



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

GENERAL OPTICAL COUNCIL

F(23)06

AND

MARTYN STEWART (D-17306)

**DETERMINATION OF A SUBSTANTIVE HEARING
19 JUNE 2023 – 21 JUNE 2023**

Committee Members:	Ms Julia Wortley (Chair/Lay) Ms Asmita Naik (Lay) Ms Victoria Smith (Lay) Ms Claire Cowen (Dispensing Optician) Ms Jessica Shrimplin (Dispensing Optician)
Legal adviser:	Ms Aminah Khan
GOC Presenting Officer:	Mr Charles Drinnan
Registrant present/represented:	No and not represented
Registrant representative:	N/A
Hearings Officer:	Ms Abby Strong-Perrin
Facts found proved:	1,2,3,4,5,6
Facts not found proved:	None
Misconduct:	Found
Impairment:	Impaired
Sanction:	Erasure
Immediate order:	Imposed



Proof of service

1. As the Registrant did not attend the hearing, nor was he represented, the Committee heard an application from Mr Drinnan, on behalf of the Council, for the matter to proceed in the Registrant's absence. First, the Council was required to satisfy the Committee that the documents had been served in accordance with Section 23A of the Opticians Act 1989 and Rule 61 of the General Optical Council (Fitness to Practise) Rules 2013 ('the Rules').
2. Mr Drinnan submitted that it was clear from the correspondence with the Registrant that he had been notified of the hearing and he referred the Committee to the Notice of Hearing, dated 12 May 2023, which contained the correct times and dates of the hearing. Further, this notice warned the Registrant that if he did not attend, then the Committee may proceed to hear the case in his absence. Mr Drinnan took the Committee through more recent correspondence from the Council to the Registrant, dealing with matters of case management, to show that the Registrant had been made aware of the hearing on more than one occasion.
3. The Committee accepted the advice of the Legal Adviser, who referred the Committee to the Rules on service of the Notice of Hearing and acceptable methods of service.
4. The Committee had regard to the documentation before it regarding service contained within a service bundle. The Committee noted that the Registrant had been served with the Notice of Hearing on 12 May 2023, via email, to an email address which the Registrant had registered with the Council. This email address was one that he had previously used to communicate with the Council, including when he self-referred on 10 November 2020. The Committee further noted that the Registrant had confirmed in an email to the Council in April 2021 that he was content to communicate with the Council via email.
5. The Committee noted that the Council had sent further information to the Registrant in recent weeks in preparation for the hearing, via email, and that this correspondence had not been responded to.
6. The Committee was satisfied, in the circumstances, that there had been effective service of the Notice of Hearing and that all reasonable efforts had been made to notify the Registrant of the hearing in accordance with the Rules.

Proceeding in the absence of the Registrant

7. The Committee then went on to consider whether it would be in the public interest to proceed in the Registrant's absence in accordance with Rule 22. Mr Drinnan, on behalf of the Council, submitted that it was in the public interest to proceed in the absence of the Registrant, as he had voluntarily waived his right to attend. He had not provided any reason for his absence and when considering whether to proceed with the hearing, the Committee ought to factor into the balance the seriousness of the allegation. In this case a particularly serious allegation of dishonesty consisting of theft from his employer for over a year. No adjournment

had been requested by the Registrant and there was nothing to suggest that if the case was adjourned, he would attend a future hearing.

8. Mr Drinnan submitted that there was a public interest in cases being heard expeditiously and in good time. These matters already went back four years. There was also a Council witness present, able to give evidence today. Mr Drinnan highlighted the admissions that the Registrant had made in his workplace interview and in his self-referral to the Council, from which the Committee could conclude that the risk of reaching the wrong conclusions in the absence of the Registrant, in light of those admissions, was limited. Further, there were no apparent health issues preventing the Registrant's attendance. Mr Drinnan submitted that it would run counter to the public interest if the Registrant could frustrate the Regulatory process by not engaging with it and he invited the Committee to determine that it was in the public interest to proceed.
9. The Committee accepted the advice of the Legal Adviser, who referred the Committee to the guidance on proceeding in a Registrant's absence in the Council's 'Hearings and Indicative Sanctions Guidance' (updated November 2021). She advised that the Committee had a discretion as to whether to proceed in absence, and it should have regard to any reasons for absence which have been provided by the Registrant, and consider, whether in the circumstances, it is in the public interest to proceed. The Legal Adviser advised the Committee that in deciding whether to proceed in the absence of the Registrant it should proceed with great care and caution. She advised that the Committee should consider whether the Registrant had waived his right to attend and whether a fair hearing could take place in his absence. The Legal Adviser advised the Committee that it should take into account the public interest in the hearing of cases in a timely and fair manner.
10. The Committee was satisfied that the Registrant was aware of today's hearing and that he had the option to attend, however he had chosen not to do so and instead voluntarily absented himself. Further, there was no application to adjourn by the Registrant. In the circumstances, the Committee could not see any basis for not proceeding today and there would be nothing gained by adjourning the hearing, as there was nothing to reassure the Committee that the Registrant would attend a future hearing. These were serious allegations which had been ongoing for some time and it was in the public interest to determine them without delay.
11. Accordingly, the Committee determined that it would be in the public interest for the hearing to proceed in the Registrant's absence.



ALLEGATION (AS AMENDED)

The Council alleges that you, Martyn Stewart D-17306, a registered dispensing optician:

1. On one or more occasions between 19 March 2019 and ~~27~~ 18 October 2020 you knowingly processed false refund transactions to the value of approximately ~~£3,915.00~~ £3,726. ~~;-and/or~~
2. On or around 19 October 2020 you:
 - a. knowingly processed a false refund transaction to the value of approximately £67.50; and/or
 - b. removed £70 from the till. ~~;-and/or~~
3. On or around 21 October 2020 you:
 - a. knowingly processed a false refund transaction to the value of approximately £39.10; and/or
 - b. removed £40 from the till. ~~;-and/or~~
4. On or around 26 October 2020 you:
 - a. knowingly processed a refund transaction to the value of £39.10; and/or
 - b. removed £40 from the till. ~~;-and/or~~
5. On or around 27 October 2020 you:
 - a. knowingly processed a refund transaction to the value of £39; and/or
 - b. placed £1 into the till to cover the variant when you removed £39 from the till. ~~;-~~
6. Your conduct as set out above at 1, 2, 3, 4 and/or 5 was inappropriate and/or dishonest in that you knew:
 - a. the refund(s) did not arise from legitimate transactions; and/or
 - b. you were not entitled to the refund money.

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

12. Mr Drinnan invited the Committee to consider amending the allegation during his closing submissions at the end of the fact stage, in order to avoid the risk of double counting, given that the original figure in particular 1 (£3,915), which represents the total sum stolen, included the figures in particulars 2-5. The Committee determined to amend the wording of the allegation, as set out further below.

DETERMINATION

Background to the Allegation

13. The Registrant first registered with the Council as a student Dispensing Optician on 28 October 2014 and transferred onto the full register on 6 September 2016. He has no previous fitness to practise history.
14. On 10 November 2020 the Council received a self-referral from the Registrant advising that he had been dismissed by his employer, Specsavers REDACTED, for stealing money from the store. The Registrant had worked for Specsavers for 11 years, and at the time of his dismissal, he was employed as a store manager. In his self-referral, the Registrant stated that *"I am not proud of the fact but I have been stealing from the business for over a year now."*
15. On 23 November 2020 the Council received information from Mr B, Store Director at Specsavers REDACTED, that the Registrant had been dismissed from his role as dispensing optician for stealing approximately £4000 in cash in the period between April 2019 and October 2020.
16. The Specsavers parent company had become concerned about the high number of refunds that were being processed in the store without a customer number and a customer TR number, which suggested that these refunds were not linked to any particular customer. This raised a concern as to whether cash was being taken from the till.
17. An investigation was commenced by Specsavers, which included the installation on 7 October 2020 of three covert surveillance cameras in the store, one in the location of the till area. The footage obtained from these cameras, when compared to the data reports from the till which indicated that suspicious refunds were being made, showed that the Registrant was using the till at the relevant time, and was carrying out refunds without customers present.
18. The CCTV footage for four days (19, 21, 26 and 27 October 2020) and corresponding data reports from the till, were analysed by Mr A, Financial Risk Support Consultant for Specsavers Optical Group. It was suspected that the Registrant was using a method of processing fraudulent refunds and then later removing that (or a similar) amount in cash from the till towards the end of the day, before the till was emptied.
19. The Registrant was invited to a workplace interview on 3 November 2020, during which he admitted to stealing money from the till for more than one year. He admitted all of the matters put to him, apart from disputing some of the refunds on the list of suspicious transactions, as he maintained that some of those were genuine refunds. The Registrant explained that he had started taking money on the spur of the moment when he needed to buy petrol, and since then he would

do it every couple of days or weeks. The Registrant agreed that on each of the occasions identified on the CCTV footage he was stealing from the store and that he knew it was wrong and illegal. He described his conduct as appalling and apologised. The Registrant signed the note of the interview, which was conducted under caution, as an accurate record.

20. The Committee agreed to sit in private session briefly whilst the Registrant's explanation for his conduct was explained, as this referred to private matters relating to REDACTED. The Committee was of the view that it was appropriate to sit in private to hear about these matters, under Rule 25(3).

The hearing

21. Mr A gave evidence and took the Committee through his exhibits that he compiled during his investigation, which included a list of the refunds processed in the store between 19 March 2019 and 27 October 2020 and a cash till declaration report for 1 July 2020 to 28 October 2020, identifying variances.
22. Mr A also took the Committee through the covert surveillance footage and described what he had identified was taking place from his analysis of the original footage, which he had compared with the till reports. Mr A described that the Registrant, on each of the relevant occasions, approached the till and entered a product refund transaction without the presence of a customer. Mr A explained that this was suspicious in itself, as cash refunds would always take place in the presence of the relevant customer.
23. Mr A explained that on each occasion, the Registrant overrode the price of the product in question for a sum which relates to the value of an NHS voucher, with the refund tendered to cash. No cash was removed from the till by the Registrant at that time, so for a time the balance of the till was up due to the refund that had been processed. However, at a later time that day, shortly before the store closed, the Registrant opened the till (entering a no sale transaction to open the till drawer without registering a sale), and removed a sum of money representing the refund value (rounded to the nearest note). Mr A highlighted that on a number of occasions when other colleagues were near the till, the Registrant prevented the till drawer from fully opening. In Mr A's opinion this was to conceal the fact that the Registrant was putting through a transaction. Mr A further highlighted the Registrant first concealing the cash in his hands and then placing it into his pocket.
24. On the last occasion on 27 October 2020, Mr A explained that the Registrant is viewed placing a £1 coin into the till and that this would compensate for the £1.00 variance that would have been caused when removing £40.00 after entering a £39.00 refund. Mr A explained that this would have made the fraudulent transaction harder to detect, as there would be no variance when the till was counted.

25. Mr A explained to the Committee how he had calculated the total amount that he believed had been stolen by the Registrant of approximately £3,915, which was from his analysis of the list of refunds processed by the Registrant. He had deducted a number of transactions that the Registrant had said were genuine, such as refunds for 'OCTs' and 'Ultra clear' amounts, as he accepted the Registrant's explanation in his interview. Given the admissions that the Registrant had made regarding his conduct, he accepted that the Registrant was being truthful about these transactions being genuine and accordingly these had not been included when he calculated the total loss figure.
26. The Committee had questions for Mr A and asked him how he could say what exactly was happening on the footage, as not every action he referred to was as apparent from its viewing the footage alone. Mr A explained that when viewed on the machine used to record it, the footage could be slowed down frame by frame, and it could be 'zoomed in', however this was not possible on the recorded version. Mr A stated that he had also watched the footage multiple times and compared what was happening with the records from the till, which showed what was being entered by the Registrant, for example, the amounts of the refund.
27. Mr A also clarified in response to Committee questions, how the voucher system worked and that no actual NHS vouchers had been used by the Registrant, so there was no loss to the NHS, as that was simply the amount of the refund used (which corresponded to a voucher amount), which Mr A suggested was an amount chosen by the Registrant to cause confusion if the refund was investigated. He also explained that the Registrant was a store manager working alongside the store directors who were also on site.
28. In closing submissions, Mr Drinnan explained that particular 1 of the allegation was a global charge for the total amount stolen, which included the specific examples captured on CCTV, contained in particulars 2-5. He highlighted that as originally drafted, the allegation did not make clear that the amounts in particulars 2-5 were included in 1 and there was a risk of double counting these amounts. Mr Drinnan invited the Committee to consider this point when deliberating and to make an amendment to the allegation under Rule 46(20) as the Committee saw fit, of its own motion. Mr Drinnan submitted that making such an amendment, to make the particular clearer, could be made without causing injustice.
29. Mr Drinnan submitted that the CCTV footage was extremely clear and when watched whilst reading the detailed evidence of Mr A, it was very clear what the Registrant was doing on the four occasions that refunds were captured on the footage. Mr Drinnan submitted that the Registrant had become increasingly confident in his method, as the footage showed that in the later incidents he would steal even when colleagues were around. He had also become more sophisticated by adding £1, to reconcile the till balance, in order to cover his tracks. Mr Drinnan highlighted the forensic analysis of Mr A and submitted that

his evidence, taken with the full and frank admissions made by the Registrant, made the case extremely compelling.

30. Mr Drinnan invited the Committee to draw an adverse inference from the fact that the Registrant had not attended the hearing and had not given evidence.
31. The Committee accepted the advice of the Legal Adviser that the burden of proving a disputed allegation was on the Council, to the civil standard of the balance of probabilities. In particular, the Legal Adviser gave advice regarding considering the particulars of the Allegation separately, that intention can be inferred from the surrounding circumstances and in relation to the Registrant's good character, as he had no previous regulatory findings against him. She also referred the Committee to the case of *Ivey v Genting Casinos* [2017] UKSC 67 in relation to the test for dishonesty.
32. In relation to amending the allegation, the legal advisor referred the Committee to Rule 46(20), which gives the Committee the power to amend the allegation at any time during the hearing, either upon the application of a party or of its own volition, if satisfied that the amendment can be made without injustice. The Legal advisor advised the Committee that it was possible to draw an adverse inference if they considered that it was fair in all of the circumstances to do so, and advised them to consider the factors set out in the Council's Hearings and Indicative Sanctions guidance on this issue.

Findings in relation to the facts

33. The Committee first considered the issue regarding the amendment of the allegation, as raised by Mr Drinnan in closing.
34. The Committee agreed that as originally drafted, there was a risk of double counting in respect of the sums alleged to have been stolen. It was not clear on the face of the original allegation that the total amount stolen in particular 1 included the amounts captured as being stolen in the CCTV footage, as set out in particulars 2-5. The Committee considered that the allegation ought to be amended in order to remove any ambiguity on this issue and considered that such an amendment could be made without injustice, as it was being done to make the position clear on the amount alleged to have been stolen. The Council's case had not materially changed in any way and the amendment would make the allegation closer to the evidence that had been heard. The Committee determined to amend the allegation as per Rule 46(20), of its own volition, as it was satisfied that the amendment can be made without injustice.
35. The Committee considered that the most appropriate way to amend the allegation to make it clear would be to deduct the sums set out in particulars 2-5 from the figure in particular 1, so that the allegation read as a whole, resulted in a total theft of £3,915, which was the Council's case. In addition, the Committee

determined to remove and/or after the end of each particular of the allegation, so that they stood as separate charges. The material dates were also amended accordingly.

Particular 1

36. The Committee first considered the evidence in relation to particular 1, which alleged that (as amended) on one or more occasions between 19 March 2019 and 18 October 2020, the Registrant knowingly processed false refund transactions to the value of approximately £3,726.
37. The Committee noted that this allegation related to the refunds processed by the Registrant which had not been captured on the footage taken by the covert surveillance camera. The Committee considered the interview that took place with the Registrant on 3 November 2020, and the notes of that interview, which the Committee had before it, were signed as correct by the Registrant.
38. The Registrant in that interview made admissions about having processed fraudulent refunds for over a year and he agreed with the methodology which had been detected by his employer. He had accepted that the majority of the refunds put to him in that interview were fraudulent, apart from the types he had identified as being genuine ('OCTs' and 'Ultra clear' amounts), which Mr A had explained had been deducted from his total amount.
39. The Committee also noted that the Registrant had accepted in his interview that he knew his conduct was wrong and illegal. He had not sought to hide anything from his employer once he had been detected and made a frank self-referral to the Council.
40. Although the Committee had not heard from the Registrant in these proceedings, it was of the view that the admissions that he had made in his interview and in his self-referral could be relied upon as being his honest account of his actions.
41. The Committee also considered the evidence of Mr A in relation to this aspect of the case. The Committee was of the view that Mr A gave clear and detailed evidence. It was apparent that Mr A had investigated the concerns regarding the refunds in a thorough and forensic manner. He was able to explain his evidence in an analytical way and support his statements, with reference to the various detailed spreadsheets that he had prepared.
42. The Committee had particular regard to the exhibit LG06, which was a detailed spreadsheet listing all of the cash product refunds that had been identified between 19 March 2020 and 27 October 2020. This spreadsheet, when allowances had been made for the genuine transactions, supported that refunds had been processed by the Registrant in the approximate sum of £3,726 (not including the transactions captured on the footage, set out at particulars 2-5 of the allegation).

43. It was noted by the Committee that Mr A was fair minded in his approach, as he made concessions when he felt it was appropriate to do so, for example in relation to deducting the genuine transactions. The Committee considered that the evidence of Mr A, both his oral evidence and the documentary evidence he produced, was credible and reliable. Mr A was present at the workplace interview, which further added to the reliability of the interview record presented.
44. In relation to the issue of whether the Registrant knowingly processed false refund transactions, the Committee had regard to the fact that the Registrant was in a position of responsibility as a store manager and had worked for Specsavers for 11 years. He was authorised in his role to carry out customer refunds but for genuine transactions only. The Committee was satisfied that the Registrant was aware that by refunding amounts which were not linked to a genuine transaction, and by seeking to cover his tracks by using amounts for NHS vouchers, he was acting knowing that the refunds he was processing were false.
45. The Committee considered that the evidence of Mr A and the full and frank admissions of the Registrant supported each other and as such, the Committee was satisfied on the balance of probabilities that it was more likely than not that the Registrant had on one or more occasions between 19 March 2019 and 18 October 2020, knowingly processed false refund transactions to the value of approximately £3,726.
46. The Committee was also mindful that it had before it evidence of the Registrant taking money from the till on the four occasions captured by the covert surveillance footage and that whilst they had to consider each part of the allegation separately, its findings in relation to one part of the allegation, where relevant, could support findings in respect of another part of the allegation, particularly when the conduct was very similar.
47. The Committee noted that it had been invited to draw an adverse inference in respect of the Registrant not attending the hearing and not giving evidence in his defence, and the Committee considered doing so, however determined that it was not necessary to draw such an inference in the circumstances of the case and declined to do so. The Committee also noted that the Registrant was of previous good character, as he had no prior fitness to practise history, however it was of the view that only very limited weight could be given to this, when considering the Registrant's admissions of dishonesty.
48. Considering all of the above matters, the Committee found particular 1 of the allegation proved.

Particular 2

49. The Committee went on to consider whether on or around 19 October 2020 the Registrant:

- a. knowingly processed a false refund transaction to the value of approximately £67.50; and/or
- b. removed £70 from the till.

50. The Committee noted that in the Registrant's interview he was specifically asked about this incident and it was put to him that after processing the refund, he later removed £70 from the till and put it in his pocket. He was asked, '*Have you stolen this money?*', to which he replied 'Yes'.

51. The Committee also had regard to the covert video footage that it watched, as narrated by Mr A. Whilst the Committee was unable to detect every action on the footage that Mr A had described in his witness statement or his oral evidence, it accepted Mr A's evidence that he was able to watch the footage on the original equipment at a slower speed and magnified, and that after doing so and watching multiple times, he was able to detect matters that were not obviously seen on the version of the footage seen by the Committee. Overall the footage as viewed by the Committee did appear to show a clear theft of cash.

52. In addition, the Committee had regard to the fact that the Registrant did not dispute any of the methodology put to him in interview and accepted that he had removed the money from the till to use for his own purposes.

53. The Committee determined that the unchallenged evidence of Mr A, the covert video evidence, and the admissions of the Registrant, were all in alignment with each other. The analysis carried out by Mr A, particularly his cash product refund analysis and what he suspected was happening, ties in fully with what is shown on the CCTV and was accepted in full by the Registrant when it was specifically put to him in interview.

54. In the circumstances, the Committee were satisfied that it had been proved on the balance of probabilities that the Registrant had knowingly processed a false refund of £67.50 on 19 October 2020, and that he had removed £70 from the till. Accordingly, the Committee found particular 2 of the allegation proved.

Particulars 3 – 5

55. The Committee considered the evidence in respect of particulars 3, 4 and 5 separately and in turn, and in relation to each noted that the evidence being relied upon for each was similar, with there being no basis to distinguish between these particulars of the allegation. The Committee noted that the sophistication of the theft as described increased in particular 5, as seen on the CCTV footage. As such the Committee in relation to each particular of the allegation relied upon the same findings as made in respect of particular 2 of the allegation, namely that the evidence of Mr A, the applicable covert video recordings and the admissions of the Registrant made in interview to each specific transaction, all were supportive of each other. Accordingly, the Committee found that these

allegations were all proved, both in respect of processing the false refund and in relation to removing the money from the till.

Particular 6

56. The Committee turned to consider whether the Registrant's conduct at particulars 1, 2, 3, 4 and/or 5 was inappropriate and/or dishonest in that he knew the refund(s) did not arise from legitimate transactions; and/or that he was not entitled to the refund money.
57. The Committee considered the test in the case of *Ivey* and started with consideration of what the Registrant's state of mind was. In this case, the Committee was of the view that this matter was clear, as it was apparent from the evidence before it that the Registrant was fully aware that his actions were wrong and unlawful, as he clearly accepted in interview.
58. The Committee was satisfied that the Registrant had a dishonest state of mind at the time of conducting the fraudulent refunds, and he appreciated what he was doing was not permitted, which is why he sought to cover up his tracks. The Committee noted that he was in a position of responsibility as the store manager, and he abused his position and his knowledge of the store's systems to steal from the store by processing fraudulent refunds. Further, this was a complicated theft, which was not a one-off incident but repeated conduct for more than a year.
59. The Committee was satisfied that this conduct was both inappropriate and dishonest, both by the knowledge of the Registrant and by the objective standards of ordinary decent people. Accordingly, the Committee found particular 6 of the allegation proved.

Findings in relation to misconduct

60. Although the Committee heard submissions in respect of misconduct and impairment together, it considered and determined the two issues separately and in sequence.
61. First, the Committee proceeded to consider whether the facts, as found proved, amount to misconduct. No further material was put before the Committee at this stage.
62. The Committee heard submissions from Mr Drinnan on behalf of the Council who invited the Committee to find that the Registrant's actions amounted to misconduct. Mr Drinnan outlined the caselaw on misconduct, with reference to the cases of *Roylance v General Medical Council (No.2)* [2000] 1 A.C. 311 and *Remedy UK Ltd v General Medical Council* [2010] EWHC 1245 (Admin).
63. Mr Drinnan submitted that in a nutshell, the thefts committed by the Registrant amounted to disgraceful and morally culpable behaviour, and were a stark breach

of his employer's trust. He submitted that the Registrant's actions had fallen far below the standards expected of Optometrists and Dispensing Opticians.

64. Mr Drinnan invited the Committee to have regard to the "*Council's Standards of Practice for Optometrists and Dispensing Opticians*," effective from April 2016. He submitted that the Registrant has departed from the following standards by virtue of his conduct:

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

65. Mr Drinnan submitted that the Registrant's conduct fell far short of these standards and far below the standards of what would be proper conduct in the circumstances. He said that the conduct was sufficiently serious as to amount to misconduct, as the Registrant had brought disgrace on himself and the profession. Mr Drinnan highlighted the aggravating factors in the case, namely that the dishonesty was not a one off, it was repeated over a long period of time, it developed over time to take place in front of colleagues, sophisticated steps were taken to avoid detection, and would have continued if the Registrant was not caught.

66. The Committee accepted the advice of the Legal Adviser who referred to the case of *Roylance v General Medical Council (no2)* [2000] 1 AC 311 regarding the two principal kinds of misconduct, either conduct linked to professional practice or conduct that otherwise brings the profession into disrepute. The Committee was reminded that misconduct was a matter for its own independent judgement and no burden or standard of proof applied. Further, that the Committee needed to consider whether the conduct was sufficiently serious to amount to professional misconduct.

67. The Committee considered the "*Council's Standards of Practice for Optometrists and Dispensing Opticians*" and the standards which it had been referred to by the Council, namely standards 16 and 17. The Committee was satisfied that the Registrant's actions, multiple acts of dishonesty, fell far short of the standards.

68. The Committee noted in particular that the Registrant had stolen a significant amount of money from his employer, totalling approximately £3,915, over a prolonged period of over a year, using a sophisticated method to manipulate his employer's refund system. He breached the trust placed in him by his employer, as he was working at the time of the thefts as the store manager, in a position of responsibility. It was also noted that the Registrant was working alongside his employers, the directors of the store, when he carried out some of the thefts. The thefts were not impulsive but were pre-meditated and persistent.

69. The Committee further noted that the Registrant's actions in some of the later incidents became more blatant, taking place in front of colleagues. The Registrant also took multiple steps to hide his tracks and make detection more difficult.

70. The Committee considered that dishonesty can range in seriousness, however it took the view that the conduct of the Registrant was at the higher end of the

scale of seriousness, given the numerous aggravating factors summarised above.

71. The Committee was satisfied that the Registrant's conduct was serious, morally culpable, and disgraceful. It fell far below the standards expected of a Dispensing Optician, contravening both of the GOC Standards 16 and 17.
72. The Committee also concluded that this conduct is damaging to the reputation of the profession and has brought it into disrepute. Further, fellow professionals would consider it deplorable.
73. Taking everything into account, the Committee was in no doubt that the conduct of the Registrant in undertaking sustained and persistent acts of dishonesty, over a prolonged period, breaching his employer's trust, amounted to professional misconduct, which was serious. Therefore, the Committee determined that the facts found proved amount to misconduct.

Findings regarding impairment

74. The Committee next went on to consider whether the Registrant's fitness to practise is currently impaired by virtue of his misconduct.
75. The Committee heard submissions from Mr Drinnan on behalf of the Council, who submitted that confidence in the profession would be undermined in this case, if no finding of impairment was made.
76. Mr Drinnan submitted that the Registrant's conduct was not remediable, as it was deep-seated, attitudinal in nature, and raised questions of morality. In any event, it had not been remedied by the Registrant, as he had not demonstrated that any steps of remediation had been taken. Further, Mr Drinnan submitted that in the circumstances the conduct was likely to be repeated by the Registrant.
77. Mr Drinnan referred the Committee to the guidance in the case of *CHRE v (1) NMC and (2) Grant* [2011] EWHC 927 (admin) and the test that was formulated by Dame Janet Smith in the report to the Fifth Shipman Inquiry. Mr Drinnan submitted that limbs (b)-(d) of this test are engaged in this case, namely that the conduct in question brought the profession into disrepute, breached one of the fundamental tenets of the profession and was dishonest.
78. Mr Drinnan referred to the public interest and stated that the need to uphold professional standards and maintain public confidence in the profession would be undermined if no finding of impairment was made. He submitted that this was one of those cases referred to in the case of *Yeong v General Medical Council* [2009] EWHC 1923 (Admin), where a finding of impairment of fitness to practise may be justified on the grounds that it is necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the practitioner and in the profession.
79. Mr Drinnan submitted that whilst the Committee had not exercised their discretion to draw an adverse inference at the facts stage, they could take into account now the Registrant's attitude and lack of engagement in these proceedings, as being relevant to the issue of current impairment. Whilst it could be said that the Registrant had expressed some remorse informally during the local investigation, he had not formally done so in these proceedings. Further, although the Registrant made admissions in interview, Mr Drinnan submitted that the evidence was so strong that he had no option but to admit his culpability.

80. Mr Drinnan suggested that on the evidence, the Registrant only had limited insight. Whilst he had raised some personal difficulties in his self-referral, these were bare assertions and no evidence had been produced to show what steps had been taken by the Registrant to address these issues.
81. Mr Drinnan invited the Committee to make a finding of current impairment by reason of misconduct. He submitted that the evidence fell significantly short of what would be required for the Registrant to demonstrate that he had remediated. In any event, given the seriousness of the conduct, it would be necessary to make a finding of impairment in the wider public interest, to uphold standards and maintain public confidence in the profession.
82. The Committee 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 principles set out in the cases of *The General Medical Council v Armstrong* [2021] EWHC 1658 (Admin), *CHRE v (1) NMC and (2) Grant* [2011] EWHC 927 (admin) and *Cohen v GMC* [2008] EWHC 581 (Admin).
83. The Committee considered whether the Registrant's conduct was capable of being remediated, whether it had been remediated and whether there is a risk of repetition of the conduct in future.
84. The Committee was of the view that the persistent dishonesty in this case was likely to be a deep-seated, attitudinal issue, making it very difficult to remediate, but did not consider that it was impossible to do so. However, the Committee considered that the level of insight demonstrated by the Registrant in this case was very limited and it was concerned, particularly as he had not engaged in these proceedings, that there was no evidence of him undertaking reflection, nor taking any steps to remediate his behaviour.
85. The Committee noted the Registrant's acknowledgement in his self-referral that he had issues with REDACTED. He stated he had, since these events, taken some steps to obtain support for these issues, including attending REDACTED. However, other than what was in the initial self-referral, the Committee had no information about what further remediation or steps the Registrant had undertaken more recently to address these issues, and it knew nothing about his current position. The Committee also was of the view that the Registrant's reference to some REDACTED may have provided context for his conduct, but without further information, the Committee did not consider that this was mitigation.
86. The Committee noted that the Registrant had apologised and appeared to be remorseful for his conduct. The Committee also noted that he had made full admissions in interview. However, the Committee agreed with the submission made by Mr Drinnan that given the strength of the evidence, including the covert video recordings, the Registrant may have felt that he had little choice but to fully admit his involvement at that stage. The Committee also agreed that, based on the evidence regarding his previous conduct, if the Registrant had not been caught, the Registrant's misconduct would likely have continued.

87. The Committee concluded that the Registrant's insight into his conduct was very limited, and he still has significant work to do in this respect in order for the Committee to be reassured that he has remediated his misconduct. Given the lack of evidence of remediation by the Registrant, the uncertainty regarding his current position with his addictions and whether he has successfully sought support and treatment to address these, the Committee was of the view that there was a high risk of repetition.
88. The Committee also considered that the likelihood of repetition was high due to the length of time that the dishonesty continued for, the blatant and risky nature of it, its apparent escalation and the likelihood that it would have continued had the Registrant not been apprehended.
89. The Committee next turned to consider the public interest and had regard to the case of *CHRE v (1) NMC and (2) Grant* [2011] EWHC 927 (admin) and the test that was formulated by Dame Janet Smith in the report to the Fifth Shipman Inquiry. The Committee agreed with the submission of Mr Drinnan that limbs (b)-(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 which is dishonest.
90. Further, given the serious nature of the conduct, which the Committee considered that it was at the upper range of seriousness in dishonesty cases, it concluded that the public would be extremely concerned if no finding of impairment was made, and this would undermine the public interest. The Committee determined that it was also necessary to make a finding of impairment in this case in order to maintain confidence in the profession, and the Regulator and in order to uphold proper professional standards.
91. The Committee found that the fitness of Mr Martyn Stewart to practise as a Dispensing Optician is currently impaired.

Sanction

92. The Committee next went on to consider what would be the appropriate and proportionate sanction, if any, to impose in this case. It heard submissions from Mr Drinnan on behalf of the Council.
93. Mr Drinnan reminded the Committee that in imposing a sanction it was primarily concerned with protecting the public and with meeting the Council's overarching objective. He referred to the Council's 'Hearings and Indicative Sanctions Guidance' (updated November 2021) ('the Guidance') and outlined the sanctions that were available to the Committee in this case. Mr Drinnan made reference to the paragraphs in the Guidance on indicative sanctions for dishonesty, at paragraphs 22.4 -22.5, highlighting that in cases of dishonesty a registrant was at risk of being removed from the Register, although there was no blanket rule that erasure would be appropriate in all cases.
94. In relation to aggravating factors, Mr Drinnan highlighted the length of time that the dishonesty persisted for, its repetition, the high value of the amount stolen, that it developed in complexity and the breach of trust. Further, there had been no reflection, remediation and the Registrant had not engaged with these proceedings. He submitted that these aggravating factors would likely outweigh

any mitigating factors, which would inevitably be of less significance in a case such as this.

95. Turning to the sanctions available to the Committee, Mr Drinnan reminded the Committee that they ought to start with consideration of the least restrictive sanction first. However, he submitted that taking no further action and a conditions of practice order would both be inappropriate, and in reality the most appropriate sanction would likely be either suspension or erasure, which may come down to a difficult exercise of judgment for the Committee.
96. Mr Drinnan submitted that there was no basis for any lesser sanction than suspension to be imposed, given that there was no compelling evidence of insight and this was wholesale, repeated dishonesty, which was not likely to have stopped without the intervention of the business. He submitted that it was at the upper range in terms of seriousness.
97. Mr Drinnan invited the Committee to consider erasure, as allowing the Registrant to return to practise would severely damage the reputation of the profession and erasure may be necessary in order to protect the public interest. He referred the Committee to paragraph 21.35 of the Guidance, and the list of factors therein which indicate that erasure may be appropriate, several of which he submitted applied to this case, particularly '*f. Dishonesty (especially where persistent and covered up)*'.
98. The Committee accepted the advice of the Legal Adviser, which was for the Committee to take into account the factors on sanction as set out in the Guidance; to assess the seriousness of the misconduct; consider any aggravating and mitigating factors; and to consider the range of available sanctions in ascending order of seriousness. Further, the Committee is required to act proportionately by weighing the interests of the registrant against the public interest.
99. The Committee considered the aggravating and mitigating factors. In the Committee's view, the aggravating factors in this case are as follows:
 - 1) the persistent nature of the dishonesty, carried out over a prolonged period of over a year, which only stopped when he was caught;
 - 2) the abuse of trust, which was of particular significance given that the Registrant had a position of responsibility as store manager;
 - 3) the incidents of theft were calculated, covered up and became increasingly brazen, carried out in front of colleagues and employers;
 - 4) the high value of the amount stolen;
 - 5) no evidence of insight, remediation or engagement in these proceedings.
100. The Committee considered whether there were any mitigating factors, however concluded that there was no evidence of any. Whilst the Registrant had made admissions in his workplace interview, this was in the face of considerable evidence, including the covert video footage. The Committee also was of the view that it had insufficient information regarding the Registrant's self-confessed addictions, for this to be taken into account as mitigation. In any event, the

Committee considered that in this case any mitigation would be outweighed by the considerable aggravating factors present, as set out above.

101. The Committee next considered the sanctions available to it from the least restrictive to the most severe, starting with no further action.
102. The Committee considered taking no further action as set out in paragraphs 21.3 to 21.8 of the Guidance. It concluded that there were no exceptional circumstances to justify taking no action in this case. It further considered that taking no further action was not proportionate nor sufficient given the seriousness of the case and the public interest concerns.
103. The Committee considered the issue of a financial penalty order, however it was of the view that such an order was not appropriate, given that it had no information relating to the financial position of the Registrant.
104. The Committee considered the Guidance in relation to the imposition of conditions. It 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. Moreover, as the Registrant had not engaged with these proceedings, there was no basis for finding that he would be willing to comply with them.
105. Further, the Committee considered that the Registrant's conduct is attitudinal in nature, which would therefore be difficult to address with conditions. In addition, conditions would not sufficiently mark the serious nature of his misconduct or address the public interest concerns identified. The Committee concluded that conditions could not be devised which would be appropriate, workable or measurable in this case.
106. 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.*

107. The Committee was of the view that the majority of the factors listed in paragraph 21.29 were not applicable. The most clearly relevant was factor a), namely this was serious misconduct, where a lesser sanction was not sufficient.

108. In relation to b), the Committee was of the view that this does not apply as the conduct was likely attitudinal in nature, and that there was evidence of harmful deep-seated personality or attitudinal problems.
109. In relation to c), whilst there was no evidence of repetition of the behaviour since the incidents, the dishonesty itself had persisted over a prolonged period.
110. In relation to d), the Committee is not satisfied that the Registrant is developing insight and therefore does pose a significant risk of repeating his conduct. Factor e) was not applicable to the facts of this case.
111. The Committee concluded that a suspension order was inappropriate to address the public interest concerns that it had identified. It considered that a suspension order would not adequately mark the seriousness of the Registrant's conduct, which was at the upper end of the scale, maintain confidence in the profession and declare and uphold proper standards of professional conduct and behaviour.
112. The Committee went on to consider erasure. The Committee was of the view that several of the factors listed in the Guidance at paragraph 21.35 (a)-(h), which lead towards the sanction of erasure being appropriate, applied in this case. Paragraph 21.35 states as follows:

Erasure

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

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

113. The Committee were of the view that factors a), c), f), and h) were engaged in this case and that under the Guidance there were more factors indicating that erasure was the appropriate sanction rather than suspension.

114. The Committee determined that given that the nature of the Registrant's conduct was of the utmost gravity and the aggravating factors detailed above, the behaviour was fundamentally incompatible with being on the Register. The proportionate and appropriate sanction in this case was one of erasure and any lesser sanction would not uphold standards and would undermine confidence in the profession and the regulator.
115. The Committee therefore ordered that the Registrant be erased from the Register.

Immediate Order

116. The Committee invited representations on whether an immediate order should be imposed. Mr Drinnan, on behalf of the Council, submitted that it was a matter for the Committee whether to exercise its discretion to impose an immediate order of suspension under Section 13I of the Opticians Act 1989. He stated that the Committee may consider that there are grounds to do so based upon its earlier findings. He reminded the Committee that if the Registrant appealed, the order for erasure would not come into effect for several months whilst the appeal was pending.
117. 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 is met, i.e., that the making of an order is necessary for the protection of members of the public, otherwise in the public interest or in the best interests of the Registrant.
118. The Committee had regard to the statutory test, which required that an immediate order had to be necessary to protect members of the public, be otherwise in the public interest or in the best interests of the Registrant.
119. The Committee took a wide view of the meaning of 'the public' and considered that it could include future employers, colleagues, as well as the general public, and assessed the risk on that basis.
120. The Committee bore in mind that it had found that the misconduct was particularly serious and there was a high risk of repetition. The Committee was therefore concerned that if no immediate order was made, the Registrant could return to practise and repeat the conduct or similar. The Committee therefore concluded that an immediate order was necessary to protect members of the public in this case.
121. The Committee also bore in mind that it had concluded that erasure was the only appropriate and proportionate sanction in this case. In the circumstances, the Committee decided that it was also in the public interest that an immediate order be imposed, given the serious nature of the conduct, so there would not be a delay before the order came into effect and to cover the 28-day appeal period and any ensuing period should the Registrant appeal. Accordingly, the Committee imposed an immediate order of suspension.

Revocation of an interim order



122. There was no interim order to revoke.

Chair of the Committee: Ms Julia Wortley

Signature
2023

Date: Wednesday 21 June

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 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.