

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

GENERAL OPTICAL COUNCIL

F(22)13

AND

ROSS HUTCHESON (01-24464)

**DETERMINATION OF A SECOND SUBSTANTIVE REVIEW
01 NOVEMBER 2023**

Committee Members: Graham White (Chair)
Ian Hanson (Lay)
Miriam Karp (Lay)
Alexander Howard (Optometrist)
Claire Roberts (Optometrist)

Legal adviser: Paul Moulder

Clinical Adviser: Dr Keith McIntyre

GOC Presenting Officer: Tope Adeyemi

Registrant: Present and not represented

Registrant representative: N/A

Hearings Officer: Abby Strong-Perrin

Outcome: **Conditional Registration Order extended by 12
months - conditions varied**

DETERMINATION

1st Substantive Review – 10 August 2023

Background

1. The Registrant was an optometrist and store director at Specsavers REDACTED. Following a mystery shopper visit in April 2018, concerns were identified regarding the Registrant's conduct. The mystery shopper recorded the sight examination, and it showed the Registrant carrying out an incomplete test. This was brought to the attention of the professional services consultant.
2. An internal investigation was carried out focusing on the Registrant's other patient examinations. It found several clinical failings carried out on other patients. During the internal investigation, the Registrant was asked to attend an interview in July 2018. He told investigators that he had been going through REDACTED he said affected his work.
3. The Registrant referred himself to the GOC on the 15 October 2018 regarding a video recording made by the mystery shopper and what it showed, namely an incomplete examination carried out by the Registrant.
4. A second referral was made by Specsavers with regard to similar concerns on review of other patient records and also based on information provided by patients in their customer feedback form. An internal investigation was opened and found a history of failures by the Registrant when dealing with a number of patients. The failings relate to assessments, advice and recording of information in patient records. The investigation concluded that the Registrant had also acted dishonestly and attempted to cover up his failings by amending clinical records.
5. The case examiners referred the allegations relating to the clinical failings to the Fitness to Practise Committee on the 20 February 2022. REDACTED
6. The Registrant was subject to an Interim Conditions Order from November 2018. Following further clinical concerns this order was replaced with an Interim Suspension Order in May 2019. In June 2021 the Interim Suspension Order was replaced with an Interim Conditions Order until the substantive hearing in July 2022. Under the new Interim Conditions Order the Registrant was required to work under "close supervision" and his supervisor was Ms A. The Registrant worked from time to time under Ms A's supervision while continuing to maintain his full-time employment as a prison officer.
7. An Agreed Panel Disposal (APD) was approved between the Council and the Registrant on 10 May 2022. The APD report set out what both parties agreed and the proposed disposal which was placed before the substantive Committee at a substantive APD hearing held on 18-19 July 2022. The APD report concluded that since his referral to the Council the Registrant had shown considerable improvement in his practice as evidenced in his positive supervisory reports. REDACTED

8. The substantive Committee determined that the Registrant's registration be suspended for a period of 12 months. That Committee considered the review committee would need to be satisfied:
 - That the Registrant has fully appreciated the nature of the misconduct;
 - That he has maintained his skills and knowledge;
 - That the Registrant's patients would not be placed at risk by resumption of practice or by the imposition of conditional registration.
9. The Committee further considered that it would be helpful to a future reviewing Committee if the Registrant set out his intentions with regard to returning to practice together **REDACTED**
10. The order was due to expire on 15 August 2023.

Findings regarding impairment (12 July 2023)

11. Prior to and during the hearing the Registrant provided this Committee with the following documents:
 - **REDACTED**
 - CPD statement for the current cycle 2022-2024.
 - CET statement for the 2019-2021 cycle.
 - Reports from his supervisor, Ms A dated 1 September 2021, 4 February 2022, and 30 May 2022.
12. In his evidence to this Committee the Registrant provided an update on his current circumstances. He remains employed as a prison officer, but is currently not attending the workplace due to the difficulties of working in this environment **REDACTED** was hoping to return imminently to his employment with amended duties.
13. The Registrant acknowledged that his current fitness to practise was compromised to an extent because of his lack of confidence and his rustiness. He spoke to the Committee about his underlying belief that he has the knowledge and ability to practise well as an Optometrist. He attributed his past misconduct to the difficulties in his **REDACTED** as described in detail in his statement for the Specsavers' investigation. The Registrant accepted that the CPD training he has undertaken during the past year when he has been subject to a suspension order has been limited and not targeted to any of the specific deficiencies as found proved by the substantive hearing committee. He acknowledged that there was an extent to which he had not sufficiently thought about the areas in which he needed to refresh his knowledge and skills.
14. The Registrant was asked about the supervised sessions with Ms A and he confirmed that they were limited to approximately five sessions in 2022 as set out in her reports.

15. The Registrant was asked about his REDACTED and his coping strategies if he were faced with similar difficulties in the future. The Registrant spoke about his greater understanding of his own vulnerabilities and gave the example of his decision to seek help when he needed it REDACTED
16. The Committee has heard submissions from Ms Sheridan on behalf of the Council. She submitted that the Registrant's fitness to practise is currently impaired. She submitted that the Registrant has not practised as an Optometrist for the last twelve months. Prior to the suspension, he had not practised autonomously for five years and had only undertaken a small number of sessions with Ms A under close supervision. The CPD training he has undertaken was not focussed on the clinical failings. Ms Sheridan submitted that there therefore remained a risk of repetition.
17. Ms Sheridan also invited the Committee to consider the issue of dishonesty and the Registrants answers relating to this topic.
18. The Registrant had no further submissions to add to his documentary and oral evidence. The Registrant remained committed to returning to practise.
19. The Clinical Adviser, Dr Dunleavy, advised the Committee that it would appear that the Registrant's REDACTED .
20. The Committee accepted the advice of the Legal Adviser. She advised that there is a persuasive burden upon a Registrant to demonstrate that they are fit to resume unrestricted practice with reference to the case of *Abrahaem v GMC* [2008] EWHC 183. 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 judgment in relation to the question of whether there was current impaired fitness to practise.
21. The Committee was of the view that the Registrant had demonstrated some insight, particularly in relation to his greater understanding of his own vulnerabilities and REDACTED. The Committee was of the view that the Registrant may be over-confident in believing that the full extent of all the deficiencies in his practice was attributable to the REDACTED. In this respect the Committee had in mind the serious and wide-ranging nature of the deficiencies over a significant period of time. Nevertheless, the Committee recognised that the Registrant had fully engaged with the Committee and that he acknowledged that his current fitness to practise is compromised.
22. The Committee considered that the Registrant had so far made insufficient progress in remedying the deficiencies in his practice. He had been subject to a suspension order and had not been able to practise, he had also not undertaken any targeted training and the CPD he had undertaken was limited. In addition, the Registrant recognised himself that he lacked confidence and his skills were rusty.
23. Given absence of sufficient remedial steps at this stage, in the Committee's judgment, the Registrant would likely continue to pose a risk to the public if he

were able to practise without restriction. Consequently, there was an ongoing risk of harm to members of the public. This ongoing risk also engaged the wider public interest because there was a risk of damage to the reputation of the profession if the Registrant were to be permitted to practise without restriction.

24. Therefore, the Committee decided that the Registrant's fitness to practise was currently impaired.

Sanction (10 August 2023)

25. In reaching its decision, the Committee took into account the submissions on behalf of the Council by Ms Sheridan and the Registrant as well as reminding itself on the facts found proved and the previous decisions on misconduct and impairment.
26. The Committee took into consideration the Registrant's self-directed personal learning between 12 July and 9 August 2023 which was presented as a list to the Committee in a pdf document. The Committee accepted the Clinical Adviser's and the Legal Adviser's advice.
27. Ms Sheridan reminded the Committee of the relatively limited extent of CPD undertaken by the Registrant. She submitted that the Registrant had not practised autonomously for five years, that his clinical skills were "rusty" and that his confidence was at "rock bottom". However, the Council took a neutral position as to sanction.
28. The Committee took the view the Registrant had not provided enough evidence of addressing the underlying clinical concerns, albeit that some insight had been shown. It appreciated that having been suspended by a previous Committee the Registrant had not been afforded an adequate opportunity to address those concerns. Nevertheless, the Committee was mindful of the fact that the Registrant had not provided any concrete plan towards being permitted back to work as an Optometrist or any engagement with the Optometric profession as a whole.
29. The Committee took the view that the Registrant had not made any progress in addressing the clinical failings by either shadowing, attending courses or completing sufficient CPD in the time between suspension and the hearing of 21 July 2023. The Committee had little evidence to suggest that he could work to the minimum standards required of an unrestricted Registrant.
30. Accordingly, the Committee was concerned that the Registrant had not shown the necessary skills and knowledge with an ability to safely return to unrestricted practice.
31. The Committee was mindful of the fact that it was required to be proportionate in reaching a decision and carried out a balancing exercise. The Committee began with considering the least restrictive sanction. It concluded that conditions of practice for the duration of four months was proportionate and necessary under

the circumstances to balance the overarching objectives of public protection and the upholding of proper standards with the Registrant's own interests. It took the view that suspension would be disproportionate and would effectively impede the Registrant's further progress.

32. The Committee in reaching its decision took the view that although there remained some risk, a conditions of practice order for a period of four months with a review would be sufficient to protect the public.
33. At the review hearing a future Committee might be assisted by:
 - a. A detailed back to work plan
 - b. Evidence of relevant CPD
 - c. Evidence of engagement in the Optometric profession
 - d. Positive testimonials
 - e. Evidence of shadowing Optometrist colleagues
34. This Order was to take effect from the 15 August 2023 when the current order expired.

DETERMINATION

2nd Substantive Review hearing – 01 November 2023

35. The Registrant provided the Committee with an update regarding his circumstances since the last review. The Council, represented by Ms Adeyemi relied on its Skeleton Argument dated 29 September 2023. The Committee was also provided with a review bundle of 358 pages, including past determinations, reports and evidence from the case.
36. In advance of the hearing, the Registrant provided to the Council the following documents:
 - Emails dated 16 August and 20 September 2023, updating compliance with conditions of practice
 - CPD statement 2023
 - 'Optometry Return 2023' document detailing the two clinical observation sessions in September 2023 and other activities
37. The Registrant had provided in advance of the hearing an email dated 20 September 2023 providing information concerning his compliance with the conditions of practice. The Registrant stated in his email that he had issues with regard to his re-registration with the Council which had only lately been resolved.

As a result, he said he had been unable to re-join the Performers' List for NHS England. The Registrant stated that he has been unable to complete any practice sessions on which to ask his supervisor to report. The Registrant stated that he had undertaken some clinic observations with other experienced optometrists.

38. REDACTED

39. The Registrant said that he had now achieved re-registration with the Council and was working on re-joining the NHS Performers' List. He said that he had not appreciated how long the administrative procedures would take. He had also joined the AOP.

40. Mr Hutcheson said that he had undertaken some observations with optometrists but was concerned not to over-step what was permissible in those, whilst he was not registered with the Council or on the NHS Performers' List. He had a good relationship with his proposed supervisor, who was the Chair of the REDACTED Local Optical Committee ("LOC"). Mr Hutcheson said that he now had a more holistic view of the profession and appreciated the benefit of increased engagement with a wider section of the optometrist community.

41. The Registrant described the continuing professional development which he had undertaken and confirmed that it included theoretical assessments but not practical observations. The Registrant told the Committee that he was mindful of the need to actually see patients in practice, in order to demonstrate remediation. He had to balance his work with the need to support his family and was currently continuing in work as a prison officer. He hoped to be in work as an optometrist working part-time about 3 days per week, which would be financially viable for him.

42. Ms Adeyemi submitted that the steps taken by the Registrant were clearly positive. She acknowledged that he was putting in efforts to remediate. However, she submitted, there was insufficient evidence to demonstrate that the Registrant was able to work without restriction. Ms Adeyemi submitted that there remained a risk to the public and reputational damage if the current order did not continue. Ms Adeyemi relied on her skeleton argument in the bundle.

43. Mr Hutcheson submitted that he had explained his position as fully as he could in giving evidence. He told the Committee that he was waiting to get going in a return to practice.

44. REDACTED

45. The Legal Adviser advised the Committee that it had to determine whether to exercise its powers under s13F(13) of the Act. In considering this question, the court had stated in *Abrahaem v GMC* [2008] EWHC 183 that, at a review there is a persuasive evidential burden on the professional that they had dealt with any previous concerns with regards to their fitness to practise. He advised that the Committee had to decide first whether the Registrant's fitness to practise remained currently impaired, and if so, which of the possible directions under s13F(13) it should make. He advised the Committee that its approach to impairment had to bear in mind the need to protect patients and the need to maintain public

confidence in the profession. Any direction had to be proportionate to the level of impairment.

Decision on Impairment (01 November 2023)

46. The Committee took into account all the information provided, including the review hearing bundle and the additional documents submitted by the Registrant. It also considered the Registrant's oral evidence given to the review hearing today, together with the submissions of both parties and the legal advice.
47. The Committee first considered whether the Registrant's fitness to practise remains currently impaired, according to its own judgement. The Committee considered whether it was satisfied that the Registrant had fully acknowledged his past misconduct and remedied it to the point that he was highly unlikely to repeat his past failings. The Committee considered whether the Registrant was safe to return to unrestricted practice. The Committee also considered whether, in any event the wider public interest in maintaining public confidence in the profession, or maintaining standards required a finding of impaired fitness to practise, notwithstanding any risk of repetition.
48. The Committee took into account the determinations of the previous Committees which had imposed the suspension order and had varied this to conditions of practice on review. Although the Committee was careful to make its own judgement on matters, it took into account the concerns which previous Committees had raised with regards to the Registrant's practice.
49. The Committee carefully considered the past concerns and the evidence that it had received. The Committee recognised the wide-ranging and serious deficiencies involved in the original findings. However, the Committee was satisfied that the Registrant has continued to make progress since the last review.
50. The Committee, having heard the Registrant give evidence and considered the papers, concluded that in the past, the Registrant had been affected by a number of factors which had influenced his conduct. REDACTED
51. The Committee considered that the Registrant has much greater insight today into the past concerns. REDACTED
52. The Committee noted that the Registrant no longer worked in the environment in which he had worked in 2018. Further, the Committee was pleased to note that the Registrant had begun to engage with the wider optometry community and had built a good relationship with the Chair of the LOC, who was his agreed workplace supervisor.
53. The Committee considered that any need for marking the previous misconduct in terms of the wider public interest had been satisfied already by the imposition of a year's suspension of the Registrant's registration as an optometrist.
54. The Committee noted the central concern of the Committee last reviewing this case had been the length of time for which the Registrant had been out of practice. It had considered that there was a risk of harm to the public which arose from the

insufficient progress in remedying deficiencies and rebuilding his professional confidence.

55. The Committee on the last occasion had imposed conditions, with a view to the Registrant committing to and being able to sustain a guided return to practice, working in practice to address the deficiencies in a supervised manner.
56. The Committee reviewing the case today was pleased to note that the variation to conditions of practice, together with the improvements in the Registrant's personal circumstances had resulted in him having committed to an effective return to optometric practice. The Registrant has remained engaged with his regulator, his professional association and the wider profession.
57. The Committee is satisfied that there is no need to make a finding of impairment on the basis of maintaining public confidence in the profession, or professional standards. All those issues have been dealt with by the previous period of suspension.
58. The Committee accepted that, in practical terms, there have been obstacles to the Registrant's return to optical practice. Some of the administrative matters have been resolved and some remain to be concluded. However, this had the result that, as matters stand, the Registrant has not been able to provide the review with sufficient evidence that he has remedied his past deficiencies and that he is safe to return to unrestricted practice on the expiry of this current order. Therefore, the Committee finds the Registrant's fitness to practise is currently impaired, due to the continuing risk of harm.
59. The Committee noted that the Council had not sought to suggest that the conditions had been breached in the circumstances where the Registrant had not been able to obtain employment in optical services. The Committee considered that this position was a reasonable one.
60. Having decided that the Registrant's fitness to practise is impaired, the Committee next considered what direction it should make, pursuant to s13F(13) of the Act. It first considered taking no action. However, having decided that there remained a risk of harm, this would be insufficient to protect the public.
61. The Committee next considered whether it should extend the current conditions. The Committee was mindful that there was a clear commitment from the Registrant to a return to safe practice but also a requirement to ensure the public was safe while this was achieved. It considered that supervision of the Registrant's practice remains necessary in order to protect the public. However, being proportionate, the Committee considered that for the Registrant to be able to demonstrate remediation required him to be able to obtain a position in which he could work towards full remediation.
62. The Committee was satisfied with the level of insight displayed by the Registrant and does not consider that there are any attitudinal issues. It is a case of ensuring that the Registrant is sufficiently confident and up to date with knowledge and skills to return to unrestricted practice.

63. The Committee was satisfied, having heard from the Registrant and considered the evidence, that he is committed to a safe return to practice and would comply with conditions. It accepted that he had been unable to demonstrate full compliance with conditions to date due to not being able to obtain experience in optometric practice.
64. The Committee therefore decided that it was appropriate to maintain the current conditions of practice order. However, it was proportionate in its view for there to be a variation of the conditions in relation to supervision, condition A1.3(d). The Committee was satisfied that the public would be sufficiently protected if, in the general course, the Registrant is supervised by a person available to give direct supervision by being present in the practice. In addition, however, that supervisor should provide immediate supervision in the same room during one sight test per week.
65. The Committee considered that the condition as varied is proportionate because it maintained an element of immediate supervision whilst making it more likely that the Registrant will be able to obtain an optometric position.
66. The Committee also determined to vary condition A1.4, noting that there is no condition specifically requiring a Personal Development Plan, but considering that it would better accord with the concerns in the case for the supervisor's report to address the following areas: clinical assessment; advice to patients; quality of record-keeping.
67. The Committee next considered the period for which the conditions ought to be extended, bearing in mind that the maximum is three years. It concluded that a period of twelve months is required and is proportionate. The Committee considered that, bearing in mind the Registrant's plans for a return to practice, it would take this period for him to be able to demonstrate that he had gained the experience necessary. The Committee took into account that its order will be reviewed before the expiry of this period and it will be necessary at that review for the Registrant to demonstrate his progress.
68. The Committee therefore extends the current conditions from its current expiry date for a period of twelve months and varies the conditions mentioned above. For the avoidance of doubt, the Committee sets out the new conditional registration order as varied and in full below. These conditions apply from the expiry of the current conditions.
69. Shortly before the expiry of the extension period, the order will be reviewed by another Committee. At that review, the next Committee will be assisted by the Registrant's attendance. This Committee cannot bind the next one, but the next Committee may be assisted by the Registrant providing it, along with any other information he wishes to bring, with the following:
- a. Evidence of relevant CPD
 - b. Evidence of continued engagement in the Optometric profession

c. Relevant testimonials

70. The conditions, as varied are set out below.

Chairman of the Committee: Graham White



Signature

Date: 01 November 2023

List of conditions

<p>A1.1 Informing others</p>	<p>You must inform the following parties that your registration is subject to conditions. You should do this within two weeks of the date this order takes effect.</p> <ul style="list-style-type: none"> a. Any organisation or person employing or contracting with you to provide paid or unpaid optical services, whether or not in the UK (to include any locum agency). b. Any prospective employer or contractor where you have applied to provide optical services, whether or not in the UK. c. Chairman of the Local Optometric Committee for the area where you provide optometric services. <p>The NHS body in whose ophthalmic performer or contractor list you are included or are seeking inclusion.</p>
<p>A1.2</p>	<p>You must inform the GOC if:</p>

<p>Employment and work</p>	<ul style="list-style-type: none"> a. You accept any paid or unpaid employment or contract, whether or not in the UK, to provide optical services. b. You apply for any paid or unpaid employment or contract to provide optical services outside the UK. c. You cease working. <p>This information must include the contact details of your prospective employer/ contractor and (if the role includes providing NHS ophthalmic services) the relevant NHS body.</p>
<p><u>A1.3</u></p>	<p>You must:</p> <ul style="list-style-type: none"> a. Identify a workplace supervisor who would be prepared to monitor your compliance with these conditions. b. Ask the GOC to approve your workplace supervisor within two weeks of the date this order takes effect. If you are not employed, you must ask us to approve your workplace supervisor before you start work. c. Identify another supervisor if the GOC does not agree to your being monitored by the proposed supervisor. d. <u>Place yourself under the following arrangements for supervision of your practice:</u> <ul style="list-style-type: none"> i. <u>Direct supervision by your supervisor (who must be physically present in the practice throughout all consultations) and to remain under his/her supervision for the duration of these conditions, and;</u> ii. <u>Immediate supervision during each working week of one sight test by your supervisor (who must be physically present in the room throughout the consultation).</u> e. At least once a week meet your supervisor to review compliance with your conditions and <u>your progress in respect of:</u> <ul style="list-style-type: none"> i. <u>Clinical assessment</u> ii. <u>Advice to patients</u>

	<p>iii. <u>Quality of record-keeping</u></p> <p>f. At least every month or upon request of the GOC, request a written report from your supervisor to be provided to the GOC, detailing how you have complied with the conditions he/she is monitoring.</p> <p>Inform the GOC of any proposed change to your supervisor and again place yourself under the supervision of someone who has been agreed by the GOC.</p>
A1.4 Other proceedings	You must inform the GOC within 14 days if you become aware of any criminal investigation or formal disciplinary investigation against you.
A1.5 Registration requirements	<p>You must continue to comply with all legal and professional requirements of registration with the GOC.</p> <p>A review hearing will be arranged at the earliest opportunity if you fail to:-</p> <p>a. Fulfil all CET requirements; or</p> <p>Renew your registration annually.</p>
A4.1 Restriction on practice	<p>You must:</p> <p>Not undertake any locum work unless agreed in advance by your workplace supervisor and the Registrar.</p>

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.