

R(10)04

**BEFORE THE REGISTRATION APPEALS COMMITTEE
OF THE GENERAL OPTICAL COUNCIL**

2nd APPLICATION FOR RESTORATION

**MR ASHLEY GOULD
(01-13061)**

Friday, 18 February 2011

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2nd APPLICATION FOR RESTORATION: ASHLEY GOULD

Friday, 18 February 2011

Registration Appeals Committee: Ms Fran Jones (Lay - Chair)
Ms Elizabeth O'Donoghue (Optometrist)
Ms Janice McCrudden (Optometrist)
Mr Alan Baldwin (Lay)
Mr Arif Khan (Lay)

Legal Adviser: Mr David Swinstead

Hearings Manager: Mr David Henley BEM

For the GOC: Ms Nimi Bruce
For the Applicant: Ms Melanie Craig
Mr Daniel Craig

[*The hearing commenced at 9.27 a.m.*]

Ms Jones: Good morning, I am Fran Jones, a lay member of the Hearings Panel, and I have been elected by the Committee to chair today's restoration application hearing. The Committee today is made up of two optometrists and three lay members, and I will ask the members to introduce themselves and the capacity in which they sit commencing on my far left. [*Introductions made*]

To my right is Mr David Swinstead, 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 and 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 Mr Charles Nisbet, the transcriber, 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.

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. I understand that at previous hearings of the Registration Appeals Committee the order of proceedings has been changed, and has been found to be the most fair and appropriate way of conducting business. You will see

in the Registration Appeal Rules from Rule 33 that there is set out the order of proceedings. The Rules anticipate that we would hear first from the applicant and then the Council's presenting officer on behalf of the respondent – that is the Council. The Council would address the Committee in relation to the application, and thereafter under Rule 37 we would hear first from Mr Gould in relation to submissions, and then from the Council.

However, it is suggested if you agree to it that the Council address the Committee first, both in relation to the framework of our decision-making and the evidence available, so that Mr Gould who would then address the Committee would know exactly the evidence upon which the Council relies, and the framework within which it is said so that it is established before he addresses us on the evidence.

It appears that our colleagues on previous occasions have found this change in procedure most helpful. It is however a matter for the Council and Mr Gould whether you are prepared to proceed on that basis.

Ms Craig: Madam, I am happy to proceed.

Ms Bruce: Madam, the Council is prepared to proceed on that basis.

Ms Jones: Thank you both. Mr Gould, as this is not your first application for restoration since you were erased you should be aware that if the Committee were to refuse your application on this occasion, the Committee would be empowered by Section 13K(8) of the Opticians Act 1989 to suspend your right to make future applications indefinitely. I thought this point should be made clear from the outset.

Prior to commencing I also want to confirm that the Committee has received quite significant bundles of information, and we have received both e-mail and hard copies. These are marked A1, and the title page is called "Ashley Gould, Bundle supporting representations"; A2, Bundle of Authorities; and we have received today A3, "For the attention of the Hearings Panel, General Optical Council, at their meeting on Friday 18 February 2011" from Mrs Maureen Gould. I confirm that item A3 has been read by the Committee members and read to Mr Khan. We have also received document C1.

Ms Craig: C1 being my bundle?

Ms Jones: The Capsticks bundle. Can I invite Ms Bruce to proceed?

Ms Bruce: Madam, of course you may; thank you for helpfully labelling those documents. This is a restoration application made by Mr Gould for your determination today, and I am sure it has already been made clear that I represent for the Council and Ms Craig represents the applicant.

The test that you must apply today comes from the Opticians Act 1989 as amended, Section 13K. In determining a restoration application you must direct that that the Registrar restore a person's name to the Register if you

think fit, and must not give such a direction if the evidence before you does not satisfy you.

In relation to the documents that you have in C1, I propose to take you through that briefly, then to take you through the applicant's bundle making a few comments on that, and then finally to make some concluding rounding-up remarks. Madam, because you have helpfully indicated that you have already read the documentation I can take it in summary form only, and would hope to avoid reading out large tracts of text.

Mr Gould appeared before a Substantive Hearing on 23 March 2006, and you have the transcript from that at page 1 of C1, the Council's bundle. You will have noticed at page 5 in the top paragraph there are set out those matters that were the subject of the Notice of Inquiry when this matter first came before the GOC. In essence it was that on 29 July 2005 Mr Gould appeared before the Horseferry Road Magistrates Court. He was convicted of five counts of making an indecent photograph of a child, and that was contrary to Sections 1, 1A and 6 of the Children Act 1978; and two counts of having an indecent photograph of children, and that was contrary to 160(1)(a) and (3) of the Criminal Justice Act 1988. He was sentenced, and you can see that set out in the first paragraph, to a three-year rehabilitation order with the requirement to attend a Sex Offenders Programme, and to sign on the Sex Offenders Register for a period of five years.

Madam, may I pause at this point in my submissions just to allude to the fact that the probation order was completed on 18 February 2008, and that Mr Gould came off the Sex Offenders Register on 29 July 2010, and we will be taking you through the documents for that in due course.

You will be aware Madam from your reading that the charges were in fact specimen charges, and you will also be aware that Mr Gould pleaded guilty.

If you look at page 5 in the bottom paragraph there it sets out the circumstances and background leading up to the conviction. In the latter part of 2004 the Paedophile Unit at Battersea Police Station in London received information that Mr Gould had made some transactions to a computer site with his credit card, a site containing indecent images of children, and that this had occurred some time during 2000 and 2003. As a result of that information received by the police they attended Mr Gould's home address, and under warrant seized various equipment including computer equipment from Mr Gould's home address.

The computer equipment was subsequently examined and a full breakdown of the various types of file found are set out on page 6, paragraph 2. Madam, I am sure that you and your colleagues are aware of the banding system set out in the case of *Oliver*, but it may be of assistance if I tell you that in the bundle of authorities which you have labelled A2, and I do not ask you to turn to it but perhaps just to note it down, you have the case of *R-v-Oliver* [2002] The Times at Tab 4, and you will be aware that there is a grading system 1-5 in ascending order of seriousness.

Turning back to page 6 I have taken you to the second paragraph down there. I will not read it all out but if you look at the final two sentences there is a helpful summary of the images: 215 Level 1 images or moving images; 380 Level 2 images or moving images; and four Level 3 images, and all of those images appeared to be real pictures of children.

Madam, again may I pause at this point in my submission to make it absolutely clear, and I am sure you and your colleagues are cognisant of this, Mr Gould was charged with having and making indecent images of children, and I say that because there are various references in the bundle to Mr Gould's attraction being to young men, and I am sure that you will have at the forefront of your mind when being addressed on that point the fact that the law has defined these images as being of children.

At the substantive hearing the Committee heard evidence from Dr Craissati, Clinical and Forensic Psychologist. Her evidence is set out between pages 8-10, and in essence her evidence was that Mr Gould presented a very low risk of reoffending, and particularly she concentrated on the fact that unusual sexual practices related to internet use do not necessarily mean that these practices are acted out in everyday life; that is, it does not mean that somebody will necessarily go on to commit contact sexual offences.

The Committee also heard evidence from the applicant, and this is at page 11 onwards, and again because you have helpfully indicated that you have read these documents I will not take you through it, but you will note that at paragraph 4, page 11, Mr Gould acknowledged that his actions were a serious and repeated breach of the criminal law, and he stated that he appreciated the gravity of his behaviour.

Then at page 14 you may find it helpful to look at paragraph 17, which just sets out a brief chronology of Mr Gould's practice to that point. He was a self-employed locum mainly for the practices of Maria Gore and Garry Cheek, and he was a regular permanent locum at those practices for over a decade.

At paragraph 22 Mr Gould sets out the voluntary work that he undertook for various organisations, and at page 17 – please do stop me if I am going too fast – towards the bottom of the text on page 17 approximately three paragraphs up from the bottom, there is a discussion about the number of times that Mr Gould gave his credit card details to the company and over what period. It was three separate occasions over a period of three months as set out there.

At page 33 you will know from your reading the sanction of erasure was imposed after a lot of legal discussion, much of which involved the case of *CRHCP v Fleischmann* [2005] EWHC 87 (Admin) which I am sure you are familiar with, which in essence says that offences of this type are fundamentally incompatible with continued registration, and again you have the case of *Fleischmann* in the bundle of documents that has been provided.

At page 33 you can see the Committee's remarks in imposing the sanction of erasure, and this is the second block of text, penultimate paragraph approximately half-way down page 33. It comes under the heading "Ms Kershaw" and it says:

"The Committee accepts that there was mitigation in the registrant's case, particularly his plea of guilt, which was reflected in the sentence that he received. However, bearing in mind the gravity of convictions and the fact that he is subject to a supervision and the requirement to attend a sex offenders' programme, the Committee concluded the only way to protect the public, maintain public confidence in the profession and the profession's own confidence in its proper professional standards, was to erase the registrant's name from the Register."

There was an immediate order for suspension imposed in the case.

The first application for restoration I propose to deal with very briefly. It is set out on page 36, and you can see that this is a hearing that took place on 10 February 2009. Suffice to say that the substantive application in that case was never aired and that is because it stalled on a point of formality, namely that Mr Gould could not demonstrate on his application that he had completed the required amount of CET points to get past the legal threshold for the case to be heard. After a very lengthy and protracted hearing the Committee came to their decision at page 76, and it is the final paragraph there which really sets out the legal position and the reasons why the Committee could not continue that day. It says:

"For the reasons set out above, the Committee has concluded that it has no discretion to set aside the requirements of Rule 25 and therefore that whatever the merits of the case may be otherwise (of which the Committee expresses no opinion) the Committee is bound to dismiss this application."

Madam, it may assist you in terms of today's case to know that the Council do not take any point in relation to CET points. We accept that the formalities have been complied with on this occasion.

Madam, perhaps just for the sake of completeness I can take you to the Notice of Hearing for this matter, which is at page 87 – sorry, I am taking it out of order so may I start with page 77, which is today's application? You then have at page 83 the CET points recorded for Ashley Gould in support of that application, and then finally the Notice of Hearing of today's date.

Madam, that completes my background to the Council's bundle. I wonder if I might now make some points in relation to the documents that have been submitted by the applicant. I will take them in chronological order as they appear in the bundle, or I will try to insofar as is possible.

Again Madam, I do not want to cherry-pick but I do want to draw out if I can those points that the Council make in relation to these documents. I know

that Ms Craig on behalf of the applicant will address you in relation to anything that is important to him that he wishes you to be aware of.

First of all you have the report from Dr Craissati, which is at page 1 of A1. You will recall that Dr Craissati actually gave live evidence at the substantive hearing. The reports from her are dated 2006 to 2008, so in my submission you will have to be a little careful as to the weight that you attach to these documents given that they are now rather dated. As a general point Dr Craissati places great emphasis on the fact that Mr Gould is at low risk of progressing from an interest in children on the internet to contact sexual assault. That is a familiar point, and one that was raised at the substantive hearing, but the report in my submission is less helpful in assessing the risk posed by Mr Gould of reoffending by accessing child pornography on the internet. Clearly this is an area of great concern to the Council, although it is referred to in passing and without analysis at page 14, paragraph 6, which is the addendum report.

You will be aware, Madam, of the case of *Low-v-General Osteopathic Council* [2007] EWHC 2839 (Admin), which again is in your bundle of authorities, which states that:

“In a regulatory framework even a low risk of reoffending may be of particular concern to a professional Committee, given the close nature of the relationship between professionals and their patients.”

The other point that I make in relation to Dr Craissati’s report, and I do not criticise it for this, it was designed for a different forum, but it does not address the second strand of the public interest, namely the need to uphold proper standards of conduct and behaviour and maintain trust and confidence in the profession. Clearly that will be a central and critical area for you and your colleagues in reaching your determination in this case.

May I address you in relation to the probation report which is at page 15? Again I know that you will have read this report in full and will know that it is a favourable report for Mr Gould. If you look at the bottom of page 16, you can see there that there is a reference under “Risk assessment” to the fact that Mr Gould denied a sexual interest in children but did concede to some interest in young males. Again I am sorry if I am repeating myself, but may I again emphasise this point: that Mr Gould was charged with having and making indecent images of children and not young men, and there were some 599 sexual images found on Mr Gould’s computer equipment.

Further, in relation to the probation report may I ask you to bear in mind, as I know you will, that the Probation Service were dealing with the question of risk in a criminal rather than a regulatory context, and again I place emphasis on the importance of the second strand of the public interest in this case, the need to maintain trust and confidence in the profession, and uphold proper standards of conduct and behaviour.

The Independent Safeguarding Authority has looked at this case at the request of the Probation Service, and you can see Rita Ashworth setting out the position for the Independent Safeguarding Authority at page 20. I will just pause a moment to allow you to find that page, page 20, penultimate paragraph, and it is the last few sentences there. The question the Independent Safeguarding Authority seems to have been asked to address was whether there was a potential risk that Mr Gould may pose to either children or vulnerable adults were he to gain employment which brought him into contact with these groups, and again that will be a consideration for this Committee but perhaps a secondary consideration.

In terms of the ISA letter itself which is at page 49, and forgive me, I am now taking you out of order just because this is the response to that application, to some extent it is not a helpful letter in that it does not set out the reasons why the Independent Safeguarding Authority at page 49, in a letter dated 1 October 2010, decided that Mr Gould did not need to be on the children's barred list or the adult barred list. It might perhaps have been helpful if there had been a little bit more analysis as to why they had come to that decision.

Mr Khan: I am sorry, I have two letters from the Independent Safeguarding Authority, is that right? One came three or four days ago.

Ms Craig: That is the same letter, sir.

Mr Khan: The same letter? Okay, I am sorry.

Ms Bruce: Not at all. May I take you back to the bundle again? I am sorry if I am jumping you around, but on page 30 you can see the CET points statement set out there. It is clear that Mr Gould has used his best endeavours to keep his skills up-to-date, and has also attended a number of courses which you may feel are relevant. May I make the point on behalf of the Council that Mr Gould has not now practised for some six-and-a-half years; he last practised around October 2005 and that being the case, as part of your overall assessment of these matters you will wish to consider the question of deskilling in a profession that moves very fast in terms of developments.

Finally I promised that I would take you to the relevant letters from the authorities relating to the sex offenders' registration expiration, and that is at page 35. You can see the confirmation there in this letter from the Metropolitan Police dated 28 July 2010 that Mr Gould's registration on the Sex Offender Register expired on 29 July 2010.

There is one final point I make in relation to the bundle of documents that has been submitted by the applicant in this section, which is A1, which is that there is a letter from the applicant's sister at page 36, and I certainly have no objection to this Committee quite properly hearing from the family of Mr Gould in relation to the impact that these matters have had on him, and their assessment of the likelihood of him repeating his behaviour. However, at paragraph 3 may I just urge caution, because Ms Addlestone on behalf of Mr Gould appears to be stating a professional opinion of risk whereas she is not

an expert in this case? I am sure that you will wish to bear that in mind when you come to read that document.

Madam, that completes my submission in relation to this bundle. You have before you a bundle of authorities. I know that many of these will be very familiar to you, and indeed Ms Craig was good enough to discuss with me some of the relevant authorities, and to a certain extent this is a mutual bundle insofar as it has the cases with which you are familiar: *Yeong*, *Low*, *Oliver*, *Fleischmann* and so forth.

However, at the back of that bundle there are a number of GMC first instance decisions, and these start at section 9. It was decided that were we to have legal argument about these on the morning of this hearing it would cause unnecessary and undue delay, but the Council do take issue with the weight and relevance of these decisions. They are not binding authorities on you, but that said it is important that Mr Gould feels able to present his case in the way that he wants to, so as a professional committee we have confidence in you in terms of your assessment of the relevance of these documents, which in my submission is questionable but we have no difficulty with your seeing those.

Madam, I wonder if I might just conclude my submissions in this case by setting out the Council's position? The Council asks you to refuse the application that is before you today. You will want to address your mind in relation to risk, and the question of whether even a low risk is acceptable to you and your colleagues; but perhaps more fundamentally you will also wish to consider whether the breach of trust in this case was so fundamental as to indicate that Mr Gould should not go back on the Register. In this I know that you will be assisted by the guideline case of *Yeong v GMC* [2009] EWHC 1923 (Admin) and *Bolton v Law Society* [1993] WLR 512.

The case of *Yeong* makes the point that there are some breaches that are so fundamental in terms of a professional's behaviour and conduct that arguments about rehabilitation and remedial action taken, coalesce-type arguments, are less relevant, and you cannot import those types of arguments from performance cases on to certain types of misconduct which are fundamental breaches. In my submission this is such a case.

Madam, may I also refer you to the case of *Bolton* which I know you and your colleagues will be more than familiar with. However, the salutary words of Lord Bingham, then Master of the Rolls, perhaps sum it better than I ever could, so would you forgive me if I take you to that? It is in the bundle that you have designated A2, which is the big bundle of authorities, and it is Tab 3 page 25. You will be aware that this was a case involving a solicitor, but the general points of principle apply. From B page 25 it states:

"Because orders made by this Tribunal are not primarily punitive it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often

happens that a solicitor appearing before the Tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off” – a pertinent reference to restoration cases in my submission there – “all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches on the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.”

It then goes on to say, and this is at E:

“The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.”

Madam, you and your colleagues may feel that members of the public would be little short of horrified that somebody convicted of such a serious sexual offence, who has been on the sex offenders’ register for a period of five years, would be allowed to practise again, and I ask you to have at the absolute forefront of your minds, as I know you will, the need to maintain trust and confidence in the profession and uphold proper standards of conduct and behaviour, notwithstanding what I am sure is the substantial mitigation that you are going to hear about in the course of proceedings today.

I ask you to refuse this application. Madam, I do not know if I can assist you or your colleagues further but those are my submissions.

Ms Jones: Thank you; can I just check to my right, do you have any questions?

Mr Baldwin: I do have one question, and I am not sure that I know the answer to this. Does the definition of the word “child” put in the Children and Young Persons Act apply in these cases, in other words is a “child” under 14, or is there some other age for the purpose of this legislation?

Ms Bruce: Sir, I believe it was changed from 16 to 18. May I undertake to check that for you before the end of today? I have brought the relevant sections of *Archbold* with me. I am not quite confident enough in my answer not to want to look it up.

Ms Craig: I cannot give a categorical answer either, sir.

Ms Jones: If we can come back to this matter do you have any questions? [*No further questions*] Thank you. Can I check with Mr Baldwin, would you like that question answered now or can you stay a moment?

Mr Baldwin: I am not sure whether it will impact on the further case.

Ms Jones: Very well, let's pause; Ms Bruce, do you need to leave the room to find that information or would you have it with you?

Ms Bruce: Madam, may I please ask for a moment, because I do want to get it right. May I also clarify the question: the question is how does the law define "a child"?

Mr Baldwin: For the purpose of the legislation under which he was convicted rather than general legislation.

Ms Bruce: Yes; I think it is under 18, or the appearance of under 18.

Ms Jones: Mr Henley, would you please clear the room? Should you need more than 15 minutes would you please alert us? Thank you.

[Proceedings adjourned at 9.58 a.m.]

[Proceedings resumed at 10.21 a.m.]

Mr Baldwin: Chairman, it has been suggested that I might broaden the question slightly, and ask perhaps through our Legal Adviser what these offences actually mean in real legal terms?

Mr Swinstead: It would be helpful if Ms Bruce answers the first point, and then if necessary I might be able to help with reference to *Archbold*.

Ms Bruce: Certainly; can I just advise on the sections of *Archbold* while I do that: 31.115 and 31.107.

Mr Swinstead: I have those, thank you.

Ms Bruce: Sir, may I apologise first of all to you and your colleagues for keeping you waiting; it is not my practice to keep professional committees waiting. What actually took the time was working out whether these sections were in application at the time of the commission of these offences and the conviction and not the relevant sections changing it.

The definition of "the child" is originally tried in the Protection of Children Act 1978, Section 7(6), which defined "a child" as being a person under the age of 16. That was substituted or replaced by Section 45 of the Sexual Offences Act 2003 which defined a child as a person under 18 rather than under 16 years of age. That came into force on 1 May 2004, so at the time of this conviction the relevant definition of a child was a person under 18 years.

I hope that assists with the question that you asked.

Ms Jones: Thank you.

Ms Craig: I have no comment on that.

Mr Swinstead: Can I just deal with that? It may be that at this stage I could address the Committee, subject obviously to any view you have, if I read out short passages from *Archbold* which effectively demonstrate what “making” and “having” indecent images are – unless you were going to deal with that in any event.

Ms Bruce: I am not going to mention it but I am very happy for you to do so.

Mr Swinstead: Can I say that the first offence which Mr Gould was charged with was under Section 1(1)(a) of the Protection of Children Act 1978 in particular “making an indecent photograph or pseudo-photograph of a child”.

In *Archbold* at paragraph 31.118 referring to the cases of *R-v-Smith* and *R-v-Jason* [2003] Criminal Appeal Reports at page 13, the Court of Appeal held that:

“(1) Where a person opens an attachment to an e-mail that contains an indecent photograph or pseudo-photograph of a child, he may be said to make that photograph or pseudo-photograph, and he will be guilty of an offence. The mere act of downloading a photograph or pseudo-photograph from the internet to computer screen can also be said to constitute the making of a photograph or pseudo-photograph, and that a person who did such an act intentionally and knowing that the image was or was likely to be an indecent image of a child, would be guilty of an offence under s.1(1)(a).”

At (3):

“In neither case was it necessary to prove that the individual did any act with a view to saving the image on his computer”,

so if the parties agree I think it is the act of downloading it on to the computer which is sufficient to make the offence. With regard to possession, which are the other two offences which were under Section 160(1) of the Criminal Justice Act 1988, *Archbold* covers at paragraph 31.118 possession *inter alia* in the case of *R-v-Porter* [2006] EWCA Crim 560, which was after Mr Gould was convicted, and it was held that:

“A person would have possession of indecent images if he had custody or control over them.”

And there is an issue about deletion, but effectively as I understand it the possession is having them on the computer from where they can be recovered. There is an issue about whether or not you deleted them, but that may not have been relevant in this case, but effectively it is having them on the computer; so “making” is effectively downloading, and “having

possession” is that they are available to be found on a person’s computer. Do the parties agree with that?

Ms Craig: I absolutely agree, but the point I was going to make is simply that everyone agrees these were downloaded on the computer offences, so the idea of “making” perhaps suggests something else - but that was a purely technical issue.

Mr Swinstead: Can I just help perhaps with that? Section 1(1)(a) includes the words “to take or to permit to be taken or to make” any indecent photograph, so if there had been any suggestion here that Mr Gould had been taking photographs no doubt the judgment would have been framed in that way, and as I understand it the evidence simply was that these were found on his computer, and the admission was that he had downloaded them.

Ms Craig: That is absolutely right.

Mr Swinstead: Have I put the thing fairly for both parties?

Ms Bruce: That has been put most helpfully, and certainly assists with the Council's understanding of the legal position.

Ms Jones: Can I just check with the Panel, do you have any further questions? [*No further questions*] Thank you very much, that is most helpful. Ms Craig?

Ms Craig: I am extremely sorry, in the moving I seem to have left part of my paperwork downstairs. I wonder if I could just go and fetch that. [*Agreed*] I am terribly sorry. [*Short pause in recording*] Thank you, I do apologise for that.

Madam, I would like to start by talking about the task that faces me and how I intend to approach it. You have already heard Ms Bruce’s explanation and the task falls into two parts, as I see it: you have to first consider whether Mr Gould is fit to practise, which I take to mean that he is safe to work with members of the public and you are not putting anyone at risk; that he has been completely rehabilitated, which I take to mean that he has co-operated with every part of the sanctions placed on him; and fully understood and accepted the gravity of the offences which he committed. If you are satisfied about his fitness to practise you then have a discretion - that means that you have to decide whether you think it is fit to restore him.

In my closing remarks when you have heard all the evidence, I will have a lot to say about how you should exercise that discretion. I entirely agree with Ms Bruce that the main aspects, and I suggest the real nub of this case, is your duty to maintain the standards of the profession and uphold public confidence in the profession, and that extremely important matter will be the subject of some closing submissions in which I will refer you to case law and ask you to take into consideration ways in which other professions have handled these matters. I stress, and I wholly agree with Ms Bruce on this, that those first

instance decisions are in no way binding on you, I simply ask you to consider them if you think they are helpful by way of illustration.

I first have to present my evidence, and I will call that evidence in four parts, some live and some simply within documentation. The first part will be the experts' evidence which will be purely by way of me taking you through some of the aspects of the reports which I consider to be important. You have already had the opportunity of reading them, for which I am very grateful, so I will as Ms Bruce has done simply direct you to some points which I consider helpful.

In those reports as you have heard there are some psychological reports, there is a report from the probation officer who dealt with Mr Gould's period of probation, and a report which was commissioned from a probation officer who is manager of the West Yorkshire Probation Service Sex Offender Treatment Programme. If I can just clarify, that report was commissioned on behalf of Mr Gould, and it was in considering the matter as regards the Independent Safeguarding Authority who hold records and have lists of people who are barred from working with children and vulnerable adults. It was thought on behalf of Mr Gould that before making this application we should check whether it was thought necessary to place him on either of those lists, because there would be no point in coming here if he was held to be any sort of risk. Consequently a report was commissioned independently from a very experienced probation officer, and they – who previously had not been particularly aware of Mr Gould – were told by Mr Gould of his existence and of these offences, and asked to consider in the light of the report what was the percentage of risk and whether he needed to go on any of these lists, and the answer as you have seen came back that he did not. That is the situation there, it is just a little different from what Ms Bruce understood.

Now, the psychological reports deal with the nature of offences and I will be going into more detail shortly. We have heard about the levels of seriousness, and the evidence will show, and you have heard a little about this already, that the images viewed were at the lowest levels and were mainly gay images of teenage boys. I am not trying in any way to say that this is not serious, because teenage boys like all children require protection, but it is important to be aware of what these images were rather than what they were not, and in looking at the seriousness and the level of these images the age of the children is taken into account.

I would just like to remind you that before these offences were committed Mr Gould was a person of impeccable character. He had worked for 18 years as an optometrist. He made an immediate admission of guilt, he has co-operated fully with all the authorities involved. He has successfully undergone the Sex Offenders Treatment Programme, and concluded his probation period to the complete satisfaction of the probation officer. The opinion is unanimous that the professionals have no concern about him being allowed to work with any members of the public, and that he has fully co-operated and is fully rehabilitated.

Now, he has completed his term on the Sex Offenders Register, and I would just like to pause a moment here to say that the five years that he was on the Sex Offenders Register is a mandatory term that goes with these offences, so there was no discretion by the judge, and that is the minimum term. That is why he was on it for five years. At the time when he was sentenced, although the judge had powers at that stage to bar him from working with children, no such action was taken.

That is the expert evidence that I will be referring you to. Mr Gould is of course here. He is obviously willing and able to answer any questions that anyone has. You have seen his statement, and Ms Bruce has helpfully indicated (although she may change her mind) that at the time when we spoke she did not have any questions for him, but obviously he is here and able to answer any questions which the Committee may wish to put to him.

I will also be calling live evidence from Mrs Maria Gore and Mr Garry Cheek. They are former employers of Mr Gould, and they are keen for him to return to the profession and keen to offer him work. In this context I will be asking them to deal with the suggestion that he may be out-of-date with his knowledge and de-skilled, and they hopefully will be able to deal with that very well. Just one point which was made by my friend that may have been a slight misunderstanding, he has been off the Register for five years four months, not six-and-a-half years. I think it is six-and-a-half years since the offending and five years four months that he has been off the Register.

Ms Bruce: I thought there was an interim order?

Ms Craig: No, that is the time that he has been off. That is when the suspension was made. You will also hear that he was an exceptional optometrist. He was exceptionally conscientious and careful, and that he set up clinics working with disadvantaged people together with one of his employers, and that he learned languages such as Bengali and Somali in order to be able to communicate with disadvantaged people from those communities.

The final part of my evidence will be witness statements from friends, family and others who I do not propose to give evidence, although as a matter of fact a number of them are here and would be able to answer questions if you wanted to ask them, but I do not think there is any real dispute about their evidence. They include statements from Mrs Guthrie, who believes that Mr Gould's exceptionally careful work saved her son's life, and as you have probably seen in the bundle felt this was so important and such a wonderful thing that she has written on several occasions to the Committee to reinstate him.

Those are the four parts of my evidence, and I will now embark upon taking you through the evidence itself.

The first part, if I can ask you to have handy Bundle A1, which contains our evidence. You have already been told about the reports of Dr Craissati, and some reference was made to the fact that the first report dated 2006 in

particular was perhaps a little old and perhaps not so relevant today. It is true that it is some years old, but the point I ask you to take from that is that even right at the very beginning Mr Gould was found to be at low risk of reoffending, and he was from the very outset very much prepared to understand the level of his offending, the wrongness of what he had done, and to move towards learning from it and understanding it and being rehabilitated from it. He was not someone who refused to accept the serious nature of the offences at any stage.

Comment has been made that Dr Craissati, although she said quite a lot about the low risk of him progressing to any offence of being in contact with a child as opposed to downloading these images on the internet, had not dealt in any depth with the possibility of him reoffending by looking at images again, so I would just like to read to you that part which starts right at the bottom of page 9 of the A1 bundle and on to page 10. It says:

“Our own research, conducted in conjunction with the London Probation Area, followed up 90 internet offenders over one to two years; we found that only two of the 90 internet offenders had re-offended sexually during this period, both returning to internet child pornography use, and no one had escalated to a contact sexual offence. These finds are likely to be representative of the wider body of research in this area.”

She goes on to say:

“Mr Gould does not present with any aggravating features in his offending and background, and there is substantial evidence to support the premise that he is primarily sexually interested in adult men and there is a very low risk indeed of him ever progressing to a contact sexual offence against a child.”

So that was what she said then back in 2006, the very first time this matter was considered by your Committee. She had another consideration of the matter in 2006 in respect of the hearing for restoration, which as you have heard did not go ahead for technical reasons, and she looked at that again. That is at page 14 of this same bundle, and she says there at the top of the page, so this is a bit more up-to-date:

“Mr Gould has progressed in a very positive manner, as would have been predicted from his attitude at the time of his conviction and his previous assessment with me. I remain very confident that the assessment of him as posing a low risk remains absolutely valid. That is, I would consider it extremely unlikely that there would be any risk of him escalating to a contact sexual offence with a child, and I would consider him to pose a low risk of returning back to downloading child pornography on the internet. Further, there has been increasing research in this area with longer follow up periods, and the findings remain as before”.

I assume then she is referring back to research that I read out from her previous report, that is:

“Men with Mr Gould’s offending and background characteristics pose very low risk to others indeed.”

So that was what Dr Craissati says, who as you will have read has an extremely strong background. She tells us that at page 2 as Head of Forensic Psychology Services at the Bracton Centre, and she tells us about her other extremely impressive qualifications and so forth.

Moving on then to the probation officer’s report which starts at page 15, the probation officer was obviously entirely independent, somebody who worked with Mr Gould during the period of time which you have heard he was on probation, and at the end of all that was asked to report back about what had happened and what she felt about his risk and so on. This is in 2008, which was immediately after his period of probation ended. She talks on page 15 and confirms the information provided by the police officer in the case, and this is about the middle of the page, stating that:

“The images recovered were generally gay images of teenage boys.”

She then goes on in her report to say that she agrees with the report of Dr Craissati, and this is on page 17. The independent probation officer taking an entirely independent view of everything says various things about it, but just looking half-way down the page and half-way down the middle paragraph she is saying:

“Furthermore, during the past three years of his supervision, no aggravating factors have come to light, and his previous preoccupation with pornography appears to have diminished in correlation to his increased confidence in himself, and increasingly positive interpersonal interactions and relationships with others. Ms Craissati also stated that were Mr Gould to be reinstated to the GOC, in her view the risks of re-offending by Mr Gould were negligible. She remarked how he had at that time already implemented good practice”,

and she is there talking about the way in which he works in his practice, and also deals with his statement.

Further down that page she says:

“- I would concur with Ms Craissati’s views and assess Mr Gould as posing a low risk of direct harm to children and having a low likelihood of re-offending.”

So those are her very positive assessments. You also have seen that as well as the probation and the sex offenders’ course and the other things that he did to try and recognise and deal with his offending behaviour, there is also a report from a chartered counselling psychologist, Dr Stauffer Kruse, on page

42 in which once again he talks very positively about Mr Gould's understanding of his behaviour, and he says in the penultimate paragraph at the end:

“Personally I would have no anxiety seeing him working with vulnerable members of the public.”

We then see the report which was prepared at the request of those advising Mr Gould, by Mrs Rita Ashworth, the Practice Manager of the West Yorkshire Probation Sex Offender Treatment Programmes, and therefore clearly a specialist in this type of case. That appears at page 73 of your bundle and she says in relation to her own background of her prime responsibility for assessing referred men for suitability for treatment and assessing the management of risk, pre, during and post-treatment:

“I have twenty years experience as a Probation Officer of which the last ten years have been in the field of sex offender assessment and treatment, with 8 years as a local and then Area Practice Manager” and so forth.

Ms Jones: Excuse me Ms Craig, two of us have turned to the wrong page.

Ms Craig: I am terribly sorry; I am on page 73 now, so shall I pause while everybody catches up? Actually I am terribly sorry, I have completely misled you. There is old page numbering, it is now on page 20. I should now be looking at the printed numbering. I am terribly sorry, that is entirely my fault.

Ms Jones: Right, got it, thank you.

Ms Craig: Following that through to page 21 what is her assessment of Mr Gould? She talks about the likelihood of re-offending, and she explains that:

“The probation and prison services throughout England and Wales use a Home Office validated actuarial risk assessment tool”, etc.

and she explains what that is. She says:

“Even prior to treatment Mr Gould was assessed as falling into the Low Risk category on RM2000. In practical terms this means 8% of men in this category are likely to reoffend over the next 5 years, and 11% over the next fifteen. This refers to sexual reoffending.

Of course, the pertinent question for the I.S.A. is ‘How likely is Mr Gould to fall into that small category that are likely to reoffend in the future?’ Whilst predicting future behaviour can never be an exact science, because we are human beings and life itself is unpredictable, I would assess that Mr Gould would fall into the much larger category of Low Risk offenders who will never repeat either the illegal downloading of child images or any other form of sexual offence.”

She says:

“I base my judgment on the response that he has made to Probation intervention and treatment, his broad support network of relatives and friends and several other important ‘protective’ factors. Most crucially, I am impressed by his own understanding of why he offended as he did, his remorse, and recognition of the seriousness of his actions and his understanding of the underlying problems (risk factors) which led to his illegal and unhealthy means of coping.

Another, very important, protective factor is Mr Gould’s awareness of the unbearably negative consequence for himself should he ever reoffend.”

So she talks at some length about that, and then on page 22A, and that was in addition to your bundle and I believe was sent to you electronically separately – I don’t know if everybody has that?

Ms Jones: We do have several copies of that.

Ms Craig: Yes, for some reason it seems to have been copied several times and I do not know how that happened but I do apologise for that. Because her previous report was addressed to the Independent Safeguarding Authority she was also asked to address yourselves in relation to this matter, and to give her opinion about it. In the second paragraph of that she says:

“Whilst my full report hopefully makes clear that Mr Gould is assessed as posing low risk to the general public, I wish to emphasise my own opinion that he would be safe to employ in any capacity that brings him into contact with children or vulnerable adults.”

She goes on to say, and I am going to ask you to think about this carefully later:

“Research evidence shows that one of the most important factors in the rehabilitation of ex-offenders is employment. Due to my professional interest in rehabilitation and reduction of the risk to the public, it is always very gratifying to know that some employers who have the power to do so are willing to play their part in helping ex-offenders reintegrate as useful members of society.”

The other points, which you have already been referred to and therefore I will not take your time up too much with them, are the fact that his period on the Sex Offenders Register finished on 29 July 2010, and you have already been referred to confirmation on that point, and you have seen the ISA letter which you have been referred to, right at the back of your bundle at page 49 confirming that it was considered not appropriate to include Mr Gould either on the Children’s Barred List or the Adults’ Barred List.

That is as it were the professional, the expert, evidence which I have brought before you. I would now like to say that Mr Gould is available to answer questions. He has provided a statement which you will find in your bundle at page 23. This deals with all the matters that we have heard about. I know that sometimes in the practice here for him to read that statement out to you; unless either you or my friend wishes that to happen I do not see any reason to do so, but he is here to answer questions if any members of the Committee have questions for him, either now or at some stage if matters arise. I wonder if you would like to ask him some questions now.

Ms Jones: Can we just pause there a moment? I want to check with the Panel whether there are questions. I understand that you will be calling witnesses?

Ms Craig: I will.

Ms Jones: So if on the bundle of information Ms Bruce has any comments at this stage?

Ms Bruce: Madam, there are a couple of points I would like to come back on, but perhaps not at this stage. Perhaps if you hear all the evidence I can then deal with all my points at once, which might be better.

Ms Jones: I just wanted to check with the Panel whether they have any questions? [*No questions from the Committee*] I have one question which is about the Independent Safeguarding Authority on page 49. I do not really understand the role of this agency. Does it cover all persons on the Sexual Offenders Register?

Ms Craig: I think this is a matter for some debate. It was set up by the last Government and it really covered absolutely everybody that had any sort of involvement with children which was considered to be wrong, and they were given the role of setting up lists of people who were to be barred from working with children or vulnerable adults, and to put them on a list so it would be an easy way, I suppose, of checking if they had decided to bar someone, and they had discretion to do so. However it is a rather confusing position because I believe the present Government is not so keen on this list and is reviewing whether it is actually necessary. I have tried to get to the bottom of it but the only thing that seems clear is that it is currently under review.

Ms Jones: Ms Bruce, could you shed any further light on this agency or its work or status? I am afraid I am a lay member and rather lacking in knowledge.

Ms Bruce: It is certainly not anything that I have encountered in the criminal context, in the sense that it forms a part of any kind of sentence or order imposed by the court, but other than that I am unable to assist as to this body and its function.

Ms Craig: Suffice it to say, however, that it was not considered necessary to put him on it!

Ms Jones: No, it is the agency and their status which I am trying to understand.

Ms Bruce: Madam, I can also undertake to find out about it. This was information which was given to me on behalf of the applicant, but I am happy to undertake to find out some more information about it if you feel that would assist.

Mr Swinstead: Can I intervene to this extent: a case that another Committee was considering yesterday involving very similar offences, where the registrant was sentenced in September of last year, the judge informed him – and I think a judge is now required to inform them – that his suitability to be able to work with children would be considered by the ISA. The judge did not put it quite in those words, he just used shorthand and said that the ISA would consider it or some such words, and as I understand the position where any person is convicted of these sort of offences, or indeed of any offences related to either children or with adults because there are obviously vulnerable adults, the matter has to be considered by this authority.

There may be other people who are considered by this authority who have not committed criminal offences but are thought for one reason or another to be people who should be considered by them, but it would appear certainly from the sentencing remarks of the judge last September that amongst other things, reminding him that he was on the Sex Offenders Register and ordering him to attend a programme and all the rest of it, was to say 'The ISA will consider your case' or words to that effect.

Ms Bruce: Then in my submission it does not form a part of the sentence itself.

Mr Swinstead: It is certainly not a part of the sentence, but this is exactly what it says it is; it is the Independent Safeguarding Authority, and it therefore independently has to consider, presumably under its statutory duty on the basis it was set up, whether it is appropriate to put somebody on the appropriate list. That as I understand it from my reading of yesterday is basically its task.

Ms Bruce: Yes, that is consistent with my understanding. I could not help but notice that Ms McCrudden might have had some observations in relation to this?

Ms Jones: Ms Craig, were you going to come back on this series of interactions?

Ms Craig: I was only going to say that what I have been told is that if anybody wants to employ somebody in the capacity in which they deal with children or vulnerable adults, they are obliged to check with the ISA to find out whether or not they are on the register.

Ms McCrudden: From an optometrist's point of view I understand they are there to ensure that optometrists working within their area are not barred from dealing with children or vulnerable adults by the ISA.

Ms Craig: Yes, that is exactly my understanding. That is helpful.

Ms Jones: Thank you very much for all of that. We have a statement from Mr Gould; Ms Craig, are you inviting us to indicate whether we wish to –

Ms Craig: Yes indeed, if you would like him to come and read his statement or answer questions on it, then he is obviously here to do so. I did not have any questions, and I do not think that Ms Bruce does – unless something now has occurred to her.

Ms Jones: Okay, I just wanted to clarify that because it is unusual for the Panel to be invited to consider –

Ms Craig: I would not want to do anything unusual at all, it was just something that Ms Bruce and I discussed.

Mr Swinstead: Ms Craig, may I suggest that you ask Mr Gould to go to the witness stand, to confirm the contents of his statement and his signature on the last page, to indicate whether that is the position that you do not have any questions, and tender from Ms Bruce whether she does not have any questions, and then it is for the Committee? If the Committee do not have any questions then Mr Gould can go back to his place, but I think that is the proper way of doing it.

Ms Craig: Absolutely.

Ms Jones: Thank you.

**MR ASHLEY GOULD, called and sworn
Examined-in-chief by MS CRAIG**

Q. Mr Gould, are you Ashley Gould?

A. I am.

Q. Did you make a statement, and I think you have a copy of a bundle in front of you, which appears at page 23 of that bundle?

A. I did.

Q. If you could just have a look at page 29 of that bundle?

A. Yes, that is my signature.

Q. Have you recently read this statement that you made?

A. I have, yes.

Q. Is everything in that statement true?

A. True. Everything is true.

Q. Perhaps you would wait there to see whether there are any questions from Ms Bruce.

Cross-examined by MS BRUCE

Q. Mr Gould, I just have one or two supplementary questions which have arisen from submissions which have been made on your behalf this morning. I wonder if it might be possible for you to have a copy of the bundle which Counsel are calling C1 in front of you. It was put on your behalf that the majority of the gay images were of teenage boys, do you recall that?

A. Yes.

Q. Is there any evidence that the Committee has to confirm that beyond what you said to the probation officer, which is of course hearsay?

A. Well, just my word.

Q. Dealing with your word, could you turn to page 17 of the bundle in front of you? If you look towards the bottom end of that, it is the final few sentences; please take a moment to familiarise yourself with this page. This is from the first hearing transcript and you are being asked questions about the credit card details, do you remember?

A. I do.

Q. And you might want to look over the page at page 18, at the top there; again I do not want to rush you so do take a moment to look at that. [*Pause*] I do not need you to read the whole page, perhaps just down to the second paragraph. Have you done that?

A. Yes.

Q. If you look back at page 17 you are being asked by Ms Etherington, and it is the penultimate question on page 17:

“How many times would you say you accessed the material, or any part of it?”

And you say:

“It was down to the perception of what was under age or not. I went to this site –”

and it says there:

“Deal with the material that you perceived to be under age”, and you said “Not often then.”

Do you see that?

A. Yes.

Q. If you look over the page, the second paragraph that begins “By ‘teenage’ you mean under age – teenage under 18?”, and Mr Gould, you were ahead of both me and the Legal Assessor in saying:

"I believe the law changed in May 2004", which we now know of course is accurate, "- and this was prior to - it was under 16 then and I don't believe that there was that much below the age of 16."

Do you see that?

A. Yes.

Q. So we can take it from this that there was some that was below the age of 16 in the 599 images that were found in your possession?

A. That was my statement at the time, yes.

Q. And you concur with that?

A. Yes.

Q. It was not all images of teenagers?

A. As I said at the time of my arrest you can hardly tell the differences, so I can't give an age.

Q. But you accept, don't you there, that there were some that looked to be below the age of 16, and that you accessed those?

A. That is what I said at the time, yes.

Q. And that is what you are saying now is it?

A. Yes.

Q. I have no further questions, thank you.

Re-examined by Ms Craig

Q. If I could just come back on that one point, just going back to page 15 of Bundle A1, could you just read from the middle of the paragraph starting with "A police report", do you where I am saying?

A. Sorry, is that the probation report?

Q. The probation report, exactly.

A. [Reading] "In November 2004" -

Q. If you could start from "A Police report" which is the final sentence there?

A.

"A Police report dated 23/3/2006 which is held on file, provided by DC Kevin Gow, previously of Operation Jigsaw, indicates that the images recovered were "generally gay images of teenage boys"."

Q. So that is where that came from, not from you? It was not just you word?

A. Yes.

Q. Thank you, I have no more questions.

Ms Jones: Are there any questions from the Committee?

Questions from the Committee

Mr Khan: I have two questions Mr Gould. My first question is could you in your own language and style outline why you should be trusted?

A. First of all I am very remorseful and very regretful. It is hard to believe it is seven years ago now and I certainly won't re-offend. I believe I have been punished enough in that regard, and I do not believe I am a threat to anybody. I am very good at my profession and would like to go back, and I am certainly not a threat.

Q. But what makes you believe you are not a threat?

A. Because I know I am not, because I have not re-offended and I will not re-offend.

Q. And that you have learned something?

A. I certainly have, yes.

Q. In the last seven years – I think the offences were in '04?

A. Yes.

Q. I know you were taken off and erased in '06. Will you just tell us what you have been doing in the last five years, please?

A. I have been attempting to come back to this profession, and I have been keeping up-to-date with advances in the profession.

Ms Jones: Excuse me Mr Gould, when traffic goes by it is very difficult to hear. I am sorry to ask you, but could you please -

A. Sorry, I am quite shy, and obviously quite nervous.

Q. But we really do want to hear what you have to say.

A. Okay. I have taken steps to rehabilitate myself in many ways, as my statement states. I have obviously kept up-to-date with the Continuing Education Training points and advances in the profession. I have also done lots of courses, courses which will advance me in many ways including coming back into the profession. I am doing British sign language, also other examples I have given in my statement. I have been quite depressed and down about obviously events, etc. I have done a lot – [Upset] I would dearly love to go back into the profession, which I miss, and what I have said in my statement.

Mr Khan: And you have done some voluntary work as well?

A. I have.

Q. I would like to know about that too.

A. I did voluntary work while I was still working, for an HIV charity and a sex workers' charity in Kings Cross. That was while I was still working, but obviously since then I have not been able to work in this profession. Since then I have done charitable work.

Q. What does it involve, this work?

A. I was being an optometrist to them in outreach centres in Kings Cross, and in Stepney, in Commercial Road, but that was before I was erased. But since then I have done some charitable work – well, not charitable work, but I have raised money for the British Heart Foundation, I have done some cycle rides, etc. I have also swum the equivalent of Lands End to John O’Groats in that time, and I will be doing charitable swims in the future, Swimathons. That is the extent of my voluntary charitable work.

Q. Thank you.

Ms Jones: Could I ask you something about the CPD work which we had in the list of papers?

A. CPD?

Mr Swinstead: CET.

Ms Jones: Sorry, CET – it is called different things in different organisations, my apologies! Could I ask you to tell us something about it, because I understand that it can range from reading an article through to practising? Ms Bruce has said that your fitness to practise may be questionable as it has been a very long period, so can you tell us a bit more about what it has entailed?

A. Certainly. I am still subscribing to the regular journals, periodicals on optometry, and clearly they do include CET points and exams that you can take from that. I have not attended any courses in person as such, but I have taken these regularly and they do keep you abreast of the changes, and I have been reading the whole journals anyway. I have stayed in contact with my two previous employers, Maria Gore and Garry Cheek, in that regard, and obviously I can see what is going on with the profession.

I applied to go on and was accepted on a course for people who have been out of the profession for a while, which was actually last week I believe, and I pulled out of the course because of this hearing. It was mainly for people who had been out of work for years or on maternity leave, etc. just to give them a leg-up back into the profession again. I have been determined not to let things go, not de-skill in that sense.

Q. Why do you want to come back into this profession?

A. Quite simply, I loved it, and I feel that I have something to give, and I have given a lot in the past and I believe it is something I excelled at and would excel at again. It is a shame that I am not doing it, and I regret it every day since I have been struck off. I believe I have a lot more to give, and it is not fair that I have not been able to give it. That is how I see it.

Q. A major issue is protection of the public in these hearings -

A. Sure.

Q. - and we have read reports that you would be categorised as Low Risk. Are there any circumstances under which you think the public is at risk?

A. None at all. None whatsoever.

- Q.** Thank you. I just want to check whether the Panel have any further questions? [*No further questions*] Ms Bruce, do you have any final questions? [*No further questions*]

Re-examined by Ms Craig

- Q.** Mr Gould, in your statement you have attached the CET points that you have done. Can you just tell us how many of those points you have now?

A. They are too numerous to count – I am sorry. I do not know the exact number.

- Q.** And how much of your time at a rough estimate does that take up?

A. Supposedly each point should take up one hour study or work, so each point is one hour's education.

- Q.** And you have dozens and dozens of them, I can't count them either.

A. Yes.

- Q.** Thank you very much.

Ms Jones: If there are no further questions perhaps Mr Gould could stand down now.

[*The witness stood down*]

Ms Craig: I would now like to call Mrs Maria Gore.

**MRS MARIA GORE, called and affirmed
Examined-in-chief by MS CRAIG**

- Q.** Mrs Gore, could I ask you to see if you have in front of you a bundle that is marked A1?

A. Yes.

- Q.** I will ask you to turn to page 33. You see a statement there? [*Document located*] It is a statement signed by Maria Gore; is that you?

A. That is me.

- Q.** And is that your signature?

A. It is.

- Q.** Perhaps as the statement is quite brief could I ask you to read it aloud?

A. Yes:

"I have known Ashley Gould for 12 years and he worked with me in a professional capacity for all this time until he was suspended from practice. He is the best optometrist I have worked with; he is very professional in every way, polite, conscientious and always tried his best for every patient. Many patients ask for him specifically.

I am aware of the offences committed by Ashley. I can vouch that there have never been any complaints about him. He has always behaved in the most professional manner. As a mother I would trust him implicitly with my children. I have always had an arrangement of an “open door” policy. This is a sight hole in the door. I watched in amazement as he communicated with a Bangladeshi patient in Bengali. He even learned some of the Somali language. He was developing a theory on dyslexia and seemed rather enthused by this. He always gives extra time and effort to people who are underprivileged or who are mentally or physically disabled. He loves to help people.

After all that has happened I would employ Ashley as my optometrist.”

- Q.** Thank you very much, Mrs Gore. Can I ask you first of all, do you have any concerns at all that he might be a risk to any of your patients?
- A.** None at all. None at all.
- Q.** Now, it has been said that as he has been out of practice for just over five years, there is a possibility that he might have become de-skilled and therefore would not be such a good optometrist again. What would you say about that?
- A.** I don't think so. Ashley kept up with all the reading, all the optics that are going, and very recently I had a question about somebody with a detached retina that was out-of-hours, and I phoned Ashley for advice and he gave me the advice. I think he keeps up with it because he wants to be an optician and he wants to go back.
- Q.** Thank you; so do you have any concerns that he might let you or himself down in any way?
- A.** Not at all, no. Not at all.
- Q.** Thank you very much. I expect you will be asked some further questions.

Cross-examined by Ms Bruce

- Q.** I have a couple of questions. You appreciate, do you not, that public protection just does not mean the immediate protection of patients and so forth? You understand that do you not?
- A.** Yes.
- Q.** The public interest also includes and encompasses the collective reputation of the profession, and the need to uphold proper standards and conduct and behaviour, you understand that do you?
- A.** Yes.
- Q.** So that when people go to see a professional person, be it an optician or a doctor or a dentist, they can put their trust in that person because they have the trust in the profession as a whole, yes?

- A.** Yes.
- Q.** And you accept, do you not, that that is important?
- A.** I do, yes.
- Q.** With that in mind, how do you think that your patients who may be coming to see you with children or other vulnerable people might feel if they knew that you had employed somebody who had been on the Sex Offenders Register, and was a convicted sex offender?
- A.** Where we work it is so close to the Reception and everything. I always ask the mother to go in, whether it is a male optician or a lady optician. I ask mother to go in with the child, because that is how it should be until they are about 16.
- Q.** But how do you think they would feel if they learned afterwards of these matters?
- A.** That very much depends on the person, but if it was me and the optician treated me with respect then I do not think I would have any objections to it whatsoever.
- Q.** Some of them are likely to be horrified, are they not?
- A.** Not if he was allowed back on the Register by the profession or by the court, and that obviously means that he is no risk any more – which I do not think he is.
- Q.** You think that would weigh more strongly with them than the idea that they had been treated, unknown to them, by somebody who had been on the Sex Offenders Register?
- A.** Very difficult to answer, but I would not have any objections.
- Q.** In terms of the de-skilling, and this is no criticism of you at all Ms Gore, and I do not suggest you could have done this, but there has been no performance assessment has there of Mr Gould to assess whether he has been de-skilled?
- A.** No.
- Q.** And you are providing your opinion as a professional but not in an expert capacity, as somebody who has undergone any kind of objective testing?
- A.** No.
- Q.** I have no further questions for you.
- A.** Okay.
- Ms Jones:** Mrs Gore, we will just check whether the Committee have any questions for you.

Questions from the Committee

Mr Khan: Counsel for the GOC has asked you questions about how the public and how the family would feel. Can I get down to your clients? You say they are Bengali, Somali, and you draw a picture of very vulnerable people. My

question really is that if there were problems or complaints when Mr Gould was with you, would they be capable of making those complaints?

A. Sorry?

Q. Would they be capable of making a complaint? You know it is not easy to make a complaint against professional people.

A. No, that is right.

Q. So I am really taking you back and just questioning you on the clients, because they are very vulnerable people, if something was wrong at any time, and I am not suggesting there was, are they or were they able to complain?

A. Yes, of course they would.

Q. Have you had complaints of any nature? That is what I also want to assess – not about Mr Gould but in general.

A. When patients come out of the consulting room they either say 'This optician was really good' or they say 'That was a short test'. People do give an opinion after a test. A lot of people do, so yes, I think if there was anything then they would complain.

Q. That is what I was asking; and you think they do complain?

A. Yes, that is right. I think they would say, yes.

Q. Thank you.

Ms McCrudden: May I ask in what capacity you have known Mr Gould?

A. Ashley worked for me. I am a dispensing optician and I own the practice, and Ashley worked for me 12 years ago for about seven years, until he was disqualified.

Q. And you made an assessment of his skills; is this purely feedback from patients or are you doing this in any professional capacity?

A. No, it is feedback from the patients, and there was never any come-back, and people specifically wanted to see Ashley – and even when he left people were asking about him, and still are.

Q. That is fine, thank you.

Ms Jones: *[No further questions]* Thank you very much.

Re-examination by Ms Craig

Q. If I may ask a couple more questions, did you ever have any complaint about Mr Gould's work of any description?

A. None whatsoever, no.

Q. Just talking about the de-skilled point, in your profession is it common for people to come back to the profession after a period of being out of it for some time?

A. Yes, that is right.

Q. Is there a system available to help them get back into it?

A. I think there might be a course for them to go on, but if you do the CET points that we are doing then you are keeping up with all the newest things that are coming out, and I believe that Mr Gould has kept doing that.

Q. Thank you very much. I have no further questions.

Ms Bruce: I am being asked to raise the question, which is probably as the professional more alive to you than to me, which is the fact that this witness is in a different profession to that of Mr Gould, because as far as I am aware she is a dispensing optician, and I have just been asked to make that point in relation to the assessment of skills in that respect.

Ms Jones: I thought it had been established that comment was not personal here, the letter that was read to us?

Ms Bruce: Yes.

Ms Craig: Yes, but she has not been called as an expert witness but as an employer.

Ms Bruce: She was not in the room when I put to this witness the fact that she was assessing a personal capacity rather than as an objective performance assessment, and she was essentially giving her personal opinion; but I can see that really has not been lost on this Committee.

Ms Jones: Thank you. Are there any further questions? [*No further questions*]
Thank you very much Mrs Gore.

[*The witness stood down*]

Ms Craig: If Mrs Gore wants to stay here is that all right, or is it normal for witnesses here to leave?

Mr Henley: That is fine; she can stay if she wishes.

Ms Craig: I would now like to call Mr Garry Cheek.

**MR GARRY CHEEK, called and affirmed
Examined-in-chief by MS CRAIG**

Q. Mr Cheek, I think you will find in front of you a bundle that is marked A1, can you see that?

A. Yes.

Q. Could you turn to page 34 of that bundle please? Can you see that there is a statement that is signed Garry Cheek?

A. Yes.

Q. And there is a signature; is that you and is that your signature?

A. It is.

Q. Thank you very much. Can I ask you to read out the letter, as it is quite brief?

A. Yes:

“I am writing this letter for the purposes of the hearing at which I understand there will be a consideration whether Mr Ashley Gould should be subject to further suspension from practice. I very much hope that the panel will not take this step.

I have known Mr Ashley Gould for nine years in a professional and personal capacity and he has worked in my practice in Highbury two days per week during this period. He has provided eye examinations, fitted contact lenses, also providing diabetic screening in partnership with the Whittington hospital. We have also together provided an on-site clinic at an HIV centre. He has also regularly volunteered to help at a drop-in centre in Kings Cross. I am fully aware of the criminal charges against Mr Gould and have seen him deeply remorseful. I have also seen how he has been personally affected by the criminal and professional proceedings against him. I would like to personally attend the full hearing to voice my full support for him. I am aware that this document will be shown to the GOC committee.

Mr Gould is held in the greatest esteem by colleagues and patients alike and has never been subject to any complaint by either group. He has built up a regular client base and I feel that he should be allowed to continue working in his normal capacity before the full hearing to continue a full effective provision of patient care. He has maintained an ‘open door’ policy throughout his working practice and I would personally maintain that this continues.

I am eager to welcome him back to my practice.”

Q. Thank you very much. Could you just tell the Committee about your own position and qualifications?

A. I have been an optician starting my training in 1976, so almost 35 years, and I sit on the LOC for Camden, that is the Local Optometry Committee.

Q. And your qualifications?

A. I am a dispenser and I have a contact lens fitting practice, and I do some low-visual fitting as well.

Q. What is your opinion of the standard of Mr Gould’s work?

A. Absolutely excellent. It has always been very, very good.

Q. Do you have any concerns in terms of risk to your patients or anybody else?

A. No, absolutely not.

Q. Why is that?

A. As I said in my letter we have always had an 'open door' policy, and there has never been any suggestion of any misdoing with any of my clients and patients.

Q. Do you trust him?

A. Absolutely.

Q. Thank you very much. I think there may be some more questions.

Cross-examined by MS BRUCE

Q. Mr Cheek, you will appreciate that the public interest involves more than just keeping patients safe?

A. Yes.

Q. It is about upholding a proper standard of conduct and behaviour, and the collective reputation of the profession is extremely important.

A. Yes.

Q. It is important because when people go to see professional people such as opticians or optometrists they need to be able to trust what they are told, and to see those people as 'whiter than white' if you will forgive the colloquialism?

A. Yes.

Q. With that in mind, how do you feel your patients would react on learning that they had been treated by somebody who had been a convicted sex offender?

A. Why should they know? Who would tell them? Are the GOC going to come along and tell them this?

Q. Mr Cheek, I am so sorry, I cannot answer your questions.

A. You are suggesting that they should know this thing; should we tell each patient of each professional's background? I do not think it would be relevant.

Q. Mr Cheek, you are here to give your evidence and the Committee will want to hear the answer to my question. Shall I repeat the question?

A. No, there is no need to, I completely understood it. I do not think most patients would know, and I think under the circumstances that Mr Gould is not on any Registers on the moment and there would be no risk, and therefore they should have confidence in him.

Q. But if they found out, say for example through local gossip or through the media or any other means that they had been treated by somebody who had been on the Sex Offenders Register, do you think that might undermine their trust?

A. I do not see why it should, when all the reports indicate that he is of no risk.

Q. Do you think that is going to weigh with them on learning about this, or do you think they might perhaps think 'I don't know that I want to go back to that practice'?

- A.** As I have said, I am not sure – you suggest ‘local gossip’ but I have never come across local gossip in optics. I am not sure quite what you are referring to.
- Q.** Mr Cheek, what I am referring to is the fact that if somebody goes to see a professional person and then subsequently finds out that that person had been a convicted sex offender -
- A.** How would they find out?
- Q.** I am so sorry, I cannot answer the witness’s questions. I am not trying to be unhelpful.
- A.** You are not being very helpful to me, because I have not come across this. As I explained when I first came into the room, I have been in practice for nearly 35 years and I have never come across this instance before, where people are gossiping.
- Q.** So you do not feel that there is any danger to the profession, in terms of being under-mined in relation to trust, by putting people who have been on the Sex Offenders Register back into practice?
- A.** The reports, from what I understand, say that Mr Gould is not of any risk to anybody, so therefore I do not see that follows necessarily.
- Q.** But the Committee have the reports and they will take those into consideration, but what I am trying to ascertain -
- A.** I cannot answer for the patients. You are asking me to answer for the people who are not here.
- Mr Swinstead:** Ms Bruce, it may be a valid point but you appear to be exploring an issue which is, if you like, what an uninformed member of the public may be concerned.

Mr Cheek: It is hearsay.

Mr Swinstead: Forgive me, Mr Cheek; Mr Cheek has answered as best he can. The issue, and I think the basis of your question, is if an uninformed patient discovers something later will they be concerned. Mr Cheek has answered as best he can. Can you take it any further with him? There are various answers, with respect, that he can give and he has given his answer. I do not know if with respect you will get very much further with him, because you have posed a particular question which he has answered in his own way.

Ms Bruce: Yes, I accept that, and I think I probably have taken this point as far as I can, and I am sure the Committee understand the point I was trying to make. May I put one more question, which is perhaps the other side of the coin, and again I will try not to labour the point, which is how do you feel that somebody coming into your practice or into an optician’s practice on any High Street in the country would feel if they were told ‘We have a professional here who was on the Sex Offenders Register, and who was convicted for downloaded hundreds of indecent images of children, would you like to see him?’. Do you think that might cause –

Mr Cheek: Sorry, can you break that down into smaller parts?

Q. Yes, forgive me, I will try and rephrase it. If you had somebody who came into an optician, your practice or another practice, and were confronted by leaflet or by notice or verbally, 'We have a professional here that is a convicted sex offender' -

A. Would that be normal procedure?

Q. - 'would you like to see him?' which is the question, do you think that might under-mine trust and confidence in your profession in terms of the perception of that?

A. But they are not on the Register any more.

Q. Yes, but that was.

A. So you state 'They were on the Register but are not any more, and they are no longer at risk'? So would a full explanation of that person have to be given if the question came up?

Q. Do you think it would undermine that person's confidence in the profession?

A. No.

Q. So that is the answer?

A. Yes.

Q. Madam, that is the other side of the question I wanted to ask, thank you so much for your indulgence.

Ms Jones: Do you have any further questions?

Ms Bruce: Only in relation to the performance aspect, so may I deal with that? Of course, and it is no criticism of you at all, Mr Cheek, but you have not undertaken any kind of objective performance assessment of Mr Gould's skills at this present day, have you?

A. No, but I am aware that he has undertaken CET tests, and since they are approved by the General Optical Council I assume that they are satisfactory and are worthy of note. The other thing I would say about keeping up-to-date, because I think that is what you are referring to, is that there are many people who take breaks in their careers in optics; many women for example take time out to have children. I know of a case of one lady who has taken 20 years from not working and has just come back to work. She has not had to undergo any further training to go back straight into practice, but of her own volition she has gone to do a two-day course sponsored by Johnson & Johnson; but there is no requirement to do that.

Q. Those are all the questions I have for you.

A. Thank you.

Re-examined by MS CRAIG

- Q.** If I can just follow up with one point on that matter, would you have any concerns about Mr Gould having become de-skilled?
- A.** Absolutely not, no. There are many, many practitioners who come out of retirement who are in fact not actually up to speed with things, and they continue, not I would suggest of a lower standard because that is not what I mean, but who are not up to speed with the latest things perhaps. I employed a gentleman temp last year who was 76; now, is he de-skilled?
- Q.** Thank you very much.

Ms Bruce: And that concludes my questions, Madam.

Ms Jones: I would just like to check before we move on do the Committee have any questions?

Questions from the Committee

- Mr Khan:** Yes, I have, I will start. I have a question on how a professional would look at it, and whether this has been adequately explored Mr Cheek. You have known Mr Gould for nine years you say?
- A.** Yes.
- Q.** And you also felt that he was very good as a professional?
- A.** Yes.
- Q.** Which nine years are these, because for the last six years he has not been practising?
- A.** He has not been practising but I have still kept in contact with Mr Gould, yes.
- Q.** So you have seen his work for three years, or four years?
- A.** No, no, he was working in my practice for nine years.
- Q.** So he was working in your practice for nine years?
- A.** Yes, that is correct.
- Q.** So obviously you knew him for much longer?
- A.** Yes, I have known him for many years, a total of 14 or 15.
- Q.** I am glad you said that, because I was not very sure.
- A.** Yes, of course – so in total around about 15 years.
- Q.** So Mr Cheek, what is your reasoning for saying that he is, as you put it, no risk to patients?
- A.** My partner happens to be involved in the Probation Service and was Head of the Probation Service, and we have both met Mr Gould. My partner's assessment of the situation, and he is not here as an expert, would suggest that there is no risk and is also very clear on this. If you have come off the Register and the Register says this, and he has gone through psychiatric

assessment and Mr Gould has gone through all of the correct retraining processes, whatever they may be, I think that they have to be paramount. They are there for a reason, and they are there for rehabilitation, and I think it is unfair if they are dismissed. If they do not work then there is a bigger thing to be looked at here.

Q. Yes; more specifically Mr Cheek, whilst he was employed by you two days a week I think for nine years -

A. Yes, that is correct.

Q. What can you tell us about the people he dealt with, complaints or anything?

A. We have never, ever had a complaint, ever. What I do know is that when Mr Gould could not practise any more he was missed, because he has built up a very, very good relationship with his client base and with his patients. They ranged from very, very young children through to very elderly people, people with all sorts of sight disabilities.

Q. What is your experience of complaints?

A. We have never had any complaints, in my experience of complaints.

Q. People complaining?

A. People complaining usually would come back because they are unable to get on with their spectacles, and it is usually varifocals and that is just an adjustment problem. But as far as the sight test is concerned I have never, ever had a complaint for Mr Gould.

Q. Thank you.

Ms McCrudden: Can I ask you how you implement the complaints procedure within your practice, and how you let patients know about it?

A. We have a standard policy, and that is from the PCT. The practice I have – and at the moment we have moved to a new building and we are up to all of the current standards from Health & Safety, the accident book, the whole thing, it is all in place.

Q. Can you explain to me how you implement it? Every area and every authority has different regulations on what you must display.

A. Yes, there are forms available which are, I think, from the GOC, I can't remember precisely, and they explain complaints procedure. Complaints would normally then go to then through the PCT, and then would come back to us.

Q. Where do you have these forms available?

A. They are available in the practice and they are shown.

Q. Are they on display?

A. Absolutely.

Q. Or are they in a drawer?

A. No, they are on open display.

Q. Do you have an appointed Complaints Officer that patients would know about?

A. That would be myself.

Q. Thank you. I have no further questions.

Ms Jones: Are there any final questions for Mr Cheek? [*No further questions*]
Thank you Mr Cheek.

A. A pleasure, thank you.

[*The witness stood down*]

Ms Craig: Madam, that concludes my main evidence, so as far as the evidence part of my case is concerned. It just remains for me to refer you to some of the letters which have been written by many friends and family who have written in support of him, and have stated in various ways their belief that their knowledge of his remorse, the ways in which his offending behaviour and its aftermath has affected him and the family more generally, and the way in which they feel that being restored to this profession and being able to go on and live a useful life in a profession that he loves would impact on him, and their belief that he would never, ever let them down or let you down or let his profession down again.

I believe you have read them. Some of them are live but I do not propose to call them as live witnesses. The one particular thing that I wanted to refer to you is several statements from one lady called Lorna Guthrie, which appears at page 39 onwards of your bundle. She felt so strongly about this issue that she has written several letters on the subject. She is the lady whose son had been ill for some years; he had been un-diagnosed, and as a result of him being examined by Mr Gould in the course of an eye test Mr Gould made an urgent referral, which this lady Mrs Guthrie believes saved her son's life.

I would like to refer you to some what I consider pertinent comments which she makes at page 44 in her concluding comments. At the top of that page she says:

"Families like mine need people like Mr Gould. There are many people in this world that should take a leaf from Mr Gould's book. I know that only too well, as Joseph had been seen many times by different opticians over the years prior to his tumour being found. Being a slow growing tumour, I'm sure it would have been quite a big size on at least 1 of his routine eye tests, and the fact that he had already experienced double vision and was prescribed glasses, but it was missed. No referral, nothing. As soon as Mr Gould looked into Joseph's eyes, (he told me months later) that he knew Joseph was very, very ill. He described to me what he found and he made his referral directly. So you see, families like mine really DO need people like Mr Gould.

Mr Gould's attitude to his work was always caring, professional and top quality. The above information, I am hoping, will show anyone that reads this how dedicated Mr Gould is and how seriously he always took his career at that time, and would continue to do so in the future. I am of the belief that by not re-instating him, it would be a dreadful loss to all those groups of people, (for whatever reason are at risk), that he has come into contact with in past, and many more in the future."

That is what Mrs Guthrie had to say about these matters.

Madam, I will not read out the other letters, including the most recent one which you have been kind enough to read amongst yourselves at the last moment, the letter from his parents in which they talk about the effect on them. That really concludes the evidence part of my case, so before I make any closing remarks I want to know if Ms Bruce has anything she would like to say at this stage, or indeed any further matters that were to be raised.

Ms Jones: Ms Bruce, would you like to make your submissions?

Ms Bruce: May I make a few concluding remarks? The majority of my submissions were contained in my opening, but perhaps you will forgive me if I round up some of the points that have been raised.

Madam, you heard from Mr Gould, who accepted that some of the images that he viewed were of children under the age of 16, and there were a lot of images in total, so there is an evidential gap as to how many that might include but you know that there were some. In my submission this phrase "teenage boys" does of course encompass children who are 13, 14 and 15. In my submission you perhaps do not need to overly divert yourselves with questions about whether the children were 18 or 16. You may feel perhaps the fact was the law defined them as "children" and that is what is important.

You heard from Mr Cheek and Mrs Gore who came here, entirely admirably in my submission, to speak for their friend and colleague, and they were able to say (and say convincingly) that he was an excellent optometrist and they had had no complaints about him. None of my submissions attempt to go behind that, and I do not attempt to say that the testimonials are not admirable and that he has not done his utmost to rehabilitate himself, to comply with the court orders, and to keep his skills up-to-date.

But of course none of that deals with my central submission, which the second strand of the public interest, and that is the need to uphold proper standards of conduct and behaviour, and crucially to maintain the collective trust that the public have in this profession. It was perhaps unfair to ask Mr Cheek and Mrs Gore to answer for the general public in this respect; they cannot get into their heads, and they cannot say what they would feel. As a Committee as part of your role, you will need to have some consideration of this, because in my submission the Trust and confidence in the profession would be undermined by a convicted sex offender, who had spent a period of

time, albeit lapsed as he is no longer on it, on the Sex Offenders Register for five years.

Again I take you back to Lord Bingham's remarks which relate to the fact that the overall importance of the reputation of your profession is more important than the fate of any individual member; so I do not ask you not to have sympathy for Mr Gould, I do not ask you not to say that the steps he has taken to rehabilitate himself are not entirely praiseworthy, but the central point here is whether he can go back on the Register in a way that means the reputation of the profession is upheld. In my submission, he cannot.

Madam, there are the Indicative Sanctions, which I immediately say apply to Fitness to Practise Panels, and I am not trying to ask you to fulfil that role as you sit here in a different capacity. However, you may find it helpful just to remind yourself of the twin strands of the public interest which are at page 5, the first paragraph, which deal with some of the points that I have been alluding to, and the particular need to protect the patient and the collective need to maintain confidence of the public in their profession.

Madam, unless you have questions that completes my submissions.

Ms Jones: Thank you; do the Panel have any questions? [*No questions from the Panel*] Thank you very much. Our Legal Adviser has something?

Mr Swinstead: It is a very interesting point, and you may not be advancing it, but would it be the GOC's case that any optometrist who has ever been on the Sex Offenders Register would not be an appropriate person? The simple fact of being on the Sex Offenders Register you would argue would effectively debar him from returning to the profession because it would always have the potential to lower the view of the public in the profession, and therefore have a loss of confidence? Is that effectively what you are saying, because the way you have made your submissions effectively suggests that in a sense there is no come-back, because the way you have phrased your submissions is that the fact – and it was really the way you were asking your questions of Mr Cheek and to an extent to Mrs Gore – that the Sex Offenders Register was almost a bar in itself.

Ms Bruce: May I concede immediately that I am not aware of any statutory authority in this area which envisages the possibility of 'never'. It is not that we deal with the case in absolute terms. In this particular case, because that is what this Committee is dealing with, I would ask you to have regard to the number of images, I would ask you to have regard to the fact that they were levels 1-3, and the prolific nature of this offending behaviour which also encompassed credit card transactions. The aggravating features of this particular offence in my submission mean that the breach of trust was so fundamental that in this case he should not be restored to the Register. I do not deal with hypothetical future situations.

Mr Swinstead: Forgive me for asking, but I was not thinking of case law or anything, it was simply the way you phrased it, and the way you had asked

your questions might suggest to the Committee that the GOC would be effectively saying that the very fact of the Sex Offenders Register in this gentleman's past would make it inimical that he should ever return to the Register. That is how you appeared to be phrasing it.

Ms Bruce: The way I asked my questions raises an important point that the Committee will have to have regard to, but the way in which I put my case is as I have just put it: which is that there are never any absolutes in this profession and I could never say that the GOC would always, in every circumstance, say that membership of the Sex Offenders Register would be a bar to registration. I cannot say that, it is hypothetical in my submissions.

Mr Swinstead: Thank you, Ms Bruce, for your help.

Ms Craig: Madam, I will be some time I am afraid with my closing remarks, and I am wondering whether you would prefer to take a break now before I start, or whether you would rather I just press on?

Ms Jones: Could you clarify what you are thinking of as "some time"?

Ms Craig: I think probably at least an hour.

Ms Jones: In that case I suggest that we do take a brief lunch break, and that we reconvene at 12.30. Let me just check; I am aware that people have to go out to get their refreshments.

Mr Henley: I think 45 minutes might be more appropriate, Madam.

Ms Jones: Very well, 12.45, and thank you for raising that Ms Craig.

[Hearing adjourned at 11.57 a.m.]

[Hearing resumed at 12.45 p.m.]

Ms Jones: Ms Craig, would you like to commence your final submissions?

Ms Craig: Madam, you have heard that before committing these offences Mr Gould was a man of excellent character who had been in practice as an optometrist for 18 years. You have heard that he was held in the highest esteem by his patients and his employers, and you may find it rather exceptional that after all this time his employers have taken the trouble to come here today to tell you what an exceptional optometrist he was, and how much they would be happy to welcome him back to work if you so allowed.

You have heard about other aspects of his exceptional work, in particular Mrs Guthrie's statement in which she explains that she believes that he saved her son's life, and we have heard about his particular care for underprivileged people and his willingness to learn languages in order to help him.

You are also aware that as far as these offences are concerned, he has faced up to his culpability. He admitted his guilt at the earliest opportunity. He cooperated fully with the probation officer in his case. He has successfully undertaken the sex offender treatment. He is off the Sex Offender Register. The Independent Safeguarding Authority which you have heard quite a bit about, which decides whether people need to be placed on a list whereby they are barred from working with children, decided that was not necessary in his case. You have also heard that he has brought his professional knowledge up-to-date with numerous courses, and that the employers here have no concerns about him not being up-to-date as a professional.

You have read the reports from the experts and the psychological reports, which say they have no concern about him working with any member of the public, and he is regarded as “safe”. Those are the words that are used. The reports you have seen could not really be any better or more positive, and I submit to you that it is absolutely clear that he has been fully rehabilitated.

What I would submit to you therefore is that on the fitness to practise side of matters, which is what you have to be satisfied on before you can take it any further, I submit to you that he is fit to practise. If you find that, and that will be the preliminary part I expect of your deliberations, then you have to go on to decide whether you think it is fit in a different sense for him to be restored to the Register.

When you are doing that I will refer you to the bundle adduced by Ms Bruce, which is C1. When looking at the duties with which you have to have regard they are summarised at the previous hearing by the Legal Adviser on that occasion, Mr Etherington. If you look at page 31 of that bundle I can do no better than quote from him, and he says:

“What are the three duties to which you must have regard? And they have been referred to extensively” it says. “The first is the protection of the public from any harm which you reasonably consider may be caused by this registrant. The second is the protection of public confidence in the profession. The third is the protection and support of proper professional standards within the profession.”

Well, on the “harm” element, insofar as he might cause any harm, I submit to you that there is sufficient in the evidence you have seen to satisfy you that he would not cause any harm, but I would like to add to that by saying that looking at harm one might also take into account the harm that might be caused by not admitting him back to the profession, because people who are exceptionally conscientious and do a very good job in any profession are valuable, and they are a resource which should be maintained. You have heard from Mrs Guthrie who believes that her son would have been at risk had she not encountered Mr Gould, so there is an element there of a public interest and a public risk in not allowing someone like Mr Gould to come back.

However moving on to what I think we all agree is the nub of the matter, about maintaining public confidence in the profession, I am drawing again on Mr

Etherington if you turn over the page to page 32. He explains how you are to view your duty in looking at public confidence in the profession. In the third chunk of that page he is saying:

“When considering public confidence, I advise you that you should apply a test which considers the public as reasonable people, properly informed of all the material facts. It is that category of person that you should consider when you are looking at public confidence. That is to say, you should not consider the view of prejudiced, biased, unreasonable people, or people who do not know the facts that you know. So, when considering public confidence, ‘public’ is defined for those purposes as reasonable people, properly informed of all material facts.”

So my submission is that the question that you need to ask yourself when considering this matter is not the question that was put to two of the witnesses, and I believe your Legal Adviser indicated this point as well I believe, the question is not ‘What would people think if they knew that you were employing someone who had once been on the Sex Offenders Register’, that is not the question at all. The question is ‘What would people think if they knew everything that you knew’, that is that he had been convicted of offences which were at the lowest end of these type of offences, where the images were at a low level, and where the images albeit serious were not at the most serious level, that is they were of older children not of little children.

There are all the other things that you know, that he was placed on the Sex Offenders Register as a mandatory matter in connection with these offences, that he was not even at that time thought to be a danger to children and was not debarred from working with children, and that he has been thoroughly rehabilitated – and, a more important point, the most important perhaps that they would need to know is this: that this profession had not treated these serious offences lightly. When the matter first came before them at the Hearing when he was erased, they had taken the most serious measures open to the profession of erasing him. They have shown their disapprobation in the strongest way open to them, so this is not a profession about which it is to be said ‘We do not take this matter seriously, we do not care’ or anything of that nature. You have thoroughly shown your disapprobation, and no-one could be under any illusion over that, and having done that the profession then kept him off the Register until such time as he had been shown to be thoroughly rehabilitated. You have then examined the matter in the most thorough and conscientious way, gone into every aspect of it, and it was only then after that thorough examination that you permitted him to go back on the Register.

It is in the light of that knowledge that a person would have to be asked whether they see the profession in a poorer light as a result of him going back on the Register, not just on the broad statement ‘You do not really like this sort of thing happening do you?’ That is a rather long-winded question that one has to put, but that is one aspect of it that I want you to take into account.

Another point here that I would also ask you to consider is that in thinking about the offences, which I will talk about more in a moment, you need to balance the fact that he has committed these offences with the public interest in not using such a capable practitioner as Mr Gould, and that in lowering public confidence in the profession there is an element of the profession setting out not to lose its valuable practitioners, not losing them unless it is absolutely necessary to do so.

Now, the way I want to think further about this matter is this: we talked about him being rehabilitated and having done everything possible to restore his ability to work, and to recognise what has gone wrong and to put it right insofar as he can, but you may say 'Well, there is a spectrum here. There are some cases where however marvellously the person has sought to rehabilitate themselves, there are probably some offences which are just too bad, and we just could not bring that sort of person back on to the Register'. That is what I am inviting you to think about, and to accept that goes to the crux of the case. For example, with a murderer you would probably say 'We appreciate there may have been extenuating circumstances and all of that, but this offence is too bad, we cannot bring him back', and in thinking about this you have to think about where this case falls within that spectrum.

He would not have been erased if these matters were not serious. They are most certainly serious, but I do ask you to keep in mind that they are offences which consist of viewing images. That is very wrong in itself and I am not trying in any way to get away from the wrongness of it, because it is inexcusable that one would want to view such things and he has accepted that wrongdoing and culpability; but it was viewing images, and there has never been any suggestion that he would directly harm anyone, that he has ever directly harmed anyone, there has never been any criticism of him or complaint by anybody in that direction, either in the public or private sphere.

Secondly, those offences were committed in a private sphere, and whilst that does not make them any more excusable from the point of view of their wrongdoing, it would be much worse and in many cases considered much worse if offences are committed in the course of somebody's employment, or in respect of people who are patients and so on. These offences were not in that context, they were in an entirely private context.

What I say to you is that these are offences which fall within the category of offences which, while serious, are not beyond someone repenting of them, doing their best to be rehabilitated, and then being brought back. In order to make that case I will ask you to look at cases, some of which are authorities from the High Court and the Court of Appeal and some of which, as Ms Bruce very fairly points out, first instance cases which do not bind you in any way but may, I hope, be of some assistance to you in the way that I will explain.

What I would like you to look at is the case of *Fleischmann*, which has been referred to already by Ms Bruce. You will find that at Tab 5 of your A2 bundle. Just to look briefly at the offences that were committed, you will see

at page 34 that the offences in this case were much worse, and at the top of page 34 there are a lot of Level 4 images, of which there are none in this case, and that even worse you can see that the children involved were very young. You can see in that paragraph they were looking at some very young ages, three and four years and so on, and none of those aggravating features present in this case.

Bearing that in mind I would then like to refer you to the remarks of Mr Justice Newman in that case at page 53, paragraph 54, and the reason why he felt that Mr Fleischmann should be erased. I am sure this is very familiar to you but the original Dental Committee who heard it suspended but did not erase Mr Fleischmann, and the matter went to the High Court when Mr Justice Newman decided that he should be erased. The reason he did so, or part of his rationale anyway, is set out in paragraph 54 which I would like to read to you. The part that I would like to read, just going a little further down, is:

“I am satisfied that, as a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained.”

Madam, what I draw from what he is saying there is that even Mr Fleischmann, whose offences were much worse than those of Mr Gould, once he had been rehabilitated and gone through the whole rehabilitation process and was then considered safe and no risk, there was a possibility of him then practising again. The reason why it was not correct to allow him to be suspended rather than erased at that stage was because he had not been rehabilitated. It was much too early, and that seems to be the implication of Mr Justice Newman's remarks there.

Madam, what I will say to you further is that if it is possible that there is a public principle at stake here, that if offenders can be rehabilitated, I say to you that they should be, and that people in positions of power, as you are, should be promoting the public good of rehabilitating offenders where it is good to do so. I go further and say that it is part of maintaining public confidence in the profession to be willing to take part in that public enterprise of rehabilitating offenders when it can safely be done, and when that person can be made into a useful member of the profession again this profession, like others, should take their part in rehabilitating that offender.

I would like then to move on having looked at the Fleischmann matter to a case which has also been referred to today by Ms Bruce, and that is the famous matter of *Bolton* on which I am sure on many occasions you have heard the resonant words of the Master of the Rolls, Sir Thomas Bingham,

and which have been read out to you today by Ms Bruce. You have heard those words many times, but what many people have not heard is the actual story of the case, which I will try briefly to tell you now. In the case of *Bolton*, Mr Bolton was a solicitor. He engaged in a conveyancing transaction whereby his wife was to sell a flat to her brother. Mr Bolton acted for his own wife, her brother, and the building society who was lending the money for the transaction.

Mr Bolton, as solicitors do, requisitioned the money from the building society that was to be borrowed to purchase the flat, but instead of holding the money in his account until the purchase of the property was completed he handed the money over to his own wife. The next thing that happened was that the purchase fell through. He should never have given the money to his wife in the first place until the transaction had been completed, but instead of getting it back and sending it back to the building society he left the money with his wife.

It is said in *Bolton* that holding client's monies and being trusted with money is the fundamental duty of a solicitor, and it is absolutely clear that solicitors do have to be trusted with money. The conveyancing system in this country could not work if solicitors could not be trusted with money. What happened to Mr Bolton? Mr Bolton went before the Law Society, was suspended from practising for two years, and he complained about that because he said that 'A suspension of practice for two years is equivalent to me losing my livelihood'. He made a couple of appeals, but he ended up in front of the Master of the Rolls, Sir Thomas Bingham.

That is when Sir Thomas Bingham made these remarks, and if you had to guess what happened you would probably say 'He would have been struck off from being a solicitor at that point. We cannot allow solicitors to do that sort of thing', and the words that he gave so many times about the profession being more important than any individual solicitor, and mitigating circumstances and all the rest of it, the value of the profession and the public confidence is the most important thing. It may seem absolutely obvious; he was struck off – but he was not. Not only was he not struck off but during the whole of those two years when he had been suspended he had been allowed to practise, because that is a matter that was subject to appeal. They did not stop him working during that time, and at the end of it Sir Thomas Bingham made his remarks and said that 'In this particular case there are extenuating circumstances and there will be no further penalty on him, he has been working all this time and he can carry on working'.

So even in that case, which is so often referred to as an example of harshness - or not so much harshness but the way to preserve the confidence in the profession is harshness and strictness even in that case. The actual actions of the extremely eminent judge who were involved were of forgiveness for somebody who had clearly mended their ways, and a lesson.

This really brings me to the point that I want you to consider, which is whether it is by extreme stern-ness that a profession preserves its standards? Is it by

casting out any wrong-doer? Is that the way forward? In the twenty-first century when perhaps we have a little more leniency or a little more understanding of how people can go astray and then go back on to the right path again, is that the right approach for preserving professional standards or is it to understand people's circumstances a little better, because that is what the right-thinking and reasonable person nowadays might expect in the profession, the person that knows everything that has happened and can understand why you have reached this decision. That is the thought that I would like you perhaps to have in mind.

I will, I hope fairly briefly, touch on the other cases which have been referred to. You have in your bundle, and it was referred to once again by Ms Bruce, at Tab 7 the matter of *Yeong*.

Mr Khan: Sorry, which case is that?

Ms Craig: It is *Yeong*, and I am sure it is very familiar to you, sir. The facts will probably be familiar to you, but it was a doctor who had an improper relationship with a patient. Here we have someone in the actual course of their work behaving improperly, and there are various other complaints against him to do with lack of confidentiality and other issues. However, the sanction that was imposed was not erasure, it was a suspension – and I know Ms Bruce is very familiar with this – for one year, because the maximum is one year that can be imposed.

Ms Bruce: It was two years, in Singapore.

Ms Craig: Right, thank you very much - I knew Ms Bruce would know a great deal more about it than I do. It was not considered that this very serious matter was incompatible with him eventually coming back into the profession at some future time. He was not erased 'As a result of that incident', that expression that the doctors use.

I will come to *Low* in a minute, but similarly in the other case which is in your bundle at Tab 6, the matter of *Fatnani and Rashid-v-GMC* [2007] EWCA Civ 46. Again this is a doctor who was involved improper sexual conduct with a young woman patient who had a history of psychiatric problems. He had quite improperly made various sexual approaches to her in various ways. Once again it was not considered necessary to erase him. I think that was a one year suspension from practice, so again the sanction of suspension was considered sufficient but did not go as far as your Committee went in this case of erasing the doctor from the profession.

Mention has been made of the matter of *Low*, and this matter is I would suggest quite case-specific. It was an erasure case like Mr Gould. It appears at Tab 8 of your bundle, and this was an osteopath. What I would ask you to take from this matter is that the offences were similar but perhaps a little worse than Mr Gould, because he is talking about younger children from the age of about seven. In that case there was certainly some doubt about whether Mr Low should be erased, and the reasons which were given for

erasing him rather than allowing him to practise with conditions were very case-specific, because they were talking about the osteopath's profession which, unlike the optical profession, does require the practitioner to have direct physical contact with the patient.

At page 96 of your bundle it says at paragraph 21 in the second part of that:

“It could not fail to harm public confidence in this particular profession – given the necessarily close physical nature of the relationship between an osteopath and the patient – if a person who is on the register of sex offenders and has been disqualified from working with children by court order was allowed to continue to practise.”

Pausing a moment there, Mr Low was disqualified from working with children by court order, but Mr Gould was never considered a risk to children in that way and he was never, although he could have been, and no order has ever been made to disqualify him from working with children because he was not considered to be a risk in that way. What I take from that is the point that had it not been, as it were literally, a hands-on profession then the court may well have taken a different view even of that case.

The other matters that I wanted to draw to your attention perhaps will weigh less heavily with you, because they are matters to which my friend refers as ‘first instance decisions’. They are matters which came before a Committee such as your own, and were considered there in relation to doctors. These are not binding on you in any way. You of course, and I fully understand, have to consider your profession and what is right for your profession. Nonetheless, what you are considering is what a right-thinking and reasonable person in possession of all the facts might consider. There we cannot obviously take a survey of what the answer might be to that, so the reason I am suggesting to you that these Panels of the General Medical Council are similar sorts of people to the right-thinking people in possession of all of the facts, and therefore it may be of some help to you to understand what they thought was the right thing to do in relation to their profession. I put it no higher than that.

If you would turn to Tab 11 and Dr Azim, and I am reading from page 114, that Dr Azim had:

“ – inappropriately touched four female nursing staff and made indecent sexual comments to them.”

That was over a period of three years from 2005 to 2008, again in the course of his practice wholly inappropriate with other members of the medical professions. That happened on that occasion when he came before the Fitness to Practise Panel when his registration was suspended for a period of 12 months. Then if you look at the end of that case at page 116 the Panel considered it, after the end of that period of suspension, and if I can read from the last two paragraphs it said:

“The Panel has balanced the need to uphold professional standards and to uphold public confidence in the profession with the public interest in not depriving patients of an otherwise useful and competent doctor. Consequently, the Panel has determined that your fitness to practise is not impaired by reason of misconduct” –

and it goes on to say:

“Your current period of suspension will therefore expire ... after which you will be free to resume unrestricted practice.”

So having had all that, and the Committee having heard of the way in which he had dealt with his misconduct and been rehabilitated and so on, he went back and presumably is still practising today in an unrestricted way.

Dealing briefly from Tab 12 there are a few cases, and I have tried to be quite brief in going through them. Dr Craft was cautioned for possession of drugs. Her fitness was found to be impaired, but the Panel decided there was no need to impose any sanction at all. She gave certain undertakings as to her future conduct in practice, and that was considered to be enough to safeguard the public and the interests of the profession in maintaining its standards.

From page 128 Dr Dhami, a much more serious matter of battery and assault of a police officer. He received a suspended prison sentence, clearly a message that it was a much more serious sentence than in Mr Gould’s case. In that case having heard all the facts and what had been done to remedy matters, the Committee decided that no penalty should be imposed at all. I will read the sanction from the bottom of page 9:

“The Panel is satisfied that a finding of impairment of Dr Dhami’s fitness to practise will serve as reminder to him of the high standard required of medical practitioners.”

This is page 136, I am sorry if I confused you with the wrong page number there. Inevitably Dr Dhami’s convictions and a finding of impaired fitness to practise put a black mark against his registration, which sent a message to the public and the profession about what is regarded as unacceptable behaviour. It goes on to say that that is sufficient and they will take no further action against him.

The matter of Dr Ventour, which starts from page 138: in referring to this I will just quote from there the reference to the case of *Meadows v GMC* [2006] EWCA Civ 1290, which is I am sure extremely well-known to Ms Bruce and to you, in which it is mentioned many times in these types of proceedings, the quotation that is given at the bottom of page 139:

“In short, the purpose of [fitness to practise] proceedings is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The FGPP thus looks forward not back. However, in order to form a view as

to the fitness of a person to practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past.”

Coming back to Dr Ventour, he was fined for possession of controlled drugs. It was decided that the Committee had to look forward and not backwards, and conditions were placed on his registration. He was allowed to continue in practice notwithstanding the offences.

I am coming to the end of this quite soon, but I have Dr Darley at page 146. Dr Darley was convicted of some serious offences, which included soliciting a prostitute, obstructing a policeman in the course of his duty, and throughout lies found out about him to many people in the course of the professional proceedings.

The outcome of that matter was that he was suspended from practice for six months, and I would like to quote to you from one matter there which I found helpful, and I hope you will, from page 158. Half-way down the page it says:

“The Panel wishes to make clear that dishonest doctors put themselves in peril of erasure. Whilst the Panel has found that you have engaged in a pattern of dishonesty it accepts that pattern emanated from a single incident. Dishonesty is a serious matter, albeit that the Panel considers your dishonesty to have been at the lower end of the spectrum. Other than matters before this Panel, there is no evidence of any ongoing concerns about your probity. The Panel has weighed in the balance the testimonial evidence of your knowledge, skills and experience as a clinician.”

It goes on to say at the bottom of the page:

“It is clear that you are a competent and valued clinician. Whilst there is a public interest in taking action against doctors who are guilty of misconduct; there is also a public interest in retaining an otherwise competent and useful doctor who does not present a danger to members of the public.”

Mr Swinstead: Ms Craig, I do not want to interrupt but how much is this going to assist by decisions of the General Medical Council, which of all those cases seem to be either reviews of orders already made or specific findings of GMC Panels at first instance and findings of impairment? I just wonder how you say any of these authorities and cases are of assistance to this Committee in what it is required to do, because I think it may be unclear to them. You are taking them to various parts of the determinations, but I wonder how they are relevant to this Committee’s decision.

Ms Craig: Sir, I do not say that they are directly relevant, and I am at some pains to say that I do not consider that this Committee is in any way bound to take any notice of them at all. The assistance which I hope that you may take from them is that these are cases where doctors who have been convicted of

offences, some of them serious, have been allowed by the General Medical Council to continue in practice, in circumstances where the General Medical Council has considered its duty to uphold public confidence in the profession, and has found that notwithstanding the fact that these doctors have been convicted of offences, nonetheless other messages can be sent of their disapprobation other than erasure and other than preventing such doctors from acting.

I completely accept what your Legal Adviser says about the circumstances being different, and the reason why I have drawn your attention to these matters is that they are illustrative of a profession being able to maintain public confidence without necessarily having to stop working, valuable and well-trained doctors who have been convicted of serious offences.

That is the only point I ask you to draw from them, and that is why I hope that perhaps at not too much length I have drawn your attention to them, but it was necessary to tell you some of the facts in order to obtain some attention to them.

Ms Bruce: Madam, I hesitate to interrupt but I wonder if it would assist the Committee if on behalf of the Council I concede that you must balance competing public interest in this case, to the extent that you must look at whether good practitioners should be allowed to continue to practise as against the public interest in all the senses of that phrase are concerned. There is a case called *Jiele*, and I completely accept that you will have to balance all these factors.

Mr Swinstead: If I could intervene there, *Jiele* is the famous case where a doctor who might otherwise I think have been erased for an improper relationship with a patient was simply suspended because he was a distinguished plastic surgeon, and it was considered that the balance of the public interest was that he should still be able to practise his particular skills, which had a public benefit which had to be balanced against the public interest of his public erasure. Am I right in that?

Ms Bruce: You are absolutely right, and he was unique among his generation of surgeons, and it was felt that the skills that he could bring to his profession outweighed what he had been accused of, which was an inappropriate relationship, and was subsequently lied about at a Fitness to Practise hearing. The point of general principle, which I am happy to concede, is that you must weigh the general public interest in allowing good practitioners to practise against all the considerations of public interest, and that is the approach that the General Medical Council takes, and I am happy to concede that.

Ms Jones: Thank you Ms Bruce, that is helpful.

Ms Craig: Thank you. If I may I do not want to take up any more of your time on this at all, but in your bundle there are two doctors who were convicted of offences of downloading pornography, and I felt just to conclude my remarks on the

case law it would be worth drawing your attention to those cases, because they are germane in many ways.

There is the case of Dr Lattimer at page 108, in which Dr Lattimer was convicted on 10 counts of making indecent photographs or pseudo-photographs of children and sentenced to a community rehabilitation order for six months with conditions. Notwithstanding that, he was allowed to carry on practising, with conditions, and at the end of conditions carrying on for several years he was then allowed to practise freely. The conditions were removed, and his present status, and this is said at page 113 of your bundle, is that he can work at any grade in the NHS including consultant.

Similarly there is also the case of Dr Ruthven which appears at Tab 9, a somewhat similar type of case, whereby you can see the facts of the case at page 99, convicted on 12 counts of making indecent photographs, and a community rehabilitation order for eight months, lay in place on the Sex Offenders Register for five years. Once again he was allowed to continue in practice, and in the end having had conditions for some years he was allowed to practise freely without conditions.

Mr Khan: An important factor is that he was not to be in contact with children because of pathology.

Ms Craig: That was originally his status, but eventually the outcome was that it was said quite clearly at the end, that after the original conditions he was allowed to practise with a condition placed on his medical registration. Right at the end it says at page 107:

“While public confidence and trust is always jeopardised by a doctor engaging in any way with child pornography, the exceptional circumstances of this case and the journey that you have been on since your convictions should reassure the public that you are now a doctor who can practise in your chosen field without restriction.”

So he was entitled to practise without restriction in medicine.

Mr Swinstead: I think the next conclusion is that fitness to practise was not impaired? [Yes] And so that was the decision the Panel reached on that occasion. Following the bit you read out, as it were the corollary of that is the fitness to practise in that case was no longer impaired.

Ms Craig: Yes, thank you very much.

That is what I would draw your attention to in the case law, and I would like to remind you of the points that I have been making: to ask you to consider how far a profession needs to go in order to maintain public confidence in it, bearing in mind that in this particular case you have already shown full extent of your disapproval in the strongest possible way to you by erasing Mr Gould? Is it necessary to maintain confidence in the profession that you go any further than that and keep him out of the profession for ever? He did not appeal the

sentence of erasure, he accepted it and concentrated his efforts as he worked to rehabilitate himself.

The question then is 'Would it lower confidence in the profession if somebody knew all about the erasure and everything that has happened since then, and would it lower confidence if you let him back in?'. I remind you of the remarks made in *Fleischmann* which we talked about, somebody having to earn their way back into the profession, and I submit to you that if anyone has earned their way back after committing serious offences it has to be Mr Gould.

It was probably apparent to you how much he was suffering in having to come and give evidence to you today. There can only be one reason why he put himself through that, and that would be his earnest and overwhelming desire to going back to being useful again, and to go back to practising a profession which he says that he loves.

So how would a right-thinking and reasonable person view the decision to reinstate Mr Gould in the profession? I would like to refer you once again to page 22A of Bundle A1 which I read out to you before, where Mrs Ashford, the practice manager of the West Yorkshire Probation Sex Offender Treatment Programme, said in the third paragraph:

"With my professional interest in rehabilitation and reduction of the risk to the public, it is always very gratifying to know that some employers who have the power to do so are willing to play their part in helping ex-offenders reintegrate as useful members of society."

What I am saying there is would not the right-thinking person in possession of all the facts think that you were doing the wrong thing if you did not play your part in rehabilitating Mr Gould, and is that not what right-thinking people want? That for people who have committed offences who are no risk, we all ought to play our part in making them useful. To consign people to the scrap-heap who could be useful is in no way part of a profession's high standards, and the profession ought to be looking to bring people back into the workplace if they can safely do so.

Therefore what I am submitting to you is that it would in no way lower public confidence in the profession if, knowing everything that you do, you were to play your part in that way in a clear matter which is in the public interest.

I go further than that in saying that in considering the interests of the public, you also need to consider as your Legal Adviser has explained to you and as Ms Bruce agrees, there is a balance to be drawn in between losing people who are of a very high professional standard and in what otherwise might be considered to be a case where that person should not practise, and it is in the public interest and therefore would not lower public confidence in the profession if such a useful person were brought in, and the profession were to see itself as keeping people within the profession who are exceptionally useful to the public.

You have seen from the remarks of Mrs Guthrie how she feels that the profession would in fact be damaged by not bringing Mr Gould back. She knows the facts, and that is her opinion for what it is worth. Obviously it is your opinion that matters and not her's, but that is an opinion of a member of the public in possession of all the facts.

What I am saying to you is that it is not necessary in support of maintaining public confidence in the profession to keep Mr Gould out of the profession for any longer. You have already maintained the standards of the profession in the action that you have taken, and now in my respectful submission you maintain the standards by allowing him to come back because of the whole story that you have heard about rehabilitation, and the fact that his exceptional competence is a valuable resource which should not be wasted.

Unless I can help you further, that is all I have to say.

Ms Jones: Thank you; Ms Bruce?

Ms Bruce: Madam, may I come back briefly on a few points? I will not detain you and your colleagues long.

Taking you through the factual scenarios of totally different cases such as *Yeong* or *Bolton* and then saying 'Well, these people were not struck off, therefore Mr Gould's application for restoration should be considered in that light' is in my submission not the right approach.

We deal with these cases as points of general principle, and taking for example *Yeong* I dealt with that case in first instance and the High Court, and the point of general principle that we draw out of that is that you cannot import a *Cohen/Zygmunt/Azzam* type approach on rehabilitation which was used for single instance performance cases on to some types of misconduct. It is not to say that there is any analogy to be drawn between Mr Gould's behaviour and Dr Yeong's behaviour in Singapore when he had an inappropriate relationship with a patient, so we deal with these cases on points of general principle which are of assistance to Committees.

The second point is in relation to the case of Dr Ruthven, and I know that you know you cannot restore Mr Gould with conditions, so it would not be open to you to impose for example a condition that he did not work with children.

However, I do not particularly want to be drawn into the GMC cases because it perhaps gives some indication that I am giving them some relevance or value which perhaps I do not before this Committee, but the very brief look that I had at the two cases involving downloading pornography did not involved the same number of specimen charges, and I will be corrected if I am wrong about that. They were different factually, and in any event my general point about the GMC cases is that they were of very limited assistance to you, and you should not perhaps be diverted by them.

Finally Madam, it is not in my submission your primary role to rehabilitate people who have erred. Your role is to maintain an effective Register, and to maintain and uphold proper standards of conduct and behaviour and confidence in the profession, and it is to that which you should really, as I know you will, address your minds when you reach your determination in this matter.

Those were the only points that I wanted to draw out.

Ms Jones: Thank you. Can I invite our Legal Adviser therefore to advise us?

Mr Swinstead: In just one moment. *[Pause]* Madam, my advice is as follows, looking at the general principle s first. An applicant may apply for his name to be restored as the Registrant under the provisions of Section 13K(1) of the Act. The following sub-sections, (2), (3), (4), and I think (5) deal with such issues as the period of time which must elapse before such an application can be made, and the time before any subsequent application can be made.

The next important sub-section is (6) which provide you with the specific power if you think fit to direct the Registrar to restore the applicant's name to the Register.

The power to direct the Registrar to restore the applicant's name is the only direction you can make, as Ms Bruce has just indicated. You have no power to make such a direction conditional upon any event taking place or any other factor.

Then sub-section (7) provides that you shall require the applicant to provide such evidence as you consider appropriate as to his fitness to practise, and you must not give a direction to the Registrar to restore if the evidence does not satisfy you.

Consequently if there is any fact on which you have to decide, the burden of proving that fact must be on the applicant, and he must satisfy you on the balance of probabilities that the matter in issue is made out.

Therefore as has already been submitted I think by both parties, it is effectively a two-stage process: firstly, for you to be satisfied as to his fitness to practise; and secondly, if you are so satisfied then if you think fit, and that is clearly a more general consideration, you may direct the Registrar to restore Mr Gould's name.

I remind you, as you indeed realise yourself, at the commencement of the Hearing sub-section (8) provides you with the power to order after a second or subsequent application for restoration is unsuccessful, the indefinite suspension of Mr Gould's right to make further applications. That is not a mandatory requirement. The sub-section provides that you "may" make such an order.

With regard to the authorities placed before you, if they set out a principle of law which is relevant to your decision then you should apply that principle of law. For example perhaps the most helpful and directly-relevant authority to one matter you must consider is the case of *Fleischmann* and the particular decision of the judge, that until a person has completed their sentence, unless it is some minor sentence which he talks about such as a disqualification from driving or until he has paid a fine, it will not be appropriate to put a person back on the Register.

The General Dental Council Committee in that case who merely suspended Dr Fleischmann had erred, because he would not have completed his sentence by the time the period of suspension had concluded. Mr Justice Newman therefore set out the principle which I think you are invited to consider in this case, that it would not be appropriate to restore somebody to the Register until they had completed their sentence, and in this case that they obviously, as indeed in Dr Fleischmann's case, had satisfactorily completed it. The evidence that is put before you here in the arguments put forward is that he has completed satisfactorily his sentence, and therefore that is the basis upon which you are therefore invited to restore him.

With regard to the other case which may have some relevance, which is the case of *Bolton*, then you have heard what both parties have said about that case.

With regard to the decisions of other Regulators, they have no force of law in the sense that you must apply any principle contained in them. They can only be there for your information, and it is a matter for you entirely whether you feel that you obtain any helpful information from those cases, or not. It is unusual for one Regulator to have placed before them the decisions of other Regulators. It is noticeable that I do not think in any of the cases the General Medical Council Panel was being asked to undertake a particular task that you are currently undertaking, although clearly a number of the cases to which you have been directed concerned doctors who were appearing before Panels for various types of criminal offence.

Madam, I remind you also, and it is an important matter, that when considering the public interest you must have in the forefront of your mind the protection of the public, and of course in particular patients, the maintenance of public confidence in the profession, and the declaring and upholding of the standards of conduct in the profession. It is right to say, and Ms Craig makes a fair point, that when she refers you to the original Committee of Mr Etherington, and I draw your attention particularly to the short paragraph on page 32 and repeat his words, because I think they are attractive and helpful:

“One particular feature of cases such as this is how you approach the inevitable opprobrium and detestation exhibited by the public to these offences. When considering public confidence, I advise you that you should apply a test which considers the public as reasonable people, properly informed of all the material facts. It is that category of person that you should consider when you are looking at public confidence.

That is to say, you should not consider the view of prejudiced, biased, unreasonable people, or people who do not know the facts that you know. So, when considering public confidence, 'public' is defined for those purposes as reasonable people, properly informed –".

Madam, clearly that is the 'public' that you have to bear in mind, not persons who may have some information, no information, or the wrong information, and have formed a view upon that.

Madam, finally – and I say this cautiously – I am not absolutely sure how assisted you are by the case of *Yeong*, because very specifically that case was dealing with certain types of misconduct which, as Ms Bruce has said, would fall outside any real concept of remediation, and that it is of itself misconduct which falls into a category where, as I have said, steps to remedy the shortcomings would have some relevance, but particularly in those cases where they would have less relevance and where a Panel would act accordingly. It really concerns where somebody has violated a fundamental rule of the profession.

How relevant that is at this stage is really a matter for you. Clearly you are faced with the facts and the history that you have, and you must decide on all the matters whether at this stage, bearing in mind everything that has occurred, you are satisfied on the basis of the tests that you must apply as set out in the Act.

Madam, I think that is all the advice I give, unless any other party would wish me to say anything further, or more importantly to correct anything I have said.

Ms Jones: Ms Bruce?

Ms Bruce: I certainly would not quarrel with any of the very helpful advice you have been given. May I just draw your attention to the paragraph above the paragraph you have been referred to on page 32?

Ms Jones: Of which document?

Ms Bruce: Of Mr Etherington's comments, which are in C1. I am so sorry, I know you have been enlightened by them already, but it may be useful.

Mr Khan: Metaphorically speaking!

Ms Bruce: I am so sorry, forgive me, Mr Khan.

Ms Jones: Please continue, Ms Bruce.

Ms Bruce: I am not sure I can! The second paragraph down there, and please accept, sir, that I absolutely meant no disrespect or discourtesy to any member of the Committee, if you look at the second paragraph down there it deals with where a registrant has a conviction and has not completed the

sentence, which is the case that was being dealt with in *Fleischmann*, because he had not yet completed his CRO, his Community Rehabilitation Order, and was still on the Sex Offenders Register. It made the general point that there should not be two separate systems of registration, that is if somebody could never have been put on the Register on that factual situation then they should not now be placed in a better position at the point where you are considering whether to erase them or not.

It may be helpful for you as part of your intellectual exercise to consider whether on these facts, on the facts that you are faced with today, Mr Gould could be considered suitable for registration had he never been registered, and that may be a useful exercise for you to go through in your minds.

In some senses it is artificial because you must also take into account the circumstances of his professional practice and what you have heard about that, but that is the only point I would make about that: just to ask you to have regard to that paragraph above the paragraph which you have been referred to.

Ms Jones: Ms Craig, do you have any response?

Ms Craig: Madam, forgive me, I just wanted to make the point. This is a completely new point which has not been made so far today, and I do want to deal with it. I think it is a point that I want to deal with quite carefully, because the suggestion that you treat Mr Gould in the same way that you would treat a new registrant I think is wrong. Mr Gould is 47 years of age, he has had 18 years in practice before these offences were committed. He is in a completely different position from a new registrant. He has put his life into this profession, so to say that it would lower the standards of the profession to treat him differently from someone who is a completely new entrant to the profession is in my submission plainly wrong. Although one can draw something like that from *Fleischmann*, and in fact looking at *Fleischmann* as a whole that is not the sense in which it was meant there in my submission.

If you would give me a moment I will find what I consider the relevant part of that.

Ms Bruce: Madam, I do not want to over-trouble this Committee with this point, which may on reflection –

Ms Jones: Well, you raised the point, Ms Bruce, and it is right for Ms Craig to look fully to it.

Ms Bruce: Of course, yes, and I would not disagree with that.

Ms Craig: It is paragraph 56 on page 54 of the Authorities bundle, and it says:

“I recognise that the variety of circumstances presented by individual cases must be weighted but, where grave and serious offences are under consideration, personal factors, such as character, previous

history and the practitioner's livelihood as a dentist, will invariably be insufficient to produce a result different from that which would have applied had the individual been an applicant for registration. Had an application been received from Mr Fleischmann during the currency of his Community Rehabilitation Order, only six months after its imposition, it is inconceivable it would have been accepted."

So really that is following on from the previous section where they talk about rehabilitation, and the learned judge at that point is really in my respectful submission saying 'Well, this is all part of the fact that he has not been rehabilitated yet', and you would not take someone on who is in the process of being rehabilitated rather than it being a broad statement that you must look at someone who has worked all their life in the profession, and at the age of 47, in exactly the same way that you would look at new entrants. That is really all I wanted to say about that point.

Mr Swinstead: Isn't the issue really this, Ms Bruce, that what I think the judge was saying, and in a sense Mr Etherington was repeating, was that by only imposing a 12 month suspension should a registrant be in a better position than somebody who is applying for registration who might well not be even considered for registration until they had completed every element of whatever sentence had been imposed by the court? I think that was the point Mr Etherington was making, and I thought that was the point that Mr Justice Newman was also making.

Ms Bruce: I do accept that, and I do not want to spend time on a bad point.

Ms Jones: Were there any other further comments, Ms Craig, in regard to the Legal Adviser's advice?

Ms Craig: One very annoying point, which was the issue of conditions which was raised. I know perfectly well that of course you cannot impose conditions, and nor have I ever invited you to do so. The reason that this came up was because some of the doctors were initially under conditions, but my point was that they were not erased immediately, they were put under conditions and eventually allowed to practise free from conditions. That was the only point I was making there. I was not suggesting there was any power for Mr Gould to be placed on conditions or anything like that.

Mr Swinstead: Sorry, I should just say Ms Craig that this was not pointed particularly at you, that was just reminding the Committee that it could only, as it were, make one decision. It could not temper that decision, it could either say 'Yes' or 'No' effectively. That is all I was saying, and I apologise, it was not meant as a criticism.

Ms Craig: Thank you very much.

Ms Jones: I have a query which I am not sure but think I should put through our Legal Adviser. It is about Section 8. Part of what the Committee will be invited to consider is restoration, and I see that the Committee is empowered

to suspend Mr Gould's right to make future applications indefinitely. I do not know whether we should seek any submissions from the parties at this stage?

Mr Swinstead: I think Madam probably that you should, because it appears that you have to make all the decisions, if one looks at the Rules at one time, and therefore I think you should – although I will receive any submissions from both parties on that issue.

Can I raise one point with regard to that? It seemed to me curious that the last application found its way to the Committee when there was, effectively, a fundamental flaw in the sense that the number of the CET points in the period before the application was made was not the right number, and that nobody had actually picked it up and withdrew the application or pointed it out, either one side or the other. Effectively Mr Gould never had his first application fully considered, and it seems to me – and I am butting in here – it might be argued to be rather unfair to him if this was counted as his second, because somebody might have picked up the fact that that application was bound to fail on that area, because he had not complied with the requirements.

Now, I pose that as a question to both parties – although it may be an answer as well – but seriously that seems to be the issue to which everybody should probably direct their minds in the first instance.

Ms Jones: So can I receive from the parties any thoughts around that whole issue, whether it contains our Legal Adviser's thoughts on it or wider issues?

Ms Bruce: As to whether you should consider barring Mr Gould from making subsequent applications as being his second application, Madam? Was that the question? I am so sorry, I just missed the first part of it.

Ms Jones: Yes, I am not clear I understand where the GOC is on this Section 8 issue, which I know we have to consider, so I would like your view, and then I will go to Ms Craig for her view.

Ms Bruce: I am without instruction. It is not because it has not been discussed, it is because there was a view taken that we should listen to all the evidence in the case before taking a view on that. I would need to take specific instructions on that, and also of course would need to canvass what has quite properly been raised, which is a potential point of unfairness arising from the fact that there was not actually a substantive hearing on the merits of the application on the last occasion. It may be something that the GOC would ask you not to consider in the light of that, but I would need just to clarify my instructions.

Ms Craig: Well Madam, I would simply like to adopt the point, that you did not really have a proper hearing, for whatever reasons. My client has therefore effectively had one application, and I would say perhaps it is much too early to consider debarring him from further applications.

Ms Jones: Ms Bruce, I would have to say that having started today reading out this paragraph at Section 8 that will be something the Committee has to consider as part of its work. It is disappointing that you have not received the GOC's guidance, but I suggest that we pause for 15 minutes, that you take that instruction, and if you can get the GOC's view in as short a time as possible we would appreciate it.

Ms Bruce: I am sure I can do that.

Ms Jones: Thank you. Would you please clear the room?

[Hearing adjourned at 1.58 p.m.]

[Hearing resumed at 2.08 p.m.]

Ms Jones: Thank you for that prompt re-start, Ms Bruce, I appreciate it.

Ms Bruce: Once again may I apologise for having said I would take instructions, I have not reached a decision on any of my applications on this point, so forgive me; but the short answer is that it is not a point that the GOC urge upon the Committee today, because of course the application was not considered on the merits on the last occasion. However it remains a matter of professional judgment for you and your colleagues.

Ms Jones: Thank you for that.

Ms Craig: Madam, I wonder if I might have your indulgence to make one final point that has been brought to my attention during the Committee standing down. I will be as quick as I can, but it is on page 35 of Bundle C1. At the end of the hearing when Mr Gould was erased the Committee stated, in the middle of the page and the part that is in inverted commas, that:

"In order to reflect the fact that the registrant has not completed his sentence, including the sex offenders' programme found by the Court to be necessary in his case, the Committee ordered that the registrant be suspended from the Register with immediate effect and that this suspension shall last until such time as the period for appealing the erasure order has expired, or any appeal in this matter has been determined".

It is not exactly clear what was meant by that, but it looks as though it was a suggestion that one of the reasons why the result was at it was, was to do with the fact that he had not completed that at that stage. That has been drawn to my attention.

Mr Swinstead: Ms Craig, I think there the Committee were dealing with the issue of immediate suspension and not with erasure. I do not know how much assistance the Committee would have from that part of the determination. Madam, I merely make that comment.

Ms Craig: I am sorry to have brought up a last-minute point anyway.

Ms Jones: In view of the comments we have heard on s.8 is there any advice which you wish to add to your earlier comments?

Mr Swinstead: No Madam, it remains a matter for you to consider, obviously in the light of all the information you have, and indeed what Ms Bruce has submitted. Obviously I think Ms Craig has specifically urged you not to consider making such an order, but it is a matter for you.

Ms Jones: Thank you; Mr Henley would you clear the room for the Committee?

[Hearing adjourned at 2.10 p.m.]

[Hearing resumed at 5.21 p.m.]

Ms Jones:

On 18 February 2011, the Registration Appeals Committee of the General Optical Council met to consider an application by Ashley Gould for restoration to the Register of Optometrists.

DETERMINATION

The Committee noted that Mr Gould had previously applied for restoration at a hearing on 10 February 2009, but that application failed because of Mr Gould's failure to obtain the prerequisite amount of CET points.

In reaching this decision, the Committee took account of both the oral and documentary evidence placed before it. It also took account of the submissions of Ms Bruce on behalf of the Council and those of Ms Craig on behalf of Mr Gould. The Committee accepted the advice of the Legal Adviser.

The Committee noted that it must first consider the evidence placed before it by the applicant as to his fitness to practise, and then to consider whether, depending upon that decision, it thinks it fit to direct the Registrar to restore Mr Gould's name to the Register.

The Committee noted that the applicant was made the subject of an interim order of suspension on the 28 October 2005 and he was erased from the Register on the 23 March 2006.

The Committee first had regard to the facts that had brought the applicant before the original Committee which erased him from the Register. It noted that the applicant had co-operated and pleaded guilty at the earliest opportunity to five offences of making indecent photographs of a child and two offences of having indecent

photographs of children. He was sentenced to a 3 year rehabilitation order with a requirement to attend the sex offenders' programme, and was required to sign the sex offenders register for a period of five years. It noted that he completed the rehabilitation order on the 18 February 2008 and his period on the sex offenders register on the 29 July 2010. It noted that the photographs were images of teenage boys, some of whom were likely to be under the age of 16 and that they comprised images at the lower three levels of the five level Oliver Scale.

In reaching its decision, the Committee noted a number of matters which demonstrated the insight that the applicant has shown and the efforts he has made to rehabilitate himself over a period of more than five years.

It notes that he had fully complied with the requirements of the rehabilitation order and successfully completed it. He had also completed the time he was required to be on the sex offenders register. It noted that he has not been placed upon any barred list by the Independent Safeguarding Authority. It had regard to the reports of the psychologist, Dr Craissati; the probation officer, Rita Ashford; and the counsellor, Soren Stauffer-Kruse.

All the reports attested to the fact that the applicant is considered to be at a low risk of re-offending in the same manner again, and it noted that it was thought to be extremely unlikely that there would be any risk of his offending escalating to contact sexual offences with children. It also noted the evidence of his former employers as to the exceptionally high regard in which he is held both by them and by his former patients. It noted that no complaints had been received about his practice when he was working. It noted that both his former employers would wish to re-employ him. It also took account of the eighteen years' unblemished service including work with underprivileged and disadvantaged individuals.

It had regard to the number of CET points that he had obtained and was satisfied that he had maintained his continued education requirements.

From all the evidence before it, it was satisfied that the applicant is now fit to practise.

It went on to consider whether it thought it fit to direct the Registrar to restore the applicant's name to the Register. In considering this issue, the Committee had regard to the public interest. It concluded that protection of the public was dealt with by its finding that the applicant is fit to practise. It further concluded that standards of conduct in the profession had been maintained by the original order of erasure.

It therefore went on to consider whether, if the applicant were to be restored to the Register, this would cause a loss of confidence in the profession. It particularly noted and applied the principles set out in the case of *CRHCP-v-Fleischmann* [2005] EWHC 87 (Admin), and considered the steps that the applicant had taken to rehabilitate himself. It noted that it must have in mind the view of the reasonable and well-informed member of the public who was aware of all the facts that had been before the Committee. It concluded that such a member of the public would not lose confidence in the profession if the applicant were to be restored to the Register. Further, the applicant having taken appropriate steps to rehabilitate himself since the imposition of the order of erasure, the Committee was now in a position to consider directing his restoration to the Register.

Consequently the Committee thought it fit to direct the Registrar to restore the applicant's name to the Register."

Thank you.

[Hearing concluded at 5.27 p.m.]