

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

GENERAL OPTICAL COUNCIL

F(24)28

AND

ANIL RACH (01-42048)

**DETERMINATION OF A SUBSTANTIVE HEARING
3 - 5 February 2025**

Committee Members:	Jayne Wheat (Chair/Lay) Victoria Smith (Lay) Nigel Pilkington (Lay) Denise Connor (Optometrist) Claire Roberts (Optometrist)
Legal adviser:	Aaminah Khan
GOC Presenting Officer:	Jerome Burch
Registrant present/represented:	Yes and represented
Registrant representative:	Emily Mattin
Hearings Officer:	Natasha Bance
Facts found proved:	All
Facts not found proved:	None
Misconduct:	Found
Impairment:	Impaired
Sanction:	Suspension 3 months – Without Review
Immediate order:	No

ALLEGATION (AS AMENDED)

The Council alleges that you, Anil Rach (01-42048 formerly SO-14029) a student optometrist whilst working at Specsavers, [redacted] you:

1. Falsified an online diary appointment in the name of [redacted] for the following appointments dated:
 - a. 21 January 2023 at 13:55;
 - b. 24 January 2023 at 13:15;
 - c. 26 January 2023 at 10:40.
2. Falsified an online diary appointment in the name of [redacted] dated 27 January 2023 at 11:20.
3. Falsified an online diary appointment in the name of [redacted] dated 27 January 2023 at 12:00.
4. Falsified an online diary appointment in the name of [redacted] dated 27 January 2023 at 14:05.
5. Falsified an online diary appointment in the name of [redacted] dated 30 January 2023 at 16:05.
6. Falsified on online diary appointment in the name of [redacted] dated 2 February 2023 at 15:05.
7. Falsified an online diary appointment in the name of [redacted] dated 3 February 2023 at 10:40.
8. Falsified an online diary appointment in the name of [redacted] dated 6 February 2023 at 14:50.
9. Falsified an online diary appointment in the name of [redacted] dated 7 February 2023 at 13:15.
10. Falsified an online diary appointment in the name of [redacted] dated 17 February 2023 at 14:15.
11. Falsified an online diary appointment in the name of [redacted] dated 23 February 2023 at 15:55.
12. Falsified an online diary appointment in the name of [redacted] dated 27 January 2023 at 15:30

13. Falsified an online diary appointment in the name of [redacted] dated 27 February 2023 at 13:15.

14. Falsified an online diary appointment in the name of [redacted] dated 27 February 2023 at 13:55.

15. Falsified an online diary appointment in the name of [redacted] dated 27 February 2023 15:05.

16. Falsified an online diary appointment in the name of [redacted] dated 27 February 2023 at 16:30.

17. Falsified an online diary appointment in the name of [redacted] dated 2 March 2023 at 17:50.

18. Falsified an online diary appointment in the name of [redacted] dated 21 February 2023 at 10:35.

19. Falsified an online diary appointment in the name of [redacted] dated 10 February 2023 at 16:35.

20. Your conduct above was:

- a. Misleading; and/or
- b. Inappropriate; and/or
- b. Dishonest;

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

Preliminary Issues

1. At the outset of the hearing the two optometrist members of the Committee outlined their past connections with Specsavers, which included previously working for them. However, this was a considerable period of time ago, in a different region and both Optometrists confirmed that they did not know any of the individuals involved in this case. Ms Connor also highlighted that she is a College Assessor, but does not assess the region where the Registrant is based. The Committee was satisfied that these matters did not impact the Optometrist members' ability to hear this case fairly and impartially. Furthermore, neither party objected or raised any concerns regarding the Optometrist members sitting on the Committee. Therefore, the case continued with the Committee as constituted.
2. The General Optical Council ('the Council') made an application to amend the originally worded Allegation under Rule 46(20) of The General Optical Council (Fitness to Practise) Rules Order of Council 2013 ('the Rules') to correct two

typographical errors, one to an appointment time and one to a patient name. The Registrant did not oppose the application. The Committee granted the application as it was satisfied that the amendments were appropriate in the circumstances and could be made without injustice.

DETERMINATION

Admissions in relation to the particulars of the Allegation

3. The Registrant admitted particulars 1- 20 of the Allegation. The Committee Chair announced that these particulars had been found proved, by virtue of the Registrant's admissions, pursuant to Rule 46(6) of the Rules.

Background to the Allegations

4. The Registrant registered with the Council as an Optometrist on 23 February 2024. The events which are the subject of the Allegation occurred whilst the Registrant was a student Optometrist undertaking his pre-registration training at Specsavers, [redacted]. The Registrant has no previous fitness to practise history.
5. On 4 April 2023, the Council received an email self-referral from the Registrant, declaring that he had been dismissed from his employment with Specsavers due to gross misconduct. The Registrant had commenced his pre-registration training with Specsavers in [redacted] in or around June 2022. The gross misconduct related to the Registrant falsifying a number of patient appointments over a six week period between 21 January 2023 and 2 March 2023.
6. Concerns had initially been raised by a colleague of the Registrant regarding patient appointments appearing to be fabricated, due to having an unusual name, email address or phone number. The patients named in these appointments would not attend, leaving free time slots in the rolling clinic. The colleague who first noticed this raised the issue with managers and following an investigation it was noted that the Registrant was working on every occasion that false appointments had been booked.
7. The Registrant admitted to his colleagues that he had made the false appointments and he was suspended on 6 March 2023 and a formal disciplinary hearing was held on 24 March 2023, following which he was dismissed on 29 March 2023. The Registrant completed his training with [redacted] Optometrists, [redacted], which is a practice owned by the [redacted].

Findings in relation to the facts

8. The Committee Chair announced that the facts were found proved by virtue of the Registrant's admissions to the Allegation in its entirety. The hearing therefore proceeded to the next stage of misconduct, which the parties agreed could properly be combined with the impairment stage. Although the Committee heard both

misconduct and impairment together, these issues were considered and determined by the Committee separately and in turn.

Misconduct

9. The Committee went on to consider, pursuant to Rule 46(12) of the Rules, whether the facts found proved amounted to misconduct.
10. The Committee had before it documentation from both parties. The bundle submitted on behalf of the Council contained the self-referral from the Registrant to the Council, a witness statement from the store manager with exhibits, including documents from the disciplinary investigation. The Registrant's bundles contained his reflective witness statement, CPD records and reflections upon the CPD undertaken and testimonials.
11. The Registrant gave evidence and was questioned by his representative Ms Mattin and Mr Burch asked a number of questions on behalf of the Council.
12. In summary, the Registrant's evidence was that at the time of events he was completing his pre-registration training whilst working at Specsavers, [redacted] full time, five days a week. It was a busy store, with four test rooms which operated a 'rolling clinic', which meant that the next free Optometrist would take the next waiting patient. The Registrant described that the rolling clinic was always over running, he would have to try and catch up over lunch and he had insufficient time to complete his tasks, which included preparing for visits from the College of Optometrists, adding field results and catching up on referrals. He was also given two additional tasks on top of his usual work, which was to check the triage forms and contact lens stock. When he said he did not have enough time to do the latter, he was given thirty minutes to do so, but this meant he missed out on the weekly staff training session.
13. The Registrant stated that he did get good support when he asked for it, but he was not closely supervised (apart from the first month) and he had to ask for that support. The Registrant described that he was coping at first but it was getting harder and harder. He did not realise how tired and stressed he was until he finished working for Specsavers. The Registrant was asked if he had ever raised these issues with colleagues and he felt that he had spoken to his supervisor about the length of time he had for appointments but that this was not recorded and she did not recall it being raised. He accepted that he had not communicated clearly enough to his employer that he was struggling.
14. The Registrant explained that he created the false appointments because he was struggling with time and after voicing that he was struggling, he had received no support. He wanted to give himself time in the day to catch up with patient notes and prepare for College visits and he did not realise at the time the ramifications of doing what he did, for the business and for colleagues. The Registrant accepted that making false appointments was dishonest and broke the trust of his supervisors and let down his colleagues. He also acknowledged that the public place trust in professionals and his actions could have damaged the reputation of the profession.

15. When asked about the standards which he fell short of, the Registrant stated that as well as being dishonest and damaging the reputation of the profession, he also did not maintain effective boundaries, in that he did not set effective boundaries with his supervisors regarding his workload.
16. The Registrant gave evidence of the reflection and remediation that he had undertaken, including the courses that he had attended. These included a full day course on probity and ethics, where he learnt the importance of being honest and why he needed to admit when things go wrong.
17. The Registrant gave evidence regarding his current role in his [redacted] practice, which he eased himself into and is run very differently to Specsavers. He explained that he had not experienced the same level of pressure as previously, but if he found himself in a similar situation he would be a lot more vocal, open with colleagues and make sure his issues were understood. The Registrant stated that he had learnt from his actions, he was more equipped to deal with pressure now and had learnt how to manage his work.
18. The Committee heard submissions on misconduct from Mr Burch, on behalf of the Council, and from Ms Mattin, on behalf of the Registrant.
19. Mr Burch invited the Committee to find that the facts admitted by the Registrant amounted to misconduct.
20. Mr Burch referred the Committee to the case law on misconduct, including the case of *Roylance v General Medical Council (No.2)* [2000] 1 A.C. 311, where, at paragraph 35, Lord Clyde stated:

“Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed in the particular circumstances.”
21. In determining those standards, Mr Burch referred the Committee to the Council’s “Standards for Optical Students”, effective from April 2016. He submitted that the Registrant has departed from the following standards by virtue of his conduct:
 - Standard 15: Be honest and trustworthy
 - Standard 16: Do not damage the reputation of your profession through your conduct
 - Standard 14: Maintain appropriate boundaries with others
 - Standard 18: Be candid when things have gone wrong
22. Mr Burch reminded the Committee that the falling short of the standards must be serious and, in caselaw, had been regarded by fellow professionals as conduct that was deplorable. He submitted that as the allegations involve dishonesty over several instances over a number of weeks, this amounted to a serious departure from the standards expected of a competent Optometrist.
23. Ms Mattin in her submissions on misconduct reminded the Committee that dishonesty is not a monolithic concept and there was a scale of dishonest conduct that can take various forms. She submitted that there were a number of mitigating

factors in this case, particularly when considering the context in which the Registrant's actions occurred and furthermore misconduct was a high threshold.

24. The Committee heard and accepted the advice of the Legal Adviser, who reminded the Committee that misconduct was a matter for its own independent judgement and no burden or standard of proof applied at this stage. Further, that the Committee needed to consider whether the conduct was sufficiently serious to amount to professional misconduct.

The Committee's Findings on Misconduct

25. In making its findings on misconduct, the Committee had regard to the evidence it had received to date, the submissions made by the parties, and the legal advice given by the Legal Adviser.
26. The Committee considered the Standards for Optical Students and considered that the most relevant standards were 15 (be honest and trustworthy), 16 (bringing the profession into disrepute) and 9 (working collaboratively with colleagues). The Committee was satisfied these standards applied in this case and had been breached by the Registrant's conduct.
27. In relation to all particulars of the Allegation, which had been admitted and found proved, the Committee was satisfied that there had been a falling far short by the Registrant of what was proper in the circumstances, which was serious. The Committee had regard to the nature of the Allegations, namely dishonesty, by falsifying patient appointments, whilst practising as a student Optometrist, which was repeated on numerous occasions over a six week period. Although there was no risk to patients by the Registrant's conduct, the Committee was satisfied that it breached the trust between the Registrant and his employer and colleagues.
28. The Committee was also satisfied that in the circumstances, the Registrant's actions were serious, were damaging to the reputation of the profession and would be considered wholly unacceptable and deplorable by fellow practitioners. Accordingly, the Committee was satisfied that the facts that had been admitted by the Registrant and found proved amounted to misconduct.

Impairment

29. The Committee next considered whether the fitness to practise of the Registrant was currently impaired, as a result of the misconduct found.
30. In his submissions on impairment, Mr Burch referred the Committee to the test that was formulated by Dame Janet Smith in the report to the Fifth Shipman Inquiry, which was approved in the cases of *CHRE v (1) NMC and (2) Grant* [2011] EWHC 927 (Admin) and *Zygmunt v GMC* [2008] EWHC 2643 (Admin). This test indicates that impairment would be found where (in a doctor, but applicable to Optometrists):

- a) the doctor presented a risk to patients,

- b) the doctor had brought the profession into disrepute,
 - c) the doctor had breached one of the fundamental tenets of the profession and
 - d) that the doctor's integrity could not be relied upon.
31. Mr Burch submitted that limbs (b), (c) and (d) of this test are all engaged in this case. Mr Burch acknowledged that the Registrant has undertaken some remediation and provided testimonials. However, Mr Burch submitted that dishonesty was a serious issue which was also an attitudinal one which was not easy to remedy.
32. Mr Burch submitted that, although the Registrant had reflected and carried out remediation, he had not been placed in a similarly pressured or stressful situation and so the Committee could not be reassured that the conduct would not be repeated. Mr Burch highlighted that although the Registrant was a trainee at the time of the conduct, he was relatively more experienced than other trainees due to working in his [redacted] practice.
33. Mr Burch invited the Committee to find that the Registrant remained currently impaired on the personal component. When asked by the Committee Chair regarding the wider public interest, Mr Burch confirmed that the Council's position was that a finding of impairment was also required in order to uphold standards in the profession and public confidence would be undermined if a finding of impairment was not made.
34. Ms Mattin, on behalf of the Registrant, invited the Committee to find that the Registrant was not impaired either on public protection or public interest grounds. Ms Mattin submitted that the Registrant had sufficiently remediated his conduct so as to not pose a significant risk to the public, considering the motive for his conduct, the lack of patient harm, the high level of insight and remediation and the Registrant's remorse.
35. Ms Mattin highlighted that the Registrant was in the infancy of his career, struggling with his workload and acted foolishly. He was seeing more patients than was recommended by the College of Optometrists when in a training position and yet was able to obtain ratings from patients higher than the store average. Ms Mattin submitted that there is no evidence of patient harm and if the false appointments were not made, they would likely have been filled by routine, not urgent patients.
36. In relation to insight, Ms Mattin submitted that the Registrant had demonstrated a high level of insight and had demonstrated remorse. The Registrant had made admissions to his employer and ultimately admitted dishonesty, for which he deserves credit. He has provided detailed reflections and given evidence to the Committee, so that his insight could properly be described as full. In relation to remorse, Ms Mattin highlighted that the Registrant has been candid about his conduct throughout and has not sought to minimise his culpability, showing genuine remorse. Ms Mattin submitted that the Registrant has shown a thorough and consistent commitment to his remediation and professional development. He is highly regarded in his current role, as shown by the references provided.

37. Turning to the public interest, Ms Mattin submitted that it was not necessary to make a finding of impairment in order to uphold the public interest. A fully informed member of the public, who was aware of the particular circumstances of the dishonesty, would not consider it necessary to make a finding of impairment in this case. Ms Mattin submitted that it was also in the public interest to have a safe Optometrist in practice.
38. The Committee heard and accepted the advice of the Legal Adviser who advised the Committee that the question of impairment was a matter for its independent judgement taking into account all of the evidence it has seen and heard so far. She reminded the Committee that a finding of impairment does not automatically follow a finding of misconduct and outlined the relevant considerations set out in the case of *Cohen v GMC* [2008] EWHC 581(Admin), namely whether the conduct is remediable, whether it has been remedied, and whether it is likely to be repeated.
39. The Legal Adviser referred the Committee to the case of *GMC v Armstrong* [2021] EWHC 1658 (Admin), which sets out that dishonesty can arise in a variety of circumstances and in a range of seriousness and that Committees must have proper regard to the nature and extent of the dishonesty and engage with the weight of the public interest factors tending towards a finding of impairment. This case also sets out that, in cases of dishonesty, the impact on public confidence in the profession is not diminished by a low risk of repetition and that the Committee must consider the weight that it puts on personal mitigation as this may have a more limited role in cases of dishonesty. It also sets out that it is a rare or unusual case where dishonesty does not lead to a finding of impairment.

The Committee's findings on impairment

40. In making its findings on current impairment, the Committee had regard to the evidence it had received to date, the submissions made by the parties, and the legal advice given by the Legal Adviser.
41. The Committee firstly considered whether the Registrant's conduct was remediable, whether it had been remedied and whether the conduct is likely to be repeated in future.
42. The Committee noted that the misconduct related to dishonesty, which is more difficult to remediate than other types of misconduct, such as clinical concerns, albeit not impossible to remediate.
43. The Committee turned to consider whether the Registrant's misconduct had been remedied by him since the events took place in 2023. The Committee noted the steps that the Registrant has taken in order to remediate, which include his reflective statements and the significant amount of CPD undertaken, including on probity and ethics. The Committee noted that the Registrant did not delay starting to remediate and started to do so shortly after the events in question.
44. The Committee considered the level of insight demonstrated by the Registrant, in his written reflective statements developed over a period of time and the oral evidence that he gave during this hearing. The Committee was of the view that he

was able to articulate well and reflect in his evidence upon why the misconduct occurred and he gave examples of how he would do matters differently.

45. The Committee was impressed by the Registrant's approach to his remediation and the extent of his reflection, including his approach to his return to work, ensuring that he was supported. Whilst dishonesty is difficult to remediate, the Committee considered that the Registrant had undertaken all of the remediation that he could. Overall, the Committee found that the remediation undertaken by the Registrant does address the misconduct and was adequate.
46. The Committee turned to consider the likelihood of repetition. The Committee had regard to the references from the Registrant's work colleagues, which were positive. The Committee noted that it was now almost two years since the misconduct occurred and there had been no further concerns raised. Although the Registrant was now working in what he regarded as a more supportive practice and had not since been in as pressurised an environment as he had previously, the Committee did not consider this should be held against the Registrant when assessing the risk of repetition. The Committee had been reassured by the evidence of the Registrant that he has learnt from his conduct, he is now a more experienced Optometrist and has remediated, which mitigates the risk should he be placed in a similar position again.
47. In addition, as set out above, the Committee was of the view that the Registrant has reflected, shown genuine remorse, developed adequate insight, and remediated his misconduct as much as can be expected. Accordingly, the Committee determined that the Registrant's risk of repetition is low.
48. Having regard to all of the above, the Committee determined that the Registrant's fitness to practise was not impaired on public protection grounds.
49. The Committee next had regard to public interest considerations and to the case of *CHRE v (1) NMC and (2) Grant* [2011] EWHC 927 (admin), particularly the test that was formulated by Dame Janet Smith in the report to the Fifth Shipman Inquiry. The Committee agreed with the submission of Mr Burch that limbs (b), (c) and (d) of this test are engaged in this case, namely conduct which brings the profession into disrepute, breaches a fundamental tenet of the profession and is dishonest. The Committee considered that these limbs of the test were engaged on the Registrant's past conduct in relation to the misconduct found proved.
50. The Committee considered whether a finding of impairment was necessary on the basis of the wider public interest in order to uphold proper professional standards and public confidence in the profession.
51. The Committee considered the extent and seriousness of the Registrant's dishonesty in respect of the fabricated patient appointments. The Committee acknowledged that there was no financial gain linked to the conduct, rather it was to ease the Registrant's workload, when he was at the training stage of his career. However, notwithstanding this context, this was not an isolated incident and was repeated on numerous occasions over a period of six weeks. In the Committee's

view the dishonesty in this case was serious and systematic, breaching trust of his employer and colleagues, and was a breach of fundamental standards.

52. The Committee was of the view that despite the remediation that had been undertaken by the Registrant, given the seriousness of the conduct, the public would be concerned and public confidence in the profession would be undermined, if a finding of impairment was not made. The Committee determined that it was necessary to make a finding of impairment in this case in order to maintain confidence in the profession and in order to uphold proper professional standards.
53. Accordingly, the Committee found that the Registrant's fitness to practise as an Optometrist is currently impaired on public interest grounds.

Sanction

54. The Committee went on to consider what would be the appropriate and proportionate sanction, if any, to impose in this case. It heard oral submissions from Mr Burch on behalf of the Council and Ms Mattin on behalf of the Registrant. No further evidence was placed before the Committee at this stage of the hearing.
55. Mr Burch reminded the Committee that the purpose of imposing a sanction was the protection of the public, declaring and upholding standards in the profession and maintenance of public confidence in the profession. Furthermore, he stated that sanctions are not intended to be punitive and the reputation of the profession is more important than the fortunes of any individual member, referring to *Bolton v The Law Society* [1994] 1 WLR 512.
56. Mr Burch submitted that the Committee ought to have proper regard to the Council's 'Hearings and Indicative Sanctions Guidance' ('the Guidance') and also the principle of proportionality.
57. Mr Burch stated that an aggravating feature of the case was that there have been findings of dishonesty, which is particularly serious as it may undermine the public's confidence in the profession. In relation to mitigating factors, Mr Burch submitted that these include that no actual harm was caused to any patient, the Registrant has reflected, the positive testimonials, that there is no fitness to practise history and the admissions made.
58. Mr Burch reminded the Committee that it ought to start with consideration of the least restrictive sanction first, which would be taking no further action. However, he submitted that taking no further action, a financial penalty order and a conditions of practice order would all be inappropriate given the nature of the misconduct. Furthermore, he submitted that dishonesty could not be easily addressed by conditions, especially where impairment had only been found on public interest grounds and where the Committee had found that remediation was complete. Mr Burch confirmed that the Council's position was that the appropriate sanction in this case was suspension.

59. Mr Burch referred the Committee to the list of factors in paragraph 21.29 of the Guidance, which indicate when a suspension may be appropriate. He submitted that (a) – (d) in the list all clearly applied and (e) was not relevant.
60. Mr Burch made reference to the paragraphs in the Guidance on indicative sanctions for dishonesty, at paragraphs 22.4 -22.6, highlighting that in cases of dishonesty a Registrant was at risk of being removed from the Register, although there was no blanket rule that erasure would be appropriate in all cases.
61. Mr Burch referred the Committee to paragraph 21.35 of the Guidance, and the list of factors therein which indicate that erasure may be appropriate. However, Mr Burch emphasised that the Council did not consider that erasure would be an appropriate sanction in this case. He submitted that erasure would be appropriate where the conduct was fundamentally incompatible with continued registration, which was not the case given the Committee's earlier findings and the mitigation in favour of the Registrant.
62. Mr Burch submitted that in relation to length of suspension, the Council considered that a period of six months would meet the public interest and he indicated that the Council would not be seeking that an immediate suspension order was made. When asked by the Committee Chair whether the Council had a position on whether a Review hearing ought to be directed, Mr Burch stated that he had no instructions on the point.
63. Ms Mattin, on behalf of the Registrant, submitted that a suspension order would be a disproportionate sanction and further, that the Committee can take the exceptional step of taking no further action in this case. Ms Mattin referred to the quote from Lord Bingham in the case of *R v Kelly (Edward)* [2000] QB 198:

"We must construe 'exceptional' as an ordinary, familiar English adjective, and not as a term of art. It describes a circumstance which is such as to form an exception, which is out of the ordinary course, or unusual, or special, or uncommon. To be exceptional a circumstance need not be unique or unprecedented, or very rare; but it cannot be one that is regularly, or routinely, or normally encountered."
64. Ms Mattin highlighted that in the Guidance, no action may be appropriate where a Registrant had demonstrated considerable insight into their behaviour and has already completed any remedial action that the Committee would otherwise require them to undertake. Ms Mattin submitted that this was consistent with the earlier conclusions of the Committee at the impairment stage. Furthermore, erasure would be disproportionate and draconian.
65. Ms Mattin acknowledged that all dishonesty is necessarily serious. However, in this case the dishonesty was at the lower end of the spectrum; there was no financial motive and the Registrant's purpose was to create extra time in the day to complete his professional duties. Furthermore, the dishonesty arose from the Registrant's inability to cope with his workload, compounded by the early stage of his career and the pressure he was under, which he had not adequately communicated to his supervisors.

66. The Registrant had also, at the time of the dishonesty, failed to comprehend the significance of his actions. Ms Mattin submitted that there was no evidence of harmful deep-seated or attitudinal problems, no patient harm and the Registrant had demonstrated remorse and made early admissions. Furthermore, there is no fitness to practise history and there has been no evidence of repetition in the two years that the Registrant has practised without restriction.
67. In relation to the principle of proportionality, Ms Mattin submitted that a suspension would deprive the right of the Registrant to provide for his [redacted] and have a significant impact upon the [redacted] practice where he now works, as he is one of two Optometrists who runs the myopia clinic for the practice. Ms Mattin argued that the public interest was better served by the Registrant continuing to care for his local community.
68. The Committee accepted the advice of the Legal Adviser, which was in summary, for the Committee to take into account the factors on sanction as set out in the Guidance; 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.
69. In relation to exceptional circumstances, the Legal Adviser referred the Committee to the case of *GMC v Rezk* [2023] EWHC 3228, where it was held that a finding that a doctor has been a diligent, conscientious and professional doctor on a training programme which he was completing in an exemplary fashion was not 'unusual, special or uncommon'. Nor was the fact that the doctor was isolated from family and dealing with the stress and strain of working in intensive care unit during the height of the COVID pandemic, as many other doctors were in that position. However, each case turns on its own facts and whether there were exceptional circumstances would be for the Committee to assess.

The Committee's findings on sanction

70. When considering the most appropriate sanction, if any, to impose in this case, the Committee had regard to all of the evidence and submissions it had heard and the Guidance. The Committee also had regard to its previous findings at the impairment stage.
71. The Committee firstly considered the aggravating and mitigating factors. In the Committee's view, the aggravating factors in this case are as follows:
 - a. the repeated nature of the dishonesty, 21 instances over a period of 6 weeks.
72. The Committee considered that the following mitigating factors were present:
 - a. there was no evidence of harm to patients;
 - b. the Registrant made full admissions at the investigation stage and in these proceedings;

- c. the Registrant has apologised and shown genuine remorse;
 - d. the Registrant has no fitness to practise history and was at an early stage in his career;
 - e. the Registrant has shown a high level of remediation, including reflection, development of insight and positive testimonials.
73. The Committee considered that whilst all dishonesty is serious, it determined that this is at the lower end of the scale of dishonest conduct, in light of the mitigating features as set out above.
74. The Committee next considered the sanctions available to it from the least restrictive to the most severe, starting with no further action.
75. The Committee considered taking no further action as set out in paragraphs 21.3 to 21.8 of the Guidance. The Committee noted that to do so exceptional circumstances would be required and the Guidance states at paragraph 21.3 that,
- ‘Where a registrant’s fitness to practise is impaired, the FtPC would usually take action to protect patients, maintain public confidence in the profession and uphold proper standards of conduct and behaviour.’*
76. The Committee considered the submissions made by Ms Mattin regarding exceptional circumstances and noted that some aspects of the guidance on taking no action applied, for example the complete remediation. However, the Committee concluded that on balance taking no action would not be an appropriate outcome in this case. The Committee had regard to the legal advice and the case law on exceptional circumstances, which describe them as circumstances that are ‘unusual, special or uncommon’. The Committee considered that whilst there was considerable mitigation, as set out above, and some features of the case were not common, such as the extent of the remediation, there were no exceptional circumstances when considering the case as a whole that would justify taking no action. Furthermore, the Committee considered that taking no further action was not proportionate nor sufficient given the seriousness of the case, the nature of the misconduct and the public interest concerns.
77. The Committee considered the issue of a financial penalty order. However, it was of the view that such an order was not appropriate, given that the Registrant’s conduct was not financially motivated and had not resulted in financial gain. It also would not be a sufficient sanction to meet the public interest.
78. The Committee considered the Guidance in relation to the imposition of conditions. At paragraph 21.17 of the guidance it states,
- “Conditions might be most appropriate in cases involving a registrant’s health, performance, or where there is evidence of shortcomings in a specific area or areas of the registrant’s practice.”*
79. The Committee considered that for conditions to be appropriate and workable they would need to address any risks identified in the case. Further, at paragraph 21.19 of the Guidance, it states that,

“The objectives of any conditions placed on the registrant must be relevant to the conduct in question and any risk it presents.”

80. The Committee 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. The Committee could not identify workable conditions that would be relevant to the Registrant’s dishonest conduct. In addition, the Committee was of the view that conditions would not sufficiently mark the serious nature of the Registrant’s misconduct or address the public interest concerns identified. The Committee therefore concluded that conditions could not be devised which would be appropriate, proportionate, workable or measurable in this case.
81. The Committee next considered suspension and had regard to paragraphs 21.29 to 21.31 of the Guidance. 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.*

82. The Committee was of the view that all of the factors listed in paragraph 21.29 were applicable, apart from factor e), which was not relevant in this case. In relation to factor a), this was a serious matter, where a lesser sanction was not sufficient, as set out above.
83. In relation to b), the Committee was of the view that although there were repeated instances of dishonesty, the conduct was not in the Committee’s assessment likely to be attitudinal in nature. The Committee did not find that there is evidence of harmful deep-seated personality or attitudinal problems.
84. In relation to c), there was no evidence of repetition of the behaviour since the incidents.
85. In relation to d), the Committee had earlier found that the Registrant has developed insight and the risk of repetition was low. The Committee was therefore satisfied

that factors indicating that suspension may be appropriate were established in this case.

86. The Committee balanced the mitigating and aggravating factors in the case and considered the principle of proportionality. The Committee was of the view that a suspension order was an appropriate and proportionate sanction 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.
87. The Committee was mindful of the impact of a suspension upon the Registrant, as it would restrict the Registrant's ability to earn an income as an Optometrist. The Committee was satisfied that having regard to the seriousness and nature of the conduct, suspension as a sanction struck the balance correctly between the public interest and the Registrant's interests.
88. The Committee, having found that suspension would be an appropriate and proportionate sanction, was not required to go on to consider erasure. In any event, the Committee considered that the conduct was not fundamentally incompatible with continued registration. The Committee was not of the view that erasure was the only order that would satisfy public interest concerns. It considered that erasure would be disproportionate and unnecessarily punitive in this case, in light of the Committee's assessment that whilst serious this was not at the higher end of the scale and taking into account the significant mitigating factors.
89. The Committee gave consideration to the appropriate length of the order of suspension. It determined that, having balanced the mitigating and aggravating factors against the public interest, it would be proportionate to suspend the Registrant for a period of three months. When considering the appropriate length of order, the Committee had regard to the mitigation, the testimonials, and the impact upon the Registrant. However, the Committee also had regard to the repeated nature of the dishonesty and the need to adequately meet the public interest.
90. In the circumstances, the Committee was of the view that three months was an appropriate and proportionate period of suspension to sufficiently mark the seriousness of the Registrant's conduct, which was unacceptable and to address the public interest concerns it had identified.
91. The Committee considered whether to direct that a review hearing should take place before the end of the period of suspension. The Committee noted that at paragraph 21.32 of the Guidance, it states that a review should normally be directed before an order of suspension is lifted, because the Committee will need to be reassured that the registrant is fit to resume unrestricted practice. The Committee bore in mind that it had found that the Registrant had developed insight and had adequately remediated. A review hearing would not serve any purpose in this regard. The Committee was satisfied that the Registrant would be fit to resume unrestricted practice in three months time and noted that impairment had been found based upon the public interest alone. In the circumstances, the Committee

was not satisfied that it was necessary or appropriate to direct a review hearing before the order of suspension expired.

92. The Committee therefore imposed a suspension order for a period of three months, without a review hearing.

Immediate order

93. The Committee went on to consider whether to impose an immediate order of suspension and invited representations from the parties on this issue.
94. Mr Burch confirmed that the Council was not inviting the Committee to impose an immediate order of suspension under Section 13I of the Opticians Act 1989, as one was not necessary in the circumstances and none of the grounds were met.
95. Ms Mattin agreed with the Council's position and opposed the imposition of an immediate order. Ms Mattin submitted that an immediate order was not necessary given the Committee's findings and the fact that a short period of suspension had been ordered on public interest grounds only. Further, the Registrant has been practising unrestricted for the past 23 months since the conduct and making no immediate order would allow the Registrant time to prepare for his suspension.
96. The Committee accepted the advice of the Legal Adviser, which was that to make an immediate order, the Committee must be satisfied that the statutory test in section 13I of the Opticians Act 1989 is met. The Legal Adviser advised that necessity had been described in caselaw as being more than desirable. The Committee was referred to the relevant section in the Guidance on making an immediate order.

The Committee's decision on an immediate order

97. The Committee considered the statutory test and the parties' submissions. The Committee was mindful that the test for making an immediate order was that 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.
98. The Committee was not satisfied that there was any necessity for an immediate order to protect the public as there were no public safety or clinical concerns regarding the Registrant. He has also been working with patients, with no interim order in place, for the past 23 months since the conduct in question. Furthermore, the Committee had found the risk of repetition to be low and had not directed a Review hearing.
99. The Committee considered whether an immediate order was otherwise in the public interest. Whilst the Committee had found that a sanction of suspension was appropriate in this case to meet the public interest, on balance, the Committee considered that the public interest had been adequately provided for by the three month suspension order itself. The Committee did not consider that it was in the interests of the Registrant to make an immediate order.

100. Therefore, the Committee was not satisfied that the statutory test had been met and decided in the circumstances not to impose an immediate suspension order.

Revocation of interim order

101. There is no interim order to revoke.

Chair of the Committee: Jayne Wheat



Signature

Date: 5 February 2025

Registrant: Anil Rach

Signature *Present remotely and received via email* **Date: 5 February 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 10 Old Bailey, London, EC4M 7NG or, by telephone, on 020 7580 3898.