

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

**GENERAL OPTICAL COUNCIL**

**F(20)14**

**AND**

**SYED SHAH (SO-13847)**

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**DETERMINATION OF A SUBSTANTIVE REVIEW  
TUESDAY 26 OCTOBER 2021**

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<b>Committee Members:</b>	Ms Hermione McEwen (Chair/Lay) Mr Ben Summerskill (Lay) Dr Jackie Alexander (Lay) Ms Sanna Nasrullah (Optometrist) Mr Alex Howard (Optometrist)
<b>Legal adviser:</b>	Mr Ian Ashford-Thom
<b>GOC Presenting Officer:</b>	Mr Dean Taylor
<b>Registrant:</b>	Not present
<b>Registrant representative:</b>	Not present – Cassandra Dighton (AOP)
<b>Hearings Officer:</b>	Ms Abby Strong-Perrin
<b>Outcome:</b>	Impaired. Order for erasure imposed.

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### **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 28 July 2021, notice of this virtual hearing under cover of a letter of the same date was sent to the Registrant's email address on the Council's register. The notice contained the information required by the Rules including the date and time of this virtual hearing and a statement that it would take place by way of video conference or telephone conference facilities. A copy of the letter and the notice was also sent by email to the Registrant's representative at the Association of Optometrists (AOP), who replied on the same date confirming that the documents had been safely received.
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 as to why it was in the public interest to proceed in the Registrant's absence.
8. The Committee heard and accepted the advice of the Legal Adviser who referred to the principles set out in the cases of *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. In a letter to the Council dated 4 October 2021, the AOP, his representatives, wrote:

*“We write on behalf of Mr Shah in respect of his first Substantive Review Hearing on 26 October 2021. We can confirm on behalf of Mr Shah that he has been properly notified of the Review hearing but has, for the reasons set out below, elected not to attend. Mr Shah understands that the hearing will continue in his absence. ...*

*“In view of Mr Shah’s instructions, we considered it appropriate to write advising of the Registrant’s position. We wish to stress that neither Mr Shah nor the Association of Optometrists intend any discourtesy to the panel by not attending this hearing however, as we have no oral submissions to make on behalf of Mr Shah, we do not consider our presence would assist the panel in making any decision.”*

11. Further, in an email of 4 October 2021 to which the above letter was attached, it was stated:

*“Considering the content of the letter, we would not object to the Council convening the Substantive Order Review Hearing on the papers.”*

12. In the light of this letter and email, the Committee was satisfied that the Registrant was aware of this hearing and that he had voluntarily chosen to absent himself and had waived his right to representation. 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 recognised that a consequence of the Registrant being absent and unrepresented was that he would be unable to present his case orally. However, the Committee concluded that this was unlikely to result in any disadvantage to him, in view of the written submissions provided by his representative in the letter of 4 October 2021. Furthermore, there was a strong public interest in the expeditious disposal of this review hearing.

13. Taking into account 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**

14. The allegations against the Registrant were as follows:

*The Council alleges that you, Syed Ashraf Anwar Shah (SO-13847), a registered Student Optometrist:*

- 1) On 9 November 2018 at **REDACTED** Crown Court, you were convicted of:

a) On 9 October 2018 at **REDACTED** had in your possession a quantity of cocaine, a controlled drug of class A in contravention of section 5(1) of the Misuse of Drugs Act 1971, contrary to section 5(2) of and Schedule 4 to the Misuse of Drugs Act 1971.

b) On 9 October 2018 at **REDACTED** had in your possession a quantity of cannabis, a controlled drug of class B in contravention of section 5(1) of the Misuse of Drugs Act 1971, contrary to section 5(2) of and Schedule 4 to the Misuse of Drugs Act 1971.

2) On 14 August 2019 at **REDACTED** Crown Court, you were convicted of, on 9 October 2018 at **REDACTED** had with you, without good reason or lawful authority, in a public place **REDACTED** an article which had a blade or was sharply pointed, namely a black lock knife, contrary to section 139(1) and (6) of the Criminal Justice Act 1988.

*And by virtue of the facts set out above, your fitness to undertake training is impaired by reason of above conviction(s).*

15. On 3 December 2018 the Registrant referred himself to the Council following his arrest on 9 October 2018 and police charges. At that date the Registrant was studying Optometry and had completed the first year of his course.

16. The Council obtained a copy of a Certificate of Conviction from **REDACTED** Crown Court dated 17 October 2019 for the offence of having an article with a blade or point in a public place. The Registrant was convicted following a trial. He was sentenced on 24 September 2019 to six months imprisonment, suspended for 18 months, 250 hours of unpaid work, curfew for three months (electronically monitored) and forfeiture of the lock knife.

17. A second Certificate of Conviction also dated 17 October 2019 certified a conviction at **REDACTED** Court for the offences of possessing a controlled drug of Class A-cocaine and Class B-cannabis. The Registrant was sentenced on 24 September 2019 to one month imprisonment suspended for eighteen months and forfeiture and destruction of the drugs.

### **The Substantive Hearing – findings of the Committee**

18. On 24 August and 2 November 2020, the Fitness to Practise Committee considered the allegations in relation to the Registrant at a substantive hearing. The Registrant attended the hearing and was legally represented.

19. The Registrant admitted the allegations in their entirety. The Committee found the convictions proved by the Registrant's admission and the Certificates of Conviction.

20. The Committee went on to determine that a finding of impairment was required in order to uphold proper professional standards and public confidence in the profession. The Committee found that two limbs of the test formulated by Dame Janet Smith in her fifth Shipman Report were engaged, in that the Registrant had in the past acted to bring the profession into disrepute and had breached one of the fundamental tenets (to comply with the law) of the profession.
21. In relation to sanction, the Committee considered the aggravating and mitigating factors in the case. The Committee also considered the level of the Registrant's insight and made the following findings:

*"The Committee's view was that the Registrant's insight is developing. He has reflected on the reasons for his past behaviour, accepted his personal responsibility, and acknowledged the gravity of his criminal conduct. When asked about the impact of his behaviour on the profession he recognised the unacceptability of his criminal conduct and said that he felt embarrassed. The Committee had concern that the Registrant does not fully recognise his own vulnerability and the potential need for professional support and coping strategies when he faces challenging circumstances in the future. By way of analogy he explained to the Committee that he believes that because of his past experiences when he learned to "swim" or "float", he would now be able to do the same in any circumstances. The Committee's view was that the Registrant may be over confident in believing that he can so easily overcome any difficulties or challenges he may face in the future without more support.*

*"Although the Committee had some reservations about the level of the Registrant's insight, it did not consider that there was a deep seated attitudinal issue. The Registrant is fully engaging with the regulatory process and the Committee was persuaded that he is motivated and committed to his own personal development."*

22. The Committee considered that this was a case where the Registrant was at risk of erasure, given the gravity of the convictions. However, the Committee's view was that a fully informed member of the public would understand that there was a prospect of the Registrant's rehabilitation and potential for him to become an asset to the profession and would recognise the steps he had taken since his arrest to change the course of his life. Accordingly, the Committee decided that a twelve-month period of suspension was a serious sanction which was proportionate in the circumstances. The Committee decided that the suspension order should be subject to a review before it expires, and stated that a reviewing Committee may be assisted in the following ways:

*"The Committee has highlighted in its decision its reservations relating to the level of the Registrant's insight. A reviewing Committee may be assisted by evidence that the Registrant has reflected on the Committee's decision and details of any ok "In his submissions Mr McDonagh emphasised to the Committee that this is not a health case. The Committee agreed. Nevertheless, a future reviewing committee*

*will be considering whether there is a risk of repetition of criminal conduct. That is likely to include considering whether the Registrant is continuing to abstain from taking illegal drugs. The reviewing committee may therefore be assisted by independent evidence confirming the Registrant's abstinence, such as evidence of independent drug testing."*

### **Findings of this reviewing Committee regarding impairment**

23. This Committee heard submissions from Mr Taylor on behalf of the Council as to whether the Registrant's fitness to undertake training as an Optometrist remains impaired by reason of his convictions.
24. The Committee considered the following submissions of the AOP on behalf of the Registrant in its letter of 4 October 2021:
- "We have been instructed to inform the Council and the Committee that Mr Shah no longer wishes to undertake training as a student Optometrist nor pursue a career in Optometry. This is a decision that he has not taken lightly however, in his particular circumstances, he does not envision his future in the profession of Optometry.*
- "Mr Shah is aware of the Committee's powers regarding this review hearing as contained in Section 13(F)(13) of the Opticians Act 1989. In summary, the reviewing Committee may, if it thinks fit, direct the registration be erased from the register, extend the current period of suspended registration, direct the registration be conditional for a period not exceeding 12 months or revoke or vary the order. Mr Shah respectfully leaves the decision on current impairment and an appropriate sanction to the Committee."*
25. The Committee heard and accepted the advice of the Legal Adviser, who referred to the case of *CHRE v NMC and Grant [2011] EWHC 927 (Admin)*.
26. The Committee took into account that there was no evidence to suggest that the Registrant had, since the substantive hearing, taken any steps, whether by adopting the suggestions of the previous Committee or otherwise, to demonstrate remorse or remediation, or the development of his limited insight into the failings which had given rise to his convictions. While the Registrant's decision not to pursue his studies further might be an explanation for this lack of evidence, it had no relevance to the fact that there was nothing before the Committee to suggest that the impairment of his fitness to undertake training as an Optometrist had been addressed.
27. In these circumstances, this Committee found that the two limbs of the *Shipman* test referred to by the previous Committee remained applicable. This Committee was satisfied that the Registrant has in the past brought, and is liable in the future to bring, the profession into disrepute, and that he has in the past breached, and is liable in the future to breach, one of the fundamental tenets of the profession.

28. In the light of these conclusions, the Committee was satisfied that a finding of current impairment remains necessary in order to protect the public, to uphold proper professional standards and maintain public confidence in the profession.

### **Sanction**

29. With regard to sanction, Mr Taylor in his Skeleton Argument set out the Committee's powers under section 13 (F) (6) and (7) of the Act. Mr Taylor submitted that the case was far too serious to take no further action. He further submitted that, given the Registrant's stated intention to abandon his optometry training, conditional registration would be neither practicable nor workable. Mr Taylor submitted that, realistically, the issue was whether a further period of suspension or an order for erasure should be imposed.

30. The Committee noted from the letter of 4 October 2021 that the Registrant respectfully leaves the decision on an appropriate sanction to the Committee.

31. The Committee heard and accepted the advice of the Legal Adviser, who reminded the Committee of the need to refer to the Indicative Sanctions Guidance (ISG), to consider the available sanctions from the least serious upwards and to achieve proportionality in its decision.

32. The Committee first considered whether to take no further action. The Committee had no doubt that this would be inappropriate, given the seriousness of the Registrant's convictions.

33. The Committee next considered whether to impose conditions on the Registrant's registration. The Committee decided that this would be inappropriate. The Committee accepted Mr Taylor's submission that no practicable or workable conditions could be devised in this case.

34. The Committee next considered imposing a further period of suspension. The Committee took into account the Council's ISG, in particular:

***"34. Suspension (maximum 12 months)***

*34.1 This sanction may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):*

*...*

*d. The panel is satisfied the registrant has insight and does not pose a significant risk of repeating behaviour;"*

35. Given the Committee's conclusions as to the absence of any evidence to suggest further development of insight on the part of the Registrant, the Committee was satisfied that this provision had no application in this case.

36. The Committee therefore went on to consider erasure as a sanction. The Committee was assisted by the following passages in the ISG:

**“36. Erasure**

*36.5. This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional and involves any of the following (this list is not exhaustive):*

- a. Serious departure from the relevant professional standards as set out in the Standards of Practice for registrants and the Code of Conduct for business registrants;”*

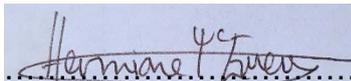
The Committee was satisfied that the Registrant’s behaviour which gave rise to his convictions was fundamentally incompatible with being a registered professional and that it involved serious departure from the relevant professional standards.

37. The Committee determined that nothing less than an order for erasure would now be sufficient for the purpose of protecting the public, upholding proper professional standards and maintaining public confidence in the profession.

38. In the light of the Registrant’s stated intention not to pursue his optometry studies further, the Committee considered that it was unlikely that erasure would result in hardship to him. However, even if any hardship, whether financial or otherwise, were to result, the Committee was satisfied that the public interest outweighed the Registrant’s own interests. Accordingly, the Committee was satisfied that an order for erasure was both appropriate and proportionate.

39. The Committee therefore directs the Registrar to erase the Registrant’s name from the Register.

**Chair of the Committee: Ms Hermione McEwan**

Signature .....  .....

**Date: 26 October 2021**

**Registrant: Mr Syed Shah**

Signature .....

**Date: 26 October 2021**

<b>FURTHER INFORMATION</b>	
<b>Transcript</b>	
	A full transcript of the hearing will be made available for purchase in due course.
<b>Appeal</b>	
	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).
<b>Professional Standards Authority</b>	
	<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 <a href="http://www.professionalstandards.org.uk">www.professionalstandards.org.uk</a> or by telephone on 020 7389 8030.</p>
<b>Effect of orders for suspension or erasure</b>	
	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.
<b>Contact</b>	
	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.

