

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

GENERAL OPTICAL COUNCIL

F(17)12

AND

JAGDIP DHARIWAL (01-14618)

**DETERMINATION OF A SUBSTANTIVE HEARING
14-15 October 2019 and 27 -28 April 2020
(Video hearing on 27-28 April 2020)**

Committee Members:	Dr P Ormerod - (Chair/Lay) Mr P Curtis - (Lay) Mr D Brown - (Lay)(14-15 October 2020 only) Ms S Nasrullah - (Optometrist) Ms A Basra - (Optometrist)
Legal adviser:	Mr I Ashford-Thom (14-15 October 2019) Ms S Zouq (27-28 April 2020)
GOC Presenting Officer:	Ms H Thomas
Registrant present/represented:	Yes and represented
Registrant representative:	(14-15 October 2019) Mr S Hammond Ms L Shah - (AOP) (27-28 April 2020) Mr S Singh Ms S Hatt
Hearings Officer:	Ms V Desai (14-15 October 2019) Ms A Riaz (27-28 April 2020)
Facts found proved:	1, 2, 3 – proved by admissions

	4a not considered 4b – found proved
Facts not found proved:	None
Misconduct:	Found
Impairment:	Impaired
Sanction:	6 months suspension (Without Review)
Immediate order:	No

DETERMINATION

The Committee heard evidence and considered documentary evidence relating to allegations against the Registrant, a registered Optometrist who was first registered on 2 October 1992.

ALLEGATION

The allegations are as follows;

The Council alleges that you, Jagdip Dhariwal, a registered Optometrist:

1. On 22 October 1998 you were convicted at Southampton Magistrates' Court of an offence of indecent exposure to the annoyance of residents on 24 September 1998 contrary to section 28 of the Town Police Clauses Act 1847.
2. On or around the following dates, you stated on an application for retention form that you had not been convicted of a criminal offence, namely:
 - a. 10 February 2006;
 - b. 1 January 2007;
 - c. 12 March 2008.
3. You did not declare your conviction to the General Optical Council:
 - a. On the application for retention form for the period 2009 – 2010;

- b. On the application for retention form for the period 2010 – 2011;
 - c. On the application for retention form for the period 2011 – 2012;
 - d. On the application for retention form for the period 2012 – 2013;
 - e. On the application for retention form for the period 2013 – 2014;
 - f. On the application for retention form for the period 2014 – 2015;
 - g. On the application for retention form for the period 2015 – 2016;
 - h. At any point before 12 January 2016.
4. Your actions at (2) and (3) were:
- a. Misleading in that you knew, or ought to have known, that you had been convicted of an offence and were required to declare it to the General Optical Council;
 - b. Dishonest in that you knew you had been convicted of an offence and understood that you were required to declare it to the General Optical Council;

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

Background to the allegations

The Committee considered the witness statement of **Witness 1** dated 22 March 2017. **Witness 1** was the [REDACTED].

Her witness statement was agreed by the Registrant. **Witness 1** in her witness statement set out the background to the allegations which is as follows:

On 22nd October 1998, the Registrant was convicted at Southampton's Magistrates Court of indecent exposure. He was fined £100 and ordered to pay costs of £45.

It is alleged that the Registrant failed to disclose this conviction to the GOC until 12 January 2016, despite being required to make such disclosure when completing retention forms from 2006 onwards.

There was no obligation on applications forms for disclosure of criminal offences before 2006. In 2006, such a requirement was included. It was in the following terms:

“Section 4 - Criminal and disciplinary proceedings

1. *Have you ever been convicted of, or cautioned in relation to a criminal offence (or been the subject of an Agreed Order, Penalty Payment Agreement, or Absolute Discharge Order in Scotland) or are you currently being investigated in relation to a criminal offence?"*

Then there is "yes" and "no", and, "if yes, please give details below."

The Registrant ticked the "no" box and signed and dated the form on 10 February 2006. Above his signature there is written *"I declare that the information given in this form is true and accurate."*

The Registrant completed forms in the same format in 2007 and 2008. He again indicated that he had no convictions for a criminal offence and signed and dated these forms below the above declarations.

In 2009-10 and 2010-11 the application forms changed in format but still required the Registrant to disclose any convictions or cautions. The relevant section was in the following terms:

*"Please provide full details of any convictions or cautions (or any Agreed Offer, Penalty Payment Agreement, or Absolute Discharge Order in Scotland), or any investigations in relation to a criminal offence. You must declare any conditional caution and any conviction which led to the imposition of a conditional or absolute discharge. This must include any conviction etc that you believe spent. You should give full details of the **date, offence committed, the penalty or punishment imposed and the circumstances leading the event. This should include the amount of any fine and the name of any court you attended.**"*

There were "No" and "Yes" boxes which asked the Registrant if he wished make any declarations. He ticked "No." He also signed the form alongside the declaration, that the information given in the form is "true and accurate".

The Registrant completed a form in 2010-11 in the same format declaring that he had no criminal convictions.

From 2011-16 the declaration form was completed on-line. The form included "declaration of criminal matters" under which was written:

"You must provide the details of the date of the offence, name of court, any penalty or punishment including the amount of any fine and background circumstances that are applicable:

- *Conviction in the British Isle or abroad"*

Throughout these years, the Registrant completed the forms, declaring he had no criminal convictions.

On 17 December 2015, the GOC received an anonymous allegation that the Registrant had a criminal conviction for indecent exposure.

On 12 January 2016, before the GOC had notified the Registrant of the anonymous allegation, the Registrant wrote to the GOC declaring his conviction on 22nd October 1998 for indecent exposure. In the letter, he stated that the conviction arose out of a streaking incident with friends during a university freshers' week. The Registrant stated that,

"At the material time I was not aware it was considered criminal behaviour or that it would mean I had a criminal record. I have very little recollection of the attendance at Southampton Magistrates Court. I paid the fine and associated costs and put the incident behind to concentrate on my studies. In my mind it was a student prank for I had simply been fined and did not attach any "conviction" to the matter."

The letter continued,

"However, following a routine DBS check when changing OPL lists in 2013 I was very surprised to learn there was a record of the incident. On speaking with the PCT they simply asked me a few questions and advised it did not affect my ability to practise and included me on the OPL list. Once again, I thought no more of the issues."

It is only recently in discussion with my employer, who is aware of the conviction, asked whether I had made the GOC aware of the matter. On reflection of this point, I thought it was very likely I had not. I think in the first instance, when I first registered in 2005, I was simply not aware I had a conviction and made no disclosure. In 2013 I made no declaration because in my mind this was not a new matter and there was no ongoing police investigation and I filled in the forms as I had always done. I now realise this was not correct."

Consequently, I would like to declare I have this conviction. I can confirm that since that date I have not been the subject of any police investigation and have no other convictions or cautions. I apologise sincerely for not declaring this matter sooner; it was most unconsciously done, with no intent to hide the matter. I enclose a copy of the relevant DBS check for your information."

The DBS form is dated 6 January 2013. In the box "conviction details" it records the Registrant's conviction in 1998 for "indecent exposure to the annoyance of residents" on 24 September 1998 at Southampton's Magistrates Court and that the conviction resulted in a fine of £100 and costs amounting to £45.

In the course of the hearing, Mr Hammond on behalf of the Registrant indicated that Particulars 1, 2 and 3 of the allegation were admitted in their entirety. The Committee therefore found these charges proved by way of admission.

Application to amend allegations

The allegations in Particular 4 were denied. In the course of the hearing, Particular 4a was amended to remove the words “knew or” so that the amended charge read:

“Your actions at (2) and (3) were:

Misleading in that you ought to have known, that you had been convicted of an offence and were required to declare it to the General Optical Council”

This amendment was made by consent. The Committee was informed that the intention was that the allegations in Particulars 4a and 4b were made in the alternative.

At the hearing

The Registrant gave evidence on oath. He stated that he had not appreciated that he had a criminal conviction until the discussion with his employer in late summer of 2015. This caused him to seek the advice of the Association of Optometrists which led him to write the letter of declaration to the GOC dated 12 January 2016.

The Registrant told the Committee that he was aged 28 at the time of the incident. He was a practising optometrist, who had completed a second degree and returned to [REDACTED] where he owned a house following a year of working abroad.

He stated that:

“On 24th September 1998, we were at home in [REDACTED], celebrating some good news of a friend. My friend had just got engaged to his girlfriend. Five of us had gathered together for dinner and a few drinks. It was fresher’s week and two of those invited were students at the University [REDACTED]. Everyone was in very high spirits at the time.

By around midnight, three of us were quite drunk and were being encouraged by the others to streak into the cold. It was a foolish dare but being silly we decided to strip off and ran outside. We stood outside, only briefly, without any clothes on and laughed before dashing back inside. There were a few students who were milling around outside, and a police vehicle pulled up as the students raised their voices to cheer us on. Realising the dare had been inappropriate and stupid we quickly dressed as officers came to the door and demanded to be let in.”

He then stated:

“I was taken to a police station and put in a police cell. I was not aware at the time that I was being arrested, probably because I was quite drunk. Again I cannot remember being offered legal representation. I was held in the cell for a number of hours and then released.”

He then received a summons in the post to appear at Southampton Magistrates Court. He attended without legal representation. He pleaded guilty and was asked a few “jocular questions” by the Court and was fined £100. He thought that the fine was “pretty lenient and represented the close of an unfortunate matter” he saw it as a “slap on the wrist” and not as an actual criminal conviction.

Cross-examined by Ms Thomas, it was put to the Registrant that he must have realised that the incident in 1998 had resulted in a criminal conviction. The fact that he had been arrested and taken to the police station and kept in the cells for few hours, before being released and that he had thereafter, received a summons for the alleged offence and attended at Southampton’s Magistrates Court must have made it clear to him that he was being charged with and convicted of an criminal offence.

The Registrant responded that he had just seen the fine as a “ticking off”. He did not realise it was a conviction. He did not take legal advice at the time which was his fault. He said that he thought it was similar to a fixed penalty notice for speeding or littering. He did not regard himself as a criminal. The Registrant, in his evidence, stated that he regarded criminals as thieves or murderers and that convictions were for dangerous people who get into fights or deal drugs.

The Committee also heard evidence from the Registrant’s [REDACTED], Ms 1. She gave evidence in support of the Registrant’s integrity and absolute honesty. She told the Committee that after the event in 1998 he had told her what had happened including being taken away by the police to sober up. He had also told his [REDACTED] later that he had been given a telling off and a fine or a reprimand. Nobody thought it was a conviction. She stated that he had not understood that he had a criminal conviction.

The Committee also received references from some 40 individuals attesting to the Registrant’s honesty and integrity.

The Committee heard closing submissions from Ms Thomas on behalf of the GOC and Mr Hammond on behalf of the Registrant.

The Committee accepted the advice of the Legal Adviser. He advised that the burden of proof lay on the GOC and there was no burden on the Registrant to prove or disprove anything. The Standard of proof to be applied was the balance of probabilities. With regard to the charge alleging dishonesty, the test to be applied was set out by the *Supreme Court in Ivey v Genting Casinos [2017] UKSC 67*. Where dishonesty is in question the, fact-finding tribunal must ascertain, subjectively, the actual state of the individual’s knowledge or believe as to the facts. The reasonableness of that belief is a matter of evidence going to whether they held the belief, but it was not an additional requirement that the belief had to be reasonable; the question is whether it was genuinely held. When the state of mind has been established the question whether the conduct was honest or dishonest is to be determined by applying the objective standards of ordinary decent people. There is

no requirement that the person concerned must appreciate that the conduct was dishonest by those standards.

The Committee considered the Registrant's evidence. Given the circumstances surrounding the offence and its disposal at the Magistrates Court the Committee found it impossible to accept the Registrant's account that he had not realised that at the time that he had received a criminal conviction. The Committee was satisfied that the Registrant must have realised when he was arrested and taken to the police station and locked in a cell for several hours that the incident involved something much more serious than a fixed penalty fine for speeding or littering. The formality of receiving a summons for the alleged offence and the experience of attending court and pleading guilty to, that offence must have made it abundantly clear to the Registrant that he was being convicted of a criminal offence.

If, which the Committee did not accept, the Registrant was in any doubt as to the fact he had received a conviction at the time, any doubt must have been removed when he saw the DBS certificate in 2013, which expressly recorded his "conviction" for indecent exposure.

The Committee therefore rejected the Registrant's evidence that he had until January 2016, genuinely believed he had not received a criminal conviction for his offence in 1998. The Committee was satisfied that he knew that the incident he described as "streaking" had resulted in a criminal conviction and that he made declarations from 2006 onwards which were untrue. The Committee was satisfied that the Registrant's conduct in intentionally failing to disclose his conviction on the annual retention forms was conduct that would be regarded as being dishonest by applying the objective standards of ordinary decent people.

With regard to **Witness 1's** evidence the Committee accepted her evidence. However, her impression at the time that the Registrant believed that he had not received a criminal conviction was based on what the Registrant had told her. As the Committee has concluded in the above paragraph the Committee does not accept that the Registrant genuinely believed that he had not received a criminal conviction.

With regard to the references provided by the Registrant, the Committee had no reason not to accept that the Registrant is in general terms a person of honesty and integrity. However, the Committee was satisfied that his failure to disclose this conviction, repeatedly, between 2006 and 2016 was dishonest.

The Committee therefore concluded that the Particular of dishonesty in 4b was found proved on the balance of probabilities. Accordingly, there was no requirement to consider the alternative Particular in 4a.

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Hearing Adjourned

****RESUMED HEARING 27-28 April 2020****

Findings in relation to misconduct

The Committee has heard submissions from Ms Thomas on behalf of the Council and from Mr Singh on behalf of the Registrant. It has accepted the advice of the Legal Adviser.

Ms Thomas, on behalf of the GOC, submitted that the Registrant's conduct fell far below the standard required of registered optometrists. She submitted that the Committee's finding of dishonesty is serious and referred the Committee to the relevant codes that the Registrant has breached. She reminded the Committee of the relevant case law and concluded that that Registrant's actions were sufficiently deplorable to amount to misconduct.

Mr Singh, on behalf of the Registrant, conceded misconduct.

The question of whether the facts constitute misconduct is for the judgment of the Committee and there is no burden or standard of proof.

There is no statutory definition of misconduct, but the Committee had regard to the guidance of Lord Clyde in *Roylance v GMC* (No 2) 1 AC 311: "*Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances...*". The conduct must be serious.

The alleged misconduct occurs over the currency of two editions of the professional code. The Committee considered those codes and bore in mind that not every breach of the codes will result in a finding of misconduct; however it noted that the codes are indicative of behaviour expected of a registered optometrist. The Committee concluded that the Registrant's actions breached the following principles and standards:

The GOC Code of Conduct for Individual Registrants (2005):

Principle 10: be honest and trustworthy.

The GOC Standards of Practice for Optometrists and Dispensing Opticians (effective from April 2016)

Standard 16. Be honest and trustworthy

16.1 Act with honesty and integrity to maintain public trust and confidence in your profession.

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

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

17.3 Be aware of and comply with the law and regulations that affect your practice, and all the requirements of the General Optical Council.

The Committee considered that the Registrant's intentional failures to disclose his conviction on annual retention forms between 2006 and 2015 was a lengthy period of time. His conduct involved active dishonesty during each decision to apply for renewal of registration. The Registrant's conduct is aggravated by his assertion that he was not aware of having received a conviction. As the Committee noted earlier any doubt would have been removed in 2013 when he saw the DBS certificate which expressly recorded his "conviction" for indecent exposure. Despite this the Registrant failed to declare his conviction until January 2016.

The Committee concluded that the Registrant's conduct was a significant departure from the Code and Standards so as to amount to misconduct. The potential consequences of his dishonesty were serious, seeking as it did to frustrate the ability of his regulator to effectively exercise its function. This was likely to undermine public confidence in the profession and the integrity of the register.

During its deliberations the Committee noted that no submissions had been received by the parties on misconduct and impairment with respect to Particular 1. The Legal Adviser informed the Committee that Particular 1 details the fact of the conviction, however, the statutory ground of impairment by reason of conviction is not alleged by the Council. She stated that Mr Hammond, on behalf of the Registrant, acknowledged the absence of conviction as a ground of impairment at the factual stage in October 2019. The Legal Adviser stated that Particular 1 is to be read as a fact only. She then advised the Committee that it may help inform their deliberations if the Council is asked to clarify the position on misconduct and impairment in respect of Particular 1. The Committee agreed.

The Committee received a document from the Council titled “Note on Charge 1”. The Council confirmed that it does not allege that the conviction amounts to misconduct and does not submit that the Registrant’s fitness to practice is impaired by way of Particular 1. The Committee took the Note on Charge 1 into account during its deliberations.

In the Committee’s judgment the Registrant’s conduct in particulars 2, 3 and 4(b) fell far below the required standards and behaviour of a registered optometrist and was sufficiently serious to constitute misconduct that fellow practitioners would consider deplorable.

Findings regarding impairment

The Committee has heard submissions from Ms Thomas on behalf of the Council and from Mr Singh on behalf of the Registrant.

Ms Thomas submitted that the Registrant’s conduct is sufficiently egregious as to warrant a finding of impairment, particularly so given the limited insight demonstrated. She reminded the Committee of the submission made by Mr Hammond (Counsel for the Registrant on days 1 and 2 of the substantive hearing) who stated that the 1998 conviction had been declared every year since 2016. This position was checked and found to be incorrect, with the correct position being that the conviction was declared on the 2016 retention form but not thereafter. Ms Thomas indicated to the Committee that this demonstrated a lack of insight and the Committee cannot be satisfied that this conduct will not be repeated.

Ms Thomas referred the Committee to the relevant case law on impairment and reminded the Committee that honesty and integrity are fundamental elements of the professional conduct of a registered optometrist, and she concluded that a finding of current impairment is required on public interest grounds.

Mr Singh conceded impairment on the Registrant’s behalf and referred to the agreed position between the parties that the Committee should not be making any factual findings regarding the retention forms from 2016 onwards as such matters had not been alleged. He submitted that this evidence was adduced simply to correct Mr Hammond’s earlier submission on behalf of the Registrant and that no adverse conclusion ought to be drawn from this incorrect submission as to the Registrant’s insight or any risk of repetition.

Mr Singh stated that the Registrant understood why the Committee may find him to be currently impaired, even when there is no risk to patient safety. He submitted that the Registrant has had a long career in Optometry, spanning 27 years, and has adduced impressive references from a variety of professionals who all attest to his character

and professionalism. He informed the Committee that the GOC has confirmed that the Registrant has declared his conviction on his most recent retention form.

Mr Singh referred the Committee to the cases of *Amao v NMC* [2014] EWHC 147 (Admin) and *Blakely v GMC* [2019] EWHC 905. He submitted that the Registrant does have insight even though he had not accepted the allegation of dishonesty. He stated that it is possible for an individual in the Registrant's position to have insight into the likely impact that a finding of dishonesty would have upon the public and in respect of maintaining public confidence in the profession.

Mr Singh reminded the Committee that it is able to place weight on written submissions at both the misconduct and impairment stages even when the Registrant was not giving oral evidence, but had done so at the fact stage where his oral evidence had been rejected (*Professional Standards Authority v. Health and Care Professions Council and Doree* [2017] EWCA Civ 319).

The Committee has accepted the advice of the Legal Adviser and had regard to the Fitness to Practise Committee Hearings and Indicative Sanctions Guidance (Revised 1 December 2018).

The Committee noted that in his recent reflective piece the Registrant accepted that his fitness to practise is impaired. He was apologetic and expressed remorse for his actions. The Registrant accepted the Committee's finding of dishonesty and stated that he understood how honesty and integrity are fundamental to the profession and their importance in ensuring that colleague's and patients have trust and confidence in him as a registered optometrist and in the optometry profession.

The Committee read numerous positive testimonials, including those submitted recently, from a wide range of professionals and individuals, all of whom were aware of the nature of the regulatory proceedings brought by the Council.

The Committee considered impairment in the context of Dame Janet Smith's comment in the *5th Report to the Shipman Inquiry* and concluded that the Registrant has acted in the past so as to (b) bring the optometry profession into disrepute (c) breach a fundamental tenet of the optometry profession and (d) has acted dishonestly.

The Committee is aware that it is difficult for someone to demonstrate remediation in cases of dishonesty. However, there was evidence in the form of the Registrant's reflective piece, submitted at this resumed hearing and the most recent character references, that he had now developed sufficient insight into the nature of his misconduct and its implications such that he was unlikely to repeat an act of dishonesty. Mr Singh has confirmed, on behalf of the Registrant, that he has declared his conviction in the most recent retention form.

The Registrant commented on the factual finding of dishonesty and informed the Committee how he is ensuring his previous conduct will not be repeated. He states "*In the future I will absolutely ensure that any declarations I am required to make are*

completely accurate and full, and where I am uncertain, or it is ambiguous, I will ensure that I declare the maximum information that I can. This is to ensure that nothing is left out which could affect the GOC's ability to carry out its regulatory role. I now read any forms I am required to submit more carefully now, treat them seriously and make any declaration honestly".

The Committee concluded that the Registrant has acquired sufficient insight into his shortcomings and was reassured by the measures he had taken to ensure there would be no recurrence of his misconduct. Accordingly, the Committee considered that the Registrant is, in the future, unlikely to (b) bring the optometry profession into disrepute (c) breach a fundamental tenet of the profession and (d) act dishonestly.

The Committee then reminded itself of the public interest considerations including the need to maintain public confidence in the profession and uphold standards of conduct and behaviour (*Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant* [2011] EWHC 927 (Admin))

Dishonesty is serious and is likely to undermine public confidence in the profession, particularly when it is repeated over a lengthy period of time. In this case the Registrant's conduct in dishonestly completing the retention forms between 2006 and 2015 without declaring his conviction is such a departure from the required standards that public confidence in the profession would be undermined if a finding of impairment were not made. Full and honest disclosure by a Registrant is an essential element of the regulator's ability to perform its function effectively to protect the public and the public interest.

The Committee therefore concluded that the Registrant's fitness to practise is currently impaired by reason of his misconduct.

In view of the above findings, the Committee must proceed to consider the issue of sanction.

Decision on Sanction

The Committee received submissions from the parties on the issue of sanction.

Ms Thomas referred the Committee to the Fitness to Practise Committee Hearings and Indicative Sanctions Guidance, revised 1 December 2018 ("the guidance"). She outlined the public interest test and reminded the Committee that any sanction imposed should address the public interest concerns. She submitted that the appropriate and proportionate sanction is either one of suspension or erasure, but that this is a case which falls on the cusp of erasure.

Ms Thomas submitted that the aggravating features included dishonest conduct that was serious and repeated over a 10 year period and which had affected public confidence in the profession. She stated that the insight developed by the Registrant was late. In terms of mitigating features, Ms Thomas submitted that the Registrant's misconduct did not result in harm to patients and the public, that the Registrant has produced a wealth of positive testimonials and character references, and that the Committee has found the Registrant to have demonstrated insight. She confirmed that the Registrant does not have any prior regulatory findings.

Ms Thomas submitted that if the Committee was minded to impose a sanction of suspension; in view of the seriousness of the extended dishonesty by the Registrant, the maximum period of suspension should be imposed and the Committee direct a review of the order. She stated that a sanction of erasure should only be imposed when there is no other sanction sufficient to protect patients and the public interest. Ms Thomas submitted that there are factors in the guidance where the Committee can find that a sanction of erasure is the appropriate and proportionate sanction.

Mr Singh submitted that erasure is a disproportionate sanction in this case, and that a suspension order satisfies the public interest considerations. He reminded the Committee of the guidance on dishonesty and sanction which states that "there is no blanket rule or presumption that erasure is the appropriate sanction in all cases of dishonesty". A suspension order was submitted as appropriate and proportionate because of the following factors:

- This is the Registrant's first appearance before his regulator in 27 years;
- The Registrant is a person of positive good character as demonstrated in the numerous testimonials and character references provided by him throughout the hearing. These references and testimonials show that the Registrant's dishonesty is out of character;
- At the facts stage the Committee had no reason not to accept that the Registrant is "in general terms a person of honesty and integrity";
- The Committee has found that the Registrant has shown insight into its findings of dishonesty;
- The Committee has concluded that the misconduct is unlikely to be repeated;
- There are no public protection concerns in this case. The Registrant is a competent practitioner who provides a useful purpose to the profession and the communities he serves as highlighted in a number of character references;

- The Committee is right to be concerned about public confidence in the profession, but it should not feel it necessary to remove “an otherwise competent and useful registrant who presents no danger to the public in order to satisfy public demand for blame and punishment”, *Bijil v General Medical Council* [2001] UKPC 42. This principle was consistently followed in the recent case of *Bawa-Garba v General Medical Council* [2018] EWCA Civ 1879 in which it was stated (at paragraph 93) that “an important factor weighing in favour of Dr Bawa-Garba is that she is a competent and useful doctor, who presents no material danger to the public, and can provide considerable useful future service to society”. These principles are relevant in this case;
- These proceedings have been weighing on the Registrant for four years, and has caused him stress and worry as detailed in his and his siblings reflective pieces;
- Mr Singh submitted that it is possible to conceive of more serious offences that are not disclosed to the regulator. However, he emphasised that this is not the Registrant’s approach to declarations as the Registrant has informed the Committee in his recent reflective piece that he would declare all future matters to the GOC and that it would be for the GOC to decide their seriousness;
- Mr Singh gave a summary of the Registrant’s “precarious financial position” and stated that erasure or a long period of suspension would have “disastrous” consequences for him and his wider family.

Mr Singh concluded his submissions by reminding the Committee that because it is considering sanction with respect to the public interest only, that the Committee is entitled to take into account that the Registrant has been subject to a public hearing where findings of dishonesty, misconduct and impairment have been made. These findings, together with a period of suspension, are, in his submission, sufficient to uphold proper standards and maintain public confidence in the profession. In light of this, Mr Singh did not consider that a review of a suspension order was necessary.

The Committee accepted the advice of the Legal Adviser that the Committee should consider the range of available sanctions in ascending order of seriousness; to consider any aggravating and mitigating factors in the case; to act proportionately; and to remember that the purpose of sanction is not to be punitive, but is to protect the public, maintain public confidence in the profession, and declare and uphold proper standards of conduct and behaviour. She further advised the Committee to take into account the factors set out in the GOC’s “Hearings and Indicative Sanctions Guidance” and confirmed that the principles in the case law quoted by the parties as accurate.

The Committee has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. It recognised that the decision on sanction is a matter for the Committee, exercising its own independent judgement.

Before making its decision on the appropriate sanction, the Committee established the aggravating and mitigating features in this case.

The Committee agreed with the aggravating factors identified by Ms Thomas, and added that the Registrant's persistent dishonesty in failing to disclose his conviction is further aggravated by his failures to declare his conviction once in possession of the DBS Certificate in 2013 which showed that he had been convicted.

The Committee took into account the following mitigating factors:

- The Registrant's previous good character
- The numerous positive testimonials provided on the Registrant's behalf attesting to his ability as a clinician and to the fact that dishonesty appears to be wholly out of character
- The length of time since the misconduct, combined with the lack of any repetition of it
- Since the Committee's findings, the Registrant has developed considerable insight
- The Registrant has expressed remorse.

The Committee concluded that taking no further action, or a financial penalty order were not proportionate or sufficient given the seriousness and the nature of the misconduct.

The Committee concluded that conditional registration would not be sufficient in light of the seriousness of the dishonesty. Further, such an order would not be practicable due to the nature of the misconduct, which did not involve identifiable areas of practice in need of assessment or retraining.

The Committee next considered suspension and considered paragraph 34 of the guidance. The Committee took into account the fact that dishonesty is a serious matter, and in this case, the dishonesty was repeated over a lengthy period of time.

The Committee revisited its finding at the fact stage where it had stated that "in general terms", the Registrant, was "a person of honesty and integrity". The Committee balanced the dishonesty it found proved against the Registrant's recent reflection and

developed insight. The Registrant has demonstrated a clear understanding of the need to act with honesty and integrity and has informed the Committee why matters must be declared to his regulator. This understanding by the Registrant, together with the Registrant's previous good character, his clinical ability, and the lack of repetition since the time of the last failure to declare in 2015, leads the Committee to conclude that suspension is the appropriate sanction in these circumstances. The Committee considered that a reasonable member of the public, in possession of all the facts, would accept that suspension was the proportionate sanction in the Registrant's case.

The Committee did consider erasure, but was of the view that this would be disproportionate and excessively punitive, in light of the Registrant's insight and remediation, the very low risk of repetition and that this was not the only sanction that could protect the public interest in the circumstances of this case. The Committee took into account the wider public interest in retaining the services of a committed Optometrist whose contribution to the profession is recognised by both patients and professional colleagues.

The Committee therefore concludes that a period of suspension is sufficient to address the public interest concerns and to declare and uphold proper standards of conduct and behaviour and maintain confidence in the profession.

The Committee gave consideration to the length of the order and concluded that six months was the appropriate length to address the seriousness of the dishonesty and the public interest concerns it had identified.

The Committee has decided, in this instance, not to order a review hearing. This is on the basis that the Suspension Order for a period of six months is imposed to uphold the public interest, the Committee already having found that the Registrant has developed insight and not repeated the misconduct since 2015. The Committee is satisfied that the public interest will be served once the Suspension Order comes to an end.

The Committee therefore imposes a Suspension Order for a period of six months and does not direct a review.

Immediate order

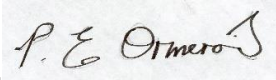
Ms Thomas on behalf of the Council stated that she had taken instructions and made no application for an immediate order.

The Committee noted that no application had been made for an immediate order in the light of its reasons for sanction. In all the circumstances, the Committee endorsed the view that an immediate order was not appropriate.

Revocation of interim order

There was no interim order in place.

Chair of the Committee: Dr Pamela Ormerod

Signature  Date: 28 April 2020

Registrant: Mr J Dhariwal

Signature Date: 28 April 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

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.