BEFORE THE FITNESS TO PRACTISE COMMITTEE  
OF THE GENERAL OPTICAL COUNCIL

GENERAL OPTICAL COUNCIL

AND

MR CONNOR HAYWOOD (SD-8058)

DETERMINATION OF A SUBSTANTIVE HEARING  
09 SEPTEMBER 2019

Committee Members: Dr P Ormerod (Chair/Lay)  
Mr U Hoque (Lay)  
Mr P Curtis (Lay)  
Ms C Cowen (Dispensing Optician)  
Ms J Stodel (Dispensing Optician)

Legal adviser: Dr H Helmi

GOC Presenting Officer: Ms A Ling

Registrant present/represented: Not present nor represented

Hearings Officer: Miss J Alvarado

Facts found proved: Particular 1

Facts not found proved: N/A

Misconduct: N/A

Impairment: Impaired

Sanction: Suspension -3 months no review required

Immediate order: No immediate order
Proof of service

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

The Committee is satisfied that all reasonable efforts have been made to notify the Registrant of the hearing in accordance with the statutory provisions, by way of Notice of the hearing dated 9 August 2019 and sent by special delivery.

Proceding in the absence of the Registrant

The Committee then went on to consider whether it would be in the public interest to proceed in the Registrant’s absence in accordance with Rule 22. The Committee accepted the advice of the Legal Adviser.

Ms Ling informed the Committee of contact made between the Council and the Registrant by email and telephone. In a letter to the Council dated 26 April 2019, the Registrant stated that he was not in a financial position to attend the substantive hearing. As a result, the Council sent him an email dated 30 July 2019 which referred to his letter and asked him to call the Council to discuss engagement by Skype or telephone. There was a telephone call on 19 August about engaging by Skype and the Registrant indicated that he would create a Skype ID for this purpose. A further email from the Council to the Registrant dated 20 August 2019 referred to this call and requested his Skype details. Further attempts to contact the Registrant were made by the Council by email on 29 August 2019 and telephone on 6 September 2019. However there was no response. Ms Ling submitted that the Committee may consider that the Registrant has voluntarily absented himself and that the hearing should proceed today. When questioned by the Committee, she did not object to a further call being made to the Registrant by the Council prior to the start of the hearing in order to ascertain his position. A call was duly made, and an email sent this morning and there was no answer by the Registrant.

The Committee took into account that while the Registrant initially expressed an interest to attend by telephone or Skype, and that there was contact between the Council and him regarding this, he has not responded to the most recent attempts to contact him. There is no application for an adjournment by him, and no indication that an adjournment would secure his attendance in the future. The Committee took into account the potential disadvantage to him in proceeding in his absence, particularly because he is not legally represented. However, the written submissions and supporting documentation sent by him, in the Committee’s view, would mitigate against this to a degree. The Committee also took into account the Registrant’s lack of response to more recent attempts to contact him. In light of these circumstances,
the Committee was of the view that the public interest in expeditiously proceeding should be given effect. The Committee therefore decided to proceed today in the Registrant's absence.

ALLEGATION

The Council alleges that in relation to you, Connor Haywood (SD-8058) a registered student dispensing optician:

1. On 30 April 2017 you accepted a conditional caution for an offence contrary to section 39 of the Criminal Justice Act 1988, in that you, on 25 November 2016, assaulted a person by beating him;

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

DETERMINATION

Background to the allegations

The Registrant is a registered student dispensing optician. On 30 April 2017, the Registrant received a Conditional Caution in respect of an assault by beating, contrary to Section 39 of the Criminal Justice Act 1988. The incident occurred on 25 November 2016 at approximately 1.15am. The Registrant was one of a group of 4 men, and there was an altercation with the victim who was employed at a backpacker hostel. Whilst on duty at the reception area he heard the group of men outside, he came outside, and there was an altercation in which the 4 men, including the Registrant, assaulted the victim. The Registrant was interviewed by police on 10 January and 20 April 2017. He redacted prior to the incident.

The condition attached to the Caution was that the Registrant complete a redacted which he did in fact complete.

The Registrant referred his Conditional Caution to the Council by email dated 27 November 2017.

Findings in relation to the facts

The Committee considered the Council’s substantive hearing bundle, and the Council’s written skeleton argument. The Committee accepted the advice of the Legal Adviser.

The Committee was aware that the burden of proof rests entirely on the Council to the civil standard, namely the balance of probabilities.
The Committee considered the Conditional Caution document signed by the Registrant on 30 April 2017. It also took into account the Registrant’s self-referral to the Council dated 27 November 2017 in which he declared his Conditional Caution. The Committee therefore found the Allegation proved.

**Findings in relation to proof of caution**

The Committee heard submissions from Ms Ling, on behalf of the Council, and accepted the advice of the Legal Adviser.

As a result of its factual finding that the Registrant received a Caution, the Committee went on to consider whether the Registrant’s fitness to undertake training as student dispensing optician is impaired.

**Findings regarding impairment**

The Committee heard submissions from Ms Ling that the Registrant’s fitness to practise is impaired on public interest grounds. The Committee read the Council’s substantive hearing bundle which contained the Registrant’s letter to the Council dated 26 April 2019 as well as an employment reference dated 12 April 2019, positive patient feedback (undated) and details of his education and training.

The Committee accepted the advice of the Legal Adviser who referred to the case of *Cohen v GMC* [2008] EWHC 581 and *CHRE v (1) NMC (2) Grant* [2011] EWHC 927. The Committee was aware that impairment is a matter for its own independent judgment and that both public protection and the wider public interest should be considered.

The Committee considered the case of *Grant* which set out questions from the Fifth Shipman Report to be asked by it when considering impairment. In considering these questions the Committee concluded that the Registrant had not in the past put any patient at unwarranted risk of harm in respect of the incident which led to the Conditional Caution. The Committee also decided that the Registrant is not liable to do so in the future, there being no suggestion that he has ever been violent towards patients, and taking into account his good employment record. Neither did dishonesty apply in this case.

However, the Committee did conclude, when considering the remaining questions from the Fifth Shipman Report, that the Registrant had in the past, by reason of the Conditional Caution, brought the profession into disrepute. The Committee was also satisfied that he had breached the following fundamental tenets of the profession:

**Standards for Optical Students (from April 2016)**

“16. **Do not damage the reputation of your profession through your conduct**

16.1 Ensure that your conduct, whether or not connected to your professional study does not damage public confidence in you or your profession.
16.3 Be aware of and comply with the law and all the requirements of the General Optical Council.”

The Committee then considered whether he was liable to bring the profession into disrepute and breach fundamental tenets in the future.

The Committee took into account the Registrant’s admissions to police, his self-referral, as well as his apology, and expression of remorse in his letter to the Council dated 26 April 2019, which indicates an understanding of the effect of his actions on the profession in general. The Committee also took into account the evidence of his good work record since he was 16 years of age, previous good character, the absence of any similar concerns since the incident, the time which has elapsed since the incident, and the absence of any evidence redacted. The Committee was also mindful of the police’s acceptance in interview that the Registrant was the least aggressive of the group, when examining the CCTV of the incident.

The Committee noted that the Registrant, while initially claiming self-defence when interviewed by the police, accepted in the second police interview that he had gone beyond the limits of self-defence, when shown the CCTV. However, while he did rely on self-defence in his letter of 26 April 2019, the Committee did not view this as indicating a lack of insight. Rather, the Committee viewed the Registrant as expressing a position that he believed he had acted in self-defence, but had accepted that he went beyond this, for the purpose of criminal law.

The Committee also took into account that the Registrant completed the redacted course, and accepted his contention that he has distanced himself from the friends involved in the incident. As a result, the Committee was satisfied that he has remediated his misconduct.

In light of the factors set out above, the Committee was satisfied that the Registrant has good insight and that he has remediated his actions. Therefore, the Committee was of the view that there is a very low risk of repetition of the behaviour in question.

The Committee then considered the wider public interest, namely the need to maintain public confidence in the profession and to uphold proper standards of conduct and behaviour.

Despite the insight and remediation shown, the Committee took into account that the Registrant received a Conditional Caution for an offence of violence, albeit not the most serious. He was part of a group of 4 men who assaulted another man, while redacted in the early hours of the morning. An offence of violence flies in the face of the fundamental tenets of the profession. As a result, the Committee was of the view that a reasonable and well-informed member of the public, aware of all the evidence
before the Committee, would be concerned to discover that the Registrant’s current fitness to practise was found to be unimpaired.

After careful consideration, the Committee was of the view that, due to the nature of the Conditional Caution, the need to maintain public confidence in the profession and to uphold proper standards would be undermined if a finding of impairment were not made in the particular circumstances of this case.

The Committee therefore found that the fitness of Connor Haywood to undertake training as a dispensing optician is impaired on public interest grounds.

Sanction

The Committee heard submissions from Ms Ling who suggested that the appropriate sanction would be a period of suspension of less than 12 months.

The Committee accepted the advice of the Legal Adviser who reminded the Committee that which sanction to impose is a matter for the Committee’s independent judgment, that the purpose of sanction is to protect the public and uphold the public interest, and that any sanction must be proportionate. The Committee took into account the Indicative Sanctions Guidance (ISG) published by the Council and reminded itself that its decision, that the Registrant’s current fitness to undertake training is impaired, is based on the need to uphold the wider public interest only, with no public protection concerns.

The Committee identified the following mitigating factors:

- i. no previous fitness to practise history;
- ii. previous good character;
- iii. admissions during the criminal investigation;
- iv. self-referral to the Council as soon as he realised he was obliged to do so;
- v. previous engagement with the regulatory process;
- vi. remorse expressed;
- vii. insight and remediation demonstrated;
- viii. positive testimonials from his previous employer and a patient;
- ix. no repetition since the incident.

The Committee identified the following aggravating factors:

- i. criminal offence involving violence;
- ii. the behaviour occurred while the Registrant was registered with the Council.
The Committee considered the sanctions available to it from the least to the most severe. It was aware that it must consider the sanctions in ascending order of severity, and only move upwards if the lesser sanction is insufficient to address the concerns which it has identified.

The Committee first considered, and discounted, taking no further action, because this would not be sufficient to address the public interest concerns in this case. This was not an exceptional case in which such an outcome may be appropriate.

The Committee next considered a financial penalty order but decided that this would not be appropriate as there was no financial motivation or gain associated with the incident.

The Committee next considered conditional registration but decided that this would not be appropriate because there are no areas of concern in respect of the Registrant’s ability to undertake training to which conditions could be addressed.

The Committee next considered Suspension. Taking into account paragraph 34.1 of the ISG, the Committee noted that the Conditional Caution was in respect of a relatively serious incident involving physical violence, where a lesser sanction is not sufficient, there is no evidence of harmful deep-seated personality or attitudinal problems, no evidence of repetition of the behaviour since the incident and the Committee is satisfied that the Registrant has insight and that there is a very low risk of repetition. Balancing these positive matters as well as the mitigating factors in this case, with the seriousness of the behaviour in question and the need to uphold the public interest, the Committee was satisfied that a period of Suspension is the proportionate sanction. It determined that a period of 3 months is sufficient to mark the need to uphold the public interest.

In coming to this decision, the Committee took into account the impact that this will have on the Registrant, in that he will be unable to undertake training, and the financial and reputational impact. However, the Committee was satisfied that in weighing up the balance, the need to uphold the public interest outweighed the Registrant’s in this regard.

The Committee did consider Erasure, but was of the view that this would be disproportionate and punitive, in light of the Registrant’s insight and remediation, the very low risk of repetition, and his wish, as expressed in his letter of 26 April 2019, to return to his studies.

The Committee is minded, in this instance, not to order a review hearing. This is on the basis that the short Suspension Order for a period of 3 months is imposed to uphold the public interest, the Committee already having found that the Registrant has good insight and has remediated the concerns. The Committee is satisfied that the public interest will be served once the Suspension Order comes to an end.
Immediate order

The Committee heard submissions from Ms Ling who stated that she made no positive application for an immediate order and stated that it was a matter for the Committee. Ms Ling outlined to the Committee that the Registrant has suspended his studies and therefore as a result he is unable to have any contact with patients. Ms Ling also referred the Committee to an extract of the Register which demonstrates that the Registrant has not paid for his student retention fee for the previous 2 years.

The Committee accepted the advice of the Legal Adviser.

The Committee has decided not to impose an immediate order. In line with the Committee’s previous decision, an immediate order is not necessary to protect the public. In light of the short period of the substantive Suspension Order of 3 months, as well as the Registrant’s current suspension of his studies, the Committee did not consider that it was in the public interest, or in his own interests to impose an immediate order.

Revocation of interim order

There was no interim order in place.

Chair of the Committee: Dr P Ormerod

Signature .......................... Date: 9 September 2019

Registrant: Mr C Haywood

Signature .......................... Date: 9 September 2019
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<tr>
<th>FURTHER INFORMATION</th>
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<tr>
<td><strong>Transcript</strong></td>
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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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<td><strong>Appeal</strong></td>
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<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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<tr>
<td><strong>Professional Standards Authority</strong></td>
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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>
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<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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<td><strong>Effect of orders for suspension or erasure</strong></td>
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<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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<td><strong>European Alert</strong></td>
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<td>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.</td>
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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 Committee’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.