

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

**GENERAL OPTICAL COUNCIL**

**F(20)19**

**AND**

**MALTI AMIN (01-15129)**

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**DETERMINATION OF A SUBSTANTIVE REVIEW  
WEDNESDAY 28 SEPTEMBER 2021**

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**Committee Members:** Mr Graham White (Chair/Lay)  
Ms Victoria Smith (Lay)  
Ms Vivienne Geary (Lay)  
Dr Catherine Collin (Optometrist)  
Ms Claire Roberts (Optometrist)

**Legal adviser:** Ms Megan Ashworth

**GOC Presenting Officer:** Mr Matthew Corrie

**Registrant:** Not present and unrepresented

**Registrant representative:** N/A

**Hearings Officer:** Mr Terence Yates

**Outcome:** Impaired fitness to practise,  
Erasure imposed

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### **Proof of service**

1. The Committee heard an application from Mr Corrie for the Council for the matter to proceed in the Registrant's absence. First, the Council was required to satisfy the Committee that the documents had been served in accordance with Section 23A of the Act and Rule 61 of the Fitness to Practise Rules 2013. The Committee accepted the advice of the Legal Adviser.
2. The Committee had regard to the documentation before it in relation to service. It noted that the Registrant had been served the notice of hearing on 5 May 2022 via email, a method of service permitted by Rule 2A of the GOC (Committee Constitution, Registration and Fitness to Practise) (Coronavirus) (Amendment) Rules 2020. It had regard to the contents of the notice, which included the date of this review, together with the requirements set out in Rules 56 and Rule 28(1)(b) to (e), namely the right to attend and be represented, the power of the Committee to proceed in absence, the right of the Registrant to adduce evidence, and the Committee's powers of disposal.
3. The Committee was satisfied that all reasonable efforts have been made to notify the Registrant of the hearing.

### **Proceeding in the absence of the Registrant**

4. 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. The Committee accepted the advice of the Legal Adviser.
5. The Committee had regard to the Registrant's email, dated 2 September 2022, in response to the GOC enquiry as to whether she had received the documentation for the review and whether she wished to submit any documentation herself. The Registrant's email stated that she would not be attending the hearing, citing [Redacted] and personal matters as the reason for not attending.
6. In light of the email, the Committee was satisfied that the Registrant was aware of the date of this review and had decided not to attend. It considered that she had voluntarily absented herself in the full knowledge of the nature of the hearing and the powers of the Committee. Although she had cited [Redacted] as being the reason for her non-attendance, the Committee bore in mind that it had no [Redacted] evidence in support, nor had the Registrant applied for the review to be adjourned. The Committee was not satisfied that an adjournment would secure her attendance on a future occasion. The Committee was satisfied that the Registrant had been given the opportunity to attend but had decided not to do so. It did not consider that an adjournment would serve any useful purpose. The Committee was mindful that this was a mandatory review of a suspension order currently in place which is due to expire on 28 October 2022 and so there was a public interest in proceeding.
7. The Committee determined that it would be in the public interest for the hearing to proceed in the Registrant's absence.

## DETERMINATION

### Background

8. 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 Luxottica Retail UK (the employers) at their [Redacted] Branch. 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.

9. The allegations against the Registrant were as follows:

*The Council alleges that you, Malti Amin (01-15129) a registered Optometrist while working as a Store Manager/ Optometrist with Luxottica Retail UK:*

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.*

10. On 28 and 29 September 2020, at the Substantive Hearing, the Fitness to Practise substantive Committee found the facts proved in their entirety, including dishonesty. The substantive Committee also found misconduct and that the Registrant's fitness to practise was impaired on public interest grounds.

11. The Committee concluded that the appropriate sanction was a 12 months period of suspension.

12. The suspension order was first reviewed on 23 September 2021. In the absence of any information to assist with assessing the Registrant's insight or remediation, the first reviewing Committee concluded that there remained a risk of repetition. Consequently, the first reviewing Committee determined that the Registrant's fitness to practise remained impaired on public interest grounds and that the need to uphold professional standards and public confidence in the profession would be undermined if a finding of impairment were not made. The suspension order was extended by that

Committee for another 12 months with a review. In reaching its decision, the first reviewing Committee took account of the Registrant's stated personal circumstances and [Redacted] and decided to give her a further opportunity to engage and produce [Redacted] evidence in support of the [Redacted] to which she had referred. The first reviewing Committee also made recommendations which may assist a future reviewing Committee as follows:

- 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 to the misconduct; her appreciation of the gravity of her misconduct for herself and the profession; and the steps taken by her to prevent repetition;
- Evidence of any professional and other help received by the Registrant with a view to preventing a recurrence of the pressures which she indicated prevailed at the time of the misconduct;
- References which 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).

13. The period of suspension is due to expire on 28 October 2022.

### **Findings regarding impairment**

14. The Committee heard submissions from Mr Corrie on behalf of the Council. Mr Corrie clarified for the Committee that there had been no theft of money, and that the debit and credit card transactions had been to move money from and to different accounts all held by the Registrant. The Registrant was in debt and had been moving the money about, which had incurred transaction fees for her employer, but it was not possible to quantify these fees. It was these unauthorised transactions which had been undertaken dishonestly over a period of four years.

15. Mr Corrie explained that no further evidence had been provided by the GOC or the Registrant since the last review. He pointed out that the Registrant had not engaged and so there was no material or information relevant to remediation, such as testimonials, reflection, continuing professional development (CPD), or insight. He submitted that this was despite the recommendations of the previous reviewing Committee signposting the types of information which may assist a future reviewing

Committee. Mr Corrie submitted that without such information, the Committee could not be satisfied that the Registrant had remedied her misconduct and therefore the risk of repetition remained. He further submitted that the nature and gravity of the dishonesty was at the serious end of the spectrum and together with her non engagement and absence of remediation, the public interest required a finding of current impairment.

16. The Committee had no written submissions or information from the Registrant for the purpose of this review.
17. The Committee accepted the advice of the Legal Adviser, who cited the case of *Abrahaem v GMC [2008] EWHC 183 (Admin)* and advised that there is a persuasive burden upon a Registrant to demonstrate that they are fit to resume unrestricted practice. In reaching its decision, the Committee was mindful of the wider public interest elements of declaring and upholding proper standards of conduct and behaviour and maintaining public confidence in the profession. The Committee exercised its own judgement in relation to the question of whether there was current impaired fitness to practise.
18. The Committee considered that very little had changed since the last review. The only information from the Registrant since that review was her email, dated 2 September 2022, in which she cited [Redacted] and personal issues and said:

*'I am extremely sorry about everything that has happened and feel ashamed to be in public.'*
19. The Committee bore in mind that the persuasive burden was on a Registrant to demonstrate that they were fit to practise unrestricted. It acknowledged that it was difficult to evidence remediation in dishonesty cases. Nevertheless, the previous reviewing Committee had given recommendations which might assist a future reviewing Committee, and which signposted for the Registrant the types of information she might wish to provide to a reviewing Committee to demonstrate remediation and so discharge the persuasive burden on her. Whilst the Committee understood that these were recommendations and not requirements for the Registrant, the position was that the Committee had no information before it to demonstrate that she had developed any insight or that she had remedied her misconduct. Whilst the Committee considered that the Registrant's email of 2 September 2022 demonstrated an element of remorse into her actions, it did not provide evidence of insight or remediation.
20. With reference to the recommendations, the Committee noted that the Registrant had not engaged with the reviewing Committee as suggested. She had not provided any reflective statement to explain her actions or the factors that led her to act in that way, or her appreciation of the gravity of her actions and the potential impact of her dishonesty on public confidence in the profession. She had not provided any [Redacted] evidence to support her assertions that she was [Redacted]. Further, she had not provided any testimonials or evidence that she had undertaken any CPD. In relation to CPD, the Committee noted that in the Registrant's email of 2 September 2022, she stated that she: *'would like some help to start on my cpd when I can'*. In any event, the Committee had no evidence that the Registrant had undertaken any CPD since the substantive hearing in September 2020, and so had no information to satisfy it that she had been keeping her knowledge and skills up to date.

21. In the absence of any information to demonstrate insight and remediation, the Committee could not be satisfied that the Registrant had remedied her misconduct. Therefore, it concluded that the risk of repetition remained. Given the nature and gravity of the dishonesty, together with the non-engagement, lack of evidence of remediation, and consequent risk of repetition, the Committee concluded that the public interest required a finding of current impairment.
22. Accordingly, the Committee found that the fitness of Ms Malti Amin to practise is currently impaired on public interest grounds in order to maintain public confidence in the profession and to uphold professional standards.

### **Sanction**

23. The Committee heard submissions from Mr Corrie on behalf of the Council. He submitted that, in reality, the choice for this Committee was between suspension and erasure. He explained that the position of the Council was that a suspension order was no longer adequate to meet the public interest. This was because the previous Committees had considered suspension to be appropriate and, on both occasions, had given the Registrant the opportunity to engage, and had signposted the sorts of information which may potentially assist future reviewing Committees. He submitted that she had not taken that opportunity, despite their warning that it might be her last opportunity to engage. He submitted that it was highly unlikely that she would engage and so the Registrant was fundamentally unsuited to being a registered Optometrist. He invited the Committee to impose the sanction of erasure.
24. The Committee accepted the advice of the Legal Adviser. It had regard to the Indicative Sanctions Guidance.
25. The Committee considered the sanctions available to it from the least restrictive to the most severe, as set out in section 13(7) of the Opticians Act 1989, namely no sanction, conditional registration, suspension, and erasure. The Committee applied the principle of proportionality by weighing the Registrant's interests with the public interest.
26. The Committee concluded that in the absence of insight and remediation, it would be inappropriate to take no action, as that would not be sufficient to address the public interest elements of maintaining public confidence and upholding the reputation of the profession.
27. The Committee did not consider that conditional registration was appropriate in this case. There had been no issues in respect of the Registrant's clinical practice; the issue had been her dishonesty. The Committee did not consider that it was possible to formulate conditions to address this. In any event, given the ongoing lack of engagement, or steps to develop insight or achieve remediation, the Committee did not consider that conditional registration would meet the public interest elements of maintaining public confidence and upholding the reputation of the profession.
28. The Committee agreed with the submission of Mr Corrie to the effect that, in essence, the choice for the Committee was between extending the suspension order and erasure. In relation to suspension, the Committee considered the relevant factors

which may indicate suspension is appropriate, as set out in the Indicative Sanctions Guidance. In particular it had regard to paragraph 34.1 (d): *'the Committee is satisfied the registrant has insight and does not pose a significant risk of repeating behaviour'*. The Committee took account of its decision on impairment, and in particular that it had no evidence to demonstrate insight or remediation, and so the risk of repetition remained.

29. The Committee acknowledged that a suspension order would protect against the risk of repetition for the period for which it was in place. However, the Committee questioned whether a suspension order would satisfy the public interest, in terms of maintaining public confidence and upholding the reputation of the profession. The Committee considered that this was a Registrant who had been given opportunities to demonstrate that she had developed insight into her dishonesty and had remedied her misconduct. The Committee noted that she had cited [Redacted] and personal circumstances as reasons for her non-attendance, but these were unsubstantiated through evidence.
30. The previous Committees had signposted the types of information which the Registrant might want to provide to assist her in demonstrating insight and remediation, but the Registrant had not provided any information for this Committee to consider. The first reviewing Committee had considered that the choice between suspension and erasure was finely balanced. It had extended the substantive suspension order by 12 months to give the Registrant a further opportunity to engage and provide information to evidence insight and remediation. She had not taken this opportunity.
31. The Committee was mindful of its responsibility to maintain public confidence and to uphold the reputation of the profession. It was not satisfied that if it were to further extend the suspension order and give the Registrant another opportunity to engage and provide evidence to demonstrate insight and remediation, that she would take it. At this time, the Committee considered that the Registrant was fundamentally incompatible with remaining on the Register. The Committee was satisfied that erasure was the only sanction which was sufficient to satisfy the public interest elements of maintaining public confidence and upholding the reputation of the profession.
32. Accordingly, the Committee determined to erase the Registrant's name from the Register.

**Chairman of the Committee: Mr Graham White**

**Signature** 

**Date: 28 September 2022**

**Registrant: Ms Malti Amin**

**Signature** not present

**Date: 28 September 2022**

<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.