

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

**F(22)20**

**GENERAL OPTICAL COUNCIL**

**AND**

**DAWN LAMB (D-13888)**

---

**DETERMINATION OF A SUBSTANTIVE HEARING  
AGREED PANEL DISPOSAL(APD)  
19 JANUARY 2023**

---

<b>Committee Members:</b>	Ms Hermione McEwen (Chair/Lay) Ms Diane Roskilly (Lay) Ms Susan Bradford (Lay) Ms Sarah Baylay (Dispensing Optician) Mr Adrian Street (Dispensing Optician)
<b>Legal adviser:</b>	Mr Graeme Dalgleish
<b>GOC Presenting Officer:</b>	Ms Tope Adeyemi
<b>Registrant:</b>	Not present and unrepresented
<b>Registrant representative:</b>	N/A
<b>Hearings Officer:</b>	Mr Lee Wood
<b>Facts found proved:</b>	All
<b>Facts not found proved:</b>	None
<b>Misconduct:</b>	Found
<b>Impairment:</b>	Impaired
<b>Sanction:</b>	Erasure
<b>Immediate order:</b>	Yes

### **Proof of service**

1. The Committee heard an application from Ms Adeyemi for the General Optical Council (GOC) to find proper service of the notice of hearing had been made and for the matter to proceed in the Registrant's absence. First, the Council was required to satisfy the Committee that the documents had been served in accordance with Section 23A of the Act and Rule 61 of the Fitness to Practise Rules 2013. The Committee accepted the advice of the Legal Adviser that there had been proper service.
2. The Committee was satisfied that the Registrant had been properly served with notice of the hearing. She received formal notice of this hearing on 20 September 2022 and again on 9 January 2023 giving her notice of the shortened hearing (the original hearing having been scheduled for 4 days from 17 January 2023).

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

3. The Committee then went on to consider whether it would be in the public interest to proceed in the Registrant's absence in accordance with Rule 22. The Committee accepted the advice of the Legal Adviser and was mindful of the guidance in *Adeogba v GMC* [2016] EWCA Civ 162 and took account of the views expressed by the Registrant who had made clear that she had received both notices of hearing and that she will not be attending.
4. The Registrant replied to the GOC on 17 August 2022 and on 29 December 2022 advising that she would not be attending the hearing and stated that she was waiving her right to attend. A further notice of hearing was sent by the GOC on 9 January 2023 and the Registrant replied on 9 and on 10 January 2023 waiving her right to a further 28 days' notice and making clear that she will not be attending this, or any future hearings. She had signed the Agreed Panel Disposal ('APD') report before the Committee.
5. The Committee decided, given the responses from the Registrant, that it would be in the public interest for the hearing to proceed in her absence. Nothing would be achieved by delaying or adjourning this hearing and the Registrant has repeatedly stated that she had waived her right to attend and will not be attending. The Committee concluded that in these circumstances it was fair and appropriate to proceed in her absence.

### **Conducting the Hearing in private**

6. The Committee heard from Ms Adeyemi on the matter of holding the hearing in private in whole or part. It noted that the presumption is in favour of a public hearing for open justice. However, it considered some private issues may arise in respect of the Registrant as she has made clear in her responses to the GOC that both REDACTED matters were factors in her fitness to practise matter. The Registrant had indicated that she would want the Committee to consider these issues. With regard to Rule 25 and having accepted legal advice, the

Committee decided it was fair and appropriate where such matters arise to conduct that part of the hearing in private as it was appropriate, and in the interest of justice to do so to protect the Registrant's rights to privacy.

### ALLEGATION

*The Council alleges that you, Dawn Lamb D-13888 a registered Dispensing Optician;*

- 1. On or around 02 November 2020 you processed a false refund transaction to the value of approximately £177.80 and/or you credited the false refund to your personal REDACTED.*
- 2. On or around 14 December 2020 you processed a false refund transaction to the value of approximately £318.00 and/or you credited the false refund to your personal REDACTED.*
- 3. On or around 11 February 2021 you processed a false refund transaction to the value of approximately £308.00 and/or you credited the false refund to your personal REDACTED.*
- 4. On or around 06 May 2021 you processed a false refund transaction to the value of approximately £228.00 and/or you credited the false refund to your personal REDACTED.*
- 5. On or around 24 July 2021 you processed a false refund transaction to the value of approximately £352.00 and/or you credited the false refund to your personal REDACTED.*
- 6. On or around 27 July 2021, without authorisation, you applied a discount to a sale by Patient A, described by you as your REDACTED to be, causing a monetary loss of £34.50 with the intention of permanently depriving The Store of these monies.*
- 7. On or around 27 July 2021, without authorisation, you provided a product free of charge to Patient A causing a monetary loss of £35.00 with the intention of permanently depriving The Store of these monies.*
- 8. On or around 02 September 2021 you processed a false refund transaction to the value of approximately £277.00 and/or you credited the false refund to your personal REDACTED.*
- 9. On or around 16 October 2021 you processed a false refund transaction to the value of approximately £273.00 and/or you credited the false refund to your personal REDACTED.*

*10. Between November 2020 and October 2021, you amended the telephone numbers on several customer records to conceal the fraudulent refunds you completed.*

*11.*

*Your conduct noted at 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 was inappropriate and/or dishonest in that you:*

- a. knew the refunds did not arise from legitimate transactions; and/or*
- b. knew you were not entitled to the refund money and/or*
- c. knew you were not authorised to give the discount and/or*
- d. knew you were not authorised to provide products free of charge and/or*
- e. knew you were falsely changing patient contact details to conceal your conduct.*

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

## **AGREED PANEL DISPOSAL**

7. At the outset of this hearing, Ms Adeyemi, on behalf of the GOC, informed the Committee that prior to this hearing a provisional Agreed Panel Disposal had been reached with regard to this case between the GOC and the Registrant. She summarised the background, the Allegation and advised that full admissions had been made by the Registrant who had signed the proposed Agreed Panel Disposal Agreement ('APD'). Ms Adeyemi summarised the relevant case law and its applicability to the current case, as set out in detail in the APD. She also referred the Committee to the GOC Agreed Panel Disposal Policy effective 22 August 2019.
8. The Registrant made a self-referral to the GOC on 29 October 2021 and admitted that in her professional role she had made seven fraudulent refunds, applied unauthorised discounts, provided a product free of charge and altered patient records to conceal her actions. She was dismissed by her employer REDACTED Visionplus Limited for gross misconduct. The transactions amounted to £1933.80 and the details are fully set out in a Financial Risk report following an investigation. The Registrant had made a written response and made full admissions in a letter to the GOC on 17 August 2022. The Registrant stated that she previously had an unblemished career for 20 years. REDACTED
9. The APD agreement, which was before the Committee, sets out the Registrant's full admission to the full particulars set out in the Allegation, that her actions amounted to misconduct and that her fitness to practise is currently impaired by reason of that misconduct. It is further stated in the APD that an appropriate and proportionate sanction in this case would be an order for Erasure. The APD sets out that the Registrant's fraudulent conduct was a serious departure from the appropriate professional standards and amounts to misconduct which is accepted by the Registrant. Further as set out in the APD, it is agreed that the Registrant's fitness to practise is impaired. Some insight is shown by the Registrant, given her

apology, engagement in this process and admissions. However, Ms Adeyemi submitted that the aggravating features in this case are the deliberate nature of the conduct and that it took place over a period of time. the Registrant has stated that she agrees with the proposed sanction of Erasure and that she has no intention of returning to the profession. She had not worked in her professional role since the Allegation.

10. The Committee heard and accepted the advice of the Legal Adviser. He reminded it to consider the APD, be mindful of the APD policy and the Sanctions Guidance and of the importance considering the public interest and the need to protect the public. He confirmed that the Committee's task in considering the fitness to practise matter and the law was correctly set out in the APD report.
11. The Committee has considered the provisional agreement reached by the parties. That provisional agreement reads as follows:

**Agreed Panel Disposal**

12. See attached as Annex A

**DETERMINATION**

13. The Committee decided to accept the Agreed Panel Disposal Agreement.

**Findings of Fact**

14. The Registrant has admitted all the particulars of the Allegation by way of the APD. The Committee, mindful of Rules 40(6) and 46(6) as regards admission of facts. Accordingly, the Committee found that the facts and therefore the Allegation proved by way of admission.

**Misconduct**

15. The Committee then went on to consider misconduct and whether the Registrant's fitness to practise is currently impaired. Whilst acknowledging the agreement between the GOC and the Registrant, the Committee has exercised its own independent judgement in reaching its decision on misconduct and impairment of fitness to practice. It is not bound by the APD.
16. In respect of misconduct, the Committee was mindful of the guidance in the case law including *Roylance v GMC* (no 2) [2000] 1 AC 311. The admitted conduct was dishonest and happened more than once, employing different deliberate methods. The dishonesty also involved altering patient records by changing telephone numbers and changing accounting records. Those changes placed patients at risk given the falsification of contact records. the Registrant's conduct involved repeated, deliberate, pre-meditated acts designed to conceal her dishonesty.

17. The Committee found that the admitted conduct was a serious departure from professional standards, in particular standard 16 - To be honest and trustworthy, and standard 17 – Do not damage the reputation of your profession through your conduct. The conduct was also an abuse of the trust and power vested in the Registrant in her professional role. The Committee found that the conduct proved was serious and fell far short of what would have been proper and amounts to misconduct.

### **Impairment**

18. The Committee next considered whether the Registrant's fitness to practise is currently impaired. It was mindful of the guidance in *CHRE v NMC and Grant* [2011] EWHC 927 (admin). The Committee found the conduct and dishonesty is remediable, although that may be difficult. the Registrant has apologised, has shown some remorse and she has offered to repay the money, although that does not appear to have happened.

19. The Committee has no evidence before it that the Registrant has developed sufficient insight into her conduct, and no evidence that she had taken any steps to fully reflect on and seek to remedy her practice. She has not worked in a professional role since this Allegation and she agrees that she is currently impaired. The Committee noted that the Registrant had taken some steps to deal with her REDACTED.

20. The Committee concluded that the Registrant has not remedied her practice, she has not sufficiently reflected on her actions and she has shown only limited insight into her conduct. The Committee accordingly concluded that there remains a real risk of repetition. With the guidance in *Grant* in mind, the Committee concluded that the Registrant has in the past and is likely in the future to place patients at risk of harm; to breach fundamental tenets of the profession, namely trust and integrity; to bring the reputation of the profession into disrepute; and to act dishonestly. The Committee concluded that the Registrant's fitness to practise is currently impaired.

21. Given the nature and gravity of the Allegation found proved, the Committee concluded that not to find current impairment would also undermine public confidence in the profession and the reputation of the profession.

### **Sanction**

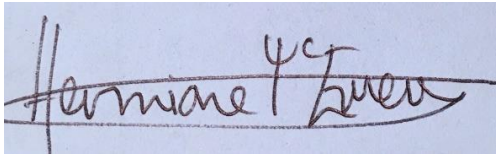
22. The Committee considered the sanctions available to it from the least to the most severe (no sanction, financial penalty, conditional registration, suspension, erasure). It was mindful of the Sanctions Guidance. Given the gravity of findings the Committee decided that to impose no sanction, a financial penalty or impose conditional registration would be insufficient to protect the public and the wider public interest and would not be proportionate in the circumstances of this case. REDACTED.

23. The Committee had regard to paragraph 21.29 of the Sanctions Guidance as regards the appropriateness of suspension. The Committee is not satisfied that the Registrant has sufficient insight and it has found that she continues to pose a

significant risk of repeating the behaviour. The Committee has found that the Registrant has not demonstrated any steps to remedy her practice and, indeed, that is reflected in her stating that she has no wish to return to the profession. In these circumstances, the Committee is therefore satisfied that suspension is not a sufficient, appropriate or proportionate sanction.

24. The Committee considered the Sanctions Guidance on erasure, and in particular it considered paragraphs 22.4, 22.5 and 21.35. It found parts 21.35 parts a), b), c), and f) were engaged. The Committee has found that there was a serious departure from professional standards, a risk of harm to patients as a result of dishonestly altering patient records, there was abuse of a position of trust and the conduct was dishonest, persistent and covered up. The dishonesty found proved was sophisticated and enduring, and it was not isolated but repeated and premeditated. The Committee concluded that erasure is the appropriate and proportionate sanction.
25. The Committee was mindful of the Council's APD policy. It was satisfied that this case was both eligible and suitable for agreed disposal. The Committee was satisfied that it had been provided with a sufficient and appropriate amount of evidence and information about the case. The case has been considered by the case examiners and the Allegation is admitted in full. The Committee did not consider that the nature of the allegation was such that a public hearing was required. The Registrant has shown some, albeit limited, insight by engaging in this process. The Committee did not consider that any unfairness to the Registrant, or to the public interest arose as a result of the APD. It was satisfied that the Registrant understands the process and what she was agreeing to. Indeed, it formed the view that the APD was likely to be in the Registrant's own interests given her circumstances. She has ceased to practice.
26. The Committee was satisfied that there was no public interest in requiring a fitness to practise hearing to take place and for witnesses to attend. The Committee was satisfied in all the circumstances that the objective of protecting the public, and the wider public interest, were appropriately and sufficiently protected by the proposed APD. It is appropriate that the sanction of erasure be imposed with immediate effect. No interest is served in delaying the imposition of the agreed sanction.
27. The Committee was satisfied that the Complainant has had a fair opportunity to respond and that an APD was not inappropriate or unfair in the circumstances. The Committee noted the Complainant's comments and that he was willing to attend a hearing and he will receive a copy of this decision.
28. The Committee accordingly found that the APD was appropriate. The Committee agreed the APD agreement in full.

Chair of the Committee: Hermione McEwen



Signature

Date: 19 January 2023

Registrant: Dawn Lamb

Signature .....

Date: 19 January 2023

**ANNEX A**

**GENERAL OPTICAL  
COUNCIL**

*a  
n  
d*

**DAWN LAMB D-  
13888**

**AGREED PANEL  
REPORT**

---

CASE LAW HAS BEEN ADDED TO THIS REPORT – DELETE / AMEND  
AS APPROPRIATE



## Introduction

1. This is a substantive hearing in respect of Dawn Lamb (D-13888), a registered dispensing optician, first registered with the General Optical Council ("the Council") on 12 October 2018. The Fitness to Practise Committee ("FTPC") meet to consider whether to approve an agreed form of disposal under the Agreed Panel Disposal ("APD") process. Both parties agree to the proposed form of disposal set out in this report. The Registrant is not represented but has been provided with a copy of the APD policy. The Registrant has confirmed she understands the process and consents to APD.
2. The Council's published policy on the APD process is addended to this report. It is a hearing management tool, designed to assist in avoiding full hearings with the calling of evidence where the public protection and public interest objectives of the fitness to practise process would still be met by an agreed outcome. It is not a separate statutory tool or path to a finding of impaired fitness to practise. The FTPC retains full jurisdiction over the procedure and, save where it would be otherwise appropriate not to do so, the proposed APD is considered at a public hearing. The options open to the FTPC are:
  - i. To approve the report in its entirety and make the appropriate order(s);
  - ii. To vary the sanction with the agreement of both parties after inviting submissions. If one or both parties disagree with the variation suggested by the FTPC, the APD hearing will be vacated and the matter will be scheduled for a substantive hearing before a new committee without an agreed report;
  - iii. To disagree with all or part of the report. In this instance, the GOC and the registrant may agree to amend the report in light of the FTPC's findings and resubmit this to the same committee at a reconvened hearing, otherwise the APD hearing will be vacated and the matter will be listed for a substantive hearing before a new committee without an agreed report;
  - iv. If either party decides that they no longer want the case to proceed by APD, the current hearing must be immediately concluded by the FTPC with no orders being made (unless there is a request for procedural directions from both parties). The matter will then be scheduled for a substantive hearing before a new committee without an agreed report.

## Background

3. On 29 October 2021 the Registrant self-referred to the GOC declaring she had processed 7 fraudulent refunds amounting to £1933.80. The GOC also received a complaint from the Registrant's employer REDACTED (the Complainant) on 10 November 2021. The GOC opened a fitness to practise investigation on 16 December 2021 and obtained the internal investigation documentation REDACTED which highlighted the following concerns that the Registrant:
  - Conducted 7 fraudulent refunds amounting to £1933.80
  - Applied unauthorised discount to a transaction by Patient A
  - Provided a product free of charge to Patient A
  - Changed patient contact details to conceal her actions
4. The Council notified the Registrant of the Fitness to Practise investigation on 20 December 2021.

5. On 21 December 2021 the Registrant advised the Council that she had no intention of ever returning or working in the Optical profession. This is a stance the Registrant has maintained throughout the investigation.
6. On 22 July 2022 the Registrant was notified that the matter had been referred to the Fitness to Practise Committee.
7. On 28 July 2022 the Council's case was served on the Registrant.
8. In the Hearings Questionnaire dated 20 August 2022, the Registrant admitted to all the allegations and explained she was no longer in practise and maintained she had no intention of returning to practise.
9. On 18 September 2022 the Council received confirmation from the Registrant that she accepts she is currently impaired.

Allegation

10. The allegation is set out below.

The Council alleges that you, Dawn Lamb D-13888 a registered Dispensing Optician;

1. On or around 02 November 2020 you processed a false refund transaction to the value of approximately £177.80 and/or you credited the false refund to your personal REDACTED.
2. On or around 14 December 2020 you processed a false refund transaction to the value of approximately £318.00 and/or you credited the false refund to your personal REDACTED.
3. On or around 11 February 2021 you processed a false refund transaction to the value of approximately £308.00 and/or you credited the false refund to your personal REDACTED.
4. On or around 06 May 2021 you processed a false refund transaction to the value of approximately £228.00 and/or you credited the false refund to your personal REDACTED.
5. On or around 24 July 2021 you processed a false refund transaction to the value of approximately £352.00 and/or you credited the false refund to your personal REDACTED.
6. On or around 27 July 2021, without authorisation, you applied a discount to a sale by Patient A, described by you as your REDACTED to be, causing a monetary loss of £34.50 with the intention of permanently depriving The Store of these monies.

7. *On or around 27 July 2021, without authorisation, you provided a product free of charge to Patient A causing a monetary loss of £35.00 with the intention of permanently depriving The Store of these monies.*
8. *On or around 02 September 2021 you processed a false refund transaction to the value of approximately £277.00 and/or you credited the false refund to your personal REDACTED.*
9. *On or around 16 October 2021 you processed a false refund transaction to the value of approximately £273.00 and/or you credited the false refund to your personal Bank of REDACTED.*
10. *Between November 2020 and October 2021, you amended the telephone numbers on several customer record to conceal the fraudulent refunds you completed.*
11. *Your conduct noted at 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 was inappropriate and/or dishonest in that you:*
  - a. *knew the refunds did not arise from legitimate transactions; and/or*
  - b. *knew you were not entitled to the refund money and/or*
  - c. *knew you were not authorised to give the discount and/or*
  - d. *knew you were not authorised to provide products free of charge and/or*
  - e. *knew you were falsely changing patient contact details to conceal your conduct.*

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

*Nature of the Recommended Disposal*

11. *Upon the Registrant's admissions and upon the Council and Registrant agreeing to this recommendation, the parties jointly seek and recommend to the FTPC that this matter is disposed of by a determination on the following basis:*
  - i. *All of the particulars of the allegations are admitted and found proved*
  - ii. *That the particulars of the allegations amount to misconduct*
  - iii. *That the Registrant's fitness to practise is impaired by reason of misconduct; and*
  - iv. *The appropriate and proportionate sanction is erasure*
12. *The matter is governed by The Opticians Act 1989 ("the Act") and The General Optical Council (Fitness to Practise) Rules Order of Council 2013 ("the Rules").*
13. *In accordance with Rule 46 a hearing is required to be conducted in three stages:*
  - i. *Stage 1 - Findings of fact;*

- ii. Stage 2 - Findings on whether, as a result of the facts found proved, the Registrant's fitness to practise is impaired by reason of misconduct;
- iii. Stage 3 - Consideration of the appropriate sanction, if any.

14. Rule 40(6) provides: "the registrant may admit a fact or description of a fact, and a fact of description of a fact so admitted may be treated as proved."

15. More detailed submissions are set out below in respect of each stage.

**Stage 1: Factual Findings**

16. On 29 October 2021 the Registrant self-referred to the GOC declaring she had processed 7 fraudulent refunds amounting to £1933.80. On 4 November 2021 the GOC also received a complaint from the Registrant's employer the Complainant advising the Registrant had been summarily dismissed. The Complainant explained that the Registrant had been dismissed on the grounds of gross misconduct in relation to theft of £1933.80 and the finding of the falsification of records had been deliberate. During the course of the Council's investigation the Complainant provided internal investigation documentation including a Financial Risk Support Remote Analysis Report and the internal Contemporaneous Record of Interview with the Registrant.

17. The Financial Risk Support Remote Analysis Report (Exhibit CD/01 pages 6-11) was completed on 11 October 2021 and provides the background for how the concern was identified. On 5 October 2021 the routine analysis of group card refund data identified 3 refunds processed onto the same card number at the REDACTED store. Further analysis showed that the card had only ever had one purchase processed against it and the card was associated to a REDACTED bank account.

18. Following the completion of the report, a further investigation was conducted by parent company Specsavers Optical Group where 3 additional cards were identified as having processed refunds that appeared unusual. Further analysis showed that the refunds identified on the three additional cards were entered on the till by the operator code associated with the Registrant. (REDACTED Witness statement page 37-42)

19. The internal Contemporaneous Record of Interview with Registrant (CD/02 pages 12-18) was recorded on 18 October 2021 and provides details of the Registrant admitting to stealing money from the business. The Registrant admitted to processing fraudulent refunds on 7 occasions using 3 different bank cards. The transactions are as follows:

<b><u>Date Refund Processed</u></b>	<b><u>Transaction Amount</u></b>	<b><u>Card Ending</u></b>
02 November 2020	£177.80	REDACTED

14 December 2020	£318.00	REDACTED
11 February 2021	£308.00	REDACTED
06 May 2021	£228.00	REDACTED
24 July 2021	£352.00	REDACTED
02 September 2021	£277.00	REDACTED
16 October 2021	£273.00	REDACTED

20. During the interview the Registrant admitted to, on 27 July 2021, applying an unauthorised discount to a family member's sale, Patient A, without the required authorisation causing a monetary loss to the business to the value of £34.50. The Registrant further admitted to providing a product to Patient A free of charge causing the business a monetary loss to the value of £35.00.
21. The Registrant also admitted to changing contact details for 2 – 3 patients to prevent the business from making successful contact with patients between November 2020 and October 2021 to conceal the fraudulent transactions she had made.
22. The Registrant provided a personal statement to the employer apologising for her actions. (Pages 32-36).
23. REDACTED referred the Registrant to the Council as they considered her actions to breach several of the standards of practice in the GOC Standards of Optometrists and Dispensing Opticians.

## **Stage 2: Misconduct and Impairment**

### Misconduct

24. With regard to the issue of misconduct, there is no definition but a review of some of the authorities provides some guidance, Lord Clyde in Roylance v GMC (no.2) [2000] 1 A.C. 311 Lord Clyde, in his judgment at page 331, stated:

*“Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word “professional” which links the misconduct to the profession of medicine. Secondly, the misconduct is qualified by the word “serious”. It is*

*not any professional misconduct which will qualify. The professional misconduct must be serious”.*

25. In the case of R (on the application of) Remedy UK v General Medical Council [2010] EWHC 1245 at paragraph 37, it was stated:

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

26. As to seriousness, Collins J, in Nandi v General Medical Council [2004] EWHC (Admin), rightly emphasised, at paragraph 31 of his judgment, *“the need to give it proper weight, observing that in other contexts it has been referred to as ‘conduct which would be regarded as deplorable by fellow practitioners’.”*

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

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

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

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

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

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

28. It is agreed by both the Council and the Registrant that the Registrant’s conduct breached the following paragraphs of the Standards of Practice for Optometrists and Dispensing Opticians:

- 16 - Be honest and trustworthy
- 17 – Do not damage the reputation of your profession through your conduct

29. It is agreed by both parties that the allegations amount to a serious departure from the standards of practice expected of a competent dispensing optician.

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

#### Impairment

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

32. They are:

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

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

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

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

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

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

*"In short, the purpose of fitness to practise proceedings is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The FPP thus looks forward not back. However, in order to form a*

view as to the fitness of a person to practice today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past".

22. In my judgement this means that the context of the doctor's behaviour must be examined. In circumstances where there is misconduct at a particular time, the issue becomes whether that misconduct, in the context of the doctor's behaviour both before the misconduct and to the present time, is such as to mean that his or her fitness to practise is impaired. The doctor's misconduct at a particular time may be so egregious that, looking forward, a panel is persuaded that the doctor is simply not fit to practise medicine without restrictions, or maybe not at all. On the other hand, the doctor's misconduct may be such that, seen within the context of an otherwise unblemished record, a Fitness to Practice Panel could conclude that, looking forward, his or her fitness to practise is not impaired, despite the misconduct".

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

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

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

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

38. In an email dated 5 July 2022 the Registrant explained that she was no longer in practice and had no intention of returning to practice. This is a stance the Registrant has maintained throughout the duration of the Council's investigation. On 18 September 2022. The GOC received confirmation from the Registrant that she accepts she is currently impaired.

39. The Registrant accepts that his fitness to practise is currently impaired, in that:

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



**Stage 3: Sanction**

40. Where the FTPC find that a registrant's fitness to practise is impaired, the powers of the FTPC are listed under section 13F (2) (3) and (4) of the Act. Section (2) states that the FTPC may, if they think fit, give a direction specified in subsection (3).
41. The purpose of sanctions in fitness practise proceedings are as follows:
- a) the protection of the public;
  - b) the declaring and upholding of high standards in the profession; and
  - c) the maintenance of public confidence in the profession
42. Sanctions are not intended to be punitive. Accordingly, matters of personal mitigation carry very much secondary weight. In Bolton v The Law Society [1994] 1 WLR 512 Bingham LJ said:
- "...the reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits but that is part of the price."
43. The FTPC should have proper regard to the Indicative Sanctions Guidance unless the FTPC have sound reasons to depart from it – per Lindblom LJ in PSA v (1) HCPC (2) Doree [2017] EWCA Civ 319 at paragraph 29.
44. The FTPC must have regard to the principle of proportionality. The principle requires that when considering what sanction to impose in order to fulfil the statutory over-arching objective, the FTPC must take into consideration the interests of the Registrant, which may include the wider public interest in a competent dispensing optician being permitted to return to practice. The FTPC should consider the sanctions available, starting with the least restrictive sanction available, judging whether that sanction will be sufficient to achieve the over-arching objective, and if it will not, moving on to consider the next least restrictive sanction.
45. In terms of aggravating features, the matter involves several aspects of dishonesty. The Registrant has admitted to dishonest conduct where she deprived the business of money totalling £2003.30 (total includes transactions relating to Patient A) and also amended patient records to conceal her actions. In addition, the dishonest conduct with carried out over a substantial period from November 2020 to October 2021.
46. In terms of mitigating circumstances, the Registrant has no previous fitness to practise history and she has shown insight to admitting the allegations. The Registrant also agrees to the facts of misconduct and impairment for the purposes of the fitness to practise hearing. The risk arising from the dishonest conduct is reduced by the Registrant confirming she has stopped practicing and has no intention to return.

47. Having regard to the GOC's Indicative Sanctions Guidance, the parties agree that the appropriate and proportionate sanction is erasure. The Registrant has provided the position that she wishes to be removed from the register. The GOC has considered the following in making this proposal:

**No Further Action**

48. No further action is not proportionate or sufficient given the seriousness of the misconduct.

**Financial Penalty Order**

49. A financial penalty is not considered appropriate here.

**Conditional Registration or Suspension**

50. Conditional registration or suspension is not practical as the Registrant has no intention of returning to practice. Furthermore, conditional registration and suspension are insufficient to address the public interest concerns.

**Erasure**

51. The parties agree that the Registrant's conduct is fundamentally incompatible with registered practise and this sanction is appropriate and proportionate. Erasure is appropriate given the serious of the misconduct. Erasure is sufficient to address both the public protection and public interest concerns and in addition also upholds the proper standards of conduct and behaviour to maintain public confidence in the profession.

**Immediate Order**

52. The parties agree that, should the FTPC accept the parties' recommendation for disposal, it is appropriate to impose an immediate order for erasure as it is necessary to do so to protect the public and it is otherwise in the public interest.

<b>FURTHER INFORMATION</b>
<b>Transcript</b>
A full transcript of the hearing will be made available for purchase in due course.
<b>Appeal</b>
Any appeal against an order of the Committee must be lodged with the relevant court within 28 days of the service of this notification. If no appeal is lodged, the order will take effect at the end of that period. The relevant court is shown at section 23G(4)(a)-(c) of the Opticians Act 1989 (as amended).
<b>Professional Standards Authority</b>
<p>This decision will be reported to the Professional Standards Authority (PSA) under the provisions of section 29 of the NHS Reform and Healthcare Professions Act 2002. PSA may refer this case to the High Court of Justice in England and Wales, the Court of Session in Scotland or the High Court of Justice in Northern Ireland as appropriate if they decide that a decision has been insufficient to protect the public and/or should not have been made, and if they consider that referral is desirable for the protection of the public.</p> <p>Where a registrant can appeal against a decision, the Authority has 40 days beginning with the day which is the last day in which you can appeal. Where a registrant cannot appeal against the outcome of a hearing, the Authority's appeal period is 56 days beginning with the day in which notification of the decision was served on you. PSA will notify you promptly of a decision to refer. A letter will be sent by recorded delivery to your registered address (unless PSA has been notified by the GOC of a change of address).</p> <p>Further information about the PSA can be obtained from its website at <a href="http://www.professionalstandards.org.uk">www.professionalstandards.org.uk</a> or by telephone on 020 7389 8030.</p>
<b>Effect of orders for suspension or erasure</b>
To practise or carry on business as an optometrist or dispensing optician, to take or use a description which implies registration or entitlement to undertake any activity which the law restricts to a registered person, may amount to a criminal offence once an entry in the register has been suspended or erased.
<b>Contact</b>
If you require any further information, please contact the Council's Hearings Manager at 10 Old Bailey, London, EC4M 7NG or, by telephone, on 020 7580 3898.