

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

GENERAL OPTICAL COUNCIL

F(22)14

AND

JADE BUTLER [D-15585]

**DETERMINATION OF A SUBSTANTIVE HEARING
THURSDAY 1 SEPTEMBER 2022**

Committee Members:	Ms Pamela Ormerod (Chair/Lay) Mr Philip Cross (Dispensing Optician) Mr Ian Hanson (Lay) Mr Ian Taylor (Dispensing Optician) Ms Sarah Hamilton (Lay)
Clinical adviser:	Not applicable
Legal adviser:	Mr Graeme Dalglish
GOC Presenting Officer:	Ms Tope Adeyemi
Registrant present/represented:	Not in Attendance
Registrant representative:	Not Represented
Hearings Officer:	Mr Lee Wood
Facts found proved:	All – Proved by way of admission
Facts not found proved:	None
Misconduct:	Found
Impairment:	Found
Sanction:	Erasure
Immediate order:	No

ALLEGATION

The particulars of the allegations are as follows:

1) Whilst working at [redacted] ('the Store') you took funds from your employer by putting numerous fraudulent refunds onto several of your own credit cards (SIC) as below:

- a. On or around 24 February 2019 you processed a false refund transaction to the value of approximately £268.00 and/or you credited the false refund to your personal [redacted];*
- b. On or around 30 June 2019 you processed a false refund transaction to the value of approximately £288.00 and/or you credited the false refund to your personal [redacted];*
- c. On or around 03 November 2019 you processed a false refund transaction to the value of approximately £344.00 and/or you credited the false refund to your personal [redacted];*
- d. On or around 21 December 2020 you processed a false refund transaction to the value of approximately £254.00 and/or you credited the false refund to your personal [redacted];*
- e. On or around 07 January 2021 you processed a false refund transaction to the value of approximately £318.00 and/or you credited the false refund to your personal [redacted];*
- f. On or around 14 March 2021 you processed a false refund transaction to the value of approximately £389.00 and/or you credited the false refund to your personal [redacted];*
- g. On or around 08 April 2021 you processed a false refund transaction to the value of approximately £234.00 and/or you credited the false refund to your personal [redacted];*

h. On or around 09 May 2021 you processed a false refund transaction to the value of approximately £360.00 and/or you credited the false refund to your personal [redacted];

i. On or around 04 June 2021 you processed a false refund transaction to the value of approximately £284.00 and/or you credited the false refund to your personal [redacted];

j. On or around 10 June 2021 you processed a false refund transaction to the value of approximately £334.00 and/or you credited the false refund to your personal [redacted];

k. On or around 01 July 2021 you processed a false refund transaction to the value of approximately £441.00 and/or you credited the false refund to your personal [redacted];

l. On or around 10 July 2021 you processed a false refund transaction to the value of approximately £194.00 and/or you credited the false refund to your personal [redacted];

m. On or around 02 August 2021 you processed a false refund transaction to the value of approximately £386.00 and/or you credited the false refund to your personal [redacted];

n. On or around 09 August 2021 you processed a false refund transaction to the value of approximately £359.00 and/or you credited the false refund to your personal [redacted];

o. On or around 30 August 2021 you processed a false refund transaction to the value of approximately £294.00 and/or you credited the false refund to your personal [redacted];

p. On or around 03 September 2021 you processed a false refund transaction to the value of approximately £398.00 and/or you credited the false refund to your personal [redacted];

q. On or around 11 September 2021 you processed a false refund transaction to the value of approximately £377.00 and/or you credited the false refund to your personal [redacted]; and/or

r. On or around 22 September 2021 you processed a false refund transaction to the value of approximately £347.00 and/or you credited the false refund to your personal [redacted];

2) On or around 10 October 2021, you removed cash to the approximate value of £100.00 not belonging to you from the till by:

a. Processing a false refund transaction to the value of approximately £99.00; and/or

b. Whilst conducting the end of day processes removes approximately £100.00 in cash notes from the till draw;

3) On or around 14 October 2021 you removed cash not belonging to you from the till by:

a. Processing a fraudulent petty cash transaction for £20.00;

b. removing £40.00 in cash notes;

c. returning only £12.72 back into the till; and/or

d. causing the business, a cash shortage of £19.96 at the end of the trading day;

4) On or around the 19 October 2021, you removed cash not belonging to you from the till by:

a. Processing a fraudulent refund of £55.00;

b. carrying out a no sale transaction and removing £60.00 in cash notes from the till;

c. processing a fraudulent petty cash transaction for £50.00;

d. removing £40.00 in cash notes from the till; and/or

e. by placing an approximate total of £100.00 in cash notes into your pocket; and/or

5) Your conduct noted at 1a, 1b, 1c, 1d, 1e, 1f, 1g, 1h, 1i, 1j, 1k, 1l, 1m, 1n, 1o, 1p, 1q, 1r, 2a, 2b, 3a, 3b, 3c, 3d, 4a, 4b, 4c, 4d, and/or 4e was inappropriate and/or dishonest

in that you:

a. Knew these (SIC) funds did not arise from legitimate transactions;

b. knew you were not entitled to these (SIC) fund money;

and/or

c. knew you were not entitled to the cash you took

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

DETERMINATION

Preliminary matters – notice and proceeding in absence

1. The Committee heard from Ms Adeyemi. She referred to the formal notice of hearing sent to the Registrant on 4 August 2022 to the email address she had provided to the Council. The Registrant replied to the Council by email on 23 August 2022 advising that she would not be attending and would not be represented. The Committee accepted the legal advice and it found that proper notice had been given in terms of the rules.
2. Ms Adeyemi asked the Committee to proceed in the absence of the Registrant, and she referred to the powers in rule 22 to do so. She advised that the Registrant had replied to the notice and stated that she would not be attending or be represented. She had not asked for an adjournment, and it was therefore appropriate to proceed in her absence.
3. The Legal adviser reminded the Committee of its powers and of the guidance in *Adeogba v GMC* [2016] EWCA Civ 162 which makes clear that the first question is whether all reasonable efforts have been taken to serve the Registrant with notice. If the Committee is so satisfied, the discretion whether or not to proceed must be exercised having regard to all the circumstances of which the Committee is aware, with fairness to the Registrant being a prime consideration, but balanced with fairness to the regulator and the interests of the public.
4. The Committee accepted the legal advice and it took account of the reply from the Registrant to the notice of hearing advising that she would not be attending and that she had also stated in her response to the hearing that she wanted the matter resolved “*as soon as possible*”. She has not asked for an adjournment and there is nothing to suggest that she would attend at a later date. In all the circumstances, the Committee decided that it was fair and appropriate to proceed in the absence of the Registrant and that there was a public interest in proceeding.

Admissions in relation to the particulars of the allegation

5. The Registrant admitted all the particulars of the allegation. She admitted the allegation in the formal response to the hearing of 25 July 2022. With reference to rule 40(6) the Committee announced that the allegation was proved by way of admission.

Background to the allegations

6. The Registrant faces four allegations, including 18 sub-allegations, relating to the theft of money from her employer, [Redacted], (the store) between February 2019 and 19 October 2021. The thefts occurred whilst she was employed as store Manager at the store.

Concerns first arose in September 2021 following the routine analysis of refund data conducted by [Redacted], financial risk support team. That analysis identified 4 refunds processed under the same card. The refunds attracted suspicion not only because they were processed under the same card but because they were not registered against any customer details, nor could they be linked to any corresponding sales. As a result of the concerns further investigations were undertaken into the store's transactions.

7. The investigations were led by [Redacted]. The investigations highlighted more concerning transactions. These transactions could be linked to the Registrant as a number had been processed under her till operator code. By November 2021 a decision had been taken to install covert cameras within the shop floor. The footage captured by the cameras revealed more wrongdoing on the part of the Registrant and is reflected in allegations 2 - 4, which set out that the Registrant removed cash from the store's till under the pretext of processing either a refund or a petty cash transaction.
8. On 21 December 2021 the Registrant was interviewed at the store by [Redacted]. She admitted to multiple incidents of theft from the store for amounts totalling £6,089.00. These admissions are reflected in the allegations for consideration by the Committee. During the interview the Registrant stated that she acted in the way she did, due to owing approximately £10,000.00 to credit card and pay day loan providers. She also stated that she was ashamed and sorry for her actions.
9. [Redacted] state in their FRS Investigation Report that the Registrant offered to and has now paid back all the money she had stolen together with the costs associated with the investigation in order to avoid the matter being reported to the police and on the basis that she attend a disciplinary hearing.
10. On 7 April 2022 the Registrant sent an email to the GOC in which she stated that "*in relation to the investigation in to my fitness to practice I take fully responsibility for my actions. I fell in to financial hardship and acted in an untrustworthy and shameful way*". She went on to add that she accepts "*any outcome the GOC sees fit for my unforgivable actions.*" The Registrant also went on to complete a hearings questionnaire on 25 July 2022. In the questionnaire she admitted all the charges.

Submissions on Misconduct and Impairment

11. The Committee having found the allegation proved, heard submissions from Ms Adeyemi in respect of misconduct and impairment, and she provided the Committee with a full written submission. She submitted that the Committee had found proved the allegation as a whole, including dishonesty. The Registrant had abused her position as a manager and stolen from her employer. Ms Adeyemi submitted that in light of the guidance in *Roylance v GMC* that the Registrant's conduct was serious and it amounted to misconduct. She said that the Council's professional standards 16 and 17 had also been breached.
12. As regards impairment, Ms Adeyemi referred to the relevant guidance, case law and to her written submissions. She advised the Committee that the Registrant had repaid the money and she had apologised. The refund had been made by Ms Butler on the understanding that the police would not be involved. However, the Registrant had provided no evidence of any insight or remediation. There was nothing to indicate that she would not repeat her dishonesty, or that she would act differently should such circumstances arise in the future. She submitted that the Registrant's fitness to practise was currently impaired.
13. Ms Adeyemi referred to the importance of the public interest in upholding proper standards of professional conduct and submitted that in the circumstances of this case that the Registrant's conduct brought the profession into disrepute. She submitted that the Registrant's fitness to practise was impaired and that a finding of impairment was also required in the public interest to uphold proper standards and to maintain public confidence in the profession.

Finding on Misconduct

14. The Committee accepted the advice of the Legal Advisor who referred it to the guidance in *Roylance v GMC* (no 2) [2000] 1 AC 311 where misconduct is defined as:- *"a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances."* The Legal Advisor reminded the Committee that on misconduct there was no onus or standard of proof and it was a matter for its own professional judgement.
15. The Committee took account of the facts found proved and that the Registrant was in a senior position of trust as the store manager. She abused that trust and stole money from her employer in a planned, pre-meditated and deliberate manner over a period of time, some two and half years, and only stopping when confronted with the evidence of her dishonesty. Her dishonesty is serious and the Committee decided that it was conduct which falls far below what would have been proper in the circumstances and that it amounts to misconduct.
16. The Committee agreed with the submissions of the Council and decided that the Registrant had breached the following Standards of Practice for Optometrists and Dispensing Opticians, effective from April 2016:-

- *Standard 16: Be honest and trustworthy;*
- *Standard 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;*
- *Standard 17.1: Ensure that your conduct, whether or not connected to your professional study does not damage public confidence in you or your profession;*

Finding on Impairment

17. The Committee accepted the Legal Advisor's advice and considered whether the Registrant's fitness to practise is currently impaired. He reminded it to keep in mind the Council's guidance on impairment and the central importance of the protection of the public and the wider public interest. He referred the Committee to the authoritative guidance in *CHRE v NMC & Grant* [2011] EWHC 927 (Admin) and *Cohen v GMC* [2008] EWHC 581 (Admin), and advised it to consider the central issues of insight, remorse, remediation and the risk of repetition of the misconduct.
18. The Committee considered all the information before it. The Registrant has apologised and she has repaid the money. However, she did so on the basis that she would not be reported to the police. The Committee has nothing before it from the Registrant to indicate any insight, or that any steps have been taken by her to remedy her practice.
19. The Committee considered that whilst dishonesty is difficult to remediate, the conduct is remediable and it considered the limbs set out in the *Grant* case when assessing impairment :-
- "Do the finding show that fitness to practise is impaired in the sense that:*
- a) Has the Registrant in the past acted and/or is liable in the future to act in a way so as to put service users at unwarranted risk of harm;*
 - b) Has the Registrant in the past brought and/or is liable in the future to bring the profession into disrepute;*
 - c) Has the Registrant in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession?*
 - d) has in the past acted dishonestly and/or is liable to act dishonestly in the future."*
20. In the absence of any evidence of insight and remediation, the Committee decided that a real risk of repetition remains by the Registrant. Having considered all the information before it, the Committee concluded that the Registrant has in the past, and is likely in the future, to bring the profession in to disrepute; she has in the past and is likely in the future to breach a fundamental tenet of the profession, namely trust; and that she has in the past, and is likely in the future, to act dishonestly.

21. The Committee next considered the public interest. The dishonest conduct was deliberate, premeditated and prolonged. The Committee was mindful that there is a need to protect the individual as well as a collective need to maintain confidence in the profession and declare and uphold proper standards of conduct and behaviour. In all the circumstances of this case, the Committee concluded that the nature and gravity of the misconduct was such that a finding of impairment was required in order to uphold proper professional standards and to maintain public confidence in the profession. A member of the public would be most concerned were a Registrant who had acted dishonestly not be found to be impaired and were permitted to practise without restriction.
22. On both the personal and public aspects of impairment, the Committee therefore concluded that the Registrant's fitness to practise is currently impaired.

Submissions on Sanction

23. Ms Adeyemi referred the Committee to the Council's Sanctions Guidance, to her written submissions and to the relevant case law, including *Lusinga v Nursing and Midwifery Council* [2017] EWHC 1458 (Admin) on the issue of dishonesty. She submitted that the matter was too serious for no action to be taken and that there are no conditions of practice which could be adequately framed which would maintain public confidence in the profession. She reminded the Committee that the dishonesty in this case took place at the Registrant's place of work. She stressed the importance of the public interest and the significant detrimental impact on public confidence of the findings. She submitted that the appropriate and proportionate sanction should be no less than a period of suspension. She advised that there is no fitness to practise history in respect of the Registrant.
24. The Legal Adviser reminded the Committee to consider the Council's sanctions guidance and of the need to act proportionately and to impose the least restrictive sanction necessary to protect the public and the wider public interest. The Committee should consider the range of sanctions in ascending order from least restrictive to more restrictive, moving upward only if necessary. It should be mindful that the primary purpose of sanction is not to punish, but to protect the public and the wider public interest.

Finding on Sanction

25. The Committee accepted the legal advice and it had regard to the sanctions guidance and in particular, to paragraphs 22.4 and 22.5 on dishonesty.
26. The Committee found the following aggravating features:-
- The Registrant held a senior and trusted position
 - Multiple incidents of dishonesty over a significant period of time
 - Premeditated and deliberate acts of dishonesty
27. The Committee found the following mitigating factors :-
- No previous regulatory history

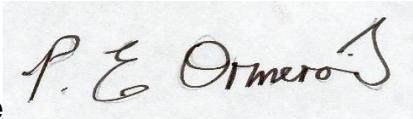
- The Registrant made an apology, but only once her dishonesty was discovered.
28. The Committee first considered whether to take no further action, but it concluded that this case was far too serious to take no further action and to do so would fail to protect the public or the public interest. Such an order would undermine public confidence and fail to uphold proper standards.
 29. The Committee next considered conditional registration. It decided that such an order would not be appropriate given the nature and gravity of the conduct and the pre-meditated dishonesty. The Committee decided that, in any event, it was not able to devise workable and realistic conditions that would be sufficient and proportionate, and which would not undermine the public interest.
 30. The Committee next considered Suspension. It noted the terms of the sanctions guidance at paragraph 21.29. The Committee has had very limited engagement from the Registrant. She has not provided any information about her current circumstances and provided no evidence to demonstrate any insight or remediation. The Committee found that the dishonesty in this case is at the most serious end of the scale as it was premeditated, planned and deliberate over a prolonged period of time; it took place in her place of work in her professional role; and the Registrant in doing so exploited and abused the trust of the public and her employer.
 31. In these circumstances, the Committee concluded that Suspension was not sufficient to appropriately mark the Registrant's conduct, and that such an order would not sufficiently uphold proper standards and would fail to maintain public confidence in the profession.
 32. The Committee next considered Erasure. It was mindful of the sanctions guidance at paragraph 21.35 and of the guidance in *Professional Standards Authority for Health and Social Care v General Dental Council, Ikhlaq Hussain [2019] EWHC 2640 (Admin)* which stated in a summary of the law as follows:-

“The cases make clear that dishonesty in any health care professional is always to be considered as serious and as adversely affecting the public interest. That is because trust and honesty lie at the heart of the relationship between such a professional and the public... Findings of dishonesty lie at the top end of the spectrum of gravity of misconduct...”
 33. The Registrant has breached fundamental tenets of her profession and her actions strike at the heart of the trust placed in her by the public and her fellow professionals, whose reputation she has damaged as a result. Her dishonesty was persistent and concealed and she has demonstrated no insight, other than an apology after her conduct was discovered.
 34. With that guidance in mind, and in light of the gravity of the dishonesty in this case, the Committee decided that nothing less than Erasure was the appropriate and proportionate sanction to impose.

Immediate Order

The Committee decided that there were no grounds for an immediate suspension order and none was applied for by the Council. The Committee decided that this case does not give rise to public protection issues and that an immediate order is not necessary in order to protect the public. The Committee noted that the Registrant has stated that she will accept any order imposed. The Erasure Order imposed sufficiently and appropriately protects the wider public interest and the reputation of the profession.

Chair of the Committee: Pamela Ormerod

Signature 

Date: 01 September 2022

Registrant: Jade Butler

Signature ...Not Present.....

Date: 01 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
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).

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.