

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

GENERAL OPTICAL COUNCIL

F(22)06

AND

NIRMAL KOASHA (01-21288)

**DETERMINATION OF A SUBSTANTIVE REVIEW
20 AUGUST 2024**

Committee Members:	Sara Fenoughty (Chair) Miriam Karp (Lay) Vivienne Geary (Lay) Caroline Clark (Optometrist) Sanna Nasrullah (Optometrist)
Legal adviser:	Kelly Thomas
GOC Presenting Officer:	Ryan Ross
Registrant:	Not present
Registrant representative:	Unrepresented
Hearings Officer:	Terence Yates
Outcome:	Fitness to Practice remains impaired 6 months suspension (With Review)

Proof of service

1. The Committee heard an application from Mr Ross 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 Rules"*). Mr Ross pointed to the emails dated 30 April 2024 from the Registrant to confirm she had received the papers for this hearing, as well as the email dated 16 August 2024 from the Registrant to the General Optical Council (GOC) which stated *"I do not have any further representations for this case."*
2. The Legal Adviser outlined that for Proof of Service the Committee should be satisfied, according to *Rule 22(a) of The Rules* that all reasonable efforts have been made to notify the Registrant of the hearing in accordance with the above.
3. The Committee accepted the advice of the Legal Adviser and 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.
5. Mr Ross for the Council outlined the email received today from the Registrant, which stated *"I do not have any further representations to present and nothing further to comment on the hearing. I am happy for the hearing to continue but if you are able to provide an update by email I would be grateful."* Further Mr Ross outlined from an email received from the Registrant this morning, the Registrant stated *"I understand that as I am not able to attend the hearing will continue."*
6. Mr Ross submitted that the Committee may feel that the Registrant has voluntarily absented herself, that she appears to be aware of the proceedings and has chosen not to attend. Mr Ross also referred to the case of *GMC v Adeogba [2016] EWCA Civ 162* and the public interest test.
7. The Legal Adviser stated that the test for proceeding in absence according to Rule 22(b) was that the Committee *'having regard to any reasons for absence which have been provided by the registrant, it is satisfied that it is in the public interest to proceed.'* The Legal Adviser referred to the cases of *R v Jones [2002] UKHL* and *GMC v Adeogba [2016] EWCA Civ 162* for the factors the Committee should consider.
8. The Committee accepted the advice of the Legal Adviser. The Committee determined initially that it needed more information from the Registrant as to whether she was requesting an adjournment. An email response was received from the Registrant, which read *"Hi thank you for the offer however I am happy for you to proceed as I have no further submissions."*
9. Further to this clarification, the Committee found that the response from the Registrant was clear. The Committee concluded given the acknowledgement from

the Registrant and her email response that it would be in the public interest for the hearing to proceed in the Registrant's absence.

DETERMINATION

Background

10. The Registrant had failed to meet her 2016 - 2018 Continuing Education and Training ("CET") requirements. She was advised by the General Optical Council ('the Council') that she had not met the CET requirements and was, therefore, not permitted to undertake the activities which are restricted to registered Optometrists. This was reiterated to the Registrant on a number of occasions.

Substantive hearing – concluded February 2023

11. The Registrant did not attend the substantive hearing, which proceeded in her absence. However, she did submit written representations. The Committee dealing with the substantive hearing found it proved that between 10 April 2019 and 30 September 2019 the Registrant nevertheless conducted around 353 sight tests, a restricted activity.
12. In addition, the substantive hearing Committee also found it proved that the Registrant had dishonestly informed the Council in an email to a Senior Investigations Officer, Mr A, dated 29 November 2019, that she had "*probably conducted about 20 eye tests earlier in the year*".
13. In relation to the Registrant's clinical practice, the substantive hearing Committee found it proved that she had failed sufficiently, or at all, to maintain records relating to aspects of the treatment provided to and assessments undertaken in relation to multiple patients.
14. The substantive hearing Committee found misconduct and that the Registrant's fitness to practise was impaired on public protection and public interest grounds.
15. The Registrant's registration was suspended for 12 months following the substantive hearing which concluded on 27 February 2023. The order is due to expire on 26 March 2024 and a Review hearing was directed to take place before the end of the order.
16. The substantive hearing Committee considered that the maximum suspension of 12 months was required in this case to mark the seriousness of the misconduct, and to declare and uphold the standards of the profession and maintain public confidence in the profession.
17. The substantive hearing Committee had determined that the Registrant needed to develop her insight and to undertake CPD to maintain her skill set. This training

was to include courses targeted at the concerns arising in this case, namely on honesty, integrity and probity, as well as recordkeeping.

18. The substantive hearing Committee considered that the Committee at the Review hearing may be assisted by the Registrant supplying it with:
 - (i) Evidence of training undertaken to show development of honesty, integrity, probity, recognition of the importance of the role of the regulator and proper record keeping. Evidence of certificates of courses undertaken and detailed written personal reflections on the insight gained and how the Registrant will use this to improve her standard of practice.
 - (ii) Testimonials from friends and colleagues who are aware of the circumstances.
 - (iii) Written reflections on the misconduct, on how that has impacted on the reputation of the profession in the eyes of members of the public and of fellow professionals, as well as reflections on the importance of maintaining the standards of the profession.
 - (iv) Evidence of practical experience to keep up to date with optometric environment, this could be for example; volunteering or undertaking a non-clinical role that gives the opportunity to observe the practice of other optometry professionals.

First Substantive Review - 4 and 13 March 2024

19. The Committee heard evidence during the First Substantive Review hearing from the Registrant who attended unrepresented and supplied some evidence of her attempts to meet the above recommendations.
20. The Committee considered the documentary evidence that was before it, the evidence of the Registrant and the submissions from the parties. The Committee noted that the misconduct that was found proved was a mix of recordkeeping concerns, practising when restricted and a finding of dishonesty in respect of lying to the Council's Investigations Officer regarding the number of sight tests carried out. The Committee considered that all of the misconduct was capable of remediation.
21. The Committee had taken into account the substantive hearing determination and the findings of the previous Committee, as well as the steps which had been recommended to assist at a Review hearing, as set out above.
22. The Committee considered the steps that the Registrant had taken since the substantive hearing and was of the view that she had started to take some steps to remediate, including starting to reflect, reading guidance and listening to podcasts. The Committee noted that the Registrant had produced her CET and CPD statements for the previous and current cycle and that she had undertaken a significant number of CPD hours.

23. However, the Committee had been concerned that the vast majority of the courses were not targeted to address the misconduct in this case, of dishonesty and recordkeeping. The Committee had not been sufficiently reassured by the evidence before it, that the Registrant had sufficiently addressed the concerns in the case, had maintained her clinical skills and was safe to return to unrestricted practice.
24. The Committee had been mindful that there was in effect a persuasive burden on the Registrant to demonstrate that she is fit to resume unrestricted practice and was not satisfied in the circumstances, that the Registrant had demonstrated she was safe to do so.
25. 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 was of the view that the original suspension for a period of twelve months had served the purpose of upholding public confidence and maintaining standards of the profession, which appropriately marked the misconduct. Therefore, the Committee determined that it was neither necessary, nor proportionate, to make a finding of impairment on wider public interest grounds.
26. Accordingly, the Committee had found that the fitness of the Registrant to practise as an optometrist remained impaired on the grounds of public protection.
27. The Committee determined that in the circumstances the most appropriate and proportionate sanction to impose at that time was a further period of suspension. The Committee bore in mind the impact of this upon the Registrant and her practice. However, it was of the view that conditions of practice at that time were neither workable nor appropriate and the only appropriate and proportionate sanction to adequately protect patients was to impose a further period of suspension.
28. The Committee went on to consider the length of suspension to impose. The Committee bore in mind the length of time that the Registrant had already been suspended and that the minimum order to address the risks in the case ought to be imposed. The Committee determined that an appropriate and proportionate period of suspension was one of six months. In the Committee's view six months was the minimum period required in order to allow the Registrant sufficient time to further reflect, develop her insight and remediate adequately.
29. The Committee determined that a review hearing will be held between four and six weeks prior to the expiration of the order. The Review Committee will need to be satisfied that the Registrant:
 - Has fully appreciated the gravity of the offence;
 - has not re-offended and has maintained her skills and knowledge and
 - that the Registrant's patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.

30. The Committee at the review hearing may be assisted by the Registrant supplying it with;
- (1) Evidence of training undertaken (such as course certificates) relevant to show development of insight into honesty, integrity, probity, recognition of the importance of the role of the regulator, relevant to the Optometry sector;
 - (2) Evidence of training undertaken (such as course certificates) relevant to show development of proper record keeping, relevant to the Optometry sector;
 - (3) Any further testimonials from friends and colleagues who are aware of the circumstances;
 - (4) Detailed written reflections on learnings from the further training undertaken and the misconduct and on the importance of maintaining the standards of the profession;
 - (5) Evidence of practical experience to keep up to date with optometric environment, this could be for example; volunteering or undertaking a non-clinical role that gives the opportunity to observe the practice of other optometry professionals. This could include evidence of the shadowing undertaken, and a report or testimonial from any mentor.
31. The Registrant's registration was further suspended for 6 months following a substantive review hearing held on 4 and 13 March 2024. The order is due to expire on 26 September 2024.

Second Substantive Review - 20 August 2024

Findings regarding impairment

32. This Committee heard submissions from Mr Ross on behalf of the Council who were neutral on the issue of impairment. Mr Ross outlined the previous hearings and the evidence supplied by the Registrant at the previous substantive review, namely evidence of CPD points, a reflective statement and testimonials. Mr Ross submitted that despite the previous Committee's indication of further information which would assist this Committee, the Registrant has supplied no further information for consideration. Further, the Registrant has not explained why there has been no further information supplied.
33. There were no representations or documents supplied from the Registrant who did not attend.
34. The Legal Adviser advised on the cases of *Abrahaem v GMC EWHC 183 (Admin)* and *Khan v GPhc [2016] UKSC 64* and advised that there is a persuasive burden upon a Registrant to demonstrate that they are fit to resume unrestricted practice. Further, the focus of a review hearing is upon the current fitness of the registrant to resume practice, judged in light of what they have, or have not, done since the substantive hearing and whether they remain impaired. The Legal Adviser also outlined the *Hearings and Indicative Sanctions Guidance ("The Guidance")*

Paragraphs 16.1-16.7, as well as the personal and public elements of impairment, pointing to the Council's overriding objective, namely "To protect, promote and maintain the health, safety and well-being of the public, the protection of the public by promoting and maintaining public confidence in the profession and promoting and maintaining proper professional standards and conduct."

35. The Legal Adviser also outlined the public interest considerations and whether an ordinary well-informed person would expect a declaration of current impairment in order to promote and maintain public confidence in the profession. The case of *CHRE v NMC (Grant) [2011] EWHC 927 (Admin)*, para 76 gives four principles to consider as to whether the Registrant has:
 - (a) 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.
 - (b) has in the past brought and/or is liable in the future to bring the profession into disrepute.
 - (c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession.
 - (d) has in the past acted dishonestly and/or is liable in the future to act dishonestly.
36. The Committee accepted the advice of the Legal Adviser.
37. The Committee considered the documentary evidence that was before it, information from the previous hearings and the submissions from Mr Ross.
38. The Committee noted that the misconduct that was found proved was a mix of recordkeeping concerns, practising when restricted and a finding of dishonesty in respect of lying to the Council's Investigations Officer regarding the number of sight tests carried out. The Committee considered that all of the misconduct was capable of remediation.
39. The Committee took account of the substantive hearing determination and the findings of the previous reviewing Committee, as well as the steps which had been recommended to assist at a Review hearing, as set out above. The Committee was mindful that it was not bound by the views of the earlier Committee, and it had to come to its own independent judgement on whether or not the Registrant was currently impaired.
40. The Committee considered the steps that the Registrant has taken since the last substantive review hearing and noted that no information at all had been forthcoming from the Registrant. There was a lack of any further information which would allow the Committee to make an informed decision on the risks of repetition, whether the Registrant had kept up to date with practice with CPD or appreciated the gravity of the conduct itself.
41. The Committee shared the previous Committee's concerns in relation to insight and agreed that the previous reflections had failed to adequately meet the concerns of the Committee in relation to the type of misconduct, namely dishonesty and record keeping. The Committee considered that the Registrant had started to

develop and provide evidence of the above, but more detail was necessary for the Committee to be satisfied that the Registrant had properly understood what was expected of her.

42. The Committee was mindful that the Registrant had been absent from practice for a considerable period, possibly as long as 4 years given that she had been given an Interim Order initially. The Committee was not reassured by evidence before it, and it had no recent evidence that the Registrant had sufficiently addressed the concerns in the case, had maintained her clinical skills and was safe to return to unrestricted practice.
43. Accordingly, the Committee was not satisfied, based on the evidence before it, that the Registrant has sufficiently reflected and remediated her conduct.
44. The Committee noted that there had been no repetition of the conduct since 2019. However, it was the view of the Committee that as the Registrant had further reflection and remediation to undertake, and had not taken any steps since the last hearing, were she to return to unrestricted practice, this would pose a risk to patient safety. As a result, there still remained a potential risk to the public.
45. 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 considered that there was a puzzling absence of any information provided by the Registrant to indicate that she had taken the previous Committee's recommendations seriously. The Committee was concerned that the Registrant had not addressed any of the recommendations despite her repeated reassurances at the last hearing. Further, no explanation had been provided by the Registrant as to why she had been unable to supply this information. The Committee concluded that this lack of engagement increased its concerns and found that the public interest element was now engaged. The Committee considered that the ordinary well-informed person would be concerned where a Registrant had failed to address any of the concerns of her Regulator, despite reassurances at the last hearing that she would do so, and further had failed to supply any information as to why.
46. 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 not satisfied in the circumstances, that the Registrant had demonstrated she was safe to do so.
47. Accordingly, the Committee found that the fitness of the Registrant to practise as an optometrist remains impaired on the grounds of public protection and public interest.

Findings regarding Sanction

48. The Committee has heard submissions from Mr Ross on behalf of the Council, namely that the GOC were neutral on sanction. Mr Ross outlined that sanctions

are not supposed to be punitive although may have that effect. Mr Ross submitted that the Committee should start with the least restrictive sanction and work up to the most serious, and he went through each of the sanctions, including no further action, financial penalty, conditional registration, suspension and erasure.

49. There were no representations or documents supplied from the Registrant who did not attend.
50. The Committee heard and accepted the advice of the Legal Adviser, who referred to *The Guidance* at *Paragraphs 20-23* as well as sections *13F-13H of the Opticians Act 1989*, namely that the purpose of imposing a sanction is not to punish the Registrant but to protect patients and the wider public interest. It is for the Committee to form their own judgement, and to consider the least restrictive sanction first, and where not appropriate or proportionate, to move to the next available sanction in ascending order. Sanctions are not designed to punish although may well have that effect.
51. The Committee considered the sanctions available to it from the least restrictive to the most severe as set out in *The Guidance*. The Committee was mindful that the purpose of imposing a sanction is not to punish the Registrant but to protect patients and the wider public interest. The Committee applied the principle of proportionality by weighing the Registrant's interests against the wider public interest.
52. The Committee was of the view that given the lack of material remediation and insight, it would neither be appropriate nor proportionate to make no order. Furthermore, there were no exceptional circumstances that would justify taking no action. The Committee was of the view that a financial penalty order was not appropriate given the serious nature of the misconduct found.
53. The Committee next went on to consider whether a conditions of practice order was a sufficient and proportionate response to the risks identified. The Committee had regard to paragraph 21.25 of *The Guidance*, which states:

21.25 Conditional registration may be appropriate when most, or all, of the following factors are apparent (this list is not exhaustive):

 - a) No evidence of harmful deep-seated personality or attitudinal problems*
 - b) Identifiable areas of registrant's practise in need of assessment or retraining*
 - c) Evidence that registrant has insight into any health problems and is prepared to agree to abide by conditions regarding medical condition, treatment, and supervision*
 - d) Potential and willingness to respond positively to retraining*
 - e) Patients will not be put in danger either directly or indirectly as a result of conditional registration itself*
 - f) The conditions will protect patients during the period they are in force*

g) It is possible to formulate appropriate and practical conditions to impose on registration and make provision as to how conditions will be monitored.

54. The Committee noted that the original order of suspension was imposed for record keeping concerns, practising when restricted and dishonesty. In relation to the record keeping concerns, this is an identifiable area of the Registrant's practice where there are shortcomings, which conditions could address. The Committee considered that conditions of practice were less apt to address the dishonesty and working whilst restricted aspects of the case. The Committee therefore considered that *paragraph 21.25 b)* of *The Guidance* was only applicable to the record keeping aspect of the misconduct and *paragraph 21.25 g)* was not met, as it would be difficult to formulate 'appropriate, proportionate, workable, and measurable conditions in respect of the dishonesty.
55. The Committee noted that the Registrant had at the previous hearing expressed genuine regret and apologised, and it considered that her difficult personal circumstances did mitigate the conduct to a limited extent. However, at the previous hearing the Committee found that the Registrant is yet to fully remediate and her insight is still developing, therefore a risk to patient safety remains. The Committee noted the Registrant's previous evidence that she had indicated a willingness to improve further and stated that she would comply with any conditions of practice imposed.
56. However, in the absence of any information which could address how the Registrant had developed her insight further, particularly regarding record keeping and dishonesty, for example by the completion of targeted courses and further reflection upon probity, integrity and record keeping, the Committee considered that the options available to it were limited, and concluded that conditional registration was not an appropriate or proportionate sanction.
57. The Committee went on to consider suspension and noted *Paragraph 21.29* of *The Guidance* as to when this sanction may be appropriate, namely:
- 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.*
58. The Committee was mindful of oral evidence and written documents provided to the last Committee that addressed limbs c) and d) above, albeit that the previous Committee outlined that there were still some developments to be demonstrated. The Committee considered that in the absence of any further representations as to the Registrant's current employment, it was unable to be sufficiently reassured

that her situation had improved at all. The Committee again reminded themselves of the opportunity which had been given to the Registrant since the last hearing to meet the concerns raised.

59. The Committee determined that in the circumstances, considering all of the above matters, the most appropriate and proportionate sanction to impose at this time is a further period of suspension.
60. The Committee did briefly consider erasure in this matter, as it was unclear why the Registrant had failed to provide any information that she had undertaken to provide at the last hearing. The Committee was mindful of the personal challenges the Registrant outlined on the last occasion and were concerned that this may have interfered with the Registrant's ability to comply. The Committee reminded itself it must not speculate and it was required to make a decision on the information available today. The Committee were inclined to allow the Registrant another attempt to remedy the lack of information in order to reassure the GOC that she was moving towards being fit to return to unrestricted practice.
61. However, given the lack of progress since the last hearing, the Committee was clear that this position could not continue. If the Registrant continued to be unable to demonstrate sufficient progress at the next hearing, or at least provide an explanation as to why there was such a failure in that progress, the next Committee would need to consider all options available to it.
62. The Committee went on to consider the length of suspension to impose. The Committee bore in mind the length of time that the Registrant has already been suspended and that the minimum order to address the risks in the case ought to be imposed. The Committee determined that an appropriate and proportionate period of suspension was one of six months. In the Committee's view six months was the minimum period required in order to allow the Registrant sufficient time to further reflect, develop her insight and remediate adequately.

Review Hearing

63. A review hearing will be held between four and six weeks prior to the expiration of this order. The Review Committee will need to be satisfied that the Registrant:
 - has fully appreciated the gravity of the offence
 - has not re-offended and has maintained her skills and knowledge
 - that the Registrant's patients will not be placed at risk by resumption of practice or by the imposition of conditional registration
64. The Committee at the review hearing may be assisted by the Registrant supplying it with:

- (1) Evidence of training undertaken (such as course certificates) relevant to show development of insight into honesty, integrity, probity, recognition of the importance of the role of the regulator, relevant to the Optometry sector;
- (2) Evidence of training undertaken (such as course certificates) relevant to show development of proper record keeping, relevant to the Optometry sector;
- (3) Any further testimonials from friends and colleagues who are aware of the circumstances;
- (4) Detailed written reflections on learnings from the further training undertaken and the misconduct and on the importance of maintaining the standards of the profession;
- (5) Evidence of practical experience to keep up to date with optometric environment, this could be for example; volunteering or undertaking a non-clinical role that gives the opportunity to observe the practice of other optometry professionals. This could include evidence of the shadowing undertaken, and a report or testimonial from any mentor.
- (6) Evidence that if you are unable to provide the evidence suggested in paragraphs (1) to (5) above, that an explanation is provided so that Committee can understand why that progress was not made.

Chairman of the Committee: Sara Fenoughty



Signature

Date: 20 August 2024

Registrant: Nirmal Koasha

Signature Not present and sent via email

Date: 20 August 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.