

**BEFORE THE REGISTRATION APPEALS COMMITTEE
OF THE GENERAL OPTICAL COUNCIL**

RAJ SHIVRAJ (D-17657)

AND

GENERAL OPTICAL COUNCIL

**DECISION OF THE REGISTRATION APPEALS COMMITTEE
29 SEPTEMBER 2022**

Committee Members:	Ian Crookall (Chair) Claire Cowen (DO) Ian Taylor (DO) Ann McKechin (Lay) Miriam Karp (Lay)
Legal adviser:	Austin Stoton
GOC Presenting Officer:	Dean Taylor
Appellant present/represented:	Yes, and represented
Appellant representative:	Dean Smith
Hearings Officer:	Terence Yates
Outcome:	Appeal dismissed

Appeal determination

Background

1. This is a Registration Appeal by Mr. Raj Shivraj (the "Appellant"), a dispensing optician who first registered with the General Optical Council (the "Council" or the "Respondent") on 16 May 2012.
2. The Appellant was removed from the register for not completing the requisite Continuing Education and Training ("CET") for the 2016-2018 CET cycle. The Appellant was subsequently restored to the Council's register under his current registration number, D-17657.
3. The Appellant appeals against the decision of the Registrar to remove his registration in the register due to non-completion of his CET requirements for the last CET cycle period, which ran from 1 January 2019 to 31 December 2021.

Late service of documents

4. The Appellant applied to admit into evidence a short statement made by the Appellant. The Council objected to the admission of the material. It was noted that the case had been adjourned on the 31 August 2022 for the purpose of case preparation the Committee were disappointed that the case remained late in its preparation. However, the Committee considered it in the interest of justice and fair in all the circumstances to admit the Registrant's witness statement.

Hearing in private

5. The Appellant applied to have the sensitive evidence relating to the Appellant and his **Redacted** heard in private. The Committee were reminded of the sensitive nature of the evidence and agreed that sensitive evidence should be heard in private in accordance with standard practice. All other evidence would be heard in public.

Determination

6. The Appellant appeals against the decision of the Council to again remove his registration in the register due to non-completion of his CET requirements for the last CET cycle period, which ran from 1 January 2019 to 31 December 2021. The reason the Council decided to remove the Appellant's registration was because he did not complete his CET requirements by the deadline of 31 December 2021. Specifically, there was a shortfall of 11 general points, and one competency missed, which represented 47.8% of his overall requirement.

7. On 7 February 2022, the Appellant submitted an “exceptional circumstances” application advising the Council that he had not managed to accumulate CET points in the last cycle, **Redacted** the previous year.
8. The Registrar considered the Appellant’s application for exceptional circumstances on 4 March 2022. Given the size of the shortfall, the Registrar recommended that the Registrant be removed from the register until he met the restoration requirements. This determination was further considered by the GOC CET manager who stated that:

“I agree to removal from the register, there is a poor history on this registrant’s file ranging from insufficient CET this cycle, a reset to registration...this is based wholly upon the high levels of missed CET which would mean we could not ensure public safety.”

9. The Appellant was written to in March 2022 placing him on notice that his application had been unsuccessful, that letter stated, *inter alia*:

“Unfortunately, the Registrar has determined that your application has not been approved because while we accept that your circumstances have been very difficult, the size and nature of your CET shortfall are such that we believe the public interest would be best served by you leaving the register until you have been able to make good the shortfall. In your case, we will waive the £75 restoration fee as a gesture of goodwill. This means that you have not met the requirements for the 2019-21 CET cycle. Your CET shortfall can be found in your MyCET account by reviewing the previous 2019-21 CET cycle. Unfortunately, this means you will be removed from the register. CET (and CPD going forwards) is an important assurance that registrants are keeping their knowledge and skills up to date and this ensures that patient safety is maintained.”

10. It follows that in line with the Council’s own policy it had determined that the Appellant had not demonstrated exceptional circumstances. The letter went on to emphasise that the Appellant could apply for restoration to the register, if he was able to meet the requirements, that being the quickest and simplest route back to registration.

11. The CET requirements in the relevant period are set out below:

“CET requirements for dispensing opticians (1 January 2019-31 December 2021)

1. You are required to obtain 36 points during this cycle. (The points requirement is adjusted for registrants joining after 1 January 2019.)

2. You must achieve a minimum of 18 points through interactive CET.

*We expect you to obtain at least **six points per year** but would encourage you to do more than this in order to spread your learning evenly across the three-year cycle. The number of points awarded for a CET activity reflects the level of engagement with peers or experts and the extent to which the activity supports*

reflection by the participant. For example, peer review and clinical skills CET carry more points than attendance at lectures or article-based CET.

*You must cover all of the **dispensing optician competencies***

*You must create a **scope of practice statement** and at least one **learning goal** in the personal development plan section of your **MyCET account**.”*

12. The Council operates a policy whereby a Dispensing Optician who has a shortfall of CET points at the end of the cycle may advance exceptional circumstances as to why they have been unable to obtain the requisite amount of CET points. Paragraph 1.4 of the policy states:

“[The Council] recognise that it will not always be proportionate to remove a registrant who does not meet the statutory minimum CET requirements, and this policy sets out the Registrar’s discretion for retaining such registrants in circumstances where this would not risk public protection or undermine the public interest.”

13. The Council submitted that any consideration of exceptional circumstances must be done alongside the over-arching objective contained within section 1(2A) of the Act: “The over-arching objective of the Council in exercising their functions is the protection of the public”.

14. Paragraph 3.1 of the policy states: “This policy applies to all fully-qualified registrants who have not been able to meet their CET requirements but can, exceptionally, demonstrate that their retention on the register would not risk public protection or undermine the public interest”.

15. The ‘Principles to be applied’ are stated in full at paragraphs 4.1 to 4.5 of the policy, and include:

4.3.1 the size and nature of the CET shortfall, for example, whether CET has been undertaken in each competency, whether interactive requirements have been met, if peer review has been completed (if relevant) and if specialist requirements have been met;

4.3.2 the amount of CET undertaken before, during and after the current cycle, for example, whether the shortfall was addressed shortly after the end of the cycle;

4.3.3 how long and how recently the registrant has been practising, for example, if the registrant is an experienced practitioner who is currently maintaining their skills;

4.3.4 *any other steps taken to maintain their skills, for example, having recently completed relevant further and/or higher education or non GOC-approved training;*

4.3.5 *any plans to get back on track, for example, arranging to undertake CET shortly after the end of the cycle;*

4.3.6 *any other concerns regarding fitness to practise, for example, whether the applicant's current health impairs their ability to practise safely;*

4.3.7 *any other relevant factors, including whether the applicant has completed CET that is relevant to their own specific learning needs and scope of practice.*

16. The Appellant was 11 points and one competency requirement short of his requirements during the CET cycle.

Personal Circumstances

17. During the 2016 to 2018 CET cycle the Appellant had a 11 point shortfall of the 36 point requirement. He gave evidence that this arose from difficulties at work. He subsequently then went through the restoration process to make up the shortfall and was readmitted to the Register.

18. In July 2020 the Appellant's **Redacted**. In May 2021 the Appellant's **Redacted** suffered further issues, the effects of which lasted for some months thereafter. Both those events seriously affected the Appellant. He raised other issues with regards to his **Redacted** education that distracted his professional focus. The Committee accept the Appellant's evidence in that he experienced distressing personal circumstances during that period.

19. The Registrant's current CPD statement dated 28th September 2022 reports that he has completed 12 general CPD points towards a target of 36 points to be reached by the 31st December 2024.

20. In relation to the 2019 - 2021 cycle, in January 2020 the Appellant handed in notice at his place of work. In February he registered at Company House as **Redacted** and started trading in the capacity of repairs, adjustments and servicing of spectacles. The Appellant indicated in evidence that he had a level head at the time and was getting the business going. He was undertaking this work between February 2020 and July 2020. He also set up an account with **Redacted**. In July 2020 the company attracted its first customer.

21. The Appellant pointed to the Coronavirus Pandemic, challenging Redacted circumstances, entering self-employment, and his Redacted as the reasons why he fell short of his CET requirements.
22. Page 96 of the Council's bundle evidenced the Appellants CET record in the relevant 2019 – 2021 year period. The Appellant evidenced that the 12 CET points of the 23 required points, were accumulated in one day in October 2020. He accepted in evidence that he could have done more. The Appellant had between October 2020 and December 2021 to complete the CET requirement. Although the GOC placed him on notice of his CET requirements, he did not remedy the deficiency; no further points were completed, nor did he contact the GOC to advise them of his difficulties at any time during the cycle.
23. The Appellant gave evidence that he was proud of his GOC number and that was a motivating factor behind this Appeal. As he put it, he had a sense of belonging with the GOC and would like to continue in practice, and further, that being removed only to be allowed to restore again would be counterproductive. He asserted that he didn't want to start over with a new registration number. The Committee took this approach to be inconsistent with the Appellant's proclaimed professional motivation. The Committee did not accept that this evidence was either consistent or relevant, the Appellant having previously been issued a new Registration Number in January 2020.

Determination

24. The Committee is reassured to see that the Appellant is now able to continue working having been through the troubling times his Redacted experienced. However, it appears to the Committee that he was working throughout the period of the CET shortfall in one way or another as he himself acknowledged. It is commonplace, and often essential, for professionals to work through difficult situations in their professional and personal lives. This case appears to the Committee to be more a scenario of the Registrant having prioritised matters other than his professional obligations. That was, in the Committee's view, an error of focus.
25. The Committee was cognisant that the Appellant was not practicing for approximately 6 months prior to restoration in January 2020, which of itself would have necessitated some CET to guard against diminishing professional skill.
26. The Council submitted, *inter alia*, that he did not complete the compulsory ocular examination competency requirement, that his CET activity was undertaken recently and there was a considerable period where no CET was undertaken. His personal circumstances were insufficient to be regarded as exceptional and that the Appellant had a poor history of maintaining his CET. In short, the Council submitted that the Appellant's shortfall was too great to permit continued registration, when this was reconciled against the risk to patient safety and the public interest.

27. The Appellant argued it would be disproportionate to remove them from the Register, the Committee reject that submission. The Committee does not find that the difficulties the Appellant experienced amounted to exceptional circumstances. The Committee find that the level of the CET undertaken was substantially deficient, and whilst the Appellant experienced a harrowing period, those events were not such that they amounted to exceptional circumstances. The Committee are minded that throughout the period that he established a company, started trading in the capacity of repairs, adjustments and servicing of spectacles, set up his own website and advertised his fledgling business.
28. The CET discrepancy was excessive; the Committee did not expect to see such a marked shortfall mindful that the Appellant had been in a similar position in the last CET cycle. The Committee viewed the Appellant's approach to CET as *laissez faire* considering his past CET history. Particularly so when considering that the Appellant took minimal steps to remedy the deficit when he was put on notice by the GOC prior to the end of the CET cycle. There is a strong public interest in ensuring that standards are maintained across all Registrants by completing their CET requirements.
29. In all the circumstances and given the need to maintain the public's confidence in the profession and uphold the standards of competence expected of Dispensing Opticians the Committee decided to uphold the Registrar's decision and to dismiss the appeal.

APPEAL DISMISSED

Chairman of the Committee: Ian Crookall

Signed  Date 29 September 2022

Appellant: Raj Shivraj

Signed present via video Date 29 September 2022

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.