

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

GENERAL OPTICAL COUNCIL

F(23)05

AND

CARLA MAHON (01-23622)

**DETERMINATION OF A SUBSTANTIVE HEARING
13-19 JULY 2023**

Committee Members:	Mr Ian Crookall (Chair/Lay) Ms Vivienne Geary (Lay) Mr Ubaidul Hoque (Lay) Mr David Cartwright (Optometrist) Ms Catherine Collin (Optometrist)
Legal adviser:	Mr Mike Bell
GOC Presenting Officer:	Ms Genevieve Woods
Registrant present/represented:	Yes and represented
Registrant representative:	Mr David Claxton Ms Nan Mousley [AOP]
Hearings Officer:	Ms Abby Strong-Perrin
Facts found proved:	1 (a) (ii), (b), 2 (a), (b) and (c)
Facts not found proved:	1 (a) (i) and (iii) by way of an application of no case to answer being upheld in relation to these allegations.
Misconduct:	Found in respect of allegation 2 only.
Impairment:	Impaired only on the grounds of public interest

Sanction:	Three month Suspension Order with no review
Immediate order:	None

ALLEGATION

The Council alleges that you, Carla Mahon (01-23622), a registered optometrist:

*1a. You used abusive words towards Mr A by calling him a **REDACTED** and **REDACTED** and/or **REDACTED**.*

1b. Your conduct above was

- i. racially motivated; and/or*
- ii. inappropriate*

2a) You failed to declare your driving offences to the General Optical Council when you registered as an optometrist on 30th October 2007.

2b) When applying for retention to the register, you failed to disclose your drink driving offences to the General Optical Council on the following dates:

- i) 25 February 2008;*
- ii) 3 March 2009;*
- iii) 1 March 2010;*
- iv) 25 March 2013;*
- v) 12 February 2014;*
- vi) 10 March 2015;*
- vii) 8 March 2016;*
- viii) 13 March 2017;*

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

ALLEGATION (as amended)

The Council alleges that you, Carla Mahon (01-23622), a registered optometrist:

1a. You used abusive words by text message and/or in person when communicating with Mr A, namely: i. "REDACTED"; ii. "REDACTED"; and/or iii. "REDACTED";

1b. Your conduct above was
i) racially motivated; and/or
ii) inappropriate.

2a. You failed to declare your driving offences to the General Optical Council when you registered as an optometrist on 30th October 2007.

2b. When applying for retention to the register, you failed to disclose your drink driving offences to the General Optical Council on the following dates:

- i) 25 February 2008;
- ii) 3 March 2009;
- iii) 1 March 2010;
- iv) 25 March 2013;
- v) 12 February 2014;
- vi) 10 March 2015;
- vii) 8 March 2016;
- viii) 13 March 2017;

2c. Your conduct in relation to 2a and/or 2b above was:

- i) misleading; and/or
- ii) dishonest.

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

Background to the allegations

1. The Registrant a practising optometrist who was first registered with the GOC as a student optometrist on 29 September 2005 before registering as an optometrist on 30 October 2007. She has had continuous registration since that date.
2. It is alleged that on 10 August 2007, the Registrant was convicted at REDACTED Magistrates Court of Driving a Motor Vehicle with Excess Alcohol. The offence occurred on 2 August 2007. The Registrant was disqualified from driving for a period of 16 months and was required to pay a fine of £100.
3. It is further alleged that on 3 October 2007, less than two months after her conviction, Ms Mahon applied to join the register of optometrists by filling in a signed form and making a formal declaration of the truth of its contents.
4. In the form, the Registrant was asked, "Have you ever been convicted of, or cautioned in relation to, a criminal offence (or been the subject of an Agreed Offer, Penalty Payment Agreement, or Absolute Discharge Order in Scotland) or are you currently being investigated in relation to a criminal offence?". The Registrant answered 'No'.
5. The Registrant was required to complete a declaration in her application for retention to the register annually. It is alleged she repeatedly failed to declare her previous conviction. Declarations were made by the Registrant on the following dates:
 - i. 25 February 2008 (Hearing Bundle, page 24);
 - ii. 3 March 2009 (Hearing Bundle, page 29);
 - iii. 1 March 2010 (Hearing Bundle, page 35);
 - iv. 25 March 2013 (Hearing Bundle, page 37);
 - v. 12 February 2014 (Hearing Bundle, page 41);
 - vi. 10 March 2015 (Hearing Bundle, pages 48-49);
 - vii. 8 March 2016 (Hearing Bundle, pages 51-52);
 - viii. 13 March 2017 (Hearing Bundle, page 54).
6. From 2009, the wording of the form changed to include additional detail, asking:

"Please provide full details of any convictions or cautions (or any Agreed Offer, Penalty Payment Agreement, or Absolute Discharge Order in Scotland) or any investigations in relation to a criminal offence. You must declare any conditional caution, and any conviction which led to the imposition of a conditional or absolute discharge. This must include any conviction etc. that you believe spent. You should give full details of the date, the offence committed, the penalty or punishment imposed and the circumstances leading to the offence.

This should include the amount of any fine and the name of any court that you attended. Attach a separate sheet if necessary.

You must declare any matters which:

- you have been asked to declare at this retention by the Registrar;*
- have occurred at any time since the last retention.*

You do not need to declare road traffic offences that have been dealt with by way of a fixed penalty.”

7. It is alleged that on 26 March 2013 and 12 February 2014, the GOC wrote to the Registrant to confirm her retention on the register after she disclosed a separate matter. The letter reminded the Registrant of the obligation to disclose convictions or cautions.
8. On 24 November 2021, the GOC received a report from REDACTED, referred to herein as ‘Mr A’. The report alleged that the Registrant had made racist comments towards Mr A in text messages and stated that the matter had been reported to the police. The report also notified the GOC that the Registrant had failed to disclose the previous criminal offence, stating:

“They have had enough opportunities to declare this but has continuously lied and worked at Specsavers for years”. (sic)

9. The criminal offence was subsequently formally disclosed to the GOC by the Registrant on 4 March 2022, more than 14 years after her conviction and was described as resulting in a “12-month” ban from driving.

DETERMINATION

Application to Amend

10. Prior to the charges being read, Ms Woods applied to amend allegation 1(a) by replacing the words 'You used abusive words towards Mr A by calling him a REDACTED and REDACTED and/or REDACTED' with the words 'You used abusive words by text message and/or in person when communicating with Mr A, namely: i. REDACTED ; ii. REDACTED; and/or iii. REDACTED.
11. Ms Woods told the Committee it had the power to amend the allegation under rule 46 (20) of the General Optical Council (Fitness to Practise) Rules Order of Council 2013 (the Rules) which states:

'(20) Where it appears to the Fitness to Practise Committee at any time during the hearing, either upon the application of a party or of its own volition, that—

(a) the particulars of the allegation or the grounds upon which it is based and which have been notified under rule 28, should be amended; and

(b) the amendment can be made without injustice, it may, after hearing the parties and consulting with the legal adviser, amend those particulars or those grounds in appropriate terms.'
12. Ms Woods submitted that the proposed amendment did not change the underlying mischief of the allegation and simply provided clarity and specification. She argued that the amended allegation would properly reflect the evidence and that the Registrant would not suffer any prejudice by the amendment.
13. Ms Woods also applied to add a new allegation 2C stating that 'Your conduct in relation to 2a and/or 2b above was: i. misleading; and/or ii. dishonest.'
14. She submitted that the amendment was required in order for the wording of the allegations to comply with the decision in *R (on the application of the Council for the Regulation of Health Care Professionals) v NMC, Kingdom* [2007] EWHC 1806 (Admi).
15. Ms Woods told the Committee that the amendment would not increase the level of seriousness of the allegation or require the addition of further evidence, but instead separated out an allegation which is already inherent in existing allegations 2a and 2b for reasons of legal and procedural compliance.

16. Mr Claxton told the Committee that he did not oppose the amendment, but as it came late no adverse view should be taken from the fact that the Registrant had not addressed the proposed version of the allegations in any of the documentation before the Committee. He indicated the Registrant would set out her position on the varied allegation in due course.
17. The Committee accepted the advice of the Legal Adviser. He referred to Rule 46 (20) and advised the Committee to consider whether the proposed amendment could be made without unfairness.
18. The Committee took into account the submissions of Ms Wood and Mr Claxton and considered the evidence in the bundle before it. The Committee considered that the amended allegation would better reflect the evidence and that no unfairness would result from the allegation being amended.
19. The Committee therefore granted Ms Woods' application to amend.
20. At the outset of the Hearing Mr Claxton told the Committee that he wished to make preliminary arguments in relation to two matters. Firstly he contended that the GOC had no jurisdiction in relation to allegation 1 and secondly that, even if it had, the Committee should grant a stay of proceedings in relation to allegation 1.
21. Ms Woods submitted that these applications were not preliminary matters, but should be dealt with at the conclusion of the evidence, for two reasons.
22. She submitted firstly, that it was very difficult, if not impossible, for the Committee to properly assess the relevance of Mr A's evidence without hearing that evidence and understanding the specific concerns of the Registrant, as expressed through her cross-examination. Only Mr A's live evidence will confirm the extent to which her alleged racist words were connected to the Registrant's work and/or concerned her colleagues/patients. This is the central question for consideration by the Committee in order to address the Registrant's legal submissions. Without establishing the facts, the jurisdictional question and issues of proportionality cannot sensibly be determined.
23. Ms Woods further submitted that, secondly, the submissions made by the Registrant are fundamentally related to the question of impairment, and therefore fall to be considered at the next stage.
24. The Committee accepted the advice of the Legal Adviser.
25. The Committee determined that these matters should be addressed as a preliminary matter. It considered that even if the applications were refused, Mr

Claxton would always have the opportunity to revisit these issues at a later stage of the hearing.

Preliminary issues

26. Jurisdiction of the Optical Council

27. Mr Claxton submitted that the GOC did not have jurisdiction to consider the issues set out in allegation 1.
28. He submitted that it was uncontroversial that there are matters and conduct that are so inherently private in nature that they fall outside of the remit and jurisdiction of professional regulators. However, he acknowledged that conduct unconnected with professional life may nonetheless give rise to a finding of serious professional misconduct and referred the Committee to the case of *Roylance v General Medical Council (No 2)* [2000] 1 AC 311).
29. Mr Claxton also referred the Committee to the case of *(Remedy UK Ltd) v the General Medical Council* [2010] EWHC 1245 (Admin). He submitted that where the conduct complained of is of a nature and / or occurs in a context which means that, even though it took place outside of the practice of medicine (or in the cases of other regulators, a different profession) it nonetheless gives rise to a concern related to the Registrant's practice. Therefore, acts of criminality, violence, sexual misconduct, harassment and hate speech (where it is promulgated in a public forum, such as political meetings or on social media) fall within a regulator's remit.
30. Mr Claxton further submitted that the current case was without precedent or parallel and there was no example in the reported cases of the reach of a regulator extending to things said in anger between REDACTED. He also submitted that the factual matrix of this case represented an overreach by the regulator into matters that were of a purely private nature and had no connection to the exercise of the Registrant's optometric calling.
31. He suggested that the circumstances of this case were, moreover, a disproportionate intrusion into the Registrant's right to a private and family life, which is protected by Article 8 ECHR and which has direct application by virtue of the Human Rights Act 1998. As a public body, the General Optical Council is bound by this Act. Mr Claxton referred the Committee to the case of *Beckwith v Solicitors Regulation Authority* [2020] EWHC 3231 (Admin) and the comments therein that:

'It is one thing to accept that any person who exercises a profession may need, for the purposes of the proper regulation of that profession in the public interest, to permit some scrutiny of his private affairs; to suggest that any or all aspects of that person's private life must be subject to regulatory scrutiny is something of an entirely different order'... There can be no hard and fast rule either that regulation under the Handbook may never be directed to the regulated person's private life, or that any/every aspect of her private life is liable to scrutiny. But Principle 2 or Principle 6 may reach into private life only when conduct that is part of a person's private life realistically touches on her practise of the profession (Principle 2) or the standing of the profession... Any such conduct must be qualitatively relevant. It must, in a way that is demonstrably relevant, engage one or other of the standards of behaviour which are set out in or necessarily implicit from the Handbook. In this way, the required fair balance is properly struck between the right to respect to private life and the public interest in the regulation of the solicitor's profession. Regulators will do well to recognise that it is all too easy to be dogmatic without knowing it; popular outcry is not proof that a particular set of events gives rise to any matter falling within a regulator's remit.'

32. Mr Claxton stated he derived the following principles from *Beckwith*:

- i. the regulator's jurisdiction to conduct an inquiry into purely private conduct is subject to limits;
- ii. where Article 8 is engaged a regulator's jurisdiction is further limited by the requirements of proportionality; and,
- iii. 'popular outcry' or general disapproval of conduct should not be elided with a legitimate subject of regulatory enquiry.

33. In conclusion he submitted that the conduct particularised in allegation 1 a, and / or the specific conduct reflected in the messages at page 11 of the bundle is:

- i. outwith the jurisdiction of the General Optical Council; and /or
- ii. the proceedings are a disproportionate interference with the Registrant's Article 8 rights.

and that allegation 1, or that part of allegation 1 that is predicated on the text messages, should be stayed.

34. Ms Woods submitted that that the allegations fall squarely within the jurisdiction of the regulator, that progressing the case and reaching a conclusion is necessary and proportionate from a human rights law perspective, and that the Committee must hear the case in order to uphold relevant public interest considerations.

35. She further submitted that the following legal principles are of application in this case in relation to Article 8:

- ix. The GOC is subject to the duty under section 6(1) of the Human Rights Act 1998 not to act incompatibly with convention rights;
- x. The hearing of any case and imposition of any sanction by the GOC in every case entails some measure of interference with the Registrant's convention rights under article 8(1), namely the right to respect for private and family life, home and correspondence;
- xi. Such interference may be justified in any given case under article 8(2), namely where it is in accordance with law and necessary in a democratic society in the interests of (inter alia) public safety, the prevention of disorder or crime, the protection of health or morals or the protection of the rights and freedoms of others;
- xii. In general terms, GOC proceedings may be undertaken in pursuance of a number of legitimate aims, including the need to protect the public, to prevent crime and disorder and to uphold standards of health and morals within the profession.

36. In relation to the question of jurisdiction, Ms Woods submitted that the GOC has not only a power but an obligation to take action where it is put on notice of misconduct or other sufficiently serious adverse conduct by a registrant in breach of the relevant standards.

37. Ms Woods argued that the Registrant accepted that conduct unconnected with professional life may give rise to a finding of misconduct in a regulatory context. She referred the Committee to the case of *Khan v General Pharmaceutical Council* [2017] 1 WLR 169 *Ibrahim v GMC* [2022] EWHC 2936 (Admin) and *Beckwith v SRA* [2020] EWHC 3231 (Admin).

38. Ms Woods stated that it was not disputed that not every aspect of one's private life must be subject to regulatory scrutiny, as there are undoubtedly specific cases which would constitute regulatory overreach. She submitted that *Beckwith* was clear authority for the fact that jurisdiction persists where professional standards of behaviour are engaged by the conduct and that there was no legal requirement for the relevant conduct to take place "in the exercise of [a professional] calling", as submitted by the Registrant. She also submitted that the only requirement is for the Tribunal to make an assessment on the facts as to whether i) there has been breach of a relevant professional standard, or ii) conduct which is likely to undermine trust and confidence in the practitioner or the profession. Ms Woods referred the Committee to the comments in the case of *Diggins v BSB* [2020] EWHC 467 (Admin) that:

'I cannot accept that there is some "bright line" to be drawn between that which falls purely within the private realm, and that which is sufficiently public to engage the disciplinary jurisdiction... In my view this is a false point... Ultimately, the question for the Panel in a case under CD5 is whether the conduct admitted or proved is likely to undermine trust and confidence in an individual barrister (as a barrister) or the profession. That is a question for assessment on the basis of the facts of the individual case. The range of factual scenarios that could properly raise such a question has no theoretical limits. Some public conduct may be too trivial to satisfy this requirement. Some private conduct may clearly cross the line. Some conduct may be hard to categorise as either public or private. A Panel will have to evaluate the conduct in all the circumstances.'

39. Ms Woods argued that the case involved serious allegations of racist conduct by the *Registrant* some of which was accepted on behalf of the Registrant. She submitted that the conduct falls within the jurisdiction of the GOC, for two reasons. Firstly, any racist conduct by Registrants is a matter which is properly within the jurisdiction of the GOC, regardless of the context in which it occurs. This is conduct which i) clearly engages the professional standards by which the Registrant is bound, and ii) which is likely to undermine trust and confidence in the Registrant and in the profession. Secondly, Standard 13 states that optometrists are required to:

'13.2 Promote equality, value diversity and be inclusive in all your dealings and do not discriminate on the grounds of gender, sexual orientation, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief.'

40. Ms Woods submitted that unlike other provisions within the standards, 13.2 is specifically worded to include behaviour which is not directed to patients or colleagues. It is a broad standard which requires non-discriminatory conduct "*in all [the Registrant's] dealings*".

41. She further referred the Committee to Standard 17 that states Registrants must:

"17.1 Ensure your conduct, whether or not connected to your professional practice, does not damage public confidence in you or your profession."

42. Ms Woods submitted that the broad wording of these standards reflects the unarguable fact that racist conduct, wherever it occurs, is repugnant and reflects adversely upon the optometrist and the profession as a whole, serving to undermine public confidence. For this reason, the Registrant has not been able to

identify any authority where racist conduct by a professional person has been held to fall outside the scope of regulatory jurisdiction.

43. Ms Woods also argued that the Registrant had accepted that she expressed racist language about people from Pakistan and/or South Asia. She expressed the view that they always want “something for nothing”, that it is “typical” of them to seek money and used the word “dishonest” when describing her view of conduct typical of persons from that background. Such conduct is self-evidently in breach of standard 13.2.
44. Ms Woods further submitted that, in the course of her work, the Registrant will deal with patients from Pakistan/South Asia. It is plainly relevant to her work as an optometrist that i) she has expressed that she holds collective negative and discriminatory views regarding that category of patients, and ii) she shared those views with Mr A, who is himself South Asian, in a derogatory manner. She argued this was not simply a matter of the regulator catering to ‘popular outcry’ and that there was an obvious risk to patients in being treated by persons holding such views and who have demonstrated that they are willing to express them to persons from that background.
45. Ms Woods accepted that the Registrant’s Article 8 rights are an important consideration, but they did not operate to prevent regulatory proceedings being brought in this case. Given the nature of the alleged (and admitted) conduct, the infringement with the Registrant’s private life was necessary and proportionate. There was no legal ‘right to be racist’ to another person without consequence, particularly for a Registrant in a regulated profession who is bound to uphold certain standards of behaviour. For these reasons, a Registrant’s use of racist or discriminatory language is a legitimate subject of regulatory enquiry.
46. Ms Woods further submitted that there were also allegations that the Registrant’s use of racially abusive language was directly relevant to her work. Specifically, Mr A alleged that the Registrant would not be racist to her colleagues’/patients’ faces but would bring such language about them home to share with him behind their backs. Ms Woods argued that the allegation that the Registrant used racist language about persons at her work meant that this case does not relate to ‘purely private conduct’ but was a matter which fell squarely within the jurisdiction of the GOC.
47. Ms Woods submitted that the GOC were not only fully empowered to hear the allegations but must do so in order to ensure the public interest is met and confidence is maintained in the regulator. The GOC had been put on notice of allegations of racism, had received a text message disclosing racist language and had heard admissions in relation to the message from the Registrant. If it were to

take no action in response, that would undermine confidence in the regulator and send an adverse message to the public and other registrants.

48. Ms Woods told the Committee that these issues also required to be taken into account when determining whether the Committee was acting proportionately in accordance with its obligations under the Human Rights Act. When conducting any balancing exercise, the Committee must weigh factors such as (1) the potential interference of considering certain matters related to the Registrant's home life/ REDACTED, against factors such as (2) the public interest in addressing admitted racist conduct from a regulatory perspective, (3) of protecting others from such conduct, and (4) of maintaining standards of behaviour and (5) upholding public confidence in the profession.
49. In conclusion Ms Woods submitted that holding GOC proceedings to address misconduct or Deficient Professional Practise (DPP) by Registrants is necessary in pursuance of a legitimate regulatory aim in accordance with Article 8(2), and that in the present case the matters set out at (2)-(5) outweigh the limited interference of matter (1), such that hearing the case is proportionate and lawful.
50. Both Mr Claxton and Ms Woods agreed that in considering the application the Committee should take the GOC's case at its highest.
51. The Committee accepted the advice of the Legal Adviser. He referred the Committee to the case of *R (Remedy UK Ltd) v the General Medical Council* [2010] EWHC 1245 (Admin) in relation to the potential two limbs of misconduct. He advised the Committee that it required to consider the application on the particular facts and circumstances of the case and take the GOC's case at its highest. He further referred the Committee to Article 8 of the EHCR and advised that intrusion into a person's private life could be legitimate if proportionate in the particular circumstances.
52. The Committee took into account the submissions of Mr Claxton and Ms Woods. The Committee also took into account the evidence contained in the GOC bundle C1 and as agreed by the parties took the GOC's evidence at its highest.
53. The Committee noted the comments made in paragraph 37 of *Remedy* where it is stated:

'(1) Misconduct is of two principal kinds. First, it may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outwith the course of professional practice itself, but which

brings disgrace upon the doctor and thereby prejudices the reputation of the profession.

(2) Misconduct falling within the first limb need not arise in the context of a doctor exercising his clinical practice, but it must be in the exercise of the doctor's medical calling. There is no single or simple test for defining when that condition is satisfied.

(6) Conduct falls into the second limb if it is dishonourable or disgraceful or attracts some kind of opprobrium; that fact may be sufficient to bring the profession of medicine into disrepute. It matters not whether such conduct is directly related to the exercise of professional skills.'

54. The Committee determined that it was clear from *Remedy* that it was not necessary for conduct falling into the category of the second limb as defined in *Remedy* to have any connection with the Registrant's professional practice. The Committee further determined that the question before it was firstly, whether the conduct was '*dishonourable or disgraceful or attracts some kind of opprobrium*' .

55. The Committee also noted the terms of Article 8 of the ECHR that states:

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

56. The Committee determined that, if it concluded that the alleged conduct was '*dishonourable or disgraceful or attracts some kind of opprobrium*' , it would then required to consider whether it was proportionate for the GOC to institute regulatory proceedings against the Registrant. The Committee was aware that '*there can be no hard and fast rule either that regulation under the Handbook may never be directed to the regulated person's private life, or that any/every aspect of her private life is liable to scrutiny*'.

57. The Committee carefully considered all the evidence contained before it, in particular the witness statement of Mr. A. The Committee took this evidence at its highest, making no assessment in relation to credibility or reliability at this stage.

58. The Committee determined that, taking the evidence at its highest, allegation 1, as amended, related to language which, on its face value, was discriminatory and wholly inappropriate. It was accepted as such by the Registrant. These comments were made between REDACTED. The words used were solely directed at REDACTED. However the Committee took into account that in his signed witness statement Mr A stated that the Registrant would ‘*come home after work and spout racist language*’ and ‘*wouldn’t be racist to the customers and colleagues but would bring her discriminatory language home.*’ In this context the Committee took particular note of the GOC Standards of Conduct 13 and 17 which demonstrate the degree of importance which the GOC as a Regulator places on non-discriminatory behaviour in relation to protected characteristics of which race is one and the need to ensure that conduct whether or not connected with professional practice, does not damage public confidence in the profession. Whilst making no finding of fact, the Committee considered that the language allegedly used by the Registrant could amount to conduct that would be viewed ‘*dishonourable or disgraceful or attracts some kind of opprobrium.*’ The Committee further determined that such conduct, if proved was capable of undermining public confidence in the profession and the GOC as a regulator. The Committee took full account of the fact of that the GOC received the referral from Mr A and the circumstances existing at the time the referral was made. Accordingly, it was proportional to undertake this enquiry and in exercising its judgement the Committee considered it was necessary to reach into this aspect of the Registrant’s behaviour because of the potential impact on her practise and the standing of the profession. Clear regulatory standards of the GOC were potentially engaged.
59. The Committee decided that having received the referral, the GOC was duty bound to initiate regulatory investigation and progress matters to this hearing and that such action was proportionate in terms of Article 8 (2) of the EHCR.
60. The Committee therefore refused Mr Claxton’s preliminary application that the GOC had no jurisdiction in this matter.

Abuse of Process

61. Mr Claxton then made an application for a stay of proceedings in respect of allegation 1.
62. Mr Claxton referred to the *Blackstone’s Criminal Practice 2023* which he suggested provided a helpful summary of the general principles engaged in relation to abuse of process. In particular he referred to the comments that:

'In Maxwell [2010] UKSC 48, [2011] 1 WLR 1837 (at [13]), cited in Warren v A-G for Jersey [2011] UKPC 10, [2012] 1 AC 22 (at [22]), Lord Dyson summarised the two categories of case in which the court has the power to stay proceedings for abuse of process:

It is well established that the court has the power to stay proceedings in two categories of case, namely (i) where it will be impossible to give the accused a fair trial, and (ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In the first category of case, if the court concludes that an accused cannot receive trial, it will stay the proceedings without more. No question of the balancing of competing interests arises. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will offend the court's sense of justice and propriety (per Lord Lowry in R v Horseferry Road Magistrates' Court, ex p Bennett [1994] 1 AC 42 (at 74G)), or will undermine public confidence in the criminal justice system and bring it into disrepute (per Lord Steyn in Latif [1996] 1 WLR 104 (at 112F)

63. He submitted that there were two main categories of abuse of process:
- a. cases where the court concludes that the accused cannot receive a fair trial;
 - b. cases where the court concludes that it would be unfair for the accused to be tried.
64. Mr Claxton *told* the Committee that his submission relied on the second limb. He submitted that Mr A is the REDACTED of the Registrant and the allegations arise from a period when Mr A and the Registrant were REDACTED. He stated that this moreover involved REDACTED and that the complaint to the General Optical Council was made on the same day that the REDACTED.
65. Mr Claxton submitted that it was abundantly clear that Mr A's motivation when making the referral to the General Optical Council was both vindictive and connected with the REDACTED. He referred the Committee to sections of Mr A's statement where Mr A stated :
- i. "I suspect there are REDACTED"
 - ii. "REDACTED."
66. Mr Claxton submitted that these assertions demonstrated Mr A's ill feeling towards the Registrant and, owing to their content, the GOC should consider again if it is appropriate to adduce this evidence.

67. Mr Claxton also submitted that the GOC had in effect been co-opted by Mr A in his campaign against the Registrant. When he was prevented from REDACTED, he turned to the GOC, who should have known better.
68. In conclusion Mr Claxton submitted that the continuation of the case (in relation to allegation (1) should be properly considered an affront to the Committee's sense of justice and propriety and the allegation should be stayed.
69. Ms Woods submitted that the Committee does have an inherent power to stay proceedings as an abuse of process in certain limited circumstances. She referred to the case of *Crawley* [2014] 2 Cr App R 16 where it was stated;

'...there are two categories of case in which the court has the power to stay proceedings for abuse of process. These are, first, where the court concludes that the accused can no longer receive a fair hearing; and, second, where it would otherwise be unfair to try the accused or, put another way, where a stay is necessary to protect the integrity of the criminal justice system. The first limb focuses on the trial process and where the court concludes that the accused would not receive a fair hearing it will stay the proceedings; no balancing exercise is required. The second limb concerns the integrity of the criminal justice system and applies where the Court considers that the accused should not be standing trial at all, irrespective of the potential fairness of the trial itself.

... there is a strong public interest in the prosecution of crime and in ensuring that those charged with serious criminal offences are tried. Ordering a stay of proceedings, which in criminal law is effectively a permanent remedy, is thus a remedy of last resort.'

70. Ms Woods told the Committee that where the matter said to amount to an abuse of process involves potential infringement of the Registrant's Article 8 rights, that is not determinative but is merely one factor to be taken into account when determining whether an abuse of process has occurred. She submitted that when considering the question of abuse of process in the regulatory context, tribunals must take into account as part of their proportionality balancing exercise the public interest in hearing the case for reasons of i) public protection; ii) the upholding of proper professional standards; and iii) public confidence in the profession. Tribunals should be very slow to stay proceedings on the basis of an abuse of process and should treat it only as a last resort, or as 'exceptional'. Ms Woods said that the threshold for finding an abuse on the basis of unfairness is very high. She referred to the case of *Attorney General's Reference (No 2 of 2001)* [2004] 2 AC 72 where it was stated:

'The category of cases in which it would be unfair to try the defendant will... be very exceptional, and a stay will never be an appropriate remedy if any lesser remedy would adequately vindicate the defendant's [article 6] rights.'

71. Ms Woods pointed out that the Registrant was not suggesting that it would not be possible for her to have a fair hearing (the first limb), but instead it is argued that she should not be subject to proceedings for reasons of systemic fairness.
72. Ms Woods submitted that if regulators were to be prevented from bringing proceedings in any case where the allegations were initially referred by someone who was in personal conflict with the Registrant, even very serious personal conflict, few cases would ever be brought. The fact that the reporting party is someone from the Registrant's family or personal life or a person in dispute with the Registrant is not in itself a bar to proceedings being brought and it cannot bring the system as a whole or the Committee into disrepute.
73. Ms Woods told the Committee that on 29 June 2023, the GOC was provided with a copy of a REDACTED.
74. Ms Woods stated that there was no suggestion that Mr A's referral to the GOC was in REDACTED. Rather, REDACTED to illustrate that there was some personal context to the timing of the referral made by Mr A to the GOC. From a factual perspective, it is not clear whether Mr A actually knew about REDACTED on 24 November 2021 at the time when the referral was made, as REDACTED on that date is said to have taken place without notice to him. More generally, the context of the REDACTED is not a matter on which the GOC is able to comment, nor is it relevant in the present case.
75. Ms Woods submitted that it was possible to see how REDACTED could be relevant to a potential issue about the credibility of the referral made by Mr A, given the circumstances in which the complaint was made (namely, REDACTED). However, Ms Woods submitted that was not in question in this case, because the Registrant accepted that the substance of Mr A's report on 24 November was correct and accurate, in that i) she had repeatedly not disclosed her previous criminal offending to the GOC over a period of (at that stage) approximately 14 years; and ii) she had sent Mr A text message containing a racist slur. Ms Woods argued that where the truth of matters referred to the GOC by the witness is accepted, the potential motivation for the referral was irrelevant, because no question of credibility arises.
76. Ms Woods also submitted that a stay for abuse of process is never appropriate if there is any lesser remedy which can protect the Registrant's right to a fair trial. In this case, there are a range of alternative safeguards available. Their availability means that the Committee must not impose a stay. Such alternatives include:

- i. To the extent that there are questions about credibility in relation to the broader matters contained in Mr A's statement, this is not a bar to the proceedings continuing. The context of personal dispute with a witness can be dealt with in the usual manner: the Registrant will have a full and fair opportunity to question the witness in this case so that any concerns or theories about areas of evidence which are challenged or about his reasons for giving evidence can be put to him, where relevant and proper;
 - ii. It is open to the Committee to use its powers of case management in relation to evidence, for example to restrict questioning which interferes with the Registrant's private life and deal only with those matters which are directly alleged by the GOC;
 - iii. The Registrant has a full and fair opportunity to give evidence and provide her own account. She is also entitled to serve and rely upon evidence in support of her case. The Committee is experienced and well-equipped to ensure that the proceedings do not become overly focused on satellite issues or REDACTED.
77. Ms Woods said that any concerns about the motivations of Mr A or his role in the Registrant's personal life must be weighed against the very grave public interest in trying cases related to allegations of racism and dishonesty, as well as the interest in upholding proper standards and public confidence in the profession. That interest was particularly compelling in a case where the Registrant has admitted the majority of the adverse conduct.
78. She further argued that the timing of the order and the fact that a referral was made to the GOC by REDACTED of the Registrant during the period when REDACTED may be a matter to be put forward in mitigation at the discretion of the Registrant, but it was not sufficient as a matter of law to meet the very high threshold for the proceedings to be stayed as an abuse of process.
79. The Committee accepted the advice of the Legal Adviser. He advised the Committee that it required to consider the application on the particular facts and circumstances of the case and take the GOC's case at its highest.
80. The Committee took into account the submissions of Mr Claxton and Ms Woods. The Committee also took into account the evidence contained in the GOC bundle C1 and as agreed by the parties took the GOC's evidence at its highest.
81. The Committee in particular took into account that Mr Claxton sought a stay of proceedings simply on the grounds that to proceed would offend *'the court's sense of justice and propriety to be asked to try the accused in the particular*

circumstances of the case'. The Committee also noted the comments in Crawley that 'there is a strong public interest in the prosecution of crime and in ensuring that those charged with serious criminal offences are tried. Ordering a stay of proceedings, which in criminal law is effectively a permanent remedy, is thus a remedy of last resort.'

82. The Committee determined that at this stage of the hearing there was insufficient evidence that the referral by Mr A arose solely out of his vindictive ill feeling and personal animosity to the Registrant as a result of REDACTED. Mr Claxton based his submission on this assumption, drawn from the surrounding circumstances as the Registrant saw them. However the reason for making the complaint in the absence of evidence from the complainant was entirely speculative. The complaint was clear and was supported by the statement of Mr A. The factual allegations required to be tested in the usual way by the calling of evidence. The Committee also reminded itself of its conclusions that having received the referral, the GOC was duty bound to initiate regulatory investigation and progress matters to this hearing and that such action was proportionate in terms of Article 8 (2) of the EHCR. The Committee did not consider there existed any 'very exceptional' circumstances that would justify a stay of proceedings existed at this time.
83. The Committee therefore refused Mr Claxton's application for a stay of proceedings in relation to allegation 1.

Application for direction for Mr A to attend to give evidence in person

84. Prior to the GOC opening its case, Mr Claxton made an application for the Committee to direct that Mr A should give evidence in person.
85. Mr Claxton submitted that a witness had no right to attend remotely nor a presumption that a witnesses would give evidence in person. He said that the question was what was fair. Mr Claxton argued that Mr A was the only witness to allegations 1 (a) and (b) and that the Registrant's representatives had given notice to the GOC in March 2023 that they wished him to attend to give evidence at the factual stage.
86. Mr Claxton submitted that the allegation 1 (a) and (b) were clearly serious contested allegations and there was a fundamental dispute on facts between the parties. He argued that the assessment of a witnesses' honesty and credibility was best done in person. He said that video evidence was of a secondary order or quality and given the seriousness of the allegations unfair to the Registrant to proceed in this manner.

87. Mr Claxton told the Committee that he had been advised that whilst there were practical difficulties in Mr A attending on the first two days of the hearing there appeared to be no such problem in relation to the third day. Mr Claxton indicated that his cross examination would not be lengthy and it seemed likely that Mr A's evidence be concluded on that day.
88. In conclusion, Mr Claxton submitted it was fair and appropriate for Mr A to be directed to attend to give evidence in person.
89. Ms Woods confirmed to the Committee that it had no power to compel attendance and that the GOC would have to apply to the High Court for such an order.
90. Ms Woods argued that the vast majority of regulatory hearings were conducted remotely and that witness should be permitted to give evidence remotely.
91. She outlined the reasons why Mr A could not attend in person on the first two days of the hearing but, when asked by the Committee, stated that he would be able to give evidence remotely during day two. She also confirmed there was no practical difficulty in his attending on the third day, but that if he were required to do so she would have to seek instruction on whether to make an application for him to be treated as a vulnerable witness. She submitted that if a direction was made and Mr A refused to attend as a result of his subjective concerns about being in the same room as the Registrant then she would require to make a 'hearsay' application to have his witness statement read in, with consequent issues for the evidence.
92. Ms Woods submitted that Mr A's credibility and reliability could be assessed if he gave evidence remotely and that it would be fair to proceed in this way. She further submitted that the Committee should not make the direction sought by Mr Claxton.
93. In reply, Mr Claxton indicated he had some concerns about the veracity of Mr A suggesting that he could not give evidence if he were in the same room as the Registrant as they REDACTED.
94. The Committee accepted the advice of the Legal Adviser. He referred the Committee to Rule 40 and advised that the Committee had a wide discretion in relation to how witness evidence was admitted including in person and remotely.
95. The Committee took into account the submissions of Mr Claxton and Ms Woods.
96. The Committee considered that it had no evidence before it to indicate that Mr A could not practically attend on the third day to give evidence in person. the issue was that he did not wish to do so to avoid being in the same room as the

Registrant. The Committee was aware that it has the power - either on application by either party or of its own volition - to treat a person as a vulnerable witness and adopt relevant measures to allow the evidence of a vulnerable witness to be received.

97. The Committee considered that allegations 1 (a) and (a) involved serious matters. It took into account that Mr A was the only witness speaking to allegation 1 (a) and (b) and that there were clearly disputes between Mr A and the Registrant in relation to these allegations. The Committee also considered that the issue of whether Mr A had any underlying motivation to make the referral to the GOC was potentially an important matter it might have to consider when making finding of facts in relation to allegations 1 (a) and (b). The Committee decided that the particular circumstances involved in allegations 1 (a) and (b) were unusual and such that the Mr A should be asked to attend to support his complaint.
98. The Committee also concluded that as this hearing had been set down to be in person for the first three days that it seemed implausible that this would have been done had it not been intended that at least the GOC witnesses would give evidence in person.
99. The Committee also considered that if the only barrier to Mr A giving evidence in person was his concerns about being in the same room as the Registrant, that this could potentially be addressed by considering whether this should be considered as amounting to subjective feelings of 'intimidation' and if so measures could be put in place to overcome this difficulty.
100. In the very particular circumstances relating to the evidence of Mr A, the Committee therefore directed that he be required to give evidence in person.

No case to Answer Submission

101. Following the Committee handing down its decision on Mr A giving evidence in person, Ms Woods advised that the GOC no longer intended to call Mr A to give evidence and withdrew the documents contained in the GOC bundle that were exhibited by Mr A. She advised that the parties agreed the screen shots of the text message sent by the Registrant to Mr A. The only further opening made by Ms Woods was to narrate the background to the matter.
102. Following this, Mr Claxton made an application of no case to answer under Rule 46 (8) (a) in respect of allegations 1 (a) (i) and (iii).

103. Mr Claxton stated that the basis for his application was that Mr A was not going to give evidence and the GOC had therefore withdrawn his witness statement and the documents he exhibited in it. He submitted that there was now no evidence before the Committee upon which the disputed facts could be found proved and that the allegations relating to 1 (a) (i) and (iii) should therefore be found not proved.
104. Ms Woods took no position.
105. The Committee accepted the advice of the Legal Adviser. He referred the Committee to the case of *R v Galbraith* (1981) 73 Cr App R and how the approach to no case to answer set out there in should be applied to regulatory proceedings.
106. The *Committee* determined that there was no evidence before it in relation to allegations 1 (a) (i) and (iii), that these allegations could not be found proved by a properly directed Committee.
107. The *Committee* therefore upheld Mr Claxton's application that there was no case to answer in respect of these allegations
108. *Following* the Committee handing down its decision on the no case to answer application, Mr Claxton, on the Registrant's behalf, formally admitted the remaining allegation 1(a) (ii) and allegation 1b in respect of the matters admitted in allegations 1 (a) (ii).
109. Accordingly, the Committee proceeded on the basis that there were full admissions to the following amended allegation:
- 1a. *You used abusive words by text message when communicating with Mr A, namely: "REDACTED";*
 - 1b. *Your conduct above was*
 - iii) *racially motivated; and/or*
 - iv) *inappropriate.*
 - 2a. *You failed to declare your driving offences to the General Optical Council when you registered as an optometrist on 30th October 2007.*
 - 2b. *When applying for retention to the register, you failed to disclose your drink driving offences to the General Optical Council on the following dates:*
 - ix) *25 February 2008;*
 - x) *3 March 2009;*
 - xi) *1 March 2010;*

- xii) 25 March 2013;
- xiii) 12 February 2014;
- xiv) 10 March 2015;
- xv) 8 March 2016;
- xvi) 13 March 2017;

2c. Your conduct in relation to 2a and/or 2b above was:

- iii) *misleading; and/or*
- iv) *dishonest.*

110. As a consequence of the further admissions to the remaining allegations, all factual allegations were admitted by the Registrant and were found proved by the Committee.

Findings regarding impairment

111. At the commencement of the stage of misconduct Mr Claxton advised that the Registrant and a witness on her behalf would give oral evidence to the Committee. Mr Claxton further requested that the Committee consider and hand down its decision on misconduct prior to him addressing the Committee on impairment. Ms Woods accepted this was a matter for the Committee.

112. The Committee decided it would be appropriate to consider and hand down its decision on misconduct alone in the particular circumstances of this case.

Misconduct

Application to have hearing partially in private.

113. Prior to the Registrant giving evidence Mr Claxton applied for any matters relating to her personal and family circumstances to be heard in private.

114. Ms Woods did not object.

115. The Committee accepted the advice of the Legal Adviser who referred it to Rule 46 (20) that states:

'25.—(1) Substantive hearings before the Fitness to Practise Committee must be held in public. This is subject to the following provisions of this rule.

(2) The Fitness to Practise Committee may determine that the proceedings, or any part of the proceedings, are to be a private hearing, where the Committee consider it appropriate, having regard to—

- 1. (a) the interests of the maker of an allegation (where one has been made);*
- 2. (b) the interests of any patient or witness concerned;*
- 3. (c) the interests of the registrant; and*
- 4. (d) all the circumstances, including the public interest.'*

116. The Committee determined that it was in the interests of the Registrant for any matters relating to her personal and family life to be heard in private and that this outweighed the public interest.

117. The Committee decided that any reference to the Registrant's personal and private life would be in private.

118. The Committee thereafter heard live evidence from the Registrant and Ms B. It received and had regard to the written witness statement of Mr C.

119. The Registrant adopted her signed witness statement and gave supplementary oral evidence.

120. The Registrant initially explained to the Committee why she had advised the GOC in March 2022 that she had been disqualified from driving was for a period of 12 months rather than the 16 months period set out the Police National Computer records printout. The Registrant explained that her disqualification period had initially been for 16 months but this had been reduced to 12 as a result of her taking a course in relation to drink driving. She said when she advised the GOC she thought the information she provided was correct and accurate.

121. The Registrant told the Committee about her motivation for becoming a registered optometrist and the chronology of her attending university, pre-registration and registration as an optometrist. She explained that her driving offence occurred during her pre-registration year. She told the Committee that during this period she had a part time job at nights. She normally stayed with a friend when working but on this night she had not been able to and had decided to drive home. She

was stopped by the Police and breathalysed. She accepted that she should not have driven having consumed alcohol.

122. The Registrant told the Committee that as of October 2023 she will have been practising as a registered optician for 16 years. She outlined to the Committee her work history and that she had taken no breaks from practice other than very short breaks when REDACTED. She explained that as part of her practice she carried out assessments and treatment of Minor Eye Conditions (MECS) and that she was MECS accredited and had undertaken courses about the assessment of cataracts. The Registrant explained that she now worked as a locum optometrist on a self-employed basis. The Registrant told the Committee about REDACTED. When asked by Mr Claxton about the text initially saying 'Park' the Registrant explained that her phone's predictive text had changed what she had typed and agreed she had then re-typed the word 'REDACTED'. The Registrant said that she had heard Mr A and REDACTED use the word in relation to members of their community and she used it to describe him in the same way. The Registrant said she was very upset at the time that she sent the text.
123. The Registrant said she should never have sent the text and that she '100%' regretted it. She told the Committee that REDACTED are mixed race. She explained that if comments were made about REDACTED it angered and upset her.
124. The Registrant stated she had learned to respect cultural diversity and that race was a protected characteristic. She said that in her professional life she encountered individuals from many different ethnic backgrounds. She said that she understood how a member of the public would feel let down by her sending the text and that they would expect more from a member of the profession.
125. In relation to the non-declaration of her conviction the Registrant explained her REDACTED who were professionally qualified and to whom she could have gone for advice when she was convicted. She explained to the Committee that when she was convicted she was a pre-registration optometrist and was afraid it would be the end of her career. She said she didn't know what to do and decided not to disclose the conviction. The Registrant explained that having initially not disclosed the conviction, she continued to do so through fear. She said she felt it was 'hanging over her all the time' and she regretted the decision.
126. The Registrant explained in detail to the Committee why honesty and integrity was important as a member the profession. She referred the Committee to courses she had undertaken and explained what she had learned from them with particular reference to both patients and the public more generally. She explained that patient care could be compromised if a patient knew that a registered optometrist

had not disclosed a conviction as patients might not feel able to give a full clinical history. The Registrant also explained that the public need to have faith in the profession and the GOC as its regulator.

127. The Registrant told the Committee that she loved her work, hoped to be able to continue with her career as an optometrist and explained what her current practice involved.
128. In cross examination, the Registrant accepted it had been her decision to drive after drinking. She also agreed that she had disclosed a conviction for speeding in July 2022 before she disclosed her conviction for drink driving. She also accepted that there was no ambiguity in the forms in relation to the declaration of convictions and that she knew she should have declared it and decided not to.
129. In reply to questions from Ms Wood the Registrant stated that when she sent the text she was acting out of character and it did not reflect her wider views on ethnic communities. She also expanded on what she had learned from the course she had taken and the reflection she had undertaken. She explained that her 'reflective piece' was contained in her witness statement that she had adopted.
130. In reply to questions from the Committee she confirmed that as accredited MECS optometrist she had undertaken further study to achieve an accreditation. She also said that she didn't recall any lectures about the legal duties of an optometrist when she was a student and that, due to circumstances, she did not have a supervisor or mentor to consult and take advice from when she was convicted.
131. The Committee considered that the Registrant gave her evidence in an honest, open and straight forward manner. Her evidence was consistent with her position in other documentation, remained consistent during cross examination and was not inherently implausible.
132. Ms B confirmed the contents of her written statement and adopted it.
133. She told the Committee that she had been a registered optometrist since 2005 and outlined her professional employment background. She said she had met the Registrant in 2015 and had worked together one day a week for several months, up to a year. Ms B told the Committee that she was also a friend of the Registrant and had known her long enough to get a 'feel' for her as a person and an optometrist.
134. Ms B also told the Committee that the Registrant had no racist characteristics whatsoever. She gave examples that she had seen of the Registrant's interaction

with ethnic groups during her professional practice. She also told the Committee that the Registrant's REDACTED were mixed race.

135. Ms B told the Committee that the Registrant was a 'really' kind, thoughtful person who always put Ms B's interests first. She said the Registrant was always calm when practising professionally and that, when issues arose when they were working together, the Registrant was the first person she went to for advice.
136. Ms B told the Committee that the Registrant was a 'great' optometrist and that the Registrant was the first person she called if a business needed cover.
137. During cross examination Ms B confirmed how often she had worked with the Registrant and added that she and the Registrant sometimes travelled to and from work together. She clarified that she had not seen the Registrant working during a consultation but witnessed her coming in and out of a consultation with customers.
138. Ms B also confirmed she was aware of the Registrant's conviction and that she had been advised of the GOC allegations 'some months ago' and was aware of the Registrant's position in relation to the Allegation.
139. The Committee considered that Ms B gave her evidence in an open and straight forward manner. Her evidence was consistent with her position in her written statement, remained consistent during cross examination and was not inherently implausible.
140. In his written witness statement Mr C outlined how he had come to know the Registrant professionally and that he was impressed by her work ethic and diligence to the profession. He further stated that the Registrant was not racist and provided examples of the Registrant's interactions with others to back up his view.
141. The Committee noted that Mr C's evidence had not been tested as he had not attended to give evidence as a witness.

Submissions

142. Ms Woods told the Committee that there was no statutory definition of misconduct and referred the Committee to the definition provided in the case of *Roylance v GMC* [2000] 1AC 311.
143. Ms Woods submitted that the allegations admitted and found proved breached Standards 13 and 16 of the Standards of Practice for Optometrists and Dispensing Opticians (2016) (the 2016 Standards). She told the Committee that it was accepted between the parties that the conduct admitted in allegation 2 amounted to misconduct and focussed on the conduct in allegation 1 in her submissions.

144. Ms Woods also submitted that the conduct admitted was serious. She argued that the Registrant had deliberately chosen the words used in the text and the connotation they were made in.
145. Ms Woods accepted the text had been sent when the Registrant's REDACTED but argued that the texts were hostile and sent in anger and that this could not be seen as mitigation. Ms Woods said the text reflected the Registrant's general view on members of ethnic communities. She submitted that the conduct admitted in allegations 1 amounted to open, deliberate and hostile racism and that it was significant that it was part of a series of texts sent over a period of time.
146. Ms Woods also told the Committee that public confidence in the GOC would be adversely affected if the Committee did not find misconduct.
147. Mr Claxton submitted that each allegation was separate and that the Committee had to consider them individually and whether individually the allegations amounted to misconduct.
148. In relation to allegation1, Mr Claxton told the Committee that the Registrant accepted that the word used was deplorable and horrible.
149. He referred the Committee to the case of *Nandi v GMC* [2004] EWHC 2317 and submitted that to find misconduct there required to be serious professional misconduct and that the conduct had to be examined in context. He submitted that the word had been used a single time and that it was not known what Mr A had said initially that had given rise to the Registrant's text in response as the full text exchange was not available because they were 'i messages' from Mr A's phone.
150. Mr Claxton further argued that this was an intensely private matter and had to be seen in the context of REDACTED. He also submitted that the text had been sent in anger and it was 'ludicrous' to suggest that was an aggravating feature.
151. Mr Claxton said the Committee had to take into account that the conduct had not occurred at work and that the Registrant had no history of using racist language.
152. Mr Claxton argued that when looked at in this context the admitted use of the word did not amount to misconduct.
153. In relation to allegation 2, Mr Claxton accepted that the Registrant had not disclosed the conviction and the associated dishonesty and that this amounted to misconduct.

154. However, he further commented it was in the context of the Registrant being a pre-registration optometrist when the offence occurred and that there had been no direct patient harm.
155. The Committee accepted the advice of the Legal Adviser. He referred the Committee to the cases of *Roylance* and *Calheam v GMC* [2007] EWHC 2606.
156. The Committee took into account the submissions of Ms Woods and Mr Claxton. It also took into account the written and oral evidence of the Registrant and Ms B and the written witness statement of Mr C.
157. The Committee considered that there was no evidence before it to contradict the evidence of the Registrant or her witnesses. The oral evidence of the Registrant and Ms B was consistent with prior written witness statements. The Committee considered that the context in which the text was sent as set out by the Registrant was wholly plausible given REDACTED. The Committee noted that the factual circumstances that existed at the time the text was sent, in particular the REDACTED was not contested by the GOC.
158. The Committee approached the conduct in each allegation separately.
159. In relation to allegation 1, the Committee decided that the context in which the text was sent had to be considered. The Committee accepted that at the time the text was sent the Registrant's REDACTED. The Committee further considered that the text was a private message between the Registrant and Mr A and that there was a single one off use of the word 'REDACTED'. The Committee also accepted the uncontested factual evidence of the Registrant that Mr A had made similar comments to describe other members of the Pakistani community in a derogatory way and that the Registrant had used the word to 'get back' at Mr A and upset him.
160. The Committee took into account that the Registrant's REDACTED are of mixed race and her evidence that she was not racist. The Committee also took into account the uncontested factual written and oral evidence of Ms B that she had never heard or seen the registrant acting in a racist manner and the similar evidence was contained in Mr C's written statement.
161. In these circumstances, the Committee determined that the use of the word 'REDACTED' was a one off event in a message between REDACTED.
162. The Committee determined that the conduct in allegation 1 therefore did not amount to serious professional misconduct giving rise to a finding of misconduct.

163. In relation to allegation 2, the Committee took into account that the Registrant accepted that she had failed to disclose her conviction over a period of time and that in doing so she had acted dishonestly.
164. The Committee considered that the Registrant's admitted dishonest conduct in failing to disclose her conviction over a period of time was serious. The Committee considered that there was an expectation on either a pre-registration optometrist or a registered optometrist to disclose any such conviction.
165. The Committee considered that the Registrant's admitted conduct in allegation 2 breached Standards 16 of the Standards 2016 that states:

'16. Be honest and trustworthy

16.1 Act with honesty and integrity to maintain public trust and confidence in your profession.'

166. While the *Committee* was not addressed on the issue by either Ms Woods or Mr Claxton, it noted that the majority of the dates set out in allegation 2 pre-dated the 2016 Standards. The Committee therefore referred itself to the GOC's Code of Conduct 2005 (the 2005 Code) which was in place at the time. The Committee decided that during the period that this was in place the Registrant's admitted conduct in allegation 2 breached paragraph 10 of the 2005 Code that states:

'A registered optometrist or dispensing optician must:

Be honest and trustworthy'

167. The Committee determined that the Registrant's admitted dishonest conduct as set out in allegation 2 fell far below the professional standards to be expected of a registered optometrist and was serious professional misconduct.
168. The Committee therefore determined that the Registrant's conduct in allegation 2 amounted to misconduct.
169. Following the Committee delivering its decision on Misconduct, Ms Woods observed that the Committee appeared to take into account in its decision the evidence of Ms B and Mr C. She stated that these witnesses were not able to give evidence in relation to the factual allegation and she considered that it was not appropriate to take it into account at this stage. Whilst she did not wish to question the decision of the Committee, she did ask if the Committee might re-visit that part of its decision relating to those witnesses' evidence. Mr Claxton did not consider

that this was necessary as, in his submission, it was appropriate to consider the evidence of the 2 witnesses in question in the Misconduct determination.

170. The Committee clarified its position in relation to these matters. It was clear to the Committee that Mr Claxton was calling evidence in relation to Misconduct and Current Impairment. Mr Claxton made it clear to the Committee that the only issue for the Committee to consider was the question of Misconduct. There was agreement between the parties that the Committee should receive evidence in this way.
171. The Committee clarified that it gave consideration to any evidence which would allow it to assess the context in which the statement in allegation 1a was made. This reflected the submissions of both parties in relation to allegation 1a, namely that it had to be looked at in the context of the surrounding circumstances at that time. That is how the Committee approached its task.
172. The Committee did not propose to change or alter its determination.

Decision on Impairment

173. The Committee then went on to consider whether as a result of the misconduct identified in Allegation 2 the Registrant's fitness to practice is currently impaired.
174. The Committee heard submissions from Ms Woods and Mr Claxton. It heard no further witness evidence.
175. Ms Woods, with reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) submitted that not to make a finding of impairment amounted to complete acquittal.
176. She further referred the Committee to the case of *PSA V GMC* [2019] EWHC 1638 (Admin) and submitted that appellate Courts often found a failure to find impairment to be unreasonable where dishonesty was found and the Committee should bear this in mind.
177. Ms Woods also referred the Committee to the case of *Cohen v GMC* [2008] EWHC 581 (Admin) and submitted with reference to the test set out therein, that in assessing impairment the Committee must consider whether the conduct was easily remediable, had it been remedied and whether it is highly unlikely to recur.
178. Ms Woods submitted that having initially failed to disclose her conviction the Registrant then continued to fail to declare it for a period of over 14 years. She argued that this was not a one off incident but occurred on a number of occasions

over a number of years. She suggested that if there had been no referral the GOC might still not be aware of the Registrant's conviction. Ms Woods submitted that there had been no 'significant change' since the referral and that the misconduct had not been remedied.

179. Ms Woods also submitted that the Registrant's misconduct could not be easily remedied. She argued that the fundamental dishonesty was deliberately repeated over a period of time. Ms Woods also told the Committee that the dishonesty was in the course of the Registrant's professional practice and was directed at the GOC. She said it spanned the entirety of the Registrant's time in practice from initial registration to date. Ms Woods submitted that such dishonesty was difficult to remedy.
180. Ms Woods submitted that the Registrant stated she should have taken advice. Ms Woods argued that it was difficult to understand the relevance of the Registrant's claim that she had been unable to take advice. The Registrant had accepted she didn't need advice to whether to lie or not. Ms Woods posed the question if the Registrant had taken advice, would she have disclosed her conviction or still failed to disclose on basis that she was afraid it would result in her not being able to practice. Ms Woods submitted that the Registrant had put her desire to practice first before her obligation to the GOC.
181. Ms Woods suggested that the Registrant's disclosure of her speeding conviction did not assist her and suggested it might be thought that she did so because it would have no adverse consequences and also it was not an analogous conviction. Ms Woods also commented that even when the Registrant disclosed the drink driving conviction she advised the GOC that her disqualification from driving was for 12 months rather than the 16 months imposed by the Court. Ms Woods also suggested that the 16 months disqualification indicated a greater degree of culpability as this was a higher sentence than the minimum 12 month sentence that the Registrant had disclosed.
182. Ms Woods submitted that there was no evidence that the Registrant's underlying potential attitudinal issues had changed. She was critical of the screen shots of certificates of courses that the Registrant said she had undertaken. Ms Woods said that there was no evidence that the Registrant would in the future make a disclosure that was against her interests. Ms Woods argued that the Registrant had failed to produce any evidence of journals and reflective pieces, supervision or REDACTED. She submitted that the Registrant had not remediated her misconduct.
183. Ms Woods further submitted that the Committee should attach little weight to the evidence of the Registrant and Ms B. She said that their evidence in relation to the

allegations was 'derisive and unworthy' and that the Registrant and Ms B were friends. She submitted that the written witness statement of Mr C was hearsay, had not been tested and little weight should be attached to it.

184. Mr Claxton advised the Committee that it was accepted that the Registrant was impaired on the grounds of public interest, but not in respect of public protection.
185. Mr Claxton submitted that there was no risk of repetition. He said that the Registrant's misconduct in allegation 2 was isolated in that it related to a single conviction and though repeated, in later non-disclosures, these all referred back to the single incident. He argued this was a 'perpetuation of the original omission'.
186. Mr Claxton further submitted that insight was only one 'of the tools' which was available to the Committee in assessing current impairment. Mr Claxton said that the Registrant had admitted the allegations promptly, even though the allegation of dishonesty had been added late in the day. Mr Claxton argued that there was now nothing for the Registrant to be dishonest about. The failure to disclose was now in the open and she was no longer trapped by her poor judgement. Mr Claxton further submitted that the Registrant had shown insight and had been clear and unsparing in her self-criticism.
187. Mr Claxton suggested that Ms Woods' argument that the Registrant had not demonstrated remediation was perverse as it required her to be convicted of an analogous offence to show remediation. He said this was 'ungenerous and setting up the Registrant to fail'.
188. Mr Claxton accepted that dishonesty could be difficult to remediate but referred to the Registrant's witness statement and submitted this contained her reflective piece. Mr Claxton argued that there was no supervision that could have addressed the regulatory concerns arising from allegation 2 nor any 'REDACTED' that could have been undertaken.
189. Mr Claxton submitted that it was for the Committee to reach its own view of the Registrant's supportive character witnesses. He argued that they were careful thoughtful professionals who were supportive of the Registrant. He further argued that to suggest that no weight should be given to the evidence of Ms B and Mr C because their comments on the allegation were derisive would be an injustice. He suggested that due weight should be given to the evidence of Ms B and Mr C.
190. In conclusion, Mr Claxton submitted that the Committee could be reassured that the Registrant had learnt from her omissions and the regulatory process and there would be no repetition of similar conduct.

191. The Committee accepted the advice of the Legal Adviser. He referred it to the cases of *Grant, Cohen and Lusinga v NMC* [2017] EWHC 1458 (Admin).
192. The Committee took into account the submissions of Ms Woods and Mr Claxton. It also took into account all relevant evidence before it, including the written witness statements and oral evidence of the Registrant and Ms B, the written witness statement of Mr C and all relevant documentary evidence. The Committee took into account that Mr C had not attended to give evidence, his evidence had not been tested and attached appropriate weight to it.
193. The Committee first addressed the issue of whether the Registrant remained impaired on the grounds of public protection.
194. The Committee considered that the Registrant's dishonest conduct was serious, but not at the most serious end of the spectrum of dishonesty. There was no financial, material or personal loss to any organisation or any patient safety issues.
195. The Committee decided that the Registrant's dishonest conduct arose from her initial failure to disclose her conviction and that the further failures to disclose referred back to and arose from this initial disclosure.
196. The Committee noted that the Registrant had not sought to contest her failure to disclose the conviction and as soon as the allegation was amended to include the allegation of dishonesty she admitted to acting dishonestly. The Committee accepted the Registrant's explanation that she had initially failed to disclose her conviction due to being afraid she would not be allowed to practise as a registered optometrist. The non-disclosure first occurred when she was first registered and recently qualified in her early twenties.
197. The Committee determined that the Registrant had shown insight in respect of her misconduct and the regulatory concerns arising from it. The Committee took into account that the Registrant had fully admitted her dishonest conduct. The Committee further accepted that she had undertaken courses in relation to the requirements of honesty, probity and ethics. The Committee also decided that the Registrant's written statement contained her reflections on her misconduct which she expanded upon in her oral evidence. The Committee did not consider that the failure to produce a stand alone 'reflective piece' undermined the validity of the Registrant's reflection. The Committee was satisfied that the Registrant had fully reflected on her actions.
198. The Committee also considered that the Registrant had demonstrated remorse in her written witness statement and subsequent oral evidence.

199. The Committee considered neither supervision nor undefined 'therapy' was an appropriate method of providing evidence of reflection and remediation in case of dishonesty.
200. The Committee also took into account the positive character evidence from Ms B. For the reasons set out above it attached appropriate weight to the witness statement of Mr C.
201. The Committee considered each of the *Cohen* criteria in turn in coming to its decision as follows:-
- 1. Is this behaviour capable of being remedied?*
202. The Committee fully accepted that an act of dishonesty is always difficult to remedy. However, a Registrant who faces up to the dishonesty, accepts her failings and shows genuine remorse and sorrow goes a long way to providing a remedy for her actions.
- 2. Has the behaviour been remedied?*
203. The Committee considered that the insight shown by the Registrant in her written and reflective statement, together with her demonstrable concern and upset about her actions in her oral evidence, demonstrated remediation.
- 3. Is the behaviour likely to be repeated?*
204. The likelihood of a recurrence was in the Committee's opinion extremely remote, given both the maturity of the Registrant in her response to the allegation, her current understanding of her responsibilities and the impact of her behaviour on her personal reputation and her family. Her fellow professionals regarded her as a valued and honest colleague.
205. In all these circumstances. The Committee was satisfied that the Registrant's misconduct could be remedied, that it had been remedied and that it was highly unlikely to be repeated.
206. In these circumstances, the Committee determined that the Registrant's fitness to practice was not currently impaired on the grounds of public protection.
207. The Committee then considered whether a finding of impairment was also necessary to maintain public confidence in the profession. It noted that Mr Claxton accepted that such a finding was necessary, but reached its own conclusion based on the particular facts and circumstances before it.

208. The Committee was in no doubt that the Registrant's past actions did bring the profession into disrepute and given the seriousness of the misconduct identified, including dishonesty, that public confidence in the profession would be seriously damaged if a finding of current impairment was not made.
209. The Committee therefore determined that the Registrant's fitness to practice was currently impaired on the grounds of public interest

Sanction

210. Having determined that the Registrant's fitness to practise was impaired, the Committee went on to consider what sanction, if any, it should impose. In reaching its decision, the Committee considered all the evidence before it, together with the submissions of Ms Woods and Mr Claxton and the Committee's prior decisions.

Submissions

211. Ms Woods referred to her prior submissions in relating to findings of fact and impairment and adopted her written skeleton argument.
212. Ms Woods submitted that the Committee required to balance the Registrant's interests against the public interest having regard to all the circumstances before it. She further submitted that the Committee had to consider all sanctions available to it in ascending order starting with the least severe and at all times have in mind the overarching objective of the GOC.
213. Ms Woods referred to the GOC's Hearings and Indicative Sanctions Guidance and the case of *PSA v GMC* which had already been referred to the Committee at the stage of Impairment. She submitted that there were no exceptional circumstances that would justify the Committee taking no further action where there was dishonesty. In relation to a Financial Penalty Order, Ms Woods submitted that this was usually only appropriate where there had been financial loss or gain which was not the case. She further argued that such a sanction would not reflect the seriousness of the Registrant's misconduct.
214. Ms Woods also submitted that a Conditions Order was not appropriate as no conditions could be formulated that would address the dishonest misconduct.
215. Ms Woods advised the Committee that the GOC considered that the appropriate and proportionate sanction was Suspension up to 12 months with a review. She submitted this would reflect the seriousness of the dishonest conduct and referred

the Committee to paragraph 22.4 and 22.5 of the Hearing and Indicative Sanctions Guidance.

216. Mr Claxton advised the Committee that the Registrant accepted that a sanction of Suspension was inevitable given the nature of her admitted dishonest conduct. However, he suggested that suspension for a period of 3 months was sufficient to address the seriousness of the misconduct.
217. Mr Claxton submitted the Committee had to take three matters into account. Firstly, the Committee require to declare and uphold confidence in the profession and the GOC as a regulator. Secondly, the interests of the Registrant had to be taken into account. Mr Claxton submitted that the Registrant's personal matters may be less important , but that they had to be given due weight. Thirdly, the Committee had to consider the public interest in having a capable and committed professional return to practise.
218. Mr Claxton submitted that a finding of dishonesty did not automatically lead to erasure and that a short suspension could be appropriate. He referred the Committee to its findings at the stage of Impairment that the Registrant's dishonest conduct was not at the most serious end of the spectrum of dishonesty.
219. Mr Claxton submitted that the following were mitigating factors:
- The Registrant had admitted the allegations including dishonesty,
 - The Registrant had remediated her conduct.
 - The Registrant had shown regret.
 - The Registrant had been unsparing in her self-criticism.
220. Mr Claxton also submitted that if unable to practise the Registrant would suffer personal hardship. He explained that whilst she was not the REDACTED.
221. Mr Claxton also submitted that by engaging in the process and admitting to the allegations the Registrant had required to face serious allegations and the possibility of her being prevented from practising.
222. Mr Claxton also argued there was a public interest in the Registrant, who was a competent and committed professional, being able to return to practise in an area where there were few optometrists with her level of expertise.
223. Mr Claxton also referred the Committee to the positive references provided in support of the Registrant; that the Registrant was committed to being an optometrist and loved being one; and had practised for around 15 years.

224. In conclusion Mr Claxton argued that a short suspension would send signals to the Registrant that her dishonest conduct was unacceptable and also a sign to the public that the GOC took honesty and probity very seriously. He submitted that as there were no concerns regarding public protection no review was required.
225. The Committee accepted the advice of the Legal Adviser. He referred it to the Hearing and Indicative Sanctions Guidance and various cases including *Bolton v Law Society* [1994] 1 WLR 512. He further advised that it should consider all the sanctions available to it starting with the least severe and act proportionately taking into account the public interest and the interests of the Registrant.

Decision

226. In reaching its decision on sanction in respect of the Registrant, the Committee took into account the submissions of Ms Woods and Mr Claxton, all relevant evidence before it and its prior decisions in this hearing.
227. The Committee bore in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. It recognised that the decision on sanction is a matter for the Committee, exercising its own independent judgement.
228. Before making its decision on the appropriate sanction, the Committee established the aggravating and mitigating features in this case.
229. In these circumstances the Committee considered that the aggravating factors in this case were:
- The Registrant had failed to disclose her conviction on a number of occasions over a period of time.
 - The Registrant only disclosed the conviction after the GOC received a referral from Mr A.
230. The Committee considered that the mitigating factors in this case were:
- The Registrant had engaged with the GOC and admitted all the allegations including dishonesty.
 - There were no concerns regarding the Registrant's clinical practise.
 - There was no patient harm.
 - The Registrant had demonstrated insight into her behaviour and been self-critical and shown remorse regarding her conduct.

231. The Committee first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The Committee decided that it would be neither proportionate nor in the public interest to take no further action.
232. The Committee then considered whether to impose a financial penalty. However, it determined that these matters are too serious for a financial penalty to be considered appropriate or sufficient to reflect adequately the public interest.
233. The Committee next considered the imposition of a Conditional Registration Order.
234. The Committee noted the terms of paragraph 21.5 of the Hearings and Indicative Sanctions Guidance.
235. The Committee also took into account that the allegations admitted and found proved did not relate to concerns about the Registrant's clinical practice. The Committee further considered that it would be difficult to formulate appropriate conditions in a case involving repeated dishonest conduct.
236. In these circumstances, the Committee determined that there were no practical or workable conditions that could be formulated at this time which would adequately or appropriately address the concerns in this case and protect the public and the wider public interest.
237. The Committee then went on to consider whether a suspension order would be an appropriate sanction.
238. The Committee noted the terms of paragraph 21.29 of the Hearings and Indicative Sanctions Guidance which states:

This sanction may be appropriate when some, or all, of the following factors are apparent (this list is not exhaustive):

- a. A serious instance of misconduct where a lesser sanction is not sufficient.*
- b. No evidence of harmful deep-seated personality or attitudinal problems.*
- c. No evidence of repetition of behaviour since incident.*

- d. *The Committee is satisfied the registrant has insight and does not pose a significant risk of repeating behaviour.*
- e. *In cases where the only issue relates to the registrant's health, there is a risk to patient safety if the registrant continued to practise, even under conditions.*

239. The Committee *noted* the terms of paragraph 22.4 – 22.6 of the Hearings and Indicative Sanctions Guidance which states:

'22.4 There is no blanket rule or presumption that erasure is the appropriate sanction in all cases of dishonesty, although a failure to impose any sanction for dishonesty may be found to be unreasonable in light of the importance of maintaining public confidence in the profession (Professional Standards Authority for Health and Social Care v General Medical Council [2019] EWHC 1638 (Admin)). The Committee must balance the particular circumstances of the case against the effect a finding of dishonesty has on public confidence in the profession (R (on the application of Hassan) v General Optical Council [2013] EWHC 1887 (Admin and Siddiqui v General Medical Council [2013] EWHC 1883)).

22.5 When deciding on the appropriate sanction on dishonesty, the Committee must first assess the particular conclusions about the act of dishonesty itself, then, it must consider the extent of the dishonesty and its impact on the registrant's character and, most importantly, its impact on the wider reputation of the profession and public perception of the profession. (Solicitors Regulation Authority v Imran [2015] EWHC 3058 (Admin)).

22.6 Where the fact finding Committee has concluded that an individual was dishonest, notwithstanding mental health issues or workplace related pressure, the weight to be attached to those mental health and working environment issues in assessing the appropriate sanction will inevitably be less than is to be attached to other aspects of the dishonesty found, such as the length of time for which it was perpetrated, whether it was repeated and the harm which it caused, all of which must be of more significance (Solicitors Regulation Authority v James; Solicitors Regulation Authority v MacGregor; Solicitors Regulation Authority v Naylor [2-18] EWHC 3058 (Admin)).

240. The Committee considered that the Registrant's conduct was serious. However, as reflected by its findings at Impairment, the Committee did not consider it was at the most serious end of the spectrum of dishonesty. It took into account that the Registrant had engaged with the GOC and admitted the allegations including dishonesty.

241. The Committee also decided at the stage of Impairment that there had been no repetition of the behaviour since the incidents and that the Registrant had remediated her misconduct. The Committee has also concluded that the Registrant has shown insight and there is no significant risk of her repeating her dishonest behaviour. The Committee 's conclusion at Impairment was that the Registrant's fitness to practise was only impaired on the grounds of public interest.
242. The Committee also took into consideration the positive testimonials provided in support of the Registrant and that these referred not only to her character but also that she was competent and committed optometrist with experience in MECS, working in a geographic area where such expertise was not common.
243. The Committee noted that the imposition of a sanction of Suspension might cause the registrant personal hardship and attached appropriate weight to this. The Committee noted the comments in *Bolton* that '*the reputation of the profession is more important than the fortune of any individual member*'.
244. In these circumstances, the Committee determined that a suspension order was sufficient to maintain public confidence in the profession and the Council as its regulator.
245. The Committee considered the impact this decision may have on the Registrant but considered her dishonest conduct was such that the public interest outweighed Registrant's own interests.
246. The Committee decided that a period of 3 months Suspension was appropriate and proportionate, reflected the seriousness of the Registrant's misconduct and satisfied public interest. Such an order would place on record the need to adhere to professional standards, uphold public confidence in the profession and the GOC as a regulator whilst having the effect of allowing the Registrant to return to optometry practise.
247. The Committee went onto consider the sanction of Erasure, but decided this would be disproportionate in the particular circumstances of this case.
248. The Committee also addressed the question of whether it was necessary to direct a Review of the Suspension order. It considered paragraphs 21.32 – 34 of the Hearing and Indicative Sanctions Guidance and reminded itself that Impairment had only been found on the grounds of public interest. The Committee determined that in these circumstances and with particular reference to the mitigating factors, there were no matters relating to the Registrant's practise or conduct that required to be reviewed prior to the Registrant safely returning to practise. The issue of public interest had been addressed by the imposition of a three month Suspension

Order. The Committee therefore directed that no review of its Suspension Order was required.

Immediate Order

249. The Committee then went on to consider whether, having made a direction for a three month Suspension Order, it should make an Immediate Order under section 13I of the Opticians Act 1989.
250. Ms Woods advised that the GOC did not seek such an order and Mr Claxton indicated he remained neutral.
251. The Committee had regard to its prior decisions, in particular its decisions on Impairment and Sanction. The Committee considered that, there being no public protection concerns and given its reasoning for directing a sanction of a three month Suspension Order, that no Immediate Order was necessary.

Chair of the Committee: Ian Crookall

Signature 

Date: 19 July 2023

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
<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>
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.