

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

GENERAL OPTICAL COUNCIL

F(16)20

AND

GEOFFREY THOMPSON (01-7671)

**DETERMINATION OF A SUBSTANTIVE HEARING
22 NOVEMBER 2019
AGREED PANEL DISPOSAL (APD)**

Committee Members:	Ms J Wortley (Chair/Lay) Ms S Fenoughty (Lay) Ms C Tetlow (Lay) Dr C Collin (Optometrist) Mr D Goh (Optometrist)
Legal adviser:	Dr H Helmi
GOC Presenting Officer:	Mr B Albuery
Registrant present/represented:	Not present but represented
Registrant representative:	Mr A McGee (Counsel) Ms S Hatt (AOP)
Hearings Officer:	Mr T Yates
Facts found proved:	All
Facts not found proved:	None
Misconduct:	Found

Impairment:	Impaired
Sanction:	Suspension Order 9 months – (Without Review)
Immediate order:	Immediate Order of Suspension imposed

ALLEGATION

- 1 The Council alleges that you, Mr Geoffrey Martin Thompson, a registered optometrist on 20 April 2015 carried out an eye examination on Patient A (identified in Schedule A) and that the examination was inadequate in that:
 - (a) the reason for Patient A's visit
 - (b) the outcome of the school vision check
 - (c) the general health of Patient A
 - (d) the ocular history of Patient A's family

- 2 You failed to obtain and / or record:
 - (a) you did not detect reduced vision or visual acuity in the right eye and / or
 - (b) the significant difference in vision or visual acuity between Patient A's right eye and left eye and / or
 - (c) you used to measure visual acuity the Cardiff Acuity Test which was not a suitable test for a child of Patient A's age who had failed a school vision test.

- 3 You failed to measure Patient A's visual acuity adequately in that:
 - (a) you did not detect a significant refractive error in the right eye and / or

- 4 You failed to refract Patient A adequately in that
 - (a) you did not detect a significant refractive error in the right eye and / or

- (b) you did not reassess Patient A on another occasion, with or without cycloplegia and/or
 - (c) you did not arrange for another colleague to assess Patient A and / or
 - (d) you did not refer Patient A to secondary care.
- 5 You failed to assess and / or record the assessment of stereopsis of Patient A.
- 6 You failed to ensure that Patient A had an adequate examination of the internal eye or record the result of that examination.
- 7 You failed to identify that Patient A required spectacles and / or to refer Patient A to another ophthalmic professional to make that assessment.
- 8 Your advice to the mother of Patient A was incorrect in that, contrary to your advice:
- (a) Patient A did require spectacles and / or
 - (b) Patient A required ongoing management of his eye condition.
- 9 You failed to keep an adequate record of the eye examination of Patient A in that:
- (a) you did not note the clarity of the ocular media / the presence or absence of a red reflex in each eye
 - (b) you did not note any advice which you gave to the parents of Patient A
 - (c) you did not note the period for a follow up appointment

AND as a result of the facts set out above at 1 and / or 2 and / or 3 and / or 4 and / or 5 and / or 6 and / or 7 and / or 8 and / or 9 your fitness to practice is impaired by reason of misconduct.

DETERMINATION

Agreed Panel Disposal

The parties placed before the Committee a document entitled “Agreed Panel Report” (the agreed Report), a document setting out a detailed agreed position between the parties in respect of the various issues raised by the allegation, including the facts, misconduct, and impairment of the Registrant’s current fitness to practise as well as the proposed outcome of today’s hearing by way of sanction. The Report was submitted to the Committee for its independent consideration, review and decision.

The Committee also had before it the hearing bundle, a telephone note dated 15 November 2019 reporting a conversation between the GOC and the informant, and an email from her confirming that she has considered the agreed proposal between the parties and that she is content for the matter to be dealt with in this manner. The Committee also had before it a written undertaking from the Registrant dated 16 April 2016 in which the Registrant confirmed that he would “not carry out any activities that are restricted to registrants on the register of Optometrists until the GOC confirms in writing that the Registrar is satisfied with regard to the matters set out in rule 20 of the General Optical Council (Registration) Rules 2005”.

Mr Albuery, on behalf of the GOC, took the Committee through the Report and submitted that the agreement protects the public and maintains proper standards.

Mr McGee, on behalf of the Registrant, confirmed that the Registrant’s initial qualified promise to the GOC made in 2016 not to practise as a registrant was now a more general one, in that he “had no intention of applying for registration again”. Mr McGee confirmed that the Registrant had not undertaken any CET and that he had fully retired.

Upon further questioning by the Committee, Mr Albuery confirmed that the Registrant is currently retained by the GOC on the Register to ensure that it has jurisdiction over him for the purpose of regulatory proceedings. Ordinarily he would not be on the register as he has not applied to be on it, has not paid the registration fee nor has he undertaken any CET for some time. Mr Albuery also informed the Committee that the Registrant will be on the register until expiry of the 9 months Suspension Order, as proposed by the agreed Report, if the Committee agrees to impose it. On expiry, he will no longer be on the register. Mr Albuery then addressed two possible scenarios:

- i. If the Registrant undertook all the required CET before the next renewal of registration cycle in March 2020 and paid the registration fee, he would be on the register on expiry of the Suspension Order. If that were to happen the GOC would bring fitness to practise proceedings against him based on his breach of his promise to his regulator not to seek registration. Further, if there was a concern that such proceedings could not be dealt with while the

Registrant remained on the register albeit suspended, the GOC could apply for an Interim Order;

- ii. If the Registrant did not apply for registration before March 2020 and his registration lapsed on expiry of the Suspension Order, he could apply for registration in the future, but he would have to satisfy the registration requirements and also the fitness to practise criteria before he could be registered. Based on these proceedings and his promise not to seek registration, the GOC would oppose his application for registration. He could appeal that decision to a registration appeal committee, but the GOC would oppose any such appeal.

Mr Yates, the Hearings Officer, confirmed that if the Registrant was suspended, an alert would be placed on the Registrant's record that there was a fitness to practise issue, and that as a result, the registration department would not allow the Registrant to register without consulting with the Fitness to Practise department of the GOC.

The Committee accepted the advice of the Legal Adviser regarding the principles to take into account when deciding whether the Registrant's actions amounted to misconduct, whether his fitness to practise was impaired, and how to approach the decision on sanction. She referred to the Agreed Panel Disposal Policy, as well as the Hearings and Indicative Sanctions Guidance (ISG), both published by the GOC.

The agreed Report is reproduced in full below:

"AGREED PANEL REPORT

Introduction

1. *This is a substantive hearing in respect of Mr Geoffrey Thompson, a registered optometrist first registered with the General Optical Council ("the Council") as an optometrist on 7 July 1967. 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. Mr Thompson has had the benefit of legal advice from the Association of Optometrists (' AOP ') before agreeing to dispose of this case by the APD process.*
2. *The Council's published policy on the APD process is addended 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. *The Council's case was served on the registrant in March 2017.*
4. *This case was originally listed for a 2 day hearing on 10 and 11 April 2017.*
5. *At the request of the AOP, supported by the GOC, the hearing was postponed. The reason for the postponement was to allow both parties to consider the impact, if any, on this case of the decision of the High Court in the unrelated case of Clarke v GOC [2017] EWHC 521.*
6. *That case considered, inter alia, the significance of the fact that a registrant may have retired when determining current impairment and assessment of ongoing risk. The GOC were considering an appeal of that decision and the AOP were considering the implications of it for this case in which the registrant had also retired. Both parties therefore agreed that the hearing should be postponed for these issues to be considered further.*
7. *The GOC did appeal. In GOC v Clarke [2018] EWCA Civ 1463, the Court of Appeal allowed the GOC's appeal to the extent of reinstating the FTPC's finding of impairment. Newey LJ stated (paragraph 31) ' When considering impairment (as opposed to sanction) the judge needed to focus on whether Mr Clarke's fitness to practise was impaired, as the statutory language required. In that context, the fact that Mr Clarke was not intending to resume practice could be of little or no consequence. Moreover, the fact that Mr Clarke had not undertaken CET was, as I have said, something that could properly be taken into account.'*
8. *The allegation is set out below.*

Allegation

PARTICULARS OF ALLEGATION

- 1 *The Council alleges that you, Mr Geoffrey Martin Thompson, a registered optometrist on 20 April 2015 carried out an eye examination on Patient A (identified in Schedule A) and that the examination was inadequate in that:*
- 2 *You failed to obtain and / or record:*

- (a) the reason for Patient A's visit*
 - (b) the outcome of the school vision check*
 - (c) the general health of Patient A*
 - (d) the ocular history of Patient A's family*
- 3 You failed to measure Patient A's visual acuity adequately in that:*
- (a) you did not detect reduced vision or visual acuity in the right eye and / or*
 - (b) the significant difference in vision or visual acuity between Patient A's right eye and left eye and / or*
 - (c) you used to measure visual acuity the Cardiff Acuity Test which was not a suitable test for a child of Patient A's age who had failed a school vision test.*
- 4 You failed to refract Patient A adequately in that*
- (a) you did not detect a significant refractive error in the right eye and / or*
 - (b) you did not reassess Patient A on another occasion, with or without cycloplegia and/or*
 - (c) you did not arrange for another colleague to assess Patient A and / or*
 - (d) you did not refer Patient A to secondary care.*
- 5 You failed to assess and / or record the assessment of stereopsis of Patient A.*
- 6 You failed to ensure that Patient A had an adequate examination of the internal eye or record the result of that examination.*
- 7 You failed to identify that Patient A required spectacles and / or to refer Patient A to another ophthalmic professional to make that assessment.*
- 8 Your advice to the mother of Patient A was incorrect in that, contrary to your advice:*
- (a) Patient A did require spectacles and / or*
 - (b) Patient A required ongoing management of his eye condition.*
- 9 You failed to keep an adequate record of the eye examination of Patient A in that:*

(a) you did not note the clarity of the ocular media / the presence or absence of a red reflex in each eye

(b) you did not note any advice which you gave to the parents of Patient A

(c) you did not note the period for a follow up appointment

AND as a result of the facts set out above at 1 and / or 2 and / or 3 and / or 4 and / or 5 and / or 6 and / or 7 and / or 8 and / or 9 your fitness to practice is impaired by reason of misconduct.

Nature of the Recommended Disposal

9. 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 amended allegations are admitted and found proved;

ii. That the particulars of the amended allegations amount to misconduct;

iii. That Mr Geoffrey Thompson' fitness to practise is impaired by reason of misconduct; and

iv. The appropriate and proportionate sanction is a suspension order of 9 months

Law

10. 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").

11. 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.

12. 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."
13. More detailed submissions are set out below in respect of each stage.

Stage 1: Factual Findings

14. At the time of his appointment on 25 April 2015 Patient A was 5 years old. On 20 April 2015 his eyes were screened at school. Patient A's mother was informed that he required a referral to an orthoptic eye clinic. She was concerned that this might take a couple of months based on what she had been told so arranged for her son to be seen by the registrant 5 days after the school screening.
15. She informed the registrant that her son had been referred as a result of the school screening. She states that she was told by the registrant that his eyes were fine and that he should return in 12 months but that he did not need new glasses. A copy of her statement is at page 24 and it gives the full background to the eye examination and what the registrant said to Patient A's mother at the end of it.
16. Much more quickly than she had expected she received an appointment for her son to be seen at the hospital on 29 April, 4 days after the examination with the registrant and 9 days after the school screening.
17. At the hospital Patient A's vision was found to be similar to the vision found by the school but markedly different to that recorded in the registrant's examination. Spectacles were prescribed by the hospital for full time wear. Patient A's mother was very concerned particularly about what might have happened if, based on what the registrant had told her, she had not kept the hospital appointment.
18. She made a referral to the GOC and a copy of it appears at page 14.
19. [Dr] Mr Robert Harper was instructed to prepare an expert optometric report. A copy of it appears at page 29. The allegations are drafted based on the conclusions in that report.
20. The registrant admits the facts alleged against him.

Stage 2: Misconduct and Impairment

Misconduct

21. 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”.

22. *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.”

23. *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’.”

24. *In the case of Calhaem v General Medical Council [2007] EWHC 2606 (Admin) at paragraph 39 at paragraph (1) Jackson J (as he then was) said:*

“(1) Mere negligence does not constitute “misconduct” within the meaning of section 35C(2)(a) of the Medical Act 1983. Nevertheless, and depending upon the circumstances, negligent acts or omissions which are particularly serious may amount to “misconduct”.

(2) A single negligent act or omission is less likely to cross the threshold of “misconduct” than multiple acts or omissions. Nevertheless, and depending upon the circumstances, a single act or omission, if particularly grave, could be characterised as “misconduct”.

(3) “Deficient professional performance” within the meaning of section 35C(2)(b) is conceptually separate from negligence and from misconduct. It connotes a standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the doctor’s work.

(4) A single instance of negligent treatment, unless very serious indeed, would be unlikely to constitute “deficient professional performance”.

(5) It is neither necessary nor appropriate to extend the interpretation of “deficient professional performance” in order to encompass matters which constitute “misconduct”.

25. The Registrant accepts the correctness of Dr Harper's opinion as regards whether any individual failing fell 'below' or 'far below' the standard of the reasonably competent optometrist.

26. It is agreed by both the Council and the Registrant that the Registrant's conduct breached the following paragraphs of the 'GOC Code of Conduct for Individual Registrants':

1. Make the care of the patient your first and continuing concern

2. Maintain adequate patients' records

19. Ensure your conduct, whether or not connected to your professional practice, does not damage public confidence in you or your profession.

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

28. The parties agree that the Registrant's conduct therefore amounts to misconduct within the meaning of section 13D(2)(a) of the Act.

Impairment

29. 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.

30. 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)*

31. As to the meaning of fitness to practise, in the case of Zygmunt 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.*

32. Factors (a) and (b) are engaged in this case.

33. In Cheadle 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".

34. 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 FTTP 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 FTTP 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 FTTP) 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 FTTP 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".

35. 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."

36. In *General Optical Council v Clarke* [2018] EWCA Civ 1463 the Court of Appeal considered whether at a review hearing whether it was incumbent on a FTTP to take into account the fact that a Registrant has stated he was retiring when considering the question of the likelihood of repetition. The Court stated, in short,

that that is a factor which should be given no weight. It is submitted that a similar principle applies to the consideration of impairment at a substantive hearing.

37. The Registrant has been subject to an interim order for suspension since 29 January 2016 and, therefore, has not practised optometry for over 3 years. The Registrant has undertaken no remediation or undertaken any activities to improve his clinical skills.

38. The Registrant retired from practising optometry in 2016.

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

i. His clinical skills remain inadequate to return to unrestricted practice without posing a risk to the public

ii. 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

40. 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).

41. 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

42. 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."

43. 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.

44. *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.*
45. *In terms of aggravating features, the particulars of allegation relate to a child patient and had the child's mother not attended for a further, independent examination, she may not have realised the true position in relation to her child's eyesight. In terms of mitigating circumstances, the registrant was first registered in 1967 and has no previous fitness to practise history. He admits the allegations against him.*
46. *Having regard to the GOC's Indicative Sanctions Guidance, the parties agree that the appropriate and proportionate sanction is a suspension order of 9 months.*
47. *It is agreed that this sanction addresses public interest whilst also reflecting the fact the Registrant is retired. Therefore a review of the sanction before its expiry is not considered necessary. However, if the Registrant were to try and restore to the register during the suspension period, the Council may consider taking fitness to practise action as necessary given the Registrant has declared his retirement.*

No Further Action

48. *The Indicative Sanctions Guidance states that no further action may be justified in "exceptional circumstances". No such circumstances exist in this case.*

Financial Penalty Order

49. *The Indicative Sanctions Guidance suggests a financial penalty order may be appropriate where the conduct was financially motivated and/or resulted in financial gain. It is not alleged that the Registrant's conduct was financially motivated and, accordingly, a financial penalty order is not appropriate in this case.*

Conditional Registration

50. *For conditions to be appropriate where the FTPC has identified significant shortcomings in the Registrant's practice, the Indicative Sanctions Guidance states, "the Committee should satisfy itself that the registrant would respond positively to retraining which would thus allow the registrant to remedy any*

deficiencies in practice whilst protecting patients." The Registrant is unable and unwilling to comply with any appropriate conditions of practice in that he has decided to retire entirely from practice.

Suspension

51. The parties agree that this 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 9 months 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.

Erasure

52. The parties agree that the Registrant's conduct is not fundamentally incompatible with registered practise and that, at this stage, this sanction would be disproportionate.

Immediate Order

53. The parties agree that, should the FTPC accept the parties' recommendation for disposal, it is appropriate to impose an immediate order for suspension as it is necessary to do so to protect the public and it is otherwise in the public interest.

Blake Morgan LLP

Solicitors for the Council

29/08/2019

Association of Optometrists

On behalf of the Registrant"

Admissions in relation to the particulars of the allegation

As set out in the agreed Report, the Registrant admitted all the particulars of the allegation. The Committee therefore found all factual particulars proved by way of his admissions.

Findings in relation to misconduct

The Committee took into account the case of *Roylance v GMC (No. 2)* [2000] 1 AC 311, as well as the other authorities set out in the agreed Report. The Committee was aware that the issue of misconduct is a matter for its own independent judgment.

The failings relate to a series of errors in relation to core competencies expected of an optometrist, in respect of an examination, assessment, and record-keeping in relation to a 5 year old child patient, where a school screening had identified concerns. The Committee also noted that the evidence demonstrates that the Registrant found the examination of the child to be a difficult one, yet he set the recall period for the child at one year. There was a real risk of harm to the child who, on account of his age, was a vulnerable patient.

In these circumstances, the Committee read the agreed Report and agreed that the allegations amount to a serious departure from the standards expected of the Registrant and that they constitute misconduct.

Findings regarding impairment

The Committee considered the case *CHRE v (1) NMC (2) Grant* [2011] EWHC 927. 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 agreed Report.

The Committee noted that the Registrant accepts that he presents a risk to patients and has brought the profession of optometry into disrepute. He specifically accepts that his “clinical skills remain inadequate to return to unrestricted practice without posing a risk to the public” and accepts that it is “necessary in the public interest” for a finding of impairment to be made, in order to uphold professional standards and public confidence in the profession.

The Committee agreed with the position set out in the agreed Report. While the Registrant has shown a degree of insight into his failings by virtue of making the admissions contained within the agreed Report, he has not demonstrated any other insight or reflection regarding the impact of his misconduct. Further, he has not undertaken any remediation nor has he taken steps to address his failings. This is apparently due to his intention not to return to the profession. In the circumstances, the Committee agreed that he would present a risk to patients if he were to return to unrestricted practice and that the public interest would be undermined if a finding of impairment were not made.

The Committee therefore decided that the Registrant’s current fitness to practise is impaired on both public protection grounds, as well as on the grounds of the need to uphold the wider public interest.

Sanction

The Committee was aware that the purpose of sanction is to protect the public and uphold the public interest, and that any sanction must be proportionate. The Committee took into account the ISG and also took into account *GOC v Clarke* [2018] EWCA Civ 1463 as well as other authorities set out in the agreed Report.

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 first considered imposing no sanction. In light of the risk presented by the Registrant to patients, the Committee was of the view that this would not be sufficient to protect the public nor to uphold the public interest.

The Committee did not consider that a Financial Penalty Order was appropriate, because the misconduct was not financially motivated, nor did it result in financial gain.

The Committee next considered Conditional Registration but decided that this would not be appropriate because the Registrant has stated that he has retired and that he does not intend to return to practice and that he will not seek registration as an optometrist. There is therefore no indication that he wishes to practise or that he would be willing to comply with conditions.

The Committee next considered Suspension. Para. 34 of the ISG states that suspension may be appropriate when some or all of the following factors are apparent, the following being a non-exhaustive list:

- “a. A serious instance of misconduct but where a lesser sanction is not sufficient;*
- b. No evidence of harmful deep-seated personality or attitudinal problems;*
- c. No evidence of repetition of behaviour since incident;*
- d. The panel is satisfied the registrant has insight and does not pose a significant risk of repeating behaviour;*
- e. In cases where the only issue relates to the registrant’s health, there is a risk to patient safety if the registrant was allowed to continue to practise even under condition...”*

The Committee was of the view that that limbs “a – c” were met in this case. However, the Committee placed less weight on limb “c” than it otherwise might if the Registrant had been continuing to practise, because the lack of repetition was in the context of cessation of practice. The Committee was satisfied that the Registrant has a degree of insight, by virtue of his admissions in the agreed Report, but apart from this, there was no other evidence of insight or reflection.

The Committee could not be satisfied that he does not pose a significant risk of repetition of the misconduct. The Registrant has not taken any steps to address his failings, nor has he undertaken CET required of him to ensure that he remains up to date in his professional skills and knowledge. He has not practised since 2016. As part of its deliberation, the Committee did consider the sanction of erasure, as well as the ISG guidance relating to erasure, but was not satisfied that erasure was proportionate in this case. The failings were not so serious that they are in themselves fundamentally incompatible with being a registered professional, and erasure is not the only sanction which will protect the public or uphold the public interest.

The Committee deliberated carefully as to sanction and considered the agreed Report which sets out the parties' agreement that a 9 month Suspension Order is the appropriate sanction in this case, without further review. This case is one where the Registrant does not intend to take any steps to remediate or address his failings due to his intention to retire. The Committee was of the view that this particular context, as well as what is likely to occur if he wishes to change his mind and apply for registration, is of particular relevance to the consideration of sanction. The Committee carefully considered the position of the GOC, as outlined to it during the hearing, in the event that the Registrant may decide to apply for registration in the future. In addition, the Committee took into account that the misconduct is not in itself so serious as to mean that erasure is proportionate.

In such circumstances, the Committee agreed that a Suspension Order of 9 months is appropriate and proportionate, to reflect the aggravating and mitigating factors in this case. While the misconduct was serious involving wide-ranging clinical failings in relation to a vulnerable patient, and there is little evidence of reflection on the impact of the misconduct. Nevertheless, the Committee noted the misconduct involved only one patient in an otherwise lengthy and unblemished career. Having weighed up these factors, the Committee decided that the maximum period of suspension would be disproportionate, but that a suspension of less than 9 months would not adequately address the seriousness of the misconduct nor maintain public confidence in the profession.

The Committee also agreed that that no review hearing is necessary. In light of the Registrant's expressed intention not to seek registration in the future, this would be disproportionate, and would serve no useful purpose, within the context of the checks and balances which it has been assured have been set in place by the GOC should the Registrant wish to apply for registration once more.

Immediate order

The Committee considered the agreed Report and agreed that it would be appropriate to impose an immediate order for suspension. Not to do so would be inconsistent with the Committee's determination on sanction. It is necessary to do so to protect the public, and it would also be in the public interest.

Revocation of interim order

The Committee hereby revokes the interim order for suspension of registration.

Chair of the Committee: Ms Julia Wortley

Signature **Date: 22 November 2019**

Registrant: Mr Geoffrey Thompson

Signature *Registrant not present but represented* **Date: 22 November 2019**

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.