BEFORE THE FITNESS TO PRACTISE COMMITTEE
OF THE GENERAL OPTICAL COUNCIL

GENERAL OPTICAL COUNCIL

AND

BOOTS OPTICIANS PROFESSIONAL SERVICES LTD - (CO-3673)

DETERMINATION OF A SUBSTANTIVE HEARING
17 – 21 DECEMBER 2018 & 27 FEBRUARY 2019

Committee Members:  
Ms A Johnstone - (Chair/Lay)  
Dr P Ormerod - (Lay)  
Ms R O’Connell - (Lay)  
Dr C Collin - (Optometrist)  
Ms J Ames - (Dispensing Optician)

Legal adviser:  
Mr I Ashford-Thom – 17-21 December 2018  
Mr W Hoskins – 27 February 2019

GOC Presenting Officer:  
Mr B Albuery

Body Corporate:  
Boots Opticians Professional Services LTD

Registrant representative:  
Mr A Kennedy – (Counsel)  
Mr G Taylor - (Keoghs Solicitors)

Hearings Officer:  
Ms V Desai

Facts found proved:  
1a,b,c

Facts not found proved:  
None

Misconduct:  
Found

Impairment:  
Impaired

Sanction:  
Financial Penalty Imposed - £50,000.00
ALLEGATION

The Council alleges that you Boots Opticians Professional Services Ltd, a registered body corporate:

1. Between around October 2014 and February 2016 you failed to appropriately manage protected disclosures made by Mr A about clinical concerns within your business in that:

   a. You did not identify that the disclosures made were of protected disclosures pursuant to the Public Interest Disclosure Act 1988

   b. You disclosed to the subject of the protected disclosures that they had been made by Mr A

   c. You retained, or indicated that you intended to retain, the subject of the protected disclosures as the Clinical Governance Optometrist with responsibility for the clinical supervision of Mr A

   d. You failed to adequately address the concerns raised by Mr A relating to the clinical performance of the subject of the protected disclosures

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

At the outset of the hearing on 17 December 2018, Mr Albury for the General Optical Council (GOC) informed the Committee that the referral of this allegation to the Fitness to Practise Committee had recently been reviewed pursuant to Rule 16 of the General Optical Council (Fitness to Practise rules). It had been determined that one part of the allegation 1d should not be pursued at this substantive hearing. The Committee accordingly disregarded entirely 1(d).

DETERMINATION

Admissions in relation to the particulars of the allegation

No formal admissions were made in respect of any of the particulars of the charge.

Background to the allegation

The Registrant, Boots Opticians Professional Services Limited, (BOL), is in business operating a chain of ophthalmic and dispensing optician stores in the UK.

Mr A is a registered optometrist who was employed by the Registrant between November 2008 and January 2016, when he resigned from his employment. From 2012 onwards, Mr A was employed at the Registrant’s practice in [Redacted]. Mr A’s role included conducting sight tests, contact lens fittings for patients and supervising pre registration students. On or about 23 October 2014, Mr A was carrying out a sight test for a patient (Patient B). This involved checking the records of the patient’s
previous sight test to identify whether there had been any changes since that test. The earlier test had been carried out by another optometrist Ms 2. Ms 2 had been appointed in or about July 2014 as the Clinical Governance Optometrist (CGO) for the region. Her role in this capacity primarily involved travelling around the region, auditing optometrists’ records and ensuring that proper procedures were being followed and training needs met. Ms 2 was therefore Mr A’s clinical manager and was responsible for auditing his records. CGOs also carry out some eye tests from time to time, although this is not a significant part of their role.

On looking at the record of the examination by Ms 2 of the patient on 28 March 2014, Mr A was concerned that it was not adequate. He considered that the record was far below the standard to pass a Boots audit. In particular he considered that, the record showed that the patient had presented with flashing lights in one eye and loss of field vision, which are symptoms of possible retinal detachment and an emergency situation. Mr A would have dilated and carried out further tests and would have referred the patient to hospital as an emergency, as per the North Cornwall Hospital protocol. This had not happened. On discovering this record, Mr A then examined other records from Ms 2’s clinic of 28 March 2014. He found several records where both the record keeping and the management of patients with specific symptoms were, in his opinion, so poor that his immediate reaction was to suspect that Ms 2 was not a properly qualified optometrist.

Mr A then raised his concerns with Witness B, the deputy manager of the practice. Mr A also telephoned Witness C on the evening “of or around” 23 October 2014. Witness B on this date sent photographic copies of four patient records to Witness C via WhatsApp.

On 6 December 2014, Mr A emailed copies of the records of patients A-D to Witness D, the BOL’s Professional Services Officer. In his email, Mr A set out in the form of a table why he considered that the records were deficient. Mr A also expressed concern in his email that, having seen the irregularities in the records, he was in the position of being responsible for reporting them and recalling patients for legally compliant sight tests.

On 9 December 2014, Mr A sent a further email to Witness D attaching the record of another patient’s sight test carried out by Ms 2 on 13 March 2014, which Mr A considered was deficient in a number of respects. On 8 January 2015, Mr A sent a further email to Witness D reiterating his concerns that there was a potential ongoing risk to patients if they were not recalled. He also expressed concern as to his own position, given that, in his view, BOL was taking appropriate action to address this risk.

On 13 January 2015, Witness C held a meeting with Ms 2 to discuss the concerns raised about her records of sight tests. In the course of the meeting, Witness C disclosed to Ms 2 that it had been Mr A who had raised the concerns.

Following Mr A’s disclosures, the Registrant did not contact or recall the patients whose records had been identified by Mr A. An audit of Ms 2’s records was completed and upheld some of Mr A’s concerns.
In May 2015, Mr A raised concerns about Ms 2 remaining as his CGO and auditing his records. In June 2015, Mr A raised a formal grievance with the Registrant under its Grievance Policy. The grievances included a complaint that the response to his concerns about those patients had not been adequately addressed, in particular that none of them had been recalled. The outcome of this grievance was that it was not upheld for reasons sent to Mr A in a letter dated 4 September 2015. Mr A appealed against this decision by a letter dated 24 September 2015. Following an appeal hearing on 13 November 2015 the appeal was dismissed on 28 December 2015.

Mr A resigned from his employment with BOL in January 2016 and later made a claim to an Employment Tribunal. At the hearing this was dismissed on withdrawal with Mr A’s consent. In his evidence Mr A explained that he had been advised that his claim was time barred.

Submission on No Case to Answer

At the close of the Council’s case, Mr Kennedy made a submission pursuant to Rule 46(8)(a) of the General Optical Council (Fitness to Practise Rules 2013) (the Rules) that sufficient evidence had not been adduced upon which the disputed facts could be found proved.

Mr Kennedy submitted that Mr A had in his oral evidence-in-chief and in cross-examination identified a number of reasons for making disclosures relating to Ms 2, none of which related to the public interest. Mr Kennedy referred to section 43B of the Employment Rights Act 1996 (the ERA) which provides that:

“In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

… “(d) that the health or safety of any individual has been, is being or is likely to be endangered;”

Mr Kennedy submitted that the evidence, taken at its highest, was insufficient to support the proposition that Mr A’s disclosure regarding the records was carried out in the public interest.

Accordingly, Mr Kennedy submitted that the Council’s allegation in the stem of the charge that Mr A’s concerns constituted “protected disclosures” could not be made out.

Mr Albuery opposed the submission of no case to answer. He accepted that the allegation in the stem of the charge turns on the issue of whether Mr A’s disclosure of information was made in the public interest. He further accepted that the evidence showed that Mr A had a number of motives for making the disclosure. One such motive was his dissatisfaction in relation to Ms 2 auditing his patient records. However, Mr A’s emails at the time of his disclosure demonstrated that his concerns included the health of patients. Mr Albuery further referred to Mr A’s evidence during re-examination after questions from the Committee. Mr Albuery stated that Mr A had then referred specifically, and with passion to his concerns for the health and safety of the “little old lady” (Patient B) and the “7 year old kid” as well as the other patients who were the subjects of his disclosures.
Mr Albuery further submitted that Mr A’s concern for patient safety was reflected in his extreme reaction to discovering the allegedly inadequate records, namely his doubt that Ms 2 was a properly qualified Optometrist.

The Committee accepted the advice of the Legal Adviser. He referred the Committee to Rule 46(8)(a) and to the burden and standard of proof. He also referred the Committee to the judgement of the Court of Appeal in R v Galbraith [1981] 1WLR 1039 and to the Court of Appeal decision in Chesterton Global v Nurmohamed [2017] EWCA Civ 979.

The Committee considered the application carefully. The Committee accepted that the allegations in the charge must fail if there was insufficient evidence that Mr A’s belief at the time of the disclosure was that it was in the public interest and that his belief was reasonable. However, whilst Mr A had to have had a genuine belief that he was making the disclosure in the public interest, that did not have to be the predominant motive in making it. (See Chesterton Global v Nurmohamed above).

The Committee had regard to Mr A’s evidence-in-chief as set out in his witness statement. In that statement Mr A referred to his discovery in October 2014, when carrying out a sight test for Patient B, of Ms 2’s record of the patient’s previous sight test in March 2014. Mr A had concluded that Ms 2’s record was far below the standard to pass a Boots Opticians LTD (BOL) audit. Mr A’s evidence was that the record showed that the Patient had presented with flashing lights in one eye and loss of field vision, which are symptoms of possible retinal detachment and an emergency situation. Mr A stated that he would have expected an optometrist seeing a patient with these symptoms to dilate the pupils, call the triage nurse and refer the patient to hospital. This had not been done by Ms 2.

Mr A further stated that he had found several patient records where both the record keeping and the management of patients with specific symptoms was so poor that his immediate reaction was to suspect that Ms 2 was not a qualified optometrist. Mr A referred to his email to a manager, Witness D, dated 6 December 2014, in which he had provided examples of patient records made by Ms 2 which raised concerns and in which Mr A contended that the patients should be recalled for a legally compliant sight test. In his witness statement Mr A stated that, “This was because they had presented with significant symptoms of potentially dangerous conditions which had not been properly investigated.”

The Committee was satisfied that the evidence, taken at its highest, was sufficient to support an conclusion that one of Mr A’s motives in making the disclosure was his concern for the health and safety of the patients involved.

The Committee also took into account the record of Mr A’s investigative interview with Witness C, a manager on 13 January 2015. That record contains a number of references to “patient safety”. “I am doing this for patient safety… if there is evidence that an Optom is not safe then actions should be taken… 7 year old kids + old ladies and flashing light should be looked after – something is wrong.”

Following the Registrant’s decision not to recall any of the patients whose records were identified by Mr A, Mr A submitted a formal grievance by a letter dated 26 June 2015. In that letter Mr A stated;
“[Ms 2] carried out numerous sight tests so non-compliant and full of neglect for patient health and well being that the discovery forced me to suggest... that this particular Optometrist might not actually be a qualified optometrist... BOL considers that bringing the patients back for a compliant sight test will cause unnecessary distress and that we should let sleeping dogs lie and that BOL was prepared to manage the risks with this course of action. I feel that BOL is not acting in the best interest of the patients concerned and is putting the health and welfare of those patients at risk.”

The Committee was satisfied that the above evidence was such, taken at its highest, that a properly directed Committee could properly conclude on the balance of probabilities that Mr A’s disclosure was made in the public interest, as tending to show that the health or safety of patients involved had been, or was likely to be endangered. The Committee recognised that Mr A had other motives for making the disclosures, including his concern that Ms 2 would be responsible for auditing his patient records, and the likely consequences of such an audit. However, as was clear from the case of Chesterton Global v Nurmohamed above, the public interest did not have to be his sole, or predominant motive.

Accordingly, the Committee concluded that there was sufficient evidence for there to be a case to answer. The Committee therefore rejected Mr Kennedy’s application.

**Findings in relation to the facts**

The Committee heard oral evidence from Witness C, Clinical Services Manager for [Redacted], Witness B, Deputy Manager of [Redacted] and Witness D, the Registrant’s Professional Services Officer. It also took into consideration all the documentary evidence.

The Committee heard closing submissions from Mr Albuery and Mr Kennedy. Mr Albuery provided the Committee with the judgement of the Court of Appeal in Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ 979. Mr Kennedy also provided closing submissions in writing.

The Committee heard and accepted the advice of the legal adviser. He referred the Committee to the relevant sections of the ERA. He also referred to Babula v Waltham Forest College [2007] EWCA Civ 174 and to the decision of an Employment Tribunal in the case of Marriott v Scarborough Borough Council (Case no: 1800295/216).

The Committee bore in mind throughout its deliberations that the burden of proof lies with the Council and that the standard of proof is the balance of probabilities.

The Committee commenced its deliberations by assessing the witnesses who had given live evidence. The Committee found Mr A’s evidence to be generally truthful, reliable and consistent. The Committee did not accept the submission made by Mr Kennedy that Mr A’s credibility or reliability was undermined by his evidence relating to Ms 2, including his evidence that it was his belief in finding the records that Ms 2 might not be a properly qualified Optometrist. The Committee accepted that Mr A’s evidence was at times highly charged, and that he had a tendency to see things in black and white terms. However, Mr A’s credibility was, in the Committee’s assessment, enhanced by his frank admissions that he had had issues in his
relationship with BOL and with Ms 2. The Committee accepted that Mr A came across as having genuine concerns.

The Committee next considered the evidence of Witness C. The Committee noted that her witness statement was only taken a few days ago, some four years after the events. She told the Committee she had made an earlier statement for the Employment Tribunal claim in 2016. A copy of this was not provided to the Committee. Witness C was measured and carefully considered the questions before answering. However, the fact that she had to on occasions think long and hard reflected her limited recollection of what had occurred. Her recollection of conversations with Mr A was limited and she conceded that she had made no contemporaneous notes of her telephone conversations with Mr A. Her recollection was, in the Committee’s assessment, not as detailed or precise as that of Mr A, for whom events were more significant. For example, her evidence on occasions was “I believe I would have” or “my recollection is that I would have… [acted in a certain way],” although she was unable to recollect whether she had in fact done so.

The Committee next considered the evidence of Witness D. His recollection of events was very limited. He was unable to answer fully a number of questions. He had difficulty explaining retrospectively why he had acted as he did. When he was asked to elucidate emails which he had written at the time, he was on occasions unable to do so, or to do so fully. He confirmed he had no contemporaneous notes available to assist the Committee. He accepted that he had not identified Mr A’s disclosures as protected disclosures under ERA or under BOL’s Whistleblowing Policy which was in force at the time. He appeared to accept, however, that he might have reacted differently and “with the benefit of hindsight I can see how this could be seen as a disclosure.”

The Committee considered the evidence of Witness B, who was acting as the Practice Manager of BOL’s [Redacted] at the material time. Even though she was trying to assist, her oral evidence added little to her witness statement dated 11 December 2018.

The Committee first considered the issues raised in the stem of the charge.

The central issue was whether the clinical concerns raised by Mr A in respect of Ms 2’s record of her examinations of patients A-D constituted “protected disclosures.” The Committee therefore considered the relevant legislation, inserted by the Public Disclosure Act 1998 into the ERA.

Section 43A provides:

**Meaning of “protected disclosure”**

>In this Act “protected disclosure” means a qualified disclosure (as defined by section 43B) which is made by a worker in accordance within any of sections 43C to 43H.

Section 43B provides:

**Disclosures qualifying for protection**
“In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –

… “(d) that the health or safety of any individual has been, is being or is likely to be endangered;”

Section 43C provides:

Disclosure to employer or other responsible person:

(1) A qualifying disclosure is made in accordance with this section if the worker makes this disclosure.

(a) To his employer…

There is no doubt that Mr A was at the material time a “worker” employed as an Optometrist by BOL.

No issue has been raised by Mr Kennedy in relation to the disclosure having been made by Mr A, “to his employer.” Mr A directed his disclosures as advised by his manager Witness B to Witness C, the Clinical Services Manager for the [Redacted], and to Witness D, who was then BOL’s Professional Services Officer.

The Committee therefore concluded that the disclosure was made in accordance with Section 43C.

The Committee next considered whether the disclosures qualified for protection by virtue of Section 43B. This entailed considering whether the disclosure, in the reasonable belief of Mr A, was, firstly, made in the public interest and secondly, tended to show that the health or safety of any individual had been, was being or was likely to be endangered. Whether Mr A had a “reasonable belief” involved considering not only whether he genuinely held the belief (subjectively) but also whether his belief was objectively reasonable (Babula v Waltham Forest College [2007] EWCA Civ 174). It was further necessary to consider whether it was Mr A’s “reasonable belief” (subjectively and objectively) that the disclosure was being made in the public interest and tended to show that the health or safety of any individual had been, was being or was likely to be endangered at the time. The Committee bore in mind that any belief by Mr A that his disclosure was in the public interest did not have to be his predominant motive in making it (Chesterton Global v Nurmohamed [2017] EWCA Civ 979).

In respect of Mr A’s belief, the Committee was satisfied from his evidence and from the contemporaneous emails making the disclosures to Witness C and Witness D, that he had in part a genuine belief that he was making the disclosure in the public interest and that his disclosure tended to show that the health or safety of patients A-D had been, was being or was likely to be endangered. The Committee did not accept Mr Kennedy’s submission to the effect that this conclusion was not supported by Mr A’s oral evidence. It is true that Mr A’s evidence, particularly during cross-examination, also dealt in detail with his personal interests in making the disclosure. As the questions in cross-examination were predominantly directed to this end, this is unsurprising. However, the Committee was satisfied from Mr A’s evidence that, whatever other motives contributed to his disclosure, he had expressed genuine and
passionate concerns for the health and safety of patients, including his reference to the “little old lady” (Patient B) and “7 year old kid.”

The Committee also took into account Mr A’s evidence-in-chief, including his witness statement, which he read into the record. Mr A described the extent of his concern in relation to the records of Ms 2’s sight tests on 28 March 2014: “I found several records where both the record keeping and the management of patients with specific symptoms was so poor that my immediate reaction was to suspect that Ms 2 was not a qualified optometrist”. Witness C in her evidence confirmed that Mr A had communicated this suspicion to her at or around the time of his disclosures, and she had taken this as a “flippant” remark, although she told the Committee that she subsequently checked the GOC Register to confirm that Ms 2 was on it. Whilst the Committee accepts that this suspicion on Mr A’s part may have been an extreme reaction or even exaggeration for effect, it did reflect the serious nature of his concerns for the health and safety of the patients concerned.

Witness C gave evidence that “Whilst I considered this to be a low key matter, it did relate to sensitive issues, and I was fully aware I needed to investigate Mr A’s concerns so I arranged for Ms 2’s eye test records to be audited. I believe I may have spoken to Witness D, Boots’ Professional Services Officer at the time, about who I should ask to carry out the audit and I think we agreed for it to be somebody removed from Ms 2. I subsequently asked Mr 3… Mr 3 audited at least some of the records which Mr A had raised concerns about. Mr 3scored Ms 2’s eye tests records red…” In terms of BOL’s audit policy, a red score was deemed unacceptable and indicated at least six areas of concern.

In his witness statement Mr A also referred to his email to Witness D dated 6 December 2014. In this email he disclosed his concerns about Ms 2’s records of Patients A – D and in addition he expressed his opinion that the patients should be recalled for a legally compliant sight test. He stated “this was because they had presented with significant symptoms of potentially dangerous conditions which had not been properly investigated. I thought it would be reasonable for the Registrant to tell these patients that some tests had been missed and ask for them to come back.”

Witness D subsequently on 8 January 2015, in an email to Witness C expressed the opinion that some of the concerns could be substantiated.

Mr A’s concerns for the safety of patients, and his belief that they should have been recalled, were reiterated in detail at his investigatory interview with Witness C on 13 January 2015. This included the example which has already been referred to in the Committee’s decision above on the submission of no case to answer. Mr A also referred to being “a bloke of action – not malicious – patient safety” and “... if there is evidence that an Optom is not safe then action should be taken”. During that interview, it is clear from the record that Mr A was also expressing concerns about his own position (“conscious of being liable myself”). However, it is equally clear that the interview included his concerns for the safety of patients. Indeed, this was the perception of the interviewer Witness C, who is recorded as having said at one point, “You have highlighted that your concerns are purely patient safety …”.
Following that interview, in a letter dated 20 January 2015, Witness C wrote to Mr A setting out the conclusions that had been reached. These included a decision to take no further action in respect of, and not to recall any of, the patients, as this, the letter stated, would not be, “in the patient’s [sic] best interests”.

Mr A did not accept this decision. As already noted by the Committee in its decision on the submission of no case to answer, Mr A raised a formal grievance by a letter dated 26 June 2015. That grievance included the challenge to BOL’s decision not to recall any of the patients. The relevant passage from the letter has already been quoted above, but the final sentence merits repetition: “I feel that BOL is not acting in the best interests of the patients concerned and is putting the health and welfare of those patients at risk”. Whilst other adverse behaviour was being complained about in that letter, whistleblowing was specifically cited.

Mr Kennedy submitted that the issue is whether the Committee, “can safely conclude that at the time [Mr A’s] disclosure was made it was made in the public interest”. How Mr A expressed himself in later letters, e.g. letters relating to his grievance, was “of limited assistance”, Mr Kennedy submitted. However, the Committee was assisted by this evidence to the extent that it showed consistency on Mr A’s part and, further, that his persistence in maintaining that the patients should be recalled supported the proposition that the concerns he had originally expressed were genuinely and sincerely held.

Mr Kennedy submitted that the Committee must exercise caution, “not to elide concepts of health and safety with the public interest”. However, at one stage in the course of his submissions he acknowledged that there may be some “cross-fertilisation” between the two concepts.

The Committee was referred to, and carefully considered, the Court of Appeal decision in Chesterton Global v Nurmohamed (citation above), copies of which had already been provided and which was referred to extensively by Mr Kennedy in his written submissions. The Committee was assisted by a number of passages in the leading judgment in that case, in particular:

“30. … while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it.”

In this regard the Committee was satisfied that the evidence available to Mr A at the time, the actions of Witness C, the subsequent auditing taken by BOL and the observations of Witness D demonstrated that Mr A’s belief at the time was reasonable as well as genuine. The Committee accepted that whilst it may not have been the only reason for the disclosure, the concerns with Ms 2’s practice, if confirmed, would have had potentially serious implications for patient safety. The Committee was of the view that this case falls squarely within the category described above.

“31. … although this appeal gives rise to a particular question which I address below, I do not think there is much value in trying to provide any general gloss on the phrase “in the public interest”. Parliament has chosen not to define it, and the intention must have been to leave it to employment tribunals [and, by
parity of reasoning, other fact finding tribunals] to apply it as a matter of educated impression”.

The Committee accordingly adopted this approach and proceeded on the basis that the issue as to whether a disclosure is made “in the public interest” will be a question of fact in each case.

The “particular question” referred to above was as follows:

“32. The particular issue that arises in this appeal is whether a disclosure which is in the private interest of the worker making it becomes in the public interest simply because it serves the (private) interests of other workers as well.”

It is clear that the facts of the present case bear no resemblance to the facts which gave rise to the particular issue before the Court in the above case. Accordingly, Counsel’s “fourfold classification of factors” reproduced in the judgment, which was devised in the context of the issue which arose in that case and which may be a “useful tool” in some cases, was of limited relevance here. However, for the sake of completeness, as Mr Kennedy has referred to this test in his submissions, the Committee put on record that it agreed with Mr Kennedy’s submission that the fact that the Registrant is a large and well known business is not a relevant consideration at this stage.

The Committee was satisfied, in the light of Mr A’s evidence and the documentary evidence referred to above, that he did have genuine concerns about the deficiencies he had identified in Ms 2’s patient records and as to the adverse impact this may have had on the patients. Further, the Committee accepted that Mr A did have genuine concerns, in the light of those alleged deficiencies, as to the competence of Ms 2 as a fellow practitioner, albeit that his expression of his concerns included the somewhat extreme reaction of doubting her credentials.

The Committee was also satisfied that the evidence referred to above went to the heart of both the issue as to whether Mr A’s disclosure was made in the belief that it was being made in the public interest and the issue as to whether he believed that his disclosure tended to show that the health or safety of any individual had been, was being or was likely to be endangered. There is no doubt that the Registrant’s patients constituted members of the public. Concerns arising from records of patients’ allegedly deficient sight tests, which could potentially have had damaging consequences for members of the public as patients, affecting their eyesight, were self-evidently matters of the utmost importance to members of the public.

The Committee therefore concluded that, on the balance of probabilities, when Mr A made his disclosure, he did so in the subjective belief that it was in the public interest to do so and in the belief that this tended to show that the health or safety of any individual had been, was being or was likely to be endangered.

The Committee next considered whether Mr A’s beliefs were objectively reasonable. The Committee had regard to the fact that, following Mr A’s disclosure, BOL had Ms 2’s patient records audited and the outcome was that her audit received a “red score”. The Committee also took into account the evidence of Witness C who
arranged for Ms 2 to undertake some training modules, which had been recommended by Witness D in an email to her dated 8 January 2015.

The Committee was satisfied that Mr A’s concerns were genuine, reasonable, made in the public interest and raised issues as to the health and safety of patients and therefore qualified as being protected disclosures.

The Committee next considered whether it had been proved that the Registrant failed to appropriately manage the protected disclosures made by Mr A in one or more respects alleged in 1a-c.

**Charge 1a**

The Committee noted that Mr Kennedy accepted that, if it was established that Mr A’s disclosures were protected disclosures, the Registrant would have been under a duty to manage those disclosures. It was also accepted by Witness C and Witness D that they did not identify that the disclosures were protected disclosures at the time and that they had very little previous experience with whistleblowing. Witness D had conceded he had “some” experience of whistleblowing but only in relation to fraud or theft rather than clinical issues. It did not occur to either of them to consider BOL’s Whistleblowing Policy that was applicable at the time, nor had they been given any training by BOL to assist them in identifying or dealing with disclosures which amounted to protected disclosures. Witness C having determined at an early stage, that Mr A’s complaint was in the nature of, “a low level grievance between colleagues”, a view that was supported by Witness D, dealt with it accordingly.

The Committee had no doubt that Witness C and Witness D, as the managers responsible for dealing with the disclosures, were under a duty to identify that they constituted protected disclosures. For the reasons given above the Committee was satisfied that Mr A’s disclosures manifested the characteristics of protected disclosures. Identification of the protected disclosures as such was the initial and pivotal step required in order to ensure that the disclosures were appropriately managed pursuant to the statutory framework applying to whistleblowing and to the Registrant’s own Whistleblowing Policy.

The Committee therefore found, on the balance of probabilities, that the allegation in charge 1a was proved.

**Charge 1b**

With regard to Charge 1b, there is no doubt that Witness C disclosed to Ms 2 at her investigatory interview with Ms 2 on 13 January 2015 that the disclosures had been made by Mr A. This was in direct contravention to BOL’s Whistleblowing Policy which provided,

“Any concerns raised will be treated seriously and confidentiality is strictly maintained.”

The reason why Witness C disclosed Mr A’s identity to Ms 2 was simply that she was oblivious to the fact that Mr A’s disclosures were protected disclosures to which the Whistleblowing Policy applied. The Committee was satisfied that breaching Mr A’s confidentiality had the potential to impact to his detriment, in breach of the legislation.
The Committee therefore concluded that the facts in charge 1b were proved on the balance of probabilities.

**Charge 1c**

The Committee next considered the charge in 1c. It is clear that Witness C decided to retain or indicated to Mr A that she intended to retain Ms 2 as the CGO responsible for Mr A’s supervision. Witness C in her witness statement indicated that it would not have been workable in practice for Ms 2 to have remained as a CGO but not have responsibility for Mr A, who worked at a practice within the region covered by Ms 2. Witness C considered that, given the breakdown in Mr A’s and Ms 2’s working relationship, a facilitated meeting between them “would be a good idea.” This view was supported by Witness D who stated in an email to Witness C dated 8 January 2015 “my expectation would be that [Mr A] would address these issues to Ms 2 in a supportive way…” Owing to Ms 2’s absence from work on maternity leave, this meeting in fact did not take place before Mr A’s resignation in January 2016.

Notwithstanding the difficulties envisaged by Witness C, the Committee was satisfied that it was wholly inappropriate for Ms 2 to continue to be Mr A’s CGO, with responsibilities which included auditing his records, given that it had been revealed to Ms 2 that Mr A had raised issues relating to her practice. Fairness and transparency required that BOL should have devised some solution to this problem. The Committee did not accept that such a solution was impossible. In this regard, the Committee noted that Witness C in her evidence informed the Committee that in light of Mr A’s concerns over Ms 2 auditing his work, Mr A’s records were audited by two other CGOs whilst Ms 2 was on maternity leave. In any event, any such difficulties arising from the role of Ms 2 as Mr A’s CGO were largely attributable to BOL’s failure to protect Mr A’s anonymity. It was clear from Mr A’s evidence and from the contemporaneous documents that he would have been “very uncomfortable” with Ms 2 remaining his CGO. This too, in the Committee’s view, had the potential to cause Mr A detriment.

Accordingly, the Committee found charge 1c proved on the balance of probabilities.

**Findings in relation to misconduct**

Following the announcement of the Committee’s findings of fact, the Committee heard further submissions from the parties as to whether, on the basis of the facts found proved, misconduct was established.

Mr Albuery accepted that it is only breaches of professional standards that are serious which will amount to misconduct. He referred the Committee to the characteristics of this case which, he submitted, showed that this case falls within that category. He submitted that BOL’s conduct as found proved involved breaches of the preamble to, and paragraphs 1, 6 and 8 of, the GOC’s Code of Conduct for business registrants (the Code), which came into effect from 1 April 2010 and was applicable at the time of the events to which the charge relates.

For the Registrant, Mr Kennedy informed the Committee that he was not making any submissions, whether positive or negative, in relation to the issue of misconduct. He submitted to the Committee that it is only conduct which falls far below the standards
expected of a business registrant which will amount to misconduct. Mr Kennedy submitted that a Boots audit “red flag” in itself did not necessarily mean a serious impact on patient safety, and in support of this referred to the report by person A dated 16 June 2018. He accepted that paragraphs 6 and 8 of the Code were relevant.

The Committee received and accepted advice from the legal adviser, who reminded the Committee that the issue of whether the facts found proved amount to misconduct is a matter for the Committee’s own judgment. He also referred to the definition of misconduct given by Lord Clyde in the Privy Council decision of Roylance v General Medical Council [2000] 1 AC 311.

The Committee had found that BOL failed to manage whistleblowing disclosures appropriately. The management of such disclosures does not depend either on the partiality or their motive or their ultimate validation. The significance derives from compliance with protective legislation.

The Committee examined the Code and came to the conclusion that the Registrant’s conduct in respect of the facts found proved fell well below the following requirements of the Code:

The preamble

Business registrants play an integral part in the provision of optical services and products to the public. Patients, consumers and professionals must be able to trust business registrants to maintain and support a good standard of clinical practice and care.

To justify that trust, a business registrant will take reasonable and proportionate steps to:

…

6. Respect and protect confidential information for both patients and employees in accordance with current legislation;

…

8. Provide mechanisms to enable those that work for or are otherwise engaged by the business registrant to raise concerns about patients;

In assessing the seriousness of the Registrant’s failings, the Committee took into account that the Registrant had repeated opportunities to identify the fact that Mr A’s disclosures were protected disclosures. These opportunities included the original disclosure to Witness C in October 2014, the subsequent disclosure in December 2014 by email from Mr A to Witness D and Witness C’s investigative interview with Mr A in January 2015. Even in June when Mr A explicitly mentioned whistleblowing in raising his formal grievance, although it may have made no practical difference at that stage, no consideration was given to this aspect.

Mr A’s disclosures were made to relatively senior managers with responsibilities which were relevant to such disclosures, namely Witness C and Witness D, yet they were not identified as protected disclosures and managed accordingly. Witness C as the Clinical Services Manager for the [Redacted] had overall responsibility for
ensuring that the correct clinical solutions were followed in her region, including a responsibility to ensure correct standards were maintained. Witness D’s role as Professional Services Officer centred on regulation and clinical governance and he was responsible for ensuring that BOL practised in accordance with relevant legislation. The Committee noted Witness D’s evidence that his role at the time included chairing the Registrant’s Patient Safety Group. As such, and in view of his duty to ensure compliance with relevant legislation, he should have been familiar with the statutory framework relating to whistleblowers, as well as the Registrant’s own policy on Whistleblowing (such as it then was). Despite this, it appeared from his evidence that his knowledge of Whistleblowing was limited to cases involving fraud and theft. It also appeared from Witness C’s evidence that she was, at the time, largely, if not wholly, ignorant of the principles of Whistleblowing. There is some evidence that HR advice was taken but no detail was provided.

It was clear that the Registrant had provided no specific training in Whistleblowing to Witness C or Witness D. The Committee was satisfied that the Registrant’s culpable failure to provide such training amounted to a serious breach of their duty of care to their employees and a serious breach of their professional responsibilities, not least because knowledge of how to recognise and appropriately manage protected disclosures was essential to enable the Registrant to fulfil the specific duties under paragraphs 6 and 8 of the Code quoted above.

The Committee also had regard to the fact that the Registrant’s Whistleblowing Policy which applied at the time was on the face of it inadequate, limited as it was to a single side of paper. It has since been superseded by a policy dated November 2018 which is before the Committee and which runs to 8 pages.

The Committee also took into account the fact that the Registrant’s failure to identify and appropriately manage Mr A’s disclosure, including the breach of its duty of confidentiality to Mr A by disclosing his identity to Ms 2 and inappropriately retaining Ms 2 as Mr A’s CGO, caused him detriment and distress.

In the light of these considerations, the Committee found that the facts found proved were sufficiently serious to amount to misconduct.

Findings regarding impairment

Having found that misconduct was established, the Committee went on to consider whether the Registrant’s fitness to carry on the business of an optometrist or dispensing optician or both is currently impaired by reason of such misconduct.

The Committee heard further evidence at this stage from Witness E, the Registrant’s Professional Services Officer. Witness E told the Committee that she had replaced Witness D in this role, which involves overseeing BOL’s governance and regulation. Witness E told the Committee that she had contributed to the development of the new BOL’s Whistleblowing Policy, which came into effect on 23 November 2018.

The Committee heard submissions from Mr Albuery and Mr Kennedy.

Mr Albuery submitted that there was clearly a link in this case between whistleblowing and public safety. He also reminded to Committee of the need to
consider the wider public interest, in accordance with the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927. In fairness to the Registrant, he pointed out that Cox J in her judgment had indicated that the NMC’s lack of a power to mark the seriousness of a case by administering a warning where no finding of impairment was made was an important factor in the reasons for the Court’s decision.

Mr Kennedy submitted that the Committee could confidently conclude that it was highly unlikely that the misconduct would be repeated. He submitted that there was no evidence of any actual harm to any of the patients involved in this case and no evidence of them having been at risk of harm. He submitted that this case was about employment practices, and not about risk to patients. Mr Kennedy further submitted that there was no need for a finding of impairment based on the wider public interest in this case, in which a right thinking member of the public would conclude that the Registrant has achieved an appropriate outcome by taking appropriate action to remedy its misconduct. He accordingly submitted that no further action was required. Alternatively, he submitted, that the need to uphold proper professional standards and maintain public confidence in the profession could be adequately addressed by issuing the Registrant with a warning as to its future conduct or performance.

The Committee received and accepted the advice of the legal adviser, who referred to the cases of Grant above and Cohen v GMC [2009] EWHC 645 (Admin).

The Committee bore in mind that, under section 1 of the Opticians Act 1989, the Council has the general function of promoting high standards of professional education, conduct and performance among registrants and that its main objective is to protect, promote and maintain the health and safety of members of the public and patients.

In the course of its deliberation the Committee carefully considered the parties’ submissions and the evidence, in particular the evidence of Witness E and the Registrant’s new Whistleblowing Policy.

The Committee bore in mind the judgment of Mrs Justice Cox in the case of Grant. In paragraphs 74 and 75, which had been read to the Committee by the legal adviser in the course of giving his advice, Her Ladyship said:

“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 proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.

“75. I regard it as an important consideration in cases involving fitness to practise proceedings before the NMC where, unlike such proceedings before the General
Medical Council, there is no power under the rules to issue a warning, if the committee finds that fitness to practice is not impaired. As Ms McDonald observes, such a finding amounts to a complete acquittal, because there is no mechanism to mark cases where findings of misconduct have been made, even where that misconduct is serious and has persisted over a substantial period of time. In such circumstances the relevant panel should scrutinise the case with particular care before determining the issue of impairment.

The Committee took into account that, under section 13F (5) of the Opticians Act 1989, if the Committee finds that the Registrant’s fitness to practise is not impaired, it may nevertheless give the Registrant a warning as to its future conduct or performance.

Mrs Justice Cox went on to say in paragraph 76 of the judgment:

“I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor’s fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

“Do our findings of fact in respect of the doctor’s misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

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 brought and/or is liable in the future to bring the medical 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 medical profession; and/or
d. [Not applicable in this case].”

In its consideration of whether the Registrant has remedied the deficiencies in its practice, the Committee also took into account the three questions identified in Cohen, namely: Is the conduct easily remediable? Has it been remedied? Is it highly unlikely to be repeated?

The Committee considered whether the Registrant's conduct in the past, in the charges found proved, engaged limbs a., b. or c. of the Shipman test.

In respect of a., the Committee did not accept Mr Kennedy’s submission that this case is about employment practice, rather than risk of harm to patients. While the Committee accepted that there was no evidence of actual harm to patients, there was the risk of harm. That such harm did not in fact materialise was purely fortuitous.
and of limited relevance. Mr A’s protected disclosures, by their very nature, raised concerns that the health or safety of patients had been, was being or was likely to be endangered. The Committee accordingly concluded that the Registrant has in the past put a patient or patients at unwarranted risk of harm.

In respect of b. the Committee took into account the Registrant’s failure at any stage to recognise that Mr A’s disclosures amounted to protected disclosures under the current legislation and under their own Whistleblowing Policy, and to manage the disclosures appropriately as protected disclosures. The Committee was satisfied that this failure on the Registrant’s part was sufficiently serious to bring the profession into disrepute.

In respect of c., the Committee considered that the Registrant, by its failure described above, failed to maintain and support a good standard of clinical practice and care, as required by the Code, and thereby undermined the trust between patients and registrants. The Registrant had, therefore, breached a fundamental tenet of the profession.

The Committee then considered whether breaches of the above three limbs of the Shipman test are liable to happen in the future.

In this context, the Committee was assisted by the questions referred to above in the case of Cohen.

The Committee accepted that the misconduct in this case should, in principle, be capable of remediation, by such measures as introducing a suitable and effective Whistleblowing policy, implementing suitable staff training and ensuring that the policy is brought to the attention of, and understood by, all employees and by monitoring its effectiveness in practice.

In considering the questions whether the misconduct has in fact been remedied, and whether it is highly unlikely to be repeated, the Committee examined in particular the evidence adduced by the Registrant from Witness E and the Registrant’s new Whistleblowing Policy. The Committee looked for evidence of remorse, insight on the part of the Registrant, and remediation.

Regarding remorse, the Committee was disappointed to note that there was little, if any, evidence to this effect on the part of the business Registrant.

With regard to insight, the Committee was concerned that the new policy only came into effect a few weeks ago, some 4 years or so since the events giving rise to the charges in this case. Witness E told the Committee that she had taken up her post in January 2018 and it had been decided in April 2018 that all of the Registrant’s policies should be reviewed. The Whistleblowing Policy was reviewed in the course of this wide ranging exercise in July / August 2018. It was then approved and adopted as a policy in force from 23 November 2018.
The Committee was concerned that the Whistleblowing Policy had not been reviewed at a much earlier date, not least in the light of the issues presented by Mr A’s case. The Committee also noted with concern that, even after the decision was made to review all their policies, several months elapsed before the Whistleblowing Policy was reviewed and brought into force. The Committee also noted that the new policy has so far only been brought to the effective knowledge of about one half of the Registrant’s employees.

The Committee would have expected a business Registrant which was cognisant of the importance of whistleblowing as an important mechanism for monitoring patient safety to have addressed the deficiencies in its policy and delivered appropriate training to all of its employees much earlier, and with a much greater sense of urgency, than had in fact occurred here.

The Committee also had serious concerns as to whether the new policy is entirely fit for purpose.

The Committee noted that the new policy does not include a definition of “whistleblowing” to assist employees who may be contemplating making such a disclosure and to assist managers in identifying such disclosures. Furthermore, nowhere in the policy is there any guidance to assist staff in distinguishing between whistleblowing disclosures and grievances. It will be remembered that in this case the managers involved had categorised Mr A’s disclosure as an informal grievance and had failed to identify it as a whistleblowing case.

In addition, there is nothing in the policy to enlighten staff that the public interest motives involved in a disclosure which amounts to whistleblowing disclosure need not be the sole, or even the paramount, reason for the disclosure. On the contrary, the Committee was concerned that the repeated references in the policy to the need for disclosures to be made “in good faith” and the warning as to the likely adverse consequences to an employees who makes an allegation for unworthy motives might inhibit employee with mixed motives from making relevant protected disclosures.

In the light of these concerns, the Committee was not satisfied that the Registrant had demonstrated full insight or remediation.

Accordingly, the Committee was satisfied that the risk of repetition remained and that the Registrant is still liable in the future to breach limbs a., b. and c of Grant.

A finding of current impairment was therefore required on the grounds of public protection.

The Committee further considered the wider public interest. Having regard to the seriousness of the case, the Committee had no doubt that the need to uphold proper standards of conduct and behaviour and the need to maintain public confidence in
the profession required that a finding of current impairment be made on this ground as well.

Sanction

The Committee has heard submissions from Mr Albuery on behalf of the Council and from Mr Kennedy on behalf of the Business Registrant.

Mr Albuery submitted that the issues in this case revolved around the Business Registrant having an inadequate policy to deal with public interest disclosures, insufficient training for its staff in recognising such disclosures and insufficient training in responding to “Whistleblowing” concerns. He submitted that matters had been aggravated by the length of time it had taken to begin to address the issues, and he referred to the Committee’s earlier observations as to the lack of remorse and insight. He invited the Committee to impose a financial penalty order. He informed the Committee that the Council had given very careful consideration as to whether an order of conditional registration would be appropriate but had concluded that such an order was only likely to replicate existing legal obligations. Mr Albuery told the Committee that the Council regarded suspension or erasure as disproportionate in this case.

Mr Albuery also referred the Committee to the Business Registrant’s previous adverse history. Warning letters was issued in 2012, 2015 and December 2018. The warning in 2012 had expired. There was one previous adverse determination dated 25 May 2017. None of these matters involved public interest disclosures.

Mr Kennedy invited the Committee to regard “Whistleblowing” as a developing area of the law. He submitted that the Business Registrant was now putting into place a much improved policy and that the additional material contained in R3, which he had been able to place before the Committee today, went a very long way to remediating the concerns which the Committee had expressed in its earlier determination on impairment handed down in December 2018.

He also submitted that the matters with which the Committee was concerned should properly be regarded as a single event and there was no evidence of repetition. Any risk of harm to patients needed to be viewed in the light of the Business Registrant’s audit processes which were designed to provide a safeguard against poor practice. He also submitted that the Committee should take into account the fact that Mr A’s grievance process had been appropriately handled and that Mr A had been able to move, as he put it, seamlessly to another job so that there had been no significant financial impact upon him.

He then turned to the previous adverse findings against the Business Registrant. He concentrated in particular upon the Fitness to Practise Committee’s determination of 25 May 2017. He submitted that that particular case, which involved misleading advertising, had a wider reach than the case which the Committee was now considering because a large number of people had encountered the inappropriate advertising. In that case a financial penalty order of £40,000.00 was imposed. Mr Kennedy submitted that this case involved a single individual and that any financial penalty order should be less than that. He endorsed Mr Albuery’s submission that
an order for conditional registration would not serve any useful purpose and that suspension or erasure would be disproportionate.

The Committee accepted the advice of the Legal Adviser. He reminded the Committee of the Indicative Sanctions Guidance and of the need to act proportionately. He also emphasised that the purpose of any sanction was not to punish any Business Registrant but to arrive at a proportionate outcome to the case, having regard to the Committee’s responsibilities to protect the public, to declare proper standards of conduct and to maintain confidence in the profession and its regulation.

The Committee first considered the aggravating features of the case. The Committee was concerned that senior levels of management had appeared to be unable to recognise the importance of the issues in this case. That was no doubt in part due to the absence of a suitable policy in relation to public interest disclosure, and inadequate training. There seemed to have been little recognition even now on the part of the Business Registrant that “Whistleblowing” was an important mechanism which helped to ensure patient safety. The Committee regarded the time it had taken to produce improvements in the Business Registrant’s “Whistleblowing” policy as an aggravating feature. It noted that Mr A had expressly raised the issue of “Whistleblowing” in his formal grievance of 2015.

The Committee was unimpressed by the submission that this case only involved one individual. To approach the matter in that way was, in the opinion of the Committee, to seriously diminish the significance of what had occurred. Although Mr A had been affected by the inadequate approach to his disclosures, the factors which had produced that approach were applicable to the whole organisation and it was a cause of real concern that any satisfactory measures to produce an appropriate policy and training in relation to public interest disclosures were only now in progress, and, at least to an extent stimulated by the Committee’s earlier determination. The Committee did not accept the submission that the case in 2017 involving misleading advertising was of greater seriousness than the present case.

In relation to mitigating features, the Committee acknowledged that matters may have got off to a bad start because it was the perception, at local level, that Mr A had mixed motives for making the disclosures that he did. This may have contributed to treating his disclosures as a matter of grievance rather than a “Whistleblowing” disclosure.

The Committee also acknowledged that there had recently been significant efforts to improve the Business Registrant’s policies and that those efforts were still in progress, with the roll-out of further training in relation to the new policy expected in the near future.

The Committee first considered whether taking no action would be appropriate. The Committee decided that it would not be appropriate or proportionate. This case was much too serious for such a course to be taken. It was a matter of grave concern that it had taken several years, from Mr A’s initial disclosures in the autumn of 2014 and his identification in June 2015 of the matter, as a “Whistleblowing” concern for the Business Registrant’s policies and procedures to be improved.
The Committee next considered a financial penalty order. The Committee concluded that a financial penalty order could serve to mark the seriousness of what had occurred. The Committee considered this to be a very serious case. Significant public interest disclosures had not been recognised as such and a potential safeguard for patient safety had thereby not operated as it should have done. Thereafter, the Business Registrant’s approach to the matter consistently downplayed the significance of the failures that had occurred. This approach had been maintained right up to and during the conduct of this hearing. As the Committee had already noted, the failure, until after the Committee’s determination in December 2018, to put in place a suitable policy and training in relation to public interest disclosures was a failure that had implications for the whole of the Business Registrant’s organisation. It is a matter of real concern that senior levels of management do not appear to have recognised the importance of this issue at an earlier stage.

The Committee has already stated that it does not regard this case as less serious than of misleading advertising. It has noted that in that earlier case of misleading advertising, full admissions were made at the outset of the hearing. There were expressions of regret and apology and there was no risk of clinical harm to patients. In the present case, there had been little, if anything, by way of expressions of regret and apology, and there was a risk of harm to patients. The case was fully contested and there appeared to be little evidence during the course of this hearing in relation to facts, misconduct and impairment, that the Business Registrant had developed any satisfactory insight into the issues to which the Allegations gave rise.

The Committee has carefully considered the level of financial penalty that is appropriate. The Committee regards this case as at the most serious end of the spectrum and has concluded that the maximum financial penalty order should be imposed. This would properly reflect the Committee’s findings in relation to misconduct and impairment. The Committee has been concerned by the Business Registrant’s failure to recognise both the impact that these events have had upon Mr A and upon the significance which these failures have in relation to public safety and the wider public interest. The Committee has concluded that only the maximum penalty is sufficient to send a clear message as to the importance of managing public interest disclosures appropriately. The Committee has concluded that this level of financial penalty is proportionate in the particular circumstances of this case and necessary to maintain public confidence in the regulator and the profession.

The Committee also gave careful consideration as to whether to impose an order for conditional registration in addition to the financial penalty order. However, the Committee accepted Mr Albuery’s submission that any conditions would merely replicate existing legal obligations and accordingly decided to make no order in this respect.

Accordingly, the Committee imposes a financial penalty order of £50,000.00. This is to be paid within 28 days in view of the resources available to the Business Registrant.
Chair of the Committee: Ms A Johnstone

Signature ..................................................  Date: 27 February 2019

Business Registrant: Boots Opticians Professional Services

Signature ..................................................  Date: 27 February 2019
NOTICE TO REGISTRANT:

- In accordance with Section 13C(3) of the Opticians Act 1989, the GOC may disclose to any person any information relating to your fitness to practise in the public interest.

- In accordance with Section 13B(1) of the Opticians Act 1989, the GOC may require any person, including your learning/workplace supervisor or professional colleague, to supply any information or document relevant to its statutory functions.
### 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
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 [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk) or by telephone on 020 7389 8030.

### 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.

### 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.
Chair of the Committee: Ms A Johnstone

Signature  ........................................... Date: 21 December 2018
Registrant: Boots Opticians Professional Services LTD

Signature ........................................... Date: 21 December 2018

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