

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

GENERAL OPTICAL COUNCIL

F(18)20

AND

MR ANIL KUMAR GUPTA (D-11237)

**DETERMINATION OF A SUBSTANTIVE HEARING
29 JULY – 02 AUGUST 2019
RESUMING 7 – 10 JANUARY 2020**

Committee Members:	Ms S Fenoughty (Chair/Lay) Ms C Tetlow (Lay) Mr U Hoque (Lay) Ms C Eva (Dispensing Optician) (29 July to 2 August 2019) Mr M Chatham (Dispensing Optician)
Legal adviser:	Mr W Hoskins
GOC Presenting Officer:	Ms P Dyer
Registrant present/represented:	Present and represented
Registrant representative:	Ms N Evans
Hearings Officer:	Mr T Yates (29 July 2019) Miss J Alvarado (30 -31 July and 01-02 August 2019) Ms A Shabani (7 – 10 January 2020)
Facts found proved:	Found proved 2a, 2b(i-ix),3a,3b and 3c,4a and 4b,5a(i-ii),6a and 6b and 7 in respect of 2b, 3a, 3b, 4a, 4b, 5a(i) and 6b.
Facts not found proved:	Facts not found proved 1a and 1b
Misconduct:	Found
Impairment:	Fitness to Practice currently impaired
Sanction:	Erasure

Immediate order:	Suspension
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ALLEGATION (as amended)

The Council alleges that you, Mr Anil Kumar Gupta, a registered dispensing optician [D-11237], working at [REDACTED] ("the Store"):

1. In or around March 2007, falsely declared to the Association of Optometrists that you had retired when you had not, in that you knowingly:
 - a. Remained on the General Optical Council register for dispensing opticians; and/or
 - b. Continued practising as a dispensing optician from March 2007.
2. Between 20 March 2008 and 4 August 2016 ["the relevant period"] you practised as a dispensing optician in circumstances where you:
 - a. Failed to obtain and maintain professional indemnity insurance cover as required by Part 1, Section 10A of the Opticians Act 1989; and
 - b. Falsely declared to the General Optical Council that you held professional indemnity insurance on one or more of the following occasions during the retention process when you did not:
 - i. In or around March 2008;
 - ii. In or around March 2009;
 - iii. In or around April 2010;
 - iv. In or around February 2011;
 - v. In or around March 2012;
 - vi. In or around March 2013;
 - vii. In or around March 2014;
 - viii. In or around March 2016;
 - ix. In or around March 2015.
3. During the relevant period at 2 above, you:

- a. Knew or ought to have known that in holding yourself out to the public as a registered dispensing optician, you were required to hold professional indemnity insurance cover; and/or
 - b. Treated patients in the knowledge that you did not hold appropriate indemnity insurance cover; and/or
 - c. Failed to take adequate and reasonable steps to ensure you had the appropriate professional indemnity insurance cover.
4. On or around 5 January 2017, you made an application to the Association of Optometrists for professional indemnity insurance cover and failed to declare that you were:
 - a. Under investigation by the General Optical Council for practising without professional indemnity cover; and/or
 - b. The subject of a General Optical Council Interim Suspension Order.
5. On or around 15 February 2017, having received notification from the Association of Optometrists that an application you had made for professional indemnity insurance cover had been declined you:
 - a. Submitted an application for professional indemnity insurance cover to Marketform Limited and:
 - i. In the "Previous Insurance History" section when asked "has any application for this type of Insurance cover ever been declined? / cancelled? / Required any special terms? / None", you selected "None"; and/or
 - ii. In the "Supplementary Information" section you wrote "current I am suspended by the G.O.C until I obtain profession indemnity insurance" [sic]
6. On or around 20 February 2017 you:
 - a. Told a representative of the General Optical Council that you were aware that the Association of Optometrists had declined your application for professional indemnity insurance cover; and

- b. On oath, falsely declared to the General Optical Council Interim Orders Committee that you were not aware that the Association of Optometrists had declined your application for professional indemnity insurance cover.

7. Your actions, in respect of one or more of the following allegations:

- a. 1(a);
- b. 1(b);
- c. 2(b);
- d. 3(a);
- e. 3(b);
- f. 4(a);
- g. 4(b);
- h. 5(a);
- i. 6(b).

were dishonest and/or misleading and/or inappropriate.

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

DETERMINATION

Background to the allegations

The Registrant was first registered as a dispensing optician in 1975. He worked at [REDACTED] in [REDACTED] where his wife, an optometrist, was the NHS England contract holder for the practice. On 10 December 2015, NHS England conducted a primary care contract assurance and post payment verification visit to the practice. During the course of that visit, the Registrant was asked whether he had professional indemnity insurance. He said that he did not hold such insurance. The Registrant was subsequently asked in correspondence to produce evidence of any professional indemnity insurance (PII) that he held. He did not do so and NHS England referred the matter to the General Optical Council (GOC) for investigation.

In response to the GOC investigation, the Registrant produced some insurance documentation which appeared to relate to his shop premises, employer's liability and public liability matters. He did not produce any professional indemnity insurance. It is alleged that between 20 March 2008 and 4 August 2016, he practised as a dispensing optician without PII and he did so knowing that he was required to hold such insurance and without taking adequate and reasonable steps to obtain the same.

In addition to practising without professional indemnity insurance, the Registrant is alleged to have committed a number of acts which were dishonest, misleading and inappropriate. In March 2007, it is said that the Registrant falsely declared to the Association of Optometrists (AOP) that he had retired when he had not in fact retired but continued on the register and in practice.

In January 2017, it is alleged that the Registrant made an application to the AOP for PII cover and failed to declare in his application form, that he was under investigation by the Council for practising without professional indemnity cover and was the subject of an interim suspension order.

On or around 15 February 2017, the Registrant submitted an application for professional indemnity cover to Marketform Limited and in so doing, declared that he had not previously had a request for this type of insurance cover declined/cancelled or offered subject to any special terms. He stated on his application form that he was suspended by the GOC until he obtained professional indemnity insurance. At the time that he made this application, it is alleged that he had received notification that his application to the AOP for PII had been declined.

It is further alleged that on or around 20 February 2017, he told a representative of the GOC, when about to attend a hearing of the Interim Orders Committee, that he was aware that the AOP had declined his application for PII cover when he made the application to Marketform but then, on oath, declared to the Interim Orders

Committee that he was not aware that the AOP had declined his application for PII cover.

Ms Dyer represented the Council. Ms Evans represented the Registrant.

No Case to Answer

At the close of the Council's case, Ms Evans made a submission that there was no case to answer in respect of Particulars 1 and 6 of the Allegation.

In relation to Particular 1, she submitted that this allegation arose out of a letter from the Association of Optometrists (AOP) to Mr Gupta dated 15 February 2017. That letter included the following sentence:

"We also note on reviewing our membership data that in March 2007 you took out retirement membership with the AOP."

Ms Evans pointed out that in an email of 15 August 2017, Mr Gupta had asked the AOP to *"send me the communication regarding this matter when I informed you that I have retired from optics."* That email produced an immediate response from the membership department at the AOP to the following effect:

"Further to our conversation, I can confirm that your membership with the AOP is active and we do not have you on our system as a retired member."

Ms Evans also referred to a letter from the Chief Executive of the AOP dated 6 November 2017, in which she responded to a number of points raised by Mr Gupta. One of those was the point made in the email of 15 August 2017 to which reference has already been made. Beneath the heading of that date, the Chief Executive wrote: *"This was an administrative error and was corrected within 48 hours. We do not consider that this one error constitutes incompetence nor negligence."*

Ms Evans submitted that there had been no other evidence adduced by the Council in support of this allegation and that it was clear from the correspondence that the AOP were acknowledging that the initial suggestion that Mr Gupta was a retired member was mistaken.

In relation to Particular 6, Ms Evans submitted that this allegation depended upon the evidence of Mr Corrie and that Mr Corrie had accepted that he could not remember the precise words of the conversation that he had had with Mr Gupta and that it was possible that he might have been mistaken. Ms Evans submitted that his evidence was therefore not sufficient to establish a case to answer.

Ms Dyer opposed both parts of Ms Evans' application.

In relation to Particular 1, she submitted that the only evidence which the Committee should take into account at this stage was the letter of 15 August 2017 as that letter

had been produced by Mr Corrie, who had been given the letter by Mr Gupta at an Interim Orders hearing. The other correspondence had been included in the bundle at the Registrant's request but did not form part of the Council's case and so should not be considered at this stage.

In relation to Particular 6, she accepted that Mr Corrie had said that he could not remember the exact words of the conversation that he had had with Mr Gupta but that he clearly remembered the gist of that conversation and he had made a contemporaneous note which was included in the bundle of documents before the Committee.

The Legal Adviser reminded the Committee of the test to be applied as set out in *R v Galbraith [1981] 1 WLR 1039*.

In relation to Ms Dyer's submission that only the letter of 15 February 2017 should be considered, he advised that this was to take an overly technical approach. All of the correspondence had been included in the bundle prepared by the Council and no objection was taken to the authenticity of that correspondence. No witness had been called to give oral evidence in relation to this issue and it would be artificial to isolate one letter from the remaining correspondence. The Committee accepted this advice.

Particular 1

The Committee accepted Ms Evans' submission in relation to this allegation. An allegation that a false declaration had been made to the AOP was a serious matter. The Committee noted that Mr Gupta had asked for details of this allegation in his email of 15 August 2017, but no further detail had been provided and no witness with any knowledge of the AOP register had been called by the Council to give evidence in relation to the register and the correspondence. As the evidence stood, the Council's case rested upon an assertion in correspondence to Mr Gupta which he disputed, and which appeared to be later acknowledged as mistaken. The Committee was of the view that this was an insufficient basis upon which to conclude that Mr Gupta had made a false declaration to the AOP. The evidence was too tenuous to enable a committee to find such a serious matter proved on a balance of probabilities.

Particular 6

The Committee did not accept Ms Evans' submission in relation to this allegation. Although Mr Corrie had accepted that he could not remember the precise words of the conversation and that there was a possibility that he was mistaken, he was firm in his recollection of what he maintained was the gist of the conversation that he had had with Mr Gupta and which was inconsistent with what Mr Gupta had later told the Interim Orders Committee, as evidenced by the transcript in the bundle. The

Committee noted that Mr Corrie had thought it advisable to make a contemporaneous note of the gist of this conversation which had been included in the bundle of documents submitted to the Committee.

The Committee was of the view that there was a case to answer in respect of this allegation.

Documentary Evidence

The Committee was provided with a bundle of documents which included documentation relating to the NHS Contract Verification Visit to the practice which the Registrant managed in December 2015, various retention forms submitted by the Registrant to the General Optical Council, various application forms in relation to insurance submitted by the Registrant and a transcript of the Interim Orders hearing which took place on 20 February 2017.

Oral Evidence

The Committee heard evidence from a number of witnesses called on behalf of the Council. Mr Yeslin Gearty, Ms Katri Kadjava and Ms Hannah Doherty gave evidence in relation to the retention process and the retention forms submitted by the Registrant. Ms Rosanna Gilby, a paralegal employed by Messrs Blake Morgan gave evidence of enquiries she had made in relation to insurance policies which the Registrant had identified. All of this evidence was largely formal in nature and was entirely credible.

Ms Vesna Drazic, an ophthalmic adviser for NHS England gave evidence in relation to the Contract Verification Visit that she had carried out on 10 December 2015. She produced the Ophthalmic Contract Visit form created as a result of this visit and also some further correspondence which she had had with the Registrant and his wife. The Committee considered that she gave her evidence in a considered and balanced manner. She acknowledged that her visit had taken place some time ago so that not every detail of her interaction with the Registrant was now present in her mind. She was however assisted by the contemporaneous form created during the visit and email correspondence that had occurred in the early part of 2016. The Committee found her to be a credible and careful witness.

Mr Matthew Corrie, a barrister employed by Messrs Blake Morgan, gave evidence in relation to a conversation he had had with the Registrant at a hearing of the Interim Orders Committee on 20 February 2017. He also produced a contemporaneous note summarising the gist of the conversation he had had with the Registrant outside the hearing room on that day. Mr Corrie accepted that the passage of time inevitably impaired recollection. He also gave his evidence in a careful and balanced way and the Committee found him to be a credible witness.

The Registrant gave oral evidence. The Committee was unable to conclude that he was a reliable witness. The Committee found his evidence to be at times evasive, implausible and on various occasions contradictory. The heart of the Registrant's position in relation to the question of PII was that he had assumed that he was covered by his shop premises or employers liability insurance. The Committee found this a highly implausible assertion. By the time of Ms Drazic's visit at the end of 2015 the Registrant had been in practice as a registered dispensing optician for some 40 years and had managed a number of practices at which his wife was the registered optometrist. The requirement to have in place PII had been an important part of the standards for registered dispensing opticians for many years. The Registrant told the Committee that he began his professional life in a hospital setting and was aware of the need for PII in that setting which was provided by his employers. He also told the Committee that he was aware that locums employed at the practices that he managed needed PII and that this could be provided by the AOP.

The initial difficulty which the Committee had in accepting the Registrant's assertion that he thought that PII was covered by building or employers liability insurance was exacerbated by aspects of the Registrant's evidence which were contradictory. The Committee formed the view that at times the Registrant was giving whatever answer he thought best served his purpose in the moment, without regard to the truthfulness or accuracy of that answer. For example, the Registrant's position depended upon an assumption which he said he made that the insurance policies he had in place included PII. Yet when questioned before the Interim Orders Committee on 20 February 2017 in relation to an insurance policy the Registrant said:

".... It is quite a large document to read. I hadn't read it: I just took the policy out. One thing I do know is that if there any material changes in there, it is my duty to notify the insurer but, at this point I hadn't read the insurance policy, which I always do. I would have notified them" (Bundle C1 page 99)

The careful approach towards insurance policies which the Registrant here asserted is entirely at variance with the position he adopted at this hearing. Not only did he fail to check whether his shop insurance policies covered PII, but he also supplied inaccurate details of those policies to the GOC.

A further example of contradictory evidence is provided by the Registrant's answers in relation to the matter of downloading documents from the internet. When questioned about his receipt of a Marketform insurance application form by a Committee member, the Registrant answered:

"Yes, I would have downloaded myself, by the way, just to let you know. I would have downloaded". (Transcript 2 August 2019 page 12 F)

Later that same day when asked about an email which he had received on 21 June 2016 the following exchange took place in re-examination by Ms Evans

Q “Mr Gupta it is really important if you do not know the answer to a question, it is not what you think we want to hear. We just need to know....”

A “The truth is, I don’t know how to download anything, to begin with” (Transcript page 24 A).

The Committee was unable to accept the Registrant as a reliable witness.

The Committee also heard evidence from a number of character witnesses called on behalf of the Registrant. Dr Ranjan Adur, Mr Terry Newman and Mr Avtar Chopra gave evidence about their knowledge of the Registrant. They told the Committee that the Registrant had undertaken a number of charitable activities and that he was a person of integrity. However, none of these witnesses knew the full details of the allegations faced by the Registrant.

The Committee heard oral evidence over 5 days in July and August 2019. The matter was then adjourned for submissions on the facts and resumed on the 7 January 2020. Between hearing the evidence and resuming for submissions, a member of the committee Ms Carrie Eva passed away. The Committee continued to be quorate in her absence and neither party raised any objections to the Committee continuing to hear the case.

Findings in relation to the facts

The Committee heard submissions from Ms Dyer and Ms Evans. Both representatives had helpfully reduced their submissions to writing. Ms Dyer addressed each of the particulars of the Allegation and submitted that the evidence as a whole showed that the Registrant was aware of the distinction between PII and other forms of insurance and that the Registrant’s evidence contained numerous inconsistencies from which the Committee could properly draw the inference that he had been dishonest.

Ms Evans emphasised the Registrant’s very good reputation both clinically and professionally for the past 43 years. She reminded the Committee of the testimony of the character witnesses called on the Registrant’s behalf. She also submitted that there was a lack of guidance to professionals such as the Registrant from the GOC so that it was reasonable that the Registrant did not know and could not be expected to know about appropriate professional indemnity cover. She submitted that the Registrant had been honest throughout and that these proceedings have been the consequence of an honest misunderstanding on his part. The proceedings have caused great strain to the Registrant and his family at the end of a long and an unblemished career.

The Committee accepted the advice of the Legal Adviser who reminded the Committee in particular of the test for dishonesty now set out in *Ivey v Genting*

Casinos Ltd [2017 UK SC 67] and of the need for any finding of dishonesty to be supported by cogent evidence. He also reminded the Committee of the function of character evidence; in particular that it could lend weight to the evidence of the Registrant and could suggest that the Registrant did not have a propensity for dishonest conduct.

The Committee considered the written submissions of the parties with care and turned to the remaining particulars of the Allegation.

Allegation 2a

2. *Between 20 March 2008 and 4 August 2016 ["the relevant period"] you practised as a dispensing optician in circumstances where you:*
 - a. *Failed to obtain and maintain professional indemnity insurance cover as required by Part 1, Section 10A of the Opticians Act 1989; and*
The Committee noted that the Registrant accepted at the outset of his cross-examination that he did not have PII for the period 2008 to 2016.

Ms Dyer asked him:

"is it right that you now accept that you did not have professional indemnity insurance for the period 2008 to 2016?"

To this question the Registrant answered

"correct" (Transcript 31 July 2019 page 38 E)

The committee therefore finds this allegation proved.

Allegation 2b

- b. *Falsely declared to the General Optical Council that you held professional indemnity insurance on one or more of the following occasions during the retention process when you did not:*
 - i. *In or around March 2008;*
 - ii. *In or around March 2009;*
 - iii. *In or around April 2010;*
 - iv. *In or around February 2011;*
 - v. *In or around March 2012;*

- vi. *In or around March 2013;*
- vii. *In or around March 2014;*
- viii. *In or around March 2016;*
- ix. *In or around March 2015.*

The Committee had regard to the retention forms in the bundle of documents submitted by the Registrant annually between 2008 and 2016 and signed by him with a declaration that the information given in the form is true and accurate. The forms included an assertion that he held professional indemnity insurance. As is evident from the Registrant's acceptance that he did not hold such insurance this assertion was false. The Committee accordingly finds this allegation proved.

Allegation 3a

- 3. *During the relevant period at 2 above, you:*
 - a. *Knew or ought to have known that in holding yourself out to the public as a registered dispensing optician, you were required to hold professional indemnity insurance cover; and/or*

The Committee took the view there can be no doubt that the Registrant ought to have known that he was required to hold PII cover. The Standards of Practice for Optometrists and Dispensing Opticians requires at Standard 12 that a registered dispensing optician has adequate PII which provides continuous cover for the period in practice and covers complaints that are received after the dispensing optician has ceased practising. Prior to the Standard coming into effect, the Code of Conduct, effective from 1 April 2010 required a registered dispensing optician to *"be covered by adequate and appropriate insurance for practice in the United Kingdom throughout your period of registration."*

It is also clear from answers given by the Registrant that he knew of these requirements, as would be expected. A Committee member asked him on 1 August 2019:

"you said you were employed in 1980 and you were covered by the employer and hospital. How do you know that?"

A *"Yes we was told that. You are covered by insurance anything you do wrong there, just told"*

Q *"So, you did know that you needed insurance covering you for anything you did wrong?"*

A *"Yes, yes. I did know that"* (Transcript 1 August 2019 pages 25 H and 26 A)

The committee therefore finds this allegation proved.

Allegation 3b

- b. Treated patients in the knowledge that you did not hold appropriate indemnity insurance cover; and/or*

At the verification visit undertaken by Ms Drazic on 10 December 2015 the Registrant was asked whether he had PII. Ms Drazic told the Committee that, to the best of her ability to remember she would have asked the Registrant:

“What is your professional indemnity insurance and who is it provided with? The response was, “I do not have any” so I would have just recorded that on the form I cannot remember anything further”.

Ms Drazic also told the Committee that she wrote on the form *“no personal professional indemnity insurance”*. (Transcript 30 July 2019 page 12 G)

In his evidence to the Committee the Registrant asserted that the question Ms Drazic had asked him was *“do you have separate professional indemnity insurance?”* (Transcript 31 July 2019 page 52 C)

There is no reference to the word *“separate”* in the form completed by Ms Drazic and that is inconsistent with her recollection of what she would have asked, and her email dated 31 March 2016. The committee reject the Registrant’s evidence on this point and find that the Registrant’s answers to Ms Drazic as recorded by her are consistent with knowledge that he did not have PII.

The Committee also rejects the Registrant’s assertions that he thought that his shop insurance covered him in respect of professional indemnity. The Registrant accepted that his wife, an optometrist, had PII through her membership of the AOP. He also accepted that he knew that locums working at his practice required PII cover. He maintained that he had never discussed insurance matters with his wife. The Committee finds this evidence to be implausible and rejects it. The Registrant was aware that he needed PII and did not have it.

Allegation 3c

- c. Failed to take adequate and reasonable steps to ensure you had the appropriate professional indemnity insurance cover.*

The Registrant took no steps to ensure that he had appropriate professional indemnity cover for this period. His position in evidence was that he thought his shop insurance was sufficient. He did not assert that he made any attempt to check with

his insurer whether his policy covered professional indemnity. On his case, he simply assumed that it did.

The Committee finds this allegation proved on the basis that the Registrant took no steps to satisfy himself that he had appropriate PII.

Allegation 4a and b

4. *On or around 5 February 2017, you made an application to the Association of Optometrists for professional indemnity insurance cover and failed to declare that you were:*
 - a. *Under investigation by the General Optical Council for practising without professional indemnity cover; and/or*
 - b. *The subject of a General Optical Council Interim Suspension Order.*

The Committee had sight of a “Membership Application Form 2016” signed by Mr Gupta and dated 5 January 2017. (Bundle C1 page 60) That form included an application for professional indemnity cover. Mr Gupta had ticked a box stating that he had nothing to declare. By ticking that box he signified his agreement with the following statement:

“to the best of my knowledge and belief there are no other outstanding or potential claims against me or complaints about me... In relation to employment matters, I declare that I am unaware of any other current issues that involve me.”

At the time he signed the form Mr Gupta was suspended by virtue of an interim order. His letter of 11 January 2017 (Bundle C1 page 77) confirms that he knew of the Interim Order proceedings against him from at least 21 December 2016 (Bundle C1 page 78).

In his evidence the Registrant asserted that he had spoken to a member of the AOP by telephone and that he had been told that he did not need to declare his suspension. This evidence is itself highly implausible and is inconsistent with the terms of a letter from the AOP dated 15 February 2017 (bundle page 74/75).

The Committee rejects the Registrant’s evidence in relation to this alleged telephone conversation and finds this allegation to be proved on the basis of the Registrant’s completion of the form and his letter dated 11 January 2017 to which reference has already been made.

Allegation 5a

5. *On or around 15 February 2017, having received notification from the Association of Optometrists that an application you had made for professional indemnity insurance cover had been declined you:*
 - a. *Submitted an application for professional indemnity insurance cover to Marketform Limited and:*
 - i. *In the "Previous Insurance History" section when asked "has any application for this type of Insurance cover ever been declined? / cancelled? / Required any special terms? / None", you selected "None"; and/or*
 - ii. *In the "Supplementary Information" section you wrote "current I am suspended by the G.O.C until I obtain profession indemnity insurance" [sic]*

On 15 February 2017 the Registrant completed an application for PII to Marketform (bundle C1 page 68-73). In that form he asserted that no previous application for this type of insurance cover had ever been declined.

On that same day, 15 February 2017 the Registrant received an email from the AOP declining his application for membership. In his evidence to the committee the Registrant asserted that he had not read the email from the AOP until the following day and therefore did not know that his application for membership and PII had been declined. He said that he applied for further insurance as a precaution. This assertion seems to the Committee to be implausible and is itself at variance with evidence which the Registrant gave to the Interim Orders Committee on 20 February 2017. When questioned by a member of the Committee at that hearing it was put to the Registrant:

Q *"You see, it looks as though before the inception of the policy on the 17th that you must have had the letter from the AOP which informed you that the insurance had been declined or cancelled with the AOP?"*

A *"Yes, I knew on the 15th but I got the paperwork on the 17th or whatever and that was it"* (Bundle C1 page 103)

The Registrant told the Committee, as he indeed told the Interim Orders Committee, that it was his practice to check his email daily but that he had not in fact seen the email from the AOP on the 15 February 2017. The Committee rejects his assertion that he had not seen the email from the AOP on the 15 February 2017. He did not apply for insurance through Marketform until three weeks after the initial Interim Orders Committee review hearing on 26 January 2017. The only plausible explanation for the Registrant applying for insurance through Marketform on the 15 February 2017 is that he knew then that his application for insurance via the AOP had been declined.

The Committee also notes that on the form addressed to Marketform dated the 15 February 2017 the Registrant had written “*current I am suspended by the GOC until I obtain professional indemnity insurance*”. This entry is also consistent with the Registrant knowing that he did not have PII through the AOP.

Accordingly, the committee finds this allegation proved.

Allegation 6

6. *On or around 20 February 2017 you:*
 - a. *Told a representative of the General Optical Council that you were aware that the Association of Optometrists had declined your application for professional indemnity insurance cover; and*
 - b. *On oath, falsely declared to the General Optical Council Interim Orders Committee that you were not aware that the Association of Optometrists had declined your application for professional indemnity insurance cover.*

Mr Corrie gave oral evidence to the Committee. He also produced a note that he had written on 20 February 2017 which is in the following terms:

“in discussion with Registrant and wife in presence of legal adviser...

1. I asked what happened to AOP insurance

2. Gave me letter 15/2/17

3. At same date application to ... ins I asked whether he made application having seen that AOP would not insure him and he said yes

I am very clear about this

4. In evidence, said that had received after”

The transcript of the hearing before the Interim Orders Committee makes clear that Mr Corrie questioned the Registrant about the date on which he received notification from the AOP and in particular what the Registrant had told him about this outside the hearing room:

Q *“what did you say to me about when you received the letter from the AOP and when you made the application?”*

A *“I said it was a day or two afterwards I made this application on the 15”*

In her submissions, Ms Evans relied upon Mr Corrie's concession that there was a possibility that he might be mistaken or have misinterpreted what the Registrant had said to him. She submitted that the Registrant had always been unequivocal and that he had never suggested to Mr Corrie that he had received notification from the AOP before completing the application via Marketform. However, Mr Corrie told the committee that he did not believe that he was mistaken, and he relied upon his note made on the same day before he left the building. The Committee accepts his evidence which is powerfully supported both by the contemporaneous note he made and by the transcript of the interim orders hearing.

The Committee therefore finds this allegation proved.

Allegation 7

7. *Your actions, in respect of one or more of the following allegations:*

- a. 1(a);
- b. 1(b);
- c. 2(b);
- d. 3(a);
- e. 3(b);
- f. 4(a);
- g. 4(b);
- h. 5(b);
- i. 6(b).

were dishonest and/or misleading and/or inappropriate.

Dishonesty

The Committee has had regard to the test for dishonesty set out in Ivey's case at paragraph 74.

The Committee has already found that the Registrant knew that he was required to have PII cover over the period set out in the Allegation. He submitted applications for retention which falsely declared that he held such cover. The Committee has found that he knew that he did not hold such cover when he submitted these retention forms and that he treated patients in the knowledge that he did not hold this cover.

The Committee finds that an ordinary decent person would regard conduct of this kind as dishonest.

The Committee has also found that the Registrant made an application for PII to the AOP without declaring that he was under investigation by the GOC and was the subject of an interim suspension order. The Committee finds that an ordinary decent person would regard this conduct as dishonest.

The Committee has also found that the Registrant submitted an application for PII to Marketform Ltd without declaring that he had received notification from the AOP that an application that he had made for PII had been declined. The Committee finds that an ordinary decent person would regard this conduct as dishonest.

However, the Committee does not find that the Registrant's entry in the supplementary information section of that form to the effect that "*current I am suspended by the GOC until I obtain professional indemnity insurance*" (sic) to be in itself dishonest although it was not an accurate statement of the position as it omitted the important point that he had been suspended *because* he had no PII.

The Committee has also found that on the 20 February 2017 the Registrant told a representative of the GOC that he was aware that the AOP had declined his application for PII cover when he came to submit an application to Marketform and later, on oath gave evidence that he was not so aware to the Interim Orders Committee. The Committee finds that an ordinary and decent person would regard this conduct as dishonest.

In the light of these findings the Committee finds dishonesty proved in respect of 2b, 3a, 3b, 4a, 4b, 5a(i) and 6b.

In the light of these findings the Committee also finds that the Registrant's conduct in respect of these matters was misleading and inappropriate as well as being dishonest.

Findings in relation to misconduct

The Committee has heard submissions from Ms Dyer and Ms Evans in relation to both misconduct and impairment. The Committee considered these matters separately when it retired.

Ms Dyer had reduced her submission to writing. She emphasised that both the failure to obtain PII and the dishonesty which the Committee has found had extended over a significant period of time. She referred the Committee to relevant parts of the Codes of Conduct in force at the relevant times; in particular the need for registrants to be honest and trustworthy. She submitted that the Registrant's integrity

could not be relied upon and, further, that a finding of impairment was required on public interest grounds.

In her submissions Ms Evans emphasised that it had not been suggested that the Registrant's clinical practice posed a risk to patient safety. She told the Committee that the Registrant did now have PII and, she submitted, there was no likelihood of any repetition in respect of the matters raised during these proceedings. She also told the Committee that the Registrant had been devastated by the Committee's findings which had come at the end of a long and previously unblemished career.

The Committee accepted the advice of the Legal Adviser. He reminded the Committee that misconduct involved a serious falling short of the standards to be expected of a registered dispensing optician. He also reminded the Committee that impairment was to be assessed at today's date and the Committee would need to assess the extent of the Registrant's insight when deciding whether any remediation of the misconduct had taken place.

Irrespective of questions of remediation, the Committee would also need to consider whether the public interest required a finding of impairment to be made.

Misconduct

The Committee noted that there were two elements to this case. The first element was the failure to have in place PII for a period of some eight years. This was in itself a very serious matter as any member of the public would be disturbed to learn that a registered dispensing optician with a contact lens speciality, was practising without any form of PII.

Serious as that aspect was, the matter was very significantly compounded by the dishonesty which had occurred over a long period of time and which had been repeated. In particular, since 2016, the Registrant had misled the AOP, Marketform, through whom he was applying for insurance, and the Interim Orders Committee. In misleading the Interim Orders Committee, he had lied while on oath. This Committee was unable to regard him as a reliable witness.

The individual allegations which the Committee found proved were each sufficiently serious to amount to misconduct. Cumulatively they were a cause for deep concern.

Misconduct was therefore established.

Impairment

The Committee had regard to the well-known approach of Dame Janet Smith in the 5th Shipman report. That approach was summarised by Ms Dyer in the following terms:

Has the practitioner acted so as to pose a risk to patients and/or is he liable to do so in the future?

Has he brought the profession into disrepute and/or is he liable to do so in the future?

Has he breached one of the fundamental tenets of the profession and/or is he liable to do so in the future?

Can his integrity be relied upon?

The Committee accepted Ms Dyer's submission that all four limbs of this formulation were engaged and that in relation to the first three questions the answer was "yes" and in relation to the last the answer was "no".

The Committee noted Ms Evans' submissions that the Registrant was now in receipt of PII and would continue to maintain such cover. The Committee also noted her submission that the Registrant had resolved to be more careful about insurance matters in future. However, that submission did not address at all the question of dishonesty, repetitive and long standing, which the Committee had found to be proved in this case.

Dishonesty is always difficult to remediate and the dishonesty in this case was very serious. In the Committee's assessment the Registrant's dishonesty posed an ongoing risk, and dishonesty of this kind created both a risk to patient safety and a risk to the reputation of the profession. Although Ms Evans had told the Committee that the Registrant "acknowledged" its findings, the Committee had no confidence he had engaged in any significant reflection upon the impact this type of behaviour could have upon the reputation of the profession and the maintenance of appropriate standards. The Committee was of the view that the Registrant had developed no real insight in this respect.

The Committee was also satisfied that, irrespective of any question of insight and remediation, the public interest required a finding of impairment to be made. Members of the public were entitled to expect that registrants who treated them were covered by appropriate PII and were also individuals whose integrity could be relied on. Any reasonable member of the public, fully informed as to the fact of this case, would expect a finding of impairment to be made on the grounds that such a finding was necessary to declare and maintain proper standards of conduct and to maintain confidence in the profession.

The Committee was therefore satisfied that the Registrant's fitness to practice is currently impaired.

Sanction

The Committee heard submissions from Ms Dyer and Ms Evans.

Ms Dyer produced written submissions. She submitted that the Committee may well consider erasure to be the appropriate sanction in the light of the repeated dishonesty and lack of insight shown by the Registrant.

Ms Evans told the Committee that the Registrant was unable to apologise for dishonesty as he did not consider himself to have been dishonest. He disagreed with the Committee's findings. Ms Evans indicated that the Registrant had not been subject to an interim order since April 2019 and he was now covered by PII. She submitted that the risk of any repetition in relation to the issues around PII was minimal. She told the Committee that the Registrant accepted that he needs to be more careful in relation to insurance issues in future. She said that the Registrant was willing to comply with any conditions which the Committee might place upon his registration and he was anxious for guidance as to the impact of any order made by the Committee on charitable work that he might do overseas.

The Committee accepted the advice of the Legal Adviser. He reminded the Committee of the purpose of the Indicative Sanctions Guidance. He also reminded the Committee that the purpose of any sanction was not to punish the Registrant but to arrive at a proportionate outcome to the case, having regard to the Committee's responsibility to protect the public and to declare and maintain appropriate standards of conduct.

The Committee first considered the aggravating and mitigating features of the case.

The aggravating features were that the Registrant had practised without PII for a long period of time, more than eight years, and failed to obtain PII in response to the Contract Verification Visit carried out by Ms Drazic. His dishonesty had been repetitive; it had included misleading the GOC, the insurers and the AOP, and had also extended over a considerable period of time. In his responses to the concerns raised, the Registrant had shown a consistent tendency to blame others and a persistent lack of insight.

The mitigating circumstances were that the Registrant was of good character and had practised since 1975 without any previous complaints. He had been able to call a number of character witnesses who spoke in particular of his charitable activities as well as of his general integrity. There was no evidence of any patient harm.

The Committee considered the Indicative Sanctions Guidance and considered the available sanctions in ascending order of seriousness.

The case was much too serious to take no action.

The case was also not suitable for a financial penalty order as financial gain was not suggested to be at the heart of the misconduct.

The Committee did not consider that Conditions of a Practice order was appropriate. No clinical concerns had been identified and a Conditions of Practice order could not

address the concerns in relation to the Registrant's persistent dishonesty, which in any event he disputed. In the Committee's view the misconduct was also too serious to be adequately addressed by a Conditions of Practice Order.

The Committee next considered a suspension order and had regard in particular to the matters set out in the Indicative Sanctions Guidance at paragraph 34.1. The Committee noted that this sanction may be appropriate in cases where there is no evidence of harmful deep-seated personality or attitudinal problems and the Committee is satisfied that the Registrant has insight and does not pose a significant risk of repeating behaviour. In the Committee's view the Registrant has displayed no real insight into the seriousness of his misconduct and his persistent dishonesty provides evidence of harmful deep-seated attitudinal problems.

Further, in view of the extent of the Registrant's dishonesty the Committee was not satisfied that a suspension order would satisfy the public interest.

The Committee went on to consider erasure. The Committee noted the content of paragraph 36.5 of the ISG. The Registrant's misconduct was a serious departure from the relevant professional standards. His dishonesty had been persistent and covered-up. He had shown a persistent lack of insight into the seriousness of his actions and their potential consequences. The Committee had in mind the need to act proportionately. However, in the Committee's view, the only sanction which was sufficient to protect patients from the risks occasioned by the lack of integrity evident in this case was that of erasure.

The Committee also considered the wider public interest. The Committee considered that a reasonable and fully informed member of the public would be surprised and concerned if a registrant who had been guilty of persistent dishonesty, which included evidence which he gave on oath to the Interim Orders Committee, was not erased from the register.

Accordingly, the Committee directs erasure from the register of the Registrant's registration.

Immediate order

Ms Dyer made an application for an immediate order of suspension. She relied in particular upon the Committee's finding that the Registrant's dishonesty posed an ongoing risk to patient safety and the Committee's view that the only sanction which was sufficient to protect patients from the risks occasioned by the Registrant's lack of integrity was that of erasure.

Ms Evans opposed the application for an immediate order of suspension. She told the Committee that the Registrant was considering an appeal. She submitted that, as the Registrant now has PII, there was no risk to the public which required an immediate order.

The Committee accepted the advice of the Legal Adviser. He reminded the Committee that when considering whether an immediate order should be imposed, the question of risk to patient safety should be at the forefront of the Committee's thinking and that the findings made by the Committee in its determination were likely to be crucial in this respect.

The Committee noted that it had found the Registrant to have been dishonest over an extended period of time and in a number of different contexts. All of these contexts were closely related to the Registrant's professional practice. A registrant who lacked integrity did, in the Committee's view, pose an ongoing risk to patients. For example, if a patient had a complaint about treatment it was of the utmost importance that the Registrant could be relied upon to respond with integrity to that complaint. In the Committee's view the extent of the repeated dishonesty and lack of insight in this case was such as to leave the Committee with no confidence in the Registrant's integrity. That created a risk to the public which it was necessary to address through an immediate order of suspension.

The Committee took into account that such an order was likely to have an adverse impact on the Registrant albeit that he was now, to use the description given by Ms Evans, "semi-retired". However, this adverse impact was outweighed by the need to protect the public.

The Committee has therefore decided to impose an immediate order of suspension pursuant to section 13I of the Opticians Act 1989 (as amended).

Chair of the Committee: Ms S Fenoughty

Signature **Date: 10 January 2020**

Registrant: Mr A Gupta

Signature **Date: 10 January 2020**

NOTICE TO REGISTRANT:

- The GOC will enter these conditions against your name in the register save for any conditions that disclose information about your health.
- In accordance with Section 13C(3) of the Opticians Act 1989, the GOC may disclose to any person any information relating to your fitness to practise in the public interest.
- In accordance with Section 13B(1) of the Opticians Act 1989, the GOC may require any person, including your learning/workplace supervisor or professional colleague, to supply any information or document relevant to its statutory functions.

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.