BEFORE THE FITNESS TO PRACTISE COMMITTEE
OF THE GENERAL OPTICAL COUNCIL

GENERAL OPTICAL COUNCIL

AND

F(18)30

JATINDER BHAMRA - (D-12677)

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DETERMINATION OF A SUBSTANTIVE HEARING
28-29 JANUARY 2019

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| Committee Members:       | Ms A Johnstone (Chair/Lay) |
|                         | Mr J Kellock (Lay)         |
|                         | Dr P Ormerod (Lay)         |
|                         | Mr M Chatham (Dispensing Optician) |
|                         | Ms J Ames (Dispensing Optician) |
| Legal adviser:           | Mr W Hoskins               |
| GOC Presenting Officer:  | Mr T Day                   |
| Registrant present/represented: | Not present or represented |
| Hearings Officer:        | Ms V Desai, Mr C Liddell  |
| Facts found proved:     | 1(a), (b), 2(a), (b)       |
| Facts not found proved: | None                       |
| Misconduct:             | Found                      |
| Impairment:             | Impaired                   |
| Sanction:               | Suspension Order – 9 months |
| Immediate order:        | No order                   |
Proof of service

The Committee heard an application from Mr Day on behalf of the Council for the matter to proceed in the Registrant’s absence.

First, the Council was required to satisfy the Committee that the Notice of Inquiry and accompanying documentation had been served in accordance with Section 23A of the Act and Rule 61 of the Fitness to Practise Rules 2013.

The Committee accepted the advice of the Legal Adviser.

The Committee noted the letter of 24 October 2018, notifying the Registrant of today’s hearing and containing the relevant prescribed information and sent to the Registrant’s registered address on that date. The Committee was satisfied that proper service had been affected in accordance with the Rules.

Proceeding in the absence of the Registrant

The Committee then went on to consider whether it would be in the public interest to proceed in the Registrant’s absence in accordance with Rule 22.

Mr Day on behalf of the Council, drew the Committee’s attention to email correspondence with the Registrant in which she confirmed that she had received the hearing documents. On 7 January 2019 she wrote;

“I would like to confirm that I will be not attending the hearing, and I would like the hearing to proceed in my absence.”

On 14 January 2019, the Registrant wrote further by email;

“I would wish for the hearing NOT to be postponed and to continue as scheduled.”

The Committee accepted the advice of the Legal Adviser, who reminded the Committee of the need for caution when exercising its discretion to proceed in the absence of the Registrant and of the need to take into account the public interest in the expeditious disposal of cases.

The Committee had regard to the correspondence to which it had been referred. It concluded that the Registrant had decided not to attend the hearing and did not want the hearing postponed. The Committee concluded that it was in the public interest to proceed in her absence.
ALLEGATION

The Council alleges that in relation to you, Jatinder Bhamra (D-12677), a registered Dispensing Optician:

1. Between 9 December 2017 and 26 December 2017, you:
   a) manually added points to your personal Boots Advantage Card to the value of £84.00 although you were not authorised to do so;
   b) used the points on your personal Boots Advantage card to make purchases equivalent to the value of £42.97;

2. Your actions as set out at 1a. and/or 1b. were:
   a) Financially motivated;
   b) Dishonest

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

DETERMINATION

Background to the allegations

The Registrant was employed as a Registered Dispensing Optician and practice manager [redacted]. The practice operated a loyalty card scheme, known as an Advantage Card. If a purchase was made points could be added to the card, and these points could be redeemed against future purchases. Each point had a monetary value of one penny. In general, points were added automatically at the time of purchase. However, points could be added manually at a later date by managers or other specified individuals using an operator’s card which identified the originator by a number. This was done typically in circumstances where a customer had made a purchase but had not had his or her card available at the time. As the practice manager, the Registrant had the authority to add points manually to an Advantage card but was not permitted to add points to her own card.

The Registrant was issued with an Advantage card in September 2017. Following the identification of some unusual activity, an investigation into the Registrant’s use of her own Advantage card subsequently showed that between 9 December 2017 and 26 December 2017, the Registrant had manually added a total of 8400 points to her card, which had a monetary value of £84. There appeared to be no justifiable reason for this. During the same period the Registrant paid for items from the store using not less than 4297 points from her Advantage card.

The Registrant was interviewed about the entries on her Advantage card and the purchases she had made using the points she had added manually. She initially denied that she had been responsible for adding the points manually and implied that someone else must have used her card. However, when presented with the
card records during the course of the investigatory interview she accepted that she had indeed been responsible for adding points manually and stated that she had done this because she had “hard times at home, needed to get presents”. The Registrant was working her notice period at the time before commencing new employment and was immediately suspended. Subsequently, the Registrant reimbursed the sum claimed.

**Findings in relation to the facts**

Mr Day on behalf of the Council, invited the Committee to consider all of the evidence in the case and not just the admissions made by the Registrant in correspondence and in the case management form. He referred to the written witness statements of **Witness A** and **Witness B**. He told the Committee that the Registrant had agreed to these witness statements being adduced in evidence without the need for the witnesses themselves to attend to give oral evidence. He relied in particular upon an email from the Registrant dated 10 January 2019, in which she had written;

“I do not wish to challenge or question the witness statements and am happy for the witnesses to use the evidence they have.”

Mr Day, therefore applied to the Committee to admit the written witness statements in evidence.

The Committee accepted the advice of the Legal Adviser, who reminded the Committee of the broad discretion it had under Rule 40 to admit evidence providing that it was fair and relevant.

The Committee decided to admit the written witness statements, of **Witness A** and **Witness B**, including the supplemental witness statement of the latter.

**Witness A**, in his witness statement detailed the operation of the Advantage card and produced a number of records which showed the Registrant’s use of the Advantage card, the manual addition of points, and the purchases she had made. The records demonstrated that between the 9 December 2017 and 22 December 2017, the Registrant had added points to her Advantage card manually. The manual points added totalled 8400 and had a monetary value of £84.00. The records also showed, that during this period, the Registrant used her Advantage card to redeem points, i.e. make purchases on a number of different occasions to a value of not less than £42.97.

The witness statement of **Witness B** explained the system by which points could be added manually. **Witness B** made clear that the system by which points could be added manually was designed to be used so that points could be added to a customer’s card at a later date if a customer had made a purchase and did not have the Advantage card with him/her at the time of purchase.

**Witness B** produced a record of the interview he had conducted with the Registrant. When questioned about the circumstances in which she had come to add Advantage
points to her card, the Registrant initially denied adding points to her own card. However, when the records were presented to her she said;  
“I’m not gonna (sic) lie – I have been doing that – adding points. I had hard times at home, needed to get presents, I can return it. I don’t want this to affect my GOC registration. It was (sic) stupid mistake.”

Witness B then said;  
“You have been adding points and you have been redeeming points.”

To which the Registrant responded;  
“Yes, I have…. I know it was completely wrong.”

A little later in the same interview, she added:

“I have never done this before, I can’t let this affect my next job; I knew it’s wrong every time I done it.”

The position was summarised to her by Witness B as follows:

“You’ve been in essence breaching security by stealing points and redeeming them – in total £84; from what you said before you knew this was wrong”

To which the Registrant answered:

“Definitely; I’ve been in Optics for 18 years and that is the stupidest thing I have done.”

In a letter written to the Hearings team, dated 7 January 2019, included in the bundle of documents before the Committee the Registrant wrote:

“The thought of my reputation and self-conscious of what I have done disappoints me and has effected [sic] me to carry on working…  
I accept I have made a mistake and I know I have to accept the consequences of my actions. I have never let these actions occur before neither will I carry these out in the future.  
I am petrified of the outcome, as this feels like a life changing situation for me.”

**Allegation 1 (a)**

Between 9 December 2017 and 26 December 2017, you:

a) manually added points to your personal Boots Advantage Card to the value of £84.00 although you were not authorised to do so.

Found Proved. The Committee had regard to the record of the Registrant’s Advantage card, which showed a total of 8400 points added manually and to the Registrant’s admission that she had done this.
Allegation 1 (b)

b) used the points on your personal Boots Advantage card to make purchases equivalent to the value of £42.97;

Found proved. The Committee had regard to the record of redemption of points through the Registrant’s Advantage card over the period in question, to the Registrant’s admissions and was satisfied from the records that the Registrant had redeemed points to the value of not less than £42.97.

Allegation 2 (a)

Your actions as set out at 1a. and/or 1b. were:

a) Financially motivated;

Found Proved. The Committee had regard to the Registrant’s admission in interview that she had done this because she had “hard times at home [and] needed to get presents”.

Allegation 2 (b)

b) Dishonest

Found Proved. The Committee had regard to the Registrant’s admissions and was satisfied that in respect of not more than £42.97 what she did would be regarded as dishonest by the standards of the ordinary honest person.

The Committee, with the consent of Mr Day, decided to deal with misconduct and impairment in one stage, although the two matters would be considered separately.

Findings in relation to misconduct

The Committee heard submissions from Mr Day who emphasised that this was a case of proven dishonesty. The Registrant had abused a position of trust and it was the more serious because she was the practice manager. It was, in his submission, effectively a case of theft from her employer.

The Committee accepted the advice of the Legal Adviser who reminded the Committee that there was no statutory definition of misconduct. The question was one for the Committee’s judgement having regard to all the facts which it had found proved.

The Committee considered that this was a case of breach of trust. The Registrant was a practice manager who had used her authority to add points manually to her Advantage card so as to steal from her employer. The Committee considered that in so doing she had breached principles 16 and 17 of the Standards of Practice for Optometrists and Dispensing Opticians which provides as follows:

16. Be honest and trustworthy.
17. Do not damage the reputation of your profession through your conduct.

The Committee was satisfied that this case of theft from an employer crossed the necessary threshold of seriousness and was properly categorised as misconduct.

Findings regarding impairment

The Committee heard submissions from Mr Day on behalf of the Council. Mr Day focussed on the question of the Registrant’s insight. He submitted that this could only be regarded as partial. He reminded the Committee that the Registrant had initially sought to deny guilt and shift blame elsewhere when interviewed, and he also referred the Committee to an email written by the Registrant to the Council on 5 January 2018 in which she complained of discrimination and appeared not to accept the guilt which she had admitted in interview. In fairness to the Registrant, Mr Day also submitted that the misuse by the Registrant of her Advantage card appeared to have ended before she was interviewed about the matter and she had repaid the sum that was alleged to have been misappropriated.

Mr Day submitted that three limbs of Dame Janet Smith’s formulation as endorsed in the case of Grant were engaged. He submitted that the Registrant had brought the profession into disrepute and breached one of the fundamental tenets of the profession and had acted in such a way that her integrity could no longer be relied upon. Further, he invited the Committee to find that the Registrant’s fitness to practise was impaired on public interest grounds.

The Committee accepted the advice of the Legal Adviser. He reminded the Committee of the importance of insight in a case of this kind and of the Committee’s responsibility to declare and uphold proper standards of conduct, so that confidence in the profession and in its regulation was maintained.

As the Registrant had chosen not to attend the hearing, the Committee had limited information from her as to the level of her insight at today’s date. The Committee noted the contents of her two letters to the Hearings team dated 3 October 2018, and 7 January 2019. In the latter she expressed disappointment at what she had done and accepted that she would have to accept the consequences of her actions. She stated;

“I have never let these actions occur before, neither would I be carrying these out in the future.”

The Committee noted that the Registrant appeared to have admitted the allegations against her by 3 October 2018. The Committee concluded that the focus of the Registrant’s letter was very much upon her own position. There was no real indication in the letter that she appreciated the impact that conduct of this kind has upon the profession as a whole. In those circumstances, the Committee concluded that the Registrant’s level of insight into the seriousness of her actions was only partial. Further, it accepted Mr Day’s submission that the three limbs of Dame Janet Smith’s formulation, to which he had referred, were all engaged.
The Committee went on to consider whether the public interest required a finding of impairment to be made. It was in no doubt that the public interest required such a finding. Dishonesty is always a serious matter and in this case the Registrant occupied a position of particular trust. The Registrant took advantage of her position to commit the acts of dishonesty which the Committee had found proved.

Accordingly, the Committee concluded the Registrant’s fitness to practise is currently impaired by reason of her misconduct.

Sanction

The Committee has heard submissions from Mr Day on behalf of the Council. In relation to aggravating features, Mr Day submitted that the principal aggravating feature was that this was an abuse of trust which had occurred at work, and that the Registrant was not only an employee but also the practice manager. In addition, her insight was partial. Mr Day accepted that the Registrant had shown remorse and had repaid the sum which she had misappropriated. He reminded the Committee that she had an otherwise unblemished fitness to practise history of some 18 years and that these events had occurred over a period of 2 weeks. He submitted that this was not a case of harmful, deep-seated attitudinal issues and that the Council’s position was that an appropriate sanction would be one of suspension, although he accepted that the Committee may also wish to consider erasure.

The Committee accepted the advice of the Legal Adviser. He reminded the Committee that the purpose of any sanction was not to punish but to arrive at a proportionate outcome having regard to the Committee’s responsibility to declare and uphold proper standards of conduct so that confidence in the profession and its regulation was maintained.

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

In the Committee’s judgement, the aggravating features were that the dishonesty had occurred at work, had involved an abuse of trust, was premeditated and repeated over the course of about 2 weeks. The Registrant had also initially tried to shift the blame and had shown limited insight into the impact that behaviour of this kind has upon public confidence in the profession.

The mitigating features were that the Registrant had shown remorse, had some insight and had paid back the money she had misappropriated. She had cooperated fully with the investigation and she had a long previous practice history which was unblemished. The Committee also noted the Registrant’s account that this behaviour had occurred at a time [redacted].

The Committee took the view that there was no significant risk of repetition.

The Committee considered the sanctions available to it beginning with the least restrictive sanction.

The Committee was of the view that to take no action would be manifestly inappropriate in a case involving breach of trust.
The Committee did not consider a financial penalty order to be appropriate. The sums misappropriated were not substantial and had been repaid, and the Registrant’s means, on the basis of the information she had supplied to the Council, were very limited.

The Committee did not consider an order for conditional registration to be appropriate. Such orders were primarily designed to address clinical failings, and this was not a case of that type and, in any event, the dishonesty was too serious to be dealt with by such an order.

The Committee considered carefully the Indicative Sanctions Guidance in relation to an order for suspension. The Committee concluded that the factors set out at paragraph 34.1 a-d were substantially met. This was a serious instance of misconduct where a lesser sanction was not sufficient. The Committee did not consider that there was evidence of harmful, deep-seated attitudinal problems. There was no evidence of repetition of the behaviour since the incident. The Committee was satisfied that the Registrant has some insight and does not pose a significant risk of repeating behaviour.

The Committee concluded that a significant period of suspension would be sufficient in this particular case to maintain the public interest. The Committee decided that a period of 9 months’ suspension would meet the requirements of the case.

The Committee also considered erasure. This was a case which involved an abuse of position and trust although it was not a case which involved vulnerable patients or violation of the rights of patients. The dishonesty had occurred over a period of two weeks but was an isolated event in a long and otherwise unblemished practice history. The dishonesty was also very naive as the manual addition of large quantities of points to the Registrant’s Advantage card was bound to come to the attention of those responsible for supervising the use made of such cards in due course. Looking at the case as a whole, the Committee concluded that erasure would be a disproportionate sanction in these particular circumstances.

Accordingly, the Committee determined to impose a suspension order for a period of 9 months with a review held 6 to 8 weeks prior to the expiration of this order. The Review Committee may be assisted at its review by:

a) the attendance of the Registrant,

b) a reflective piece written by her demonstrating her appreciation of the adverse impact that behaviour of this kind has upon the reputation of the profession,

c) testimonials and references from any employment, whether paid or unpaid, current or previous,

d) evidence that she has kept up to date with professional skills and knowledge.

The Review Committee will want to be satisfied that the Registrant:

- has fully appreciated the gravity of the offence,
• has not re-offended and has maintained her professional skills and knowledge.

Immediate Order
Mr Day made no application for an immediate order in this case as the order made by the Committee was made primarily on public interest grounds.

The Committee accepted Mr Day’s approach. The order it had imposed was made primarily on public interest grounds and in view of the Committee’s finding that there was no significant risk of repetition of the Registrant’s behaviour, there was no justification for an immediate order to cover the period before the substantive order made by the Committee came into force.

Chair of the Committee: Ms Anne Johnstone

Signature ………………………………………………… Date: 29 January 2019

Registrant: Ms Jatinder Bhamra (Not present)

Signature ………………………………………………… Date: 29 January 2019
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<tr>
<th><strong>FURTHER INFORMATION</strong></th>
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<tr>
<td><strong>Transcript</strong></td>
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<td>A full transcript of the hearing will be made available for purchase in due course.</td>
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<td><strong>Appeal</strong></td>
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<td>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).</td>
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<tr>
<td><strong>Professional Standards Authority</strong></td>
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<td>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). 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.</td>
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<td><strong>Effect of orders for suspension or erasure</strong></td>
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<td>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.</td>
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<td><strong>European Alert</strong></td>
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<td>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.</td>
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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?**
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/](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.