

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

GENERAL OPTICAL COUNCIL

F(18)34

AND

MR OLUKOLAJO KAYODE (D-14004)

**DETERMINATION OF A SUBSTANTIVE REVIEW
28 OCTOBER 2019**

Committee Members:	Mr I Crookall (Chair/Lay) Ms A Robertson-Rickard (Lay) Ms J Wheat (Lay) Ms J Stodel (Dispensing Optician) Ms S Baylay (Dispensing Optician)
Legal adviser:	Mr I Ross
GOC Presenting Officer:	Mr R Price
Registrant:	Present and represented
Registrant representative:	Mr J Graham (WGL)
Hearings Officer:	Terence Yates
Outcome:	Not impaired – order expires 15 Nov 19

DETERMINATION

Background

The Registrant was registered with the GOC as a dispensing optician from March 2011. He faced an allegation which arose out of two distinct matters. The first was that on 13 November 2017 he assaulted Witness 1 while they were both working at [REDACTED]. The second was that he failed to declare on his retention applications in 2016/17 and 2017/18 that he had received a caution for common assault in January 2016. The caution arose out of a domestic incident.

The Registrant referred himself to the GOC on 16 November 2017 following the assault on Witness 1, which occurred on the shop floor at [REDACTED] during business hours and when members of the public were present. He pleaded guilty to a charge of assault by beating at South East London Magistrates' Court 27 November 2017. He received a conditional discharge and was also ordered to pay compensation, a victim surcharge and costs.

The Registrant's registration was suspended for 6 months following a substantive hearing held on 15-17 April 2019. The order is due to expire on 15 November 2019.

Findings regarding impairment

The Committee was provided with a bundle from the Council numbered pages 1 – 121. The Committee also received a Registrant's bundle numbered pages 1 – 106 and a separate bundle of written references on behalf of the Registrant numbered pages 1 – 7.

The Committee heard submissions from Mr Price on behalf of the Council and from Mr Graham on behalf of the Registrant. It has accepted the advice of the Legal Adviser that the Committee's task was to determine whether the Registrant's fitness to practise was currently impaired.

The Committee has heard sworn evidence from the Registrant. The Committee found that the Registrant gave credible and helpful evidence. The Committee was satisfied that he has taken on board the seriousness of his misconduct, both in respect of the effect on Witness 1 and in respect of the damage caused to the reputation of his profession. The Committee noted that when asked what he understood by damaging the reputation of the profession, the Registrant replied that, "he was the image of his profession".

The Committee had regard to the findings of the Substantive Hearing Committee. The Committee noted that at the substantive hearing, the Registrant admitted Particulars 1, 2 and 3 of the Allegation. Particular 4 of the Allegation which alleged dishonesty in relation to failing to disclose his caution, was found not proved.

The Substantive Hearing Committee had no doubt that the Registrant was genuinely remorseful about what had occurred. That Committee considered that the Registrant had developed some insight into the misconduct stemming from the assault and also from the caution, but that his insight was not complete. That Committee found that

the Registrant's difficulty with emotional control was capable of remediation but had not yet been fully remedied.

The Substantive Hearing Committee found that misconduct was established in relation to the admitted Particulars 1,2 and 3 of the Allegation. That Committee found that the Registrant's fitness to practise was impaired as a result of the misconduct found in relation Particulars 1 and 2 but not in relation to Particular 3.

When directing a review of the suspension order prior to its expiry, the Substantive Hearing Committee set out what would assist this Reviewing Committee. This Committee considered that the Registrant had fully addressed the recommendations of the Substantive Hearing Committee. The Registrant has attended this review hearing and has remained fully engaged in this regulatory process. Further, the Registrant has provided abundant evidence of having attended courses, of learning experiences and of support mechanisms, in particular with regard to conflict resolution. During the period of his suspension, the Registrant has continued to work as an Optical Assistant.

The Registrant has provided certificates in relation to 3 courses undertaken by him since the findings of the previous Committee. These courses were (1) Anger Management and Control [REDACTED]; (2) Workplace Violence – Online Training & Certification, [REDACTED]; (3) Certificate in Anger Management which [REDACTED] and was successfully completed. The Committee considered, that in the course of robust cross-examination and in his reflective statement, the Registrant fully demonstrated what he had learned from these courses. In this Committee's view, the Registrant is now fully aware of the damage caused to public confidence in the profession by any inappropriate/violent behaviour. The Committee considered that the Registrant had now demonstrated full insight into his misconduct and that it was unlikely his misconduct would be repeated.

The Registrant has provided his CET statement which shows a level of continuous education which is over and above that which would normally be required. The Registrant also provided this Committee with a reflective witness statement which addresses the concerns raised by the previous Committee.

The Committee also had regard to the testimonial evidence provided. It noted that on one occasion the Registrant had, *“even stepped in to defuse a heated argument between two male colleagues and that [the Registrant] remained calm and composed at all times.”* All of the references, which have been provided by the Registrant's professional colleagues are extremely positive and supportive and describe the Registrant in terms such as *“being, calm, respectful, no concerns whatsoever, always conducting himself professionally and courteously and a very much loved member of the team”*.

The Committee had regard to the fact that the Registrant's fitness to practise was found to be impaired on public interest grounds only. There are no clinical concerns about the Registrant's practice, nor has he been found to present any danger to patients or the public. The Committee noted that the Substantive Hearing Committee had taken the view that a period of suspension of 6 months would be sufficient to

mark the gravity of the misconduct and to declare and uphold proper standards of behaviour so as to maintain confidence in the profession and its regulation.

The Committee was of the view that the public interest in this case has now been satisfied and that a finding of current impairment was no longer required to protect the public interest. The Committee considered that a reasonably well-informed member of the public, fully aware of the Registrant's remorse, full insight and remediation would not be concerned were a finding of impairment not made.

Taking all matters into consideration and applying its own professional judgement, the Committee concluded that the Registrant's fitness to practise is not impaired.

Declaration

The Committee makes a formal declaration that the Registrant's fitness to practise is not impaired for the reasons above.

Chairman of the Committee: Ian Crookall

Signature **Date: 28 October 2019**

Registrant: Olukolajo Kayode

Signature **Date: 28 October 2019**

FURTHER INFORMATION
Transcript
A full transcript of the hearing will be made available for purchase in due course.
Appeal
Any appeal against an order of the Committee must be lodged with the relevant court within 28 days of the service of this notification. If no appeal is lodged, the order will take effect at the end of that period. The relevant court is shown at section 23G(4)(a)-(c) of the Opticians Act 1989 (as amended).
Professional Standards Authority
<p>This decision will be reported to the Professional Standards Authority (PSA) under the provisions of section 29 of the NHS Reform and Healthcare Professions Act 2002. PSA may refer this case to the High Court of Justice in England and Wales, the Court of Session in Scotland or the High Court of Justice in Northern Ireland as appropriate if they decide that a decision has been insufficient to protect the public and/or should not have been made, and if they consider that referral is desirable for the protection of the public. PSA is required to make its decision within 40 days of the hearing (or 40 days from the last day on which a registrant can appeal against the decision, if applicable) and will send written confirmation of a decision to refer to registrants on the first working day following a hearing. PSA will notify you promptly of a decision to refer. A letter will be sent by recorded delivery to your registered address (unless PSA has been notified by the GOC of a change of address).</p> <p>Further information about the PSA can be obtained from its website at www.professionalstandards.org.uk or by telephone on 020 7389 8030.</p>
Effect of orders for suspension or erasure
To practise or carry on business as an optometrist or dispensing optician, to take or use a description which implies registration or entitlement to undertake any activity which the law restricts to a registered person, may amount to a criminal offence once an entry in the register has been suspended or erased.
European Alert
The General Optical Council is required by Regulation 67 of the European Union (Recognition of Professional Qualifications) Regulations 2015 to inform all European competent authorities of any restrictions or prohibitions on a dispensing optician or an optometrist's practice. 'Competent authority' effectively means the relevant regulator for each EU member state.

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

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

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

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

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

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

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

Please see the attached information sheet for further information.

Contact

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

European Alert – Information Sheet

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

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

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

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

2. What is the purpose of these alerts?

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

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

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

4. Who will see the alert?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On appeal the County Court may:

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

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

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

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