

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

GENERAL OPTICAL COUNCIL

F(23)17

AND

**BHAVIK GANDHI
(01-32156)**

**DETERMINATION OF A SUBSTANTIVE HEARING
AGREED PANEL DISPOSAL (APD)
26 SEPTEMBER 2023**

Committee Members:	Ms Jayne Wheat (Chair/Lay) Mr Mark McLaren (Lay) Mr Ubaidul Hoque (Lay) Mr Kamlesh Gohil (Optometrist) Ms Sanna Nasrullah (Optometrist)
Legal adviser:	Ms Aminah Khan
GOC Presenting Officer:	Mr Matthew Corrie
Registrant:	Present and represented
Registrant representative:	Mr Kevin Saunders Ms Katie Holland - (AOP)
Hearings Officer:	Ms Abby Strong-Perrin
Facts found proved:	Particulars 1 and 2
Facts not found proved:	None
Misconduct:	Found
Impairment:	Impaired
Sanction:	10-month suspension order (Without Review)
Immediate order:	No

ALLEGATION

The Council alleges that you, Bhavik Gandhi, a registered Optometrist:

- 1. Between March 2021 and April 2022, while working at REDACTED; you made 14 separate false claims to your retail director, as set out in Appendix A, for bonus figures, totalling £2,811.33, to which you were not entitled.*
- 2. Your actions, as set out above were dishonest, in that you knew you were not entitled to the sums you had claimed.*

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

CONSENSUAL PANEL DETERMINATION AGREEMENT

1. At the outset of this hearing, Mr Corrie, on behalf of the GOC, informed the Committee that prior to this hearing a provisional agreement of an Agreed Panel Disposal ('APD') had been reached with regard to this case between the GOC and the Registrant.
2. The agreement, which was put before the Committee within an APD report dated 12 September 2023, sets out the Registrant's full admissions to the facts alleged in the charges, that the Registrant's actions amounted to misconduct and that the Registrant's 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 of ten months, without a review hearing and with no immediate order.
3. The Committee considered the provisional agreement reached by the parties, as set out in the APD Report, which is at Annex A of this determination.

DETERMINATION

4. Mr Corrie, on behalf of the GOC, outlined the APD process, as set out in the GOC's APD policy, and proposed that this process be followed, as this case met the eligibility and suitability criteria under the policy. The parties had agreed that misconduct and current impairment were established and that the case can appropriately be disposed of by a sanction of 10 months suspension and no review.
5. Mr Corrie highlighted that although the parties were in agreement, the ultimate decision rests with the Committee and there were a number of options open to the

Committee, as set out at paragraph 8.3 of the GOC's APD policy. These options included the Committee disagreeing with parts of the report and varying the sanction, after hearing further submissions.

Background to the Allegation

6. Mr Corrie took the Committee through the background to this case. At the material time the Registrant was working as a resident Optometrist for REDACTED a company within the Specsavers Group.
7. The Council received a referral from REDACTED on 22 June 2022, notifying the GOC that the Registrant had been dismissed from their employment for gross misconduct. The reason for the dismissal was due to REDACTED discovering, following a random spot check, that the Registrant had been inflating his bonus figures, so that he received a higher bonus each month than he was entitled to.
8. REDACTED operated a bonus scheme whereby an Optometrist received 10% of their sales over the threshold of £1,200. This system relied upon the trust of employees, who self-reported their bonus figures for payment, which would be subject to spot checks. REDACTED concerns first came to light in April 2022, when REDACTED spotted a discrepancy in the Registrant's bonus figures. The Registrant had claimed £290.21 for that month, whereas REDACTED had calculated that it ought to have been £57.66.
9. When the Registrant was first asked about the discrepancy, he suggested that he had '*messed up*' and may have mistakenly submitted two months together. REDACTED carried out an investigation which revealed that the Registrant had submitted inflated figures over a period of 14 months, from March 2021 until April 2022. This resulted in an overpayment to the Registrant totalling £2,811.33.
10. The Registrant was interviewed by REDACTED during the disciplinary process. His initial response was that he had miscalculated his bonus, as he was working to the wrong threshold. However, during the interview, he admitted that he had knowingly overclaimed his bonus, as he considered that his salary was not high enough. The Registrant accepted that he had lied and had been dishonest. The Registrant apologised to his colleagues, and he repaid the money he had overclaimed.

Submissions of the parties

11. Mr Corrie submitted that dishonesty had been alleged on the basis that the Registrant knew that he was not entitled to the sums claimed. The Registrant has no fitness to practise history and his colleagues considered him a good member of staff.
12. Mr Corrie invited the Committee to find the facts of the Allegation proved following the Registrant's admissions. Turning to misconduct, Mr Corrie submitted that as this was a case of dishonesty, this was conduct that amounted to serious

misconduct. In relation to impairment, the GOC was satisfied that there would be no repetition of the conduct, although that was a matter for the Committee's judgement.

13. Mr Corrie invited the Committee to find current impairment on the public interest element only, as given there was no risk of repetition, there was no current impairment on the public protection element. However, in respect of the public interest, given that this was serious dishonesty, over a long period, a finding of current impairment was necessary in order to maintain professional standards and confidence in the profession.
14. In relation to sanction, Mr Corrie referred the Committee to the relevant parts of the APD policy and the GOC's Indicative Sanctions Guidance (Updated November 2021) ('the ISG'). Mr Corrie submitted that whilst dishonesty was always considered serious, there was no presumption of erasure and it was for the Committee to decide where the case sat on the spectrum of seriousness, considering all of the circumstances of the case.
15. Mr Corrie submitted that as the GOC considered that the Registrant had remedied his misconduct, there was no necessity for a review hearing. Nor was an immediate order necessary in the circumstances. There was no interim order to revoke.
16. Mr Saunders commended the APD report to the Committee. In relation to misconduct, without seeking to make light of the underlying conduct, and acknowledging that all dishonesty is serious, Mr Saunders highlighted that the overpayment had been repaid by the Registrant and he had made admissions throughout these proceedings. He had co-operated with his regulator. By virtue of his admissions, the Registrant accepted misconduct and current impairment.
17. Mr Saunders invited the Committee to find current impairment on public interest grounds only, which he submitted was the only possible basis for a finding of current impairment in the circumstances. There was no evidence of clinical concerns or that the Registrant posed any risk to the public. Mr Saunders submitted that he was grateful for the GOC's assessment of risk in this case, namely that it was not likely that the Registrant would repeat this conduct.
18. In relation to sanction, Mr Saunders submitted that when considering paragraph 21.29 and the factors in the ISG which indicate when an order of suspension may be appropriate, the Registrant met the relevant factors. There was no evidence of deep-seated attitudinal problems, if anything the evidence shows the contrary. The Registrant had shown remorse, insight, reflection. He had attended three relevant CPD courses designed to address the misconduct. There was no evidence of repetition and there was no risk that the behaviour would be repeated.
19. Mr Saunders submitted that the APD proposed sanction of a suspension for 10 months, reflected the mitigation in the case, namely that the Registrant was of previous good character, had shown insight, remorse, and there has been remediation, with repayment of overclaimed sums and an apology.

20. The Committee heard and accepted the advice of the Legal Adviser who reminded the Committee that although there was an agreed disposal, as set out in the APD report, the Committee was not obliged to follow that outcome and it was for the Committee to form its own independent judgment in respect of each stage of the proceedings. If the Committee disagreed with and was minded to vary the APD report, there should be an opportunity for further submissions from the parties.
21. In relation to misconduct and impairment, the Legal Adviser endorsed the legal analysis set out in the APD report but added reference to the case of *The General Medical Council v Armstrong* [2021] EWHC 1658 (Admin). A number of principles were outlined from this case. Firstly, as dishonesty arises in a variety of contexts and can range in seriousness, Committees must have proper regard to the nature and extent of a practitioner's dishonesty and engage with the weight of the public interest factors tending to a finding of impairment. Further, in cases of significant professional dishonesty, mitigation has a necessarily limited role and the consequences of a finding of dishonesty in the professional regulatory context on the overarching objective, mean that to justify a finding of no impairment, the factors balanced on the other side will need to be extremely strong.
22. In relation to sanction, the advice of the Legal Adviser was for the Committee to take into account the factors on sanction as set out in the ISG; to assess the seriousness of the misconduct; consider any aggravating and mitigating factors; and to consider the range of available sanctions in ascending order of seriousness. Further, the Committee is required to act proportionately by weighing the interests of the registrant against the public interest.

Findings in relation to the facts

23. The Registrant admitted the facts of the Allegation in their entirety. The Committee therefore found the facts proved by reason of the Registrant's admissions pursuant to Rule 40(6) of the of the General Optical Council (Fitness to Practise) Rules 2013 ('the Rules').

Findings in relation to misconduct

24. Although the Committee heard submissions in respect of misconduct and impairment together, it considered and determined the two issues separately and in turn.
25. The Committee proceeded to consider whether the admitted facts, which were found proved, amounted to misconduct, which was serious.
26. The Committee had regard to the documentary evidence before it, including the witness statements of two directors of REDACTED regarding the investigation, the APD report, the material provided by the Registrant and the submissions of the parties.

27. The Committee agreed with the parties' submission, set out within the APD report, that the Registrant's conduct breached the "*Council's Standards of Practice for Optometrists and Dispensing Opticians*," effective from April 2016 and that the Registrant has departed from the following standards:
- Standard 16: Be honest and trustworthy.
 - Standard 17: Do not damage the reputation of your profession through your conduct.
28. The Committee was of the view that the conduct of the Registrant, by persistently submitting inflated bonus claims over a fourteen-month period in breach of his employer's trust, fell far below the standards of what was expected of him and what was proper in the circumstances. The Committee further noted that the conduct persisted until the Registrant was caught by a spot check and if that had not occurred at that time, it may have continued. Further, the motivation was for the Registrant's own financial gain.
29. The Committee concluded that this dishonest conduct is damaging to the reputation of the profession and has brought it into disrepute. Further, fellow professionals would consider it deplorable.
30. Taking everything into account, the Committee was satisfied that the conduct of the Registrant in undertaking sustained and persistent acts of dishonesty, over a prolonged period of 14 consecutive months, breaching his employer's trust, amounted to professional misconduct, which was serious. Therefore, the Committee determined that the facts found proved amount to misconduct.

Findings in relation to current impairment

31. The Committee then went on to consider whether the Registrant's fitness to practise is currently impaired by virtue of his misconduct. Whilst acknowledging the agreement between the GOC and the Registrant, the Committee has exercised its own independent judgement in reaching its decision on impairment.
32. The Committee considered whether the Registrant's conduct was capable of being remediated, whether it had been remediated and whether there is a risk of repetition of the conduct in future. The Committee considered that whilst dishonesty can be difficult to remediate, it was not impossible to do so. The Committee considered the level of insight and remediation that had been demonstrated in this case by the Registrant.
33. The Committee noted that the Registrant had apologised, made admissions at an early stage and had co-operated with his regulator in these proceedings. Further, he had repaid the amount that he had over claimed. The Committee considered the Registrant's reflective statement, his CPD courses that he had undertaken, and the reference provided. The Committee considered that the Registrant had developed insight and undertaken appropriate remediation, by apologising,

repaying the monies back and attending targeted and relevant courses. The Committee further noted that in the witness statements of the REDACTED directors who worked with the Registrant, they considered him to otherwise be a good employee. Furthermore, there were no clinical concerns in this case.

34. In the circumstances, the Committee formed the view that the Registrant had made a serious error of judgment in committing the dishonesty, but that he had since adequately reflected, developed insight and remediated by attending appropriate CPD courses. The Committee therefore agreed with the submissions of the parties that the risk of repetition of similar conduct in future was low and further, that a finding of current impairment was not required on public protection grounds.
35. The Committee next considered the public interest and the guidance in the case of *CHRE v (1) NMC and (2) Grant* [2011] EWHC 927 (admin). In particular, the Committee had regard to the test that was formulated by Dame Janet Smith in the report to the Fifth Shipman Inquiry, as approved in the case of *Grant*, which is as follows:

“Do our findings of fact in respect of misconduct... show that his fitness to practise is impaired in the sense that he:

- (a) Has in the past acted and/or is liable in the future to so 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 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 future.”*

36. The Committee was satisfied that limbs (b)-(d) of this test are engaged in this case, namely that the Registrant's conduct brought the profession into disrepute, breached one of the fundamental tenets of the profession and was dishonest.
37. The Committee had regard to the public interest and considered that the need to uphold professional standards and maintain public confidence in the profession would be undermined if no finding of impairment was made.
38. Therefore, the Committee found that the fitness of Mr Bhavik Gandhi to practise as an optometrist is currently impaired.

Sanction

39. The Committee considered the aggravating and mitigating factors present in this case. In the Committee's view, the aggravating factors are as follows:
- 1) the persistent nature of the dishonesty, which was repeated over a prolonged period of 14 months, and only stopped when the Registrant was caught;
 - 2) the conduct was an abuse of his employer's trust;

- 3) It was carried out for financial gain.
40. The Committee identified the following mitigating factors:
- 1) The Registrant was of previous good character with no fitness to practise history;
 - 2) The Registrant had made admissions from an early stage and co-operated with the GOC;
 - 3) The overpayment had been repaid;
 - 4) The Registrant had demonstrated a good level of insight, reflection, remorse and had apologised.
41. The Committee considered the sanctions available to it from the least necessary to the most severe (no sanction, financial penalty, conditional registration, suspension, erasure).
42. In relation to taking no action, the Committee was of the view that this was not proportionate nor sufficient given the seriousness of the misconduct and the public interest concerns. Further, there were no exceptional circumstances to justify taking no action in any event.
43. The Committee considered the issue of a financial penalty order; however, it was of the view that such an order was not appropriate nor proportionate in the circumstances.
44. The Committee considered the ISG in relation to the imposition of conditions. It was of the view that conditional registration would not be practicable due to the nature of the misconduct, which did not involve identifiable clinical areas of practice in need of assessment or retraining, which conditions often seek to address.
45. The Committee was of the view that it would be difficult to formulate appropriate conditions in a dishonesty case. Further, conditions would not sufficiently mark the seriousness of the misconduct in this case and would not meet the public interest.
46. The Committee concluded that conditions could not be devised which would be appropriate, proportionate, workable or measurable.
47. Next, the Committee considered suspension and had regard to paragraphs 21.29 onwards of the ISG. In particular, the Committee considered the list of factors contained within paragraph 21.29, that indicate that a suspension may be appropriate, which are as follows:

Suspension (maximum 12 months)

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. In cases where the only issue relates to the registrant's health, there is a risk to patient safety if the registrant continued to practise, even under conditions.*

48. The Committee agreed with the submission of Mr Saunders that the above factors of a-d were engaged in this case, with e. not being relevant.
49. The Committee concluded that when considering insight, remediation and the mitigating factors, a suspension order was appropriate to address the public interest concerns that it had identified. It considered that a suspension order would adequately mark the seriousness of the Registrant's conduct, maintain confidence in the profession and declare and uphold proper standards of professional conduct and behaviour.
50. The Committee considered the relevant part of the ISG in relation to erasure, namely paragraph 21.35. The Committee was mindful that whilst dishonesty was serious and could lead to erasure, that was not necessarily the appropriate sanction in every dishonesty case. The Committee concluded that given the Registrant's good level of insight, the remediation that had taken place, and the mitigation that was present, the conduct was not fundamentally incompatible with being a registered professional. Therefore, erasure, in the particular circumstances of this case, would be a disproportionate sanction. This confirmed the view of the Committee that an order of suspension was the appropriate and proportionate sanction to order in this case.
51. The Committee considered the proposed length of the suspension order in the APD report, which was ten months and considered the parties submissions in respect of this. The Committee was satisfied that the proposed length of ten months appropriately balanced the seriousness of the misconduct, in that it persisted over a prolonged period and involved a breach of employer's trust but took into account the mitigating factors in the case. The Committee was satisfied on balance that the period proposed of ten months was sufficiently long enough to meet the public interest.
52. Accordingly, the Committee approved the APD report and made an order in the terms agreed by the parties, namely a ten-month suspension order.

Review hearing

53. The Committee *next considered whether a review hearing ought to be held prior to the expiration of this order. The Committee was mindful of paragraph 21.32 of the ISG, which*

states that a review hearing should normally be directed. However, the ISG goes on to state that one of the reasons for this, is the need to the Committee to be satisfied that the Registrant's patients will not be placed at risk by resumption of unrestricted practice.

54. The Committee is minded, in this instance, not to order a review hearing, as it had no concerns regarding the Registrant returning to unrestricted practise and given the Committee's views on the good level of insight and remediation that the Registrant had already demonstrated, a Review hearing was not considered necessary.

Immediate order

55. The Committee considered whether to make an immediate order in this case. It has considered the submissions from Mr Corrie on behalf of the GOC and from Mr Saunders, on behalf of the Registrant, on this issue, who both submitted that an immediate order was not warranted in this case.
56. The Committee has accepted the advice of the Legal Adviser, which was to consider the statutory test in section 13I of the Opticians Act 1989 is met, i.e., whether the making of an order is necessary for the protection of members of the public, otherwise in the public interest or in the best interests of the Registrant.
57. The Committee decided not to impose an immediate order, as it was not necessary to protect the members of the public, nor was it otherwise in the public interest or in the best interests of the Registrant. The Committee was satisfied that the public interest was met by the substantive suspension order that is being made by the Committee.

Conclusion

58. For the reasons set out above, the Committee determined to accept the Agreed Panel Disposal as put forward by the parties, without variation.

Revocation of interim order

59. The Committee was informed that there was no interim order made in this case, therefore there is no such order to revoke.

Chair of the Committee: Ms Jayne Wheat

Signature 

Date: 26 September 23

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