



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

GENERAL OPTICAL COUNCIL

F(22)05

AND

Mr JOHN HOOLEY (01-12345)

DETERMINATION OF SUBSTANTIVE HEARING

05 - 09 SEPTEMBER 2022

&

23 - 24 JANUARY 2023

Committee Members:	Ms Anne Johnstone (Chair/Lay) Mr Ubaidul Hoque (Lay) Mr John Vaughan (Lay) Dr Ewen MacMillan (Optometrist) Mr David Cartwright (Optometrist)
Legal adviser:	Dr. Austin Stoton
GOC Presenting Officer:	Mr John Greany
Registrant present/represented:	Yes, and represented throughout.
Registrant representative:	Ms Katharine Germishuys (AOP) Mr Trevor Archer, Counsel
	Ms Abby Strong-Perrin (05 - 09 September 2022) Ms Nazia Khanom (23 – 24 January 2023)
Facts found proved:	2a, 2b, 2c & 2d
Facts not found proved:	1a, 1b, 1c dismissed.
Misconduct:	Found
Impairment:	Not Found

ALLEGATION

The Council alleges that you, John Hooley (01-12345), a registered Optometrist:

- 1a) Your record keeping in relation to cup:disc ratio for some or all of the patients listed in Schedule A was inappropriate in that you knowingly recorded inaccurate information within the patient records relating to cup:disc ratio; and/or*
 - b) Your record keeping in relation to cup:disc ratio for some or all of the patients listed in Schedule A was misleading in that you knowingly recorded inaccurate information within the patient records relating to cup:disc ratios; and/or*
 - c) Your record keeping in relation to cup:disc ratio for some or all of the patient listed in Schedule A was dishonest in that you knowingly recorded inaccurate information within the patient records relating to cup:disc ratios.*
- 2) In respect of some or all of the patient records listed in Schedule B:*
- a) The patient history recorded was inadequate;*
 - b) The assessment and/or recording of the assessment of contact lens fitting was inadequate;*
 - c) The assessment and/or recording of the assessment of the anterior eye was inadequate;*
 - d) The provision and/or recording of the provision of advice to the patient was inadequate.*

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

DETERMINATION

Admissions in relation to the particulars of the allegation

1. At the outset of the case the Registrant admitted allegation 2a in its entirety and allegations 2b, 2c insofar as the recording of his patient assessments were concerned. The Registrant further admitted allegation 2d.
2. Allegation 1 was denied.

Background to the allegations

3. Mr. John Hooley (“the Registrant-”), registered with the General Optical Council (“the Council”) on 5th September 2003 as an optometrist. Mr. Hooley had been employed by ASDA in redacted as the store optometrist since 19th September 2016.
4. From August 2018, the Registrant had been undertaking training with ASDA colleagues. In March 2019 Ms A, Superintendent optometrist, was notified of

concerns arising from the Registrant's practice. On the 16 April 2019 the General Store Manager, Person A, met with the Registrant, to talk about his general performance including record keeping. On the 26 April 2019, an investigation meeting took place. The Registrant did not attend that meeting. Thereafter the Council received a referral from ASDA's Optical Compliance Team regarding the Registrant, who was then employed as the resident optometrist at their redacted practice. This followed the internal audit and internal investigation at ASDA, which raised concerns about the Registrant's record keeping.

5. The supervising optometrist at ASDA, Ms. A, first brought the concerns to the attention of the Council in early May 2019 following an internal audit which had prompted an internal investigation at ASDA. The audit of the Registrant's performance raised concerns about his record keeping. The main thrust and the way in which the Council has put the case was that the Registrant recorded a cup:disc (C:D) ratio of 0.3, for healthy discs, as a matter of routine.

Submission of no case to answer

6. At the conclusion of the Council's case Mr. Archer indicated that he would make a submission of no case to answer in respect of allegation 1. A written submission was served on the afternoon of the 7 September 2022. The Committee received legal advice on how to approach a submission of no case to answer which covered the General Optical Council Fitness Rule 46 Paragraph 8 and 9 on submissions of no case to answer applications, the application of the test outlined in the case of *R v. Galbraith* [1981] 73 Cr App R 124, dishonesty and the approach to expert evidence. The Committee accepted that advice.

The application

7. Paragraph 4 of the defence skeleton argument encapsulates how the application is put; it reads as follows;

"4. There are three limbs to this submission:

- a. *The **first limb** is there is no evidence that any cup:disc ratio recorded for a patient listed in Schedule A was inaccurate by the standards of a reasonably competent optometrist ("RCO"). This limb applies to each of allegations 1(a), 1(b) and 1(c).*
- b. *The **second limb** is that the evidence to support the contention that the Registrant knowingly recorded inaccurate ratios is so tenuous that no reasonable committee, properly directed, could rely on it to support such a finding. This limb applies to each of allegations 1(a), 1(b) and 1(c).*
- c. *The **third limb** is that the evidence relied on to prove dishonesty is so tenuous that no reasonable committee, properly directed, could rely on it to support such a finding. This limb only applies to allegation 1(c)."*

The 'first limb' of the Defence application

8. The first limb of the defence application is an application under 'limb one' of *R v. Galbraith*. Schedule A to the Allegations contains 40 patients. The GOC expert Dr Kwartz, reviewed those patients' records and made an assessment of the cup:disc (C:D) ratios of those patients. Dr Kwartz gave evidence that if two reasonably competent optometrists examined the same patient and measured the patient's C:D ratio, it is accepted in practice that measurements may differ. This is known as *inter-observer variation*. She stated that it was accepted that the general limit of inter-observer variation was 0.2, however, that figure could be greater if the assessment is carried out under dissimilar circumstances, such as live assessment of the optic disc versus photographic assessment as opposed to two equally competent clinicians assessing a C:D ratio from a photographic image of the optic disc. The conditions of Dr Kwartz and the Registrant's assessment of the Schedule A patients were dissimilar. It follows that the *inter-observer variation* between Dr Kwartz and the Registrant might have been greater than 0.2. The expert was not pressed on the magnitude of the expected increase in the inter-observer variation; however, she was clear that the actual variation of the inter-observer variation could be in excess of 0.2.
9. Having reviewed the 40 records for the patients listed in Schedule A, Dr Kwartz made her own assessment of the C:D ratio for those patients, of whom she had photographs of the optic discs from which C:D ratios could be measured. She then compared her results with those of the Registrant who had recorded the C:D ratios from live examination using direct ophthalmoscopy. She identified five records where the Registrant had recorded a C:D ratio that varied by more than 0.2 when compared with Dr Kwartz's own estimate based on the photographs. Dr Kwartz used a method to measure the C:D ratio that primary care optometrists would not be expected to use and recorded to a resolution of two decimal places. This level of accuracy is generally only found in hospital records. Dr Kwartz stated that it was acceptable and common practice for a reasonably competent primary care competent optometrist to record ratios to one decimal place.
10. Mr Archer argued that the similarity between the Registrant and Dr Kwartz's recorded C:D ratios is indicative of the generality of the accuracy of the Registrant's measurements.
11. He relies on the evidence of the Council's expert Dr Kwartz. Only four of the forty patients reviewed by Dr Kwartz, Patients 13, 16, 18 and 39, had records which showed a C:D ratio that varied by 0.25 when compared with Dr Kwartz's estimate. The fifth patient, Patient 37, had a C:D ratio that varied by 0.3 when compared with Dr Kwartz's assessment. He submitted that these measurements are likely to be within the case specific *inter-observer variation* limit of the two practitioners. In any event there are only two patients' ratios that fall outside of the generally accepted 0.2 range.
12. The Committee considered that the assessment of a C:D ratio is essentially a qualitative and subjective activity and that no one measurement can be regarded as absolute or correct, instead, an acceptable range of values could be considered equivocal, bearing in mind inter-observer variability. The Committee accepted Dr Kwartz's evidence.
13. The Committee does not accept that the information that the Registrant entered into the records was 'inaccurate' insofar as it fell within an acceptable inter-

observer variation limit. Accordingly, it follows that the Registrant did not knowingly enter inaccurate information into the patient records.

14. The Committee does not accept that the Registrant would have been able to enter data recorded to a resolution of ± 0.05 , cognisant of the subjective nature and difficulty inherent in measuring a C:D ratio.
15. The Council submitted that the Registrant did record *certain cup disc ratio measurements which are at odds with and/or different from the assessments of the expert*. The Committee does not accept that submission. Having reviewed the evidence of Dr Kwartz the Committee considered that, insofar as it is material, there is generally consistent agreement between Dr Kwartz's measurements and the Registrant's measurements. The Committee therefore concluded that there is no evidence of the Registrant having taken inaccurate measurements. It cannot thereby be the case that the Registrant knowingly recorded anything inaccurately. On that basis the committee accedes to the Registrant's application and dismisses allegation 1a. Inexorably, it follows, that allegations 1b and 1c fall away. The Committee therefore dismiss those allegations.
16. The Council has relied heavily upon statements made by witnesses and on occasions allegedly by the Registrant during the performance review and subsequent investigation meeting, which the Registrant did not attend. Prior to those meetings the Registrant had not been provided with nor was he sighted of any of the materials that were subsequently put to him. It was asserted that he had incorrectly recorded a high proportion of C:D ratios as 0.3. It follows that his limited engagement with ASDA and anything he said at that time must be considered in light of his lack of prior knowledge of the concerns being put to him. The Committee was also concerned that there was not always an optometrist present when certain clinical allegations were being made. Consequently, the Registrant did not appear to understand the nature, extent and seriousness of the allegations being made, which, in any event, in retrospect were not evidentially grounded. Had an application been made in respect of this material the Committee would have had to consider its admissibility or the extent to which it could properly have been deployed.
17. **The application is therefore acceded to and allegation 1 in its entirety is dismissed.**

Misconduct

Admissions in relation to the particulars of the allegation

18. The Registrant admitted allegation 2a and allegations 2b and 2c insofar as the recording of his patient assessments were concerned. The Registrant further admitted allegation 2d.
19. Allegation 1 was denied. The Committee subsequently acceded to a submission of no case to answer. We now turn to allegation 2.
20. Mr Hooley has not given oral evidence but has provided us with a written statement.

Allegation 2a: The patient history recorded was inadequate;

21. We note that the records of patient 1, who consulted the Registrant on the 15 August 2017, lacked detail of patient history. There were omissions from the record in that the history did not detail the wearing time of the contact lenses nor compliance with the contact lens care system. In addition, the Committee considered the history of patient 4, where the expert stated that although the Registrant had recorded the wearing time of the contact lenses on the day of the examination, their wearing pattern and maximum wearing time were not. There was also no information regarding the care solution and whether the patient was compliant with its use. Moreover, there was no information about the wearing pattern of Patient 7, Patient 9 or Patient 14.
22. The committee accepts this evidence and determines that these breaches are sufficiently serious to amount to misconduct.
23. It notes that at paragraph 20 and 16 of his statement the Registrant admits allegation 2(a) in full.

24. Allegation 2b: The assessment and/or recording of the assessment of contact lens fitting was inadequate

25. The Registrant addresses contact lens fitting at paragraphs 20 and 21 of his statement:

“Contact Lens Fittings

20. I admit that I previously did not record a sufficiently detailed history when performing contact lens fitting and aftercare appointments. Furthermore, that my assessment and/or recording of the assessment of contact lens fitting was inadequate. As can be seen in the evidence, there are many records where I have failed to record that the contact lens fit was assessed at all. It is partly due to inadequate understanding of the ASDA software system; however, this is no excuse.

21. My assessment and/or recording of the assessment of the anterior eye was inadequate. In the evidence there is only a record that the eyelids and lashes were examined, which I admit is not sufficient. Furthermore, I failed to record the provision of advice to patients.”

26. The Committee noted that the Registrant admits that he did not record the assessments adequately, although avers that the assessments were not inadequate.
27. The Committee considered the patients' contact lens records and paragraphs 13 and 14 of Dr Kwartz's report. Those records do not note contact lens fitting characteristics. Many records contain the summary statement "Good". The Committee accepts Dr Kwartz's evidence that a reasonably competent optometrist would document the contact lens centration, lag (lens movement on lateral gaze), sag (lens movement on upward gaze), post-blink movement and recovery on a push-up test. Generally, the information in the contact lens records is deficient insofar as there are multiple instances where the clinical data is insufficient to provide a basis for ongoing patient care. The Committee accepted Dr Kwartz's evidence that the recording of the assessment of contact lens fitting fell far below the standard of a reasonably competent practitioner.

Allegation 2c: The assessment and/or recording of the assessment of the anterior eye was inadequate

28. The Committee considered the patient records in the round. There are thirty instances, in paragraph 12.1 of Dr Kwartz's report, for patients 1-12, 14 and 15 where Dr Kwartz, the GOC expert, states that no anterior eye examination was undertaken in so far as no fluorescein stain check or no corneal examination or no anterior eye examination was undertaken at all. Dr Kwartz stated that:

"Below is a list of cases where recording of the anterior eye examination was incomplete and/or there is no evidence that a stain check with fluorescein was performed. In all cases where these tests have been omitted, I consider the standard to lie far below that of a reasonably competent optometrist as the test is fundamental to ensuring a patient's ocular health in contact lens wear and an adverse ocular response to contact lens wear could go undetected.

Patient 1: 15/08/17: no fluorescein stain check

Patient 2: 10/08/16: no anterior eye examination at all

Patient 2: 19/08/17: no anterior eye examination at all

Patient 2: 23/08/18: no corneal examination or fluorescein stain check

Patient 3: 18/06/16: no corneal examination or fluorescein stain check Patient 3: 12/08/17: no corneal examination or fluorescein stain check

Patient 3: 14/02/19: no fluorescein stain check Patient 4: 05/01/17: no anterior eye examination at all.

Patient 4: 16/01/17: no corneal examination or fluorescein stain check Patient 4: 01/09/17: no corneal examination or fluorescein stain check

Patient 5: 25/08/17: no anterior eye examination at all

Patient 5: 24/10/18: no corneal examination or fluorescein stain check

Patient 6: 15/08/17: no corneal examination or fluorescein stain check

Patient 6: 18/08/17: no corneal examination or fluorescein stain check

Patient 7: 12/08/17: no anterior eye examination at all

Patient 8: 09/08/17: no corneal examination or fluorescein stain check

Patient 9: 16/08/17: no fluorescein stain check

Patient 10: 25/08/17: no fluorescein stain check

Patient 10: 04/09/18: no anterior eye examination at all

Patient 11: 12/08/17: no anterior eye examination at all

Patient 11: 19/08/17: no corneal examination or fluorescein stain check

Patient 12: 22/07/17: no anterior eye examination at all

Patient 12: 28/07/17: no anterior eye examination at all

Patient 12: 16/08/17 no fluorescein stain check

Patient 14: 19/08/17 no fluorescein stain check

Patient 14: 24/08/17: no corneal examination or fluorescein stain check

Patient 14: 10/10/17: no anterior eye examination at all

Patient 14: 17/10/17: no anterior eye examination at all

Patient 15: 10/10/17: no corneal examination or fluorescein stain check

Patient 15: 17/10/17: no corneal examination or fluorescein stain check”

29. In respect of allegation 2(c), the Registrant admits that he did not record the assessments adequately, but does not accept that the assessments themselves were inadequate.
30. The Committee had regard to paragraph 12.1 of Dr. Kwartz’s report, which states that:
“a reasonably competent optometrist would perform a full examination of the anterior eyes with a slit lamp. They would also instil fluorescein which enables visualisation of any damage to the ocular surface and perform a thorough check of the cornea, which is particularly susceptible to damage in contact lens wear.”
31. The committee accepts that evidence and determines that those breaches are sufficiently serious to amount to misconduct.

Allegation 2d: The provision and/or recording of the provision of advice to the patient was inadequate.

32. This allegation is narrow and as best as can be divined refers to Patients 2, 6, 10 and 11. Insofar as those patients are concerned the Registrant accepts that his advice could have been more clearly recorded or that the advice was implicit from surrounding circumstances of the patient consultation. The Committee accepts the Registrant’s evidence, however, observes that the recording of advice given to patients was generally of a disappointing quality and below that expected in the *General Optical Council’s Stage 2 Core Competencies for Optometry (2011)*. However, the Committee did not consider that the standard fell far below that anticipated by the GOC.

Impairment

33. The Committee has considered all of the evidence presented to it and has had particular regard to the documentary bundle that the Registrant has prepared. The bundle includes a reflective statement. The Registrant gave oral evidence during the Impairment stage.
34. The Committee has taken into account the submissions made by Mr Greany on behalf of the General Optical Council (GOC), and those made by Mr Archer on the Registrant’s behalf. The Committee has accepted the advice of the Legal Adviser.

Fitness to practise history

35. The Registrant has been qualified for 37 years and has worked continually apart from the NHS 6 month suspension associated with the index facts of these proceedings. Following which he was readmitted to the NHS Performers List subject to conditions. Following further training and engagement, those conditions were removed. A letter to the Registrant from the NHS performers list

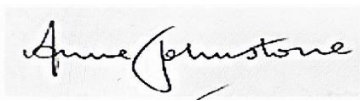
decision panel dated September 2020 having reviewed the Registrant's record keeping stated that:

“The Panel noted that you had made good progress and improved significantly in your record keeping skills. The Panel would like to commend you on the improvements made which was evident from the audit undertaken by NHS England and from the reports provided by your supervisor.”

36. The Registrant has no fitness to practise history with the Council and no other disciplinary history save for those associated with the underlying facts of these proceedings.
37. The Registrant's work has been extensively audited by NHS England. In addition his current employer, Scrivens, by whom he has been employed since July 2021 conducts regular audits which include auditing of recording keeping and a check on the assessments performed. The Registrant has not received any negative feedback from any of his employer's audits.
38. The Registrant indicated that his current CPD is 10 points beyond the current GOC cycle expectation. The Registrant has benefited from videos and reading College of Optometrists guidance on record keeping. The Committee was encouraged to see that the Registrant has engaged in and undertaken a sea change in his attitude to ongoing training.
39. The Registrant acknowledged in his oral evidence that the public's perception of the profession would be diminished by his past performance and that he was consequently driven to take steps to remedy his past failings. The Registrant, who is near retirement, further indicated that he considered the optical profession a vocation which he takes seriously and stated in his oral evidence in terms that 'going out on a 'low' would 'hurt', which the Committee took to be an indication of the Registrant's enthusiasm and commitment to the profession.
40. The Committee considers that the Registrant has provided sufficient oral evidence of having remedied the failings in his practice, particularly in terms of the results of the record-keeping audits, and as part of his remediation and reflective statements. This remediation has been heightened by his level of insight into the effect of his past inadequate practice.
41. The Committee determines that a repetition of the Registrant's misconduct in this area is highly unlikely. It is clear to the Committee that these proceedings, which have culminated in this hearing, have had a salutary effect on the Registrant. The Committee is satisfied from the Registrant's evidence that he has sufficient insight and has remediated his record keeping to the extent that Committee and the public can be confident that a repetition of his previous conduct is highly unlikely to reoccur.
42. In the Committee's judgement public trust and confidence in the profession, and in the regulator, would not be seriously undermined by the Registrant's unrestricted practice bearing in mind the particular circumstances of this case and the remediation work he has done over the last few years. The Committee considers that the public is not at risk of harm because of any unremediated misconduct in the Registrant's practice, and that a reasonable minded and fully informed member of the public would be satisfied that professional standards and public confidence have been maintained. Accordingly the Committee considers that the Registrant's fitness to practise is not currently impaired. The

Committee did not consider that in the circumstances of this case a warning is appropriate or necessary.

Chair of the Committee: Ms Anne Johnstone

Signature ...  Date: 24 January 2023

Registrant: John Hooley

Signature ... Attended remotely via MS Teams ... Date: 24 January 2023



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
<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 www.professionalstandards.org.uk or by telephone on 020 7389 8030.</p>
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.