

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

GENERAL OPTICAL COUNCIL

AND

HUSNAL MURTZA (01-30787)

**DETERMINATION OF A SUBSTANTIVE HEARING
20 AUGUST 2020
AGREED PANEL DISPOSAL (APD)**

Committee Members:	Dr P Ormerod (Chair/Lay) Mr M McLaren (Lay) Ms D Roskilly (Lay) Mr K Gohil (Optometrist) Ms D Ellis (Optometrist)
Legal adviser:	Dr H Helmi
GOC Presenting Officer:	Mr D Taylor
Registrant:	Present and represented
Registrant representative:	Mr S Thomas (Counsel) Ms E Franci (AOP)
Hearings Officer:	Ms A Shabani
Facts found proved:	All
Facts not found proved:	None
Misconduct:	Found
Impairment:	Impaired
Sanction:	Suspension 3 months (Without Review)
Immediate order:	None

AGREED PANEL DISPOSAL

Prior to this hearing a provisional agreement in the form of an Agreed Panel Report (APR) had been reached with regard to this case between the GOC and the Registrant.

The agreement, which was put before the Committee, sets out the Registrant's full admission to the facts alleged in the Allegation, states that the Registrant accepts that his actions amounted to misconduct and that the Registrant's fitness to practise is currently impaired by reason of that misconduct. It is further stated in the agreement that an appropriate sanction in this case would be a 3 month Order of Suspension (without review or immediate order).

The Committee has considered the provisional agreement reached by the parties. That provisional agreement reads as follows:

“AGREED PANEL REPORT

Introduction

1. This is a substantive hearing in respect of Mr Husnal Hamzah Murtza, a registered Optometrist first registered with the General Optical Council (“the Council”) as a student optometrist (SO-9903) on 28 October 2013, and subsequently registered as an optometrist on 26 February 2018. The Fitness to Practise Committee (“FTPC”) meet to consider whether to approve an agreed form of disposal under the Agreed Panel Disposal (“APD”) process. Both parties agree to the proposed form of disposal set out in this report. The Registrant has had the benefit of legal advice from the Association of Optometrists (“the AOP”) before agreeing to dispose of this case by the APD process.
2. The Council's published policy on the APD process is added to this report. As is made clear in that policy, it is a hearing management tool, designed to assist in avoiding full hearings with the calling of evidence where the public protection and public interest objectives of the fitness to practise process would still be met by an agreed outcome. It is not a separate statutory tool or path to a finding of impaired fitness to practise. The FTPC retains a full supervisory jurisdiction over the procedure and, save where it would be otherwise appropriate not to do so, the APD recommendation is considered at a public hearing. The options open to the FTPC are:
 - i. To approve the recommendation and make the appropriate order(s);
 - ii. To vary the sanction with the agreement of both parties
 - iii. To disagree with the recommendation. In this instance, an amended recommendation may be resubmitted at a reconvened APD hearing, or the case may proceed under the usual hearing process.

Background

3. On 8 June 2017, the Council received a referral letter from the Director of Education (“the Director”) at the College of Optometrists (“the College”) relating to the Registrant’s alleged conduct.
4. The allegation is one of misconduct and relates to the Registrant inappropriately and dishonestly presenting incorrect records as evidence during his Stage 2 Assessment whilst he was training as a student optometrist.
5. The Council investigated the matter and on 5 April 2019 prepared an investigation report for the consideration by the Case Examiners. The Registrant submitted representations to the Case Examiners dated 14 April 2019, wherein he admitted he falsified records and that his conduct was dishonest. The Registrant’s representations to the Case Examiners can be found at pages 66-67 of the bundle (hereinafter “B/x”). The Registrant further provided a reflective statement in his representations. The Case Examiners referred the matter to the FTPC on 21 May 2019.
6. In preparing for the hearing, the Council obtained a further witness statement and exhibits from **redacted**, a Senior Assessor at the College who had conducted the Stage 2 Assessment (“the assessment”) on the Registrant. [B/2-19]
7. The Council’s case was served on the registrant on 27 March 2020. [B/1-65]
8. The AOP confirmed that the Registrant admits the facts alleged against him.
9. The Council proposed an APD with the sanction as a 3 month suspension with no review and no immediate order.
10. The AOP confirmed that the Registrant agrees that the allegations constitute misconduct; that his fitness to practise is currently impaired and that the appropriate and proportionate sanction is a 3 month suspension with no review and no immediate order.
11. The AOP have provided the Council with a reflective piece from the Registrant; CET records; and a bundle of testimonials. [B/68-90]
12. There is no interim order in place.
13. The allegation is set out below and located at B/F.

Allegation

The Council alleges that in relation to you, Mr Husnal Hamzah Murtza (01-30787), a registered optometrist, whilst you were training and registered as a student optometrist, you:

1. *On or around 12 April 2017, presented a record(s) as evidence for your Stage 2 Assessment in relation to Patient A purporting that you:
 - a. *Did an initial contact lens assessment and/or fit on 10 November 2016 which was incorrect;**

- b. Did a contact lens aftercare which was incorrect;*
 - c. Did a complete RGP contact lens fit which was incorrect.*
- 2. *On or around 12 April 2017, presented a record(s) as evidence for your Stage 2 Assessment in relation to Patient B, purporting that you:*
 - a. Saw the patient 2 days after initial assessment for the collection of toric contact lenses and/or fit which was incorrect;*
 - b. Did a follow-up aftercare and/or complete toric contact lens fit which was incorrect;*
- 3. *Your action as set out at 1a, 1b, 1c, 2a, and/or 2b above was;*
 - a. Inappropriate; and/or*
 - b. Dishonest in that you knew the record(s) was incorrect;*

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

Nature of the Recommended Disposal

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

- i. All of the particulars of the allegations are admitted and found proved;
- ii. That the particulars of the allegations amount to misconduct;
- iii. That the Registrant's fitness to practise is impaired by reason of misconduct; and
- iv. The appropriate and proportionate sanction is a 3 month suspension with no review and no immediate order.

Law

15. The matter is governed by The Opticians Act 1989 ("the Act") and The General Optical Council (Fitness to Practise) Rules Order of Council 2013 ("the Rules").

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

- i. Stage 1 - Findings of fact;
- ii. Stage 2 - Findings on whether, as a result of the facts found proved, the Registrant's fitness to practise is impaired by reason of misconduct;
- iii. Stage 3 - Consideration of the appropriate sanction, if any.

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

18. More detailed submissions are set out below in respect of each stage.

Stage 1: Factual Findings

19. At the relevant time, the Registrant was a pre-registration optometrist enrolled on the College of Optometrists Scheme for Registration. redacted, a Senior Assessor and Chief OSCE examiner for the College's Scheme, assesses trainees within the workplace against the list of given GOC competencies both in Stage 1 and Stage 2. The Stage 2 assessment requires the trainee to demonstrate maintenance of competence across all 8 competency groups; by assessing their ability to carry out an eye examination on a presbyopic patient, assessing their ability to fit soft contact lenses as well as provide aftercare to a soft lens wearer and by assessing the thirteen overarching Stage 2 elements of competence. [B/2-3]

20. On 12 April 2017, redacted visited the Registrant at redacted in order to conduct the Stage 2 Assessment ("the assessment"). During the assessment, redacted became concerned that the Registrant had not actually seen Patient A on the dates he stated in the RGP records, which consisted of a contact lens fitting record and a contact lens aftercare record that were to be completed by the Registrant during the contact lens direct observation. According to the RGP records, the initial assessment took place on 10 November 2016 and the follow up was on 17 November 2016. However, when redacted cross checked the RGP records with the computer record, logbook, and the diary, there was no record of Patient A being seen by Mr Murtza on 17 November 2016. redacted says it appeared that Mr Murtza had fabricated the RGP records. [B/3-5]

21. At the end of the assessment redacted asked the Registrant if he could explain what happened during the RGP consultation, and he said that he "would just have to face up and accept that he has no evidence to say that the fit was completed and so would have to discount that record." When asked if there could be any explanation as to why it was not in the log book or on the computer, he said no, he could not think of any. [B/9]

22. As a result of the concerns raised by redacted, an investigation was conducted by the College of Optometrists. Mr Murtza provided a statement regarding the Stage 2 Assessment at pages B/32-33. Regarding Patient A, Mr Murtza stated, "the written RGP record which I presented as a fit states that I did an initial assessment on the 10/11/16. This is in actual fact was an aftercare assessment – as on Socrates. On the paper record, I wrote it up as a fit, but no fit/initial assessment was done....Instead what I incorrectly did was saw a patient for an RGP aftercare on the 10/11/17 (sic) and wrote out a paper record as though I did a fit. I did this out of desperation and pressure as I was struggling to find RGP fits and aftercares in time for my assessments." [B/32]

23. redacted was also concerned that Mr Murtza had presented a contact lens toric fitting as being complete at the time of the assessment when in fact, it had not been completed in relation to Patient B. The initial assessment for contact lenses suitability had taken place two days prior to the collection appointment; however, there was no record of an aftercare appointment and therefore the fitting was incomplete. [B/6] In the Registrant's statement for the College's investigation, he stated, "For the toric fit, I saw the patient for the initial assessment on the 20/02/17. I ordered the lenses. But I should have also seen the patient collecting the contact lenses and done a fit and VA on her. And THEN wrote on the paper record that I did the fit and VA. Then I should have seen the patient 2 weeks after the fit and VA check for a follow up aftercare to make this a complete fit. Instead what I incorrectly did not do was I did not see the patient collecting her contact lenses at all. But wrote on the paper records that she did; 2 days after the initial assessment. I wrote down on the paper that the collection was on 22/02/17 which didn't actually take place on that date...I didn't

carry out the post-trial follow up aftercare in time for my assessment which meant that before my assessment, the fit was incomplete..." [B/32]

24. Thus, the Registrant presented inaccurate records as evidence for his Stage 2 assessment which was inappropriate and dishonest in that he knew the records were incorrect.

25. The Registrant admits the facts alleged against them.

Stage 2: Misconduct and Impairment

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

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

27. In the case of *R (on the application of) Remedy UK v General Medical Council [2010] EWHC 1245* at paragraph 37, it was stated:

"First, it may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outwith the course of professional practice itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession."

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

"the need to give it proper weight, observing that in other contexts it has been referred to as 'conduct which would be regarded as deplorable by fellow practitioners'."

29. It is agreed by both the Council and the Registrant that the Registrant's conduct breached the following paragraphs of the GOC Standards of Practice:

Relevant parts of the Standards for Optical Students include:

15. Be honest and trustworthy

16. Do not damage the reputation of your profession through your conduct 18. Be candid when things have gone wrong

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

31. The parties agree that the Registrant's inappropriate and dishonest behaviour of presenting false records as evidence during his Stage 2 Assessment amounts to misconduct within the meaning of section 13D(2)(a) of the Act.

Impairment

32. There are a number of authorities from the High Court in appeals against decisions of the General Medical Council's Fitness to Practise Panels, where the Panel has found a doctor's fitness to practise to be impaired. These authorities discussed the way in which regulatory committees should approach impairment in this case at the second stage.

33. They are:

- *Cohen v GMC [2008] EWHC 581 (Admin)*;
- *Zygmunt v GMC [2008] EWHC 2643 (Admin)*;
- *Cheatle v GMC [2009] EWHC 645 (Admin)*;
- *Yeong v GMC [2009] EWHC 1923 (Admin)*;
- *CHRE v NMC and Grant [2011] EWHC 927 (Admin)*

34. 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 a risk to patients;
- b) has brought the profession into disrepute;
- c) has breached one of the fundamental tenets of the profession;
- d) has acted in such a way that his/her integrity can no longer be relied upon.

35. Factors (b) (c) and (d) are engaged in this case.

36. In *Cheatle v GMC*, Mr Justice Cranston said this (at paragraphs 21 - 22):

21. There is clear authority that in determining impairment of fitness to practise at the time of the hearing regard must be had to the way the person has acted or failed to act in the past As Sir Anthony Clarke MR put it in Meadow v General Medical Council [2006] EWCA Civ 1390 [2007] 1 QB 462:

"In short, the purpose of fitness to practise proceedings is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The FPP thus looks forward not back. However, in order to form a view as to the fitness of a person to practice today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past".

22. In my judgement this means that the context of the doctor's behaviour must be examined. In circumstances where there is misconduct at a particular time, the issue becomes whether that misconduct, in the context of the doctor's behaviour both before the misconduct and to the present time, is such as to mean that his or her fitness to practise is impaired. The doctor's misconduct at a particular time may be so egregious that, looking forward, a panel is persuaded that the doctor is simply not fit to practise medicine without restrictions, or maybe not at all. On the other hand, the

doctor's misconduct may be such that, seen within the context of an otherwise unblemished record, a Fitness to Practice Panel could conclude that, looking forward, his or her fitness to practise is not impaired, despite the misconduct".

37. In *Yeong v GMC [2009]* Mr Justice Sales said (at Para 21):

"It is a corollary of the test to be applied and of the principle that a FTPP is required to look forward rather than backward that a finding of misconduct in the past does not necessarily mean that there is impairment of fitness to practise - a point emphasised in Cohen and Zygmunt...in looking forward the FTPP is required to take account of such matters as the insight of the practitioner into the source of his misconduct, and any remedial steps which have been taken and the risk of recurrence of such misconduct. It is required to have regard to evidence about matter that have arisen since the alleged misconduct occurred".

(At Para 48): "Miss Grey submitted that each of Cohen, Meadow and Azzam was concerned with misconduct by a doctor in the form of clinical errors and incompetence. In relation to such type of misconduct, the question of remedial action taken by the doctor to address his areas of weakness may be highly relevant to the question whether his fitness to practise is currently (i.e. at the time of consideration by a FTPP) impaired; but Miss Grey submitted that the position in relation to the principal misconduct by Dr Yeong in the present case (i.e. improperly crossing the patient/doctor boundary by entering into a sexual relationship with a patient) is very different. Where a FTPP considers that the case is one where the misconduct consists of violating such a fundamental rule of the professional relationship between medical practitioner and patient and thereby undermining public confidence to the medical profession, a finding of impairment of fitness to practise may be justified on the grounds that it is necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the practitioner and in the profession, in such a case, the efforts made by the medical practitioner in question to address his behaviour for the future may carry very much less weight than in the case where the misconduct consists of clinical errors or incompetence. I accept Miss Grey's submissions that the types of cases which were considered in Cohen, Meadow and Azzam fall to be distinguished from the present case on the basis she puts forward".

38. The High Court revisited the issue of impairment in the recent case of *CHRE v NMC and Grant* where Mrs Justice Cox noted (at paragraph 74):

*"In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not **only** whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances."*

39. The parties considered the wider public interest. It considered whether or not a finding of impairment was required as a result of the collective need to maintain confidence in the profession, as well as declaring and upholding standards in the profession. The parties agree that the misconduct of the Registrant was sufficiently serious so as to necessitate a finding of impairment on the grounds of public interest.

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

i. It is necessary in the public interest to make a finding of impairment of fitness to practise in order to uphold professional standards and public confidence in the profession.

Stage 3: Sanction

41. Where the FTPC find that a registrant's fitness to practise is impaired, the powers of the FTPC are listed under section 13F (2) (3) and (4) of the Act. Section (2) states that the FTPC may, if they think fit, give a direction specified in subsection (3).

42. 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

43. Sanctions are not intended to be punitive. Accordingly, matters of personal mitigation carry very much secondary weight. In *Bolton v The Law Society [1994] 1 WLR 512* Bingham LJ said:

"...the reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits but that is part of the price."

44. The FTPC should have proper regard to the Indicative Sanctions Guidance unless the FTPC have sound reasons to depart from it – *per* Lindblom LJ in *PSA v (1) HCPC (2) Doree [2017] EWCA Civ 319* at paragraph 29.

45. The FTPC must have regard to the principle of proportionality. The principle requires that when considering what sanction to impose in order to fulfil the statutory over-arching objective, the FTPC must take into consideration the interests of the Registrant, which may include the wider public interest in a competent optometrist being permitted to return to practice. The FTPC should consider the sanctions available, starting with the least restrictive sanction available, judging whether that sanction will be sufficient to achieve the over-arching objective, and if it will not, moving on to consider the next least restrictive sanction.

46. In terms of aggravating features, the parties have identified the following: 1) dishonest actions in the context to pass more than one competency in a Scheme for Registration work-based assessment; 2) actions risk undermining the integrity of the Scheme for Registration; 3) has the potential of harm to patients if the Registrant had been successful, and 4) admitted his dishonest conduct only when challenged with irrefutable evidence of his wrong doing.

47. In terms of mitigating circumstances, the parties have identified the following: 1) no previous ftp history; 2) early admissions of misconduct; 3) the length of time since the misconduct, combined with the lack of any repetition of it; 4) demonstrated significant insight and reflection as shown in his reflective statement; 5) the young age of the

registrant at the time of the misconduct; 6) no concerns regarding the registrant's clinical competence; 7) numerous positive testimonials; and 6) no actual harm to patients.

48. Having regard to the GOC's Indicative Sanctions Guidance, the parties agree that the appropriate and proportionate sanction is a 3 month suspension with no review and no immediate order.
49. The parties considered and concluded that taking no further action, or a financial penalty order were not proportionate or sufficient given the seriousness and the nature of the misconduct.
50. The parties concluded that conditional registration would not be practicable due to the nature of the misconduct, which did not involve identifiable areas of practice in need of assessment or retraining.
51. The parties next considered suspension and considered paragraph 34 of the indicative sanctions guidance. The parties took into account the fact that dishonesty is a serious matter, and in this case, the dishonesty was for the purpose of passing a competency based assessment.
52. The parties did consider erasure, but was of the view that this would be disproportionate and excessively punitive, in light of the Registrant's insight, the very low risk of repetition and that this was not the only sanction that could protect the public interest in the circumstances of this case. The parties took into account the wider public interest in retaining the services of a committed optician whose contribution to the profession is recognised by both patients and professional colleagues.
53. The parties therefore concluded that a period of suspension is sufficient to address the public interest concerns and to declare and uphold proper standards of conduct and behaviour and maintain confidence in the profession. The parties gave consideration to the length of the order and concluded that 3 months was the appropriate length to address the seriousness of the dishonesty and the public interest concerns it had identified.
54. The parties had regard to whether a review hearing was required, and concluded that a review is not needed given the significant reflection and insight shown and low risk of repetition.
55. The parties considered whether there was a need for an immediate order and agree not to impose an immediate suspension order for the following reasons: previously identified that there was a low risk of repetition, and that there is no risk of patient harm. The parties took into account that the Registrant has continued to practise without restriction. The public interest would not be undermined by not imposing an immediate order of suspension. The public interest is sufficiently addressed by the substantive order imposed.
56. Therefore, the parties agree that a period of suspension is the appropriate sanction. In considering the length of the suspension, although this remains a matter for the Committee it is submitted by the parties that a 3 month suspension with no review and no immediate order is appropriate to reflect the nature of the concerns raised by the case, the registrant's previous history and his acceptance of the allegations against him."

DETERMINATION ON AGREED PANEL DISPOSAL (APD)

The Committee decided to accept the APR.

In addition to the APR the Committee read the hearing bundle, and took into account the GOC'S APD Policy.

The Committee heard and accepted the advice of the legal adviser who gave advice as to the matters to be considered as to each stage, as well as the Committee's powers in respect of an APR.

The Registrant admitted all particulars of the Allegation by way of the APR. The Committee therefore found all factual particulars proved by way of these admissions.

The Committee then went on to consider whether the Registrant's fitness to practise is currently impaired. Whilst acknowledging the agreement between the GOC and the Registrant, the Committee has exercised its own independent judgement in reaching its decision on impairment.

In respect of misconduct, the Committee was aware that misconduct is a matter for its own independent judgment. The Committee agreed that the matters found proved are serious. The Registrant fell far below Standards 15, 16 and 18 of the GOC Standards for Optical Students. The Registrant was dishonest in the course of seeking to obtain a professional qualification for himself, and he did not admit his dishonesty to his assessors when they questioned him initially about his records, which were fabricated. The Committee was satisfied that the matters found proved were so serious as to fall sufficiently below the standards of conduct expected of the Registrant to constitute misconduct.

The Committee then considered whether the Registrant's fitness to practise is currently impaired. The Committee was aware that impairment is a matter for its own independent judgment and that both public protection and the wider public interest should be considered.

The Committee considered the APR in which it is stated that the following limbs, taken from the test of impairment in the case of *Grant*, are said to be "engaged":

- i. that the Registrant brought the profession into disrepute;
- ii. that the Registrant breached a fundamental tenet of the profession;
- iii. that the Registrant acted in the past in such a way that "his...integrity can no longer be relied upon".

The Committee did take into account that relatively young age of the Registrant who was a student at the time, as well as the lapse of time since the incidents. The Committee also took into account the Registrant's written reflections which show considerable insight into his misconduct as well as his reflections on how he would avoid acting in the same way in the future. The Committee read the testimonials including those from within the optometry profession who are aware of this regulatory process and who value him as a professional as well as from those who have employed him since the incidents. His testimonials speak highly of him as a professional and attest to his dishonesty being out of character.

Nevertheless, the Committee was of the view that the misconduct was serious. It involved fabrication of patient records for personal gain, namely in the course of obtaining a professional qualification. He did not admit it when questioned by his assessors. The Committee agreed with the APR that this is not a case from which arose an “unwarranted risk of harm” to patients, as set out in *Grant*. There is no evidence that there is likely to be such a risk in the future.

The Committee also agreed that, in light of the absence of repetition, his considerable remorse, the insight and remediation shown, the risk of repetition is low. However, the Committee was of the view that there is a need to uphold the public interest in light of the misconduct in light of the serious nature of the dishonesty and the fact that the Registrant attempted to conceal it from those assessing his work. The Committee therefore decided that a finding of impairment is required to maintain confidence in the profession and to declare and uphold proper standards.

The Committee was aware that the purpose of sanction in this case is to uphold the public interest, and that any sanction must be proportionate. The Committee took into account the Indicative Sanctions Guidance (ISG) published by the Council.

The Committee considered the sanctions available to it from the least to the most severe. It was aware that it must consider the sanctions in ascending order of severity, and only move upwards if the lesser sanction is insufficient to address the concerns which it has identified.

The Committee considered the APR including the aggravating and mitigating features set out in that document. The Committee decided that no sanction would be inappropriate because this matter is too serious, and the public interest would be undermined. The Committee was of the view that a financial penalty is not appropriate in this case and, in any event, would not address the public interest. The Committee was of the view that conditional registration would be inappropriate because there is no issue with regard to the Registrant’s clinical competency, and that no conditions could be formulated to address the public interest concerns arising out of the dishonesty.

The Committee then considered Suspension and noted that the ISG states that

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

- 1. A serious instance of misconduct but where a lesser sanction is not sufficient;*
- 2. No evidence of harmful deep-seated personality or attitudinal problems;*
- 3. No evidence of repetition of behaviour since incident;*
- 4. The panel is satisfied the registrant has insight and does not pose a significant risk of repeating behaviour...”*

In this case, there is no evidence of any harmful deep-seated personality or attitudinal problems. There is no evidence of repetition since, and the Registrant has considerable insight and the risk of repetition is low. It is for these reasons that the Committee decided that Suspension would be appropriate. In considering the length, the Committee carefully considered the aggravating and mitigating factors, and decided that in light of the strong

mitigating factors, the successful record of practice since the incidents and the insight, remorse and remediation which the Registrant has shown, 3 months would be proportionate and sufficient to give a clear message that the misconduct was unacceptable and would be sufficient to uphold the public interest.

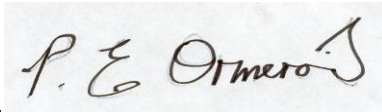
The Committee did consider Erasure but in light of its reasoning in respect of an Order of Suspension, it decided that Erasure would be disproportionate.

The Registrant has already demonstrated considerable insight, undertaken remediation, and presents a low risk of repetition. The purpose of the sanction is to mark the public interest alone and the Committee therefore decided that a review hearing would not be required. The Committee decided that the public interest would be sufficiently protected by the substantive sanction of Suspension for 3 months.

Immediate order

The Committee considered this matter and agreed with the reasons in the APR that an immediate order is not required in this case. This is due to the considerable insight which the Registrant has shown, the low risk of repetition, and the Registrant's successful practice since the incidents, attested to by his testimonials. The Committee decided that the public interest would not be undermined if no immediate order were made.

Chair of the Committee: Pamela Ormerod

Signature  Date: 20 August 2020

Registrant: Husnal Murtza

Signature present via videoconference Date: 20 August 2020

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. PSA is required to make its decision within 40 days of the hearing (or 40 days from the last day on which a registrant can appeal against the decision, if applicable) and will send written confirmation of a decision to refer to registrants on the first working day following a hearing. 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.
European Alert
The General Optical Council is required by Regulation 67 of the European Union (Recognition of Professional Qualifications) Regulations 2015 to inform all European competent authorities of any restrictions or prohibitions on a dispensing optician or an optometrist's practice. 'Competent authority' effectively means the relevant regulator for each EU member state.

The GOC is the competent authority for all opticians registered in the United Kingdom (UK).

If you have been made subject to either a suspension or conditions of practice order (whether interim or substantive), or to an erasure order, we hereby notify you of the following:

- Within 3 days of the Fitness to Practise Committee decision taking effect you will be the subject of an alert sent under article 56a(1) of the Directive;
- You have the right to appeal the decision to issue the alert or to apply for rectification of the decision; and
- You have the right to access remedies in respect of any damage caused by false alerts sent to other competent authorities.

The alert is sent securely via the Internal Market Information (IMI) system. The alert will include the following details:

- Your identity (full name and date of birth);
- Your profession;
- Your GOC registration number;
- The fact that the GOC is the national authority which adopted the decision on the restriction or prohibition of your professional activities;
- The scope of the restriction or prohibition;
- The period during which the restriction or the prohibition applies.

If you wish to appeal the decision to issue this alert then please see the information sheet below. Please note that this relates to your right of appeal against the issuing of the alert – see above regarding your right of appeal against a substantive decision.

A copy of the alert may be obtained via the contact details at the end of this document.

Please see the attached information sheet for further information.

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.

European Alert – Information Sheet

Please see the below Frequently Asked Questions (FAQs) which have been developed to assist you with this process and explain your options.

1. Why has the General Optical Council (GOC) sent this alert?

With effect from 18 January 2016 the GOC is legally required to issue alerts concerning all registrants whose practice has been prohibited or restricted – this includes all determinations of suspension, conditions or erasure issued by a Fitness to Practice Committee (FTPC), whether interim or substantive, and any extensions ordered by the High Court.

This legal requirement is placed on us by article 56a of Directive 2005/36/EC on the recognition of professional qualifications ('the Directive'). This article was adopted into UK legislation via Regulation 67 of the European Union (Recognition of Professional Qualifications) Regulations 2015. All other Member States must also comply with the provisions of the Directive and participate in the alert mechanism.

2. What is the purpose of these alerts?

The purpose of these alerts is to ensure public protection across all Member States. The intention is that each member state will be notified of any restrictions or prohibitions placed on UK registrants so that they are able to check this against their own registers and applicants. We will also be notified of any restrictions or prohibitions handed down to European optical professionals. This will assist us with safeguarding the public and maintaining the integrity of our registers.

3. Why was I not consulted before the alert was sent?

The terms of the Regulations are very strict; the alert must be issued within three days of the panel's decision coming into effect. The notification must be issued at the same time the alert itself is sent.

4. Who will see the alert?

The alert is sent securely via the Internal Market Information (IMI) system to the competent authority in each Member State.

In the UK, statutorily regulated health and social care professionals have to be registered with, and show that they meet the standards of, the relevant regulatory body, in order to practise their profession. The regulators control access to regulated professions, professional and vocational titles and professional activities which require specific qualifications, and are subject to national law. The European Commission term these organisations the 'competent authorities' although the exact duties of the competent authorities vary across member states, they are effectively the regulator (in the same way the GOC is) for each member state.

A competent authority has been defined by the European Commission as: *any authority or body empowered by a Member State specifically to issue or receive training diplomas and other documents or information and to receive the application and take the decision, referred to in Directive 2005/36/EC.*

5. If there is a mistake in the alert can I apply for it to be corrected?

If you notice a mistake in the alert (such as a typing error or incorrect information) then please contact the GOC and we will consider your request to amend the alert. Please note the GOC is not able to remove an alert at your request, see next question for further information.

6. What if I disagree with the alert being sent?

If you disagree with the sending of an alert then you have the right of appeal to the County Court. If you merely consider there to be a mistake within the alert then please refer to the above question.

Please note that the GOC is required to send the alert under European Law. With this in mind, and if you still wish to appeal to the County Court, then you may find the following government website useful: <https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/county-court/>

If you attended the hearing and were given the FTPC decision document by hand then the period for submitting an appeal with the County Court is 28 days from the date you were handed the document. If the FTPC decision document has been sent to you by post, the appeal period is 30 days from the date the decision document was posted to you (there is an additional 2 days allowed to cover postage time).

7. Can the GOC assist me with my appeal against the issuing of an alert?

The GOC is unable to help you with your appeal – we strongly advise that you seek independent legal advice.

8. If I appeal an alert being sent, what effect will that have on the substantive decision made in relation to my registration?

There will be no effect on the decision made by the GOC affecting your registration. This would be an appeal against the issuing of the alert and not the substantive decision – they are two separate things and each have different appeal routes. If you require details on how to appeal the substantive decision (i.e. the erasure, conditions or suspension) then please refer to the separate guidance sheet enclosed with the decision letter regarding your substantive GOC case.

9. If I successfully appeal the issuing of an alert, what will happen to the alert itself?

While your appeal is ongoing the alert will remain on the IMI system but with a qualification to say that an appeal has been lodged.

On appeal the County Court may:

- Dismiss your appeal;
- Allow your appeal and direct the alert be withdrawn or amended accordingly.

If the County Court decide to allow the appeal then the GOC has a duty to delete the alert (or amend as appropriate) within three days of this decision.

10. What happens if the order made by the FTPC is revoked?

When an order is revoked by the FTPC (or the High Court) and that order was the subject of a European alert, we will close the alert within 3 days of the decision to revoke the order. When an alert is closed, all personal data is removed from the alert system.