

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

F(23)12

GENERAL OPTICAL COUNCIL

AND

KARINA GAHIR (01-30825)

**DETERMINATION OF A 1st SUBSTANTIVE REVIEW
FRIDAY 03 NOVEMBER 2023**

Committee Members: Jayne Wheat (Chair/Lay)
Ubaidul Hoque (Lay)
Ann McKechin (Lay)
Caroline Clark (Optometrist)
Maninder Gudray (Optometrist)

Legal adviser: Aaminah Khan

GOC Presenting Officer: Kathryn Sheridan (Kingsley Napley)

**Registrant present
/represented: and** Present and respresented

Registrant representative: Christopher Hamlet (on behalf of AOP)

Hearings Officer: Nazia Khanom

Outcome: Impairment not found

DETERMINATION

Background

1. The Registrant is a registered Optometrist, who first registered on 9 April 2018. At the material time the Registrant worked at the Vision Express (UK) Ltd ('Vision Express') store in redacted.
2. On 7 April 2021, Vision Express submitted a referral to the Council regarding their employee, Karina Gahir, the Registrant. It was alleged that the Registrant had cancelled patient appointments and sent text messages to patients informing them of the cancelled appointments, without the store's authorisation. The Registrant was summarily dismissed, following a disciplinary hearing, on the grounds of gross misconduct.
3. Vision Express provided the Council with an internal investigation report, setting out details of an investigation it carried out in November 2020. This report provided the background as to how the concerns were identified, the investigation process and its conclusion.
4. A series of cancellation texts were sent to patients of the Solihull store on 24 October 2020 and on 6 November 2020 without authorisation. This came to light when at least one patient called the store to query the reason for cancellation. The IT department was asked to investigate and found that the expired PIN that had been used was linked to an employee based in another Vision Express store, who was not working at the redacted store on either day in question.
5. A member of the IT team confirmed that on 24 October 2020, two separate batches of cancellation texts were sent from an account that logged out at the same time the Registrant logged in the computer at 14:07. The texts on 6 November were sent from the Registrant's room and she logged in 3 mins before and after the texts were sent, between 09:04 and 09:05. The practice work rota showed that across the two dates that the texts were sent, the only person who had the opportunity to input the text messages was the Registrant.
6. At the first internal investigation meeting with the Registrant on 6 November 2020, the Registrant denied sending the cancellation texts insisting '*I wouldn't do something like that*'. The likelihood of another user sending the texts from the Registrant's PC was explored but this was not pursued as the Registrant herself stated '*people come in and talk to me but not when I am not here*'.
7. When the Registrant was informed that she had logged in within a few minutes of the cancellation texts being sent, she responded that she was logging in to check her diary for the day ahead. The Registrant stated that maybe someone else had used her PIN and went on to say another colleague used her PIN before for under 16s. She was informed that the colleague was not working on 6 November 2020, and it did not explain the texts.

8. At a second investigation meeting with the Registrant on 12 November 2020, she stated that she shared her PIN with a trainee when she was running behind, to check under 16s. It was discussed with her the considerable risk this could pose to patients and the consequences to herself. The Registrant was also informed that the colleague she started sharing her PIN with denied ever having the Registrant's PIN.
9. The Registrant claimed that at the time the texts were sent on the morning of 6 November 2020 she was putting in eye drops for a colleague, but it was ascertained that that colleague did not clock in until 9.01 and dropped off belongings before going to the Registrant for the eyedrops, concluding that the Registrant was not instilling eye drops at the time the texts were sent. Colleagues present that morning were confirmed to be elsewhere. The Registrant could not explain logging in at the exact minute the account sending the texts logs out at 14:07 on 24 October 2020.
10. At a further investigation meeting with the Registrant on 19 November 2020 she was informed of the GOC standards namely '*being honest when things go wrong*'. It was at this point that the Registrant stated that she did not realise the severity of her actions and admitted that she did in fact send the cancellations texts to the patients and apologised for not being honest sooner.
11. At the conclusion of the investigation the Registrant took full responsibility for her actions and stated that she sent the texts because she panicked about her clinic falling behind and not having enough time to clean up between patients. She did not raise concerns because she did not want to complain and wanted to get on with work.
12. Upon receipt of the referral, the Council notified the Registrant of the Fitness to Practise investigation on 19 May 2021. On 16 March 2023, the Registrant was notified that the matter had been referred to the Fitness to Practise Committee by the case examiners.
13. A substantive hearing took place between 8 – 11 August 2023, where the facts were found proved, in their entirety, following the Registrant's admissions to the following Allegation (as amended):

ALLEGATION (as amended)

The Council alleges that you, Karina Gahir, a registered optometrist:

- 1) *On or around 24 October 2020, whilst working at Vision Express, **redacted** ("the store") you;*
 - (a) knowingly sent text messages to several patients to cancel appointments without the store's authorisation;*
 - (b) used an expired PIN from another employee to cancel patients' appointments.*
- 2) *On or around 06 November 2020, whilst working at the store you:*

(a) knowingly sent text messages to several patients to cancel appointments without the store's authorisation;

(b) used an expired PIN from another employee to cancel patients' appointments.

3) *Your actions in 1 and/or 2 above were:*

(a) dishonest and/or inappropriate.

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

14. The Registrant gave evidence at the misconduct and impairment stages of the substantive hearing (which were heard together with the agreement of the parties).

15. The Committee made findings of misconduct and of current impairment. It found that whilst the Registrant was developing insight into her conduct, she still had further work to do in respect of reflection and remediation. The Registrant had been on a relevant CPD course, however the Committee felt that this was too close in time to the substantive hearing for the Registrant to have properly reflected upon it and for her insight to have fully developed.

16. Given that the Registrant's insight was still developing, and further reflection and remediation was required, the Committee considered that at that time there was a risk of repetition. The Committee found that the Registrant was currently impaired on both the personal and public interest components.

17. The Registrant's registration was suspended for three months at the conclusion of the substantive hearing on 11 August 2023. The order is due to expire on 9 December 2023.

18. At the substantive hearing, the Committee directed a Review hearing to take place before the end of the suspension period and was of the view that a Reviewing Committee would be greatly assisted if the Registrant:

1) Attended the Review hearing;

2) Submitted evidence of relevant and targeted successfully completed CPD;

3) Submitted a reflective piece, regarding the misconduct found and any learning from the further remediation undertaken.

The Review hearing

19. The Committee considered the documentary evidence that was before it, which included (but was not limited to), evidence from the substantive hearing, the earlier Committee's substantive determination and the Council's written submissions. The Registrant's bundle contained a log of the CPD courses and reflective learning that the Registrant has undertaken and her

written apology to Vision Express. In addition, the Committee had before it the Registrant's evidence relied upon at the substantive hearing, namely a witness statement dated 7 August 2023, undated reflections, and character references from colleagues.

20. The Registrant gave oral evidence to the Committee, after Ms Sheridan on behalf of the Council outlined the background to the case. The Registrant expanded upon her reflective log and detailed how she had reflected over the period of suspension in respect of each CPD course and piece of reflective learning undertaken. The Registrant explained why she had taken courses on assertiveness, communication and having difficult conversations, which was to address the circumstances that led to her conduct, namely feeling under pressure and not wanting to raise that issue with management. The Registrant explained that undertaking and reflecting upon these courses had increased her confidence and maturity. She had learnt how to deal with difficult situations at work and that in future she knew how to approach such conversations, by offering solutions, so that patient care was not compromised.
21. The Registrant explained what she had learnt from the dishonesty courses that she had completed, in particular she now realised the severity of her conduct and appreciated that dishonesty can impact upon the trust with colleagues, patients and the business. The Registrant gave evidence that in October 2023 she had written the letter of apology to Ms A, the Head of Professional Practice at Vision Express because she previously had a good relationship with Ms A, when she was her regional manager, which the Registrant had damaged through her actions and she realised after her reflection that she owed that apology. The Registrant explained that she also would have liked to apologise to the patients concerned, but she did not have their details to do so.
22. The Registrant was cross-examined by Ms Sheridan and she was asked questions by the Committee, including about how the Registrant would do things differently in future and how she had kept her skills and knowledge up to date. The Registrant explained that she had been reading professional publications, and keeping up to date with developments online and from colleagues. She explained that she had not been working during the suspension, as her employer Boots had also suspended her employment pending the outcome of these proceedings but that she had used her time to reflect and remediate further.
23. The Committee then heard submissions from Ms Sheridan on behalf of the Council in relation to current impairment. Ms Sheridan outlined the law on impairment and submitted that the Council took a neutral position on current impairment, recognising that it was a matter for the independent judgement of the Committee. Ms Sheridan submitted that the central question for the Committee was whether the Registrant had taken sufficient steps to indicate that she had remediated the misconduct.
24. Mr Hamlet, on behalf of the Registrant, submitted that there was not a great deal of difference between the parties' positions on impairment, namely the Council's neutrality and the Registrant's position that she was no longer impaired. Mr Hamlet highlighted parts of the substantive hearing

determination, which he invited the reviewing Committee to be mindful of, including that they found the dishonesty to not be at the top end of the scale but not at the bottom of the scale either.

25. Mr Hamlet submitted that the earlier Committee had found that the Registrant still had some reflection and remediation to do, but the fact that the suspension was only for three months showed that she was almost there, as otherwise a longer period would have been imposed. He characterised these concerns as residual and that she had now closed the gap.
26. Mr Hamlet invited the Committee to have regard to the steps that the Registrant had undertaken since the last hearing, and highlighted the relevant and targeted courses that she had attended. He submitted that the Registrant had undertaken the further remediation and reflection envisaged by the earlier Committee to the point that her fitness to practise was no longer impaired. Mr Hamlet submitted that previously there was a low risk of repetition and that this could now be considered to be no risk.
27. Mr Hamlet further submitted that the suspension was primarily to mark the conduct and to meet the public interest. However, the public interest component had been met by the three month suspension and there was no need for that period to be extended in the public interest. He invited the Committee to find that the Registrant was safe to return to unrestricted practice and is not now impaired.
28. The Committee accepted the advice of the Legal Adviser, who referred the Committee to the relevant sections of the Hearings and Indicative Sanctions Guidance 2021. It was advised that the Committee will need to satisfy itself that the Registrant has fully appreciated the gravity of the offence, has not re-offended and has maintained their skills and knowledge, and that the Registrant's patients will not be placed at risk by resumption of practice.
29. In particular, the Committee was reminded of the case of *Abrahaem v GMC* [2008] EWHC 183 (Admin) and advised that at a Review hearing, there is in effect a persuasive burden upon a Registrant to demonstrate that they are fit to resume unrestricted practice.

Findings regarding impairment

30. The Committee took account of the substantive hearing determination and the findings of the previous Committee, as well as the steps which they recommended may assist at a Review hearing, as set out above.
31. The Committee considered that the Registrant has followed these recommendations, as she attended and gave further oral evidence at this hearing. Further, she has provided documentary evidence of relevant and targeted training and a reflective log, reflecting on the remediation that she had undertaken since the earlier hearing.
32. The Committee found that when giving evidence the Registrant was able to demonstrate that she had reflected further on her misconduct and was able to articulate how her insight had developed in a nuanced manner. In particular

she was able to show that she had gained an understanding of the impact of her misconduct on her colleagues, the wider profession and the public.

33. The Committee considered that the Registrant had undertaken relevant and targeted CPD courses and learning, on dishonesty and communication, which addressed the nature of the misconduct in this case and that she had appropriately reflected upon the same. The Committee noted that the Registrant had only had a relatively short period in order to complete remediation and to reflect upon it, but that in that time period she had adequately done so.
34. The Registrant was also able to explain in her oral evidence, with practical examples, how she would do things differently in future and reassure the Committee that she had kept her knowledge up to date during the period of her suspension.
35. The Committee was of the view that the Registrant had further developed her insight, she accepted full responsibility for her actions, has expressed remorse and demonstrated that she understood the gravity of the misconduct.
36. The Committee was satisfied, based on the evidence before it, including the oral evidence of the Registrant, that she has sufficiently reflected and remediated her conduct. The Committee noted that there had been no repetition of the conduct since 2020. It was the view of the Committee that the Registrant did not currently pose a risk to patient safety and that the risk of repetition was minimal.
37. The Committee was mindful that there was in effect a persuasive burden on the Registrant to demonstrate that she is fit to resume unrestricted practice and was satisfied that given the further reflection and remediation that had taken place since the suspension was imposed, that the Registrant had demonstrated she was safe to do so.
38. The Committee considered whether the public interest required a finding of impairment to be made, in order to maintain public confidence in the profession and/or to declare and uphold standards in the profession. The Committee noted that it was a high bar for a finding of impairment to be made on public interest grounds alone. It also considered that the original suspension for a period of three months appropriately marked the misconduct. In view of the steps that the Registrant had undertaken to reflect, develop her insight and remediate, and with there being no repetition, the Committee was of the view that it was not necessary, nor proportionate, to make a finding of impairment on public interest grounds.
39. Accordingly, the Committee found that the fitness of the Registrant to practise as an optometrist is not impaired.

Declaration

The Committee makes a formal declaration that the Registrant's fitness to practise is no longer impaired for the reasons above. The substantive suspension order will expire at the conclusion of the three-month period for which it was imposed.

Chair of the Committee: Ms Jayne Wheat

Signature 

Date: 3 November 2023

Registrant: Ms Karina Gahir

Signature ...Attended remotely via Ms Teams....

Date: 3 November 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.

