

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

**GENERAL OPTICAL COUNCIL**

**F(24)24**

**AND**

**HOLLY BAILEY (D-35235)**

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**DETERMINATION OF A SUBSTANTIVE HEARING**

**2-5 DECEMBER 2024**

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<b>Committee Members:</b>	Sara Fenoughty (Chair) Ubaidul Hoque (Lay) Amanda Webster (Lay) Claire Cowen (Dispensing Optician) Philip Cross (Dispensing Optician)
<b>Clinical adviser:</b>	Dr Jenny Bearn
<b>Legal adviser:</b>	Paul Moulder
<b>GOC Presenting Officer:</b>	Dr Francis Graydon
<b>Registrant present/represented:</b>	Present and not represented
<b>Registrant representative:</b>	N/a
<b>Hearings Officer:</b>	Mr Terence Yates
<b>Facts found proved:</b>	1, 2, 3, 4.
<b>Facts not found proved:</b>	None
<b>Misconduct:</b>	Found

<b>Impairment:</b>	Impaired
<b>Sanction:</b>	Suspension Order 3 months (without review)
<b>Immediate order:</b>	None

### **ALLEGATION**

*The Council alleges that in relation to you, Holly Bailey (D-35235), a registered dispensing optician, whilst employed at Specsavers [redacted]:*

- 1) *On or around 10 June 2023, you used the store's supply of Prescription Only Medicine (POM), namely 1% Cyclopentolate, to administer on yourself [redacted]; and/or*
- 2) *Between January 2023 and June 2023, on multiple occasions you used the store's supply of Prescription Only Medicine (POM), namely 1% Cyclopentolate, to administer on yourself to [redacted]; and/or*
- 3) *Your actions as set out at 1) and/or 2) is dishonest and unprofessional in that you:*
  - a. *Took the store's supply of a regulated POM eye drop for personal use without the appropriate consent;*
  - b. *Intentionally used POM eye drops to [redacted] in order to deceive your colleagues;*
  - c. *Used the store's supply of a POM eye drops to administer [redacted];*
  - d. *Used 1% Cyclopentolate eye drops to administer [redacted];*
- 4) *[redacted].*

*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

### Preliminary matters

#### Public/private hearing

At the start of the hearing, the Registrant applied to the Committee for it to sit entirely in private. The Registrant submitted that the whole of the hearing would necessarily entail reference to matters relating to [redacted] and she wished the hearing to be conducted in private.

Dr Graydon submitted that there is a public interest in conducting hearings in public; matters of public interest arose in the case. He acknowledged that matters relating to the Registrant's [redacted] must be heard in private. Dr Graydon submitted that the hearing should be conducted partly in private.

The Legal Adviser referred the Committee to Rule 25 of the General Optical Council (Fitness to Practise) Rules Order of Council 2013 (as amended) ("the Rules"). He advised that the Rule 25(1) required a 'public' hearing in support of the principle of open justice. However, the Committee had a discretion to sit wholly or partly in private, if the interests referred to in Rule 25(2) outweighed the public interest. Further, the hearing of matters relating to the Registrant's [redacted] must be conducted in private.

The Committee acknowledged the requirement to sit in private to hear matters relating to the Registrant's [redacted]. It acknowledged that there would be difficulty for the unrepresented Registrant to fully present her case and, at the same time, to be cognisant of the requirement to move in and out of the public hearing. The Committee accepted the Registrant's submission that her evidence and her case were very much concerned with [redacted] matters.

The Committee decided that the fair course was to move into a private hearing at any point where the Registrant is addressing the Committee, whether giving evidence or making submissions. Apart from this, the Committee decided to sit in public, moving into private as required. The Committee was satisfied that this course struck a fair balance between protecting the Registrant's interests and the public interest.

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

The Registrant admitted particulars 1, 2 and 3 of the Allegation at the outset of the hearing. The Chair of the Committee announced those parts of the allegation proved by reason of the Registrant's admissions, in accordance with Rule 46(6).

## **Background to the allegations**

The Registrant is a Dispensing Optician ("DO") registered with the Council since 27 October 2021. On 09 August 2023, a referral to the Council was made concerning the Registrant by the Dispensing Manager at Specsavers [redacted] following her summary dismissal.

In the referral it was alleged that the Registrant had stolen Prescription Only Medicine (1% Cyclopentolate drops) from her employer while at work. It was further alleged that the Registrant had self-administered the medication to *"fake signs of migraine, with the simple intention to deceive to leave work early"*.

It was also alleged in the referral that the Registrant had made statements describing herself as a [redacted] and various references to [redacted].

The Committee was provided with a hearing bundle, together with a skeleton argument on behalf of the GOC. The hearing bundle included signed witness statements from: the Optometry Director; the Dispensing Manager; the DO and Contact Lens Manager; and the Practice Manager of Specsavers [redacted]. The bundle also included a report and documents from the Registrant's [redacted], documents from [redacted] and the Registrant's own representations and her further comments, having considered the GOC evidence.

In addition, the Registrant provided a referral letter from her [redacted] and two character references.

## **Summary of Evidence**

As the GOC's evidence in support of particular (4) of the Allegation, Dr Graydon took the Committee to the report of the [redacted], dated 02 April 2024 and the [redacted] notes contained in the documentary evidence.

The Registrant gave evidence to the Committee that she [redacted]. She had worked whilst at college and experienced stress whilst studying for her DO course. The

stress had abated after the end of college but had re-surfaced when she had been promoted into a managerial role at work.

The Registrant stated that she [redacted]. The Registrant also provided her two statements which were contained in the hearing bundles.

[Redacted]

The Legal Adviser advised the Committee that, as regards the remaining factual particular which had not been admitted, the GOC bore the burden of proof on the 'balance of probabilities'. He advised the Committee that the interpretation of particular (4) was a matter for the Committee, but it must read the particular together with the 'stem' of the Allegation. The Committee must decide whether the GOC had discharged the burden of proving the particular on the evidence before it.

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

The Committee had found the facts in particulars 1, 2 and 3 proved by virtue of the Registrant's admission, in accordance with the Rules. The remaining factual particular, which had not been admitted, was particular (4).

The Committee carefully considered the evidence and the parties' submissions. It accepted the advice of the Clinical Adviser and the legal advice of the Legal Adviser.

The Committee took into account that it had documentary evidence before it from the Registrant's [redacted]. That evidence included a [redacted] and her engagement with the process.

The Committee first considered the meaning of the particularised allegation. On its face, the allegation read that "[The Registrant] a registered dispensing optician, whilst employed at Specsavers [redacted]: (4) You [redacted] set out in Schedule A" and Schedule A read: [redacted].

The Committee took into account the GOC's submission that its case is that the Registrant currently [redacted]. The Committee bore in mind its duty to protect the public and the purpose of regulation. The Committee decided that it must read particular (4) together with the 'stem' of the Allegation as asserting that the Registrant had a continuing [redacted], which had existed at the time of her employment, and which was still current. The Registrant's position was that having sought the appropriate help from [redacted].

[redacted]

The Committee found particular (4) proved.

### **Findings in relation to misconduct and [redacted]**

The Committee heard submissions on behalf of the Council and the Registrant. It accepted the advice of the Legal Adviser.

Dr Graydon took the Committee to the GOC's written skeleton argument. He laid out there the key cases on the meaning of 'misconduct'. Dr Graydon submitted that there were several professional standards engaged and the Registrant's falling short of the Standards was serious. Dr Graydon submitted that breaches of the GOC Professional Standards 16, 17 and 19 were involved.

Dr Graydon submitted that the Registrant's dishonesty had involved several layers. He said that the Registrant had taken the prescription only medicine ("POM") and used it for herself, intending to deceive her colleagues. She knew that POM had to be prescribed by a doctor and dispensed by a pharmacist. Dr Graydon submitted that this is a dishonesty case and dishonesty in professionals is a serious matter.

Dr Graydon further submitted that there was no evidence to gainsay that the Registrant has an [redacted] and that it impacted on the workplace. The Registrant has a history of [redacted] this was apparent in the evidence and the Registrant's own account.

The Registrant admitted that she had not behaved in a proper way. She submitted that, at the time, she had been incredibly stressed in her role as a manager and not capable of functioning appropriately. The Registrant accepted that she had breached the standards at the time. She said that she had been heavily affected by a bereavement, which had been a major trigger for her stress.

The Legal Adviser advised the Committee that it had to consider whether, in its judgement, its findings of fact demonstrated that the Registrant had engaged in misconduct. For the purposes of the statutory ground of misconduct, the question was whether there had been serious professional misconduct.

In addition, the Legal Adviser advised the Committee that it also had to determine whether the [redacted] in Schedule A, which it had found proved, amounted to [redacted]. Both issues, misconduct and [redacted], are matters of the Committee's own judgement, not involving a burden or standard of proof.

The Committee considered its findings of fact in relation to particulars 1 to 3 of the Allegation. Particular 1 amounted to the Registrant on one occasion having

dishonestly taken for her own use a POM which had belonged to her employer and used it to deceive her colleagues as to her [redacted]. Particular 2 concerned similar misconduct, but on multiple occasions. Particular 3 specified the reasons for which the misconduct in particulars 1 and 2 was said to be dishonest. The Committee was careful to avoid any risk of 'double-counting' particulars 1 and 2, due to the dates alleged.

The Committee concluded that the Registrant, by her misconduct had breached important professional standards, namely:

***“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 you or your profession.*

*17.3 Be aware of and comply with the law and regulations that affect your practice and all the requirements of the General Optical Council.”*

The Committee found that there had been a lack of honesty and integrity on the part of the Registrant by her taking the POM and her deception of her colleagues. This would alarm any member of the public and undermine public confidence. The Registrant had damaged the reputation of the profession by her misconduct.

The Committee did not find that the misconduct engaged the specific standard of a duty of candour (Standard 19), since this was more directed towards conduct in post-event investigations, which was not directly included in the Allegation.

The Committee took into account that, in each case of taking the POM it had been a deliberate, calculated act. There had been more than one occasion on which it had occurred, the Registrant had breached the trust of her employer and the confidence and mutual trust between colleagues. The Committee took into account that, as a professional person who would have been aware of the importance of the POM regime and protections, the Registrant had chosen to disregard these important safeguards.

Even though the Registrant was suffering at the time from a [redacted]. The Registrant herself had now reflected that she was 'disgusted' by her actions at that time.

The Committee was clear that, considered separately or together, the misconduct in particulars 1, 2 and/or 3 would be regarded as deplorable by fellow professionals and was serious professional misconduct.

[Redacted]

The Committee found that the admitted and proved facts, in regard to particulars 1, 2 and 3 of the Allegation amount to misconduct and those found proved in relation to particular amount to [redacted].

### **Findings regarding impairment**

The Committee has heard submissions from Dr Graydon on behalf of the Council and from the Registrant. It has accepted the advice of the Clinical Adviser and the Legal Adviser.

The Registrant gave evidence to the Committee at this stage of the hearing. The Registrant told the Committee that she did not consider her fitness to practise to be currently impaired by reason of [redacted] at present. She stated that she accepted that [redacted].

The Registrant stated that she is now much more open with colleagues and is looking after herself. She felt that she benefits from her voluntary activities and looking after her [redacted].

[Redacted]

The Registrant referred to the Committee's finding of misconduct. She stated that while she did not seek to excuse her actions, she was very sorry for them. The Registrant stated that she had been in a very great deal of mental distress at the time. [Redacted]. The Registrant acknowledged that she had known her actions were wrong at the time and said that this had added to her stress at the time and accounted for her muddled thinking and bad decision-making.

The Registrant stated that, at the time that she had written her statements and sought references, she had not been aware that the Allegation was addressing her current [redacted] whilst at the Specsavers [redacted] branch, due to a level of



ambiguity in the wording of the Allegation. As a result, she suggested, reference to her [redacted] had not appeared in the character references or her own statements.

The Registrant stated that she did not believe that she had let her patients down, in the sense that they had not received less care from her. She accepted that it could be said that she had let them down by her lack of integrity. She said that she recognised that dishonesty in a professional is serious. The Registrant said that patients needed to be able to trust the professional. The Registrant stated that she had undertaken Continuing Professional Development (“CPD”) since the events and, with the permission of the Committee and no objection from Dr Graydon, provided further evidence of the CPD.

Dr Graydon referred the Committee to the submissions on impairment in the skeleton argument. He submitted that the Registrant’s misconduct and her [redacted] engaged all four ‘limbs’ of the test of impairment from the 5<sup>th</sup> ‘Shipman’ Report referred to in *CHRE v NMC & Grant* [2011] EWHC 927 (Admin).

Dr Graydon submitted that the Registrant’s conduct had impacted on her colleagues and had a knock-on impact on patients. He said that the Registrant’s sudden absence from work would have meant lost appointments for patients, although there was no evidence of patient harm and none had been alleged. He submitted that the Registrant has limited insight; she had not considered the impact of her dishonesty or the impact of her actions on her colleagues in the evidence she had provided, beyond some reference to the store management. Dr Graydon submitted that there is a risk of the Registrant repeating her misconduct. He referred to the ‘multi-layered’ or ‘multi-faceted’ nature of the dishonest misconduct.

Dr Graydon submitted that public confidence in the profession would be undermined unless there is a finding of impaired fitness to practise and he referred again to the Registrant’s alleged lack of full insight.

[Redacted]

The Legal Adviser advised the Committee that it had to decide whether, taking into account the evidence and the submissions together with its findings, the Registrant’s fitness to practise is currently impaired, either by her misconduct and/or her [redacted]. He referred the Committee to the GOC’s ‘*Hearings and Indicative Sanctions Guidance*’ (updated November 2021) (“the SG”).

The Legal Adviser advised that impairment can be found on more than one basis. Impairment may be found on the basis that the Registrant is personally impaired and there is a risk of repetition of misconduct or impairment by [redacted]. Alternatively, it

may be found where there has been a breach of fundamental professional tenets, because a finding of impairment is necessary for wider public interest reasons, such as the need to uphold and maintain public confidence in the profession.

The Committee found the Registrant to be a straightforward, candid and credible witness, who gave evidence with an open demeanour. The Committee bore in mind that the Registrant had not been represented in the hearing, but she had fully engaged with the questioning and been very frank with the Committee.

The Committee considered that the evidence was clear that the Registrant [redacted].

[Redacted]

The Committee concluded that the Registrant is not currently impaired by reason of her [redacted].

The Committee went on to consider impairment by reason of misconduct. It bore in mind its findings that particulars 1, 2 and 3 of the Allegation were serious professional misconduct and had been conduct which professionals would regard as 'deplorable' conduct. The Committee took into account that dishonesty in professionals is a serious matter and it may indicate attitudinal issues which are a threat to public confidence in the profession.

The Committee took into account that the dishonesty in this case is 'multi-factorial' in that the Registrant took her employer's POM eye drops without permission for her own use, she had used the eye drops to [redacted] to deceive her colleagues and she had acted in breach of the proper controls. Although the Registrant had admitted dishonesty and so the Committee had not been required to make a finding, it was in no doubt that ordinary members of the public would consider that these intentional and calculated acts had been conducted with a dishonest state of mind.

The Committee acknowledged that, to her credit, the Registrant had not sought to excuse or minimise her conduct as being a result of her [redacted]. She had admitted the dishonesty at an early stage. The Committee was also swayed by the advice of the Clinical Adviser [redacted]. Having found the Registrant to be a credible and reliable witness, the Committee accepted that she had been suffering from stress in the workplace and the [redacted].

The Committee considered the four bases for impairment, referred to in the case of *Grant* and the test for impairment, namely:

*“Do our findings of fact in respect of the doctor’s misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/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; and/or*

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

The Committee did not accept the submission that there had been a risk of harm caused by the Registrant’s dishonest actions; there was no allegation and no evidence that harm had been caused to patients. It accepted the Registrant’s evidence that, after she left work, others would have been present to see patients. The Committee did find, however, that the Registrant’s misconduct had brought the profession into disrepute, it had breached important standards, as referred to above, and her actions had been dishonest.

Although it is correctly stated that dishonesty is hard to remediate, the Committee took into account that in this case there was a finding of an underlying active [redacted]. The Committee concluded that there were not attitudinal issues on the part of the Registrant. It concluded that her misconduct was related to her [redacted] and was remediable.

The Committee considered to what extent the Registrant has undertaken remediation of her misconduct. It took into account her admission of the facts, including dishonesty, indicated at the outset of the hearing and her expressions of apology and regret, which the Committee felt are genuine. The Committee accepted the Registrant’s evidence of her having undertaken CPD and also took into account her two written statements, in which she explained her conduct. The Committee accepted the oral evidence of the unrepresented Registrant, who explained her understanding of the effect on the public impression of the profession and her colleagues arising from her misconduct.

The Committee reminded itself of its conclusion of the risk of repetition in relation to the [redacted] of the Registrant. It also took into account the Registrant's character references. Although these did not directly acknowledge the detail of the Allegation, both spoke positively of the Registrant's character currently and the reference from the Practice Owner indicated an awareness of the GOC investigation. The Committee gave some weight to these referees with whom the Committee was told the Registrant has been working for a considerable period after events in the Allegation.

The Committee concluded, in all the circumstances, that the Registrant has gained sufficient insight into her past difficulties and has undertaken sufficient reflection and remediation for it to conclude that it is highly unlikely that the Registrant will repeat her past misconduct.

The Committee took into account, however, that the Registrant did not rely on her [redacted] as an excuse for her misconduct. Albeit that the Registrant's acts had been impulsive, they had been repeated, there had been a degree of calculation and deception of the Registrant's colleagues. The proper controls for POM medications had been ignored. The Committee acknowledged that, as set out in paragraph 17.8 of the SG, there is a 'scale' of dishonest conduct and it can take various forms. In this case, the Committee considered that there had been significant breaches of the Standards of the GOC, in paragraphs 16.1, 17.1 and 17.3 (above). It considered that honesty and integrity are fundamental principles for the profession. The Committee concluded that, notwithstanding its conclusion on the risk of repetition, the seriousness of the misconduct meant that the Committee had to make a finding of impairment on the basis that this was necessary in order to maintain public confidence in the profession and to promote proper professional standards.

The Committee found that the Registrant's fitness to practise as a Dispensing Optician is impaired.

## **Sanction**

The Committee heard submissions from Dr Graydon on behalf of the Council and from the Registrant. It accepted the advice of the Legal Adviser.

The Registrant gave further oral evidence to the Committee at this stage. She referred the Committee to the section in the Sanctions Guidance ("SG") on taking 'no further action' and asked the Committee to consider this course. The Registrant said that she had made huge steps forward personally and professionally in the past

year. She had reflected on her mistakes and was “truly and deeply sorry”. The Registrant stated that she now works in a wonderful practice and feels well-supported. She had not yet discussed possible sanctions of suspension or erasure with her employer, but was due to in the days after the hearing. The Registrant said that there was no place for unregistered staff in the practice and she feared she might lose her position, even if suspended for a short period. The Registrant said that she loved her job. She would not be at risk of losing her accommodation, but would suffer financially with managing daily expenses, were she to be out of work.

Dr Graydon referred the Committee to the GOC’s written skeleton argument. This reminded the Committee of the principles of proportionality in imposing a sanction and the need to weigh the public interest with the Registrant’s interests. The Committee was referred to the case of *Bolton v Law Society* [1994] 2 All ER 486 and the remarks of Sir Thomas Bingham MR. Dr Graydon also referred the Committee to *PSA v GDC & Hussain* [2019] EWHC 2640 (Admin) which states that dishonesty in a health care professional is a serious matter, findings of dishonesty lie at the top end of a spectrum of gravity. Dr Graydon referred the Committee to the case of *Lusinga v NMC* [2017] EWHC 1458 (Admin) and the ‘scale’ of dishonesty. He submitted that the case is not at the most, nor least serious end of the scale. He also referred the Committee to *Sun v GMC* [2023] EWHC 1515 (Admin). He submitted that the case helped with the consideration of the interplay between misconduct and [redacted]. He said that the [redacted] element did not exonerate or excuse the misconduct.

Dr Graydon made submissions on the mitigating and aggravating features of the case and the skeleton argument referred to the multiple breaches of the Standards. He submitted that the GOC’s view is that a suspension order is the appropriate sanction in this case. Dr Graydon submitted that a review should be directed and the SG indicated that this was the usual course and would serve the public interest. He also reminded the Committee that, in accordance with *Bolton v Law Society* [1994] 2 All ER 486, the reputation of the profession as a whole outweighs the fortunes of any particular member of the profession.

The Registrant submitted that the Committee might consider that the finding of misconduct and impairment was sufficient to mark the gravity of the case and it could consider taking ‘no further action’. The Registrant felt that she had undertaken a lot of remedial actions. She agreed that she had done wrong in the past.

The Legal Adviser advised the Committee that it must consider whether and if so which sanction to impose under s13F and s13H of the Opticians Act 1989 (as amended). It must impose the least restrictive sanction which met the level of impairment and met the statutory objectives. The Committee must be consistent with

the basis of impairment it had found and its previous decisions. He referred the Committee again to the SG and advised the Committee to start its consideration from the lowest sanction, moving upwards as appropriate. The Registrant's interests had to be balanced with the public interest, he advised. The Committee had to deliberate in private and produce its its written reasons for any sanction imposed.

*The Legal Adviser referred the Committee to the case of Simawi v GMC [2020] 2168 (Admin) and the review in that case by the Court of other cases and principles relating to sanctions for dishonesty. He also referred the Committee to Lusinga and paragraph 17.8 of the SG and offered advice on the case of Sun v GMC referred to above.*

The Committee considered the sanctions available to it from the least to the most severe. The Committee was aware that it could decide to impose no sanction, a financial penalty, a conditional registration order, a period of suspension, or erasure.

The Committee paid careful regard to its previous findings, the evidence received at this stage and the parties' submissions. It closely considered and was guided by the SG (updated November 2021).

The Committee identified certain aggravating and mitigating features of the case. It aggravated the case that there had been repeated dishonesty and a breach of the trust of the Registrant's colleagues. The Committee considered that the heart of the case involved a breach of the professional Standards' requirement to act with honesty and integrity, which had also brought in the other Standards mentioned. Although the Allegation had a date range from January to June 2023, the Committee noted that the admitted acts amounted to [two] instances in which the Registrant took the POM.

The Committee acknowledged the Registrant's genuine remorse and apology for her actions. She had fully engaged with the regulatory proceedings. It had found that the Registrant had been suffering from workplace stress at the time and [redacted]. The Committee had found that the Registrant had developed significant insight into her misconduct and had made early admissions. There was no evidence of harm having been occasioned to patients.

The Committee was assisted by the reference to the case of *Sun v GMC* [2023] EWHC 1515 (Admin). It accepted the legal advice that notwithstanding its acceptance that evidence of [redacted] difficulties may be a mitigating factor, the weight to be given to that factor is a matter for the Committee's own assessment.

The Committee was mindful that the caselaw in general shows that dishonesty in professionals is a serious matter, particularly when coupled with a lack of insight. The matter of personal mitigation is generally of less weight when deciding sanction. There is a 'spectrum' of dishonesty (*Lusinga*) and it is for the Committee to determine where on the range of seriousness the particular case lies.

*The Committee gave some weight to its finding that the Registrant had at the time a [redacted] which caused her to act impulsively to escape from stress. This mitigated the seriousness of the conduct to a degree. It considered that the dishonesty in this case was not at the highest end, not involving for example fraud or financial gain. Taking into account the [redacted], the Committee found that the dishonesty was more towards the lower end of the spectrum suggested in Lusinga.*

The Committee bore in mind that it should address the available sanctions in order, starting with the least serious and moving upwards in accordance with the seriousness of the impairment. The chosen sanction had to be the least restriction which met the need to protect the public interest. The Committee had to balance the Registrant's interests with this.

The Committee started by considering taking 'no further action' despite its finding of impairment. The Committee noted the SG at paragraph 21.3 and 21.4 stated that the Committee would 'usually' take action following a finding of impairment. However, there may be exceptional circumstances in which a Committee might be justified in taking no action.

The Committee noted that the Registrant had asked the Committee to consider this course, relying on the Committee's finding that the Registrant has taken big steps forward in managing [redacted], has reflected on her mistake, learnt her lesson and was truly deeply sorry. However, giving due respect to the unrepresented Registrant, the Committee concluded that these matters were not so exceptional that they warranted a departure from the starting point that a sanction would generally follow from a finding of dishonesty.

The Committee did consider whether the circumstances of the Registrant's [redacted] might be an exceptional circumstance or the fact that the Committee had found no lasting attitudinal issues. The Registrant admitted that she knew that what she was doing was wrong. However, it concluded this case was not exceptional because the [redacted] was not relied on as an excuse for the Registrant's dishonesty. The lack of underlying attitudinal issues did not excuse that the dishonest acts had occurred.

The Committee took into account that it had found it necessary to mark the misconduct with a finding of impairment in order to maintain public confidence in the profession. It concluded that, to end the case with no further action would not satisfy that aim. Accordingly the Committee decided not to finish with 'no further action' taken.

The Committee is permitted by s13H of the Opticians Act 1989 (as amended) to impose a financial penalty, in isolation or in addition to other sanctions. However, the Committee read from the SG that this course may be more appropriate in cases involving financially motivated misconduct or which resulted in financial gain. Although the Registrant had deprived her employer of a certain amount of the eye drops, this was not a case in which it was suggested that this had been for financial gain. The Committee decided that this was not an appropriate sanction.

The Committee considered whether it should impose conditional registration, which may be imposed for up to three years. It noted from paragraphs 21.15 to 21.25 of the SG that the purpose of conditions is to protect the public, but that conditional registration is most appropriate in cases involving a lack of competence, or where the subject has [redacted]. The present case is now a misconduct case alone. The Committee had already decided that any repetition is highly unlikely and the aim of sanction now concerned maintenance of public confidence.

The Committee decided that conditional registration did not address the finding of impairment in this case.

The Committee next considered the sanction of suspension, which is appropriate when some or all of the factors (non-exhaustively) listed in paragraph 21.29 of the SG are present. These are:

- "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."*



The Committee considered that the dishonest misconduct in this case is serious, *but not at the highest end for the reasons set out above*. A lesser sanction than suspension is not sufficient. The Committee had found that there were particular circumstances surrounding the Registrant's dishonesty, which were unlikely to recur, and there were no attitudinal issues involved. It had no indication of any repetition since the incidents in question, the Registrant's character references in particular were positive about her current performance. The Committee is satisfied that the Registrant has insight. All of these factors indicated that suspension is appropriate in this case.

The Committee went further to consider whether a sanction of erasure was necessary, as the SG discussed in paragraphs 21.35 to 21.39. However, the Committee had found that there was no harm caused to patients, and although there had been a serious departure from the professional standards, the Registrant did not have a persistent lack of insight into the seriousness of her actions.

The Committee concluded that, taking into account the guidance in paragraph 21.37, that there is a lesser means of maintaining public confidence in the profession and upholding professional standards. Having heard from the Registrant and made the findings set out above, the Committee concluded that her actions were not fundamentally incompatible with her continuing registration.

Evidence had been received and accepted by the Committee from the Registrant concerning the effect of sanctions on her. The Committee acknowledged that imposing a suspension, even for a short period might put the Registrant in jeopardy of losing her current position. This would cause the Registrant difficulties with paying for her day-to-day living expenses (though not apparently her accommodation).

The Committee carefully weighed this information with the public interest. However, the Committee took into account that personal mitigation may be given less weight in the sanction stage (*Bolton*) as the reputation of the profession takes precedence. The Committee concluded that the need to maintain public confidence in the profession by imposing a period of suspension outweighed the Registrant's interests.

The Committee concluded that the appropriate and proportionate sanction is a period of suspension. The Committee bore in mind that it does not require the Registrant to undertake any further remediation. The Committee must impose a period of suspension which is the minimum to mark its disapproval of the misconduct and send a message to the profession and to the public of acceptable standards of conduct. The Committee decided that the appropriate period is a suspension order for three months.

The Committee decided that, since there is no requirement for any further remediation and its order is to maintain public confidence and professional standards, there would be no point in a review of the suspension order. The suspension order will lapse at its end date.

### **Immediate order**

The Committee has heard submissions from Dr Graydon on behalf of the Council and from the Registrant. It has accepted the advice of the Legal Adviser. The Legal Adviser advised the Committee that it must be satisfied that it is necessary for protection of the public, is otherwise in the public interest or the Registrant's interests to impose an immediate suspension.

The Committee bore in mind that it had not found impairment on public protection grounds. It did not consider that an immediate order was otherwise in the public interest, nor is it in the Registrant's interests.

For the reasons above, the Committee determined not to impose an immediate suspension order to cover the 28 days' appeal period before the substantive order comes into effect. The sanction given will come into effect after the appeals period should an appeal not be lodged.

**Chair of the Committee: Sara Fenoughty**



**Signature**

**Date: 2 December 2024**

**Registrant: Holly Bailey**

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

**Date: 2 December 2024**

<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.