



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

GENERAL OPTICAL COUNCIL

F(23)40

AND

HERKIRAN RIYAIT (01-27741)

**DETERMINATION OF A SUBSTANTIVE HEARING
29 JANUARY – 02 FEBRUARY 2024**

Committee Members:	Hermione McEwen (Chair/Lay) Ben Summerskill (Lay) Nicola Enston (Lay) Caroline Clark (Optometrist) Sanna Nasrullah (Optometrist)
Clinical adviser:	Dr Jennifer Bearn
Legal adviser:	Jayesh Jotangia
GOC Presenting Officer:	Alexander Adamou
Registrant present/represented:	No and not represented
Registrant representative:	N/A
Hearings Officer:	Arjeta Shabani
Facts found proved:	Particular 1 of the Allegation – Condition 1 of the Schedule Particular 2 of the Allegation
Facts not found proved:	Particular 1 of the Allegation – Conditions 2 and 3 of the Schedule
Misconduct and [redacted]:	Found
Impairment:	Impaired [redacted]
Sanction:	Suspension from the register for a period of twelve months – (With Review)
Immediate order:	Yes



Applications

1. The Registrant was not in attendance nor represented at the hearing.
2. Mr Alexander Adamou, Counsel for the General Optical Council ('the Council'), made four applications at the start of the hearing.

Proof of Service

3. The first application related to proof of service of the notice of hearing on the Registrant.
4. The Council was required to satisfy the Committee that the notice of hearing documents had been served in accordance with Section 23A of The Opticians Act 1989 ("The Act") and complied with Rules 28 and 61 of The General Optical Council (Fitness to Practise) Rules Order of Council 2013 ("the Rules").
5. Mr Adamou submitted on behalf of the Council that the Registrant's then solicitor, the Association of Optometrists ("AOP"), had confirmed by e-mail on 24 May 2021, the Registrant's email address, and had given consent on the Registrant's behalf to receive documents and communications via it. Mr Adamou drew the Committee's attention to historic correspondence between the Registrant and the Council using the same e-mail address. Mr Adamou highlighted to the Committee that the Registrant's email address was the same as on the Council's Register too. Mr Adamou detailed how the notice of hearing documents satisfied the requirements of Rule 28.
6. The Legal Adviser advised the Committee that the contents of the notice of hearing and its service on the Registrant complied with the provisions of the Rules and Section 23A of The Act, and that effective service had been made.
7. The Committee accepted the advice of the Legal Adviser. The Committee noted that the notice of hearing had been sent to the Registrant on 26 October 2023, via the email address notified by the Registrant and confirmed by their then solicitor. The Committee had regard to the contents of the notice of hearing and was satisfied that it complied with the requirements of Rule 28. The Committee determined that the notice of hearing had been served more than 28 days in advance of the hearing as required by Rule 34(2).
8. The Committee determined that the notice of the hearing had been served upon the Registrant in accordance with the Rules and the Act.

Proceeding in the absence of the Registrant

9. Mr Adamou made a second application, to proceed with the hearing in the absence of the Registrant, subject to the Committee finding that it was satisfied that the Registrant had been properly served with notice of the hearing.

10. Mr Adamou submitted that the Council had made all reasonable efforts to notify the Registrant of the hearing. He noted that she had not provided any reasons for her absence, had not made an application for the hearing to be adjourned and had not requested reasonable adjustments to enable her attendance. He submitted that it was appropriate for the hearing to proceed in the Registrant's absence as there had already been a significant delay since the fitness to practice concern was referred to the Council and that it was in the public interest for it to be dealt with now.
11. The Legal Adviser advised the Committee of the provisions of Rule 22 on proceeding in the absence of a Registrant. He further advised the Committee of the legal test to be applied as set out in paragraphs 23 and 63 of *General Medical Council v Adeogba [2016] EWCA Civ 162*, which was whether all reasonable efforts had been taken to serve appropriate notice of the proceedings on the Registrant and whether the Registrant had deliberately chosen not to attend or be represented.
12. The Committee accepted the advice of the Legal Adviser.
13. In considering the Council's proof of service application, the Committee had already noted the efforts the Council had made to notify the Registrant of the hearing. The Committee now had to determine whether it would be in the public interest to proceed with the hearing in the Registrant's absence, having regard to any reasons she had provided for her absence.
14. The Committee noted that the Registrant had not made an application for an adjournment of the hearing nor provided any specific reason for her non-attendance. The Committee found no evidence before it to suggest that if the hearing was adjourned, the Registrant would attend at a future date. Indeed, the Committee had regard to the contents of an email from the Registrant to the Council dated 22 June 2022 stating that she was confused, no longer wanting to continue with the process as it was becoming both exhausting and overwhelming. She further stated that she was happy not to practice optometry any longer after all the stress.
15. The Committee noted the requirement for the Registrant to engage with her regulator, the Council. The Committee further noted that the Registrant had not engaged in a Case Management Meeting prior to the hearing, despite being invited to do so by the Council. The Committee considered the long delay since the Council had received the fitness to practice concern and was satisfied that it was in the public interest for the matter to be determined.
16. The Committee determined that all reasonable efforts had been made to notify the Registrant of the hearing, and it was satisfied that it was in the public interest to proceed with the hearing in the Registrant's absence.

Hearing in private

17. Mr Adamou made a third application for the hearing to be conducted in private [redacted].
18. The Legal Adviser advised the Committee [redacted].
19. The Committee accepted the advice of the Legal Adviser.

20. [redacted]
21. The Committee decided to hold the entire hearing in private [redacted].

Application to amend the Allegation

22. Mr Adamou made a fourth and final application, to amend the Allegation. He made the application under Rule 46(20). He requested the addition of the conjunctive word “/or” at the end of particular 2 of the Allegation. The application to amend was as follows:

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

- *Misconduct; and/or*
- *[redacted]*

23. Mr Adamou submitted that the amendment to the Allegation could be made without injustice. He asserted that the requested amendment did not substantially change the nature of the Allegation in that it rectified a typographical error. He submitted that the proposed amendment gave clarity to the Allegation, in that the Committee could consider misconduct and/or [redacted]. Mr Adamou stated that the Registrant had chosen not to engage and in any event the amended Allegation would be fairer to her.
24. The Legal Adviser advised the Committee of the provisions of Rule 46(20). He advised that the Committee had the power to amend the particulars of the Allegation at any time during the hearing, either upon the application of a party or of its own volition, where the amendment could be made without injustice. The Legal Adviser advised the Committee to consider whether the proposed amendment substantially changed the nature of the Allegation, whether it was fair and reasonable to make the amendment, and whether the amendment would give rise to prejudice to the Registrant.
25. The Committee accepted the advice of the Legal Adviser.
26. The Committee granted the application to amend the Allegation. In the Committee’s view the addition of the conjunctive word to the Allegation clarified it. The Committee was satisfied that the amendment would not prejudice the Registrant and could be made in the interests of justice.

ALLEGATION

The Council alleges that you, Herkiran Riyait (01-27741), a registered Optometrist:

1. [redacted]
2. In or around October 2022, you failed to engage with the [redacted] as directed by the General Optical Council's Investigation Committee.

Schedule

- [redacted]
- [redacted]
- [redacted]

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

- Misconduct; and/or
- [redacted]

Findings in relation to the facts

27. The Committee found Particular 1 of the Allegation – Condition 1 of the Schedule and Particular 2 of the Allegation proved.
28. The Committee found Particular 1 of the Allegation – Conditions 2 and 3 of the Schedule not proved.

Findings in relation to grounds of impairment: misconduct [redacted]

29. The Committee found that the facts found proved amount to misconduct.

The Committee's decision on Impairment

30. The Committee found that the fitness of Herkiran Riyait to practise as an optometrist impaired.

The Committee's decision on Sanction

31. The Committee decided that an order of suspension was the appropriate and proportionate order to impose. The Committee determined that the order

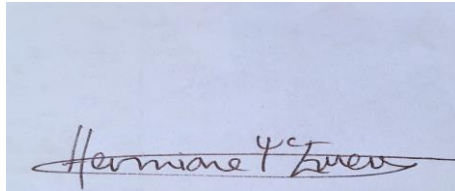
should be for the maximum 12 months to mark the seriousness of the Registrant's conduct and to satisfy the wider public interest.

- 32. The Committee decided that the suspension order should be reviewed before it expires.

Immediate Order

- 33. The Committee decided to impose an immediate order of suspension for a period of 12 months, determining that this was necessary for the protection of the public and in the wider public interest.

Chair of the Committee: Hermione McEwen



Signature

Date: 2 February 2024

Registrant: Herkiran Riyait

Signaturenot present

Date: 2 February 2024



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.