BEFORE THE FITNESS TO PRACTISE COMMITTEE
OF THE GENERAL OPTICAL COUNCIL

GENERAL OPTICAL COUNCIL

AND

ZAHIR IBRAHIM – D-14908

DETERMINATION OF A SUBSTANTIVE HEARING
23 SEPTEMBER – 01 OCTOBER 2021
27 JANUARY – 04 FEBRUARY 2022
13 JUNE – 17 JUNE 2022
08 AUGUST – 11 AUGUST 2022

| Committee Members: | Ms Valerie Paterson (Chair/Lay)  
| | Mr Ben Summerskill (Lay)  
| | Mr Nigel Pilkington (Lay)  
| | Ms Sarah Baylay (Dispensing Optician)  
| | Ms Jessica Shrimplin (Dispensing Optician, 23 September – 1 October 2021 only) |
| Clinical adviser: | N/A |
| Legal Adviser: | Mr Graeme Henderson |
| GOC Presenting Officer: | Ms Grace Hansen (23 September – 1 October 2021)  
<p>| | Mr Shaun Moran (27 January – 4 February 2022) (13 June – 17 June 2022) (08 August – 11 August 2022) |
| Registrant present/represented: | Present but not represented |</p>
<table>
<thead>
<tr>
<th>Registrant representative:</th>
<th>Not represented</th>
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<tbody>
<tr>
<td><strong>Hearings Officer:</strong></td>
<td>Ms Arjeta Shabani (23 September – 1 October 2021) Ms Abby Strong-Perrin (27 January – 4 February 2022) (13 June – 17 June 2022) (08 August – 11 August 2022)</td>
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<tr>
<td><strong>Facts found proved:</strong></td>
<td>All (Particular 5 was only found proved with regard to [Redacted] posts)</td>
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<td><strong>Facts not found proved:</strong></td>
<td>Not found in Particular 5 in relation to an intention to conceal from Patient H and/or Patient H’s carer.</td>
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<tr>
<td><strong>Misconduct:</strong></td>
<td>Found in relation to Particulars 1 (a)-(k), 2,3, 4,5, 6(a), 7 (in relation to 6(a), 10,11 (a)&amp;(b), and 13. Not found in relation to Particulars 6(b), 7 (In relation to 6(b), 8, 9 and 12.</td>
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<tr>
<td><strong>Impairment:</strong></td>
<td>Impaired</td>
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<td><strong>Sanction:</strong></td>
<td>Erasure</td>
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<td><strong>Immediate order:</strong></td>
<td>Yes</td>
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ALLEGATION

The Council alleges that you, Mr Zahir Ibrahim (D-14908), a registered dispensing optician:

1. Posted written posts and/or videos to [Redacted]:
   a. On 5 May 2017 which gave the impression that colour tinted lenses alone could straighten Patient P’s eyes;
   b. On 7 May 2017 which stated that colour tinted spectacles can be used to try "to reduce the disabling effects of disorder found not only in Learning difficulties (reading and writing) but also those found in AUTISTIC SPECTRUM DISORDERS";
   c. On 10 May 2017 which gave the impression that colour tinted lenses disabled the effects of hypermobility for Patient A;
   d. On 15 July 2017 which stated that "COLOUR SPECTACLE" can be used "to disable the effects of the disorders";
   e. On and/or around 2 August 2017 which gave the impression that colour tinted lenses:
      i. Reduced the impact of multiple sclerosis on Patient D's mobility;
      ii. Enabled Patient D to walk without support from a functional electrical stimulation machine;
      iii. Enabled Patient D to walk more quickly;
      iv. Improved the posture of Patient D;
   v. Enabled Patient D to walk in a straighter line;
f. On 14 August 2017 and one or more unknown dates which gave the impression that colour tinted lenses alone had an impact on Patient H's ability to read;

g. On 20 October 2017 which gave the impression that colour tinted lenses enabled Patient J to walk without assistance;

h. On 20 October 2017 which gave the impression that colour tinted lenses can have an impact on the symptoms or effects of learning difficulties and/or autistic spectrum disorders, and/or mental health issues;

i. On 21 February 2018 which gave the impression that colour tinted lenses disabled the effects of vertigo for Patient K;

j. On 21 February 2018 which gave the impression that colour tinted lenses could be used to manage and/or treat and/or improve learning difficulties and vertigo or their symptoms;

k. On an unknown date which gave the impression that colour tinted lenses can have an impact on bladder control for Patient L;

2. One or more of the impressions given at 1 were inappropriate and/or misleading in that they were not supported by objective evidence or were supported by controversial evidence;

3. Failed to explain in the [Redacted] posts and/or videos that one or more of the impressions given at 1 were not supported by objective evidence or were supported by controversial evidence;

4. The impression given at 1.f was inappropriate and/or misleading and/or inaccurate in that you did not explain that the refractive correction in Patient H's glasses had an impact on his ability to read;

5. Your conduct at 1.f was dishonest in that you knew that the refractive correction in Patient H's glasses had an impact on his ability to read and intended to conceal this from Patient H and/or Patient H's carer and/or the viewers of the [Redacted] posts and videos;
6. Posted written posts and/or videos to [Redacted]:
   a. On 5 May 2017 which gave the impression that colour tinted lenses reduced body movements for Patient P;

   b. On 17 July 2017 and I or on one or more unknown dates, which gave the impression that colour tinted lenses prevented or reduced twitching in Patient B's hands and I or feet;

7. The impressions given at 6.a and/or 6.b were inappropriate and/or misleading in that you did not explain why colour tinted had or might have had an impact on the patient's behaviour;

8. On 11 August 2017 and I or an unknown date posted a written post and/or video to [Redacted] in relation Patient E;

9. Your conduct at 8 was inappropriate and/or misleading in that you failed to explain that the evidence supporting the use of colour tinted lenses was controversial;

10. On 12 August 2017 posted a video to [Redacted] in which you stated "the colour glasses has in, in essence, caused the medication dosage to come down a bit";

11. Your conduct at 10 was:
   a. Outside the scope of your practice;
   b. Inappropriate and/or misleading in that you failed to explain that the evidence to support this statement was controversial;

12. On 21 February 2018 posted to [Redacted] a post which stated that a patient "had nothing to lose" by trying colour tinted lenses;

13. Your conduct at 12 was inappropriate and/or misleading in that you failed to explain that interventions carry a cost in terms of expense, and/or time,
and/or raised expectations;

AND by virtue of the facts set out above, your fitness to practise is impaired by reason of Misconduct
DETERMINATION

Background to the allegations

The Registrant is a registered Dispensing Optician having first registered with the Council in June 1996.

On 9 March 2018 the Council received a referral in respect of [Redacted] posts from the respondent’s business, [Redacted]. It was alleged that the registrant had made misleading claims, on this company [Redacted] page, in relation to the application of colour tinted lenses for the treatment of conditions, including autism, dyslexia, dyspraxia, migraine, headaches and multiple sclerosis (MS).

Prior to this hearing commencing the Registrant lodged a considerable amount of background material in respect of the earlier, interim, stages of his regulatory process. He was unhappy at the time that the regulatory process has taken. He disclosed that he has been on an interim suspension order. The interim order was initially made on 18 May 2018 for a period 18 months. It has since been extended by the High Court and reviewed.

The Registrant has been made aware, through discussions with the Legal Adviser, that this Committee do not have the powers to review the activities of the Council and determine his various complaints against both the Council and the Solicitors instructed by the Council. It was unusual for a Committee to be made aware of the existence of an interim order at the fact-finding stage. The fact that an interim order had been made would not influence its determination on the facts.

Application for the Exclusion of an expert witness

At the start of the hearing the Registrant indicated that he wished to address the Committee on a preliminary legal argument in terms of Rule 46 (3) of the General Optical Council (Fitness to Practise) Rules, Order of Council 2013 (The Rules).

He invited the Committee to exclude the evidence of the expert witness instructed by the Council. He submitted that, as a matter of Law, an expert witness had to be practising in the relevant field they were commenting upon at the time of the events in question. He referred to guidance, issued by the College of Optometrists, which stated:

“...in most cases you should be in current clinical practice in the area under consideration.”

The Registrant drew to the attention of the Committee a passage in an expert report dated 22 April 2021, provided to the Council by Dr Jennifer Turner, which stated that she:

“..undertook post graduate training, a 10-credit module: Eyecare for people with learning disabilities and additionally a 20 credit module: Paediatric Eyecare. The work continued until I left in 2015 to pursue post doctorate research work and clinics in private practice.”
He submitted that the passage, marked in bold for emphasis, indicated that the expert ceased to be an expert when she left in 2015. It was unlikely that she would continue in dealing in eyecare for people with learning difficulties after that point. The Registrant, accordingly, invited the Committee to exclude her evidence on the basis that she did not have the expertise to comment on events.

Ms Hansen on behalf of the Council invited the Committee to refuse his application. She submitted that the Committee should have regard to the guidance issued by the Supreme Court in the case of Kennedy v Cordia Services Limited [2016] UKSC 6. The usual means of challenging the expertise of a witness would be by cross-examining them. The Registrant’s objection was based upon one sentence in her report. She submitted that report contained other passages that contradicted the Registrant’s assumptions.

Ms Hansen then referred the Committee to the guidance relied upon by the Registrant and observed that the part marked in bold represented a significant qualification:

“in most cases you should be in current clinical practice in the area under consideration”.

Ms Hansen observed that this was not a run of the mill case and she stated that in more obscure areas where the profession operates it would be more difficult to find an expert witness whose experience was a precise match.

The Committee heard and accepted the advice of the Legal Adviser. He referred the committee to a passage in Kennedy (paragraph 70) in which the Supreme Court said:

“Whether or not the witness has the experience and knowledge to give skilled evidence is a matter which can be explored either through case management or in cross-examination”.

The Legal Adviser told the Committee that while it could consider the Registrant’s objection at this stage the key question was whether it was appropriate for it to do so. The Committee would have to be satisfied that the witness was plainly not an expert. In the event that the Committee refused the Registrant’s application, at this stage, the Registrant would still have an opportunity to cross-examine the witness on her expertise and make submissions on her suitability.

The Committee retired to consider the matter. It noted that the guidance relied upon by the Registrant was guidance and not a legal requirement. It did not state an absolute rule and was qualified by the words “in most cases”. The Committee accepted the submissions on behalf of the Council that this was an obscure area of practice and that it may not be possible to find a precise match. In any event it considered that it had insufficient information for it to be able to reach a confident opinion that Dr Turner did not have sufficient expertise, at this stage. It was not prepared to take the extreme step of excluding her evidence on the basis of interpreting one passage in her expert report.

It would be open for the Registrant to challenge the evidence of Dr Turner by way of cross-examination and in closing submissions.
Privacy Issues

Since the particulars contained references to a number of patients with health issues the issue was raised as to whether any part of the hearing should be in private, in terms of Rule 25 (2).

Ms Hansen submitted that, as the parties were anonymized, there would be no need for any part of the proceedings to be marked in private, unless a name was used accidentally. The Registrant agreed with this.

The Committee accepted the advice of the Legal Adviser and agreed that the Committee should be vigilant if the real name of one of the patients was used by mistake or other privacy issues arose it would proceed in private.

Rule 41 Application

Ms Hansen applied to the Committee for measures to be adopted to assist the Council’s first witness in giving evidence. She had a number of disabilities and would require a support worker to assist her in retrieving documents from her laptop. The matter had been agreed with the Registrant in the presence of the Legal Adviser. It was proposed that the support worker would also be visible on video link.

The Committee heard and accepted the advice of the Legal Adviser who referred to Rule 41.

The Committee was satisfied that the witness was a vulnerable witness within the meaning of Rule 41. It determined that it would be appropriate for a support worker to be present to assist the witness provided she too was visible on screen.

Admissions in relation to the particulars of the Allegation

None of the particulars of the allegation were admitted by the Registrant.

No Case to Answer

At the close of the case for the Council the Registrant was advised of his right to make an application for no case to answer, in terms of Rule 46 (8) of the Rules. He was provided with a copy of the relevant part of the Judgement of Lord Lane CJ in the case of R V Galbraith [1981] 1 WLR 1039 by Ms Hansen.

Having been given time to consider his position the Registrant submitted that there was no case to answer in respect of the Allegation. He submitted that the expert evidence of Dr Turner was so obviously wrong that the Committee should disregard it at the stage that the hearing had reached.
He submitted that it was obvious from the evidence that had been presented in her reports that there were a number of areas of her evidence that called into question the reliability of her evidence.

He submitted that:

- The expert failed to take into account evidence which proved that tinted lenses had beneficial effects
- The expert has provided two reports that the Council rely upon but these are contradicted by other reports that she made to the Council.
- The expert reports relied upon by the Council did not contain all of the facts that were available to the Council at the time they were requested.
- The expert is not a specialist in the area under consideration
- The expert did not follow the Guidance issued by the College of Optometrists (COO)
- The expert did not interview patients of his, nor did she view his patient records

He concluded with observations about the handling of the case by the Council and the Solicitors that had been instructed by the Council.

Ms Hansen invited the Committee to refuse the Registrant’s application. She explained that in regulatory cases such as this no case to answer submissions are determined by using the test set out in the criminal case of Galbraith. She reminded the Committee that the test set out in Galbraith involved two limbs. For the first limb to succeed the Committee would have to be satisfied that no evidence had been presented that would satisfy the Committee that the allegation could be found proved. She submitted that it was tacit from the Registrant’s submissions that there was some material evidence.

Ms Hansen suggested that the Registrant was basing his application on the second limb of the Galbraith test. She accepted that the Council’s case was reliant on the expert evidence. However, she submitted that this was a situation where the Committee would have to take a view on the reliability of the witness. This was not a situation where the Committee should readily come to the view that the case was inherently weak or vague at this stage. She further submitted that the expert denied the matters put to her during the course of her cross-examination by the Registrant. She invited the Committee to disregard a number of observations made that were not germane to the issue of no case to answer.

The Committee heard and accepted the advice of the Legal Adviser. He referred to the Galbraith test and Rule 46 (8) which states:

“Before opening the registrant’s case, the registrant may make submissions as to—
(a) whether sufficient evidence has been adduced upon which the disputed facts could be found proved;
(b) whether the facts, whether they are disputed or proved, could support a finding of impairment.”

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The Committee noted that the Registrant had only applied in terms of part (a). He had made no submissions on the issue of impairment set out in part (b).

Since the Registrant’s submissions were confined to the issue of facts the Committee had regard to the test set out in Galbraith, noting that this is a regulatory matter with no crime alleged:

“(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty – the judge will stop the case.

(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.

(a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.

(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness’s reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.”

The Committee accepted the submissions of Ms Hansen to the effect that the Registrant accepted there was evidence, albeit disputed. It determined that his submissions proceeded on the basis that the evidence was inherently weak. The Registrant made no alternative submissions to the effect that some discrete particulars of the allegation should be excluded.

The Committee had careful regard to the Registrant’s submissions as well as the evidence of Dr Turner in both her Reports and in the witness box. Although the Registrant put his case to her, the Committee did not consider that she made material concessions in the witness box that would justify it making a finding of no case to answer at this stage.

The Committee considered that much of the Registrant’s questioning of Dr Turner involved an issue of her reliability. Although he raised other issues such as credibility all of these were better suited to being determined at a later stage when the Committee will decide if the facts are proved or not.

The Committee accordingly refused the Registrant’s application for it to make a finding of no case to answer.

Having announced its decision on No Case To Answer the Committee adjourned the hearing.
Resumed hearing

At the outset of the resumed hearing, on 27 January 2022, the Chair sought confirmation that the Legal Adviser had informed the Registrant, in private discussion, of the consequences of one of the Committee members being no longer able to participate in the hearing.

The Legal Adviser advised the Committee that he had been in private discussion with Mr Moran, who now appeared for the Council, and the Registrant. The Legal Adviser confirmed that he had advised that, despite the departure of one Committee member the Committee remained quorate. In light of the fact that there were now four Committee members the Committee would have to vote in favour of the Registrant in the event of a tied vote.

Giving evidence or making submissions.

When asked whether or not he wished to provide oral evidence or make oral submissions the Registrant indicated that he wished to make submissions in place of giving evidence on oath.

The Legal Adviser told the Committee that, in private discussion Mr Moran, for the Council had indicated that, if the Registrant did not give evidence on oath, this may be subject to adverse comment under reference to the case of Iqbal v SRA [2012] EWHC 3251(Admin) (Iqbal). Although the Registrant stated that this case had not been mentioned during private discussion with the Legal Adviser Mr Moran stated it had been.

The Committee saw no need to consider whose recollection of events was correct.

In response to the legal advice provided to the Committee, regarding the effect of Iqbal, the Registrant urged the Legal Adviser to consider whether or not Iqbal remained good law.

The Legal Adviser sought and obtained a short adjournment to research the issue of whether or not Iqbal had been overruled.

The Legal Adviser told the Committee that the decision of Iqbal had been applied in other cases. In particular it was applied in a case involving a health regulator (R (Kuzmin) v GMC 2019 1 WLR 6660).

The Committee heard and accepted the advice of the Legal Adviser. It noted that the Registrant had been informed, in the advance of him not giving evidence, that this matter might be relied upon by the Council in their closing submissions.

He had elected to make submissions, rather than give evidence.
Evidence Transcripts

The Registrant commenced his submissions, to the Committee, making use of a 63 page document which had been lodged with the Council and thereafter the Committee on the first resuming day of the hearing. Although he was permitted to lodge it and make use of it this was under reservation, by Mr Moran, of the right to comment upon it later.

The 63-page document was headed “ADMISSIONS OF DR TURNER” but it contained submissions and excerpts from documents some of which were not exhibits.

During the course of the second day of his submissions Mr Moran repeated a complaint that he had made during the first day. He expressed a concern that the submissions made by the Registrant regarding the state of the evidence did not match the content of the transcript.

The Registrant then informed the Committee, on the second day, that he had not received a copy of the transcripts of the previous hearings. They were told by the Hearings Officer that the transcripts had been sent to the Registrant at the same time as they had been sent to the Committee. This was on 9 November 2021 @16:31.

The Committee noted the Registrant’s position. Its concern was that, as a matter of fairness, the Registrant should be afforded an opportunity to read them.

The Committee noted that, since this matter arose on a Friday, it would be of advantage to him to have the remainder of that day, and the weekend to familiarize himself with the transcripts.

Accordingly, the Committee adjourned the case until Monday.

Issues regarding “missing documents”.

On the case resuming on Monday the Committee sought assurances from the Respondent that he had, in fact, been able to read the Transcripts.

The Committee was told that he had been unable to do so due to circumstances beyond his control. Despite this the Registrant stated that he wished to resume his submissions.

Mr Moran sought and obtained the permission of the Committee to address it on a matter of concern arising from the Registrant’s submissions document.

Mr Moran informed the Committee that, having had an opportunity to consider the 63-page submissions document with his expert, there was a concern arising in relation to that part of the Registrant’s submissions that had not yet been discussed. He referred the Committee to the Rules. In terms of Rule 29.6 the Registrant required to serve the Council with copies of the documents he intended to rely upon no later than ten working days before the commencement of the hearing.

Mr Moran had already expressed a concern that parts of the Registrant’s submissions involved the cutting and pasting of documents without a reference to their origin. However, his latest concern was that the documents, that the Registrant was about to refer to, had clearly not been served on the Council.
Mr Moran reminded the Committee that the Registrant put to his expert (Dr Turner) that she did not see all of the [Redacted] communications that the Registrant had generated. Dr Turner accepted that there were times when she was only able to access the front page and unable to access the rest. It was submitted that the Council were able to access some pages but were unable to access pages that were linked to the front page. The attention of the Committee was drawn to one particular page of the Council’s bundle in respect of Patient I.

Mr Moran then referred to a page in the 63-page submissions that appeared to be lifted from a [Redacted] page that, he stated, was not taken from the documents before the Committee. He expressed a concern that these documents should be produced by the Registrant in order that, if necessary, his expert could be given an opportunity to comment on them.

The Registrant explained that the Documents were originally on a [Redacted] page entitled “Learning Difficulty Solutions” but he was able to access more documents that he was able to find using another of his [Redacted] accounts. He was unsure regarding the means by which he could intimate the contents of these documents.

The Committee heard and accepted the advice of the Legal Adviser.

The Committee considered that it was in the interests of justice that the Registrant should produce the documents referred to. The Allegation related to posts and videos that the Registrant had posted on [Redacted]. The production of further [Redacted] material may create a different impression regarding the meaning, extent and effect of the posts and videos that were posted.

Accordingly, the Committee determined that the hearing should adjourn in order that Registrant should produce the [Redacted] material, contained in the latter part of his 63-page document, by the start of the hearing on the following day.

It was envisaged that the Registrant would also have a further opportunity to consider the transcripts.

Although the Registrant sent various emails Mr Moran requested that all [Redacted] material that the Registrant was relying on should be in the form of one item.

The Registrant produced a new bundle of documents. At the front of the bundle was a schedule containing a list of documents with cross references. The bundle continued through the various [Redacted] pages.

Mr Moran informed the Committee that the Council did not seek further time. The Council was content that the Registrant should lodge the bundle and be invited to resume his submissions. Mr Moran submitted that the evidential value of the documents lodged should be afforded the same status as his other documents.

**Adjournment**

The Registrant’s submissions concluded on the last scheduled day of the hearing. His submissions concluded with the Committee asking a number of questions.

Mr Moran had already informed the Committee that his closing submissions, in respect of the findings of facts stage, were likely to take at least one day.

It was unlikely that the Council’s closing submissions would finish that day, given the limited time still available.
Having heard and accepted legal advice the Committee did not consider that it would be fair to the parties for closing submissions including legal advice to be split over a significant period.

The Committee determined that the remainder of that day should be spent attempting to obtain further available dates, from all parties, the Committee and the Legal Adviser, for the resuming hearing.

**Resumed Hearing**

The hearing further resumed on 13 June 2022 at which time the parties made final submissions on the facts of the Allegation.

In inviting the Committee to find all of the particulars to the Allegation proved, Mr Moran invited the Committee to find the evidence of the two witnesses to be credible and reliable. He invited the Committee to have regard to the evidence schedule and skeleton argument that was already before the Committee. He took the Committee through each of the particulars and explained where the evidence, in support of each particular, could be found.

He referred to the case of *Ivey v Genting Casinos [2017] UKSC 67* and submitted that the two stage test for dishonesty was satisfied in relation to the particular relating to dishonesty (particular 5).

Mr Moran renewed his concerns regarding the late production of material by the Registrant. He invited the Committee to have regard to the fact that it was lodged well after the Council’s expert had given evidence.

He referred to the case of *R (Kuzmin) v GMC 2019 1 WLR 6660* and submitted that the Committee should draw an adverse inference from the fact that the Registrant had elected not to give evidence. He submitted that all of the factors, set out in *Kuzmin* were engaged:

(i) He submitted a prima facie case to answer had been established, on the basis that the case had survived no case to answer submissions.

(ii) The Committee could be satisfied that the Registrant had been given appropriate notice and an appropriate warning that such an inference might be drawn if he did not give evidence.

(iii) there was no reasonable explanation for his not giving evidence and

(iv) there were no other circumstances in the particular case which would make it unfair to draw such an inference

Mr Moran confirmed that although there was reference to videos and postings of patient N there were no particulars relating to that patient. This material could be disregarded. The Registrant did not require to address the Committee on this issue.
In replying the Registrant invited the Committee to find the particulars of the allegation not proved.

He renewed the submissions that he had already made during earlier parts of the hearing and provided a succinct summary of his criticisms of the Council’s case.

The Registrant remained highly critical of the evidence led on behalf of the Council and especially the suitability of Dr Turner. He submitted that the Council’s expert witness should not be considered an expert under reference to *Kennedy v Cordia Services Limited [2016] UKSC 6*.

**Determination on Facts**

The Committee heard and accepted the advice of the Legal Adviser who referred to a number of authorities including the case of *Ivey* in respect of dishonesty, *Kennedy* in respect of expert witnesses and *Kuzmin*. He reminded the Committee that the most recent version of the guidance issued by the Council to fitness to practise committees (Hearings and Indicative Sanctions Guidance – Revised November 2021) (“the guidance”) contained detailed advice regarding the applicability of *Kuzmin*. He pointed out that the application of *Kuzmin* was not automatic. The burden of proof remained with the Regulator and the Registrant had a right to silence.

The Committee retired to consider which, if any, of the allegations, were found proved. It recognised that the burden of proof was on the Council and that it could only find each particular of the allegation proved if it was satisfied that it was more likely than not that something said to have happened actually occurred. The fact that an interim order was in existence played no part in this Committee’s deliberations. The Committee recognised that Interim Orders Committees do not determine factual issues.

**Witness Evidence and adverse inferences**

**Kuzmin issues**

Before considering the particulars in detail the Committee considered whether the issues which arose in the case of *Kuzmin* were applicable to this case. The Committee accepted that it was appropriate to consider this matter prior to determining the discrete issue of whether any of the particulars could be found proved.

The Committee considered that the special circumstances of this case made it unfair to draw any adverse inference from the fact that the Registrant has not given evidence and did not do so.

One of the policy reasons for the adverse inference rule applying to professionals is on the basis that they are expected to engage with their Regulator. The Registrant has engaged with the Regulatory process throughout.
The most significant reason behind the Committee being disinclined to draw an adverse inference from the Registrant not giving evidence was due to the stance, taken by the Registrant, in respect of the Allegation. This is not a situation where the Registrant denied posting the material referred to in the Allegation. The Registrant had the right to contest the Allegation in the manner he saw fit. He chose to do so by seeking to discredit the Council’s case. He was perfectly entitled to do this as a matter of law and practice.

Since the Registrant’s case was based on discrediting the Council’s evidence the Committee considered whether or not the Registrant’s general criticisms were sufficiently persuasive for the Committee to reach the conclusion that the Council had discharged its burden.

In order to assess whether the Council’s case failed on the basis that the witness evidence was unsatisfactory the Committee considered the evidence of each witness in turn.

**Witness 1 - Patient E**

The Committee commenced its deliberations by considering the witness evidence of the only factual witness, Patient E. This was because the Registrant suggested that Dr Turner had only seen one witness statement and, on the basis that this witness statement was false, the entire opinion evidence was wholly undermined.

The Registrant was critical of the evidence of Patient E.

Patient E provided two witness statements dated 29 September 2020 and 26 August 2021. In his cross-examination of Dr Turner, the Registrant categorized the evidence of Patient E’s first witness statement as being “false information”. His position was that because Dr Turner was furnished with the first witness statement her evidence was undermined. She did not accept the proposition that “…that would make the report that you put in this hearing as a false representation.”

The Committee was told by Dr Turner that she had access to both witness statements from Patient E. The Committee accepted this evidence.

The Committee considered that, in any event, the evidence of Patient E was peripheral to the central issue in this case. She provided background information concerning how she and the Registrant went into business together. She was severely dyslexic and also had Irlens Syndrome and ADHD. She started a business where she taught others how to use assistive technology to help them learn. At some point she met the Registrant and was issued with glasses by him. They formed a business arrangement whereby she would recommend clients to him. The precise nature of their business arrangement was unclear. In her initial statement Patient E denied that the patients who appeared in various [Redacted] videos were her clients. She also denied that the patients were filmed in her office and that the Registrant never filmed any of her clients when he performed tests on them in her office. This issue was peripheral to the issue that Dr Turner provided evidence on. The central issue was whether the Registrant
posted [Redacted] material and whether or not the content of that material was appropriate.

These assertions were all corrected in Patient E’s later statement. The Committee noted that, following her providing the first statement, Patient E was provided with 25 videos that were obtained as part of the Council’s investigation. On reviewing these videos, she was able to confirm that she recognised a number of patients who appeared in the videos and that the videos were shot in her offices.

The Committee did not consider that this change to Patient E’s evidence, with regard to where the videos were shot and the identity of the patients, should discredit the entirety of her evidence. It considered that, in light of the learning difficulties that the witness faced, she ought to have only been asked to provide a formal witness statement once all material had been gathered. She herself compiled no records. At one time she, and not the Registrant, stored patient records. However, her business closed down and those records were destroyed.

Patient E was able to provide the Committee with a picture of the rudimentary nature of the business arrangement between herself and the Registrant. She would provide clients for him to assess. There would be no charge for the assessment but, if they wanted glasses, the cost would be £200 to £300. She would be paid a commission from this sale. As it was there were few patients with sufficient funds to pay for the glasses. She would assist with the filming of some videos. She would sometimes supply the camera and/ or perform some camera work.

The Committee concluded by considering that, notwithstanding finding Patient E to be a credible and relatively reliable witness, they would not be able to find the allegation proved on the basis of her evidence. She supplied background narrative. She was not able to assist the Committee on the key issue of whether the various postings / videos should have been made by a Registered Dispensing Optician. The fact that she changed her evidence did not, of itself, undermine Dr Turner’s evidence. Dr Turner’s evidence was based upon seeing both witness statements and her evidence on the appropriateness, or otherwise of the [Redacted] material.

**Witness 2 – Dr Turner (Expert witness)**

The Committee next considered whether or not it should accede to the Registrant’s submissions that it should reject the expert evidence of Dr Turner entirely.

Dr Turner produced two reports which were lodged by the Council in support of their case. The first report was dated 17 September 2019. The Second Report was dated 22 April 2021. The Reports took different forms The Registrant invited the Committee to disregard her evidence on the basis that one report had not been signed. The first report did not contain the manuscript signature of the author but her name was clearly identified alongside the date. The second report contained an actual manuscript signature alongside the date. The Committee did not consider this issue to be material. Dr Turner confirmed her authorship of these reports in live evidence.
The Committee considered the decision of *Kennedy v Cordia Services* and noted that it raised 4 issues:

(i) the admissibility of such evidence;

(ii) (the responsibility of a party’s legal team to make sure that the expert keeps to his or her role of giving the court useful information;

(iii) the court’s policing of the performance of the expert’s duties; and

(iv) economy in litigation.

The Committee did not consider that the last issue was live in this case. There was only one expert providing live evidence.

Although the Registrant’s criticisms mainly related to parts (ii) and (iii) of *Kennedy* the Committee first considered whether part (i) was engaged.

The Committee considered that it was under a duty to determine whether or not the evidence of Dr Turner was admissible.

It had regard to the following passage from Paragraph 44 of *Kennedy v Cordia Services*:

“There are in our view four considerations which govern the admissibility of skilled evidence: (i) whether the proposed skilled evidence will assist the court in its task; (ii) whether the witness has the necessary knowledge and experience; (iii) whether the witness is impartial in his or her presentation and assessment of the evidence; and (iv) whether there is a reliable body of knowledge or experience to underpin the expert’s evidence…”

The Committee first considered whether or not the evidence of Dr Turner was required to assist it in its task. The allegation relates to a relatively obscure area of clinical practice for Dispensing Opticians or Optometrists. The Committee reminded itself that Ms Hansen said the following on behalf of the Council at the start of the hearing:

“I should say as an aside why this matter has arisen, I don’t think it’s in dispute that this is a niche area. I think Dr Turner’s report perhaps makes it clear why it’s niche, that there is little evidence in this field. There are, therefore, few people practising in this field and therefore difficulties in finding an expert witness who might – where one can clear-cut say that they are someone who does this day in, day out, because of the issues of this being a niche field”.

The Committee noted that although the Registrant was afforded a right to reply to Ms Hansen’s submissions he made no comment on that aspect of the Council’s submissions.

The Committee determined that this was a case where it would have to have regard to expert evidence in order to reach a proper and informed view. It was not a matter
of controversy that this was an obscure/ niche area of practice for a dispensing optician or an optometrist. Only someone practising in this field would be able to comment on the matters raised in the allegation.

The Committee considered it would not be able to form a sound judgment on the matter without the assistance of a witness possessing special knowledge or experience in the area. It also considered that the subject matter of the opinion formed part of a body of knowledge or experience which was sufficiently organized and recognized to be accepted as a reliable body of knowledge or experience, a special acquaintance with which by the witness would render her opinion of assistance to the Committee.

The second question, which the Committee had to address, was whether this witness had acquired by study or experience sufficient knowledge of the subject to render her opinion of value in resolving the issues before this tribunal.

This issue had been raised by the Registrant at the outset of the case.

The Registrant renewed his submissions to the Committee, at the stage of making submissions on the facts, to disregard the evidence of Dr Turner. He submitted that, as a matter of Law, an expert witness had to be practising in the relevant field they were commenting upon at the time of the events in question. He referred to guidance, issued by the College of Optometrists, which stated:

“…in most cases you should be in current clinical practice in the area under consideration.”

The Registrant drew to the attention of the Committee a passage in an expert report dated 22 April 2021, provided to the Council by Dr Jennifer Turner, which stated that she:

“..undertook post graduate training, a 10-credit module: Eyecare for people with learning disabilities and additionally a 20 credit module: Paediatric Eyecare. The work continued until I left in 2015 to pursue post doctorate research work and clinics in private practice.”

This passage was preceded by fuller work history. In 2002 Dr Turner had worked with [Redacted] University Special Assessment Unit and the Local NHS eye hospital service. This involved the regular assessment of 30 to 40 patients with various disabilities. In 2004 she was Head of Optometry and her role was extended to offering colour overlays. From her experience and other research, she was of the view that colour overlays/ coloured spectacle lens intervention would benefit a small proportion (15%) of people with dyslexia.

He submitted that the passage, marked in bold for emphasis, indicated that the expert ceased to be an expert when she left in 2015. It was unlikely that she would continue dealing in eyecare for people with learning difficulties after that point. The Registrant, accordingly, invited the Committee to exclude her evidence on the basis that she did not have the expertise to comment on events.
This position was maintained throughout the hearing.

The Committee did not consider this submission to be well founded. It considered that the admission of expert witnesses in this matter was bound by the common law and not any other guidelines. It noted that reference to “in most cases” clearly involved a recognition on the part of the party devising the rules that there would be cases where it would be difficult to find an expert.

This issue was raised, again, in cross-examination. The Registrant was asked whether she still worked mainly in colour overlays. Dr Turner replied that she would, in general practice, see three or four people who required assessment. In answer to a Committee question she explained that this was three to four patients per month. This may or may not involve colour overlays. It was put to her that she performed such work, with coloured tints, in 2018. She agreed that she had. Therefore, there was clear evidence she was in current clinical practice at the time of the events in question and at the time of the hearing.

The Committee noted the Registrant’s additional submissions that Dr Turner was not an expert because

- She only worked in colour overlays and not with coloured tints
- She had not attained 10,000 hours of practice
- She is not a neurologist
- She did not submit a CV (Curriculum Vitae) or a front page containing her “credentials” in her reports.

The Committee accepted the evidence of Dr Turner that her experience with colour overlays rather than coloured tints was relevant to the Allegation before it. It accepted her evidence that in practice an Optician, while carrying out the examination of patients, would not make up glasses with a particular tint. The effect of particular colours on patients would be assessed using overlays. It would only be necessary to go to the expense of making tinted spectacles once diligent research had been carried out to assess the effect of the colour.

The Committee was not persuaded by the suggestion that Dr Turner was not qualified to provide an opinion on the basis that she was not a neurologist. It was also put to Dr Turner that she was not qualified in various other specialist disciplines such as dyspraxia, and physiotherapy. She explained that whilst she had performed post-doctoral studies on the effect of vision on people falling she was not a specialist in co-ordination. This hearing involved concerns raised about the fitness of this Registrant to practise. Dr Turner was asked to comment on what a reasonably competent Dispensing Optician working in this particular niche area should have done.

The Committee accepted that Dr Turner did not supply full biographical details of what her academic qualifications were and a list of other achievements. It is common for experts to present a curriculum vitae as an appendix to their report. This was not a mainstream case where the general qualifications of the expert would be of
assistance. Both of the Reports, relied on by the Council, contained information that was relevant to her experience in the niche specialist area under scrutiny.

In cross-examination, by the Registrant, the following question and answer took place:

“Q. Certainly, if you are an expert writing a report, then your credentials should be on that report whether draft or not, do you agree?
A. I believe, sir, that the relevant qualifications and experiences paragraph suffices for this matter”

The Committee accepted Dr Turner’s approach. It considered that Dr Turner had presented the Committee with sufficient relevant information in her report and live evidence to satisfy it that she was suitably qualified to comment upon the Registrant’s fitness to practise and the use, by him, of social media in the niche specialist area under scrutiny. The Committee noted that the Registrant’s cross-examination of Dr Turner began with him making the following observation:

“Basically Dr Turner, you have given us a nice overview regarding your CV and that you have gone back into clinical practice”.

Having considered that aspect of the Expert’s practice the Committee then went on to consider the following issues:

- Whether the expert was impartial
- Whether she had been properly instructed (including whether the legal team made sure that the expert kept to her role of providing the court useful information)
- Should the Committee exclude her evidence as part of its “policing” role?

The Committee had regard to Dr Turner’s evidence given over three days. The Registrant cross-examined Dr Turner extensively and there was, sometimes, repetitive questioning. Her credibility, in the view of the Committee, was not disturbed.

The Council lodged two reports from Dr Turner as part of its case. The Registrant submitted that the Committee should have regard to earlier material that Dr Turner had prepared during the course of her discussions with the Solicitors who acted for the Council. The Committee noted that, at one time, the scope of her remit was to consider other matters which went beyond the subject matter of the allegation. For example, she produced a Report dated 5 June 2020 where she was asked to consider whether or not the examinations carried out by the Registrant on the patient group met the standard of a reasonably competent dispensing optician. At that stage she commented on the fact that there was a lack of clinical evidence and, as such was unable to comment on the various issues raised. The Committee disregarded the information which went beyond the scope of the Allegation.

The Committee did not consider this Report to have undermined Dr Turner’s credibility and reliability. It is not unusual for an expert to provide a series of Opinions or Draft
Opinions in response to the changing nature of an investigation into a Registrant’s fitness to practise.

It was suggested to Dr Turner that her findings were inadequate because she did not interview the patients, watch them being examined or have access to their clinical records. The Committee did not consider this line of questioning to be specifically relevant to the Allegation. The Allegation that the Registrant was facing related to his [Redacted] activity alone.

There was criticism of Dr Turner in that, she stated that she followed the Council’s guidelines in relation to expert reports and not guidance issued by any other organisation. The Registrant referred to a number of different guidelines during the course of the hearing and suggested that these had not been followed. He submitted that Dr Turner’s reports and thereby her evidence should be excluded. The Committee was not satisfied that this was a valid reason for excluding her evidence.

The Registrant made a submission of “no case to answer” where he submitted.

“I have been suspended for the last three years due to the fake representations and fake and false reports produced by Dr … Turner which amounts to fraudulent behaviour in my opinion.”

He also submitted that “The expert Dr Turner was dishonest and what Patient E said the patient had to give a choice….”

“..So instead of making true facts she has ended up making false facts.”

The Committee was not satisfied that there was evidence to support the Registrant reaching these conclusions.

It was suggested in cross-examination by the Registrant that there was a deficiency in the investigation because he alone was being investigated. The Registrant operated his business using the trading name of [Redacted]. The Registrant told the Committee that the business was incorporated as a limited company that has now folded. This hearing was convened to consider the fitness of the Registrant to practise and not the company. There was no suggestion that anyone else was employed for or acted for the company.

In commenting on Dr Turner’s evidence, the Registrant suggested Dr Turner displayed a lack of the appropriate level of knowledge required:

“She was asked standard questions regarding visual motor integration, Pulfrich effect, okay, dorsal stream. She didn’t have a clue. If you are an expert working in this field Pulfrich effect, right, is quite easily seen, spatial awareness, okay. People with coordination issues did not have spatial awareness. She didn’t pick that out. These are simple, basics”

The Committee did not consider this submission to be an accurate reflection of Dr Turner’s response to questions.
The Committee was being invited to disregard the evidence of Dr Turner on the basis of questions asked by the Registrant. The Registrant did not produce an expert report, or submit any other expert material, to put to her. He provided the Committee with limited information regarding his experience in the niche area under examination. He told the Committee that he had been involved in this area since 2014.

Dr Turner observed that the Registrant did not identify the methods that he used in his colour tinted spectacle intervention. He did not explain the system that he used or the methodology that he adopted as well as his reason for his clinical choices.

The Committee raised this issue with the Registrant. He was unable to advise the Committee what particular system he used without assistance from the Committee. He was only able to advise the Committee what his "Filter system type" was after being prompted, by the Committee, to have regard to Table 1 in Dr Turner’s second report.

Dr Turner conceded that it was possible for tinted spectacles to be of benefit to patients with certain conditions. However, Dr Turner’s evidence was that there was no qualification to the claims that the Registrant was making. Her evidence was that potential patients and, in certain circumstances, their families received no advice that this was a “controversial” area of practice.

Whilst the Committee considered the evidence of Dr Turner to be generally credible and reliable it then began to consider whether or not each of the Particulars was found proved. The Committee could only find these particulars proved having carefully scrutinised the evidence of Dr Turner and all of the other evidence on each discrete issue.

The Council alleges that you, Mr Zahir Ibrahim (D-14908), a registered dispensing optician:

1. Posted written posts and/or videos to [Redacted]:

The Committee found that the Registrant, a registered dispensing optician, was responsible for the posting of the various items set out in the particulars. The posts were entered on a [Redacted] page for [Redacted].

The Committee noted that the stated aim of [Redacted], in the “about” section of its [Redacted] page, was to “disable the effects of learning difficulties”. It noted that photographs of the Registrant featured regularly and he was described as the founder and chief assessor of the organisation. There was no submission from the Registrant that anyone, other than the Registrant, was responsible for the activities of [Redacted].

a. On 5 May 2017 which gave the impression that colour tinted lenses alone could straighten Patient P’s eyes;

Particular found proved
The Committee had regard to the [Redacted] post relative to Patient P as well as the two videos, transcripts of the videos and Dr Turner’s observations. In the [Redacted] post it was said that Patient P was shown stimming, with rocking of body and flapping of arms. The stimming is pronounced with the old glasses, and reduced when the new glasses are worn.

In the video Patient P was seen wearing spectacles with a pink tint. The video then cut to showing Patient P wearing glasses with a yellow tint. At this point the Registrant asked “so what did the Doctor say in there”

Patient E replied:

“about my eye?..., If these glasses help straighten it not to worry. But if they are not working as much then I can be operated upon”.

The Registrant then explained to the viewer:

“okay a lot calmer. No body movement. Just a hand movement up and down. Fantastic.”

The Committee considered that the ordinary viewer of the video would be left with the impression that coloured tinted lenses could straighten Patient P’s eyes. The message from the video, from Patient P, was that if these glasses had the desired effect of straightening eyes then there would be no need for an operation.

There was nothing in the video or the [Redacted] post to qualify or correct this representation.

In the circumstances the Committee found Particular 1 (a) proved and then went on to consider the issues raised in Particulars 2 and 3.

2. One or more of the impressions given at 1 were inappropriate and/or misleading in that they were not supported by objective evidence or were supported by controversial evidence;

3. Failed to explain in the [Redacted] posts and/or videos that one or more of the impressions given at 1 were not supported by objective evidence or were supported by controversial evidence;

The Committee then considered whether or not what was said was inappropriate and / or misleading and whether or not this claim was supported by objective evidence or even controversial evidence.

The Committee had regard to the material that the Registrant produced during the course of his submissions and after Dr Turner had provided evidence. It did not consider that this was specifically relevant to the this particular. On the basis that it was a genuine post, it was a post which was entered on 23 September 2016. It predated the post complained of in Particular 1(a). The Registrant was charged with a post made on 5 May 2017. Having looked at the earlier post the Committee was not
satisfied that it did exculpate the Registrant. The earlier post gave the unqualified impression that coloured lenses could relieve autism.

The Committee accepted the evidence of Dr Turner that she was unaware of any objective scientific basis to support the hypothesis that colour tinted spectacles alone can influence ocular alignment. Dr Turner’s evidence was that she expected the Registrant to explain that refractive correction, and not tints, would provide the means to encourage the patient’s eyes to straighten. It was not suggested by the Registrant, in cross-examination, that there was an objective scientific basis.

The Committee also accepted Dr Turner’s observations that the material produced by the Registrant did not explain that the results claimed could be attributed to other factors such as; the placebo effect, the possibility that coloured spectacles can reduce anxiety, a refractive effect of the lens focusing the eye, or the possibility of pattern glare being reduced by the tints.

In the circumstances the Committee considered that the material was misleading. The ordinary visitor to the [Redacted] page would be left with the impression that coloured tints alone could straighten eyes.

The Committee also considered that the publication of this material, in the manner that it was, was also inappropriate. The Committee agree with Dr Turner’s observation, that this was “experimental” treatment and that not explaining his reasoning was inappropriate. Accordingly, it found Particular 2 proved.

The Committee also went on to consider Particular 3. The Committee accepted Dr Turner’s evidence that there was no objective evidence to support the impressions that were given on [Redacted]. The Committee considered that the Registrant was under a duty to explain this to the ordinary reader. The [Redacted] page was open to members of the public, a number of whom would be vulnerable people, with learning difficulties, or the families of these people, seeking treatment to “disable” the effects of their particular learning difficulties.

In these circumstances the Committee found Particular 3 proved in relation to Particular 1(a).

b. On 7 May 2017 which stated that colour tinted spectacles can be used to try “to reduce the disabling effects of disorder found not only in Learning difficulties (reading and writing) but also those found in AUTISTIC SPECTRUM DISORDERS”;

The Committee had regard to the Registrant's [Redacted] post for 7 May 2017 which contained a photograph of the Registrant and stated:

“ My name is Zahir Ibrahim, Founder and Chief Assessor with [Redacted]. I use an intervention of Colour Tinted Spectacles – as a holistic approach in trying to reduce the disabling effects of disorders found not only in learning difficulties(reading and writing) but also AUTISTIC SPECTRUM DISORDERS”.

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The Committee found this particular proved. It noted that this claim was made on a number of other occasions.

The Committee then went on to consider whether or not this impression could give rise to findings in respect of Particulars 2 and 3.

2. One or more of the impressions given at 1 were inappropriate and/or misleading in that they were not supported by objective evidence or were supported by controversial evidence;

3. Failed to explain in the [Redacted] posts and/or videos that one or more of the impressions given at 1 were not supported by objective evidence or were supported by controversial evidence.

The Committee noted that Dr Turner stated that she was unaware of any objective evidence in support of the suggestion that colour tinted spectacles could reduce the effect of learning difficulties and also Autistic Spectrum Disorders. She accepted that there is controversial evidence that colour tinted spectacles can reduce the effect of visual stress (pattern glare). It was not suggested, in cross-examination of Dr Turner, that there was objective evidence.

The Committee considered that the post was misleading. The post contained no qualification to the suggestion that colour tinted spectacles could reduce the effect of learning difficulties and also Autistic Spectrum Disorders.

The Committee also considered the post to be inappropriate. The Registrant was advertising a treatment to disable the effects of learning difficulties with no caveat to suggest that what he was offering was experimental.

The Committee found particular 2 proved so far as it related to Particular 1(b).

The Committee also went on to consider Particular 3. The Committee had already accepted Dr Turner’s evidence that there was no objective evidence to support the impressions that were given on the [Redacted] posts. The Committee considered that the Registrant was under a duty to explain this to the ordinary reader. The [Redacted] page was open to members of the public, a number of whom would be vulnerable people, with learning difficulties, or the families of these people, seeking treatment to “disable” the effects of their particular learning difficulties.

In these circumstances the Committee found Particular 3 proved in so far as it related to Particular 1(b).

c. On 10 May 2017 which gave the impression that colour tinted lenses disabled the effects of hypermobility for Patient A;

The Committee had regard to the [Redacted] entry dated 10 May 2017 which contained a photograph of Patient A. It stated that:
“A lot of times people with learning difficulties often have other disorders present in them- in [Patient A’s] case it is HYPERMOBILITY- on top of her dyslexia, dyspraxia-the video shows that when the right colour is found in [Patient A’s] case, the colour was disabling the effects of her hypermobility.”

This claim was also made in the video where Patient A put on her glasses and stated that she did not bend her finger joint as much. The Registrant is then heard saying “so you feel it is trying to actually stop you from or prevent you from doing it or bending it as much…”

The Committee also had regard to the material submitted by the Registrant during the course of his submissions. It noted that the Registrant lodged 3 posts that were said to have been created on 1 December 2015 in respect of two of them and 10 March 2017. It was not a relevant defence to suggest that the Registrant made different representations on these occasions. These posts contained particular emphasis on the suggestion that Intervention could alleviate dyspraxia.

The Committee found Particular 1 (c) proved on the basis that the written material alone contained a representation that colour tinted lenses could disable the effects of hypermobility.

Having found Particular 1 (c) proved the Committee then went on to consider particulars 2 and 3.

2. One or more of the impressions given at 1 were inappropriate and/or misleading in that they were not supported by objective evidence or were supported by controversial evidence;

3. Failed to explain in the [Redacted] posts and/or videos that one or more of the impressions given at 1 were not supported by objective evidence or were supported by controversial evidence.

The Committee had regard to Dr Turner’s evidence that she was unaware of any objective scientific basis for the suggestion that colour tinted spectacles can influence the elasticity of an individual’s finger or knee joints where they allege that they have hypermobility. It was not suggested to Dr Turner, during the course of cross-examination, that there was.

The Committee considered that the post was misleading. The post contained no qualification to the suggestion that colour tinted spectacles could reduce the effect hypermobility.

The Committee also considered the post to be inappropriate. The Registrant was advertising treatment with no caveat to suggest that what he was offering was experimental.

The Committee found particular 2 proved so far as it related to particular 1(c).

The Committee also went on to consider Particular 3. The Committee had already accepted Dr Turner’s evidence that there was no objective evidence to support the
impressions that were given on the [Redacted] posts. The Committee considered that the Registrant was under a duty to explain this to the ordinary reader. The [Redacted] page was open to members of the public, a number of whom would be vulnerable people, with learning difficulties, or the families of these people, seeking treatment to “disable” the effects of their particular learning difficulties.

In these circumstances the Committee found Particular 3 proved in so far as it related to Particular 1 (c)

d. On 15 July 2017 which stated that “COLOUR SPECTACLE” can be used “to disable the effects of the disorders”;

The Committee had regard to the [Redacted] posting dated 15 July 2017 which showed a still taken of a video showing the Registrant. A proper reading of the wording was that Learning Difficulty Solutions dealt with learning “disorders and their co-morbidity and cross overs with other spectrum disorders. It was stated that Learning Difficulty Solutions “use the COLOUR SPECTACLE intervention to disable the effects of the disorder.

The Committee found particular 1 (d) proved.

The Committee then went on to consider whether or not particulars 2 and 3 were proved in respect of this matter.

2. One or more of the impressions given at 1 were inappropriate and/or misleading in that they were not supported by objective evidence or were supported by controversial evidence;

3. Failed to explain in the [Redacted] posts and/or videos that one or more of the impressions given at 1 were not supported by objective evidence or were supported by controversial evidence.

The Committee noted that Dr Turner considered that she was unaware of any objective evidence in support of the suggestion that colour tinted spectacles could reduce the effect of learning difficulties and also Autistic Spectrum Disorders. She accepted that there is controversial evidence that colour tinted spectacles can reduce the effect of visual stress (pattern glare).

The Committee considered that the post was misleading. The post contained no qualification to the suggestion that that colour tinted spectacles could reduce the effect of learning difficulties and also Autistic Spectrum Disorders.

The Committee also considered the post to be inappropriate. The Registrant was advertising treatment with no caveat to suggest that what he was offering was experimental.

The Committee found particular 2 proved so far as it related to particular 1(d).
The Committee also went on to consider Particular 3. The Committee had already accepted Dr Turner's evidence that there was no objective evidence to support the impressions that were given on the [Redacted] posts. The Committee considered that the Registrant was under a duty to explain this to the ordinary reader. The [Redacted] page was open to members of the public, a number of whom would be vulnerable people, with learning difficulties, or the families of these people, seeking treatment to “disable” the effects of their particular learning difficulties.

In these circumstances the Committee found Particular 3 proved in so far as it related to Particular 1 (d)

e. On and I or around 2 August 2017 which gave the impression that colour tinted lenses:

i. Reduced the impact of multiple sclerosis on Patient D’s mobility;

ii. Enabled Patient D to walk without support from a functional electrical stimulation machine;

iii. Enabled Patient D to walk more quickly;

iv. Improved the posture of Patient D;

v. Enabled Patient D to walk in a straighter line;

The Committee had regard to the [Redacted] post for 2 August 2017 which was headed “multiple sclerosis” There was an invitation for the reader to have regard to the second video in which;

“the (FES) machine was turned off and the patient was made to walk with just the coloured tinted spectacles…walking from a starting point to door and back… observing the speed, posture and deviation from the lines in the tiles on the floor. Very pleased with the results.”

The machine in question was a functional electrical stimulation machine. The Committee also had regard to the accompanying video.

In the first video Patient D was seen wearing spectacles without a tint. She appeared to have a gait which was impeded and limping. Although she was seen wearing coloured spectacles in the second video it was not clear whether any improvement had taken place. Dr Turner noted that Patient D was slower by 4 seconds when she made the same journey using glasses.

The Committee considered that what was represented on [Redacted] gave the impression that the use of coloured tinted lenses : i. reduced the impact of multiple sclerosis on Patient D’s mobility ii. it was also satisfied that, by referring to the before
and after results said to be demonstrated in the videos that the use of coloured tinted lenses enabled Patient D to walk without the support of an FES machine. iii. the reference to "speed" implied that this intervention enabled her to walk more quickly. iv. that reference to "posture" implied that it improved her posture and that. v. reference to "deviation from the lines" implied that it enabled Patient D to walk in a straighter line.

Having found particular 1 (e) proved in its entirety the Committee then went on to consider whether or not particulars 2 and 3 were proved in relation to particular 1 (e).

2. One or more of the impressions given at 1 were inappropriate and/or misleading in that they were not supported by objective evidence or were supported by controversial evidence;

3. Failed to explain in the [Redacted] posts and/or videos that one or more of the impressions given at 1 were not supported by objective evidence or were supported by controversial evidence.

The Committee accepted the evidence of Dr Turner who said that she was unaware of any objective evidence in support of the suggestion that colour tinted spectacles could treat damaged nerve conduction between the foot and the brain. She considered that this was outside his area of expertise and involved the provision of misleading and false information in a public forum. Dr Turner also considered that if there was an improvement there could be at least three other explanations for that improvement that did not involve the effect of lenses. It could have been an example of the Hawthorne effect. This is where an act of being observed by a practitioner for the purposes of a video may enhance the performance of the intervention. It could also have been an example of the novelty effect where there would be increased motivation and response to suggestion when participating in a new and exciting intervention. She also suggested there may be a placebo effect where an individual thinks that an intervention will disable the effects of her mobility disorder.

The Committee considered that the post was misleading. The post contained no qualification to the suggestion that that colour tinted spectacles could replace FES machine.

The Committee also considered the post to be inappropriate. The Registrant was advertising a treatment with no caveat to suggest that what he was offering was experimental.

The Committee found particular 2 proved so far as it related to particular 1(e).

The Committee also went on to consider Particular 3. The Committee had already accepted Dr Turner's evidence that there was no objective evidence to support the impressions that were given on the [Redacted] posts. The Committee considered that the Registrant was under a duty to explain this to the ordinary reader. The [Redacted] page was open to members of the public, a number of whom would be vulnerable people, with learning difficulties, or the families of these people, seeking treatment to “disable” the effects of their particular learning difficulties.
In these circumstances the Committee found particular 3 proved so far as it related to Particular 1 (e).

e. On 14 August 2017 and I or on one or more unknown dates which gave the impression that colour tinted lenses alone had an impact on Patient H's ability to read;

The Committee noted that the Council were offering to prove that the Registrant had been responsible for postings on one or more dates. It noted that The Council had lodged a posting dated 14 August 2017 in one part of its document bundle. Dr Turner produced a copy of a posting dated 24 August 2017 in her report which was in another part of the bundle.

In the posting for 14 August 2017, it was said that “when the right intervention is in place, suddenly the whole world opens up [Patient H] is able to read.” In the accompanying screenshot for the video there was a picture of Patient H and a text overlayed which said “Cannot read and has sensory issues”.

In the posting for 24 August 2017 Patient H was described as a “high functioning autistic adult - with learning difficulties and typical autism traits including Biting.”

In the posting for 24 August 2017, he referred to Patient H and another Patient G and described himself as having a couple of “champagne moments” that “left me in wonderment as to the impact of colour tinted spectacles on their lives…”. 

The Committee also had regard to the accompanying videos. In one video Patient H was seen to change his spectacles and was wearing a light metal frame with grey tinted lenses. Patient H was then seen to be able to read the words “education, words, reading, health, life, career”.

Towards the end of the video the Registrant said “His carer is, I would say, in a state of shock to see how quickly [Patient H] from being able to read nothing suddenly with colour tinted glasses is like reading as though he has been reading for years”.

The Committee was satisfied that there was evidence that on 14 August 2017 and at least on one other occasion material was posted that gave the impression that coloured tinted lenses alone had an impact on Patient H's ability to read.

The Committee found Particular I (f) proved.

Having found particular 1 (f) proved in its entirety the Committee then went on to consider whether or not Particulars 2 and 3 were proved in relation to Particular 1 (f).

2. One or more of the impressions given at 1 were inappropriate and/or misleading in that they were not supported by objective evidence or were supported by controversial evidence;
3. Failed to explain in the [Redacted] posts and/or videos that one or more of the impressions given at 1 were not supported by objective evidence or were supported by controversial evidence.

The Committee accepted the evidence of Dr Turner who considered that there was some controversial evidence that colour tinted spectacles can reduce visual glare and may assist a patient in reading in certain circumstances. She considered that the Registrant had used Patient H to exaggerate the effects of his unspecified intervention. She explained her reasons for suggesting that there was exaggeration. In the first video Patient H was seem wearing spectacles that did not provide the correct refraction for close distance. In addition, she observed that Patient H was wearing darkly tinted spectacles. She formed the view that it was hardly surprising that Patient H was unable to read the notice board. She then observed that when Patient H was provided with an appropriate refractive correction with a lightly tinted spectacles he was “unsurprisingly” able to read.

Although she was cross-examined on this issue Dr Turner remained of the view that he was wearing prescription lenses which minified his eyes. She explained to the Registrant that “The spectacles he was wearing were causing the facial contours and ocular rim to become smaller. The minification in the edge of the lens was obvious to me from viewing the video.”

After further questioning she said;

“Having done many pairs of spectacles in the 25 years I have been refracting and dispensing I can ascertain when an individual is wearing a prescription. I would not be able to tell you the exact amount of the prescription that was in the spectacles, but I can tell you that they are refracted correction in the glasses.”

Dr Turner also described it as “unsurprising” that Patient H was unable to read a shop sign, in the street below, when wearing dark glasses in low light conditions but was able to read a “Sports Direct dot com” sign when wearing lighter glasses with appropriate refractive correction.

The Committee also accepted Dr Turner’s view that other factors may have been at play if there was any actual improvement in his reading. It could have been an example of the Hawthorne effect. This is where an act of being observed by a practitioner for the purposes of a video may enhance the performance of the intervention. It could also have been an example of the novelty effect where there would be increased motivation and response to suggestion when participating in a new and exciting intervention. She also suggested there may be a placebo effect where an individual thinks that an intervention will disable the effects of her mobility disorder.

The Committee considered that the post was misleading. The post contained no qualification to the suggestion that the intervention was based on, at best, controversial evidence.

The Registrant produced a posting dated 22 September 2017. The video also claimed that appropriately tinted glasses could have an effect on patients with autism. The Committee did not consider this material to assist the Registrant. Whilst it did explain
that Patient H wore dark sunglasses it did not suggest that the very wearing of dark sunglasses would affect his ability to read.

The Committee also considered the post to be inappropriate. The Registrant was advertising a treatment with no caveat to suggest that what he was offering was experimental and based on controversial evidence.

The Committee found Particular 2 proved so far as it related to particular 1(f).

The Committee also went on to consider Particular 3. The Committee had already accepted Dr Turner’s evidence that the evidence to support the impressions that were given on the [Redacted] posts was controversial. The Committee considered that the Registrant was under a duty to explain this to the ordinary reader. The [Redacted] page was open to members of the public, a number of whom would be vulnerable people, with learning difficulties, or the families of these people, seeking treatment to “disable” the effects of their particular learning difficulties.

In these circumstances the Committee found Particular 3 proved so far as it related to Particular 1 (f).

The Committee noted that particular 1(f) was also referred to in Particulars 4 and 5. It would return to consider each of these particulars at a later stage of its deliberations.

g. On 20 October 2017 which gave the impression that colour tinted lenses enabled Patient J to walk without assistance;

The Committee first had regard to the post dated 20 October 2017 which commenced “NEW LOG: TO INFINITY AND BEYOND”.

It went on to explain that although intervention had been used in learning difficulties, autistic spectrum disorders and some mental health issues “today we have seen it work in disability”.

It was then said that Patient J was a 53-year old with complex needs:

“She has palsy, low muscle tone in her legs and cannot stand for too long… she has learning difficulties has always worked with crutches and now a walker. Today for the first time in her life she is going to attempt to walk without any assistance and see if coloured tinted spectacles can help her walk without any assistance…. It was such an amazing experience and result”

The Committee also examined the video still photograph of Patient J which had the caption “She would have fallen down by now”. Patient J was standing and not being supported by either crutches or a carer.

The Committee then had regard to the video of Patient J. There was footage of Patient J walking without her walker. The video concluded with Patient J saying “I felt able to
walk on my own unassisted". She also said “without my glasses I was all over the place.”

The Committee was satisfied that Particular 1 (g) was proved.

Having found Particular 1 (g) proved the Committee then went on to consider whether or not Particulars 2 and 3 were proved in relation to particular 1 (g).

2. One or more of the impressions given at 1 were inappropriate and/or misleading in that they were not supported by objective evidence or were supported by controversial evidence;

3. Failed to explain in the [Redacted] posts and/or videos that one or more of the impressions given at 1 were not supported by objective evidence or were supported by controversial evidence.

The Committee accepted the evidence of Dr Turner who considered that she was unaware of any objective evidence in support of the suggestion that colour tinted spectacles could influence the mobility disability experienced by Patient J in a beneficial way. It was suggested that this intervention would mean that individuals with significant mobility issues attributed to cerebral palsy should consider this intervention to improve their quality of life and relinquish their mobility aids.

The Committee accepted Dr Turner’s evidence that she was unaware of any objective scientific evidence to support the hypothesis that adults with cerebral palsy and significant mobility disability could walk without aids as a result of such intervention.

She considered that this was outside his area of expertise and involved the provision of misleading and false information in a public forum. Dr Turner also considered that if there was an improvement there could be other explanations for that improvement that did not involve the effect of lenses. She suggested there may be a placebo effect where an individual thinks that an intervention will disable the effects of her mobility disorder.

The Committee considered that the post was misleading. The post contained no qualification to the suggestion that colour tinted spectacles could improve mobility for people such as Patient J.

The Committee also considered the post to be inappropriate. The Registrant was advertising a treatment with no caveat to suggest that what he was offering was experimental.

The Committee found Particular 2 proved so far as it related to Particular 1(g).

The Committee also went on to consider Particular 3. The Committee had already accepted Dr Turner’s evidence that there was no objective evidence to support the impressions that were given on the [Redacted] posts. The Committee considered that the Registrant was under a duty to explain this to the ordinary reader. The [Redacted] page was open to members of the public, a number of whom would be vulnerable
people, with learning difficulties, or the families of these people, seeking treatment to “disable” the effects of their particular learning difficulties.

In these circumstances the Committee found Particular 3 proved so far as it related to particular 1 (g).

h. On 20 October 2017 which gave the impression that colour tinted lenses can have an impact on the symptoms or effects of learning difficulties and/or autistic spectrum disorders, and/or mental health issues;

The evidence in support of this particular is identical to the particular involving Patient J in Particular 1(g).

The Committee have already found that the post for 20 October 2017 gave the impression that coloured tinted lenses can have the impact on symptoms and effects of learning difficulties autistic spectrum disorder and mental health issues.

The Committee found this particular proved and went on to consider whether or not it should find it proved in respect of Particulars 2 and 3. The claims made in this particular were similar to claims made in earlier particulars.

The post contained no warning that the treatment on offer was experimental.

The Committee considered that the claims made were unsupported by objective evidence and were accordingly misleading and inappropriate. It also considered that the Registrant was under a duty to qualify the impressions given but that he failed to do so. The [Redacted] page was open to members of the public, a number of whom would be vulnerable people, with learning difficulties, or the families of these people, seeking treatment to “disable” the effects of their particular learning difficulties.

Accordingly, it found Particulars 2 and 3 proved in so far as they relate to Particular 1(h).

i. On 21 February 2018 which gave the impression that colour tinted lenses disabled the effects of vertigo for Patient K;

The [Redacted] for Patient K was posted on 21 February 2018. Patient K was said to have suffered from balance issues and having been treated for vertigo for some time. She decided to try Colour Tinted spectacles “as an intervention to disable the effects of vertigo. The glasses had instant impact -raising hope for [Patient K] to realise her unfulfilled dreams”.

There was a caption for a video which stated “Use of colour tinted spectacles to disable [Redacted] vertigo and improve balance”.
In the video there was a demonstration of the apparent improvement in Patient K’s ability to walk. The Registrant was heard to state “and now we can see with the glasses on how we walk.”

Patient K was heard to say “I cannot believe it, I can actually walk…I could wear heels.”

The Committee found the facts of particular 1 (i) to be proved. The [Redacted] entry gave the impression that colour tinted lenses disabled the effects of vertigo on Patient K.

Having found particular 1 (g) proved the Committee then went on to consider whether or not particulars 2 and 3 were proved in relation to particular 1 (g).

2. One or more of the impressions given at 1 were inappropriate and/or misleading in that they were not supported by objective evidence or were supported by controversial evidence;

3. Failed to explain in the [Redacted] posts and/or videos that one or more of the impressions given at 1 were not supported by objective evidence or were supported by controversial evidence.

The Committee accepted the evidence of Dr Turner who considered that she was unaware of any objective evidence in support of the suggestion that colour tinted spectacles could disable the effects of longstanding vertigo in patients who had suffered head trauma.

She considered that this was outside the Registrant’s area of expertise and involved the provision of misleading and false information in a public forum.

The Committee considered that the post was misleading. The post contained no qualification to the suggestion that that colour tinted spectacles could disable vertigo for people such as Patient K

The Committee also considered the post to be inappropriate. The Registrant was advertising a treatment with no caveat to suggest that what he was offering was experimental.

The Committee found Particular 2 proved so far as it related to particular 1(g).

The Committee also went on to consider Particular 3. The Committee had already accepted Dr Turner’s evidence that there was no objective evidence to support the impressions that were given on the [Redacted] posts. The Committee considered that the Registrant was under a duty to explain this to the ordinary reader. The [Redacted] page was open to members of the public, a number of whom would be vulnerable people, with learning difficulties, or the families of these people, seeking treatment to “disable” the effects of their particular learning difficulties.

In these circumstances the Committee found particular 3 proved so far as it related to Particular 1 (i).
J. On 21 February 2018 which gave the impression that colour tinted lenses could be used to manage and or treat learning difficulties and vertigo or their symptoms

The Committee had regard to a [Redacted] post, also dated 21 February 2018, which contained a picture of Person M (Patient K’s sister) The post stated that Patient K’s big sister had heard of Learning Difficulty Solutions and seen some of the work on [Redacted]. She had “recommended [Patient K] to try colour tinted spectacle intervention – for both her learning difficulties and vertigo- saying she had nothing to lose.”

The post directed the reader to a video where it was claimed that:

“Here we see and hear [Person M’s] observations of what she saw when her sister wore the colour tinted spectacles. Its just AMAZING!”

The Committee found Particular 1 (j) proved.

The Committee then went on to consider whether Particulars 2 and 3 could be found proved.

It had already found Particulars 2 and 3 proved in respect of Particular 1(i). Particular 1(i) involved a claim that intervention could disable vertigo. This particular involved an unqualified claim that it could manage, treat and improve learning difficulties and vertigo.

The [Redacted] page was open to members of the public, a number of whom would be vulnerable people, with learning difficulties, or the families of these people, seeking treatment to “disable” the effects of their particular learning difficulties.

The Committee considered that there was little material difference between the two particulars so far as it related to the issue of managing treating and improving vertigo. The only additional claim was that it could manage, treat and improve learning difficulties. The Committee had already determined issues in respect of claims regarding learning difficulties when determining particulars 1(b) and 1(h). As such it was satisfied that particulars 2 and 3 could be found proved in respect of Particular 1(j)

k. On an unknown date which gave the impression that colour tinted lenses can have an impact on bladder control for Patient L;

The Committee had regard to a post, dated 3 May 2017, which contained a photograph of Patient L. It also had regard to videos which were posted on an unknown date. During the course of the video there was a question and answer session between the Registrant, Patient L and Patient L’s mother. The conversation started with the suggestion that tinted spectacles improved his ability to perform schoolwork. Towards the end of the video there was a question and answer session where, through prompting by the Registrant, Patient L’s mother claimed that bladder control was “60 to 70 % better now”. The Registrant had said “the bladder issue is quite common.. if it is reducing down then the glasses are doing their job.”
In light of this video evidence the Committee found Particular 1 (k) proved.

Having found particular 1 (k) proved the Committee then went on to consider whether or not particulars 2 and 3 were proved in relation to particular 1 (k).

2. One or more of the impressions given at 1 were inappropriate and/or misleading in that they were not supported by objective evidence or were supported by controversial evidence;

3. Failed to explain in the [Redacted] posts and/or videos that one or more of the impressions given at 1 were not supported by objective evidence or were supported by controversial evidence.

The Committee accepted the evidence of Dr Turner who explained that she was unaware of any objective evidence in support of the suggestion that colour tinted spectacles could have an impact on bladder control.

She considered that this was outside his area of expertise and involved the provision of misleading and false information to the mother of a young child. She considered that, if there was an improvement, this may be attributable to the fact that there was some evidence that coloured glasses may, in certain circumstances, reduce anxiety.

The Committee considered that the post was misleading. The post contained no qualification to the suggestion that that colour tinted spectacles could have an impact on bladder control.

The Committee also considered the post to be inappropriate. The Registrant was advertising a treatment with no caveat to suggest that what he was offering was experimental.

The Committee found Particular 2 proved so far as it related to Particular 1(k).

The Committee also went on to consider Particular 3. The Committee had already accepted Dr Turner’s evidence that there was no objective evidence to support the impressions that were given on the [Redacted] posts. The Committee considered that the Registrant was under a duty to explain this to the ordinary reader. The [Redacted] page was open to members of the public, a number of whom would be vulnerable people, with learning difficulties, or the families of these people, seeking treatment to “disable” the effects of their particular learning difficulties.

In these circumstances the Committee found particular 3 proved so far as it related to particular 1 (k).

2. One or more of the impressions given at 1 were inappropriate and/or misleading in that they were not supported by objective evidence or were supported by controversial evidence;
For the reasons stated above the Committee found this particular proved in respect of all of Particular 1. It had already determined that it was proved in respect of Particulars 1(a), 1(b), 1(c), 1(d), 1(e) (i-v), 1(f), 1(g), 1(h), 1(i), 1(j) and 1(k).

3. Failed to explain in the [Redacted] posts and/or videos that one or more of the impressions given at 1 were not supported by objective evidence or were supported by controversial evidence;

For the reasons stated above the Committee also found this particular proved in respect of all of Particular 1. It had already determined that it was proved in respect of Particulars 1(a), 1(b), 1(c), 1(d), 11 (i-v), 1(f), 1(g), 1(h), 1(i), 1(j) and 1(k).

4. The impression given at 1.f was inappropriate and/or misleading and/or inaccurate in that you did not explain that the refractive correction in Patient H's glasses had an impact on his ability to read;

The Committee had regard to its earlier findings. It had already determined that Patient H had been supplied glasses with an obvious refractive correction. It was satisfied that the impression given was inappropriate, misleading and inaccurate in that the Registrant did not explain that the refractive correction in Patient H's glasses had an impact on his ability to read.

Accordingly, it found Particular 4 proved.

5. Your conduct at 1.f was dishonest in that you knew that the refractive correction in Patient H's glasses had an impact on his ability to read and intended to conceal this from Patient H and/or Patient H's carer and/or the viewers of the [Redacted] posts and videos;

The Committee had careful regard to the wording of the Particular. It considered that the Particular related to two periods. The first period was when the video was shot. The recipients of any impression conveyed by the Registrant would be Patient H and his mother. The Registrant would then have had an opportunity to review the video and then consider editing it prior to posting it on [Redacted].

The Committee also had careful regard to the rubric of the case of Ivey:

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”
The Committee considered that it should consider the Registrant’s state of knowledge when shooting the video as well as his state of knowledge when he posted it.

The Committee had regard to the video and considered that it was entirely possible that the Registrant may have held a genuine belief that the dramatic change in Patient H was attributable to the coloured lenses alone. It was entirely possible that this belief was held by him, on the spur of the moment, and any information conveyed by him was not intended to conceal the fact that refractive correction was also involved. In light of that state of knowledge and belief the Committee did not consider that the information that he conveyed would be considered to be dishonest by the standards of ordinary decent people. In the circumstances the Committee did not consider that the Council had discharged its burden of proof.

The Committee next considered the alternative part of the Allegation. The viewers of [Redacted] posts and videos would only have seen the video in its current form because the Registrant posted it. The Committee was satisfied that the Registrant would have had an opportunity to consider its content and view it in light of the fact that it would be published to a wide audience. He would have viewed the video that he shot. He would have been aware, through examination of the glasses and the visual effect of wearing glasses on the size of Patient H’s eyes, that Patient H wore refractive spectacles. The Committee considered that the Registrant would have had a different state of mind when carrying out his editorial function. The Committee determined that despite knowing that refractive lenses have an impact on the ability of Patient H to read, he published the material on [Redacted] without any explanation or qualification. The Committee was consequently satisfied that the Registrant did intend to conceal this from readers of the [Redacted] pages.

The Committee considered that his latter state of mind would be regarded as dishonest by the standards of ordinary decent people.

Accordingly, the Committee found Particular 5 proved in respect of the viewers of the [Redacted] pages and videos only.

6. Posted written posts and/or videos to [Redacted]:

a. On 5 May 2017 which gave the impression that colour tinted lenses reduced body movements for Patient P;

The Committee had regard to the [Redacted] post of 5 May 2017 relative to Patient P as well as the two videos, transcripts of the videos and Dr Turner’s observations. In the [Redacted] post it was said that “Patient P was shown stimming “rocking of body and flapping of arms The stimming is pronounced with the old glasses, and reduced when the new glasses are worn.”

The Committee found this particular proved.
b. On 17 July 2017 and / or on one or more unknown dates, which gave the impression that colour tinted lenses prevented or reduced twitching in Patient B’s hands and / or feet;

The Committee had regard to the posting, dated 17 July, and the video that accompanied it. The posting showed a still from the video of patient B. During the course of the video the Registrant explained to the viewer that patient B was “a classic example of and feet movement in anxiety, because as anxiety moves in you find that the twitching and movement of the fingers becomes worse”.

Patient B was then seen to put on darkly tinted spectacles and then state “That is really strange, I couldn’t twitch if I wanted to.”

His mother is then recorded as saying “It’s like flicking a switch…literally he puts the glasses on and stops twitching.”

The Committee found Particular 6(b) proved.

7. The impressions given at 6.a and/or 6.b were inappropriate and/or misleading in that you did not explain why colour tinted had or might have had an impact on the patient’s behaviour;

The Committee had careful regard to and accepted the evidence of Dr Turner. She accepted that there was reasonable evidence that spectacles may reduce anxiety in Patients. This was not made clear in either the video or the written post.

Accordingly, it considered that the impressions given at 6(a) and 6(b) were both inappropriate and misleading.

8. On 11 August 2017 and / or an unknown date posted a written post and/or video to [Redacted] in relation Patient E;

The Committee had regard to the [Redacted] entry for 11 August 2017 where the Registrant made reference to Patient E and Patient G. In light of that the Committee found the particular proved.

9. Your conduct at 8 was inappropriate and/or misleading in that you failed to explain that the evidence supporting the use of colour tinted lenses was controversial;

Patient E gave live evidence regarding her business arrangement with the Registrant. The nature of the particulars required the Committee to confine its consideration to what the Registrant represented on [Redacted]. The Registrant stated that Patient E was a lady with a “spikey profile on the spectrum”. It was said that she had Irlen lenses but “they didn’t do much for her”. It was also said that “blue and coloured lenses transformed her life totally”.

The Committee accepted the evidence of Dr Turner who stated that there was some evidence that coloured tinted spectacles might, in certain circumstances, reduce visual
stress in someone with Irlen's syndrome. However, this evidence was controversial. The Committee considered that the Registrant was under a duty to include a qualification or explanation that the evidence supporting the use of colour tinted lenses was controversial but that he failed to do so.

Accordingly, the Committee found Particular 9 proved.

10. On 12 August 2017 posted a video to [Redacted] in which you stated “the colour glasses has in, in essence, caused the medication dosage to come down a bit”;

The Committee had regard to the [Redacted] posting dated 12 August 2012 where it was claimed “Colour tinted spectacles and photosensitive epilepsy [Patient I] success story”.

In the accompanying video Patient I reported that her medication, for epilepsy had been reduced following her being given coloured glasses. She felt “100% better, fits have gone from virtually every day to one a month”

She also said “I have reduced my medication, I have just have my Phenytoin and that is reduced from 550 to 450 and I am pretty well controlled now.”

The Registrant asked Patient I “so you feel the coloured glasses has in essence caused the dosage to come down a bit”.

Patient I replied “Yes”.

Accordingly, the Committee found Particular 10 proved.

11. Your conduct at 10 was:

   a. Outside the scope of your practice;

The Committee accepted the evidence of Dr Turner that the provision of advice regarding the effect of coloured glasses on medication dosage for treating epilepsy was outside the scope of the Registrant’s practice. The Registrant had given the impression that his unspecified colour tinted spectacles could enable individuals with photosensitive epilepsy to reduce the medications necessary to control seizures. The Registrant accepted that he had not been in contact with the patient’s Doctor. He took the patient’s word, at face value, that the medication for treating epilepsy had been reduced as a result of wearing tinted spectacles. The Registrant accepted that he was not privy to the reasoning behind the decision, of the prescribing Doctor, to reduce the medication.

Accordingly, the Committee found particular 11.a proved.
b. Inappropriate and/or misleading in that you failed to explain that the evidence to support this statement was controversial;

The Committee accepted the evidence of Dr Turner who stated that whilst there is some evidence that wearing tinted spectacles can, in certain circumstances, reduce the symptoms of photosensitive epilepsy (including a reduction of seizures) there was little evidence to suggest that it would lead to a reduction in associated medications. Since this was controversial evidence the Registrant was under a duty to explain that it was controversial and failed to do so. She accepted, in cross-examination that it was possible that it had that effect. However, the Registrant produced no objective evidence to substantiate this claim. He suggested, to the Committee, that he was involved in a “multi-disciplinary partnership” because a Doctor was also involved. However, he did not communicate with the Doctor and the Doctor did not communicate with him. The Registrant accepted that he had received no communication, from the Doctor, confirming that Patient I’s medication had been reduced and, if so, why it had been reduced.

Accordingly, the Committee found Particular 11(b) proved.

12. On 21 February 2018 posted to [Redacted] a post which stated that a patient “had nothing to lose” by trying colour tinted lenses;

The Committee already had regard to the [Redacted] page of 21 February 2018 when it considered particular 1(j). The Committee noted that it contained a picture of Person M (Patient K’s sister). The post stated that Patient K’s big sister had heard of Learning Difficulty Solutions and seen some of the work on [Redacted]. She had “recommended [Patient K] to try colour tinted spectacle intervention – for both her learning difficulties and vertigo- saying she had nothing to lose.”

Accordingly, the Committee found Particular 12 proved.

13. Your conduct at 12 was inappropriate and/or misleading in that you failed to explain that interventions carry a cost in terms of expense, and/or time, and/or raised expectations;

The Committee considered that the Registrant’s conduct was inappropriate and misleading. The likely audience might include people of limited means and who had significant learning difficulties and those assisting both. The suggestion that there could be an instant treatment raised expectations. The post for 21 February 2018 contained no warning that the proposed solution was, at best, controversial. It also contained no cost warnings that testing would take time and that the prospective patient would require to pay, for the treatment, out of their own funds.’

Accordingly, the Committee found Particular13 proved.


Misconduct

Having announced its findings of Facts the Committee afforded the parties time to consider the lengthy written determination that it issued.

When the hearing resumed the following day Mr Moran made submissions on the issue of misconduct.

He invited the Committee to make findings of misconduct in respect of each and all of the particulars found proved. He referred the Committee to the Council's skeleton argument and what, he submitted, involved instances of the Registrant’s conduct falling far below the standards expected of a Dispensing Optician. He submitted that when considering what was proper in the circumstances, the Committee was invited to have regard to the Council’s Standards for Optometrists and Dispensing Opticians, (effective from April 2016). (The Standards).

He accepted that the accepted legal definition of was to be found in Roylance v General Medical Council (No.2) [2000] 1 A.C. 311);

Misconduct is defined as “an act or omission which falls short of what would be proper in the circumstances”. It was not enough for the Registrant’s conduct to fall below the standards expected of him. The conduct had to fall far below these standards before it could be categorised as misconduct. In considering this issue the Committee could have regard to the evidence of Dr Turner but they were not bound to follow it. The Committee was invited to exercise its professional judgement.

Mr Moran concluded by submitting that the Registrant’s conduct, found proved, fell into three different categories. The bulk of the particulars, found proved, involved making misleading statements on social media. There was one finding of dishonesty that was found part proved (Particular 5). There was also a finding of acting outside the scope of his practice.

The Registrant began his reply by making it clear that he did not accept the findings of the Committee. It was explained to him, by both the Chair and the Legal Adviser that, following the Committee reaching a decision on facts it would not be open to revisit that issue. The hearing had reached a different stage where the issue of misconduct had to be determined on the basis of the facts found proved.

The Registrant submitted that he did not agree with the Committee’s findings and, in any event did not consider that there should be a finding of misconduct.

The Committee heard and accepted the advice of the Legal Adviser. He confirmed that the Committee should consider misconduct by using the Roylance test. It was not enough that the conduct fell below the standards. The Committee had to determine that it fell far below. The Committee required to exercise its professional judgement. There was no burden or standard of proof. Although they could have regard to the evidence of Dr Turner they did not have to agree with all and any of her opinions on the issues of misconduct that she commented upon.
The Legal Assessor referred to reference to the case of Schodlok v GMC [2015] EWCA Civ 769. He explained that the case of Ahmedsowoda v GMC [2021] EWHC 3466 (Admin) provided a crucial explanation of how Schodlok should be interpreted. The Committee could not cumulate findings of no misconduct with findings of misconduct to turn the former into misconduct.

The Committee retired to consider whether or not each of the particulars found proved amounted to misconduct. It recognised that there was no burden or standard of proof and that it had to exercise its professional judgement.

The Committee had regard to the standards. The Committee took into account all the information before it including the submissions made on behalf of the Council, the submissions of the Registrant and noted the observations of Dr Turner. In exercising its professional judgement it considered that particulars involved a falling short from the following standards:

(1.3) Assist patients in exercising their rights and making informed decisions about their care.

(5.1) Be competent in all aspects of your work, including clinical practice, supervision, teaching, research and management roles, and do not perform any roles in which you are not competent.

(5.3) Be aware of current good practice, taking into account relevant developments in clinical research, and apply this to the care you provide.

(6.1) Recognise and work within the limits of your scope of practice, taking into account your knowledge, skills and experience.

(15.2) Never abuse your professional position to exploit or unduly influence your patients or the public, whether politically, financially, sexually or by other means which serve your own interest.

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

(16.2) Avoid or manage any conflicts of interest which might affect your professional judgement. If appropriate, declare an interest, withdraw yourself from the conflict and decline gifts and hospitality.

(17.2) Ensure your conduct in the online environment, particularly in relation to social media, whether or not connected to your professional practice, does not damage public confidence in you or your profession.

The Committee considered each particular and each sub-particular in turn. It did not consider it appropriate to carry out an exercise in batching. It determined in turn whether each part of the particulars involved the Registrant falling far below the standards expected of a Dispensing Optician. It had regard to the various posts in [Redacted], Dr Turner’s evidence and the Committee’s findings in fact.
The Committee first had regard to Particular 1 and considered each of the sub-particulars in turn. The Committee considered that each of the posts referred to involved conduct that fell far below the standards expected of the Registrant. Each of the posts were individually serious enough to be classified as misconduct. They each involved irresponsible claims asserting the beneficial effect of colour tinted lenses.

The Committee next had regard to Particular 2 and was satisfied that the posting of numerous inappropriate and misleading claims on [Redacted] was conduct that fell far below the standards expected of a Dispensing Optician.

The Committee considered that in failing in his duty to explain to potential patients and others that the impressions given were not supported by objective evidence or were supported, at best, by controversial evidence the Registrant’s conduct fell far below the standard expected of him. It found misconduct in respect of Particular 3.

The Committee considered that there was misconduct in respect of Particular 4. The Committee considered that by not explaining there was a refractive correction in Patient H’s glasses the material posted was inappropriate and misleading. It was sufficiently serious to be conduct that could be described as conduct that fell far below what was expected of the Registrant.

The Committee had regard to Particular 5. It accepted that conduct, even involving a finding of dishonesty, need not necessarily result in a finding of misconduct. However, the Committee was satisfied that the Registrant’s dishonest conduct, in this case, was sufficiently serious for it to find that his conduct was far below what was expected of him.

The Committee went on to consider Particular 6. It first considered Particular 6(a). The Committee considered that the impression created in the posting for 5 May 2017 was sufficiently serious to be described as conduct falling far below what was expected of the Registrant.

The Committee next considered Particular 6(b). The Committee noted that Dr Turner opined that whilst the conduct of the Registrant fell below the standard expected of him it did not fall far below. The Committee had regard to Dr Turner’s reasoning. She accepted that wearing spectacles with a tint (of any type) might have reduced Patient B’s anxiety which in turn might encourage less repetitive behaviour. Her concern was that what was posted contained insufficient explanation and qualification to the claims that were made. Whilst Dr Turner was critical of the material published in [Redacted] she did not consider that this departure from the standards was sufficiently serious to amount to misconduct. The Committee accepted the reasoning of Dr Turner. In exercising its own professional judgement it considered the reasoning of Dr Turner to be persuasive, it did not consider that the conduct was sufficiently serious to amount to misconduct. The Committee considered that although this conduct fell below what was expected of the Registrant it did not fall far below.

The Committee next considered Particular 7. In light of its determination that there had been no misconduct in respect of Particular 6(b) it only considered whether there was misconduct in respect of 6(b). It accepted Dr Turner’s view that, although there had
been misleading and inappropriate impressions created, in relation to Patient B, this conduct only fell below the standards expected of the Registrant and not far below. The Committee determined that it could not find misconduct in respect of that part of particular 7.

However, the Committee determined that there was misconduct in respect of Particular 7 in relation to the impressions created at 6(a). The Committee considered that the impression created, that colour tinted lenses could reduce body movements, was far more serious than the claims in Particular 6 (b). As such it considered that the Registrant’s conduct, in that part of Particular 7, fell far below what was expected of him.

The Committee next considered Particulars 8 and 9. The Committee noted that these Particulars related to Patient E. In commenting on the Registrant’s conduct Dr Turner considered that it fell below and not far below what was expected of him. The Committee had regard to Dr Turner’s reasoning. Dr Turner considered that there was some evidence that coloured tinted spectacles might, in certain circumstances, reduce visual stress in patients with Irlen syndrome. However, the evidence concerning Irlen syndrome could only be regarded as controversial. Although the material which was posted was inappropriate and misleading it was not sufficiently serious to be classified as misconduct. The Committee considered this matter carefully and accepted the opinion of Dr Turner on this issue. Accordingly, it did not find misconduct in relation to Particulars 8 and 9.

The Committee next considered Particular 10. It considered that a claim that the colour of glasses caused a patient’s medication, for epilepsy, to come down a bit was sufficiently serious to amount to misconduct. It had regard to its findings of fact. The claim was not substantiated by any contact with the prescribing Doctor. In the circumstances the Committee considered that the Registrant’s conduct fell far below what was expected of him.

The Committee then considered Particular 11.

In respect of 11(a) the Committee had already determined that making the claim that he did, in Particular 10, was outside the scope of his practice. It considered that this conduct was sufficiently serious to amount to conduct that fell far below what was expected of the Registrant.

In respect of 11(b) the Committee considered that the inappropriate and misleading claims made in the post were sufficiently serious to amount to misconduct. They determined that the Registrant’s conduct fell far below what was expected of him.

The Committee next considered Particular 12. This involved a bald statement that a patient “had nothing to lose”. The Committee considered that the post, containing this statement, did not involve misconduct and that the Registrant’s conduct fell below, but not far below, what was expected of him.

The Committee then considered Particular 13. It had already determined that the post was inappropriate and misleading. It had regard to the fact that the post would be seen by a wide range of members of the public who had not been warned that interventions
carry a cost in terms of expense, time and raised expectations. As such the Committee determined that the conduct was sufficiently serious for it to be satisfied that the Registrant’s conduct fell far below the standards expected of him.

In the Circumstances the Committee found there to be misconduct in respect of Particulars 1(a)-(k), 2, 3, 4, 5, 6(a), 7 (in relation to 6(a)), 10, 11 (a)&(b), and 13.

It found that there was no misconduct in respect of Particulars 6(b), 7 (in relation to 6(b)), 8 and 9 and 12.

**Application to adjourn by the Registrant**

Following the handing down on the written determination on misconduct the hearing adjourned in order that parties may consider the decision.

Mr Moran indicated that he would wish the Committee to consider further documents at the impairment stage. The Registrant indicated that he did not wish the Committee to consider them.

Prior to this issue being discussed the Committee was advised that the Registrant had produced documentation overnight which he wished the Committee to have regard to. Mr Moran and the Legal Adviser had no concerns with the Committee seeing these documents.

The Committee had regard to the Registrant’s documents which consisted of written submissions in support of an application to adjourn and various emails from the Registrant to various parties.

The Committee determined that it would be appropriate for it to consider the Registrant’s application to adjourn before making any determination on the admissibility of the documents which Mr Moran wished to submit. It considered that, as a matter of fairness, it would be proper to determine the Registrant’s application first.

The Registrant invited the Committee to have regard to his written submission. He indicated that he would read the document out but make oral additions.

The Document in support of his application was headed

“ILLEGAL PROCEEDINGS

EVIDENCE HAS COME TO LIGHT THAT THESE PROCEEDINGS ARE ILLEGAL - AND SHOULD NOT BE CONTINUED “

The remainder of the document was also written in capital letters. The Registrant sought adjournment on the basis that “evidence has come to light”. He explained that, following the announcement of the Committee’s decision on misconduct, he looked at a handbook that had been sent to him by the Council. The Committee were familiar with this handbook as it is available at the venue where physical hearings take place.
It contains copies of the Opticians Act 1989 (as amended), the Rules and other guidance. It is available online but the Committees are not sent hard copies.

The Registrant had two grounds for seeking an adjournment.

The Registrant told the Committee that his intention was to withdraw from the proceedings and not partake in them any further unless representatives of the Optical Ombudsman and the Charities Commission were present. In response to Committee questions the Registrant explained that he had not contacted either organisation.

His second ground for seeking an adjournment was that he considered that the Council had followed none of the relevant requirements incumbent on it in bringing this matter before the Committee. He referred to part 4 and 3 of the rules in his written submissions and part 2 was mentioned in his supplementary submissions. Included in that was a complaint that he had been subjected to an immediate suspension order but that should only have been imposed if he was in custody.

He criticised the Committee in the following terms:


IN ESSENCE PROTECTING THEIR PAYMASTER FROM SERIOUS CONSEQUENCES (sic) THIS IS CLEAR EVIDENCE - THE FATE OF THIS CASE IS ALREADY SEALED VIA - SECRET ILLEGAL PROCESS .”

He amplified his observation that the Committee “had been told the outcome by the paymaster” (the Council).

In replying on behalf of the Council Mr Moran invited the Committee to refuse the application.

He submitted that it had always been open for the Registrant to invite anyone to attend and observe these proceedings.

Mr Moran submitted that, as the Registrant had the right of appeal, there would be no practical purpose in anyone attending these proceedings. The precise role of these proposed attendees was unclear. In the event of an appeal the entire transcript of these proceedings and supporting documentation would be available to anyone wishing to review what happened.

Mr Moran submitted that as part of the appeal process the Court could have regard to the fairness of the proceedings. He raised the issue of what powers the Committee had to deal with the complaints raised by the Registrant.
The Committee heard and accepted the advice of the Legal Adviser. He explained to the Committee that the Registrant’s application was competent. Rule 35 permitted the Registrant to make the application “at any stage”.

The Legal Adviser explained that the Committee had no power to compel the attendance of observers. He then referred to the case of Colton v NMC [2010] NIQB 28. Although it would be open for the Registrant to make an application for Judicial Review they are less likely to be entertained where there is a normal route of appeal. He confirmed that the Registrant had a right of appeal at the end of these proceedings. He also explained that the Registrant had used the expression “immediate order” when what he meant to say was “interim order”. He stated that the assertion that interim orders were reserved only for those serving custodial sentences was wrong in law. Interim orders can be imposed if they are necessary for the protection of the public, in the public interest or in the interest of the Registrant.

The Committee retired to consider the application.

The Committee considered each of the grounds.

The Committee did not consider that it would be appropriate to adjourn the hearing until such time as two observers could attend. The Committee had no power to compel attendance. There was no information before the Committee to suggest that these representatives would be willing to attend, as observers, if asked. The Registrant would be able to have access to transcripts and provide them to anyone he wished to assist him in any application to appeal.

The Committee then went on to consider whether or not the hearing should be adjourned on the basis that the Registrant was alleging procedural irregularities. It had regard to the emails and submissions provided by the Registrant in support of this. They contained general criticisms without reference to the precise wording of either the Opticians Act 1989 or the Rules. It had difficulty in identifying what these alleged irregularities were. Many of these related to earlier, investigation, stages of the proceedings prior to the case being before this Committee.

The Committee reminded itself that its role was to carry out the stages of a hearing set out in Rule 46. There was no express power to investigate how these proceedings came before the Committee. The Committee was concerned that an adjournment would result in further unquantifiable delay in this case. It was also not in the public interest that this case should be adjourned following a finding of misconduct. Any ordinary member of the public would expect the public protection issues raised by a finding of misconduct to be dealt with expeditiously. The Registrant has a right to appeal this decision at the conclusion of this case.

For these reasons the Committee decided to refuse the Registrant’s application to adjourn.
Additional Documents

Following the Committee announcing its decision on the Registrant’s motion to adjourn the parties were afforded time to read and consider the written determination.

The Committee then invited Mr Moran to make his application for the Committee to receive documents, relating to the Registrant’s previous regulatory history as evidence.

Mr Moran explained that the stage that the hearing reached (Rule 46 (14)) was one that envisaged further evidence being received.

Since the Rules permitted the receipt of evidence the “floor” was with the Registrant to explain his grounds of opposition.

The Registrant explained his concerns.
  • The documents related to his past and some were a long time ago
  • There was a concern that Mr Moran would “twist” this material

In replying on behalf of the Council Mr Moran submitted that it was common for such material to be introduced at the time of considering impairment. He referred to the case of Mitarobi v NMC [2017] EWHC 476 (Admin).

The Committee heard and accepted the advice of the Legal Adviser. He explained that the Registrant was well aware that evidence of this nature would be introduced at this stage. There had been private discussions involving the Legal Adviser, the Registrant and Mr Moran, involving this matter, prior to submissions at the fact-finding stage. These discussions had been repeated prior to submissions at the misconduct stage. The Legal Adviser had formed a view that it would not be fair for the introduction of this material at an earlier stage. The fact that the Registrant had adverse regulatory findings was not a matter for the Committee to be informed of at the earlier stages. The introduction of such material, at the earlier stages, would have been potentially prejudicial.

The Legal Assessor’s advice agreed, with Mr Moran, that it was common for material such as this to be introduced at the stage a Committee was considering impairment. He referred to the cases of Cheatle v GMC 2009 EWHC 645 (Admin) and Cohen v General Medical Council [2008] EWHC 581 (Admin).

The Legal Assessor reminded the Committee that the issue of whether this evidence was admissible was governed by Rule 40. The Committee had to consider whether admitting this evidence was relevant and fair.

The Committee retired to consider this issue.

The Committee considered that it would be appropriate to admit the evidence at this stage. Although the Committee had to consider whether the Registrant was impaired now it had to have regard to past events in order to consider remediation. Although it was content to admit this material at this stage, on the basis that it was fair and
relevant, the issue of what weight it could give it was a matter for it to consider once it heard submissions on current impairment.

**Submissions on Impairment**

Following the announcement of the decision on the admission of these documents as evidence the Committee then invited submissions on impairment.

Mr Moran submitted that the Committee should find current impairment. He invited it to have regard to paragraphs 15 to 19 of the Council’s skeleton argument. He submitted that the Committee should have regard to the Registrant’s regulatory history in considering remediation. The Committee should consider remediation in light of the case of Cohen and the test set out in the case of CHRE v (1) NMC and (2) Grant [2011] EWHC 927 (Admin).

The Registrant was given some time to consider his position in light of the determination to admit documents in respect of his earlier regulatory history.

The Registrant invited the Committee not to find him currently impaired.

He submitted that there was confusion arising out of the fact that he wore “two hats”. As well as being a Dispensing Optician he also ran a business.

He informed the Committee that he did not accept the findings on misconduct and did not, in particular, understand how the Committee arrived at findings that he was in breach of standards 15.2 and 16.2.

He explained that following his suspension the business of [Redacted] had shut down. He was now working as a locum dispensing assistant at various branches of Specsavers. There was a verbal agreement that he should not mention tinted spectacles at all. There were cameras in the shops which would monitor his activities.

He told the Committee that he kept his knowledge up to date by reading three magazines that were delivered to various professionals in the shop. He volunteered that he was behind with his Continuing Educational Training (CET).

He invited the Committee to take into account the fact that although he was [Redacted].

The Committee heard and accepted the advice of the Legal Assessor who referred to the tests set out in the cases of Cohen and Grant. He also referred to the case of General Optical Council v Clarke EWCA CIV 1463. The fact that the Registrant had said he had no current intention of practising with coloured tinted lenses was not relevant to the issue of impairment.

The Committee retired to consider current impairment.

The Committee had regard to all of the material before it as well as the submissions made.
The new evidence consisted of two separate regulatory concerns.

The Registrant was erased from the Register on 15 March 2000 [Redacted].

The Registrant was restored to the Register on 11 July 2005 having had a prior application refused on 16 October 2001.

The Committee also had regard to the Case Examiners’ decision dated 16 October 2016. In that decision the Case Examiners reported that they had investigated regulatory concerns analogous to those that this Committee dealt with. The concerns were that the Registrant made similar claims regarding the benefits of tinted spectacles in March 2015. These claims related to the treatment of dyspraxia and were made at a conference and followed up in [Redacted] communication. This resulted in the Registrant being given a warning. He was reminded to adhere to the Standards especially 6, 15 and 17 of the current code.

The Committee began by considering the issue of remediation. The Committee reminded itself of the passage in the case of Cohen which stated:

“It must be highly relevant in determining if a doctor’s fitness to practise is impaired that first his or her conduct which led to the charge is easily remediable, second that it has been remediated and third that it is highly unlikely to be repeated”.

The Committee considered that in most cases the majority of the particulars found in respect of his would have been easily remediable. In many cases a Registrant will appreciate that what they have said, on social media, was inappropriate and will undertake not to repeat it. The Committee had no reassurance that the Registrant will not repeat his behaviour. The Committee were particularly concerned that the Registrant’s behaviour involved a repetition of behaviour that he had been warned not to do. The Registrant did not accept that his claims, regarding the benefits of tinted spectacles, were either unsupported by any evidence or at best supported by controversial evidence.

The Committee noted that the Registrant told it that he had a verbal agreement with those that employed him whereby he was not to promote tinted spectacles. However, the Committee formed the view that he was not promoting tinted spectacles only because he had been warned not to. The Committee noted that the Registrant did not accept the findings of the Committee.

The Committee also noted that, although his [Redacted] for dishonesty was of some vintage, there was a further finding of dishonesty by it. In addition, there was one finding where the Registrant acted outside the scope of his practice.

Having considered the issues raised by the case of Cohen the Committee considered that, in the case of this Registrant, his misconduct could not be easily remedied.

The Committee next went on to consider the test set out in the case of Grant:
“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 considered that all four limbs were engaged with regard to both the past and the future. The unsupported claims made the Registrant were such as to put patients at unwarranted risk of harm. The Committee had insufficient confidence that this would not be repeated. The Registrant has brought the profession into disrepute. He was in a position of trust and sought to make financial gain by abusing that position of trust and making unsupported claims which served his interests. There was a clear conflict of interest between him promoting the interests of his company ahead of his responsibilities as a Registrant. He was responsible for a number of posts that were misleading and inappropriate. On one occasion a post was found to be dishonest and on one occasion he was acting outside the scope of his practice. The Committee had insufficient confidence that this would not be repeated. The Committee also considered that the Registrant had breached the fundamental tenets of the Profession. The misconduct involved the making of inappropriate, misleading and dishonest claims The Committee had insufficient confidence that this would not be repeated. The Committee also noted that there had been a finding of dishonesty. The Committee had insufficient confidence that this would not be repeated.

In light of these findings the Committee considered that the fitness to practise of the Registrant was impaired both on the grounds of public protection and such a finding was also in the public interest.

Sanction

Following the Committee announcing its decision, on current impairment, the parties were provided with an opportunity to consider how to frame submissions on sanction in light of that decision.

Mr Moran invited the Committee to consider sanction having regard to the Council’s 2021 Hearings and Indicative Sanctions Guidance (‘the 2021 Guidance’).

Mr Moran took the Committee to the findings in its determination on impairment. He contended that this part of the determination contained findings of what should be regarded as the aggravating features in the case. He addressed the Committee indicating, with reference to various paragraphs in the 2021 Guidance, why erasure should be considered to be the appropriate sanction.
The Registrant began his submissions by apologising to the Committee for the behaviour that led to the findings of misconduct. He also apologised to the Committee for his behaviour during the hearing. He invited the Committee to impose an order of conditions and suggested that the sanction of erasure would be disproportionate. He invited the Committee to have regard to the fact that he could be supervised and that a personal development plan could be put in place. The Registrant told the Committee that he had been working with a large organisation and that his work had been restricted by working for Specsavers which commenced in June 2018.

The Registrant explained that the effect of an interim suspension order had been serious. His salary had been reduced despite his working for longer hours. He told the Committee that his motivation for his misconduct was to improve the lives of people. His work was experimental and to improve quality of life.

The Committee heard and accepted the advice of the Legal Adviser. He indicated that the Registrant had been suspended on an interim basis for a significant period of time. He submitted that his inability to practise due to the interim suspension may be relevant to the issue of the length of the period of suspension that the Committee may wish to impose. He referred the Committee to the cases of Kamberova v NMC [2016] EWHC 2955 (Admin); Akhtar v GDC [2017] EWHC 1986 (Admin); and GMC v Ahmed [2022] EWHC 403 (Admin).

The Legal Adviser also reminded the Committee that the guidance did not suggest that a finding of dishonesty should result in a particular penalty. It contained no blanket rule to that effect. This was a reference to paragraph 22.4 of the 2021 Guidance. He also referred to an earlier part of the 2021 Guidance (17.8) and made reference to the case of Lusinga v NMC [2017] EWHC 1458 (Admin) where it advised the Committee to have regard to the scale of the dishonesty.

The Legal Adviser referred the Committee to the case of O v NMC [2015] EWHC 2949 where the Indicative Sanctions Guidance, provided to the Nursing and Midwifery Council's conduct and competence committee, was similar to the Council's. Like this Committee the NMC Panel had to consider sanctions for misconduct in ascending order of gravity. However, where the appropriate sanction was between suspension or striking off, it was critical that all the available mitigation was considered at both stages, not just at the striking-off stage.

The Legal Adviser concluded by referring to part 21.31 of the 2021 Guidance. That provision made reference to the case of HK v General Pharmaceutical Council [2014] CSIH 61. He pointed out that the decision of the Extra Division of the Inner House was overturned, on appeal, by the Supreme Court under reference to [2016] UKSC 169. Accordingly, that part of the Guidance should be disregarded.

**Committee Deliberations**

The Committee appreciated that in considering sanction there was no burden of proof and that it had to reach its decision based upon its own professional judgement and based upon the 2021 Guidance. The Committee had regard to the introduction to the Guidance which contained a reminder of the over-arching objective of the Council. The
Committee had equal regard for each of its limbs. It was the responsibility of this Committee to make fair, consistent and just decisions that fulfil the over-arching objective.

Throughout its decision making, the Committee had regard to the principle of proportionality, and weighed the interests of the Registrant with the public interest. It appreciated that it is often appropriate in serious cases to give greater weight to the public interest, than to any consequences of sanction for the registrant. The primary purpose of a sanction was to achieve the over-arching objective. Even if a sanction may have a punitive effect on the Registrant it would still be appropriate if its purpose was to achieve the overarching objective.

The Committee started by identifying what it considered to be the aggravating and mitigating factors in the case.

Aggravating factors (part 14.3 of the 2021 Guidance)

- The Registrant lacked insight into the gravity of his failings, particularly with regard to the fundamental failings in providing misleading and inaccurate information to the public.
- His late apology
- There was minimal remorse
- The Registrant’s attitude to his misconduct. His insight was not apparent to the Committee
- The Registrant has a previous Regulatory history
- The Registrant’s misconduct took place shortly after he had received a warning from his regulator.
- The Registrant was dishonest. Although this was not at the higher end of the scale, nor was it repeated, it remained an aggravating factor.
- There was no independent evidence of his current work or of his CET.

- The target audience of his posts included vulnerable people.

Mitigating factors (part 14.2 of the 2021 Guidance)

- The Registrant has apologised albeit at the last possible (sanction) stage
- He has engaged with his Regulator
Considering Sanction

In its evaluation of the proportionate and appropriate sanction which upheld the overarching objective, the Committee considered the aggravating and mitigating factors it had identified and gave them appropriate weight when reaching its decision.

The Committee considered the sanctions available to it from the least restrictive to the most severe.

It considered whether to take no further action but considered that this would not be appropriate. It would not satisfy the public interest in a case as serious as this, with the aggravating factors identified. Furthermore, the public would not be protected.

The Committee then went on to consider a financial order but determined that such an order was not appropriate either by way of a substantive order or in addition to any order that it could make. Such an order was not sought by the Council. There was no suggestion that the Registrant actually made a significant financial gain. There was no information provided with regard to the ability of the Registrant to pay. The Committee determined that such an order was an inappropriate sanction as it was not relevant to the misconduct found proved and it would neither protect the public nor satisfy the public interest.

The Committee then went on to consider conditional registration. It did not consider that such an order would protect the public nor would it satisfy the public interest, having regard to the seriousness of the case and the weight it placed upon the aggravating factors identified. The misconduct did not involve problems with normal areas of a dispensing optician’s practice. There were not easily identifiable, purely clinical skills, which could be improved and monitored via conditional registration.

The Committee was also unable to formulate conditions that could be devised to address the issue of dishonesty and more general attitudinal issues which were identified in the earlier stages of this hearing. It would not be possible to formulate conditions that were appropriate, proportionate, workable or measurable. Considering the Committee’s concern regarding the Registrant’s level of insight, and the other aggravating factors it had identified, in particular the fact that he ignored a warning from his regulator, it concluded that the seriousness of the case would not be met by conditions.

The Committee had regard to the mitigating features when considering conditions and other sanctions. It was not persuaded that the limited mitigating factors would have an effect on the public protection and public interest concerns that it identified. It also took into account the Registrant’s personal mitigation. It accepted that any order that prohibited the Registrant from working would create financial hardship but also considered that this was outweighed by concerns regarding public protection and the wider public interest.

In considering whether or not it should suspend the Registrant the Committee also deemed it necessary to consider the issue of erasure. This was because paragraph 19.2 d of the guidance, which deals with decision making required it to:
“…explain why the Committee feel that a particular sanction is the most appropriate sanction for them to apply…”

Unless the Committee considered both sanctions it would not be possible to explain why and how it had alighted upon the most proportionate and appropriate sanction.

The Committee, in considering whether or not to suspend the Registrant’s registration, considered the aggravating and mitigating factors set out in the earlier paragraphs. It had regard to paragraph 21.29 of the 2021 Guidance in order to assess whether any of the factors set out in that provision were engaged:

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

a. A serious instance of misconduct where a lesser sanction is not sufficient.
b. No evidence of harmful deep-seated personality or attitudinal problems
c. No evidence of repetition of behaviour since incident.
d. The Committee is satisfied the registrant has insight and does not pose a significant risk of repeating behaviour.
e. In cases where the only issue relates to the registrant’s health, there is a risk to patient safety if the registrant continued to practise, even under conditions.”

The Committee had already determined that this was a serious case of misconduct involving multiple elements including repeatedly posting misleading and inappropriate information, acting outside the scope of his practice on one occasion and one instance of dishonesty, rather than a single serious instance of misconduct. It considered that factor (a) was not engaged.

The Committee then had regard to factor (b). It considered that there were harmful deep-seated attitudinal problems identified in its earlier findings. The Registrant had received a warning from his regulator in 2016 but continued to make unsupported claims, regarding the benefits of tinted lenses, in the following year. He continued to deny any wrongdoing until the sanction stage of this hearing.

The Committee had regard to the fact that there are no further allegations of repetition of his misconduct but did not consider factor (c) to be relevant. The Committee had serious public protection concerns arising from the fact that the misconduct took place shortly after the Registrant received a warning from his regulator to desist from making inaccurate and misleading claims.

The Committee considered that factor (d) related to the concerns it identified when considering factor (b). The Registrant’s insight was not apparent throughout the course of the hearing and the late apology was insufficient to assure it he had fully appreciated the nature of his misconduct. The Committee have determined that there was a risk significant enough for it to make a finding that the Registrant would, in the future, put patients at risk of harm. As such factor (d) was not engaged.
The Committee considered these factors in conjunction with the preamble to paragraph 21.29 of the 2021 Guidance:

“Consider: Does the seriousness of the case require temporary removal from the register? Will a period of suspension be sufficient to protect patients and the public interest? “

The Committee considered the two questions in turn. Whilst the seriousness of the case suggested that the temporary removal of the Registrant from the Register was an option, it gave rise to the question as to whether removal from the Register should be temporary or permanent when all the relevant guidance had been considered. In answering the second question, the Committee concluded that having found some of the factors for suspension to be engaged only in a limited or qualified way, it was required to go on to consider the guidance in relation to erasure.

The Committee next considered whether or not erasure was the appropriate sanction and had regard to the aggravating and mitigating features as well as the factors set out in part 21.35 of the 2021 guidance:

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

a. Serious departure from the relevant professional standards as set out in the Standards of Practice for registrants and the Code of Conduct for business registrants;

b. Creating or contributing to a risk of harm to individuals (patients or otherwise) either deliberately, recklessly or through incompetence, and particularly where there is a continuing risk of harm to patients;

c. Abuse of position/trust (particularly involving vulnerable patients) or violation of the rights of patients;

d. Offences of a sexual nature, including involvement in child pornography;

e. Offences involving violence;

f. Dishonesty (especially where persistent and covered up);

g. Repeated breach of the professional duty of candour, including preventing others from being candid, that present a serious risk to patient safety; or

h. Persistent lack of insight into seriousness of actions or consequences.”

The Committee considered that factors (d) (e) and (g) were not engaged.

In relation to factor (a) the Committee concluded that there had been a serious departure from the standards expected of the Registrant. The Registrant posted
misleading, inappropriate and on one occasion dishonest information. He also acted outside the scope of his practice. This was not simply a departure from the multiple standards identified in the misconduct determination. It involved a breach of the fundamental tenets of the profession and took place shortly after a warning was issued. Accordingly, factor (a) was engaged.

The Committee had clearly identified that patients were put at an unwarranted risk of harm and that there remained a future risk of harm to the public. Accordingly, factor (b) was engaged.

The Committee has identified that the target audience of these postings included vulnerable people as well as their relatives. The Committee did find that there was an abuse of his position of trust. The Committee had already determined, at the impairment stage, that the Registrant was in breach of the trust placed upon him by members of the public seeking to use his professional services. Accordingly, factor (c) was engaged.

The Committee had already determined the seriousness of the Registrant’s dishonesty. It did not find that the dishonesty was persistent or covered up. However, concluded that factor (f) was engaged.

The Committee had regard to the Registrant’s lack of insight and that factor (h) was engaged.

The Committee noted that a significant number of factors in favour of erasure were engaged, and could not identify any reason to depart from them.

The Committee also had regard, in considering this issue, to the preamble to paragraph 21.35 of the 2021 guidance which states:

Consider: Is erasure the only sanction which will be sufficient to protect patients and the public interest? Is the seriousness of the case compatible with ongoing registration? Can public confidence in the profession be sustained if this registrant is not removed from the register?

The Committee considered all three of the issues raised. Despite continued engagement with the regulatory process the Registrant remains a risk to patients. There are attitudinal issues. The Committee were concerned that any right-thinking member of the public would be concerned if the Registrant were permitted to remain on the Register. They would have concerns regarding the exposure, of patients, to risk arising from all of these actions and that the continuing exposure to risk some years after the events had not diminished. The Committee formed the view that public confidence in the profession would not be sustained if the Registrant remained on the Register. The seriousness of the case was incompatible with ongoing registration.

The Committee had regard to the issue of proportionality and accepted that the order it would make would have a fundamental impact on the Registrant’s ability to work in his chosen profession as well as affecting his status, both financially and reputationally. It considered that the protection of the public and wider public interest concerns that it had already identified outweighed the interests of the Registrant.
In all of the circumstances the Committee directed that the Registrant’s name should be erased from the Register.

**Immediate order**

The Committee has heard submissions from Mr Moran on behalf of the Council who applied for an Immediate Order.

The Registrant indicated that he did not formally oppose the application. He explained that he did not think what he had to say would make a “jot of difference”. He said that the decision that the Committee made was pre-determined and that the decision was made without evidence. The Committee sought clarification on the issue of whether the Registrant was resiling from the apology that he had tendered at the sanction stage. He explained that he still maintained his apology.

The Committee accepted the advice of the Legal Adviser.

The Committee decided to impose an Immediate Order for Suspension for the following reasons. It determined that such an order was necessary for the protection of the public and was otherwise in the public interest. To not impose such an order would be inconsistent with its earlier sanction determination that the seriousness of the case was incompatible with ongoing registration.

Accordingly, it directed an immediate order of suspension in terms of Section 13 (I) of the Opticians Act 1989.

Chair of the Committee: Ms Valerie Paterson  
Signature ……………………………… Date: 11 August 2022

Registrant: Mr Zahir Ibrahim  
Signature present via video Date: 11 August 2022