

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

GENERAL OPTICAL COUNCIL

F(20)18

AND

MALTI AMIN (01-15129)

**DETERMINATION OF A SUBSTANTIVE REVIEW
Thursday 23 September 2021**

Committee Members:	Mr Graham White (Chair/Lay) Dr Nina Barnett (Lay) Ms Zaiada Bibi (Lay) Dr Catherine Collin (Optometrist) Ms Claire Roberts (Optometrist)
Legal adviser:	Mr Ian Ashford-Thom
GOC Presenting Officer:	Ms Kathryn Sheridan
Registrant:	Not present and unrepresented
Registrant representative:	N/A
Hearings Officer:	Ms Abby Strong-Perrin
Outcome:	Suspension extended for 12 months

Proof of service

1. There being no attendance by the Registrant, Ms Sheridan for 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 1969 ('the Act') and Rule 61 of the General Optical Council (Fitness to Practise) Rules 2013 ('the Rules'). Ms Sheridan told the Committee that on 15 March 2021 notice of this virtual hearing had been sent to the Registrant's email address on the Council's register and by special delivery postal service to her postal address on the register. The notice contained the information required by the Rules including the date and time of this virtual hearing. The Track & Trace record shows that the notice was successfully delivered to the Registrant's address on 16 March 2021.
3. Ms Sheridan 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 Ms Sheridan.
8. The Committee 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. It noted that there had been little engagement by the Registrant with these proceedings at any stage. She had not attended the substantive hearing a year ago. On 13 and 21 September 2021, The Council's Hearings Officer sent emails to the Registrant enquiring whether she would be attending this hearing. In her response by email, dated 21 September 2021, the Registrant stated:
11. "Hi I will not be attending REDACTED Regards Miss Amin"
12. In the light of this statement, the Committee was satisfied that the Registrant was aware of this hearing and that she had voluntarily chosen to absent herself. There was no request for an adjournment, and the Committee considered it unlikely that an adjournment would be likely to secure her attendance. The Committee acknowledged that there was likely to be disadvantage to the Registrant in being absent and therefore unable to present her case. However, this was an inevitable consequence of her failure to engage with the process. Against this, there was a strong public interest in the expeditious disposal of this review hearing.
13. Balancing 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 Registrant is a Registered Optometrist who first registered with the Council on 21 January 1994. She has no previous fitness to practise history. Throughout the period of the allegations she was working as an Optometrist and Manager with REDACTED. The employers changed their merchant /card processing account in August 2018. They began to investigate concerns that a significant number of refunds had been processed using credit and debit cards in the Registrant's name. The sums totalled just under £32,000 for the period of August 2018 to mid-January 2019.
15. The allegations against the Registrant were as follows:
16. The Council alleges that you, Malti Amin (01-15129) a registered Optometrist while working as a Store Manager/ Optometrist with REDACTED:

- 1 Between January 2015 and 18 January 2019, on one or more occasions you conducted unauthorised sale and /or refund transaction(s) using your personal credit / debit card (s);
- 2 Your actions at 1) above were: a. dishonest in that you knew you were not authorised to conduct these transaction(s).

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

17. On 28 and 29 September 2020, at the Substantive Hearing, the Fitness to Practise Committee found the facts proved in their entirety, including dishonesty.

18. The determination notes that the Registrant's former employer discovered significant numbers of transactions where charges were made on credit cards and refunds were issued to different cards. For example, from August 2018 to January 2019 the number of refunds were valued at £32,000. The Registrant admitted that she had performed these transactions. The Committee further noted that 'the Registrant admitted that she had carried out these transactions to pay off debts but she did not consider this to be an issue as she had not taken money out of the business. The Registrant claimed she was not aware of the cost implications to her employer, of the credit card transactions'.

19. The 2020 Committee did not accept the Registrant's explanation that because she had not stolen funds from her employer she did not consider she had done anything wrong. The Committee noted that the Registrant had significant debts to service and by creating false purchases and refunding them to another card she was moving funds from one card to another. The Committee observed that the Registrant was experienced in retail operations, and she would have been aware that these transactions would have resulted in the employers paying out transaction charges. The Committee considered that the Registrant knew what she was doing and went on to find the dishonesty allegation proved.

20. The Committee found that the facts found proved amounted to misconduct and that the Registrant's fitness to practise was impaired on public interest grounds.

21. The Committee concluded that the appropriate sanction was a 12 month period of suspension.

22. The period of suspension is due to expire on 29 October 2021.

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

24. This Committee took into account the Council's written submissions in its Skeleton Argument dated 19 August 2021, together with the oral submissions of Ms Sheridan.
25. The Committee accepted the advice of the Legal Adviser, who advised that the Committee should first consider whether the Registrant's fitness to practice remains impaired by reason of her misconduct. If, and only if, the Committee finds such impairment, the Committee should go on to consider what, if any, sanction is now appropriate and proportionate.

Findings regarding impairment

26. The Committee noted that the Committee at the substantive hearing indicated that the review Committee may benefit from the following:
 - The active participation of the Registrant with the reviewing Committee
 - The provision of a detailed reflective statement from the Registrant explaining her misconduct; the factors that led her to the misconduct; her appreciation of the gravity of her misconduct for herself and the profession; the steps taken by her to prevent repetition and that she has taken steps to maintain her skills and knowledge
 - Evidence of any professional and other help received by her with a view to preventing a recurrence of the pressures that she indicated prevailed at the time of the misconduct
 - References. These would include recent character references and testimonials as well as employment references (whether paid or unpaid) if any.
27. The Committee noted that the Registrant has failed since the original hearing to engage in any meaningful way with the Council. She has chosen not to participate in this review hearing. She has not provided any reflective statement. She has not provided any evidence of any professional and other help received by her with a view to preventing a recurrence of the pressures she was allegedly under at the time of her misconduct. There are no references or testimonials.
28. 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.”

29. The Committee agreed with the last Committee that, while there was no evidence to suggest that the Registrant's misconduct had put a patient or patients at unwarranted risk of harm, the other three limbs were all engaged in this case.

30. The Committee considered whether the Registrant remains liable in the future to bring the profession into disrepute and/or to breach a fundamental tenet of the profession and/or to act dishonestly. In this regard, the Committee took into account the complete absence of any material from the Registrant, whether in accordance with the previous Committee's recommendations as set out above or otherwise, to demonstrate reflection, remorse, insight or remediation.

31. The only communication from the Registrant was her brief assertion in her email of 21 September 2021 that she would not be attending due to **REDACTED**

32. In these circumstances, there was nothing to reassure the Committee that the Registrant's impairment had been addressed. Accordingly, the Committee could only conclude that there remains a risk of repetition of similar misconduct by the Registrant, which would involve breaches of limbs b, c and d of the Shipman test above.

33. 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?

34. While dishonesty may be difficult to remedy, the Committee was of the view that the Registrant's conduct was at least potentially remediable. However, the Committee had no evidence, such as a reflective statement or references or

testimonials, to show insight or remediation. Accordingly, the Committee could not be satisfied that such conduct was “highly unlikely to be repeated”.

35. In the light of these conclusions, the Committee determined that the Registrant's fitness to practise remains currently impaired on public interest grounds. The Committee was satisfied that the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the circumstances of the case.
36. Ms Sheridan referred the Committee to the Council's Skeleton Argument. She invited the panel to have regard to the Council's Indicative Sanctions Guidance. She indicated that the Council is not submitting that any particular sanction is appropriate and leaves this to the judgment of the Committee.
37. The Committee accepted the advice of the Legal Adviser, who reminded it of the need for proportionality and the requirement to consider the appropriate sanctions in ascending order of seriousness.
38. The Committee first considered whether it would be appropriate to take no further action and allow the current order to lapse on expiry. However, the Committee had no doubt that there were no exceptional circumstances that would justify such a course. Such an outcome would not reflect the importance of upholding the public interest and would clearly be inappropriate in view of the seriousness of the misconduct in this case.
39. The Committee then had regard to whether conditional registration was an appropriate sanction. However, this was not a case where the Registrant's clinical skills had been called into question. The misconduct of the Registrant was not of a nature that conditions could be designed to address. In any event, the case was too serious for disposal in this way.
40. The Committee next considered whether to impose a further period of suspension. The Committee had no doubt that the misconduct, involving a pattern of repeated dishonesty towards the high end of the scale, was serious. The Registrant had failed to engage meaningfully with her regulator or throughout the subsequent proceedings. She had failed to adopt any of the recommendations of the previous panel or to provide any other evidence of remorse, insight or remediation. The Committee considered that a further period of suspension for the maximum period of 12 months would sufficiently mark the public interest. Such a sanction would give the Registrant a further, and probably

final, opportunity to engage with her regulator and provide the evidence which had thus far been lacking. The Committee was satisfied that such a sanction would be proportionate, and that any resulting hardship, financial or otherwise, to the Registrant was outweighed by the public interest.

41. The Committee also considered erasure. It decided that the appropriate sanction was finely balanced between erasure and a further period of suspension. The Registrant's misconduct, together with her continuing lack of engagement, was on the borderline of being fundamentally incompatible with her remaining on the register. However, the Committee took into account the information in the Registrant's email of 21 September 2021 in respect of REDACTED. In addition, the Committee reiterates that a future reviewing Committee is likely to be greatly assisted by the Registrant's compliance with the following:

- The active participation of the Registrant with the reviewing Committee
- The provision of a detailed reflective statement from the Registrant explaining her misconduct; the factors that led her to the misconduct; her appreciation of the gravity of her misconduct for herself and the profession; the steps taken by her to prevent repetition
- Evidence of any professional and other help received by her with a view to preventing a recurrence of the pressures which she indicated prevailed at the time of the misconduct
- References. These would include recent character references and testimonials as well as employment references (whether paid or unpaid) if any
- Evidence that she has taken steps to maintain her skills and knowledge such as engagement with the GOC's continuing education and training (CET).

42. The Committee therefore decided to extend the Registrant's suspension from the register for a further period of 12 months. The Committee directs that this further suspension order shall be reviewed before its expiry.

Chairman of the Committee: Mr Graham White

Signature  Date: 23 September 2021

Registrant: Ms Malti Amin

Signature

Date: 23 September 2021

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
<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 www.professionalstandards.org.uk or by telephone on 020 7389 8030.</p>
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.