

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

GENERAL OPTICAL COUNCIL

F(19)30

AND

SHAMIR KAZI (SD-8131)

**DETERMINATION OF A SUBSTANTIVE HEARING
17 FEBRUARY 2020**

Committee Members:	Mr I Crookall (Chair/Lay) Ms A Robertson-Rickard (Lay) Mr D Abbott (Lay) Mr S Pinnington (Dispensing Optician) Ms C Kimpton (Dispensing Optician)
Legal Adviser:	Mr G Dalglish
GOC Presenting Officer:	Mr R Price
Registrant represented:	Not present or represented
Registrant representative:	N/A
Hearings Officer:	Mr T Yates
Facts found proved:	Found
Conviction:	Proved
Impairment:	Impaired by reason of Conviction
Sanction:	Erasure
Immediate order:	Yes

Proof of service

The Committee heard an application from Mr Price for the Council for the matter to proceed in the Registrant's absence. First, the Council was required to satisfy the Committee that the documents had been served in accordance with Section 23A of the Act and Rule 61 of the Fitness to Practise Rules 2013. The Committee accepted the advice of the Legal Adviser.

The Committee found that notice had been served on the Registrant at both the Registrant's registered address with the GOC and at HMP Leicester on 15 January 2020 where the Registrant is presently serving his prison sentence. It was satisfied that service had taken place in terms of the relevant rules and noted that both notices to the Registrant's home address and at HMP Leicester had been signed for. The Committee was satisfied that all reasonable efforts have been made to notify the Registrant of the hearing.

Proceeding in the absence of the Registrant

The Committee then went on to consider whether it would be in the public interest to proceed in the Registrant's absence in accordance with Rule 22. The Committee accepted the advice of the Legal Adviser and considered the guidance in *Adeogba v GMC [2016] EWCA Civ 162*. It heard the submissions from Mr Price who reminded the Committee that this was a final hearing in respect of a serious matter and there was a strong public interest in proceeding in the absence of the Registrant.

The Committee determined that it was appropriate and fair to conduct the hearing in the Registrant's absence. All reasonable efforts had been made to effect service. The Registrant has not engaged and has made no response to the Council. He has not requested an adjournment. This is a serious matter, the Registrant having received a nine year prison sentence as a result of the conviction for grievous bodily harm. The Committee balanced the right of the Registrant to attend with the public interest in proceeding and concluded that it was appropriate and fair in the circumstances to proceed in the absence of the Registrant.

ALLEGATION

The Council alleges that in relation to you, Shamir Kazi (SD-8131), a registered student dispensing optician:

1. On 11 February 2019, at Leicester Crown Court, you were convicted of:
 - a. Causing grievous bodily harm with intent, contrary to Section 18 of the Offences Against the Person Act 1861.

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

DETERMINATION

Background to the allegations

The Registrant is a student dispensing optician registered with the Council since June 2016. Following an incident at a nightclub in [Redacted] the Registrant on 11 February 2019 was, following trial, sentenced to nine years imprisonment for causing grievous bodily harm with intent contrary to section 18 of the Offences Against the Person Act 1861. A Certificate of Conviction dated 5 April 2019 was produced to the Committee.

Findings in relation to proof of conviction

The Committee has heard submissions from Mr Price on behalf of the Council. It accepted the advice of the Legal Adviser and considered the terms of rule 40(3) which states that a signed Certificate of Conviction shall be conclusive proof of the offence. The Committee considered the Certificate of Conviction provided and accordingly found allegation 1 (a) proved.

The Committee is next required to consider whether the Registrant's fitness to undertake training is impaired by virtue of the criminal conviction.

Findings regarding impairment

The Committee has heard submissions from Mr Price on behalf of the Council. It accepted the advice of the Legal Adviser who referred it to the guidance in *CHRE v Grant* [2011] EWHC 927 (Admin). He reminded it to keep in mind the importance of the public interest in maintaining confidence in the profession and declaring and upholding proper standards.

Mr Price submitted that the Registrant's fitness to undertake training was currently impaired by reason of the conviction and that the public interest required a finding of current impairment as this was a serious conviction. He referred the Committee to the case of Grant. He submitted that the Committee should consider the issue of remediation and he submitted that, given the total lack of engagement by the Registrant, there was no evidence of remediation. He said this had been a violent assault and there remained a risk of repetition. He submitted that the Committee should consider the reputation of the profession and that the Registrant had breached fundamental tenets of the profession, namely to maintain confidence in the profession and to comply with the law.

The Committee concluded that the conviction is a very serious one, involving premeditation and conspiracy with others. This resulted in an innocent person being violently assaulted and suffering life changing injuries. The Judge at the trial described the injuries as "*very serious*". The victim now has limited vision in one eye. The Judge also described the offence as one involving "*a significant degree of premeditation*" and imposed a custodial prison sentence of nine years on the Registrant. The Committee noted that the Registrant pleaded not guilty.

The Committee has no evidence from the Registrant, who has not engaged with the Council. It has seen no evidence of any insight, reflection, remediation or remorse by the Registrant and concluded that there is a risk of repetition.

The Committee concluded that the offence for which the Registrant has been convicted is undoubtedly very serious. The Registrant has breached fundamental tenets of the profession and it concluded that he is liable to do so in the future. The Committee concluded that in light of the seriousness of the criminal offence, being the most serious non-fatal offence against a person, that the Registrant has, and is likely in the future, to bring the profession into disrepute.

A reasonable member of the public would rightly be most concerned were the Registrant's fitness to undertake training not found to be currently impaired. The Committee concluded that in all the circumstances public confidence in the profession and the regulator would be seriously undermined were the Registrant not found to be impaired.

The Committee accordingly found on public interest grounds that the Registrant's fitness to undertake training is currently impaired by reason of his conviction.

Sanction

The Committee has heard submissions from Mr Price on behalf of the Council. It has accepted the advice of the Legal Adviser who reminded it of the guidance in the Council's Indicative Sanctions Guidance (ISG). He reminded the Committee to act proportionately and to keep in mind the public interest.

Mr Price submitted that the only proportionate sanction was one of erasure. He reminded the Committee that this was a serious offence and he referred it to the guidance in *Bolton v Law Society [1994] 1 WLR 512*. He stressed the importance of the public interest and referred to the ISG at paragraph 36 being the guidance on the sanction of erasure. Mr Price emphasised that the Registrant was not yet a useful or competent Registrant given that he was still in training. He submitted that this was an offence involving violence and the Registrant had caused serious harm to the victim of the assault, and there was no evidence of insight by the Registrant.

Mr Price advised that there was an interim suspension order in place that would need to be revoked should erasure be imposed.

The Committee considered the aggravating factors were the seriousness of the conviction and the lack of evidence of any insight. It identified no mitigating factors.

The Committee considered the sanctions available to it from the least necessary to the most severe - no sanction, financial penalty, conditional registration, suspension, erasure. It started at the least restrictive.

The Committee was mindful of its earlier findings, including those on the nature and gravity of the conviction. The Committee concluded that imposing no sanction, a financial penalty and conditional registration would not be proportionate or appropriate sanctions as they would fail to proportionately protect the public interest and to uphold and declare proper standards. These sanctions would not sufficiently deal with the risk of repetition or the nature and gravity of the conviction.

The Committee considered suspension. The Committee was mindful of the nature and gravity of the conviction. The seriousness of the conviction coupled with the lack of any evidence of insight led the Committee to conclude that suspension would not be a sufficient or proportionate sanction. Suspension would fail to protect the public interest and would not uphold confidence in the profession or the regulator, and it would also fail to uphold and declare proper standards of conduct and behaviour.

The Committee has no evidence of remediation or any insight. It has identified a risk of repetition. The conviction was for a violent assault which caused life changing injuries. The Registrant deliberately, and with premeditation, caused serious harm to a member of the public through a violent assault. He has received a substantial

prison sentence as a result of his conviction. He was clearly in breach of the key tenets of the profession in relation to his personal conduct.

The Committee concluded that in all the circumstances nothing less than erasure would be a sufficient or proportionate sanction, and nothing less than erasure would sufficiently serve to maintain confidence in the profession.

Immediate order

The Committee has heard submissions from Mr Price on behalf of the Council. It has accepted the advice of the Legal Adviser.

On public interest grounds the Committee concluded that, given the nature and gravity of the conviction, the erasure order should take effect immediately.

Revocation of interim order

The Committee hereby revokes the interim order for suspension of registration that was imposed on 5 April 2019.

Chair of the Committee: Mr Ian Crookall

Signature **Date: 17 February 2020**

Registrant: Mr Shamir Kazi

Signature *Not present to sign* **Date: 17 February 2020**

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

F(19)30

General Optical Council

AND

Shamir Kazi

SD-8131

APPLICATION TO AMEND DETERMINATION HEARING

10 March 2020

Committee Members:	Ms Eileen Carr (Chair/Lay) Mr Ian Hanson (Lay) Ms Judith Stodel (Dispensing Optician)
Legal adviser:	Dr Hala Helmi
GOC Presenting Officer:	Mr Price
Registrant present/represented:	Not present and not represented
Registrant representative:	N/A
Hearings Officer:	Ms Anila Riaz
Outcome:	Application granted

Proof of service

The Committee heard an application from Mr Price 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 Act and Rule 61 of the Fitness to Practise Rules 2013 (the 2013 Rules). The Committee accepted the advice of the Legal Adviser.

The Committee took account of the notice of today's hearing which referred to the hearing as a "Directions Meeting" in the Notice of Inquiry. The Committee also took into account Rule 31 of the 2013 Rules which requires that the date of a procedural hearing must not be earlier than 7 days after the date upon which party requiring the hearing notified the registrar of the request. While this is a somewhat unusual application to be considered by the Committee today, it appeared to the Committee that today's hearing could be accurately described as a procedural hearing.

The Committee is satisfied that all reasonable efforts have been made to notify the Registrant of the hearing and that the Notice of the hearing has been served in accordance with the statutory requirements.

Proceeding in the absence of the Registrant

The Committee then went on to consider whether it would be in the public interest to proceed in the Registrant's absence in accordance with Rule 22. Mr Price submitted that the hearing should proceed today. The Committee accepted the advice of the Legal Adviser.

The Committee took into account that the Registrant is currently serving a nine year sentence of imprisonment. There has been no application by him for an adjournment. The Committee also took into account that the purpose of today's hearing is to correct an error with regard to the immediate order as referred to in the decision of the Committee at the substantive hearing on the basis that it was a 'slip'. In the circumstances, the Committee was satisfied that it is in the interests of justice, in the public interest, and fair to the Registrant to proceed today.

Decision

The Committee read the skeleton argument of Mr Price who submitted that there was an accidental error in the decision of the Committee before which the substantive hearing took place. Having decided to erase the Registrant, and in considering whether there should be an immediate order, the substantive hearing Committee decided that "the erasure order should take effect immediately". Mr Price submitted that that this is an error in light of the section 13I(1) of the Opticians Act

1989 which makes clear that where erasure has been ordered, the Committee may order suspension on an immediate basis. There is no power to order erasure on an immediate basis. Mr Price referred to *Fajemisin v GDC* [2013] EWHC 3501 and *R (on the application of Jenkinson) v NMC* [2009] EWHC 1111.

The Committee accepted the advice of the Legal Adviser which was that the Committee does have the power to correct an accidental error as long as it is a mistake in the nature of a “slip” of language and not an error of a substantive nature.

The Committee was satisfied that the reference in the previous Committee’s decision referring to an immediate erasure order was an accidental error of expression in the decision. The power of the Committee is clear in section 13I(1), and the Committee can only intended to have referred to an immediate order of suspension.

The Committee therefore decided that in the “Immediate order” section of the previous decision, the wording should be corrected as follows:

“On public interest grounds the Committee concluded that given the nature and gravity of the conviction, **the Registrant should be suspended forthwith**”.

Chairman of the Committee: Ms Eileen Carr

Signed: _____ **Date: 10 March 2020**

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. PSA is required to make its decision within 40 days of the hearing (or 40 days from the last day on which a registrant can appeal against the decision, if applicable) and will send written confirmation of a decision to refer to registrants on the first working day following a hearing. PSA will notify you promptly of a decision to refer. A letter will be sent by recorded delivery to your registered address (unless PSA has been notified by the GOC of a change of address).</p> <p>Further information about the PSA can be obtained from its website at 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.
European Alert
The General Optical Council is required by Regulation 67 of the European Union (Recognition of Professional Qualifications) Regulations 2015 to inform all European competent authorities of any restrictions or prohibitions on a dispensing optician or an optometrist's practice. 'Competent authority' effectively means the relevant regulator for each EU member state.

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

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

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

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

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

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

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

Please see the attached information sheet for further information.

Contact

If you require any further information, please contact the Council's Hearings Manager at 10 Old Bailey, London, EC4M 7NG or, by telephone, on 020 7580 3898.

European Alert – Information Sheet

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

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

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

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

2. What is the purpose of these alerts?

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

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

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

4. Who will see the alert?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On appeal the County Court may:

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

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

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

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