

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

GENERAL OPTICAL COUNCIL

F(19)40

AND

KERRY DOYLE (SO-13041)

**DETERMINATION OF A SUBSTANTIVE HEARING
13-15 July 2020**

Committee Members:	Ms J Wheat (Chair/Lay) Mr B Summerskill (Lay) Ms A McKechin (Lay) Mr D Goh (Optometrist) Ms S Fida (Optometrist)
Clinical adviser:	Not Required
Legal adviser:	Ms M Swinnerton
GOC Presenting Officer:	Ms A Ling
Registrant present/represented:	Yes, and represented
Registrant representative:	Mr J Milner Ms N Wheater [AOP]
Hearings Officer:	Ms A Riaz
Facts found proved:	1,2,3 admitted and found proved
Facts not found proved:	4 (in relation to 2 and 3) not proved
Misconduct:	No
Impairment:	No
Sanction:	No- no order made

Immediate order:	No
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ALLEGATION

The Council alleges that you, Kerry Doyle (SO-13041), a registered Student Optometrist:

- 1) On 26 October 2011 at Magistrates' Court in Northern Ireland, you were convicted of an offence contrary to Article 90(4) of the Road Traffic (Northern Ireland) Order 1981 in that on 19 July 2011 in the County Court Division of Belfast, you permitted [Ms A] to use a motor vehicle on a road without there being in force in relation to the user of the said vehicle by the said [Ms A] such a Policy of Insurance or such a Security against third-party risks as complied with the requirements of Part V111 of the Road Traffic (Northern Ireland) Order 1981;
- 2) You failed to declare to the GOC the conviction set out at (1) above, when you applied for registration as a student optometrist in August 2017;
- 3) You failed to declare to the GOC the conviction set out at (1) above, when you applied for retention as a student optometrist on 11 July 2018;
- 4) Your conduct as set out at (2) and/or (3) above was dishonest in that you knew you had to declare the conviction set out at (1) above to the GOC;

And by virtue of the facts set out above, your fitness to undertake training is impaired by reason of conviction regarding (1) above, and/or by reasons of misconduct regarding (2) and/or (3) and/or (4) above.

Hearing in private

Pursuant to Rule 25 (3) of *the General Optical Council (Fitness to Practise) Rules Order of Council 2013* the Committee determined that all those parts of the hearing where it was considering the [redacted] of the Registrant should be heard in private.

DETERMINATION

Admissions in relation to the particulars of the allegation

The Registrant admitted particulars 1,2 and 3 of the Allegation and these were found proved.

Background to the allegations

The Registrant is a registered student Optometrist, who first registered with the GOC on 22 September 2017. In autumn 2017, she began and continues to be a student on an undergraduate BSc (Hons) Optometry degree course at the University of [redacted].

On 26 October 2011, at the Magistrates' Court, Northern Ireland, she was convicted of an offence contrary to Article 90 (4) of the Road Traffic (Northern Ireland) Order 1981 ("The Order"). In that, on 19 July 2011, in the County Court division of Belfast, she permitted Ms A, her friend, to drive the Registrant's car on a road, when the Registrant did not have a valid policy of insurance, or such a security covering Ms A against third party risks.

The Registrant attended at the Magistrates' Court on 26 October 2011 and pleaded guilty to this offence. She was ordered to pay a fine of £250.00 and her driving licence was endorsed with six penalty points. The Council has been provided with a Certificate of Conviction, dated 13 November 2018.

On 28 August 2017 and again on 29 August 2017, before she began her undergraduate course, the Registrant completed and submitted her initial student Optometrist application form to register with the GOC. Both these forms were identical. The Registrant did not declare her conviction on either form, although she was required to do so.

On 11 July 2018, she submitted an application form online for retention as a student Optometrist. The Registrant did not declare her conviction on this application form.

The GOC published, in November 2013, a document entitled "Declarations guidance for student Registrants" ("the Declarations guidance"), which is available online. It is intended to provide guidance for those applying, or considering applying, to the GOC for registration, as well as those who are currently registered and making an application for retention of registration.

This guidance states, at Pages 7 and 8, that all applicants are required to declare

"Any conviction (including conviction by court-martial) or caution received in the British Islands for a criminal offence, or a conviction elsewhere which, if committed in England or Wales, would constitute a criminal offence".

On 5 November 2018, the Council received an email from the Registrant stating she had declared her previous motoring conviction on registering with the GOC in 2017. She stated she had now been asked by Specsavers, when applying for pre-registration positions, to provide confirmation this declaration had been made.

It was as a result of this email that the Council first became aware of the Registrant's conviction.

It is alleged the Registrant knew she had to declare her conviction to the GOC when she first applied for registration and again when she applied to be retained on the register, and that her conduct in failing to declare it was dishonest.

Findings in relation to the facts

In reaching its decision on the facts, the Committee considered all the evidence before it, both oral and documentary, including the positive testimonials which were contained in the Registrant's bundle. It took account of the Skeleton Argument and submissions made by Ms Ling on behalf of the Council and the submissions made by Mr Milner on behalf of the Registrant.

The Committee accepted the advice of the Legal Adviser who advised that the burden of proof rests on the GOC and that there is no burden on the Registrant to prove or disprove anything. The standard of proof applied is the balance of probabilities, i.e., whether something is more likely than not. The Committee had regard to the relevant legal test when considering allegations of dishonesty set out in the case of *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67.

Witness Assessment

The Committee first considered the overall credibility and reliability of the witnesses it heard from.

Witness 1 - [redacted]. He confirmed the contents of both his witness statement and his supplementary statement and adopted them as his evidence in chief. There was no material challenge to the reliability of his evidence, and he made appropriate concessions when matters were put to him in cross-examination. For example, when asked to explain whether the Registrant's initial application form being submitted twice was due to a technical error, he said he did not have the personal knowledge to answer that question. The Committee considered his evidence to be clear and reliable. He provided credible evidence about the procedure and process the Registrant, as a student, would have been required to follow when she submitted, online, her initial registration form (twice) and subsequently, her student retention application.

A summary of his evidence is as follows:

He stated the GOC, on its CRM database, keeps an individual record for all Registrants. Each Registrant's record begins when they register initially with the

GOC and includes details about the history of the Registrant with the GOC e.g. correspondence, telephone calls and application forms.

He said this CRM database was in place when the Registrant first registered with the GOC in August 2017 and he confirmed he had searched her record on it. He stated student Registrants all follow the same online process. He said the Registrant, when she first applied to the GOC, would have selected "Student Registration" and gone on to complete the student registration form. He stated she completed and submitted two identical online student optometrist forms on 28 and 29 August 2017. He stated he was unsure why she did this but, he confirmed that it would not have been possible for her to resubmit on 29 August 2017, the same form she had originally submitted previously. He said he had no knowledge about whether the Registrant had completed any of her application forms on a laptop, or a mobile phone with a pre-populated text function. He stated this form contains a "Fitness to train Declaration", which requires applicants to provide details of any criminal, disciplinary, or mental and/or physical health conditions which may currently affect the individual's fitness to train. His evidence was the application form clearly states a Registrant must declare a conviction or caution.

He confirmed the Registrant should have had access to the Declarations guidance, a detailed document which is available online, when she completed her registration application form. His evidence was there is a section on the online form, which the Registrant would have been able to click on, to open the link enabling her to access this further guidance. He stated that the search of the Registrants` CRM history showed she did not declare her criminal conviction on either of the application forms submitted in August 2017. He stated she would have added her electronic signature to the Declaration section of the form, confirming its contents were true and accurate when she submitted it.

He said Section 4 of the application form, which the appellant completed in 2017 (twice), required her to declare the information given in the form is true and accurate, and that she had read, understood and will comply with the GOC`s Standards for Optical Students. He stated when someone submits the form online it is received electronically into the GOC's mailbox and a Registrant should get an email straightaway confirming the form has been received.

Witness 1 stated that all Registrants are asked to repeat the GOC renewal process annually. He said all Registrants wishing to be retained on the GOC's register as a student Registrant must go on to the GOC's website and complete a new registration form each year. He confirmed, having checked the Registrant's record, that she submitted her application form for retention as a student Optometrist on 11 July 2018 and did not declare her criminal conviction on Section 4 of that form as required. His evidence was she had completed the form confirming she had no declarations to make.

The Committee found his evidence was clear and consistent in relation to the requirement for student Optometrists to declare any criminal convictions to the GOC

when first applying for registration and subsequently when making any further applications for the purposes of retention of registration.

The Registrant- The Committee considered the Registrant's evidence in the round, taking account of the particular difficulties she may have experienced during the hearing because of her difficulties in aspects of literacy. It found her evidence to be both credible and believable. Her oral evidence that she always declared her criminal conviction, including on forms requiring her to do so e.g. for UCAS, Northern Ireland Social Care Council (NISCC), Specsavers and the Northern Health and Social Care Trust was believable and consistent with the documentary evidence contained in her bundle.

The Committee found the Registrant's evidence remained consistent under cross examination. She tried to the best of her ability to answer the questions put to her. She told the Committee that she could not remember some events, for example, why she submitted her initial student registration application form twice and whether or not the second of these forms was prefilled. The Committee, taking into account the passage of time, found this plausible. When asked by Ms Ling to explain what she meant by the term "general declaration" that she had used in her letter to the GOC dated 13 February 2019, she was unable to explain further. However, the Committee found that this was consistent with [redacted] that she had outlined to it.

Her evidence, that she had not taken care and was probably rushing when she filled the forms in, was considered to be both honest and plausible. It was consistent with her evidence, which the Committee also accepted, that she was a single mother, looking after two small children and a baby, whilst working and starting her university course. The Committee accepted her evidence that it was on her mind to sort out registration after being told to do so by the university [redacted]. [redacted]

Particular 4

Your conduct as set out at (2) and/or (3) above was dishonest in that you knew you had to declare the conviction as set out at (1)...to the GOC.

The Committee considered whether the Registrants' conduct was dishonest separately in respect of the admitted allegations 2 and 3.

This allegation is found not proved

With regard to this allegation, the Committee applied the test as set out by the Supreme Court in the case of Ivey v Genting Casinos [2017] UKSC 67:

Lord Hughes, at para 74 stated:

"when dishonesty is in question the fact-finding tribunal must ascertain, (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practise determinative) going to whether he held the belief, but it is not an additional requirement that this belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to

facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

Allegation 4 – "Your conduct as set out at (2)"----- was dishonest in that you knew you had to declare the conviction as set out at (1)"... "to the GOC"

The Committee initially addressed the issue of the Registrants' actual state of knowledge or belief as to the facts.

After considering all the evidence, the Committee determined this allegation is not proved.

The Committee considered all the relevant evidence with particular care in order to decide, subjectively, the Registrant's knowledge or belief as to the facts on 28 and 29 August 2017, when she completed and submitted her initial student registration forms to the GOC.

The Committee accepted the Registrant's evidence that she was careless when she completed these forms on her mobile phone, that at the time she would have avoided fully reading the accompanying guidance from the GOC, which she could have linked into online. [redacted]. [redacted].

The Registrant's evidence that she did not read the application form and guidance properly, as she was in a rush to complete them, was also consistent with the pressures on her because of her personal and family situation at that time. She was a busy single mother with three children to care for, applying late at night via her mobile telephone. She was applying, hurriedly, in response to an email from her tutor at University advising her she had to do so before she started her course. She was frank with the Committee in stating that, [redacted] The Committee found when she went online to complete the form she was rushing and not taking proper care. It concluded this was why she did not correctly complete the Declaration about her criminal convictions.

The Committee found the Registrant's evidence that she had always previously declared this conviction when required to do so, and that it had not affected her career detrimentally was consistent with the documentary evidence she provided. The Committee accepted that she had no reason to deliberately omit the information. In light of this evidence, the Committee found it believable that if she had realised, she was required to declare her conviction to the GOC she would have done so. It concluded therefore that her omission, and subsequent false recollection that she had so declared it, were genuine mistakes.

The Committee also considered that her actions upon being asked by Specsavers to clarify the position the GOC had taken regarding her conviction, (namely immediately contacting the GOC and asking them), taken with her co-operation in providing details when she realised she had not declared it, were consistent with her making a mistake rather than acting with a dishonest motive.

Having determined the Registrant's state of mind, The Committee went on to conclude that in applying the objective standards of ordinary decent people, this conduct would be considered careless and leading to a mistake, but not dishonest.

Allegation 4 – "your conduct as set out at"... (3) was dishonest in that you knew you had to declare the conviction set out at (1)"... "to the GOC".

After considering all the evidence, the Committee determined this allegation is not proved.

Having accepted the Registrant's [redacted] the Committee had regard to the format of the application for retention as a student Optometrist and to the GOC's accompanying guidance. The Committee considered the declaration section of this form and its accompanying narrative to be ambiguous and unclear. The click box stated: "Make a new declaration". The accompanying guidance could be easily accessed, but the Committee found the relevant sections were more difficult to find. The Committee, having accepted that the Registrant thought she had initially declared her conviction, as she had on several previous forms submitted for a similar purpose, concluded that she had misinterpreted what was required of her on the retention application.

Having reached this conclusion as to the Registrant's actual state of mind in 2018 when she submitted her application for retention as a student Optometrist to the GOC, the Committee went on to determine whether the Registrant's actions would be considered dishonest by applying the (objective) standards of ordinary decent people.

It determined that, by such standards, the Registrant's actions in failing to declare her criminal conviction to the GOC in 2018 would not be considered dishonest, but rather, conduct which was careless and mistaken.

Conviction, Misconduct and Impairment

The Committee next went on to consider the grounds for impairment as alleged by the Council, namely conviction in relation to particular 1 of the Allegation and misconduct in relation to particulars 1, 2 and 3.

The Committee took account of the submissions made by Miss Ling on behalf of the Council and of her Skeleton Argument. It also heard and took account of submissions from Mr Milner on behalf of the Registrant. The Committee accepted the advice of the Legal Adviser. The Committee were referred to the leading cases in relation to both misconduct and impairment.

Findings in relation to proof of conviction

The Committee had before it the Certificate of Conviction dated 13 November 2018. Pursuant to Rule 40(3) of the Fitness to Practise Rules 2013, production of a Certificate of Conviction shall be conclusive evidence of the offence committed.

Pursuant to Rule 40(5) the only ground of challenge possible was that the Registrant was not the person convicted but no such challenge has been made. The Registrant has always accepted and never denied that she was convicted of this offence.

The Committee was therefore required to go on to consider whether the Registrant's fitness to undertake training is impaired by virtue of her criminal conviction for a driving offence in 2011. A criminal conviction is a potential ground for the Registrant to be found impaired pursuant to Section 13D(2) of the Opticians Act 1989.

Impairment in relation to conviction

The Committee reminded itself that whether or not the Registrant's fitness to undertake training is impaired is a matter for its professional judgement. There is no burden or standard of proof.

The Committee was referred to the criteria in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Paula Grant [2011] EWHC 927, whether the Registrant

- a) Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
- b) Has in the past and/or is liable in the future to bring the profession into disrepute; and/or
- c) Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession

The Legal Adviser also took the Committee to the case of Cohen v General Medical Council [2008] EWHC 581 and suggested the Committee ask whether the Registrant's conduct is easily remediable, whether it has been remedied and whether it is highly unlikely to be repeated.

The Legal Adviser also asked the Committee to consider whether the Registrant had insight into her conduct, and she referred them to the case of Kimman v GMC [2016] EWHC 1808. She reminded it to keep in mind the importance of the public interest in maintaining confidence in the profession and declaring and upholding proper standards.

The Committee read numerous positive testimonials, from a wide range of individuals, all of whom were aware of the nature of the regulatory proceedings brought by the Council, and all of whom commended the positive character and academic achievements of the Registrant.

The Committee reminded itself that the purpose of these proceedings is not to punish the Registrant for past misdoings but to protect the public and/or profession where her fitness to train is impaired at the date of the hearing. The Committee looks

forward not back, but, in order to form a view as to the Registrant's current fitness to train it took account of the way she has acted, or failed to act in the past and any insight she has into her conduct and any steps taken to remedy it.

The Committee took account of the fact that the Registrant's conviction for the driving offence of permitting the use of her motor vehicle by another, who was uninsured, had occurred in 2011, that she has not had any further convictions, cautions, or other fitness to practise history since this time.

The Committee took into account that the Registrant admitted particular 1 and has never sought to dispute that she has this criminal conviction. The Committee also took into consideration the evidence she gave in which she explained that since the conviction, she was fully aware and compliant with the requirements to hold relevant insurance.

The Committee also took into account Ms Ling's submission that any Registrant who has a conviction for a driving offence of a similar nature would be unlikely to be referred by the Investigations Committee to a Fitness to Practise Committee for that conviction alone.

The Committee determined that this hearing will have been a salutary experience for the Registrant.

The Committee concluded that the Registrant's conduct is remediable, has been remedied and is highly unlikely to be repeated.

The Committee further concluded that the Registrant has not acted and is not liable in the future to act so as to put a patient or patients at unwarranted risk of harm and neither has she breached any of the fundamental tenets of the profession.

The Committee considered the wider public interest. It considered whether or not a finding of impairment was required as a result of the collective need to maintain confidence in the profession, as well as declaring and upholding standards in the profession. The Committee determined that the Registrant's conviction for a motoring offence in 2011 does not necessitate a finding of current impairment on the grounds of public interest.

The Committee found that the fitness of Kerry Doyle to undertake training as an Optometrist is currently not impaired.

Findings in relation to misconduct

Ms Ling invited the Committee to find that the Registrant's conduct in receiving a criminal conviction coupled with her failure to declare it to her Regulator, the GOC in 2017 and again in 2018, was sufficiently serious to constitute misconduct. Mr Milner submitted the allegations found proved, in failing to declare her conviction, amounted to a genuine mistake by the Registrant, albeit a serious one. He submitted that the Registrant's conduct therefore did not amount to serious misconduct and that it would not be regarded as deplorable by fellow registrants.

The Committee was reminded that it was a matter for its professional judgement to determine whether there had or had not been misconduct.

The Committee were referred to the cases of Roylance v GMC (No2) [2000] 1 A.C. 311 and Remedy UK Ltd v General Medical Council [2010] EWHC 1245 (Admin) and it was suggested that the appropriate test for the Committee to use was to consider whether there had been a serious departure from the standards expected of a reasonably competent Registrant.

The Committee had regard to the GOC's Standards for Optical Students (effective from April 2016) applicable at the time. The Committee accepted that not every breach of the standards would result in a finding of misconduct. It would have to be satisfied that the departure from the standards was serious enough to warrant a finding of misconduct.

The Committee considered the Registrant's conduct in the round when determining whether or not it constituted misconduct. The Committee took into account all the conduct admitted and found proved, including the criminal conviction.

In relation to the criminal conviction, the Committee reminded itself that it was from 2011, was for a motoring offence, and that there had been no repetition of this or any other criminal behaviour.

The Committee determined that the Registrant's conduct in failing to declare her conviction for a driving offence to the GOC, when submitting application forms twice in 2017 and once in 2018, was careless. The Committee considered she had been negligent when completing these forms, failing to give them her proper care and attention. In her own evidence, the Registrant accepted she rushed to complete the forms, neglecting to read them properly or to read the GOC's accompanying Guidance. The latter is published to assist registrants by providing details of the information they are required to include on these forms. However, whilst negligent and careless, the Committee did not consider that her conduct was serious.

While the Committee determined her conduct in making omissions on these forms to be submitted to her Regulator would be disapproved of by fellow registrants, it did not consider that they would consider it to be deplorable.

The Committee was not persuaded by the submission made by Ms Ling on behalf of the Council that the Registrant had departed from the standard 16 of the GOC's Standards for Optical Students.

Standard 16 states the Registrant should:-

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 did not find that the reputation of the profession had been damaged by these omissions, nor that public confidence was damaged.

In all the circumstances, whilst omitting the conviction from two official forms was negligent and careless, it did not constitute a serious departure from the standards expected and did not amount to misconduct which was serious.

Having found that the Registrant's conduct did not amount to the ground of impairment alleged, namely misconduct, the Committee was not required to consider the issue of current impairment further in relation to particulars 1, 2 and 3.

Declaration

The Committee makes a formal declaration that the Registrant's fitness to undertake training is not impaired.

Warning

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

The Committee took account of the GOC's Hearing and Indicative Sanctions Guidance (revised 1 December 2018).

The Committee determined that it was not appropriate, in the particular circumstances of this case to give a warning to the Registrant. With regard to particular 1, the conviction, it considered that the Registrant had shown insight into, apologised for, and remediated her conduct. It did not consider her conduct was sufficiently serious to require a formal response, taking account of the nature and age of the motoring conviction.

With regard to particulars 1, 2 and 3, the Committee has already determined that this conduct did not amount to misconduct. It did not go on to consider current impairment as a result. It cannot therefore be said that this conduct approached the threshold for impairment, or that it was sufficiently serious to require a formal response.

In light of the Registrant's previous good history, given that there has been no repetition of the conduct since and the remediation shown, a warning was not appropriate.

Chairman of the Committee: Ms Jayne Wheat



Signature

...Date: 15.07.20

Registrant: Ms Kerry Doyle

Signature ... attended via videoconference..... **Date: 15.07.20**