

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

**GENERAL OPTICAL COUNCIL**

**F(24)46**

**AND**

**MINAL THAKER (01-22544)**

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**DETERMINATION OF A SUBSTANTIVE HEARING  
28 APRIL - 2 MAY 2025**

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<b>Committee Members:</b>	Gaon Hart (Chair/Lay) Carolyn Tetlow (Lay) Mark McLaren (Lay) Kamlesh Gohil (Optometrist) Denise Connor (Optometrist)
<b>Legal adviser:</b>	Aaminah Khan
<b>GOC Presenting Officer:</b>	Holly Huxtable
<b>Registrant present/represented:</b>	Yes and represented
<b>Registrant representative:</b>	David Claxton
<b>Hearings Officer:</b>	Natasha Bance
<b>Facts found proved:</b>	Allegations 1-3 by virtue of the Registrant's admissions, Allegation 4(a) found proved
<b>Facts not found proved:</b>	Allegation 4(b) no case to answer
<b>Misconduct:</b>	Found
<b>Impairment:</b>	Impaired on public interest grounds
<b>Sanction:</b>	4 months suspension (Without Review)
<b>Immediate order:</b>	No

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### ALLEGATION (AS AMENDED)

*The Council alleges that in relation to you, Minal Thaker (01-22544), a registered Optometrist, whilst you were employed at [redacted] Visionplus Limited:*

- 1. Between 2019 and 2023, you incorrectly claimed personal expenses amounting to £529.92, by representing they were business-related expenses; and/or*
  - 2. Between 2019 and 2023, you incorrectly claimed disputed expenses amounting to £1192.86, by representing they were business-related expenses; and/or*
  - 3. Between 2019 and 2023, you received reimbursement for personal expenses and disputed expenses, by representing they were business-related expenses; and/or*
  - 4. Your actions as set out at 1) and/or 2) and/or 3) above are:*
    - a. Dishonest in that you knowingly misrepresented personal expenses as business-related expenses; and/or*
    - b. ~~Dishonest and/or unprofessional in that in your role as Director of the business, namely [redacted] Visionplus Limited, you knowingly exposed the business to potential additional tax liabilities by representing personal expenses as business-related expenses.~~ **No case to answer***
- submission upheld***

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

### Preliminary Issues

1. At the outset of the hearing the Chair raised that two members of the Committee (the Optometrist members) had given notification prior to the hearing that they both had a connection with Specsavers. Mr Gohil was a director of Specsavers franchises in Northwest London, however this was in a different area to where the Registrant's stores were located and he did not know the Registrant or any witness. Ms Connor had previously worked for Specsavers as an employee, many years ago. In addition, Ms Connor is a College of Optometrists Assessor, and she had assessed an individual who worked with the Registrant and who had provided a reference for the Registrant (which was referenced in correspondence to the Case Examiners). Ms Connor, as part of the assessment, would have visited the Registrant's store on one or two occasions, however she had no recollection of meeting the Registrant.
2. Ms Huxtable, on behalf of the General Optical Council (the Council) and Mr Claxton, on behalf of the Registrant, confirmed that they had no objection to the two Optometrist members remaining as a member of the Committee and hearing this case. Both parties confirmed, when asked by the Committee, that this was notwithstanding the case of *Suleman v General Optical Council* [2023] EWHC 2110 (Admin).
3. The Committee accepted the legal advice given by the Legal Adviser, which was that the test in *Porter v Magill* [2002] 2 AC 357 was the correct test to apply, namely whether the circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility of bias. The decision as to recusal was one for the whole Committee, rather than individual members. Further, when considering the fair-minded observer, they had been described in caselaw as '*neither complacent, nor unduly suspicious*' (as per *Belize Bank Limited v Attorney General of Belize* [2011] UKPC 36).
4. The Committee considered the position in respect of potential bias and conflict in relation to each Committee member separately. Although Mr Gohil has an ongoing connection to Specsavers, as he is a current director of a franchise, the Committee considered that his circumstances were different to the panel member in the case of *Suleman*. Here, the connection has been declared and both the parties (the Registrant being legally represented) have had the opportunity to object and have not done so. Additionally, the connection between Mr Gohil and the Registrant was non-existent and the potential for the decision of the Committee in this case to have any consequential impact on the finances of Mr Gohil was negligible and speculative. In the circumstances, considering the test in *Porter v Magill*, the Committee concluded that there was no basis for actual nor perceived bias and there was no basis for any Committee member to be unable to decide the case impartially and fairly. Ms Connor only had a connection to a referee for the Registrant and there was no real or impactful connection on the decisions required by the Committee. The Committee did not consider that the test in *Porter v Magill* was met in respect of either Optometrist member, and that there was no basis for any member of

the Committee to recuse themselves. Accordingly, the Committee determined to continue to hear the case as originally constituted.

5. The second preliminary issue which was raised by the Chair related to the wording of the Allegation and the basis of the proposed admissions that the Registrant had indicated, in her witness statement, would be made. The Chair raised whether the inclusion of the word 'misrepresented' in particulars 1 and 2 of the originally worded Allegation had an inherent or implied meaning as to the Registrant's state of mind and if so, on what basis the admissions of misrepresentation were being made.
6. Mr Claxton initially proposed that the admissions to particulars 1 and 2 (which contained the word misrepresented) would be made on a qualified basis, to make clear that the Registrant was making purely factual admissions to incorrectly making expenses claims for personal items, which were not business expenses and the Registrant was not making admissions to any particular state of mind (as dishonesty was denied). However, after further discussion between the parties, the parties jointly proposed amendments to the Allegation, to address this issue. Additionally, in relation to an amendment to the original particular 3, to better reflect the Council's case (to make clear this related to the Registrant receiving reimbursement for the expense claims), this amendment was also made.
7. The Committee was advised by the Legal Adviser that it had the power to amend the Allegation under Rule 46(20), either upon the application of a party, or on its own volition, if the amendment can be made without injustice. The Legal Adviser also referred the Committee to the case *PSA v (1) GMC & (2) Lingam* [2023] EWHC 967 (Admin).
8. The Committee was satisfied that the proposed amendments to the wording of the Allegation, which were agreed by the parties, made what the Council was alleging against the Registrant clearer and this clarity was vital for both the Registrant understanding the precise case that she faced, to clarify the central issues arising, and also for any reader of the determination to understand clearly what the case concerned. The Committee considered that this was a preferable approach to the Registrant making admissions on a qualified basis and was satisfied that the amendments could be made without injustice. Accordingly, the Committee granted the application to amend the Allegation.

## DETERMINATION

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

9. Mr Claxton, on behalf of the Registrant, formally entered admissions to particulars 1, 2 and 3 of the Allegation (as amended) which were found proved by virtue of those admissions and on the Committee's understanding of the issues in the case, pursuant to Rule 46(6) of the General Optical Council (Fitness to Practise) Rules Order of Council 2013 ("the Rules").

### Background to the Allegation

10. The Registrant is an Optometrist who first registered with the Council on 14 August 2006. At the time of the events giving rise to the allegations, the Registrant was a director and Optometrist at [redacted] Visionplus Limited and [redacted] Specsavers Limited. Both businesses operated as Specsavers retail outlets under a Shared Venture Agreement (SVA).
11. Under the SVA with Specsavers the Registrant was required to adhere to the Joint Venture Partner Manual (the Manual) and associated policies, including the expenses policy. Paragraph 10.14 of the Manual relates to claiming business expenses and states:

*"If you or a member of your Store's staff incur business expenses on behalf of your Store, you/they are able to make a claim for reimbursement for the Store in accordance with the Specsavers Group's expense policy.*

*Expense claims must only be completed for legitimate business expenditure in accordance with the Specsavers Group's expense policy found on Connect."*

12. An audit, which reviewed expense claims for all SVA businesses, was conducted as part of the SVA audit programme, carried out by the Financial Risk Support (FRS) team. This audit identified irregularities with several of the expense claims that had been submitted by the Registrant and for which she had received reimbursement. The matter was referred to Witness A, a Financial Risk Support Consultant, employed by Specsavers, who prepared a report of his investigation and findings.
13. Witness A's report identified that he believed there had been numerous instances of personal expenses being claimed by the Registrant as business expenses. These claims were either entirely personal or were included as part of a wider claim for accepted business expenses. These claims, which were made between 2019 and 2023, totalled £1,722.78, which was later repaid by the Registrant.

14. The Council's case is that the personal expenses that have been claimed as legitimate business expenses fall into specific categories as follows:

- a) Known personal expenses, such as school photographs, cards and a unicorn cupcake;
- b) Meals with children and/or family members present. 14 claims were submitted for meals stated to be business meetings, which included children's meals as part of the overall claim. The Council highlighted an expense claim made for a meal at Prezzo in December 2021 (the day before the Registrant's [redacted]), which was stated to be a "Partners/managers dinner" and included several children's meals and alcoholic beverages, including cocktails;
- c) Pizza claims. It was alleged that there was a clear pattern of claims for pizza submitted annually on or around the birthdays of the Registrant's [redacted] and that 6 claims had been identified close to their birthdays. The Council highlighted in particular that on 8 December 2019, a significant order for pizza was delivered to a local leisure centre with the expense description of "catering/canteen expenses" and "staff room".

### **The hearing**

- 15. The Council relied upon the agreed evidence of Witness A, Financial Risk Support Consultant, who was tasked by Specsavers to carry out an investigation and produced a report. As the evidence of this witness was not challenged by the Registrant Witness A was not required to attend for cross-examination.
- 16. Ms Huxtable opened the case on behalf of the Council, and took the Committee through the relevant documents in the bundle, which included, but was not limited to the Investigation Report of Witness A, documents relating to the SVA between the Registrant and Specsavers, including the SVA Manual and expense policy, documents relating to the Registrant's expense claims, copies of receipts and the Registrant's accounts given during the investigation.
- 17. At the conclusion of the Council's case, during which Ms Huxtable explained the basis upon which they invited the Committee to find particular 4(b) of the Allegation proved, Mr Claxton, on behalf of the Registrant, made a submission that there was no case for the Registrant to answer in respect of particular 4(b) of the Allegation.
- 18. Ms Huxtable had put the Council's case on the basis that although there had been no actual tax implications for Specsavers, as the money paid to the Registrant had been paid back to Specsavers by her, there was clear guidance in the policy that if expenses were claimed when they should not be, there could be potential tax implications to the company. Further, that it was the Council's case the Registrant was aware when submitting the claims that this could potentially expose the company to tax implications. Ms Huxtable confirmed that



the Council relied upon what was stated in the policy documents, namely that if the expense policy was not followed the expenses claimed may be treated as a tax benefit.

19. Mr Claxton referred the Committee to the test for considering a submission of no case to answer in the case of *R v Galbraith* [1981] 1 WLR 1039 and submitted that the submission was primarily being made under limb one of Galbraith, that there was no evidence in support of this particular of the Allegation and it should go no further. Mr Claxton submitted that the section of the policy that the Council had referred to related to an individual's tax position (referring to a taxable benefit) and was nothing to do with corporation tax liability and what tax liability Specsavers may have been exposed to. Mr Claxton submitted that the Council had not produced any evidence at all in support of what was actually alleged in particular 4(b).
20. Ms Huxtable, on behalf of the Council, opposed the application and submitted that there was evidence upon which particular 4(b) of the Allegation could be found proved. In particular, Ms Huxtable referred the Committee to sections of the SVA Manual and Specsavers policy on claiming expenses, the investigation report of Witness A and an email within the bundle that had been received from Witness B, a Tax Director at Specsavers. Ms Huxtable emphasised that the wording of the Allegation was that there was a potential tax implication and that it did not matter that the monies had been repaid by the Registrant. Ms Huxtable submitted that if improper claims were made and not paid back there would be tax implications.
21. Mr Claxton, in response, submitted that the email of Witness B was expressed neutrally and did not confirm that there would be tax implications. Further, that Witness A's statement was referring to not exceeding rates and limits set by HMRC (such as mileage), whereas the issue in this case was claiming incorrect expenses. Mr Claxton clarified that his primary submission was that there was no evidence as to the corporate tax consequences for Specsavers of the Registrant's actions, which was required to establish particular 4(b) and that limb one of Galbraith applied. However, if the Committee did not agree he invited consideration of limb two in the alternative, that the evidence would be so weak on this issue that it would be unfair to the Registrant to allow this part of the Allegation to proceed further.
22. The Committee heard and accepted the advice of the Legal Adviser on the submission of no case to answer. In relation to the submission of no case to answer, the Legal Adviser confirmed that *Galbraith* was the leading case and although it was a criminal case it was well established that the same principles apply to regulatory proceedings. The test in *Galbraith* is that, firstly, if there is no evidence that the charge alleged has been committed, the charge must be dismissed. Secondly, if there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence, the charge must also be dismissed.

23. The Committee retired in private to consider the submission of no case to answer. The Committee considered the wording of particular 4(b) carefully and noted that the Council was required to prove, on a balance of probability, firstly that the Registrant exposed the business to potential additional tax liabilities by representing personal expenses as business-related expenses and secondly, that she did so knowingly.
24. The Committee considered the submissions made by the parties and took the view that Mr Claxton, on behalf of the Registrant, had raised a valid point regarding the distinction between individual tax liabilities and tax liabilities of the business. The wording of particular 4(b) specifically relates to business tax liabilities, whereas parts of the policy relied upon by the Council, such as the reference to limits, could relate to individual tax liability. The Council had not obtained any evidence from a tax expert and was essentially relying upon interpretation of the documentary evidence available.
25. The Committee had regard to the email from Witness B, a Tax Director at Specsavers, who stated that *“any personal expenses that have been paid by the Company should be repaid in full and therefore there will not be a tax consequence. If they are not repaid in full then please could you revert back.”* There was no further evidence on this issue. The Committee found that this statement was ambiguous as to whether in the circumstances there were any potential business tax liabilities to the Company. The Committee found that the reference to ‘revert back’ was ambiguous as to the nature of the potential business tax liabilities.
26. In addition, if it was established that there were potential business tax liabilities on the Company, the Committee considered that there was no evidence before it that the Registrant would have known of this, to establish the knowledge alleged in particular 4(b). The Committee was of the view that the potential business tax implications of incorrectly claiming personal expenses as business expenses was not sufficiently clear in the policy documents and it noted that the investigation by Witness A was subsequent to the claims being made, so was not relevant to what the Registrant knew at the time of making the expense claims. Additionally, Witness A’s comments were ambiguous as to whether he was referring to business tax liability or thresholds for personal tax liability. In relation to the Registrant’s knowledge, the Committee considered that there was no evidence to support this aspect of the Allegation, with weak and tenuous evidence in respect of the tax implications aspect of the Allegation.
27. In the circumstances, the Committee found that there was no case for the Registrant to answer in respect of Allegation 4(b).
28. The Committee moved on to consideration of the facts.
29. The Registrant gave evidence, confirming and expanding upon the contents of her witness statement and was questioned by Ms Huxtable, on behalf of the Council, by her representative, Mr Claxton and the Committee.



30. The Registrant gave evidence regarding her background and how she had been a Specsavers Director since 2013, later opening an audiology business in 2017 and opening a second Specsavers store [redacted] in 2019, with her business partner. The combined turnover of the three businesses was around £4 million at one stage with around 40 staff.
31. In summary, in relation to the allegations, the Registrant accepted that she had submitted claims for personal expenses but denied that any of the incorrect expenses claims had been submitted knowingly or deliberately, rather that it was due to her not understanding what she was not allowed to include in an expenses claim (for example, kid's meals during a business meeting and the people attending an event) or inadvertently including personal expenses in error, by not checking the receipts with sufficient care and/or confusing them with business purchases (for example cards which would also sometimes be bought by the business).
32. The Registrant's evidence was that it was her understanding that she was able to claim expenses for anything related to the business. For example, with regard to claiming [redacted] meals, this was because they were present at business meetings, which took place outside of core opening hours and because she did not have [redacted], so her two [redacted] would be present. She stated that she did not realise that she needed to apportion personal items if the expenses were partly personal and partly business. The Registrant stated that she thought as it was a business meeting the whole receipt could be claimed.
33. With some of the personal expenses, the Registrant's case was that these were inadvertent claims that were mistakenly put through in error (such as the school photographs), which she suggested may have been due to similarities between her business and personal banking cards. In addition, the Registrant also indicated that she had a disorganised system that she used for keeping receipts before making a claim for a number of items together. She stated that she did not realise with regard to some small/trivial personal expenses, that she was not allowed to claim for them, as it was her own business.
34. The Registrant explained that nothing was hidden, she always submitted the receipts which showed what she was claiming for and she understood there to be a two-tier checking system where, if errors had been made, these would be flagged to her. She also explained that she did not realise that she had to put extra detail into the claims and they had to be accurate, she thought it was a 'tick box exercise'.

#### Registrant's Hearsay Application

35. Following the Registrant's evidence and before the close of the Registrant's case, Mr Claxton made an application to admit into evidence, as hearsay, extracts of a decision letter sent by Ibex Gale (who had carried out an independent investigation following Witness A's investigation) dated 12

December 2023. The extracts contained references to the evidence of third parties who had been spoken to as part of that investigation. Mr Claxton had proposed that the extracts be admitted as agreed facts. However, the Council's position was that it could not agree to their admission as the extracts taken in isolation were out of context and it was not clear what events/dates some of the comments were referring to.

36. Mr Claxton therefore applied to admit the extracts as hearsay evidence, submitting that the comments covered a narrow compass and were uncontroversial but would assist the Committee with what others had to say about the nature of three events (i.e. whether business or personal) that they attended. Mr Claxton submitted that the Committee when determining the issue of dishonesty would need to grapple with the Registrant's explanations and whether they were honest or not and this evidence may assist the Committee to decide. Furthermore, Mr Claxton submitted that this was material that was already known to the Council, who had had the full report for some time and it was reliable information given that it had been extracted from an independent investigation decision letter and the persons referred to within had been interviewed as part of that investigation.
37. Mr Claxton submitted that it was relevant evidence that ought to be admitted and in relation to fairness, whilst the witnesses were not being called and so the evidence was untested, it was highly unlikely that if called the Council would allege that the evidence was fabricated. Mr Claxton submitted that at worst there was a de minimis disadvantage to the Council in the evidence being admitted. If admitted, it would be a matter for the Committee as to what weight to attach to the evidence in due course.
38. Ms Huxtable submitted that it was unfortunate that the Registrant was only seeking to admit this evidence at this stage, as they have had the full report since November 2024 and the issue of admissibility ought to have been resolved at a procedural hearing. Ms Huxtable explained that the Council could not agree the extracts as drafted, as it was four paragraphs from a much longer report, presented without background or context. Ms Huxtable submitted that the Registrant if they wanted to rely upon this evidence could apply for the full report to go before the Committee but that would need to be redacted, as the Committee ought not to see parts of the report, such as the investigation findings. Ms Huxtable raised that if the Registrant had wanted to rely upon the evidence of the third-party witnesses referred to in the extracts, she could have called them as witnesses in this hearing and has not done so. Ms Huxtable submitted that should the Committee be minded to admit the full report, the Council ought to have the opportunity to suggest redactions.
39. Mr Claxton confirmed that he was not applying to admit the full report, which he agreed would need to be appropriately and extensively redacted, as the Committee ought not to see the findings. He emphasised that his application was in relation to four extracted paragraphs of the report, which contained references to the evidence of third parties spoken to during the investigation, regarding three events.

40. The Committee sought clarity from the parties on what probative value the extracts could be said to have. Ms Huxtable responded that in relation to the meal on 4 December 2021, there was some probative value as the evidence went to the nature of the meal (although it was not probative of how the meal had been represented when claimed). In relation to the other extracts, Ms Huxtable stated that it was not clear what event was being referred to and there was a danger when taken out of context, so she could not say if they were probative or not. Ms Huxtable further highlighted that the Registrant had admitted (by virtue of her admission to particular 2) that the expenses claimed were personal but it now appeared (by seeking to admit this evidence regarding the nature of the events), that she was seeking to argue that they were legitimate business expenses.
41. The Committee heard and accepted advice from the Legal Adviser on the application to admit hearsay evidence. The Legal Adviser referred the Committee to its power to admit any evidence that it considers fair and relevant to the case before it, under Rule 40(1). The Legal Adviser advised the Committee that it needed to be satisfied that the evidence was relevant to the case and also that it would be fair to admit it, considering fairness to both parties. The Legal Adviser referred the Committee to the relevant sections of the Hearings and Indicative Sanctions Guidance (HISG) and the section on hearsay evidence, in particular the principles arising from the case of *Thorneycroft v Nursing and Midwifery Council* (2014) EWHC 1566 (Admin).
42. The Committee retired to make a decision in respect of the hearsay application. The parties had not provided the Committee with the material prior to determining the issue, and proceeded on the basis of summarising the material in submissions, but had accepted that if the Committee required sight of the material in order to decide the application that was a matter for the Committee. During its deliberations, the Committee considered whether it needed to have sight of the extracts that the Registrant was seeking to admit as hearsay, in order to determine the relevance, however it did not consider it necessary to do so and made the decision based upon the parties submissions, for the reasons below.
43. The Committee firstly considered whether the hearsay evidence was relevant to the case before it and the issues it had to decide. Mr Claxton had submitted that it was relevant, it had been referred to by the Registrant during her live evidence and Mr Claxton submitted that it would lend support to the Registrant's case. The Committee noted that Ms Huxtable, on behalf of the Council, accepted that at least in relation to some of the material, for example, that relating to the meal on 4 December 2021, it had some probative value, as it went to the nature of the meal. The Committee considered that on the basis that it had been accepted by Ms Huxtable that some of the material had probative value, it was satisfied that it was relevant, at least to some of the expenses claimed.
44. Turning to the issue of whether it would be fair to admit the evidence, the Committee considered it would be fair to the Registrant to admit the evidence,

as it was her application to do so and it was submitted by Mr Claxton that this evidence would lend support to her case.

45. In relation to whether there would be unfairness to the Council if the evidence was admitted, the Committee noted that the extracts were from a reliable source, in that the witnesses were interviewed as part of the Ibex Gale investigation and the Council had had the full report for some time, so this was not new evidence that it was previously unaware of. The Committee acknowledged that there may be some degree of unfairness to the Council in the evidence being admitted as hearsay, as it would not be possible for the Council to test the evidence. It also acknowledged the concerns the Council had regarding the extracts being only four paragraphs of a report without background or context. It also considered that the findings of any other body should not influence it, but noted that the findings were not being put to it. However, the Committee considered that these concerns could be mitigated either by the Council seeking to admit the full report (subject to appropriate redactions) or seeking to call the witnesses in question. The Committee did not consider that the hearsay evidence was the sole and decisive evidence in relation to the issues, as the Registrant had given evidence regarding the nature of the events in question and there is other documentary evidence.
46. The Committee was also mindful that if admitted, the fact that the Committee did not hear live from these witnesses could be reflected in the weight to be attached to this evidence by the Committee in due course. Overall, the Committee did not consider that there would be significant unfairness to the Council if the application was granted. Accordingly, the Committee was satisfied that the hearsay evidence ought to be admitted under Rule 40, as it was fair to do so and relevant to the case before it and decided to grant the Registrant's application.
47. The Committee allowed the parties time to consider if there were any issues arising from its decision to admit the hearsay evidence, following which Ms Huxtable confirmed that the Council did not seek to call any further evidence.
48. At this stage of the proceedings, the Chair of the Committee raised with the parties that having read a new testimonial bundle that had been submitted on behalf of the Registrant, both Optometrist members had raised a connection with one of the individuals who had provided a testimonial for the Registrant. Ms Connor had previously assessed one of the trainees of a testimonial witness, in her assessor role, and in that process had met him to discuss the feedback. In respect of Mr Gohil, the testimonial witness had been supervised by Mr Gohil approximately 8 years ago and they had met occasionally at events since. Both parties confirmed that due to the connections being with a testimonial witness rather than a witness of fact, no difficulty arose. The Committee did not consider that these connections gave rise to a conflict, as there was no actual or perceived bias, similar to those considerations discussed previously.

Closing submissions

49. The Committee heard closing submissions from both parties. Ms Huxtable referred the Committee to the case law on dishonesty and the test in the case of *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67. Ms Huxtable submitted that the Council's case is that the Registrant knowingly submitted claims for meals and other personal items that she knew that she was not entitled to claim. Further, that the Registrant deliberately misrepresented the true nature of the expenses to make a financial gain.
50. Ms Huxtable invited the Committee to consider the issue of dishonesty in the following way, applying the test in *Ivey*,
  - i. Consider whether the act or omission said to be dishonest is proven on the balance of probabilities;
  - ii. Consider, on the balance of probabilities, what the Registrant's actual state of knowledge or genuine belief as to the facts was;
  - iii. Consider whether the Registrant's actions were dishonest by the standards of ordinary honest [sic] people.
51. On the evidence, in summary, Ms Huxtable reminded the Committee that the Registrant was an experienced director, running three businesses and that she had a duty to comply with the policy set out in the manual and expenses policy, which clearly set out what was permitted. Ms Huxtable highlighted the different explanations given by the Registrant and suggested that when the Registrant had stated that she thought she could claim for some small items, that this was nearer to the truth.
52. Ms Huxtable submitted that there had been 46 claims for personal expenses, 14 occasions where children's meals had been included, and 6 occasions where pizza had been ordered on or around her [redacted], which she submitted showed an annual pattern.
53. In relation to the meal on 4 December 2021 at Prezzo, Ms Huxtable highlighted that this was around a child's birthday and the day before, the Registrant had accepted making a purchase of balloons, which was a personal expense that she had claimed. The Registrant had suggested that this meal was a children's open day at the practice, however she had also accepted that the meal was a personal benefit, given her admission to particular 2 of the Allegation. The Council's position was that this was a birthday party for the Registrant's [redacted], but in any event she had admitted that this was a personal expense. Ms Huxtable further highlighted that the Registrant had not properly represented the event in the claim, as she claimed that others were present at the meal when they were not, the purpose stated in the claim was '*Partners/manages [sic] dinner*' when she could have stated in the 'purpose column' that it was a children's open day, if that was the case. Ms Huxtable submitted that the Registrant knew full well that she was putting through a personal expense and that this was done deliberately.



54. In relation to the leisure centre order of pizza, Ms Huxtable submitted that it did not make sense for staff pizza to be delivered to a leisure centre and that this date also coincided with the next Saturday to a child's birthday. In relation to a pizza meal on 1 February 2023 from Dominos, Ms Huxtable submitted that the Registrant had given differing explanations for this purchase, with the most recent being that it was for a director's meeting at her house. Ms Huxtable highlighted the amount of the pizza order (£68.48) and suggested that it was in fact for another birthday.
55. In relation to claiming for children or family members' food, Ms Huxtable submitted that the Registrant was relying upon naivety but invited the Committee to find that she was aware that she could not claim for family members, as she had not declared who was present on the claim and the policy was clear on how to fill out the form. If not sure, the Registrant could have checked what was allowed. Ms Huxtable submitted that there were too many incorrect claims to be coincidences. Whilst the Registrant says she relied upon there being a two-tier checking system for expenses, this would only work if accurate information was provided in the claim.
56. In relation to the hearsay evidence, Ms Huxtable invited the Committee to apply caution as it needed to be satisfied which events that evidence related to and it had not been tested. Ms Huxtable highlighted that the extracts suggest that these were legitimate business expenses but the Registrant had made admissions to them being personal expenses.
57. The Committee received written closing submissions from Mr Claxton, which he supplemented with further oral submissions. Mr Claxton reminded the Committee of the burden and standard of proof, as well as the good character of the Registrant, which can be taken into account at the fact stage, particularly when considering dishonesty, as relevant to propensity and credibility (referring to *Wissom v Health Professions Council* [2013] EWHC 1036).
58. Mr Claxton submitted that in this case the Registrant had been careless and perhaps cavalier in her approach to her expenses, but that she was not dishonest. He acknowledged that the defence case varies, however this is because of the different nature of the expense claims and that different expenses have different explanations.
59. Mr Claxton highlighted the relatively small sums involved, when considered over the period of time concerned, which was approximately £50 per month. Mr Claxton submitted that it made no sense for the Registrant to risk jeopardising her career for such trifling amounts. Furthermore, the claims were not hidden and were submitted by the Registrant expecting them to be scrutinised, which would be inconsistent with acting dishonestly. Mr Claxton submitted that this may also have given the Registrant a false confidence such that she was less attentive than otherwise would have been the case when submitting her expense claims.
60. Mr Claxton set out that the expenses fell within broadly three categories. The first is where the Registrant asserts that a particular expense was a business



expense and the issue is whether the facts relied on by the Registrant are untrue. The second is where the Registrant advances an honest belief that the expenditure in question was capable of being reclaimed legitimately. The third is where a non-business expense was claimed in error. Mr Claxton submitted that it is not the Registrant's case that she believed herself entitled to reclaim non-business expenditure.

61. Mr Claxton highlighted that the policy document at the core of this case is long and open to interpretation. He submitted that the Council's interpretation during this case was wrong, for example in relation to subsistence. As a busy store director, the Registrant would not have time to consult it regularly and would not have had a working knowledge of its provisions. Furthermore, expenses are an administrative burden and would be put off until the receipts had built up. Mr Claxton submitted that often the precise business cost may be lost to time, especially for small or recurrent costs. Mr Claxton submitted that the issue of children being present at business events and the status of their costs was far from clear, as [redacted] is sometimes provided by a business and that this was not obviously impermissible.
62. Mr Claxton highlighted that there were a number of different expense claims and it did not necessarily follow that the Committee has to adopt the same analysis in respect of each. Allegation 3 draws no particular distinction other than as it relates to Allegations 1 and 2 but that does not deprive the Committee of a more nuanced analysis. Mr Claxton submitted that it is technically open to the Committee to reach different findings in relation to different classes of expense and if so, invited the Committee to make this clear, as it may be relevant to a later stage of the proceedings.
63. In relation to the hearsay material, Mr Claxton submitted that this puts a different gloss on the case. The Council had made much of a pattern regarding the childrens' birthdays and it was not clear that there was such a pattern. One of the birthdays falls in December, which was a busy month, with other events. Mr Claxton invited the Committee to not look at events in silos. Overall, he submitted that there was sufficient to defeat any inference that the Registrant was acting dishonestly.
64. The Committee heard and accepted advice from the Legal Adviser at the end of the facts stage, which included advice that the burden of proof throughout lies on the Council to prove the disputed facts, on the balance of probabilities. The Committee was advised it is required to make decisions based on the whole evidence, deciding what evidence to accept, what to reject and what weight to attach to evidence, assessing all of the evidence that has been presented, both witness evidence, documentary evidence and the hearsay evidence it had admitted. Reasonable inferences can be drawn from the evidence, but the Committee should not speculate about evidence or witnesses it has not heard from.
65. In relation to dishonesty, the Committee was advised that the test is set out in *Ivey v Genting Casinos* [2017] UKSC 67 (SC). The test in *Ivey* has 2 separate

stages; firstly the Committee should ascertain, subjectively, the actual state of the Registrant's knowledge or belief as to the facts. Secondly, the Committee should decide whether the conduct was honest or dishonest by applying the objective standards of ordinary decent people. The reasonableness or otherwise of the belief is a matter of evidence going to whether or not the Registrant genuinely held the belief, but there is not an additional requirement that the belief must be reasonable.

66. The Legal Adviser advised that the Committee ought to be mindful that recklessness cannot be equated with dishonesty, as confirmed in *Ahmedsowida v The General Medical Council* [2021] EWHC 3466 (Admin). Further, where a Registrant puts forward other explanations for the conduct that is alleged to be dishonest the Committee ought to consider whether there are other reasonable explanations for the conduct. There is often no direct evidence of dishonesty, but the Committee can draw inferences about the Registrant's state of mind from the evidence. However, this must be the most likely inference to draw in the circumstances.
67. In relation to the Registrant's character, the Legal Adviser reminded the Committee that she had no fitness to practise history. Good character could be relevant to both the Registrant's credibility and propensity. However, the weight to be attached to such evidence is a matter for the Committee.

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

68. Given the admissions and the finding of no case to answer in relation to Allegation 4(b), the Committee was required to make a finding in relation to one part of the Allegation, as follows:

#### ***4(a) Your actions as set out at 1) and/or 2) and/or 3) above are:***

***Dishonest in that you knowingly misrepresented personal expenses as business-related expenses;***

69. The Committee noted that at the outset of the hearing the Registrant had made admissions to incorrectly claiming personal expenses by representing that they were business-related expenses, on all of the occasions between 2019 and 2023, which were reflected within Allegations 1 and 2 and as reimbursed to the Registrant, as reflected in Allegation 3. The individual transactions within Allegation 1 and 2, totalling £1,722.78, were set out in tables within the bundle, together with the descriptions that had been applied to the claims by the Registrant.

70. The Committee considered that some of the explanations put forward by the Registrant during the hearing appeared to contradict the admissions that had been made, for example, the nature of the meal on 4 December 2021. In her evidence and in the hearsay evidence of third parties, the Registrant suggested that this was a business-related expense. However, it was included within the list of admitted personal expenses falling within Allegation 2 (at page 237 of the bundle). In considering its findings in respect of Allegation 4(a), the Committee did not go behind the admissions that had been made by the Registrant, which the Committee was satisfied had been properly made.
71. Therefore, the sole issue for the Committee to decide was whether the Registrant's actions were dishonest, in that she knowingly misrepresented the personal expenses as being business-related expenses.
72. The Committee applied the test for dishonesty set out in *Ivey v Genting Casinos* [2017] UKSC 67 (SC) and firstly the Committee considered, subjectively, the actual state of the Registrant's knowledge or belief as to the facts.
73. The Committee carefully considered the evidence given by the Registrant, during the investigation, and as set out in her witness statement and the oral evidence that she gave during the hearing, in which she denied that she had knowingly misrepresented any personal expenses as business-related expenses. The Committee considered the different accounts and explanations given by the Registrant for the differing types of expenses claims that she had submitted. The Committee took the view that the Registrant's evidence was inconsistent in several respects. For example, in relation to the claim dated 1 February 2023 for Dominos pizza in the sum of £64.48, the Registrant had initially stated during the Specsavers FRS investigation that this was a directors' meeting, but then in an interview said it was more likely that it was a 'staff thing' as it was pizza. Then when later providing comments on certain expenses, explained that this was a business meeting with the retail director held at the Registrant's house, which was held on the same date as [redacted].
74. The Committee also considered that the Registrant's evidence was not consistent as to what she believed she was entitled to claim. During her evidence the Registrant stated clearly that she thought that she could claim for some small personal items, as it was her own business. However, when re-examined on this issue by her representative Mr Claxton she appeared to retract from this position. It appeared to the Committee that the Registrant's answers on this issue were not consistent.
75. The Committee considered that it was relevant when considering the explanations given by the Registrant, that she was an experienced director of

over 13 years and she had an obligation to be familiar with the process and policy for claiming expenses. Whilst the policy and Manual were long and detailed, the sections on expenses were not overly long or complex. The Committee considered that the amount of personal claims that had been submitted (46) was relevant, as even over the period of four years, these were not a few isolated errors.

76. The Committee considered the accounts given by the Registrant, but took the view that they lacked plausibility. For example, the explanation given by the Registrant that she did not realise expenses had to be apportioned, as she thought she could claim expenses for family members present at a meal as long as business matters were being discussed. The Registrant had stated that this was usually because she had no [redacted], but on the occasion where her [redacted] were also present, the Committee considered this explanation was not plausible. The Committee considered that although this situation may not have been expressly covered in the policy, an ordinary honest member of the public would not expect that meals for family members, including children, could be claimed as business expenses.
77. The Registrant had given evidence that she had not identified on the claims who was present (for example for the directors' meetings in July 2022 and February 2023, where family members were present), as she was not aware that naming attendees was required. However, on another occasion she had named staff members as being present during the meal claimed for on 4 December 2021, when in fact coincidentally they had not been present at the meal element. The Committee considered that it appeared that the Registrant was aware at an earlier stage that attendees should be named. It also noted that the Registrant had claimed this meal as a 'Partners/manages [sic] dinner' when she later claimed that it was a children's open day, which the Registrant could have described it as. When reviewing the evidence in the bundle, the Committee noted that in some earlier expense claims the Registrant had given fuller descriptions of the expenses claimed, whereas for the expense claims subject to the Allegations, which involved personal expenses, her descriptions were vaguer and noticeably more generic.
78. The Committee also did not consider the Registrant's explanation for the school photographs being claimed for as a business-related expense in error was credible, as the Committee did not consider it likely that this could be accidentally claimed given the nature of the expense. The Committee noted that the Registrant had stated that she may have used the wrong card, as her personal bank card looked similar to her business card. However, there would be a second error when later submitting the claim through the Specsavers expenses system.

79. The Committee had regard to the fact that the Registrant is not only of good character by not having prior fitness to practise history, but the Committee also had before it evidence of positive good character, in the numerous testimonials that had been provided, speaking highly of the Registrant's honesty. The Committee however considered that the significance of the testimonials at this stage was limited in that they mostly spoke of the Registrant's clinical ability, and showed that the Registrant was a well regarded and competent Optometrist, but were not directly relevant to the alleged wrongdoing. Additionally, the Committee were conscious of the fact that the Registrant was managing considerable business interests and two [redacted]. It accepted the chaotic nature of the Registrant's receipt procedures. The Committee accepted Mr Claxton's comments around this being a relatively small amount and it was conscious not to attribute malice to reckless disregard to administrative matters. However, due to the matters considered above these explanations did not adequately satisfy the Committee on a balance of probabilities that the Registrant was not being dishonest.
80. The Committee considered the weight that could be attached to the extracts of third party witnesses evidence, which had been admitted as hearsay evidence. The Committee considered that in relation to some events, which were dated, it could be clear which expense was being referred to. However, in relation to the fourth paragraph, which was undated, the Committee considered that the evidence was not sufficiently clear to draw an inference as to what date and expense that related to. Whilst Mr Claxton had invited the Committee to draw an inference that it was 6 December 2020, due to the reference to a Saturday market on the first Saturday in December, the Committee noted that this date was in fact a Sunday. The Committee also considered that this evidence lacked detail and specificity, for example, a comment from parents referred to 'attending an event in store' but did not specify what the event was. Overall, the Committee considered that the hearsay evidence was ambiguous, particularly in relation to the fourth paragraph, and only limited weight could be attached to it.
81. For the above reasons, taken together, the Committee was satisfied that the Council had proved, on the balance of probability, that the Registrant's actions at Allegations 1, 2 and 3 were dishonest, as she knowingly misrepresented personal expenses as business-related expenses. The Committee was satisfied that this was knowingly dishonest conduct, and would be regarded as such by the standards of ordinary decent people. Therefore, particular 4(a) is found proved.

### **Misconduct**

82. The Committee went on to consider, pursuant to Rule 46(12) of the Rules, whether the facts found proved amounted to misconduct. With the agreement of the parties, the Committee heard submissions on the misconduct and impairment stages together. However, it considered and determined these issues, separately and in turn, as set out below.
83. The Committee received a bundle of further material on behalf of the Registrant, which contained material relevant to remediation and the impairment stage, including a reflective statement, testimonials and CPD documentation.
84. The Registrant gave evidence and was questioned by her representative Mr Claxton, Ms Huxtable, on behalf of the Council and the Committee.
85. In summary, the Registrant's evidence at this stage was that she had read and reflected upon the Committee's decision on the facts and accepted the findings of the Committee. She explained that she no longer was a director of a Specsavers business and instead worked as a locum Optometrist for several practices, [redacted], of which she had become a director.
86. The Registrant was asked about what she thought the impact of her conduct was on the profession and she explained that she had learnt from her mistake and that patients and colleagues need to be able to trust her and that a finding of dishonesty affects the profession. She explained what she does differently now when dealing with her expenses, for example being extra cautious and referring to her accountant if she is unsure. The Registrant stated that she now understood that she could not claim any expenses where there was a personal element and if she was unsure if she could claim for something it was better not to submit it.
87. The Registrant gave evidence regarding the reflection and remediation that she had undertaken, which included courses that she had attended on probity and ethics and the mentoring that she had been attending regularly over the past six months with a franchise business director.
88. The Committee heard submissions on misconduct from Ms Huxtable, on behalf of the Council, and from Mr Claxton, on behalf of the Registrant.
89. Ms Huxtable invited the Committee to find that the facts admitted by the Registrant and those found proved by the Committee, amounted to misconduct. She reminded the Committee that it was a two-step process and that the Committee could find misconduct but may then decide that the Registrant's fitness to practice is not impaired.



90. Ms Huxtable referred the Committee to the case law on misconduct, including the case of *Roylance v General Medical Council (No.2)* [2000] 1 A.C. 311, where, at paragraph 35, Lord Clyde stated:

*“Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed in the particular circumstances.”*

91. Ms Huxtable highlighted the guidance from the case of *Nandi v GMC* [2004] EWHC 2317 (Admin), where Collins J held that the conduct must be serious and the adjective “serious” must be given its proper weight. This had been described as conduct that fellow practitioners would find deplorable.

92. In determining misconduct, Ms Huxtable referred the Committee to the Council’s “*Standards of Practice for Optometrists and Dispensing Opticians*”, effective from April 2016. She submitted that the Registrant has departed from the following standards by virtue of her conduct:

- *Standard 16: Be honest and trustworthy*
- *Standard 17: Do not damage the reputation of your profession through your conduct*
- *Standard 19: Be candid when things have gone wrong*

93. Ms Huxtable submitted that as the allegations involve repeated dishonesty over a period of several years, this amounted to a serious departure from the standards expected of a competent Optometrist. Ms Huxtable submitted that the conduct was aggravated by the Registrant being in a position of responsibility and if the audit had not been conducted, it may have continued. Ms Huxtable submitted that the conduct was damaging to the reputation of the profession and amount to misconduct.

94. Mr Claxton in his submissions on misconduct informed the Committee that the Registrant did not dispute that the conduct amounted to misconduct. However, he made submissions regarding the severity and the degree of the misconduct. He reminded the Committee that there was a scale of dishonest conduct that can take various forms. He submitted that there were a number of mitigating factors in this case, particularly that there was no harm to patients and given the nature of the conduct, no prospect of their being harm to patients. Furthermore, the misconduct did not occur during the Registrant’s practise as an Optometrist, but was adjacent to it, in that it occurred in the running of Specsavers stores.

95. Mr Claxton invited the Committee to find that the nature of the misconduct was also narrow in scope, namely the claiming of expenses and was not different types of dishonesty. Furthermore, the sums involved were relatively modest, the total amount being less than the gross monthly pay of someone on a UK median income.
96. The Committee heard and accepted the advice of the Legal Adviser, who reminded the Committee that misconduct was a matter for its own independent judgement and no burden or standard of proof applied at this stage. Further, that the Committee needed to consider whether the conduct was sufficiently serious to amount to professional misconduct.

### **The Committee's Findings on Misconduct**

97. In making its findings on misconduct, the Committee had regard to the evidence it had received to date, the submissions made by the parties, and the legal advice given by the Legal Adviser.
98. The Committee considered the Standards for Optometrists and considered that the most relevant standards were 16 (be honest and trustworthy) and 17 (do not damage the reputation of your profession through your conduct). Whilst the Council had referred to Standard 19 (be candid when things go wrong), the Committee took the view that this was more applicable to when dealing with patients. The Committee was satisfied standards 16 and 17 applied in this case and had been breached by the Registrant's dishonest conduct.
99. In relation to all of the Allegations, which had been admitted or found proved, the Committee was satisfied that there had been a falling far short by the Registrant of what was proper in the circumstances, which was serious. In considering whether the conduct was serious, the Committee had regard to the nature of the Allegations, namely repeated dishonesty, by knowingly misrepresenting personal expenses as business-related expenses on multiple occasions over a lengthy period of four years, from which the Registrant gained financially, by being reimbursed for her personal expenses. Whilst some of the individual expense claims were relatively modest, the total amount was not insignificant (totalling £1,722.78). The Committee also considered that if the conduct had not been discovered in the audit, it would likely have continued for a longer period.
100. The dishonest conduct occurred in relation to the Registrant's operation of her stores and so was linked to her practice as an Optometrist. Although there was no risk to patients by the Registrant's conduct, the Committee was satisfied that

it breached the trust between the Registrant and her business colleagues and was damaging to the reputation of the profession.

101. The Committee was satisfied that in the circumstances, the Registrant's actions were serious and would be considered wholly unacceptable and deplorable by fellow practitioners. Accordingly, the Committee was satisfied that the facts that had been admitted by the Registrant and the dishonesty that it had found proved amounted to misconduct.

### **Impairment**

102. The Committee next considered whether the fitness to practise of the Registrant was currently impaired, as a result of the misconduct found.
103. In her submissions on impairment, Ms Huxtable reminded the Committee that impairment was a forward looking exercise and that the purpose of fitness to practise proceedings is not to punish the Registrant for past wrongdoings but to protect the public from the acts of those who are not fit to practise.
104. Ms Huxtable referred the Committee to the test that was formulated by Dame Janet Smith in the report to the Fifth Shipman Inquiry, which was approved in the case of *CHRE v (1) NMC and (2) Grant* [2011] EWHC 927 (Admin), namely that impairment may be found where a Doctor (but applicable to Optometrists) has either in the past, or is liable in future to:
- a. put a patient(s) at unwarranted risk of harm, and/or
  - b. brought the profession into disrepute, and/or
  - c. breached one of the fundamental tenets of the profession and/or
  - d. acted dishonestly.
105. Ms Huxtable submitted that limbs (b), (c) and (d) of this test are all engaged in this case. She submitted that the allegations demonstrate a propensity on the part of the Registrant to dishonestly misrepresent expense claims, which brings the profession into disrepute and breaches a fundamental tenet of the profession.
106. Ms Huxtable acknowledged that the Registrant has undertaken some remediation and provided numerous positive testimonials. However, she submitted that dishonesty was a serious issue which was also an attitudinal one and was not easy to remedy. Ms Huxtable reminded the Committee that the Registrant had suggested that she had been naïve, considering claiming expenses to be a tick-box exercise, which showed a lack of accountability.

107. Ms Huxtable referred to the cases of *Professional Standards Authority v Health and Care Professions Council and Ajeneye* [2016] EWHC 1237 (Admin), which stated that deliberate dishonesty must come high on the scale of misconduct and *GMC v Armstrong* [2021] EWHC 1658, which suggested that it is rare for a person who has acted dishonestly to escape a finding of impairment.
108. Whilst the Registrant has repaid the expenses, Ms Huxtable submitted that the Registrant had sought to minimise her behaviour. She submitted that the remediation so far was insufficient to satisfy the Committee that the conduct would not be repeated in future.
109. Ms Huxtable submitted that it was the Council's position that a finding of impairment was required in the wider public interest, in order to maintain public confidence in the profession, which would be undermined if a finding of impairment was not made. Ms Huxtable confirmed, when asked by the Committee, that the Council was only seeking a finding of impairment on public interest grounds, as it was accepted that there was no risk to patients in this case.
110. Mr Claxton, on behalf of the Registrant, when making submissions on the issue of impairment, invited the Committee to find that the Registrant was impaired solely on public interest grounds. Mr Claxton submitted that the Registrant had sufficiently remediated her conduct and there was no risk of repetition. Mr Claxton submitted that he disagreed that dishonesty was attitudinal and that it was not necessarily harder to demonstrate remediation for dishonesty. He submitted that the Registrant had engaged with the process and co-operated with her regulator and these proceedings had had a significant impact upon her.
111. Mr Claxton submitted that the Registrant had candidly reflected and undertaken what remediation she could. She accepted the Committee's findings. He invited the Committee to consider that the period of the Allegations was a relatively short period when set against the Registrant's long career, that there was no prior fitness to practise history and no concerns had arisen since these matters. Mr Claxton submitted that the Registrant had worked hard to develop insight, sought out relevant courses and a mentor and worked with them to address the issues, which was a paradigm example of insightful behaviour.
112. Mr Claxton submitted that the Registrant is highly regarded as an Optometrist, as shown by the references provided and given the above, it would be wrong to find that there was a risk of repetition. He invited the Committee to make a finding of impairment on public interest grounds only.

113. The Committee heard and accepted the advice of the Legal Adviser who advised the Committee that the question of impairment was a matter for its independent judgement taking into account all of the evidence it has seen and heard so far. She reminded the Committee that a finding of impairment does not automatically follow a finding of misconduct and outlined the relevant considerations set out in the case of *Cohen v GMC* [2008] EWHC 581 (Admin), namely whether the conduct is remediable, whether it has been remedied, and whether it is likely to be repeated. In relation to insight, it was advised that the fact a Registrant has contested proceedings does not automatically lead to a lack of insight, as Registrants are properly and fairly entitled to defend themselves, although the refusal to accept the misconduct/ the Committee's findings may make insight difficult to establish. There have been a number of cases which have emphasised that a panel should carefully consider whether it is fair and appropriate to use a rejected defence when considering lack of insight (including *Sawati v General Medical Council* [2022] EWHC 283 (Admin)).
114. The Legal Adviser referred the Committee to the case of *GMC v Armstrong* [2021] EWHC 1658 (Admin), which sets out that dishonesty can arise in a variety of circumstances and in a range of seriousness and that Committees must have proper regard to the nature and extent of the dishonesty and engage with the weight of the public interest factors tending towards a finding of impairment. This case also sets out that, in cases of dishonesty, the impact on public confidence in the profession is not diminished by a low risk of repetition and that the Committee must consider the weight that it puts on personal mitigation as this may have a more limited role in cases of dishonesty. It also sets out that it is a rare or unusual case where dishonesty does not lead to a finding of impairment.

### **The Committee's findings on impairment**

115. In making its findings on current impairment, the Committee had regard to the evidence it had received to date, the submissions made by the parties, and the legal advice given by the Legal Adviser.
116. The Committee considered whether the Registrant's conduct was remediable, whether it had been remedied and whether the conduct is likely to be repeated in future.
117. The Committee noted that the misconduct related to dishonesty, which is more difficult to remediate than other types of misconduct, such as clinical concerns, albeit not impossible to remediate.
118. The Committee considered whether the Registrant's misconduct had been remedied by her since the events took place between 2019 and 2023. The

Committee noted the steps that the Registrant has taken in order to remediate, which include reflecting, as set out in her reflective statement and CPD Reflective Log, and the relevant CPD undertaken, including on probity and ethics. The Committee was particularly impressed by the mentoring that the Registrant had regularly undertaken over the past six months, which was evidenced with a reference from her business mentor.

119. The Committee was of the view that the Registrant gave candid evidence and showed that she had reflected and developed insight, giving examples of what she had learnt and how she would do matters differently. Dishonesty is difficult to remediate and the Committee considered that the Registrant had undertaken all of the remediation that she reasonably could. Overall, the Committee considered the level of insight demonstrated by the Registrant, in her written reflective statement and the oral evidence that she gave during this hearing, to be good.
120. The Committee turned to consider the likelihood of repetition. The Committee had regard to the references from the Registrant's work colleagues, which were positive. The Committee noted that it was now almost two years since the misconduct occurred and there had been no further concerns raised. The Committee had been reassured by the evidence of the Registrant that she has learnt from her conduct, developed insight and has shown a good level of remediation, which mitigates the risk should she be placed in a similar position again.
121. Accordingly, the Committee determined that the Registrant's misconduct is unlikely to be repeated.
122. Having regard to all of the above, and the fact that there were no patient safety concerns arising in this case, the Committee determined that the Registrant's fitness to practise was not impaired on public protection grounds.
123. The Committee next had regard to public interest considerations and to the case of *CHRE v (1) NMC and (2) Grant* [2011] EWHC 927 (admin), particularly the test that was formulated by Dame Janet Smith in the report to the Fifth Shipman Inquiry. The Committee agreed with the submission of Ms Huxtable that limbs (b), (c) and (d) of this test are engaged in this case, namely conduct which brings the profession into disrepute, breaches a fundamental tenet of the profession and is dishonest. The Committee considered that these limbs of the test were engaged on the Registrant's past conduct in relation to the misconduct found proved.



124. The Committee considered whether a finding of impairment was necessary on the basis of the wider public interest in order to uphold proper professional standards and public confidence in the profession.
125. The Committee considered the extent and seriousness of the Registrant's dishonesty in respect of the misrepresented expense claims. The Committee considered it serious that there was a financial gain linked to the conduct. Furthermore, this was not an isolated incident and was repeated on multiple occasions over a period of four years. In the Committee's view the dishonesty in this case was serious and systematic, breaching the trust of the Registrant's business partners and colleagues, and was a breach of fundamental standards, as set out above.
126. The Committee was of the view that despite the remediation that had been undertaken by the Registrant, given the seriousness of the conduct, the public would be concerned and public confidence in the profession would be undermined, if a finding of impairment was not made. The Committee determined that it was necessary to make a finding of impairment in this case in order to maintain confidence in the profession and in order to uphold proper professional standards.
127. Accordingly, the Committee found that the Registrant's fitness to practise as an Optometrist is currently impaired.

### **Sanction**

128. The Committee went on to consider what would be the appropriate and proportionate sanction, if any, to impose in this case. It heard oral submissions from Ms Huxtable on behalf of the Council and Mr Claxton on behalf of the Registrant. No further evidence was placed before the Committee at this stage of the hearing.
129. Ms Huxtable reminded the Committee that the purpose of a sanction is to protect the public and it is not intended to be punitive, although it may have that effect. When deciding the appropriate sanction Ms Huxtable invited the Committee to have regard to the principle of proportionality and the Council's Hearings and Indicative Sanctions Guidance (HISG).
130. Ms Huxtable submitted that it was an aggravating factor that this case concerned dishonesty, which was particularly serious as it may undermine public confidence in the profession. In relation to mitigating factors, she highlighted that there had been no patient harm, a degree of remediation, positive testimonials and no prior fitness to practise history.

131. Ms Huxtable stated that the Council's position was that the appropriate sanction in this case would be a period of suspension. She submitted that all lesser sanctions would be insufficient given the seriousness of the misconduct. In relation to conditions, there were no practical conditions which could allay the concerns identified in this case.
132. Ms Huxtable submitted that the factors in paragraphs 22.4 – 22.6 of the HISG may assist the Committee, which deal with dishonesty. In relation to the length of suspension that ought to be imposed, Ms Huxtable submitted that a period of 9 months would be appropriate and proportionate to meet the public interest in this case.
133. Ms Huxtable emphasised that the Council did not consider that erasure would be appropriate in this case, as the misconduct was not fundamentally incompatible with the Registrant's continued registration. She submitted that a suspension would address impairment and any concerns the Committee has regarding the Registrant's registration going forwards.
134. Mr Claxton submitted that he was in agreement with the Council's position apart from the length of suspension. He submitted that erasure would only arise where the misconduct was fundamentally incompatible with continued registration, which was not the case here and it would be unrealistic for him to suggest any lesser sanction than a suspension.
135. Mr Claxton invited the Committee to have regard to the submissions that he made on behalf of the Registrant at the misconduct stage. In relation to dishonesty being an aggravating feature where the misconduct is itself based upon dishonesty, he submitted that the Committee should be careful not to double count factors.
136. Mr Claxton submitted that the Committee should take into account that she had undergone a difficult two year process involving the local investigation and regulatory proceedings. He highlighted her good career and positive testimonials which show she is a capable Optometrist with an additional qualification, being a Minor Eye Conditions Service provider, which was valuable to the public. Mr Claxton submitted that the Committee could properly impose a short suspension and suggested a period of three months.
137. In relation to whether a review hearing was required, Mr Claxton submitted that this was not necessary as the finding of impairment in this case was solely on public interest grounds and there was no risk of repetition. He stated that the public interest would be met by the substantive order and there would be no practical purpose to a review hearing.

### **The Committee's findings on sanction**

138. The Committee heard and accepted the advice on the Legal Adviser regarding the approach to follow when considering sanction. When considering the most appropriate sanction, if any, to impose in this case, the Committee had regard to all of the evidence and submissions it had heard and the HISG. The Committee also had regard to its previous findings.
139. The Committee firstly considered the aggravating and mitigating factors. In the Committee's view, the particular aggravating factors in this case are as follows:
- a. the repeated nature of the dishonesty; there were multiple instances over a period of 4 years;
  - b. the misconduct resulted in a financial gain to the Registrant, albeit this was repaid but only once the dishonesty had been identified;
  - c. the Registrant was in a senior leadership position, in that she was an experienced company director.
140. The Committee considered that the following mitigating factors were present:
- a. there was no evidence of harm to patients, nor potential harm;
  - b. the Registrant has apologised, shown remorse during these proceedings and has accepted the Committee's findings;
  - c. the Registrant has no fitness to practise history and there has been no repetition of the conduct;
  - d. the many positive testimonials from fellow professionals, which also highlighted her general honesty;
  - e. the Registrant has shown some insight and taken steps to remediate;
  - f. the Registrant has now repaid the financial gain received from her misconduct.
141. The Committee next considered the sanctions available to it from the least restrictive to the most severe, starting with no further action.
142. The Committee considered taking no further action as set out in paragraphs 21.3 to 21.8 of the HISG. The Committee noted that exceptional circumstances would be required and none were present in this case. Additionally, taking no action would be insufficient to address the public interest concerns in this case.

143. The Committee considered the imposition of a financial penalty order. It noted that this was available as a sanction, either on its own or in addition to any other order. The Committee considered that there was some merit to this sanction, as the misconduct was acquisitive, but felt that it would not reflect the seriousness of the misconduct in totality and appropriately mark the breach of standards expected of an Optometrist in these circumstances. The Committee also considered that to impose this sanction alongside the proposed sanction could be regarded as punitive.
144. The Committee next considered conditions. The Committee was of the view that conditional registration would not be practicable due to the nature of the misconduct, which did not involve identifiable clinical areas of practice in need of assessment or retraining, which conditions often seek to address. In addition, the Committee was of the view that conditions would not sufficiently mark the serious nature of the Registrant's misconduct or address the public interest concerns identified. The Committee therefore concluded that conditions could not be devised which would be appropriate, proportionate, workable or measurable in this case.
145. The Committee next considered suspension and had regard to paragraphs 21.29 to 21.31 of the Guidance. In particular, the Committee considered the list of factors contained within paragraph 21.29, that indicate that a suspension may be appropriate, which are as follows:

*Suspension (maximum 12 months)*

*21.29 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 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 continued to practise, even under conditions.*
146. The Committee was of the view that all of the factors listed in paragraph 21.29 were applicable, apart from factor e), which was not relevant in this case. In relation to factor a), this was a serious matter, where a lesser sanction was not sufficient, as set out above.

147. In relation to b), the Committee was of the view that although there were repeated instances of dishonesty, they were narrow in scope and the Committee did not find that there is evidence of harmful deep-seated personality or attitudinal problems and took account of the testimonials provided that speak to the Registrant's honesty.
148. In relation to c), there was no evidence of repetition of the behaviour since the incidents.
149. In relation to d), the Committee had earlier found that the Registrant has developed insight and the risk of repetition was low. The Committee was therefore satisfied that factors indicating that suspension may be appropriate were established in this case.
150. The Committee balanced the mitigating and aggravating factors in the case and considered the principle of proportionality. The Committee was of the view that a suspension order was an appropriate and proportionate sanction to address the public interest concerns that it had identified. It considered that a suspension order would adequately mark the seriousness of the Registrant's conduct, maintain confidence in the profession and declare and uphold proper standards of professional conduct and behaviour.
151. The Committee, having found that suspension would be an appropriate and proportionate sanction, was not required to go on to consider erasure. However, in any event, the Committee considered that the conduct was not fundamentally incompatible with continued registration. Although some of the factors in paragraph 21.35 of HISG were present, such as persistent dishonesty, the Committee was of the view that erasure was not the only order that would satisfy public interest concerns and it would be disproportionate and unnecessarily punitive in this case, in light of the mitigating factors. The Committee also took the view that the Registrant was a well regarded Optometrist and there is a public interest in allowing such an Optometrist to be able to return to practice.
152. The Committee gave consideration to the appropriate length of the order of suspension. It determined that, having balanced the mitigating and aggravating factors against the public interest, it would be proportionate and appropriate to suspend the Registrant for a period of four months. When considering the appropriate length of order, the Committee had regard to the mitigation, the testimonials, and the impact upon the Registrant. However, the Committee also had regard to the repeated nature of the dishonesty and the need to adequately meet the public interest.

153. In the circumstances, the Committee was of the view that four months was an appropriate and proportionate period of suspension to sufficiently mark the seriousness of the Registrant's misconduct and to address the public interest concerns it had identified.
154. The Committee considered whether to direct that a review hearing should take place before the end of the period of suspension. The Committee noted that at paragraph 21.32 of the Guidance, it states that a review should normally be directed before an order of suspension is lifted, because the Committee will need to be reassured that the registrant is fit to resume unrestricted practice. However, the Committee bore in mind that it had found that the Registrant had developed insight, had remediated and the misconduct was unlikely to be repeated. Additionally, the finding of impairment was on public interest grounds only. In the circumstances, the Committee was not satisfied that it was necessary or appropriate to direct a review hearing before the order of suspension expired.
155. The Committee therefore imposed a suspension order for a period of four months, without a review hearing.

### **Immediate Order**

156. The Committee went on to consider whether to impose an immediate order of suspension and invited representations from the parties on this issue.
157. Ms Huxtable confirmed that the Council was not inviting the Committee to impose an immediate order of suspension under Section 13I of the Opticians Act 1989, as one was not necessary in the circumstances and none of the grounds were met.
158. Mr Claxton agreed with the Council's position and opposed the imposition of an immediate order. Mr Claxton submitted that an immediate order was not necessary given the Committee's findings and the fact that the public interest had been met by the substantive suspension order.
159. The Committee accepted the advice of the Legal Adviser, which was that to make an immediate order, the Committee must be satisfied that the statutory test in section 13I of the Opticians Act 1989 was met. The Committee was referred to the relevant section in the Guidance on making an immediate order.

### **The Committee's decision on an immediate order**

160. The Committee considered the statutory test and the parties' submissions. The Committee was mindful that the test for making an immediate order was that it



is necessary for the protection of members of the public, otherwise in the public interest or in the best interests of the Registrant.

161. The Committee was not satisfied that there was any necessity for an immediate order to protect the public as there were no public safety or clinical concerns regarding the Registrant in the circumstances of this hearing. The Committee was also not satisfied that an immediate order of suspension would be otherwise in the public interest, as the public interest had been met by the four month suspension order itself. Nor would an immediate order be in the Registrant's own interests.

162. Therefore, the Committee decided not to impose an immediate suspension order.

**Revocation of interim order**

163. There is no interim order to revoke.

**Chair of the Committee: Gaon Hart**

Signature 

**Date: 2 May 2025**

**Registrant: Minal Thaker**

**Signature** *Present remotely and received via email*

**Date: 2 May 2025**

<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.</p> <p>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).</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>Contact</b>	
If you require any further information, please contact the Council's Hearings Manager at Level 29, One Canada Square, London, E14 5AA or by telephone, on 020 7580 3898.	