

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

GENERAL OPTICAL COUNCIL

AND

OMER ARSHAD (01-27752)

**DETERMINATION OF A SUBSTANTIVE HEARING
AGREED PANEL DISPOSAL (APD)
21-22 AUGUST 2025**

Committee Members:	Louise Fox (Chair/Lay) Diane Roskilly (Lay) Audrey McFarlane (Lay) Sarvat Fida (Optometrist) Kalpana Theophilus (Optometrist)
Legal adviser:	Austin Stoton
GOC Presenting Officer:	Holly Huxtable
Registrant:	Not present and represented
Registrant representative:	Alex Mills
Hearings Officer:	Arjeta Shabani
Facts found proved:	Admitted and proven
Facts not found proved:	NA
Misconduct:	Found
Impairment:	Impaired
Sanction:	Erasure
Immediate order:	Imposed

Introduction

1. The Committee convened on 21 August 2025 to consider Fitness to Practise proceedings brought against the Registrant. The Committee and the parties convened over Microsoft Teams. No witness was called throughout this hearing and no evidence was contested.
2. The Committee was sighted of the following documentation:
 1. Certificate Of Conviction
 2. Transcript of Proceedings (sentencing remarks)
 3. Surrey Police disclosure
 4. APD Policy
 5. An agreed panel report – Annex A

This material was agreed by the parties.

3. These proceedings relate to a referral made by Surrey Police to the General Optical Council (the Council) following the arrest of the Registrant on the 8 December 2021 in relation to the following allegations.

The Council alleges that you, Omer Arshad, a registered optometrist:

1. *On 24 May 2024 at Staines Magistrates' Court, were convicted of having in your possession on 8 December 2021 indecent photographs, namely 1 Category A moving image of a child, contrary to section 160 of the Criminal Justice Act 1988.*
2. *On 24 May 2024 at Staines Magistrates' Court, were convicted of having in your possession on 8 December 2021 indecent photographs,*

namely 1 Category B still image of a child, contrary to section 160 of the Criminal Justice Act 1988.

3. *On 24 May 2024 at Staines Magistrates' Court, were convicted of having in your possession on 8 December 2021 indecent photographs, namely 45 Category B moving images of children, contrary to section 160 of the Criminal Justice Act 1988.*
4. *On 24 May 2024 at Staines Magistrates' Court, were convicted of having in your possession on 8 December 2021 indecent photographs, namely 4 Category C still images of children, contrary to section 160 of the Criminal Justice Act 1988.*
5. *On 24 May 2024 at Staines Magistrates' Court, were convicted of having in your possession on 8 December 2021 indecent photographs, namely 6 Category C moving images of children, contrary to section 160 of the Criminal Justice Act 1988.*
6. *On 24 May 2024 at Staines Magistrates' Court, were convicted of making on 8 December 2021 an indecent photograph, namely 1 Category B still image of a child contrary to s.1(1)(a) of the Protection of Children Act 1978.*

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

Approved Panel Disposal Agreement

4. At the outset of this hearing, both parties indicated to the Committee that an Agreed Panel Disposal (APD) Report had been prepared for the Committee. Both Parties indicated that the content of that report was agreed between the parties.

5. The APD Report set out the Registrant's full admission to the facts alleged, both parties agreed that the Registrant's actions amounted to a serious departure from acceptable standards and that the Registrant's fitness to practise is currently impaired by reason of those convictions. It further stated in the agreement that an appropriate sanction in this case would be erasure.

Background

6. This matter was initially referred to the Council by Surrey Police on 8 December 2021. The Council was informed that the Registrant had been arrested for sexual offences and released on police bail.
7. The Registrant was subsequently charged and pleaded guilty at Staines Magistrates' Court on 24 May 2024 to six offences of possessing and making indecent images of children, namely category A to C (moving and still) indecent images.
8. The Registrant was committed to Guildford Crown Court for sentence. On 27 September 2024, the Court imposed an 8 month custodial sentence suspended for 24 months with a [redacted] treatment requirement, a rehabilitation activity requirement and unpaid work. The Court further imposed a Sexual Harm Prevention Order ("SHPO") for 10 years.
9. The SHPO imposed several prohibitions on the Registrant but perhaps most relevant to these proceedings is prohibition 10, namely that the Registrant is prohibited from:

"having any contact or communication with any child under 16 other than:

- i. Such as is inadvertent and not reasonably avoidable in the course of normal daily life;*
 - ii. With the consent of child's parents or guardian, who has knowledge of his convictions, and having made aware your managing Police Officer, and children's services for the area in which the child resides."*
10. The Committee had sight of the Certificate Of Conviction and of the SHPO.

Submissions on the facts

11. Both parties agreed the facts. Mr. Mills informed the Committee that the Registrant admitted the facts. Neither party made any further submissions in relation to proof of the facts.
12. The legal adviser advised as to the APD procedure and emphasised that the determination of the case was a matter for the Committee's independent assessment, irrespective of the agreement or otherwise of the parties. The Committee accepted the advice of the legal adviser.

Determination on the facts

13. In accordance with rule 46(6) of The General Optical Council (Fitness to Practise) Rules Order of Council 2013 (the Rules) where facts have been admitted, the Chair announced that the facts in this case have been found proven.

Submissions on conviction and impairment

14. Having regard to the Standards of Practice for Optometrists and Dispensing Opticians, effective from April 2016, the Council and Registrant agreed that the Registrant has breached Standard 17 - do not damage the reputation of your profession through your conduct.
15. It was agreed by both the Council and the Registrant that the allegations amount to a serious departure from the standard of practice expected of a competent optometrist.
16. The parties agreed that the Registrant has been convicted of criminal offences which fall within the meaning of section 13D(2)(c) of the Act. Both parties agreed that the facts of the convictions were serious.
17. The parties referred the Committee to the decision of the High Court in *CHRE v (1) NMC and (2) Grant* [2011] EWHC 927 (Admin), where it was said that an appropriate approach for panels considering impairment might be that which

was formulated by Dame Janet Smith (as she then was) in the report to the Fifth Shipman Inquiry, namely:

“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 practice 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”.*

18. The parties agreed that a- c, above, are engaged in this case and as such the Registrant is currently impaired on the grounds of public protection and public interest.
19. The legal adviser advised that a number of cases have considered the requirement of seriousness. The acts or omissions in question must amount to *“conduct which would be regarded as deplorable by fellow practitioners”* *Nandi v GMC* [2004] EWHC 2317 (Admin), or an *“elementary and grievous failure”* *Meadow v GMC* at [2007 1 All ER 1, being *“sufficiently serious to call for the opprobrium that inevitably attaches to a disciplinary offence”*, *Preiss v GDC* [2001] 1 WLR 1926 at [28].
20. The legal adviser reminded the Committee of *CHRE v NMC & Grant* [2011] EWHC 927 (Admin) , *R (on the application of Cohen) v. General Medical Council* [2008] EWHC 581 (Admin), the Fifth Report from The Shipman Inquiry (9 December 2004) and in *Nicholas-Pillai v. General Medical Council* [2009] EWHC 1048 (Admin). Public interest considerations demand that the Committee considers the protection of patients, maintaining public confidence in the profession and declaring and upholding proper standards of behaviour. Public protection and public confidence in the profession are central to the

impairment test. S 13 D of the Opticians Act 1989 provides that impairment can be shown by virtue of a criminal conviction. Impairment means current impairment, *i.e.* impairment at the time of the fitness to practise hearing.

21. The Committee accepted the advice of the legal adviser.

Determination on conviction and impairment

22. The Committee carefully considered the evidence before it and made the following findings.
23. The Committee determined that the Registrant is impaired on the ground of his convictions.
24. The Committee determined that any criminal conviction is to be taken seriously. The Committee noted that the Registrant had been convicted of the possession of several still and moving indecent images of children including one category A image, the most serious classification. The Committee found that members of the optical profession would find the facts of the conviction “*deplorable*” and “*sufficiently serious to call for the opprobrium that inevitably attaches to a disciplinary offence*”.
25. The Registrant had in the past engaged in conduct that resulted in criminal convictions. The nature of those convictions are such that the public would be rightly outraged were the Registrant’s fitness to practise not found to be impaired. The conviction fulfils the grounds identified in *Grant*, namely that public confidence in the profession, and the need to uphold proper standards, are clearly engaged.
26. The Committee noted that the Registrant’s actions raise issues of both patient safety and wider public trust and confidence in the profession. The conduct in question is attitudinal in nature, and therefore more difficult to remediate. The Committee gave careful consideration to whether the behaviour is remediable, whether it has in fact been remedied, and whether it is likely to be repeated. In this case, there have been six convictions relating to still and moving images of a sexual nature. The Registrant is subject to a SHPO of ten years, which

restricts contact with children unless considerable preventative conditions are in place. The Committee determined that this represents an ongoing risk to younger patients.

27. The Committee had not seen any evidence of remediation. On the contrary, the terms of the court order indicated that the courts themselves considered there to be a longer-term risk that must be managed. The Committee concluded that the risk to the public remains in place. The Committee therefore determined that the Registrant is currently impaired on the ground of public protection.
28. On a separate and stand-alone basis, mindful of the nature of the misconduct, the Committee considered the wider public interest (maintaining public confidence and upholding professional standards) also requires a finding of current impairment, because, irrespective of any future risk of harm, a finding of impairment is necessary to mark the seriousness of the breach and thereby maintain public confidence and promote professional standards.
29. The Committee therefore also finds the Registrant's current fitness to practise to be impaired on public interest grounds.

Sanction

30. The parties' agreed position in the APD Report was:

Having regard to the Council's Indicative Sanctions Guidance, the Council and the Registrant agree that the appropriate and proportionate sanction is erasure. The parties agree that the Registrant's conduct is fundamentally incompatible with registered practise and this sanction is appropriate and proportionate.

Both parties made oral submissions consistent with the requirement for erasure.

31. The legal adviser gave advice on the purpose of sanctions, proportionality, the hierarchical approach to the sanctions available to the Committee, the public interest and weighing the interest of the Registrant. He also advised the

Committee to take note of the relevant sections of the Hearings and Indicative Sanctions Guidance, revised November 2021 (the Guidance). The Committee accepted the advice of the legal adviser.

32. The Committee considered the available sanctions in ascending order from the least restrictive, take no action, to the most restrictive, erasure, in order to identify the appropriate and proportionate outcome commensurate with the facts of the Registrant's case.
33. In relation to mitigating factors, the Committee noted that the Registrant, had pleaded guilty to the offences, and had not attempted to minimise his conduct, he had engaged with the GOC and the APD Report. Further he had instructed a psychosexual professional all of which indicated that the Registrant had some insight into the serious nature of his actions. In relation to aggravating factors, the Committee noted that the Registrant had been convicted of six offences including possession of the following indecent images:
 - a. Category A:
 - 1 moving image, the subject matter of which was particularly serious.
 - b. Category B:-
 - 1 still image.
 - 45 moving images.
 - c. Category C:
 - 4 still images.
 - 6 moving images.

A total: 57 indecent images.

34. The Committee noted that the Hearings and the Guidance at 22.2 states that *"possession of an indecent photograph or pseudo-photograph of a child is illegal and regarded as morally reprehensible"*.

35. The Committee was minded that outcomes are guided by the overarching objective of the Council of protecting the health, safety, and wellbeing of the public, maintaining public confidence in the profession, and upholding proper professional standards. Sanctions are not intended to be punitive, but rather to ensure public protection and maintain trust in the regulatory process. The Committee was aware that any sanction must be necessary, proportionate and no more restrictive than required to address the issues and protect the public interest. The Committee had regard to the Guidance.
36. The Committee considered that the Registrant's actions were too serious to either take no action or to be dealt with by a financial penalty. On the evidence and the APD Report following analysis of the Registrant's actions there remains a risk to public safety.
37. The Committee moved on to consider conditional registration. The Committee again considered that the gravamen of the convictions were so serious that conditions would be inappropriate. Further the Committee considered that due to the SHPO and the practicalities associated with children visiting an optical practice, conditions would be impractical, inappropriate and unworkable. As such conditions would not protect the public nor would they uphold standards, or maintain public confidence, in the Registrant, the profession or the Council.
38. The Committee next considered whether suspension would be a proportionate outcome. The Committee noted the Guidance on suspension, at 21.29:

This sanction may be appropriate when some, or all, of the following factors are apparent (this list is not exhaustive):

- a. A serious instance of misconduct where a lesser sanction is not sufficient.*
- b. No evidence of harmful deep-seated personality or attitudinal problems.*
- c. No evidence of repetition of behaviour since incident.*
- d. The Committee is satisfied the registrant has insight and does not pose a significant risk of repeating behaviour.*

e. ...

The Committee noted that the Registrant by virtue of his sentence in September 2024 is subject to a [redacted] Treatment Requirement for a period of 12 months. The Committee further noted that the Registrant is subject to a notification requirement to register with a nominated Police Station for a period of ten years. The Committee noted that the most serious charge in this case involved a category A moving image. The Committee considered these matters to be consistent with the existence of *harmful deep-seated personality or attitudinal problems* and considered that there is an ongoing risk of repetition. The Committee therefore determined that a period of suspension was not appropriate in this case.

39. The Committee went onto consider erasure, and considered 21.35 of the Guidance, cognisant that the Registrant's convictions were marked by:
- a. Serious departure from professional standards: A significant breach of the standards expected of registrants, namely Standards of Practice No. 17;
 - b. Ongoing risk of harm: Creating or contributing to a risk of harm to individuals, either deliberately, recklessly, or through incompetence, especially where there is a continuing risk; and,
 - c. Offences of a Sexual Nature: Including involvement in child sexual abuse material.

The Guidance indicates that erasure is likely to be appropriate when any of the above factors are engaged. The Committee considered all of these factors are present in this case and all are consistent with a requirement for erasure.

40. The Committee noted that 22.3 of the Guidance provides specific guidance for indecent images of children and states that, "*conviction for these offences is a matter of grave concern and it is, therefore, highly likely that the only proportionate sanction will be erasure.*"

41. The Committee considered that the Registrant's actions were fundamentally incompatible with being a registered professional. Consequently the Committee considered that erasure would be the only sanction sufficient to protect patients and satisfy the public interest. The Committee further held that the seriousness of the case was incompatible with ongoing registration.
42. The Committee therefore directs that the Registrar erases Omar Ashad (01-27752) from the Register.

Immediate order

43. The Committee has heard submissions on behalf of the Council and on behalf of the Registrant. Both indicated that an immediate order was appropriate in this case.
44. The legal adviser advised that Immediate Orders can be imposed if necessary for the protection of the public, or in the public interest. The Committee accepted the advice of the legal adviser.
45. The Committee determined, based on its findings, that the Registrant represented a significant risk to the public in the event there is no immediate order in place. The Committee further considered, minded of the seriousness of this case, that an immediate order was otherwise in the public interest. The Committee therefore directs that an immediate order of suspension be imposed to cover the 28 days' appeal period. The substantive sanction will come into effect after the appeals period should an appeal not be lodged.

Revocation of interim order

46. The Committee hereby revokes the interim order of suspension imposed on 04 January 2022.

Chair of the Committee: Louise Fox

A handwritten signature in black ink, appearing to be 'LF' with a flourish.

Signature

Date: 22 August 2025

Registrant: Omer Arshad

Signature

not present but represented

Date: 22 August 2025

FURTHER INFORMATION
Transcript
A full transcript of the hearing will be made available for purchase in due course.
Appeal
Any appeal against an order of the Committee must be lodged with the relevant court within 28 days of the service of this notification. If no appeal is lodged, the order will take effect at the end of that period. The relevant court is shown at section 23G(4)(a)-(c) of the Opticians Act 1989 (as amended).
Professional Standards Authority
<p>This decision will be reported to the Professional Standards Authority (PSA) under the provisions of section 29 of the NHS Reform and Healthcare Professions Act 2002. PSA may refer this case to the High Court of Justice in England and Wales, the Court of Session in Scotland or the High Court of Justice in Northern Ireland as appropriate if they decide that a decision has been insufficient to protect the public and/or should not have been made, and if they consider that referral is desirable for the protection of the public.</p> <p>Where a registrant can appeal against a decision, the Authority has 40 days beginning with the day which is the last day in which you can appeal. Where a registrant cannot appeal against the outcome of a hearing, the Authority's appeal period is 56 days beginning with the day in which notification of the decision was served on you. PSA will notify you promptly of a decision to refer. A letter will be sent by recorded delivery to your registered address (unless PSA has been notified by the GOC of a change of address).</p> <p>Further information about the PSA can be obtained from its website at www.professionalstandards.org.uk or by telephone on 020 7389 8030.</p>
Effect of orders for suspension or erasure
To practise or carry on business as an optometrist or dispensing optician, to take or use a description which implies registration or entitlement to undertake any activity which the law restricts to a registered person, may amount to a criminal offence once an entry in the register has been suspended or erased.
Contact
If you require any further information, please contact the Council's Hearings Manager at Level 29, One Canada Square, London, E14 5AA or by telephone, on 020 7580 3898.

ANNEX A

BEFORE THE FITNESS TO PRACTISE COMMITTEE OF THE GENERAL OPTICAL COUNCIL

GENERAL OPTICAL COUNCIL

and

OMER ARSHAD (01-27752)

AGREED PANEL REPORT

Introduction

1. This is a substantive hearing in respect of Omer Arshad ("the Registrant"), a registered optometrist who first registered with the General Optical Council ("the Council") as an optometrist on 28 October 2013. The Fitness to Practise Committee ("the Committee") are 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 ("AOP").
2. Page numbers included within this document refer to the Council's bundle unless indicated otherwise and are shown in square brackets **[page x]**.

3. The Council's policy in respect of the APD process is addended to this report **[p51-57]**. 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 Committee retains full jurisdiction over the procedure and, save where it would be otherwise appropriate not to do so, the proposed APD is considered at a public hearing. The options available to the Committee are:
- i. To approve the report in its entirety and make the appropriate order(s);
 - ii. To vary the sanction with the agreement of both parties after inviting submissions. If one or both parties disagree with the variation suggested by the Committee, the APD hearing will be vacated, and the matter will be scheduled for a full substantive hearing before a new Committee;
 - iii. To disagree with all or part of the report. In this instance, the Council and Registrant may agree to amend the report in light of the Committee's findings and resubmit this to the same committee at a reconvened hearing, otherwise the APD hearing will be vacated, and the matter will be listed for a full substantive hearing before a new Committee;
 - iv. If either party decides that they no longer want the case to proceed by APD, the current hearing must be immediately concluded by the Committee with no orders being made (unless there is a request for procedural directions from both parties). The matter will then be scheduled for a full substantive hearing before a new Committee.
4. The Registrant is expected to attend and be represented at the APD hearing.

Background

5. The Council's case was served on the Registrant on 31 March 2025.

6. This matter was initially referred to the Council by Surrey Police on 8 December 2021. The Council was informed that the Registrant had been arrested for sexual offences and released on police bail.
7. On 4 January 2022 the Committee imposed an interim order of suspension on the Registrant for a period of 18 months. This interim order was extended for a period of 12 months by the High Court on 4 July 2023 and then further extended for period of 12 months on or around 3 July 2024. The interim order is due to expire on 3 July 2025.
8. The Registrant was subsequently charged and pleaded guilty at Staines Magistrates' Court on 24 May 2024 to six offences of possessing and making indecent images of children, namely category A to C (moving and still) indecent images.
9. The Registrant was committed to Guildford Crown Court for sentence. On 27 September 2024, the Court imposed an 8 month custodial sentence suspended for 24 months with a [redacted] treatment requirement, a rehabilitation activity requirement and unpaid work. The Court further imposed a Sexual Harm Prevention Order ("SHPO") for 10 years [p16 – 18].
10. The SHPO imposed several prohibitions on the Registrant but perhaps most relevant to these proceedings is prohibitions 10, namely that the Registrant is prohibited from [p18]:

"Having any contact or communication with any child under 16 other than

 - i. Such as is inadvertent and not reasonably avoidable in the course of normal daily life;
 - ii. With the consent of child's parents or guardian, who has knowledge of his convictions, and having made aware your managing Police Officer, and children's services for the area in which the child resides.

11. The allegation is set out below.

Allegation

The Council alleges that you, Omer Arshad, a registered optometrist:

- 1. On 24 May 2024 at Staines Magistrates' Court, were convicted of having in your possession on 8 December 2021 indecent photographs, namely 1 Category A moving image of a child, contrary to section 160 of the Criminal Justice Act 1988.*
- 2. On 24 May 2024 at Staines Magistrates' Court, were convicted of having in your possession on 8 December 2021 indecent photographs, namely 1 Category B still image of a child, contrary to section 160 of the Criminal Justice Act 1988.*
- 3. On 24 May 2024 at Staines Magistrates' Court, were convicted of having in your possession on 8 December 2021 indecent photographs, namely 45 Category B moving images of children, contrary to section 160 of the Criminal Justice Act 1988.*
- 4. On 24 May 2024 at Staines Magistrates' Court, were convicted of having in your possession on 8 December 2021 indecent photographs, namely 4 Category C still images of children, contrary to section 160 of the Criminal Justice Act 1988.*
- 5. On 24 May 2024 at Staines Magistrates' Court, were convicted of having in your possession on 8 December 2021 indecent photographs, namely 6 Category C moving images of children, contrary to section 160 of the Criminal Justice Act 1988.*
- 6. On 24 May 2024 at Staines Magistrates' Court, were convicted of making on 8 December 2021 an indecent photograph, namely 1 Category B still image of a child contrary to s.1(1)(a) of the Protection of Children Act 1978.*

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

Nature of the Recommended Disposal

12. Upon the Registrant's admissions and upon the Council and Registrant agreeing to this recommendation, the parties jointly seek and recommend to the Committee that this matter is disposed of by a determination on the following basis:

- i. All of the particulars of the allegations are admitted and found proved;
- ii. That the Registrant's fitness to practise is impaired by reason of criminal convictions; and
- iii. The appropriate and proportionate sanction is erasure.

Relevant Legislation:

13. The procedure for principal hearings before the Fitness to Practice Committee is set out in Rule 46 of the Fitness to Practise Rules ("the Rules"). This hearing is required to be conducted in four stages:

- i. Stage 1 – findings of fact;
- ii. Stage 2 – if the facts have been found proved, have the grounds of impairment alleged under section 13D of the Opticians Act 1989 ("the Act"), by reason of a criminal conviction, been established;
- iii. Stage 3 – if the grounds of impairment alleged under section 13D of the Act have been established, is the Registrant's fitness to practise so impaired; and
- iv. Stage 4 – if the Registrant's fitness to practise is impaired, what is the appropriate sanction, if any.

14. Rule 40(6) of the Rules 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

15. The Registrant was convicted at Staines Magistrates' Court on 24 May 2024 of six offences of possessing and making indecent images of children, namely category A to C (moving and still) indecent images.
16. In support of this allegation, the Council relies on the Certificate of Conviction [p16 – 45].
17. It is therefore submitted that on the basis of the above evidence, findings of fact can be made out, notwithstanding that the Registrant admits the facts against him in their entirety.

Stage 2 and 3: Conviction and Impairment

18. Having regard to the Standards of Practice for Optometrists and Dispensing Opticians, effective from April 2016, the Council and Registrant agree that the Registrant has breached Standard 17 - do not damage the reputation of your profession through your conduct.
19. It is agreed by both the Council and the Registrant that the allegations amount to a serious departure from the standard of practice expected of a competent optometrist.
20. The parties agree that the Registrant has been convicted of criminal offences which fall within the meaning of section 13D(2)(c) of the Act.

Impairment

21. The Committee is reminded that the purpose of Fitness to Practise proceedings is not to punish the Registrant for past wrongdoings but to protect the public from acts of those who are not fit for practice. The committee must look forward and not back. However, in order to form a view as to fitness to practise today, the committee will have to take account of the way in which Registrant has acted in the past: *Meadow v GMC [2007] 1 All ER 1*.

22. Guidance on these issues which the Committee may wish to take into account is contained at pages 22-24, paragraphs 16.1 to 17.8 of the "Hearings and Indicative Sanctions Guidance," December 2021.

23. The Committee will be aware of the volume of case law providing guidance on the considerations involved in determining impairment of fitness to practice. The Council bring the following to the Committee's attention:

The High Court in *CHRE v (1) NMC and (2) Grant [2011] EWHC 927 (Admin)*, considered that an appropriate approach for panels considering impairment might be that which was formulated by Dame Janet Smith in the report to the Fifth Shipman Inquiry:

"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 practice 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".*

24. The Council submits that limbs a) to c) of the test are engaged in this case. The Registrant was found to have made and be in possession of indecent images of children (category A – C). The Council notes that category A is the most serious category of material and involves penetrative sexual activity. It is the Council's view that the nature and seriousness of the criminal convictions are such that he poses a significant risk of harm to child patients. Equally, his conduct has brought the profession into disrepute and is wholly incompatible with the fundamental tenets of the profession.

25. Silber, J set out guidance in *Cohen v General Medical Council [2008] EWHC 581 (Admin)* at paragraph 65:

"It must be highly relevant in determining if a doctor's fitness to practice is impaired that first his or her conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated."

26. In *Cheatle v General Medical Council* [2009] EWHC 645 (Admin), Cranston J at paras [21-22] stated:

"21. There is clear authority that in determining impairment of fitness to practice at the time of the hearing regard must be had to the way the person has acted or failed to act in the past..."

22. In my judgment 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 practice 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 practice medicine without restrictions, or maybe 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 practice is not impaired, despite the misconduct."

27. 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 FTPP 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 FTPP 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 FTPP) impaired;

but Miss Grey submitted that the position in relation to the principal misconduct by Dr Yeong in the present case (i.e. improperly crossing the patient/doctor boundary by entering into a sexual relationship with a patient) is very different. Where a FTPP considers that the case is one where the misconduct consists of violating such a fundamental rule of the professional relationship between medical practitioner and patient and thereby undermining public confidence to the medical profession, a finding of impairment of fitness to practise may be justified on the grounds that it is necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the practitioner and in the profession, in such a case, the efforts made by the medical practitioner in question to address his behaviour for the future may carry very much less weight than in the case where the misconduct consists of clinical errors or incompetence. 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".

28. When considering impairment, the Committee must also have regard to public interest considerations. In *PSA v Nursing and Midwifery Council (Grant)* [2011] EWHC 927, the High Court said that, in deciding whether fitness to practise is impaired, the Committee should ask themselves:

"Not only whether the registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case.

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

- i.* he poses a significant risk of harm to the public, more specifically to child patients;
- ii.* it is necessary in the public interest to make a finding of impairment of fitness to practise to uphold professional standards and public confidence in the profession.

Stage 3: Sanction

30. If a finding of impairment is made, the available sanctions are set out in section 13F (3)(a) – (c) of the Act.
31. 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
32. When deciding on sanction, the Committee should bear in mind that “*orders made by the tribunal are not primarily punitive*” (*Bolton v Law Society* [1994] 1 WLR 512, at para [519]). The first concern for the Committee is, however, public protection with the impact of a sanction on the Registrant being secondary (*PSA v NMC* [2015] EWHC 1887 (Admin)).
33. The Committee will be guided by to the Council’s Hearings and Indicative Sanctions Guidance at paragraph 22.2 and 22.3.
34. The Committee should have proper regard to the Indicative Sanctions Guidance unless the Committee have sound reasons to depart from it – per Lindblom LJ in *PSA v (1) HCPC (2) Doree* [2017] EWCA Civ 319 at paragraph 29.
35. The Committee 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 Committee must take into consideration the interests of the Registrant, which may include the wider public interest in a competent optometrist being permitted to return to practice. The Committee 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.

36. In terms of aggravating features, the nature and seriousness of the convictions, notably for child sexual offences, are likely to lead the Committee to consider taking more serious action.
37. In terms of mitigating features, it can be said that the Registrant pleaded guilty to the offences at the earliest opportunity and has not sought to minimise his conduct.
38. The Council submits that this matter is too serious to take no further action or to impose a fine on the Registrant. Equally, conditional registration would be inappropriate given the nature and seriousness of the criminal convictions and significant risk of harm to child patients. There are no workable conditions that could adequately address this concern.
39. The Council further considers that a period of suspension would not be appropriate or sufficient to protect the public, nor would it be sufficient to uphold public confidence in the profession.
40. Having regard to the Council's Indicative Sanctions Guidance, the Council and the Registrant agree that the appropriate and proportionate sanction is erasure. The parties agree that the Registrant's conduct is fundamentally incompatible with registered practise and this sanction is appropriate and proportionate.

Immediate Order

41. The Council and the Registrant agree that, should the Committee accept the recommendation for disposal, it is appropriate to impose an immediate order as it is necessary to do so to protect the public and it is otherwise in the public interest.

Conclusion

42. The Council respectfully reserves the right to make further submissions orally at the hearing.

General Optical Council

Date: 11 June 2025

On behalf of the Registrant: Scott Shadbolt, Head of Professional Discipline, Association of Optometrists (Mr Arshad's Legal Representative)

Date: 20 June 2025