

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

**GENERAL OPTICAL COUNCIL**

**F(23)44 & 45**

**AND**

**HADIQA ALI (SO-15035) & AZHAR MAHMOOD (SO-16015)**

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**DETERMINATION OF A SUBSTANTIVE HEARING  
17-28 JUNE 2024**

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| <b>Committee Members:</b>              | Pamela Ormerod (Chair/Lay)<br>Ben Summerskill (Lay)<br>Sarah Hamilton (Lay)<br>Gemma O'Rourke (Optometrist)<br>Sanna Nasrullah (Optometrist)    |
| <b>Legal adviser:</b>                  | Kelly Thomas  |
| <b>GOC Presenting Officer:</b>         | Kamran Khan   |
| <b>Registrant present/represented:</b> | Ms Ali - Yes and represented<br>Mr Mahmood – Yes and unrepresented  |
| <b>Registrant representative:</b>      | Ms Ali - Kevin Saunders (counsel)<br>Katie Holland (AOP)<br><br>Mr Mahmood – not represented  |
| <b>Hearings Officer:</b>               | Terence Yates   |
| <b>Facts found proved:</b>             | Ms Ali: Allegations 1(a), 1(b) by admission,<br>and 2 following determination.<br><br>Mr Mahmood: Allegations 1(a), 1(b) and 2 by<br>admission. |
| <b>Facts not found proved:</b>         | None  |

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|-------------------------|--|
| <b>Misconduct:</b>      | Ms Ali: Found<br><br>Mr Mahmood: Found   |
| <b>Impairment:</b>      | Ms Ali: Impaired<br><br>Mr Mahmood: Impaired   |
| <b>Sanction:</b>        | Ms Ali: 3 months suspension with review<br><br>Mr Mahmood: 6 months suspension with review |
| <b>Immediate order:</b> | Ms Ali: No immediate order<br><br>Mr Mahmood: No immediate order                           |

### ALLEGATION

***The case against Hadiqa Ali:***

*The Council alleges that you, Hadiqa Ali (SO-15035), a registered student optometrist, whilst employed at [Branch A] Specsavers Limited:*

- 1) *On or around 2 February 2023 you:*
  - a) *used your colleague's Socrates code and accessed his profile;*
  - b) *completed a contact lens trial in the absence of a patient on behalf of your colleague for him to use this file on his College of Optometrists Stage 1 assessment.*
- 2) *Your actions as set out in 1 were dishonest in that you fabricated a clinical record to be used as part of your colleague's College of Optometrists Stage 1 assessment.*

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

***The case against Azhar Mahmood:***

*The Council alleges that you, Azhar Mahmood (SO-16015), a registered Student Optometrist, whilst employed at [Branch A] Specsavers Ltd:*

- 1) *On or around 2 February 2023 you:*

- a) *Asked your colleague, a registered student optometrist via text message to access your profile and complete a contact lens trial to use for your College of Optometrists Stage 1 assessment;*
  - b) *You allowed your Socrates user code to be used and/or were aware that your Socrates user code was used by your colleague to complete a contact lens trial on a false clinical record.*
- 2) *Your actions as set out in 1 were dishonest in that you were planning to present a clinical record as part of your College of Optometrist Stage 1 assessment knowing that it had been fabricated and you were not working on that day;*

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

### **Application to amend the allegation**

1. The representative for the General Optical Council (GOC), Mr Kamran Khan, made an application at the outset to amend the allegations with two amendments as follows:
2. Firstly, to amend the particulars against both Ms Hadiqa Ali and Mr Azhar Mahmood so that the last line would read “fitness to train” instead of fitness to practise. Mr Khan submitted that this would reflect the position that both parties were in fact pre-registrant optometrists.
3. Secondly, to amend the particulars in relation to Mr Mahmood for allegation 1(a) to change the words “text message” to “Snapchat.” Mr Khan submitted that this reflects the evidence that Snapchat was the platform used.
4. In summary Mr Khan indicated that this amendment would cause no prejudice to the Registrants and would properly reflect evidence and the Registrants’ training status.
5. Mr Saunders, representative for Ms Ali raised no objection to the proposed amendments and agreed that they would properly reflect the evidence and would cause no prejudice to Ms Ali.
6. Mr Mahmood stated that he also raised no objection to the proposed amendments and agreed that they would properly reflect the evidence and would cause no prejudice to himself.
7. The Legal Adviser gave advice, namely that *Rule 46 (20) of the Fitness to Practise Rules (“The Rules”)* provides that:  
*(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.*

8. The Legal Adviser further advised that the Committee should consider whether there would be any prejudice to the Registrant, and balance this against the overarching objective of protection of the public, according to *Section 2A of the Opticians Act 1989*.
9. The Committee accepted the advice of the Legal Adviser. The Committee concluded that there was no prejudice to either of the registrants in making the proposed amendments. The proposed amendments were sensible in that they reflected both the evidence relied upon and the Registrants' training status at the time of the incident.
10. The Committee therefore agreed to the amendments.

### **AMENDED ALLEGATION**

#### ***The case against Hadiqa Ali:***

*The Council alleges that you, Hadiqa Ali (SO-15035), a registered student optometrist, whilst employed at [Branch A] Specsavers Limited:*

- 3) *On or around 2 February 2023 you:*
  - c) *used your colleague's Socrates code and accessed his profile;*
  - d) *completed a contact lens trial in the absence of a patient on behalf of your colleague for him to use this file on his College of Optometrists Stage 1 assessment.*
- 4) *Your actions as set out in 1 were dishonest in that you fabricated a clinical record to be used as part of your colleague's College of Optometrists Stage 1 assessment.*

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

#### ***The case against Azhar Mahmood:***

*The Council alleges that you, Azhar Mahmood (SO-16015), a registered Student Optometrist, whilst employed at [Branch A] Specsavers Ltd:*

- 3) *On or around 2 February 2023 you:*
  - c) *Asked your colleague, a registered student optometrist via Snapchat to access your profile and complete a contact lens trial to use for your College of Optometrists Stage 1 assessment;*

- d) You allowed your Socrates user code to be used and/or were aware that your Socrates user code was used by your colleague to complete a contact lens trial on a false clinical record.*
- 4) Your actions as set out in 1 were dishonest in that you were planning to present a clinical record as part of your College of Optometrist Stage 1 assessment knowing that it had been fabricated and you were not working on that day;*

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

### **Background to allegation**

11. Ms Hadiqa Ali joined Specsavers as an Optical Assistant in 2021 and later began to undertake pre-registration with them. Ms Ali was working at the Specsavers [Branch A] store at the time of the incident on 2 February 2023. Mr Azhar Mahmood, also a pre-registration optometrist, was working at the [Branch A] store at the same time.
12. Mr Mahmood enrolled on the College of Optometrists Scheme for Registration on 6 August 2021. At the time of the incident, he had completed four visits in Stage One and achieved 43 out of the 75 competencies. A 5<sup>th</sup> visit was scheduled imminently.
13. On 2 February 2023, Mr Mahmood contacted Ms Ali, via Snapchat, and provided his login details for Socrates (a Specsavers database) and information about a contact lens patient, so that she could input these onto his records. The GOC alleged that Mr Mahmood intended to use this record for his College of Optometrists Stage 1 assessment.
14. Ms Ali was observed doing this by Ms A, a registered optometrist and pre-registration supervising optometrist. She subsequently reported both pre-registration optometrists to the Store Director, who later reported the incident to the GOC. It was also reported to the College of Optometrists.
15. The cases are linked in nature, and by events, which resulted in them being formally joined in January 2024.
16. As matters stand, Mr Mahmood has admitted all of the allegations, and Ms Ali admitted the facts of the allegations in relation to what took place, but denies 1) that it was a trial appointment, and 2) that it was in order to assist Mr Mahmood for use on his College of Optometrists Stage 1 assessment. Further, she also denies acting dishonestly.

### **APPLICATION TO ADMIT EVIDENCE**

17. Mr Khan made an application to admit correspondence between the GOC and the witness Ms A, namely an email dated 11 April 2024 and two attachments. Ms A had stated to the GOC that the reason for her non-attendance was

because she was getting married, in celebration dates which were on both 14 June 2024 and 16 June 2024 (the day before the hearing commenced), as well as a honeymoon thereafter. Mr Khan submitted that this email supported the proposed hearsay application in relation to the same witness, in that it supported the fact that she has a good reason for non-attendance. Mr Khan submitted that it would be fair and relevant for the Committee to consider this correspondence.

18. Mr Saunders, on behalf of the Registrant Ms Ali, opposed this application and invited the Committee to consider whether the documents themselves were admissible. It is accepted by the GOC that the email was only served a few minutes before the start of the hearing, and Mr Saunders submits that this means the registrant Ms Ali has been deprived of the opportunity to investigate it. Nevertheless, Ms Ali was able to produce a screenshot which, through her representative, she submitted had been supplied to her in a WhatsApp group, which contained a video invitation to a wedding celebration of Ms A which took place in 2023. Mr Saunders outlined that Ms A had already made an early indication that she would not attend to give oral evidence in her witness statement dated 13 April 2023. Mr Saunders submits that this undermines the assertion that the witness Ms A was getting married this weekend, and that to suggest otherwise, without reference to Ms A herself, who is now unavailable, would be speculation. Mr Saunders submits that this information is not fair or relevant, would cause prejudice to the Registrant, and therefore should not be admitted.
19. The Registrant Mr Mahmood made no submissions on this issue.
20. The Committee heard and accepted the advice of the Legal Advisor, namely that *Rule 40 of The Rules* sets out what evidence the Committee may hear. It may "admit any evidence it considers fair and relevant to the case before it, whether or not such evidence would be admissible in a court of law" (*Rule 40(1) and (2)*). The tests are 'fairness' and 'relevance.' The Committee was asked to consider also the balancing exercise of whether this would cause prejudice to the Registrant and also to have regard for the overarching principle of protection of the public.
21. The Committee expressed regret at having been provided with this information so late in proceedings, especially where the witness had sent the email to the GOC as early as 11 April 2024. The Committee concluded that the information in the email did provide some support that the witness was having a wedding celebration this weekend. The Committee also noted that despite the very late service of this email, Ms Ali did have an, albeit limited, opportunity to rebut the material, as she had done so in the video she had supplied to the Committee shortly after service of the email. The Committee therefore concluded that it was fair and relevant to both Registrants to allow this email and attachments to be admitted as part of the evidence.

### **Application to adduce hearsay**

22. Mr Khan made an application to admit hearsay in relation to the evidence of one GOC witness, Ms A, because she is not available for cross-examination. Mr Khan served a skeleton argument and addressed the following issues:
23. Mr Khan identified the case of *Thorneycroft v NMC* [2014] EWHC 1565 (Admin) and went through the determining factors for the Committee to consider when making a decision on whether to admit the statement from the non-attending witness. Mr Khan submitted that the analysis of the factors in *Thorneycroft* overall weigh in the favour of granting its application and addressed the factors. Firstly, the witness statement is not the sole or decisive evidence in support of the allegations. There is evidence of another witness, Mr B (the ophthalmic Director of the Store), that includes a transcript of an interview he was present at, where Ms A was the interviewee. The GOC indicated that it is accepted that the evidence of Ms A relates to the dishonesty element of the allegation. Mr Khan states that the email provided by Ms A outlines her good reasons for non-attendance, namely that she was getting married. Mr Khan further submitted that the Council has taken reasonable steps to secure Ms A's attendance, on 14 March 2024 via email, where she was asked whether she would attend, and that it would be on a remote basis and her involvement would likely only run until Day 2. There was no response until 11 April 2024 when she reiterated her unavailability. Mr Khan went on to submit that the Registrants have had prior notice that the witness statement is to be read, as early as 8 November 2023 in the Hearings Questionnaire, and the Registrant had already anticipated that such an application was likely to be made.
24. Mr Khan submitted that the Committee is not invited to make substantive determinations on the weight to be placed on this evidence, and indeed it is within the Committee's power to admit the hearsay evidence but then go on to attach zero weight to it at the fact-finding stage.
25. Mr Saunders also provided a written skeleton opposing the hearsay. Mr Saunders submitted that as it is the GOC case that Ms Ali's fitness to train is impaired by dishonesty, the evidence of Ms A is central to the issues in dispute. As an optometrist, Ms A was the principal pre-registration supervisor to Mr Mahmood and occasional supervisor to Ms Ali and can provide evidence of the alleged actions and conversation with Ms Ali on the day of the incident, in particular as to whether Ms Ali was informed that what she was doing was wrong. These comments are disputed by Ms Ali, and in Mr Saunders' submission, go directly to the issue of honesty.
26. Mr Saunders submitted that according to the principles in *Thorneycroft* and *Bonhoeffer*, as well as *Rule 40(1)*, the relevant issue for the Committee is to consider whether it would be fair to admit this evidence as hearsay. Mr Saunders submits that to allow the evidence to be admitted without the attendance of the witness would deprive the Registrant Ms Ali of the only opportunity to test the evidence in cross examination. Cross examination of Mr B would not remedy the unfairness to the Registrant in this regard.

27. Mr Saunders further submits that these issues equally apply to the transcript of the interview RS/2, namely the interview exhibited by Mr B, which includes the comments of Ms A. Mr B can only provide the notes and is not able to answer to the credibility of Ms A. Mr Saunders submits this would also be unfair, as it would amount to allowing evidence to be admitted without providing the Registrant with the opportunity to test Ms A's account.
28. Mr Saunders went on to address the Committee on the reasons for the non-attendance of the witness. As a supervisor optometrist for the GOC Ms A would have a duty to co-operate, yet from her first witness statement dated 13 April 2023 she states she is not willing to attend a fitness to practise hearing, without giving any reasons. Mr Saunders submits that even if the Committee places some weight on Ms A's latest reasons for non-attendance, there is nothing to suggest she could not have actually attended remotely today, as from the emails she is neither getting married or on honeymoon today. Mr Saunders does not accept that the GOC have taken all reasonable steps to secure her attendance. As her Regulator, the GOC could have compelled her to attend.
29. Mr Saunders submitted that it would not be appropriate for the Committee to allow the evidence to be admitted at this stage, with a view to giving it little weight at a later stage, as it would be contrary to the case law and give rise to unfairness as it cannot be challenged.
30. Mr Saunders submits that Ms A's evidence is sole and decisive as she gives a contradictory account to Ms Ali. The only evidence of attempts to secure Ms A's attendance from the GOC is one email.
31. Further, Mr Saunders submits that the evidence of the witness Mr B, the interview with Ms A should be excluded for the same reasons.
32. Mr Saunders urged the Committee to consider the case of *R (Bonhoeffer) v GMC [2011] EWHC 1585 (Admin)* and submitted finally there is no remedy to the Registrant Ms Ali to challenge Ms A's evidence except in cross-examination, and therefore to admit her evidence as hearsay would be unfair and prejudicial.
33. The Committee heard and accepted the advice of the Legal Adviser. *Rule 40(1)* of the *Rules* sets out what evidence the Committee may hear. It may "admit any evidence it considers fair and relevant to the case before it, whether or not such evidence would be admissible in a court of law." Also, in relation to the rules on hearsay in the *Hearings and Indicative Sanctions Guidance, Rule 13.12-13.15*, what is fair will depend on the circumstances of each case and, in particular, on the seriousness and gravity of the allegations and the importance of the hearsay evidence to any disputed facts or allegations.
34. The Legal Adviser outlined the *Thornycroft* case, namely that admitting witness statements without the appearance of a witness means that the Committee will have to perform a careful balancing exercise, and the case requires the Committee to consider the following issues before admitting evidence:
  - i. whether the statements were the sole or decisive evidence in support of the charges;



- ii. the nature and extent of the challenge to the contents of the statements;
  - iii. whether there was any suggestion that the witnesses had reasons to fabricate their allegations;
  - iv. the seriousness of the charge, taking into account the impact which adverse findings might have on the Appellant's career;
  - v. whether there was a good reason for the non-attendance of the witnesses;
  - vi. whether the party calling the witness had taken reasonable steps to secure their attendance;
  - vii. whether the Registrant had or did not have prior notice that the witness statements were to be read
35. The Legal Adviser also reminded the Committee that, according to the case of *R (Bonhoeffer) v GMC [2011] EWHC 1585 (Admin)*, hearsay evidence, if accepted, is read to the Committee without the witness being called, which means the witness cannot be cross-examined. This may result in prejudice to the Registrant and this should not be agreed routinely.
36. The question for the Committee is whether that prejudice causes unfairness. In *EI Karout v NMC (2019) EWHC 28 (Admin)*, there was a clear distinction between whether the evidence is *admissible* and what *weight* should be given. The matter of what weight to give would be a consideration for the fact-finding stage. The Committee should also consider the similar principles in *NMC v Ogbonna [2010] EWCA Civ 1216*, where it was confirmed that there is a "*critical distinction*" between the two concepts. There are two distinct stages when considering hearsay in regulatory proceedings, stage 1 is admissibility and stage 2 is weight.
37. The Legal Adviser finally outlined the case of *Mansaray v. Nursing and Midwifery Council [2023] EWHC 730 (Admin)*, that the absence of a good reason does not automatically result in the exclusion of the evidence. However, where such evidence is the sole or decisive evidence in relation to the charges, the decision whether or not to admit it requires a panel to make careful assessment, weighing up the issues in the case, the other evidence which is to be called and the potential consequences of admitting the evidence. The Committee should be satisfied either that the evidence is demonstrably reliable or, alternatively, that there will be some means of testing its reliability.
38. The Committee considered the submissions and legal advice. The Committee considered that the evidence was pertinent to the issue of dishonesty, although not sole and decisive given that Ms Ali has given her account of the interaction with Ms A in her own interview. The Committee did not accept that there was a sufficiently good reason for non-attendance, nor that the GOC has taken all reasonable steps to secure her attendance. The Committee noted that Ms A was not willing to attend a hearing even before she was aware of its date. Given that Ms Ali disputes the statement of Ms A, the only way for Ms Ali to test that

evidence would be via cross-examination. The Committee concluded that it would be unfair to admit this evidence as hearsay.

39. The Committee came to the same conclusions in relation to the interview of Ms A. Whilst the Committee noted that another GOC witness, Mr B was present at that interview, he cannot give evidence as to the truthfulness or otherwise of Ms A and therefore the Registrant is left in the same position, unable to challenge this evidence. Therefore, the Committee decided it would be unfair to admit this evidence as hearsay.
40. Therefore, Ms A's evidence, in both her witness statement and her interview, would not form part of the case and the Committee will exclude this from any further deliberations.

#### **Further application to amend allegations**

41. Mr Khan made a further application to amend at the start of Day 2 of the hearing. In relation to Ms Ali, the application was to amend allegation 1 b) and 2 from 'contact lens trial' to 'record of a contact lens fit.' Also, in allegation 1 b) and 2, to amend 'on behalf/as part of your colleague for him to use this file on his College of Optometrists Stage 1 assessment' to 'to be used by your colleague.'
42. In relation to Mr Mahmood, Mr Khan also made an application to amend the allegation, namely that allegation 1 a) should be amended from 'complete a contact lens trial to use for your College of Optometrists Stage 1 assessment' to 'record a contact lens fit.' Further, that 'as part of your College of Optometrist Stage 1 assessment' in Allegation 2 should be removed.
43. Mr Saunders was neutral on these points.
44. Mr Mahmood made no objections.
45. The Committee heard and accepted the advice of the legal adviser, who reminded the Committee of *Rule 46(20)* as previously advised upon.
46. The Committee did not consider there to be any prejudice to the Registrants in the amendments to the allegations, and the amendments were in accordance with the evidence. Therefore the Committee agreed to the amendment application.

#### **Further amended allegations**

*The Council alleges that you, Hadiqa Ali (SO-15035), a Registered Student Optometrist, whilst employed at [Branch A] Specsavers Limited:*

1. *On or around 2 February 2023 you:*

a) *used your colleague's Socrates code and accessed his profile;*

b) *completed a record of a contact lens fit in the absence of a patient on behalf*

*of your colleague for him to use this file.*

2. *Your actions as set out in 1 were dishonest in that you fabricated a record of a contact lens fit to be used by your colleague.*

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

*The Council alleges that you, Azhar Mahmood (SO-16015), a registered Student Optometrist, whilst employed at [Branch A] Specsavers Ltd:*

1. *On or around 2 February 2023 you:*
  - a) *Asked your colleague, a registered student optometrist via Snapchat to access your profile and record a contact lens fit;*
  - b) *You allowed your Socrates user code to be used and/or were aware that your Socrates user code was used by your colleague to record a contact lens fit on a false clinical record.*
2. *Your actions as set out in 1 were dishonest in that you were planning to present a clinical record knowing that it had been fabricated and you were not working on that day;*

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

#### **Further application to amend the allegations**

47. Prior to the final reading of the Allegations, Mr Khan on behalf of the GOC made a further application to amend the allegations. Mr Khan submitted that the further amendments, as set out below, were uncontroversial, that they fully reflect the evidence, and that the Registrant will suffer no prejudice.
48. Mr Saunders made no further submissions in relation to the proposed amendments.
49. The Legal Adviser repeated the legal advice as per *Rule 46(20)* as previously advised upon.
50. The Committee deliberated and requested their own amendment to the allegation, which was agreed by all parties, namely that the allegation in relation to Mr Mahmood, prior to allegation 1, should have a reference to the College of Optometrists assessment, as per the evidence.
51. All parties agreed to the amendments.

### **FINAL ALLEGATION (AS AMENDED)**

The Council alleges that you, Hadiqa Ali (SO-15035), a Registered Student Optometrist, whilst employed at [Branch A] Specsavers Limited:

- 1) On or around 2 February 2023 you:
  - a. used your colleague's Socrates code and accessed his profile;
  - b. completed a record of a contact lens fit in the absence of a patient on behalf of your colleague.
- 2) Your actions as set out in 1 were dishonest in that you fabricated a record of a contact lens fit.

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

The Council alleges that you, Azhar Mahmood (SO-16015), a registered Student Optometrist, whilst employed at [Branch A] Specsavers Ltd:

- 1) On or around 2 February 2023, in preparation for your College of Optometrists Stage 1 assessment, you:
  - a. Asked your colleague, a registered student optometrist via Snapchat to access your profile and record a contact lens fit;
  - b. You allowed your Socrates user code to be used and/or were aware that your Socrates user code was used by your colleague to record a contact lens fit on a false clinical record.
- 2) Your actions as set out in 1 were dishonest in that you were planning to present a clinical record knowing that it had been fabricated and you were not working on that day;

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

### **Reading of the allegations**

52. Ms Ali admitted Allegations 1(a) and 1(b). Ms Ali denied Allegation 2.
53. Mr Mahmood admitted Allegations 1(a), 1(b) and 2.
54. The Committee therefore found those Allegations 1(a) and 1(b) for Ms Ali, and Allegations 1(a), 1(b) and 2 for Mr Mahmood, proved.

## GOC opening

55. Mr Khan opened the case for the GOC in relation to Allegation 2 for Ms Ali. Mr Khan outlined the allegations and re-iterated that the GOC case, from the beginning, was that Ms Ali would have known that what she was doing was inappropriate and therefore dishonest. Ms Ali accepts that she was not part of any patient assessment. The GOC allege that she would have known as part of her responsibilities that it was therefore dishonest to carry out these actions. Mr Khan submits that the parameters for the record of a contact lens fit were set up with false information, which Mr Mahmood admits. Ms Ali, as a pre-registrant optometrist would have been aware of her level of responsibility. The GOC stated that the sending messages on Snapchat, which are automatically self-deleting, gave rise to a suspicion of dishonesty.

## Evidence

56. The Committee heard oral evidence from Mr B.
57. Neither Mr Khan nor Mr Saunders had any questions for Mr B.
58. Mr Sandhu responded positively in evidence regarding Mr Mahmood's previous record at the store. In response to the Committee questions, Mr B said the following:

*Q: As you are aware we have got two people who are facing charges, and one of the issues is that Ms Ali used Mr Mahmood's Socrates code and accessed his profile. My question is when they joined the store what in terms of induction or training - what were they told about accessing some else's code and accessing their profile?*

*A: That it's a serious offence and should not be done. It is not only done when joining the store it is done regularly during employment as well. I'd say about 6 months we have a GDPR training that we have to do online, and it is compulsory. It is a serious breach of GDPR and company policy. Told upon joining and regular online training as well.*

*Q: And in terms of company policy is there actually a written policy that they are shown or given?*

*A: It would be in a staff handbook and on a module called "iLearn". I'm not sure whether the policies are in "iLearn" actually, it would be in the staff handbook and available online via its called... our intranet is called Sharepoint is referenced on there too.*

*Q: Sometimes companies will have policies and they are not necessarily abided to, to your knowledge, was it common practice for people to log in using other colleagues codes?*

*A: Not common, not common at all - I doubt it very much whether it happens at all.*

Q: You are saying there would normally be absolutely no circumstances in which someone would be signing on in someone else's name?

A: Never heard it happen, would be surprised if it happened in my practice. There would be no need to that I would know. On the exception we employ somebody we use a self-employed locum login in those circumstances.

Q: [Mr B] you mentioned GDPR, can you explain just how this is a breach of that?

A: If a staff member who has not been given the roles and responsibilities their job is entitled to have, by swapping passwords they will be accessing a lot of information that they may not... that they haven't got access to, so we are very strict on that.

Q: If I look up the patient record that was submitted - pg 40 - as a lay member I am a bit unclear as to how much is auto recorded in terms of dates and that sort of thing?

A: The dates would not be...they are time stamped, sorry they are automatic.

Q: Even in this paragraph that starts 2.2.23, is that? Patient record - pg 40? A bit of narrative - how much of that is auto inputted and how much of that would have to be created by the person who was making the record.

A: I can tell you exactly. Auto input would be the date, his name, and the rest would be inputted by the person.

Q: Is that the same on every occasion? I am looking up one further, above on the page but just below the diagram I can see again 2.2.23 Azhar Mahmood and there is a reference to the fluorescein?

A: Yes

Q: As soon as you hit that bit of the screen the date and the name go in automatically is that correct?

A: Yes, and the text, the NaFL, the expiry and the batch number is inputted by the operator.

Q: If above the notes and NaFL - one line that says "Anterior chamber clear? True" Would the word 'true' have to be inputted as well?

A: Yes.

#### Re-examination from Mr Khan

Q: You were asked about a GDPR breach. You said that if you use someone else's account you are exposed to a number of different records. Is it the case then that each individual has certain medical records that they can only access through their own account?

A: Erm, no - so once you are given a professional allocation you are allocated to all medical records for patients, so it is all or nothing. You either have access or you do not.

*Q: Professional allocation - does that also apply to students?*

*A: If pre reg then yes. If they are students like undergraduates who work, the answer is no. They will have access to some patient records but not everything. We have various platforms we have other... we call it EOS Enhanced Optical Services where there is actual, a lot more patient personal information. The students would not have access to this, no.*

*Q: When you say students?*

*A: The undergraduates.*

*Q: You mentioned that there are refresher training throughout the employment - how long had each Registrants been working?*

*A: Azhar I think it was 4 years, I actually thought it was longer, I thought it was 5. Hadiqa I don't know exactly but I think, more than 2, possibly, more than than 2 and a half possibly.*

*Q: Your best estimate of when re-training?*

*A: Definitely every 12 months. Possibly more frequent than that.*

*Q: Aside from training, would there ever be any discussion about how to handle information?*

*A: There would be discussions, we'd send the pre-reg's on courses, it is definitely on the syllabus there as well, I am confident, the pre-reg courses in those circumstances as well, it would be explained clearly.*

#### Further Committee question

*Q: When a pre-reg is doing a test, are they always supervised?*

*A: Yes*

*Q: Does supervisor the supervisor [SIC] indicate that they have endorsed the record at any point - is there anywhere I can look in that test card that would show me?*

*A: As to who the supervisor was on that day?*

*Q: How they had signed off, yes?*

*A: Actually that is a very good question. Normally what would happen is the pre-reg would annotate who has given verbal consent and supervision on the day. But the actual Socrates software, to sign in, the initial sign on you would have to allocate who supervising you on that day, and that is recorded.*

*Q: Pg 44 - there is a reference to [Ms A] 'vcg sup [Ms A]'*

*A: That was inputted by the inputter who says who is supervision time on the day, that was actively done.*

*Q: What does VCG stand for?*

*A: Verbal Consent Given Supervisor*

*Q: Is it also a breach of GDPR to put patient information on to Snapchat?*

*A: I have no information as to what was put on Snapchat. Whether they were personal detail, just general information about the patients. If not referenceable to patient details, then no, but if it had a patient details, then most definitely, yes. I have not seen that Snapchat message detail.*

*Q: The information that Ms Ali would require to complete this record, comes information from Mr Mahmood on a Snapchat?*

*A: Via I'm not quite sure whether some of it was done by a telephone call, but if it was all Snapchat, he may have had an unidentifiable customer number as opposed to the name date of birth and address etc. Could have been referenced from non-personal details.*

*Mr Khan questions*

*Q: Even if we assume that the information was sent with non-identifiable features, such as name/address etc, would you expect colleagues to send information to request somebody else to upload a record with whatever information?*

*A: I would never expect it, no.*

59. Mr Khan then concluded the case for the Council.

**Application on behalf of Ms Hadiqa Ali of no case to answer**

60. At the close of the GOC case, Mr Saunders, on behalf of the Registrant Ms Ali, made a submission of no case to answer. Central to his skeleton arguments and oral submissions was that the GOC case on dishonesty is misconceived.
61. In relation to allegation 1(a) and 1(b), Mr Saunders submitted that the GOC case does not allege any form of mental element, or 'mens rea.' Mr Saunders submitted that there is no evidence, nor any allegation that Ms Ali knew that she was completing a record of a contact lens fit for Mr Mahmood to use as part of his College of Optometrists Stage 1 assessment. In admitting these offences, and the cases being subsequently proved, Mr Saunders submits that the GOC have accepted that there is to be no reference to the lack of knowledge, or mental element. Consequently, Mr Saunders concludes that there is no basis for the Committee to be able to find any misconduct arising out of those actions as they cannot amount to dishonesty. Mr Saunders went on to submit that there was no evidence of a statutory prohibition or rule of practice that precludes Ms Ali from accessing her colleague's profile where she has authority to do so, and nor has the GOC alleged that this amounts to a breach of GDPR, or a breach of Specsavers company policy. Further, Mr Saunders submits that there is no evidence that Ms Ali was aware of such a policy nor that such a policy was brought to her attention, either in the GOC written evidence nor in the oral evidence (or "musings") of Mr B who, Mr Saunders submits, was purely speculative on the issue. In summary, Mr Saunders concludes that the evidence,



- taken at its highest, does not allow a Committee, properly directed, to conclude that there can be a finding of misconduct in relation to Allegations 1(a) and 1(b).
62. Mr Saunders asked the Committee to conclude therefore, that in admitting and proving allegations 1(a) and 1(b), in their current form and with no mental element, it must therefore follow that it was Ms Ali's genuine belief that she had authority from Mr Mahmood to take those actions.
  63. Mr Saunders argued that the amendments to the allegations have shown an attempt by the GOC at a late juncture to inject additional elements to the allegation. It is his contention that it was only when Mr Khan set out the three averments on the GOC's case in his opening speech that the case against Ms Ali became clear, which is not fair according to the principles in *Dutta v GMC* (2020) EWHC 1974.
  64. Mr Saunders went on to address the Committee in relation to allegation 2. Mr Saunders invited the Committee to consider the principles in the case of *Maxfield-Martin v SRA [2022] EWHC 307 (Admin)*, in particular those at para 85, as they were directly similar to this case in that the finding of dishonesty did not necessarily have to follow from the Committee's finding that the factual basis of Allegations 1(a) and 1(b) was established. This is further demonstrated by the fact that the GOC identified this as a distinct additional allegation (Allegation 2) for the Committee to consider. Mr Saunders argues that this case is similar to *Maxfield-Martin* in that Ms Ali's conduct in Allegation 1 was undertaken in circumstances where she believed she had authority to do so.
  65. Mr Saunders set out the test in *Ivey v Genting Casinos UK Ltd (Crockfords Club) [2017] UKSC 67*, and later *R v Barton & Booth [2020] EWCA CRIM 575*, namely:
    - a) *what was the defendant's actual state of knowledge or belief as to the facts; and*
    - b) *was his conduct dishonest by the standards of ordinary decent people?*
  66. Mr Saunders submitted in relation to the first stage of the test that in this case there is a young pre-registrant, dealing with a request from a more senior pre-registrant, with no evidence of company training provided and therefore it must follow that Ms Ali had a genuine subjective belief that she had authority from Mr Mahmood to use his Socrates code, access his profile and to complete a record of a contact lens fit on his behalf. For the second stage of the test, Mr Saunders argued that Ms Ali was a pre-registrant, that she held a genuine belief that she had authority, that she disclosed those acts in front of a supervisor and registered optometrist Ms A, and that Ms A did not stop Ms Ali. Therefore, Mr Saunders would invite the Committee to conclude that they cannot properly find dishonesty in those circumstances.
  67. Mr Khan responded to the half time submissions of Mr Saunders with both a written skeleton argument and oral submissions. Mr Khan submitted that the case falls into three broad strands. Firstly, that the admissions in Allegation 1 are the starting point in the assessment of dishonesty. Those facts are admitted and allow the Committee to evaluate Ms Ali's actions through both an objective

and a subjective lens. Mr Khan submitted that it is not relevant that Allegation 1 does not contain a *mens rea* element in its wording, because Allegation 2 deals with the aspect of dishonesty. It is clear from the reading of the two allegations together that the line of argument is that the dishonesty was as a result of undertaking Mr Mahmood's request. In other words, allegation 2 is *capable* of following allegation 1.

68. Mr Khan argues that the second strand is that Ms Ali would have known her actions were dishonest. Mr Khan indicates that has always been the GOC's contention and the case has, from the outset, always been one of dishonesty. Mr Khan points to the evidence of Mr B who gave oral, unchallenged evidence in relation to Ms Ali's training and record keeping. Mr Khan drew the Committee's attention to the potential breach of company rules which was raised in Ms Ali's disciplinary meeting of 14 March 2023, and again this went unchallenged. Further, Mr Khan points to the evidence of Mr B in relation to the information recorded in the contact lens fit, in particular the reference to "vcg sup [Ms A]," which Mr B indicated would mean "verbal consent given by supervisor Ms A." Further, Mr Khan points to the entry which reads "NaFL used" which Mr B confirmed meant that fluorescein (a diagnostic staining agent) was used, which was plainly untrue as it is accepted by all parties that there was no patient. Plainly, Mr Khan submitted, that on any reading, the conversation between Ms A and Ms Ali, evidenced from Ms Ali's interview, does not indicate that any valid verbal consent was given.
69. For the third strand of his submissions, Mr Khan submits that there is evidence from Ms Ali's witness statement (paragraph 7) that Mr Mahmood and Ms Ali were messaging each other on multiple platforms. Given that Snapchat auto-deletes messages and this request was not commissioned immediately, Mr Khan submitted that how Ms Ali noted/recorded the parameters sent by Mr Mahmood before making the record on his Socrates account is an important issue that also goes towards her state of mind.
70. Mr Khan asserts that the case of *Maxfield-Martin* can be distinguished from this case. Firstly, because in that case there was a hierarchical supervisor/supervisee relationship, secondly there was evidence of a history of instances where implied authority was granted, and also that Mr B has confirmed the company stance on logging information.
71. In addressing the *Ivey* case, Mr Khan states that in relation to Stage 1, the subjective test of Ms Ali's actual state of mind as to her knowledge or belief, there was evidence in relation to the training, staff handbook, the fact that there was no patient, and the fact that Ms Ali was questioned at the time by Ms A which would suggest that she did not have a genuinely held belief that what she did was honest. For the second stage test, Mr Khan submits that the evidence is capable of demonstrating an objective finding of dishonesty, when viewed through the objective prism of the standards of ordinary decent people.

72. In conclusion Mr Khan asserts that the facts of Allegation 1 are capable of resulting in a finding of misconduct being made by a Panel and that in respect of Allegation 2, a finding of dishonesty can be made as a consequence.
73. The Committee heard and accepted the advice of the Legal Adviser. Firstly, the case of *R v Galbraith [1981] 1 WLR 1039*, was outlined which considered the circumstances where (in that case a criminal court) a party may make an application to stop the case, and referred to two distinct limbs:
- Limb 1 - there is no evidence upon which the jury could convict; or
  - Limb 2 - there is some evidence, but it is so poor that it would be unsafe to leave it to the jury, it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.
74. In relation to the GOC, the guidance can be found in the *Fitness to Practise Rules* (“*The Rules*”) at *Rule 46 (8)*:
- Before opening the registrant’s case, the registrant may make submissions as to—*
- (a) whether sufficient evidence has been adduced upon which the disputed facts could be found proved;*
- (b) whether the facts, whether they are disputed or proved, could support a finding of impairment.*
75. In reaching that decision, the Committee should consider both the written and oral evidence, and should read the facts of the Allegations carefully, as it is for the GOC to prove the Allegations. At this point, the test is not ‘on the balance of probabilities’ however, but the tests in *Galbraith* and *Rule 46(8)*.
76. The Legal Adviser referred firstly to allegations 1(a) and 1(b), and advised the Committee to consider whether or not it has previously, or indeed always been the case that the GOC have alleged an element of dishonesty running throughout. If the Committee conclude that there was, it would be open to them to consider the element of dishonesty in relation to allegations 1(a) and 1(b). The test at this point, from the *Rules*, is whether the facts could support a finding of impairment.
77. The Legal Adviser outlined the misconduct test from *Roylance v. The General Medical Council (Medical Act 1983)[1999] UKPC 16 Privy Council* and *Remedy UK Ltd v General Medical Council [2010] EWHC 1245 (Admin)*, as well as the *Hearings and Indicative Sanctions Guidance* (“*The Guidance*”) at *Paragraph 16.1* for relevant factors to consider.
78. The Legal Adviser then referred to Allegation 2, and outlined the test in *Ivey*, namely, when dishonesty is in question the Committee must conduct a two stage assessment:
- (i) First ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts;*

*(ii) When his state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people.*

79. In relation to the first stage of the test, the Legal Adviser stated that it is perfectly possible for this Committee to find the facts of the allegations as at 1(a) and 1(b) proved and to conclude that there was no dishonesty - one does not automatically follow the other. The GOC has placed dishonesty as a separate and distinct allegation as at allegation 2, which is common practice as per the case of *Raychaudhuri*. The issue for this stage appears to focus around whether Ms Ali had a genuinely held belief that she had authority to enter the records. The Legal Adviser outlined that it is not for the Committee to make a finding of fact on this issue at this stage, but to consider the test in *Galbraith* and *The Rules at Rule 46(8)*. It is only once the 'actual state of the individual's knowledge or belief' has been established, that the Committee should move on to the second stage.
80. In relation the second stage of the test in *Ivey*, the Legal Adviser outlined that there is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest. The issue is whether the conduct fell short, when applying the (objective) standards of ordinary decent people. The Legal Adviser re-iterated that it is not for the Committee to fact find at this stage, but to consider, when taking the case at its highest, the test in *Galbraith* and *Rule 46(8)*.
81. The Legal Adviser outlined the facts of the case of *Maxfield-Martin* as highlighted by Mr Saunders. In that case, at the point of considering dishonesty, the SDT had already made a finding that the solicitor believed himself to have been authorised to enter the director's name and knew that the declaration was false, (i.e. the first stage of the *Ivey* test). Then, accepting there was a genuine belief the solicitor had authority, the SDT had to consider whether the solicitor's proven conduct was dishonest by the standards of ordinary decent people (i.e. the second stage test). The SDT were criticised in that case for erroneously finding that the falsity of the declaration settled the issue of dishonesty, and were criticised for giving no real weight to the fact that the solicitor had been given authority. The Legal Adviser advised the Committee to look carefully at that case, which was provided in full, in particular when considering the issues of authority, and who that authority came from.
82. In summary the Legal Adviser outlined that the thresholds to meet in *Galbraith* and *Rule 46(8)* were high, and that it is not for the Committee at this stage to make findings of fact. At this stage, the Committee should consider (a) whether sufficient evidence has been adduced upon which the disputed facts could be found proved; and (b) whether the facts, whether they are disputed or proved, could support a finding of impairment.

**Determination on application of no case to answer on behalf of Ms Ali**

83. The Committee deliberated and considered the tests in *Galbraith* and *Rule 46(8)*. The Committee considered a full review of all of the evidence received so far. In particular, the Committee noted the following:

- Ms Ali in her disciplinary interview stated
  - *“All am said is that this is for a CL px. In terms of the px being our px (this store) I had no knowledge”*
  - *“I didn’t have any knowledge. I understand I made a mistake. I should’ve questioned him. AM gave me all the parameters. I know now I should’ve questioned him on whether the px had defiantly been seen”*
  - *“I know I should’ve thought about why did AM require this favour? Could he have done it when he was in store? Has the px been seen or not? If I had those questions answered, then I wouldn’t of done I had done”*
  - *“[Ms A] saw me putting record on system. I was on shopfloor. I turned round and said its not for me its for AM. When she saw me. She said in a joking kind of way. “I know what you’re doing”. And then went I [SIC] into room we spoke. She asked why. I said AM asked for a favour and id feel bad if I didn’t help him. She then said if AM asks for anything again like this say no. she didn’t tell me to stop putting the record on. She said don’t do anything like this in the future.”*
  
- In a further interview with Specsavers on 23 March 2023, Ms Ali said
  - *“I was at the contact lens area, and [Ms A] walked past, and she saw that obviously I was on shop floor that day, she saw me putting the record onto the system, and she said in a kind of jokey way ‘ha ha I know what you are doing.’ I turned around and said ‘it is not for me, it is for Azhar,’ and then we did not speak any more out there. Then I went into [Ms A’s] room to borrow some fluorescein, because at that time there was limited stock. [Ms A] asked me ‘why are you putting the record on for Azhar?’ I said ‘because he has asked me for a favour, and if I did not help him I would feel bad for not doing it.” (page 71-72)*
  - *In response to a question about the fluorescein expiry and batch number, Ms Ali is asked “when you went to her [Ms A] room and you started talking, was the actual record completed, or have you gone back and put the fluorescein and expiry date and batch number on there?” and Ms Ali replies “Yes I went back after.”*
  
- In her witness statement Ms Ali says *“The message Azhar sent to me asked me to do a favour for him.”*

- In his evidence Mr B stated:

- (Committee questions)

*Q: In this case there is an allegation of using the code. When they joined the store, what were the inductions or training, what were they told about that?*

*A: That it is a serious offence and should not be done. The training was regularly done, it was GDPR, a serious breach of GDPR and company policy. There is regular training.*

*Q: Is there a written policy?*

*A: It would be in a staff handbook and on a module called "iLearn," likely in handbook. The Intranet is called Sharepoint and is referenced on there too.*

*Q: Is it common practice for people to log in using others codes?*

*A: Not common, I doubt whether it happens at all.*

*Q: Are there no circumstances in which someone would sign on?*

*A: I have never heard of it happen, I would be surprised if it happened in my practice. Even if ...not officially logged in yet, would use a self-employed login.*

*Q: Can you explain how this would be a breach of GDPR?*

*A: If someone is not given ... in swapping passwords they are accessing personal information that they should not have access to - we are very strict on that.*

*Q: The patient record at pg 40 - which parts are automatic?*

*A: The dates and name are automatic. The rest would be inputted by the person.*

*Q: Is that the same on every occasion?*

*A: The date and name only - everything else inputted by the operator.*

*Q: For example the comment 'anterior chamber clear'?*

*A: Yes that would be inputted.*

(Questions from Mr Khan)

*Q: In a GDPR breach – does each individual have certain medical records only accessible through their own account?*

*A: No. Once given a professional allocation you would have all access to all records, you either have access or you do not.*

*Q: Does that also apply to students?*

*A: If pre reg then yes. Students will have access to some. Some more optical services. Undergraduates would not have access to this.*

*Q: In relation to refresher training - how long had each of the pre-registrant's been working?*

*A: I think it was five years, possibly four. Hadiqa more than two.*

*Q: What is your best estimate of when re-training took place?*

*A: Definitely every 12 months. Possibly less.*

*Q: Aside from that - general training on how to handle information?  
A: There were discussions, we sent pre-reg on courses, it was explained clearly.*

*(Questions from the Chair)*

*Q: For a pre-registrant doing a test - are they supervised?*

*A: Yes*

*Q: Does the supervisor record this anywhere?*

*A: Normally what would happen is the pre-registrant would annotate who has given verbal consent. At the initial sign on you would have to allocate who was signing on.*

*Q: At page 44 there is reference to 'vcg sup [Ms A]' – what does this mean?*

*A: This means the person who inputted the information put that in – VBC means Verbal Consent Given.*

*Q: Would it be a breach of GDPR to put patient information on to Snapchat?*

*A: I don't know what was put on there. If not referenceable to patient details, then no, but if it had details, then yes.*

*Q: The information to complete the record, comes from a Snapchat?*

*Possible from a phone call or snapchat. He may have had an unidentifiable patient number - could have been without personal details.*

*(Question from Mr Khan)*

*Q: If we assume that information was not identifiable - would you expect colleagues to send information to request someone else to upload information?*

*A: Never no.*

84. The Committee firstly considered Allegations 1(a) and 1(b), which are admitted and proved. The issue is whether the undisputed facts are insufficient to establish impairment.
85. The Committee noted that Ms Ali was made aware of the facts of the accusation from the outset. The allegation of dishonesty has been consistent throughout and this is alleged as a result of Ms Ali's actions in Allegation 1. The Committee does not consider that there is any procedural unfairness in this regard. The Committee considered that Allegations at 1(a) and (b) did give rise to a consideration of Ms Ali's state of mind when read in conjunction with Allegation 2.
86. The oral evidence of Mr B did confirm Ms Ali would have been aware of her professional obligations. Mr B stated that Ms Ali was made aware through regular training that she would be breaching her own professional rules and training by using someone else's Socrates code and accessing their profile, as

well as by completing a record of a contact lens fit in the absence of a patient on behalf of a colleague. The Committee concluded that it is not correct to say that there is no evidence of Ms Ali's awareness of her duties in that regard. The Committee also noted Mr B's evidence in relation to the data which was manually entered into the record, and noted his evidence that a supervisor's name and implied consent ("verbal consent given") was manually entered as "VCG [Ms A]" at page 3 of RS/02 (page 44). In addition, the Committee noted the manual entry of a fluorescein batch number and expiry date at page 4 of RS/02 (page 40). The Committee concluded, in relation to Allegation 1(a) and (b), that there was some evidence that could support a finding of impairment.

87. In relation to Allegation 2, the Committee noted that the particulars included reference to Allegation 1 that "your actions as set out in 1 were dishonest in that you fabricated a record of a contact lens fit." The issue for the Committee is whether, on the evidence received, it could make a finding of dishonesty and therefore impairment. The Committee considered at this point the two stage dishonesty test in *Ivey*.
88. The first stage would require the Committee to ascertain the state of the individual's knowledge or belief as to the facts. The Committee acknowledged that the reasonableness or otherwise of Ms Ali's belief is a matter of evidence, it is not an additional requirement that her belief must be reasonable, the question is whether it is genuinely held. The Committee considered that the issue of whether Ms Ali held a genuine belief that she had authority to carry out the actions in Allegation 1 was still in dispute. The Committee noted that it is open to the Committee to find that Mr Mahmood did not appear to be in a position to provide authority to her given that he is also himself a pre-registered optometrist. Ms Ali herself said in her interview with Specsavers said that Ms A did talk to her about her actions, saying "I know what you are up to" and advised Ms Ali not to repeat those actions. The Committee did not consider that Ms A's failure to stop Ms Ali amounts to an authority to continue with those actions. Therefore, on the evidence received so far, the Committee considered that there was sufficient evidence adduced upon which the Committee could determine that Ms Ali's assertions as to having authority to carry out the actions in Allegation 1 were not a 'genuine belief.' The Committee do not make any findings of fact in this regard at this stage.
89. The Committee considered in full the case of *Maxfield-Martin*, in particular on the issue of authority. Whilst the facts of the case are similar, the Committee noted some differences. Firstly, in that case there was a hierarchical solicitor/partner relationship, secondly there was evidence of a history of instances where implied authority was granted. Thirdly, the Committee noted that in that case the issue of whether the solicitor had a 'genuine belief' in the fact that he was given authority had been accepted and settled. The Committee acknowledged that if it were to find that Ms Ali had a genuine belief that she had been given actual authority to carry out her actions at Allegation 1, they would take this into account when moving to Stage 2 of the *Ivey* test.



90. In making a fact-finding decision, the Committee would only be required to move to Stage 2 of the *Ivey* test once Ms Ali's state of mind as to knowledge or belief has been established. However, in fairness to Ms Ali, and in order to consider whether it could find impairment, the Committee did consider whether, if they did later find that Ms Ali had a genuine subjective belief that she had authority to take out the actions in Allegation 1, her conduct was honest or dishonest as part of a Stage 2 assessment. The Committee concluded that even if it accepted that Ms Ali had a genuine belief that she had authority (Stage 1), there was sufficient evidence before it to conclude that Ms Ali's conduct could amount to dishonesty according to the *standards of ordinary decent people* (Stage 2).
91. Having reviewed the evidence so far, the Committee found, when applying the tests in *Galbraith* and *Rule 46(8)*, that there is sufficient evidence adduced upon which the disputed facts could be found proved, and that the facts could support a finding of impairment. Consequently, the Application is dismissed.

### **Hearing resumed**

92. The Committee re-commenced the hearing and Ms Ali gave evidence. During the course of her evidence, it became apparent that there were documents in existence in relation to Ms Ali's training, which may assist the Committee.
93. Mr Saunders and the Committee both requested at this point that it would be helpful to hear again from the witness Mr B.
94. Ms Ali remained under oath. Mr B was recalled to give further evidence. During his evidence, Mr B mentioned that there were further training documents which may provide assistance to the Committee. The Committee allowed a short adjournment for these documents to be sought and served.
95. One further document was served which was the pre-registration Specsavers induction slides. It was agreed to be fair and relevant to be admitted by all parties. The Committee, having accepted the advice of the Legal Advisor, agreed to admit this into evidence. The Committee was then informed that no other documents would be available for some time. The Committee considered it would not be proportionate or fair to Ms Ali and Mr Mahmood to delay proceedings and concluded that they no longer required any further documents or evidence from Mr B.
96. Although Ms Ali had remained under oath, the Committee gave Mr Saunders permission to discuss only the further evidence of Mr B and the new document with her before re-commencing her evidence.
97. Ms Ali then continued her remaining evidence. In her oral evidence Ms Ali discussed her CV, indicated her experience of data protection training and reiterated the circumstances in which she obtained the information which she inputted. She was adamant that she believed she was acting honestly and with authority. In answer to Committee questions, Ms Ali accepted that she understood the purpose of passwords and the effect of sharing them.

98. The case for the Registrant Ms Ali then concluded.

### **Closing submission**

99. Mr Khan for the GOC made closing submissions and acknowledged from the outset that the GOC bears the burden of proving the case. Allegations 1(a) and 1(b) are already found proven, the only outstanding issue being the dishonesty aspect in Allegation 2. The GOC submits that it is possible for the Committee to find dishonesty on the second allegation, and this should be established as a fact. The GOC submitted that Ms Ali, as an academic, well-qualified individual, knew right from wrong and knew she was acting dishonestly. Mr Khan invited the Committee to consider five streams of the evidence.
100. Firstly, that Ms Ali knew that passwords should not be shared at any time under any circumstances, even on her own evidence. The moment the password was shared was the moment the rule was broken, especially where, in this case, information was shared via Snapchat. Secondly Mr Khan outlined the training Ms Ali would have had. There was a Colleague handbook, which indicated that sharing passwords was not permitted and amounted to gross misconduct, as well as Ms Ali's own evidence that she was aware of GDPR principles from her undergraduate course, when she was exposed to information and security training. Ms Ali also accepts that she took part in Specsavers Global Induction training in 2020, as well as mandatory training in April 2021 about information security and data protection, which was repeated in March 2022. Finally in October 2022 Ms Ali accepts that she completed the pre-registration Specsavers induction course. In her evidence Ms Ali had explained how she was told about cheating in exams, as well as changing and amending records for the purpose of an assessment. Mr Khan submitted that despite this knowledge, Ms Ali did in fact make changes to the records on 2 February 2023, by inputting parameters to the record on a day when she knew Mr Mahmood was not even at the branch. Thirdly Mr Khan submits that Ms Ali's actions do give rise to serious clinical concerns. By using Mr Mahmood's Socrates code, accessing his profile, and completing the record of a contact lens fit, Ms Ali went further than simply inputting the details Mr Mahmood provided. Ms Ali independently sourced the batch number and expiry date of fluorescein. Mr Khan submits that whilst there is a dispute over the meaning of 'vcg', Ms Ali asserting that 'verbal consent given' would be consent from the patient, and Mr B stating that this means consent from the supervisor, Ms Ali could not be sure that consent was in fact obtained from either. Ms Ali accepted in her College of Optometrists investigation that in order to properly upload a record of a fit you need to have examined that person, and complete the record contemporaneously. It follows therefore that she knew it was not the appropriate thing to do to add the details. Fourthly, in relation to the interaction with Ms A, Ms Ali recalls being told by her "I know what you are doing" in a 'jokey' way. Ms Ali asserts that having disclosed that she was inputting on Mr Mahmood's behalf, Ms A did not take any further action to stop her, Ms Ali believed that her actions were legitimate. Mr Khan asked the Committee to consider why, if that were the case, Ms A was

concerned enough to investigate this matter and subsequently report the issue. Mr Khan submitted that it is not Ms A's role to change Ms Ali's mindset from dishonest to honest. Fifthly and finally, Ms Ali has never before encountered such a request. Ms Ali initially used the word 'favour' but later refers to being given 'authority' by Mr Mahmood. Mr Khan submitted that Mr Mahmood is the same rank as Ms Ali, albeit slightly further along in his studies, but as they were both pre-registration optometrists, it was not possible for him to provide such authority. Mr Khan submits that it would not matter if the authority came from the Head of Specsavers, given the overarching principle of which Ms Ali was aware, that passwords must not be shared. Mr Khan submitted that Ms Ali was a bright academic individual, who had recently left University, and had been exposed to the concepts of GDPR and information security. Ms Ali acknowledges in her evidence that passwords are there to provide protections and Mr Khan submitted that Ms Ali would have known that sharing those would compromise those protections, especially where shared on personal devices.

101. In applying the facts to the dishonesty test in *Ivey*, Mr Khan submitted that on the first stage, given Ms Ali's knowledge, experience, the interaction with Ms A and the lack of previous similar requests made to her, the only conclusion is that Ms Ali knew what she was doing was dishonest. Further, Mr Khan submitted that even if the Committee were to find that Ms Ali did not know what she was doing was dishonest, when it moves to stage 2 of the test, in applying the objective standards of ordinary decent people, the Committee should still conclude that Ms Ali's actions were dishonest. Mr Khan concluded that given the weight of the facts in this case, the case of dishonesty is made out and therefore the matter is capable of amounting to misconduct.
102. Mr Saunders for Ms Ali made his closing submissions. Mr Saunders submitted that it was only during this hearing that the GOC began to assert evidence of Ms Ali's training records. Despite this, the Committee has not yet been provided with clear evidence of the training that has actually been provided to Ms Ali. Mr B did indicate that using a Socrates code, and accessing another's profile was not something that happened at the practice, however he accepted later that he was "caught on the hoof" in his evidence. In Mr Saunders' submission, Mr B failed to make proper reference to documents. Mr Saunders submitted that the Committee should not speculate on what the training may or may not have contained, but look at the documentary evidence and known facts. Mr Saunders referred to *Dutta v GMC* and *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013], in submitting that the best approach is to base factual findings on inferences drawn from documentary evidence and known or probable facts.
103. Mr Saunders submitted that the GOC has not pleaded a mental element as part of Allegation 1 and therefore it is questionable how dishonesty arises. Mr Saunders stated that whilst there had been dishonesty alleged in Allegation 2, that does not exist in a vacuum and cannot be alleged in a vacuum, and invited the Committee to consider whether the GOC has proved how it alleges Ms Ali's behaviour was dishonest. It is common ground that Mr Mahmood gave Ms Ali authority to access his profile using his Socrates code, and Mr Saunders submits

that the GOC has never submitted that there was a statutory prohibition or established rule of practice that precluded Ms Ali from using it where she had authority. Further, Mr Saunders submitted that the GOC has never previously alleged that these actions were a breach of GDPR rules. Mr B's evidence confirmed that Ms Ali and Mr Mahmood had access to all of the same data. Mr Saunders submitted that the GOC has provided the Colleague handbook, despite the fact that Mr B says he cannot be certain it was given to Ms Ali prior to her disciplinary interview. Mr B also acknowledged that Ms Ali was not given a contract. Mr Saunders submitted that the GOC cannot now rely on Ms Ali's acknowledgement that she had received training on accurate record-keeping. Mr Saunders submitted that the GOC had specifically precluded reference to her motivation in making the amendments to the allegations 1(a) and 1(b).

104. Mr Saunders submitted that the question put to Mr B by a member of the Committee in relation to induction and training provided to Ms Ali pre-supposed that Mr B was able to answer those questions, despite the fact that there was nothing in his witness statement to support it. Mr Saunders stated that Mr B later agreed he had been speculative in this regard and resiled from his previous answer. Mr Saunders submitted that if any finding of dishonesty is based on training, that is an erroneous approach where the underlying documents have not been obtained. Mr Saunders asked the Committee to consider it implausible that Ms Ali, a pre-registration optometrist, who has committed her life to bettering herself with a career in optometry, would risk throwing all of that away by doing a favour for a colleague.
105. Mr Saunders invited the Committee, when looking at the first stage in the case of *Ivey*, to find that Ms Ali did have a genuine belief in the authority she was given from Mr Mahmood to complete the record, had been consistent in her account throughout interview and evidence, and that Ms Ali was open with Ms A in both verbal comments and in her actions whilst obtaining the fluorescein. Mr Saunders also indicated that Ms Ali is of good character, and the Committee should consider this in her favour when it comes to both her credibility and her propensity to have acted dishonestly. Mr Saunders submitted that the Committee should find that Ms Ali had a genuine belief in the fact that she was given authority to complete the actions.
106. In relation to stage 2 of *Ivey*, and following the case of *Maxfield-Martin*, if the Committee do find that Ms Ali had that genuine belief in that authority, it should rely on that belief in concluding that Ms Ali's actions, even by the standards of ordinary decent people, were not dishonest.
107. The Committee heard and accepted the advice of the Legal Adviser. The Legal Adviser outlined that the burden of proof is on the GOC and the standard is on the balance of probabilities, or 'more likely than not.' The Committee had heard live evidence from Mr B and Ms Ali, as well as having received numerous documents. Whilst there is no dispute as to the key facts, the issue remains one of dishonesty. The Legal Adviser referred to the case of *Byrne v General Medical Council [2021] EWHC 2237 (Admin)* in that the Committee should have regard to the whole of the evidence as well as the submissions and form their

own judgement about which evidence is reliable and which is not. It is up to the Committee to decide what weight to attach to the evidence before it. The Committee is also entitled to draw proper inferences, that is to come to common sense conclusions based upon the evidence which it accepts as reliable; but it must not speculate. Similarly, it must not speculate about what other evidence there might have been.

108. The Legal Adviser repeated again the dishonesty principles in *Ivey* as set out above. Further the Legal Adviser outlined the law in relation to the credibility of witnesses, referring to the cases of *Dutta v GMC [2020] EWHC 1974*; *Byrne v General Medical Council [2021] EWHC 2237 (Admin)* and *Khan v The General Medical Council [2021] EWHC 374 (Admin)*, drawing the Committee's attention to the fact that it should consider contemporaneous documents and agreed facts first, before considering demeanour or credibility of witnesses. Finally, the Legal Adviser outlined the good character of Ms Ali as a positive feature which should go in her favour, both in terms of her credibility and her lack of propensity to offend any such rules previously.

#### **Determination on Facts**

109. The Committee considered Allegation 2, the only remaining disputed allegation. Firstly the Committee considered the difference between the falsity of a statement and dishonesty. The Committee acknowledged that the mere making of a statement knowing that it was false cannot automatically be equated with a dishonest intention. However in this case, as the allegations are linked together in Allegation 2 "your actions as set out in 1 were dishonest in that you fabricated a record of a contact lens fit to be used by your colleague," the Committee are required to make a finding as to whether Ms Ali had been dishonest.
110. The Committee considered the first stage test in *Ivey*. In trying to ascertain (subjectively) the actual state of Ms Ali's knowledge or belief as to the facts, the Committee understood this to require the evaluative judgment of the tribunal, understanding the precise information available to the Registrant at the time. The Committee considered the documentary and undisputed evidence first in this regard in order to follow the principles in *Dutta*. The Committee considered the Colleague handbook, which indicates that sharing passwords is not permitted and amounts to gross misconduct. However, it was unclear from the evidence whether Ms Ali had ever received this. Ms Ali's own evidence is that she was aware of GDPR principles from her undergraduate course and when she was exposed to information and security training. Ms Ali also accepted that she took part in Specsavers Global Induction training in 2020, as well as mandatory training in April 2021 about information security and data protection, which was repeated in March 2022. Finally in October 2022 Ms Ali accepts she attended the pre-registration Specsavers induction course. It was clear to the Committee that Ms Ali, having obtained upper second class honours in her BSc Optometry degree, and then being employed at Specsavers since 2020, was an educated, sensible, intelligent and thoughtful woman. This came across clearly

in her oral evidence. It follows as a matter of common sense, and Ms Ali accepts the knowledge in her evidence, that she was aware that passwords are there to provide protections and that sharing those passwords would compromise those protections. This would be particularly true when shared on personal devices. Her actions involved sharing a password which regardless of any specific training, Ms Ali knew undermined security and should not happen. The Committee did not consider Ms Ali to be credible when she states that she did not know she was doing anything wrong in using Mr Mahmood's Socrates code, accessing his profile and completing the record of a contact lens fit in the absence of a patient.

111. The Committee went on to consider Ms Ali's account that she was simply inputting information that she believed to be accurate. The Committee considered that Ms Ali was aware that the patient was not present. She had no way of knowing whether the information Mr Mahmood gave her, including the supervisor details, were accurate, as she was not aware of whether there had been a patient assessment at all. Ms Ali also went further than to just copy information given to her by Mr Mahmood, in that she moved from passive to proactive steps to endorse the record. Firstly, when inputting the information on the record, Ms Ali accepted that it would auto-generate a date which was not accurate. For the reader, this would indicate the date of the patient assessment, in this case the date generated was 2 February 2023. Ms Ali would have been aware that Mr Mahmood could not have assessed the patient on that date because it is accepted by all parties that Mr Mahmood was not in the store. The date appears repeatedly on the entries, and whilst auto-generated, constitutes a fabrication. Secondly, in making the entry, Ms Ali was aware that the system would expect her to enter the batch number and expiry date of the fluorescein strip which is used in a patient assessment of this kind. Ms Ali stated in her evidence that she was unaware whether Mr Mahmood had seen the patient or not. Ms Ali made an assumption that the fluorescein strip used by Mr Mahmood in the patient assessment would have been from the same box which she accessed in the store on 2 February 2023, and therefore would contain the same batch number and expiry date. Ms Ali took it upon herself to seek out that box of fluorescein strips, copy down the batch number and expiry date, and return to input arbitrary details of them into the record. In not knowing whether there was a patient assessment at all, Ms Ali could not have been sure that the batch number and expiry date she inputted was, in fact, the same as the batch number and expiry date used for the patient assessment. This does cause the Committee some clinical concerns. If Ms Ali took the information Mr Mahmood gave her as accurate, then she believed that there had been a real patient assessment. If that patient had an allergic reaction for example, it would have been impossible to know as a fact which batch that fluorescein strip had originated from. The Committee found that on finalising the record, the date and the fluorescein strip batch number and expiry date were not recorded contemporaneously and therefore Ms Ali had fabricated information on the record.

112. The Committee also considered Ms Ali's evidence in relation to her interaction with Ms A. According to Ms Ali, Ms A did tell Ms Ali that if Mr Mahmood asked her to do it again, she should say no. The Committee considered, given those accepted facts, that Ms Ali would have been aware at that point that she was doing something wrong. Even after that interaction, Ms Ali went back and continued to complete the record, having apparently made her own innocent interpretation. The Committee did not accept the submission that this interaction proves that Ms Ali's actions must have been honest because Ms A failed to stop her.
113. The Committee therefore concluded that Ms Ali was aware that the entries she made were fabricated.
114. The Committee acknowledges, despite that finding, and following *Maxfield-Martin*, it should also consider, and give appropriate weight to, the possibility that Ms Ali honestly and genuinely relied on the authority she states she was given from Mr Mahmood. The Committee considered Ms Ali's evidence carefully in this regard. On her own account, she did not, at the time, pause, think about or question any of the knowledge she already had in relation to password sharing. Neither did Ms Ali question whether Mr Mahmood is capable of giving legitimate authority, or the possibility that he might actually be acting dishonestly himself. The Committee found that this seriously undermined Ms Ali's contention of 'honest belief.' The Committee considered that Ms Ali was aware that Mr Mahmood was not in a position to be able to give her authority, regardless of his standing, even if somewhat further along than Ms Ali, as a pre-registration optometrist. Further, given what Ms Ali accepts she knew generally in relation to the sharing of passwords, it should have been obvious to her that any sharing of passwords would be against the professional rules, regardless of any authority given. Ms Ali made no enquiry of Mr Mahmood as to why he needed the 'favour' and this should have caused her concern. Given stage 1 of the *Ivey* test, the Committee does not therefore find that Ms Ali genuinely held a belief that she had authority to carry out the actions, and her knowledge was such that she should have come to a different conclusion.
115. Even if the Committee had found that Ms Ali did have a genuinely held belief in the authority from Mr Mahmood, it was still important for the Committee to move to the second stage of the *Ivey* test, considering whether, by applying the (objective) standards of ordinary decent people, her actions would be considered honest or dishonest.
116. In considering the second stage of the test, and having regard to the above, the Committee concluded that in entering a record which, in its final form, contained false information, namely the date and the batch and expiry number of the fluorescein strip, there would be a cause for concern for ordinary decent people. On her account, Ms Ali relied without question on the information given to her by Mr Mahmood. The Committee considered, in applying the objective test, that fabricating a healthcare record with false information would fall below the standards of ordinary decent people and would therefore lead them to conclude that the behaviour was dishonest. An ordinary member of the public would

undoubtedly have an inherent awareness that passwords are not to be shared, and that data protection is paramount when it comes to professional clinical care. The Committee considered this to be a matter of common sense. Following on from this, the Committee considered that an ordinary decent person would have had cause for concern if presented with the same scenario, and would have raised further queries with Mr Mahmood or better still a supervisor before making any such entries. The Committee considers that an ordinary decent person would find it implausible that Ms Ali made no such enquiry. As these entries involve clinical records, the Committee considered that there is a higher duty incumbent upon Ms Ali, and optical professionals in general, to take a fundamental obligation such as information sharing seriously. The objective standards of ordinary and decent people must involve the expectations that pre-registration optometrists will have some regard to the professional standards under which they are required to operate, pursuant to a system of regulation that is designed to protect the public.

117. The Committee therefore finds that the only reasonable conclusion is that Ms Ali was dishonest.

### **Misconduct**

118. Mr Khan submitted that the case of *Roylance v GMC* [1999] Lloyd's Rep Med 139 outlined that misconduct was a word of general effect involving some acts or missions falling short. Mr Khan also raised the case of *Nandi v General Medical Council* | [2004] EWHC 2317 (Admin) to indicate that the behaviour must be serious and regarded as 'deplorable.'
119. In relation to student optometrists, Mr Khan drew the Committee's attention to the *Standards for Optical Students* to assist. The guidance makes clear that students must use their "own professional judgement, with the support of the training provider or supervisor, to determine how to achieve these standards.
120. In relation to Mr Mahmood, Mr Khan submitted that the relevant provisions for the Committee to consider are *Standards* 3, 7, 9, 13, 14, 15, 16, 17 and 18. In relation to Ms Ali, Mr Khan submitted that the relevant standards are 3, 7, 13, 14, 15, 16 and 18.
121. Mr Khan submitted that both Registrants have been proven to be dishonest through admissions or the litigation process. As no valid consent was obtained from a patient, the record was in fact entirely fictitious. In Mr Mahmood's case the purpose was to avoid falling behind on his assessment. According to the Committee's findings, Ms Ali also knew she had no legitimate authority to complete the contact lens fit. Mr Khan submitted that the record itself is inadequate because it was untrue. This started with Mr Mahmood was then passed on to Ms Ali who inputted further details as found, despite the fact that she had no clear knowledge that such a fit taken place.
122. Mr Khan submitted that the dishonest conduct as found in this case must be misconduct. Mr Khan went through the standards referred to above and



compared them with the facts in this case. In particular, Mr Khan stated that the two Registrants have fallen short of the professional standards by:

- sharing information on a personal device would be a breach of *Standard 9.2* and *13*;
- Mr Mahmood asking Ms Ali to carry out a request he knew was false falls short of *Standard 14*,
- the allegations found proved would fall short of *Standard 15*, in particular *15.6* relating making misleading, confusing or unlawful statements within communications;
- the dishonest conduct as found by the Committee necessarily amounts to falling short of *Standards 16*;
- Mr Mahmood, by initially giving a false story about how this scenario happened, and then later correcting this, would amount to a falling short of *Standard 17*;
- the failure to maintain adequate records would amount to a falling short of *Standard 7*;
- in relation to *Standard 18* to “be candid when things have gone wrong” Mr Mahmood has fallen short by initially being dishonest in his account, and by Ms Ali has fallen short by continuing to maintain her honesty throughout the hearing.

123. Given all of those factors, Mr Khan submitted that the Committee should find misconduct.

124. Mr Saunders made no submissions in relation to misconduct.

125. Mr Mahmood made no submissions in relation to misconduct.

126. The Committee heard and accepted the advice of the Legal Adviser, who outlined that at this stage it is for the Committee to consider misconduct, which is one of the grounds of impairment outlined under section 13D of the Opticians Act 1989. The Legal Adviser outlined the *Hearings and Indicative Sanctions Guidance 15.6* to *15.9* and included advice in relation to *Roylance*, that misconduct might be defined as “*a falling short by omission or commission of the standards to be expected among [medical practitioners] and such falling short must be serious...*”

127. The Legal Adviser further outlined the case of *Remedy UK Ltd v General Medical Council [2010] EWHC 1245 (Admin)* in explaining the two principal kinds of misconduct, either conduct linked to professional practice or conduct that is morally culpable or otherwise disgraceful that brings the profession into disrepute.

128. Finally, the Legal Adviser outlined the case of *Professional Standards Authority v Health and Care Professions Council and Ajeneeye [2016]* which said:

*“Deliberate dishonesty must come high on the scale of misconduct. That is particularly so when a direct consequence of that misconduct is physical harm to a patient. The lack of financial motive or personal gain means that a further*

*aggravating feature is not present. It does not mitigate the risk of harm to patients created by the breach of professional standards. Equally, the number of instances of dishonesty is important, once might be described as an aberration but more than once, even if only twice, may demonstrate a tendency to act dishonestly.”*

129. In the same case, there was a reference to rejected defences, that “*a failure immediately or speedily to acknowledge and admit such conduct is material. An attempt to deny the alleged dishonesty by contesting proceedings by seeking to place blame elsewhere is a factor that may also demonstrate a tendency to act dishonestly. In the context of professional standards it is capable of being highly relevant to the question of impairment to practise.*” However, the Legal Adviser indicated that this may be better for the Committee to consider at the impairment stage, if the Committee reach that. Finally, the Legal Adviser indicated that only serious misconduct should be taken into account at the misconduct stage.

#### **Findings in relation to misconduct**

130. The Committee considered the *Standards for Optical Students*.
131. The Committee considered its findings so far and the fact that dishonesty is considered to be a serious matter in professional standards. The Committee recognised that there was a spectrum of dishonesty. The Committee found that in considering misconduct, dishonesty lies at the upper end.
132. The Committee acknowledged that this was only one incident, although nevertheless a serious matter. It is further aggravated by the fact that Ms Mahmood intended to use the record entry for personal gain for his college assessment.
133. Whilst there was a failure to speedily admit to the allegations on behalf of both Mr Mahmood and Ms Ali, the Committee did not consider that useful to their determination on misconduct.
134. Further, the Committee rejected the assertion that the Registrants, in their actions, fell short of Standard 14, because it does not, on the face of it, appear to apply to colleagues but also does not appear to relate directly to the facts in this case.
135. The Committee did, however, consider that in his actions, Mr Mahmood fell short of Standards 3, 7, 8.2 and 8.3, 9.2, 13, 15, 16 and 18.
136. The Committee considered that in her actions, Ms Ali fell short of Standards 3, 7, 8.2, 13, 15, 16 and 18.
137. The Committee found that the facts found and admitted for both Mr Mahmood and Ms Ali do amount to misconduct.

## Impairment

138. Mr Khan submitted on behalf of the GOC that both Ms Ali and Mr Mahmood are currently impaired. Mr Khan referred to the case of *PSA v Nursing and Midwifery Council (Grant) [2011] EWHC 927* and stated that the Committee in each case should ask itself:
- a. Has [the Registrant] in the past acted and/or is [he] liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
  - b. Has [the Registrant] in the past and/or is [he] liable in the future to bring the medical profession into disrepute; and/or
  - c. Has [the Registrant] in the past breached and/or is [he] liable in the future to breach one of the fundamental tenets of the medical profession; and/or
  - d. Has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.
139. Mr Khan also referred to the case of *Cohen v GMC 2008 EWHC 581* and asked the Committee to consider the past misconduct in light of whether it is easily remediable, whether it has in fact been remedied, and whether it is highly unlikely to be repeated.
140. In relation to Mr Mahmood, Mr Khan submitted that he remained impaired. Mr Mahmood committed a dishonest act and compromised his exam integrity as well as patient integrity. He sought to actively cover up events initially, although now accepts that this was a fabrication. Mr Mahmood had also spent almost a year not participating in any demonstrable remediation. The details of all the courses Mr Mahmood provided show completion dates of May 2024. Mr Khan stated it is possible, albeit difficult for Mr Mahmood to remediate dishonest behaviour. Mr Khan also submitted that further time to reflect was required.
141. In relation to Ms Ali, Mr Khan repeated again the submissions from the *Grant* and *Cohen* cases, and submitted that Ms Ali remains currently impaired. Mr Khan referred to Ms Ali's denial of dishonesty throughout the proceedings, which he says shows a lack of insight into the circumstances. Ms Ali had, according to the Committee's findings, a clear and significant amount of particular as well as personal knowledge at the time, which causes significant concern as Ms Ali had, throughout the hearing, hidden behind her lack of curiosity, which Mr Khan characterised as a façade. He observed that Ms Ali had completed further training although this was all undertaken shortly after the incident in March 2023, one month later. Mr Khan submitted that the Committee might consider the period of 15 months without further training to be an issue. Mr Khan accepted that the disciplinary process may have gone some way to instilling the message that this was wrong. However, it was apparent throughout that there had not been an acceptance that what she did was dishonest. This has now been proven as a fact, and the GOC says that some further training and evidence of

self-awareness would be required before Ms Ali can say she is no longer impaired.

142. In summary, Mr Khan stated that both Registrants have committed offences of dishonesty. The Committee has recognised that dishonesty lies towards the upper end of the scale of serious misconduct. Mr Khan submitted that it is fortunate that there was no direct patient harm. He questioned whether, if the false records had not been identified, the patient, who is an identifiable real patient at Specsavers, would have continued with false records. Mr Khan submitted that there is a risk of putting patients at unwarranted risk of harm, and there also remains a risk of bringing the profession into disrepute. Mr Khan raised concerns regarding Ms Ali's attitudinal approach.
143. The Committee heard evidence from Ms Ali and Mr Mahmood. The Committee also received documents from both Registrants which went towards insight and included positive testimonials, and in Mr Mahmood's case, details of his personal circumstances.
144. Ms Ali gave evidence. When asked if she felt there was further work to be done, Ms Ali confirmed that the courses she had already completed had assisted her in highlighting the gravity of the situation and would prevent her putting herself in a similar position again. When asked about the wider impact of her dishonesty on a member of the public, Ms Ali focused on the fact that she was very inexperienced and had no malicious intent. She stated that she was not justifying her actions, but acknowledged that she should have asked questions when the situation arose. Ms Ali focused on the need to take more time in making decisions. Ms Ali was able to give an example of an ethical dilemma which presented in her practice of patient confidentiality which had arisen since this incident and how she dealt with it appropriately.
145. Mr Saunders made submissions on impairment. Mr Saunders also referenced the *Hearings and Indicative Sanctions Guidance* at 16.1 – 16.6. and reminded the Committee that Ms Ali has no previous fitness to train history, which is unsurprising as she is in the infancy of her career. Mr Saunders submitted that some cases, for example where there are clinical issues, are more easily capable of being remedied than others.
146. Mr Saunders submitted in relation to *Rule 16.6* that the Committee should approach the issue of insight carefully:
 

*16.6 Where the committee has found the facts proved, despite a registrant(s) denial, they need to approach the issue of insight carefully... '...it is too much to expect of an accused member of a profession who has doughtily defended an allegation on that ground that he did not do it to suddenly undergo a Damascene conversion in the impairment phase following a factual finding that he did do it". GMC v Awan [2020] EWHC 15553 (Admin)*
147. Mr Saunders drew the Committee's attention to the fact that Ms Ali's own employer had, upon considering the facts, only issued Ms Ali with a final warning. It was Ms Ali herself who self-referred to the GOC. In doing so, Mr

Saunders submitted that she is displaying insight and would demonstrate there is a low risk of repetition from someone who obviously recognises they must be co-operative and transparent with their regulator.

148. In relation to the reputation of the profession, Mr Saunders submitted that there is a distinction between Ms Ali's isolated lack of judgement, where she has shown remorse and swiftly undertakes training, and someone who is twenty years into practice and engaged in the same conduct. In the latter, Mr Saunders accepts that the public would be concerned and expect proper disciplinary processes to take place.
149. In relation to the case of *Grant*, Mr Saunders submitted that that was an NMC case, and a careful distinction should be made because in that case, the NMC would not have the outcome of a warning available to them when no impairment is found, whereas in the GOC, there remains an option to find no impairment and still offer a warning. Mr Saunders referred to the case of *Uppal [2015] EWHC 1304 (Admin)* where it was stated that it was open to the Committee to find no impairment and impose a warning. Mr Saunders stated that the Committee should consider a warning in this case. Ms Ali has faced a rigorous disciplinary investigation and a finding of misconduct, and this would recognise the behaviour without the necessity for further sanction.
150. Mr Saunders submitted that Ms Ali has shown insight, both in her oral and written evidence, that she addressed the underlying issues straightaway and has completed a number of courses which demonstrate this. Ms Ali has her final exams in two weeks' time and is still working at a Specsavers store, which proves that those efforts have been successful.
151. In summary Mr Saunders submitted that Ms Ali's fitness to train is not impaired. There was a momentary lapse of judgement on her part, during the infancy of her training, which was not for any ostensible gain. Mr Saunders stated that it is highly unlikely to be repeated, and is certainly not a 'deep rooted attitudinal problem.' Ms Ali is academic, with a hitherto good record which is demonstrated in her testimonials, and shows promise of her being a credit to the reputation of the profession.
152. Mr Mahmood gave evidence. Mr Mahmood accepted that from the outset he had been dishonest, and that the likely finding would be that of being currently impaired, although he himself did not feel so. In relation to the incident itself, he stated that he had had an upcoming visit a couple of weeks after 2 February 2023 which he had delayed once already. He made the decision to fabricate a record and gave the details of a completely false contact lens fit to Ms Ali in order to support his College of Optometry competencies. He admitted that once that deception was discovered, he then lied to conceal it, and continued that lie for a very long period before finally admitting the truth. Mr Mahmood was unsure why he had not just completed a patient assessment himself, or indeed enter the details on the record himself when he was due to be at work on the 4 February 2023. He stated that his actions were 'heinous' and would be considered as such by both the public and other members of the profession. Mr Mahmood

stated that the public would be likely to think that those actions were not befitting of a member of the public let alone a health-care professional.

153. The Legal Adviser raised the issue of going into private session as Mr Mahmood intended to rely on material which may refer to his physical or mental health. The Legal Adviser outlined *Rule 25* which stated:

*25.—(1) Substantive hearings before the Fitness to Practise Committee must be held in public but subject to the following provisions may determine a private hearing, where the Committee consider it appropriate, having regard to—*

*a) the interests of the maker of an allegation (where one has been made);*

*b) the interests of any patient or witness concerned;*

*c) the interests of the registrant; and*

*d) all the circumstances, including the public interest.*

*(3) A hearing, or any part of a hearing, of the Fitness to Practise Committee must be a private hearing where the Fitness to Practise Committee is considering the physical or mental health of the registrant.*

*This is subject to paragraph (4).*

*(4) Where the Fitness to Practise Committee is considering matters referred to in paragraph (3), it may meet in public where it considers that it would be appropriate to do so, having regard to the matters set out in paragraph (2).*

*(5) The Fitness to Practise Committee may at any time deliberate in private.*

154. No parties raised any objections to the hearing going into private session.
155. The Committee considered that as Mr Mahmood was a Registrant who wanted to refer to his personal circumstances and [redacted] to assist in his submissions, it was appropriate to go into private session.
156. Mr Mahmood continued and stated that he did not accept the assertion by the GOC that he had done nothing since the time of the incident to remediate until May 2024. In relation to training, Mr Mahmood relied on the documents he had sent, including his personal development plan and four certificates. Whilst he accepts that these were all from May 2024, Mr Mahmood stated that he took a number of other steps before this hearing which demonstrates his remediation. Mr Mahmood stated that he immediately took a leave of absence from work following the incident as he was [redacted]. All of this, Mr Mahmood stated, had a negative effect on his [redacted] at the time of the incident. To remedy this, Mr Mahmood stated that he had been referred to [redacted] from March 2023 until September 2023. Mr Mahmood then took employment again in an optical related role and has since returned to employment with Specsavers in a pre-registration capacity commencing May 2024. Both of these have given him access to procedures and professionals which guide him in relation to dishonesty. Mr Mahmood has been open and honest to these employers and gave evidence that he has found their insights useful, particularly that of Mr C,

his mentor. Further, Mr Mahmood has provided the Committee with several testimonials as to his previous good conduct. Mr Mahmood indicated that the above stresses have now been resolved. He also added that were stressful events to happen in the future, on a private or professional level, he would take time to consider his actions.

157. The Committee heard and accepted the advice of the Legal Advisor who outlined *Paragraphs 16.1 to 16.7* of the *Hearings and Indicative Sanctions Guidance*. In relation to making fair use of a rejected defence, the Legal Adviser referred to the case of *Misra v GMC [2003] UKPC 7*:

*"In short, before a Tribunal can be sure of making fair use of a rejected defence to aggravate sanctions imposed on a doctor, it needs to remind itself of Lord Hoffmann's starting place [in that doctors are properly and fairly entitled to defend themselves, and may then find it helpful to think about four things:*

- i) how far state of mind or dishonesty was a primary rather than second-order allegation to begin with (noting the dangers of charging traps) – or not an allegation at all,*
- ii) what if anything the doctor was positively denying other than their own dishonesty or state of knowledge;*
- iii) how far 'lack of insight' is evidenced by anything other than the rejected defence and*
- iv) the nature and quality of the defence, identifying clearly any respect in which it was itself a deception, a lie or a counter-allegation of others' dishonesty."*

158. The Legal Adviser then advised the Committee to consider the two separate elements of impairment namely the public and personal components. The public component concerns the reputation of the profession and upholding professional standards, whereas the personal component concerns the risk of repetition and insight displayed on the part of the registrant. In *Cohen v GMC 2008 EWHC 581* the Committee should be aware that not every case of misconduct results in a finding of impairment, but being impaired must take account of the need to protect the individual patient, and the collective need to maintain the confidence of the public in the profession. The public interest includes amongst other things the protection of patients, maintenance of public confidence in the profession as well as declaring and upholding proper standards of conduct and behaviour.

159. The Legal Adviser also outlined the case of *CHRE v Grant 2011 EWHC 927* which indicated some questions for the Committee to ask itself:

- a. Has [the Registrant] in the past acted and/or is [he] liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. Has [the Registrant] in the past and/or is [he] liable in the future to bring the medical profession into disrepute; and/or*

- c. *Has [the Registrant] in the past breached and/or is [he] liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
  - d. *Has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.*
160. The Legal Adviser also referred to the cases of *Uppal* and *Professional Standards Authority v Health and Care Professions Council and Ghaffar [2014] EWHC 2723 (Admin)* where it was stated that “a finding of dishonesty does not mean necessarily a finding of impairment, although it is accepted that it will be a frequent one.”
161. The Legal Adviser further advised the Committee in relation to warnings, drawing its attention to *Rule 20*.

#### **Findings in relation to Impairment – Azhar Mahmood**

162. The Committee considered the Council’s overriding objective and gave equal consideration to each of its limbs as set out below:
- “To protect, promote and maintain the health, safety and well-being of the public, the protection of the public by promoting and maintaining public confidence in the profession and promoting and maintaining proper professional standards and conduct.”*
163. The Committee considered this guidance in relation to Mr Mahmood’s position on impairment first. The Committee first considered the four questions endorsed in the *Grant* case. The Committee concluded firstly that following Mr Mahmood’s admissions, and the case being proved, that he had in the past put patients at unwarranted risk of harm. The Committee appreciated that there was no actual harm caused to this patient but the potential for harm existed. The false details had been entered on to a real patient’s record and, as such, could have caused safety issues for both that patient and other professional colleagues who accessed the record. In doing so, and in acting dishonestly thereafter, Mr Mahmood had also in the past brought the profession into disrepute and breached one of the fundamental tenets of the profession, as demonstrated by the breach of professional *Standards for Optical Students* as found by the Committee. The Committee has already made findings of dishonesty and therefore an answer to the last question has already been provided.
164. The Committee then considered the test outlined in the case of *Cohen*, namely whether the conduct is remediable, whether it has been remedied, and whether it is highly unlikely to be repeated.
165. The Committee accepted that where there is a finding of dishonesty it is difficult to show evidence of remedial steps, although details of the Registrants’ insight, and the steps taken since the incident would assist and therefore the Committee found the misconduct is remediable. As to whether it has been remedied, the Committee noted that Mr Mahmood has made much progress in seeking



assistance in courses and has also been re-employed by Specsavers. However, Mr Mahmood himself acknowledged that there is more to do and that he would still benefit from the 'passage of time'. The Committee agreed with this statement, appreciated Mr Mahmood's realistic approach, and also concluded that the conduct has not yet been fully remediated. Thirdly, the Committee noted that Mr Mahmood had only recently started back as a pre-registration optometrist and therefore is likely to be tested under similarly stressful conditions, albeit with a mentor who is also his pre-registration supervisor. Whilst Mr Mahmood appeared to show improved insight both in his evidence and in the documents he had provided, the Committee could not conclude that the misconduct was highly unlikely to be repeated, albeit *that the risk of repetition is low*.

166. On the basis that there remained a risk to the health, safety and wellbeing of patients, the Committee concluded that Mr Mahmood's current fitness to train is impaired on a personal level.
167. The Committee then returned to the questions in Grant and concluded in light of the conduct not being fully remedied, that there remained some future risk to patients of unwarranted harm, that the profession would be brought into disrepute, that fundamental tenets of the profession are liable to be breached, and that dishonesty may occur again.
168. The Committee then considered the wider public interest in maintaining public confidence in the profession and in promoting and maintaining proper professional standards and conduct. It determined that in circumstances where the registrant acted dishonestly in this manner, public confidence would be undermined if a finding of impairment was not made. The Committee concluded that all three limbs of the overriding objective were engaged.
169. Therefore the Committee found that Mr Mahmood's fitness to train is currently impaired.

### **Findings in relation to Impairment – Hadiqa Ali**

170. The Committee considered the Council's overriding objective and gave equal consideration to each of its limbs as set out below:
 

*"To protect, promote and maintain the health, safety and well-being of the public, the protection of the public by promoting and maintaining public confidence in the profession and promoting and maintaining proper professional standards and conduct."*
171. The Committee considered this guidance in relation to Ms Ali's position on impairment. The Committee first considered the four questions endorsed in the *Grant* case. The Committee concluded firstly that following the findings made against Ms Ali, that she had in the past put patients at unwarranted risk of harm. The false details had been entered on to a real patient's record and as such, could have caused safety issues for both that patient and other professional colleagues who accessed the record. In doing so, Ms Ali had also in the past brought the profession into disrepute and breached one of the fundamental

tenets of the profession, as demonstrated by the breach of professional *Standards for Optical Students* as outlined above. The Committee has already made findings of dishonesty and therefore an answer to the last question has already been provided.

172. The Committee then considered the test outlined in the case of *Cohen*, namely whether the conduct is remediable, whether it has been remedied, and whether it is highly unlikely to be repeated.
173. The Committee accepted that where there is a finding of dishonesty it is difficult but not impossible to fully remediate. Details of the Registrants' insight, and the steps taken since the incident may assist. As to whether it has been remedied, the Committee noted that Ms Ali continued to work at Specsavers, has continued with her pre-registration optometry course, and is coming to the end of her pre-registration year without further incident. Ms Ali has provided evidence of relevant courses completed immediately after the incident. The Committee did not consider the fact that Ms Ali had denied the dishonesty allegation in these proceedings to be an aggravating factor to the issue of impairment. Nevertheless, following Ms Ali's evidence in relation to impairment, the Committee was not satisfied that Ms Ali's insight had yet been fully developed, as she appeared to be unable to properly recognise the impact of her actions on colleagues in the profession, or the impact on the wider public. Therefore, the Committee did not find that Ms Ali's misconduct had yet been entirely remedied. Thirdly, whilst the Committee noted that Ms Ali has current supervision and has ongoing assessments, her apparent lack of fully developed insight meant that the Committee could not conclude that the misconduct is highly unlikely to be repeated, albeit that the risk of repetition is low.
174. On the basis that there remained a risk to the health, safety and wellbeing of patients, the Committee concluded that Ms Ali's current fitness to train is impaired on a personal level.
175. The Committee then returned to the questions in Grant and concluded in light of the conduct not being fully remedied, that there remained some future risk to patients of unwarranted harm, that the profession would be brought into disrepute, that fundamental tenets of the profession are liable to be breached, and that dishonesty may occur again.
176. The Committee then considered the wider public interest in maintaining public confidence in the profession and in promoting and maintaining proper professional standards and conduct. It determined that in circumstances where the registrant acted dishonestly in this manner, public confidence would be undermined if a finding of impairment were not made. The Committee concluded that all three limbs of the overriding objective were engaged.
177. Therefore, the Committee found that Ms Ali's fitness to train is currently impaired.

## Sanction

178. The Committee moved on to consider sanction. Mr Khan for the GOC remained neutral in relation to sanctions for both Registrants. Mr Khan referred to the *Hearings and Indicative Sanctions Guidance* from *Paragraph 21* which outlines the sanctions available. Mr Khan submitted that as this is a case of dishonesty it would be towards the upper end of the scale of sanctions. Mr Khan acknowledged that this was the first instance of its kind for both Registrants. For Mr Mahmood, Mr Khan submitted that his misconduct was for his personal gain and was calculated, and he had lied about the misconduct when challenged initially, before eventually telling the truth. For Ms Ali, Mr Khan submitted that the findings of the Committee have been that she was not fully developed in terms of having a general appreciation of the seriousness of this incident and she had a lack of proper insight. The Committee should bear that in mind when coming to a view on sanction.
179. Mr Saunders submitted that the Committee's findings are that the risk of repetition is low. Mr Saunders reminded the Committee of the *Guidance* on dishonesty and the case of *Uppal*, in that *"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.* Under the *Guidance*, the Committee should balance the particular circumstances of the Registrant against the effect of the finding of dishonesty on the public confidence in the profession. In this case Mr Saunders submitted that there is an absence of persistent misconduct which had been covered up. Mr Saunders said that Ms Ali has, as a very junior pre-registration optometrist, had a momentary lapse of judgment which was not for ostensible gain. Mr Saunders invited the Committee to consider the mitigation factors as follows:
- a. Isolated lapse of judgement
  - b. Risk of repetition is low
  - c. Displayed significant insight into misconduct albeit on the finding not quite fully developed
  - d. Ms Ali's road to remediation is well documented.
  - e. Genuine attempts to commit to the amelioration of that aspect of her thinking
  - f. Ms Ali self-referred to the GOC
  - g. Ms Ali has had no further professional issues
  - h. Ms Ali has the potential to be a real credit to the reputation of the profession
  - i. There are very positive testimonials provided on her behalf.
180. Mr Saunders indicated that the Committee, in conducting the balancing exercise required, may consider that the rigorous assessment of Ms Ali's fitness to train in the proceedings, including the findings of misconduct and impairment now recorded against her, will maintain public confidence in the profession.
181. Mr Saunders submitted that *Paragraph 21.25* of the *Guidance* in relation to conditions should apply. Mr Saunders submitted that Ms Ali is far from having deep-seated personality or attitudinal problems, that there are identifiable areas

of her practice in need of assessment or retraining, namely her insight, and that she has shown an abundant willingness to respond positively to retraining. Indeed, Mr Saunders submitted that everything about Ms Ali's academic progress speaks of a determined young woman committed to improving herself. He said that when discussing sanctions, if conditions were to be imposed, patients would be protected, and such conditions as he would suggest are practical and proportionate.

182. Mr Saunders suggested conditions of 1) supervision and 2) assessment of Ms Ali's records which will address the concerns of the Committee.
183. Mr Mahmood made submissions on sanction. He outlined his own character and pointed to his numerous testimonials and the evidence of Mr B in his positive character evidence. Mr Mahmood outlined examples of where he has demonstrated his ability to seek assistance when things became stressful for him, such as when he assisted his [redacted], when he sought support from [redacted], and when he sought assistance for his [redacted] which started in 2022. Mr Mahmood asked the Committee to consider that he has already shown an ability to initiate appropriate time off to reflect when he paused his optometry undergraduate course to deal with those matters. Mr Mahmood outlined that he also sought more time by starting as a healthcare assistant with Spa Medica and not rushing into his pre-registration course again. Mr Mahmood acknowledged that completing his qualification will be a stressful period but he submitted that he now has in place a support network to assist. Mr Mahmood also submitted that conditions of supervision and assessment of records would be a fair sanction as it would allow him to have a passage of time to develop his insight and prove that he can act honestly in the future.
184. The Committee heard and accepted the advice of the Legal Adviser who referred to the *Guidance Paragraphs 20-23 and 13F - 13H of the Opticians Act 1989* in outlining the sanctions available to the Committee. The Legal Adviser stated that the sanctions guidance is not a 'straightjacket', but if the Committee were to deviate, they must give reasons. It is not the purpose of sanctions to punish, but the Committee should consider proportionality and balance the interests of the public against those of the Registrant. That said, the interests of the profession take precedence. The Legal Adviser outlined the case of *Bolton v Law Society (1994) 1 WLR 512*, which stated:
- "The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price."*
185. The Legal Adviser drew the Committee's attention to the *Guidance* on sanctions in dishonesty cases, namely:
- 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. 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)**).
186. The Legal Adviser referred to the case of *SRA v Sharma [2010] EWHC 2022 (Admin)* which highlighted the following three points of principle for sanctions on dishonesty:
- a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll. That is the normal and necessary penalty in cases of dishonesty.
  - b) There will be a small residual category where striking off will be disproportionate in all the circumstances.
  - c) In deciding whether a particular case falls into that category, relevant factors will include the nature, scope and extent of dishonesty itself; whether it was momentary, or over a lengthy period of time; whether there was a benefit to the solicitor and whether it had an adverse effect on others."
187. The Legal Adviser outlined the principles in *Lusinga v NMC [2017] EWHC (Admin) 1458* and *Watters v NMC [2017] EWHC (Admin) 1888*, that the Council should differentiate between different forms of dishonesty, and "should not lump the thief and the fraudster together with the mere contract breaker". Those cases made clear that not every finding of dishonesty should lead to the most serious sanction.
188. Finally, the Legal Adviser outlined that there is no burden or standard of proof at this stage, but sanction is a matter for the Committee's own judgment. In accordance with *Paragraph 8.3* of the *Guidance*, the Committee was advised to

consider the least restrictive sanction first and, if not appropriate or proportionate, to move to the next available sanction in ascending order.

### **Findings on sanction – Azhar Mahmood**

189. In reaching its decision on sanction, the Committee took into account the submissions on behalf of all parties, the facts found proved and its previous findings on misconduct and impairment. The Committee considered sanctions for Mr Mahmood first.
190. Throughout its deliberations the Committee had regard to the overarching objective, giving equal consideration to each of its limbs. The Committee considered the following to be aggravating factors for Mr Mahmood:
- a. The misconduct was relevant to Paragraph 17.1(c) of the Guidance and was serious in that it breached a number of professional standards as outlined in the Misconduct and Impairment determinations;
  - b. There was a potential harm to the patient whose false contact lens fit was recorded;
  - c. His conduct breached the trust of colleagues and patients;
  - d. The misconduct was deliberate and impacted upon the integrity of the records themselves, the integrity of the supervisor and undermined the integrity of the professional training in that he attempted to obtain a qualification based on false material;
  - e. Mr Mahmood did stand to benefit from the misconduct in being able to falsely demonstrate his competencies for his College of Optometry Stage 1 assessment;
  - f. Mr Mahmood compounded the misconduct by continuing the dishonesty during the initial disciplinary investigations;
  - g. His actions had a detrimental effect on others, including Ms Ali, the patient and the supervisor.
191. In mitigation, the Committee acknowledged the following factors,:
- a. Whilst he was still in the pre-registration stage of his career, Mr Mahmood had no adverse previous fitness to train history;
  - b. Mr Mahmood made early admissions to the GOC in its investigation stages;
  - c. There was no evidence of repetition;
  - d. Mr Mahmood had shown remorse from an early stage;
  - e. He had reflected on his misconduct;
  - f. He had engaged in remediation in his courses and supervision with a mentor;
  - g. There were very positive written testimonials from professional colleagues who were aware of the incident as well as the positive oral testimony from Mr B;

- h. Mr Mahmood had been co-operative throughout the GOC process, and during this hearing;
  - i. He showed promise of becoming a valued member of the profession;
  - j. He showed some insight, although at this stage it is still developing.
192. The Committee followed the *Guidance* at 8.3 and went through the possible sanctions, starting with the least severe, that being to take no further action. It determined, having regard to the *Guidance*, that there were no exceptional circumstances to justify it doing so. Taking no action would not protect the public or be in the wider public interest, it would not reflect the seriousness of the misconduct and therefore it would be entirely inappropriate.
193. The Committee decided that the imposition of a financial penalty was not appropriate or proportionate and would not reflect the seriousness of the misconduct, or protect the public against the risk of repetition.
194. The Committee next considered a period of conditional registration. It took into account paragraph 21.25 of the *Guidance*:
- a. No evidence of harmful deep-seated personality or attitudinal problems.*
  - b. Identifiable areas of the registrant's practice in need of assessment or retraining.*
  - c. Evidence that the registrant has insight into any health problems and is prepared to agree to abide by conditions regarding medical condition, treatment, and supervision.*
  - d. Potential and willingness to respond positively to retraining.*
  - e. Patients will not be put in danger either directly or indirectly as a result of conditional registration itself.*
  - f. The conditions will protect patients during the period they are in force.*
  - g. It is possible to formulate appropriate and practical conditions to impose on registration and make provision as to how conditions will be monitored.*
195. The Committee noted that Mr Mahmood had submitted that a reasonable sanction would be one of conditions, those being 1) supervision and 2) assessment of records. The Committee noted that Mr Mahmood was already being supervised and assessed given that he had just re-started his pre-registration optometry course. Whilst the conditions suggested might be workable, and measurable, the imposition of conditions in this case did not sufficiently mark the level of misconduct, or adequately protect the public interest.
196. The Committee next considered a suspension order and the relevant sections of the *Guidance* contained within *paragraph 21.29* namely;
- 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 the 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.*

197. The Committee next considered that *paragraph 21.29* part a) was engaged given the aggravating factors identified. In considering the limbs at parts b) and c), the Committee would agree that both of these apply. Limb d) is engaged in that Mr Mahmood does show some developing insight, and the Committee has found in its Impairment determination that the risk of repetition was low. Limb e) does not apply. It concluded that suspension may well be the most appropriate sanction, but went on to test this proposition against the criteria for erasure, the most serious sanction.
198. In accordance with *Paragraph 8.3 of the Guidance*, the Committee next considered the factors in relation to erasure under *Paragraph 21.35*:
- a. Serious departure from the relevant professional standards as set out in the Standards of Practice for registrants and the Code of Conduct for business registrants;*
  - b. Creating or contributing to a risk of harm to individuals (patients or otherwise) either deliberately, recklessly or through incompetence, and particularly where there is a continuing risk of harm to patients;*
  - c. Abuse of position/trust (particularly involving vulnerable patients) or violation of the rights of patients;*
  - d. Offences of a sexual nature, including involvement in child pornography;*
  - e. Offences involving violence;*
  - f. Dishonesty (especially where persistent and covered up);*
  - g. Repeated breach of the professional duty of candour, including preventing others from being candid, that present a serious risk to patient safety; or*
  - h. Persistent lack of insight into the seriousness of actions or consequences.*
199. The Committee formed the view that limbs a), b) were engaged, and f) where dishonesty was initially covered up, but was not thereafter persistent. There were however, as above, numerous mitigating factors that suggested that suspension and not erasure would be most appropriate and proportionate in this case. Most crucially, Mr Mahmood's engagement with this Committee, his evidence, and the testimonials and courses he has produced have demonstrated that he has some developing insight which is reassuring. This led the Committee to acknowledge a low risk of repetition in this case.
200. The Committee took into account Mr Mahmood's personal interests and the importance of balancing those against the public interest. Mr Mahmood has already been suspended by the College of Optometrists for twelve months. Although he has now recommenced he will by this decision be further delayed in his training. However, in order to ensure public confidence and proper professional standards, the Committee concluded that suspension was the appropriate and proportionate sanction.



201. The Committee considered the most appropriate term of suspension to mark the public confidence in the profession and to uphold proper standards, but also to allow Mr Mahmood to further develop his insight and to continue to become a valued member of the profession would be one of 6 months.

### **FINDINGS ON SANCTION – HADIQA ALI**

202. In reaching its decision on sanction the Committee took into account the submissions on behalf of the parties, the facts found proved and its previous findings on misconduct and impairment.

203. Throughout its deliberations the Committee had regard to the overarching objective, giving equal consideration to each of its limbs. The Committee considered an aggravating factor of the incident for Ms Ali to be that she co-operated in allowing records to be changed dishonestly, which carried a potential risk for the patient and undermined the integrity of those records. This was relevant to *Paragraph 17.1(c)* of the *Guidance* and was very serious in that in doing so she breached a number of professional standards as outlined in the *Misconduct and Impairment* decisions, and this act enabled Mr Mahmood to act dishonestly in preparation for a College assessment.

204. In mitigation, the Committee acknowledged the following factors:

- a. Ms Ali had self-referred to the GOC
- b. She had made early admissions to the Allegations in 1(a) and 1(b) throughout;
- c. She had expressed remorse from an early stage
- d. Ms Ali had undertaken some remediation
- e. Whilst she was still in the pre-registration stage of her career, Ms Ali had no adverse previous fitness to train history
- f. She had reflected on her misconduct
- g. She showed promise of becoming a valued member of the profession, providing a number of very positive and supportive testimonials from professional colleagues who were aware of the incident
- h. Ms Ali does show some insight, although at this stage it is limited.

205. The Committee followed the *Guidance* at 8.3 and went through the possible sanctions, starting with the least severe, that being to take no further action. It determined, having regard to the *Guidance*, that there were no exceptional circumstances to justify it doing so. Taking no action would not protect the public or be in the wider public interest, it would not reflect the seriousness of the misconduct and therefore it would be entirely inappropriate.

206. The Committee decided that the imposition of a financial penalty was not appropriate or proportionate and would not reflect the seriousness of the misconduct, or protect the public against the risk of repetition.

207. The Committee next considered a period of conditional registration. It took into account paragraph 21.25 of the *Guidance*:

- a. *No evidence of harmful deep-seated personality or attitudinal problems.*
  - b. *Identifiable areas of registrant's practice in need of assessment or retraining.*
  - c. *Evidence that the registrant has insight into any health problems and is prepared to agree to abide by conditions regarding medical condition, treatment, and supervision.*
  - d. *Potential and willingness to respond positively to retraining.*
  - e. *Patients will not be put in danger either directly or indirectly as a result of conditional registration itself.*
  - f. *The conditions will protect patients during the period they are in force.*
  - g. *It is possible to formulate appropriate and practical conditions to impose on registration and make provision as to how conditions will be monitored.*
208. The Committee noted that Mr Saunders, on behalf of Ms Ali, had submitted that a reasonable sanction would be one of conditions, those being 1) supervision and 2) assessment of records. The Committee noted that Ms Ali is already being supervised and assessed given that she is in the final stages of her pre-registration year. Whilst the conditions suggested might be workable, and measurable, the imposition of conditions in this case did not sufficiently mark the level of misconduct or directly address the concerns of the Committee.
209. The Committee next considered a suspension order and the relevant sections of the Guidance contained within *paragraph 21.29* namely;
- 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 the 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.*
210. The Committee considered that *paragraph 21.29* part a) was engaged given the aggravating feature of the dishonesty identified. In considering the limbs at parts b) and c), the Committee agreed that both of these apply. Limb d) is engaged in that Ms Ali does show some insight, and the Committee has found in its Impairment determination that the risk of repetition was low. Limb e) does not apply. It concluded that suspension may well be the most appropriate sanction, but went on to test this proposition against the criteria for erasure, the most serious sanction.
211. However, in accordance with *Paragraph 8.3* of the *Guidance*, the Committee next considered the factors in relation to erasure under *Paragraph 21.35*:
- a. *Serious departure from the relevant professional standards as set out in the Standards of Practice for registrants and the Code of Conduct for business registrants;*

- b. Creating or contributing to a risk of harm to individuals (patients or otherwise) either deliberately, recklessly or through incompetence, and particularly where there is a continuing risk of harm to patients;*
- c. Abuse of position/trust (particularly involving vulnerable patients) or violation of the rights of patients;*
- d. Offences of a sexual nature, including involvement in child pornography;*
- e. Offences involving violence;*
- f. Dishonesty (especially where persistent and covered up);*
- g. Repeated breach of the professional duty of candour, including preventing others from being candid, that present a serious risk to patient safety; or*
- h. Persistent lack of insight into the seriousness of actions or consequences.*

212. The Committee formed the view that limbs a), b) and f) were engaged. There were however, as above, numerous personal mitigating factors that suggested that suspension and not erasure would be appropriate and proportionate in this case. Most crucially, Ms Ali's engagement with this Committee, her evidence, and the testimonials and courses she has produced have demonstrated that she is developing insight which is reassuring and has led the Committee to acknowledge a low risk of repetition in this case.
213. The Committee concluded that when taking into account Ms Ali's interests and balancing those against the public interest, in order to ensure public confidence and proper professional standards, suspension was the appropriate and proportionate sanction. The Committee recognises that this may delay her training but had not been advised by her representative that there would be any additional adverse impact.
214. The Committee considered the most appropriate term of suspension to mark the public confidence in the profession and to uphold proper standards, but also to allow Ms Ali to further develop her insight and to continue to become a valued member of the profession, would be one of three months.

### **Review hearing**

215. Mr Khan for the Council was neutral on the issue of review.
216. Mr Saunders outlined that whilst the Committee has found that there were outstanding concerns, the period of suspension would provide Ms Ali with ample opportunity to reflect. He said that the Committee can be confident that that issue will be resolved and reflected upon. As the risk of repetition is low and there is a low risk of harm, there is no need for a review in this case.
217. Mr Mahmood also remained neutral but stated that he would have plenty of time during the suspension period to develop his reflection and remediation.
218. The Committee heard and accepted the advice of the Legal Adviser in relation to review hearings, who guided the Committee to *Paragraph 21.32-21.34* of the *Guidance*. The Committee has the power to order a Review hearing, although in some misconduct cases it may be self-evident that following a short period of

suspension (up to 6 months), there will be no value in a review hearing. It is for the Committee's judgement as whether it would need to be reassured that the Registrants will be fit to resume training either unrestricted or with conditions or further conditions.

#### **Findings on review hearing – Azhar Mahmood**

219. Whilst suspension in this case is imposed primarily to protect the public interest, there are aspects of Mr Mahmood's practice which need to be addressed. The Committee therefore requires that the order be reviewed between four and six weeks prior to its expiration. The Review Committee may be assisted by:
- Any additional evidence of remediation or further insight
  - Evidence from his mentor of the Registrant's further progress
220. The Committee therefore imposes an order of suspension of six months with a review hearing.

#### **Findings on Review Hearing – Hadiqa Ali**

221. Whilst suspension in this case is imposed primarily to protect the public interest, there are aspects of Ms Ali's practice which need to be addressed. The Committee therefore requires that the order be reviewed between four and six weeks prior to its expiration. The Review Committee may be assisted by:
- Evidence that the Registrant understands the impact her misconduct has had on the public interest and the reputation of the profession
  - Any additional evidence of remediation
222. The Committee therefore imposes an order of suspension of three months with a review hearing.

#### **Immediate Order**

223. Mr Khan, on behalf of the Council, made an application for an immediate order of suspension for both Registrants. This would cover the appeal period, after which the substantive order will take effect if no appeal is lodged under Section 13I of the Opticians Act 1989. He submitted that an immediate interim order was necessary to protect the public and the wider public interest having regards to the Committee's findings on misconduct and impairment. For both Registrants, Mr Khan submitted that an immediate order was necessary for all three limbs of the test, given the findings of dishonesty. Mr Khan submitted that it was necessary to deal with those serious issues and that the consequences of not imposing an immediate order means that the Registrants can continue to train and would raise concerns for the protection of the public and the wider public interest.

224. Mr Saunders, on behalf of Ms Ali, remained neutral on this issue.
225. Mr Mahmood accepted that an immediate order would be necessary.
226. The Committee heard and accepted advice from the Legal Adviser, namely that the Committee should refer to *Paragraphs 23.1-23.5* of the *Guidance*. The Committee may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the Registrant. The test is necessity.

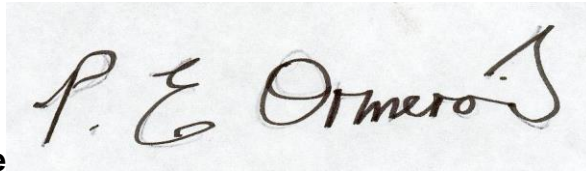
#### **Findings in relation to immediate order – Azhar Mahmood**

227. The Committee took account of the relevant paragraphs of the *Guidance*. In particular, it considered paragraph 23.3:
- “If the Committee has made a direction for (suspension or) erasure, it should consider whether there are reasons for ordering immediate suspension. Before doing so, the Committee must be satisfied that to do so is necessary for the protection of members of the public, otherwise in the public interest or in the best interests of the Registrant.”*
228. The Committee decided that there is not a necessity for an immediate order. Mr Mahmood is currently under training and supervision and the Committee determined that an immediate order was not required in the circumstances. The Committee did not find that an immediate order was necessary to protect the public, was otherwise in the public interest, or was in Mr Mahmood’s own interests.

#### **Findings in relation to immediate order – Hadiqa Ali**

229. The Committee took account of the relevant paragraphs of the *Guidance*. In particular, it considered paragraph 23.3:
- “If the Committee has made a direction for (suspension or) erasure, it should consider whether there are reasons for ordering immediate suspension. Before doing so, the Committee must be satisfied that to do so is necessary for the protection of members of the public, otherwise in the public interest or in the best interests of the Registrant.”*
230. The Committee decided that there is not a necessity for an immediate order. Ms Ali is currently under training and supervision and the Committee determined that an immediate order was not required in the circumstances. The Committee did not find that an immediate order was necessary to protect the public, was otherwise in the public interest, or was in Ms Ali’s own interests.

**Chair of the Committee: Pamela Ormerod**

A handwritten signature in black ink on a light-colored background. The signature reads "P. E. Ormerod" in a cursive style.

**Signature**

**Date: 28 June 2024**

**Registrant: Hadiqa Ali**

**Signature** *present and received via email*

**Date: 28 June 2024**

**Registrant: Azhar Mahmood**

**Signature** *present and received via email*

**Date: 28 June 2024**

| <b>FURTHER INFORMATION</b>   |
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| <b>Transcript</b>  |
| A full transcript of the hearing will be made available for purchase in due course.  |
| <b>Appeal</b>  |
| 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).   |
| <b>Professional Standards Authority</b>  |
| <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 <a href="http://www.professionalstandards.org.uk">www.professionalstandards.org.uk</a> or by telephone on 020 7389 8030.</p> |
| <b>Effect of orders for suspension or erasure</b>  |
| 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.   |
| <b>Contact</b>   |
| 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.   |