

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

**GENERAL OPTICAL COUNCIL**

**F(21)22**

**AND**

**JITESH GADHER (D-16062)**

**DETERMINATION OF A SUBSTANTIVE HEARING**

**04 APRIL 2022 – 06 APRIL 2022**

**20 SEPTEMBER 2022 – 22 SEPTEMBER 2022**

**24 APRIL 2023 – 28 APRIL 2023**

**19 JUNE 2023**

**21 JUNE 2023 – 22 JUNE 2023**

<b>Committee Members:</b>	Ms Anne Johnstone (Chair/Lay) Ms Clare Hayes (Dispensing Optician) Ms Judith Stodel (Dispensing Optician) Mr Mark Richards (Lay) Mr Ubaidul Hoque (Lay)
<b>Legal adviser:</b>	Mr Ian Ashford Thom (04-06 April 2022 only) Mr William Hoskins (All other dates)
<b>GOC Presenting Officer:</b>	Ms Selena Jones
<b>Registrant present/represented:</b>	Yes and represented
<b>Registrant representative:</b>	Mr John Graham (WGL)
<b>Hearings Officer:</b>	Mr Lee Wood
<b>Facts found proved:</b>	1,2,3,6,7,8,9. 10 (a) and (b) in relation to 1,2,3,6, 7,8 & 9.
<b>Facts not found proved:</b>	4
<b>Misconduct:</b>	Found
<b>Impairment:</b>	Impaired

<b>Sanction:</b>	Erasure
<b>Immediate order:</b>	Suspension

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## ALLEGATION

1. *The Council alleges that you, Mr Jitesh Gadher (D-16062), a registered dispensing optician whilst working at REDACTED (“the practice”)*
  1. On or around 8 January 2020, Patient 1 purchased a spectacle frame from the practice, and you took payment of on or around £185 in cash given to you by Patient 1, and you did not put this cash into the cash till and removed this cash from the practice without consent;
  2. On or around 12 December 2019, you took REDACTED amounting to the value of on or around £75 from the practice without consent;
  3. On or around 12 December 2019, you took payment of on or around £50 in cash given to you by Patient 9157 for a re-glaze, and you did not put this cash into the cash till and removed this cash from the practice without consent;
  4. On or around 4 December 2019 you took a split payment of on or around £30 in cash given to you by Patient 11251 for a re-glaze, any you did not put this cash into the cash till and removed this cash from the practice without consent;
  5. [On or around 20 November 2019 you took payment of on or around £200 in cash given to you by Patient A (Patient 3062) for purchase of spectacles, and you did not put this cash into the cash till and removed this cash from the practice without consent];
  6. On or around 15 November 2019, you took payment of on or around £236 in cash given to you by Patient B (Patient 4238) for purchase of spectacles, and you did not put this cash into the cash till and removed this cash from the practice without consent;
  7. On or around 14 November 2019, you delivered spectacles to Patient C and took payment of on or around £334.95 in cash from Patient C (Patient 9229)’s nephew Mr C, and you did not put this cash into the cash till and removed this cash from the practice without consent;
  8. On multiple unknown dates between September 2016 to 22 January 2020 you informed Mr A and/or Mr B that you worked as an Investigating Officer and/or Fitness to Practise Committee member for the General optical Council (GOC) despite knowing this to be untrue;
  9. On an unknown date between 1 April 2019 and 22 January 2020 you informed Mr D that you worked as an Investigating Officer and/or Fitness to Practise Committee member for the General Optical Council (GOC) despite knowing this to be untrue;

10. Your actions at 1, and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 and /or 7 and/or 8 and/or 9 above were:

- (a) Inappropriate
- (b) Dishonest

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

## DETERMINATION

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

2. The Registrant admitted paragraphs 8 and 9 of the Allegation. The Registrant also admitted paragraph 10 (a) insofar as it related to paragraphs 8 and 9 of the Allegation. Those paragraphs were therefore found **Proved** by reason of the registrant's admissions
3. The Council withdrew paragraph 5 of the Allegation on the grounds that there was insufficient evidence to support it. This allegation therefore appears in square brackets above and is **Not Proved**
4. The Registrant did not admit any of the other allegations.

### A Procedural Issue

5. During the first tranche of hearings, Mr Graham applied to adduce a witness statement from Mr S. His application was opposed by Ms Jones on the ground that it was made too late, and she would be unable to consider and deal with it properly. The Committee accepted Ms Jones' objections and initially refused to allow that evidence to be adduced. However, when it became clear that the case was going to be part- heard the basis for Ms Jones' objections disappeared and the Committee decided to admit the evidence. In the circumstances no useful purpose would be served by producing a written determination in respect of the Committee's initial decision as this has now been overtaken by events.

### Background to the allegations

6. Between August 2016 and January 2020 the registrant was employed as a part-time dispensing optician at **REDACTED**. The practice was owned by Mr A, a registered dispensing optician, and Mrs B, a registered contact lens optician. Mr A and the registrant had known each other since they were students. The registrant worked for three days a week at the practice and occupied a position of trust, on some days working on his own.
7. In December 2019 Mrs B was expecting to receive some vouchers she had ordered via a reward scheme operated by Hoya, the lens manufacturers used by the practice. When she did not receive these vouchers by the expected date, Mrs

B made enquiries of the staff at the practice without any positive result. As the Post Office records showed that the vouchers had been signed for as delivered, Mrs B and Mr A reviewed the Closed-Circuit TV["CCTV"] cameras at the practice. The recording showed the post being signed for by the locum optometrist, Mr D, who then passed the post to the registrant who appeared to examine an envelope, and its contents, and then place it under the printer.

8. Mr A and Mrs B were suspicious of this activity and decided to investigate the practice records and review further CCTV footage. As a result, they invited the registrant to a "Disciplinary meeting" on 14 January 2020. Following that meeting, at which various questions were asked of the registrant and his answers recorded, they invited the registrant to a formal meeting which was scheduled for 28 January 2020.
9. The registrant resigned from his employment on 22 January 2020. In his letter of resignation he denied any wrongdoing and wrote "*My reason for resigning is that I feel that the investigation that has been carried out by yourselves is biased*".

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

10. In relation to evidence adduced by the Council, the Committee heard oral evidence from Mr A, Ms B, Mr D and Patient 1.
11. The Committee also reviewed CCTV footage and was provided with a plan, photographs and clinical and business records from the Practice. The business records included various transactions that had been entered on the computerised record system ["the copars system"], and Mrs B's notebooks recording her calculations with regard to till receipts, cash and Visa card transactions. The clinical records consisted of patient record cards.
12. The Committee also heard oral evidence from the registrant, and from a witness called on his behalf, Mr S. The Committee also received a number of testimonials from colleagues and patients.
13. The evidence from each of these sources will be referenced where relevant in relation to each of the paragraphs of the Allegation. There was no dispute between the parties that the practice accepted payment both in cash and via Visa card.
14. The Committee received detailed written submissions from the parties in relation to the facts.
15. It accepted the advice of the Legal Adviser, who referred the Committee, amongst other matters, to the guidance given in *R (Dutta) v GMC [2020] EWHC 1974(Admin)*.
16. The Committee reminded itself throughout that the burden of proving each particular rested upon the Council and that the standard of proof required was the balance of probabilities. It recognised that it needed to consider each individual allegation separately, though it could in certain circumstances take into account its findings in relation to one allegation if it concluded that those findings augmented the evidence in relation to a different allegation.

17. The Committee also recognised that the registrant was a person of previous good character, and that evidence of his character was relevant at this stage both because it may support the credibility of his account and may make it less likely that he behaved in the way alleged. The Committee has borne this in mind when considering the individual particulars.
18. The Committee's findings in relation to the individual particulars of the Allegation are as follows.

*1. On or around 8 January 2020, Patient 1 purchased a spectacle frame from the practice, and you took payment of on or around £185 in cash given to you by Patient 1, and you did not put this cash into the cash till and removed this cash from the practice without consent;*

19. The Committee was shown CCTV footage of Patient 1 attending the practice on 8 January 2020 and giving the registrant a sum in cash. It was clear from the footage that this cash sum was not placed in the till but placed on the counter next to it. The CCTV footage is consistent with the evidence of Patient 1, who told the Committee that he gave £185.00 in cash to the registrant for the purchase of some spectacle frames. He said that he was surprised to see that this sum did not go into the till and that he was not given a receipt.
20. The CCTV footage later showed the registrant picking up this sum and moving out of camera shot. The registrant's account, to the Case Examiners and in his oral evidence, was that he put the cash in the contact lens cupboard as, he said, it was less vulnerable to theft if hidden in that way than it would be if placed in the till. This was not an account he gave in the "Disciplinary meeting" of 14 January at which he is noted as having said "I would have put the money in the till. I don't know why the cash was not in the till the following day".
21. The Committee was told by Mrs B that that the till did not contain £185 on 9 January 2020. Mrs B took a photograph of the till and its contents at about 09.30 on the morning of 9 January 2020.
22. Mr A told the Committee that he telephoned the registrant on 9 January 2020 to ask whether there had been any transactions on 8 January and the registrant replied in the negative. His evidence in this respect was supported by Mrs B who was on the premises when the registrant took this call. Mr A said that some 15 minutes after this telephone call the registrant entered a sale transaction in respect of this cash sale. The Committee accepted Mr A's evidence in this respect.
23. The Committee has significant reservations about one aspect of the evidence given by Patient 1 and Mr A. The Committee is sceptical that Patient 1 and Mr A were, as they each maintained, unknown, or virtually unknown, to each other prior to 8 January 2020. It seems to the Committee more likely than not that Patient 1's transaction on 8 January was arranged so as to test the registrant. This is consistent with what Mr S said that he heard from Mr A in relation to this episode, namely that Mr A had arranged for a friend of his to test the registrant after he and Mrs B had become suspicious.

24. Be that as it may, the Committee has come to the conclusion that this significant flaw in their evidence, very regrettable as it is, is not sufficient to undermine the remainder of the evidence in relation to this episode. There is no suggestion in any of the evidence (in particular the CCTV evidence and the registrant's own account) that the cash which was given to the registrant was ever put in the till. The Committee also accepts the evidence of Mr A and Mrs B that no cash sum of anything like that amount was found either in the till or in the contact lens cupboard. The registrant was the last person to be seen in possession of the sum concerned and his account that he placed the money in the contact lens cupboard was not the account he gave when interviewed on 14 January 2020. The Committee has also noted the registrant's failure to issue a receipt and his initial, false, denial to Mr A that any transaction had taken place on 8 January 2020.
25. Taking all of this evidence into account, the Committee is satisfied on the balance of probabilities that the registrant removed this cash from the practice without consent. This allegation is therefore **Proved**.

*2. On or around 12 December 2019, you took Hoya vouchers amounting to the value of on or around £75 from the practice without consent.*

26. The CCTV evidence shown to the Committee records the registrant opening an envelope which was part of the postal delivery and carefully examining the contents. These can be seen to be vouchers of the type photographed by Mrs B, for illustrative purposes, and referred to in her evidence. Confirmation that the vouchers were delivered and signed for at the premises has been provided by the Post Office and the evidence of Mr D, the locum optometrist who signed for the post. The CCTV footage also shows the registrant looking around, as if to check whether anyone was watching him, and then placing the envelope and its contents completely under the printer.
27. When Mrs B asked shortly afterwards, via a work WhatsApp group, whether anyone in the group had seen the vouchers which she was expecting to receive, the registrant replied "*Hmm...lol. What vouchers are these. I want lol*". He maintained his denial at the Disciplinary meeting of 14 January 2020.
28. In his witness statement the registrant says that he separated the post to check whether it was important, or junk, mail. "*On this occasion I expect I put some of the mail under the printer so that I could review it later as I was already on my way out for lunch. I often did this...I cannot recall what the item of post was but I do not recall them being the vouchers. This is why I responded as I did to the message sent to me regarding them.*" This differs significantly from the account he gave at the Disciplinary meeting at which he denied that the contents of the envelope were vouchers and when asked why he had placed the envelope under the printer said: "*I can't recall*".
29. His denials were, and remain, inconsistent with the unequivocal evidence of the video footage which, in the Committee's assessment, shows the registrant closely examining what appear to be vouchers of the type shown in Mrs B's photographs and then surreptitiously placing the envelope and vouchers beneath the printer. As Mrs B never received these vouchers, the Committee infers, as a matter of

probability, that they were removed from the practice by the registrant who retrieved them from the place in which he had concealed them.

30. The Committee finds this allegation **Proved**.

*3. On or around 12 December 2019, you took payment of on or around £50 in cash given to you by Patient 9157 for a re-glaze, and you did not put this cash into the cash till and removed this cash from the practice without consent;*

31. The CCTV footage shows a patient handing money to the registrant, who subsequently drops the money onto the floor. The registrant does not retrieve it immediately but can be seen to be looking over at Mrs B to see whether she is observing him and then leans down and picks up what he has dropped on the floor.

32. At no point on the footage does the registrant open the till, although he has been given a sum in cash. Nor does he offer a receipt. There appears to be no reason why this sum should not have been placed in the till.

33. The registrant entered the transaction as a Visa payment, although there is no suggestion on the available footage that a Visa card machine was ever used.

34. Mrs B told the Committee that no cash receipt for this transaction had been found and that the till had been found to be down by £50 at the end of the week.

35. The Committee considered that the video evidence strongly suggested that the registrant was seeking to retain this cash sum without being observed. The failure to issue a receipt and the entry of the transaction, incorrectly, as a Visa transaction were also consistent with the impression given by the CCTV evidence.

36. The Committee finds this allegation **Proved**.

*4. On or around 4 December 2019 you took a split payment of on or around £30 in cash given to you by Patient 11251 for a re-glaze, and you did not put this cash into the cash till and removed this cash from the practice without consent.*

37. The Committee noted Mrs B's evidence that, in relation to the split transaction (£30 cash/£20 Visa) "it was unclear whether he pocketed the £30 or whether there was another reason for undercharging the patient."

38. Mr A, in his first witness statement, referred to the absence of CCTV evidence and said that "£30 was either pocketed or we cannot locate the receipt for the £30 difference". Ms Jones relies upon a remark in Mr A's second witness statement in which he sought to clarify his position by stating that the registrant did not put £30 into the till.

39. The registrant has no recollection of this particular transaction but points out in his witness statement that a hand-written receipt for the full amount was identified and this correlated with the patient record and the entry on the copars system.

40. In the light of all of this evidence the Committee has concluded that the Council has failed to prove on the balance of probabilities that the registrant removed this cash from the practice. This allegation is therefore **Not Proved**

6. On or around 15 November 2019, you took payment of on or around £236 in cash given to you by Patient B (Patient 4238) for purchase of spectacles, and you did not put this cash into the cash till and removed this cash from the practice without consent
41. The Committee had regard to the patient record card, dated 28 June 2019 which recorded a sight test and the purchase of some spectacles. The patient paid a deposit of £150, leaving a balance of £236.00 to pay. This balance had been entered on the copars system as having been discharged via a Visa payment, the date of the transaction being 15 November 2019. The patient record card was also marked *pif* (i.e. paid in full) on that date. The registrant did not dispute that he had made the entry recording a Visa payment or that he had entered *pif* on the record card.
42. The Committee also had regard to Mrs B's note of a conversation with the patient which she recorded on the patient's record card. The note is dated 06.01.2020. The patient confirmed that he had paid £236 in cash. The record of the conversation, as it appears on the card, is as follows: **Mrs B:** "We are currently auditing our records and wanted to confirm if the payment you made in store when you collected your glasses was by cash or card? **Patient:** Oh, I paid cash, Why is everything ok? Are you trying to say I didn't pay? **Mrs B:** No. Not at all. All is fine. We were just doing out audits...". This conversation is consistent with an undated and unparticularised receipt for the sum of £236 issued by Clarke Opticians in relation to this transaction.
43. Mrs B told the Committee that the till "was down by £236" in relation to this transaction. When investigating the Practice's November takings she had made an entry as follows: "15.11. 206.50 + 29.50 visa receipts not allocated card or cash? Till down £236.00."
44. Mr A told the Committee that "we cannot find any cash or card receipt" in relation to this transaction. He confirmed that the transaction had not appeared on the practice's Visa statement.
45. In his witness statement, the registrant says: "[70]I cannot recall whether the payment made was cash or card however if Patient B states that a cash payment was made then I would not dispute that. I may have made an error in inputting the correct mode of payment on the copars sale spreadsheet. For this mistake I apologise unreservedly and I am sorry for my actions. [71]I don't understand how the directors would not be aware of a difference of this amount the next day if theft had occurred. This does not ascertain that the cash has been taken from the practice or not put in the till. I feel this is just an assumption/allegation."
46. The Committee is satisfied that the registrant took payment of £236 in cash on 15 November 2019 and recorded the payment as having been made by Visa. The effect of this was that the disparity between the sum in the till and what had been received in cash on that date would not have been apparent. The Committee accepts the evidence of Mr A and Mrs B that £236 in cash was missing in relation to this transaction and the only probable explanation for that is that the registrant had removed it from the practice.
47. The Committee finds this allegation **Proved**.

7. On or around 14 November 2019, you delivered spectacles to Patient C and took payment of on or around £334.95 in cash from Patient C (Patient 9229)'s nephew Mr C, and you did not put this cash into the cash till and removed this cash from the practice without consent;
48. The Committee heard evidence from Mrs B that the registrant had entered the details of this transaction on the copars system in an incorrect amount. The amount due under the transaction was entered on the system as £121.31 which was in fact what the patient had paid by way of deposit (£100) and an NHS sight test voucher. The total value of the dispense, as shown on the patient record card, was actually £434.95 so the amount which should have been entered as owing was £334.95, being £434.95 less £121.31.
49. Mrs B told the Committee that the spectacles were delivered to the patient at his home on 19 November 2019 and that payment was made in cash. She received confirmation of this over the telephone from Patient C's nephew, as Patient C was elderly and hard of hearing. The note she made of this conversation appears on Patient C's record card and is dated 6 January 2020. No receipt was given.
50. Mrs B pointed out that because of the incorrect entry on the copars system, there would be no disparity between what was in the till and what was shown in respect of this transaction on the system.
51. The registrant maintained that he took no payment when delivering the spectacles, he said on 21 November 2019, as the patient had paid in full when he came into the practice a few days earlier to collect one of the two pairs of spectacles he had bought. He accepted, after some hesitation, that the patient record card, in which the deposit taken and the sum owed on collection are correctly set out, was completed by him. He also issued a receipt for the deposit. He said that he could not say for certain who had entered the incorrect information on the copars system as this would sometimes be "left to the end of the day when it was quieter", rather than being done immediately by the person dealing with the transaction. He said that if he had taken a cash payment he would have put it in the till or in the contact lens cupboard.
52. The Committee considers it more likely than not that the registrant entered the incorrect information on the Copars system. This would be consistent with his entering, as he accepted, the financial details on the patient record card and issuing a receipt for the deposit and NHS sight test payment. There is no documentary evidence to suggest that the patient had paid in full if and when he came into the practice to collect an earlier pair of spectacles. Nor is there any evidence that a cash sum of this size, otherwise unaccounted for, had been deposited in the till. Mrs B told the Committee that the normal system was for a patient to pay any balance owing when the goods were collected. In relation to this transaction that would be when the spectacles were delivered to Patient C at his home.
53. The Committee considers it unlikely that the details entered on the copars system were entered as the result of an honest mistake. The registrant was very familiar with the details of this transaction. The Committee considers it unlikely that he would have made an honest mistake of this magnitude. Entering the details in the

way he did enabled him to conceal on the copars system his receipt of a cash payment in respect of the spectacles he delivered.

54. In cross-examination of Mrs B, it was put to her on the registrant's behalf that the registrant had spotted the discrepancy in the copars record and raised the matter with her. Mrs B denied that any such conversation had taken place. The Committee accepts her evidence in this respect.
55. The Committee finds that it is more likely than not that the balance owing on this transaction was paid when the registrant delivered the spectacles and that he failed to account to the practice for that balance.
56. Accordingly, the Committee finds this allegation **Proved**.

*11. Your actions at 1, and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 and /or 7 and/or 8 and/or 9 above were:*

- (a) *Inappropriate*
- (b) *Dishonest*

57. The registrant accepted during cross-examination that his admitted actions in relation to Paragraphs 8 and 9 of the Allegation were dishonest, as well as inappropriate. In the Committee's judgment he was right to do so and his dishonesty in respect of those paragraphs is therefore **Proved**.
58. The Committee's findings of fact in relation to paragraphs 1,2,3, 6 and 7 involve the misappropriation of vouchers and cash which did not belong to him. His conduct in respect of these paragraphs of the Allegation can only be regarded as both inappropriate and dishonest and these allegations are therefore **Proved**.

### **Findings in relation to misconduct and impairment**

59. The Committee heard further oral evidence from the registrant. He told the Committee that he had changed his methods of working and had become much more cautious about processes than he had been previously. He said that daily transactions were now signed and counter-signed and this reduced the scope for error. He was also more careful when he made notes and his record-keeping had improved. He realised now that he should have been honest with Mr A and Mrs B about the need for him to preserve days off from the practice and that he should not have pretended that he was working for the General Optical Council.
60. The registrant said that he was at times overwhelmed by remorse at the impact of his behaviour on Mr A and Mrs B. He apologised both to them and to the Council for the time and effort expended on his case. He said he realised that the reputation of the profession was important. He was hoping in future to supervise two student dispensing opticians so as to give something back to the profession.
61. The Committee heard submissions on behalf of the Council and the Registrant. Both parties had prepared helpful and detailed written skeleton submissions which they supplemented with oral submissions. There was no disagreement as to the legal principles to be applied at this stage.

62. Ms Jones submitted that the registrant had shown a persistent inability to recognise professional boundaries and had developed no insight despite the length of time over which this case had been heard. She submitted that there was an absence of genuine remorse and a likelihood of repetition. She highlighted the fact that the registrant had chosen to attack the integrity of witnesses called by the Council and contended that the testimonials submitted, including a further testimonial this morning, were of little value in view of the Committee's findings. This was, in her submission, a case involving a breach of trust and she invited the panel to find current impairment of fitness to practise on both personal and public interest grounds.

63. Mr Graham pointed out, in response, that the Committee had been critical of some of the evidence given by witnesses called on behalf of the Council. He referred the Committee to the most recent testimonial, written by the registrant's manager, and said that the course of events showed that the registrant has been practising since 2020 without adverse incident. He said that the registrant now appreciated the importance of recording accurate information in relation to transactions and that the references the registrant had been able to submit were important. He emphasised that there was no evidence of current wrongdoing, that the registrant recognised the potential repercussions of his behaviour and had apologised to Mr A and Mrs B. Mr Graham submitted that the registrant now recognised the importance of proper process and procedures and was highly unlikely to bring the profession into disrepute in future. He submitted that the registrant had demonstrated remediation in his attitude and approach to practice and that he was likely in future to be an asset to the profession.

64. The Committee accepted the advice of the Legal Adviser.

65. The Committee first considered the issue of misconduct. It recognised that it needed to be satisfied that the factual findings it had made were serious departures from proper standards if a finding of misconduct was to be made.

66. The Committee considered that the two paragraphs from the *Standards of Practice for Optometrists and Dispensing Opticians* cited by Ms Jones in her opening skeleton argument were applicable. These were: *Standard 16: Be honest and trustworthy* and; *Standard 17: Do not damage the reputation of your profession through your conduct*.

67. Both of these Standards had been breached.

68. The Committee had made a number of findings of dishonesty against the registrant. These findings involved different aspects of behaviour. He had misappropriated vouchers and cash which belonged to his employers, who were also friends of his and who were trying to make a success of a small business. He had also made false representations both to his employers and to Mr D, a colleague, that he worked as an Investigating Officer and/or Fitness to Practise Committee member for the General Optical Council. His misconduct was premeditated and was not an isolated incident. He had behaved in this way when occupying a highly trusted position within the practice at which he was working.

69. The Committee was in no doubt that the factual findings it had made were sufficiently serious to amount to misconduct. Any one of them would have been, in itself, a serious matter and the Committee was concerned with several such matters.

70. The Committee therefore went on to consider the question of current impairment of fitness to practise in the light of its finding of misconduct.
71. The Committee recognised that dishonesty is often said to be difficult to remediate. In principle, the Committee considers that dishonesty is remediable. However, it had seen no significant evidence of remediation in this particular case. The registrant's oral evidence had focused to a large extent on matters such as better attention to work processes and procedures, and improved record-keeping. These matters were not at the heart of this case.
72. The Committee acknowledged that it was often difficult for a registrant who had denied an allegation of dishonesty to demonstrate convincing insight in the face of an adverse finding. In this case, however, the registrant, in his evidence, had eventually accepted that he had behaved dishonestly in relation to his false claims to work for and/or serve on a Committee of the General Optical Council. This Committee saw no evidence that he had reflected to any great extent on the implications of this kind of behaviour. In the part of his witness statement headed "reflection" the registrant had described this behaviour as "a grave error of judgment on my part and totally inappropriate". In fact, this misconduct went much further than an error of judgment. To call such behaviour an error of judgment is to minimise the significance of the dishonesty involved.
73. The Committee concluded that the level of insight shown by the registrant was seriously deficient.
74. The Committee had regard to the testimonial submitted, at this stage, from the registrant's current manager. It acknowledged that this was a supportive testimonial. However, the writer of the testimonial made clear that the registrant was now employed in a tightly controlled environment in which robustly enforced procedures, including financial procedures, had to be followed. The misconduct in this case had occurred in a much less tightly controlled setting and the Committee had heard nothing in the registrant's evidence which gave it sufficient assurance that such conduct would not be repeated if the opportunity arose in future.
75. The Committee concluded that there remained a risk of repetition and that a finding of impairment was required because the registrant had failed to remediate his misconduct.
76. The Committee went on to consider whether the public interest also required a finding of impairment to be made. In the Committee's judgment a reasonable and fully informed member of the public would be very concerned if the serious findings made in this case did not result in a finding of impairment of fitness to practise. The absence of such a finding would be liable to undermine public confidence in the profession and in its regulation.

## **Sanction**

77. The Committee heard submissions from Ms Jones on behalf of the Council and from Mr Graham on behalf of the Registrant. Both parties relied on their written submissions and added further oral submissions.
78. Ms Jones referred the Committee to *Bolton v The Law Society* [1994] 1 WLR 512 and the observations made in that case. She submitted that, in view of the

Committee's findings in relation to dishonesty, erasure was the appropriate sanction.

79. Mr Graham referred in particular to the testimonial evidence submitted on behalf of the registrant and to the public interest in keeping a competent practitioner in practice. He submitted that the appropriate sanction was a period of suspension.
80. The Committee accepted the advice of the Legal Adviser. He reminded the Committee that the purpose of sanction was not to punish a registrant but to arrive at a proportionate outcome to the case, having regard to the principles contained in the Hearings and Indicative Sanctions Guidance. He also advised that the observations in *Bolton v the Law Society*, while very important, were observations made in the context of that case and the Committee needed to be alive to the context of this particular case when considering the appropriate and proportionate sanction. However, it was a well-established and widely applicable principle, stated in *Bolton v The Law Society*, that the reputation of the profession is more important than the fortunes of any individual member.
81. The Committee considered the aggravating and mitigating factors.
82. The aggravating factors included the registrant's lack of insight and the fact that he had abused a position of trust. He had chosen to exploit vulnerabilities in the system of financial control at his workplace. His conduct had been premeditated and had occurred on several occasions. His dishonesty had also been multi-factorial in that it had involved not only the misappropriation of vouchers and cash but also the creation of an entirely fictitious narrative in which he had claimed to hold a position of responsibility with his regulator.
83. The Committee had some difficulty in identifying mitigating features. It noted that there had been no previous findings against the registrant and that he had engaged fully with the regulatory process.
84. The aggravating factors far outweigh the mitigating factors.
85. The Committee also noted the various testimonials submitted on behalf of the registrant and, in particular, the most recent testimonial which showed that he had been working successfully and was, clinically, very competent.
86. The Committee considered the sanctions available to it in ascending order and reminding itself of the obligation to act proportionately.
87. The Committee concluded that to take no action, or impose a financial penalty, would not address the risk of repetition which it had identified. Nor would such a course be sufficient to satisfy the public interest.
88. The Committee next considered a conditions of practice order. The registrant's clinical practice was highly competent and the attitudinal issues in this case could not be satisfactorily addressed through a conditions of practice order.
89. The Committee next considered a suspension order. It had regard to the *Hearings and Indicative Sanctions Guidance* at paragraph 21.29 and, in particular, the guidance that such an order may be appropriate where there was no evidence of harmful deep-seated attitudinal problems and/or the Committee was satisfied that the registrant has insight and does not pose a significant risk of repeating behaviour. In this case the Committee was not satisfied that the registrant has insight, and the Committee has also identified a risk of repetition. The Committee

was also concerned that the multi-factorial and repetitive nature of the dishonesty was evidence of a harmful attitudinal problem.

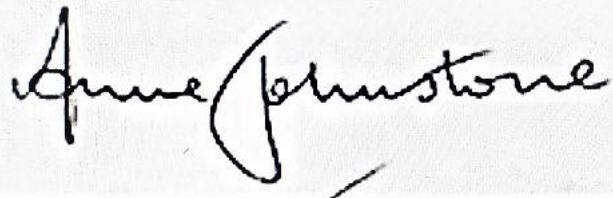
90. The Committee has concluded that the only appropriate and proportionate sanction in this case is one of erasure. The Committee has identified in the preceding paragraph the reasons why a period of suspension is not appropriate. Further, the Committee considers that any sanction short of erasure would be insufficient to address the public interest in view of the seriousness of the misconduct in this case.
91. The Committee therefore directs that the Registrant's name is erased from the register of dispensing opticians.

### **Immediate order**

92. The Committee heard submissions from Ms Jones on behalf of the Council and from Mr Graham on behalf of the Registrant. It accepted the advice of the Legal Adviser.
93. Ms Jones submitted that an interim order was appropriate in view of the serious nature of the Committee's findings.
94. Mr Graham opposed an interim order on the grounds that the registrant had been working successfully and that the Committee's decision was based mainly on public interest grounds so there was no pressing need for an interim order.
95. The Legal Adviser reminded the Committee that the basis for any interim order in circumstances such as the present was that such an order was necessary for the protection of the public or otherwise in the public interest.
96. The Committee has decided to impose an immediate suspension order. Such an order is necessary for the protection of the public and otherwise in the public interest. The Committee has had regard to the terms of its determination. In relation to the registrant's misconduct, it has identified an ongoing risk of repetition. Although the registrant has been working successfully in a tightly controlled environment, the nature of the Committee's findings, which involve serious, persistent dishonesty, means there is an ongoing risk from which the public need to be protected.
97. The Committee is also satisfied that a reasonable and fully informed member of the public, who was aware of the findings in this case, would not expect the registrant to be permitted to continue in practice pending any appeal.
98. The Committee therefore directs that an immediate order of suspension is imposed in this case.

**Chair of the Committee: Anne Johnstone**

**Signature**

A handwritten signature in black ink that reads "Anne Johnstone". The signature is fluid and cursive, with "Anne" on the top line and "Johnstone" on the bottom line, joined together.

**Date: 22 June 2023**

**Registrant: Jitesh Gadher**

**Signature** Present via MS Teams

**Date: 22 June 2023**



## FURTHER INFORMATION

### **Transcript**

A full transcript of the hearing will be made available for purchase in due course.

### **Appeal**

Any appeal against an order of the Committee must be lodged with the relevant court within 28 days of the service of this notification. If no appeal is lodged, the order will take effect at the end of that period. The relevant court is shown at section 23G(4)(a)-(c) of the Opticians Act 1989 (as amended).

### **Professional Standards Authority**

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.

Where a registrant can appeal against a decision, the Authority has 40 days beginning with the day which is the last day in which you can appeal. Where a registrant cannot appeal against the outcome of a hearing, the Authority's appeal period is 56 days beginning with the day in which notification of the decision was served on you. 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.