

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

**GENERAL OPTICAL COUNCIL**

**F(21)18**

**AND**

**SHAHID SUJAWAL (SO-10910)**

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**DETERMINATION OF A SUBSTANTIVE HEARING  
AGREED PANEL DISPOSAL (APD)  
28 FEBRUARY – 1 MARCH 2022**

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**Committee Members:** Anne Johnstone (Chair/Lay)  
Mark McLaren (Lay)  
Nicola Enston (Lay)  
Daniel Goh (Optometrist)  
Ewen MacMillan (Optometrist)

**Legal adviser:** Sadia Zouq

**GOC Presenting Officer:** Dean Taylor

**Registrant:** Present

**Registrant representative:** David Claxton (18 RLC)  
Nan Mousley (AOP)

**Hearings Officer:** Terence Yates

**Facts found proved:**

**1 (a) and (b), 2, 3, 4 (a) and (b), 5 (a) and (b), 6, 7 (a) – (e), 8 (a) and (b), 9, 10, 11 (a) and (b), 12, 13, 14, 15 (a) and (b), 16, 17 (a) and (b), 18 (a) and (b), 19 (a) and (b), 20 (a) and (b), 21, 22, 23 (a) and (b), 24, 25, 26 (a) and (b), 27, 28 (a) and (b), 29, 30, 31, 32, 33 (a) and (b), 34 (a) and (b).**

**Facts not found proved: None**

**Misconduct: Proved**

<b>Impairment:</b>	<b>Proved</b>
<b>Sanction:</b>	<b>9-month Suspension Order (Without Review)</b>
<b>Immediate order:</b>	<b>None</b>

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### **ALLEGATION**

The Council alleges that in relation to you, Mr Shahid Sujawal (SO-10910), a registered optometrist:

#### **Patient A**

1. On or around 14 June 2018 or 2 August 2018, you retrospectively amended the patient records of Patient A for 23 April 2018 by:
  - a. Recording that the criteria for sight impairment had been discussed;
  - b. Recording that low visual aids had been dispensed;
2. On or around 3 August 2018, you retrospectively amended the patient records of Patient A for 23 April 2018 by recording that an Amsler test had been conducted;
3. On or around 27 September 2018, you retrospectively amended the patient records of Patient A for 23 April 2018 by recording that you had explained how low visual aids were to be used;
4. Your actions at (1), (2) and/or (3) were:
  - a. Misleading; and/or
  - b. Dishonest in that you knew the retrospective amendments did not accurately reflect the sight test that you completed on Patient A on 23 April 2018.

#### **Patient B**

5. On or around 6 August 2018, you retrospectively amended the patient records of Patient B for 16 March 2018 by:
  - a. Adding the note “not sure which” to the section of the records titled “History>Presenting Complaint”;
  - b. Adding cover test results;
6. On or around 17 August 2018 you retrospectively amended the patient records of Patient B for 16 March 2018 by adding commentary on the eye symptoms with prescription;

7. On or around 26 September 2018, you retrospectively amended the patient records of Patient B for 16 March 2018 by:
  - a. Adding the note “but after a long time reading feels a bit of strain”;
  - b. Adding the note “9 o’clock”;
  - c. Adding the note “pt wants varifocals with prism and advised prism will be throughout whole lens for D and N”; and
  - d. Adding the note “20/04/19 – phoned patient and getting on well with new specs. No issues at all now and patient completely asymptomatic”;
  - e. Adjusting the mallet result for Patient B from “3.5 base in.” to “3 base in.”;
  
8. Your actions at (5), (6) and/or (7) were:
  - a. Misleading; and/or
  - b. Dishonest in that you knew the retrospective amendments did not accurately reflect the sight test that you completed on Patient B on 16 March 2018.

### **Patient C**

9. On or around 28 September 2018, you retrospectively amended the patient records of Patient C for 6 April 2018 by inserting the note “advised max WT for Hy is 10 hours! Patient agreed”;
10. On or around 28 September 2018, you retrospectively amended the patient records of Patient C for 30 May 2018 by inserting the note “told explicitly max WT is 10hrs for Hy lenses – px is now aware and agreed.”;
11. Your actions at (9) and/or (10) were:
  - a. Misleading; and/or
  - b. Dishonest in that you knew the retrospective amendments did not accurately reflect the contact lens fitting that you conducted on Patient C on 6 April 2018 and/or the aftercare appointment on 30 May 2018.

### **Patient D**

12. On or around 10 April 2018, you retrospectively amended the patient records of Patient D for 2 March 2018 by adding the note “CT c rx D&N nmd”;
13. On or around 09 August 2018, you retrospectively amended the patient records of Patient D for 2 March 2018 by adding the note “roughly symmetrical central scotoma”;
14. On or around 17 August 2018, you retrospectively amended the patient records of Patient D for 2 March 2018 by adding the note “med-large” to the scotoma reference;

15. Your actions at (12), (13) and/or (14) were:

- a. Misleading; and/or
- b. Dishonest in that you knew the retrospective amendments did not accurately reflect the sight test that you completed on Patient D on 2 March 2018.

**Patient E**

16. On or around 30 June 2018, you retrospectively amended the patient records of Patient E for 23 June 2018 by adding the note “frame selected bvd=10”;

17. On or around 7 July 2018, you retrospectively amended the patient records of Patient E for 23 June 2018 by:

- a. Adding the note “but parents didn’t go through with it”;
- b. Adding the note “Discussed options with mother and pt and also possible surgery and risks does not want to proceed yet, to review next eye exam”;

18. Your actions at (16) and/or (17) were:

- a. Misleading; and/or
- b. Dishonest in that you knew the retrospective amendments did not accurately reflect the sight test that you completed on Patient E on 23 June 2018.

**Patient F**

19. On or around 7 July 2018, you retrospectively amended the patient records of Patient F for 6 February 2018 by:

- a. Adding the note “as patient elderly and gets confused”;
- b. Amending the entry for amblyopia so that it read “RE amblyopic – unsure of further details and can’t remember”;

20. Your actions at (19) were:

- a. Misleading; and/or
- b. Dishonest in that you knew the retrospective amendments did not accurately reflect the sight test that you completed on Patient F on 6 February 2018.

**Patient G**

21. On or around 11 April 2018, you retrospectively amended the patient records of Patient G for 13 February 2018 by adding the note “advised safety specs”;

22. On or around 7 July 2018, you retrospectively amended the patient records of Patient G for 13 February 2018 by adding the note “no pain no light sensitivity no reduced vision no discharge no watery eyes”;

23. Your actions at (21) and/or (22) were:

- a. Misleading; and/or
- b. Dishonest in that you knew the retrospective amendments did not accurately reflect the sight test that you completed on Patient G on 13 February 2018.

### **Patient H**

24. On or around 19 March 2018, you retrospectively amended the patient records of Patient H for 16 March 2018 by adding the note “advised to inform school to aid in alternative educational aids as needed and discussed limitation on possible future career options”;

25. On or around 11 April 2018, you retrospectively amended the patient records of Patient H for 16 March 2018 by adding the note “r+l test plate seen all other plates failed red-green deficiency”;

26. Your actions at (24) and/or (25), were:

- a. Misleading; and/or
- b. Dishonest in that you knew the retrospective amendments did not accurately reflect the sight test that you completed on Patient H on 16 March 2018.

### **Patient I**

27. On or around 30 May 2018, you retrospectively amended the patient records of Patient I for 11 May 2018 by adding the note “mother is concerned patient having a squint.”;

28. Your actions at (27) were:

- a. Misleading; and/or
- b. Dishonest in that you knew the retrospective amendments did not accurately reflect your appointment with Patient I on 11 May 2018.

### **Probity allegations**

29. Between 30 October 2017 and 28 September 2018, you submitted records of the above Patients A-I to your assessor from the COO as part of your Stage 1 and Stage 2 assessments;

30. The College of Optometrists (“COO”) contacted you on 3 October 2018 to raise concerns about the falsification of two records submitted as above at (29). You

responded on 25 October 2018 and admitted to falsifying the two records in question;

31. On 25 October 2018, you reported your misconduct to the Registrar of the General Optical Council (“GOC”) in these terms: *“The College have raised concerns that I have amended/added to 2 records. I admit that I have made additions to the record, at a later date, to include false information.”*;

32. Your actions at (29) were dishonest in that you submitted records that you knew had been partly falsified;

33. Your response to the COO at (30) was:

- a. Misleading; and/or
- b. Dishonest in that you knew more than two patient records had been falsified but did not so inform the COO;

34. Your response to the Registrar of the GOC at (31) was:

- a. Misleading; and/or
- b. Dishonest in that you knew more than two patient records had been falsified but did not so inform the Registrar.

AND that by reason of the matters alleged above your fitness to undertake training is impaired by reason of misconduct.

### **CONSENSUAL PANEL DETERMINATION AGREEMENT**

1. Mr Dean Taylor appeared on behalf of the GOC and Mr David Claxton appeared on behalf of the Registrant, Mr Sujawal.
2. Mr Taylor informed the Committee that prior to this hearing a provisional agreement by way of an Agreed Panel Determination (“APD”) had been reached with regard to this case between the GOC and Mr Sujawal.
3. The APD, which was put before the Committee, sets out the Registrant’s full admission to all of the facts alleged in the Allegation, his acceptance that his actions amount to misconduct and his acceptance that his fitness to train is currently impaired by reason of that misconduct in the public interest. It is further stated in the agreement that an appropriate sanction in this case would be a suspension order for a period of 9 months without a review. The agreement was signed on behalf of the Registrant on 17 February 2022, and by the GOC on 11 February 2022.
4. The Committee has considered the APD reached by the parties. That provisional agreement reads as follows:

## **AGREED PANEL REPORT**

### *Introduction*

1. *This is a substantive hearing in respect of Mr Shahid Sujawal (SO-10910), a registered student optometrist who first registered with the General Optical Council (“the Council”) as a student optometrist on 7 November 2014. The Fitness to Practise Committee (“FTPC”) meet to consider whether to approve an agreed form of disposal under the Agreed Panel Disposal (“APD”) process. Both parties agree to the proposed form of disposal set out in this report. The Registrant has had the benefit of legal advice from Nan Mousley of the Association of Optometrists before agreeing to dispose of this case by the APD process.*
2. *The Council's published policy on the APD process is addended to this report. As is made clear in that policy, it is a hearing management tool, designed to assist in avoiding full hearings with the calling of evidence where the public protection and public interest objectives of the fitness to practise process would still be met by an agreed outcome. It is not a separate statutory tool or path to a finding of impaired fitness to practise. The FTPC retains a full supervisory jurisdiction over the procedure and, save where it would be otherwise appropriate not to do so, the APD recommendation is considered at a public hearing. The options open to the FTPC are:
  - i. *To approve the recommendation and make the appropriate order(s);*
  - ii. *To vary the sanction with the agreement of both parties; or*
  - iii. *To disagree with the recommendation. In this instance, an amended recommendation may be resubmitted at a reconvened APD hearing, or the case may proceed under the usual hearing process.**
3. *The Council's case was served on the Registrant on 8 September 2021.*
4. *Mr Shahid Sujawal (“The Registrant”) registered with the General Optical Council (“GOC”) as a student optometrist on 7 November 2014. The Registrant has no fitness to practise history. The GOC received a self-referral from the Registrant on 1 November 2018. Within the self-referral the Registrant explained that he was subject to an investigation by the College of Optometrists (“The College”) due to discrepancies found relating to two records the Registrant had presented at his stage two assessment on the 28 September 2018. The Registrant was working at Vision Express [Redacted] at the time the amendments were made.*
5. *The GOC requested information from The College. The College's Investigation documentation suggests that the Registrant made amendments to records relating to nine patients (Patient's A-I) for the purposes of the Registrant's stage 1 and stage 2 assessment.*
6. *The GOC requested records for Patients A-I from [Redacted], the Optical Compliance Officer at Vision Express in relation to the [Redacted] Store. Vision Express provided the*

relevant patient records which include screenshots detailing the notes added/amended by the Registrant and corresponding dates of amendments. Vision Express and The College have confirmed there was no patient harm resulting from the Registrant's actions.

7. The case was sent to the Case Examiners, who referred the case to the Fitness to Practise Committee ("FTPC") on 8 September 2020.
8. A witness statement was obtained from [Redacted] of the College of Optometrists.
9. The case was disclosed on the Registrant on 8 September 2021.
10. The allegation is set out at Annex 1.

#### *Nature of the Recommended Disposal*

11. Upon the Registrant's admissions and upon the Council and Registrant agreeing to this recommendation, the parties jointly seek and recommend to the FTPC that this matter is disposed of by a determination on the following basis:
  - I. All of the particulars of the allegations are admitted and found proved;
  - II. That the particulars of the allegations amount to misconduct;
  - III. That the Registrant's fitness to practise is impaired by reason of misconduct; and
  - IV. The appropriate and proportionate sanction is a suspension.

#### *Law*

12. The matter is governed by the Opticians Act 1989 ("the Act") and The General Optical Council (Fitness to Practise) Rules Order of Council 2013 ("the Rules").
13. In accordance with Rule 46 a hearing is required to be conducted in three stages:
  - I. Stage 1 - Findings of fact;
  - II. Stage 2 - Findings on whether, as a result of the facts found proved, the Registrant's fitness to practise is impaired by reason of misconduct;
  - III. Stage 3 - Consideration of the appropriate sanction, if any.
14. Rule 40(6) provides: "the registrant may admit a fact or description of a fact, and a fact of description of a fact so admitted may be treated as proved."
15. More detailed submissions are set out below in respect of each stage.

#### *Stage 1: Factual Findings*

16. The GOC obtained investigation documents from The College. We have a letter, dated 3 October 2018, from [Redacted] at the College to the Registrant, advising him of discrepancies found relating to Patient records 26085 and 40487. The Registrant subsequently provided a response to the College on 25 October 2018 admitting to falsifying record 26085 and failing to create a new record for record 40487.



17. *The College referred the concerns to the GOC. The College's outcome was that the Registrant should return to stage 1 and be reassessed where record amendments were found. The Registrant was allowed to continue on the Scheme for Registration at this point. The College held an Appeal Panel meeting on 16 January 2019 and concluded "The Panel felt that recommendations were clear and appropriate. The trainee has admitted to being dishonest. The panel unanimously agreed with the recommendations and will refer this candidate to the GOC."*
18. *The GOC obtained a signed witness statement from [Redacted] of the College on 17 March 2021. [Redacted] describes and exhibits as SH/01 the email correspondence she received from Assessor [Redacted] on 28 September 2018 regarding the possible falsification of patient records by the Registrant. [Redacted] was unclear on the extent of records which had been falsified by the Registrant at this point.*
19. *[Redacted] attended Vision Express [Redacted] on 14 November 2018 with colleague [Redacted] and examined the records the Registrant presented at Stage 1 and the patient episode list presented at stage 2. [Redacted] explains that further discrepancies were found involving patients C-I.*
20. *The GOC have notes from [Redacted] practise visit as well as the conclusions and recommendations found from the visit exhibited as SH/03 and SH/04. As per point 17 above, the College's recommendations have been actioned.*
21. *As per point 6 above, the GOC have records from Vision Express [Redacted] detailing the amendments made.*
22. *Both Vision Express and the College have confirmed that there was no resulting harm from the Registrant's actions.*
23. *The Registrant admits the facts alleged against him. This is evidenced in email correspondence by Nan Mousley, the Registrant's representative.*
24. *With regard to the issue of misconduct, there is no definition but a review of some of the authorities provides some guidance, Lord Clyde in Roylance v GMC (no.2) [2000] 1 A.C. 311 Lord Clyde, in his judgment at page 331, stated:*  
  
*"Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word "professional" which links the misconduct to the profession of medicine. Secondly, the misconduct is qualified by the word "serious". It is not any professional misconduct which will qualify. The professional misconduct must be serious".*
25. *In the case of R (on the application of) Remedy UK v General Medical Council [2010] EWHC 1245 at paragraph 37, it was stated:*

*"First, it may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outwith the course of professional practice itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession."*

26. As to seriousness, Collins J, in *Nandi v General Medical Council* [2004] EWHC (Admin), rightly emphasised, at paragraph 31 of his judgment,

*"the need to give it proper weight, observing that in other contexts it has been referred to as 'conduct which would be regarded as deplorable by fellow practitioners'."*

27. In the case of *Calhaem v General Medical Council* [2007] EWHC 2606 (Admin) at paragraph 39 at paragraph (1) Jackson J (as he then was) said:

*"(1) Mere negligence does not constitute "misconduct" within the meaning of section 35C(2)(a) of the Medical Act 1983. Nevertheless, and depending upon the circumstances, negligent acts or omissions which are particularly serious may amount to "misconduct".*

*(2) A single negligent act or omission is less likely to cross the threshold of "misconduct" than multiple acts or omissions. Nevertheless, and depending upon the circumstances, a single act or omission, if particularly grave, could be characterised as "misconduct".*

*(3) "Deficient professional performance" within the meaning of section 35C(2)(b) is conceptually separate from negligence and from misconduct. It connotes a standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the doctor's work.*

*(4) A single instance of negligent treatment, unless very serious indeed, would be unlikely to constitute "deficient professional performance".*

*(5) It is neither necessary nor appropriate to extend the interpretation of "deficient professional performance" in order to encompass matters which constitute "misconduct".*

28. It is agreed by both the Council and the Registrant that the Registrant's conduct breached the following paragraphs of the 'GOC Standards for Optical Students':

*7 Maintain adequate patient records;*

*9 Work collaboratively with your peers, tutors, supervisors or other colleagues in the interests of patients;*

*10 Protect and safeguard patients, colleagues and others from harm; 15 Be honest and trustworthy;*

*16 Do not damage the reputation of your profession through your conduct; 18 Be candid when things have gone wrong*

29. *It is agreed by both parties that the allegations amount to a serious departure from the standard of practice expected of a competent student optometrist.*

30. *The parties agree that the Registrant's conduct therefore amounts to misconduct within the meaning of section 13D(2)(a) of the Act.*

*Impairment*

31. *There are a number of authorities from the High Court in appeals against decisions of the General Medical Council's Fitness to Practise Panels, where the Panel has found a doctor's fitness to practise to be impaired. These authorities discussed the way in which regulatory committees should approach impairment in this case at the second stage.*

32. *They are:*

- *Cohen v GMC [2008] EWHC 581 (Admin);*
- *Zygmunt v GMC [2008] EWHC 2643 (Admin);*
- *Cheatle v GMC [2009] EWHC 645 (Admin);*
- *Yeong v GMC [2009] EWHC 1923 (Admin);*
- *CHRE v NMC and Grant [2011] EWHC 927 (Admin)*

33. *As to the meaning of fitness to practise, in the case of Zygmunt v GMC [2008] EWHC 2643 (Admin) Mr Justice Mitting (at para 29) adopted the summary of potential causes of impairment offered by Dame Janet Smith in the Fifth Shipman Inquiry Report (2004, Paragraph 25.50). Dame Janet Smith considered that impairment would arise where a doctor:*

- a) presents a risk to patients;*
- b) has brought the profession into disrepute;*
- c) has breached one of the fundamental tenets of the profession;*
- d) has acted in such a way that his/her integrity can no longer be relied upon.*

34. *Factors (b) (c) and (d) are engaged in this case.*

35. *In Cheatle v GMC, Mr Justice Cranston said this (at paragraphs 21 - 22):*

*21. There is clear authority that in determining impairment of fitness to practise at the time of the hearing regard must be had to the way the person has acted or failed to act in the past As Sir Anthony Clarke MR put it in Meadow v General Medical Council [2006] EWCA Civ 1390 [2007] 1 QB 462:*

*"In short, the purpose of fitness to practise proceedings is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The FPP thus looks forward not back. However, in order to form a view as to the fitness of a person to practice today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past".*

*22. In my judgement this means that the context of the doctor's behaviour must be examined. In circumstances where there is misconduct at a particular time, the issue becomes whether that misconduct, in the context of the doctor's behaviour both before*

*the misconduct and to the present time, is such as to mean that his or her fitness to practise is impaired. The doctor's misconduct at a particular time may be so egregious that, looking forward, a panel is persuaded that the doctor is simply not fit to practise medicine without restrictions, or maybe not at all. On the other hand, the doctor's misconduct may be such that, seen within the context of an otherwise unblemished record, a Fitness to Practice Panel could conclude that, looking forward, his or her fitness to practise is not impaired, despite the misconduct".*

36. *In Yeong v GMC [2009] Mr Justice Sales said (at Para 21):*

*"It is a corollary of the test to be applied and of the principle that a FFTP is required to look forward rather than backward that a finding of misconduct in the past does not necessarily mean that there is impairment of fitness to practise - a point emphasised in Cohen and Zygmunt...in looking forward the FFTP is required to take account of such matters as the insight of the practitioner into the source of his misconduct, and any remedial steps which have been taken and the risk of recurrence of such misconduct. It is required to have regard to evidence about matter that have arisen since the alleged misconduct occurred".*

*(At Para 48): "Miss Grey submitted that each of Cohen, Meadow and Azzam was concerned with misconduct by a doctor in the form of clinical errors and incompetence. In relation to such type of misconduct, the question of remedial action taken by the doctor to address his areas of weakness may be highly relevant to the question whether his fitness to practise is currently (i.e. at the time of consideration by a FFTP) impaired; but Miss Grey submitted that the position in relation to the principal misconduct by Dr Yeong in the relationship with a patient) is very different. Where a FFTP considers that the case is one where the misconduct consists of violating such a fundamental rule of the professional relationship between medical practitioner and patient and thereby undermining public confidence to the medical profession, a finding of impairment of fitness to practise may be justified on the grounds that it is necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the practitioner and in the profession, in such a case, the efforts made by the medical practitioner in question to address his behaviour for the future may carry very much less weight than in the case where the misconduct consists of clinical errors or incompetence. I accept Miss Grey's submissions that the types of cases which were considered in Cohen, Meadow and Azzam fall to be distinguished from the present case on the basis she puts forward".*

37. *The High Court revisited the issue of impairment in the recent case of CHRE v NMC and Grant where Mrs Justice Cox noted (at paragraph 74):*

*"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 professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances."*

38. *The Registrant accepts that his fitness to train is currently impaired, in that:*

- i. It is necessary in the public interest to make a finding of impairment of fitness to practise in order to uphold professional standards and public confidence in the profession.*

*Stage 3: Sanction*

39. *Where the FTPC find that a Registrant's fitness to practise is impaired, the powers of the FTPC are listed under section 13F (2) (3) and (4) of the Act. Section (2) states that the FTPC may, if they think fit, give a direction specified in subsection (3).*

40. *The purpose of sanctions in fitness to practise proceedings are as follows:*

- a) the protection of the public;*
- b) the declaring and upholding of high standards in the profession; and*
- c) the maintenance of public confidence in the profession*

41. *Sanctions are not intended to be punitive. Accordingly, matters of personal mitigation carry very much secondary weight. In Bolton v The Law Society [1994] 1 WLR 512 Bingham LJ said:*

*"...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."*

42. *The FTPC should have proper regard to the Indicative Sanctions Guidance unless the FTPC have sound reasons to depart from it – per Lindblom LJ in PSA v (1) HCPC (2) Doree [2017] EWCA Civ 319 at paragraph 29.*

43. *The FTPC must have regard to the principle of proportionality. The principle requires that when considering what sanction to impose in order to fulfil the statutory over-arching objective, the FTPC must take into consideration the interests of the Registrant, which may include the wider public interest in a competent student optometrist being permitted to train. The FTPC should consider the sanctions available, starting with the least restrictive sanction available, judging whether that sanction will be sufficient to achieve the over- arching objective, and if it will not, moving on to consider the next least restrictive sanction.*

44. *In terms of aggravating features the concerns surround the amendment of records for nine patients the Registrant had used for the purpose of his stage 1 and stage 2 assessments with the College. The matters surround dishonesty relating to the Registrant's profession. The dishonesty was perpetrated to promote the Registrant's own interests in completing his stage 1 and stage 2 assessments with The College. Although the Registrant made early admissions in self-referring to the GOC he did not make full admissions relating to the extent of the amendments he made to patient records. In light of this, there may be concerns about there being a timely development of insight.*

45. *In terms of mitigating circumstances, the Registrant has shown insight by admitting that he had amended the records of the patients involved and agreeing to facts, misconduct and impairment for the purposes of the fitness to practise hearing. Within representations provided by the Registrant he notes that his response to the College could have differed in respect of his admissions to the amendment of patient records. The Registrant advises "I realise in hindsight that stating "I do not recall which records specifically I had edited and more specifically when", would have been the more correct way to respond". The Registrant was undergoing difficult personal circumstances at the time that the amendments were made, and the concerns arose at an early point in his career. The Registrant has undertaken CPD since the concerns arose. There was no resulting harm to the patients involved and the Registrant has reflected on the potential harm which could have arisen from his actions. The Registrant states that this behaviour was "out of character" for him and the GOC has received a number of testimonials highlighting his good character. The GOC can confirm that there has been no other fitness to train concerns raised about the Registrant since the self-referral from him on 1 November 2018.*

46. *Having regard to the GOC's Indicative Sanctions Guidance, the parties agree that the appropriate and proportionate sanction is a suspension for nine months.*

47. *This sanction is appropriate and proportionate in that a lesser sanction would not mark the seriousness of the misconduct or allow the Registrant to reflect sufficiently on his misconduct. The period of suspension is sufficient in light of the dishonesty involved, balanced against there being no evidence of repetitive dishonest behaviour since the incident occurred.*

*No Further Action*

48. *The Indicative Sanctions Guidance states that no further action may be justified in "exceptional circumstances". The GOC considers that there are no exceptional circumstances to justify taking no action in this instance. The GOC considers that taking no further action in light of the seriousness of the misconduct involved would not uphold standards or maintain confidence in the profession and the regulatory process. The insight and remedial action undertaken by the Registrant does not fully remediate the Registrant's misconduct.*

*Financial Penalty Order*

49. *The Indicative Sanctions Guidance suggests a financial penalty order may be appropriate where the conduct was financially motivated and/or resulted in financial gain. The GOC do not consider this penalty to be applicable to the circumstances of this case. There is no evidence of financially motivated behaviour.*

*Conditional Registration*

50. *For conditions to be appropriate where the FTPC has identified significant shortcomings in the Registrant's practice, the Indicative Sanctions Guidance states, "the Committee should satisfy itself that the registrant would respond positively to retraining which would thus allow the registrant to remedy any deficiencies in practice whilst protecting patients."*

51. *The GOC do not consider that conditions would be appropriate in light of the nature of misconduct. It is not possible to formulate clear conditions which address the dishonesty*

*and the amendment of patient records. In any event the GOC considers the misconduct too serious for the sanction of conditions.*

*Suspension*

52. *Suspension is appropriate when some or all of the following factors are apparent:*  
21.29 of the Indicative Sanctions Guidance:
- a. *A serious instance of misconduct where a lesser sanction is not sufficient.*
  - b. *No evidence of harmful deep-seated personality or attitudinal problems.*
  - c. *No evidence of repetition of behaviour since incident*
  - d. *The committee is satisfied the registrant has insight and does not pose a significant risk of repeating behaviour*
  - e. *In cases where the only issue relates to the registrant's health, there is a risk to patient safety if the registrant continued to practise, even under conditions.*
53. *The GOC consider that 21.29 (a)-(d) are relevant in light of the Registrant's misconduct. The GOC consider the amendments and the extent of amendments made by the Registrant for the purposes of meeting the Registrant's stage 1 and 2 assessment requirements, fall into 21.29(a). We have no evidence of current personality or attitudinal problems and no concerns of repeated behaviour since the matters were referred. We have evidence of insight and remorse and no current concerns that the Registrant may repeat such behaviour.*
54. *The parties agree that this is the appropriate sanction. In considering the length of the suspension, although this remains a matter for the Committee, it is submitted by the parties that a period of nine months will suffice. Nine months is appropriate to reflect the nature of the concerns raised by the case, the Registrant's previous history and his acceptance of the allegations against him.*
55. *The parties consider that a review hearing is not required given the low risk of repetition.*

*Erasure*

56. *The parties agree that the Registrant's conduct is not fundamentally incompatible with registered practise and that, at this stage, this sanction would be disproportionate. Whilst there was dishonesty, there have been admissions as well as insight shown by the Registrant.*

*Immediate Order*

57. *The parties do not consider it is necessary to impose an immediate order, again due to the low risk of repetition as well as the low risk of patient harm.*

## DETERMINATION

5. The Committee had regard to all the documents before it and to the proposed APD signed by the Registrant and the GOC.
6. The Committee heard and accepted the advice of the Legal Adviser at each stage of the hearing. She referred the Committee to the GOC Agreed Panel Disposal Policy (“the policy”) and reminded the Committee to be mindful of the public interest and the overarching objective of the GOC. She referred to the relevant GOC Rules, the relevant case law regarding findings of fact, misconduct, current impairment and to the GOC Indicative Sanctions Guidance. She advised that if, at any stage in its deliberations the Committee required further clarity, or if, in respect of sanction, it required further information or submissions, then the Committee should reconvene with the parties and invite the parties to address it. Specifically, the Legal Adviser advised the Committee of paragraph 8.4 of the Policy which states:

*“If the panel’s findings are in accordance with those in the agreed panel disposal report at each stage, it will make an order setting out the reasons for its findings. If the panel wish to vary the sanction they will invite submissions from both parties... If both parties agree the variation the case will be concluded on that basis. Otherwise, the case will go to a further hearing where both parties may make new submissions.”*

### Finding on Facts and Misconduct

7. The Registrant has admitted all of the facts in the Allegation. The Committee had regard to the legal advice and Rule 40(6).
8. The Committee had regard to the evidential information provided to it, upon which the Registrant’s admissions were based. It considered the altered records, and correspondence regarding the probity particulars, and was satisfied that each of the factual particulars admitted by the Registrant was made out on the evidence. Accordingly, it found each of the factual particulars and sub-particulars proved.
9. The Committee first considered the issue of misconduct. Whilst acknowledging the agreement between the GOC and the Registrant, and the admissions of the Registrant, the Committee nevertheless exercised its own independent judgement in reaching its decision on misconduct and it was mindful that it was not bound by the proposed APD.
10. This allegation concerns dishonest conduct and the Registrant admits that he was dishonest as alleged. The dishonest acts include retrospectively amending nine patient records over a period of seven months, submitting two falsified patient records to the College of Optometrists as part of the stage 1 and 2 assessments, admitting to the GOC and Registrar of having falsified two patient records when the Registrant knew there were more than two patient records that had been falsified. The dishonesty was therefore repeated, pre-meditated and deliberate. The Committee concluded that the Allegation was serious and



that the Registrant's conduct falls far short of what would have been proper in the circumstances. Two fundamental tenets of the profession are to be honest and trustworthy. Dishonesty is serious as it undermines trust in the profession.

11. The conduct brings the profession into disrepute and breaches the GOC Standards for Optical Students as set out in the APD being standards 7, 9, 10, 15, 16 and 18.

*7 Maintain adequate patient records;*

*9 Work collaboratively with your peers, tutors, supervisors or other colleagues in the interests of patients;*

*10 Protect and safeguard patients, colleagues and others from harm;*

*15 Be honest and trustworthy;*

*16 Do not damage the reputation of your profession through your conduct;*

*18 Be candid when things have gone wrong*

12. The Committee concluded that the facts admitted and found proved amount to misconduct. The Committee accordingly agreed with and accepted the APD recommendations as regards its finding on facts and misconduct.

### **Findings in relation to Impairment**

13. The Committee then considered whether the Registrant's fitness to train is currently impaired as a result of his misconduct. The Committee has exercised its own independent judgement in reaching its decision on impairment.

14. The Committee noted that the APD (at paragraph 33), did not contend that impairment arose under paragraph (a) of Dame Janet Smith's test in the Fifth Shipman Inquiry Report, namely that the practitioner "*has in the past acted and/or is liable in the future to act so as not to put a patient or patients at risk of unwarranted harm*". Rather, the APD contended that paragraphs (b), (c), and (d) were engaged as follows:

*"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; and/or*

*d. has in the past acted dishonestly and/or is liable to act dishonestly in the future."*

15. During the course of its deliberations on impairment, the Committee sought further information from the parties in respect of paragraph 38 of the agreement (set out above). In particular, it sought further information of the basis on which impairment was alleged by the GOC and agreed by the parties, noting in particular paragraph 49 of the Registrant's reflective statement dated August 2020 in which he referred to and considered the potential impact of his conduct in relation to patient harm.

16. Mr Taylor, on behalf of the GOC, clarified to the Committee that impairment was alleged on the public interest component only, and not on the component of public protection. Mr Taylor referred the Committee to an email from [Redacted] at Vision Express dated 2 April 2019 in which [Redacted] stated that “no there was no patient harm”, and “no, there have not been any other incidents relating to the registrants conduct”. Mr Taylor stated that based on this information and noting the test in the *Grant* case, the GOC concluded that the “public interest was sufficient for a decision on impairment to be made”. Mr Claxton, on behalf of the Registrant, had no observations.
17. In respect of impairment, the Committee disagreed with the position of the parties as set out in the APD.
18. The Committee noted that the Registrant has considered that his conduct had the potential to cause patient harm. He specifically accepts that a different clinician viewing falsified records could suspect that a patient was suffering from a disease or medical issue when this was not the case. The Registrant states “this could have deleterious consequences for an innocent person and possibly bring harm to the patient”.
19. In the Committee’s judgement, whilst not all of the retrospective amendments to patient records were of clinical significance, there were a number which, in the Committee’s view, could have potentially misled subsequent practitioners, and affect patient care. For example, in respect of Patient A the amendment by the Registrant that he had supplied a low vision aid when he had not; in relation to Patient B the Registrant claimed to have telephoned the patient and recorded that the patient was asymptomatic when this did not accurately reflect the sight test; in relation to Patient D the Registrant had retrospectively recorded the size of the visual loss when this did not accurately reflect the sight test, and in relation to Patient the Registrant amended the patients record to state that he had discussed with the patient’s mother possible surgery when this did not accurately reflect the sight test undertaken.
20. In the Committee’s view, had the falsified amendments to records not been detected there was a risk of potential harm to patients, particularly in view of the nature and potential consequences of some amendments (as evidenced above) and the number of records the Registrant amended. Although it was confirmed to the GOC that no patient harm had occurred, the Committee was not informed of how Vision Express came to this conclusion. For example, there is no information of an internal investigation conducted by Vision Express or follow up contact with each patient to establish there had been no patient harm. Accordingly, the Committee concluded that this was a case where public protection was relevant to its consideration to current impairment.
21. The Committee therefore decided to reject the APD.

22. Following the Committee's findings, the parties agreed to amend APD in light of the Committee's findings and resubmit this to the Committee in accordance with paragraph 8.6 of the APD Policy:

*8.6 If the panel do not agree with the agreed panel disposal report, the GOC and the registrant may agree to amend the report in light of the panel's findings and resubmit this to the panel at a reconvened hearing. Alternatively, the case will proceed under the usual hearings process.*

23. An amended APD was received by the Committee on the morning of 1 March 2022, signed and dated by Mr Taylor on behalf of the GOC, and the Registrant's representative. The amendments to the APD read as follows:

*34. Factors (a), (b), (c) and (d) are engaged in this case.*

*35. With regards to factor (a), the Council and the Registrant appreciate and accept that the circumstances presented a risk of harm to patients, as acknowledged by the Registrant in paragraph 49 of his reflective statement of August 2020.*

*39. The Registrant accepts that his fitness to train is currently impaired on the basis of both public protection and public interest grounds.*

24. The amended APD sets out that Mr Sujawal admits that his fitness to train is currently impaired on the basis of both public protection and public interest.

25. The Committee considered its findings on impairment in light of the amended APD. As set out above, the Committee considered that limb (a) of the Dame Janet Smith criteria was engaged, in so far as Mr Sujawal's conduct had the potential to place patients at a risk of harm in the past. The Committee considered that Mr Sujawal has shown insight into his failings by virtue of making the admissions contained within the APD, his reflective statements and representations, his deep regret and remorse, and his learning and remediation. In his reflective statement and representations, he has demonstrated what the potential impact of his misconduct could have had on patients as set out in paragraph 49 of his reflective statement dated August 2020, and, and further, in paragraph 26 where Mr Sujawal states:

*Breaching the standards for a GOC registrant is very grave and my transgressions are some of the most serious possible. I had falsified, amended and presented these records for assessment purposes. I worried deeply about bringing possible harm to the patients. Even being told by others that I hadn't harmed patients did not allow me to rest easy. I thought long and hard and tried to place myself in the shoes of the patient.*

26. Further, the Committee noted that Mr Sujawal has stated in his response to the GOC dated 5 August 2020:

*The GOC has obtained a clinical risk assessment report from Roma Malik. Roma Malik observes that “assuming the registrant takes action to remedy his apparent failings, the level of risk to the public is low”.*

27. In all the circumstances, although the Committee found Mr Sujawal's misconduct had placed patients at a risk of harm in the past, the risk to patient harm going forward was considered to be low.
28. The Committee therefore decided that the Registrant's current fitness to practise is impaired on both public protection grounds, as well as on the grounds of the need to uphold the wider public interest.
29. The Committee considered that this was a case where the wider public interest considerations were relevant. Mr Sujawal had admitted to dishonestly amending a number of clinical records retrospectively, submitting falsified patient records to the College of Optometrists as part of the stage 1 and 2 assessments, yet only admitting to the GOC and Registrar of having falsified two patient records when Mr Sujawal knew there were more than two patient records that had been falsified by him. The Committee considered such behaviour required a finding of current impairment in order to maintain the reputation of the profession and to uphold the standards required of a registered professional. Consequently, the Committee accepted the parties' position as set out in the agreement, that the misconduct of Mr Sujawal in this case is sufficiently serious so as to necessitate a finding of impairment. Accordingly, in the Committee's judgement, the Registrant's fitness to practise is impaired on the grounds of public protection and public interest.

#### **Decision on sanction**

30. The Committee noted the APD recommends a 9-month Suspension Order with no review and with no immediate order. The Committee is not bound by that recommendation, and it considered the sanctions available to it from the least necessary to the most severe - no sanction, financial penalty, conditional registration, suspension, erasure.
31. The Committee was aware that the purpose of sanction is to protect the public and uphold the public interest, and that any sanction must be proportionate. The Committee took into account the legal advice, the Hearings and Indicative Sanctions Guidance (December 2021) as well as other authorities set out in the agreed Report.
32. The Committee agreed with the aggravating and mitigating factors as set out in the APD. It first considered imposing no sanction or to apply a Financial Penalty Order. In light of its findings on impairment, the Committee was of the view that neither sanction would be sufficient in the public interest in upholding proper standards and maintaining public confidence in the profession. Further, the misconduct was not financially motivated, nor did it result in financial gain.

33. The Committee next considered Conditional Registration and Conditions of Practice. It was mindful of its earlier findings and that any conditions must be proportionate, workable and realistic. The Committee concluded that the findings were of a nature, namely repeated and deliberate dishonest conduct, that is not liable to be sufficiently and effectively controlled and managed by conditions of practice. In these circumstances, the Committee was not able to formulate proportionate and appropriate conditions that would be measurable and address the wider public interest.

34. The Committee next considered a Suspension Order. Suspension is appropriate when some or all of the following factors are apparent:

*Paragraph 21.29 of the Indicative Sanctions Guidance:*

*a. A serious instance of misconduct where a lesser sanction is not sufficient.*

*b. No evidence of harmful deep-seated personality or attitudinal problems.*

*c. No evidence of repetition of behaviour since incident*

*d. The committee is satisfied the registrant has insight and does not pose a significant risk of repeating behaviour*

*e. In cases where the only issue relates to the registrant's health, there is a risk to patient safety if the registrant continued to practise, even under conditions.*

35. The Committee agreed that (a)-(d) are relevant to the Registrant's misconduct. The Committee found that the Registrant has developed significant insight as demonstrated in his reflective accounts and response to the Allegation. It noted that the Registrant had considered the potential impact his misconduct could have had on patient safety. The Committee attached significant weight to the testimonials submitted on behalf of the Registrant. It noted that the writers of the testimonials were aware of the Allegation and spoke highly of the Registrant's professionalism and trustworthiness. The Committee did not consider the Registrant's dishonesty was a deep-seated attitudinal issue. There is no evidence of any repetition of the dishonesty since the incidents forming the Allegation in 2018. The Committee therefore concluded that, whilst there was a low risk of repetition, it appeared from the evidence before the Committee that, given the steps taken by the Registrant, the risk was diminishing.

36. The Committee therefore agreed with the APD that a 9-month Suspension Order was an appropriate and proportionate sanction which would serve to protect the public and the wider public interest. This sanction is required to reflect the seriousness of the findings and to uphold the confidence of the public in the profession.

37. The Committee carefully considered Erasure. This is a serious case of dishonesty which was deliberate and repeated. The Registrant has breached a fundamental tenet of his profession. However, in light of the mitigating factors identified, including his significant insight and journey since the Allegation, the Committee formed the view that Erasure from the register was not the only means of protecting the public and maintaining public confidence in the profession. It concluded that the Registrant's conduct was not fundamentally incompatible with registration, and that Erasure would be disproportionate.

38. In all the circumstances the Committee decided that a 9 months Suspension Order was necessary and appropriate to protect the public, to mark the seriousness of the conduct, to protect the reputation of the profession, to maintain public confidence and to declare and uphold proper standards.

### **Review Hearing**

39. The Committee considered that in light of all of its findings, particularly as to insight, the low risk of repetition, and no repetition since the incidents forming the Allegation over 3 years ago, that a review hearing before the expiry of the Suspension Order was not required.

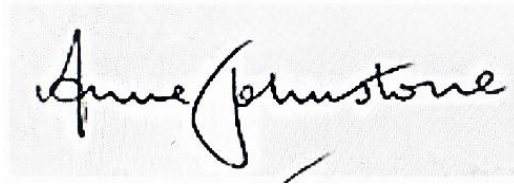
### **Immediate order**

40. The Committee agreed with the position of the parties that an immediate order for suspension was not required as an immediate order was not necessary in order to protect the public, nor was one required in the public interest or in the Registrant's own interests. In reaching this decision, the Committee considered there was a low risk of repetition; there had been no repetition since the incidents identified over three years ago; there was a low risk of patient harm; and the public interest was sufficiently addressed by the substantive order and would not be undermined if no immediate order were imposed.

### **Suitability of APD in this case.**

41. Finally, the Committee referred back to the Policy and paragraph 6.2, in order to satisfy itself that this case was suitable to be dealt with under the APD route. In all the circumstances, the Committee was satisfied that this case was suitable to be resolved by way of APD and imposes a sanction of 9 months suspension without a review.

**Chair of the Committee: Anne Johnstone**

A rectangular box containing a handwritten signature in black ink that reads "Anne Johnstone".

**Signed:**

**Date: 01 March 2022**

**Registrant: Shahid Sujawal**

**Signed: Present via video**

**Date: 01 March 2022**

<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).
<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.