

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

IO(12)01

**GENERAL OPTICAL COUNCIL
AND
GRAHAM BODMAN (D-9698)**

**INTERIM ORDER HEARING
Wednesday, 18 January 2012**

INTERIM ORDER HEARING: GRAHAM BODMAN (D-9698)
Wednesday, 18 January 2012

Fitness to Practise Committee: Ms Fran Jones (Lay) (Chair)
Mrs Geraldine Huka (Lay)
Mr Timothy Bowden (Dispensing Optician)

Legal Adviser: Mr Mark Lucraft QC

Clinical Adviser: Dr Nicholas Seivewright

Hearings Manager: Mr David Henley BEM

For the Council: Mr Bradley Albuery

The Registrant was neither represented nor present

[Hearing commenced at 09.30]

Ms Jones: Good morning, I have been elected to chair today's hearing of the Council's application for an Interim Order. The Committee today is made up of one dispensing optician and two lay members. I will ask the members to introduce themselves and the capacity in which they sit, beginning at my right.
[Introductions]

To my left is the Council's Clinical Adviser, Dr Nick Seivewright, who will provide clinical advice to the Committee on any matters of health which may arise in the course of the hearing. The Clinical Adviser may accompany the Committee should it sit in private to deliberate.

To my right is Mr Mark Lucraft QC, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee and ensure the proceedings are conducted in accordance with the rules of procedure, so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate. In the event that any matter arises during the course of the Committee's deliberations from 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 Mr 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.

Please note that in accordance with the Council's protocols, the identity of the Registrant will not be revealed until such a time as the Committee announces its decision. Where the Committee decides that an order should be made, then the Registrant's details will be revealed. Alternatively, if the Committee decides that an order should not be made, then the Registrant will remain anonymous. Throughout the hearing, the Registrant will be referred to as 'the Registrant'.

You should be aware that it is the Council's policy for the determination of the Committee and a transcript for the proceedings to be displayed on the Council's website for public viewing, but where matters of health have been discussed, the determination and transcript will be redacted accordingly.

Can I enquire as to whether there are any applications today?

Mr Albuery: Good morning, Madam. I represent the Council today. The only application will be for you to proceed in the Registrant's absence. I have no other applications. I am ready to deal with that application if we are at the point at which you would like to hear it?

Ms Jones: That would be very helpful, thank you.

Mr Albuery: Madam, could you confirm please that you have, and that your colleagues have, a copy of the notice pack, the service of notice of hearing relating to today's hearing?

Ms Jones: We have that and have had that for some time.

Mr Albuery: Thank you, we will call that C1. Madam, have you also had the pack of papers – the hearing bundle – which includes the evidence upon which the Council relies?

Ms Jones: We have.

Mr Albuery: Thank you. Madam, have you and your colleagues had an opportunity to read that?

Ms Jones: Yes, we have.

Mr Albuery: Thank you; we would like to call that C2.

Madam, as you can see, Mr Bodman is not here, and the first decision – and this may be the only decision that you need to make today, depending on that first decision, is whether you should proceed in his absence.

As you know, there are two limbs for you to consider. The first is whether you are satisfied that he is aware of today's hearing and the service requirements have been properly complied with. The second matter is, if you are so satisfied, whether you should proceed in his absence – whether you should exercise your discretion to do so.

Madam, I do not think that there is any doubt about the first matter. You will have seen from the service pack that notice relating to today's hearing was sent by the Council to Mr Bodman on 3 January 2012 which gave him more than is required in terms of notice for this type of hearing, and that that was sent – there is a copy of that letter at page 2 of your bundle C1 – to his registered address.

Madam, as you will see from the pack, there appears to have been some difficulty in relation to the sending of that information. What is important, of course, is the sending of it rather than the receipt of it, in terms of the first limb. In any event, and more importantly, you may feel that you can be satisfied that Mr Bodman is aware of today's hearing by looking at page 7 in C1 where you will see David Henley, the Council's Hearings Manager, refer, in an email to Mr Bodman, to the hearing today, confirming what Mr Bodman told him which was that he was intending to appear here but that he would not be represented.

Madam, I can go on to consider whether you should exercise your discretion or not to proceed, but that would be premature unless you are first satisfied that the first limb is met. So, if you agree, perhaps I should pause there before dealing with the issue as to how you might exercise your discretion?

Ms Jones: [*Confers*] Yes, we are happy to proceed, thank you.

Mr Albuery: Madam, as you know, you have a power under the Fitness to Practise Rules, Rule 21, and in my handbook it is at page 140, to proceed in the absence of the Registrant. You may indeed feel it relevant that Mr Bodman was reminded of that in the very notice informing him of today's hearing, at page 2 in bundle C1, you will see this in the third paragraph of the letter:

“If you do not attend the hearing, the Fitness to Practise Committee has the power to proceed in your absence if the conditions set out in Rule 21 are satisfied.”

So Mr Bodman was aware that non-appearance could result in you proceeding today.

Rule 21 says this:

“Where the Registrant is neither present nor represented at a hearing the Fitness to Practise Committee may nevertheless proceed if –

- (a) They are satisfied that all reasonable efforts have been made to notify the registrant of the hearing”.

You have already indicated that you are so satisfied; and,

“Having regard to all reasons for absence which have been provided by the registrant, they are satisfied that it is in the public interest to proceed.”

Madam, I am instructed that this morning, Mr Bodman’s General Practice called the Council to say that yesterday evening, sadly, Mr Bodman’s father died and that because of that he would not be here today. The Council would want to place on record its sympathy to Mr Bodman for his loss.

Madam, notwithstanding that and the obvious and natural sympathy that anyone would have in these circumstances, my instructions are to invite you still to proceed. In doing so, I accept that you will be reminded, I am sure, by your learned Legal Adviser – and I will not trespass into matters which are more properly for him – that there are criteria set out by the Court of Appeal and adopted with some revision by the House of Lords in the case of *R v Jones* [2003] 1 AC which have been adopted in regulatory proceedings which assist you in deciding how to exercise the discretion which you have. I accept that you should proceed with utmost care and caution in proceeding in a case where a registrant has indicated a desire to attend but there has been some intervening event; sometimes it is a medical reason, on this occasion it is for the personal reason which I have mentioned, which causes a registrant not to be here.

Madam, the reason, notwithstanding that caution, that the Council believes that you should proceed is because of the very serious concerns that it believes this case raises and the fear that not only may the matters which are already before you result in you needing, for the various reasons articulated, to impose some form of interim order, but that this added stress, to a man who deals with stress in the way in which you have read, would cause continuing and urgent concerns relating to public protection, particularly, but also the other two grounds upon which the Council relies.

Madam, I think that it is important therefore, bearing in mind that that is my application, that I give you some detail as to the case. I appreciate that you have read it, but it is perhaps important that I highlight those things which I say – and I accept that we are only at a preliminary stage – are serious such that you should proceed.

Mr Bodman, as you know, is a man who has been referred to the Council’s Investigation Committee in relation to three limbs: first, his health and secondly the fact that he has been convicted of a criminal offence which was in April of last year, and thirdly, that he failed to disclose that conviction to the

Council. As was mentioned in the application which you have all read, the mixture of those three limbs – the redacted, the conviction and the alleged dishonesty – make this case a serious one in terms of public protection.

Mr Bodman was first convicted of driving with excess alcohol in June 2009. You will know that after inquiry – including the obtaining of redacted – it was decided that the matter need not be referred for further inquiry but that it should be the subject of a warning. You have seen the terms of that warning relating to Mr Bodman's conduct which might cause the profession disrepute. That warning was considered in July of last year and Mr Bodman was informed of it on 10 August last year.

You now also know that, for an offence in March last year, he was convicted for the second time, of driving with excess alcohol at Bournemouth Magistrates Court on 15 April 2011. His reading on that occasion was twice the legal limit – it was 71 where the legal limit is 35; the first reading having been 57.

He did not disclose that conviction to the Council. Although the Council accepts that, when he completed his application for retention for this current practice year, he had not by then be convicted or indeed charged so he could not have revealed it. The footnote to the Code of Conduct for individual registrants – and I have a copy if anyone needs to see it – makes it clear that such convictions need to be informed to the Council straightaway. He did not do it and he accepts that he did not do it – and you have seen that and he has given his reasons for not doing so.

This means that you have a situation whereby there are two convictions for serious matters which may, with all else about which you have read, and I only say 'may' demonstrate an redacted or a risk, if not a dependency, that in moments of stress, drink becomes Mr Bodman's refuge. You also have redacted reports – which we accept are out of date – which certainly in April of last year – and you will note that Dr Hillson's letter to the Council of 15 April was written on the very day on which Mr Bodman was appearing at Bournemouth Magistrates Court – show that she does raise concerns relating to his redacted and his ability to be at work. These were concerns which were highlighted or felt by his employers as well. Madam, a copy of that report is in your bundle at page 38, it is dated 15 April 2011 from redacted. It talks about the time for which he has been signed off, that he had been a voluntary patient at redacted and it also says, at about five lines down that,

“There have been concerns from his Practice about his behaviour whilst there. They do not think, at his Practice, that he is ready to return back to work. I am in agreement that he is certainly not ready at this present time to return to work.”

Madam, it is clear from Mr Bodman's own representations to the Council that he finds certain situations stressful. He cites the personal problems which he has articulated as well as his workplace stress and, lastly, he appears also to rely on the very pressure of the GOC's investigations themselves. Of course that is not going away. That stress will continue because the GOC is investigating him currently for these matters and they will be determined by the IC in March this year.

Madam, the Council did hope that – if not for today, then certainly by the time that the Investigation Committee looks at it – that there would be more up-to-date redacted evidence from his current redacted. That is not going to happen because the GP has been in communication with the Council and has indicated that he has not been in touch with them, so certainly – at that point last week – they have not seen him to provide further information. It is obviously possible that the IC might order a further redacted assessment but that is a matter for them and it would be premature for us to consider that today.

Therefore, Madam, balancing it all, the Council says that the public interest demands that you proceed today, notwithstanding the sad circumstances of his non-appearance. Any concerns which you might otherwise have to the prejudice of Mr Bodman are, to some extent, met by the fact that he has put before you a number of representations and we have set up for you all of the letters which he has sent. I accept that you do not have the benefit of any further oral submissions which he might have made, but you do have his written submissions. They are, you might think, quite fulsome in relation to the matters which caused him to be before you – were he here – today.

Madam, those are my submissions.

Ms Jones: [*Confers; no questions from the Committee*] Dr Seivewright, do you have any comments that you would like to make at this stage?

Dr Seivewright: The index incident was a drink-drive offence and this always raises the possibility – as the GOC counsel has indicated – of redacted

That is what I would say at present.

Ms Jones: Thank you, Dr Seivewright. Do you have further comments, Mr Albuery?

Mr Albuery: No thank you, Madam.

Ms Jones: Can I invite our Legal Adviser to present us with legal advice?

Mr Lucraft: Certainly, Madam. Obviously the question at this stage is the exercise or the discretion as to whether to proceed or not in the absence of the Registrant.

Mention has been made of the case of *Jones* which was a House of Lords' case which dealt with the factors to be taken into consideration where a trial before a Crown Court should continue or not in the absence of the defendant. A number of the features were spoken about. I should make this comment about *Jones*. What was said by the House of Lords was that the judge had a discretion to start or continue a trial in the defendant's absence but that it was to be exercised with great caution and with close regard to the overall fairness of proceedings. A defendant afflicted by involuntary illness or incapacity would have much stronger grounds for resisting the continuation of the trial than one who had voluntarily chosen to abscond. The particular factors to which the House of Lords indicated that a judge should have regard include the nature and the circumstances of the defendant's behaviour in absenting himself for the trial; secondly, whether an adjournment would resolve a matter and the likely length of such an adjournment.

The key phrase effectively is to proceed with caution and to consider the position of the Registrant who is not here. Obviously you take into account any reasons for his absence and the only material before this Committee is simply that his father sadly passed away yesterday. In relation to whether an adjournment would satisfy that, of course it is important that the Committee take into account the purpose of today's hearing. The features have been outlined by Mr Albuery and perhaps I can distil those into a number of points.

First of all, this Committee is not making any final order. Secondly, this is not a fact-finding exercise on evidence to be called and will be based upon the material in the documents before you and to that extent, of course, you have written submissions relevant to the decision that you will have to make from the Registrant in any event. The third point is that he is not required, under the Rules, to be in attendance for this hearing. Fourthly, there is no power that you have – unlike a judge in a Crown Court – to compel his attendance. It comes down really to this fifth point, whereby you balance the grounds on which an interim order could be made against the interests of the Registrant being present, as opposed to having those points made in writing that he has put forward. Those five features go into the balance in working out whether to exercise your discretion to proceed or not in his absence.

Ms Jones: Mr Albuery if you have no comments, then we will adjourn for a few minutes.

[Hearing adjourned at 09.55]

[Hearing recommenced at 10.00]

Ms Jones: The Committee has decided to proceed and will give its reasons later.

Mr Albuery: Thank you. Madam, I know that you and your colleagues have read the papers thoroughly and I have already mentioned some of the facts upon

which the Council relies. So I will be brief, if I may, in relation to the facts and then say a little more about why the Council says that an interim order is required.

Madam, the relevant chronology appears to me to be this: putting to one side at the moment, as I think is probably fair, the very first drink-drive conviction, which was about 15 to 16 years ago, Mr Bodman drove with excess alcohol on 30 June 2009. He appeared at Bournemouth Magistrates Court in relation to that in August 2009 and he was disqualified for 12 months. On that occasion his reading was 57 in breath and I mentioned earlier, the legal limit is 35. There was then a delay and I think that this delay was caused by the fact that, to be fair to Mr Bodman, the first the Council became aware of this was when he declared it, that is my understanding, so we must give them the benefit of that doubt. This delay was until August 2010 when the Investigating Committee decided to order – unsurprisingly – reports and for there to be a **redacted** assessment. Your Clinical Adviser has already referred to those two assessments which were obtained. Those are in your pack and you will have read those already.

Madam, you have already heard again today and read that, in their view, at that time, there were no concerns sufficient to justify restriction on his ability to practise. Those are the reports of **redacted**, of 14 December 2010 and **redacted** on 14 February 2011. Madam, when the Investigating Committee considered that matter in May last year, it decided not to refer, as I mentioned, but to issue a warning and you have a copy of that warning in your papers. The warning was issued in July last year and a copy of it may be found in your bundle at page 32. For the record, the warning was in these terms:

“You should ensure that your conduct, whether or not connected to your professional practice, does not damage public confidence in you or your profession.”

Mr Lucraft: Could I just interrupt, I am sorry; you mentioned July but that letter was dated 10 August?

Mr Albuery: Yes, I should clarify and thank you for prompting me to do so. As I understand it, the IC made that determination in July – those are my instructions – but it was communicated to him on 10 August 2011. The Investigating Committee first considered the matter in May 2011.

Madam, you look hesitant?

Ms Jones: No, please proceed.

Mr Albuery: Madam, what nobody knew around the time at which all of these decisions were being made – and this was because Mr Bodman did not tell them – was that in fact, he drove with excess alcohol again and this time he was twice the legal limit, and that was on 30 March 2011. In relation to that

matter he appeared at Bournemouth Magistrates Court on 15 April 2011 and was disqualified for three years. You will know that, bearing in mind that his previous offence was in a ten-year period, that is the minimum disqualification which could be imposed on him. In any event, the reading would have resulted in the otherwise minimum 12 months being imposed.

Madam, Mr Bodman did not disclose that matter to the Council and that is a matter of some significance, I would say, because he knew at the very time at which he committed that second offence – or the third offence if you take into account the very first one – and was convicted for it in April, that this very Council was considering a matter of exactly the same type against him and, we allege, was and is in breach of the Code for individual registrants by not, as that Code requires, informing the Council straightaway of that conviction. If I can remind you again of the dates: it actually occurred and he was convicted for it in April 2011. The Investigating Committee was considering his conduct in May of that year, which he knew, because he had been invited to make representations which he did and then they subsequently issued that warning. Madam, certainly for one of the offences, it is aggravated by the fact that he had his seven or eight year old daughter in the back of the car with him. I will not go into any more detail about the personal circumstances relating to the offences but you have read about them in the Certificate of Conviction and the information from the police and Crown Prosecution Service.

Madam, if we can deal with only the convictions: we have three convictions which are all for drink-driving but, most importantly, because I accept that one of them is very old, we have two within a relatively short period of time. The second one was committed while all these other matters were going on with the Council's inquiry into the first, if you like, or second, drink-drive conviction and also with an increased alcohol intake on that occasion and he had been twice over the limit. That says something not just about the way in which Mr Bodman reacts to stress, but also perhaps says something about a lack of insight and a lack of understanding of the seriousness of the matters which the Council were considering at that very time. One of the reasons for which the Council says that you should impose an Interim Order is to maintain proper standards in the profession and the reputation of the profession, particularly when dealing with a man who has committed two serious offences in such a short space of time.

Madam, in relation to the redacted issues, this is more complex, because of the age of the redacted evidence which we are all trying, with the benefit of your Clinical Adviser, to understand. I think that it is common ground, and I apologise if I use the wrong terminology, that certainly Mr Bodman has suffered and may still be suffering from some sort of redacted. He refers to that himself in his various representations and he appears to suggest that there are three factors that cause it. First, his personal circumstances, and you do not know what they currently are in terms of his family and the break up that appeared sadly to have happened there; secondly, work; and thirdly

the GOC investigation. You may be concerned that work place stress that he relies upon may be ever present if this Council does not take any action – whether that be through the imposition of conditions or his suspension from practice. Although he says that that retail manager has now gone and there is less stress placed on him in terms of targets, I think that all of us who work know that the work place brings its own stresses and, even in the most recent correspondence, Mr Bodman does allude to the continual tension which he finds between trying to be the best clinician that he can and what he regards as, ‘continuing and unfair, improper demands’ on the way that he must go about his practice by those who are may be more interested in the delivery of profit. Thirdly, or course, he relies on the then on-going, GOC investigation which he says causes him stress. Sadly, we have another GOC investigation and that is going to continue for some time. I rely on that fact, as he relies on it, because he says that it causes him stress.

Madam, I hesitate to rely – it might appear unattractive and unsympathetic – on the news which we have heard today, but I do say that you should consider that there is at least a risk that, coupled with all of these other things, having to deal with the death of his father may exacerbate the situation in which Mr Bodman already finds himself.

Madam, in terms of redacted evidence, I ask you to read again – and I will not read it again to you – the evidence of redacted, old though I accept it is, it is more informative than the most recent letters because his current redacted practice only saw him once or twice for nothing in particular and he registered there only in October last year.

Madam, I think that those facts are relatively straightforward. Obviously I will answer any questions which you may have for me. Perhaps I should – unless you have any questions now – proceed straightaway to the submissions that I have to make.

Ms Jones: Are there any questions? [*No questions*] There are no questions, please proceed.

Mr Albery: Madam, this is a case in which the Council relies on each of the three grounds which allow you, under the Opticians Act 1989, to impose an Interim Order. Now that is not, I hope you agree, because the GOC always does so, but it is because the Council, who instruct me, think that each of those grounds has merit. They are, to remind you, that such an order is necessary, for the protection of the public; that it is in the interest of the registrant, or otherwise in the public interest. I will deal with each of those separately, in the same way as they have been dealt with in the written application.

In relation to the protection of the public and the interests of the Registrant, my understanding of the law is that you would need to be satisfied that such orders are necessary but that necessity does not apply to the limb relating to

whether it is otherwise in the public interest. Your learned Legal Adviser will tell you what the law is.

Madam, in relation to the protection of the public, paragraph 46 in the application shows that,

“The medical evidence indicates that the Registrant has an anxiety disorder which is exacerbated by stressful events.”

The evidence of the Registrant’s convictions establishes that, on two occasions, certainly in the recent past, he has driven his car while under the influence of alcohol as a result of a reaction to stress, he says.

Madam, at paragraph 47, he has, as a practising dispensing optician, regular access to patients and will, it seems to us, continue to work in a potentially pressurised environment. This clearly, if there is no restriction placed upon him, puts public safety at risk, particularly in the absence of any up-to-date medical evidence reassuring you of the matters which might cause you concern from the reports that you have read.

Madam, insofar as the interests of the Registrant are concerned, it is rare - I think that regulators rely on this ground - because generally it is not in the interest of a registrant not to be able to go about his or her practice. The grounds relied upon at paragraphs 48 and 49 are put therefore in a light touch, I think. The fact is, for all of the reasons which I have already given, that you might conclude that it is actually in the interests of Mr Bodman not to have to be the subject of the work-related stress about which he himself complains, particularly in the context of the ongoing GOC investigation.

Madam, the third limb – that is that such an order is otherwise in the public interest – is the limb on which the Council can rely, necessity not being required here, in relation to more general concerns about confidence in the profession as well as the need for you to maintain proper, professional standards. Bearing in mind, notwithstanding the **redacted** issues, the conviction of this dispensing optician, while his own regulator was considering his behaviour and what it should do about it in relation to the first conviction, suggests, you might think, that such confidence would be undermined if you did not take action which is sought by the Council today.

Madam, those are my submission in relation to an order. I appreciate that you must deal with all matters proportionately and balance the harm that might be caused to the Registrant against the public interest which I have outlined. In relation to the sort of order that Council seeks, it has not jumped to conclude that it must be a suspension order. It is simply this: that the Council itself cannot conceive of or craft conditions which might meet the concerns it has and it has shared with you, particularly when there is little information or current information from the Registrant himself as to his current employment

status which might more easily allow you to impose conditions in relation to the concerns about public safety and so on. In any event, even if those concerns could met by the imposition of conditions, what I call the 'conduct concerns', they cannot be in the Council's opinion, and it is for that reason that you are invited to make a suspension order for 18 months if you make one. As you know, it has to be reviewed every six months and the Council, in any case where there is an interim order, will do its best to ensure that the substantive hearing be heard as soon as is possible.

Madam, do you and your colleagues have any questions? [*There were no questions*] Then those are my submissions.

Ms Jones: Thank you very much. Mr Lucraft, can I invite you to advise us?

Mr Lucraft: Yes, I wonder if you need any clinical advice further to that which you have already heard.

Mr Seivewright: I have no further clinical advice to give.

Mr Lucraft: Thank you. Madam, in relation to the legal advice, could I just draw everyone's attention to Section 13L(1). The section provides three gateways, as it were, to the making of an interim order. Those three are, first, necessary for the protection of members of the public; secondly, otherwise in the public interest; or, thirdly, in the interests of the registrant.

This is a case where the Council says that all three may well apply. In relation to situations such as the one which you face, some guidance was provided in the case of *Shiekh v General Dental Council* [2007] EWHC 2972, and I am sure that the Committee members are familiar with that case. It was, as you know, a General Dental Council case, concerning a similar provision. Mr Shiekh was the subject of criminal proceedings alleging that he was party to a conspiracy to defraud. He pleaded guilty to those matters and was made the subject of a suspended sentence of imprisonment. It was post his conviction that the General Dental Council commenced regulatory proceedings against him and his case came before an interim appearance panel. His was a case where it was accepted that he did not pose a direct risk to the safety of the public, but he was suspended on the basis that the panel members were satisfied that it was in the interests of the public that he be so suspended.

That order was maintained at the first review and the decision later was on the subject of an appeal to the High Court. In the course of his judgment, Mr Justice Davis said this:

"As a matter of strict language, no grammatical interpolation of the word 'necessary' falls to be applied to the phrase 'or is otherwise in the public interest'. But that is not the end of the matter because it does seem to me that if 'the public interest' is to be invoked in this context, under the statute, then that, to my mind, does at least carry some

implication of necessity; and certainly it at least carries with it the implication of desirability.”

He then goes on to state:

“At all events, in the context of imposing an interim suspension order on this particular basis, it does seem to me, adopting the words of Mr Winter, ‘the bar is set high’; and I think that, in the ordinary case at least, necessity is an appropriate yardstick. That is so because of reasons of proportionality. It is a very serious thing indeed for a dentist or a doctor to be suspended.”

And in the case which you have here, for an optician or optometrist to be suspended.

“It is serious in many cases just because of the impact on that person’s right to earn a living. It is serious in all cases because of the detriment to him in reputational terms. Accordingly, it is, in my view, likely to be a relatively rare case where a suspension order will be made on an interim basis on the ground that it is in the public interest. I do not use the words ‘an exceptional case’.”

So that was guidance given and it has been referred to since in two other cases, *Sathanathan v General Medical Council* [2008] EWHC 872 (Admin, as well as *Sandler v General Medical Council* [2010] EWHC 1029 (Admin) to which Mr Albuery has referred in his note. Can I invite your attention to what Mr Albuery has put in paragraph 51 of his document before you, it is at page 8, paragraph 51 of the statement of facts. Then, very helpfully for you, he has set out, at paragraph 52, the result of the three cases, in particular referring to *Sandler* where in fact the necessity issue and the limb of ‘otherwise in the public interest’, where Mr Justice Nicol, who is the judge in *Sandler* gave caution to introducing words into the statute which are not there.

To summarise, I will set out what I would advise you as to the legal principles which you should apply. The first question which you should ask yourself is simply: “Is an interim order necessary for the protection of the public?” Remember that the word ‘necessity’ introduces, by its very use, a high bar on that particular ground. If that is not the case, then consider whether such an order should otherwise be made in the public interest or in the interests of the Registrant. Bear in mind what Mr Justice Davis said in *Shiekh* about whether the reputation of the profession can be upheld by a final order as opposed to an interim order and perhaps this key phrase – the watchword is ‘proportionality’: there is a need to balance the interests of the public and the Registrant’s own interests in continuing his profession without any restriction.

If an interim measure is required in the public interest then you should ask yourselves whether conditions would be sufficient and only if not should you ask whether this is a rare case where suspension is justified. Each case, of course, turns on its own facts and, as I said, proportionality is the key phrase which I would advise you to adopt in considering whether to impose the order sought in this case.

Ms Jones: Thank you. Do you have any further comments, Mr Albuery?

Mr Albuery: One, if I may. It is of course not about the legal advice which I accept has been put very ably. In relation to *Shiekh*, the legal analysis and summaries given by learned Legal Adviser, I adopt. What I would say, though, is that you can properly distinguish the facts of that case from this. In the case of *Shiekh*, the Court was dealing with matters of dishonesty and it almost appeared as a punitive measure, in the absence of concerns about public safety, to impose an interim order. Here, the convictions are not for dishonesty matters but for alcohol related offences and the Council believes that that does give rise – because there have been two, or three, of them – to public concerns. That is all that I wanted to add. Thank you.

Ms Jones: Thank you.

[Hearing adjourned at 10.24]

[Hearing resumed at 11.39]

Ms Jones:

Notification of hearing and proceeding in the Registrant's absence

The Committee accepted the advice of its Clinical Adviser and also the advice of its Legal Adviser. The Committee is satisfied that all reasonable efforts have been made to notify the Registrant of the hearing. The Registrant had communicated with the Hearings Manager and was clearly aware of the date, time and venue of the hearing. Shortly before the hearing was due to commence, a message was received that the father of the Registrant had sadly passed away yesterday, and the Committee extends its sympathy to the Registrant. No request for any adjournment had been received and the Committee considered whether or not it should proceed in his absence. It considered the case for *R v Jones* [2003] 1 AC, 1 HL, and the checklist relevant to a consideration of whether to proceed in the absence of the Registrant. The Committee noted that it had various documents from the Registrant setting out material relevant to its consideration of an interim order, as well as the fact that it had no power to compel attendance even if an adjournment was to be made. The Committee also considered the background leading to the application to be made.

The Committee further determined that it would be in the public interest for the hearing to proceed in the Registrant's absence.

Decision

The Committee considered the application of the Council that an interim order of suspension be made in the case of the Registrant on the three grounds set out in Section 13L of the Opticians Act 1989.

The Registrant is a registered dispensing optician. He was first registered on 22 February 1983. He was convicted at Bournemouth Magistrates Court of a drink driving offence on 30 June 2009. That conviction was referred to the GOC, and in August 2010 it was directed that the Registrant undergo a redacted. The Committee had those reports before it today. Those redacted reports were considered by the Investigation Committee in May 2011. The matter was also considered in July 2011 by the Investigation Committee. They decided not to refer the matter to a Fitness to Practice Committee, but issued a warning to the Registrant. The warning was in these terms:

“You should ensure your conduct, whether or not connected to your professional practice, does not damage public confidence in you or in your profession.”

Notification of that warning was made to the Registrant on 10 August 2011.

When the Registrant applied for retention on the register for 2011/12 on 22 March 2011, he said that he had been off work since February with redacted. As a consequence information was sought from the Registrant and his redacted. A letter from the Registrant's redacted was received. That letter was also before this Committee. This Committee also had before it a letter from the Registrant written in response to the report of his redacted. There is also a letter from the Registrant's new redacted dated 17 November 2011.

At the time that the Investigation Committee was considering the position of the Registrant in May 2011, he had in fact been convicted of a further drink drive offence by the Magistrates Court in Bournemouth. This conviction was not brought to the attention of the Council by the Registrant himself, but by the Dorset Police on 8 July 2011. On this second conviction he was disqualified from driving for a period of three years. His breath alcohol reading was twice the legal limit. When the fact of that conviction, and the fact that the Registrant had not declared the conviction to the Council was brought to the attention of the Registrant, he responded by letter dated 28 November 2011. That letter was also before this Committee and its contents have been

considered along with a further letter of 11 December 2011 that he has submitted.

In the light of the matters set out above, and set out in the documents before it, the Committee is of the view that this is a case where an interim order of suspension is necessary. The Committee considered the material relevant to each of the three limbs under the relevant section. This is a case where in addition to the underlying conduct he has deceived his regulator by not declaring a second conviction at a time when he knew the Investigation Committee was still considering his case, and on his own documents there was disclosed underlying redacted that had prevented him from working as a dispensing optician for significant periods. It is particularly concerned as to the potential underlying redacted which there may be, in the light of the all of the facts surrounding his drink drive convictions, and the history of redacted set out in the reports and letters. There is no report from a redacted specialist, and as and when this matter is reviewed there should be such a report along with relevant redacted as well as an up to date report on his redacted.

The Committee ordered that the Registrant's registration be suspended for a period of 18 months from today. The order will be reviewed within six months from today unless all matters are resolved within that time, or earlier should new evidence be made available, or if the Registrant, at any time after three months from today's date, requests an early review.

Thank you.

Mr Albuery: Thank you all very much.

[Hearing concluded at 11.45]