

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

GENERAL OPTICAL COUNCIL

F(22)26

AND

HELEN LAMPKA (01-10388)

**DETERMINATION OF A SUBSTANTIVE REVIEW
20 MARCH 2024**

Committee Members:	Julia Wortley (Chair) Ben Summerskill (Lay) Jackie Alexander (Lay) Sarvat Fida (Optometrist) Caroline Clark (Optometrist)
Legal adviser:	Matthew Cassells
GOC Presenting Officer:	Jerome Burch
Registrant:	Not present or represented
Registrant representative:	N/A
Hearings Officer:	Humera Asif
Outcome:	Suspension order – 12 months with review

Proof of service

1. The Committee heard an application from Mr Burch for the Council, for this matter to proceed in the Registrant's absence. First, the Council was required to satisfy the Committee that the documents had been served in accordance with Section 23A of

the Act and Rule 61 of the Fitness to Practise Rules 2013. The Committee accepted the advice of the Legal Adviser.

2. The Registrant was served with the notice of hearing by post on 07 December 2023, a method permitted by Section 23A and Rule 61 of the Fitness to Practise Rules 2013. The Committee had regard to the contents of the notice, which included the date of this review, together with the requirements set out in Rule 56 and Rule 28(1)(b) to (e), namely the right to attend and be represented, the power of the Committee to proceed in absence, the right of the Registrant to adduce evidence, and the Committee's powers of disposal.
3. The Committee was satisfied that notice was served in accordance with the Rules and that reasonable efforts have been made to notify the Registrant of the hearing.

Proceeding in the absence of the Registrant

4. 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. The Committee heard submissions from Mr Burch on behalf of the Council and accepted the advice of the Legal Adviser.
5. The Committee noted that the Registrant had not responded to any correspondence from the GOC relating to the substantive hearing in March 2023 and had not attended the substantive hearing. The Registrant has not responded to any correspondence sent subsequently relating to this hearing despite, as the Committee has already found, being served in accordance with the Rules and all reasonable efforts having been made to notify the Registrant of the hearing.
6. In those circumstances, the Committee considered that the Registrant had voluntarily absented herself.
7. The Committee noted that the Registrant has not requested an adjournment and was not satisfied that an adjournment would secure the Registrant's attendance on a future occasion.
8. The Committee was mindful that this hearing is a mandatory review of a suspension order currently in place which is due to expire on 20 April 2024 and that there was therefore a particular public interest in proceeding.
9. In all the circumstances, the Committee determined that it would be in the public interest for the hearing to proceed in the Registrant's absence.

DETERMINATION

Background

10. The Registrant was first registered as an optometrist in March 1980.
11. At the substantive hearing, the Committee considered allegations in relation to the Registrant's care of 19 patients whom she examined between April 2016 and March 2018, whilst employed at Boots Opticians in *[redacted]*.
12. The allegations related to failures to keep adequate records of consultations, failures to carry out adequate examinations and assessments and failures to make or advise of the need for referrals for or reviews of new and/or existing conditions that patients presented with.
13. At the substantive hearing in March 2023, the Committee had found that a number of the particulars found proved were sufficiently serious to amount to misconduct and that the Registrant's fitness to practise was currently impaired.
14. In finding current impairment, the Committee in March 2023 noted that it had been provided with no information about the Registrant's current circumstances, including whether she was currently working as an optometrist or had done so since the events which gave rise to the allegations.
15. The substantive Committee in 2023 noted that the failures were clinical and therefore potentially remediable but that it had been provided with no evidence which would allow it to conclude that the Registrant had remediated to any extent. The Committee had also considered that there was very limited evidence of insight, the extent of it being a commitment, recorded in a letter the Registrant sent to NHS England, to ensure her record keeping in future was 'flawless'.
16. In light of this, the substantive Committee in March 2023 considered a finding of impairment was necessary to protect the public and in the public interest.
17. When considering what sanction to impose in March 2023, the Committee had noted that there was no evidence of harmful deep-seated personality or attitudinal problems or of repetition since the incident but that otherwise the factors suggested in the Indicative Sanctions Guidance (ISG) as indicating a suspension may be appropriate were engaged.
18. The March 2023 Committee rejected the option of erasure on the basis that the Registrant's misconduct was not fundamentally incompatible with being a registered professional and on the basis that, as the Registrant's reasons for non-engagement were not known, it would be proportionate to give her an opportunity to reflect on the Committee's reasons and consider whether she wished to engage with the process and takes steps to remediate.
19. The March 2023 Committee considered that, on review, a future Committee may be assisted by:
 - a. The Registrant's engagement and attendance at the review hearing.

- b. A statement from the Registrant with her reflections on the Committee's decision.
- c. Any training or CPD undertaken relating to the Committee's findings.
- d. Information from the Registrant about her current professional circumstances and any steps she has taken to keep her knowledge and skills up to date.

20. The order is due to expire on 20 April 2024.

Findings regarding impairment

21. The Committee today heard submissions from Mr Burch on behalf of the Council. It noted that it had been provided with no information from the Registrant for the purpose of this review.

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

23. The Committee noted that, whilst the concerns in respect of the Registrant's practice remained, in principle, remediable, it had not been provided with any evidence of remediation.

24. In particular, the Committee noted that:

- a. a series of recommendations as to what might assist a future Committee on review had been provided to the Registrant and that she had not engaged with any of these recommendations.
- b. there was no evidence presented which would allow it to conclude that the Registrant had reflected on the issues in her practice or gained further insight into how her practice had fallen short of acceptable standards.
- c. there was no evidence of remediation which, the Committee considered, could, even whilst suspended, have been evidenced through training and/or self-directed learning.

25. In those circumstances, the Committee considered that:

- a. there was no evidence which would allow the Registrant to discharge the persuasive burden on her to demonstrate she had addressed the impairment previously found.

- b. in the absence of any evidence to the contrary, there remains a real risk of the Registrant repeating the conduct found proved on the last occasion and thereby causing harm.
- c. the public's confidence in the profession would be undermined if a finding of impairment were not made where serious allegations had been found proved against a registered professional, and that same professional had taken no steps to address the issues in their practice over a 12 month period.

26. Accordingly, the Committee found the Registrant's fitness to practise is currently impaired.

Sanction

27. The Committee has heard submissions from Mr Burch on behalf of the Council. Mr Burch indicated that Council's position was that sanction was a matter for the Committee. He suggested that in the light of the Committee's finding of impairment either conditions of practice or a further period of suspension might be appropriate.

28. The Committee heard and accepted the advice of the Legal Adviser. He referred the Committee to the ISG and *Unozor v Nursing and Midwifery Council* [2016] which he advised was authority for the proposition that it is not appropriate to continuously extend substantive orders in the hope that a registrant might eventually engage.

29. The Committee accepted the advice of the Legal Adviser and had regard to the Indicative Sanctions Guidance.

30. The Committee considered the sanctions available to it from the least restrictive to the most severe, as set out in section 13(7) of the Opticians Act 1989, namely no sanction, conditional registration, suspension, and erasure.

31. The Committee applied the principle of proportionality by weighing the Registrant's interests with the public interest.

32. The Committee concluded that in the absence of any insight or remediation, it would be inappropriate to take no action. To do so would not be sufficient to address either public protection or the public interest issues identified above.

33. The Committee next considered whether conditional registration would be appropriate. It noted the terms of paragraph 21.5 of the ISG which states:

"Conditional registration may be appropriate when most, or all, of the following factors are apparent (this list is not exhaustive):

1. *No evidence of harmful deep seated personality or attitudinal problems.*



2. *Identifiable areas of registrant's practise in need of assessment or retraining.*
3. *Evidence that registrant has insight into any health problems and is prepared to abide by conditions regarding medical condition, treatment and supervision.*
4. *Potential and willingness to respond positively to retraining.*
5. *Patients will not be put in danger either directly or indirectly as a result of conditional registration itself.*
6. *The conditions will protect patients during the period they are in force.*
7. *It is possible to formulate appropriate and practical conditions to impose on registration and make provision as to how conditions will be monitored."*

34. The Committee noted that the Registrant did not engage with the Council with regard to the substantive hearing and has not engaged with the Council since that time. In these circumstances the Committee was not satisfied that appropriate conditions could be formulated which would sufficiently protect the public. The Committee therefore decided that an order for conditional registration was not appropriate or sufficient.
35. The Committee then went on to consider whether a suspension order would be an appropriate sanction. The Committee noted the terms of the ISG dealing with when suspension may be an appropriate sanction.

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

1. *A serious instance of misconduct where a lesser sanction is not sufficient.*
2. *No evidence of harmful deep-seated personality or attitudinal problems.*
3. *No evidence of repetition of behaviour since incident.*
4. *The Committee is satisfied the registrant has insight and does not pose a significant risk of repeating behaviour.*
5. *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."*

36. The Committee noted that the Registrant's persistent lack of insight and engagement was relevant to the question of whether a suspension order was appropriate. It kept in mind the advice it had received that it was not appropriate to continuously extend substantive orders in the hope that a registrant might eventually engage.

37. However, the Committee noted that:

- a. this was the first review of the substantive order imposed in March 2023.
- b. the period of non-engagement should be viewed in the context of an otherwise lengthy career.
- c. it had no information as to why the Registrant had not engaged thus far.

38. Before coming to a final decision on suspension the Committee considered the more restrictive option of erasure. The Committee kept firmly in mind that the purpose of sanction was to protect the public and uphold the wider public interest. It came to the view that to impose a sanction of erasure would be disproportionate and punitive at this time.

39. Taking all of this into account, the Committee determined that a suspension order was appropriate and proportionate.
40. The Committee next considered the length of the suspension order.
41. The Committee decided that the order should be for the maximum period of twelve months. In coming to this view, the Committee acknowledged that it would be wrong in principle for the Registrant to be subject to a suspension order in the hope that she might eventually engage. However, having considered this, the Committee concluded that a further period of 12 months would provide the Registrant with a reasonable period to consider whether she wishes to remain on the register and to begin to take steps to remediate the issues identified in her practice, if so minded.
42. The Committee decided that the suspension order should be reviewed before it expires.
43. Whilst this Committee cannot bind a future Committee it records for the Registrant's benefit its expectation that at the next review serious consideration may be given to erasure if there has been no further engagement from the Registrant.
44. A review hearing will be held between four and six weeks prior to the expiration of this order. The Review Committee would be assisted by:
- a. The Registrant's engagement and attendance at the review hearing.
 - b. A statement from the Registrant with her reflections on the Committee's decision.
 - c. Any training or CPD undertaken relating to the Committee's findings.
 - d. Information from the Registrant about her current professional circumstances and any steps she has taken to keep her knowledge and skills up to date.
45. The next Review Committee will need to be satisfied that the Registrant:
- a. has fully appreciated the gravity of the offence,
 - b. has not re-offended and has maintained her skills and knowledge and,
 - c. that the Registrant's patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.
46. The Committee has therefore determined that the Registrant shall be suspended from the register for a further period of 12 months with a review.

Chair of the Committee: Julia Wortley

Signature 

Date: 20 March 2024

Registrant: Helen Lampka

Signaturesent via email.....

Date: 20 March 2024

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
<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 www.professionalstandards.org.uk or by telephone on 020 7389 8030.</p>

**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.