BEFORE THE REGISTRATION APPEALS COMMITTEE
OF THE GENERAL OPTICAL COUNCIL

R(18)01

APPLICATION FOR RESTORATION

VISHNU PARASRAM

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DETERMINATION OF THE REGISTRATION APPEALS COMMITTEE
25 JUNE 2019

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Committee Members: Mr I Crookall (Chair/Lay)
Dr P Ormerod (Lay)
Mr D Brown (Lay)
Ms C Cowen (Dispensing Optician)
Ms J Stodel (Dispensing Optician)

Legal adviser: Ms M Ashworth

GOC Presenting Officer: Ms A Ling

Applicant present/represented: Not present and not represented

Applicant representative: N/A

Hearings Officer: Mr Terence Yates

Outcome: Application for restoration refused
On 25 June 2019, the Registration Appeals Committee of the General Optical Council was convened for the purpose of an application by Mr Vishnu Parasram for restoration to the register of Dispensing Opticians.

At the outset of the hearing, the Committee was informed that the Applicant had made an application by email, dated 10 June 2019, for the restoration hearing to be adjourned on the basis that his barrister was not available on 25 June 2019. Ms Ling, on behalf of the Council, opposed the application.

Having heard the advice from the Legal Adviser as to the procedure to adopt, the Committee decided that the appropriate order of proceedings was to determine service, and then, if satisfied of service, to consider the Applicant’s application to adjourn, together with the Council’s application to proceed in the Applicant’s absence, as the two were linked.

Proof of service

In relation to service, the Council was required to satisfy the Committee that the documents had been served in accordance with Section 23A of the Opticians Act 1989 and Rules 29, 30 and 45 of the General Optical Council (Registration Appeals) Rules 2005 (“the Rules”). The Committee accepted the advice of the Legal Adviser.

The Committee was provided with the documentation to show that the notice of hearing had been sent to the Applicant’s registered address by special delivery on 26 April 2019. Track and trace documentation indicated that the notice had been delivered on 29 April 2019. The Committee was satisfied that all reasonable efforts have been made to notify the Applicant of the hearing.

Application for adjournment

Ms Ling outlined the history of the case. The Applicant submitted his application for restoration to the register on 25 November 2017.

The restoration hearing was first scheduled to take place on 12 April 2018, but was adjourned administratively at the request of the Applicant in an email dated 2 April 2018. On that occasion, the Applicant cited personal circumstances and lack of legal representation as the reasons for seeking the adjournment. The second scheduled date for the hearing was on 14 September 2018, but was adjourned administratively at the request of the Applicant in an email dated 13 September 2018. On that occasion the Applicant cited personal circumstances as the reason for his request.

The third scheduled date for the hearing was 18 April 2019. On that date, the Applicant’s request for an adjournment was considered by that Committee, who were told that the Council did not object to the application. That Committee allowed the
adjournment, considering that it had been presented with the situation where the Applicant had been given a reasonable expectation that the proceedings would be adjourned. On that date, the date of 25 June 2019 was identified as the date to which the hearing was adjourned. In the determination, sent to the Applicant on 18 April 2019, the Committee stated:

*The Committee grants this adjournment request. However, the Committee makes it clear to the Applicant that, at any hearing of an application to adjourn, the Committee may refuse the application to adjourn even if both parties agree to it. If the new hearing date [25 June 2019] is not suitable to the Applicant, for whatever reason, he should consider whether it would be better to withdraw his Application for Restoration (thus preserving his position), rather than to proceed to make another formal application to adjourn these proceedings.*

On 10 June 2019, the Applicant sent an email to the Council, stating that his barrister was not available on 25 June 2019. On 11 June 2019, the hearings team liaised with the Applicant about potential alternative dates, including 14 August 2019, or September 2019, to which the Applicant replied, stating that he had spoken to his barrister and that his barrister would be available for a September 2019 date. The Applicant’s emails were sent by the hearings team to the Council’s legal team, and on 18 June 2019, the legal team emailed the Applicant repeating its request for contact details and the name of the instructed barrister, the proposed date for the hearing, and reasons for why the hearing could not proceed on 25 June 2019. The Legal team also directed the Applicant’s attention to the determination of 18 April 2019, as set out above. No further response was received from the Applicant. Ms Ling objected to the application to adjourn.

The Committee heard and accepted the advice of the Legal Adviser, who advised in accordance with the case of *CPS v Picton (2006) EWHC 1108 (Admin)*, which sets out the considerations to apply.

The Committee noted that the Applicant had been sent a copy of the determination on 18 April 2019, and the notice of hearing on 26 April 2019, both of which had set out the date of 25 June 2019, as the date on which the restoration hearing would be held. The Applicant had not contacted the Council until 10 June 2019, to raise difficulties with the availability of his barrister, and had not responded to requests for information regarding the name and contact details of the barrister, or reasons for the adjournment.

The Committee had regard to the history of proceedings and was mindful that 28 months had passed since the Applicant had submitted his application for restoration. What had followed was, in the Committee’s view, a pattern of repeated requests for adjournments, often made close to the scheduled hearing date. The Committee did
not consider that the Applicant had meaningfully cooperated with the Council: he had not responded to the request for information about the application to adjourn, nor had he cooperated in agreeing the hearing bundle to be put before the Committee. While the Committee recognised that the administratively adjourned hearings arose primarily due to the Applicant’s personal circumstances, it considered that today’s (25 June 2019) application arose out of the fault of the Applicant. He had known the date of the hearing since around the end of April 2019 and had been warned of the potential consequences if he was not ready on that next occasion. He had also been advised of the alternative courses of action open to him in order to preserve his position. However, he had not ensured in a timely manner that his representative was available, had not taken steps to notify the Council of any difficulties until 10 June 2019; and had not responded to requests for further information to support his application.

Given the length of time since the application for restoration was submitted, the Committee considered that it was in the interests of justice for the case to proceed, and for the application for restoration to be resolved. The Committee was mindful that the Applicant would not be present to put forward his case but considered that it had the benefit of his submissions and reflections set out in his application for restoration. In all the circumstances, and balancing the principles of fairness and proportionality, the Committee decided to refuse the adjournment.

**Proceeding in the absence of the Applicant**

The Committee acknowledged that the consequence of its decision to refuse to adjourn was that the hearing would proceed in the Applicant’s absence. It therefore also considered whether it was fair and in the public interest to nevertheless proceed in his absence in accordance with Rule 15. The Committee accepted the advice of the Legal Adviser, who advised in accordance with the case of R v Jones [2002] UKHL 5.

The Committee had regard to the history of the case since the Applicant had applied for restoration. In the context of that history, the Committee considered that notwithstanding the Applicant’s stated lack of availability of his barrister, he, himself, had voluntarily decided not to attend, and had not taken the opportunity to participate either by telephone or by Skype. Given the history of previous adjournments which had not resulted in the Applicant’s attendance, the Committee was not confident that an adjournment would secure his attendance on a future occasion. The Committee recognised that there may be a disadvantage to the Applicant in proceeding in his absence, but it was satisfied that he had now brought that on himself.
In all the circumstances, the Committee determined that it was in the public interest for the hearing to proceed in the Applicant’s absence.

**Background**

On 20 January 2015, a substantive hearing was held in respect of the Applicant. At that hearing, he admitted the factual particulars of the allegation against him as follows:

1. Between 1 November 2012 and 23 April 2013, you misappropriated £8,110.45 from your employer Redacted;
2. Your actions in (1) above were dishonest.

At the time, the Applicant had been employed at the Redacted store as a dispensing optician and branch manager in May 2012. He worked five days a week, and from around August 2012, he was trained for cashing up and banking processes. He was supervised until competent to do so alone.

As branch manager he was responsible for assisting staff with the day to day running of the shop floor, managing staff, cashing up and banking the store’s takings. Between 1 November 2012 and 23 April 2013, there were occasions when the Applicant was solely responsible for banking, and between those dates, on a number of occasions, he did not bank monies received by the store. The total deficiency in banking by 23 April 2013 was £8,110.45.

The Applicant’s employers noticed irregular banking patterns for the store and started an investigation. On 20 May 2013, the Applicant was interviewed under caution with regard to the missing monies. Initially he denied theft, but then made full and frank admissions. Following the interview, he took his employers to his home address and returned £4,428.35. Subsequently on 4 June 2013, the Applicant paid to his employer £2,753.40. By the time of the substantive hearing on 20 January 2015, all the monies had been repaid by the Applicant to his employer.

In light of the Applicant’s admissions on the facts, the substantive Committee found the facts proved.

In respect of misconduct, the substantive Committee found that the Applicant had been an employee in a position of responsibility and trust and had breached that trust. He had acted dishonestly over a period of five months on several occasions. It concluded that his conduct amounted to misconduct.

In respect of impairment, the substantive Committee considered that ‘integrity and honesty are the bedrock of the profession’, and the public ‘must be assured that these principles are, and will be, maintained because trust in the profession depends upon
practitioners conducting themselves with integrity at all times’. It concluded that the repayment of the monies was not complete remediation; the Applicant showed limited signs of remediation in his attitude towards his actions. The substantive Committee concluded that the Applicant’s fitness to practice was impaired, considering that a finding of no impairment would undermine the need to uphold proper professional standards and public confidence in the profession.

In respect of sanction, the substantive Committee determined that the Applicant's conduct and dishonesty were fundamentally incompatible with him continuing as a registered professional and imposed an immediate order for erasure.

On 25 November 2017, the Applicant submitted an application for restoration. In that application he apologised for his actions and to the people who had trusted him. He explained that he had learnt from his mistakes, and asked to be given a second chance.

On receipt of the application, the Council considered the information, made inquiries and sought relevant documentation. Ms Ling outlined that information as it appeared in the hearing bundle.

As a result of the inquiries made by the Council, it transpired on 24 April 2017, a representative from NHS England had written to the Council to inform it that NHS England had terminated a General Ophthalmic Services (GOS) contract which was held by Redacted of which the Applicant was Director. The reason given was that Redacted was not eligible to hold a GOS contract due to the Applicant's erasure in 2015. The email enclosed a copy of the Applicant's letter, dated 16 January 2017, in response to the concerns which had been raised by NHS England in a letter dated 30 December 2016 addressed to the Applicant. The concerns raised were that the Applicant had provided untrue responses to questions regarding whether he had ever been the subject of any investigation by his regulatory body, or employer, where the outcome was adverse.

The letter of 16 January 2017, which had been provided by the Applicant to NHS England, and which had been forwarded to the Council, set out that the Applicant acknowledged that he had been accused of theft from Redacted, but denied that he had stolen the monies. His position in that letter was that he had an agreement with a Director at the store that he could have the money as a loan.

The hearing bundle also contained a copy of a screenshot from Companies House in respect of Redacted, with a correspondence address matching the address which the Applicant had used in his letter to NHS England of 16 January 2017. The information within the screenshot listed the Applicant as appointed on 2 February 2017 as the
Director of Redacted and listed his occupation as Optician. This is a protected title which the Applicant was not entitled to use having been erased from the register.

On 15 August 2017, the Council wrote to the Applicant regarding the use of the protected title of Optician and inviting him to take immediate steps to ensure he was not using a protected title.

DETERMINATION

The Committee heard submissions from Ms Ling on behalf of the Council. It had regard to the hearing bundles which had been provided to it, together with the representations made by the Applicant in his application for restoration. It has accepted the advice of the Legal Adviser.

The Committee understood that it is for the Applicant to demonstrate to the Committee that he is fit to practise, and that he can be safely restored to the register. The Opticians Act 1989 (as amended) places the onus upon an Applicant to satisfy the Committee as to his fitness to practise. Section 13K(7) reads that the Committee “…shall require an applicant for restoration to provide such evidence as they consider appropriate as to his fitness to practise (...) and they must not give such a direction if that evidence does not satisfy them.”

Therefore, the Committee was aware that it must not direct the Registrar to restore the Applicant to the register if the evidence that he provided did not satisfy the Committee of his fitness to practise.

The Committee was of the view that the misconduct for which the Applicant had been erased from the register had been serious, in that there had been repeated instances of dishonesty committed in breach of a position of trust. In such circumstances, the Committee was of the view that the assessment of the Applicant’s integrity and honesty was particularly important.

However, the Committee had limited information from the Applicant on which to make such assessments. It had not had the opportunity to hear from him in evidence, in order to explore with him his current level of insight and remediation.

The information which had been provided in the application for restoration, dated back to November 2017. In that application, the Applicant had expressed how ashamed he was of what had happened, and that he wanted to show that he was an honest and hardworking person. He stated that he understood that his actions were wrong; he was sorry for what had happened; and he apologised to the profession, his family and
the people who trusted him. The Applicant indicated a wish to be restored to the register ‘as soon as possible’.

The Committee, however, contrasted the information in the restoration application, and the Applicant’s admissions at the substantive hearing, with the letter of 16 January 2017, which the Applicant had provided to NHS England. In that letter, the Applicant denied the allegations of theft, and indicated that the money he had taken had been agreed as a loan with one of the Directors at the Redacted store. The Committee considered that, contrary to demonstrating insight, the Applicant had changed his account since the substantive hearing. The Committee was of the view that the Applicant had gained very little insight into his actions. In particular, the information before it indicated that he did not accept responsibility for dishonestly misappropriating £8,110.45 from his employer, and had little, if any, understanding of the impact that his behaviour would have on public confidence in the profession.

The Committee considered that the nature of the material before it was such that it could not be reassured as to the Applicant’s integrity and honesty. It noted the concerns raised by NHS England that the Applicant had provided untrue information in answer to questions about whether he had been the subject of an investigation into his professional conduct where the outcome was adverse. And it noted the Applicant’s response (in his letter of 16 January 2017) to those concerns that it was purely a mistake in answering no to those questions. In a case such as this, where the Applicant’s honesty and integrity was of such importance, the Committee was of the view that he should have demonstrated particular care in filling out the form for a GOS contract. It concluded that he had been at the very least, cavalier as to the accuracy of the information that he provided in his application for a GOS contract.

The Committee was mindful that the Applicant had not meaningfully engaged with the Council in respect of his application for restoration. At the time of submitting his application, he had completed the necessary amount of CET for 2017. However, the current CET statement before the Committee demonstrated that he has not completed any CET points in the last 12 months.

In all the circumstances, the Committee did not consider that the Applicant had provided sufficient evidence to satisfy it that he was, at this stage, fit to practise. Accordingly, the Committee determined that Mr Vishnu Parasram should not be restored to the register of dispensing opticians.
Chairman of the Committee: Mr Ian Crookall

Signed _______________________________ Date: 25 June 2019
**FURTHER INFORMATION**

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<th>Transcript</th>
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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).</td>
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Further information about the PSA can be obtained from its website at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk) or by telephone on 020 7389 8030.

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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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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 3453.