

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

F(23)22

GENERAL OPTICAL COUNCIL

AND

PHILIP SOWDEN (01-14181)

**DETERMINATION OF A SUBSTANTIVE REVIEW
29 FEBRUARY 2024**

Committee Members:	Julia Wortley (Chair/Lay) Asmita Naik (Lay) Vivienne Geary (Lay) Ann Barrett (Optometrist) Danielle Ellis (Optometrist)
Legal adviser:	Clare Bunting
GOC Presenting Officer:	Alexander Adamou
Registrant:	Not present but represented
Registrant representative:	Nicholas Hall (Counsel) Katharine Germishuys (AOP)
Hearings Officer:	Arjeta Shabani
Outcome:	Fitness to Practise – not impaired

DETERMINATION

Allegation

The Council alleges that in relation to you, Mr Philip John Sowden (01-14181), a registered optometrist:

- 1) On 15 May 2019, you conducted an eye examination on Patient A, and you;*
 - a) Failed to conduct an appropriate assessment of Patient A's eyes in that you:*
 - i) Failed to detect signs and/or symptoms of glaucoma;*
 - b) Failed to refer Patient A to the hospital eye service for further investigation and/or treatment of glaucoma;*
 - c) Failed to maintain adequate records in connection with your eye examination with Patient A, in that you did not fully record details of the:*
 - i) External eye examinations conducted;*
 - ii) Information on the optic disc appearance;*
 - iii) Method used to obtain measurements for intra-ocular pressures;*
 - iv) Near visual acuities in each eye;*
 - v) Tonometry instrument used and/or time of the test;*
 - vi) Field instrument used;*
 - vii) Optic nerve neural retinal rim appearance;*
 - viii) Anterior chamber angle assessment;*
 - ix) Symptoms of a cloud that Patient A was presenting, including the duration and/or commencement of the symptom and/or exacerbating factors;*
 - x) Name of the registrant conducting the examination;*

And by virtue of the facts set out above, your fitness to practise is impaired by reason of misconduct.

The Committee at the substantive hearing in October 2023 found the following:

Facts proved: All

Facts not proved: None.

Misconduct found.

The Committee at the substantive hearing found the Registrant's fitness to practise to be impaired and a Suspension Order for a period of 4 months was imposed as a sanction. This is the first review of that order.

Background

1. The GOC received a referral against the Registrant on 18 November 2020 from Patient A who raised concerns about the clinical care they received at the [redacted] practice where the Registrant worked. The referral relates to clinical failures by the Registrant during an eye test he conducted on 15 May 2019. On 21 October 2020, Patient A attended [redacted] Hospital for an assessment and investigation where she received a diagnosis of POAG (primary open angle glaucoma) and later had selective laser trabeculoplasty on both eyes in November 2021.

2. The GOC obtained an expert report from Denise Voon which concluded:

'At the time of the sight test with the registrant, Patient A presented with a couple of risk factors. Firstly, a family history, this can increase the risk of glaucoma by two fold and secondly, their age (almost [redacted] years). The older a patient gets, the higher the risk of glaucoma.

Although, the registrant has undertaken the tests I would expect when presented with a patient at risk of glaucoma, I do have concerns about the ability of the registrant to be able to interpret these tests, namely not being able to recognise a suspicious optic disc and failing to manage a patient presenting with a visual field defect. In my opinion, it is likely that the optic disc changes seen on 10/10/20 were visible at the time of the sight test with the registrant.

In addition, it difficult to tell whether the registrant conducted an adequate sight test as the patient records are so poor. I would consider that the registrant has failed to meet the GOC Standard 8 Maintain Adequate Patient Records'.

3. The GOC submit that the Registrant had failed to identify Patient A's glaucoma despite clear indications from the patient's history, from the sight tests undertaken and from the patient's presenting symptoms. Furthermore, the expert commented adversely on the adequacy of the records maintained.
4. Prior to the substantive hearing a provisional agreement of a consensual panel determination had been reached with regard to the case between the GOC and the Registrant on 25 September 2023. The Agreement confirmed the Registrant

made full admissions to the facts alleged in the charges, admitted his actions amounted to misconduct and that his fitness to practise was currently impaired by reason of that misconduct. It was agreed between the parties that a 4-month suspension order would be the proportionate and appropriate response.

5. The Committee at the substantive hearing held on 23 and 24 October 2023 approved the consensual panel decision, and the Registrant was made subject to a 4-month suspension order with a review. The Registrant was not present at the hearing but was represented. It was confirmed by the Registrant's representative at that time that the Registrant had no intention to return to practice.
6. In determining that the Registrant's actions amounted to misconduct, the committee found the following standards had been breached:

7 Conduct appropriate assessments, examinations, treatments and referrals

7.2 Provide or arrange any further examinations, advice, investigations or treatment if required for your patient. This should be done in a timescale that does not compromise patient safety and care

8 Maintain adequate patient records

8.1 Maintain clear, legible and contemporaneous patient records which are accessible for all those involved in the patient's care

8.2 As a minimum, record the following information:

8.2.4 The details and findings of any assessment or examination conducted.

7. The Committee was also 'satisfied that in the context of the Patient's known family history, her long attendance record with this practice and the individual errors made by the Registrant on 15 May 2019, that this behaviour fell far below the standard expected and amounts to misconduct within the meaning of section 13D(2)(a) of the Act.'
8. The Committee provided the following reasons for finding the Registrant's fitness to practise impaired on both public protection and public interest grounds:

'26. Dealing first with the Registrant's fitness to practice in respect of the personal components, the Committee noted that there was a general lack of evidence in terms of insight, remorse, and remediation. Whilst the Registrant has made admissions to his behaviour and indicated his desire to retire, there was no evidence of extra training regarding the identification and management of glaucoma, or record keeping. In addition, there was no statement addressing any reflections on his practice. Finally, the Registrant's CET record submitted did not demonstrate much in the way of addressing the issues in this case and that CET was not recent within the current CPD cycle.'

27. Considering that the Registrant had not practised since 16 February 2022 and had for all purposes retired, the Committee considered that there was insufficient evidence of remediation or training and as such the Committee was satisfied that there was a material risk of future repetition should the Registrant return to practice.

28. Turning then to the important public policy considerations, the Committee were similarly of a view that the need to uphold professional standards and public confidence in the profession would be undermined if a finding were not made in this particular case. The Registrant's behaviour undermines public confidence in the optical profession and brings the profession into disrepute by virtue of his failings'.

9. The Committee provided the following reasons for the imposition of a suspension order for 4 months:

'37. The Committee considered that the Registrant has some insight by virtue of his admissions and the risk of repetition of the behaviour was low although this was by virtue of his retirement rather than further training or development. Notwithstanding this, the Committee felt that even though the suspension proposed is relatively short, a review was necessary to monitor the decision of the Registrant to retire and to ensure that should he change his mind and seek to return to the Register while the fitness to practise proceedings are ongoing, a review would assist the Committee in addressing any ongoing public risk factors. The Committee was further satisfied that once the suspension had concluded, should the Registrant wish to return to practice, that the GOC's re-registration process would provide the necessary checks as to his competent and safe practice'.

10. The substantive hearing Committee also provided guidance as to what may assist any future reviewing Committee as follows:

- a) *Clear confirmation in writing from the Registrant that he has ceased to be registered and no longer intends to practice or*
- b) *If the Registrant wishes to continue in practice how he has addressed the clinical concerns outlined in this determination and maintained his ability to meet GOC professional standards.*

11. The Registrant's registration was suspended for 4 months following a substantive hearing held on 23 and 24 October 2023. The order is due to expire on 21 March 2024.

Findings regarding impairment

12. The Committee heard submissions from Mr Adamou on behalf of the Council and from Mr Hall on behalf of the Registrant and considered the GOC bundle of 68 pages and the statement from the Registrant dated 16 February 2024.
13. Mr Adamou on behalf of the GOC pointed out that the Registrant has not been practising since 16 February 2022 and has confirmed his retirement.
14. Mr Hall submitted that the Registrant is no longer impaired and accordingly the current suspension order should lapse upon expiry. Mr Adamou on behalf of the GOC remained neutral on the issue. The representatives appraised the Committee on the process which would be followed should the Registrant seek to be restored to the register.
15. Mr Hall on behalf of the Registrant submitted that the Registrant is no longer impaired on public protection or public interest grounds. It was stated that there is no risk of repetition as the Registrant has retired, the public interest has been served by the period of suspension served, and that a member of the public with knowledge of the full facts would not be concerned to learn that there was no finding of impairment. This would allow the Registrant to retire, and the proceedings would terminate. Mr Hall submitted that further hearings without material change to the Registrant's circumstances would be a waste of public resources.

16. In his statement dated 16 February 2024 the Registrant stated:

'I confirm that my position relayed to the Panel at the Substantive Hearing held on 24 October 2023, remains the same.

I have dedicated over 37 years to optometry, which on any assessment is a lengthy career which I humbly submit exhibits my commitment to eye health and the profession.

I confirm that 6 March 2020 was my last day in practice. Thereafter on 16 February 2022 my last intermittent locum domiciliary appointment; and thus formally retiring on that date.

I officially came off the GOC register in March 2023 by not renewing my registration. I remain retired, and will not undertake optometry practice again.

I would once more like to reiterate how saddened I was on learning about Patient A's diagnosis and hope that my cooperation during these proceedings have demonstrated my commitment to resolving this matter to both the satisfaction of Patient A and the Committee'.

17. The Committee accepted the advice of the Legal Adviser who reminded the Committee of the Council written Guidance on impairment and sanction. The Committee was reminded that its role is to consider whether the Registrant's fitness to practise remains impaired by reason of misconduct. The Committee must look forward, not back when determining impairment. Relevant factors for the Committee to consider when determining impairment include: whether the conduct which led to the allegation is remediable; whether it has been remedied; and whether it is likely to be repeated.
18. The Committee was aware that it needed to be satisfied that the Registrant has fully appreciated the gravity of the offence, has not re-offended and has maintained their skills and knowledge. Additionally, that the Registrant's patients will not be placed at risk by resumption of practice.
19. The Committee was referred to the case of *Clarke v GOC [2018] EWCA Civ 1463* – in which Newey LJ at [31] “...*the fact that Mr Clarke was not intending to resume practise could be of little or no consequence. Where repetition is improbable merely because the optometrist will no longer be practising, that would not seem to be indicative of fitness to practise. If anything, cessation of practice may point in the opposite direction, since the optometrist's skills could deteriorate with lack of use.*”
20. The Committee was mindful that impairment is expressed in terms of the present, namely whether the Registrant's fitness to practice is currently impaired. As set out in the case of *Meadow v GMC [2006] EWCA 1390*: “*In short, the purpose of fitness to practise proceedings is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The FPP thus looks forward not back. However, in order to form a view as to the fitness of a person to practice today, it is evidence that it will have to take account of the way in which the person concerns has acted or failed to act in the past.*”
21. The principal issue for the Committee to determine in this case is whether the Registrant's fitness to practise remains impaired. If it is found that impairment remains, the Committee must consider sanction, bearing in mind the need for such sanction to be appropriate and proportionate. The Committee is able to extend the suspension, erase the Registrant's name from the GOC register or impose conditions on his registration.
22. The Committee was advised that if the Registrant is deemed to no longer be impaired the current order will lapse upon expiry.

23. The Committee undertook a comprehensive review of all of the written and oral submissions made. The Committee noted that the Registrant had engaged with the regulatory process throughout and had complied with paragraph 40 of the substantive hearing Committee's determination dated 24 October 2023. The Registrant has confirmed in writing that he has not worked as an Optometrist for more than two years, has retired and no longer intends to practise.
24. In considering the issue of impairment, the Committee bore in mind that the GOC did not advance a positive case in favour of the Registrant being currently impaired. The Committee noted the admissions made by the Registrant to the allegation and considered that the decision to cease practice by the Registrant reflects a level of insight into the acts or omissions which led to the referral by Patient A. In addition, the Registrant has expressed remorse for what occurred.
25. The Committee finds that the acts or omissions which led to the proceedings are remediable. However, realistically there has been no express requirement for the Registrant to undertake remediation to improve his practice due to him being retired and maintaining a consistent position that he no longer seeks to practise as an Optometrist.
26. The Committee considered public protection, the risk of harm to members of the public and was mindful of the need to act proportionately. The Committee concluded that the risk of repetition is so low that it does not require a finding of impairment. The Committee came to this conclusion due to the fact that the allegation was isolated in nature in a 37-year unblemished career and the Registrant has chosen to step away from the profession and had retired on 16 February 2022.
27. In considering the public interest, the Committee found that a fully informed member of the public with knowledge of all of the information before it would not be concerned to learn that the Registrant was not found to be impaired in all the circumstances of this case. The Committee was mindful of the fact that the Registrant would need to pass through the restoration process, should he wish to return to the GOC register and resume practice in the future. The Committee determined that the public interest has been served by the current suspension order, which itself is a severe sanction.
28. The Committee found, on balance, that the fitness of the Registrant to practise as an Optometrist is not currently impaired on either public protection or public interest grounds.

29. The Committee makes a formal declaration that the Registrant's fitness to practise is no longer impaired for the above reasons and the current order will lapse upon its expiry on 21 March 2024.

Chairman of the Committee: Julia Wortley

Signature



Date: 29 February 2024

Registrant: Philip Sowden

Signaturenot present but represented **Date: 29 February 2024**

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.</p> <p>Where a registrant can appeal against a decision, the Authority has 40 days beginning with the day which is the last day in which you can appeal. Where a registrant cannot appeal against the outcome of a hearing, the Authority's appeal period is 56 days beginning with the day in which notification of the decision was served on you. 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>
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.