

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

GENERAL OPTICAL COUNCIL

F(20)32

AND

SARAH MORRIS (D-16786)
PRIVATE HEARING

**DETERMINATION OF A SUBSTANTIVE REVIEW
18 JANUARY 2022**

Committee Members:	Ms Anne Johnstone (Chair/Lay) Mr Ben Summerskill (Lay) Ms Jane Kilgannon (Lay) Mr Ian Taylor (Dispensing Optician) Ms Judith Stodel (Dispensing Optician)
Legal adviser:	Mr Ian Ashford-Thom
Clinical Adviser:	Dr Desmond Dunleavy
GOC Presenting Officer:	Ms Rose Stringer
Registrant:	Present and represented
Registrant representative:	Mr John Graham (WGL)
Hearings Officer:	Ms Abby Strong-Perrin
Outcome:	Fitness to practise no longer impaired. Current suspension order to lapse on expiry.

DETERMINATION

Introduction

The Registrant is a Dispensing Optician whose registration was suspended for 12 months following a Substantive Hearing held on 5 and 6 January 2021. The purpose of this hearing is to carry out a substantive review of the order, which is due to expire on 2 February 2022.

Preliminary Matters

Hearing in Private

At the outset of the hearing Ms Stringer on behalf of the General Optical Council (GOC), and Mr Graham on behalf of Ms Morris submitted that the hearing should be held in private pursuant to Rule 25 of the GOC (Fitness to Practise) Rules 2013 (the Rules).

REDACTED

The Committee accepted the advice of the Legal Adviser who referred it to Rule 25(2)(c), (d), and sub-section (3).

REDACTED

Adjourned hearing

This case previously came before the Committee for a substantive review on 5 January 2022. At that hearing the case was adjourned to today's date on the application of Ms Stringer for the GOC, supported by Mr Graham for the Registrant.

REDACTED

Background

The Registrant was employed at Specsavers REDACTED between September 2011 and July 2019 as an Optical Assistant / Dispensing Optician, being promoted to a supervisor and in July 2017 to store manager.

The Registrant made a declaration to the Council on 29 July 2019. The declaration related to the outcome of a disciplinary matter. During the course of her employment, she had processed false refund transactions on 7 occasions between 29 May 2018 and 20 June 2019 and credited the false refund to her personal bank card and that of REDACTED. The Registrant admitted the allegations during the employer's investigative process and was dismissed by her employer.

The Charges were as follows:

The Council alleges that in relation to you, Sarah Jane Morris (D-16786), a registered

dispensing optician:

1. *Between 29 May 2018 and 20 June 2019, whilst working at redacted ('the Store'):*
 - a. *On or around 29 May 2018 you processed a false refund transaction to the value of approximately redacted and/or you credited the false refund to your personal bank card;*
 - b. *On or around 21 August 2018 you processed a false refund transaction to the value of approximately redacted and/or you credited the false refund to the bank card of another person connected to you;*
 - c. *On or around 21 February 2019 you processed a false refund transaction to the value of approximately redacted and/or you credited the false refund to your personal bank card;*
 - d. *On or around 21 March 2019 you processed a false refund transaction to the value of approximately redacted and/or you credited the false refund to your personal bank card;*
 - e. *On or around 17 April 2019 you processed a false refund transaction to the value of approximately redacted and/or you credited the false refund to the bank card of another person connected to you;*
 - f. *On or around 8 May 2019 you processed a false refund transaction to the value of approximately redacted and/or you credited the false refund to your personal bank card; and/or*
 - g. *On or around 20 June 2019 you processed a false refund transaction to the value of approximately redacted and/or you credited the false refund to your personal bank card.*

2) Your conduct as set out at 1a, 1b, 1c, 1d, 1e, 1f and/or 1g above was inappropriate and/or dishonest in that you:

- a. *knew the refund(s) did not arise from legitimate transactions; and/or*
- b. *knew you were not entitled to the refund money.*

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

The substantive hearing took place on 5 and 6 January 2021. Prior to the substantive hearing the parties agreed the case could be disposed of by the Agreed

Panel Disposal (“APD”) process. The Fitness to Practise Committee met to consider whether to approve the agreed form of disposal. The Committee agreed with the APD panel report that the particulars of the allegations were admitted and proved; the particulars of the allegations amounted to misconduct and the Registrant’s fitness to practise was impaired by reason of misconduct. The Committee did not agree with the proposed sanction of 6 months suspension without a review. The Committee decided that the appropriate sanction was a 12 month suspension order with a review and this was imposed.

This review hearing

This review is being undertaken in accordance with Sections 13F (6) and (7) of the Opticians Act 1989 (the Act).

The Committee took into account the parties’ written submissions in their Skeleton Arguments, together with the oral submissions of Ms Stringer and Mr Graham.

Ms Stringer submitted that the Registrant had developed good insight and that a finding of impairment was no longer required. Ms Stringer submitted that it was clear from the Registrant’s evidence, in particular paragraph 2 of her witness statement, that she had recognised the damage her misconduct had done to the profession.

Mr Graham supported the Council’s position. He pointed out that this Committee had had the benefit of hearing live evidence on affirmation from the Registrant. The Committee at the substantive hearing, which had been presented as an APD, based solely on documentary evidence, had not heard from the Registrant.

The Committee took into account all the documentary evidence provided by the parties.

The Committee heard evidence on affirmation from the Registrant.

The Committee accepted the advice of the REDACTED

The Committee accepted the advice of the Legal Adviser, who advised that the Committee should first consider whether the Registrant’s fitness to practise remains impaired by reason of her misconduct. If, and only if, the Committee finds such impairment, it should go on to consider what, if any, sanction is now appropriate and proportionate.

Findings regarding impairment

This Committee noted that the Committee at the substantive hearing concluded that the Registrant was on a positive path REDACTED and that she was becoming more aware of the need to deal with the impact of REDACTED on her professional

conduct. This included REDACTED. However, that Committee found that the evidence on insight and remediation, whilst positive, was at an early stage. There was growing evidence of the steps that she was taking to ensure, should she face similar, REDACTED in the future, that her dishonest behaviour would not be repeated. She thus presented a continuing risk of harm to patients and to any employer. The Committee found that “harm” in this context included REDACTED harm. On balance, and in all the circumstances, the Committee remained concerned that Ms Morris had not demonstrated full reflection and insight into her dishonest behaviour. She had not demonstrated well developed insight into her response to the various, REDACTED she has faced over a number of years, and she had not shown a proper understanding of her actions. That Committee also concluded that there remained a risk of Ms Morris acting dishonestly in the future, given the lack of well-developed insight. The Committee was aware that dishonesty can be difficult to remedy.

The original Committee suggested that a reviewing Committee would be assisted by Ms Morris providing:

- cogent evidence of her reflection, insight and remediation
- recent testimonials, including from her current employer
- updates on REDACTED

This Committee was satisfied that the Registrant had provided the assistance envisaged.

There was cogent evidence of reflection, insight and remediation in the form of the Registrant’s witness statement and oral evidence given under affirmation. Up to date testimonials had been provided by colleague Person 1 and Person 2, the Ophthalmic Director of Specsavers REDACTED.

The Committee was impressed to note that the Registrant has been working without reports of any incident or concern since she obtained employment at the REDACTED shortly after her dismissal by Specsavers REDACTED. Person 3 reports that the Registrant worked first as an optical assistant, thereafter receiving “well-deserved promotion” to the post of clinical manager. Both referees wrote in glowing terms of the Registrant’s commitment and conscientious devotion to her work. Further, they wrote without reservation of their trust in the Registrant’s integrity and honesty, and described how her duties include banking and dealing with financial matters. The Committee also noted that the Registrant had maintained her membership of the Association of British Dispensing Opticians and had kept abreast of developments in the optical professions.

REDACTED

The Committee carefully considered whether the Registrant’s fitness to practise remains impaired by reason of her misconduct.

The Committee adopted the test formulated by Dame Janet Smith in her Fifth report from Shipman which was commended to regulatory panels in the case of *CHRE V NMC and Grant [2011] EWHC 927 (Admin)*:

“Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) _____ has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
- b) _____ has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
- c) _____ has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
- d) _____ has in the past acted dishonestly and/ or is liable in the future to act dishonestly.”

The Committee noted that the Committee at the substantive hearing found all 4 limbs of the above engaged both as to the past and the future. That Committee had concluded that ‘harm’ included financial harm. That Committee had concluded that a finding of impairment was required, both to protect the public from the risk of repetition and to maintain public confidence in the profession.

Having regard to all the evidence before it, this Committee was satisfied that the Registrant is no longer liable to behave in any of the ways referred to in the 4 limbs of the above test.

The Committee also had regard to the guidance set out in the case of *Cohen v GMC [2008] EWHC 581 (Admin)* namely: Is the Registrant’s conduct easily remediable; has it been remedied; is it highly unlikely to be repeated?

While dishonesty may be difficult to remedy, the Committee recognised that it is not impossible to remedy. In response to questions from the Committee, the Registrant identified REDACTED for the misconduct in this case. REDACTED. She now realised the crucial importance of taking such steps, should any such difficulties recur.

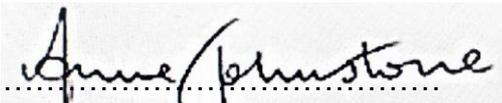
Having heard and assessed her evidence, the Committee was satisfied that the Registrant’s conduct giving rise to the charges, including the dishonesty, has now been remedied, and is highly unlikely to be repeated.

The Committee was therefore satisfied that a finding of impairment was no longer necessary for the purpose of public protection.

With regard to the public interest, the Committee was satisfied that the need to uphold public confidence in the profession has been adequately addressed by the imposition of the 12 month period of suspension.

Accordingly, the Committee decided that the Registrant's fitness to practice as a dispensing optician is no longer impaired and that the current suspension order should be allowed to lapse on expiry on 2 February 2022.

Chair of the Committee: Anne Johnstone

Signature  Date: 18 January 2022

Registrant: Sarah Morris

Signature Date: 18 January 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.