

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

**GENERAL OPTICAL COUNCIL**

**F(20)43**

**AND**

**DAVID LITTLE- (01-10284)**

---

**DETERMINATION OF A SUBSTANTIVE HEARING  
AGREED PANEL DISPOSAL (ADP)  
8 APRIL 2021**

---

<b>Committee Members:</b>	Mr Ian Crookall (Chair/Lay) Ms Asmita Naik (Lay) Mr Mark McLaren (Lay) Ms Kalpana Theophilus (Optometrist) Mr Amit Jinabhai (Optometrist)
<b>Legal adviser:</b>	Ms Megan Ashworth
<b>GOC Presenting Officer:</b>	Ms Aleksandra Manning-Rees
<b>Registrant:</b>	Not present but represented in his absence
<b>Registrant representative:</b>	Jane Oldfield [Counsel] Muna Rashid [AOP]
<b>Hearings Officer:</b>	Ms A Shabani
<b>Facts found proved:</b>	1(a)-(g); 2(a)-(g); 3(a)-(i); 4(a)-(i); 5(a)-(h); 6(a)-(h); 7(a)-(g); 8(a)-(j); 9; and 10
<b>Facts not found proved:</b>	none
<b>Misconduct:</b>	Yes

<b>Impairment:</b>	Currently Impaired
<b>Sanction:</b>	Suspension Order 12 months, no review ordered
<b>Immediate order:</b>	No

---

### ALLEGATION

*The Council alleges that you, David Little, a registered optometrist whilst working at [redacted]:*

- 1. In response to a request from NHS Dumfries & Galloway you resubmitted Patient A's record card for the examination dated 10 June 2014 however before doing so you added the following information:*
  - a. "Trop.5%" [Tropicamide 0.5% eye drops] with a batch number; and/or*
  - b. the word "smooth" or "smoker" to the "Convergence" box; and/or*
  - c. Motility now described as being full; and/or*
  - d. Illegible written text, appearing to be "no Driver", next to "PC" in the "ACC" box;*  
*and/or*
  - e. the words "macula clear" added in the "Ophthalmoscopy" box; and/or*
  - f. Distance and near phorias now quantified; and/or.*
  - g. "As prev" and a reading addition both now recorded; and/or*
  - h. "S" next to the date which could mean supplementary claim; and/or*
  - i. the words "Full OO" in respect of pupil reactions*
- 2. In response to a request from NHS Dumfries & Galloway you resubmitted Patient A's record card for the examination dated 8 January 2014 however before doing so you added the following information:*
  - a. "Trop.5%" [0.5 % Tropicamide eye drop] with a batch number and/or expiry date; and/or*
  - b. Description of blood vessel calibre; and/or*



- e. *Illegible additions to “anterior chamber”; and/or*
  - f. *Difficult-to-read additions to the “cover test” box; and/or*
  - g. *Difficult-to-read additions to the “motility” box, appearing to read “Full” or similar;*  
*and/or*
  - h. *Description of blood vessel calibre added; and/or*
  - i. *Illegible comment added to fundus/Ophthalmoscopy copy box.*
5. *In response to a request from NHS Dumfries & Galloway you resubmitted Patient A’s record card for the examination dated 1 June 2010 however before doing so you added the following information:*
- a. *“07” and “08” added to the “retinoscopy” box; and/or*
  - b. *“Trop.5%” [0.5 % Tropicamide eye drop] added; and/or*
  - c. *Information added to the “pupils” box (appearing to read “OO”); and/or*
  - d. *Illegible information added to “anterior chamber”; and/or*
  - e. *Difficult-to-read information added to the “cover test” box; and/or*
  - f. *Difficult-to-read information added to the “motility” boxes; and/or*
  - g. *“Few floaters” added to the fundus examination/Ophthalmoscopy box; and/or*
  - h. *Blood vessel calibre now described.*
6. *In response to a request from NHS Dumfries & Galloway you resubmitted Patient A’s record card for the examination dated 29 April 2009 however before doing so you added the following information:*
- a. *The fundus examination (Ophthalmoscopy) box now has blood vessel calibre and assessment of posterior capsule; and/or*
  - b. *Additions to the pupil description (appearing to read “OO”); and or*
  - c. *Illegible additions to “anterior chamber”; and/or*
  - d. *Difficult-to-read additions to the “visual fields” box; and/or*
  - e. *Difficult-to-read additions to the “motility” box; and/or*
  - f. *Difficult-to-read additions to the “cover test” box; and/or*
  - g. *“Few floaters” added to the fundus examination/Ophthalmoscopy box; and/or*



## AGREED PANEL DISPOSAL AGREEMENT

Ms Manning-Rees appeared on behalf of the GOC and Ms Oldfield appeared on behalf of the Registrant. At the outset of this hearing, the Chair went through the process for resolving a proposed Agreed Panel Disposal (APD), as set out in the Agreed Panel Disposal Policy (the Policy) with the parties.

In terms of the eligibility requirements under paragraph 5 of the Policy, the parties confirmed that the case was eligible under paragraph 5.1(a)(i), namely that “*the allegation has been considered by the Case Examiners*”; and paragraph 5.1(b), namely that the “*registrant has admitted the facts of the allegation, admitted misconduct (and/or other categories set out in section 13D of the Opticians Act), admitted that their fitness to practise is currently impaired.*”

An Agreed Panel Report (the agreement), dated 16 March 2021, was put before the Committee. It set out the Registrant’s full admission to all of the facts alleged in the particulars; his acceptance that his actions amounted to misconduct; and his acceptance 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 suspension order for 12 months without a review. The agreement was signed by the Registrant on 23 March 2021, and by the Council on 6 April 2021.

Having heard from the parties and having identified the Registrant’s admissions within the agreement, the Committee accepted that the case met the eligibility requirements as set out in the Policy.

The Committee has considered the agreement reached by the parties. The relevant parts of that agreement reads as follows:

### Introduction

1. *This is a substantive hearing in respect of Mr David Little (“the Registrant”), a registered optometrist first registered with the General Optical Council (“the Council”) on 2 November 1979. 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.*

2. *The Council's published policy on the APD process is appended 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:*
  - (1) *To approve the recommendation and make the appropriate order(s);*
  - (2) *To vary the sanction with the agreement of both parties;*
  - (3) *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

3. *On 8 June 2017, the Council received a referral from NHS Dumfries and Galloway ("NHS D&G") concerning the Registrant. The referral related to concerns raised regarding poor clinical record keeping and falsification of patient records. The allegations regarding poor clinical record keeping are not part of the Council's allegations for the FTPC hearing.*
4. *At the material time, the Registrant had two practices; one in [redacted], in [redacted], Scotland. In January 2015, [redacted], Optometric Advisor for the NHS, was contacted by the Practitioner Service Division of NHS D&G ("PSD"). She was informed that the PSD had concerns about the Registrant's record-keeping, including omitting to record required tests and procedures, and illegibility, and it was intended that, in her position as Optometric Advisor, [redacted] would review his patient record cards and make an assessment of any on-going deficiencies.*
5. *[Redacted] reviewed a sample of record cards in a visit to one of the Registrant's practices, in November 2015, and formed the view that there were inadequacies in his record-keeping. The Registrant was notified that these matters should be rectified.*
6. *A second sample of record cards was requested from the Registrant in around May- June 2016, and reviewed by [redacted] in July 2016. The*

*sample included a number of the same record cards which had previously been reviewed, and it was noted that there appeared to be additions to the information in those record cards. Concerns were raised that the Registrant had retrospectively amended the record cards.*

#### Council Investigation

- 7. The Council investigated the matter and the matter was reviewed by the Case Examiners. The Registrant did not submit representations to the Case Examiners. The Case Examiners referred the matter to the FTPC on 5 August 2019. The allegations referred included allegations relating to the dishonest amendment of the record cards and in relation to record keeping. The record keeping allegations were later disposed of by way of a Rule 16 application by the Council in August 2020.*
- 8. As part of the investigation regarding the record keeping concerns, witness evidence has been obtained from [redacted]. The Council has also obtained an expert report from Mr Lyndon Taylor.*
- 9. The Council's case was served on the Registrant on 5 November 2020.*
- 10. On 26 November 2020 the Registrant's representative returned the Registrant's completed Hearings Questionnaire. Within the Questionnaire it was noted that the Registrant admitted the facts alleged against him. It was also confirmed that the Registrant agrees that the allegations constitute misconduct and that his fitness to practise is currently impaired. The Council and the Registrant agree that the appropriate and proportionate sanction is a 12 month suspension with no review hearing and no immediate order.*
- 11. There is no interim order in place and the Registrant has no previous fitness to practise history.*
- 12. The allegation against the Registrant is as follows: [see above]*

#### Nature of the Recommended Disposal

- 13. 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:*
  - 1) All of the particulars of the allegations are admitted and found proved;*
  - 2) That the particulars of the allegation amount to misconduct;*

3) *That the Registrant's fitness to practise is impaired by reason of misconduct; and*

4) *The appropriate and proportionate sanction is a 12 month suspension with no review hearing and no immediate order.*

### Law

14. *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").*

15. *In accordance with Rule 46 a hearing is required to be conducted in three stages:*

- *Stage 1 - Findings of fact;*
- *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;*
- *Stage 3 - Consideration of the appropriate sanction, if any.*

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

### Stage 1: Factual Findings

17. *At the relevant time, the Registrant was an optometrist practising in two practices. As noted in paragraphs 7 and 8 above, the Registrant submitted record cards for a review of his practice. Upon a second review several months later, some record cards were re-submitted for the same patients and discrepancies were noted, as set out in the particulars of the allegations.*

18. *The expert report of Lyndon Taylor provides information on what must be recorded on a clinical record and that any modifications to later records must be clearly marked as to when they were amended, how and who made the amendments. Mr Taylor reviewed the records alleged to have been amended and concluded in his report that the Registrant's actions fell far below the standard that one would expect of a reasonably competent optometrist.*

19. *The Registrant admits the facts alleged against him, including the allegation of dishonesty.*

Stage 2: Misconduct and Impairment

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

*“Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word “professional” which links the misconduct to the profession of medicine. Secondly, the misconduct is qualified by the word “serious”. It is not any professional misconduct which will qualify. The professional misconduct must be serious”.*

21. *In the case of R (on the application of) Remedy UK v General Medical Council [2010] EWHC 1245 at paragraph 37, it way 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.”*

22. *As to seriousness, Collins J, in Nandi v General Medical Council [2004] EWHC (Admin), rightly emphasised, at paragraph 31 of his judgment:*

*“the need to give it proper weight, observing that in other contexts it has been referred to as ‘conduct which would be regarded as deplorable by fellow practitioners’.”*

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

- **8 Maintain adequate patient records;**

*8.1 Maintain clear, legible and contemporaneous accessible for all those involved in the patient's care.*

- **16 Be honest and trustworthy;**

*16.1 Act with honesty and integrity to maintain public trust and confidence in your profession;*

- **17 Do not damage the reputation of your profession through your conduct;**

*17.1 Ensure your conduct, whether or not connected to your professional practice, does not damage public confidence in you or your profession;*

*24. It is agreed by both parties that the allegations amount to a serious departure from the standard of practice expected of a competent optometrist.*

*25. The parties agree that the Registrant's dishonest behaviour amounts to misconduct within the meaning of section 13D(2)(a) of the Act.*

### Impairment

*26. 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.*

*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)*

*26. As to the meaning of fitness to practise, in the case of Zygmunt 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) (c) and (d) are engaged in this case.*

*29. In Cheadle 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 Para 21):*

*"It is a corollary of the test to be applied and of the principle that a FPP 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 FTTP is required to take account of such matters as the insight of the practitioner into the source of his misconduct, and any remedial steps which have been taken and the risk of recurrence of such misconduct. It is required to have regard to evidence about matter that have arisen since the alleged misconduct occurred".*

*(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 FTTP) 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 FTTP 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. I accept Miss Grey's submissions that the types of cases which were considered in Cohen, Meadow and Azzam fall to be distinguished from the present case on the basis she puts forward".*

**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. *Mrs Justice Cox went on to say that it is essential not to lose sight of the fundamental considerations emphasised by Mr Justice Silber in Cohen: that is the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession. She further added that the panel should generally consider not only whether the practitioner continues to present a risk to the public, but also whether public confidence in the profession would be undermined if a finding of impairment were not made.*
33. *In light of the above law and the factors in this case, the parties agree that the misconduct of the Registrant in this case is sufficiently serious so as to necessitate a finding of impairment.*
34. *The Registrant accepts that his fitness to practise is currently impaired.*

Stage 3: Sanction

35. *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).*
36. *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*
37. *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."*
38. *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.*
39. *The FTPC must have regard to the principle of proportionality. The principle requires that when considering what sanction to impose in order*

*to fulfil the statutory over- arching objective, the FTPC must take into consideration the interests of the Registrant, which may include the wider public interest in a competent dispensing optician being permitted to return to practice. The FTPC should consider the sanctions available, starting with the least restrictive sanction available, judging whether that sanction will be sufficient to achieve the over-arching objective, and if it will not, moving on to consider the next least restrictive sanction.*

Submissions on Sanction

*40. 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 did not initially engage with the GOC investigation in that no response was provided to the Case Examiner's (albeit he has engaged with the Rule 16 process and more recently).*

*41. In terms of mitigating circumstances, the following factors have been identified:*

- a) The Registrant has no previous fitness to practice history;*
- b) The Registrant admitted his actions when confronted by the PDP and therefore he made relatively early admissions when the matter was raised with him;*
- c) The allegations relate to conduct in 2015, some six years ago;*
- d) The allegations are limited to two patients (albeit, there are multiple record cards for Patient A);*
- e) There was no patient harm caused;*
- f) The Registrant retired from practice in March 2020 and therefore the risk of repetition is extremely low;*
- g) Those involved in the complaint at NHS D&G have separately spoken with the Council and the Council's solicitors to query whether the matter still needs to proceed to a hearing in light of the Registrant's retirement and the time elapsed.*

42. *The Council has considered whether the Registrant is using the APD mechanism to avoid a full hearing. On balance, it has considered that the Registrant's admissions and his current circumstances relating to his retirement outweigh any doubt that this matter should proceed by way of APD.*
43. *Having regard to the GOC's Indicative Sanctions Guidance, the parties agree that the appropriate and proportionate sanction is a 12 month suspension with no review hearing and no immediate order.*
44. *In light of the serious nature of the misconduct, it is considered that taking no further action, or a financial penalty order, were not proportionate or sufficient. In addition, conditional registration would not be practicable due to the nature of the misconduct.*
45. *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. There has been no evidence of repetition of behaviour since the incident and the Registrant has shown some insight by admitting the allegations.*
46. *It is considered that erasure would be disproportionate and excessively punitive. Given the Registrant's circumstances regarding retirement and his admission of the allegations, the parties submit there is a very low risk of repetition. The Registrant has accepted that his conduct was dishonest and that his fitness to practise is impaired. The parties therefore concluded that a period of suspension is sufficient to address any public interest concerns and to declare and uphold proper standards of conduct and behaviour and to maintain confidence in the profession. The parties gave consideration to the length of the order and concluded that 12 months was the appropriate length to address the seriousness of the dishonesty.*
47. *The parties had regard to whether a review hearing was required and concluded that a review hearing would not be appropriate. By the time of any proposed reviewing hearing, the Registrant will have been retired for approaching two years; there is no prospect of a return to practise and therefore a review hearing is unlikely to be necessary for either party.*
48. *The parties considered whether there was a need for an immediate order and agree not to impose an immediate suspension order for the following reasons:*
- *Low risk of repetition particularly due to the Registrant's retirement;*

- *No risk of patient harm;*
- *No repeated actions since the incidents identified which now date back to 2016, almost five years ago;*
- *The public interest is sufficiently addressed by the substantive order and would not be undermined by not imposing an immediate order of suspension.*

*49. Therefore, the parties agree that a period of suspension is the appropriate sanction. In considering the length of the suspension, although this remains a matter for the Committee it is submitted by the parties that a 12 month suspension with no review and no immediate order is appropriate to reflect the nature of the concerns raised by the case, the Registrant's previous history and his acceptance of the allegations against him.*

[End of agreement report]

## **DETERMINATION**

In addition to the signed agreement, the Committee was provided with the evidential documentation underpinning the report. In particular, this documentation included:

- copies of the patient record cards for Patient A and Patient B, both the original and amended versions;
- witness statements, dated 26 July 2018 and 22 November 2019, together with accompanying exhibits from [redacted], the Optometric Advisor asked by NHS Dumfries and Galloway to review the Registrant's patient records; and
- a report from Mr Lyndon Taylor, an expert in Optometry, instructed by the GOC.

The Committee heard and accepted the advice of the Legal Adviser. She advised the Committee to consider each stage sequentially, but not to announce its findings in relation to any of the stages unless and until it had made decisions in relation to each stage. She advised that if, at any stage in its deliberations it required further clarity, or if, in respect of sanction, it required further information or submissions, then the Committee should reconvene with the parties and invite

the parties to address it. Specifically, the Legal Adviser advised the Committee of paragraph 8.4 of the Policy which states:

*If the panel's findings are in accordance with those in the agreed panel disposal report at each stage, it will make an order setting out the reasons for its findings. If the panel wish to vary the sanction they will invite submissions from both parties... If both parties agree the variation the case will be concluded on that basis. Otherwise, the case will go to a further hearing where both parties may make new submissions.*

During the course of its deliberations, the Committee sought further information from the parties in respect of paragraphs 41(f) and 48 of the agreement (set out above). In particular, it sought further information about the Registrant's current intentions and the extent to which he had rectified the issues raised in his record keeping before he retired. The Committee was mindful that notwithstanding the Registrant's stated intention of wishing to retire, he would be in a position to return to practice after the expiry of the proposed sanction of suspension if it was imposed without a review.

Ms Oldfield, on behalf of the Registrant, informed the Committee that the Registrant had been involved in two practices: the [redacted] Practice had been a small practice in a house which had been sold; and the [redacted] Practice business had been taken on by someone else. She explained that the Registrant would be [redacted] this year and had informed the GOC of his retirement back in March 2020 and this was recorded on their systems. She said that the Registrant had stopped paying his annual retention fee and that on a search of the GOC website the Registrant would not appear, as he was under what was termed 'artificial retention' and within the GOC remit because of the fitness to practise proceedings.

In relation to remediation, Ms Oldfield drew the Committee's attention to paragraph 18 of [redacted] second statement, which states:

*"A very comprehensive support package was subsequently put in place for [the Registrant], in terms of recordkeeping and bringing him up to scratch with things like identifying glaucoma. This was provided by national education Scotland ('NES'). He did everything asked of him, put in quite a lot of work and passed that quite successfully. I think he also changed his record cards and designed new ones, which met with approval of NES and ultimately the*

*board. I therefore believe that the clinical/recordkeeping aspect of the concerns was remedied.”*

Ms Manning-Rees, on behalf of the GOC, confirmed that the GOC had considered all of the relevant factors in order to reach the proposed sanction, of which retirement was only one.

### **Findings in relation to the facts**

The Registrant admitted all of the factual particulars and sub-particulars 1 to 10 of the allegation by way of the agreed panel determination report. The Committee also had regard to the evidential information provided to it, upon which the Registrant’s admissions were based. Consequently, the Committee, having compared the original and altered records, was satisfied that each of the factual particulars admitted by the Registrant was made out on the evidence. Accordingly, it found each of the factual particulars and sub-particulars proved.

### **Findings in relation to misconduct**

The Committee then went on to consider whether the Registrant’s fitness to practise is currently impaired by reason of misconduct as alleged. Whilst acknowledging the agreement between the GOC and the Registrant, and the admissions of the Registrant, the Committee nevertheless exercised its own independent judgement in reaching its decision on misconduct and impairment.

In respect of misconduct, the Committee agreed with the position of the parties as set out in the agreement. In the Committee’s judgement, the Registrant’s actions, which included dishonesty, fell well below the standards to be expected of a registered professional, given his responsibility to maintain clear and accurate records. It agreed with the position of the parties that the Registrant’s actions breached standards 8, 16 and 17, as set out above, in paragraph 23 of the agreement. His actions related to two patients over a significant period of time.

Whilst not all of the amendments were of clinical significance, there were a number which, in the Committee’s view, could have potentially misled subsequent practitioners, and affect patient care. In particular, in respect of Patient A, a patient who presented with “flashes and floaters” amendments had been made to record that the patient had been dilated. The Committee was satisfied that fellow professionals would have viewed the Registrant’s actions as

serious overall. Therefore, in all the circumstances the Committee considered that the Registrant's actions were so serious as to amount to misconduct.

### **Findings in relation to Impairment**

The Committee then considered whether the Registrant's fitness to practise is currently impaired. It noted that the agreement (at paragraph 27), did not contend that impairment arose under paragraph (a) of Dame Janet Smith's test in the Fifth Shipman Inquiry Report, namely that the practitioner "*presents a risk to patients*". Rather, the agreement contended that paragraphs (b), (c), and (d) were engaged as follows:

- (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.*

The Committee had regard to paragraph 18 of [redacted] witness statement, dated 22 November 2019, in which she had confirmed that the Registrant had remedied his record keeping to the satisfaction of NHS Dumfries and Galloway. It was also apparent that the Registrant had continued to practise from 2016 until his retirement in March 2020 without further issues being identified.

In all the circumstances, the Committee considered that it could accept the agreement to the effect that the Registrant had remedied his record keeping. It was also satisfied that he had insight into his failings from his remediation and his admissions into all the facts, misconduct and impairment.

The Committee considered that this was a case where the wider public interest considerations were relevant. The Registrant had admitted to dishonestly amending clinical records, and such behaviour required a finding of current impairment in order to maintain the reputation of the profession and to uphold the standards to be required of a registered professional. Consequently, the Committee accepted the parties' position as set out in the agreement, that the misconduct of the Registrant in this case is sufficiently serious so as to necessitate a finding of impairment. Accordingly, in the Committee's judgement, the Registrant's fitness to practise is impaired on public interest grounds.

### **Decision on sanction**

The Committee considered the sanctions available to it from the least necessary to the most severe (no sanction, financial penalty, conditional registration, suspension, erasure).

Having heard the clarification from the parties, in particular from Ms Oldfield in respect of the Registrant's actions demonstrating his genuine retirement, the Committee agreed with the mitigating circumstances as set out in paragraph 41(a) to (g) in the agreement above.

The Committee agreed with the position of the parties, that in light of the serious nature of the misconduct, the options of taking no action and a financial penalty order were neither proportionate nor sufficient. In relation to conditional registration, the Committee did not consider that such an order would be practicable due to the nature of the misconduct itself and the Registrant's subsequent retirement meaning that he was no longer in practice.

The Committee next considered suspension and paragraph 34 of the Indicative Sanctions Guidance, as identified in the agreement. The Committee agreed with the position of the parties that dishonesty is a serious matter; there has been no evidence of repetition of behaviour since the incident; and the Registrant has shown some insight in admitting the allegations.

The Committee agreed that erasure would be disproportionate and excessively punitive, given that the dishonesty had occurred over five years ago; the Registrant had remedied his record keeping; and he had been practising up until his retirement in March 2020.

The Committee had initially had some concerns about the proposed sanction of suspension being without a review, as it did not consider that the agreement had sufficiently addressed the Registrant's remediation or his firm intentions of retirement. The Committee recognised that there may be the prospect of the Registrant returning to practise on the expiry of a suspension order. However, having heard the additional information and submissions from the parties, and taking into account the record of retirement endorsed on the GOC register, the Committee was satisfied that it could accept the agreement. It was satisfied, according to the agreement, there had been no repetition since the incident, and the Registrant did not present a risk to patients. Consequently, the Committee agreed with the proposal of the parties regarding sanction (paragraph 46) as follows:

*"...Given the Registrant's circumstances regarding retirement and his admission of the allegations, the parties submit there is a very low risk of repetition. The Registrant has accepted that his conduct was dishonest and that his fitness to practise is impaired. The parties therefore concluded that a period of suspension is sufficient to address any public interest concerns and to declare and uphold proper standards of conduct and behaviour and to maintain confidence in the profession. The parties gave consideration to the*

*length of the order and concluded that 12 months was the appropriate length to address the seriousness of the dishonesty.”*

Accordingly, the Committee has decided to impose a sanction of suspension for a period of 12 months without a review.

### **Immediate order**

The Committee agreed with the position of the parties that an immediate order for suspension was not required as an immediate order was not necessary in order to protect the public, nor was one required in the public interest. In reaching this decision, the Committee accepted the submissions of the parties that there was a low risk of repetition; there had been no repetition since the incidents identified; there was no risk of patient harm; and the public interest was sufficiently addressed by the substantive order and would not be undermined if no immediate order were imposed.

### **Suitability of APD in this case.**

Finally, the Committee referred back to the Policy and paragraph 6.2, in order to satisfy itself that this case was suitable to be dealt with under the APD route.

The Committee was satisfied that factors (a) to (b) were engaged as follows:

- 6.2(a) – The nature of the allegation. Although the allegations were serious due to the dishonesty, they are based around record keeping, and the subsequent dishonest amendments were made to make the Registrant’s record keeping appear better than they were;
- 6.2(b) – The Registrant’s insight and remediation. As set out above, the Committee accepted the agreement to the effect that the Registrant had insight into his wrongdoing and had remediated his record keeping;
- 6.2(c) – The Registrant’s own interests. The Registrant had been legally represented in this process and had admitted every aspect. The Committee was satisfied that he understood the implications of the APD process.
- 6.2(d) – The Registrant’s circumstances. The Registrant had retired and the Committee was satisfied that this was a genuine retirement. Consequently, the Committee was satisfied that there was less of a requirement in the public interest for witnesses to attend a hearing before a Fitness to Practise Committee.

In all the circumstances, the Committee was satisfied that this case was suitable to be resolved by way of APD, and imposes a sanction of 12 months suspension without a review.

**Chair of the Committee: Ian Crookall**

**Signature** .....

**Date: 8 April 2021**

**Registrant: David Little**

**Signature** not present but represented

**Date: 8 April 2021**

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