

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

GENERAL OPTICAL COUNCIL

F(24)05

AND

RAJEEV LAL SAIGAL (01-32137)

**DETERMINATION OF A SUBSTANTIVE HEARING
17-21 JUNE 2024**

Committee Members:	Hermione McEwen (Chair/Lay) Alice Robertson-Rickard (Lay) Nigel Pilkington (Lay) Sarvat Fida (Optometrist) Denise Connor (Optometrist)
Clinical adviser:	N/A
Legal adviser:	Alecsandra Manning-Rees
GOC Presenting Officer:	Rachel Birks
Registrant present/represented:	Yes, and represented
Registrant representative:	David Claxton [Counsel] Katharine Germishuys [AOP]
Hearings Officer:	Arjeta Shabani
Facts found proved:	1 (admitted and found proved) 2 (admitted and found proved) 3 (found proved)
Facts not found proved:	None
Misconduct:	Found
Impairment:	Impaired on public interest grounds alone
Sanction:	28 day Suspension Order– (Without Review)
Immediate order:	No

ALLEGATION

The Council alleges that you, Rajeev Saigal (01-32137), a registered optometrist:

1) On or around 12 June 2023 whilst employed at Specsavers Opticians [redacted], you conducted a sight test on a mystery shopper (Patient A) and failed to:

- a. complete an internal examination or an adequate internal examination;*
- b. complete an adequate external examination;*
- c. complete an external examination or examination of Patient A's anterior chamber or vitreous;*
- d. perform any further eye examination with either a Volk or a direct ophthalmoscope;*

2) On or around 12 June 2023 you failed to maintain adequate patient records in that you recorded that the following tests had been carried out on Patient A when it had not:

- a. a pupil assessment;*
- b. an external eye assessment;*
- c. . examination of the anterior chamber;*
- d. vitreous assessment;*
- e. Volk assessment;*

3) Your action as set out in 2 was dishonest in that you falsely recorded that you performed the tests set out at 1 and 2 when you did not;

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

PRELIMINARY MATTERS

Privacy

1. At the outset of the hearing, Mr Claxton, on behalf of the Registrant made an application for parts of the hearing relating to the Registrant's private and family life to be heard in private under rule 25(2)(c) of *The General Optical Council (Fitness to Practise) Rules Order of Council 2013 ("the Rules")*. Ms Birks on behalf of the Council did not object. The Committee determined that those relevant parts of the hearing would be heard in private.

Admissions in relation to the particulars of the Allegation

2. The Registrant admitted particulars 1 and 2 of the Allegation and the Chair announced that they had been found proved in accordance with rule 46(6) of the Rules.

DETERMINATION

Background to the Allegation

3. The Registrant is an optometrist who first registered with the Council on 24 October 2019. At the time of these allegations, he was working at Specsavers in [redacted] ("the practice").
4. The Allegation arises from a single patient appointment on 12 June 2023. Patient A attended the practice for a sight test as a 'mystery shopper'. As part of the role as a 'mystery shopper' they had been given a hidden video camera to record their visit which included the pre-screening, sight test and dispense. The CCTV was 58 minutes 57 seconds long, however, the relevant parts to the Registrant's sight test of Patient A lasted 11 minutes and 19 seconds.

5. The footage was reviewed as part of Specsavers quality control processes by Witness A a Professional Services Consultant. Following this review, the GOC received a referral on behalf of the Practice which stated: *'On 12 June 2023 a mystery shopper attended Practice B for a sight test which was performed by Mr Saigal. On 3 July 2023, having reviewed the mystery shopper footage, Witness B (Ophthalmic Director Practice B) raised concerns with his Retail Relationship Manager about the standard of the eye examination. I was subsequently asked to assist the store and, having reviewed the footage, shared Witness B's concerns in relation to both the standard of the examination and the record keeping. More specifically, the video does not suggest that an internal or external eye examination were performed using traditional methods while the records reflected that these had in fact been performed...Practice B takes matters such as these seriously and believes that, as a registered body corporate with the GOC, it is required to inform you of the above facts.'*

Evidence

6. The Council's evidence was agreed and therefore no witness evidence was called. Ms Birks, on behalf of the Council, outlined the case both in writing and orally at the start of day one of the hearing. The Council presented the following as evidence:
- Witness Statement of Witness A
 - CCTV footage of the appointment
 - Transcript of the CCTV footage
 - Patient A's medical record
 - Witness A's referral letter to the GOC
 - Patient A's retinal photographs and OCT scans
 - Witness statement of Patient A
 - Appointment confirmation of Patient A
 - Copy of receipt for payment Patient A's appointment
 - Assessment of Clinical Risk by a Clinical Advisor

7. In relation to particular 1, the Registrant admitted that he had failed to carry out a full sight test on Patient A in that he had failed to complete an adequate internal examination, failed to complete an adequate external examination of the patient's eyes, failed to complete an examination of the anterior chamber or vitreous and failed to perform any further examination with a Volk lens or direct ophthalmoscope. In relation to particular 2, the Registrant admitted that he had failed to maintain adequate records as he had recorded that he had conducted various tests on Patient A (namely a pupil assessment, an external eye assessment, an examination of the anterior chamber, a vitreous assessment and a Volk assessment), when he had not carried out the tests.
8. In relation to particular 3, the Registrant denied that his conduct at particular 2 was dishonest.
9. The Registrant gave evidence on day one of the hearing. In oral evidence, the Registrant relied upon his witness statement of 11 pages prepared for the proceedings and adopted into evidence. This witness statement appended:
 - The CV of the Registrant
 - 16 references in relation to the Registrant and his good character
 - The Registrant's CPD statement
 - The GOC's Public Perceptions Research paper
 - A certificate of attendance on the course "Probity & Ethics In Practice" dated 24.10.2023
10. In his oral evidence the Registrant took the Committee through the patient record for Patient A. He outlined that although the printed version of the computer record in the evidence bundle was presented in a certain way, he had set his record up on the Specsavers Socrates system so that it didn't present in the same order when in use. The Registrant explained that the form gave multiple drop-down options which he could select to complete patient records.

11. The Registrant explained that it was his usual practice to look at the OCT scan and fundus photographs which are taken by optical assistants during pre-screening before the appointment with an optometrist begins. However, on this occasion he had not had the chance to look at the images prior to the sight test beginning. The Registrant explained the purpose of these images was to look at the central portion of the back of the eye to see if there were any abnormalities. On this occasion, the Registrant loaded these images whilst the patient was in the room, after he performed the refraction, and whilst they were loading, he '*pre-filled*' certain parts of the patient record relating to the patient's eye health. The Registrant stated that this was a bad habit that he had adopted in order to save time. He explained that he would pre-fill the information and then amend it if the results of subsequent tests required him to do so.
12. The Registrant's evidence was that he would never knowingly not perform the assessments that he had pre-filled, and it was always his intention to perform the assessments. He outlined that he was "*shocked and embarrassed*" when he saw the CCTV recording which showed that he had missed out a significant part of the eye examination. The Registrant accepted that pre-filling the information was bad practice and "*not optimal*" and stated he would never allow pre-registration students who he supervised to act in this way.
13. The Registrant was asked questions by Ms Birks on behalf of the Council. The Registrant outlined that an appointment would usually take 20-25 minutes for a routine patient and a minimum of 15 minutes. He accepted that an internal and external eye examination should always take place regardless of how unremarkable a patient's presentation was. The Registrant acknowledged that this appointment was approximately 10 minutes but denied that he was trying to make up time by omitting to perform a section of the usual sight test. He stated he did not, at the time, realise how short the test was and felt that he was handing the patient over having done everything he needed to do. The Registrant accepted that his method of pre-filling in answers which he would then have to go back and amend would possibly take longer and would not therefore be time saving. The Registrant accepted that by failing to carry out the various tests he had missed

opportunities to identify potentially significant pathology which may be relevant to health of the patient's eyes. The Registrant accepted that he had recorded tests which had not taken place within the patient record, and that he had recorded that the patient's eyes were healthy when in fact he did not fully examine them. The Registrant was asked specifically about the notes in the patient record and whether they were drop-down or text that he had added. The majority were drop-down options, but the Registrant stated that he had added the figure for the Van Herick assessment as VH3 within the patient record. The Registrant explained the multiple components of a pupil assessment and confirmed that his normal practice was to complete these. The Registrant stated that he had populated the record "*in the confidence that he would complete the exam*" however this was a careless moment which resulted in his failing to undertake this section of the sight test.

14. The Registrant was then asked questions by the Committee. The Registrant stated although he was unsure of exactly when his habit of pre-filling had crept in, it had likely occurred when he began to take on more responsibility at work such as supervising pre-registration students alongside his optometry role, and it was likely that he was trying to test more efficiently. The Committee further asked whether the pre-filling of record was something he had demonstrated to pre-registration students. The Registrant responded, "*absolutely not...never under my watch*".
15. The Registrant was asked questions about the values entered on the patient record. On the patient record a value for intermediate add was documented as 1.25. The Registrant explained that he did not measure this, and the value was based on a calculation of deducting 0.75 off the near reading add measurement which he had undertaken during the sight test.
16. The Registrant explained that in the CCTV he can be seen at one point cleaning the surface of the phoropter and then going on to clean the slit lamp. He explained that after looking at the images with the patients he would normally have placed the patient on the slit lamp and undertaken the further examinations and assessments. He explained this would have been done on muscle memory, however because he had not followed his usual routine of looking at the images

prior to the patient coming into the room he had inexplicably not carried out the next part of the examination on this occasion.

17. The Registrant gave evidence regarding his private life and circumstances at the time of the allegations. He told the Committee through his witness statement and further in response to Committee questions that he was at that point in a “[redacted]” in his life. His [redacted]. He explained that he had not slept much the night before and that he remembered the day in question because he had telephoned [redacted] at lunch time, and it was apparent [redacted]. He was worried about [redacted] all day and didn’t want to be at work.
18. It was the Registrant’s evidence that he was not in his usual store and had many additional responsibilities on that day. The store where he was working was bigger and busier than his usual place of work. He felt that these circumstances materially impacted the way in which he conducted himself on that day and the omissions he had made. The Registrant stated he did not want to be in that day, and he was not acting how he would normally act.
19. In re-examination, Ms Birks asked the Registrant about when he had been observed by students pre-filling records. The Registrant admitted that there had been occasions when they had seen him pre-fill records. He told them it was not best practice. The Registrant’s evidence concluded and there was no further oral evidence.
20. At the start of day two, the Committee heard submissions on behalf of the Council and the Registrant. On behalf of the Council, Ms Birks submitted that the Registrant had a clear motivation to try to cut corners that day and to try to claw back time. The Registrant had outlined the personal and professional pressures he was facing and that any one of these might point towards a motivation for the Registrant’s actions. She outlined that the Registrant’s account was inherently implausible as the act of pre-filling the patient record would not in any way have saved the Registrant time and would have added to his administrative burden. She submitted that the Registrant was shortcutting in respect of Patient A’s sight test and the completion of the records was to give the impression that a full eye

examination had taken place when it had not. Ms Birks submitted that the Registrant had changed his evidence regarding his students observing him pre-filling records. She submitted that it was not just one small thing but a long list of elements that were missed in the examination and that it was not credible in the three minute period since completing the record that the Registrant had forgotten that he had not completed parts of the examination.

21. Mr Claxton, on behalf of the Registrant, submitted (both in writing and orally) that the Committee should draw clear lines between poor record keeping and dishonesty. He submitted that the that the alleged dishonesty in this case came without any gain, beyond a few moments in time, and the marginal benefits of that time did not warrant the Registrant acting dishonestly. He submitted that the Registrant was, at the time suffering from an exceptional mental load as a result of his *[redacted]*. His actions in recording tests that had not been completed were an attempt to save an administrative burden. He stated that this was bad practice but not a dishonest act. Mr Claxton submitted that an important point was that the Registrant had cleaned the equipment that he then failed to use and that this was a forensic insight into the intentions of the Registrant to undertake the tests. Mr Claxton further outlined the Registrant's good character and the testimonial evidence which he stated the Committee should take into consideration.
22. The Legal Adviser then gave legal advice setting out that the burden of proof as set out in rule 38 and 39 of *The General Optical Councils (Fitness to Practice) Rules 2013* is on the Council. The standard of proving the facts is the balance of probabilities, which means that a Committee must find that it is more likely than not that what is alleged occurred. The Registrant does not need to prove or disprove anything in the Allegation. There is no "heightened civil standard" applying to serious allegations as confirmed in the case of ***Re B (children) (sexual abuse: standard of proof) 2008 UKHL 35***, however the Committee should look for cogent evidence. The Committee should consider the entirety of the oral evidence heard, in the context of the documentary evidence. The Committee should analyse the evidence fairly and impartially, taking account of any gaps or apparent contradictions. The Legal Adviser invited the Committee to assess the documents

before them and assess their provenance, assessing for what purpose they were created in deciding what weight to attach to them.

23. The Legal Adviser outlined the case of ***Ivey v Genting Casinos [2017] UKSC 67*** and stated that this meant that the Committee must first consider what the Registrants actual knowledge or genuinely held belief as to the facts was at the time of the alleged incident, and secondly given the Registrant's knowledge or genuinely held belief as to the facts, was his conduct dishonest by the standards of ordinary decent people. The Committee were entitled to consider the character evidence produced by way of testimonials and the Registrants good character as set out in the case of ***Wisson v Health Professions Council [2013] EWHC 1036 (Admin)*** in which Collins J stated[44]:

“As it seems to me, good character must always be likely to be relevant for the panel where there is a substantial issue of fact to be decided and where credibility of the registrant in the evidence that he gives, is an issue and it can also go to whether it is likely that he did what is alleged against him.”

24. The Committee accepted the advice of the Legal Adviser.

Findings in relation to the facts

25. Having already found particulars 1 and 2 of the Allegation proved by admission, the Committee was left to determine particular 3, which related to whether the actions in particular 2 were dishonest.
26. The Committee considered all the evidence in this case, including the documentary evidence, the uncontested evidence of Witness A and Patient A, the CCTV, the transcript and the oral and written evidence of the Registrant. The Committee also considered the submissions from the parties.
27. The Committee began by assessing the totality of the evidence before them and noted that the CCTV, the transcript of the CCTV and the patient record were all undisputed evidence to which they could attach significant weight.

28. In making their decision in relation to this particular, the Committee were not assisted by the statement of Witness A, or the clinical assessment performed by the Clinical Advisor.
29. The Committee considered that the Registrant's oral evidence was broadly consistent with his statement. They considered the Registrant's contention that due to his difficult personal circumstances at the time he was not himself. It was clear from his evidence that the Registrant understood the aspects of the tests he had missed and their importance for proper patient care.
30. The Committee first considered what the actual knowledge or reasonably held belief of the Registrant was in completing the patient record in the manner he had on 12 June 2023. The Registrant had been a practising optometrist for four years. He had told the Committee that he had seen hundreds and potentially thousands of patients in this time.
31. The Committee determined that parts of the record of Patient A's eye examination were false. Parts of the patient record had been completed by the Registrant without him having completed the tests outlined in particular 2 and therefore with no knowledge that what he was completing was correct. The Registrant was plainly aware of the need to carry out these tests but did not carry them out and created a record that falsely reflected he had done so.
32. The Committee considered that the Registrant's actions in respect of pre-filling parts of the patient record was not only poor practice but that his actions went beyond mere drop-down box clicking. The Committee noted that he had entered specific and considered values and calculations for the Van Herick and the intermediate add on the patient record, which demonstrated to the Committee that his act in pre-filling the patient record was more likely than not to be a deliberate act to give the appearance that tests that had not been done were done. It was an act, the Committee determined, that would only have saved time for the Registrant if he did not intend to complete the tests, which comprised a substantial part of a complete sight test. Had the Registrant pre-filled the results of the tests with the

intention of later changing them after conducting the tests, this would only have added to and not reduced his administrative workload.

33. The Committee considered the Registrant's explanation: that having differed from his usual practice in not reviewing the OCT and fundus photographs prior to the appointment beginning, he had carelessly but not deliberately omitted to undertake the tests in particular 2. The Committee did not find this explanation credible. In the CCTV, the Registrant enters the test results for the parts of the test he did not carry out whilst the relevant images were loading. He then immediately goes on to explain to Patient A that their eyes are healthy and 3 minutes later concludes the appointment. The Committee found that it was implausible that having viewed the photographs and scans and entered the values for the tests not carried out, the Registrant would then omit to undertake the tests, if that had been his intention. The Committee therefore rejected the Registrant's explanation.
34. The Committee gave serious consideration to the alternative explanation provided by the Registrant for his actions and acknowledged that some of the evidence before it, such as the Registrant cleaning the slit lamp, could on the face of it support his version of events. However, on viewing the CCTV and taking account of the Registrant's evidence, this appeared to be part of an automatic routine, namely wiping the phoropter and the slit lamp together before using the phoropter, rather than an indication of an intention to use the slit lamp for Patient A.
35. The Committee noted that the Registrant had given inconsistent oral evidence regarding his pre-filling practice first saying he would never pre-fill records in front of pre-registration students and later saying that he thought there had been occasions when they had seen him pre-fill records, but he had told them it wasn't good practice.
36. The Committee acknowledged that the Registrant was at the time of the incident under considerable *[redacted]* strain. Notwithstanding this, the Committee determined that the Registrant's actions of pre-filling and the creation of values in the patient record were deliberate and dishonest acts, to suggest that a substantial part of the sight test had been conducted for what appeared to be an unremarkable

patient, in order to shorten the length of Patient A's appointment. The Committee did not accept that his [redacted] circumstances at the time caused him to forget to undertake significant parts of the sight test. Rather, it found that his [redacted] circumstances and him not wanting to be at work that day provided motivation for him wanting to cut corners and save time in what was on the evidence a very short sight test.

37. The Committee therefore found that the Registrant knowingly created a false record. This was a dishonest act both subjectively and by the standards of ordinary decent people. In coming to this conclusion, the Committee considered the evidence of the Registrant's good character and the testimonial evidence supporting this. The Committee gave some weight to this evidence, whilst noting that good character in and of itself is not a defence. The Committee felt that the testimonials were simultaneously able to give an accurate assessment of an individual who was not an inherently dishonest person but who on this occasion they determined had undertaken a dishonest act.

38. The Committee therefore found particular 3 of the Allegation proven.

Misconduct

39. The Committee next heard submissions, pursuant to Rule 46(12) of the Rules, on whether the facts admitted and/or found proved, amounted to misconduct as set out in section 13D(2) of the Opticians Act 1989.

40. The Committee heard submissions from Ms Birks on behalf of the Council, and Mr Claxton on behalf of the Registrant.

41. Ms Birks invited the Committee to find that the facts admitted and found proved amounted to misconduct. She reminded the Committee that misconduct was a matter for the Committee's own judgment and that there was no standard or burden of proof to be applied at this stage.

42. Ms Birks referred the Committee to the overriding objective; namely that the Committee should bear in mind the purpose of these proceedings is to:

- Protect and promote the health, safety and well-being of the public,
- Promote and maintain public confidence in the profession,
- Promote and maintain proper standards and conduct for members of the profession.

43. Ms Birks next directed the Committee to the relevant case law on misconduct, including the case of *Roylance v General Medical Council (No.2)* [2000] 1 A.C. 311, where, Lord Clyde stated:

“Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed in the particular circumstances.”

44. In determining those standards, Ms Birks referred the Committee to the General Optical Council’s “Standards of Practice for Optometrists and Dispensing Opticians”, effective from April 2016. Ms Birks submitted that the Registrant had departed from the following standards by virtue of his conduct:

- *Standard 8: Maintain adequate patient records*
- *Standard 16: Be honest and trustworthy*
- *Standard 17: Do not damage the reputation of the profession through your conduct*

45. On behalf of the Registrant, Mr Claxton submitted that whilst misconduct is a matter for the Committee’s judgment, it was not disputed by the Registrant that his conduct amounted to misconduct, particularly in relation to the finding of dishonesty. Mr Claxton however submitted that not all of the particulars of the Allegation individually, for example the record keeping at particular 2, would cross the threshold. He submitted that the events on this occasion related to a single event, involving a single patient and that there was no evidence of any harm to the patient.

46. Mr Claxton submitted that there was a plain difference between motivation which may aggravate or mitigate a finding of dishonesty, such as where there was a financial motivation, or a registrant was covering tracks for some personal gain. Mr Claxton emphasised the Committee’s findings at paragraph 36 of the determination where he submitted that the Committee had come to the conclusion that Mr

Saigal's personal circumstances had provided the motivation for him to cut corners and save time. He had therefore made misjudgements that were ultimately dishonest. He submitted that this matter was therefore at the lower end of seriousness for dishonesty.

47. The Committee heard and accepted the advice of the Legal Adviser, who confirmed that the law as set out by the Council was correct. She reminded the Committee that misconduct was a matter for its own independent judgement and no burden or standard of proof applied at this stage. Further, the Committee needed to consider whether the conduct was sufficiently serious to amount to professional misconduct

48. The Legal Adviser drew the Committees attention to the Hearings and Indicative Sanctions Guidance (revised November 2021), in particular the sections on Misconduct at 15.5 to 15.9 and section 17 in relation to dishonesty, particularly the case law highlighted at 17.3 in Dr Shiv Prasad Dey-v-GMC (Privy Council Appeal No. 19 of 2001) which has emphasised that: "...Health Authorities must be able to place complete reliance on the integrity of practitioners; and the Committee is entitled to regard conduct which undermines that confidence as calculated to reflect on the standards and reputation of the profession as a whole." However, she also highlighted the case law at 17.8 of *Lusinga v NMC* [2017] EWHC 1458 (Admin) about the scale of dishonesty: "...dishonest conduct can take various forms; some criminal, some not; some destroying trust instantly, others merely undermining it to a lesser or greater extent."

The Committee's findings in relation to Misconduct

49. In making its findings on misconduct, the Committee had regard to the evidence it had received to date, the submissions made by the parties, the Hearings and Indicative Sanctions Guidance, the legal advice given by the Legal Adviser and its earlier findings at the facts stage.

50. The Committee considered the “Standards of Practice for Optometrists and Dispensing Opticians” and the standards which it had been referred to by the Council, namely:

- Standard 8 (Maintain adequate patient records),
- Standard 16 (Be honest and trustworthy), and
- Standard 17 (Do not damage the reputation of the profession through your conduct).

51. The Committee was satisfied these standards were engaged and had been breached. Having referred to the Standards, the Committee also determined that standard 7: Conduct appropriate assessments, examinations, treatments and referrals and in particular 7.1 Conduct an adequate assessment for the purposes of the optical consultation was engaged too.

52. It was the Committee’s view that the Registrant’s actions fell far below the professional standards expected of an Optometrist as he had failed to conduct an adequate sight test which could have had an impact on the patient’s health. The Registrant created a false record of the sight test, which the Committee had found to be a dishonest act. The Committee was satisfied that the actions in relation to all three particulars of the Allegation were sufficiently serious to amount to professional misconduct, both as stand-alone allegations and collectively too, and that the Registrant’s actions were sufficiently serious as to bring the profession into disrepute.

53. The Committee consequently determined that the facts in particulars 1-3 of the Allegation amount to misconduct.

Impairment

54. Following the Committee’s decision on misconduct, the Registrant gave evidence in relation to his fitness to practise.

55. In his evidence, the Registrant outlined the factors that were affecting him on the date of the incident. He discussed his [redacted] circumstances and the stress, worry and anxiety that these circumstances brought him. He stated that due to these, he would likely not have had more than 2 hours of unbroken sleep the night before. In relation to his working practice, he explained that on 12 June 2023 he was not in his usual place of work due to covering a senior member of staff's holiday. He was in a busier store and the most senior member of staff present, he was supervising two pre-registration students, and he was the only MECS accredited member of staff working, meaning that all MECS patients would also have had to come to him in addition to his usual case load. All of these factors (both [redacted] and professional) he stated fed into and compounded the general exhaustion he was feeling, meaning that he was distracted all day.
56. The Registrant explained that since this incident he had been proactive in finding ways to manage his stress by reducing his working days and attending NHS talking therapy, something which had given him the tools to develop good wellbeing practices and equipped him with strategies if he began to feel a similar level of stress in the future. He also stated that he and his [redacted] were accepting more external help from friends and family. The Registrant described that since the incident he has remained working for the same employer and since reducing his working days and becoming a locum he felt much more balanced in his work and home life.
57. The Registrant explained that as a result of the events leading to these proceedings, he had become much more intentional about the things he signed in work, and he had a much more candid relationship with those he worked with. He explained that he now never pre-filled records and that he understood that the best records were the ones that were made contemporaneously. He understood that bad record keeping could be detrimental to a patient's health care outcomes and that it was his responsibility as a professional to minimise mistakes. The Registrant was asked about why honesty was important in the patient/clinician relationship. He detailed why it was vitally important for both patients and fellow clinicians to be able to trust him. He shared his reflections from the Probity and Ethics course he

attended about the power dynamic between patients/clinicians and how this had been a revelation to him. He expressed his passion and commitment for his career in optometry, stating that he had always wanted to be in healthcare to serve his community.

58. The Registrant stated in response to Committee questions that he now made much more personalised notes on patient records rather than relying on the drop-down box options. He was better able now to prevent himself from making mistakes by recording contemporaneously. His notes had improved due to regular meetings with his supervisor. These meetings have allowed the Registrant to have a more open dialogue with his supervisor, including discussion of patient management.

59. The Committee heard submissions from Ms Birks on behalf of the Council and from Mr Claxton on behalf of the Registrant.

60. Ms Birks in both her written and oral submissions outlined the relevant authorities and drew the Committee's attention to the test set out in the case of *CHRE v NMC & Paula Grant* [2011] EWHC 927 (Admin):

“Do our findings of fact in respect of the doctor’s misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his fitness to practise is impaired in the sense that 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 and/or is liable in the future to bring the 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 profession;*
- d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

61. Ms Birks also referred to the case of *Cohen v GMC* [2008] EWHC 581 (Admin) in which Mr Justice Silber 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 remedied,

second that it has been remedied and third that it is highly unlikely to be repeated'

62. Ms Birks submitted that in assessing those four criteria in Grant the Registrant's proven misconduct engaged both parts of the tests on all four criteria in that he had both acted in those ways in the past and is liable to act this way in the future. She submitted that this was due to the Registrant's denial of the allegation of dishonesty, which although was his right, nonetheless meant that he could only be at the very beginning of his journey for reflecting and taking remedial action. Ms Birks therefore submitted that the Registrant's fitness to practise was impaired both on public protection and public interest grounds.
63. Mr Claxton conceded on behalf of the Registrant that the Committee's findings were likely to result in a finding of impairment of fitness to practise on public interest grounds. He contended however that the grounds of public protection were not engaged in this case as there was no risk of repetition. He reminded the Committee that the risk must be a real risk rather than a theoretical one. He submitted that prior to this incident and since it had occurred, just over a year ago, there had been no repetition of the behaviour alleged in these particulars of the Allegation. This was therefore a single incident, with a single patient and the evidence before the Committee strongly suggested that it was out of character for the Registrant. He was therefore not someone who was habitually dishonest as supported by the testimonial evidence provided for the Committee's consideration. He pointed towards the further training that the Registrant had undertaken, the insight which he had displayed in his oral evidence particularly on the importance of honesty and the detriment when professionals fall short of that expectation. Finally, he directed the Committee towards the changes that the Registrant had made to his personal and professional circumstances which indicated a change in working practices which had given effect to real, beneficial insight.
64. The Legal Adviser drew the Committees attention to the case of *Meadow v GMC* which states:

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

65. The Legal Adviser outlined that the Committee should consider the separate elements of impairment namely the public and personal components. The public component concerns the reputation of the profession and upholding professional standards, whereas the personal component concerns the risk of repetition and insight displayed on the part of the registrant. In relation to the issue of dishonesty and impairment the Legal Adviser drew the Committee's attention to 16.6 of the Hearings and Indictive Sanctions Guidance which states:

“Where the committee has found the facts proved, despite a registrant(s) denial, they need to approach the issue of insight carefully... ‘...it is too much to expect of an accused member of a profession who has doughtily defended an allegation on that ground that he did not do it to suddenly undergo a Damascene conversion in the impairment phase following a factual finding that he did do it”.
GMC v Awan [2020] EWHC 15553 (Admin)”

66. Finally, the Legal Adviser drew the Committee's attention to the case of **Professional Standards Authority v Health and Care Professions Council and Ghaffar [2014] EWHC 2723 (Admin)** in which the Court held at paragraph 45: *“A finding of impairment does not, of course, necessarily follow upon a finding of dishonesty, although it is accepted by the Panel that it will be a frequent one.”*

The Committee's findings regarding Impairment

67. The Committee considered the two aspects of impaired fitness to practise, namely public protection and public interest. It recognised that it should not only consider the question of current impairment in respect of public protection, but also consider

it in respect of the equally important public interest considerations of maintaining public confidence in the profession and upholding professional standards.

68. The Committee first considered the question of public protection in respect of the Registrant's misconduct.

69. In considering the Grant test set out above at paragraph 60, the Committee determined that all four limbs were engaged by virtue of the Registrant's past misconduct. The Committee then considered whether the Registrant was liable to repeat the misconduct in the future.

70. In respect of risk of harm to patients, the Committee considered the oral evidence of the Registrant very carefully. The circumstances of this case were of a particular time in the Registrant's life, and he had taken extensive steps to address the stressors that had been in place at that time. This included reducing his responsibilities at work, reducing his working hours and undertaking dedicated learning to address his shortcomings on this occasion such as record keeping CPD and a Probity and Ethics course. They noted that this was a single incident and that there had been no repetition of this behaviour prior to the incident or since. The Registrant had, since this incident, been undertaking regular supervision which the Committee found had given him a genuine confidence to say when things are overwhelming which would mean there was low risk of patient harm.

71. The Committee next considered whether the Registrant was likely to bring the profession into disrepute or breach a fundamental tenant of the profession again in the future. The Committee considered that the Registrant has made pragmatic changes to his working life and his own wellbeing. The Registrant demonstrated good insight in his oral evidence into the core principles of being a healthcare professional, the fundamental importance of undertaking full sight tests and further demonstrated an understanding of the importance of accurate record keeping. He explained that his supervisory meetings had enabled him to reflect and learn about his practice. Furthermore, these fitness to practise proceedings in and of themselves had been a salutatory experience for the Registrant and had plainly had an impact upon him. This contributed to the Committee's conclusion that it was

unlikely that the Registrant would behave in a way which would bring the profession into disrepute or breach a fundamental tenant of the profession again.

72. Finally, the Committee considered whether the Registrant was liable in their view to be dishonest in the future. As set out above, the behaviour of the Registrant on this occasion reflected an unusual combination of difficult personal and working events which the Registrant has now taken steps to ensure will not happen again. The Committee noted that in this dishonesty case there was no material or potential material gain for himself or another in the behaviour undertaken by the Registrant. In his oral evidence the Registrant gave detailed testimony in which he reflected on the importance of honesty and integrity in the profession to ensure that trust is forged and maintained between patients, clinicians and colleagues. Whilst dishonesty is an attitudinal issue that is often said to be difficult to remediate, the Registrant had, despite his denial of dishonesty, undertaken the work necessary to be reflective about why and how it had happened and importantly he had always accepted the underlying conduct at particular 2 of the Allegation. The evidence before the Committee indicated that the Registrant's actions had occurred on a single day, regarding one patient, in difficult circumstances, rather than there being any deep-seated attitudinal issues. It was satisfied that the Registrant was unlikely to repeat his dishonesty.

73. The Committee therefore determined that there was a low risk of repetition in respect of the public protection aspects of this case and therefore did not find the Registrant's fitness to practise impaired on this limb.

74. The Committee next turned to the public interest aspects for finding that the Registrant's fitness to practise might be impaired, namely maintaining public confidence and upholding standards in the profession.

75. The Committee determined that the Registrant's past actions did bring the profession into disrepute and given the seriousness of the misconduct identified, including dishonesty, that public confidence in the profession would be seriously damaged if a finding of current impairment was not made. Furthermore, behaviour of this kind necessitated a finding of impairment in order to demonstrate to the

profession that behaviour of this kind was unacceptable. The Committee therefore found that the fitness of the Registrant to practise is currently impaired on the public interest ground.

Sanction

76. Having determined that the Registrant's fitness to practise was impaired, the Committee went on to consider what sanction, if any, it should impose.

77. Ms Birks referred to her prior submissions in relating to findings of fact and impairment and adopted her written skeleton argument. Ms Birks submitted that the Committee was required to balance the Registrant's interests against the public interest having regard to all the circumstances before it. She further submitted that the Committee had to consider all sanctions available to it in ascending order starting with the least severe and at all times bearing in mind the overarching objective of the GOC.

78. Ms Birks referred to the GOC's Hearings and Indicative Sanctions Guidance paragraphs 21 to 21.39. She submitted that there were no exceptional circumstances that would justify the Committee taking no further action. In relation to a Financial Penalty Order, Ms Birks submitted that this was usually only appropriate where there had been financial loss or gain which was not the case here. Ms Birks outlined as per 14.3 of the Hearings and Indicative Sanctions Guidance that '*The absence of an aggravating feature does not amount to mitigation, for example, the absence of repetition in dishonesty cases.*' Ms Birks did not suggest a particular sanction to the Committee but outlined that sanction was a matter for the Committee's professional judgment and she made reference to the case of ***Bolton v The Law Society* [1994] 1 WLR 512** in which the Master of the Rolls said: "*that the reputation of the profession is more important than the fortunes of any individual member.*"

79. Mr Claxton, on behalf of the Registrant submitted that his central submission was that although a sanction of suspension was the likely outcome in this case, it should be measured in weeks, not months. He stated that this was due to its unusual nature in that this was dishonesty not undertaken for any material or potential

material gain. It was an isolated incident in relation to a single patient on a single afternoon. He outlined that this behaviour was out of character for the Registrant which was demonstrated by the wealth of testimonial evidence which spoke of the Registrant's significant positive professional and personal attributes. Mr Claxton further submitted that there had been significant personal factors operating at the time of the incident and that the Committee should be humane in their assessment of the public interest given the particular facts of this case.

80. Mr Claxton submitted that whilst there were mitigating factors present in this case, none of the aggravating factors as set out in the Guidance were present. He stated that dishonesty, having been expressly charged, should not be 'double counted' as an aggravating feature. Mr Claxton invited the Committee to balance the public interest with the Registrant's own interests and importantly with the vital factor of good professionals, like the Registrant, being able to return to their roles and serve the public interest.

81. Mr Claxton submitted that a sanction of erasure would be disproportionate given the circumstances of this case, and that cases of erasure should be reserved for those cases where there is no engagement and no insight on behalf of the registrant. Finally, Mr Claxton submitted that a review was unnecessary in a case where impairment had been found solely on public interest grounds as there was no necessity in this case to assess further insight or matters relating to clinical practice.

The Committee's findings on Sanction

82. In reaching its decision on sanction in respect of the Registrant, the Committee considered the submissions of Ms Birks and Mr Claxton, all relevant evidence before it and its prior decisions in this hearing.

83. The Committee bore in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. It recognised that the decision on sanction is a matter for the Committee, exercising its own independent judgement.

84. Before making its decision on the appropriate sanction, the Committee established the aggravating and mitigating features in this case. The Committee considered that the mitigating factors in this case were:

- The conduct was a single incident in relation to a single patient on one day
- The Registrant had engaged with the GOC and made admissions to all but one particular of the allegations
- The Registrant's previously unblemished career
- The Registrant had demonstrated insight into his behaviour and taken steps to remediate it

85. In the circumstances of this case, the Committee considered that none of the listed aggravating features applied, and with dishonesty having been a particular of the Allegation, it should not be taken into account again.

86. The Committee first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The Committee decided that it would be neither proportionate nor in the public interest to take no further action.

87. The Committee then considered whether to impose a financial penalty. However, it determined that as this case had not involved a financial motivation this would be inappropriate.

88. The Committee next considered the imposition of a Conditional Registration Order. The Committee noted the terms of paragraph 21.5 of the Hearings and Indicative Sanctions Guidance which stated that the primary purpose of conditions should be to protect the public. As the Committee has not made a finding of impaired fitness to practise on public protection grounds it did not consider that there were appropriate, workable or proportionate conditions that would apply to this case.

89. The Committee then went on to consider whether a Suspension Order would be an appropriate sanction. The Committee noted the terms of paragraph 21.29 of the Hearings and Indicative Sanctions Guidance which states:

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.*

90. The Committee considered that the Registrant's conduct was serious. However, as reflected by its findings at the impairment stage, the Committee did not consider it was at the most serious end of the spectrum of dishonesty. It considered that the Registrant had engaged with the GOC and that there had been no repetition of the behaviour since the incident. The Committee had already determined at the impairment stage that the Registrant had remediated his misconduct. The Committee had also concluded that the Registrant has shown insight and there is no significant risk of him repeating his dishonest behaviour. The Committee's conclusion at impairment was that the Registrant's fitness to practise was only impaired on the grounds of public interest.

91. The Committee also took into consideration the positive testimonials provided in support of the Registrant which pointed towards the isolated nature of the incident.

92. The Committee noted that the imposition of a sanction of suspension might cause the Registrant personal hardship and attached appropriate weight to this. The Committee noted the comments in *Bolton* that *'the reputation of the profession is more important than the fortune of any individual member'*.

93. In all the circumstances of this case, the Committee determined that a Suspension Order was sufficient to maintain public confidence in the profession and the Council as its regulator.

94. The Committee considered the impact this decision may have on the Registrant but considered his conduct in this case was such that the public interest outweighed the Registrant's own interests.

95. The Committee decided that a period of 28 day's suspension was appropriate and proportionate. The order reflected the seriousness of the Registrant's misconduct and satisfied the public interest. Such an order would place on record the need to adhere to professional standards, uphold public confidence in the profession and the GOC as a regulator, whilst having the effect of allowing the Registrant to return to optometry practice after a short period.
96. The Committee went onto consider the sanction of Erasure, but decided this would be disproportionate in the circumstances of this case. There was no evidence of harmful, deep-seated personality or attitudinal problems, and it had found that the Registrant had insight and didn't pose a risk of repeating the behaviour.
97. The Committee also addressed the question of whether it was necessary to direct a review of the Suspension Order. It considered paragraphs 21.32 – 34 of the Hearing and Indicative Sanctions Guidance and reminded itself that Impairment had only been found on the grounds of public interest. The Committee determined that there were no matters relating to the Registrant's practice or conduct that required to be reviewed prior to the Registrant safely returning to practise. The issue of public interest had been addressed by the imposition of a Suspension Order for a period of 28 days. The Committee therefore directed that no review of its Order of Suspension was required.

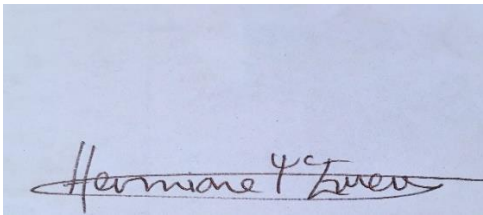
Immediate Order

98. No application for an immediate order was made by either party and therefore, the Committee decided not to impose an immediate suspension order.

Revocation of interim order

99. The Committee hereby revokes the interim order for conditional registration that was imposed on 08 September 2023.

Chair of the Committee: Hermione McEwen

Signature 

Date: 21 June 2024

Registrant: Rajeev Lal Saigal

Signaturepresent via videoconference..... Date: 21 June 2024

FURTHER INFORMATION
Transcript
A full transcript of the hearing will be made available for purchase in due course.
Appeal
Any appeal against an order of the Committee must be lodged with the relevant court within 28 days of the service of this notification. If no appeal is lodged, the order will take effect at the end of that period. The relevant court is shown at section 23G(4)(a)-(c) of the Opticians Act 1989 (as amended).
Professional Standards Authority
This decision will be reported to the Professional Standards Authority (PSA) under the provisions of section 29 of the NHS Reform and Healthcare Professions Act 2002. PSA may refer this case to the High Court of Justice in England and Wales, the Court of Session in Scotland or the High Court of Justice in Northern Ireland as appropriate if they decide that a decision has been insufficient to protect the public and/or should not have been made, and if they consider that referral is desirable for the protection of the public.

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

Further information about the PSA can be obtained from its website at www.professionalstandards.org.uk or by telephone on 020 7389 8030.

Effect of orders for suspension or erasure

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

Contact

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