BEFORE THE FITNESS TO PRACTISE COMMITTEE
OF THE GENERAL OPTICAL COUNCIL

GENERAL OPTICAL COUNCIL

AND

MICHAEL BOWLES (D-11623)

DETERMINATION OF A SUBSTANTIVE HEARING
11-17 JULY 2019

Committee Members: Ms R O’Connell (Chair/Lay)
Ms E Carr (Lay)
Mr P Curtis (Lay)
Ms C Cowen (Dispensing Optician)
Ms C Hayes (Dispensing Optician)

Legal adviser: Mr W Hoskins
GOC Presenting Officer: Mr C Geering
Registrant: not present and unrepresented
Hearings Officer: Miss J Alvarado

Facts found proved: 1a(i)-1a(v), 1b, 1c, 1d(i) – (iii), 1e(i) – 1e(iv), 1f(i)-1f(v), 2, 3, 4a, 4b and 5.

Facts not found proved: None

Misconduct: Found
Impairment: Impaired
Sanction: Erasure
Immediate order: Yes – Immediate Suspension Order.
Proof of service

The Committee first considered the issue of service. It was referred to a letter of 16 May 2019 which was delivered to the Registrant’s registered address on 17 May 2019 and which contained the relevant information including the Notice of Inquiry and the date, time and place of the Inquiry. The venue for the first two days of this six-day hearing was changed on 9 July 2019 and notice of that particular change was sent on 9 July and delivered to the Registrant’s registered address on 10 July 2019.

The Committee had regard to the provisions of rules 28 and 34 of the General Optical Council (Fitness to Practise) Rules 2013 and was satisfied that the date of this substantive hearing had been served more than 28 days before the date of the scheduled hearing and that the prescribed information had been communicated to the Registrant. Accordingly, the Committee was satisfied that proper service had been effected.

Proceeding in absence

Mr Geering made an application for the hearing to proceed in the Registrant’s absence. He referred the Committee to the notices of delivery in relation to the Notice of Inquiry and the change in venue and pointed out that it was clear that delivery had been signed for on each occasion. He also submitted that the way in which the delivery had been signed for, which appeared to be the letter “F.U” indicated the attitude that the Registrant was adopting towards the proceedings. He also referred the Committee to the bundle of correspondence which suggested that the last communication from the Registrant had occurred in November 2017.

Mr Geering submitted that the Registrant had disengaged and that there was a strong public interest in proceeding with the hearing. A number of witnesses had been warned to attend and there was no suggestion that an adjournment would secure the Registrant’s attendance on a future occasion. The Committee asked Mr Geering to check that there had been no communication since November 2017. Following a further check an email from the Registrant dated 3 April 2018, was discovered which included the following statement.

“[redacted] I do not want to waste further energy on this process or be associated with an organisation that can not see the forest through the trees.”

The Committee accepted the advice of the Legal Adviser who reminded the Committee of its duty to balance fairness to the Registrant with the public interest in expeditiously disposing of the case.

The Committee noted the contents of the email of 3 April 2018 and the lack of any significant engagement from the Registrant since November 2017. It did not regard the way in which delivery had been signed for as of any significance. It was satisfied the Registrant was aware of this hearing and had decided not to attend. It did not consider that an adjournment would serve any useful purpose in securing the Registrant’s attendance. It noted that a number of witnesses had been warned to
attend and that the allegations related to a period between September 2016 and April 2017. In all the circumstances, the Committee was of the view that it was appropriate to proceed in the Registrant’s absence.

**ALLEGATION**

The Council alleges that you, Mr Michael Bowles, a registered Dispensing Optician:

1. Between September 2016 and April 2017, you behaved inappropriately towards Ms A, a member of staff in the practice branch that you managed at the time, in that:

   a. on one or more occasions, you touched Ms A by:
      i. squeezing Ms A’s shoulder;
      ii. touching Ms A’s face;
      iii. touching Ms A’s hair;
      iv. running your fingers across the back of Ms A’s neck;
      v. placing your hand on Ms A’s knee and / or leg.

   b. on one or more occasions, you kissed or tried to kiss Ms A;

   c. on 24 March 2017, you touched Ms A’s bottom;

   d. on one occasion, you:
      i. put your hand underneath Ms A’s upper body clothing;
      ii. touched Ms A’s back;
      iii. commented to Ms A how smooth her back was.

   e. on one occasion, you:
      i. leant over Ms A and rubbed your fingers down her back;
      ii. unfastened Ms A’s bra;
      iii. touched Ms A’s right breast over her clothing;
      iv. stated ‘nice boobs, well, what I felt of it’, or words to that effect.

   f. on one or more occasions, you asked Ms A:
      i. ‘come and sit on my lap’;
      ii. if she ‘wanted to play’;
      iii. ‘how about we play? That will put a smile on your face’;
      iv. ‘You know I want to fuck you, don’t you?’;
      v. ‘Doesn’t everyone have a bit of fun at work?’;
or words to that effect.

2. You persisted in your behaviour towards Ms A as set out at paragraph 1 above, despite Ms A repeatedly making it known to you that it was unwelcome.

3. You failed to inform the Registrar of an investigation regarding your fitness to practise, as required as a member of the General Optical Council.

4. In or around 12 April 2017, you breached the terms of your suspension from [redacted] in that you:
   a. contacted Ms B by telephone;
   b. contacted Mr C by telephone.

5. Your actions as set out at paragraph 1 above were sexually motivated.

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

DETERMINATION

Background to the allegations
From around July 2016, the Registrant worked as a practice manager and Ms A was one of the staff at the practice, holding the role of [redacted]. On 4 April 2017, Ms A made a written complaint alleging that the Registrant had over the previous months indulged in sexually inappropriate harassing behaviour towards her. This behaviour included inappropriate remarks and touching. The behaviour did not stop despite Ms A making it clear that she did not wish to receive these advances.

Following Ms A’s complaint, a formal investigation by the practice was launched. During the course of the investigation, CCTV footage was reviewed in which the Registrant appeared to touch Ms A’s bottom. A number of staff were interviewed and the interviews suggested that Ms A had informally raised concerns with colleagues about the Registrant’s behaviour prior to instituting a formal complaint.

In interview, the Registrant denied all the allegations made against him and alleged that Ms A had other motivations for making a complaint.

On 11 April 2017, the Registrant was suspended by the practice. It is alleged that he contacted two witnesses involved in the investigation contrary to the terms of his
suspension. The Registrant accepted that he had done this. He resigned his position on 20 April 2017 prior to a disciplinary hearing.

The Registrant was a member of the Fitness to Practise Committee of the General Optical Council (GOC). As such, he was obliged to inform the Registrar immediately of any Fitness to Practise investigation to which he was subject. He failed to do so.

Evidence

The Committee was provided with a bundle of documents which included details of the interviews undertaken as part of the investigation at the practice. The bundle of documents also included detailed written representations made by the Registrant to the GOC in 2017 together with a number of references in relation to the Registrant’s character.

The Committee heard oral evidence from Ms A, the complainant and a number of members of staff at the practice. These included:

- Ms B, Store Manager;
- Ms C, Store Manager;
- Mr C, Assistant Manager
- Ms D, Assistant Manager;
- Ms E, who conducted the initial investigation.

The Committee also heard oral evidence from Ms F who is the Head of Governance at the GOC.

The Committee reviewed CCTV footage of an incident recorded on 24 March 2017. The Committee was told by Ms C that the CCTV footage had been recorded on a mobile phone as it proved impossible to transfer the footage onto a disc. Ms C confirmed that she had seen the footage in its original format and that the recording on the phone was an accurate representation of the footage and had not been edited in any way.

Ms A, Complainant

Ms A confirmed the contents of the detailed letter of complaint that she had written on 4 April 2017 and also the contents of the interviews which she had given during the investigation process. She told the Committee that the Registrant’s behaviour had been persistent despite her making it clear to him that his behaviour was entirely inappropriate and unwanted. She said that it had been difficult for her to know how to bring this behaviour to an end and that she felt psychologically manipulated by the Registrant. In particular, he would often seek to make a joke of his inappropriate behaviour so as to leave her in doubt as to what had been intended. She confirmed
in her evidence a particular incident that had occurred on 24 March 2017 when the Registrant touched her bottom. She also confirmed that, when she wrote her letter of complaint in which she referred to the Registrant as having “stroked my bum,” she had not been aware that CCTV footage of this incident existed. She also confirmed, “as if it was last week,” a very clear recollection of the Registrant saying to her “you know I want to fuck you don’t you.”

She told the Committee that she did most of her work in an office upstairs where she was working alone for long periods. The Registrant would often come upstairs to use an adjacent computer terminal and it was during these periods that much inappropriate touching took place and several inappropriate remarks were made. She told the Committee that the Registrant’s behaviour had a significant adverse effect upon her psychological health so that for a period, she was reluctant to come and give evidence in person at this hearing. However, she had decided to do so even though she was aware that the Registrant might be present at the hearing.

Ms B, Store Manager

The Committee heard oral evidence from Ms B who confirmed that Ms A had spoken to her on a number of occasions about the Registrant’s unacceptable behaviour. In particular, she confirmed that on 28 March 2017, Ms A was in a distressed condition and reported to her that the Registrant had tried to force her into a corner of the office and kiss her. She also reported that the Registrant had said to her “you know I really want to fuck you” and had tried to undo her bra and had managed to unclasp her bra and put his hand on the side of her breast.

Ms B’s evidence included a text from Ms A dated 3 April at 06.24 which stated:

“Morning…, I’m really sorry but I won’t be coming in. I’ve told … everything about Michael and I am going to put in a formal compliant [sic]. Ever since talking to you and telling you everything it’s made me realise how uncomfortable he’s been making me feel and how it’s affecting me. I had to tell [Mr C] on Friday as I couldn’t bare[sic] to be near him on the shop floor and since then I knew I would have to tell …. I’ve hardly slept worrying about it all and I feel I cannot come back just yet. I’m going to the doctors this morning. I will put it all in a letter stating everything if that’s what you need. X”
Mr C, Assistant Manager

Mr C told the Committee that he had been approached by Ms A on a Friday morning when she was “looking a bit upset.” She had asked him for permission to leave work early because she felt unsafe in the presence of the Registrant and did not want to leave work at the same time as him. She reported that the Registrant had tried to touch her bottom.

Ms D, Assistant Manager

Ms D told the Committee that Ms A had spoken to her about the Registrant’s inappropriate behaviour, for example by moving his chair in the office close to her and by asking her to sit on his lap. She remembered that Ms A approached her on 24 March 2017 with a very shocked look on her face saying “he has touched my bum. He has just touched my bum.” She asked Ms A “could it have been an accident?” and Ms A replied, “no he has definitely just grabbed my bum.” She said that Ms A was obviously very distraught while reporting this incident.

Ms E, Regional Manager

Ms E exhibited the records of interview made as part of her investigation and, as previously noted, Ms E confirmed the mobile phone footage.

Ms C, Store Manager

As previously noted, Ms C confirmed that the mobile phone footage was a true and unedited representation of the CCTV footage.

Ms F

Ms F gave oral evidence about the Council’s policies and procedures and in particular, the duty of the Registrant as a member of the Fitness to Practise Committee to report immediately to the Registrar any fitness to practise investigation to which he was subject.

Registrant’s written representations and references

The Committee also read carefully the Registrant’s written representations dated 21 June and 6 November 2017 and the character references submitted on his behalf.

Findings in relation to the facts

The Committee heard submissions from Mr Geering. He invited the Committee to conclude that all of the witnesses it had heard were credible and that their evidence...
supported the Council’s case that the Registrant had followed a course of unacceptable and inappropriate behaviour in relation to Ms A for a number of months.

The Committee accepted the advice of the Legal Adviser. He reminded the Committee of the burden and standard of proof and of the need to consider the evidence in relation to each particular set out in the allegation separately. He also reminded the Committee of the character evidence submitted on behalf of the Registrant.

The Committee began by considering the credibility of the witnesses it had heard. The Committee found Ms A to be a credible witness. She gave her evidence in a measured way and did not seek to exaggerate the Registrant’s conduct. The Committee had no doubt that Ms A had found it a challenge to come and give evidence in person as she could not be sure that the Registrant would not be present. Further, her evidence was supported by the CCTV footage and by the testimony of other witnesses to whom she had made contemporaneous complaints. The Committee did not consider that her evidence was invented for malicious purposes, as suggested by the Registrant. Quite apart from Ms A’s credibility, the Registrant had not produced any plausible reason to support his position.

The Committee also considered Ms B, Mr C and Ms C to be credible witnesses. None of these witnesses appeared to be partisan in their approach. None had actually seen any of the conduct complained of by Ms A but this was not surprising as almost all of the conduct alleged took place when Ms A and the Registrant were alone in an office at first floor level. All of these witnesses confirmed that Ms A had made contemporaneous complaints to them about the Registrant’s conduct and had at various times been in a distressed condition while at work.

The Committee carefully viewed the CCTV footage several times. On each occasion, it seemed clear to the Committee that the Registrant had approached Ms A and had quite deliberately touched her bottom. In the Committee’s view, it was clear that Ms A had reacted in a surprised way a moment or two later as she was passing a box to the Registrant. Ms A told the Committee that her reaction was not more extreme because she was astonished at what had taken place and that she had reacted a moment or two later when the Registrant sought to stroke her hand as he was taking the box from her. Ms A’s evidence in this respect, seemed to the Committee entirely consistent with the footage. The Committee rejected the Registrant’s suggestion, in his written representations that the camera angle produced a misleading impression and that he was simply waiting to take a box from Ms A.

The Committee considered the Registrant’s written representations which included a number of far-fetched suggestions as to why Ms A might have invented her complaints. These were all implausible. The least unlikely of these was a suggestion that Ms A was disgruntled because of a half yearly review which had resulted in an alteration of her working pattern and for which, she blamed the Registrant. This in itself seemed very unlikely and the various witnesses from the
practice who gave evidence all said that Ms A’s conduct appeared to be unaffected by the changes in her work pattern.

The Committee also considered the character references submitted by the Registrant. It noted that none of the character references gave any indication that the authors knew of the allegation which the Registrant faced. In various ways, they spoke of the Registrant as an effective manager, who was good with customers and professional in his attitude in this context, but the Committee did not regard them as of significant weight in the light of the lack of knowledge of the Allegation on the part of the authors.

1. Between September 2016 and April 2017, you behaved inappropriately towards Ms A, a member of staff in the practice branch that you managed at the time, in that:

   a. on one or more occasions, you touched Ms A by:

      i. squeezing Ms A’s shoulder;

         **Found proved.** The Committee accepted as truthful the reference to this contained in Ms A’s letter of complaint dated 4 April 2017 and her further reference to it when first interviewed in relation to her complaint. Ms A confirmed the contents of these documents in her oral evidence and made clear in her letter of complaint that the Registrant regularly squeezed her shoulders.

      ii. touching Ms A’s face;

         **Found proved.** The Committee accepted as truthful the reference to this in Ms A’s letter of complaint dated 4 April 2017 and confirmed in her oral evidence.

      iii. touching Ms A’s hair;

         **Found proved.** In her interview on 10 April 2017, Ms A demonstrated how the Registrant touched her hair. Ms A confirmed the truth of her interview in her oral evidence. She also complained of this to Ms B, as referred to in Ms B’s interview of 10 April 2017 and Ms B’s oral evidence.

      iv. running your fingers across the back of Ms A’s neck;

         **Found proved.** The Committee accepted the truthfulness of the complaint to this effect in Ms A’s letter of 4 April 2017 and confirmed by her at interview on 10 April 2017.
v. placing your hand on Ms A’s knee and / or leg.

**Found proved in both respects.** The Committee accepted the truthfulness of the complaints to this effect in Ms A’s letter of complaint; she wrote “...he placed his hand on my knee, I pushed it away and said there is a line there Michael, don’t push it. He thought this was funny and put his hand further up my leg, he then said, is this crossing the line, he repeated this a couple of times each time moving his hand higher up.” Ms B also confirmed in her interview on 10 April 2017 and in her oral evidence that Ms A had complained to her about this.

b. on one or more occasions, you kissed or tried to kiss Ms A

**Found proved.** The Committee accepted the truthfulness of Ms A’s letter of complaint dated 4 April 2017 in which she wrote “one morning I was standing by the bin in my office, it’s quite narrow and chairs were out and he came in and walked towards me. It’s quite a small space so I tried to go past him and he lent in to kiss me. I tried to move away but he was in my face so I started to walk backwards and find myself pressed against the wall and him desperately trying to kiss me...he regularly tried hard to engage in conversation with me...as he left the office he would lean in to try and kiss me goodbye and laughed when I moved away.”

c. on 24 March 2017, you touched Ms A’s bottom;

**Found proved.** The Committee accepted the truthfulness of Ms A’s letter of complaint which referred to this episode. Ms A’s evidence was supported by that of Ms D to whom she made an immediate complaint and by the CCTV footage.

d. on one occasion, you:

i. put your hand underneath Ms A’s upper body clothing;

ii. touched Ms A’s back;

iii. commented to Ms A how smooth her back was.

**Found proved.** The Committee accepted the truthfulness of Ms A’s letter of complaint dated 4 April 2017 in which he wrote that “One day he put his hand up the back of my top, I remember him saying how smooth my back was.”
e. on one occasion, you:
   i. leant over Ms A and rubbed your fingers down her back;
   ii. unfastened Ms A’s bra;
   iii. touched Ms A’s right breast over her clothing;
   iv. stated ‘nice boobs, well, what I felt of it’, or words to that effect.

**Found Proved.** The Committee accepted the truthfulness of Ms A’s letter of complaint in which she wrote “one day he came in, I was sat at my desk, he was leaning over me and was rubbing his fingers down my back, I didn’t realise at first what he was doing but then I realised he had unclipped my bra!...he quickly tried to put his hands around me just slightly touching my right breast. I jumped up and moved to the other side of the room, as I did, he said nice boobs well what I felt of it.” Ms A further referred to this episode in her interview of 10 April 2017 and in her oral evidence to the committee.

f. on one or more occasions, you asked Ms A:
   i. ‘come and sit on my lap’;
   ii. if she ‘wanted to play’;
   iii. ‘how about we play? That will put a smile on your face’;
   iv. ‘You know I want to fuck you, don’t you?’;
   v. ‘Doesn’t everyone have a bit of fun at work?’;
   or words to that effect.

**Found proved.** The Committee accepted the truthfulness of Ms A’s letter of complaint of 4 April 2017 in which she referred to each of these remarks being made to her by the Registrant at various times. Ms A confirmed the contents of the letter as truthful and the Committee accepted her evidence.

2. You persisted in your behaviour towards Ms A as set out at paragraph 1 above, despite Ms A repeatedly making it known to you that it was unwelcome.

**Found proved.** Ms A repeatedly referred in her letter of complaint to her attempts to persuade the Registrant to cease his objectionable behaviour. The Committee accepted that the account contained in her letter of complaint is accurate. For example, Ms A referred in her letter of complaint to the occasion on which the Registrant put his hand higher and higher up her leg and she “pushed him away and I said to him that’s sexual harassment, he
3. You failed to inform the Registrar of an investigation regarding your fitness to practise, as required as a member of the General Optical Council

**Found proved.** The Registrant wrote in his representations of 6 September 2017 that he had not contacted the Registrar when his conduct was investigated at the practice. He wrote “I did not contact the Registrar to notify of my suspension from [the practice] because I was not in the correct state of mind and did not realise I needed to. I am sorry for this.” Ms F referred the committee to the Code of Conduct for Members Advisers and Visitors which provides that:

“If a member...is the subject matter of an investigation or proceedings undertaken by the GOC regarding their Fitness to Practise...the member must contact the Registrar and declare this. The member must make such a declaration immediately they are aware that the GOC has received a complaint or information to initiate an investigation or proceedings.”

There is no record of the Registrant informing the Registrar of the GOC investigation and these proceedings.

4. In or around 12 April 2017, you breached the terms of your suspension from [redacted] in that you:
   a. contacted Ms B by telephone;
   b. contacted Mr C by telephone.

**Found proved.** The Registrant admitted these allegations in his interview of 13 April 2017. His attempts to contact Ms B and Mr C were confirmed by these witnesses in their evidence.

5. Your actions as set out at paragraph 1 above were sexually motivated.

**Found proved.** The Committee was unable to ascribe any other motive to the conduct set out in paragraph 1 which it has found proved.
Misconduct and Impairment

The Committee determined that it would be appropriate in this case to hear submissions in relation to misconduct and impairment at the same time. It would consider each matter separately when it retired to deliberate.

Mr Geering submitted that the Registrant’s behaviour had fallen so far short of the requisite standards that it could properly be categorised as misconduct. He submitted that particulars 1, 2 and 5 involved a serious and sustained abuse of position which was sexually motivated. He also submitted that particulars 3 and 4 involve a disregard of professional obligations which was particularly serious in the light of the Registrant’s management responsibilities. He referred the Committee to the Standards of Practice for Optometrists and Dispensing Opticians effective from April 2016 and in particular:

- “Standard 13: Show respect and fairness to others;
- Standard 15: Maintain appropriate boundaries with others;
- Standard 17: Do not damage the reputation of your profession through your conduct.”

In relation to impairment, Mr Geering submitted that the Registrant had shown no evidence of insight. On the contrary, he had advanced implausible defences in the face of incontrovertible evidence and had sought to blame others. Mr Geering also submitted the public interest required a finding of impairment to be made. He referred the Committee to the approach set out in CHRE v NMC and Grant [2011] EWHC 927(Admin).

The Committee accepted the advice of the Legal Adviser who reminded the Committee that for any action to be categorised as misconduct, it needed to cross a threshold of seriousness and whether that threshold had been crossed was a matter for the judgement of the Committee.

In relation to impairment, the Legal Adviser referred the Committee to the approach set out in Grant and emphasised the importance of considering whether the Registrant had shown insight into his misconduct and whether the public interest required a finding of impairment to be made.

Findings in relation to misconduct

The Committee first considered misconduct. The Committee accepted the applicability of standards 13, 15 and 17. The Committee was in no doubt that the conduct which it found proved at particulars 1, 2 and 5 amounted to misconduct. Fellow professionals would regard the Registrant's behaviour as deplorable. It involved the abuse of a senior position and the mistreatment of an employee in a more junior position. This conduct was sexually motivated. It not only involved
inappropriate remarks but also physical touching. Ms A had stated in her evidence “I really struggled to deal with Michael’s behaviour and the aftermath once I reported it. It was one of the emotionally hardest things that has happened to me and it affected my whole family. I tend to think of myself as a trusting and easy-going person but the incidents with Michael have changed my personality and left me feeling very vulnerable. Michael took full advantage of me and I don’t understand how but he has done something to me which has changed me.”

The Committee has found Ms A to be a credible witness.

In relation to particular 3, the Committee did not consider that the Registrant’s failure to inform the Registrar was in the circumstances of this case a sufficiently serious matter as to amount to misconduct. The Committee noted that the Registrant was first written to in relation to the existence of an investigation on 10 May 2017 and he responded by writing to the GOC acknowledging the matter on 15 May 2017. Although it was incumbent upon the Registrant to inform the Registrar, the Committee can understand that he may well have considered that his letter to the GOC was a sufficient response.

In relation to particular 4, the Committee did not consider that this was a sufficiently serious matter to amount to misconduct. The Registrant admitted that he had contacted the witnesses despite prohibition from his employer, but the Committee was prepared to accept that he was in a state of shock at the time and the witnesses themselves gave evidence that he appeared to be seeking character references from them. The Registrant clearly should not have contacted these witnesses in the light of his employer’s prohibition but there was no evidence to suggest any sinister motive in so doing.

Findings regarding impairment

The Committee went on to consider impairment. It had regard to the well-known formulation of Dane Janet Smith in the Shipman Report as endorsed in the case of Grant. In particular it considered that the Registrant’s conduct potentially engaged limbs b and c of that formulation namely whether such conduct:

“b. has in the past brought and/or is liable in the future to bring the [medical] profession into disrepute and/or

c. has in the past breached and/or is liable in the future to breach of the fundamental tenets of the [medical] profession; and/or”

The Committee considered that a fundamental tenet of the profession was an obligation to uphold professional standards of behaviour particularly in the workplace and in relation to more junior members of staff. The Registrant had clearly violated this fundamental tenet and had brought the profession into disrepute.
Further, the Committee considered that the Registrant had not shown any insight into the seriousness of his misconduct. It accepted Mr Geering’s submission that the Registrant had advanced implausible defences which included seeking to explain away clear CCTV footage. He had also sought to suggest that Ms A’s complaint was malicious.

The Registrant’s conduct was in any event difficult to remediate and he had taken no steps to remediate it. The Committee considered that the risk of repetition was therefore significant.

The Committee also concluded that the public interest required a finding of impairment to be made, so as to maintain confidence in the profession and in its regulation. Members of the public would be very disturbed if they heard that conduct of this kind was not marked by a finding of impairment.

**Sanction**

Mr Geering drew the Committee’s attention to what, he submitted, were mitigating and aggravating features of the case. He reminded the Committee that the Registrant had a previously unblemished professional history and that the testimonials he had submitted showed that he was well thought of as a manager. However, he noted that the misconduct in this case was serious and sustained and that it involved the abuse of a position of authority as the Registrant’s objectionable behaviour was directed towards a more junior member of staff.

He also reminded the Committee that the Registrant had shown no insight into the seriousness of his misconduct and had taken no steps to remediate it.

He informed the Committee that the Registrant had been the subject of an interim suspension order since 23 June 2017 and that the Committee should have regard to this when considering questions of proportionality.

Mr Geering submitted that the appropriate sanction in this case was an order for erasure in the light of the seriousness of the misconduct and the absence of insight.

The Committee accepted the advice of the Legal Adviser who reminded the Committee of the Indicative Sanctions Guidance and the need to ensure that any sanction was proportionate.

The Committee began by considering the aggravating and mitigating features of the case.
The aggravating features were as follows:

- The misconduct was not momentary or short lived but was systematic and sustained for a period of several months;
- It was sustained despite Ms A making it clear to the Registrant that it was inappropriate and unwanted;
- It had caused harm to Ms A as noted in the Committee’s decision in relation to misconduct;
- The misconduct involved an abuse of a senior position;
- The misconduct was sexually motivated;
- The Registrant had made a number of unsubstantiated and implausible counter allegations against Ms A and other members of staff;
- He had sought to explain away clear CCTV footage which showed him inappropriately touching Ms A’s bottom;
- He had shown no insight so that there was a significant risk of repetition of the misconduct.

The mitigating features of the case were as follows:

- The Registrant had no previous regulatory history;
- He was well thought of as a manager and as a dispensing optician, as suggested by the testimonials he had submitted.

The Committee noted that the aggravating features far outweighed the mitigating features. Neither of the mitigating features related to the misconduct itself or the Registrant’s subsequent response.

The Committee first considered taking no action but considered that the case was far too serious for this course.

The Committee next considered a financial penalty order but decided that this would be inappropriate as there was no financial element to this misconduct.

The Committee next considered an order for conditional registration. The Committee did not consider that such an order would meet the public interest requirements of this case and in any event, conditions of practice, which were designed primarily to address clinical short-comings, were not suitable for the misconduct in this case.
The Committee went on to consider a suspension order. It had careful regard to the Indicative Sanctions Guidance at paragraph 34.1. It bore in mind that the Registrant had been the subject of an interim suspension order since 23 June 2017.

In the Committee’s view, the sustained misconduct in this case showed evidence of harmful deep-seated personality and attitudinal problems; in particular, because the misconduct was sustained over several months even when it must have been perfectly clear to the Registrant that Ms A found his behaviour inappropriate and she had asked him on many of occasions to stop.

The Committee has also concluded that the Registrant has shown no insight. When faced with an investigation, following a formal complaint by Ms A, his response was to make counter allegations and to try and explain away very damaging and unequivocal evidence in the form of CCTV footage. He did not attend the disciplinary hearing at the practice and he has not engaged meaningfully with these proceedings.

These features, and in particular, the fact that the Committee have found that the aggravating features far outweigh the mitigating features, make a suspension order unsuitable in this case. The Registrant’s misconduct was and is fundamentally incompatible with continued registration and the Committee has concluded that the only proportionate outcome is an order for erasure. In the Committee’s judgement, this is the only outcome which will both address the significant risk of repetition and meet the public interest. Such an order is necessary to declare and uphold proper standards of conduct so that confidence in the profession and in its regulation is maintained.
Immediate order

Mr Geering made an application for an immediate order of suspension. He reminded the Committee that the order for erasure which it had made today would not take effect immediately. It would only come into force after the period for appeal had expired or after any appeal has been resolved. He submitted that in the light of the Committee’s findings, an immediate order of suspension was necessary for the protection of the public and was otherwise in the public interest.

The Committee accepted the advice of the Legal Adviser who reminded it of the statutory basis for the imposition of an immediate order at this stage as set out at section 13I of the Opticians Act 1989 (as amended).

The Committee decided to order that the registration of the Registrant be suspended forthwith. This order will remain in force until the Committee’s substantive direction takes effect or until any appeal is determined. The Committee considered that such an order was necessary for the protection of the public in view of the contents of this determination and was otherwise in the public interest.

Revocation of interim order

The Committee hereby revokes the interim order for suspension of registration that was imposed on 23 June 2017 and subsequently extended by the High Court on 21 December 2018.

Chair of the Committee: Ms R O’Connell

Registrant: Mr M Bowles
NOTICE TO REGISTRANT:

- 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.

## FURTHER INFORMATION

<table>
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<tr>
<th>Transcript</th>
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<td>A full transcript of the hearing will be made available for purchase in due course.</td>
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<th>Appeal</th>
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<tr>
<td>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).</td>
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<th>Professional Standards Authority</th>
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<td>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).</td>
</tr>
<tr>
<td>Further information about the PSA can be obtained from its website at <a href="http://www.professionalstandards.org.uk">www.professionalstandards.org.uk</a> or by telephone on 020 7389 8030.</td>
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<th>Effect of orders for suspension or erasure</th>
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<tr>
<td>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.</td>
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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.
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/](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.