

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

**GENERAL OPTICAL COUNCIL**

**F(10)13**

**AND**

**DAVID CLEGG (01-8753)**

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**DETERMINATION OF THE INQUIRY: 13-15 JUNE, 15 SEPTEMBER 2011**

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On 13-15 June and 15 September 2011, the Fitness to Practise Committee of the General Optical Council met to consider allegations against David Clegg.

**ALLEGATION**

The Council alleges that in relation to you, David Clegg (a registered optometrist):

1. On 4 December 2009 you underwent a performance assessment and you examined Patients 1, 2, 3 and 4:
  - a. In relation to Patients 1, 2, 3 and 4, your history and symptom taking was inadequate.
  - b. In relation to Patients 1, 2, 3 and 4, your oculo-motility testing was inadequate in that:
    - i. the testing did not go far enough out in any direction of gaze;
    - ii. not all positions of gaze were investigated; and
    - iii. it was undertaken too quickly.
  - c. Your cover testing was inadequate in that:
    - i. you did not undertake the testing with spectacle correction for Patients 1, 2 and 3;
    - ii. you failed to select suitable fixation target for Patients 1, 2, 3 and 4; and
    - iii. the testing was undertaken too quickly for Patients 1, 2, 3 and 4.
  - d. Your confrontation testing was inadequate in that:
    - i. you did not undertake a true confrontation test in relation to Patient 1 in that practitioner and patient visual fields were not compared.
    - ii. you undertook the testing too quickly in relation to Patients 1, 2, 3 and 4;

- iii. it was undertaken with a target too close to fixation in relation to Patients 1, 2, 3 and 4; and
  - iv. you failed to assess all of the quadrants fixation in relation to Patients 1, 2, 3 and 4.
- e. The over-refractions you performed were inadequate in that:
- i. Withdrawn by the Council;
  - ii. Withdrawn by the Council;
  - iii. Withdrawn by the Council;
  - iv. Withdrawn by the Council
  - v. you did not carry out an adequate subjective refraction, in that it was not tested at VDU usage distance in relation to Patient 2.
- f. Withdrawn by the Council.
- g. You did not adequately undertake slit lamp microscopy in that:
- i. you did not undertake a thorough assessment of the eye lids, in relation to Patient 1, a patient who presented with symptoms of red and itchy eyelids;
  - ii. you did not undertake a detailed assessment of the crystalline lens of either eye in relation to Patients 1, 2, 3 and 4,;
  - iii. you did not instil a stain to facilitate corneal assessment, despite the fact that the patient presented with red and itchy eyes in relation to Patient 1;
  - iv. you did not assess the anterior chamber angle prior to dilation in relation to Patient 2; and
  - v. you did not maintain adequate standards of hygiene in relation to Patients 2 and 4.
- h. You did not adequately undertake direct ophthalmoscopy in that:
- i. you did not change the lens rack during the examination on both eyes and only the retina was examined in relation to Patients 1, 2, 3 and 4;
  - ii. you did not ask the patient to look in all directions of gaze in relation to Patients 1, 3 and 4; and
  - iii. you did not identify and/or record details of the cataract in the right eye, which the patient had informed you of beforehand in relation to Patient 3.
- i. (I, ii, iii) Withdrawn by the Council:
- j. In relation to Patient 2, you wrote a letter of referral which:
- i. contained inaccurate information in that it suggested that the Patient's level of vision had become worse when in fact it had improved; and
  - ii. was unclear as to who the intended recipients were, in that the letter to the GP was addressed to the hospital.
- k. You did not maintain accurate patient records in relation to Patients 1, 2, 3 and 4.

2. On 4 December 2009 you underwent a performance assessment and upon inspection of six randomly selected clinical records:
  - a. Withdrawn by the Council;
  - b. On two of the records you incorrectly observed a cup to disc ratio of 0.3.

By virtue of the matters set out above your fitness to practise is impaired by reason of your deficient professional performance.

### **DETERMINATION**

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

The Committee having considered the evidence of both parties and having accepted and taken into account the legal advice provided, has reached conclusions of fact as follows:

The Committee accepts that the core competencies are a proper yardstick against which to judge performance, even in an experienced practitioner just as they provide a pre-requisite to entry into the profession for the newly-trained applicant. Turning to the allegations,

1. *On 4 December 2009 you underwent a performance assessment and you examined Patients 1, 2, 3 and 4:*

- a. *In relation to Patients 1, 2, 3 and 4, your history and symptom taking was inadequate.*

The Committee considered what was said and done on the day by the Registrant in relation to these patients. It bears in mind that these were long-standing and established patients who had been seen before. The Registrant was not asked to provide to the assessors the record cards previously prepared on the patients in question, and the assessors clearly were unable to take the contents of the records into account when they formed their judgment.

The Committee notes that there was a conflict in the evidence presented by the GOC concerning the taking of history and symptoms, as evidenced, for example, by the fact that a note taken by the assessors, showed that a question asked on the day regarding eye-drops was not reflected in the report.

The Committee was, however, very concerned at the approach of the Registrant that he could rely upon patients to know and to volunteer relevant information, and that general questions were sufficient to elicit the necessary detail from those patients. This reliance upon patient initiative is potentially an abdication of responsibility on his part. In short, he failed to take a pro-active approach. The Committee finds this allegation proved.

- b. *In relation to Patients 1, 2, 3 and 4, your oculo-motility testing was inadequate in that:*
  - i. *the testing did not go far enough out in any direction of gaze;*
  - ii. *not all positions of gaze were investigated; and*
  - iii. *it was undertaken too quickly.*

Re: subsection (i) there was insufficient evidence upon which the Committee could reach a decision. Re: subsection (ii) the Committee accepted the evidence of the GOC assessors that not all positions of gaze were investigated, and the Registrant accepted that his test only investigated four positions, rather than six. The Committee accepted that a proper test would and should cover six basic positions, which was not done. By virtue of this, it follows that the test was carried out too quickly. The Committee accepted the view of both assessors that this test was not fit for purpose, and accordingly that it was inadequate. The allegation is proved in relation to (ii) and (iii).

*c. Your cover testing was inadequate in that:*

- i. you did not undertake the testing with spectacle correction for Patients 1, 2 and 3;*
- ii. you failed to select suitable fixation target for Patients 1, 2, 3 and 4; and*
- iii. the testing was undertaken too quickly for Patients 1, 2, 3 and 4.*

Re: 1.c (i) There was a conflict of evidence in respect of this issue. The Registrant stated that the assessors were unable to see clearly, due to the presence of machinery blocking their view, although that suggestion was not put to either assessor in cross-examination. The assessors were, however, in a position to draw a distinction between patients 1, 2 & 3 and patient 4. The Committee also bears in mind that this test would have been carried out with the lights up. On balance the Committee finds that the evidence of the GOC assessors is to be preferred on this issue, and that the testing was therefore inadequate. This allegation is proved.

Re: 1.c (ii) The Committee accepts that on balance it is not possible to say that the use of a pen was not a suitable fixation target, and therefore does not find the testing inadequate on this basis. Re: 1.c(iii) the Committee is unable to say on a balance of probabilities that this specific test was carried out too quickly and therefore does not find inadequacy proven on this basis. These allegations are not proved.

*d. Your confrontation testing was inadequate in that*

- (i) you did not undertake a true confrontation test in relation to Patient 1 in that practitioner and patient visual fields were not compared.*
- (ii) you undertook the testing too quickly in relation to Patients 1, 2, 3 and 4;*
- (iii) it was undertaken with a target too close to fixation in relation to Patients 1, 2, 3 and 4; and*
- (iv) you failed to assess all of the quadrants fixation in relation to Patients 1, 2, 3 and 4.*

Considering subsection (iv) first, the Committee notes that the Registrant accepted in conversation with the assessors that he had only tested two quadrants. He admits making this concession at the time, but now seeks to resile from it. It is contended on his behalf that it was an admission born of nervousness at the time, although the evidence of the two assessors was that they had only observed him test two quadrants. The Committee finds the Registrant's explanation unconvincing, and finds on balance that it

was more likely to have been true that he did only test two quadrants. This is, in the view of the Committee, inadequate.

In relation to subsections (i) and (ii) and (iii) the Committee did not hear sufficient evidence to enable it to find to the requisite standard that the tests performed were inadequate and therefore makes no adverse finding. This allegation is proved only in respect of (iv).

- e. *The over-refractions you performed were inadequate in that:*
  - i. *deleted*
  - ii. *deleted*
  - iii. *deleted*
  - iv. *deleted*
  - v. *you did not carry out an adequate subjective refraction, in that it was not tested at VDU usage distance in relation to Patient 2.*

The Committee notes the Registrant's evidence that the test was not undertaken because the patient did not volunteer any comment, when questioned by the Registrant, that he was having difficulties at that range. Nevertheless the Committee believes that the Registrant should have performed such a test, given his knowledge that the patient worked with a VDU on a routine basis. The Committee finds that this failure amounted to an inadequate subjective refraction for Patient 2 by virtue of being incomplete. This allegation is proved.

- f. *deleted.*
- g. *You did not adequately undertake slit lamp microscopy in that:*
  - i. *you did not undertake a thorough assessment of the eye lids, in relation to Patient 1, a patient who presented with symptoms of red and itchy eyelids;*
  - ii. *you did not undertake a detailed assessment of the crystalline lens of either eye in relation to Patients 1, 2, 3 and 4;*
  - iii. *you did not instill a stain to facilitate corneal assessment, despite the fact that the patient presented with red and itchy eyes in relation to Patient 1;*
  - iv. *you did not assess the anterior chamber angle prior to dilation in relation to Patient 2; and*
  - v. *you did not maintain adequate standards of hygiene in relation to Patients 2 and 4.*

The Committee finds that subsection (i) is factually incorrect, as there was no evidence that the eyes of the patient were red and itchy at the time of the examination. Subsection (iii) is based upon the same incorrect premise. These allegations are not proved.

Subsection (ii): The Committee finds this to be proved, only in respect of Patient 3, who required a detailed examination of the crystalline lens as a consequence of the patient's cataract. With respect to the other patients the Committee accepts that rapid slit lamp microscopy represented an adequate assessment, but short of best practice.

Subsection (iv): The Committee finds that his failure to assess the anterior chamber angle prior to dilation was not in these circumstances inappropriate. This allegation is not proved.

Subsection (v): these allegations are admitted by the Registrant and the Committee finds them proved.

- h. You did not adequately undertake direct ophthalmoscopy in that:*
  - i. you did not change the lens rack during the examination on both eyes and only the retina was examined in relation to Patients 1, 2, 3 and 4;*
  - ii. you did not ask the patient to look in all directions of gaze in relation to Patients 1, 3 and 4; and*
  - iii. you did not identify and/or record details of the cataract in the right eye, which the patient had informed you of beforehand in relation to Patient 3.*

The Committee notes a factual dispute in relation to subsection (i). On the basis of the evidence presented, and the Committee does not find the allegation proved.

Re: subsection (ii), the Committee accepts the evidence of the assessors that the Registrant did not ask the patients to look in all directions of gaze. It finds the evidence of the Registrant that he was able to compensate for this by craning his neck to be unconvincing, and it rejects this explanation. This allegation is found to be proved.

Re: subsection (iii) the Committee finds that the Registrant made a minimal record of the presence of a cataract. Whilst falling short of best practice, the Committee found that this was not inadequate. The allegation is, accordingly, not proved

- i. deleted*
- j. In relation to Patient 2, you wrote an information letter which:*
  - i. contained inaccurate information in that it suggested that the Patient's level of vision had become worse when in fact it had improved; and*
  - ii. was unclear as to who the intended recipients were, in that the letter to the GP was addressed to the hospital.*

The Registrant accepts the allegation in subsection (i) and accordingly the Committee finds it proved. The Committee concludes that the letter would probably have found its way to the intended recipient. However, the matters would have been better set out with clear differentiation between action and "for information" addressees. The allegation in subsection (ii) is not proved.

- k. You did not maintain accurate patient records in relation to Patients 1, 2, 3 and 4.*

The Committee finds on such evidence as was presented that the patient records were mostly reasonably maintained. The Committee notes that in relation to the circinate exudates findings for Patient 2 there was a failure to make any written record of what was accepted to be a serious issue. The Committee concluded however that it had

insufficient evidence to find this allegation proven, but notes with concern the failure to set out the full details in the instance mentioned above.

2. *On 4 December 2009 you underwent a performance assessment and upon inspection of six randomly selected clinical records:*
  - a. *deleted.*
  - b. *On two of the records you incorrectly observed a cup to disc ratio of 0.3.*

The Registrant accepts that his observations were incorrect and accordingly the Committee finds that the allegation is proved.

### **Findings in relation to deficient professional performance**

The Committee has considered the submissions from both parties in relation to the issue of Deficient Professional Practice. The Committee has also considered and accepted the legal advice provided to it.

The Committee has considered whether the facts found indicate there is a pattern established of practice of an unacceptably low standard. The Committee has not approached this task by taking the individual failings one-by-one, but has considered whether taken together they do or may constitute a pattern or patterns of behaviour.

The Committee finds that the inadequacies demonstrated cover a series of core competencies across a series of patients, specifically the failures in taking history and symptoms in a rigorous and professional manner, and the conduct of certain tests in a cursory or incomplete manner. When challenged on individual matters the Registrant demonstrated a lack of insight which suggested that he failed to appreciate the possible consequences of his behaviour.

The Committee concludes that his behaviour amounted to Deficient Professional Performance.

### **Findings regarding impairment**

At the conclusion of the hearing on 15 June 2011 the Committee heard submissions on impairment from both parties. This morning Mr McGee, on behalf of the registrant, tabled a fresh bundle of evidence concerning Mr Clegg's efforts in the past 3 months to address the deficiencies identified by the Committee in its determination on deficient professional performance. Mr Clegg also gave further oral evidence to assist the Committee and Mr McGee made further submissions on impairment. Ms Gillet, for the Council, raised no objection to this additional evidence.

The Committee accepted the advice of the Legal Adviser. The Committee has considered whether the registrant's Fitness to Practise is impaired. The Committee reminds itself that the performance assessment that led to this case occurred nearly two years ago in December 2009.

The Committee has taken into account the courses undertaken and the retraining received by the Registrant which it regards as a robust effort, particularly in the last three months, taken to address his deficient professional performance. The Committee has

also taken into account the character and professional references provided on his behalf.

The Committee has concluded that the Registrant has found the disciplinary process, which was justified upon all of the facts, to be a chastening experience, and a wake-up call which he has heeded. It trusts that the efforts taken represent a new level of insight which was previously found to be missing; it hopes that these efforts will be continued and renewed in the coming years. The Committee would commend to him the voluntary CPD scheme operated by the College of Optometrists in respect of the areas of deficiency in his practice found proved earlier in this hearing by the Committee.

In light of all of the above the Committee found that the fitness of David Clegg to practise as an optometrist is not impaired and is not minded to give any formal warning in relation to future conduct.

**Chairman of the Committee: Peter North**

Signed \_\_\_\_\_ Date 15 September 2011

**Registrant: David Clegg**

Signed \_\_\_\_\_ Date 15 September 2011

<b>FURTHER INFORMATION</b>
<p><b>Transcript</b></p> <p>A full transcript of the hearing will be made available via the GOC website in due course.</p>
<p><b>Appeal</b></p> <p>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).</p>
<p><b>Council for Healthcare Regulatory Excellence</b></p> <p>This decision will be reported to the Council for Healthcare Regulatory Excellence (CHRE) under the provisions of section 29 of the NHS Reform and Healthcare Professions Act 2002. CHRE 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 unduly lenient and/or should not have been made, and if they consider that referral is desirable for the protection of the public. CHRE is required to make its decision within 40 days of the hearing (or 40 days from the last day on which a registrant can appeal against the decision, if applicable) and will send written confirmation of a decision to refer to registrants on the first working day following a hearing. CHRE will notify you promptly of a decision to refer. A letter will be sent by recorded delivery to your registered address (unless CHRE has been notified by the GOC of a change of address).</p> <p>Further information about the CHRE can be obtained from its website at <a href="http://www.chre.org.uk">www.chre.org.uk</a> or by telephone on 020 7389 8030.</p>
<p><b>Effect of orders for suspension or erasure</b></p> <p>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.</p>
<p><b>Contact</b></p> <p>If you require any further information, please contact the Council's Hearings Manager at 41 Harley Street, London, W1G 8DJ or, by telephone, on 020 7580 3898.</p>