

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

GENERAL OPTICAL COUNCIL

F(20)18

AND

HAROON AMIN (SD-7794)

**DETERMINATION OF A SUBSTANTIVE REVIEW
29 SEPTEMBER 2021**

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| Committee Members: | Ms Hermione McEwen (Chair) Ms Zaiada Bibi (Lay) Ms Miriam Karp (Lay) Mr Simon Pinnington (DO) Ms Judith Stodel (DO) |
| Legal adviser: | Mr Ian Ashford-Thom |
| GOC Presenting Officer: | Mr Dean Taylor |
| Registrant: | Not present and unrepresented |
| Registrant representative: | Not applicable |
| Hearings Officer: | Mr Terence Yates |
| Outcome: | Fitness to undertake training as a Dispensing Optician impaired. Erasure from the Register. |

Proof of service

1. There being no attendance by the Registrant, Mr Taylor for the General Optical Council ('the Council') applied for the matter to proceed in the Registrant's absence.
2. First, the Council was required to satisfy the Committee that notice had been served in accordance with Section 23A of the Opticians Act 1989 ('the Act') and Rule 61 of the General Optical Council (Fitness to Practise) Rules 2013 ('the Rules'). Mr Taylor told the Committee that on 2 March 2021, notice of this virtual hearing was sent to the Registrant's email address on the Council's register and on 5 March 2021 notice was sent by special delivery postal service to his postal address on the Register. The notices contained the information required by the Rules including the date and time of this virtual hearing. The Royal Mail Track & Trace record shows that the notice was successfully delivered to the Registrant's address on 13 March 2021 and signed for in the name of 'Amim'.
3. Mr Taylor submitted that this showed that service had been validly effected in accordance with Section 23A of the Act 1969 and Rule 61 of the Rules 2013.
4. The Committee accepted the advice of the Legal Adviser, who advised that the documents referred to above demonstrated that the Registrant had been duly served with notice of this hearing.
5. The Committee was satisfied that the Registrant had been served with notice in accordance with the statutory requirements.

Proceeding in the absence of the Registrant

6. The Committee then went on to consider whether it would be in the public interest to proceed in the Registrant's absence in accordance with Rule 22.
7. The Committee heard the submissions of Mr Taylor on why it was in the public interest to proceed in the Registrant's absence.
8. The Committee accepted the advice of the Legal Adviser who referred to the principles set out in the cases of and *R v Jones [2003] 1 AC 1* and *GMC v Adeogba [2016] EWCA 162*.
9. The Committee throughout its deliberations bore in mind that the discretion to proceed in a Registrant's absence must be exercised with the utmost care and caution.
10. The Committee was satisfied that all reasonable efforts had been made to notify the Registrant of the hearing. The Committee had regard to the reasons for the absence of the Registrant. It noted that there had been limited engagement by the Registrant with these proceedings. He had not attended the substantive hearing a year ago. The previous Committee had had regard to the correspondence between the Registrant and the Council up to September 2019. That Committee noted that the last contact from the Registrant had been in a telephone call on 4 September

2019, in which he responded to a voicemail message from the Council inviting representations about the case. In the telephone note of the call, it was recorded that the Registrant did not wish to make any comments and stated that he was no longer studying to become a Dispensing Optician. The telephone note also recorded that he had been told that as he was under investigation, he would remain on the Register until the Fitness to Practise process had concluded. That Committee noted that there had been numerous emails sent to the Registrant since September 2019 and many telephone calls made attempting to contact him. The Registrant had not replied to any of the attempted communication since September 2019, and it had appeared to that Committee that he had decided not to engage with the Council or the process. Furthermore, as the Court in *Adeogba* observed, there is a burden on registrants to engage with their regulator.

11. This Committee noted that there had been no engagement by the Registrant in relation to this review hearing. The Committee had found good Service. The Committee was satisfied that the proper inference to be drawn from the above history was that the Registrant was aware of this hearing and that he had voluntarily chosen to absent himself. There was no request for an adjournment, and the Committee considered it unlikely that an adjournment would be likely to secure his attendance. The Committee acknowledged that there was likely to be some disadvantage to the Registrant in being absent and therefore unable to present his case. However, this was an inevitable consequence of his failure to engage with the process. Against this, there was a strong public interest in the expeditious disposal of this review hearing.
12. Balancing the above considerations, the Committee determined that it would be in the public interest to proceed with this hearing in the Registrant's absence.

DETERMINATION

Background

The first matter

13. The allegations were as follows:

- 1) *On or around 20 April 2018 you:*
 - a) *Copied and amended the essay of another student, which was titled “Shift Happens – an Ophthalmic Reflection”;*
 - b) *Submitted the amended version of “Shift Happens – an Ophthalmic Reflection” as your own work;*
- 2) *Your conduct as set out at allegation 1(b) was dishonest, in that it amounted to plagiarism.*

14. The Registrant was a student on the Ophthalmic Dispensing programme at [Redacted] (“the College”) from 2015. In his third year he took a module in ‘Ophthalmic Business and Retail’. One of the tasks of the module was to submit an essay on professional practices, having watched a video titled ‘Shift Happens’. The essay concerned shifts in the use of technology in ophthalmic settings.

15. The Registrant submitted his essay on 20 April 2018 by uploading it onto the College database system called “Turn-it-in”. The “Turn-it-in” system, used by many Higher Education establishments, compares the submitted work to internal and external sources using an international database and highlights any similarities, either with other students’ work or published articles. The system identified a similarity index of 29%, higher than the acceptable range of 10-25%, 46 indicating a high chance of duplicated text, either through referenced quotations or plagiarism.

16. The course lecturer subsequently compared the essay of the Registrant with the essay of one of his fellow students. It was alleged at the Substantive Hearing that the Registrant copied and amended the essay of the other student and submitted it as his own, and that this was dishonest as it amounted to plagiarism.

The second matter

17. *The allegations were as follows:*

- 3) *On 19 June 2018, at Bradford Magistrates' Court, you were convicted of dangerous driving;*
- 4) *On 10 December 2018, you sent an email to the GOC that stated that a member of GOC staff had visited your home and taken documents relating to your conviction as set out at Allegation 3 above;*
- 5) *Your conduct as set out as Allegation 4 was dishonest, in that you knew that no member of GOC staff had attended your home and taken documents.*

AND that by reason of the facts set out above, your fitness to undertake training is impaired by reason of misconduct and/or conviction.

18. The Registrant pleaded guilty at Bradford Magistrates' Court on 19 June 2018 to one offence of dangerous driving, committed on 1 June 2018. His case was committed to Bradford Crown Court for sentence.

19. On 10 July 2018, the Registrant's sentence was deferred for a period of six months, with requirements of unpaid work and electronically monitored curfew as part of the deferment.

20. The Registrant was sentenced on 21 December 2018 to a community order for 12 months with 50 hours of unpaid work. He was also disqualified from driving for 12 months and required to take an extended re-test.

21. On 23 November 2018, the Registrant declared his conviction to the Council.

22. On 10 December 2018, the Registrant sent an email to the Council stating that a man called '**[Redacted]**', wearing a GOC lanyard, had attended his home on 6 December 2018. The email stated that the member of staff had questioned him regarding the traffic offence and took all of his letters and correspondence regarding this. The email stated that the Registrant had discussed the incident with his employer and asked for confirmation as to whether the visit was from a GOC representative. It was alleged that the Registrant's conduct in sending the email was dishonest as he knew no member of the Council's staff had attended his home and taken any document.

The Substantive Hearing on 5 – 7 October 2020 - findings of the Committee

23. As mentioned above, the Registrant did not attend the substantive hearing. Nor was he represented.
24. With regard to the first matter, the Committee found all the allegations, including the allegation of dishonesty, proved.
25. With regard to the second matter, the Committee found the facts alleged in allegations 4 and 5 proved. With regard to the conviction, this was found proved upon production of the relevant certificate of conviction.
26. The Committee found that the facts found proved amounted to misconduct and that the Registrant's fitness to undertake training was impaired on public interest grounds by reason of his misconduct and/or conviction. The Committee stated:

"In relation to particulars 1 and 2, the Committee considered that in April 2018, the Registrant had plagiarised a fellow student's essay, submitted it as his own, and had done so dishonestly. The Committee noted that the submitted essay was a marked piece of coursework which would have counted towards his degree had the plagiarism not been discovered. The Committee considered that this conduct was serious in itself, but that it was compounded by the Registrant maintaining that the work was his own when challenged by [Redacted]."

"In relation to particulars 4 and 5, the Committee considered that in December 2018, the Registrant had again acted dishonestly, in writing to the Council to say that a member of the Council had attended his home and taken documents, knowing that this was not true. The Committee noted that this dishonesty had occurred at a time when the Council was aware of the conviction and the Registrant knew that the Council would have to investigate it."

"The Committee considered that the particulars 1, 2, 4, and 5 demonstrated a pattern of dishonest behaviour on the part of the Registrant in relation to his intended professional role as a Dispensing Optician."

"The Committee was mindful that there has been no communication from the Registrant since his telephone call to the Council on 4 September 2019. The consequences of this lack of engagement were that there was little or no evidence before the Committee of any insight, remorse, or remediation, in respect of either his conviction for dangerous driving or his dishonesty. This meant that the Committee had no information about how the Registrant had behaved since the misconduct/conviction; if and how he had reflected on and learnt from it; and how he would ensure it would not occur again."

"In relation to the conviction, the Committee acknowledged that the Registrant had pleaded guilty in the Magistrates' Court. However, in the absence of any information from him, the Committee had no basis for assessing that there was no longer a risk of repetition.

"The Committee noted that the dishonesty had been repeated, having occurred in April 2018 and December 2018. In the absence of any information from the Registrant, the Committee had ongoing concerns in respect of his honesty and integrity and was troubled that he may act dishonestly again in the future.

"Having regard to the test set out in the case of Grant v NMC [2011] EWHC 927 (Admin), the Committee considered that the Registrant had in the past brought the profession into disrepute; had breached a fundamental tenet of the profession; and had acted dishonestly. Looking forward, given the absence of information, the Committee concluded that the Registrant was liable to act in such a way in the future and his integrity could not be relied upon."

27. The Committee considered whether a finding of impairment was required in order to uphold proper professional standards and public confidence in the profession, and concluded that it was.
28. The Committee concluded that the appropriate and proportionate sanction was a 12 month period of suspension.
29. The period of suspension is due to expire on 3 November 2021.
30. This review is being undertaken in accordance with Sections 13F (6) and (7) of the Act.
31. This Committee took into account the Council's written submissions in its Skeleton Argument dated 1 September 2021, together with the oral submissions of Mr Taylor.
32. The Committee accepted the advice of the Legal Adviser, who advised that the Committee should first consider whether the Registrant's fitness to undertake training remains impaired by reason of his misconduct and/or conviction. If, and only if, the Committee finds such impairment, it should go on to consider what, if any, sanction is now appropriate and proportionate.

Findings regarding impairment

33. This Committee noted that the Registrant has failed since the original hearing to engage with the Council. He has chosen not to participate in this review hearing. He has not provided any evidence of reflection, insight, remorse or remediation. There is nothing to suggest that he would not repeat the kinds of behaviour evident from the allegations found proved, including dishonest behaviour.
34. The Committee adopted the test formulated by Dame Janet Smith in her Fifth report from Shipman which was commended to regulatory panels in the case of *CHRE V NMC and Grant [2011] EWHC 927 (Admin)*:
- "Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*
- a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
 - b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
 - c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
 - d) *has in the past acted dishonestly and/ or is liable in the future to act dishonestly."*
35. The Committee recognised that there was no evidence to suggest that the Registrant's misconduct had put a patient or patients at unwarranted risk of harm. However, the Committee had no doubt that the other three limbs remained engaged in this case. In the absence of any evidence of insight, remorse and remediation, the Committee could only conclude that the Registrant remains liable in the future to bring the profession into disrepute, to breach one of the fundamental tenets of the profession and to act dishonestly.
36. The Committee also had regard to the guidance set out in the case of *Cohen v GMC [2008] EWHC 581 (Admin)* namely: Is the Registrant's conduct easily remediable; has it been remedied; is it highly unlikely to be repeated?
37. While dishonesty may be difficult to remedy, the Committee was of the view that the Registrant's conduct was, at least, potentially remediable. However, the Committee had no evidence, such as a reflective statement or references or testimonials, to suggest that there had been any remediation. Accordingly, the Committee could not be satisfied that the conduct to which the allegations related was "highly unlikely to be repeated".
38. In the light of these conclusions, the Committee determined that the Registrant's fitness to undertake training remains currently impaired on public interest grounds. The Committee was satisfied that the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the circumstances of the case.

Sanction

39. Mr Taylor referred the Committee to the Council's Indicative Sanctions Guidance. He indicated that the Council is submitting that a sanction of a further period of suspension is the least that is appropriate. However, the Committee may decide that the case is so serious that nothing less than erasure is now appropriate.
40. The Committee accepted the advice of the Legal Adviser, who reminded it of the need for proportionality and the requirement to consider the appropriate sanctions in ascending order of seriousness.
41. The Committee considered whether it would be appropriate to take no further action and allow the current order to lapse on expiry. However, the Committee was satisfied that there were no exceptional circumstances that would justify such a course. Such an outcome would not reflect the importance of upholding the public interest and would clearly be inappropriate in view of the seriousness of the misconduct and the conviction in this case.
42. The Committee had regard to whether conditional registration was an appropriate sanction. However, this was not a case where the Registrant's skills as a trainee dispensing optician had been called into question. The misconduct and conviction of the Registrant, which involved dishonesty and dangerous driving, were not of a kind that conditions could be designed to address. In any event, there was no evidence that any conditions would be workable or that the Registrant would be willing to cooperate with them as he was not engaged in these proceedings.

43. The Committee next considered whether to impose a further period of suspension. The Committee had no doubt that the misconduct, which included repeated dishonesty, was serious. The Committee took into account the reasoning of the previous Committee as to why a 12 month period of suspension was then the appropriate sanction:

"It also noted that the period of suspension would give the Registrant the opportunity to re-engage with the Council and demonstrate at a review that he had reflected on his behaviour; gained insight into his actions and their impact on public confidence in the profession; and remedied his misconduct."

This Committee noted, however, that the Registrant had failed to avail himself of this opportunity. He had not engaged with his regulator throughout the subsequent process, nor had he attended this hearing. He had failed to provide any evidence of remorse, insight or remediation. There was nothing to suggest that a further period of suspension would achieve any useful purpose. On the contrary, there was nothing to suggest that the Registrant's intentions had changed from those expressed in his last telephone conversation with the Council on 4 September 2019, when he stated that he had no wish to make any comment and that he did not intend to continue training as a Dispensing Optician. In these circumstances, the Committee was of the view that a further period of suspension would not be sufficient for the purpose of upholding public confidence in, and the reputation of, the profession.

44. The Committee next considered erasure. It had regard to the Council's Indicative Sanctions Guidance, in particular at paragraph 36.5, where it is stated:

*"This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional and involves any of the following:
a. Serious departure from the relevant professional standards ... f. Dishonesty (especially where persistent and covered up); g. Persistent lack of insight into seriousness of actions or consequences."*

The Committee was satisfied that the above criteria were now applicable in this case. The Committee determined that nothing less than erasure was now required in order to uphold public confidence in, and the reputation of, the profession.

45. Given the Registrant's lack of engagement, the Committee had no information as to whether, and if so to what extent, erasure might cause him hardship, financial or otherwise. However, the Committee was satisfied that any such hardship was substantially outweighed by the need to protect the public interest. Accordingly, the Committee concluded that erasure was both appropriate and proportionate.

46. The Committee therefore directs the Registrar to erase the Registrant's name from the Register.

47. That concludes this determination.

Chair of the Committee: Ms Hermione McEwen

Signature **Date: 29 September 2021**

Registrant: Mr Haroon Amin

Signature not present at hearing **Date: 29 September 2021**



| FURTHER INFORMATION | |
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| 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 | 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. 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). |
| Effect of orders for suspension or erasure | Further information about the PSA can be obtained from its website at www.professionalstandards.org.uk or by telephone on 020 7389 8030. |
| 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. |