BEFORE THE FITNESS TO PRACTISE COMMITTEE
OF THE GENERAL OPTICAL COUNCIL

GENERAL OPTICAL COUNCIL

AND

BEATRICE JORDAN (01-11403)

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DETERMINATION OF A 1st SUBSTANTIVE REVIEW
7 OCTOBER 2019

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Committee Members: Sara Fenoughty (Lay)
Kathryn King (Lay)
Carolyn Tetlow (Lay)
Gordon Elliott (Optometrist)
David Cartwright (Optometrist)

Legal adviser: Gerard Coll

GOC Presenting Officer: Anna Ling

Registrant: Present and represented

Registrant representative: Sandesh Singh (Counsel)
Lauren Barnie (AOP)

Hearings Officer: Terence Yates

Outcome: Not impaired – current order revoked with immediate effect.
DETERMINATION

Background
The Registrant is an optometrist and has been registered with the Council since 7 October 1983. The matters set out in the particulars of the allegation took place whilst the Registrant was in practice at [REDACTED] in Ayr, Scotland. She practised as an optometrist and her [REDACTED] practised as a dispensing optician in the same practice.

The matters which were alleged against her concerned two types of alleged misconduct. The first concerned her responsibilities arising from aspects of her [REDACTED]. The second concerned matters arising out of her own practice. The majority of the matters concerned children with learning or developmental difficulties who were treated at [REDACTED] between 2007 and 2012. The [REDACTED] had a special interest in tinted lenses and Visual Processing Assessments (VPA) and the benefits of such treatments to children with learning or developmental difficulties.

The matters related to [REDACTED] included: prescribing tinted lenses without reviewing and/or recording a review of her [REDACTED]; failing to follow up the results of tests undertaken [REDACTED]; not querying or offering suitable referrals in relation to findings made [REDACTED]; failing to ensure that informed consent was obtained in that the patient or carer was not informed of the limited evidence base for the VPA process and that patients and/or their carers were provided with sufficient information; and failing to maintain or ensure a record was made of why a tint was necessary, and detailing the tests to determine the tint and saturation.

The matters concerning the Registrant’s practice included: inappropriate claiming of Supplementary Eye Examinations (SEE) in relation to the VPA & inappropriate claiming in relation to small prescriptions; prescribing low prescription lenses when they would provide little or no visual benefit and/or not following the criteria set out in the “Guidance for the Issuing of Small Prescriptions and Making Small Changes to existing Prescriptions”; failing to take steps to manage a patient’s binocular vision anomalies prior to [REDACTED] undertaking a tint assessment, and prescribing spectacles with a tint without performing a refraction under cycloplegia.

The system at the practice was that the Registrant would examine the patient first and then [REDACTED] would carry out a VPA. In order to carry out a VPA, the Registrant’s [REDACTED] would use an orthoscopic Read Eye (RE). The RE is a similar piece of equipment and works in a similar way to the Intuitive Colorimeter, which is more commonly used. The [REDACTED] practises colorimetry, that is measuring the amount of colour that is required to go into a coloured lens, and each of these pieces of equipment assists in this process.

There was no criticism of the Registrant in allowing [REDACTED] as a dispensing optician, to carry out colorimetry; it is a recognised skill that a dispensing optician may carry out. The criticism of the Registrant was that she had the responsibility to prescribe the lenses advised [REDACTED] after [REDACTED] carried out a VPA and it was her responsibility to review that decision and to record the findings of her review. It was alleged that she did not carry out such a review and did not follow up the tests. In cases where
the [REDACTED] had identified other conditions, for example Prosopagnosia, the Registrant did not question the finding nor offer a referral to an NHS clinic.

With regard to informed consent, the criticism of the Registrant was that she did not ensure that the patient or carer was made aware of sufficient information about the proposed course of treatment to ensure that the patient, or carer on the Patient’s behalf, could make an informed choice as to the course of treatment to be undergone. It was alleged that it was incumbent on the Registrant to ensure that the patient or carer was informed of the limited evidence base available to support the proposed treatment and the risks and benefits associated with it.

The Registrant’s registration was made subject to conditions for 2 years following a substantive hearing held on 30 October – 10 November 2017. The order is due to expire on 07 December 2019.

**Review hearing 07 October 2019**

The Committee has heard submissions from Ms Ling on behalf of the Council and from Mr Singh on behalf of the Registrant. It heard oral evidence from the Registrant. It also had regard to the documentary evidence which included:

1. A reflective statement by the Registrant [REDACTED]
2. Supervisor’s reports [REDACTED]
3. The Registrant’s Personal Development Plans [REDACTED]
4. Records of the Registrant’s CET. [REDACTED]

In her evidence, the Registrant explained the steps that she has taken to remediate the failings identified in her practice. She took the Committee to entries in the three reports produced by her supervisor [REDACTED], and which demonstrated a methodical approach to remediation. She discussed the steps that she had taken to deal with the underlying issue of allowing her [REDACTED] views to override her own professional and clinical judgement. She made particular reference to relevant CET all-day courses undertaken at Aston University in Birmingham, and at Aberdeen University, and her full and attentive absorbing of the teaching dealing with the need to exclude reading difficulties associated with binocular vision problems before turning to VPA. The Registrant explained that she now takes command of her clinical practice. She makes a full clinical examination in line with accepted practice and does not suggest VPA unless all other options are explored and discussed first. The Registrant now has a particular interest in patient consent issues, which she intends to deepen. As a result, she now provides patients or their accompanying parent/caregiver with a written document explaining among other things the absence of an accepted evidence base for colorimetry and VPA.

**Findings regarding impairment**

Ms Ling advised that the Council was neutral on the issue of the Registrant’s current impairment. Mr Singh invited the Committee to be satisfied that as at today, the Registrant was not impaired. Accordingly, the Direction could be revoked today. The Committee has accepted the advice of the Legal Adviser which was that it must first
consider whether, in its judgement based on all of the papers available and the Registrant’s testimony, the Registrant’s fitness to practise remained impaired. He advised the Committee to hold in mind what was said by Lord Wilson in the Supreme Court at para 27 in Khan v GPhC [2017] 1 WLR 169 SC (Sc), ‘…does the Registrant’s fitness to practise remain impaired?’. He advised that the Registrant has a persuasive burden to satisfy the Committee that all of the past failings have been fully addressed having regard to the reasons why the Committee had found as it did at the substantive hearing.

The Committee accepted that the Registrant had shown insight into all of the substantive Committee’s findings and concerns. She, together with her supervisor [REDACTED], had devised a Personal Development Plan (PDP) which had been systematically and diligently followed. In making its decision, the Committee has placed significant reliance on the evidence of the supervisor, whose input allowed the Registrant to deal comprehensively with the issues identified by the previous Committee. [REDACTED] ad provided thorough reports based on his review of her records and the observations of her practice that he had made in person. These showed that after an initial period of six months, where some practice issues were identified, the progress shown by the Registrant had been significant and continuous. Her insight into her professional misconduct had been shown to have been fully developed. She satisfied the Committee that over the 23 months that had passed since the substantive order had been made, she had demonstrated that she had understood her responsibilities and embedded the personal and professional changes to her practice, so that the likelihood of a repetition of the failings in her practice was remote. She satisfied the Committee that she now took charge of her practice and in particular said ‘…I have discovered what it’s like to be in control, and I like it, and I won’t go back’. That expression in her testimony closely supported the observations of her supervisor [REDACTED], who wrote that the results of the Registrant’s understanding and response to the substantive order had been ‘…the ideal outcome’.

The Committee is satisfied that the Registrant has fully embedded the changes and improvements in her practice. The public is no longer at risk from her unrestricted practice. There is no public interest in the order continuing in effect, and the public interest would be better served by returning the Registrant to practise, she having demonstrated convincingly that she can do so safely and effectively without restriction.

The Committee found that the fitness of Beatrice Jordan to practise as an optometrist is not impaired.

Accordingly, the Committee revokes the current direction for conditional registration in terms of section 13(F)(13) of the Opticians Act 1989.

**Declaration**

The Committee makes a formal declaration that the Registrant’s fitness to practise is not impaired for the reasons set out above.
Chairman of the Committee: Ms Sara Fenoughty

Signature ................................................ Date: 7 October 2019

Registrant: Ms Beatrice Jordan

Signature ................................................ Date: 7 October 2019
## FURTHER INFORMATION

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<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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<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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<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). 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>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>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 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.