

**BEFORE THE REGISTRATION APPEALS COMMITTEE
OF THE GENERAL OPTICAL COUNCIL**

**ROSS DEMPSTER
(U-41227 previously 01-27326)**

AND

GENERAL OPTICAL COUNCIL

**DECISION OF THE REGISTRATION APPEALS COMMITTEE
4 SEPTEMBER 2019**

Committee Members:	Dr P Ormerod (Chair/Lay) Mr J Kellock (Lay) Mr P Curtis (Lay) Ms T Cox (Optometrist) Ms L Gerson (Optometrist)
Legal adviser:	Mr P Moulder
GOC Presenting Officer:	Ms A Ling
Appellant present/represented:	Present and not represented (not present for handing down)
Registrant representative:	None
Hearings Officer:	Mr T Yates
Outcome:	Appeal dismissed

Appeal

The Appellant attended to present his appeal in person. The Council was represented by Ms Ling.

Preliminary issues

The Council sought to rely on an additional document, a copy of a letter to the Appellant dated 14 June 2010 in which he had been **redacted** as to the need to maintain registration with the Council at all times. The letter had been provided to the Appellant one day before today's hearing. Ms Ling submitted that the letter had been obtained in response to the receipt of the Appellant's written representations, only received on 28 August 2019, in which he asserted no disciplinary history. The Appellant stated that he did not object to the Committee seeing the letter, on the basis he agreed that it did go to a relevant issue, and that he would be able to deal with it in giving evidence. The Committee determined that it was fair to admit the letter.

Having read the letter, two members of the Committee informed the hearing that they had been members of the Investigation Committee at the time the letter had been sent. Neither had any memory of the case in 2010. The parties were informed of this and neither objected to the Committee members continuing to hear the case. The Committee determined that a fair-minded observer, aware of the facts would not perceive a real risk of the members being biased, and that the Committee would continue as constituted.

Background

The Appellant was admitted to the register as an Optometrist with the Council on 12 June 2013, having previously qualified and practised as a Dispensing Optician since 1980. He was removed from the register on 1 April 2018 for failure to apply for retention. On 3 April 2019 the Appellant submitted a restoration restricted activity form in which he indicated he had performed the testing of sight whilst unregistered. On 22 April 2019 the Appellant submitted an online application for restoration to the register. On 5 June 2019 the Registrar refused the application for restoration. The decision letter gave reasons as to the fact that the Appellant undertook restricted activities whilst unregistered and did not indicate any knowledge on the part of his employer of his unregistered status, nor set out any measures for the recall and re-testing of patients by a registered Optometrist.

By email dated 3 July 2019, the Appellant gave notice of appeal against refusal of his application for restoration, pursuant to paragraph 2(1)(a) of Schedule 1A of the Opticians Act 1989 (as amended) (the "Act").

Hearing

The Committee heard evidence on affirmation from the Appellant and submissions from Ms Ling, on behalf of the Council, and final submissions from the Appellant. It also heard from and accepted the advice of the Legal Adviser.

The Council provided to the Committee a Hearing bundle containing the Notice of Hearing and documentary evidence. It also provided two addendum bundles and a Skeleton Argument, opposing the appeal.

The Appellant had submitted to the Committee in writing an 'Opening Statement'. In this statement, the Appellant gave details of mitigating circumstances in 2018 which contributed to his failure to apply for retention by 31 March 2018 and his subsequent failure to re-register from April 2018. He also gave a chronology of emails and letter correspondence between himself and the GOC, NHS Scotland and the AOP. The Appellant appended to his statement as exhibits copies of the emails and letter correspondence. He also provided two letters of support.

The Appellant's submission was that he had understood the correspondence he had received from the Council to indicate that any issues with his registration and continuing in practice had been resolved by 21 April 2018. He said he had missed the renewal date in January 2018, redacted.

Redacted

The Appellant stated that during the course of April 2018 he had corresponded with the Council about his registration. On 11 April 2018 the Appellant received confirmation that his email address on his GOC account had been updated. On 21 April 2018, the Appellant said he received a 'list number' from the Council ("the 'U' number"). On 1 November 2018 the Appellant stated he had received an email from NHS Scotland concerning his removal from the register. The Appellant said he had thought matters had been resolved. When he was having issues uploading his CET points in November 2018 the Appellant said he contacted the Council at the suggestion of the AOP and the Council informed the Appellant he was not on the register and he was then advised to apply to re-register, which he had done.

In oral evidence, the Appellant denied having received the original letter dated 5 April 2018 notifying his removal from the register. He accepted that it had been sent to his current business address, however stated that, at that time he had been in the process of closing down the business. He himself was in Redacted and his receptionist may have thrown the letter away. He stated that when he pursued the matter he had thought that the issuing of the 'U' number by the Council had permitted him to carry on practising whilst he obtained the necessary CET points to re-register. He said he had been told in a telephone conversation with the Council on 11 April 2018 that everything had been sorted out. On cross-examination, the Appellant accepted that he had understood, certainly by early 2019 that he had not had "full" registration. He agreed that he had not received any positive confirmation from the Council that he was able to continue practising at any time. He conceded

that he had continued work full time from 2018 to 2019 conducting eye examinations and to see patients. The Appellant asked the Committee to ignore the redacted letter of 2010 and the background was that his mentor had been at fault.

The Council opposed the appeal. In its skeleton argument the Council submitted that the issue for the Committee was whether the Appellant was a fit person to be registered to practise as an Optometrist. The Appellant had accepted that he was unregistered from April 2018. He had undertaken restricted activity (sight testing) from that time until May 2019. He had had before him plenty of information stating that he needed to restore himself to the register and how to proceed. There was no ambiguity. The Appellant had not paid any fees for a year and this should have alerted him. There were risks to the public in the Appellant not having been registered, having potentially invalid insurance and having not satisfied the CET requirements. It would be contrary to the overarching objective to allow the appeal. In closing submissions, Ms Ling submitted that the emails and online information had always been clear to the Appellant that he was not registered and should not practise until he had completed re-registration.

In his closing submissions, the Appellant submitted that he had a long history of optical practice over 40 years. He had never been a threat to his patients. He had had a very bad year in 2018 and was prepared to accept that he may have ‘taken his eye off the ball’. However, he asked the Committee to take a compassionate approach, stating that a lack of registration would have serious effects on himself, his family and others in his business and his opportunities for re-employment.

The Legal Adviser reminded the Committee that it should bear in mind that the Appellant brought the appeal and according to the statutory scheme of the appeal, was required to demonstrate that the appeal should be granted. The Committee was advised that it should consider the evidence afresh today and determine the appeal in accordance with the procedure set out in The General Optical Council (Registration Appeals) Rules 2005. It should allow the appeal if it found that the decision appealed against had been wrong and the Appellant had demonstrated that he satisfied the criteria for restoration of his registration. In order to satisfy the requirements for restoration of registration, the Appellant was required to satisfy the provisions of section 8 of the Act, that he held the necessary qualification, had adequate practical experience and was a ‘fit person’ to practise as an Optometrist. Rule 25 of the General Optical Council (Continuing Education and Training Rules) Order of Council 2005 provided that the Appellant had to satisfy the Committee as to his having conducted the relevant number of CET points prior to re-registration. He referred the Committee to the cases of *Jideofo v Law Society* and *CHRE v GDC and Fleischmann*. The Committee accepted his advice.

Decision

The Committee noted that it was now not disputed by the Appellant that he had not been registered after 1 April 2018. The Appellant advanced the reason that he had

understood the position to be that he had been entitled to continue in practice after April 2018 on the basis of having been given a 'U' number by the Council. However, he did not provide any evidence of a foundation for that belief and gave evidence that this had been his assumption. It noted that the 'U' number relied on by the Appellant could only have been created by the Appellant in going online to begin the process of seeking to restore his registration. It was clear from the information on the GOC website that the Appellant would have been informed that his registration had not been restored and that it was not permissible to continue in practice until re-registration was complete. The Committee noted that the Appellant continued to use his old GOC number when signing NHS documentation after April 2018. He had never informed the NHS or his current employer of the change to his GOC number.

The Committee was not persuaded that it was reasonable for the Appellant to have assumed that he had been entitled to carry on in practice with the benefit of the 'U' number, pending completion of his CET and 'full' re-registration. In any event, the Appellant accepted that it had been clear from receiving an email in February 2019 onward that he was not registered. The Appellant had submitted his own restricted activity form in April 2019 in which he had declared having conducted eye tests whilst unregistered. He confirmed this in his 'Fully qualified restoration application' on 22 April 2019. The Committee did not accept the Appellant's explanation for completing these forms as being consistent with a belief that he was entitled to carry on in practice at that time. In spite of the Appellant's admission that he knew by February 2019 that he was not registered, he had continued to test patients until May 2019, as evidenced by the NHS Scotland records.

The Committee noted that, aside from the Appellant's explanation of how he had come to continue in practice despite not being registered, in giving evidence the Appellant failed to demonstrate a clear understanding of the need for and processes of registration. He also did not appear to acknowledge his personal responsibility in engaging with his regulator and other authorities to maintain his registration. He did not demonstrate sufficient insight into the potential risks to the public of unregistered practitioners, and the effect on public confidence in the profession that this would have. He had assumed that his insurance cover would continue, whether or not he was registered, simply on the basis that he continued to pay the premiums and the insurers had not contacted him to check.

The Committee had sympathy for the Appellant's personal circumstances. He had clearly had a very bad year in 2018. He was a very experienced practitioner and clearly cared for his patients. The Committee accepted that he and others would be affected if his appeal were not upheld. However, the Committee had to address the statutory requirements as to whether the Appellant's was a 'fit' person to practise as an Optometrist and the other requirements of section 8(1) of the Act.

The Committee was satisfied that, of the requirements of section 8(1) of the Act, the Appellant did hold a suitable qualification and had also the requisite practical experience. In addition, it was not disputed that the Appellant had now completed the necessary CET requirement for re-registration. However, the Committee was not

satisfied that the Appellant is a 'fit' person to practise as an Optometrist, as required by section 8(1)(c) of the Act.

The Committee found that the Appellant had practised whilst unregistered for a substantial period of over a year, during which he continued to test or examine patients. He had conceded that his employer had not been aware of that position. In the view of the Committee it was an extremely serious matter that someone should engage in restricted practice without being registered, heightened in the Appellant's case by the fact that he had received a warning letter in 2010 from the GOC about the need to maintain registration. The Committee was not satisfied as to the explanation given by the Appellant concerning his belief that he had been able to continue to practise. It preferred the documentary evidence and submission of the Council that there was clear information before the Appellant that he was not registered and should not practise again until the re-registration process had been completed and he was restored to the register.

The Appellant had failed to sufficiently demonstrate to the Committee in his appeal that he had sufficient insight into and understanding of the importance and purposes of registration, and the risks to and effect on the public confidence presented by unregistered practitioners continuing to practise. Accordingly, the Committee was not satisfied that the Appellant was a fit person to practise as a registered Optometrist.

The Committee therefore determined that the Registrar's decision be upheld and the appeal is dismissed.

Chairman of the Committee: Dr Pamela Ormerod

Signed _____

Date: 4 September 2019

Appellant: Mr Ross Dempster

Signed _____

Date: 4 September 2019

FURTHER INFORMATION
Appeal
Where the decision by the Registrar been upheld by the Registration Appeals Committee, the appellant may appeal against that decision through the Courts. The relevant court is shown at section 23G(4)(b)-(c) of the Opticians Act 1989 (as amended).
Professional Standards Authority
This decision will be reported to the Professional Standards Authority.
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.