

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

SOPHIE KENYON (D-16058)

AND

GENERAL OPTICAL COUNCIL

**DECISION OF THE REGISTRATION APPEALS COMMITTEE
17 AUGUST 2022**

Committee Members:	Ian Crookall (Chair) Jackie Alexander (Lay) Ian Hanson (Lay) Philip Cross (Dispensing Optician) Simon Pinnington (Dispensing Optician)
Clinical adviser:	Dr Desmond Dunleavey
Legal adviser:	Emma Boothroyd
GOC Presenting Officer:	Dean Taylor
Appellant present/represented:	Yes not represented
Appellant representative:	None
Hearings Officer:	Nazia Khanom
Outcome:	Appeal dismissed

Background

1. The Appellant was first registered with the General Optical Council in July 2016. On or around the 4 April 2022 the Appellant was advised by the GOC that she would be removed from the register on 9 May 2022 because she did not complete her Continuing Education and Training (CET) requirements for the period 1 January 2019 to 31 December 2021.
2. The Appellant was required to achieve 36 CET points in the cycle. 18 of those points were required to be interactive, which requires physical attendance at an event or distance learning with an interactive element. During the cycle the Appellant completed a total of 24 points with 17 of those points as interactive points.
3. In April 2022 the Appellant wrote to the Registrar to explain that in her view there had been exceptional circumstances which had prevented her from completing the required points. The Appellant outlined in an email dated 20 April 2022 that **redacted**. The Appellant stated that this had resulted in her avoiding dealing with addressing her CET requirements. The Appellant also stated that she had been having problems in receiving her post and had not had any of the letters from the GOC until they were all delivered together. The Appellant asked the Registrar to maintain her name on the Register. The Appellant also set out that she had completed significant learning as part of the contact lens course and she had kept her skills up to date.
4. On 16 May 2022 the Registrar considered the Appellant's submissions and determined as follows,
*"Whilst I am pleased to see that the registrant has sought **redacted** and willing to fulfil future CPD commitments, unfortunately, the CET shortfall is just too great to ensure public safety is maintained. I...cannot support an exceptional circumstance in this instance."*
5. The appeal was therefore referred to this Committee to consider and determine.

Preliminary matters

Proceeding in Private

6. **Redacted.**
7. **Redacted.**

Order of Proceeding

8. As a further preliminary matter, as the Appellant was unrepresented, the Committee invited an opening statement from Mr Taylor to assist. The Appellant agreed to this course and was content to allow Mr Taylor to outline the background to the Appeal. The Committee accepted the advice of the Legal Assessor and agreed that this was the most effective way of dealing with proceedings.
9. The Committee then heard oral evidence from the Appellant. Within that evidence the Appellant confirmed that her written representations were correct. The Appellant set out the circumstances leading to the failure to complete the required points and provided further details, redacted. The Appellant also answered questions from Mr Taylor, Dr Dunleavey and from the Committee.
10. The Committee then heard a closing statement by Mr Taylor on behalf of the Council. The Appellant then responded with her closing submissions. The Committee heard and accepted the advice of both the Clinical Adviser and the Legal Adviser. The Legal Adviser set out the Committee's powers under the Opticians Act which included the options open to the Committee.

Determination

11. In making its determination the Committee had regard to all of the evidence and took into account the submissions of both parties. Mr Taylor submitted that the decision of the Registrar should be maintained and set out in his skeleton argument and submissions that the CET regime was clear. He submitted that although the Appellant may have had difficulties in completing the CET points, these difficulties did not justify maintaining her name on the register given the shortfall and the failure to make up the points.
12. The Appellant submitted that she was passionate about her role, that while she had experienced genuine difficulties which had prevented her completing the CET requirements, she had studied in other areas and was in no way a risk to patients.
13. The Committee noted that it was not in dispute that the Appellant did not complete the CET points as required. It noted that she was 12 points short of the requirement and 1 point was an interactive point. The Committee considered whether the circumstances as put forward by the Appellant were

exceptional and whether retaining the Appellant in these circumstances would not risk public protection or undermine the public interest.

14. In making this decision, the Committee had regard to all of the evidence, but had at the forefront of its consideration the GOC's overarching objective to protect the public and maintain confidence in the profession and uphold proper professional standards. The Committee had regard to the fact that the CET regime is a clear statutory requirement for professionals, and it should scrutinise carefully whether any departure would undermine public safety or public confidence. The Committee noted that it was for the Appellant to demonstrate that there were exceptional circumstances, such that public protection would be maintained if they remained on the register.
15. **Redacted.** This had led to a situation in which she was unable to prioritise this aspect of her learning.
16. The Committee noted that the Appellant had undertaken significant study during the CET cycle on the "contact lens course". The Committee considered that the Appellant had devoted a significant amount of hours of learning to this course which suggested that she was capable of undertaking professional learning during the cycle. The Committee was not persuaded that the Appellant's difficulties were such that she was unable to undertake any professional learning during this period.
17. The Committee noted the Appellant's CET history and took into account that she had completed 4 points in one day in an attempt to catch up in December 2021. However, she had done no further CET points since this date. The Committee was not persuaded by the Appellant's argument that she wanted to await the outcome of any appeal before undertaking further CET.
18. **Redacted.**
19. The Committee did not consider that the difficulties with the Appellant receiving post amounted to exceptional circumstances given that the CET requirements were clearly available online and within her dashboard at "My GOC". The Committee considered that the Appellant had an obligation to monitor this.
20. **Redacted** and so it went on to consider whether her registration could be maintained without a risk to public safety. In making this decision the Committee had regard to the GOC "Continuing Education and Training (CET) exceptions policy." In particular it had regard to the factors in paragraph 4.3.
21. The Committee took into account that the Appellant's CET shortfall was significant. Whilst the Committee was sympathetic to the Appellant's

difficulties it considered that public protection would be undermined by allowing the Appellant to remain on the register when her knowledge is not up to date. Further, the Committee was not persuaded that the Appellant had addressed her difficulties to the extent that it could be confident that she would be “back on track” and had made good any gaps in her knowledge. The Committee noted again that the Appellant had not made good any shortfall and had undertaken no CET training since December 2021.

22. Although the Committee noted the training and study that the Appellant had undertaken as part of the contact lens course, it noted that this had now stopped. In any event, the Committee considered that this study alone was not sufficient to address the CET requirements.

23. The Committee took into account the Appellant’s argument that she wanted to maintain her registration, rather than re-register so that she could continue to supervise others. It also noted that the Appellant had stated she would complete extra CET in her appeal. However, it considered this was not consistent with her failure to undertake any CET since December 2021. The Committee was concerned that the Appellant was supervising others when her own professional development was not up to date, and did not consider that being able to remain as a supervisor was a compelling reason to maintain her registration.


24. Redacted.

25. Overall, the Committee considered that the public interest outweighed the interests of the Registrant and to allow the Appellant to remain on the register in these circumstances would undermine standards in the profession and put the public at risk. The exceptional circumstances put forward by the Appellant were not sufficient to convince the Committee that the standards expected of a registrant were being met and would adequately protect the public.

26. The Committee therefore determined that the Registrar’s decision be upheld.

27. In conclusion, the Committee wished to draw to the Appellant’s attention the provisions for re-registration after removal from the register. This would enable the Appellant to address the shortfall in her CET and demonstrate to the regulator that her training was up to date.

Chair of the Committee: Ian Crookall

Signed  Date 17 August 2022

Appellant: Sophie Kenyon

Signed Present via video conference Date 17 August 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>

Further information about the PSA can be obtained from its website at www.professionalstandards.org.uk or by telephone on 020 7389 8030.

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.