

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

**GENERAL OPTICAL COUNCIL**

**F(19)23**

**AND**

**SANNA ASLAM (SD-5794)**

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**DETERMINATION OF A SUBSTANTIVE HEARING  
20-22 JANUARY 2020**

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| <b>Committee Members:</b>              | Ms R O'Connell (Chair/Lay)<br>Dr P Ormerod (Lay)<br>Mr N Pilkington (Lay)<br>Ms C Cowen (Dispensing Optician)<br>Ms J Ames (Dispensing Optician) |
| <b>Legal adviser:</b>                  | Mr M Bell  |
| <b>GOC Presenting Officer:</b>         | Mr B Rich  |
| <b>Registrant present/represented:</b> | Not present and unrepresented  |
| <b>Registrant representative:</b>      | N/A  |
| <b>Hearings Officer:</b>               | Mr T Yates   |
| <b>Facts found proved:</b>             | 1, 2, 3, 4, 5(a), 5(b), 5(c)   |
| <b>Facts not found proved:</b>         | None   |
| <b>Misconduct:</b>                     | Found  |
| <b>Impairment:</b>                     | Impaired   |
| <b>Sanction:</b>                       | Erasure  |
| <b>Immediate order:</b>                | Yes  |

### **Proof of service**

The Committee heard an application from Mr Rich for the Council for the matter to proceed in the Registrant's absence. First, the Council was required to satisfy the Committee that the documents 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 was satisfied that the Notice of Inquiry contained all necessary information and had been served more than 28 days before the hearing. The Committee was satisfied that all reasonable efforts have been made to notify the Registrant of the hearing. The Committee concluded that service of the Notice of Inquiry had been carried out in accordance with the statutory requirements.

### **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 Rich, for the Council, submitted that the Registrant had voluntarily absented herself from the hearing and that it was in the public interest to proceed in her absence.

The Committee accepted the advice of the Legal Adviser. He advised the Committee that its discretion to proceed in the absence of the Registrant must be exercised only with the upmost care and caution and referred it to *General Medical Council v Adeogba [2016] EWCA Civ 162*.

The Committee was mindful of this advice in deciding whether to proceed in the absence of the Registrant. The Committee weighed its responsibilities for public protection and the expeditious disposal of the case with the Registrant's right to a fair hearing.

The Committee had regard to the Council's Hearing Questionnaire completed by the Registrant and dated 8 August 2019, where in reply to a question about attendance at a hearing, the Registrant stated 'I am unable to attend' and gave reasons. In an email to the Council dated 22 December 2019, the Registrant again stated 'I am emailing you to confirm my absence from the hearing taking place from 20-22 January. The hearing may proceed in my absence'. In a further email to the Council dated 9 January 2020 the Registrant stated, 'I am happy for the hearing to proceed in my absence'. The Committee noted that in this email the Registrant also stated that 'I have already provided all comments and statements that I wish to be considered during the hearing.' The Committee was aware that there was a statement from the Registrant and testimonials submitted by her in the bundle before it.

The Committee decided to proceed in the absence of the Registrant. In reaching this decision, the Committee considered the submissions of Mr Rich, the Registrant's reply to the Council's Hearing Questionnaire and emails and the advice of the Legal Adviser. It had particular regard to the factors set out in the decisions of *Jones* and *Adeogba*. It had regard to the overall interests of justice and fairness to all parties. It noted that:

- The Registrant has clearly indicated that she will not be attending
- No application for adjournment has been made
- Adjourning the proceedings is unlikely to secure the Registrant's attendance
- The Registrant has provided a witness statement and testimonials on her behalf
- There is a strong public interest in the expeditious disposal of the case.

In these circumstances, the Committee decided that it is fair, appropriate and proportionate to proceed in the absence of the Registrant. The Committee will draw no adverse inference from the Registrant's absence.

The Committee determined that it would be in the public interest for the hearing to proceed in the Registrant's absence.

### **ALLEGATION (As amended)**

The Council alleges that in relation to you, Miss Sanna Aslam, a student dispensing optician, whilst working at [Redacted] ("the Store"):

1. On or around 4 May 2016 you input a false contact lens specification on the [Redacted] [Company's] system purporting to be from [another store] [Redacted]
2. On one or more of the dates shown in Schedules A and/or B you ordered contact lenses as shown in those schedules from Alcon and/or Johnson & Johnson to false specifications;
3. In relation to the orders referred to at 2 above, you supplied daily contact lenses to a member [Redacted] and/or another without a daily contact lens check or fit;
4. You breached the Store policy by ordering the contact lenses to the false specification without appropriate authorisation;
5. Your actions were dishonest in that:
  - (a) In relation to Allegation 1, you knew that the information you input and/or provided was incorrect;
  - (b) In relation to Allegation 2:
    - i) you knew the specification you used to order the lenses was false;
  - (c) In relation to Allegation 2 and/or 3:
    - i) you knew your [Redacted] or the person to whom you supplied the lenses, was not entitled to some or all of those lenses as trials; and/or
    - ii) you knew your [Redacted] or the person to whom you supplied the lenses, would not be charged for some or all of those lenses when he should have been charged for them; and/or

- iii) you thereby created a financial gain for your [Redacted] or the person to whom you supplied the lenses, and/or caused a financial loss to [Redacted] and/or the suppliers of the trial lenses; and/or
- iv) with regard to some or all of the orders, you used more than one patient name to disguise the quantity of lenses you were ordering for a single patient;

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

### **Schedule A**

- (a) 6 January 2016: 2 pairs of trials from Alcon
- (b) 9 March 2016: 1 pair of trials from Alcon
- (c) 30 March 2016: 2 pairs of trials from Alcon
- (d) 12 April 2016: 2 pairs of trials from Alcon
- (e) 4 May 2016: 2 pairs of trials from Alcon
- (f) 24 May 2016: 1 pair of trials from Alcon

### **Schedule B**

- (a) 17 February 2016: 2 x 5-pack of trials from Johnson and Johnson
- (b) 24 February 2016: 2 x 5-pack of trials from Johnson and Johnson
- (c) 9 March 2016: 4 x 5-pack of trials from Johnson and Johnson
- (d) 18 March 2016: 1 x 5-pack of trials from Johnson and Johnson
- (e) 30 March 2016: 3 x 5-pack of trials from Johnson and Johnson

(f) 6 April 2016: 4 x 5-pack of trials from Johnson and Johnson

(g) 4 May 2016: 10 pairs double trials from Johnson and Johnson

## DETERMINATION

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

Mr Rich referred the Committee to the Council's Hearing Questionnaire completed by the Registrant and dated 8 August 2019. He directed the Committee to question 1 which was headed 'Admissions in relation [to] the particulars of the allegation' and which contained the question 'Do you admit any of the particulars of the allegation(s) set out in the Notice of Inquiry dated 30 July 2019?'. Mr Rich submitted that the Registrant had answered this with 'I admit the allegation' and that it was for the Committee to decide if this constituted a formal admission to all the particulars of the allegation. He further submitted that the Registrant had never denied the Allegation and had apologised for her actions. When asked by the Legal Adviser he confirmed that there had been no formal change of position by the Registrant since the completion of the Hearing Questionnaire.

The Committee noted that, prior to completing the Hearing Questionnaire, the Registrant had received correspondence dated 30 July 2019, which included a copy of the particulars of the Allegation before this hearing. The Committee considered that the Registrant had sufficient opportunity to consider the allegation and her position on all aspects of it prior to completing the Hearing Questionnaire. The Committee noted the contents of the undated statement from the Registrant, but determined that it did not indicate that the Registrant had changed her position since completing the Hearing Questionnaire.

The Committee therefore determined that in terms of her completion of the Council's Hearing Questionnaire the Registrant has admitted all the particulars of the Allegation.

The Committee therefore found particulars 1, 2, 3, 4 and 5 of the Allegation proved by way of admission.

### Background to the allegation

The Registrant was a student Dispensing Optician at [Redacted] ("the Store") where she had worked for approximately 3 years.

Contact lens suppliers provided the Store [Redacted] with free lenses to give to patients for trial purposes. The suppliers have a commercial interest in the custom of long-term users of lenses and offers free trial lenses to enable customers to see if a

particular brand will suit them, in the hope that if it does the patient will then order those lenses over an extended period.

It is alleged that during the period of January to May 2016 the Registrant ordered over 50 sets of daily contact lenses supplied on a free trial basis and provided them to [Redacted] /or another without a contact lens check or fit for daily contact lenses being undertaken.

The Registrant's alleged actions were discovered through an investigation that revealed irregularities in the ordering of free trial daily contact lenses by the Registrant. It is alleged that the Registrant had ordered large quantities of trial lenses of the same prescription for [Redacted] /or another using various different names for the 'patient' on numerous dates throughout the period.

It is further alleged that the Registrant had also inputted a false specification for the patient's prescription on the Company's system. This purported to be based on an examination conducted at another store of the Company. There are no records at this store that any such examination was undertaken.

It is alleged that the Registrant told the Store's [Redacted] investigator [Redacted] that Patient A was [Redacted].

It is further alleged that the Registrant deliberately failed to follow the correct procedure for supplying lenses to a relative, which required someone else to dispense or senior authorisation to be given. It is alleged that she sought to dishonestly obtain an excessive number of free trial daily contact lenses for [Redacted] /or another. This created a financial gain for that person who would otherwise have had to pay for most of these lenses, and a loss for the supplier who provided them free to the Store.

### **Application under Rule 40 to Admit Witness statements**

Prior to making submissions on misconduct, Mr Rich made an application for four witness statements of colleagues of the Registrant to be admitted as evidence under Rule 40 of the of the GOC Fitness to Practise Rules 2013 ("the Rules"). He explained that it had been agreed with the Registrant that these witnesses were not required to attend, and that their witness statements could be admitted as their evidence. He further submitted that these statements were relevant and that to admit them would not be unfair to the Registrant. He told the Committee that if it required to hear evidence from any of the witnesses, they were available to give telephone evidence.

The Committee accepted the advice of the Legal Adviser who referred it to Rule 40 and the cases of *Thorneycroft v NMC [2014] EWHC 1565 (Admin.)*

*'Admissibility of evidence*

*40.—*

*(1) The Fitness to Practise Committee may admit any evidence it considers fair and relevant to the case before it, whether or not such evidence would be admissible in a court of law. This is subject to paragraphs (2) and (3).*

*(2) Where evidence would not be admissible in civil proceedings in England and Wales, the Committee shall not admit such evidence unless, on the advice of the legal adviser, it is satisfied that its duty of making do inquiry into the case before it makes its admission desirable.'*

The Committee determined that the witness statements were relevant. It noted from the Hearing Questionnaire and email correspondence that the Registrant had seen and not objected to the content or admission of these statements. The Committee concluded that admitting the statements would not be unfair to the Registrant and granted the application.

### **Findings regarding misconduct**

The Committee has heard submissions from Mr Rich, on behalf of the Council, and took into account the Registrant's undated statement, the testimonials provided by her and considered all the documentation before it.

Mr Rich submitted that the Allegation found proved amounted to breaches of a number of paragraphs of the Council's Code of Conduct applicable until 31 March 2016 (The Code) and the Standards for Optical Students applicable from 1 April 2016 (The Standards); that the misconduct was serious and gave rise to serious breaches of the Code.

He submitted that dishonesty was always a serious matter and that here the dishonesty was calculated and over a period of time. He submitted that a number of false names were used, and that the actions were deliberate and calculated, not impulsive, involved false record keeping and were for financial gain. Mr Rich further submitted that the Registrant's acts and omissions caused damage to the reputation of the store, the reputation of the profession and gave rise to risk of harm to patients. He referred the panel to the case of *Roylance v GMC (No. 2) [2000] 1 AC 311* and *Nandi v GMC [2004] EWHC 2317 (Admin)*.

The Committee accepted the advice of the Legal Adviser, which included reference to *Roylance v General Medical Council (No 2) [2000] 1 A.C. 311* and *Calhaem v GMC [2007] EWHC 206*.

The Committee was aware that, in considering the question of misconduct, there was no burden of proof, nor standard of proof.

In reaching its decision on misconduct, the Committee bore in mind its duty to protect the public, to maintain public confidence in the profession and in the regulatory process, and to declare and uphold proper standards of behaviour and conduct.

The Committee appreciated that breaches of the Code do not automatically result in a finding of misconduct.

The Committee considered that acting in the manner admitted and found proved in Particular 1 amounted to a falsification of records by the inputting of a false contact lens specification on the [Redacted] system. The Committee considered that the inputting of false information onto a record keeping system gave rise to the potential for patient harm if those records were relied upon by others in the future. The

Committee was satisfied that this conduct fell seriously below the standard to be expected of a student Dispensing Optician and amounted to misconduct.

The Committee further determined that the acts and omissions admitted and found proved in Particulars 2 and 4 amounted to repeated inappropriate ordering of trial daily contact lenses, failure to record and breaches of store policy. The repeated breach of store policy gave rise to the ordering of lenses that might not be suitable for the recipient and again gave rise to the potential for harm on multiple occasions. The Committee was satisfied that these actions individually fell seriously below the standard to be expected of a student Dispensing Optician and amounted to misconduct.

The Committee considered the acts or omissions admitted and found proved in Particular 3 amounted to the ordering and supply of daily contact lenses without any appropriate check being undertaken. The Committee was satisfied that the ordering of contact lenses for a patient without an appropriate check being carried out by a qualified professional gave rise to the potential for patient harm through inappropriate lenses being provided to the patient. The Committee was satisfied that these actions individually fell seriously below the standard to be expected of a student Dispensing Optician and amounted to misconduct.

The Committee considered that the dishonest acts admitted and found proved under all the limbs of Particular 5 involved multiple pre-meditated acts of dishonesty. These acts involved the use of multiple patient names which the Committee considered was a deliberate attempt to avoid the dishonest acts being detected. The Committee was satisfied the dishonest acts were undertaken for financial gain, if not directly for the Registrant, for persons associated with her. The Committee considered that the dishonest acts gave rise to the potential for patient harm through the provision of daily contact lenses without appropriate clinical checks being undertaken as to the suitability of the lenses for the individual. The Committee further concluded that this had the potential to affect the reputation of the Store and had potentially resulted in financial loss for the supplier. The Committee was satisfied that these actions individually fell seriously below the standard to be expected of a student Dispensing Optician and amounted to misconduct.

The Committee concluded that the Registrant was in breach of the following paragraphs of the Code prior to April 2016:

- 1. Make the care of the patient your first and continuing concern*
- 6. Maintain adequate patients' record*
- 10. Be honest and trustworthy*
- 19. Ensure that your conduct whether or not connected with your professional practice does not damage public confidence in you or our profession.*

The Committee concluded that the Registrant was in breach of the following paragraphs of the Standards applicable thereafter:

- Making the care of your patients your first and overriding concern.*



7. *Maintain adequate patient records*

15. *Be honest and trustworthy.*

16. *Do not damage the reputation of your profession through your conduct.*

The Committee was satisfied that, both individually and cumulatively, the Registrant's acts and omissions fell seriously below the standard to be expected of a student Dispensing Optician and amounted to misconduct.

### **Findings regarding impairment**

The Committee went on to consider if as a result of this misconduct the Registrant's fitness to undertake training is currently impaired.

The Committee heard submissions from Mr Rich on behalf of the Council in relation to impairment. It took into account the Registrant's undated statement which she confirmed in her email of 9 January 2020 she wished to be considered during the hearing together with the testimonials provided by her. It considered all the documentation before it.

Mr Rich referred the Committee to the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) and in particular paragraph 76 where Mrs Justice Cox stated:

*'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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

Mr Rich submitted that limbs (a), (b), (c) and (d) were engaged. He submitted that the Registrant was currently impaired both on the grounds of public interest and

public safety. Mr Rich submitted that there was no indication that the Registrant had recognised the potential risk of harm to patients resulting from daily contact lenses being supplied without a contact lens check or fit. He further submitted that the individual who had received the lenses had only eventually been checked because the Registrant had been caught. He stated that there was no evidence of any actual patient harm.

Mr Rich further submitted that the reputation of the profession had been damaged. He said that there was nothing in her statement indicating that the Registrant appreciated this. He further submitted that there was no specific appreciation of dishonesty by the Registrant in her statement nor anything that could re-assure the Committee that there would be no re-occurrence of similar dishonest acts. Mr Rich stated that the Registrant concentrated on the impact these proceedings had had on her; provided no explanation of why she acted as she did or appreciation of the effect of her misconduct on her employer or the profession in general. He accepted that the Registrant had made early admissions to the Council and had never sought to deny her conduct to the Council.

Mr Rich submitted that honesty is a fundamental tenet of the profession and that the Registrant had breached this tenet. He referred the Committee to the testimonials provided by the Registrant and submitted that they had to be read carefully as it appeared that the Registrant had not told the authors of the testimonials of the exact nature of her misconduct. He told the Committee that the Registrant had shown no regret or remorse, had limited insight and that there remained a risk of repetition.

The Committee considered that the Registrant's failings in the past have met the criteria set out above in limbs (a), (b), (c) and (d) of the test formulated by Dame Janet Smith.

The Committee further considered that the Registrant's misconduct in Particulars 1, 2, 3 and 4 put an individual at unwarranted risk of harm and was for financial gain, if not directly to the Registrant then for an individual known to her. By acting in this manner, the Committee determined that the Registrant has brought the profession into disrepute and breached fundamental tenets of the profession.

The Committee also considered that the Registrant's dishonest misconduct, as set out in Particular 5 had put an individual at unwarranted risk of harm and was for financial gain. Further, the Registrant's actions in Particular 5 were inappropriate, misleading and dishonest. By acting in this manner, the Registrant has brought the profession into disrepute and breached fundamental tenets of the profession.

The Committee went on to consider the Registrant's insight. It noted that the Registrant has engaged with this hearing, made early admissions, provided a statement, and testimonials from her current employers. However, the Committee concluded that in her statement the Registrant had not shown understanding of the full nature and extent of her misconduct and the potential effect on patients, her employers, colleagues and the reputation of the profession. The Committee further determined that the Registrant sought to classify her misconduct as 'poor judgement' or a 'blunder' and to minimise the severity of her misconduct. She also appeared to

initially attempt to apportion blame to a colleague. The Committee concluded that the Registrant had demonstrated very limited insight.

As regards remorse, the Committee considered that the Registrant's expression of remorse in her statement was directed at the effect that her misconduct had had upon her and was not an expression of remorse relating to the potential effect of her misconduct on patients, her former employers, colleagues and the reputation of the profession. As regards the testimonials, the Committee concluded that the Registrant had failed to explain to the authors of the testimonials the full nature of her failings and misconduct and, in particular, that it involved allegations of dishonesty. The testimonials were therefore of little assistance in assessing insight or remorse.

Notwithstanding that dishonesty is difficult to remediate, there was no evidence before the Committee of any remediation of her misconduct.

Given the Registrant's lack of remorse and insight the Committee concluded that there exists a real risk of repetition of similar behaviour in the future.

The Committee considered that a finding of current impairment on public protection grounds is necessary, given the lack of remediation, insight or remorse, and given that the Committee has found there is a risk of repetition.

The Committee then considered whether a finding of impairment was also necessary to maintain public confidence in the profession. The Committee was in no doubt that the Registrant's past actions did bring the profession into disrepute and given the seriousness of the misconduct identified, including dishonesty, that public confidence in the profession would be seriously damaged if a finding of current impairment was not made.

The Committee is therefore satisfied that the Registrant's fitness to undertake training is currently impaired both on public protection grounds, and in the wider public interest.

### **Application to amend the allegation**

When considering its decision on impairment, the Committee noted that the Allegation erroneously referred to 'your fitness to practise is impaired' rather than 'your fitness to undertake training is impaired' which would properly reflect the Registrant's status as a student Dispensing Optician.

The Committee brought this to the attention of Mr Rich who applied to amend the Allegation in terms of Rule 46(20).

The Committee accepted the advice of the Legal Adviser who referred it to Rule 46(20).

Rule 46 (20) states:

*(20) Where it appears to the Fitness to Practise Committee at any time during the hearing, either upon the application of a party or of its own volition, that—*

*(a) the particulars of the allegation or the grounds upon which it is based and which have been notified under rule 28, should be amended; and*

*(b) the amendment can be made without injustice,*

*it may, after hearing the parties and consulting with the legal adviser, amend those particulars or those grounds in appropriate terms.*

The Committee considered that the use of the words your ‘fitness to practise is impaired’ in the Allegation was an administrative error and that no injustice would be caused by amending the Allegation to properly reflect the Registrant’s status and therefore granted the application.

## **Sanction**

Having determined that the Registrant’s fitness to undertake training is impaired, the Committee considered what sanction, if any, it should impose. The Committee heard submissions from Mr Rich, on behalf of the Council, and took into account the Registrant’s undated statement, the testimonials provided by her and considered all the documentation before it.

Mr Rich advised the Committee that the Council considered that the appropriate sanction was that of erasure from the Register.

Mr Rich submitted that the Particulars found proved were serious breaches of professional standards and referred the Committee to its conclusions that the Registrant had limited insight, had not demonstrated real remorse or any remediation and that there remained a real risk of repetition.

He further submitted that the Registrant has never attempted to explain how or why she had acted dishonestly. He submitted that, whilst the Registrant has claimed in her statement that she is a different person, she had provided no explanation of how she had become a different person or what she had done to persuade the Committee that she is a different person.

Mr Rich submitted that, despite the length of time that the Allegation has existed, the Registrant had not demonstrated any real reflection and had concentrated on the effect that her misconduct had had upon her.

Mr Rich identified aggravating and mitigating factors,

He submitted that the aggravating factors were the calculated and deliberate nature of the dishonesty, including the use of 6 different patient names across 13 separate orders and the length of time over which it had occurred. He also identified financial motivation, breach of the Registrant’s former employer’s trust in her, her willingness

to put individuals at risk of harm and lack of remorse and limited insight as further aggravating factors.

He submitted that the mitigating factors were that the Registrant was a student at the beginning of her career, that the dishonesty was of low financial value and there was no actual patient harm. He also identified that the Registrant had no prior regulatory history with the Council, had made admissions to the Council and that there had been no repetition of similar acts since 2016 as being further mitigating factors. He referred the Committee to *Parkinson v NMC [2010] EWHC 1898 (Admin)* and in particular the comment that a Registrant *'who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than to direct erasure.'*

The Committee heard and accepted the advice of the Legal Adviser. He referred the Committee to the Indicative Sanctions Guidance (ISG) and *Parkinson and Lusinga v NMC [2017] EWHC 1458 (Admin)*.

The Committee has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. It recognised that the decision on sanction is a matter for the Committee, exercising its own independent judgement.

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

#### Aggravating

- The dishonest acts admitted and found proved under all the limbs of Particular 5 involved multiple pre-meditated acts of dishonesty over a period of around 5 months using different patient names
- The Registrant only stopped when the dishonest behaviour came to light
- There had been financial gain, if not directly for the Registrant, for a person associated with her
- The Registrant had breached her former employer's trust in her
- The Registrant initially sought to apportion blame on others
- There was the potential for patient harm
- Lack of insight and remorse
- Risk of repetition.

## Mitigating

- Early admissions to the Council
- No repetition of similar misconduct since 2016
- Positive testimonials regarding the Registrant's character, and similar positive comments from both her current employers and employers in 2016
- No prior regulatory history.

The Committee considered the sanctions available to it from the least severe to the most severe.

The Committee first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the Registrant's misconduct. The Committee did not consider that this was an exceptional case where it could justify taking no further action. The Committee did not consider that taking no action would address the regulatory concerns arising from the Registrant's misconduct. The Committee decided that it would be neither proportionate nor in the public interest to take no further action.

The Committee then considered whether to impose a financial penalty in addition to or instead of an erasure order, suspension or conditions. The Committee did not consider that a financial penalty would address the regulatory concerns arising from the Registrant's misconduct. It determined that the Registrant's misconduct is too serious for a financial penalty to be considered appropriate or sufficient to reflect adequately the public interest.

The Committee next considered the imposition of a Conditional Registration Order.

The Committee noted the terms of paragraph 33.9 of the ISG which states:

*33.9 This sanction may be appropriate when most or all of the following factors are apparent (this list is not exhaustive):*

- a. No evidence of harmful deep seated personality or attitudinal problems;*
- b. Identifiable areas of registrant's practice in need of assessment or retraining;*
- c. Evidence that registrant has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*
- d. Potential and willingness to respond positively to retraining;*
- e. Patients will not be put in danger either directly or indirectly as a result of conditional registration itself;*
- f. The conditions will protect patients during the period they are in force; or*

- g. It is possible to formulate appropriate and practical conditions to impose on registration and make provision as to how conditions will be monitored.*

The Committee noted that the Registrant's pre-meditated acts of dishonesty occurred over a period of around 5 months and involved the use of multiple patient names. The Committee considered this was a deliberate attempt to avoid the detection of the dishonest acts and was indicative of harmful attitudinal problems. The Committee was not satisfied that the Registrant had demonstrated evidence of anything other than limited insight and she had shown no real remorse. The Committee did not consider that the Registrant had shown potential and willingness to retrain. The Committee considered that conditions would not protect patients during the period they are in force. Further, it is difficult to formulate conditions in cases where repeated dishonesty has been found.

In light of this, the Committee determined that there were no practical or workable conditions that could be formulated at this time which would adequately address the regulatory concerns in this case and protect the public and the wider public interest.

The Committee then went on to consider whether a suspension order would be an appropriate sanction.

It noted the terms of paragraph 34.1 of the ISG which states:

*34.1 This sanction may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):*

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

The Committee considered that the Particulars admitted and found proved did not constitute one serious instance of misconduct, but rather multiple pre-meditated acts of dishonesty occurring over a period of around 5 months. Further, it involved the use of multiple patient names which the Committee considered was a deliberate attempt to avoid the dishonest acts being detected. As set out above the Committee considered that the Registrant's misconduct is indicative of harmful attitudinal problems. The Committee considered that the Registrant's misconduct gave rise to financial gain, if not directly for the Registrant, for a person associated with her. The Committee further concluded that, despite having a long period of time to reflect upon her actions and despite repeated explicit invitations from the Council to provide

evidence of this, regrettably the Registrant has demonstrated no real remorse and only limited insight. There therefore remains a significant risk of repetition.

The Committee therefore determined that a suspension order is insufficient to adequately address the regulatory concerns in this case and protect the public. Further the Committee considered that a suspension order would not satisfy the public interest in maintaining public confidence in the profession and the Council as the regulator.

The Committee then went on to consider erasure.

It noted the terms of paragraph 36.5 which states:

*36.5 This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional and involves **any** of the following (this list is not exhaustive):*

- a. Serious departure from the relevant professional standards as set out in the Standards of Practice for registrants and the Code of Conduct for business registrants;*
- b. Doing serious harm to individuals (patients or otherwise), either deliberately or through incompetence, and particularly where there is a continuing risk to patients;*
- c. Abuse of position/trust (particularly involving vulnerable patients) or violation of the rights of patients;*
- d. Offences of a sexual nature, including involvement in child pornography;*
- e. Offences involving violence;*
- f. Dishonesty (especially where persistent and covered up); or*
- g. Persistent lack of insight into seriousness of actions or consequences.*

The Committee was satisfied that the Registrant's actions amounted to a serious departure from relevant professional standards. The Registrant engaged in multiple pre-meditated acts of dishonesty occurring over a period of around 5 months involving the use of 6 patient names, abusing the trust of her then employers. There was financial gain, if not directly for the Registrant, for a person associated with her. The Committee also determined that the Registrant has shown a persistent lack of insight into the gravity of her conduct and the consequences of it.

The Committee was satisfied that, in the absence of any explanation for her actions or significant mitigation, the Registrant's conduct was fundamentally incompatible with continued registration as a student Dispensing Optician.

Balancing all of these factors, and after taking into account all the evidence before it during this case, the Committee determined that the appropriate and proportionate sanction is that of erasure. Having regard to the matters it identified, in particular the effect of the Registrant's actions in bringing the profession into disrepute and her





| <b>FURTHER INFORMATION</b>  |
|---|
| <b>Transcript</b>   |
| A full transcript of the hearing will be made available for purchase in due course.   |
| <b>Appeal</b>   |
| Any appeal against an order of the Committee must be lodged with the relevant court within 28 days of the service of this notification. If no appeal is lodged, the order will take effect at the end of that period. The relevant court is shown at section 23G(4)(a)-(c) of the Opticians Act 1989 (as amended).  |
| <b>Professional Standards Authority</b>   |
| <p>This decision will be reported to the Professional Standards Authority (PSA) under the provisions of section 29 of the NHS Reform and Healthcare Professions Act 2002. PSA may refer this case to the High Court of Justice in England and Wales, the Court of Session in Scotland or the High Court of Justice in Northern Ireland as appropriate if they decide that a decision has been insufficient to protect the public and/or should not have been made, and if they consider that referral is desirable for the protection of the public. PSA is required to make its decision within 40 days of the hearing (or 40 days from the last day on which a registrant can appeal against the decision, if applicable) and will send written confirmation of a decision to refer to registrants on the first working day following a hearing. PSA will notify you promptly of a decision to refer. A letter will be sent by recorded delivery to your registered address (unless PSA has been notified by the GOC of a change of address).</p> <p>Further information about the PSA can be obtained from its website at <a href="http://www.professionalstandards.org.uk">www.professionalstandards.org.uk</a> or by telephone on 020 7389 8030.</p> |
| <b>Effect of orders for suspension or erasure</b>   |
| To practise or carry on business as an optometrist or dispensing optician, to take or use a description which implies registration or entitlement to undertake any activity which the law restricts to a registered person, may amount to a criminal offence once an entry in the register has been suspended or erased.  |
| <b>European Alert</b>   |

The General Optical Council is required by Regulation 67 of the European Union (Recognition of Professional Qualifications) Regulations 2015 to inform all European competent authorities of any restrictions or prohibitions on a dispensing optician or an optometrist's practice. 'Competent authority' effectively means the relevant regulator for each EU member state.

The GOC is the competent authority for all opticians registered in the United Kingdom (UK).

If you have been made subject to either a suspension or conditions of practice order (whether interim or substantive), or to an erasure order, we hereby notify you of the following:

- Within 3 days of the Fitness to Practise Committee decision taking effect you will be the subject of an alert sent under article 56a(1) of the Directive;
- You have the right to appeal the decision to issue the alert or to apply for rectification of the decision; and
- You have the right to access remedies in respect of any damage caused by false alerts sent to other competent authorities.

The alert is sent securely via the Internal Market Information (IMI) system. The alert will include the following details:

- Your identity (full name and date of birth);
- Your profession;
- Your GOC registration number;
- The fact that the GOC is the national authority which adopted the decision on the restriction or prohibition of your professional activities;
- The scope of the restriction or prohibition;
- The period during which the restriction or the prohibition applies.

If you wish to appeal the decision to issue this alert then please see the information sheet below. Please note that this relates to your right of appeal against the issuing of the alert – see above regarding your right of appeal against a substantive decision.

A copy of the alert may be obtained via the contact details at the end of this document.

Please see the attached information sheet for further information.

## Contact

If you require any further information, please contact the Council's Hearings

Manager at 10 Old Bailey, London, EC4M 7NG or, by telephone, on 020 7580 3898.

## European Alert – Information Sheet

Please see the below Frequently Asked Questions (FAQs) which have been developed to assist you with this process and explain your options.

### 1. Why has the General Optical Council (GOC) sent this alert?

With effect from 18 January 2016 the GOC is legally required to issue alerts concerning all registrants whose practice has been prohibited or restricted – this includes all determinations of suspension, conditions or erasure issued by a Fitness to Practice Committee (FTPC), whether interim or substantive, and any extensions ordered by the High Court.

This legal requirement is placed on us by article 56a of Directive 2005/36/EC on the recognition of professional qualifications ('the Directive'). This article was adopted into UK legislation via Regulation 67 of the European Union (Recognition of Professional Qualifications) Regulations 2015. All other Member States must also comply with the provisions of the Directive and participate in the alert mechanism.

### 2. What is the purpose of these alerts?

The purpose of these alerts is to ensure public protection across all Member States. The intention is that each member state will be notified of any restrictions or prohibitions placed on UK registrants so that they are able to check this against their own registers and applicants. We will also be notified of any restrictions or prohibitions handed down to European optical professionals. This will assist us with safeguarding the public and maintaining the integrity of our registers.

### 3. Why was I not consulted before the alert was sent?

The terms of the Regulations are very strict; the alert must be issued within three days of the panel's decision coming into effect. The notification must be issued at the same time the alert itself is sent.

### 4. Who will see the alert?

The alert is sent securely via the Internal Market Information (IMI) system to the competent authority in each Member State.

In the UK, statutorily regulated health and social care professionals have to be registered with, and show that they meet the standards of, the relevant regulatory body, in order to practise their profession. The regulators control access to regulated professions, professional and vocational titles and professional activities which require specific qualifications, and are subject to national law. The European Commission term these organisations the 'competent authorities' although the exact duties of the competent authorities vary across member states, they are effectively the regulator (in the same way the GOC is) for each member state.

A competent authority has been defined by the European Commission as: *any authority or body empowered by a Member State specifically to issue or receive training diplomas and other documents or information and to receive the application and take the decision, referred to in Directive 2005/36/EC.*

**5. If there is a mistake in the alert can I apply for it to be corrected?**

If you notice a mistake in the alert (such as a typing error or incorrect information) then please contact the GOC and we will consider your request to amend the alert. Please note the GOC is not able to remove an alert at your request, see next question for further information.

**6. What if I disagree with the alert being sent?**

If you disagree with the sending of an alert then you have the right of appeal to the County Court. If you merely consider there to be a mistake within the alert then please refer to the above question.

Please note that the GOC is required to send the alert under European Law. With this in mind, and if you still wish to appeal to the County Court, then you may find the following government website useful: <https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/county-court/>

If you attended the hearing and were given the FTPC decision document by hand then the period for submitting an appeal with the County Court is 28 days from the date you were handed the document. If the FTPC decision document has been sent to you by post, the appeal period is 30 days from the date the decision document was posted to you (there is an additional 2 days allowed to cover postage time).

**7. Can the GOC assist me with my appeal against the issuing of an alert?**

The GOC is unable to help you with your appeal – we strongly advise that you seek independent legal advice.

**8. If I appeal an alert being sent, what effect will that have on the substantive decision made in relation to my registration?**

There will be no effect on the decision made by the GOC affecting your registration. This would be an appeal against the issuing of the alert and not the substantive decision – they are two separate things and each have different appeal routes. If you require details on how to appeal the substantive decision (i.e. the erasure, conditions or suspension) then please refer to the separate guidance sheet enclosed with the decision letter regarding your substantive GOC case.

**9. If I successfully appeal the issuing of an alert, what will happen to the alert itself?**

While your appeal is ongoing the alert will remain on the IMI system but with a qualification to say that an appeal has been lodged.

On appeal the County Court may:

- Dismiss your appeal;
- Allow your appeal and direct the alert be withdrawn or amended accordingly.

If the County Court decide to allow the appeal then the GOC has a duty to delete the alert (or amend as appropriate) within three days of this decision.

**10. What happens if the order made by the FTPC is revoked?**

When an order is revoked by the FTPC (or the High Court) and that order was the subject of a European alert, we will close the alert within 3 days of the decision to revoke the order. When an alert is closed, all personal data is removed from the alert sys

