

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

**GENERAL OPTICAL COUNCIL**

**F(22)34**

**AND**

**DANIEL HOLDEN (D-17064)**

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**DETERMINATION OF A SUBSTANTIVE HEARING  
TUESDAY 04 – THURSDAY 06 & TUESDAY 11 APRIL 2023**

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<b>Committee Members:</b>	Pamela Ormerod (Chair/Lay) Alice Robertson Rickard (Lay) Asmita Naik (Lay) Catherine Kimpton (Dispensing Optician) Philip Cross (Dispensing Optician)
<b>Clinical adviser:</b>	Dr Desmond Dunleavy
<b>Legal adviser:</b>	Mr Paul Housego
<b>GOC Presenting Officer:</b>	Mr Matthew Corrie
<b>Registrant present/represented:</b>	Not present and not represented
<b>Registrant representative:</b>	N/A
<b>Hearings Officer:</b>	Ms Nazia Khanom
<b>Facts found proved:</b>	2 a, b, d-h, 3, 4, 5. 6, 7, 8.

<b>Facts not found proved:</b>	2 c., i., and j.
<b>Misconduct:</b>	Found proved (2-7)
<b>Impairment:</b>	Impaired (2-7) Not impaired (8)
<b>Sanction:</b>	Erasure
<b>Immediate order:</b>	Immediate order of suspension

**Proof of service**

The Committee heard an application from Matthew Corrie, of Counsel, for the Council, for the matter to proceed in the Registrant’s absence. First, the Council was required to satisfy the Committee that the documents had been served in accordance with Section 23A of the Act and Rule 61 of The General Optical Council (Fitness to Practise) Rules Order of Council 2013 (“the Rules”).

The Committee accepted the advice of the Legal Adviser. He advised that the notice of hearing was sent to the Registrant, on 01 February 2023, and that this was more than the 28 days’ notice required by Rule 34(2). The notice had been sent to the email address notified by the Registrant to the Council. The Registrant had confirmed that he had received the notice, in an email sent to the Council from the email address to which the notice of hearing was sent. The Legal Adviser advised that the notice given to the Registrant of the hearing accorded with the Rules 28, 34 and 61, and accorded with The General Optical Council (Committee Constitution, Registration and Fitness to Practise) (Coronavirus) (Amendment) Rules Order of Council 2020 which amended the General Optical Council (Committee Constitution) Rules 2005 by adding:

*“2ZA.—(1) Any notice provided under these Rules may be served by email if the addressee has provided the other party with an email address for communications.”*

The Committee is satisfied that all reasonable efforts have been made to notify the Registrant of the hearing, and that notice was served in accordance with the Rules.

### **Proceeding in the absence of the Registrant**

Mr Corrie made full submissions inviting the Committee to proceed in the absence of the Registrant. The Committee considered whether it would be in the public interest to proceed in the Registrant's absence in accordance with Rule 22. The Committee accepted the advice of the Legal Adviser. He advised that in order to proceed in the absence of the Registrant the Committee must be satisfied that all reasonable efforts had been made to give notice to the Registrant, and if so the test for the Committee to apply was set out in paragraph 15 of the case of General Medical Council v Adeogba [2016] EWCA Civ 162, which was whether the Registrant had deliberately chosen not to exercise his right to be present or to give adequate instructions to enable lawyers to represent him. The Legal Adviser advised that the factors to be considered were whether a reason had been given for non-attendance, and if so, what that reason was, whether an adjournment was likely to result in the attendance of the Registrant, and the public interest in the expeditious disposal of regulatory disciplinary hearings.

The Committee determined that it would be fair, proportionate and in the public interest for the hearing to proceed in the Registrant's absence. There had been no request for adjournment, there was no suggestion that the Registrant was ill or otherwise unable to attend the hearing, and in an email of 28 March 2023 the Registrant had clearly stated that he would not be attending the hearing, giving the reason that he was busy with work. He had earlier stated, in an email of 26 January 2023 that he would not be attending and stated that *"I am happy for the hearing to proceed without me"*. Given that the Registrant had firmly indicated that he would not attend this hearing, there was no likelihood of the Registrant attending any adjourned hearing. Two witnesses were available to give evidence. The Registrant faces a serious allegation which relates to matters now some two years old. There is therefore a public interest in progressing matters today. The Committee decided that the test set out above had been satisfied. Any disadvantage to the Registrant arising from his non-attendance would be mitigated by scrutiny of the evidence by the Committee, and the Committee will be able to take account of his contribution to the internal investigation and other communication with the Council.

Mr Corrie, for the Council, asked that the part of the hearing relating to Particular 8 of the Allegation be heard in private, in so far as it related to the **redacted** of the Registrant. The Legal Adviser referred the Committee to Rule 25, which provides that hearings must be heard in public except where it is appropriate not to do so, for example when it is in the Registrant's interests. He also referred the Committee to the Hearings and Sanctions Guidance, which states:

*“10.4 Where the Committee is considering the registrant's redacted, the hearing must be in private unless the Committee considers it appropriate to meet in public, again having regard to the interests of the maker of the allegation, any witness or patient concerned and the registrant, as well as the wider circumstances and the public interest. The Committee should invite the parties to make representations on whether or not the hearing should be held in private. The decision made should also be recorded in writing and given to the parties”.*

The Committee decided to hold that part of the hearing which related to Particular 8 in private.

### **Amendment**

Mr Corrie applied to amend some of the Particulars of the Allegation.

As drafted they were:

### **ALLEGATION**

*The Council alleges that you, Daniel Holden (D-17064), a registered Dispensing Optician:*

*In the course of your employment at Specsavers Redacted you are alleged to have carried out the following:*

- 1. Between the 01 September 2020 and the 20 March 2021, you failed to declare accurate till takings relating to 13 separate dates;*
  
- 2. Between 01 October 2020 and the 26 January 2021, you fraudulently kept monies from the till takings belonging to SSL to the value of £1,737.08 on the following dates:*
  - a. £297.91 on 13 October 2020;*
  - b. £139.30 on 29 October 2020;*
  - c. £404.75 on 2 November 2020;*
  - d. £58.75 on 8 November 2020;*

- e. £219.00 on 14 November 2020;*
- f. £192.10 on 30 November 2020;*
- g. £142.75 on 6 December 2020;*
- h. £134.10 on 14 December 2020;*
- i. £45.77 on 26 January 2021;*
- j. £102.65 on 26 January 2021*

*3. On or around 17 April 2021 you conducted the cash reconciliation of the 16 April 2020's till takings and you:*

- a. Stole £10 belonging to SSL;*
- b. Whilst completing cash reconciliation, you deliberately recorded false information, namely recording £9.91 short in takings for the 16th April 2021;*
- c. Declared the takings for 17 April 2020 was short of £20.01.*

*4. On or around 19 April 2021 you:*

- a. Stole £20 belonging to SSL;*
- b. Whilst completing the cash reconciliation, you deliberately recorded false information, namely recording £20.01 short in takings for the 17th April 2021;*

*5. On or around 19 April 2021 you*

- a. stole £40 belonging to SSL;*
- b. deliberately declared false information, namely recording £39.92 short in takings for the 18 April 2021;*

*6. On 28 April 2021 you:*

- a. Stole £30 belonging to SSL;*

*b. Declared false information, namely recording £9.98 short in takings for the 27th April 2021;*

*c. When conducting the cash reconciliation, deliberately recorded false information namely, recording £60 cash notes rather than £50.00*

*7. Your conduct noted in 1, 2, 3) a – b, c, 4) a – b, 5) a – b, 6) a – c and 7 above was inappropriate and/or dishonest in that you;*

*a. knew you were not entitled to the money; and/or*

*b. knew you were falsely declaring the shortfall in the takings to conceal your conduct.*

*8. You have the **redacted** set out in Schedule A;*

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

### **Schedule A**

#### ***Redacted***

The applications made were as follows:

First, to withdraw Particular 1. The declarations made by the Registrant of the shop's takings were not inaccurate: the issue was that money accurately declared was then stolen by the Registrant, as was charged in Particular 2.

Secondly, to withdraw Particular 3(c). Mr Corrie submitted that this duplicated Particular 4(b). He submitted that this more logically fitted into Particular 4.

Thirdly, to add the words "up to" in Particular 2, before the amount of £1,737.08. Mr Corrie submitted that, as drafted, unless all the individual amounts were found proved the whole charge would fail, and that was not in the public interest. He submitted that the Registrant was not disadvantaged by the amendment, as Particular 2 was clearly alleging multiple thefts of cash by the Registrant from his employer.

The Legal Adviser referred the Committee to Rule 46(20):

*“(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.”*

The Committee decided that there was no injustice to the Registrant in any of the applications. Two applications were to withdraw Particulars. Withdrawal of these was clearly not an injustice to the Registrant. Particular 3 c. was a duplication of Particular 4 c. The Committee also decided that the withdrawal of the two Particulars was not contrary to the public interest. The amendment sought to the stem of Particular 2 (adding “up to”) was to reflect the clear allegation of multiple thefts of takings at the shop. It would be contrary to the public interest if the whole charge was found not proved because any one of the alleged thefts was found not proved.

The Committee therefore granted all three applications, and of its own volition corrected a typographical error (2020 instead of 2021) in the stem of Particular 3.

The Council put the following Allegation [as amended]:

## **ALLEGATION**

*The Council alleges that you, Daniel Holden (D-17064), a registered Dispensing Optician:*

*In the course of your employment at Specsavers **Redacted** you are alleged to have carried out the following:*

1. ... [withdrawn]

2. *Between 01 October 2020 and the 26 January 2021, you fraudulently kept monies from the till takings belonging to SSL to the value of up to £1,737.08 on the following dates:*

- a. £297.91 on 13 October 2020;*
- b. £139.30 on 29 October 2020;*
- c. £404.75 on 2 November 2020;*
- d. £58.75 on 8 November 2020;*
- e. £219.00 on 14 November 2020;*
- f. £192.10 on 30 November 2020;*
- g. £142.75 on 6 December 2020;*
- h. £134.10 on 14 December 2020;*
- i. £45.77 on 26 January 2021;*
- j. £102.65 on 26 January 2021*

3. *On or around 17 April 2021 you conducted the cash reconciliation of the 16 April 2021's till takings and you:*

- a. Stole £10 belonging to SSL;*
- b. Whilst completing cash reconciliation, you deliberately recorded false information, namely recording £9.91 short in takings for the 16th April 2021;*
- c. ... [withdrawn]*

4. *On or around 19 April 2021 you:*

- a. Stole £20 belonging to SSL;*
- b. Whilst completing the cash reconciliation, you deliberately recorded false information, namely recording £20.01 short in takings for the 17th April 2021;*

5. *On or around 19 April 2021 you*



- a. stole £40 belonging to SSL;
- b. deliberately declared false information, namely recording £39.92 short in takings for the 18 April 2021;

6. On 28 April 2021 you:

- a. Stole £30 belonging to SSL;
- b. Declared false information, namely recording £9.98 short in takings for the 27th April 2021;
- c. When conducting the cash reconciliation, deliberately recorded false information namely, recording £60 cash notes rather than £50.00

7. Your conduct noted in 2), 3) a – b, 4) a – b, 5) a – b, 6) a – c and 7) above was inappropriate and/or dishonest in that you;

- a. knew you were not entitled to the money; and/or
- b. knew you were falsely declaring the shortfall in the takings to conceal your conduct.

8. You have the *redacted* set out in Schedule A;

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

### **Schedule A**

*Redacted*

### **DETERMINATION**

#### **Admissions in relation to the particulars of the allegation**

In interview with his employer, the Registrant made certain admissions relevant to Particulars 1-7. Mr Corrie made clear that these were not formal admissions to the

Allegation or to its component Particulars, although what was said by the Registrant was highly relevant and of probative value in considering those matters. The Committee decided that the Allegation and Particulars would be taken as denied, consistent with the Registrant's email of 26 January 2023 where he explicitly denied Particular 2 and made no comment upon the other Particulars. It was for the Council to prove each of the Particulars and the Allegation on the balance of probabilities.

### **Background to the allegations**

Having had its attention drawn to certain apparent irregularities between the expected takings for the Registrant's place of work and the takings actually credited to the bank account, the Registrant's employer was concerned that there were cash discrepancies. The employer installed covert CCTV cameras which showed the Registrant engaged in the theft of cash. When interviewed he accepted that he had stolen money from his employer, both by stealing the entire daily takings of the Registrant's place of business on some days (destroying the relevant paperwork), and on others taking £10 or £20 notes from the takings and recording cash shortages ("variances") in the cash reconciliation forms.

### **Evidence**

The Committee had a bundle of documents of 287 pages (with four pager index), a smaller bundle of documents relating to service of the notice of this hearing, of 19 pages, and a statement of case prepared by Mr Corrie of 18 pages.

Oral evidence was given to the Committee by Mr A, Financial Risk Support Consultant with Specsavers, and by Mr B, a Retail Director with Specsavers Optical Group, who provided written witness statements and who answered questions about them.

### **Submissions**

Mr Corrie made submissions as to the relevant law, including Doris Enemuwe v Nursing and Midwifery Council (NMC) [2015] EWHC 2081 (Admin) (to the effect that the conclusions of employers were not to be considered by a regulatory fitness to practise committee) and Ivey v Genting Casinos (UK) Ltd (t/a Crockfords) [2017] UKSC 67 (the test for dishonesty). He referred to the admissions made in two formal interviews, which he said should be given substantial evidential weight. He submitted that the subsequent denial to Particular 2 was contrary to those admissions and was a bald denial and gave no cause to doubt the evidence provided by the Council, or his earlier admissions.

In relation to Particular 2, Mr Corrie submitted that there was strong evidence to support 2 a, b, d, e, f, g and h. Store records demonstrated that cash taken on those days had not been banked, and the Registrant's admissions in interviews supported the conclusion that it was he who took the missing cash. Mr Corrie conceded that there were anomalies in relation to Particulars 2 c, i and j, as on those days although there was a cash shortage, the whole day's takings had not gone missing. He submitted that it was a matter for the Committee as to whether it found these sub-Particulars proved.

In relation to Particulars 3-6, Mr Corrie referred in detail to the documentary evidence, and to the CCTV. Mr Corrie submitted that there was conclusive CCTV evidence supporting several of the Particulars and the admissions made by the Registrant clearly indicated that the Registrant accepted that he had taken money as alleged.

If, as was alleged, the recording of variances of about the same as the amount alleged to have been stolen was to attempt to conceal the thefts, it was necessarily deliberately recording false information. That the methodology may have been, on occasion, convoluted did not detract from the essential fact that there was no honest explanation for what had been seen on the CCTV and was evident from the documentation.

As to Particular 7, Mr Corrie submitted that there could be no doubt that the Registrant knew that the money he had taken belonged to his employer, and that he had no right to take any of it. The only possible conclusion was that he was dishonest, within the definition set out in *Ivey*.

As to Particular 8, **redacted**

**Redacted**

## **Findings in relation to the facts**

### Particular 2

The Committee found Particulars 2 a-b, d-h proved and Particulars 2 c i and j not proved.

There is an anomaly in respect of Particulars 2c. i. and j. Mr A evidence was that there was money missing on those dates but the deficit was less than that alleged in each sub-Particular. Accordingly, the Committee found those three sub-Particulars not proved.

The remainder of Particular 2 was found proved. There is strong evidence in support of the allegation that the Registrant took up to £1737.08 of the takings of his employer between 01 October 2020 and 26 January 2021.

The Committee accepted Mr A's evidence that on each of those days none of the cash that had been taken by the store had reached the store's bank account. On those dates all the takings went missing. The Committee noted that this, on its own did not prove that it was the Registrant who was responsible for this loss to his employer.

However, there was no evidence which could lead to any other conclusion. In addition, there were the admissions made in formal interviews. There was the recent email denying Particular 2 in full, but no reason for that denial was given, and it was not disputed by the Registrant that some days' takings had gone missing. He had chosen not to attend and so the Committee could not evaluate any challenge he might have wished to assert. The bare denial was given little weight for that reason.

In contrast clear admissions had been made by the Registrant. In his interview of 26 May 2021 he admitted to taking whole days' banking since before Christmas 2020. He had not given specific dates but admitted that he took whole days' takings.

The Committee accepted that it was not common for whole days to go missing. The evidence showed that it was unlikely to be anyone else who took the takings. There was no other possible explanation, other than that the Registrant took the money. The Committee accepted the evidence as to processing of the bags, which were sealed and signed and recorded by G4S.

The Committee accepted the evidence of Mr B, who said he had explored the possibility that a bag or bags had gone missing, but it could not be the case that bags were not picked up. They were kept in the safe and collected weekly. Only a very limited number of managers had access to the safe, the Registrant being one, and Mr B another. In addition, the Registrant had accepted that it was he who took the bags.

In evaluating the denial in the email dated 26 January 2023 the Committee noted that the Registrant stated:

*"I would also like to say that under no circumstances did I take any money on the 2<sup>nd</sup> allegation. As it clearly states that they believe (sic) I did. Not that are certain I did."*

The Committee noted that the reason for the denial of Particular 2 was that the employer "believed" that he had stolen the money but did not say they were "certain" he had done so. This is semantics, provided that there was a genuine belief on reasonable grounds after proper investigation. The Committee is satisfied that this was the case. In any event, the view of the employer is not of relevance to this Committee (*cf Emenuwe*) and certainty is a reflection of the criminal standard of proof not the civil standard applicable to this Committee's decision.

The Committee noted that in the interview of the Registrant with his employer on 26 May 2021 there were a series of questions about taking money, relevant to Particular 2 and Particulars 3-6.

The Registrant admitted to a series of thefts of what he described as “*silly little amounts*” of about £30 in a week. He said that he did so while cashing up and put the bank notes in his pocket, accounting for them as variances (differences between cash recorded on the tills as taken and actual cash). He said he had stopped recently because he felt guilt at doing so. The next series of questions and answers is as follows:

*“q Have you stolen in any other ways?*

*a I have whole days at a time from the banking.*

*q How much do you think you have stolen from the banking?*

*a I don't know. I genuinely don't know.*

*q Where are the banking giros from the banking that you have stolen?*

*a I throw them away.*

*q There is £2,600 that is showing as being missing from the banking dating back to September 2020 over 13 days. Are you responsible for these cash losses in the banking?*

*a Yes.*

*q In cash variances over the same period of time there is a total of £226.00 are you responsible for these cash losses as well?*

*a Yes I am.”*

These notes were typed up during the meeting and at the end of the meeting the Registrant read through them and signed them as an accurate record.

The Committee accepted that this was an accurate record of admissions made by the Registrant, at an interview where he was accompanied.

On 02 June 2021 the Registrant was interviewed by his employer. He said:

*“SH. When stealing the money what were you doing with the paperwork bank slips and bags*

*DH. I put them in the bin at home or anywhere*

*SH. Was all the the money to pay off debts? Who?*

*DH. Yes, topman debt Vodafone, burton.*

*SH. Have you used the money to pay of your debts*

*DH. Some but I don't have prove [sic]*

*SH. What was the money used for otherwise?*

*DH. Gambling scratch cards about £20 per-day*

*SH. How was the money split?*

*DH. About £600 on debts and most of the £2000 was wasted and most spent on scratch cards"*

In addition, he said:

*"SH. How did you choose what money to take?*

*DH. At random*

*SH. You understand you can lose everything job, [name of Registrant's then partner]?*

*DH. I felt excited and loved to feel this way and the buzz*

*SH. Why did you change from bags to cash from the till for the money?*

*DH. Guilt it made me feel sick and nervous and causing me to be sick.*

*SH. Would you like to watch the covert videos of the money going into your pocket and wallet?*

*DH. No, I would not*

*SH. Would you say it's the spur of the moment thing as on the video footage you left money in the till on Sunday and picked it up Monday morning was this planned?*

*DH. Not planned just spur of the moment.*

*SH. Did you ever think you were stealing from me and **redacted**?*

*DH. Yes, from the start*

*SH. If I left my wallet on side would you take money from that?*

*DH. No never*

*SH. But the safe money is mine and **redacted** so it's the same thing, right?*

*DH. I didn't think of it in that way"*

### Particular 3 a and b

The Committee found these Particulars proved.

For 3a, on 17 April 2021 a cash reconciliation for 16 April 2021 showed that the Registrant stole £10 and recorded false information on the reconciliation form of £9:91 shortage.

This was obvious from the CCTV of 17 April 2021. This showed the Registrant counting the takings from the previous day. At 11:26:20 he took money out of the bag and put a £10 note to the right of computer monitor and at 11:10:30 he put the note in his pocket. The Committee accepted Mr Corrie's submission that this caught the Registrant "*red handed*".

Mr A had explained that the Registrant was cashing up from day before, as was the practice.

For 3 b, on the cash form, present in the bundle of documents, the Registrant had reported that the takings were £9.91 short. The Committee accepted that there was a shortfall of approximately this amount only because the Registrant had taken £10: but for that there would be no shortage, and so the Registrant deliberately recorded false information on the form, as alleged.

In addition, on 26 May 2021 the Registrant had made a clear admission to stealing the money as alleged in sub-Particular 3a, so the Committee was satisfied that the relevant form (3b) was falsified.

#### Particulars 4a and 4b

The Committee found these proved.

Particular 4a alleged that on 19 April 2021 the Registrant had stolen £20 and on the cash reconciliation form provided false information that the takings were £20.01 short on 17 April 2021.

The Committee again decided that this was clearly shown in the CCTV recording. The submissions of Mr Corrie had taken the Committee through exactly what had happened. Ultimately the Registrant is seen (on 19 April at 7:28:50 - 7:29:15) taking out the red bag with the takings, to place £20 next to the monitor, then to count the money and after that the Registrant places that £20 note in his trouser pocket. The Committee accepted Mr Corrie's submission that the Registrant was again caught "*red handed*".

Particular 4b was proved because the cash reconciliation document (which was in bundle of documents) showed a shortage of £20:01, but if £20 had not been stolen there was no such shortage. Accordingly, this was false recording. There was also a clear admission from the Registrant in the internal interview that he stole money (detailed above).



### Particular 5

The Committee found both parts a and b proved.

The Committee was satisfied that the Council had proved, on the balance of probabilities that on 19 April 2021 the Registrant stole £40 and on 20 April 2021 and provided false information that the takings on 18 April 2021 were £30:92 short.

The CCTV, with the evidence of Mr A, made it clear that the Registrant had stolen £40. He could be seen putting the money in his pocket.

Mr Corrie had taken the Committee through the movement of the two £20 notes, which he had left in the till overnight, then the next day taken to the office with all the other takings. Then, in the office he took out all the money from the till, including the two £20 notes from the previous day, and put them in his pocket. He then recorded that on 18 April 2021 there was a shortfall of £39.92. This was not accurate as it was not a genuine shortage because he took £40.

### Particular 6 a b and c

The Committee found these proved.

The Committee noted that for these matters on 28 April 2021 the Registrant was not caught by CCTV actually taking the money, but the Committee accepted Mr Corrie's submission that the CCTV, as explained by Mr A, was sufficient to find this proved on the balance of probabilities.

CCTV in the office showed the Registrant taking £20 from red bag and putting into his wallet. Then he took £10 from the blue bag to the left of the desk and separated it from the other cash. There was no reason to do so.

The £30 therefore came from two sources – the float bag and the previous day's takings.

The CCTV then showed the Registrant taking the £20 from his wallet and placing it on desk near to where the £10 was. He then moved both notes to where the red bag was (out of shot), then he took the red bag and left the office.

The CCTV of the store and till showed the Registrant emptying the contents of the red bag contents to the till and when counted it was £30 short. The Committee accepted Mr A's evidence that the only explanation was that the £30 was not in bag at that point because it was taken by the Registrant as he went down the stairs from the office to the shop floor.



The Committee accepted Mr Corrie's submission that what the Registrant had done was highly suspicious. There was no honest reason to separate the two notes from the other money, particularly as he had placed one in his wallet.

For Particular 6b, there was false information that the takings were £9:98 short on 27 April 2021. This was false because the Registrant took the money.

For Particular 6c when the Registrant recorded this it was recorded false information because he recorded £60 not £50 on the cash reconciliation form, which was shown to the Committee.

The CCTV shows the Registrant counting out 5 x £10 notes. The Committee accepted that Mr A had the benefit of freeze frame and zoom and it was clear that was the case.

There was then complex evidence as to how it was processed to show a loss over 3 days, resulting in a cash variance not on one day but spread over three days.

#### Committee observations on evidence

The Committee found the Council's witnesses careful, comprehensive and credible. Mr A was clearly expert in his work, as a Financial Risk Support Consultant since 2002. He said that he had access to software which allowed careful analysis of the CCTV recordings, including freeze frame capability. He was open and balanced in his evidence and explained complex matters clearly. His evidence as to 2 c. i. and j was transparent. Mr B evidence was likewise balanced and objective. He had believed that he had a good working relationship with the Registrant whom he regarded as a key employee.

In addition, the Registrant admitted both taking substantial sums of money both by individual bank notes and whole day's takings.

In coming to its conclusions the Committee bore in mind that the evidence showed that:

- the till receipts showed that there were takings on the days for which the whole day's takings was unaccounted for;
- that the cash takings were handled by G4S (who recorded a specific and individual number for each such bag);
- there was no reason to suppose that there was any issue with delivery to the bank of cash collected by G4S (there were no bags collected by G4S which were not delivered to the bank);
- it had been clearly seen on the CCTV that on other occasions the Registrant had stolen money from his employer: the CCTV clearly showed the Registrant separating bank notes from the takings and then putting them in either his trouser pocket or his wallet;

- the reconciliation sheets for those days (prepared by the Registrant) showed variances of approximately the same amounts as he was seen taking;
- there were clear admissions from the Registrant on two different occasions;
- the reconciliation forms bore the Registrant's name and signature.

### Particular 7

The Committee had regard to the Hearings and Sanctions Guidance and to the advice of the Legal Adviser concerning dishonesty, in particular to the test in *Ivey*. The Committee was satisfied that the Registrant knew that he was taking money to which he was not entitled, and that ordinary decent members of the public would consider this dishonest (as did the Registrant himself), and so found Particular 7a, that of dishonesty, proved. In addition, by his repeated admissions of theft made in interview by his employer the Registrant accepted that he had been dishonest.

The Committee decided that the Registrant's conduct, set out in 7b (that the Registrant knew he was falsely declaring the shortfall in the takings to conceal his conduct) was also dishonest.

### **Finding in relation to redacted**

### Particular 8

Redacted

### **Findings in relation to misconduct (Particulars 2-7)**

The Committee heard oral submissions from Mr Corrie, who expanded on submissions set out in his Statement of Case. He also referred to the Hearings and Indicative Sanctions Guidance (December 2021) ("the Guidance") at paragraphs 15.5 - 15.9. He submitted that dishonesty such as was found proved crossed the threshold of seriousness required for a finding of misconduct.

Mr Corrie referred the Committee to a number of cases including R (Calhaem) v General Medical Council [2007] EWHC 2606 (Admin) and Remedy UK Ltd v General Medical Council [2010] EWHC 1245 (Admin) and to the Council's Standards of Practice for Optometrists and Dispensing Opticians, effective from April 2016, specifically:

*"16 - Be honest and trustworthy*

*16.1 - Act with honesty and integrity to maintain public trust and confidence in your profession*

*17 - Do not damage the reputation of your profession through your conduct*

*17.1 - Ensure your conduct, whether or not connected to your professional practice, does not damage public confidence in your or your profession.”*

Mr Corrie submitted that the conduct found proved amounted to misconduct because of the following factors:

- i. Theft from employer in breach of trust;
- ii. Conduct took place over a prolonged period;
- iii. Conduct was for the Registrant’s own personal gain;
- iv. Dishonesty.

He submitted that the conduct involved multiple instances of premeditated theft from the Registrant’s employer, during the course of his practice, and over a six-month period. While the total sum was not large it was still a significant amount of money. It was a breach of trust. This had been aggravated by the false paperwork he had used to conceal some of his thefts.

The Registrant had provided no written submissions.

The Committee was aware that there is no burden or standard of proof and that the decision is a matter for the judgment of the Committee.

The Committee heard and accepted the advice of the Legal Adviser. The Legal Adviser advised the Committee that for conduct to be professional misconduct it must be conduct that is seriously below the standards to be expected of members of the profession and be blameworthy. He referred the Committee to the Hearings and Indicative Sanctions Guidance, December 2021 revision (“the Guidance”). He also referred the Committee to the cases of Cheatle v General Medical Council [2009] EWHC 645 (Admin), Roylance v. The General Medical Council (Medical Act 1983) [1999] UKPC 16 and Spencer v General Osteopathic Council [2012] EWHC 3147 (Admin).

The Committee noted that during the course of his profession the Registrant had on multiple occasions stolen from his employer and also falsified paperwork to try to conceal the thefts. This was a serious breach of trust. It damaged the reputation of the profession. It breached fundamental tenets of the profession.

The Committee decided that the conduct found proved in Particulars 2-7 was sufficiently serious to be misconduct. Accordingly, the Committee found that the Registrant was guilty of misconduct.

### **Findings regarding impairment - misconduct**

The Committee then considered whether Registrant's fitness to practise was impaired by reason of his misconduct.

Mr Corrie referred to his written submissions, and to the Guidance at paragraphs 16.1 and 16.7. He submitted that the key questions were whether the misconduct was remediable, whether it had been remedied and whether it was likely to be repeated. He submitted that it was not easily remediable and that there was no evidence that it had been remediated. He submitted that the question of insight was also important, and that while the Registrant had made admissions and apologised, and had self-referred, he had not attended nor provided any reflection regarding his conduct. Accordingly, there was no evidence for the Committee to judge whether he had any insight, and so there was a risk of repetition.

The Registrant provided no written submissions about impairment.

The Committee accepted the advice of the Legal Adviser. He advised that there was no burden or standard of proof in the decision as to whether the Registrant's fitness to practise is impaired.

The Legal Adviser advised the Committee that impairment was a forward-looking exercise. The issue to be decided was whether the fitness to practise of the Registrant was now impaired by reason of the misconduct found proved. He advised that the public interest could also require a finding of current impairment by reason of past misconduct.

The Legal Adviser referred the panel to the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin), where Mrs Justice Cox said:

*'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

In paragraph 76 of the judgment in *Grant*, Mrs Justice Cox approved of the approach formulated by Dame Janet Smith as follows:

*‘Do our findings of fact in respect of the doctor’s [equally applicable to other medical professionals] misconduct, deficient professional performance, adverse health, conviction, caution, or determination show that his/her fitness to practise is impaired in the sense that she/he:*

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

The Legal Adviser also referred the Committee to Cohen v GMC [2008] EWHC 581 (Admin). This set out that when deciding whether fitness to practise is impaired panels should take account of these three questions:

- 1) Whether the conduct which lead to the charge is easily remediable;
- 2) Whether it has been remedied; and
- 3) Whether it is likely to be repeated.

The Committee noted that attitudinal issues such as dishonesty are regarded as difficult to remediate. There was no evidence of remediation, other than the self-referral, the making of admissions (from which he had resiled in relation to Particular 2) and an expression of apology to his employer. There was little evidence of insight other than regret at the effect that the discovery of his thefts would have on his life. The Committee concluded that there was a risk of repetition.

The Committee decided that limbs b, c and d of the test set out above were applicable to the Registrant, both in the past and in the future, and so the Registrant’s fitness to practise is currently impaired.

There was also damage to the reputation of the profession and the wider public interest to consider. The Committee decided that in these circumstances these factors also required a finding of current impairment.

### **Charge 8 – alleged impairment by reason of redacted**

The Council also alleged that the Registrant's fitness to practise was impaired by reason of adverse redacted (S13D(2)(f) of the Opticians Act 1989).

Mr Corrie submitted that the redacted was not recent. He added that in fairness to the Registrant the evidence of Mr B was that the Registrant was regarded as a key employee and had been promoted during his employment. Mr Corrie said that it was a matter for the Committee whether it found the Registrant's fitness to practise impaired by reason of redacted .

Asked by the Committee whether the Council could point to any evidence that the Registrant's fitness to practise was impaired by redacted Mr Corrie said that he had no further submissions to make.

The Committee accepted that the Registrant had a redacted. However, it had no evidence to show that this had any adverse effect on his fitness to practise, nor that it had any connection with the matters found proved.

The Committee therefore decided that the Registrant's fitness to practise is not impaired by reason of the redacted set out in Schedule A.

### **Sanction**

The Committee heard submissions from Mr Corrie on behalf of the Council. He referred to his written statement of case and to the Hearings and Indicative Sanctions Guidance (December 2021). He submitted that the Committee should bear in mind the purpose of sanctions. They were to protect the public, and to declare and uphold professional standards and the reputation of the profession and of the Council as a regulator.

Mr Corrie submitted that the sanction imposed must be proportionate to the misconduct found proved and balance the Registrant's own interests against those of the public and the profession.

Mr Corrie submitted that while the Committee would start its consideration at the lowest sanction possible, the matter was too serious for no further action. He submitted that this not reflect the public interest, in circumstances where the Committee had found that the Registrant had not displayed insight and that there was a risk of repetition. He submitted that it was not possible to devise conditions of practice to deal with the dishonesty found proved.

He submitted that the Committee would therefore be considering either suspension or erasure. Mr Corrie directed the Committee to those parts of the Hearings and

Sanctions Guidance which covered these sanctions, at 21.29 to 21.39, and to 22.4 which dealt with dishonesty.

Mr Corrie referred the Committee to Bolton v Law Society [1994] 2 All ER 486, to the effect that the reputation of a profession is more important than the fortunes of any individual member. Membership of a profession may bring many benefits, but membership comes at the price of liability to sanctions to maintain the reputation of the profession. He also referred the Committee to other cases, which set out that dishonesty was a spectrum and that it was not inevitable that someone found to have been dishonest would be erased from the register.

Mr Corrie took the Committee through aggravating and mitigating factors. The Registrant had self-reported, and at the time made full admissions and apologised to his employer. However, he had committed acts of premeditated dishonesty, when in a position of trust, taking a substantial amount of money, and dishonestly tried to conceal what he had done.

For these reasons Mr Corrie submitted that while it was a matter for the Committee, the Committee might feel that the only appropriate and proportionate sanction was that of erasure.

In an email to the Council dated 18 October 2022 the Registrant stated:

*“I just want to come away from register. I won't be returning to the industry again. I feel that this is in my best interests. I would rather just be erased.”*

In a more recent email of 26 January 2023 the Registrant stated:

*“I am and was a fantastic dispensing optician who made some awful decisions. I have paid for it in time, and continuing anxiety.*

*I really hope i don't lose my ability to practice forever as after reflection I would love to continue with the career I love so much. After some time out.*

*I am fully aware I deserve punishment for my actions.*

*But rest assured I would never ever make that mistake again. Its ruined my life as I knew it.” [sic]*

The Committee accepted the advice of the Legal Adviser. He advised that the purpose of sanctions was not punitive, although sanctions may have that effect. The purpose of sanctions was to protect the public, to declare and uphold professional standards and to maintain the reputation of the profession and of the Council as its regulator. He



advised the Committee to consider sanctions in ascending order, imposing the least sanction necessary to address the misconduct and impairment found. The sanction imposed must be proportionate and weigh the interests of the Registrant as well as those of the public protection and the public interest. The Committee should have regard to the Hearings and Sanctions Guidance, but the decision must be particular to the case it had heard.

The Committee considered the sanctions available to it from the least to the most severe (no further action, a financial penalty, conditional registration, suspension, and erasure).

The Committee decided that there were some mitigating factors. The Registrant had self-reported. In interview he had apologised to his employer, and not denied what he had done (although he did deny Particular 2 subsequently). There had been no previous misconduct. There was some remorse, but it was focussed on the effect of being caught and did not display insight.

The Committee decided that there were aggravating factors.

- The thefts were not spontaneous.
- They took place over a substantial period of time.
- They involved more than one way of stealing takings.
- The thefts were a breach of trust by someone in a managerial position.
- The thefts were for personal gain and were of a substantial amount of money.
- The Registrant continued with his thefts until caught.
- There was very limited evidence of insight (the email of 26 January 2023 also contained a denial in respect of Particular 2).

The Committee decided that attitudinal issues such as dishonesty were difficult to remediate. The Committee decided that there was no evidence of remediation, although there was some level of insight because the Registrant initially accepted that what he had done was wrong. However, he had resiled from that, in part, in his email of 26 January 2023. There was a risk of repetition.

The Committee decided that the misconduct was too serious for no further action, or for a financial penalty. There were no conditions of practice that could be devised to deal with the Registrant's dishonesty and the misconduct is too serious.

The Committee considered whether suspension would be the proportionate sanction. The Committee paid careful attention to the Guidance at paragraph 21.29. This stated that suspension was appropriate when:



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

- 1. A serious instance of misconduct where a lesser sanction is not sufficient.*
- 2. No evidence of harmful deep-seated personality or attitudinal problems.*
- 3. No evidence of repetition of behaviour since incident.*
- 4. The Committee is satisfied the registrant has insight and does not pose a significant risk of repeating behaviour.”*

The Committee considered that point 1 was met so that no lesser sanction was appropriate.

Points 2 and 4 of the Guidance were not met in this case, because there is evidence of deep-seated attitudinal problems, and the Committee is not satisfied that the Registrant has insight.

Point 3 was not of assistance to the Registrant because he had been dismissed so could not repeat his dishonest behaviour within the profession.

The Committee therefore concluded that the misconduct was too serious for a suspension order to be made.

The Committee next considered the factors set out in paragraph 21.35 of the *Guidance*:

*“Erasure is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional and involves any of the following (this list is not exhaustive):*

- 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 seriousness of actions or consequences.*

The Committee decided that points a, c, f and h applied. The other points relate to different types of misconduct. Erasure is appropriate where any one of the subheadings are met.

The Committee noted case law guidance in Parkinson v Nursing and Midwifery Council [2010] EWHC 1898 (Administration), applicable equally to the Registrant's profession:

*"18. A nurse found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the register. A nurse who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than to direct erasure."...*

There was no information available to the Committee concerning the Registrant's present circumstances other than that he was working. In any event the public interest would outweigh the Registrant's own interests.

Bearing all the factors above in mind the Committee decided that no lesser sanction than erasure could be imposed, and so ordered the Registrant be erased from the Register.

### **Immediate order**

As the Committee had made a final order it also revoked the interim suspension order which Mr Corrie advised was in place.

The Committee heard submissions from Mr Corrie on behalf of the Council. He requested that an immediate order of suspension be made. The erasure order did not come into effect until the 28 days during which an appeal could be lodged had expired, and if an appeal was lodged the erasure order would not come into effect until the appeal had been determined. Mr Corrie submitted that such an order was necessary to protect the public, given the Committee's finding that there was a risk of repetition. He submitted that it was also otherwise in the public interest to make an immediate

order of suspension because of the nature and gravity of the matters found proved, the attitudinal issues and the lack of insight shown.

The Committee accepted the advice of the Legal Adviser. He advised that Mr Corrie's submissions were accurate – the erasure order did not take effect for 28 days and if an appeal was lodged by the Registrant the order of erasure would not have effect until the appeal was determined. Accordingly, there was a minimum period of 28 days when, without an immediate order, the Registrant would have no restriction on his practice. For this reason, Rule 13I gave the Committee the power when ordering the erasure of a Registrant also to make an immediate order of suspension.

The Committee has decided to impose an immediate suspension order for the following reasons. The Committee accepted Mr Corrie's submissions. The erasure order does not take effect for 28 days. Should the Registrant appeal he would be able to practise unrestricted until that appeal concluded.

In all the circumstances of this case that would present a risk to the public and undermine the reputation of the profession. Accordingly, an immediate suspension order was required.

**Chair of the Committee: Pamela Ormerod**

Signature ...  ... Date: 11 April 2023

**Registrant: Daniel Holden**

Signature .... Not Present .... Date: 11 April 2023

<b>FURTHER INFORMATION</b>
<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).

**Professional Standards Authority**

This decision will be reported to the Professional Standards Authority (PSA) under the provisions of section 29 of the NHS Reform and Healthcare Professions Act 2002. PSA may refer this case to the High Court of Justice in England and Wales, the Court of Session in Scotland or the High Court of Justice in Northern Ireland as appropriate if they decide that a decision has been insufficient to protect the public and/or should not have been made, and if they consider that referral is desirable for the protection of the public.

Where a registrant can appeal against a decision, the Authority has 40 days beginning with the day which is the last day in which you can appeal. Where a registrant cannot appeal against the outcome of a hearing, the Authority's appeal period is 56 days beginning with the day in which notification of the decision was served on you. PSA will notify you promptly of a decision to refer. A letter will be sent by recorded delivery to your registered address (unless PSA has been notified by the GOC of a change of address).

Further information about the PSA can be obtained from its website at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk) or by telephone on 020 7389 8030.

**Effect of orders for suspension or erasure**

To practise or carry on business as an optometrist or dispensing optician, to take or use a description which implies registration or entitlement to undertake any activity which the law restricts to a registered person, may amount to a criminal offence once an entry in the register has been suspended or erased.

**Contact**

If you require any further information, please contact the Council's Hearings Manager at 10 Old Bailey, London, EC4M 7NG or, by telephone, on 020 7580 3898.