

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

**GENERAL OPTICAL COUNCIL**

**F(24)23**

**AND**

**BETHAN JOHN (D-33068)**

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**DETERMINATION OF A SUBSTANTIVE HEARING  
02 DECEMBER 2024**

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<b>Committee Members:</b>	Valerie Paterson (Chair/Lay) Ben Summerskill (Lay) Mark Richards (Lay) Adrian Street (Dispensing Optician) Lesley Reid (Dispensing Optician)
<b>Clinical adviser:</b>	N/A
<b>Legal adviser:</b>	Clare Bunting
<b>GOC Presenting Officer:</b>	David Sadeh
<b>Registrant present/represented:</b>	Present and represented
<b>Registrant representative:</b>	John Graham [Counsel]
<b>Hearings Officer:</b>	Arjeta Shabani
<b>Facts found proved:</b>	Particulars 1, 2 and 3
<b>Facts not found proved:</b>	None
<b>Misconduct and Conviction:</b>	Found
<b>Impairment:</b>	Impaired
<b>Sanction:</b>	Suspension Order for a period of 12 months – With Review
<b>Immediate order:</b>	Yes

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## ALLEGATION

*The Council alleges that you, Ms Bethan John ((D-33068), a registered Dispensing Optician:*

- 1) On or around 28 June 2017, at Cardiff Magistrates' Court, you were convicted of driving a motor vehicle on 11 June 2017 after consuming alcohol that exceeded the prescribed limit, contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988.*
- 2) You failed to declare the conviction set out at 1 above to the Council on your:*
  - a. Application for restoration to the register of dispensing opticians dated:*
    - i. 16 May 2018;*
    - ii. 1 April 2021;*
  - b. Application for retention to the register of dispensing opticians dated:*
    - i. 2 March 2022;*
    - ii. 27 February 2023;*
- 3) Your conduct as set out at 2a and 2b was dishonest.*

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

## AGREED PANEL DETERMINATION DISPOSAL

1. Mr Sadeh on behalf of the General Optical Council (GOC) informed the Committee that a provisional agreement of an Agreed Panel Determination (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 Agreed Panel Disposal (APD) report finalised on 29 November 2024, sets out the Registrant's full admission to the facts alleged, that the Registrant's actions were dishonest, amounted to misconduct and conviction, 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 order for a period of 12 months.
3. Mr Sadeh clarified that a finding of impairment was sought in relation to both the conviction and the misconduct, and further confirmed that the relevant Standards

referred to in the APD Report were those relating to Optometrists and Dispensing Opticians.

4. Mr Sadeh submitted that, whilst of some age, the conviction would bring the profession into disrepute, as the Registrant had breached one of the fundamental tenets of the profession, and the Committee was invited to conclude that the Registrant is currently impaired on public interest grounds in relation to the conviction. Mr Sadeh submitted that if the Committee was not minded to find current impairment in relation to the conviction, it could proceed to conclude the matter on the basis of the alleged dishonesty / misconduct alone as proposed within the report without the need for an adjournment.
5. Mr Sadeh submitted that the alleged dishonesty took place over a not insignificant period and was repeated, demonstrating a pattern of behaviour, over a number of years. Mr Sadeh submitted that dishonest behaviour is to be frowned upon, and the Committee could properly find misconduct as the dishonesty was not isolated and occurred on multiple occasions.
6. Mr Graham on behalf of the Registrant advised the Committee of the stress and anxiety the proceedings have caused the Registrant. It was stated that the Registrant had lost her employment as a result of the regulatory proceedings. However, the Registrant is committed to continuing in the profession in the future.
7. 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 and accepted the advice of the Legal Adviser.

### **DETERMINATION**

8. The Committee considered the hearing bundle of 86 pages, the APD Report dated 29 November 2024 and the APD Policy. The Registrant admitted the facts of the allegation in their entirety. The parties agreed within the APD report that misconduct, conviction and current impairment were established and that the case could appropriately be disposed of by a suspension order for 12 months.
9. The Committee was mindful that the ultimate decision in respect of this matter rests with it, and there were a number of options open to the Committee, as set out at paragraph 8.3 of the GOC's APD policy and paragraph 6 of the Agreed Panel Disposal Report. These options included the Committee disagreeing with parts of the report and varying the sanction, after hearing further submissions.

### **Background to the allegations**

10. Mr A, a Registration Officer employed by the GOC (the Council) provided a witness statement that on 18 September 2023 the Registrant applied for registration as a student Optometrist via an application form received by the

Registrations department. The Registrant made a declaration that on 26 June 2017 she had been convicted at Cardiff Magistrates Court for an offence of driving a motor vehicle with excess alcohol on 11 June 2017. The Council noted that there was a discrepancy on the conviction date, as the Registrant's declaration states the conviction was on 26 June 2017, yet the memorandum of conviction states 28 June 2017.

11. On 13 November 2023, the Council notified the Registrant that her application for admission to the Register as a student Optometrist had been refused. Mr A emailed the Council's Fitness to Practice department to inform them of the declaration. Mr A also confirmed that the Registrant was required to make a declaration during the previous restoration and retention applications she submitted in 2018, 2021, 2022 and 2023.
12. Mr A details that in the Registrant's application dated 16 May 2018 she failed to declare the criminal conviction. In particular, the Registrant marked 'No' under the declaration.
13. Mr A details that the Registrant was further removed from the Register on 9 April 2019.
14. The Registrant made a further application for Registration dated 1 April 2021. Within the application the Registrant failed to declare the criminal conviction.
15. Mr A details that the Registrant completed her yearly annual retention application on 02 March 2022 and 27 February 2023. On both occasions the Registrant failed to declare the criminal conviction.
16. The Council obtained a copy of the criminal conviction signed and dated 18 January 2024 which details that the Registrant appeared at Cardiff Magistrates Court on 28 June 2017 and pleaded guilty to an offence of driving a motor vehicle whilst the proportion of alcohol in her breath exceeded the prescribed limit.
17. The Registrant was sentenced to a financial penalty of [redacted], ordered to pay a surcharge of [redacted] and costs of [redacted]. The Registrant was also disqualified from driving for a period of 12 months.
18. Both parties agree to the proposed form of disposal as set out in the APD Report. The Registrant has had the benefit of legal advice.

#### **Admissions in relation to the particulars of the allegation**

19. The Registrant admitted particulars 1, 2 and 3 of the allegation.

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

20. The Registrant admitted the facts of the Allegation in their entirety. The Committee accepted the advice of the Legal Adviser and found the facts proved

by reason of the Registrant's admissions pursuant to Rule 40(6) of the General Optical Council (Fitness to Practise) Rules 2013 ('the Rules').

21. In addition, Rule 40(3) the Rules states:-

*'Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, shall be conclusive evidence of the offence committed'.*

22. The Committee considered whether the conduct was dishonest and accepted the advice of the Legal Adviser who referred them to the case of *Ivey v Genting Casinos (UK) Lys t/a Crockfords [2017] UKSC 67* which states that when making decisions involving alleged dishonesty, the Committee will need to determine whether the Registrant acted as an honest person would have acted in the circumstances. This means asking two questions:

- a) What did the Registrant know or believe as to the facts and circumstances in which the alleged dishonesty arose.
- b) Given the Registrant's knowledge and belief of the circumstances they were in, was the Registrant's conduct dishonest by the standards of an "ordinary decent person".

23. The Committee found that the Registrant was dishonest by the standards of an 'ordinary decent person' as she knew the declarations not to be true and stated that she failed to declare the conviction as she was fearful of the consequences. The Committee found that the Registrant was intentionally dishonest due to the number of false declarations which the Registrant made over a number of years.

### **Findings in relation to misconduct and conviction**

24. The Committee considered the written submissions provided on behalf of the Council and the Registrant including the APD Report, and the bundle of agreed evidence. It accepted the advice of the Legal Adviser and was referred to the case of *Roylance v GMC [1999]* where misconduct was described as:

*"A falling short by omission or commission of the standards to be expected among [medical practitioners] and such falling short must be serious... It is of course possible for negligent conduct to amount to serious professional conduct, but the negligence must be to a high degree".*

25. The Committee proceeded to consider whether the admitted facts, which were found proved, amounted to misconduct and conviction.

26. Pursuant to rule 40 (3) of the Rule, production of a certificate of conviction shall be conclusive evidence of the offence committed. The Committee will go on to consider whether the Registrant's fitness to practise is impaired by virtue of the criminal conviction.

27. The Committee was mindful of the overarching objective to protect the public including the public interest and was of the view that the facts found proved were

serious, and that the conduct of the Registrant amounted to serious misconduct within the meaning of section 13D(2)(a) of the Act.

28. The Committee agreed with the parties' submission, set out within the APD report, that the Registrant's conduct breached the following paragraphs of the Standards of Practice for Optometrists and Dispensing Opticians (the Standards) effective from April 2016:
- 6. *Be honest and trustworthy;*
  - 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;*
    - 17.3 *Be aware of and comply with the law and regulations that affect your practice, and all the requirements of the General Optical Council.*
29. The Committee found that the misconduct amounts to a serious departure from the standards of practice expected of a competent Dispensing Optician. The Committee noted that the dishonesty took place within the Registrant's professional practice and found that it sought to undermine the purpose of the regulator in protecting the public and upholding professional standards. The Registrant has failed to declare her criminal conviction on a number of occasions which does not demonstrate her being trustworthy and acting with honesty and integrity. The Committee concluded that the conduct and the conviction were damaging to the reputation of the profession and has brought it into disrepute. Further, fellow professionals would consider the actions of the Registrant to be deplorable.
30. In the circumstances, the Committee was satisfied that the conviction and conduct of the Registrant amounted to professional misconduct, which was serious. Therefore, the Committee determined that the facts found proved amounted to misconduct.

### **Findings regarding impairment**

31. The Committee then went on to consider whether the Registrant's fitness to practise is currently impaired by virtue of her conviction and 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 and it accepted advice from the Legal Adviser.
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 the future. The Committee also considered the level of insight and remediation that had been demonstrated in this case by the Registrant.
33. The Committee agreed with the submissions within the APD report that the conduct demonstrated is attitudinal in nature, which if not addressed, raises the

risk of repetition. The Committee noted that the Registrant made admissions and co-operated with the regulator in these proceedings.

34. The Committee considered the public interest and 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 *CHRE v NMC and Grant (2011) EWHC 927 (Admin)*, 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 tenants of the medical profession and/or;*
- d. Has acted in such a way that his/her integrity can no longer be relied upon..”*

35. The Committee was satisfied that limbs (b)-(d) of this test are engaged in this case, namely that the Registrant’s conduct has brought the profession into disrepute, breached one of the fundamental tenets of the profession, and her integrity can no longer be relied upon.
36. The Committee had regard to the public interest and considered that the requirement to uphold professional standards and maintain public confidence in the profession would be undermined if no finding of impairment was made. It reached this decision due to the fact of the criminal conviction and the repeated dishonesty in failing to declare the conviction over a number of years.
37. Therefore, the Committee found that the fitness of the Registrant to practise as a Dispensing Optician is currently impaired.

### **Sanction**

38. The Committee accepted the advice of the Legal Adviser and was aware that 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.
39. The Committee was mindful that it should start with the least severe and only move on to consider the next sanction if the one under consideration does not sufficiently protect the public, promote, and maintain public confidence in the profession and promote and maintain proper professional standards and conduct.

40. The Committee considered the aggravating and mitigating features present in this case. In the Committee's view, the aggravating factor is:

- The failure to declare took place on multiple occasions over several years.

The Committee considered this matter to be of considerable weight in its assessment of the seriousness of the misconduct.

41. The Committee considered the following mitigating factors identified by the defence:

- The Registrant has no fitness to practice history;
- The Registrant recognises her failings, has made admissions and has co-operated with the GOC throughout;
- The lack of any clinical concerns.

The Committee gave some weight to these mitigating factors.

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

43. In relation to taking no action, the Committee was of the view that this was neither proportionate nor sufficient given the seriousness of the misconduct and the public interest concerns. The Committee agreed with the APD report which states at paragraph 64 '*The Registrant's conduct has been a deliberate attempt not to declare the criminal conviction and the Registrant's criminal conviction elevates both the potential and public confidence and reputation concerns*'. Further, there were no exceptional circumstances to justify taking no action.

44. The Committee considered the issue of a financial penalty order; however, it was of the view that such an order was neither appropriate nor proportionate in the circumstances.

45. The Committee considered the Indicative Sanctions Guidance (ISG) in relation to the imposition of conditions. It was of the view that conditional registration would not be practicable or suitable as the allegations do not concern the Registrant's clinical practise. The Committee was of the view that it would be difficult to formulate appropriate conditions in this case. Further, conditions would not sufficiently mark the seriousness of the misconduct and would not meet the public interest.

46. The Committee concluded that conditions could not be devised which would be appropriate, proportionate, or workable.

47. Next, the Committee considered suspension and had regard to paragraphs 21.29 onwards of the ISG. Given the nature and seriousness of the conduct, the Committee concluded that a suspension would be appropriate and a suitable sanction which would adequately mark the seriousness of the conduct and be sufficient to ensure public confidence in the profession and its regulator is maintained.



48. The Committee considered that a 12-month suspension order was reasonable and proportionate in the circumstances of this case. Any lesser sanction would not be sufficient to mark the gravity of the conduct involving repeated dishonest behaviour over a number of years.
49. The Committee noted paragraph 22.4 of the ISG which states:-
- 'There is no blanket rule or presumption that erasure is the appropriate sanction in all cases of dishonesty, although a failure to impose any sanction for dishonesty may be found to be unreasonable in light of the importance of maintaining public confidence in the profession'.*
50. The Committee went on to consider erasure and concluded that it would be disproportionate in the circumstances of this case, particularly given the passage of time since the conviction arose, and the expressed wish of the Registrant to return to the profession in the future.
51. The Committee agreed that it would be appropriate to direct a review of the suspension order to ensure that the Registrant is fit to resume practice, either unrestricted or with conditions, and considered that the reviewing committee may be assisted by the following:-
- A reflective statement addressing professional integrity, insight, remorse and remediation;
  - Evidence of CPD;
  - Testimonials and references.
52. A review hearing will be held between four and six weeks prior to the expiration of this order. The Review Committee will need to be satisfied that the Registrant:
- has fully appreciated the gravity of the offence,
  - has not re-offended and has maintained her skills and knowledge and
  - that the Registrant's patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.
53. Accordingly, the Committee approved the APD report and made an order in the terms agreed by the parties, namely an order for suspension for a period of 12 months.

### **Immediate order**

54. The Committee has heard submissions from Mr Sadeh on behalf of the Council and from Mr Graham on behalf of the Registrant.
55. The Committee considered whether to make an immediate order in this case and had regard to the Hearings and Indicative Sanctions Guidance.
56. The Committee accepted the advice of the Legal Adviser, which was to consider the statutory test in 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 to impose an immediate order, as it was in the public interest given the findings in this particular case.

**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.

**Chair of the Committee: Valerie Paterson**



**Signature ...**

**Date: 2 December 2024**

**Registrant: Bethan John**

**Signature .....present via videoconference..... Date: 2 December 2024**

FURTHER INFORMATION
<b>Transcript</b>
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**

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.

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).

Further information about the PSA can be obtained from its website at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk) or by telephone on 020 7389 8030.

**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.

**ANNEX A**

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

**THE GENERAL OPTICAL COUNCIL**

**-and-**

**BETHAN JOHN (D-33068)**

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**AGREED PANEL DISPOSAL REPORT**

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**Introduction**

1. This is a Substantive Hearing regarding Miss Bethan John ("the Registrant"), a registered Dispensing Optician first registered with the General Optical Council ("the Council") on 4 July 2013.
2. The Notice of Hearing ("NOH") dated 11 September 2024 was sent to the Registrant by email only. The NOH can be found at pages C-E of the Council's bundle. Hereafter, references to the Council's bundle will appear as **[B/X]**.
3. The Registrant faces allegations that her fitness to practise is impaired by reason of her conviction and misconduct. The particulars of allegation can be found at **[B/H]**.
4. The Registrant is represented by Mr Dean Smith, of William Graham Law.

**APD Process**

5. 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 Registrant's representative, before agreeing to dispose of this case by the APD process.
6. The Council's published policy on the APD process is appended to this report. 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 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 open to the FTPC are:

- a. To approve the report in its entirety and make the appropriate order(s);
- b. 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 substantive hearing before a new committee without an agreed report;
- c. To disagree with all or part of the report. In this instance, the Council and the registrant may agree to amend the report in light of the FTPC'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 substantive hearing before a new committee without an agreed report;
- d. 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 substantive hearing before a new committee without an agreed report.

#### **Relevant legislation**

7. The hearing procedure is governed by The Opticians Act 1989 ("the Act") and The General Optical Council (Fitness to Practise) Rules Order of Council 2013 ("the Rules").
8. In accordance with Rule 46 (a) hearing is required to be conducted in three stages:
  - (a) Stage 1 - Findings of fact.
  - (b) Stage 2 - Findings on whether, as a result of the facts found proven, the Registrant's fitness to practise is impaired by reason of his misconduct.
  - (c) Stage 3 – Consideration of the appropriate sanction, if any

#### **Allegation 2 and 3**

8. A witness statement has been provided by Mr <sup>A</sup> [REDACTED], a Registration Officer employed by the Council. [B/1-2]. Mr <sup>A</sup> [REDACTED] details on 18 September 2023, the Registrant applied for registration as a Student Optometrist via an application form, received by the Registrations department. [B/3-10]. The

Registrant made a declaration, namely that on 26 June 2017, she was convicted at Cardiff Magistrates Court for driving a motor vehicle on 11 June 2017 with excess alcohol. [B/1, para 4, B/7]. The Council notes that there is a discrepancy on the conviction date, as the Registrant's declaration states the conviction was on 26 June 2017, yet the date on the Memorandum of Conviction reads 28 June 2017.

9. On 13 November 2023, the Council notified the Registrant that her application for admission to the Register as a student optometrist had been refused. [B/12-13]. Mr <sup>A</sup> [REDACTED], emailed the Council's Fitness to Practice department to inform them of the declaration. Mr <sup>A</sup> [REDACTED] also confirmed that the Registrant was required to make a declaration during the previous restoration and retention applications she submitted in 2018, 2021, 2022 and 2023.
10. Mr <sup>A</sup> [REDACTED] details the Registrant's application dated 16 May 2018. The Registrant failed to declare the criminal conviction. In particular, the Registrant marked "No" under the declaration. [B/18].
11. Mr <sup>A</sup> [REDACTED] details within his witness statement that the Registrant was further removed from the Register on 9 April 2019. [B/1].
12. The Registrant made a further application for Registration dated 1 April 2023. [B/2]. Within the application the Registrant failed to declare the criminal conviction. [B/67].
13. Mr <sup>A</sup> [REDACTED] details that the Registrant completed her yearly annual retention application on 2 March 2022 and 27 February 2023. [B/2]. On both occasions the Registrant failed to declare the criminal conviction. [B/2, B/68-67, B70-71].

#### **Allegation 1**

14. The Council have obtained a copy of the criminal conviction signed and dated 18 January 2024. [B/72-73]. The criminal conviction details that on 28 June 2017 the Registrant appeared at Cardiff Magistrates Court. The Certificate of conviction details that the Registrant pleaded guilty to driving a motor vehicle whilst exceeding the prescribed limit. [B/72].
15. The Registrant was sentenced to a financial penalty of £[REDACTED]. The Registrant was also ordered to pay a surcharge of £[REDACTED] and costs of £[REDACTED]. The Registrant was disqualified from driving for a period of 12 months. [B/72].

#### Conclusion

16. Rule 40 (3) provides;

*“Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, shall be conclusive evidence of the offence committed”*

17. It is respectfully submitted that no such evidence has been or is likely to be relied on by the Registrant in this case in disproving the criminal conviction under Rule 40 (5). The Council therefore respectfully submits that the Committee can and must properly find Allegation 1 proved.

Allegation 3 - Dishonestly

18. The law on dishonesty was clarified in the Supreme Court case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. At paragraph 74, Lord Hughes JSC (with whom other members of the Court agreed) said:

*“These several considerations provide convincing grounds for holding that the second leg of the test propounded in Ghosh does not correctly represent the law and that directions based upon it ought no longer to be given. The test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: see para 62 above. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest”*

19. In short, the Committee must assess the Registrant’s state of mind and then go on to determine, given that assessment, whether the Registrant’s conduct was dishonest by the standards of ordinary decent people. The Council does not have to prove that the Registrant realised that her conduct was, by those standards, dishonest.

20. The Council submit the Registrant submitted inaccurate and untrue declarations as set out above. The Council would submit that the Registrant was aware of criminal conviction but failed to apply her mind to declaring the criminal conviction when required to do so.

21. The evidence suggests that the Registrant has a propensity to make untruthful declarations. It is submitted it was a deliberate intention to mislead and amounts to dishonesty.

#### Conclusion on facts

22. 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"*.

23. The Council submit that facts can be found proved in accordance with the civil standard burden of proof.

#### **Stage 2- Impairment**

24. Stage 2 of any fitness to practise hearing addresses the concept of whether the Registrant's fitness to practise is currently impaired. The Opticians Act 1989 ("The Act") under 13 D (2) provides: *"the Fitness to Practise Committee must determine whether or not the fitness to practise of the person in respect of whom the allegation is made (referred to in this article as "the person concerned") is impaired."*

25. The Act contains no definition of what is meant by impaired fitness to practise. The Council will be inviting the Committee to find impairment in accordance with 13 D (2) of the Act which provides: -

*"The only grounds upon which the fitness to practice of a registered optometrist or registered dispensing optician, or the fitness to undertake training of a student registrant, is "impaired" for the purposes of this act are;*

(a) misconduct.

(c) Conviction

26. Consideration of impairment has to be undertaken in two separate stages. Firstly, the Committee has to consider whether on the facts found proved, there is misconduct. Then, it has to consider whether, as a result, the Registrant's fitness to practise is currently impaired. This approach was explained in the Judgement given by Mr Justice Cranston at paragraph 19 in *Cheatle v GMC* [2009] EWHC 645 (Admin):



*“A Panel must engage in a 2-step process. First, it must decide whether there has been misconduct, deficient professional performance or whether the other circumstances set out in the section are present. Then it must go on to determine whether, as a result, fitness to practise is impaired. But it may be that despite a [practitioner] having been guilty of misconduct, for example, a Panel may decide that his or her fitness to practise is not impaired.”*

#### Step 1: Gateway

#### Misconduct

27. The Council allege the Registrant’s misconduct relates to Allegation 2 set out within the particulars of allegations.

28. Misconduct has most recently been defined in the judgment of Forz Khan v Bar Standards Board [2018] EWHC 2184 (Admin) at paragraph 35 as:

*“behaviour must be “seriously reprehensible” before it can amount to professional misconduct.”*

29. In Meadow v General Medical Council [2007] 1 All ER 1, the Court of Appeal made clear that the “misconduct” should not be viewed as anything less than “serious professional misconduct”. At paragraph 200 Auld LJ said:

*“As to seriousness, Collins J. in Nandi v General Medical Council [2004] EWHC 2317 (Admin), rightly emphasised at [31] 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.”*

30. In Shaw v General Osteopathic Council [2015] EWHC 2721 (Admin), Kerr J indicated how he should approach unacceptable professional conduct. At paragraph 47 he said:

*“It seems to me that Irwin J was, with respect, correct to observe that a charge of unacceptable professional conduct does entail conduct that, to some degree, is morally blameworthy and would convey a degree of opprobrium to the ordinary intelligent citizen”*

31. In *Remedy UK Ltd v General Medical Council* [2010] EWHC 1245 (Admin) the Court reviewed a number of authorities in relation to misconduct and derived a number of principles which included the following at paragraph 37:

*“Misconduct is of two principal kinds. 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 outside the course of professional practice, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession.*

*Misconduct within the first limb need not arise in the context of a doctor exercising his clinical practice, but it must be in the exercise of the doctor’s medical calling. There is no single or simple test for defining when that condition is satisfied.*

*Conduct falls into the second limb if it is dishonourable or disgraceful or attracts some kind of opprobrium; that fact may be sufficient to bring the profession of medicine into disrepute. It matters not whether such conduct is related to the exercise of professional skill.”*

32. The misconduct took place within the course of the Registrant’s professional practice, therefore, within the first limb of the above case of *Remedy*.

33. Lord Clyde in *Roylance v General Medical Council (No.2)* [2000] 1 A.C. 311 at paragraph 35 stated:

35. *“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.....in the particular circumstances.”*

34. The Council submit that the Registrant’s particularised conduct falls far below the standards expected of her as a registered Dispensing Optician. In determining misconduct, the Committee should consider the Council’s Standards for Optometrists and Dispensing Opticians dated April 2016 (“the Standards”). It is submitted that the Registrant breached the following standards:

- i) **Standard 16:** Be honest and trustworthy.
- ii) **Standard 17:** Do not damage the reputation of your profession through your conduct.

35. Standard 16 requires Dispensing Opticians to act with honesty, maintain public trust and confidence in the profession. Standard 16 also sets out a requirement that the Registrant is required not to make false or misleading statements. The Council submit that the Registrant failing to declare her criminal conviction is a misleading statement and that she acted in a manner which failed to maintain public trust and confidence in the profession.
36. Standard 17.1 requires pharmacy professionals conduct whether or not connected to the Registrants professional practice does not damage public confidence in you or your profession. The Council submit that the Registrant obtaining a criminal conviction and then failing to declare the declare the criminal conviction at the relevant declaration points, undermines such principles and therefore does not demonstrate her being trustworthy and acting with honesty and integrity. As such, her behaviour is likely to undermine the trust people have in pharmacy professional's and the profession as a whole.
37. The Council submit that standard 17.3 is engaged. Mr <sup>A</sup> details within his witness statement details the guidance notes which have not changed since 2013. The guidance notes details the requirements on the Registrant in relation to declaring a criminal conviction at the point of Restoration and Retention. The Council submit that the Registrant failed to be aware and comply with the law and regulations which affected her practice *"and all the requirements of the General Optical Council"*.
38. The Council submits that the facts of this case constitute misconduct.
39. The Council submit in relation to the gateway if open as set out above by the Registrant receiving the criminal conviction.

#### **Current Impairment**

40. The Committee must decide, in the case of any registrant, whether or not the requirements as to fitness to practise are met in relation to that registrant.
41. As to the meaning of fitness to practise, in the case of *Zvumunt v GMC* [2008] EWHC 2643 (Admin) Mr Justice Mitting (at para 29) adopted the summary of potential causes of impairment offered by Dame Janet Smith in the Fifth Shipman Inquiry Report (2004, Paragraph 25.50). Dame Janet Smith considered that impairment would arise where a doctor:

*a) presents an actual or potential risk to patients or to the public.*

- b) has brought, or might bring, the profession of pharmacy into disrepute;*
- c) has breached one of the fundamental principles of the profession of pharmacy; or*
- d) shows that the integrity of the registrant can no longer be relied upon.*

42. The test recommended by Dame Janet Smith in the report to the Fifth Shipman Inquiry essentially mirrors the criteria when considering impairment of fitness to practise, and was endorsed in *CHRE v Grant* [2011] EWHC 927 (admin) by Cox J at paragraph 76 as a test equally applicable to other regulatory schemes.

43. In *Cheatle v GMC*, Mr Justice Cranston said this (at Para's 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 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 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"*.

44. Mr Justice set out as guidance in *Cohen v General Medical Council* [2008] EWHC 581 (Admin) at [para 65]:

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

45. The High Court revisited the issue of impairment in the case of CHRE v NMC and Grant EWHC 927 (Admin) where Mrs Justice Cox noted (at Para 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.”*

#### **Submissions on current impairment**

46. In light of the above case law, when considering whether the Registrant’s current fitness to practise is impaired, the Committee should take into consideration the need to maintain public confidence in the profession in addition to maintaining proper standards of conduct.

47. The Council’s case is that the Registrant’s misconduct impairs her current fitness to practise. The Council submit that the Registrant’s conduct particularised within the allegations engages limbs (b) – (d) above.

48. The particularised conduct has the potential to bring the Optical profession into disrepute. The public interest is engaged through the Registrant’s dishonest actions. The Registrant completed various declarations at different years without declaring her criminal conviction. Members of the public are entitled to expect Optical professionals to be honest and trustworthy members of society, and her actions go against that expectation. The Registrant’s actions and behaviour has the potential to undermine the public’s confidence in the profession. The public would be appalled by the Registrant’s actions and would find this conduct reprehensible.

49. The Council submit that the Registrant’s criminal conviction engages the public interest limb. In particular the Registrant is expected to maintain professionalism both inside and outside work and therefore Registrants actions has the ability to damage public confidence in the profession and undermine standards to fellow optical professionals.

50. The Council suggests that registrant’s conduct has failed to promote and maintain proper standards and conduct for members of those professions, thereby breaching one of the fundamental principles of the pharmacy profession.

51. The Council submit that the integrity of the Registrant can no longer be relied upon as a result of her actions. The Registrant's failure to declare the criminal conviction was particularly serious in light of the fact there were repeated declarations made which failed to disclose the criminal convictions both at applications for restoration and retention cycles. The conduct took place over a sustained prolonged period between 2018 to 2023.
52. The Committee's attention is also respectfully drawn to the Council's "Hearings and Indicative Sanctions Guidance" revised edition November 2021. The guidance sets out that when deciding on impairment, in particular paragraph 16 set out at page 12.
53. The Council note that paragraph 17 of the guidance document sets out examples of dishonestly for the Committee to take into consideration.
54. In the event that the Committee find current impairment proved the Council submit it is not clear if the Registrant's particularised conduct can be remediated. The Council submit that the conduct demonstrated is an attitudinal failure, which if not addressed, raises the chances of repetition.
55. In any event the Council submit, a finding of current impairment as a result of the Registrant's misconduct is required in order to uphold the public confidence in the profession.

### **Stage 3 - Sanction**

56. The Committee's powers in relation to sanction are contained within 13F (2) and (3) of the Act. In determining the appropriate sanction, the Council submit that the Committee should consider the options in ascending order.
57. Should the Committee determine that the Registrant's fitness to practise is not impaired, they may issue a warning or advice under 13L (5) of the Act.
58. At the sanction stage, it is submitted that the Committee should have regard to the principles of proportionality and weigh the interests of the public against those of the Registrant. Public interest considerations include protecting the public, maintaining public confidence in the profession, and maintaining proper standards of behaviour.

59. In *Law Society v Brendan John Salsbury* [2008] EWCA Civ 1285 it was held (at paragraph 30) that the statement of the principle relating to sanction for professional misconduct set out in *Bolton v Law Society* (1994) 1 WLR 512 CA (Civ Div) remained good law. The judgment in *Salsbury*, refers to *Bolton*, in which it was held that:

*“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 a part of the price”* (at paragraph 21, *Law Society v Brendan John Salsbury*).

60. The Council’s “Hearings and Indicative Sanctions Guidance” para 21, page 31, sets out that when deciding on sanction, key factors to consider include the public interest and an assessment of mitigating and aggravating factors.. The Committee should give appropriate weight to protecting the public, maintaining public confidence in the profession and maintaining proper standards of behaviour.

61. The aggravating factors in this matter consist of the following:

- The Registrant has received a Criminal Conviction.
- The Registrant failed to declare the Criminal Conviction.
- The failure to declare took place on multiple occasions over several years.

62. The mitigating factors are as follows:

Defence submissions

- The Registrant has no other convictions or cautions other than the one that forms the basis of these allegations against her and has no previous fitness to practise history.
- The Registrant recognises her failings in this case and has cooperated with the GOC throughout and made early admissions.
- The current fitness to practise case arose as a result of the self-declaration made by the Registrant. The original conviction arose from difficult and frightening circumstances outside the Registrant’s control. Notwithstanding this, she accepted her guilt and culpability at an early stage and has complied with the sentence of the court.
- The conviction and sentence upon which this case is predicated occurred a significant time ago and is now classified as a spent conviction. Of course, the Registrant understands and recognises that notwithstanding this, she should have declared it in her various applications for retention and restoration and must do so until such time as the conviction becomes a protected conviction.

- Despite the conviction, the Registrant has performed well and without issue in the Optical setting and has made good progress in her journey to become an Optometrist.
- No patients have been harmed or placed at risk of harm as a result of the Registrant's admittedly, improper and unacceptable conduct.

63. The Committee submit that the sanction imposed should reflect the importance of the public interest, public protection, and the need to maintain proper professional standards.

64. The Council submits that a warning would be insufficient to mark the seriousness of the Registrant's misconduct. The Registrant's conduct has been a deliberate attempt not to declare the criminal conviction and the Registrant's criminal conviction elevates both the potential and public confidence and reputation concerns.

65. The Council submits no conditions of practice are suitable in this matter against the Registrant. This case is not about the Registrant clinical failings or restoring the Registrant to practice in a phased way therefore no conditions of practice which the Council would suggest are appropriate when considering the nature of the allegations.

66. The Committee may consider in light of the above, that the appropriate and proportionate sanction is a period of suspension for 12 months to mark the seriousness of the conduct and to send out a clear message to the public and members of the Optical profession that this type of conduct is not acceptable.

67. The Council has considered removal in this matter, and it is an option to disagree with the Council and is available to the Committee. However, the Council submit that removal would be disproportionate in the circumstances.

68. The Council submit a review is appropriate in this case. The Council submit that the failure to declare at the relevant points was not a "one off" or isolated conduct but instead was a pattern of dishonest behaviour over a sustained period of time. Whilst the Registrant has provided her reasons as to why she behaved in this manner the Council submit that a review will satisfy the Committee that Registrant will not commit further dishonest behaviour in the future and therefore a review will seek to satisfy a reviewing Committee that the Registrant's fitness to practice is no longer impaired.

69. The Council respectfully reserves its position to make further submissions in relation to each stage of the proceedings.



**On behalf of the Council:** David Sadeh, Solicitor

**Date:** 28 November 2024

**On behalf of the Registrant:** W J Graham, Director

**Date:** 29 November 2024

SOLICITOR  
ADVOCATE



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