

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

GENERAL OPTICAL COUNCIL

IO(09)08

AND

IQBAL NABI (D-11818)

MONDAY, 15 AUGUST 2011

FOURTH REVIEW OF AN INTERIM ORDER

FOURTH REVIEW OF AN INTERIM ORDER: IQBAL NABI (D-11818)

Monday, 15 August 2011

Committee Members: Lady Margaret Wall (Lay) (Chair)
Mrs Geraldine Huka (Lay)
Mr Tim Bowden (Dispensing Optician)

Legal Adviser: Mr David Marshall

Hearings Manager: Mr David Henley BEM

For the GOC: Mr Christopher Whalley

The Registrant was neither present nor represented

[The Hearing commenced at 9.30]

Lady Wall: Good morning. I am Margaret Wall, and I have been elected to chair today's review of an interim suspension order regarding Iqbal Nabi, which was made on 21 December 2009. 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. *[Introductions]*

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

To your right is David Henley, the Hearings Manager, who will provide administrative support to the Committee. Next to Mr Henley is the transcriber, 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.

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

Are there any applications to be made?

Mr Whalley: Madam, yes, there is one application which is of course to proceed in the absence of Mr Nabi. As we can see, Mr Nabi is not here, nor is he represented.

If I can ask you to look at the small bundle, the Council's bundle, which is a service bundle. Hopefully, you all have copies of that.

Lady Wall: Yes.

Mr Whalley: First, on page 1, you will see a screen print from the Council's website which confirms the contact details and the registered address for Mr Nabi, which is on the right-hand side of that page. Indeed, it is Mr Nabi's responsibility to make sure that is up-to-date with the Council.

At page 2 is a letter sent to that address as it appears on the Register, dated 15 June 2011, setting out the location, date and the time of today's hearing, addressed to Mr Nabi. That was sent by Special Delivery, and we can see at page 4, that has been signed for on 16 June 2011, and is a Proof of Delivery document. There is a further letter which was sent to Mr Nabi at page 6, again to the same address. This was a letter updating the time of the hearing, and the time has moved forward to 9.30. That again was signed for on 9 July, and we can see at page 7 the Proof of Delivery of that letter.

You should, hopefully, have also received a copy of an email which was sent to my solicitors acting on behalf of the Council. It is an email of 29 July 2011 sent by Mr Nabi's solicitors, and they have advised that Mr Nabi will not be attending today's hearing, and secondly,

"The hearing can proceed in Mr Nabi's absence".

In those circumstances, given that service, in my submission, has been made, and Mr Nabi has confirmed in writing through his solicitors that he has no objections to proceed in his absence today, there is no prejudice to proceeding without him, and that is my application, Madam.

Lady Wall: Thank you. It is clear from all the documents that Mr Nabi has been properly informed of the date and change of time, and therefore we feel that we can go ahead quite safely in his absence, particularly as we have this confirmatory email.

Mr Whalley: Thank you, Madam. If I can then turn to the purpose of today's hearing which is a hearing to review an interim suspension order? In the Council's bundle which runs to 79 pages – I hope you have copies of that – there is some history to this interim order. I do not propose to take you through the full chronology of that, it is very clearly set out.

This review hearing is taking place following the extension of the interim order at the High Court. That was extended by consent on 24 May of this year until 19 June 2012. This is therefore the first hearing to review that suspension order following the High Court extension.

Today, in terms of your considerations, they should be whether the suspension order is necessary for the protection of members of the public or otherwise in the public interest, or otherwise in the interests of the Registrant.

You will see from the bundle the history of the case and the nature of fraud investigation and subsequent charges that were laid against Mr Nabi. The statement of facts at pages 1-3 really sets out the details of that investigation. There has been some slow progress through the criminal courts and that is why the suspension order has remained in place for some time.

There is little I can add to the statement of facts other than to update you on the current position with the criminal case. We can see at page 78, towards the end of your bundle, there is an email setting out the current position. This is from the Fraud Investigation Officer, an email of 11 July this year, Kevin Oliver. He states:

“Mr Nabi pleaded not guilty at Lewes Crown Court on 8 July, and his trial has been set down for 17 October. Mr Nabi’s co-defendant pleaded guilty.”

In many ways, Madam, the position is the same as it has been throughout. The criminal prosecution now is ongoing and in my submission, the Interim Suspension Order is necessary, both for the protection of the public and otherwise in the public interest. I rely on the statement at pages 1-3 which clearly sets out the reasons for the suspension order when it was first applied for. Of course, the trial will now take place in October. We have some finality to the criminal prosecution, and thereafter, of course, the Council’s investigation will no doubt proceed hopefully more swiftly than the current prosecution has done.

That is my application for the order to continue as it has done for some time now, unless I can assist you any further.

Lady Wall: Thank you. I will ask our Legal Adviser to give us his advice.

Mr Marshall: Certainly. This is a review of an interim suspension order. You have the power to revoke the order, to replace the present order for suspension with an order for interim conditional registration, or to leave the order unchanged. You should have regard to all the circumstances prevailing on the date of this review hearing, as well as the circumstances prevailing at the time of the initial order.

On any review hearing, you should comprehensively reconsider the existing order in the light of the circumstances which are now before the Committee, although clearly there is little new in this hearing.

An interim order can only be continued where you remain satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of a registrant. You should bear in mind the principle of proportionality. Any order imposed on the Registrant should be no more restrictive than is necessary to meet the public interests you are here to serve.

That is my advice.

Lady Wall: Thank you. Are there any questions?

Mrs Huka: I have no questions; I don't think anything has changed.

[No further questions from the Committee]

Lady Wall: For the maintenance of formality, I will ask you all to withdraw.

Mr Whalley: Madam, one thing I should have mentioned – forgive me – is of course the email as well from Mr Nabi's solicitors, point 4:

“Mr Nabi accepts that the Interim Order should continue”.

I am not putting forward anything different to my application.

Lady Wall: Thank you.

[The Hearing adjourned at 9.40]

[The Hearing recommenced at 9.55]

Lady Wall: The Committee has taken legal advice on this matter, and after discussion, this is our determination.

DETERMINATION

Service

The Committee is satisfied that all reasonable efforts have been made to notify the Registrant of the hearing. The Committee further determined that it would be in the public interest for the hearing to proceed in the Registrant's absence. The Registrant's solicitors have indicated that he is aware of the hearing but does not wish to attend because he does not oppose the continuation of the order.

Decision

The Fitness to Practise Committee reviewed an interim suspension order made on 21 December 2009 in respect of Iqbal Nabi; the order being for 18 months in duration. Following a High Court application order on 24 May 2011, the order was extended until 19 June 2012.

The Committee has conducted a full review of the case today, and notes that since the previous review hearing the CPS had decided to take action against the Registrant. He has been charged and appeared at the Magistrates Court on 1 April 2011. The Magistrates referred the case to the Crown Court for trial due to the seriousness of the matters of this case. Apart from this there has been little change since the last hearing. The Committee notes that the Registrant does not oppose the continuation of the order.

The Committee is satisfied that at present, it remains necessary for the protection of the public, and is in the wider public interest, to continue the present interim suspension order for the same reasons as the order was continued on the last occasion.

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.

[The hearing concluded at 9.57]