

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

GENERAL OPTICAL COUNCIL

F(20)10 + F(20)46

AND

MR FAWAD AHMED (SD-9622)

**DETERMINATION OF A SUBSTANTIVE HEARING
10-12 MAY and 22-23 JUNE 2021**

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| Committee Members: | J Wheat (Chair/Lay) J Vaughan (Lay) A Robertson-Rickard (Lay) A Street (Dispensing Optician) C Cowen (Dispensing Optician) |
| Legal adviser: | G Henderson |
| GOC Presenting Officer: | Z Ahmed |
| Registrant present/represented: | Present and represented |
| Registrant representative: | J Graham (WGL) |
| Hearings Officer: | T Yates |
| Facts and/or Conviction found proved: | 1a of the "First Matter", 1, 2a, 2b, 3a, and 3b of the "Second Matter" -admitted and found proved 4, 5a and 5b of the "Second Matter" - found proved. |
| Facts/or Conviction not found proved: | n/a |
| Misconduct: | Found |
| Impairment: | Impaired |
| Sanction: | Erasure |

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| Immediate order: | No |
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ALLEGATION (as amended)

‘First Matter’

The Council alleges that in relation to you, Fawad Ahmed (SD-9622), a registered Student Dispensing Optician:

1. On 17 February 2011, at Manchester Crown Court, you were convicted of:
 - (a) Conspiracy to defraud

And by virtue of the facts set out above, your fitness to undertake training is impaired by reason of your conviction.

‘Second Matter’

The Council alleges that you, Mr Fawad Ahmed, a registered Student Dispensing Optician:

1. On 22 December 2016, you were convicted in West Cheshire Magistrates Court of driving a motor vehicle with the proportion of a specified controlled drug above the specified limit;
2. On 03 October 2017, you were convicted in Greater Manchester Magistrates’ Court of the following two offences:
 - (a) Driving while disqualified; and
 - (b) Using a vehicle while uninsured;
3. On 20 September 2018, while completing your student registration application with the GOC for the 2018/2019 cycle, you:
 - (a) Selected option “Yes” in the online form where it asked you whether “you have any declarations to make?”; and
 - (b) Did not provide any detail of your convictions as required by the online form;

4. On 31 January 2019, you emailed a Registration Officer at the GOC and stated “any way I think it’s an error on my part” in respect of your having selected option “Yes” in the online form;
5. Your conduct was dishonest and/or misleading in that:
 - (a) In respect of Allegation 3, you knew were required to provide details of your convictions to the GOC and did not do so;
 - (b) In respect of Allegation 4, you intended to persuade the Registration Officer that you had no convictions to disclose;

And that by reason of the matters alleged above your fitness to undertake training is impaired by reason of your convictions and/or your misconduct.

Preliminary matters

The Committee were asked to deal with two preliminary matters before the Allegation was read.

Mr Graham, on behalf of the Registrant objected to the admission of one document which had been lodged on behalf of the Council. It was a matter of admission that the Registrant, on 17 February 2011, at Manchester Crown Court was convicted of Conspiracy to Defraud. The document was said to be a draft of the Opening submissions made on behalf of the CPS at the Crown Court.

Although the document formed part of the papers that were sent to the Committee, it had been warned not to read them until the issue concerning the document’s admissibility was resolved.

Mr Graham referred to Rule 40 of the General Optical Council (Fitness to Practise) Rules 2013 (“the Rules”) which states that the Committee should only admit evidence that it “considers fair and relevant to the case before it”.

Mr Graham’s concern was that the Council were seeking to make use of a document that purported to be the draft of the opening speech by Prosecution Counsel at the start of the trial, which was only the Prosecution Counsel’s interpretation of the facts. Mr Graham submitted that the admission of such a document would not be fair.

Ms Ahmed, for the Council, invited the Committee to admit the document. Ms Ahmed submitted that the Committee could allow the document to be received into evidence and attach to the document such weight as it considered appropriate.

The Committee heard and accepted the advice of its Legal Adviser who referred to Rule 40 of the Rules.

The Committee retired to consider the matter. It determined that the document was not analogous to the sentencing remarks of a Judge. It was an indication of what Crown Counsel intended to say, but there was no record of what they actually said at the trial. The document was not evidence in the case. The Committee were concerned that to admit such a document as evidence in this case would be unfair. The

Committee also noted that no objection was made to the inclusion of a form MG5, which contained a summary of the police investigation of this matter. The Committee determined that the document should not be admitted as evidence, as although it may be relevant, it had the potential for unfairness and the necessary contextual information regarding the conviction was provided by the police MG5.

Following the announcement of the decision of the Committee Ms Ahmed applied to the Committee for an amendment of the particulars of the allegation. Ms Ahmed invited the Committee to have regard to the allegations as a whole. The particulars are framed on the basis that the Registrant is a “registered Student Dispensing Optician”. Although the first matter alleges that the Registrant’s fitness to “undertake training” is impaired the second matter alleges that the Registrant’s fitness to “practise” is impaired. Ms Ahmed invited the Committee to make a simple amendment to the allegation to correct this.

Mr Graham indicated that this matter was not opposed by the Registrant.

The Committee heard and accepted the advice of the Legal Adviser who referred to Rule 46 (20) of the Rules, which states that the Committee are allowed to amend the allegation provided that the amendment can be made without injustice.

The Committee were of the view that the proposed amendment involved the correction of a clerical/ drafting error and that the amendment could be made without injustice. As a result “practise” was deleted from the second last line of the particulars and “undertake training” was added in its place.

DETERMINATION

Admissions in relation to the particulars of the allegation

Following the reading of the Allegation, as amended, the Registrant admitted the facts of 1a of the first matter and 1, 2(a), 2(b), 3(a), and 3(b) of the second matter.

The Chair announced that these facts had been found proved.

Background to the allegation

The Registrant was registered with the Council as a Student Dispensing Optician in November 2018. The Registrant has no prior fitness to practise history.

On 20 September 2018 the Registrant completed an online student application that resulted in their registration with the Council. Despite the Registrant having previous convictions, more fully set out in the particulars, they did not provide the Council with any details of their convictions. This has resulted in two separate investigations. The division of the particulars into two separate matters reflects the fact that there were two investigations. Matters were conjoined on 18 January 2021.

Findings in relation to the facts

The Committee then went on to hear evidence in relation to the disputed facts.

The Council relied on the witness evidence of Aaron Grell (AG), the Council's International Registration and Quality Assurance Manager and Sabina Begum (SB), Registration Officer of the Council, referred to in the Allegation. Their evidence was read into the record as a matter of consent.

The Registrant provided oral evidence to the Committee and a number of statements were read into the record. These were the witness statements of:

- Witness 1 - Registered Optometrist
- Witness 2 - Registered Optometrist
- Witness 3 - Social Worker
- Witness 4 - Ophthalmic Dispensing Programme Leader at [Redacted]

The Committee heard submissions on the evidence from Ms Ahmed on behalf of the Council and Mr Graham for the Registrant.

The Committee heard and accepted the advice of the Legal Adviser who referred to the case of *Ivey v Genting Casinos [2017] 1 WLR 1212* with regard to the appropriate test for dishonesty.

The Committee accepted that the burden of proof rested with the Council and that the standard of proof was the civil standard. It could only determine facts in favour of the Council if it accepted that a particular fact was more likely than not to have occurred.

In their evidence, the Registrant explained that they graduated, with a BSc in Medical Science, from [Redacted] University. The Registrant then worked in call centres and the [Redacted] before joining the police. The Registrant's police career was curtailed when they were arrested in respect of matters that formed the basis of the first matter. The Registrant was found guilty of a conspiracy to defraud between 1 June 2007 and 30 September 2008. The Registrant was imprisoned for 54 months and [Redacted].

On their release from prison, the Registrant had difficulties in finding employment but was invited by their Landlord, Witness 2, to work at [Redacted] Opticians as a delivery driver. The Registrant commenced work at the end of 2013 and progressed to working in the practice. Following discussions with Witness 2, the Registrant was encouraged to and decided to enrol on an Ophthalmic Dispensing course with [Redacted] College. Having made their decision to enrol in September 2018 the Registrant met with Witness 4, the course leader, who invited them to submit application forms and commence the course despite being slightly late for the general intake.

The Registrant completed their online application for registration with the Council. The Registrant admitted Allegation 3(a) and 3(b) of the second matter. The Registrant admitted that on 20 September 2018, while completing their student registration application with the GOC for the 2018/2019 cycle, they selected option "Yes" in the online form where it asked you whether "you have any declarations to make?"; but the

Registrant did not then provide any detail of their convictions as required by the online form.

Allegation 4: On 31 January 2019, you emailed a Registration Officer at the GOC and stated “any way I think it’s an error on my part” in respect of your having selected option “Yes” in the online form

Found Proved

The Registrant told the Committee that they completed their registration with the Council in a hurry. At the same time, the Registrant had been completing forms for admission to the college, Association of British Dispensing Opticians (“ABDO”) forms, and completing a form for a DBS Check. The Registrant recalled feeding one of their children when they were completing the online registration with the Council.

The Committee had regard to the witness evidence of SB which was not the subject of challenge.

On 22 January 2019 SB sent an email to the Registrant. The email was in the following terms:

“We notice that you have ticked the declaration option in your student registration application from 20th September 2019.

Can you please confirm this is correct? If so, please provide further details of this declaration ...”

The communication contained an obvious typographical error. The application could not have been made in 2019 and was in relation to their 2018 application.

On 29 January 2019 SB sent a follow up email in the following terms:

“The GOC contact you on the 22nd January with regards to a declaration.

We are yet to receive a response. can you confirm if the declaration box was ticked by accident or if you need us to inform us of any declarations.

I would appreciate it if you could send your response by 5th February 2019.”

The Registrant replied on the same email thread, the subject of which was “Student Registration Declaration”, on 31 January 2019:

“Hello and sorry about the late reply... I was not able to check my email...any way I think it’s an error on my part..I oppologise [SIC] for the late reply.”

In the Registrant’s evidence to the Committee, the Registrant said they had replied to the emails in the manner that they did because they had received a call on their mobile phone around a day before they sent the email reply to the Registration Officer. The Registrant’s position was that somebody telephoned them when they were out with their children. The Registrant did not know who the person was but the person was enquiring about whether or not the Registrant was restricted from working with adults

and children. The Registrant said they were asked to confirm they were under no such restriction by email. The Registrant did not obtain contact details of this caller but subsequently found the emails from SB in the spam folder of their emails. When replying to SB's emails the Registrant thought they were confirming that the Registrant was safe to work with adults and children.

It was the evidence of SB that they never contacted the Registrant by telephone, and if they had, a log of the call would have been made. There was no such log. SB also confirmed that having restrictions upon working with adults was not a typical question they would ask. This evidence was not challenged.

The Committee did not accept the Registrant's account and had concerns regarding the overall credibility and reliability of the Registrant's evidence. It considered the Registrant's evidence to have significant inconsistencies such that it was not credible. Although explanations for the Registrant's inconsistencies were cited such as memory difficulties and English not being their first language, the Committee did not accept them. It noted that no medical evidence was produced in relation to any memory difficulties. The Registrant's level of English was good enough for them to have completed a degree and practical courses including the Communication Skills module of the Ophthalmic Dispensing course.

The Committee had regard to a statement provided by the Registrant to the Council dated 6 March 2020. In that statement the Registrant accepted that they had been sent emails by SB on 22 January 2019 and 29 January 2019, regarding the Registrant having ticked "yes" for having a declaration to make.

In the 2020 statement the Registrant asserted that they were contacted by SB, by telephone, on or about the 30 January 2019 and "*it was explained to me that I had been sent emails that remained unanswered.*" In this statement the Registrant said they were "*specifically asked whether I had ticked the declaration which I explained that I did*" and "*asked specifically if I had any restrictions that prevented me from working with adults*".

By the time the Registrant made their statement in these proceedings, dated 7 May 2021, they had changed their account and said they could not now recall whether the person they spoke to on the phone asked them a specific question about ticking the declaration. The Registrant also stated that they apologised if it wasn't SB who had phoned them and if they had inadvertently misled the General Optical Council.

The Registrant's explanation for them saying in their earlier response to the Council that they were contacted by SB was that the Registrant prepared their 2020 response "without legal representation and did not appreciate the full gravity of any statements which I made in my response". However, when asked if the Registrant had help in compiling the 2020 statement, they initially stated they weren't helped and then conceded that they did receive assistance from someone with a legal background.

Furthermore, in their evidence to the Committee, the Registrant first said they had not mentioned their criminal convictions in the phone call, then said they **had** mentioned them, which the Committee found to be a significant inconsistency.

The Committee did not believe the evidence of the Registrant that a telephone call took place. The inconsistencies in the Registrant's evidence regarding the phone call led the Committee to conclude that the phone call was fabricated to provide an explanation for their response to the emails they had been sent by SB.

The Committee rejected the Registrant's contention that they were replying to a telephone conversation in which they were asked about restrictions upon working with adults and children and not answering the questions posed in the emails sent by SB asking if they had ticked the declaration box.

Had the Registrant's email response been, as they stated, to address the request in the phone call to confirm they had no restriction on working with adults or children, the Committee would have expected that to have been made clear in the Registrant's response. Furthermore, the Registrant did not question in their response what they were being asked to clarify and what SB's email referred to.

There was no mention, in either the two emails from SB nor in the Registrant's response, that the email correspondence related to restrictions on working with adults or children.

The Committee also had regard to the email sent by the Registrant to SB on 31 January 2019 and noted that the explanation for not replying was given as difficulty in accessing emails and not that they had been sent to their spam folder.

The Committee considered that the purpose of the emails sent by SB was clear; to ascertain if the ticking of the declaration box was correct. It noted that the subject heading of the emails was "Student Registration Declaration". The email could not have provided more clarity about what declarations may have been omitted as the Council had no knowledge of the nature of the declarations that this registrant may have had to make.

The Committee concluded that the Registrant provided their response to the emails in respect of having selected option "yes" in the online form, rather than in respect of their ability to work with adults and children. Accordingly, the Committee found this proved.

Allegation 5(a): Your conduct was dishonest and/or misleading in that:

In respect of Allegation 3, you knew were required to provide details of your convictions to the GOC and did not do so;

Found proved – both misleading and dishonest

In respect of this part of the allegation the Committee commenced by considering whether or not the Registrant's actions in Allegation 3 were misleading. The Committee considered that, in relation to Allegation 3(b), they were.

The Committee had careful regard to the way in which the application form would have been completed by the Registrant. The "Fitness to Train declarations" were on a separate page in the online application form.

It commenced with the following instruction:

“You must provide details of any criminal, disciplinary, or mental and/or physical health condition that may currently affect your ability to train.

*We provide further guidance on “making declarations” **here**. This link will open a new tab, you will not lose progress made on the application form.”*

There then followed a drop box to answer yes or no and what then followed was:

*“If you answered ‘yes’ you must follow this link to provide full details of your declaration **here...**”*

Having answered ‘yes’ the Registrant did not go on to provide any details. In the circumstances the Registrant’s application was misleading in that the Registrant claimed they had something to declare but made no declaration.

The Committee then considered whether or not the Registrant’s actions were dishonest.

It first considered the Registrant’s state of mind at the time of the application. The Registrant was well aware that they had a criminal record and they ticked the “yes” box. The Registrant was unable to provide a credible explanation for not completing the next part. Whilst the Committee could accept the Registrant may well have had distractions of childcare and have been in a rush, it considered that the form was clearly set out. Having ticked “yes” to make a declaration the Committee did not consider it credible that the Registrant simply missed the links nor that they would then forget to actually declare the convictions before submitting the form.

Furthermore, the Registrant had served as a police officer and would have been well aware that previous convictions, especially those resulting in a lengthy prison sentence, could have an effect on job applications. The Committee did not accept as genuine the Registrant’s stated belief that such a conviction would have no effect on the progress of their application to register with the GOC. The Registrant’s own evidence was that they had struggled to find work having been released from prison.

In light of the Registrant’s state of mind, the Committee considered if their actions in not giving details of their criminal convictions would have been regarded as dishonest by ordinary, decent people. It concluded they would. Ordinary, decent people would regard the failure to give details of their convictions after clear instructions to do so, and after ticking that there was a declaration to make, as dishonest.

In the circumstances the Committee considered that the Registrant’s actions in Allegation 5(a) were both misleading and dishonest. Accordingly, the Committee found this proved.

Allegation 5(b): Your conduct was dishonest and/or misleading in that:

In respect of Allegation 4, you intended to persuade the Registration Officer that you had no convictions to disclose;

Found proved - both misleading and dishonest

The Committee had regard to the emails passing between SB and the Registrant. It considered that the Registrant's reply was misleading as it would have provided the recipient with the false impression that the Registrant had ticked the "yes" box in error and, accordingly, there was nothing to actually declare, when, in fact, there were convictions to disclose.

Having determined that the communication was misleading the Committee then considered the issue of dishonesty.

The Committee considered the Registrant's state of mind at the time of the act of replying to the email and stating "any way I think it's an error on my part".

The Committee, in its findings for Allegation 4, did not accept the Registrant's evidence that they had received a phone call a day or so earlier, in which they were asked to confirm via email that they had no restriction on working with adults or children. The Committee also determined that in replying in the way the Registrant did, the Registrant was replying to the query regarding the ticking of the declaration box.

Therefore, the Committee determined that the Registrant knew by stating it was an error on their part, that it would create a false impression that there were no convictions to declare. Subjectively this was dishonest.

The Committee concluded that the Registrant's actions in light of that state of mind would be considered to be dishonest by ordinary, decent people, and accordingly found the matter proved.

Findings in relation to the convictions and misconduct

Ms Ahmed on behalf of the Council and Mr Graham for the Registrant invited the Committee to hear the next two stages of the hearing together. It was submitted that it would be appropriate to truncate the order of proceedings set out in Rule 46 (12-15) into one stage.

The Committee heard and accepted the advice of the Legal Adviser who referred to the preamble of Rule 46 which gave the Committee the discretion to alter the procedure at the hearing.

In the circumstances the Committee considered that it would be appropriate to hear the issues of whether the grounds of impairment were established and the issue of

current impairment together. The Committee was cognisant that the issues would be considered separately when it came to making a decision.

The Committee next heard further live evidence from the Registrant who told the Committee that they understood why the Committee had made the decision that it did. The Registrant explained the impact that their prison sentence had on them; that they had lost their house and that they encountered difficulties in finding employment on their release from prison. The Registrant also told the Committee about other personal problems they had previously, and was currently, experiencing.

Although the Registrant said, in cross examination, that they accepted their fitness to undertake training was currently impaired, the Committee was not satisfied that the Registrant had understood the unfair nature of the questioning. The issue of whether or not their fitness to undertake training is currently impaired was a matter for this Committee to determine.

The Committee heard submissions from Ms Ahmed on behalf of the Council and Mr Graham on behalf of the Registrant.

The Committee heard and accepted the advice of the Legal Adviser who referred to the case of *Roylance v General Medical Council (No 2) [2000] 1AC 311* in respect of misconduct; *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council & Paula Grant [2011] EWHC 927 (Admin)* (the Grant Case); *R(on the application of Cohen) v General Medical Council [2008] EWHC 581 (Admin)* and *Nicholas-Pillai v General Medical Council [2009] EWHC 1048 (Admin)* in respect of impairment.

The Committee appreciated that there was no burden or standard of proof at this stage. The Committee was required to exercise its professional judgement.

Convictions

The Committee first considered whether the grounds of impairment, set out in S13D of the Opticians Act 1989, were established in respect of the three convictions that were proved by admission at the outset of the hearing. These were:

- On 17 February 2011, at Manchester Crown Court the Registrant was convicted of conspiracy to defraud. (The First Matter)
- On 22 December 2016, the Registrant was convicted in West Cheshire Magistrates Court of driving a motor vehicle with the proportion of a specified controlled drug above the specified limit. (The Second Matter)
- On 03 October 2017, the Registrant was convicted in Manchester and Salford Magistrates Courts of driving while disqualified and using a vehicle while uninsured. (The Second Matter)

The Committee was satisfied that grounds for impairment were established with regard to both the conviction set out in the First Matter in the Allegation and the two convictions set out in the Second Matter in the Allegation.

Certificates of conviction were provided for each of the convictions.

The Committee noted that the Certificate of Conviction for 17 February 2011 refers to the crime of “Knowingly make a statement which was false or misleading in a material particular”, rather than conspiracy to defraud.

The Registrant has admitted that they were found guilty of conspiracy to defraud. The Council has been provided with a copy of the Indictment and correspondence confirming that the offence stated in the Certificate of Conviction was incorrect. In correspondence with court officials, the Council was informed, having consulted the Judge who presided over the trial, that “the charge on the indictment is correct” and that the Court record, which is wrong, “cannot be corrected”.

The Registrant admitted the convictions set out in the Second Matter.

Misconduct

The Committee next went on to consider whether or not there had been misconduct in respect of the remaining parts of the allegation in the Second Matter.

The Committee had regard to the GOC “Standards for Optical Students” effective from April 2016.

It considered that the following Standards were engaged as soon as the Registrant applied to become a Student Dispensing Optician:

- *Standard 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.*
- *Standard 16 - Do not damage the reputation of your profession through your conduct:*
 - 16.1 *Ensure your conduct, whether or not connected to your professional study does not damage public confidence in you or your profession.*
 - 16.3 *Be aware of and comply with the law and all of the requirements of the General Optical Council*

The Committee had regard to the Registrant’s conduct on 20 September 2018, while completing their student registration application with the GOC for the 2018/2019 cycle where, having selected the option “Yes” that they had a declaration to make, they did not provide any details of their convictions as required by the online form. The Committee had already determined that such an action was misleading and dishonest.

The Committee was satisfied that this was a significant departure from the standards expected of the Registrant, as set out above, and as such amounted to misconduct.

The Committee then considered its finding that on 31 January 2019, the Registrant emailed a Registration Officer at the GOC and stated “any way I think it’s an error on my part” in respect of them having selected option “Yes” in the online form. The Committee had found that the statement was misleading and dishonest in that the

Registrant intended to persuade the Registration Officer that they had no convictions to disclose. The Committee concluded that this was a serious falling short of what was expected of them as a student involved in the registration process for the Registrant's profession.

The Committee was also satisfied that this was a significant departure from the standards expected of the Registrant, as set out above, and as such amounted to misconduct.

Impairment

The Committee next considered whether the Registrant's fitness to undertake training was currently impaired by reason of the convictions and/or misconduct.

The Committee appreciated that there was no burden or standard of proof at this stage. The Committee was required to exercise its professional judgement.

It had regard to the following test set out in the *Grant* case, which was equally applicable to Student Dispensing Opticians as to the medical profession.

“Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.”*

Impairment on grounds of convictions

The Committee first considered the 2011 conviction for conspiracy to defraud (the First Matter).

The Committee acknowledged the age of this conviction, however, the Committee considered this to be a serious, premeditated, repeated and sophisticated fraud involving a large sum of money.

Although the Registrant described their offending behaviour as a “mistake” the Indictment discloses that it took place between 1 June 2007 and 30 September 2008. Taking into account the length of the offending behaviour it cannot be categorised as a mistake or an error of judgement. At the time of the offence, the Registrant was a serving Police Officer and a former employee of the victim of the crime [Redacted].

The Registrant was sentenced to a lengthy term of imprisonment of 54 months and later ordered to pay the [Redacted] the sum of £50,000.

The Committee concluded that, although the conviction predated the Registrant's application for registration with the profession, the Registrant's conviction for conspiracy to defraud was liable to bring the profession into disrepute.

The Committee recognised that, although dishonesty is regarded as something that is difficult to remediate, the Registrant had taken some steps to do so. The Registrant had obtained regular employment and the statements from Witness 1 and Witness 2 confirm the Registrant was a good employee. Witness 2 stated "I wanted to give [the Registrant] an opportunity to earn my trust so I offered [the Registrant] a position". The Registrant commenced work for Witness 2 in December 2013 as a delivery driver and progressed to the "shop floor". The Committee had regard to the reflective section of the Registrant's statement at paragraph 26 onwards. The Committee also had regard to the witness statement of Witness 3 who said that the Registrant "has spent a lot of time thinking of the past and [the Registrant] continues to carry a lot of regret and disappointment regarding [their] actions."

Despite this, the Committee remained concerned regarding the level of insight displayed by the Registrant. The Registrant did not provide the Committee with any detail of how they became involved in this offending activity, or how they might prevent themselves from becoming involved again. The Committee considered that the Registrant sought to minimise their offending. In the Registrant's evidence to the Committee at the facts stage, the Registrant suggested that a crime of dishonesty was less serious than other crimes, could be categorised as "white collar" and that they didn't think it would cause any problems in registering with the GOC as a Student Dispensing Optician. The Registrant also described their decisions in offending as "split second" when they gave evidence again at this stage of the proceedings. Despite telling the Committee that "I have learned my lesson" the Committee considered that the Registrant's level of insight was incomplete.

Furthermore, the Committee was concerned that the focus of the Registrant's regret was upon the effect on themselves and by extension, their family. There was little demonstrable reflection upon the impact of their offending on the reputation of the profession.

When considering the Registrant's partial remediation and limited insight, the Committee determined that the risk of repetition, although low, could not be ruled out and considered that they may therefore be liable in future to bring the profession into disrepute, breach a fundamental tenet of the profession or be dishonest.

The Committee considered that public confidence in the profession would be undermined if a finding of impairment were not made in the circumstances of a conviction for such a serious matter, and the limited insight shown by the Registrant.

Accordingly, the Registrant's fitness to undertake training is impaired in respect of the conviction set out in the First Matter.

The Committee next went on to consider the issue of impairment with regard to the convictions from 2016 and 2017, set out in the Second Matter.

The Committee considered that both convictions were serious.

The Conviction for driving under the influence of drugs arose because the Registrant was driving a car that was involved in a one vehicle traffic collision. The vehicle ended up on its roof, the Registrant had facial injuries and was taken to hospital. The Police requested a blood sample which disclosed that the Registrant was over the prescribed limit for the cannabis compound in their blood stream.

The Registrant pleaded guilty to the offence on 22 December 2016, was fined £170 and disqualified from driving for 12 months. The Committee again considered that the Registrant had sought to minimise this conviction to this Committee, describing how food at the party they had attended before the accident had been “inadvertently made with some form of hemp/cannabis produce” and how they did not smoke or deliberately intake cannabis at the party. It noted that in court, the Registrant did not avail themselves of the mitigation of “special reasons” in order to show they shouldn’t have been disqualified.

Driving under the influence of drugs involves a disregard for public safety. The Registrant’s car was involved in a collision and they were injured. In the Registrant’s statement they acknowledged that “It is only very good fortune that prevented anyone else from being hurt that night.”

The Registrant remained disqualified until 21 December 2017. On 15 September 2017 they were arrested for driving a motor vehicle whilst disqualified and without insurance. On 3 October 2017, the Registrant pleaded guilty to these charges. The Registrant was disqualified from driving for a further 12 months, fined and subject to a Community Order. The Registrant was required to carry out 160 hours of unpaid work in the community.

Despite assuring the Committee that this would never happen again, the Committee were concerned that the Registrant had committed two serious road traffic offences at a time when they were seeking to rehabilitate themselves from earlier offending. The Registrant’s only explanation for driving whilst disqualified, which was in direct contravention of a court order, was that they had been in an argument with [Redacted] and they wanted to remove themselves from the situation. The Registrant did not explain why it was necessary for the to drive in order to do this.

The second offence in time only occurred due to the first resulting in a disqualification, suggesting that the Registrant had not reflected on their offending behaviour when they drove their vehicle whilst disqualified in 2017. By driving whilst disqualified, the Registrant was without insurance, thus putting the public at risk of harm. The Committee considered that both convictions demonstrated a lack of regard for other road users.

The Committee concluded that by virtue of these convictions the Registrant was liable to bring the profession into disrepute. The Committee was not satisfied that the Registrant had demonstrated sufficient insight or reflection to rule out the risk of a repetition of the behaviours that led to the two convictions.

The Committee was of the opinion that public confidence in the profession would be undermined if a finding of impairment were not made in relation to the two convictions in the Second Matter.

Accordingly, the Committee concluded that the Registrant's fitness to undertake training is impaired by reason of the convictions.

Impairment on grounds of misconduct

The Committee next had regard to the Registrant's activities in completing their student registration application with the Council, which also formed part of the Second Matter. It has found this behaviour amounted to misconduct.

By dishonestly omitting information from the Registrant's application and following up a query from the Registrant's regulator with a dishonest reply, they obtained entry onto the Register.

The Committee was in no doubt that the Registrant's behaviour when obtaining registration, brought the profession into disrepute, breached a fundamental tenet of the profession and was dishonest.

The Committee also had regard to the Registrant's conduct in the hearing before it. The Registrant provided evidence at the facts stage that the Committee did not find credible. In particular, it found that the Registrant had fabricated an account of a telephone call that they had received on or around 30 January 2019. The Committee understood that it could take this into account when considering impairment under reference to the case of *Nicholas-Pillai v General Medical Council [2009] EWHC 1048 (Admin)*.

The Committee took into account that the Registrant, when they gave evidence at this stage, was able to state that they respected the findings of the Committee, and when prompted was able to express why truthfulness was important. The Registrant was able to demonstrate the beginnings of understanding the effect their misconduct might have on the public's trust and confidence in the profession. It also took into account the Registrant's expressions of remorse and regret and that they "should be more truthful and change as a person".

The Committee also had regard to the Registrant making full declarations regarding their convictions on later retention application.

Nonetheless, the Committee considered that being dishonest to gain student membership to the profession was something that was not easily remediable and did not consider that the Registrant had remediated. In the Committee's evidence they sought to minimise the dishonesty and the Committee concluded that the Registrant showed very limited insight into their conduct. As such, it could not rule out a risk of repetition of future similar dishonest conduct which would be liable to bring the profession into disrepute and breach a fundamental tenet of the profession.

The Committee was in no doubt that public confidence in the profession would be undermined if a finding of impairment were not made in relation to the Registrant's misconduct.

Accordingly, the Committee concluded that the fitness of the Registrant to undertake training is impaired by virtue of misconduct in respect of their application for student registration.

Sanction

The Committee heard oral submissions from Ms Ahmed on behalf of the Council, and from Mr Graham, on behalf of the Registrant. The Committee were assisted, in this matter, by the written skeleton arguments that supplemented their submissions.

Ms Ahmed invited the Committee to consider the aggravating and mitigating features in this case, including the conspiracy to defraud conviction being premeditated and taking place over a period of time. Ms Ahmed acknowledged the Registrant's partial remediation and limited insight.

When considering the public interest, Ms Ahmed reminded the Committee that greater weight is to be placed upon it than the Registrant's interests. Ms Ahmed submitted that the case of *Bolton v Law Society 1994 1 WLR 512* demonstrated that one of the factors that the Committee should have regard to was that the reputation of the profession is more important than the fortunes of any individual member.

Ms Ahmed invited the Committee to have regard to the guidance on sanctions ("Hearings and Indicative Sanctions Guidance" – December 2018 Edition) ("ISG") issued by the Council. Ms Ahmed submitted that, whilst the matter of sanction was always a matter for the Committee to determine, the issue of proportionality required it to consider the appropriate sanction in ascending order. This was to ensure that the Registrant was given the least restrictive sanction which would also meet the public interest.

Ms Ahmed drew the attention of the Committee to para 39 of the ISG which states:

"There is no blanket rule or presumption that erasure is the appropriate sanction in all cases of dishonesty. The Committee must balance all the relevant issues in a proportionate manner whilst putting proper emphasis on the effect a finding of dishonesty has on public confidence in the profession (R (on the application of Hassan) v General Optical Council [2013] EWHC 1887 (Admin) and Siddiqui v General Medical Council [2013] EWHC 1883)"

Ms Ahmed submitted that the Committee may consider that the most appropriate sanction was one of suspension.

Mr Graham submitted that there were a number of mitigating factors that could be taken from the Committee's determination, including the Registrant's attempts to remediate and the eventual declaration of their convictions on their retention application. The Registrant submitted that the Committee could infer genuine remorse from the Registrant's conduct. Mr Graham asked the Committee to have regard to the positive testimonials it has read.

Mr Graham submitted that in light of the Registrant's developing insight, the Committee should give serious consideration to applying its discretion and impose a sanction that would allow the Registrant to remain as a student within the profession.

The Committee accepted the advice of the Legal Adviser. The Registrant referred to the case of *Lusinga v NMC [2017] EWHC 1458 (Admin)* which stated that the Committee should consider the nature of the dishonesty and assess how serious it was. The Legal Adviser advised that the Committee should identify and give weight to the aggravating and mitigating features in the case. It should apply the principle of proportionality, weighing the Registrant's interests against the public interest. The Committee should approach consideration of the available sanctions in ascending order and impose the least restrictive sanction which was sufficient to meet the public interest. The Committee should explain why the next sanction up was inappropriate.

The Committee's decision on Sanction

The Committee considered the aggravating and mitigating factors.

Aggravating Factors

- The Registrant's conviction for conspiracy to defraud, albeit now some time ago, was serious, premeditated and involved sustained dishonesty for a significant period of time. At the time of the offending behaviour, the Registrant was a serving police officer and a former employee of the bank that was the victim of the fraud.
- The Registrant has displayed limited insight into the behaviour which led to their convictions. The Committee had previously found that they attempted to minimise the seriousness of their offending behaviour.
- The Committee found that the Registrant has shown only limited insight into their misconduct, which also involved dishonest behaviour.
- The Registrant was found to be untruthful in their evidence to the Committee in respect of the phone call they said took place between them and the GOC.
- The dishonesty occurred when applying to become a Student Dispensing Optician, in an attempt to avoid declaring their criminal convictions and gain entry to the register.

Mitigating factors

- The Registrant admitted some of the allegations and has engaged in the regulatory process.
- The Registrant is beginning to develop some limited insight into both their offending behaviour and misconduct.
- The misconduct took place at the beginning of their career in the profession.

- The Registrant declared their convictions in their first retention application to the Council.
- There are positive testimonials before the Committee from a range of people including their employer and the Programme Leader at [Redacted] College.

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

The Committee first considered whether it would be justified in taking no action and had regard to para 31.2 of the ISG. It did not identify any exceptional circumstances which would make this course of action appropriate. Taking no further action would not be in the public interest, given the seriousness of the matters before the Committee and the aggravating features it has identified. Such an order would be inconsistent with the earlier determinations of the Committee.

The Committee next considered a financial penalty order. It had not been addressed on this issue and formed the view that it was not appropriate to impose one. It had regard to para 32.4 of the ISG. It concluded that imposing such an order would not address the wider public interest.

The Committee then had regard to whether or not a conditional registration order was an appropriate sanction. It took into account para 33.9 of the ISG and considered whether any of the factors had been engaged. The Committee did not consider that it could formulate conditions that would address the dishonesty element of this case. None of the remaining concerns identified in this case could be addressed by conditions which were appropriate or workable. In any event the behaviour of the Registrant was too serious, in light of the particular aggravating features identified by the Committee, for conditional registration to be appropriate. Conditional registration would not address the public interest in this case.

The Committee then considered whether or not it should impose the sanction of suspension. It had regard to para 34.1 of the ISG and concluded that the Registrant's behaviour could not be categorised as one "serious instance", as there were a number of factors involved including three separate criminal convictions and findings of dishonesty in order to gain registration as a Student Dispensing Optician.

The Committee considered that the dishonesty that led to a custodial sentence was at the high end of the scale of serious offending behaviour, being premeditated, prolonged, sophisticated and involving a large sum of money. In addition, the Committee was concerned over the Registrant's limited insight into their convictions, despite the passage of time since their commission.

The Committee gave weight to both the aggravating factors of acting dishonestly in order to gain student registration and the limited insight shown into that misconduct.

Although the Registrant declared their convictions in their first retention application, they then went on to give untruthful evidence to the Committee. This highlighted a pattern of ongoing dishonest behaviour.

Whilst the Committee had identified some mitigating factors, for example, the development of limited insight, it determined that the significant aggravating factors were indicative of a deep-seated attitudinal problem. A period of suspension would not sufficiently mark the public interest in maintaining confidence in the profession and declaring and upholding proper professional standards.

Having considered all other sanctions, in ascending order, the Committee then went on to consider erasure. It had regard to para 36.2 – 36.5 of the ISG, and in particular 36.5:

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

...

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

Having found a pattern of dishonest behaviour, the Committee formed the view that the Registrant’s behaviour was fundamentally incompatible with them remaining on the register. The Committee considered that the principles in the case of *Bolton* (referenced above) applied as it considered that this was the only sanction that would maintain public confidence in the profession.

Accordingly, the Committee directed that the Registrar remove the Registrant’s name from the appropriate Register in terms of Section 13F (3)(a) of the Opticians Act 1989.

Immediate order

The Committee heard submissions from Ms Ahmed on behalf of the Council and from Mr Graham on behalf the Registrant. It accepted the advice of the Legal Adviser who referred to the case of *Davey v General Dental Council (Unreported) High Court (QB)* 8 October 2015.

The Committee decided not to impose an immediate suspension order for the following reasons:

The Committee could only impose such an order if it considered it to be necessary for the protection of the public, in the wider public interest or in the interests of the Registrant.

The Committee did not make the substantive order on the basis of any public protection concerns. Since such an order was not in the interests of the Registrant the only remaining basis for imposing such an order would be the wider public interest. The Committee determined in the circumstances of this case, the substantive sanction of erasure was sufficient to protect the wider public interest. There was therefore no requirement for an immediate suspension order.

Chair of the Committee: Jayne Wheat

Signature **Date: 23 June 2021**

Registrant: Fawad Ahmed

Signature *present via video* **Date: 23 June 2021**

| FURTHER INFORMATION |
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| 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. |