

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

GENERAL OPTICAL COUNCIL

AND

DAVID JOHN CLEGG (01-8753)

Thursday, 15 September 2011

SUBSTANTIVE HEARING

[Resumed from 15 June 2011]

SUBSTANTIVE HEARING: DAVID JOHN CLEGG (01-8753)

DAY FOUR

Thursday, 15 September 2011
[Resumed from 15 June 2011]

FTP Committee: Mr Peter North – Lay (Chair)
Lady Margaret Wall - Lay
Dr Vicki Harris - Lay
Mr Rakesh Kapoor - Optometrist
Mr Paul Reeves – Optometrist

Legal Adviser: Mr Alexander Milne QC

Hearings Manager: Mr David Henley BEM

For the Council: Ms Gemma Gillet

For the Registrant: Mr Andrew McGee
Ms Fiona Mitchell

[Hearing resumed at 09.44]

Mr North: Good morning. As everyone will be aware, this is a resumed hearing following adjournment of the matter in June of this year. The Committee is, once again, made up of two optometrists, Rakesh Kapoor and Paul Reeves, and three lay members: Dr Vicki Harris, Lady Margaret Wall and myself as chair.

To my right is Mr Alex Milne QC, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee and ensure that the proceedings are conducted in accordance with the Rules of Procedure so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate. In the event that any matter arises during the course of the Committee's deliberations upon which the Committee seeks advice, the parties will be invited to return to hear the matter which the Committee has raised, and the advice to the Committee. Where advice on any issue is not accepted by the Committee, this will be indicated in the course of its decision on that issue.

To your right is David Henley, the Hearings Manager, who will provide administrative support to the Committee. Next to Mr Henley is the transcriber, Charles Nisbet, who will be keeping an official record of all that is said today during the sessions of the hearing at which the parties are present. The remaining persons sitting in the hearing room rather than in the public and press areas are members of the respective legal teams.

I would remind you again that it is the Council's policy for the determination of the Committee and a transcript of proceedings to be displayed on the

Council's website for public viewing, but where matters of health have been discussed, the determination and transcript will be redacted accordingly.

In June we concluded at the point where the Committee found that Mr Clegg's behaviour amounted to deficient professional performance, and we now commence today at the impairment stage of proceedings. Before we do so, I should enquire of the parties whether there are any applications to be made at this stage. Ms Gillet?

Ms Gillet: No, sir.

Mr North: Mr McGee?

Mr McGee: No, sir.

Mr North: Ms Gillet, you open the batting, as it were.

Ms Gillet: On the last occasion when we met, which was 13 and 15 June of this year, a number of allegations were put before the Panel. A number of those allegations were found and others were not. I shall list from my record those allegations I believe were found and others can say if they agree or not. My understanding is that the matters found proved were 1(a) –

Mr North: Let us do this slowly and carefully please, for the avoidance of doubt.

Ms Gillet: [*lists allegations*] 1(a), 1(b)(ii) and (iii), 1(c)(i), 1(d)(iv) –

Mr North: Slow down. Back to 1(c) – proved, yes.

Ms Gillet: Only in relation to (i) I believe.

Mr North: Correct.

Ms Gillet: 1(d)(iv), 1(e)(v), 1(g)(ii) but only in relation to Patient 3, the allegation had included other patients but the Panel only found that allegation in relation to one of the patients alleged, 1(g)(v), 1(h)(ii) –

Mr North: Sorry, could we go back to (g).

Ms Gillet: 1(g)(v).

Mr McGee: 1(g) was deleted. I have to say that, thus far, I am not entirely in agreement with my learned friend. My understanding from the determination on the last occasion was that 1(a) was proved, that is history and symptom taking; 1(c) –

Mr North: I shall stop this now and it would be very helpful for the two representatives to withdraw briefly, achieve a consensus and then offer that consensus to us against the determination document.

[Hearing adjourned at 09.50]

[Hearing resumed at 09.59]

Ms Gillet: I am very grateful for that time because I believe we have solved the puzzle which was quite simple to solve. The document I was working from was a printout that I believe the Panel had drafted at the end of the last session, which was read out in the public hearing. The document from which my learned friend is working is the transcript and there is a difference.

Mr North: We have now resolved the matter to our satisfaction as well. I propose to read out our perception and if, at any point, you feel we are in error, please interrupt.

Allegation 1(a) proved; 1(b)(ii) proved; 1(b)(iii) proved; 1(c)(i) proved; 1(c)(ii) not proved; 1(c)(iii) not proved; 1(d)(i) not proved; 1(d)(ii) not proved; 1(d)(iii) not proved; 1(d)(iv) proved; 1(e)(i)-(iv) deleted; 1(e)(v) proved; 1(f) deleted; 1(g)(i) not proved; 1(g)(ii) proved in relation to Patient 3; 1(g)(iii) not proved; 1(g)(iv) not proved; 1(g)(v) admitted; 1(h)(i) not proved; 1(h)(ii) proved; 1(h)(iii) not proved; 1(l) deleted; 1(j)(i) proved; 1(j)(ii) not proved; 1(k) not proved; 2(a) deleted; 2(b) proved. Does accord with you, Ms Gillet?

Ms Gillet: It does.

Mr North: Shall we proceed then?

Ms Gillet: Sir, the Panel found a number of allegations proved. One of those allegations, in my submission, deals with a separate area of what we have always said are the core competencies. The Panel then went on to find that this had been deficient professional performance, and the matter which the Panel must now consider is whether or not the issue of impairment is also found.

It is a slightly unusual position in that a number of months have elapsed between your findings and the session today and it is, of course, the current impairment which should trouble the Panel. Sir, I make my submissions in relation to the position as it was on that occasion, and I shall leave it to my learned friend to make submissions in relation to any change which the Panel may well now find.

In brief, the position as the General Optical Council sees it was that this is an experienced professional individual who perhaps had become over-confident in his own abilities, having practised successfully for many years. As a result, he did not follow the core competencies to the extent which the general public should expect.

In those circumstances, sir, there is a risk that members of the public may suffer adversely as a result. In addition, the lack of insight which was demonstrated by Mr Clegg throughout the investigation and the proceedings may also trouble the Panel. This is an individual who had been assessed, on

his own admission, by two senior respected members of this professional community, and he was not willing, apart from on a couple of small issues, to accept their professional criticism to any real extent. This is perhaps surprising given the professional standing of those two and, in my submission, the fair way in which they had approached their assessment of him. Those are the two main issues that the Panel should consider in relation to whether there is an issue of current impairment. As I said, a number of months have elapsed during which Mr Clegg has been able to take stock and perhaps reconsider his position. Unless I can assist the Panel any further, I now turn to my learned friend.

Mr McGee: Sir, can I call David Clegg?

**DAVID CLEGG, called and affirmed
Examination-in-Chief by MR MCGEE**

Q. For the record, can you give the Committee your full name?

A. David John Clegg.

Q. Before I ask you any questions, Mr Clegg, I just want to check with members of the Committee that they have received a bundle prior to today's hearing. I don't know what registrant exhibit number we have reached?

Mr North: If I may assist, Mr McGee, the bundle marked GOC v David Clegg with an AOP logo is R4, the other document is R5.

Mr McGee: I am grateful, sir. Mr Clegg, you are aware following the last hearing that there are areas of your professional performance that were found to be deficient, is that right?

A. I am aware of that.

Q. I shall take you through those areas where your professional performance was found wanting and ask you what you are currently doing in relation to those issues, both in terms of practice and procedure, do you understand?

A. I understand.

Q. If we can start with history and symptom taking, can you very briefly describe in an overview to the Committee what your current procedure is for history and symptom taking from patients?

A. With all patients who present to the practice, we provide them with a patient questionnaire of which the Panel have a copy. We ask them to fill this in. When they come to the test room with me, I then go through the patient questionnaire with them to make sure that they fully understand the questions, and verify the answers they have given. This questionnaire then goes into their file and at subsequent tests they will be asked if there are any changes.

Q. So when a new patient attends, or an old patient who has not formerly filled in a questionnaire, they fill in a patient questionnaire?

A. Yes.

- Q.** And that is referred to in the examination and on subsequent visits?
A. Yes.
- Q.** Do you have a copy of the bundle R4 in front of you?
A. I have.
- Q.** I shall start on page 1 – is that a copy of the patient questionnaire?
A. Yes, it is.
- Q.** This is in relation to Patient 1?
A. It is.
- Q.** And it is a two page questionnaire in this particular version, page 1 and page 2?
A. Yes.
- Q.** The Panel can see for themselves that you are asking basic details in the top third, is that right?
A. That is correct.
- Q.** You then ask for details of personal medical history, eye conditions with dates, things of that nature?
A. Correct.
- Q.** And there is a check-list down the right-hand side of the second section?
A. Yes.
- Q.** Family medical history is dealt with -
A. Yes.
- Q.** - especially in terms of parents, brothers or sisters suffering from ocular and ocular-related diseases, is that right?
A. That is correct.
- Q.** Then drugs and medicines are dealt with at the bottom of the first page?
A. Yes.
- Q.** Turning to the second page, general health questions and questions for female patients?
A. Yes.
- Q.** We shall come on to the modifications made to the patient questionnaire in due course but that is the questionnaire which has been used, that you have initiated, is that right?
A. That is correct.
- Q.** Did you design that questionnaire yourself?
A. No. I went on the internet to look for patient questionnaires, and this was apparently the questionnaire compiled by the Victorian Medical Centre which I downloaded and started to use.

- Q.** Have you updated that questionnaire in light of your experience of it?
A. Yes, we have.
- Q.** I shall come back to that in a moment. Patient 1 has completed that questionnaire and then you ask questions in relation to that at the beginning of the examination, is that right?
A. I do.
- Q.** If we go to page 3 of our form, that is the examination test card, is that right?
A. It is.
- Q.** Where do you record questions and answers and new information in relation to history and symptom taking on that form?
A. In the top left, we have a section with symptoms SXS. The main points are as on medical questionnaire and, of course, we put any symptoms that are mentioned on that day in that section.
- Q.** So that is in the top left-hand corner on this document: DV worse sometimes, NV clear, photopsia none, then QOH, MED, POH, FOH, what does that say next to it?
A. As on medical questionnaire.
- Q.** So you go through the medical questionnaire –
A. Oh yes.
- Q.** - asking supplementary questions?
A. Yes, definitely, to make it clear that the questionnaire is correct.
- Q.** Then any changes?
A. Any changes that have occurred in the patient's lifestyle since the last –
- Q.** NY other complaints?
A. I always ask patients are there any other complaints they have about their eyes.
- Q.** You have put "none" in relation to Patient 1 but underneath that you have some further annotation "I/V - PC blurred"?
A. Yes, I ask about the vision first and at the end of the questioning I say, "any other complaints?"
- Q.** What does "IV-PC blurred" mean?
A. It means intermediate vision, the personal computer is blurred.
- Q.** If we look further down the form, just for the sake of completeness, in the bottom left-hand corner, it says IV. What tests did you go on to do?
A. I performed the intermediate vision test for working at intermediate vision distances.
- Q.** Why did you do that test?

- A.** Because the patient uses a desktop computer at 66 centimetres as stated at the top, and they were suffering blurred vision when looking at the computer.
- Q.** And that information was elicited by way of your initial questioning of this patient?
- A.** It was.
- Q.** Perhaps we can look at pages 4, 5 and 6, for Patient 2. It is the same form that was filled in on pages 4 and 5. Then if we turn to page 6, is it the same procedure that you undertook with Patient 1 and with every patient?
- A.** It is.
- Q.** Here there appears to be some more information elicited at the beginning of the eye test examination. Included in the top left-hand corner, "attends ROH", what does N/C mean?
- A.** No change.
- Q.** And you have recorded glucose control. Can you remember what that was in relation to?
- A.** Yes. I always ask a diabetic if their glucose level is controlled as at their last blood sugar measurement.
- Q.** So the information there is based on questions that you ask (a) in general and (b) based on the medical questionnaire?
- A.** Yes.
- Q.** Finally, Patient 3. We may notice with Patient 3 that the medical questionnaire is in a different format?
- A.** Yes.
- Q.** Why is it in a different format; how did that come about?
- A.** We analyse the questionnaire as we go along, and we felt the first format was too intrusive with all the detail, so we amended this to be more appropriate to an optometric examination rather than a GP.
- Q.** So you still have the same sections: general information at the top, personal medical history, family medical history, drugs and medicines, of which Patient 3 has quite a few, and general health, is that right?
- A.** That is correct.
- Q.** Again, if we go to page 9 and look in the top left-hand corner, is that where you have recorded information in relation to this particular patient arising from questioning at the beginning of the test?
- A.** Yes.
- Q.** I want to ask you briefly now about the practical application of these questionnaires. Can I pass you some blank documentation, which perhaps could be R6? As far as the patient questionnaires, can you indicate who fills them out and when?

A. The patient questionnaire is filled out by the patient in the waiting room usually, or sometimes with my help in the consulting room.

Q. And that is all patients, either new patients or ones who have not previously filled in a questionnaire?

A. Yes, that is correct.

Q. Once the questionnaire has been filled in, the examination has happened and you have a completed examination sheet, what then happens to those documents?

A. The patient questionnaire is saved until the next appointment.

Q. And how is it saved?

A. It is saved in the patient's record in a sleeve.

Q. What other documents are in that sleeve? If you can just hold that up as it is the only copy that we have?

A. The traveller.

Q. When you say the traveller, what is that, a piece of card – what is on that?

Mr North: [*Members of Committee encounter difficulties seeing document*] It would be helpful, in due course, if this could be passed along.

Mr Henley: Do you wish me to make copies?

Mr McGee: They are very brief forms so perhaps Mr Clegg could take the Committee through them. There is a piece of card on the front isn't there?

A. Yes, the mundane details.

Dr Harris: I cannot see anything; my eyes are not very good.

Mr North: Let us briefly copy it shall we? A flat sheet would probably be enough, would it not? [*Document copied*] We shall not adjourn.

Mr McGee: We shall return to that in due course but is it right that this patient questionnaire is made use of at subsequent examinations?

A. It is.

Q. How is it made use of at subsequent examinations?

A. The patient will be presented with it in the waiting room, asked to read it through and whether there are any changes and, if so, to note them for us on the questionnaire.

Q. What would then happen at the beginning of any examination on the subsequent occasion?

A. I would then go through the changes with them.

Q. While that copying is being done, perhaps we can move on to areas of technique in terms of the eye examination where inadequacies were found.

- May I deal, first, with ocular motility, which is allegation 1(b)(ii) and (iii): “(ii) not all positions of gaze were investigated, and (iii) it was undertaken too quickly”? What have you done in relation to improving your ocular motility testing?
- A.** I have done two things. I attended the local orthoptic clinic and received training by the local senior orthoptist, Mrs Young. I also attended the Aston University binocular vision course where I was taught the binocular vision techniques of motility and cover test, and in the afternoon I used them on patients in the workshop.
- Q.** Let us deal with the first piece of training that you have undertaken in relation to that. You mention that you attended an orthoptic clinic run by a Margaret Young, the senior orthoptist, is that right?
- A.** That is correct.
- Q.** Can you look at page 15 of R4, what is that document?
- A.** That is a letter from Mrs Young signed to confirm that I did attend the training session, and that I performed motility and cover testing on three or four patients, that she gave me advice and training in how to do those things.
- Q.** Very quickly, how did that training work? Were you observing and practising, just practising, just observing – what happened?
- A.** On the first patient, I observed. On subsequent patients, she asked me to perform motility tests how she had described them to satisfy herself that I was doing it in the correct manner.
- Q.** In relation to cover testing where your performance was found to be deficient, and that is allegation 1(c)(i), was cover testing dealt with in the same way on the same occasion by Mrs Young and yourself?
- A.** It was.
- Q.** As far as your day-to-day practice now with motility and cover testing, how do you do it?
- A.** I do it as instructed by Mrs Young on every single patient.
- Q.** If we can move on to slit lamp microscopy, which is allegations g(ii) and g(v). In relation to slit lamp microscopy, g(ii) is no “detailed assessment of the crystalline lens” in one patient, Patient 3, and g(v) was inadequate hygiene, which was an admitted offence. In relation to slit lamp microscopy, what have you done in order to improve and sustain your technique?
- A.** I have attended two training sessions, one with Mr Teifi James at Calderdale Hospital at his uveitis clinic, and two sessions with Mr John Suharwardy at Royal Oldham Hospital both at his glaucoma clinics.
- Q.** In relation to that training, can you look at the document at page 13 of R4? It is clear that is a letter from Mr James, is that right?
- A.** It is.
- Q.** He indicates that you have undertaken observations and some examinations in relation to cup to disc ratio, ophthalmoscopy and slit lamp examinations, is that right?

- A.** That is correct.
- Q.** Again, was that training in relation both to observations and practical examinations?
- A.** It most certainly was observation training. He said, 'get to the slit lamp and I'll talk you through what you see'.
- Q.** At page 14, that is Mr Suharwardy. That confirms that you attended training on two occasions?
- A.** Yes.
- Q.** On 14 July and 1 September, and was the approach the same there in relation to cup to disc ratio, ophthalmoscopy and slit lamp examination that you observed and practised under supervision?
- A.** Yes.
- Q.** Two other areas of technique where you were found wanting, if I might put it that way, were confrontation testing which is at 1(d)(iv) where you failed to assess all the quadrants. Have you undertaken any formal training in relation to that and, if not, what have you done?
- A.** No, I have not undertaken any formal training because I did not come across any courses available. What I do now is, as I have been found deficient, it is imprinted on my mind that I must do these tests properly and I am most meticulous in performing confrontation in all quadrants.
- Q.** In relation to over-refractions at 1(e)(v), the finding was that "you did not carry out an adequate subjective refraction" and the factual basis of that on one patient was not testing for VDU usage. Can we return to page 3 of R4 which is the record of Patient 1, as a result of the new procedures you have for history and symptom taking and questioning, is it right that with Patient 1 you identified a need to test for VDU usage and for intermediate vision and did so?
- A.** I did so, yes.
- Q.** Is that a one-off or do you attempt to elicit that information from every patient where it is relevant?
- A.** At my own practice, we do not have many people who use a VDU, they are elderly retired people - not that retired people do not use a VDU - but not many of my patients do. In practices where I work where they do use a VDU, I ask it all the time, every time.
- Q.** In relation to letters of referral, there was a specific finding which is at (j)(i), inaccurate information, by your own admission, went on one referral form. What is happening in relation to that?
- A.** I am far more meticulous about checking my referral forms. Whenever I type anything on the computer, I always read it once afterwards to make sure that it is okay. That is all I can do on that score.
- Q.** You mentioned earlier on that you attended a binocular vision assessment course at the University of Aston. How long was that course?
- A.** It was a full day course.

Q. What did it comprise of?

A. One part was a theoretical lecture by Dr Eperjesi on colour test, motility, amplitude of accommodation, accommodative facility – assessing binocular vision.

Q. That was the morning, what happening in the afternoon?

A. In the afternoon, we were presented by Dr Eperjesi and his assistant Stephanie with eight patients whom we had to assess using the techniques he had outlined, and we were supervised in the clinic by Dr Eperjesi and Stephanie and questioned about what we found.

Q. If you turn to bundle R4, pages 16 to 25, can you confirm that those represent the records from those assessments?

A. They are, yes.

Q. Supervised by Dr Eperjesi and carried out by you satisfactorily, is that right?

A. Yes.

Mr North: I need to interject at this point, Mr McGee. Ms Mitchell will probably appreciate this comment, we have them paginated but we do not have them redacted, do we?

Mr McGee: They are not redacted in the sense of –

Mr North: It is a small point, do not linger on it.

Mr McGee: In one of them there is a surname, the rest of them are first names.

Mr North: I have found two –

Mr McGee: I do apologise if they have not been redacted.

Mr North: Thank you, let us move on.

Mr McGee: [to Registrant] Finally, you have been progressing with your CET work, is that right?

A. That is correct.

Q. I shall leave the Committee to consider this for themselves but pages 39 to 56 of R4 represent your current CET points, do they not?

A. Yes, they do.

Q. So far you have confirmed points of 472½, is that right?

A. That is the last round of CET, the present one is 238.

Q. So 238?

A. Yes.

Q. I have no further questions for you. If you stay there, there may be some from my learned friend for the GOC.

Ms Gillet: I have no questions.

Mr North: Thank you, Mr McGee.

Mr McGee: I have just been reminded these are forms of which there are copies. Do you have the blank traveller card? The first page of that is cardboard in your copy and cardboard in real life, what is that?

A. That is the traveller card which is a record of the patient's mundane details which will be carried on from one test to the next during the patient's life with the practice.

Q. Attached to that, page 2 would be all of the records from eye examinations as things go along?

A. Yes.

Q. Also attached to that traveller card would be the patient's questionnaire?

A. Correct.

Q. In fact the updated patient questionnaire?

A. Correct.

Q. When would these documents be considered by you?

A. The test form I would consider before the patient came in to see me, to brief myself as to what the patient was like. This one I would see when the patient has completed it initially, or signed that there is no change.

Q. I am grateful. May that be R6?

Mr North: Yes, we shall make that R6. On the copies which the Panel have received – I do not know where the original is at the moment, Mr McGee – the four boxes along the top of the first sheet, would I be correct in surmising that starting from the left that is title, surname, forename, PX Number?

A. Yes.

Q. Fine, thank you.

Mr McGee: Sir, the original is exhibited if members of the Committee wish to look at the hard copy in due course.

Mr North: Thank you, Mr McGee.

A. Excuse me, sir, there is a slight change. The latest edition has appointment time on it which is not on here. This is important.

Q. Fine, thank you. Ms Gillet, you have no questions you wish to ask of the witness?

Ms Gillet: No.

Questioned by the Committee

Mr North: I expect that my colleagues may have one or two questions which they wish to ask. [*No questions*] That is fine; just one small question from me Mr Clegg. The courses you did with Mr James, Mrs Young and another consultant ophthalmologist whose name I cannot make out –

A. It is Mr Suharwardy.

Q. Were those paid courses, did you pay for them, or was it familiarisation training of some sort?

A. They were totally gratis. These are consultants whom I have heard on the lecture circuit; one practises in Oldham and one practises in Halifax. They were more than happy to have me come for training; they do this regularly for people.

Q. Right, so you approached them and they agreed to do it?

A. Oh yes, and I am invited to go back at any time.

Q. Just a light note on which to end the questioning, I was a little concerned on page 31 to know that you have fabulous patient rapport. I was not quite sure what “rapport” was?

A. I did not pay him anything to say that!

Q. That is very helpful, thank you. You may return to your seat. Could I now turn to the legal adviser for advice in respect of this stage of the proceedings?

Mr Milne: I take it there is no further evidence at this stage. The sole question for the Committee at this stage is whether fitness to practise on the part of the Registrant is impaired. Thankfully, there has been a finding of deficient professional practice which should not, of itself, lead to a finding of impairment. The termination has to be on the basis of whether or not impairment is current. The approach that is being adopted in making that determination is not to punish the Registrant for any past failures but to protect the public. In short, it means that the Committee must look forward rather than look back, although the Committee may take into account any past actions or admissions in forming their judgment. The relevant factors that should be considered are, first and foremost, the need to protect the public and the public interest.

The Committee must consider whether the errors of the past were remediable, or have been remedied, and whether or not they are likely to be repeated. The Committee may take into account all the factors that have been placed before it this morning, those being the events that have taken place in the interim, the training that has been undertaken, and the evidence that has been put forward as to current skills and current improvements.

I should add that, even if the Committee concludes that the Registrant’s fitness to practise is not impaired, it has the option, if it chooses, to give him a warning concerning his future conduct or performance. However, if it chooses

to do that or it is minded to do so, the Registrant must be given an opportunity to address the Committee first through his representative but, at this stage, other than that there should be no consideration as to penalties or sanctions.

Mr North: Thank you, that is most helpful. Do I have any final comments from either of the representatives?

Mr McGee: Sir, I have not as yet made any submissions on impairment, which I believe I am entitled to do. It was very useful to have the legal advice before I make my submissions.

The issue for the Committee, as you well know, is whether Mr Clegg is impaired as of today. The criteria are quite clear, the two principal ones being: does he present a risk to patients, or does he currently bring the profession into disrepute. I shall be very brief. In relation to any potential risk to patients, may I say this? The Committee will recall what all the experts were agreed on in June. They were all agreed that the clinical outcomes for all of these patients were correct. There was no failure to diagnose, there was no misdiagnosis; there were no failures to refer. The Committee will also recall that the original complaint which sparked the performance assessment was not upheld by the GOC. Their expert investigated it at the investigation stage and vindicated the performance of the Registrant. Therefore, it is quite clear that the GOC never brought this matter on the basis that there was a risk to patients. Clearly, on the basis of their expert evidence, he was not a danger then, it was not suggested that he was, and you may think he certainly is not now.

You have heard from him moments ago about what he has done in recognition of the criticisms that have been made of him. He has taken those concerns about his performance to heart and he has acted swiftly to deal with them. He has put practical procedures in place in relation both to the patient questionnaire and his examination techniques. He has had successful training on his own initiative in areas where he was particularly criticised, some of which was supervised by Dr Eperjesi, who carried out the performance assessment in the first place.

You have seen, and you have a copy of, his CET and I leave you to consider that for yourselves. You also have in R4 between pages 26-38 a selection of references. Again, I leave the Committee to consider those. What I do say about those references is that they come from a broad cross-section of both his colleagues, from more senior members of the profession, if I may put it like that, as far as ophthalmic surgeons and consultants, as well as from patients. They are also slightly unusual references in so far as they testify to the care and integrity of this Registrant's performance over many decades. Some people who provide references for him have had dealings with him on a professional basis as patients, colleagues or senior members of the profession going back almost 30 years. I particularly urge on you the references of Mr Lavin at page 28, Mr Goodall at page 29, Mr Lipton at page 30. Those are senior professionals who speak very highly of the Registrant, the accuracy of

the information that they have received over numerous referrals from him and his professional competence.

It is quite clear, in my submission, that this practitioner of 38 years' standing has taken to heart very much the criticism made of him. He has demonstrated his insight in relation to that. There is a genuine recognition of what were shortcomings and he has made a genuinely successful effort to remedy those and to improve. In my submission, taking all of that together as of today, I suggest to the Committee that he is not currently impaired as that is understood.

Mr North: Fine; that is most helpful, Mr McGee. Do any of my colleagues have any questions? [*No questions*] We have had slightly out of order, I am afraid, the legal advice, so would parties be content to withdraw while the Committee considers the matter?

Ms Gillet: Sir, I am sorry interrupt. In relation to the way the General Optical Council put their case, I believe this is an issue that was raised on the previous occasion. That is whether or not there is a danger to the public in the assessments which were viewed by our experts. It is said by my learned friend that the General Optical Council accept that there was no misdiagnosis, no failure to refer etc. There is certainly no hard and fast evidence that it was the case but that is different from saying there is a cast iron acceptance that there was nothing missed. The situation is that those patients were not reassessed. The assessors found that the assessments that took place were not to a sufficient standard. We do not know what would have been found had those assessments been carried out properly. We hope, of course, that there was nothing and it seems very likely that there was nothing, but that is, in my submission, a subtle difference. I hope I am not saying anything new there, I believe that was the way in which the Council had always put their case.

Mr North: Thank you, Ms Gillet. Mr McGee, any comment?

Mr McGee: Sir, the only comment is this. In answer to very specific questions, which were deliberately specific, all three experts said that all the clinical outcomes in their view were correct. In their view, there was no failure to diagnose, no misdiagnosis and no failures in referral. I leave it at that.

Mr North: Thank you. We have heard the points from both parties and we shall judge them accordingly. If there are no further matters at this point, I invite the parties to withdraw and we shall make our determination *in camera*.

[*Hearing adjourned at 10.57*]

[*Hearing resumed at 12.12*]

Mr North: I shall now read the findings regarding impairment and copies of the judgment with this determination will be available from Mr Henley at the close of the proceedings.

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 three 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 on all 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 performance found proved earlier in this hearing by the Committee.

In the light of all 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.

That concludes the proceedings for today. May I thank the representatives for their assistance and good afternoon?

[Hearing concluded at 12.15]