

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

GENERAL OPTICAL COUNCIL

F(19)39

AND

MR ALISTER BLOCKLEY (01-14606)

**DETERMINATION OF A SUBSTANTIVE HEARING
1 APRIL 2020**

Committee Members:	Ms J Wheat (Chair/Lay) Ms S Bradford(Lay) Mr K Connolly (Lay) Ms A Basra (Optometrist) Mr G Elliott (Optometrist)
Clinical adviser:	n/a
Legal adviser:	Mr P Moulder
GOC Presenting Officer:	Mr R Price
Registrant present/represented:	No and not represented
Registrant representative:	n/a
Hearings Officer:	Ms A Riaz
Facts found proved:	Paragraphs 1(a) 1(b) 1(c)
Facts not found proved:	None
Misconduct:	Not applicable
Impairment:	Impaired
Sanction:	Erasure
Immediate order:	Imposed

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 Opticians Act 1989 and Rule 61 of the Fitness to Practise Rules 2013. The Committee accepted the advice of the Legal Adviser.

The Committee noted that the Council had sent to the Registrant a letter dated 15 January 2020 with the date of the hearing, which had been collected by the Registrant on 31 January 2020. A further letter dated 02 March 2020 had been collected on 30 March 2020. The Council had emailed the Registrant on 18 March 2020 inviting him to a 'remote' hearing and emailed a further letter dated 25 March 2020. The Registrant had emailed in response, acknowledging the date of the hearing on 31 March 2020.

The Committee is satisfied that all reasonable efforts have been made to notify the Registrant of the hearing. It noted that the requirement extended to sending only, but it also had evidence that the letters dated 15 January 2020 and 02 March 2020 had been collected by the Registrant.

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.

The Legal Adviser advised the Committee that this hearing was being held by remote link, due to the current Coronavirus emergency. The Registrant was emailed on the 31st March and provided with a link to enter the hearing.

The Committee was satisfied that the Registrant was aware of the hearing. There had been no request for an adjournment, and the Committee found that no purpose would be served in adjourning the case. The Registrant had stated that he would not be participating in the hearing, nor be represented. The Committee reminded itself that fairness to the Registrant must be balanced with fairness to the Regulator and the public. The public interest in protection of the public, maintaining confidence in the profession and upholding and declaring standards were engaged. The Committee determined that the Registrant had voluntarily absented himself from participating in the remote hearing and that it should proceed in his absence.

The Committee determined that it would be in the public interest for the hearing to proceed in the Registrant's absence.

ALLEGATION

The Council alleges that in relation to you, Alister Blockley (01-14606), a registered optometrist:

1. On 26 May 2019, at York Crown Court, you were convicted of:

(a) Making an indecent photograph or pseudo-photograph of a child, contrary to Section 1(a) of the Protection of Children Act 1978; and

(b) Possession of extreme pornographic images of intercourse or oral sex with an animal (whether dead or alive), contrary to Section 63(1) and 7(d) of the Criminal Justice and Immigration Act 2008;

(c) Failing to surrender to custody at an appropriate time, contrary to Section 6(1) of the Bail Act 1976.

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

DETERMINATION

Background to the allegations

The Registrant is registered with the General Optical Council (“the Council”) as a registered optometrist. He was first registered on 02 October 1992. In or around October 2017 the Registrant made to the Council a Declaration that he had been arrested for “suspicion [stet] of Possess to show/ distribute/indecent photograph/ pseudo photograph of a child”. By letter dated 24 October 2017 the Police also informed the Council of the Registrant’s arrest. On 28 May 2019 the Registrant was convicted of offences at the Crown Court at York, on his own guilty plea.

The facts of the offences are that police, acting on information received, attended the Registrant’s address and seized computer hardware. The police found on the computer hardware 422 videos or images, 209 of which were in IIOC (‘Indecent Images of Children’) Category A, 103 in Category B and 110 in Category C (Count 1 of the indictment). In addition, Police found 823 extreme pornographic images (Count 2). Further, the Registrant had failed to attend court for his original sentencing hearing (Count 3)

The Council has been provided with a certificate of conviction dated 17 July 2019 and a Police National Computer print-out detailing the convictions as set out in the charge above. The Registrant was sentenced on 17 July 2019 to a total of 12 months’ imprisonment suspended for 24 months, 20 Rehabilitation Activity Days, 200 hours’ unpaid work and 10 years Sex Offender Registration and 10 years Sexual Harm Prevention Order.

Findings in relation to proof of conviction

The Committee has heard submissions on behalf of the Council and the Registrant. It has accepted the advice of the Legal Adviser.

The Committee had before it the Certificate of Conviction dated 17 July 2019. Pursuant to rule 40 (3) of the Fitness to Practice Rule 2013, production of a certificate of conviction shall be conclusive evidence of the offence committed. The Committee is required to consider whether the Registrant’s fitness to practise is impaired by virtue of the criminal conviction. Pursuant to Rule 40(5) the only ground of challenge possible was that the Registrant was not the person convicted, but no such challenge had been made.

The Committee found it proved that the Registrant had been convicted of the offences in paragraph 1 above.

The Committee also found that a conviction was a ground for a potential finding of impairment within section 13D(2) of the Opticians Act 1989, because it was expressly stated so in that section of the Act.

Findings regarding Impairment

The Committee next considered whether the Registrant's fitness to practise was impaired by reason of his conviction for the offences.

Submissions on behalf of the Council

The Committee has heard submissions from Mr Price on behalf of the Council. Mr Price submitted that this involved consideration of past actions and current impairment. He said that this case involved the most serious and awful kind of photographs and reminded the Committee of the number and content of the images found and their IIOC categories. The Registrant did plead guilty when the matters came before the Crown Court but had not initially admitted to his offending behaviour.

Mr Price submitted that the Registrant had not demonstrated remediation at all to this Committee and there remained a risk of repetition. The only contact from the Registrant to the Council had been his email the night before the hearing. Mr Price referred to the Standards for Optometrists and submitted that standard 17 and 17.1 was engaged. The Registrant's conduct had clearly damaged public confidence in the profession.

Mr Price submitted there was a risk to public protection due to the Registrant's demonstrable sexual interest in children, in circumstances where the Registrant was called upon to examine children. Mr Price took the Committee to the test set out in the case of *CHRE v NMC & Grant [2011] EWHC 927 (Admin)*. He submitted that the tests of impairment relating to putting patients at a risk of harm, bringing the profession into disrepute and breaching fundamental tenets were all made out. Mr Price submitted that the Registrant's fitness to practise was currently impaired.

Decision on Impairment

The Committee has accepted the advice of the Legal Adviser. The Legal Adviser advised the Committee that a determination on impairment was a matter for its judgement. He reminded the Committee it was concerned with the question of current impairment but that in doing so it had to consider the past actions of the Registrant and address the question of the risk of repetition. He reminded the Committee of the test in *Cohen v GMC [2008] EWHC 581*, as to whether the Registrant's past conduct was remediable, had been remediated and was highly unlikely to be repeated. He reminded the Committee of the test of impairment as set out in the case of *Grant*.

The Committee was of the view that the convictions were for offences which were very serious, involving images of the most appalling and extreme kind.

The Committee determined that all three limbs of the overarching objective, namely; protecting the public, maintaining confidence in the profession and declaring and upholding proper standards of conduct and behaviour were engaged in this case.

The Committee were not satisfied that the offending behaviour was capable of remediation and there was certainly no evidence of effective remediation, beyond the Registrant's assertion by email that he was complying with the terms of his sentencing by the Crown Court. The Committee had no evidence before it which suggested the Registrant has reflected upon his behaviour or shown insight into it. The Committee determined that, in these circumstances, there was a real risk of repetition of his offending behaviour. There was therefore a risk to the public, especially if the Registrant was called on to examine children in his role as an optometrist.

The Committee regarded that Standards 17 and 17.1 were engaged in this case, which stated:

17. Do not damage the reputation of your profession through your conduct

17.1 Ensure that your conduct, whether or not connected to your professional study does not damage public confidence in you or your profession.

The Committee was of the view that the Registrant's offending behaviour breached these standards and brought the profession into disrepute.

In the view of the Committee the offences for which the Registrant was convicted were so serious that public confidence in the profession would be undermined were a finding of impairment not made in this case.

In all the circumstances, The Committee determined that the fitness of Mr Blockley to practise as an optometrist is currently impaired.

Sanction

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

Submissions on behalf the Council

Mr Price submitted that whilst the Registrant had paid a high price personally for his actions the key considerations were protection of the public and the collective reputation of the profession. He reminded the Committee of the case of *CHRE v GDC and Fleischmann [2005] EWHC 87 (Admin)* which he said was similar on the facts. He also drew the Committee's attention to the case of *Bolton v Law Society [1994] 1 WLR 512* and the 'essential issue' of the need to maintain confidence in the profession and that the reputation of the profession is more important than the fortunes of an individual member. Mr Price referred the Committee to relevant parts of the Hearings and Indicative Sanctions Guidance ("Sanctions Guidance"). Mr Price submitted that on the facts of this case the only appropriate sanction was erasure and anything less would harm the reputation of the profession and also would also be insufficient for public protection.

Sanction Decision

The Legal Adviser advised the Committee that the matter of sanction was for the Committee to determine, based on all the facts and that it should have reference to

the Sanctions Guidance. He said that the Committee should consider the sanctions in order of seriousness and impose a sanction that was appropriate and proportionate to the level of impairment. He also reminded the Committee of the principle in *Fleischmann*, that in general terms it was wrong for a professional who had committed a serious criminal offence to be able to resume practice until the sentence was satisfactorily completed.

The Committee could identify little in the way of mitigating features in the case. It acknowledged that the Registrant had pleaded Guilty at the Crown Court and had expressed contrition in his email. It noted that the Registrant had ceased from practice on being arrested in 2017. The Committee also noted that there were aggravating features in the case, including the number and nature of the images involved, that there had been no outright admission to all aspects of the offences at the outset and that the criminal behaviour extended for a significant period. There had been no real indication of insight into his offending behaviour on the part of the Registrant for example an understanding of the harm caused to the victims who were children.

The Committee considered the sanctions available to it from the least necessary to the most severe (no sanction, financial penalty, conditional registration, suspension, erasure).

The Committee considered that there were no exceptional features in this case that allowed it to take no action. Such a course would be completely inappropriate for this type of offending behaviour, would fail to protect the public and would not uphold professional standards and behaviour. Similarly, a fine was completely inappropriate.

The Committee next considered imposing a conditions of practice order. It noted that the Registrant had been out of practice for a substantial period. It reminded itself that any conditions had to be proportionate, measurable and workable. The Committee concluded it was not possible to formulate conditions which would deal appropriately with the attitudinal issues in the case. Nor could any conditions be devised which would deal adequately with the public protection issues, bearing in mind that children would likely be coming to any practice in which the Registrant might work. In the Committee's view, to stop at imposing conditions would not serve to maintain confidence in the profession in the circumstances of the case.

The Committee next considered whether to impose a Suspension Order on the Registrant. It noted the factors set out in the Sanctions Guidance at paragraph 34. The significant period of the offending behaviour indicated deep-seated personality or attitudinal problems on the part of the Registrant. Nor had the Committee had not been provided with any evidence of insight or remediation.

Moreover, given the severity of the offending and the damage to the reputation of the profession that had been occasioned, the Committee determined that this sanction was inappropriate.

The Committee also bore in mind the principle set out in *Fleischmann*, and the fact that the Registrant will remain subject to a suspended sentence of imprisonment until July 2021. This also indicated that suspension would not be appropriate, since the maximum period of suspension was 1 year.

The Committee next considered the sanction of erasure. It noted paragraph 36.2 of the Sanctions Guidance and noted that "*erasure from the register is appropriate where this is the only means of protecting patients and/or maintaining public confidence in the optical profession*".

Furthermore, the Committee considered paragraph 38.4 which states: “*A conviction for these offences[indecent images of children] is a matter of grave concern and it is, therefore, highly likely that the only proportionate sanction will be erasure*”.

The Committee have already noted that this was a serious departure from the Standards of Practice. The children/victims in the images had suffered serious harm and all of the images were of a sexual nature. Over 200 were of the most serious, Category A, involving penetrative sexual activity. In the view of the Committee the behaviour of the Registrant in committing these offences was fundamentally incompatible with continued registration.

The Committee considered the proportionality of ordering erasure from the Register, and was in no doubt this would have a serious effect on The Registrant’s ability to pursue his profession. However, in its view, the requirements of protection of the public and the public interest in maintaining confidence in the profession outweighed the Registrant’s interests.

The Committee therefore determined to erase the Registrant’s name from the Register.

Immediate order

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

The Legal Adviser advised the Committee that it could, where it has made an order for erasure, impose an immediate order for suspension, to cover the appeal period, where it was satisfied that it was necessary for protection of the public, was otherwise in the public interest, or was in the registrant’s best interests.

The Committee has decided to impose an immediate suspension order. The Committee was satisfied that it was necessary, in view of the risk identified in relation to the Registrant’s sexual interest in children, to make an immediate suspension order on the grounds of public protection. It was also otherwise in the public interest to impose the immediate suspension order to maintain public confidence in the profession, since the Registrant’s conviction was for serious offences that harmed confidence in the profession.

Revocation of interim order

The Committee hereby revokes the interim order for suspension of registration that was imposed on 30 July 2018.

Chair of the Committee: Ms Jayne Wheat

Signature

Ms Jayne Wheat

Date: 01 April 2020

Registrant: Mr A J Blockley

Signature

Date:

NOTICE TO REGISTRANT:

- The GOC will enter these conditions against your name in the register save for any conditions that disclose information about your health.
- In accordance with Section 13C(3) of the Opticians Act 1989, the GOC may disclose to any person any information relating to your fitness to practise in the public interest.
- In accordance with Section 13B(1) of the Opticians Act 1989, the GOC may require any person, including your learning/workplace supervisor or professional colleague, to supply any information or document relevant to its statutory functions.

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. 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).

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.

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.