

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

**GENERAL OPTICAL COUNCIL**

**AND**

**RICHARD CARR (01-16036)**

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**DETERMINATION OF A SUBSTANTIVE HEARING  
AGREED PANEL DISPOSAL (APD)  
28 OCTOBER 2024**

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<b>Committee Members:</b>	Valerie Paterson (Chair/Lay) David Abbott (Lay) Amanda Webster (Lay) Claire Roberts (Optometrist) Philippa Shaw (Optometrist)
<b>Legal adviser:</b>	Aaminah Khan
<b>GOC Presenting Officer:</b>	Abhijit Desai
<b>Registrant:</b>	Not present but represented
<b>Registrant representative:</b>	Trever Archer
<b>Hearings Officer:</b>	Humera Asif
<b>Facts found proved:</b>	All
<b>Facts not found proved:</b>	None
<b>Misconduct:</b>	NA - Conviction
<b>Impairment:</b>	Impaired
<b>Sanction:</b>	Erasure
<b>Immediate order:</b>	Yes

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## ALLEGATION

*The Council alleges that you, Richard Carr (01-16036), a registered optometrist:*

*1. On 20 October 2023 at [redacted] Magistrates' Court, you were convicted of an offence contrary to section 67(4) and (5) of the Sexual Offences Act 2003 in that:*

*a. On 16 March 2022 at [redacted] you installed equipment with the intention of enabling yourself, for the purpose of obtaining sexual gratification, to observe another person doing a private act, knowing that person did not consent to being observed for your sexual gratification contrary to section 67(4) and (5) of the sexual offences Act 2003.*

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

## CONSENSUAL PANEL DETERMINATION AGREEMENT

At the outset of this hearing, Mr Desai, on behalf of the General Optical Council ('the GOC'), informed the Committee that prior to this hearing a provisional agreement of a consensual panel determination had been reached with regard to this case between the GOC and the Registrant.

The agreement, which was put before the Committee in an Agreed Panel Disposal ('APD') report dated 22 October 2024, sets out Registrant's full admission to the facts alleged in the charges, that the Registrant's actions amounted to a conviction and that the Registrant's fitness to practise is currently impaired by reason of that conviction. It is further stated in the agreement that an appropriate sanction in this case would be erasure and an immediate order was appropriate.

The Committee has considered the provisional agreement reached by the parties. That provisional agreement is included in this determination as **Annex A**.

## DETERMINATION

1. Mr Desai, on behalf of the GOC, outlined the APD process, as set out in the GOC's APD policy, and what had been agreed by the parties in the APD report. The parties had agreed that the ground of impairment of a conviction and current impairment were established and that the case can appropriately be disposed of by a sanction of erasure.
2. Mr Desai highlighted that although the parties were in agreement, the ultimate decision rests with the Committee and there were a number of options open to the Committee, as set out in the GOC's APD policy. These options included the Committee disagreeing with parts of the report and varying the sanction, after hearing further submissions.

### Background to the Allegation

3. Mr Desai took the Committee through the background, as follows. The Registrant registered with the GOC as an optometrist on 9 August 1996. The Registrant has no prior fitness to practise history.
4. The GOC received a self-referral from the Registrant on 25 March 2022. The Registrant declared that he was subject to disciplinary proceedings whilst working at the [redacted] branch of [redacted]. The disciplinary proceedings related to an incident in March 2022, whereby the Registrant placed a recording device in a female toilet at [redacted]. The Registrant admitted that he placed the recording device in the toilet at work.
5. The GOC obtained a witness statement from Witness A, the optical receptionist and dispenser, and a long-standing colleague of the Registrant, who found the recording device in the female toilet of [redacted] branch of [redacted].
6. Within Witness A's witness statement, dated 25 October 2022, she explains where the toilets are situated and notes that customers are not permitted to use the toilets. Witness A also confirms that there are two separate toilets, one for males and one for females. On 16 March 2022, the Registrant and Witness A were the only staff on shift in the practice. Witness A explains that she discovered the recording device when she went to the toilet at around 11:55 hours.
7. Witness A took a photograph of the recording device and informed colleagues about it. When Witness A went to the toilet at 12:40 hours to show a colleague who had arrived at the store, it had by that time been removed and replaced with another item.

8. The Registrant was subsequently convicted of Voyeurism (installing equipment/constructing/adapting a structure) under the Sexual Offences Act 2003 on 20 October 2023. The Registrant pleaded guilty the offence and on 21 November 2023 before [redacted] Magistrates' Court was sentenced to a community order with rehabilitation activity, unpaid work of 160 hours to be completed within 12 months and the requirement to be registered onto the sex offenders register for a period of 5 years. The GOC obtained documentation confirming the Registrants' conviction from [redacted] Magistrates Court.

### **Submissions of the parties**

9. Mr Desai invited the Committee to find the facts of the Allegation proved following the Registrant's admissions through the APD process. The conviction was the basis for the ground of impairment. Mr Desai invited the Committee to find current impairment and submitted that given the seriousness of the conviction, a finding of current impairment was necessary in order to maintain professional standards and confidence in the profession.
10. Mr Archer made no further submissions upon matters that had already had been agreed by the Registrant, as set out in the APD report. Mr Archer invited the Committee not to hold against the Registrant the fact that he was not present today. The Chair confirmed that the Committee would not do so, as it was accepted that Mr Archer was in attendance on behalf of the Registrant.

### **The Committee's findings**

11. The Committee decided to accept the consensual panel determination, for the reasons set out below.

### **Legal Advice**

12. The Committee heard and accepted the advice of the Legal Adviser who reminded the Committee that although there was an agreed disposal, as set out in the APD report, the Committee was not obliged to follow that outcome and it was for the Committee to form its own independent judgment in respect of each stage of the proceedings. If the Committee disagreed with and was minded to vary the APD report, there should be an opportunity for further submissions from the parties.
13. The Legal Adviser referred the Committee to the Council's '*Hearings and Indicative Sanctions Guidance*' ('ISG'), which set out principles to have regard to in conviction cases. These included that in a conviction case, the purpose is not to punish the registrant a second time for the offences committed, but to consider if their fitness to practise is impaired. Further, regulatory and criminal hearings serve different functions and a sentence imposed by a court does not always

accurately reflect the seriousness of an offence. The Committee is entitled to form its own view of the gravity of the case.

14. In relation to sanction, the advice of the Legal Adviser was for the Committee to take into account the factors on sanction as set out in the ISG; to assess the seriousness of the misconduct; consider any aggravating and mitigating factors; and to consider the range of available sanctions in ascending order of seriousness. Further, the Committee is required to act proportionately by weighing the interests of the registrant against the public interest.

### **Findings in relation to the facts**

15. The Registrant admitted the facts of the Allegation in their entirety. The Committee therefore found the facts proved by reason of the Registrant's admissions pursuant to Rule 40(6) of the of the General Optical Council (Fitness to Practise) Rules 2013 ('the Rules'). The Committee further noted that the Registrant did not dispute any of the facts underlying the conviction and that he pleaded guilty to the offence at the Magistrates' Court.

### **Findings in relation to Proof of Conviction**

16. The Committee had regard to Rule 40(3), where production of a certificate of conviction shall be conclusive evidence of the offence committed. The Committee was satisfied that the Registrant has a conviction within the meaning section 13D(2)(c) of the Act, which is a ground for impairment. The Committee is now required to go on to consider whether the Registrant's fitness to practise is impaired by virtue of the criminal conviction.

### **Findings in relation to current impairment**

17. Whilst acknowledging the agreement between the GOC and the Registrant, the Committee has exercised its own independent judgement in reaching its decision on current impairment.

18. The Committee agreed with the position of the parties, as set out in the APD report, that the Registrant's conduct breached the following paragraphs of the '*GOC Standards of Practice for Optometrists and Dispensing Opticians*':

- 11        *Protect and safeguard patients, colleagues and other from harm*
- 15        *Maintain appropriate boundaries with others*
- 17        *Do not damage the reputation of your profession through your conduct*

19. The Committee considered that the conviction was for a serious offence and agreed with the position of the parties that the conduct was a serious departure from the standards to be expected of a competent Optometrist.

20. The Committee considered the authorities on impairment which were set out in the APD report. In particular, the Committee had regard to the public interest and the guidance in the case of *CHRE v (1) NMC and (2) Grant* [2011] EWHC 927 (admin) and the test that was formulated by Dame Janet Smith in the report to the Fifth Shipman Inquiry, as approved in the case of *Grant*, which is as follows:

*“Do our findings of fact in respect of misconduct... show that his fitness to practise is impaired in the sense that he:*

- (a) Has in the past acted and/or is liable in the future to so 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 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 tenants of the medical profession and/or;*
- (d) Has in the past acted dishonestly and/or is liable to act dishonestly in future.”*

21. The Committee was satisfied that several limbs of this test are engaged in this case, in particular that the Registrant’s conduct has brought the profession into disrepute and has breached one of the fundamental tenets of the profession.

22. The Committee had regard to the public interest and was of the view that, given the serious nature of the offence, which in its view fundamentally undermined professional practice, the need to uphold professional standards and maintain public confidence in the profession would be undermined if no finding of impairment was made. It was therefore necessary in the public interest that a finding of current impairment was made.

23. Therefore, the Committee found that the fitness of the registrant to practise as an optometrist is currently impaired.

## **Sanction**

24. The Committee considered the aggravating and mitigating factors present in this case. The Committee agreed with the aggravating factors as summarised in the APD Report, as follows:

1) the Registrant has received a conviction of a serious nature, which resulted in a sentence of a community order, rehabilitation activity, unpaid work and a requirement to register with the police in accordance with the Sexual Offences Act 2003;

2) the Registrant attempted to conceal the conduct by replacing the item;

3) the Registrant's conduct occurred in the workplace and had a lasting effect upon his long-standing colleague.

25. The Committee found the following mitigating factors:

- 1) The Registrant was of previous good character with no fitness to practise history over 28 years of practising as an Optometrist;
- 2) The Registrant has co-operated with the GOC and agreed to this APD process;
- 3) The Registrant had self-declared to the GOC within two weeks of the incident.

26. The Committee considered the sanctions available to it from the least restrictive to the most severe (no sanction, financial penalty, conditional registration, suspension, erasure).

27. In relation to taking no action, the Committee was of the view that this would not be proportionate nor a sufficient outcome given the seriousness of the misconduct and the public interest concerns. Further, there were no exceptional circumstances to justify taking no action in any event.

28. The Committee considered the issue of a financial penalty order; however, it was of the view that such an order was not appropriate nor proportionate in the circumstances.

29. The Committee considered the ISG in relation to the imposition of conditional registration. It was of the view that conditional registration would not be practicable due to the serious nature of the misconduct, which the Committee viewed as being fundamentally undermining of professional practice. Conditions would not sufficiently mark the seriousness of the misconduct in this case and would not meet the public interest.

30. Next, the Committee considered suspension and had regard to paragraphs 21.29 onwards of the ISG. In particular, the Committee considered the list of factors contained within paragraph 21.29, that indicate that a suspension may be appropriate, which are as follows:

### **Suspension (maximum 12 months)**

*21.29 This sanction may be appropriate when some, or all, of the following factors are apparent (this list is not exhaustive):*

- a. A serious instance of misconduct where a lesser sanction is not sufficient.*
- b. No evidence of harmful deep-seated personality or attitudinal problems.*
- c. No evidence of repetition of behaviour since incident.*
- d. The Committee is satisfied the registrant has insight and does not pose a significant risk of repeating behaviour.*
- e. In cases where the only issue relates to the registrant's health, there is a risk to patient safety if the registrant continued to practise, even under conditions.*

31. The Committee agreed with the APD Report that several of the above factors could be said to be engaged in this case. However, the Committee considered that a suspension order would not adequately protect the public and mark the seriousness of the Registrant's conduct, maintain confidence in the profession and declare and uphold proper standards of professional conduct and behaviour.
32. The Committee considered the relevant part of the ISG in relation to erasure, namely paragraph 21.35 onwards. It noted that erasure is only appropriate if it is the only means of protecting patients and/or maintaining public confidence in the optical profession, which the Committee considered to be the case.
33. The Committee was of the view that several of the factors listed in the Guidance at paragraph 21.35 (a)-(h), which lead towards the sanction of erasure being appropriate, applied in this case. Paragraph 21.35 states as follows:

#### **Erasure**

*21.35 Erasure is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional and involves any of the following (this list is not exhaustive):*

- a. Serious departure from the relevant professional standards as set out in the Standards of Practice for registrants and the Code of Conduct for business registrants;*
- b. Creating or contributing to a risk of harm to individuals (patients or otherwise) either deliberately, recklessly or through incompetence, and particularly where there is a continuing risk of harm to patients;*



- c. Abuse of position/trust (particularly involving vulnerable patients) or violation of the rights of patients;*
- d. Offences of a sexual nature, including involvement in child pornography;*
- e. Offences involving violence;*
- f. Dishonesty (especially where persistent and covered up);*
- g. Repeated breach of the professional duty of candour, including preventing others from being candid, that present a serious risk to patient safety; or*
- h. Persistent lack of insight into seriousness of actions or consequences.*

34. The Registrant's conduct involved a serious departure from professional standards and was an offence of a sexual nature. The Committee was of the view that given the nature and seriousness of the Registrant's conduct, his conviction, sentence and that he remains on the sex offenders register, the conduct was fundamentally incompatible with being a registered professional.
35. The Committee was satisfied that any lesser sanction than erasure would not sufficiently meet the public interest. The Committee has considered the serious nature of the offence itself and the aggravating factors, which include that this occurred in the workplace and the impact of the conduct on the Registrant's colleague. The Committee agreed with the position of the parties set out in the APD report, that erasure, in the particular circumstances of this case, would be an appropriate and proportionate sanction.
36. Accordingly, the Committee approved the APD report and made an order in the terms agreed by the parties, namely that the registrant be erased.

### **Immediate order**

37. The Committee considered whether to make an immediate order in this case. It has considered the position of the parties, which, as set out in the APD Report, both agree that an immediate order was warranted in this case, so as to protect the public and that it was otherwise in the public interest.
38. The Committee has accepted the advice of the Legal Adviser, which was to consider the statutory test in section 13I of the Opticians Act 1989 is met, i.e., whether the making of an order is necessary for the protection of members of the public, otherwise in the public interest or in the best interests of the Registrant.
39. The Committee had regard to the section of the Guidance regarding immediate orders and considered the statutory test, which required that an immediate order

had to be necessary to protect members of the public, be otherwise in the public interest or in the best interests of the Registrant.

40. The Committee decided to impose an immediate order, as given the nature and seriousness of the Registrant's conviction, it was necessary to protect the public. The Committee had concluded that erasure was the only appropriate and proportionate sanction in this case. In the circumstances, and given the serious nature of the conviction, the Committee decided that it was also in the wider public interest that an immediate order be imposed. Accordingly, the Committee imposed an immediate order of suspension.

### **Conclusion**

41. For the reasons set out above, the Committee determined to accept the agreed panel disposal as put forward by the parties, without variation.

### **Revocation of interim order**

42. The Committee was informed that there was an interim order made in this case, therefore it directed that the interim order ought to be revoked.

**Chair of the Committee: Valerie Paterson**



**Signature ...**

..... **Date: 28 October 2024**

**Registrant: Richard Carr**

**Signature ...represented, sent via email..... Date: 28 October 2024**

<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.