

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

**GENERAL OPTICAL COUNCIL**

**F(22)13**

**AND**

**ROSS HUTCHESON (01-24464)**

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**DETERMINATION OF A SUBSTANTIVE REVIEW  
12 JULY & 10 AUGUST 2023**

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<b>Committee Members:</b>	Graham White (Chair) Ian Hanson (Lay) Mariam Karp (Lay) (on 12 July 2023 only) Alexander Howard (Optometrist) Catherine Collin (Optometrist)
<b>Legal adviser:</b>	Helen Gower (12 July 2023) Jayesh Jotangia (10 August 2023)
<b>Clinical Adviser:</b>	Desmond Dunleavy
<b>GOC Presenting Officer:</b>	Kathryn Sheridan
<b>Registrant:</b>	Present and not represented
<b>Registrant representative:</b>	N/A
<b>Hearings Officer:</b>	Terence Yates
<b>Outcome:</b>	4 months conditional registration (with review)

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## DETERMINATION

### Background

1. The Registrant was an optometrist and store director at Specsavers [redacted]. 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 personal difficulties and [redacted] which 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. [redacted]
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:
  - That the Registrant has fully appreciated the nature of the misconduct;
  - That he has maintained his skills and knowledge;
  - 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 any [redacted].
10. The order is due to expire on 15 August 2023.

### **Findings regarding impairment (12 July 2023)**

11. Prior to and during the hearing the Registrant provided the panel 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 his evidence to the Committee the Registrant provided an update on his current circumstances. He remains employed as a prison officer, but is currently not attending the workplace due to the difficulties of working in this environment in the [redacted]. He is hoping to return imminently to his employment with amended duties.
13. The Registrant acknowledged that his current fitness to practise was compromised to an extent because of his lack of confidence and his rustiness. He spoke to the Committee about his underlying belief that he has the knowledge and ability to practise well as an Optometrist. He attributed his past misconduct to the difficulties in his personal life and the related [redacted] consequences as described in detail in his statement for the Specsavers' investigation. The Registrant accepted that the CPD training he has undertaken during the past year when he has been subject to a suspension order has been limited and not targeted to any of the specific deficiencies as found proved by the substantive hearing committee. He acknowledged that there was an extent to which he had not sufficiently thought about the areas in which he needed to refresh his knowledge and skills.
14. The Registrant was asked about the supervised sessions with Ms A and he confirmed that they were limited to approximately five sessions in 2022 as set out in her reports.
15. The Registrant was asked about his [redacted] if he were faced with similar difficulties in the future. The Registrant spoke about his greater understanding of his own vulnerabilities and gave the example of his decision to [redacted].
16. The Committee has heard submissions from Ms Sheridan on behalf of the Council. She submitted that the Registrant's fitness to practise is currently impaired. She submitted that the Registrant has not practised as an Optometrist for the last

twelve months. Prior to the suspension, he had not practised autonomously for five years and had only undertaken a small number of sessions with Ms A under close supervision. The CPD training he has undertaken was not focussed on the clinical failings. Ms Sheridan submitted that there therefore remained a risk of repetition.

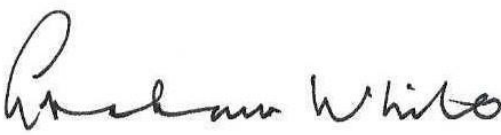
17. Ms Sheridan also invited the Committee to consider the issue of dishonesty and the Registrants answers relating to this topic.
18. The Registrant had no further submissions to add to his documentary and oral evidence. The Registrant remained committed to returning to practise.
19. The Clinical Adviser, Dr Dunleavy, advised the Committee that it would appear that the Registrant's [redacted].
20. The Committee accepted the advice of the Legal Adviser. She advised that there is a persuasive burden upon a Registrant to demonstrate that they are fit to resume unrestricted practice with reference to the case of *Abrahaem v GMC* [2008] EWHC 183. In reaching its decision, the Committee was mindful of the wider public interest elements of declaring and upholding proper standards of conduct and behaviour and maintaining public confidence in the profession. The Committee exercised its own judgment in relation to the question of whether there was current impaired fitness to practise.
21. The Committee was of the view that the Registrant had demonstrated some insight, particularly in relation to his greater understanding of his own vulnerabilities and the need to monitor his [redacted]. The Committee was of the view that the Registrant may be over-confident in believing that the full extent of all the deficiencies in his practice was attributable to the difficulties in his private life and with [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.
22. The Committee considered that the Registrant has so far made insufficient progress in remedying the deficiencies in his practice. He has been subject to a suspension order and has not been able to practise, he has also not undertaken any targeted training and the CPD he has undertaken is limited. In addition, the Registrant recognises himself that he lacks confidence and his skills are rusty.
23. 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 is an ongoing risk of harm to members of the public. This ongoing risk also engages the wider public interest because there is a risk of damage to the reputation of the profession if the Registrant was to be permitted to practise without restriction.
24. Therefore, the Committee decided that the Registrant's fitness to practise is currently impaired.

### **Sanction (10 August 2023)**

25. In reaching its decision, the Committee took into account the submissions on behalf of the Council by Ms Sheridan and the Registrant as well as reminding itself on the facts found proved and the previous decisions on misconduct and impairment.
26. The Committee took into consideration the Registrant's self-directed personal learning between 12 July and 9 August 2023 which was presented as a list to the Committee in a pdf document. The Committee accepted the Clinical Adviser's and the Legal Adviser's advice.
27. Ms Sheridan reminded the Committee of the relatively limited extent of CPD undertaken by the Registrant. She submitted that the Registrant had not practised autonomously for five years, that his clinical skills were "rusty" and that his confidence was at "rock bottom". However, the Council took a neutral position as to sanction.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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.
33. At the review hearing a future Committee may be assisted by:

- a. A detailed back to work plan
  - b. Evidence of relevant CPD
  - c. Evidence of engagement in the Optometric profession
  - d. Positive testimonials
  - e. Evidence of shadowing Optometrist colleagues
34. This Order shall take effect from the 15 August 2023 when the current order expires.

**Chairman of the Committee: Graham White**

**Signature** 

**Date: 10 August 2023**

**Registrant: Ross Hutcheson**

**Signature** received via SharePoint

**Date: 10 August 2023**

**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"> <li>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).</li> <li>b. Any prospective employer or contractor where you have applied to provide optical services, whether or not in the UK.</li> </ul>
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	<p>c. Chairman of the Local Optometric Committee for the area where you provide optometric services.</p> <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"> <li>a. You accept any paid or unpaid employment or contract, whether or not in the UK, to provide optical services.</li> <li>b. You apply for any paid or unpaid employment or contract to provide optical services outside the UK.</li> <li>c. You cease working.</li> </ul> <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>You must:</p> <ul style="list-style-type: none"> <li>a. Identify a workplace supervisor who would be prepared to monitor your compliance with these conditions.</li> <li>b. Ask the GOC to approve your workplace supervisor within two weeks of the date this order takes effect. If you are not employed, you must ask us to approve your workplace supervisor before you start work.</li> <li>c. Identify another supervisor if the GOC does not agree to your being monitored by the proposed supervisor.</li> <li>d. Place yourself under the immediate supervision of the supervisor (who must be physically present in the room throughout the consultation) and remain under his/her supervision for the duration of these conditions.</li> <li>e. At least once a week meet your supervisor to review compliance with your conditions and your progress with any personal development plan.</li> </ul>

	<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="padding-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>



<b>FURTHER INFORMATION</b>
<p><b>Transcript</b></p>
<p>A full transcript of the hearing will be made available for purchase in due course.</p>
<p><b>Appeal</b></p>
<p>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).</p>
<p><b>Professional Standards Authority</b></p>
<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 <a href="http://www.professionalstandards.org.uk">www.professionalstandards.org.uk</a> or by telephone on 020 7389 8030.</p>
<p><b>Effect of orders for suspension or erasure</b></p>
<p>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.</p>
<p><b>Contact</b></p>
<p>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.</p>