

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

**GENERAL OPTICAL COUNCIL**

**F(22)23**

**AND**

**SHERINJIT MAHAL (D-14629)**

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**DETERMINATION OF A SUBSTANTIVE HEARING  
8 FEBRUARY 2023 – 09 FEBRUARY 2023**

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<b>Committee Members:</b>	Ms Eileen Carr (Chair/Lay) Ms Audrey McFarlane (Lay) Ms Miriam Karp (Lay) Mr Ian Taylor (Dispensing Optician) Ms Judith Stodel (Dispensing Optician)
<b>Clinical adviser:</b>	N/A
<b>Legal adviser:</b>	Ms Emma Boothroyd
<b>GOC Presenting Officer:</b>	Mr Matthew Corrie
<b>Registrant present/represented:</b>	Yes and represented
<b>Registrant representative:</b>	Mr John Graham (William Graham Law Ltd)
<b>Hearings Officer:</b>	Mr Lee Wood
<b>Facts found proved:</b>	All by admission.
<b>Facts not found proved:</b>	None
<b>Misconduct:</b>	Found
<b>Impairment:</b>	Impaired
<b>Sanction:</b>	Suspension order 3 months – (Without Review)
<b>Immediate order:</b>	None

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## **ALLEGATION**

The Council alleges that in relation to you, Sherinjit Mahal (D-14629), a registered dispensing optician:

1. On 10 March 2022, you submitted an email to the Council containing altered and/or false CET information, claiming that it was sent to you by your CET provider, **REDACTED**;
2. Your action as set out above at 1) was dishonest in that:
  - i) You knew that the amendments did not appear in the original email from **REDACTED**; and/or
  - ii) You sought to mislead the Council that the amended comments had been made by **REDACTED**; and/or
  - iii) You knew that the amendments were not a true and accurate reflection of the relevant circumstances affecting your CET information.

And by virtue of the facts set out above, your fitness to practice is impaired by reason of your misconduct.

## **DETERMINATION**

### **Admissions in relation to the particulars of the allegation**

1. At the outset of the hearing the Registrant admitted all of the particulars of the allegation. The Chair announced those facts as proved by reason of the admissions, pursuant to Rule 46 of the General Optical Council (Fitness to Practise) Rules 2013.

### **Background to the allegations**

2. The circumstances leading to the hearing arise from the Registrant's submission of her CET points for the 2019 – 2021 cycle. In January 2022, the Council contacted the Registrant and raised with her that there was a shortfall of two interactive CET points and therefore she had not met the Council's requirements.
3. The Registrant began a dispute process as she considered she had undertaken the relevant courses to obtain the CET points and there had been an error by **REDACTED**, her employer, in uploading the CET points to her record. During this dispute process, the Registrant sent screenshots of her completion of the courses from the **REDACTED** website. This was not accepted by the Council as they did not show the Registrant's name, GOC number, C reference for the course or when the points were awarded.

4. On the 8 March 2022, the Registrant emailed the training provider helpdesk at REDACTED to request confirmation of the courses that she had undertaken in December 2021, in order to provide the information to the Council in support of her dispute.
5. On 10 March 2022, REDACTED, who was at the material time responsible for uploading CET points to the GOC, sent an email to the Registrant which stated as follows:

*“Hi Sherinjit*

*I have taken a look at the 3 interactive courses you took on the 14th December and can confirm the following:-*

*C-75861 Needs-based decision making in the context of COVID-19 - Interactive. You completed the interactive discussion form and your colleague REDACTED signed off the discussion on the 14th December. The point was uploaded to the GOC and I can see that you accepted the point on 22nd December.*

*C-75617 Drivers vision and DVLA requirements - Interactive - Unfortunately you did not complete the discussion form for this interactive CET, so we were unable to award you the point.*

***C-78613 Red eye emergency referrals and emerging care pathways - Interactive.*** *I can see that you completed the interactive discussion form but unfortunately, you did not complete it correctly. You put REDACTED professional registration number in the email field, and their email address in the professional registration field. Therefore REDACTED would not have received the email to confirm that the interactive discussion took place and therefore we were unable to award you the point.*

*Kind regards*

**REDACTED”**

6. At 10.26 on 10 March 2022, REDACTED received an email from REDACTED at the General Optical Council, which stated that the Registrant had forwarded an email from REDACTED in support of her CET dispute application. The email from REDACTED was attached. REDACTED was seeking confirmation as to whether REDACTED was content to award the CET points on 14 December 2021.
7. The email which was forwarded to the Council at 10.15 am by the Registrant, purporting to be from Ms REDACTED had been altered. Information had been added which stated that the interactive discussions had taken place and been signed off by a colleague on 14 December 2021. The sentences that confirmed that the points had not been awarded were removed. REDACTED realised that the email had been altered and having raised the issue internally on 14 March 2022 she reported these concerns to the Council.

8. The Registrant accepted that she had altered the email but indicated that this was because she was in a panic and not thinking clearly at the time REDACTED. The Registrant's view was that she had completed the required training so as to be awarded the points and she was trying to get that information across to the Council.

**Application for parts of the hearing to be held in private.**

9. During the oral evidence of the Registrant, Mr Graham made an application for parts of the hearing to be held in private on the basis that he wished to ask the Registrant about REDACTED.
10. Mr Corrie on behalf of the GOC did not object to the application provided that the matters held in private were solely in relation to REDACTED.
11. The Committee accepted the advice of the Legal Adviser who reminded the Committee of the Registrant's Article 6 and Article 8 rights under the ECHR and Rule 25. The Committee considered that it was both fair and appropriate to allow this evidence to be heard in private to protect the REDACTED.

**Submissions in relation to misconduct**

12. Mr Corrie invited the Committee to find that there had been misconduct in respect of all of the particulars found proved. He referred to the skeleton argument filed on behalf of the Council dated 26 January 2023. He reminded the Committee of the case of *Roylance v GMC (No2) [2000] 1 AC 311* and suggested that the Committee should consider whether or not there had been a significant falling short from the standards expected of a Registrant. In considering whether there had been misconduct he submitted that the Committee had to exercise its professional judgement. In determining misconduct, he submitted that the Committee should have regard to the Council's Standards of Practice for Optometrists and Dispensing Opticians effective from April 2016 ("the Standards"). He submitted that the Registrant had departed from a number of these standards, in particular Standards 16, 16.1 17 and 17.1. He reminded the Committee of the context of the Registrant's conduct and submitted that it was extremely serious that the Registrant had admitted dishonestly seeking to mislead her regulator about her CET position and had altered a third-party email in support of that position.
13. Mr Graham on behalf of the Registrant submitted that in relation to the issue of misconduct this was an isolated single incident, albeit serious. He reminded the Committee that not every breach of the rules will amount to misconduct and the Committee should examine the context of the behaviour. He reminded the Committee that the Registrant had been retained and supported by her employer which was aware of the circumstances. No disciplinary proceedings had been brought, which Mr Graham submitted was an indication of its view of the matter.
14. The Committee heard and accepted the advice of the Legal Adviser. She endorsed the legal framework as set out in the skeleton argument of the Council and submitted by both parties. She reminded the Committee that the issue of misconduct was one for its own professional judgement. She advised the Committee to have regard to the

relevant Standards and take into account all of the evidence it had seen and heard so far.

### **Findings in relation to misconduct**

15. The Committee was mindful that there was no burden or standard of proof. It had to exercise its professional judgement in considering whether or not there had been misconduct. The Committee considered the issue of misconduct on the basis of the approach set out in *Roylance*. It was not enough for there to be a falling short of the standards expected of the Registrant. The Committee had to be satisfied that there was a serious falling short of these standards.
16. The Committee had regard to the Standards in place at the time of the conduct, and considered that the Registrant's conduct involved breaches of the following Standards:
  - **Standard 16. Be honest and trustworthy**
  - *16.1 Act with honesty and integrity to maintain public trust and confidence in your profession.*
  - **Standard 17. Do not damage the reputation of your profession through your conduct.**
  - *17.1 Ensure your conduct, whether or not connected to your professional practice, does not damage public confidence in you or your profession.*
17. The Committee considered each of the particulars found proved and addressed the issue of whether they involved a serious falling short of the standard expected of the Registrant.
18. The Registrant had amended an email from her training provider which sought to give a misleading picture of her CET in support of her dispute with the regulator. The Committee considered that this email was amended with the intention to suggest to the Council that the CET had been satisfactorily completed when it was clear that it had not been because elements were outstanding. This was, in the view of the Committee, particularly serious as it had the potential to frustrate the ability of the regulator to effectively exercise its functions. This was likely to undermine public confidence in the profession and the integrity of the register.
19. The Committee considered that there had been misconduct in respect of each and all of the particulars found proved. The conduct breached the Standards identified and the fundamental tenets of the profession which require registrants to act honestly and with integrity. In the view of the Committee, this conduct fell far short of what the profession expects of its Registrants.

### **Submissions regarding impairment**

20. The Committee has heard submissions from Mr Corrie on behalf of the Council and from Mr Graham on behalf of the Registrant. It has accepted the advice of the Legal Adviser. It took into account all of the evidence it has seen and heard. In weighing the

oral evidence of the Registrant, the Committee took into account her obvious distress and the anxiety of giving evidence and made appropriate allowances.

21. Mr Corrie submitted that the Registrant's conduct is sufficiently serious as to warrant a finding of impairment. In his submission, the Registrant demonstrated limited insight particularly in relation to the dishonesty aspect of her conduct describing it as a "silly mistake." Mr Corrie indicated to the Committee that this demonstrated a failure to fully appreciate the gravity of the conduct and amounted to a lack of insight and the Committee cannot be satisfied that this conduct will not be repeated.
22. Mr Corrie referred the Committee to the relevant case law on impairment and reminded the Committee that honesty and integrity are fundamental elements of the professional conduct of a registered Dispensing Optician, and he submitted that a finding of current impairment is required on public interest grounds.
23. Mr Graham stated that the Registrant had been remorseful from the beginning of this process and had made admissions that her conduct was wrong. Mr Graham submitted that the Registrant had remained with her current employer and there had never been any question about her honesty and integrity until these proceedings. Mr Graham invited the Committee to view the conduct as an isolated episode at a REDACTED. Mr Graham stated that the Registrant had accepted that her conduct was wrong, made full admissions and set out in her statement and oral evidence the steps she had taken to prevent any repetition. He submitted that the Registrant has adduced a number of references from a variety of professionals who are aware of the allegations, and all positively attest to her character.
24. The Committee has accepted the advice of the Legal Adviser and had regard to the Fitness to Practise Committee Hearings and Indicative Sanctions Guidance (Revised 1 December 2018).

### **Findings regarding impairment**

25. The Committee noted that in her recent statement the Registrant stated, "*I acted on impulse and in a panic as I feared that I might lose my job and the income which I needed to support my family if the issue regarding the CET points was not addressed immediately.....I exhibited a serious error of judgement in acting as I did and I have to accept that a fair minded person, aware of all the facts, would be likely to conclude that I acted dishonestly. I am so sorry and ashamed of this...*". In her oral evidence the Registrant reiterated her remorse and apology and the Committee considered that the Registrant had displayed genuine remorse and regret.
26. The Committee noted that the Registrant appeared in her evidence to minimise her actions, referring to a "silly mistake" and had some difficulty in accepting, when questioned, that she had the intention of misleading the Council. The Committee considered that the Registrant had difficulty articulating her position in her oral

evidence because of her extreme distress. In her written statement the Registrant refers to a “silly mistake” in not correctly submitting the CET on the system rather than amending the email to the Council which she describes as a serious error of judgement. The Committee considered that the Registrant was attempting to emphasise to the Committee that she was entitled to the CET points, having undertaken the learning and the discussion and this was in her mind at the time. This was, in the Committee’s view, distinct from accepting her conduct in amending the email was an attempt to mislead the Council into accepting points she knew she was not entitled to or had not undertaken.

27. Nevertheless, the Registrant did accept that her conduct was dishonest and admitted the allegation in full at the outset. Further, with the benefit of reflection the Committee was satisfied that the Registrant had appreciated this dishonesty. On balance, the Committee was satisfied that the Registrant has reflected seriously on the circumstances leading to her misconduct as evidenced in her two statements to the Council prior to this hearing and in her oral evidence. The Committee is therefore satisfied that she has developed sufficient insight into the seriousness of the misconduct admitted. The Committee was satisfied that the Registrant understood how honesty and integrity are fundamental to the profession and their importance in ensuring that colleague’s and patients have trust and confidence in her as a registered optician and in the optometry profession.

28. The Committee noted **REDACTED**. The Committee considered that the Registrant had taken some steps to prevent a repetition of her conduct and it noted that the Registrant had completed a significant proportion of her current CPD (formerly CET) for this cycle to prevent a situation where she was attempting to complete it in the final month. The Committee noted that the Registrant had continued with the same employer and the references obtained from her employer confirmed that she was a valued member of staff. The Committee noted that this was an isolated incident and there had been no repetition of this conduct. The Committee considered the Registrant’s reflections in her written and oral evidence, and it was satisfied that she has properly reflected on what she should have done in the circumstances and explained what she would do in the future to prevent any repetition of the dishonest conduct. In addition, the Committee considered that the anxiety occasioned by these proceedings, together with the development of her insight was sufficient for it to be reassured that this conduct was unlikely to be repeated.

29. The Committee read numerous positive testimonials, including one submitted on the day of the hearing, from a wide range of professionals and individuals, all of whom were aware of the nature of the regulatory proceedings brought by the Council.

30. The Committee considered impairment in the context of Dame Janet Smith’s comment in the *5th Report to the Shipman Inquiry* and concluded that the Registrant has acted in the past so as to (b) bring the optometry profession into disrepute (c) breach a fundamental tenet of the optometry profession and (d) has acted dishonestly.

31. The Committee is aware that it is difficult for someone to demonstrate remediation in cases of dishonesty. However, the Committee was persuaded that there was

sufficient evidence in the form of the Registrant's statement, oral evidence and recent character references, for it to conclude that she had now developed sufficient insight into the nature of her misconduct and its implications such that she was unlikely to repeat an act of dishonesty. Accordingly, the Committee considered that the Registrant is, in the future, unlikely to (b) bring the optometry profession into disrepute, (c) breach a fundamental tenet of the profession and (d) act dishonestly.

32. The Committee then reminded itself of the public interest considerations including the need to maintain public confidence in the profession and uphold standards of conduct and behaviour (*Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant* [2011] EWHC 927 (Admin))

33. The Committee considered that dishonesty is serious and is likely to undermine public confidence in the profession, particularly when it is related to the Registrant's dealings with the regulator. The public must have confidence in the integrity of the Register and in the Committee's view, the public would be seriously concerned if the Register was undermined in any way or could not be relied upon. In this case, the Registrant's conduct in dishonestly altering an email to mislead the Council about her CET points is such a departure from the required standards that public confidence in the profession would be undermined if a finding of impairment were not made. Full and honest disclosure by a Registrant is an essential element of the regulator's ability to perform its function effectively to protect the public and the public interest.

34. The Committee therefore concluded that the Registrant's fitness to practise is currently impaired by reason of her misconduct.

35. In view of the above findings, the Committee must proceed to consider the issue of sanction.

### **Submissions in relation to sanction**

36. Mr Corrie referred the Committee to the Fitness to Practise Committee Hearings and Indicative Sanctions Guidance, 20 December 2021 ("the guidance"). He outlined the public interest test and reminded the Committee that any sanction imposed should address the public interest concerns. He submitted that the appropriate and proportionate sanction is one of suspension and indicated that a period of six months would be sufficient to address the public interest concerns in this case.

37. Mr Corrie submitted that the aggravating feature of this case was that the dishonest conduct involved the Registrant's communication with her regulator and which the Committee had found had affected public confidence in the integrity of the Register and the profession as a whole.

38. Mr Graham submitted that suspension is a disproportionate sanction in this case. His primary submission was that the Committee should take no further action on the basis that the Committee's finding on misconduct and impairment would be sufficient to satisfy the



public interest considerations. He drew the Committee's attention to the following mitigating features:

- This is the Registrant's first appearance before her regulator;
- The Registrant is a person of positive good character as demonstrated in the numerous testimonials and character references;
- The Committee has found that the Registrant has shown insight and demonstrated remediation and remorse;
- The Committee has concluded that the misconduct is unlikely to be repeated;
- There are no public protection concerns in this case. The Registrant is a competent practitioner who is considered to be a valued member of staff;
- There was no impact on any patient.

39. Mr Graham submitted that if the Committee were not with him in relation to his primary submission, an order of conditions could be considered appropriate to ensure that the Registrant completed future training satisfactorily.

40. The Committee accepted the advice of the Legal Adviser that the Committee should consider the range of available sanctions in ascending order of seriousness; to consider any aggravating and mitigating factors in the case; to act proportionately; and to remember that the purpose of sanction is not to be punitive, but is to protect the public, maintain public confidence in the profession, and declare and uphold proper standards of conduct and behaviour. She further advised the Committee to take into account the factors set out in the GOC's "Fitness to Practise Committee's Hearings and Indicative Sanctions Guidance" and confirmed that the principles in the case law quoted by the parties as accurate.

## **Decision on sanction.**

42. The Committee has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. It recognised that the decision on sanction is a matter for the Committee, exercising its own independent judgement.

43. Before making its decision on the appropriate sanction, the Committee established the aggravating and mitigating features in this case.

44. The Committee agreed with the aggravating factor identified by Mr Corrie, that the dishonest conduct was aggravated by the context of being in the course of the Registrant's communications with her regulator in respect of its requirements to remain on the Register.

45. The Committee took into account the following mitigating factors:

- The Registrant's previous good character;
- The numerous positive testimonials provided on the Registrant's behalf attesting to her abilities as a clinician and to the fact that dishonesty appears to be out of character and others regard her as a person of integrity;
- The Registrant has developed considerable insight;
- The Registrant has expressed genuine remorse and offered an apology;
- The Registrant has admitted the misconduct.

46. The Committee considered that although the dishonesty was at the lower end of the spectrum it remained a serious matter that went to the heart of the integrity of the Register and public confidence in the profession. The Committee could identify no exceptional circumstances that would justify taking no further action. The Committee considered that the public interest considerations in this case required a sanction to be imposed given the seriousness and the nature of the misconduct.

47. The Committee concluded that conditional registration would not be appropriate or workable. Such an order would not be practicable due to the nature of the misconduct, which did not involve identifiable areas of practice in need of assessment or retraining.

48. The Committee next considered suspension and considered the relevant paragraphs in the guidance. The Committee took into account that dishonesty is a serious matter and balanced this against the need to act proportionately.

49. The Committee was reminded of its conclusions that this was an isolated incident and that there was no evidence that there were entrenched integrity issues. The Registrant has demonstrated a clear understanding of the need to act with honesty and integrity and has taken steps to avoid any repetition of her conduct. This understanding by the

Registrant, together with the Registrant's previous good character and her clinical skills, leads the Committee to conclude that suspension is the appropriate sanction in these circumstances. The Committee considered that a reasonable member of the public, in possession of all the facts, would accept that suspension was the proportionate sanction in the Registrant's case.

50. The Committee did consider erasure, but was of the view that this would be disproportionate and excessively punitive, in light of the Registrant's insight and remediation, the very low risk of repetition, and that this was not the only sanction that could protect the public interest in the circumstances of this case. The Committee took into account the wider public interest in retaining the services of a committed Dispensing Optician.

51. The Committee therefore concluded that a period of suspension is sufficient to address the public interest concerns, declare and uphold proper standards of conduct and behaviour and maintain confidence in the profession.

52. The Committee gave consideration to the length of the order and concluded that three months was the appropriate length to address the seriousness of the dishonesty and the public interest concerns it had identified. The Committee noted that this was likely to have an adverse financial impact on the Registrant but nevertheless it considered that temporary removal from the register for this period was justified to uphold proper professional standards.

53. The Committee has decided, in this instance, not to order a review hearing. This is on the basis that the Suspension Order for a period of three months is imposed to uphold the public interest, as the Committee has already found that the Registrant has developed insight and is unlikely to repeat the misconduct. The Committee is satisfied that the public interest will be served once the Suspension Order comes to an end.

54. The Committee therefore imposes a Suspension Order for a period of three months and does not direct a review.

#### **Immediate order**

55. Mr Corrie on behalf of the Council stated that he had taken instructions and made no application for an immediate order. Mr Graham submitted that an immediate order was not required in this case, given the absence of public protection concerns. He submitted that the Registrant should be given an opportunity to arrange an orderly handover.

56. The Committee noted that no application had been made for an immediate order in the light of its reasons for sanction. In the absence of any public protection concerns the Committee did not consider an immediate order was necessary. In all the circumstances, the Committee endorsed the view that an immediate order was not appropriate.

**Chair of the Committee: Ms Eileen Carr**



**Signature**

**Date: 9 February 2023**

**Registrant: Sherinjit Mahal**

**Signature** Remote Attendance via MS TEAMS

**Date: 9 February 2023**