

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

GENERAL OPTICAL COUNCIL

F(22)13

AND

ROSS HUTCHESON (01-24464)

**DETERMINATION OF A THIRD SUBSTANTIVE REVIEW
1 OCTOBER 2024**

Committee Members:	James Kellock (Chair/Lay) Miriam Karp (Lay) Vivienne Geary (Lay) Alexander Howard (Optometrist) Claire Roberts (Optometrist)
Clinical Adviser:	Dr Jennifer Bearn
Legal adviser:	Megan Ashworth
GOC Presenting Officer:	Lee Bridges
Registrant:	Present and unrepresented
Registrant representative:	N/A
Hearings Officer:	Latanya Gordon
Outcome:	Extend current Conditional Registration Order by 7 months (with a review)

DETERMINATION

Background

1. The Registrant was an Optometrist and store director at Specsavers Store A. Following a mystery shopper visit in April 2018, concerns were identified regarding the Registrant's conduct. The mystery shopper recorded the sight examination, and it showed the Registrant carrying out an incomplete test. This was brought to the attention of the professional services consultant.
2. An internal investigation was carried out focusing on the Registrant's other patient examinations. It found several clinical failings carried out on other patients. During the internal investigation, the Registrant was asked to attend an interview in July 2018. He told investigators that he had been going through [redacted] he said affected his work.
3. The Registrant referred himself to the GOC on the 15 October 2018 regarding a video recording made by the mystery shopper and what it showed, namely an incomplete examination carried out by the Registrant.
4. A second referral was made by Specsavers with regard to similar concerns on review of other patient records and also based on information provided by patients in their customer feedback form. An internal investigation was opened and found a history of failures by the Registrant when dealing with a number of patients. The failings relate to assessments, advice and recording of information in patient records. The investigation concluded that the Registrant had also acted dishonestly and attempted to cover up his failings by amending clinical records.
5. The case examiners referred the allegations relating to the clinical failings to the Fitness to Practise Committee on the 20 February 2022. [Redacted]
6. The Registrant was subject to an Interim Conditions of Practice Order from November 2018. Following further clinical concerns this order was replaced with an Interim Suspension Order in May 2019. In June 2021 the Interim Suspension Order was replaced with an Interim Conditions of Practice Order until the substantive hearing in July 2022. Under the new Interim Conditions of Practice Order the Registrant was required to work under "close supervision" and his supervisor was Ms A. The Registrant worked from time to time under Ms A's supervision while continuing to maintain his full-time employment as a prison officer.
7. An Agreed Panel Disposal (APD) was approved between the Council and the Registrant on 10 May 2022. The APD report set out what both parties agreed and the proposed disposal which was placed before the substantive Committee at a substantive APD hearing held on 18-19 July 2022. The APD report concluded that since his referral to the Council the Registrant had shown considerable improvement in his practice as evidenced in his positive supervisory reports. [Redacted].

8. The substantive Committee determined that the Registrant's registration be suspended for a period of 12 months. That Committee considered the review committee would need to be satisfied:
 1. That the Registrant has fully appreciated the nature of the misconduct;
 2. That he has maintained his skills and knowledge;
 3. That the Registrant's patients would not be placed at risk by resumption of practice or by the imposition of conditional registration.
9. The Committee further considered that it would be helpful to a future reviewing Committee if the Registrant set out his intentions with regard to returning to practice together with an update from [redacted].
10. The order was due to expire on 15 August 2023.

1st Substantive Order Review hearing (12 July 2023 and 10 August 2023)

11. Prior to and during the first substantive order review hearing, the Registrant provided the first reviewing committee with the following documents:
 - [redacted]
 - *CPD statement for the current cycle 2022-2024.*
 - *CET statement for the 2019-2021 cycle.*
 - *Reports from his supervisor, Ms A dated 1 September 2021, 4 February 2022, and 30 May 2022.'*
12. In relation to impairment (on 12 July 2023), the first reviewing committee determined:

'The Committee was of the view that the Registrant had demonstrated some insight [Redacted]. In this respect the Committee had in mind the serious and wide-ranging nature of the deficiencies over a significant period of time. Nevertheless, the Committee recognised that the Registrant had fully engaged with the Committee and that he acknowledged that his current fitness to practise is compromised.

The Committee considered that the Registrant had so far made insufficient progress in remedying the deficiencies in his practice. He had been subject to a suspension order and had not been able to practise, he had also not undertaken any targeted training and the CPD he had undertaken was limited. In addition, the Registrant recognised himself that he lacked confidence and his skills were rusty.

Given absence of sufficient remedial steps at this stage, in the Committee's judgment, the Registrant would likely continue to pose a risk to the public if he were able to practise without restriction. Consequently, there was an ongoing risk of harm to members of the public. This ongoing risk also engaged the wider

public interest because there was a risk of damage to the reputation of the profession if the Registrant were to be permitted to practise without restriction.

Therefore, the Committee decided that the Registrant's fitness to practise was currently impaired.'

13. In relation to sanction (on 10 August 2023), the first reviewing committee determined:

'The Committee took the view the Registrant had not provided enough evidence of addressing the underlying clinical concerns, albeit that some insight had been shown. It appreciated that having been suspended by a previous Committee the Registrant had not been afforded an adequate opportunity to address those concerns. Nevertheless, the Committee was mindful of the fact that the Registrant had not provided any concrete plan towards being permitted back to work as an Optometrist or any engagement with the Optometric profession as a whole.

The Committee took the view that the Registrant had not made any progress in addressing the clinical failings by either shadowing, attending courses or completing sufficient CPD in the time between suspension and the hearing of 21 July 2023. The Committee had little evidence to suggest that he could work to the minimum standards required of an unrestricted Registrant.

Accordingly, the Committee was concerned that the Registrant had not shown the necessary skills and knowledge with an ability to safely return to unrestricted practice.

The Committee was mindful of the fact that it was required to be proportionate in reaching a decision and carried out a balancing exercise. The Committee began with considering the least restrictive sanction. It concluded that conditions of practice for the duration of four months was proportionate and necessary under the circumstances to balance the overarching objectives of public protection and the upholding of proper standards with the Registrant's own interests. It took the view that suspension would be disproportionate and would effectively impede the Registrant's further progress.

The Committee in reaching its decision took the view that although there remained some risk, a conditions of practice order for a period of four months with a review would be sufficient to protect the public.

At the review hearing a future Committee might be assisted by:

A detailed back to work plan

Evidence of relevant CPD

Evidence of engagement in the Optometric profession

Positive testimonials

Evidence of shadowing Optometrist colleagues

This Order was to take effect from the 15 August 2023 when the current order expired.'

2nd Substantive Order Review hearing – 1 November 2023

14. In advance of the second substantive order review hearing, the Registrant provided to the Council the following documents:

- *'Emails dated 16 August and 20 September 2023, updating compliance with conditions of practice*
- *CPD statement 2023*
- *'Optometry Return 2023' document detailing the two clinical observation sessions in September 2023 and other activities.'*

15. In relation to Impairment, the second reviewing committee determined:

'The Committee reviewing the case today was pleased to note that the variation to conditions of practice, together with the improvements in the Registrant's personal circumstances had resulted in him having committed to an effective return to optometric practice. The Registrant has remained engaged with his regulator, his professional association and the wider profession.

The Committee is satisfied that there is no need to make a finding of impairment on the basis of maintaining public confidence in the profession, or professional standards. All those issues have been dealt with by the previous period of suspension.

The Committee accepted that, in practical terms, there have been obstacles to the Registrant's return to optical practice. Some of the administrative matters have been resolved and some remain to be concluded. However, this had the result that, as matters stand, the Registrant has not been able to provide the review with sufficient evidence that he has remedied his past deficiencies and that he is safe to return to unrestricted practice on the expiry of this current order. Therefore, the Committee finds the Registrant's fitness to practise is currently impaired, due to the continuing risk of harm.'

16. In relation to sanction, the second reviewing committee determined:

'The Committee was satisfied with the level of insight displayed by the Registrant and does not consider that there are any attitudinal issues. It is a case of ensuring that the Registrant is sufficiently confident and up to date with knowledge and skills to return to unrestricted practice.

The Committee was satisfied, having heard from the Registrant and considered the evidence, that he is committed to a safe return to practice and would comply with conditions of practice. It accepted that he had been unable to demonstrate

full compliance with conditions to date due to not being able to obtain experience in optometric practice.

The Committee therefore decided that it was appropriate to maintain the current conditions of practice order. However, it was proportionate in its view for there to be a variation of the conditions in relation to supervision, condition A1.3(d). The Committee was satisfied that the public would be sufficiently protected if, in the general course, the Registrant is supervised by a person available to give direct supervision by being present in the practice. In addition, however, that supervisor should provide immediate supervision in the same room during one sight test per week.

The Committee considered that the condition as varied is proportionate because it maintained an element of immediate supervision whilst making it more likely that the Registrant will be able to obtain an optometric position.

The Committee also determined to vary condition A1.4, noting that there is no condition specifically requiring a Personal Development Plan, but considering that it would better accord with the concerns in the case for the supervisor's report to address the following areas: clinical assessment; advice to patients; quality of record-keeping.'

17. The second reviewing committee therefore varied the Conditional Registration Order and extended it for 12 months. It considered that the next reviewing committee may be assisted by the following:
- a. *'Evidence of relevant CPD*
 - b. *Evidence of continued engagement in the Optometric profession*
 - c. *Relevant testimonials.'*

3rd Review - 1 October 2024

Decision of Committee to proceed as currently constituted

18. At the outset of the hearing, the Chair declared the following:

- a. That he had previously sat on an Interim Order Review in the Registrant's case; and
- b. That he was a personal and social friend of the Clinical Adviser. He confirmed that they had not seen each other socially for 12 months, nor had they discussed the case.

19. The Chair confirmed his personal view that he was not biased.

20. The Clinical Adviser confirmed that she and the Chair had not seen each other recently; she was aware of her duties of confidentiality; they never discussed professional matters and she was mindful of her responsibility to provide unbiased medical advice on the basis of the information before her, which she was able to do.

21. Mr Bridges, on behalf of the GOC, having taken instructions confirmed that the GOC had no issue with the Chair continuing to sit in this case as long as the Registrant did not raise any objections.
22. The Registrant confirmed that he had no objection to the Chair continuing to sit in his case.
23. The Committee accepted the advice of the Legal Adviser, who advised in accordance with the case of *Porter v Magill; Weeks v Magill [2002] 2AC 357*, and that the test was “whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.”
24. In relation to the disclosure that the Chair had sat on a previous Interim Order Review in the Registrant’s case, the Committee was confident that the review would have been a long time ago and the facts had evolved, such that they would have no bearing on the decisions on current impairment to be made today. The Committee bore in mind that neither party had identified any prejudice or risk of bias in the Chair continuing to sit on the hearing. The Committee did not consider that the test for bias or potential bias had been met.
25. In relation to the disclosure that the Chair had a personal and social friendship with the Clinical Adviser, the Committee noted that it would not ordinarily be the case that they would sit on the same matter, but the issue had only come to light this morning. In the particular circumstances of this case, the Committee, having had regard to the documentation, considered that the Registrant’s [redacted] today was now only a peripheral element of the case. The Committee was satisfied that neither the Chair nor the Clinical Adviser had seen each other recently and had not discussed the case or any other professional matters. The Committee bore in mind that neither party had identified any prejudice or risk of bias in the Chair continuing to sit on the hearing. The Committee did not consider that the test for bias or potential bias had been met.
26. Accordingly, the Committee was satisfied that it was appropriate and fair to proceed with the Committee as currently constituted.

Findings regarding impairment

27. Mr Bridges directed the Committee to the GOC’s Statement of Facts, dated 28 August 2024 which had been prepared for this Substantive Order Review. He explained that it was the GOC’s position that it was for the Committee to make its own assessment on whether or not the Registrant’s fitness to practise remained currently impaired and what, if any, sanction was appropriate.
28. The Registrant recognised that he had not provided much evidence to demonstrate his personal and professional advances. He acknowledged that, as a result, his fitness to practise remains currently impaired. He invited the Committee to impose a further Conditions of Practice Order, during which time he hoped to showcase and evidence his professional ability. The Registrant

sought to reassure the Committee that he remained dedicated to returning to practice as an Optometrist.

29. The Committee had regard to the submissions by Mr Bridges on behalf of the Council and those of the Registrant. It had regard to the material which had been provided for the third Substantive Order Review hearing. In particular, the Registrant provided the following documentation to the Committee:
- i. A note on the significant delays and substantial challenges experienced by the Registrant in relation to his efforts to return to practice;
 - ii. An outline of the CPD undertaken by himself since the second review hearing;
 - iii. An outline of planned CPD to be undertaken by himself; and
 - iv. A Personal Development Plan up to 31 December 2024.
30. [redacted].
31. The Committee accepted the advice of the Legal Adviser and exercised its own independent judgment in determining whether the Registrant's fitness to practise remains impaired. It kept in mind the need to protect the public, to maintain public confidence in the profession, and to uphold proper standards of conduct and performance within the profession.
32. The Committee recognised that at a review, it has to consider whether the concerns raised in the finding of impairment through misconduct have been sufficiently addressed to its satisfaction. In practical terms this means that there is a persuasive burden on the practitioner at a review to demonstrate that he has acknowledged past failings and has sufficiently addressed past impairment.
33. [Redacted].
34. The Committee considered that the Registrant had been very candid at this review. He had acknowledged that he had not progressed as much as he would have wished since the last review, having underestimated the amount of time it would take him to return onto the NHS Performers' List, meet the NHS staged agreement, be re-admitted to the GOC Register, re-join the AOP and complete CPD; all alongside his current work (outside Optometry) and family commitments. The Committee considered that the Registrant had been frank in addressing it in respect of both his past personal circumstances and his understanding of the challenges facing him in the future. The Committee had been impressed by his insight and admired his continued engagement with the process and steps taken towards his ambition to return to practice as an Optometrist as his sole occupation.
35. The Committee was satisfied that the Registrant's misconduct was remediable. Although it had been extremely serious, the Committee considered that the Registrant understood the gravity of his conduct, had not sought to underplay it, and so understood the steps he needed to take to fully remediate the

misconduct. The Committee considered that the Registrant was making positive progress towards remediation, but he had yet to discharge the onus on him to demonstrate that he had fully remediated. The Committee bore in mind that the Registrant had been out of practice for a significant number of years and had yet to conduct any sight tests. The Committee concluded that the Registrant had not yet produced the evidence to demonstrate that he was capable of safe and effective practice as an Optometrist. Therefore, in the Committee's judgement, there was an ongoing risk of harm to patients if he were permitted to practise without restriction. Accordingly, the Committee determined that the Registrant's fitness to practise remains impaired on public protection grounds.

36. The Committee agreed with the previous reviewing committee that there was no ongoing requirement to further mark the misconduct, as the original sanction of suspension had achieved that. Accordingly, the Committee determined that the Registrant's fitness to practise is not currently impaired on public interest grounds.

Decision on Sanction

37. The Committee accepted the advice of the Legal Adviser, whose advice included that it must impose the least restrictive sanction sufficient to address the risks identified.
38. The Committee considered the sanctions available to it starting with the least restrictive. Given that it had concluded that there was an ongoing risk of harm to the public, it did not consider that allowing the current order to lapse on its expiry would be the appropriate and proportionate response as it would not address the public protection issues.
39. The Committee considered whether an extension to the current Conditions of Practice Order would be the appropriate and proportionate response. It was satisfied that the Registrant had good insight into what was required in order to address the clinical issues so as to achieve a safe and effective return to practice. It also recognised his commitment to return to practice and that he had a supportive supervisor who was assisting him in that. As a result, the Committee was satisfied that the Registrant would be willing and able to comply with conditions and that conditions would be sufficient to protect the public whilst the Registrant was working towards his return to safe and effective practice. The Committee was also satisfied that the current conditions were appropriate to manage the risk.
40. The Committee determined to extend the current Conditional Registration Order for a period of 7 (seven) months. In deciding this length, the Committee bore in mind that the extension would not take effect until December 2024 and so, in effect the Registrant would be subject to conditions for 9 (nine) months. The Committee considered that the Registrant had already overcome a number

of the obstacles he had experienced in his efforts to return to practice, so ought not need a full year to gather sufficient evidence to discharge the onus on him of demonstrating that his fitness to practise is no longer impaired. The Committee also considered that the Registrant would benefit from the added impetus to showcase and evidence his remediation.

41. Given that the Committee identified an ongoing risk of harm to the public, the Committee orders a review of this Conditional Registration Order before it expires. A review hearing will be held between four and six weeks prior to the expiration of this order. The Committee considered that in addition to the evidence to be produced in compliance with the conditions, a future reviewing committee may be assisted by:

- i. Evidence of continued engagement in the Optometric profession;
- ii. Evidence of relevant CPD;
- iii. Testimonials from colleagues or other Optometrists; and
- iv. Evidence of continued engagement with the GOC.

42. The Conditional Registration Order is set out below.

Chairman of the Committee: James Kellock

Signature: 

Date: 01 October 2024

Registrant: Ross Hutcheson

Signature: Present via Microsoft Teams.....

Date: 01 October 2024

List of conditions

<p>A1.1 Informing others</p>	<p>You must inform the following parties that your registration is subject to conditions. You should do this within two weeks of the date this order takes effect.</p> <ul style="list-style-type: none"> a. Any organisation or person employing or contracting with you to provide paid or unpaid optical services, whether or not in the UK (to include any locum agency). b. Any prospective employer or contractor where you have applied to provide optical services, whether or not in the UK. c. Chairman of the Local Optometric Committee for the area where you provide optometric services. <p>The NHS body in whose ophthalmic performer or contractor list you are included or are seeking inclusion.</p>
<p>A1.2 Employment and work</p>	<p>You must inform the GOC if:</p> <ul style="list-style-type: none"> a. You accept any paid or unpaid employment or contract, whether or not in the UK, to provide optical services. b. You apply for any paid or unpaid employment or contract to provide optical services outside the UK. c. You cease working. <p>This information must include the contact details of your prospective employer/ contractor and (if the role includes providing NHS ophthalmic services) the relevant NHS body.</p>
<p><u>A1.3</u></p>	<p>You must:</p> <ul style="list-style-type: none"> a. Identify a workplace supervisor who would be prepared to monitor your compliance with these conditions. b. Ask the GOC to approve your workplace supervisor within two weeks of the date this order takes effect. If you are not

	<p>employed, you must ask us to approve your workplace supervisor before you start work.</p> <p>c. Identify another supervisor if the GOC does not agree to your being monitored by the proposed supervisor.</p> <p>d. <u>Place yourself under the following arrangements for supervision of your practice:</u></p> <ul style="list-style-type: none"> • <u>Direct supervision by your supervisor (who must be physically present in the practice throughout all consultations) and to remain under his/her supervision for the duration of these conditions, and;</u> • <u>Immediate supervision during each working week of one sight test by your supervisor (who must be physically present in the room throughout the consultation).</u> <p>e. At least once a week meet your supervisor to review compliance with your conditions and <u>your progress in respect of:</u></p> <ul style="list-style-type: none"> • <u>Clinical assessment</u> • <u>Advice to patients</u> • <u>Quality of record-keeping</u> <p>f. At least every month or upon request of the GOC, request a written report from your supervisor to be provided to the GOC, detailing how you have complied with the conditions he/she is monitoring.</p> <p>Inform the GOC of any proposed change to your supervisor and again place yourself under the supervision of someone who has been agreed by the GOC.</p>
<p>A1.4 Other proceedings</p>	<p>You must inform the GOC within 14 days if you become aware of any criminal investigation or formal disciplinary investigation against you.</p>

<p>A1.5 Registration requirements</p>	<p>You must continue to comply with all legal and professional requirements of registration with the GOC.</p> <p>A review hearing will be arranged at the earliest opportunity if you fail to:-</p> <p style="margin-left: 40px;">a. Fulfil all CET requirements; or</p> <p>Renew your registration annually.</p>
<p>A4.1 Restriction on practice</p>	<p>You must:</p> <p>Not undertake any locum work unless agreed in advance by your workplace supervisor and the Registrar.</p>

NOTICE TO REGISTRANT:

- The GOC will enter these conditions against your name in the register save for any conditions that disclose information about your health.
- In accordance with Section 13C(3) of the Opticians Act 1989, the GOC may disclose to any person any information relating to your fitness to practise in the public interest.
- In accordance with Section 13B(1) of the Opticians Act 1989, the GOC may require any person, including your learning/workplace supervisor or professional colleague, to supply any information or document relevant to its statutory functions.

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>
Effect of orders for suspension or erasure
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.
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.