

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

F(22)07

GENERAL OPTICAL COUNCIL

AND

ALISTAIR AIKEN (01-28871)

**DETERMINATION OF A SUBSTANTIVE REVIEW
17 APRIL 2023**

Committee Members: Ms Hermione McEwen (Chair/Lay)
Dr Nina Barnett (Lay)
Mr Ian Hanson (Lay)
Ms Sanna Nasrullah (Optometrist)
Mr Alex Howard (Optometrist)

Legal adviser: Mr Ralph Shipway

Clinical adviser: Dr Desmond Dunleavy

GOC Presenting Officer: Mr Charles Drinnan

Registrant: Present and represented

Registrant representative: Mr Chris Saad
Ms Cassandra Dighton (AOP)

Hearings Officer: Ms Abby Strong-Perrin

Outcome: Fitness to practise no longer impaired

DETERMINATION

1. The Fitness to Practise Committee at a substantive hearing held between 31 October 2022 and 3 November 2022 considered the following amended Allegation.

ALLEGATION (AS AMENDED)

The Council alleges that you, Mr Alistair Aiken (01-28871), a registered optometrist:

1. Between October 2019 and November 2019, you were in contact with Miss B, who was under 18 years old, and you:
 - a. Sent indecent and/or inappropriate images of yourself;
2. Between January 2020 and February 2020, you were in contact with Miss D and you sent indecent and/or inappropriate images of yourself;
3. In or around November 2019, you were in contact with Miss F, who was under 18 years old, and you:
 - a. Sent indecent and/or inappropriate images of yourself;
 - b. Sent a message saying "I get to look at your good bum and big boobs" or words to that effect;
4. Between June 2019 and November 2019, you were in contact with Miss G, and you:
 - a. Sent indecent images of yourself;
 - a. Sent videos of yourself;
5. Your conduct above in charges 1-4 was sexually motivated;

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

Background

2. Mr Aiken is an Optometrist, first registered in August 2015. He became the subject of a fitness to practise investigation by the General Optical Council ('the Council'), following a referral made by the Retail Director of Specsavers, REDACTED, his former employer on 10 December 2019. The referral related to allegations that Mr Aiken has sent inappropriate messages, including sexualised images and videos, to several female work colleagues via

Snapchat, matters that came to light following conversations between staff during an employee 'night out'.

3. At the hearing the Registrant admitted the Allegation as amended. It was clarified on his behalf that he was accepting that in relation to charges 1-3, the images he sent were both indecent and inappropriate.
4. The Committee therefore found the Allegation as amended proved in its entirety by reason of the Registrant's admissions.
5. The Registrant gave evidence to the effect that REDACTED during the evenings after work, which lowered his sexual inhibitions and caused him to send the messages.
6. REDACTED
7. The Committee agreed with the submissions made by the Council that there had been breaches of Standards 11.4, 13.5, 15.1, 15.2, 17.1 and 17.2 of the Standards for Optometrists and Dispensing Opticians (2016).
8. The Committee considered that the behaviour admitted by the Registrant violated fundamental tenets of the profession and had caused considerable distress to the complainants. The Committee found that members of the profession would consider the Registrant's behaviour to be deplorable and that the Allegation amounted to misconduct both individually and collectively.
9. The Committee then considered the matter of current impairment of fitness to practise. The Committee found that the Registrant had developed some insight into his behaviour, but it continued to have concerns that he remained vulnerable with a likelihood of repetition of his misconduct.
10. The Committee found the Registrant's fitness to practise to be impaired both on the grounds of public protection and in the wider public interest.
11. The Committee then considered the matter of Sanction.
12. The Committee found the following aggravating features present in the Registrant's case:
 - a. The Registrant abused his position of responsibility in his practice, and his position of seniority with respect to the victims;
 - b. Two of the victims in the case were under the age of 18 when the sexual misconduct occurred;

- c. There were multiple victims; and
 - d. There was a sustained pattern of behaviour that continued over a period of time.
13. The Committee found the following mitigating features present in the Registrant's case:
- a. The Registrant made full admissions to the Allegation;
 - b. The Registrant demonstrated remorse during his written and oral evidence;
 - c. The Registrant has shown some insight into his past behaviour;
 - d. The Registrant has sought to remediate his behaviour through both REDACTED and self-directed study, which the Committee considered as taking of steps to prevent repetition;
 - e. The testimonials spoke well of the Registrant, attesting to his clinical skills and efforts he had made to address his addictions. The Committee in particular found the evidence of Witness A supportive in this regard; and
 - f. There were no previous regulatory findings against the Registrant.
14. The Committee considered the sanctions available to it in ascending order of severity (no further action, financial penalty, conditional registration, suspension, erasure). It reminded itself of the need to act proportionately, impose the least restrictive sanction necessary. It reminded itself that the purpose of sanctions were not to punish a Registrant, but that an appropriate sanction might have punitive effects.
15. The Committee did not consider that the imposition of Conditional Registration would sufficiently address the wider public interest as the aggravating features of the case rendered it a serious example of persistent misconduct.
16. The Committee considered that a period of suspension would protect the public as well as the public interest, and determined that a Suspension Order for a period of 6 months would be appropriate bearing in mind the substantial mitigating factors.
17. The Committee did not deem it necessary to impose an immediate order.
18. The Registrant's registration was accordingly suspended for 6 months following the substantive hearing which concluded on 3/11/22.

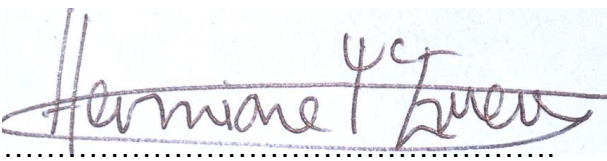
Review Hearing

19. The Council was represented by Mr Charles Drinnan of Counsel and the Registrant by Mr Christopher Saad of Counsel. The Registrant was in attendance.
20. Mr Drinnan referred the Committee to his skeleton argument prepared for the Review Hearing and reminded the Committee that it had been determined at the substantive hearing that the Registrant had shown some insight but in their view this needed developing further. He informed the Committee that the Council took a neutral stance to the matter of the Registrant's current fitness to practise and confirmed that it was a matter for the reviewing Committee to determine whether or not the Registrant was currently impaired on the basis of the all the evidence before it.
21. Mr Saad submitted that the Registrant's fitness to practise was no longer impaired. He indicated that if the Committee rejected his submission, then the appropriate and proportionate sanction to be imposed was a Conditions of Practise Order.
22. The Registrant gave evidence and adopted his witness statement and letter of reflection. He informed the Committee of how he had used his time during his suspension from practice. He confirmed that he had undertaken a 13 week Coding Course, and he asserted that the structure of this formal course helped REDACTED. He added that the personal study he had undertaken for example relating to Professional Boundaries, had allowed him to increase his level of insight into his misconduct.
23. The Registrant gave evidence as to how he now managed stressful situations. REDACTED. He confirmed that he would not allow his behaviour in 2019 to reoccur. He recognised that he had too much to lose professionally and personally.
24. The Registrant gave evidence demonstrating his understanding of how his behaviour had been extremely harmful to the complainants concerned, damaging to public confidence in the profession and how it had brought the whole profession into disrepute.
25. Mr Saad listed the mitigating circumstances which the previous Committee had identified applied in November 2022 and submitted still applied today. REDACTED. He had made good use of his time by his attendance on professional courses, personal study and continuing professional development. Mr Saad submitted that public confidence in the profession had been served by the period of suspension.
26. REDACTED
27. The Committee received and accepted legal advice from the Legal Adviser to the effect that the onus was on the Registrant to demonstrate that he had developed full insight and that full remediation had occurred, so that his fitness to practise was no longer impaired, specifically considering what had

changed since the last hearing. The attention of the Committee was drawn to the relevant case law.

- 28. The Committee gave very careful consideration to the oral and written evidence, taking the view that this was not an easily remediable situation. The Committee was of the view that the Registrant had been candid in his evidence, had demonstrated good insight into his position REDACTED.
- 29. REDACTED.
- 30. REDACTED.
- 31. The Committee observed that the Registrant had been out of practice for several months due to his suspension, however during this period he had undertaken Continuing Professional Development, and no concerns had ever been raised about the Registrant’s clinical competence.
- 32. Accordingly, the Committee find that the Registrant’s fitness to practise is no longer impaired and that the Registrant can return to practice upon the expiration of the existing order.

Chair of the Committee: Ms Hermione McEwen

Signature  Date: 17 April 2023

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.