

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

GENERAL OPTICAL COUNCIL

AND

MOHAMMED NAWAZ (01-32408)

**DETERMINATION OF A SUBSTANTIVE HEARING
AGREED PANEL DISPOSAL (ADP)
1 August 2022**

Committee Members:	Anne Johnstone (Chair/Lay) John Vaughan (Lay) Susan Bradford (Lay) Maninder Gudray (Optometrist) Alexander Howard (Optometrist)
Legal adviser:	Helen Gower
GOC Presenting Officer:	Tope Adeyemi
Registrant:	Present and represented
Registrant representative:	Rebecca Chalkley
Hearings Officer:	Terence Yates
Facts found proved:	1-6
Facts not found proved:	N/A
Misconduct:	Found
Impairment:	Impaired
Sanction:	Suspension order four months – (Without Review)

Immediate order: No

ALLEGATION

The Council allege that in relation to you, Mr Mohammed Nawaz (01-32408), a registered optometrist, whilst you were training and registered as a student optometrist:

1. You wrote the signature of your supervisor, Mr A, on the paper record for Patient [Redacted];
2. You amended the paper record for Patient [Redacted] by erasing the date of 21 February 2018 and inserting 11 February 2018 in respect of their initial RGP assessment;
3. You recorded RGP measurements in the paper record for Patient [Redacted] without having conducted the tests to obtain those measurements;
4. You submitted the RGP measurements for Patient [Redacted] to the College of Optometrists as part of your academic assessment;
5. Your conduct was dishonest in that:
 - a. In respect of Allegation 1, you forged the signature of Mr A;
 - b. In respect of Allegation 2, you inserted a date that you knew to be inaccurate;
 - c. In respect of Allegation 3, you recorded measurements that you knew to be unverified by measurement;
 - d. In respect of Allegation 4, you sought to mislead the College of Optometrists that you had conducted the tests in question;
6. You failed to maintain adequate records on the Socrates System, in that:
 - a. You failed to record the correct customer number for Patient [Redacted];
 - b. You failed to record your appointment with Patient [Redacted];

- c. You failed to record your follow-up appointment on 21 February 2018 with Patient [Redacted];
- d. You failed to record the end of trial for Patient [Redacted];
- e. You failed to record a contact lens teaching session performed by you on Patient [Redacted];
- f. You failed to record the end of trial for the presbyopic contact lens fit for Patient [Redacted];
- g. You failed to record the end of trial for Patient [Redacted];

AND that by reason of the matters alleged above your fitness to practise is impaired by reason of misconduct.

CONSENSUAL PANEL DETERMINATION AGREEMENT

1. At the outset of this hearing, Ms Adeyemi, on behalf of the GOC, informed the Committee that prior to this hearing a provisional agreement of a consensual panel determination had been reached with regard to this case between the GOC and the Registrant.
2. The agreement, which was put before the Committee, sets out the Registrant's full admission to the facts alleged in the Allegation, that his actions amounted to misconduct and that his fitness to practise is currently impaired by reason of that misconduct. It is further stated in the agreement that an appropriate sanction in this case would be a four month suspension order without a review.
3. Ms Adeyemi summarised the Agreed Panel Report (APR) and directed the Committee's attention to some of the key paragraphs in relation to the facts, misconduct, impairment, and sanction.
4. Ms Chalkley, on behalf of the Registrant, invited the Committee to approve the APR. She submitted that the Registrant has demonstrated insight. The Registrant has now qualified and is working as an Optometrist and there has been no repetition of dishonesty since 2018. She referred the Committee to the positive testimonials provided by the Registrant. She submitted that the proposed sanction of a four month suspension order addressed the need to maintain public confidence in the profession and to declare and uphold high standards for the profession.

DETERMINATION

5. The Committee had regard to all the documents before it and to the proposed APR.
6. The Committee accepted the advice of the Legal Adviser. She reminded the Committee of the public interest and the overarching objective of the GOC. She referred the Committee to the Agreed Panel Disposal Policy and the options available to the Committee. It may decide to accept or reject the proposal and it should exercise its own independent judgment. She referred the Committee to:
 - The GOC Rules regarding findings of fact;
 - The relevant case law relating to misconduct;
 - The key principles relating to current impairment; and
 - The GOC Indicative Sanctions Guidance.
7. The Legal Adviser advised that if, at any stage in its deliberations, the Committee required further clarity, it should invite further submissions from the parties. In

particular, if the Committee wished to vary the sanction it should invite submissions from the parties.

Facts

8. The Registrant admitted particulars 1-6 of the allegation by way of the APR. The Committee noted that the Registrant is legally represented. It accepted the unequivocal admissions and found the facts 1-6 proved by admission.

Misconduct

9. The Committee, whilst acknowledging the agreement between the GOC and the Registrant, nevertheless exercised its own independent judgment in reaching its decision on misconduct.
10. The Committee noted that the facts involved dishonest completion of student assessment records for two patients and multiple record keeping errors in relation to other patients. The Registrant's conduct, particularly his dishonest conduct, had the potential to undermine the integrity of the scheme for assessments of students.
11. In the Committee's judgment the Registrant's conduct breached the following paragraphs of the Standards of Practice for Optical Students:

15 Be honest and trustworthy

15.1 Act with honesty and integrity to maintain public confidence in your profession.

15.6 Do not make misleading, confusing or unlawful statements within your communications.

16. Do not damage the reputation of your profession through your conduct

16.1 Ensure that your conduct, whether or not connected to your professional study does not damage public confidence in you or your profession.

12. The Registrant's dishonest conduct was a significant departure from these standards. His dishonesty was connected to his professional studies. It appeared to the Committee that he attempted to take advantage of potential weaknesses in the student assessment system for his own benefit.
13. The Committee decided that the Registrant's conduct fell well below the standards and was sufficiently serious to amount to misconduct.

Impairment

14. The Committee then went on to consider 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 impairment.
15. The Committee considered that the Registrant has demonstrated insight. Although the Registrant did not admit every aspect of his conduct when first questioned, he made an early admission of dishonesty and referred himself to the GOC. He has admitted the Allegation in its entirety and he accepts that his fitness to practise as an optometrist is impaired. The Committee also noted that the Registrant has apologised for his acts and omissions. In his reflective statement the Registrant takes responsibility for his past conduct, and acknowledges the seriousness of dishonesty, including its impact on public confidence in the profession.
16. The Committee acknowledged that it is not easy for a Registrant to demonstrate that they have remediated dishonesty, which is by its nature difficult to remediate. Nevertheless, the Committee was pleased to note that there has been no repetition of dishonesty or of record keeping failures since the index events in 2018. There has been a significant passage of time since 2018 over which the Registrant has provided objective evidence of good practice in the form of positive testimonials. A reference dated 25 July 2022 from the Director of Specsavers [Redacted] includes the following:

“On a more personal note, I was genuinely surprised to find [the Registrant] to have a hearing of this type after getting to know him over the past months. He has conducted himself with the upmost level of professionalism and honour, therefore, the allegations seem at odds with my personal and professional dealing with him.

I believe him to be an exceptional person who is dedicated to helping those around him having a deep passion for Optometry. We tried our very best to keep him beyond June however [the Registrant] felt he needed to take a break due to the upcoming hearing, leaving us with the immense task of trying to find a replacement. We will be extremely lucky to get another Optometrist like him”.
17. The Committee also noted that the Registrant's dishonest conduct occurred when he was a student in the very early stages of his career. The Registrant has made a clear commitment, as set out in his reflective statement, that he will act differently in future. In all the circumstances, the Committee agreed with the assessment of the GOC that the risk of repetition is low. The Committee did not consider that a finding of current impairment is necessary to protect members of the public from the risk of repetition.
18. The Committee next considered the wider public interest including the need to maintain public confidence in the profession and the Registrant's serious departure from the Standards for Optical Students. The Committee agreed with the agreement between the parties in the APR that the Registrant's conduct is sufficiently serious to necessitate a finding of impairment. This finding of

impairment sends a clear message to members of the profession and the public that it is entirely unacceptable for a student to deceive the assessors responsible for deciding whether they meet the required standards and quality for professional qualification.

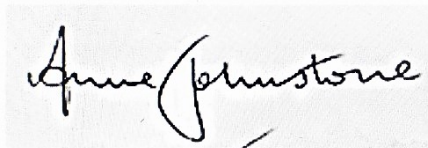
19. The Committee decided that the Registrant's fitness to practise is impaired on the basis of the wider public interest.

Sanction

20. The Committee noted that the APR recommends a four month suspension order with no review and no immediate order. The Committee is not bound by that recommendation.
21. The Committee considered the sanctions available to it from the least necessary to the most severe (no sanction, financial penalty, conditional registration, suspension, erasure). The Committee was aware that the purpose of a sanction is to protect the public and the public interest, and that any sanction must be proportionate. The Committee took into account the legal advice and the Hearings and Indicative Sanctions Guidance.
22. The Committee agreed with the aggravating and mitigating factors as set out in the APR. It first considered imposing no sanction or to apply a financial penalty order. In light of its findings on impairment, the Committee was of the view that taking no action would be insufficient to mark the seriousness of the Registrant's misconduct. A financial penalty order would not be appropriate in the circumstances of this case.
23. The Committee next considered conditional registration. The Committee decided that conditions were not appropriate. This is not a case involving shortcomings in the Registrant's practice and conditions would not address the wider public interest which is the basis for the finding of current impairment.
24. The Committee next considered the option of a suspension order which is the sanction proposed by both parties. The Committee had regard to the sanctions guidance which suggests that a suspension order may be appropriate where the following factors are apparent:
 - 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 that the registrant has insight and does not pose a significant risk of repeating behaviour.*
25. The Committee considered that these factors were all applicable. The testimonials were helpful in providing persuasive evidence that there has been no repetition of behaviour since the incident and indicating that there are no current attitudinal problems.

26. The Committee considered the more restrictive option of erasure, but decided that this would be disproportionate. The Committee's assessment of the dishonesty in this case was that while it was serious it was not at the top end of the scale of seriousness of dishonesty. Taking into account the mitigating factors as set out in the APR, the Committee considered that the Registrant's past behaviour as a student was not fundamentally incompatible with being a registered professional. In the circumstances of this case the Committee considered that there was a public interest in the safe return to practise of a competent Optometrist.
27. The Committee next considered the length of the suspension order. The Committee considered that the proposed period of four months was appropriate and proportionate. It struck an appropriate balance between the need to mark the seriousness of the misconduct and the Registrant's interests in continuing to practise his profession.
28. The APR proposed that the four month suspension order would be without a review and that there would be no immediate order. The Committee agreed. A review hearing is not required because the finding of impairment and the imposition of a sanction is on the basis of the wider public interest. The public interest is addressed by the imposition of the suspension order and there is no need for a review hearing or to impose an immediate order because the risk of repetition is low.

Chair: Anne Johnstone



Signature

Date: 1 August 2022

Registrant: Mohammed Nawaz

Signature present via video

Date: 1 August 2022

ANNEX A

AGREED PANEL REPORT

Introduction

1. This is a substantive hearing in respect of Mohammed Nawaz ('the Registrant'), a registered optometrist first registered with the General Optical Council ("the Council") as an optometrist on 29 May 2020. At the relevant time the Registrant was a student optometrist. The Registrant first registered with the Council as a student optometrist on 17 September 2009. The Registrant left the Council's register on 18 October 2016 before restoring to the register on 15 June 2017.
2. 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 has had the benefit of legal advice from the Association of Optometrists before agreeing to dispose of this case by the APD process.
3. The Council's published policy on the APD process is addended to this report. As is made clear in that policy, 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 a full supervisory jurisdiction over the procedure and, save where it would be otherwise appropriate not to do so, the APD recommendation is considered at a public hearing. The options open to the FTPC are:
 - i. To approve the recommendation and make the appropriate order(s)
 - ii. To vary the sanction with the agreement of both parties
 - iii. To disagree with the recommendation. In this instance, an amended recommendation may be resubmitted at a reconvened APD hearing, or the case may proceed under the usual hearing process.

Background

4. On 8 June 2018, the Registrant made a self-referral to the Council by email. He was registered as a student optometrist at the time. The Registrant reported that, when completing his Stage 2 Assessment for the College of Optometrists Scheme of Registration, concerns were raised by his assessor regarding his records. The Registrant advised that the records related to a rigid gas-permeable ('RGP') initial fit, assessment, and aftercare and that whilst the initial fit record was true and contemporaneous, the other records were not. The Registrant provided a copy of his letter to the College of Optometrist in which he admitted not having made accurate and contemporaneous records.
5. The College of Optometrists completed their own investigation into the concerns and on 25 September 2018 also referred the matter to the Council.

Council Investigation

The Council investigated the matter and, on 7 November 2019, prepared an investigation report for the consideration by the Case Examiners. On 18 December 2019, the Registrant submitted representations to the Case Examiners. The Case Examiners reviewed the matter and referred the case to the FTPC on 3 September 2020. There had been a previous Case Examiners decision dated 13 January 2020 which was void due to a procedural irregularity.

6. The Council has obtained patient records from the optical practice and a witness statement from the College of Optometrists' Deputy Lead Assessor, [Redacted]. Following the Council's request for more information, the Registrant also provided documentation to support his self-referral, including his correspondence with the College of Optometrists and copies of the relevant patient records.
7. The Council's case was served on the Registrant on 24 June 2021.
8. The allegation is set out below.

Allegation

The Council allege that in relation to you, Mr Mohammed Nawaz (01-32408), a registered optometrist, whilst you were training and registered as a student optometrist:

1. You wrote the signature of your supervisor, Mr A, on the paper record for Patient [Redacted];
2. You amended the paper record for Patient [Redacted] by erasing the date of 21 February 2018 and inserting 11 February 2018 in respect of their initial RGP assessment;
3. You recorded RGP measurements in the paper record for Patient [Redacted] without having conducted the tests to obtain those measurements;
4. You submitted the RGP measurements for Patient [Redacted] to the College of Optometrists as part of your academic assessment;
5. Your conduct was dishonest in that:
 - a. In respect of Allegation 1, you forged the signature of Mr A;
 - b. In respect of Allegation 2, you inserted a date that you knew to be inaccurate;
 - c. In respect of Allegation 3, you recorded measurements that you knew to be unverified by measurement;
 - d. In respect of Allegation 4, you sought to mislead the College of Optometrists that you had conducted the tests in question;
6. You failed to maintain adequate records on the Socrates System, in that:
 - a. You failed to record the correct customer number for Patient [Redacted];
 - b. You failed to record your appointment with Patient [Redacted];
 - c. You failed to record your follow-up appointment on 21 February 2018 with Patient [Redacted];
 - d. You failed to record the end of trial for Patient [Redacted];
 - e. You failed to record a contact lens teaching session performed by you on Patient [Redacted];
 - f. You failed to record the end of trial for the presbyopic contact lens fit for Patient [Redacted];
 - g. You failed to record the end of trial for Patient [Redacted];

AND that by reason of the matters alleged above your fitness to practise is impaired by reason of misconduct.

Nature of the Recommended Disposal

9. 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 4 months suspension with no review and no immediate order.

Law

10. 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").
11. 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.
12. 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."
13. More detailed submissions are set out below in respect of each stage.

Stage 1: Factual Findings

14. The Registrant admits the facts alleged against them.
15. At the relevant time, the Registrant was a student optometrist completing the College of Optometrists' Scheme of Registration. The Registrant was at Stage 2 of the Scheme. The witness statement of [Redacted] confirms that on 23 May 2018, concerns with the

Registrant's assessment records were reported to her by the Registrant's Stage 2 assessor.

16. On 24 May 2018, [Redacted] wrote to the Registrant for his response to the concerns. In the Registrant's response, he confirmed that the RGP measurements he had recorded and submitted to the College of Optometrists as part of his academic assessment were false and not undertaken. The College commenced an investigation and on 3 July 2018 held an investigation meeting. In that meeting, the Registrant made further admissions, namely that he recorded the signature of his supervisor, amended the paper record of a patient, and failed to maintain adequate records on the electronic system Socrates.

Stage 2: Misconduct and Impairment

Misconduct

17. With regard to the issue of misconduct, there is no legal definition but a review of some of the authorities provides some guidance. 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"

18. 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."

19. As to seriousness, Collins J, in Nandi v General Medical Council [2004] EWHC (Admin), 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'."

20. This is a case which involves dishonesty. The Privy Council in Dr Shiv Prasad Dey-v-GMC (Privy Council Appeal No. 19 of 2001) emphasised at paragraph 13: "...*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.*"

21. Further, in Professional Standards Authority v Health and Care Professions Council and Ajeneye [2016] EWHC 1237 (Admin) McGowan J at paragraph 21 stated:

"Deliberate dishonesty must come high on the scale of misconduct. That is particularly so when a direct consequence of that misconduct is physical harm to a patient. The lack of financial motive or personal gain means that a further aggravating feature is not present. It does not mitigate the risk of harm to patients created by the breach of professional standards. Equally, the number of instances of dishonesty is important, once might be described as an aberration but more than once, even if only twice, may demonstrate a tendency to act dishonestly. A failure immediately or speedily to acknowledge and admit such conduct is material. An attempt to deny the alleged dishonesty by contesting proceedings by seeking to place blame elsewhere is a factor that may also demonstrate a tendency to act dishonestly. In the context of professional standards it is capable of being highly relevant to the question of impairment to practise. An acknowledgement of responsibility after the charges have been found proved is not necessarily valueless but it cannot have the same weight as an unequivocal acceptance at an earlier stage. It may be a sliding scale and will always depend on the individual circumstances of a case."

22. 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 Optical Students:

15. Be honest and trustworthy

15.1 Act with honesty and integrity to maintain public trust and confidence in your profession.

15.6 Do not make misleading, confusing or unlawful statements within your communications.

16. Do not damage the reputation of your profession through your conduct

16.1 Ensure that your conduct, whether or not connected to your professional study does not damage public confidence in you or your profession.

23. In light of the above law and the circumstances of this case, it is agreed by both parties that the allegations amount to a serious departure from the standard of practice expected of a competent student optometrist.

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

Impairment

25. 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.

26. 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)*

27. As to the meaning of fitness to practise, in the case of *Zvumunt 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:

- a) presents a risk to patients;
- b) has brought the profession into disrepute;
- c) has breached one of the fundamental tenets of the profession;

d) has acted in such a way that his/her integrity can no longer be relied upon.

28. Factors b - d are engaged in this case.

29. 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".

30. In Yeong v GMC [2009] Mr Justice Sales said (at paragraph 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 these matters which has arisen since the alleged misconduct occurred".

(At Para 48): "Miss Grey submitted that each of Cohen, Meadow and Azzam was concerned with misconduct by a doctor in the form of clinical errors and incompetence. In relation to such type of misconduct, the question of remedial action taken by the doctor to address his areas of weakness may be highly relevant to the question whether his fitness to practise is currently (i.e. at the time of consideration by a FTPP) impaired; but Miss Grey submitted that the position in relation to the principal misconduct by Dr Yeong in the present case (i.e. improperly crossing the patient/doctor boundary by entering into a sexual relationship with a patient) is very different. Where a FTPP considers that the case is one where the misconduct consists of violating such a fundamental rule of the professional relationship between medical practitioner and patient and thereby undermining public confidence to the medical profession, a finding of impairment of fitness to practise may be justified on the grounds that it is necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the practitioner and in the profession, in such a case, the efforts made by the medical practitioner in question to address his behaviour for the future may carry very much less weight than in the case where the misconduct consists of clinical errors or incompetence."

31. The High Court revisited the issue of impairment in the 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."*

32. Considering the above law and the factors in this case, the parties agree that the misconduct of the Registrant in this case is sufficiently serious to necessitate a finding of impairment.

33. The Registrant accepts that his fitness to practise is currently impaired, in that it is necessary in the public interest to make a finding of impairment of fitness to practise to uphold professional standards and public confidence in the profession.

Stage 3: Sanction

34. 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).

35. 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.

36. 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."

37. 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.

38. 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 optometrist 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.

39. When considering the matters above, the following aggravating features have been identified:

- a. The allegations in this case are serious and relate to dishonest actions.
- b. The Registrant's actions risked putting the profession in disrepute.
- c. The Registrant's actions risked jeopardising the integrity of a scheme designed to ensure the profession is educated to a suitable standard and quality.
- d. The Registrant did not admit all his dishonest actions when concerns first came to light.

40. In terms of applicable mitigating circumstances:

- a. The Registrant showed insight into the allegations and made a self-referral to the Council.
- b. The Registrant's personal circumstances at the relevant time.
- c. The Registrant has successfully qualified as an optometrist, after returning to Stage 1 of the Scheme of Registration and re-completing the relevant assessments.
- d. The allegations relate to conduct that occurred some three years ago, in 2018, and the Registrant has continued to practice with no concerns.
- e. Both the Registrant's supervisor and deputy supervisor at the time of the incidents endorsed his general practice and integrity.

41. Having regard to the GOC's Indicative Sanctions Guidance, the parties agree that the appropriate and proportionate sanction is four months suspension with no review and no immediate order.

42. The parties consider taking no further action, or a financial penalty order, is not proportionate or sufficient given the serious nature of the misconduct.


43. It would not be possible to formulate appropriate and practical conditions on the Registrant's practice to address the public interest. The parties therefore considered conditions unsuitable.

44. The parties next considered suspension and considered paragraph 34 of the Indicative Sanctions' Guidance. The parties took into account the fact that dishonesty is a serious matter. The parties agree that this is the appropriate sanction, sufficient to address public interest concerns and to declare and uphold proper standards of conduct and behaviour as well as maintain confidence in the profession.
45. Given the stage in the Registrant's career that the misconduct took place and there being no evidence of deep-seated personality or attitudinal problems, the parties agree that erasure would be disproportionate and excessively punitive.
46. The parties considered the length of the suspension order. It is submitted by the parties that four months is the appropriate length to address the seriousness of the dishonesty. The parties consider this is appropriate to reflect the nature of the concerns raised, the Registrant's acceptance of the allegations against him and subsequent good practice. There has been no evidence of repetition of behaviour since the incident and the Registrant has shown some insight by admitting the allegations.
47. The parties consider that a review hearing is not required given the low risk of repetition.
48. The parties do not consider it is necessary to impose an immediate order, again due to the low risk of repetition as well as the low risk of patient harm. The parties consider that the public interest is sufficiently addressed by the imposition of the substantive suspension order.

On behalf of the Council

General Optical Council

Date 15 November 2021

A handwritten signature in black ink, consisting of a stylized 'M' followed by a long, horizontal, looping flourish.

On behalf of the Registrant

Date 22/11/2021

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>
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.