

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

**GENERAL OPTICAL COUNCIL**

**F(20)04**

**AND**

**MARTYN BARRITT (D-12860)**

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**DETERMINATION OF A SUBSTANTIVE HEARING  
15-18 JUNE 2020**

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<b>Committee Members:</b>	Ms S Fenoughty (Chair/Lay) Ms V Geary (Lay) Ms N Enston (Lay) Ms C Hayes (Dispensing Optician) Mr S Pinnington (Dispensing Optician)
<b>Legal adviser:</b>	Ms V Headley
<b>GOC Presenting Officer:</b>	Ms A Ling
<b>Registrant present/represented:</b>	Yes and represented
<b>Registrant representative:</b>	Mr J Graham (WGL)
<b>Hearings Officer:</b>	Mr T Yates
<b>Facts found proved:</b>	1,2,3 and 4a – proved by admissions 4b- proved
<b>Facts not found proved:</b>	None
<b>Misconduct:</b>	Found
<b>Impairment:</b>	Impaired
<b>Sanction:</b>	6 months suspension (With a review)
<b>Immediate order:</b>	No immediate order

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## ALLEGATION

The Council alleges that you, Mr Martyn Barritt (D-12860), a registered dispensing optician whilst working at [REDACTED] (“the Practice”):

- 1) On or after 24 November 2014 you:
  - a. supplied contact lenses at a value of £90 from the Practice to Patient 1
  - b. failed to transfer money received from Patient 1 in payment for the contact lenses to the Practice;
  - c. deleted the electronic invoice for the contact lenses;
- 2) On or after 12 January 2015 you:
  - a. supplied contact lenses at a value of £90 from the Practice to Patient 2;
  - b. failed to transfer money received from Patient 2 in payment for the contact lenses to the Practice;
  - c. deleted the electronic invoice for the contact lenses;
- 3) On or after 13 July 2015 you:
  - a. supplied contact lenses at a value of £112 from the Practice to Patient 1;
  - b. failed to transfer money received from Patient 1 in payment for the contact lenses to the Practice;
  - c. deleted the electronic invoice for the contact lenses;
- 4) Your actions at 1b and/or 1c and/or 2b and/or 2c and/or 3b and/or 3c above were:
  - a. Inappropriate; and/or
  - b. Dishonest in that you knew money received from patient(s) in payment for contact lenses from the Practice is to be transferred to the Practice and/or you knew deleting the electronic invoice(s) for the contact lenses above would conceal that money was owed to the Practice.

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

## DETERMINATION

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

The Registrant admitted particulars 1,2 and 3 of the allegation, as well as 4a in its entirety and these were found proved.

### Background to the allegations

The Registrant had been employed by Mr A for more than 20 years, initially as an optical assistant. The Practice paid for the Registrant's optical training and he trained to become an optical technician and then a dispensing optician. The Registrant had further acted as the Assistant Manager at the Practice for several years and was in charge when Mr A was not at the Practice.

The Registrant had access to the payment system and was the only other person to have passwords needed to delete invoices. Thus, the only ones that could delete an invoice would be the Registrant or Mr A.

An initial concern arose in August 2016, regarding a missing patient record card. During the course of trying to locate the missing record card, Mr A discovered anomalies regarding the accounts for Patients 1 and 2 (both relatives of the Registrant). Specifically, that contact lenses were ordered for Patients 1 and 2 and paid for by the Practice; however, the invoice had been deleted from both the patient and Practice records and the Practice did not receive any payment from the patients for these lenses.

Mr A said that it was normal for staff at the Practice to supply family members with stock at a discount. All the invoices showed up on the monthly outstanding balance sheet, unless the invoices had been deleted. Mr A would be able to spot any outstanding balance from the invoice report unless the invoice had been deleted. Regarding Patients 1 and 2, the contact lenses were ordered and yet the computer records showed no payments received and nothing was shown on the outstanding balance report.

The deletion of invoices was usually undertaken when someone either changed their mind or when staff created a wrong or incorrect invoice. All deleted invoices are recorded in a book. This is part of the records for VAT purposes, so every invoice should either be in the computer till system or recorded as deleted in the deleted record book.

Following the finding of these anomalies, the Registrant was subsequently dismissed from the Practice and the Police notified.

The Registrant was arrested and interviewed on 15 September 2016 when he admitted to supplying lenses to Patients 1 and 2, who had paid him for those lenses. He also admitted that he did not transfer the money to the Practice, and that he had

deleted the invoices and put the value of the contact lenses onto an overtime/undertime sheet.

The Registrant was subsequently charged, tried and acquitted, following a jury trial in September 2017.

## **Applications**

Two applications were made on behalf of the Registrant during the course of the case:

The first application was to request permission for evidence to be admitted although the provisions of Rule 29 of The General Optical Council (Fitness to Practise) Rules Order of Council 2013 (“the Rules”) had not been complied with, in that directions as to the timing of the disclosure had not been followed;

It was submitted by Mr Graham, for the Registrant, that although the time limit for compliance with Rule 29 had not been complied with in relation to witness statements, it was fair to allow the application to admit the evidence, which was relevant to the Registrant’s case. Mr Graham also submitted that there had been delay because there had been other preliminary applications that had only recently be decided upon and the focus had been on those applications. There was, it was submitted, no prejudice to the Council.

Miss Ling, on behalf of the Council, said that she was neutral in relation to the Application.

The Committee accepted the advice of the Legal Adviser that it should consider Rule 40 of the GOC Fitness to Practise Rules 2013 (The Rules) and whether the evidence was both fair and relevant to admit the evidence, notwithstanding the delay in providing it.

The Committee concluded that the evidence was highly relevant and that admitting it would not be unfair to the Council, who had not opposed the application, The Committee granted the application.

The second application was in relation to Hearsay. Mr Graham applied to admit a transcript of evidence given to the Crown Court, by the Registrant’s mother. Mr Graham submitted that the evidence was not controversial but was relevant to the Registrant’s case and that it provided context and background to an area that the Registrant would give evidence on.

Ms Ling opposed the application, submitting that it had been served late and was not in compliance with rule 29, and was not relevant to the charge before the Committee.

The Committee heard and accepted the advice of the Legal Adviser, who confirmed that the Committee had a discretion to admit hearsay evidence and she detailed several factors, arising from caselaw, that the committee should consider. She referred the committee to the following cases.

*NMC v Ogbonna [2010] EWCA Civ 1216*

*R (Bonhoeffer) v GMC [2012] IRLR 37,*

*Thorneycroft v NMC [2014] EWHC 1566 (Admin),*

*El Karout v Nursing and Midwifery Council [2019] EWHC 28 (Admin)*

The Legal Adviser also advised that the Committee should have regard to Rule 40 of the GOC Fitness to Practise Rules 2013 (The Rules) and whether the evidence was relevant to the case before it and whether it would be fair to admit it.

The Committee determined that the content of the transcript was relevant to the matters before it. In relation to fairness, the Committee noted that Ms Ling had not suggested that the delay in providing this evidence had had any specific impact on the Council. The Committee concluded that admitting the statements would not be unfair to the Council and they granted the application.

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

In reaching its decisions on the facts, the Committee considered all the oral and documentary evidence adduced in this case, together with the submissions made by Ms Ling on behalf of the Council and Mr Graham on behalf of the Registrant.

The Committee heard oral evidence from Mr A, the previous owner of the practice where the Registrant had been employed.

Mr A described the Registrant as being hard working, loyal and a very good employee, and that up until this incident came to light, he had found the Registrant to be exemplary. Mr A agreed that he had often told his staff that he intended to sell the Practice. He also accepted that, following professional advice he had reduced his own salary, but that this was to reflect the reduction in his working hours. Mr A denied that he had reduced or stopped [REDACTED]. He also denied manufacturing the Registrant's dismissal in the hopes of improving the saleability of the Practice and said he thought it would be more detrimental than helpful, because a Practice that had low staff turnover and good staff was attractive.

Mr A's evidence was that on returning from a holiday he was advised by his sister in law, who was also an employee, that there was a record card missing. Mr A said his intention was to look for the card when he was next in the office, which also corresponded with the Registrant being on leave. He said that, at that time, there was nothing sinister in his mind about a missing record card. He expected to search the office and find it. He accepted that at some point he was told that the card belonged to a relative of the Registrant's

Mr A stated that his practice was small with old-fashioned values. There were no written policies, but he treated the staff as family and would be as flexible as possible to help them if they were struggling. He agreed that there was an understanding that staff members and their partners would be given additional time to pay for optical

appliances, but relatives were expected to pay on collection/receipt, although he would often agree a discounted price. Mr A said he would expect staff to pay by their next pay date but that this was often extended by informal agreement between the staff members and the person that was responsible for chasing outstanding invoices. Mr A's evidence was that he did not recall a staff member extending payment for longer than approximately 11 months and that was with permission.

He said that it would not be unusual for staff to discuss their family members need for optical appliances. Mr A would agree a price and the family member would subsequently collect their appliance and pay on collection or the staff member would deliver the appliances and would be expected to pay within a few days.

Mr A said that once an order was made an invoice would be generated and this invoice, if not paid, would show up on a monthly report and would then be chased. Mr A said if this was a relative of a staff member the patient would not be contacted directly, but the staff relative would be asked about the outstanding payment.

Mr A said that there would be occasions where an invoice was generated but the patient changed their mind, or there was an error on the invoice, for example the amount. He said that in those circumstances the invoice would be deleted by either himself or the Registrant and the fact of the deletion would be recorded in a separate record book. This was part of the VAT requirements and the book could be inspected for VAT purposes.

Mr A's evidence was that the invoices related to the allegations had been deleted but had not been recorded in the deleted invoice book. He said that the cumulative effect was that there would be no record of the monies being owed to the Practice. He accepted that the information could be retrieved but only if one knew the invoice existed, the invoice number, the name and date of birth of the patient concerned, or an approximate date of the transaction; otherwise it would be impossible to trace specific invoices due to the volume of invoices to trawl through.

Mr A also denied that any member of staff, including the Registrant had ever included the cost of optical appliances on their overtime/undertime sheet. He explained the overtime/undertime sheet as a way of staff recording any time that they had worked over their contracted hours, or times that they were late or did not work their contracted hours. They would then make up the time at a later date or leave early or take a whole day off. The employee could also choose to be paid for any additional hours. Mr A described the system as flexible and based on trust. He was happy to pay staff or give them the time off in lieu, whichever they preferred. Mr A said that the sheets were kept openly on a clip in the Practice and although everyone could use them not all members of staff used the system. Mr A said that when an employee wanted to be paid, they would let him know. He would then pay them. Mr A also explained that there could be several sheets relating to the same period of time. He gave an example of where an employee might record lots of small periods of time so as to build up a whole day but at the same time, they may also have accrued a large amount of time that they wished to be paid for. They would present the sheet with the larger amount of time but keep the other sheet.

Mr A's evidence was that he had provided the overtime/undertime sheets to the police. He said these were all the ones he held. He said he was required to keep them for 6-7 years for tax purposes but after that would destroy them due to limited storage space. He also said that he would only have sheets that were presented to him for payment. He would not know if there were other sheets, if they were not given to him.

Mr A explained that he did payroll at his home and he accepted that he had made reference to payments for cleaning on some of the sheets but that these were notes to himself because he also paid 2 members of staff for cleaning, in addition to their other duties.

Mr A was asked whether he recalled exchanging contact lenses for window cleaning services. He said he could not remember such an incident.

Mr A agreed that he had 2 family members that were employed by his practice. He denied that they ever used the overtime/undertime sheet to record the cost of optical appliances. Conversely his evidence was that they were not required to pay for their appliances at all.

Mr A also gave evidence that he had known for many years that the Registrant had been in financial difficulties, and that he had personally loaned the Registrant money, that the Registrant had been in the process of working to pay the debt off.

Mr A gave evidence that in or around February 2017 he had been contacted by a staff member who had advised him that someone, saying they were the Registrant's solicitor, had attended the Practice and had tried to give the member of staff an envelope that was purported to contain money. That staff member was also asked to sign a receipt. Mr A said that he was not expecting anyone to attend, he had had no prior communication and was concerned about accepting money in such circumstances as he was concerned it could jeopardise the ongoing court proceedings. Mr A confirmed that he told the staff member not to accept the envelope. Mr A said that was the only attempt made by the Registrant to repay the money, save for a telephone call shortly after the visit to the Practice. Mr A said the caller identified themselves as the Registrant's solicitor. Mr A said his impression overall was that the approach had been very unprofessional, and he told her he would need the Court to confirm to him that it was okay to accept this money. He said he had not subsequently heard anything from the Court and the money had, to date, not been repaid.

### **The Registrant's Evidence**

The Registrant's evidence was that he had agreed a price with Mr A for his relative's contact lenses. He said that he had openly placed the order(s) in the office. He accepted that on each of the occasions in question, his relatives had paid him for the lenses, but he had chosen to use that money to alleviate his financial difficulties. He had always intended to repay the money to the practice, but it had taken much longer than anticipated because 'life had got in the way'. The Registrant also accepted that he had deleted the invoices. He said this was because he had 'taken on the debt' and did not want his family members to be chased. He believed that they would be

chased directly, had he not deleted the invoices. The Registrant also accepted that he had not put the details of the deleted invoices in the deleted invoice book.

He also said he had never been asked about the missing record card, even though there was approximately a week overlap of Mr A returning from annual leave and the Registrant going on annual leave. The Registrant said that Mr A knew the card belonged to his relative and that it would have been natural to ask him about it, He explained that he had taken the record card home with him to act as a reminder to repay the outstanding money. The Registrant said that he believed that Mr A had manufactured his dismissal because he was planning to sell his Practice.

The Registrant agreed that there was a relaxed system in regard to overtime / undertime. He also agreed that, at any time, there could be several sheets relating to the same period of time.

The Registrant said that he and others had used overtime/undertime sheets to record the cost of appliances. He referred to a specific occasion when he had done so in order to purchase a distinctive pair of Ray Ban frames and contact lenses for his daughter. The Registrant also referred to an overtime/undertime sheet that talked of ringfenced days and the Registrant said these were to pay for appliances.

The Registrant said he was also aware of specific occasions when Mr A's relative staff members included the cost of contact lenses on their overtime/undertime sheet and that they did not get them free.

The Registrant believed that there should have been many more overtime/undertime sheets available to Mr A but he did accept that he did not know how long Mr A was required to keep them before destroying them.

The Registrant also said that there was a trail of paperwork about the 3 transactions referred to in the allegation and that he was not seeking to conceal that the money was owed to the practice. In support of this the Registrant pointed to the fact that, as a part of the investigation, the invoice details had been recovered from the system. He also maintained that there was a record of the cost of the lenses on an overtime /undertime sheet that had been kept in his drawer. The Registrant explained that he had done this because he was not sure whether he would work off the money owed or repay it in cash. He said that he had also been saving up cash and that in the year that he had been dismissed and arrested, (2016) he had been able to accumulate £200. It had taken him approximately 4 months to do this and he was saving about £50 each month. The Registrant said he had expected to repay the money by October but was arrested before he could do so. The Registrant said he did not know why he had not partially paid that money towards the debt.

The Registrant also accepted that he had given a different account to the police, suggesting that the non-payment was simply an oversight and that he had the money set aside. The Registrant explained that this was on the advice of the solicitor that had represented him at the police station, and that he had not properly understood what the implication of the word oversight was. The Registrant said he had explained this during the course of his jury trial.



The Registrant accepted that, to date, he had not repaid anything to the Practice. He denied that his actions were dishonest because he always intended to repay the money owed and did not delete the invoice with the intention of concealing the outstanding money.

The Committee heard closing submissions from Ms Ling on behalf of the GOC and Mr Graham on behalf of the Registrant.

The Committee accepted the advice of the Legal Adviser, who advised that the burden of proof lay on the GOC and there was no burden on the Registrant to prove or disprove anything. The Standard of proof to be applied was the balance of probabilities.

With regard to the particular alleging dishonesty, the test to be applied was set out by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67:

*“Where dishonesty is in question the, fact-finding tribunal must ascertain, subjectively, the actual state of the individual’s knowledge or believe as to the facts. The reasonableness of that belief is a matter of evidence going to whether they held the belief, but it was not an additional requirement that the belief had to be reasonable; the question is whether it was genuinely held. When the state of mind has been established the question whether the conduct was honest or dishonest is to be determined by applying the objective standards of ordinary decent people. There is no requirement that the person concerned must appreciate that the conduct was dishonest by those standards.”*

In reaching its decisions on the facts, the Committee considered all the evidence adduced in this case together with the submissions made by Ms Ling on behalf of the Council and Mr Graham on the Registrant’s behalf.

The Committee considered the overall credibility and reliability of all the witnesses it heard from.

The Committee considered that overall both witnesses were credible and clear in respect of the issues central to the allegations, however it noted that in his evidence the Registrant referred to specific conversations, or examples that were not put to Mr A. Mr A had no opportunity to agree, disagree or otherwise comment and the Committee felt that undermined the reliability of the Registrant’s evidence. The Committee also felt there were times that the Registrant was vague or evasive in his answers. The Committee therefore preferred the evidence of Mr A.

The Committee also had regard to the testimonials provided on behalf of the Registrant. Although several of these testimonials were provided by family members of the Registrant the Committee noted that there were some that were more independent and that overall, they gave a similar impression that the Registrant was

hard working, honest and had integrity. The Committee also noted that Mr A had described the Registrant in similar terms, but for the matters which were the subject of the allegation.

The Committee considered the transcript of evidence given by the Registrant's mother. She is not an independent witness and as his mother she will have his best interests in mind. The Committee therefore gave little weight to this evidence, although it also noted that on its own it did not go directly to the allegations.

In relation to the specific allegations, the Committee considered each sub particular separately.

**4b. Dishonest in that you knew money received from patient(s) in payment for contact lenses from the Practice is to be transferred to the Practice (In relation to 1b, 2b and 3b)**

In relation to 1b

**The Committee found this allegation to be proved.**

Looking at the first transaction which is worded as taking place on or after 24 November 2014, the Committee accept that the Registrant had initially borrowed the money with an intention to pay it back within a relatively short time frame. However, by the 3<sup>rd</sup> occasion in July 2015 the Committee determine that the Registrant's state of mind had changed. He had now gone on to repeat the conduct twice more, he had deleted the document which would have alerted his employer to the outstanding debt, he had not made his employer aware of the debt, and he knew that he had still not repaid any of the initial money owing. The Committee noted the stem of the allegation did not have an end date and has been worded so as to include any time after November 2014 and the Committee was satisfied that the Registrant's ongoing failure to repay this money owed, whilst also repeating his behaviour, is conduct that would be regarded as being dishonest by applying the objective standards of ordinary decent people.

In relation to 2b

**The Committee found this allegation to be proved.**

The Committee's reasons are the same as above. It noted that this occurred approximately 6 weeks after the 1<sup>st</sup> transaction and it was feasible that the Registrant still believed he could repay both sums relatively soon but by July 2015 he knew this was not the case.

In relation to 3b

**The Committee found this allegation to be proved.**

The Committee felt that by this date a long period had passed since the 1<sup>st</sup> transaction. No one in the practice knew that cost of the 2 previous transactions was still outstanding, he had not told his relatives, and no-one had found out or challenged him about it. He had taken steps to conceal the three outstanding amounts from his employer, and he knew that he had not made any repayment of any part of the amounts outstanding. This was in contrast to the other sums owed to his employer, which were documented, and which Mr A knew about.

The Committee was satisfied that, objectively this would be considered as dishonest from the outset by ordinary and decent people.

**4b. Dishonest in that you knew deleting the electronic invoice(s) for the contact lenses above would conceal that money was owed to the Practice (In relation to 1c, 2c and 3c).**

**The Committee found this allegation to be proved in relation to all 3 transactions**

The Committee's reasoning is the same for all 3 dates.

The Registrant accepted that deleting the invoices would remove them from the monthly report and although he said there was a clear paper trail the Committee rejected this. The Registrant accepted that one would have to look for the invoices in order to be able to retrieve them and one would only look if they knew an invoice existed had reason to look for it.

The Committee also rejected that an overtime/undertime sheet in a drawer could be considered an acceptable paper trail, particularly as the Registrant admitted he had never discussed the matter with Mr A.

The Committee does not accept that recording the cost of appliances on overtime/undertime sheets was the accepted practice, nor do they accept that deleting an invoice would be the usual or accepted practice.

Deleting an invoice had the purpose of preventing it from appearing on a monthly report and without this, there was no record that the Practice was owed money. The Registrant said he deleted the invoices to ensure that his relatives would not be chased for payment. However, he knew that deleting the invoices, without recording the reason in the deleted invoices book, would effectively conceal the fact that there was an outstanding payment due in respect of these three transactions.

The Committee was satisfied that this action would be considered as dishonest by ordinary and decent people.

The Committee therefore finds the allegation proved in its entirety.

## **Findings in relation to misconduct**

The Committee has heard submissions from Ms Ling on behalf of the Council and from Mr Graham on behalf of the Registrant.

Ms Ling invited the Committee to find that there had been misconduct in respect of the Particulars found proved. Mr Graham accepted the Particulars found proved were serious but remained neutral on whether it amounted to misconduct.

The Committee was reminded that it was a matter for its professional judgement to determine that there had or had not been misconduct. It was open for the Committee to determine that there had not been misconduct even in relation to findings of dishonesty.

The Committee heard and accepted the advice of the Legal Adviser who referred to the case of Roylance v GMC (No2) [2000] 1 AC 311 and Remedy UK Ltd v General Medical Council [2010] EWHC 1245 (Admin) and suggested that the appropriate test for the Committee to use was to consider whether there had been a serious departure from the standards expected of a reasonably competent registrant. The Committee had regard to the Code of Conduct (“the Code”) applicable at the time. The Committee accepted that not every breach of the Code would result in a finding of misconduct. It would have to be satisfied that the departure from the Code was serious enough to warrant a finding of misconduct.

The Committee concluded that the Registrant had breached the following codes of the GOC Code of Conduct for Individual Registrants (2010):

### ***“10: Be honest and trustworthy***

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

The Registrant’s behaviour had involved dishonesty, whilst acting in his professional capacity as a dispensing optician. The Committee concluded that the Registrant’s behaviour could not be described as isolated. On 3 separate occasions, over a significant period of time, the Registrant failed to transfer money to the Practice, instead using that money for his own purposes. He had actively sought to conceal this by deleting invoices. This was aggravated by the fact that Registrant had been in a position of trust. The Committee agreed that this dishonesty fell seriously below the standards expected of a registered optician and would be regarded as such by other members of the profession.

Accordingly, the Committee concluded that in its judgement the facts found proved amounted to misconduct

## Findings regarding impairment

The Committee has heard submissions from Ms Ling on behalf of the Council and from Mr Graham on behalf of the Registrant. The Committee also had regard to the skeleton argument prepared by Ms Ling.

Ms Ling invited the Committee to make a finding of impairment. She submitted that the Registrant had shown a lack of insight into his behaviour. He had not recognised that his actions were dishonest, and if he did not agree that it was dishonest there was a real risk of him repeating similar behaviour in the future. Ms Ling also submitted that the findings of dishonesty were very serious and that if impairment was not found it would undermine public confidence in the profession.

Mr Graham submitted that his client was entitled to deny that his actions were dishonest but that did not undermine his level of insight. Mr Graham referred to the Registrant's acceptance that his actions were inappropriate, as showing sufficient insight that the Committee could be satisfied that there was no likelihood of repetition and that the Registrant's fitness to practise was not impaired.

The Committee received and accepted the advice of the Legal Adviser, who set out the criteria in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Paula Grant [2011] EWHC 927, and encouraged the Committee to ask whether the Registrant:

- a) Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
- b) Has in the past and/or is liable in the future to bring the profession into disrepute; and/or
- c) Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession
- d) Has in the past acted dishonestly and/or is liable to act dishonestly in the future

The Legal Adviser also took the Committee to the case of Cohen v General Medical Council [2008] EWHC 581 and suggested the Committee ask whether the Registrant's conduct is easily remediable, whether it has been remedied and whether it is highly unlikely to be repeated. The Legal adviser advised the Committee to consider whether the Registrant had insight into his misconduct, and she referred them to the case of Kimmance v GMC [2016] EWHC 1808. The Committee were reminded of the overarching objectives and advised to consider the critical public interest issues set out in the aforementioned case of Grant and also the case of Yeong v General Medical Council [2009] EWHC 1923 (Admin).

The Committee read numerous positive testimonials, from a wide range of individuals, all of whom were aware of the nature of the regulatory proceedings brought by the Council. The Committee also took account of the fact that the Registrant had, for some

years, been under difficult personal circumstances both in terms of bereavement and also financial debt.

The Committee is aware that it is difficult for someone to demonstrate remediation in cases of dishonesty, The Committee found that the Registrant had not sufficiently reflected on his conduct and noted that when the Registrant was giving his evidence, he was unable to adequately articulate why he thought his actions had been wrong or inappropriate, although he readily accepted that they had been inappropriate.

The Registrant did not give evidence at the impairment stage of these proceedings. The Committee did not draw any adverse inferences from this, although it would have been useful to have had the opportunity to ask him questions and test his level of insight and remediation.

The Committee noted and accepted that the Registrant had apologised for the impact that his arrest and Court proceedings had had on his family, and that he had shown some remorse, but the Committee was not satisfied that the Registrant recognised that he had been in a position of trust and that his actions abused that position. The Committee had no evidence before it that the Registrant had appreciated the impact that his actions had on Mr A, his colleagues, the profession as a whole or the wider public. His remorse concentrated on the impact to his own situation and circumstances. He attempted to deflect blame from himself by suggesting that Mr A had manufactured his dismissal and should have asked him about the missing record card. The Registrant used language such as "He [Mr A] got me arrested" and the Committee determined that this showed a lack of genuine insight into the seriousness of his actions.

The Committee considered impairment in the context of Dame Janet Smith's comment in the 5th Report to the Shipman Inquiry and concluded that the Registrant had acted in the past so as to (b) bring the optical profession into disrepute (c) breach a fundamental tenet of the optical profession and (d) had acted dishonestly.

The Committee agree that the consequences for the Registrant have been a salutary experience. The situation arose out of a particular set of circumstances, he was of previous good character, he had not behaved in a similar way before or since the events in the allegation, and the Committee concluded that there is a low risk of repetition.

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

The Committee found that the fitness of Martyn Barritt to practise as a dispensing optician is impaired.

## **Sanction**

The Committee heard submissions from both parties on the issue of sanction.

Ms Ling adopted the submissions in her skeleton argument. She referred the Committee to the Fitness to Practise Committee Hearings and Indicative Sanctions Guidance, revised 1 December 2018 (“the Guidance”). She outlined the public interest test and reminded the Committee that any sanction imposed should address the public interest concerns. She submitted that the appropriate and proportionate sanction should be no less than a period of suspension.

Ms Ling suggested that the aggravating features included dishonest conduct that was serious and repeated, and that the actions involved a breach of trust. She submitted that the Registrant’s misconduct had affected public confidence in the profession. She stated that the insight developed by the Registrant was limited. In terms of mitigating features, Ms Ling submitted that the Registrant’s misconduct did not result in harm to patients and the public, that the Registrant has produced a wealth of positive testimonials and character references, including from Mr A who had described the Registrant as an exemplary employee up to the time of the allegation in question. Ms Ling conceded that the Registrant had at the time been in difficult personal circumstances and she confirmed that the Registrant did not have any prior regulatory findings.

Mr Graham suggested that an abuse of trust was more relevant to situations involving patients and should not be considered as an aggravating factor against the Registrant. He also told the Committee that the Registrant’s financial position had now improved and that the Registrant’s wife was now working and able to contribute to the family’s finances.

The Committee accepted the advice of the Legal Adviser who advised the Committee to consider the range of available sanctions in ascending order of seriousness; to consider any aggravating and mitigating factors in the case; to act proportionately; and to remember that the purpose of sanction is not to be punitive, but is to protect the public, maintain public confidence in the profession, and declare and uphold proper standards of conduct and behaviour. She advised the Committee to take into account the factors set out in the GOC’s “Hearings and Indicative Sanctions Guidance”.

Before making its decision on the appropriate sanction, the Committee established the aggravating and mitigating features in this case.

The Committee took into account the following mitigating factors:

- The Registrant’s previous good character
- The positive testimonials provided on the Registrant’s behalf attesting to his ability as a clinician and to the fact that dishonesty is wholly out of character

- The length of time since the misconduct, combined with the lack of any repetition of it
- The Registrant's personal circumstances at the time of the misconduct. The Committee placed significant weight on the context of the Registrant's dire financial situation and complicated family circumstances (Bereavements) and they accepted he was under immense pressure.

The Committee took into account the following aggravating factors:

- The Registrant has shown a lack of fully developed insight
- There has been no apology from the Registrant
- The Registrant's evidence was that he always intended to repay the money but to date this has not been repaid and the Committee found that there had been inadequate attempts to repay.
- Not demonstrating the timely development of insight.
- The Registrant was in a position of trust. He was one of only two people that could access the management side of the Practice systems and the Committee found that he had breached both Mr A's trust and the position that the Registrant held.
- The Committee found that the Registrant's attempts to conceal his wrongdoing was also an aggravating feature.

The Committee concluded that taking no further action, or a financial penalty order were not proportionate or sufficient given the seriousness and the nature of the misconduct.

The Committee concluded that conditional registration would not be sufficient in light of the seriousness of the dishonesty. Further, such an order would not be practicable due to the nature of the misconduct, which did not involve identifiable areas of practice in need of assessment or retraining.

The Committee next considered suspension and considered paragraph 34 of the guidance. The Committee took into account the fact that dishonesty is a serious matter, and in this case, the dishonesty was repeated over a period of time.

The Committee reminded itself of the positive testimonial evidence given on behalf of the Registrant, describing him generally as being honest and trustworthy. Although some testimonials were from family members, the Committee noted that there were also professional testimonials, and that Mr A himself had described the Registrant in a positive manner.

The Committee did not have specific evidence before them of the Registrant's reflections or other remediation, but he had readily accepted that his conduct was wrong.



The Committee considered that a reasonable member of the public, in possession of all the facts, would accept that suspension was the proportionate sanction in the Registrant's case.

The Committee did consider erasure, but was of the view that this would be disproportionate and excessively punitive, in light of the Registrant's developing insight the very low risk of repetition and that this was not the only sanction that could protect the public interest in the circumstances of this case. The Committee took into account the wider public interest in retaining the services of a committed dispensing optician whose contribution to the profession is recognised by both patients and professional colleagues.

The Committee therefore concludes that a period of suspension is sufficient to address the public interest concerns and to declare and uphold proper standards of conduct and behaviour and maintain confidence in the profession. The Committee gave consideration to the length of the order and concluded that six months was the appropriate length to address the seriousness of the dishonesty and the public interest concerns it had identified.

The Committee had regard to whether a review hearing was required, and it determined that a review is needed to satisfy itself that the Registrant will develop sufficient insight into the seriousness of his misconduct and the impact it has had on the public interest.

This Committee feels that any future reviewing Committee will be assisted by

A reflective piece addressing the failings identified by the findings of this Committee, and the impact his behaviour had had on others, as well as an indication of any relevant training undertaken, for example a module on reflective process.

A review hearing will be held between four and six weeks prior to the expiration of this order. The Review Committee will need to be satisfied that the Registrant:

- has fully appreciated the gravity of the offence,
- has not re-offended and has maintained his or her skills and knowledge and
- that the Registrant's patients will not be placed at risk by resumption of practice

### **Immediate order**

The Committee invited submissions from both parties. Both parties were neutral as to the imposition of an immediate order of suspension.

The Committee heard and accepted the advice of the Legal Adviser.

The Committee has decided not to impose an immediate suspension order for the following reasons. The Committee previously identified that there was a low risk of repetition, and that there is no risk of patient harm. It took into account that the Registrant has continued to practise without restriction. The Committee is satisfied that the public interest would not be undermined by not imposing an immediate order of

suspension. The public interest is sufficiently addressed by the substantive order imposed.

**Chair of the Committee: Ms Sara Fenoughty**



**Signature**

**Date: 18 June 2020**

**Registrant: Mr Martyn Barritt**

**Signature** Present via video

**Date: 18 June 2020**

<b>FURTHER INFORMATION</b>	
<b>Transcript</b>	
	A full transcript of the hearing will be made available for purchase in due course.
<b>Appeal</b>	
	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).
<b>Professional Standards Authority</b>	
	<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 <a href="http://www.professionalstandards.org.uk">www.professionalstandards.org.uk</a> or by telephone on 020 7389 8030.</p>
<b>Effect of orders for suspension or erasure</b>	
	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.
<b>European Alert</b>	
	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.