

**F(09)12**

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

**GENERAL OPTICAL COUNCIL  
AND  
JAMES PAUL HANDS (01-18422)**

**PRIVATE HEARING  
CONDITIONS REVIEW HEARING  
Friday, 26 August 2011**

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**JAMES PAUL HANDS (01-18422)**  
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Committee Members: Sir Alistair Graham (Lay, Chair)  
Mr Alan Baldwin (Lay)  
Mrs Geraldine Huka (Lay)  
Miss Elizabeth O'Donoghue (Optometrist)  
Mr Paul Reeves (Optometrist)

Clinical Adviser: Dr Desmond Dunleavy

Legal Adviser: Ms Linda Goldman

For the GOC: Mr Bradley Albuery

For the Registrant: Mr Andrew McGee  
Mrs Fiona Mitchell

Hearings Manager: Mr David Henley BEM

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[Hearing commenced at 09.30]

**Sir Alistair Graham:** Good morning. My name is Alistair Graham, a lay member of the Hearings panel, and I have been elected by the Committee to chair today's hearing. The Committee today is made up of two optometrists and three lay members. I will ask the members of the Committee to introduce themselves and the capacity in which they sit. [*Introductions made*]

To my left is the Council's Clinical Adviser, Dr Desmond Dunleavy, 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 Linda Goldman, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee and ensure that the proceedings are conducted in accordance with the Rules of Procedure, so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate. In the event that any matter arises during the course of the Committee's deliberations, upon which the Committee seeks advice, the parties will be invited to return to hear the

matter which the Committee has raised and the advice to the Committee. Where advice on any issue is not accepted by the Committee, this will be indicated in the course of its decision on that issue.

To your right is David Henley, the Hearings Manager, who will provide administrative support to the Committee. Next to Mr Henley is the transcriber 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 the proceedings to be displayed on the Council's website for public viewing, but where matters of health have been discussed the determination and the transcript will be redacted accordingly. I understand this hearing concerns matters of health and it will be held *in camera* once the introductions are out of the way. Do both parties agree that special arrangement? [*Agreed*]

Could I ask if there are any applications to be made at this stage?

[*Hearing held in camera*]

**Sir Alistair Graham:** Any comment on the legal advice? [*No*] Mr Henley, can I ask you to clear the room while the Committee deliberates on this matter?

[*Hearing adjourned at 11.20*]

[*Hearing reconvened at 12.05*]

**Sir Alistair Graham:** I can announce the decision of the Committee relating to the breach of conditions.

### **Decision of the Committee – Breach of Conditions**

There was a breach of Condition 14 of the conditions imposed on 30 November 2010 by the Fitness to Practise Committee. This is admitted by the Registrant.

The Committee heard oral evidence and heard submissions from Counsel. The Committee accepted the advice of the Legal Adviser.

**Redacted.** It was serious because it put patients and the public at risk and affects public perception of the profession. The evidence of Jacqueline Nicol, the Registrant's manager at Specsavers, is preferred concerning the circumstances surrounding **redacted** at work.

The Committee does, however, accept the Registrant's oral evidence **redacted**.

I think we can move to the next stage of the process of this hearing relating to impairment.

*[Hearing adjourned at 12.30]*

*[Hearing reconvened at 12.32]*

*[Hearing adjourned at 12.35]*

*[Hearing reconvened at 13.35]*

**Sir Alistair Graham:** These are the decisions of the Committee regarding impairment and sanction:

### **Findings regarding impairment**

Given his admission of impairment and in light of the evidence heard, the Committee is satisfied that the fitness of James Hands to practise as an optometrist is impaired.

The Committee's reasons for this are:

The conviction **redacted** which provoked the current proceedings was the Registrant's second conviction in two years. **Redacted**, the Registrant received a custodial sentence, suspended (on appeal) for two years. The previous Committee decided that this matter was so serious that there was a need to protect the public from this type of conduct, which clearly falls far below that standard of conduct which the public is entitled to expect from the profession. In light of **redacted** and other evidence, **redacted**, the Committee deemed it appropriate to impose robust conditions on the Registrant's practice. **Redacted**.

This early review was carried out because the Registrant's employer informed the GOC **redacted** after he had treated a patient on 5 August 2011.

### **Sanction**

The Committee heard submissions from Counsel for both parties as to what would be an appropriate sanction. **Redacted**. Accordingly, Counsel for the GOC explained that it was open to the Committee to

consider erasure from the register given the serious nature of the breach of the order for conditions. Alternatively, as there had not been compliance with the order for conditions, the Committee should contemplate suspension.

Counsel for the Registrant submitted that the breach of the order had only arisen because of the change **redacted** and the Committee should consider imposing stricter conditions.

The Committee considered that it is proportionate to impose a sanction.

The breach of Condition 14 goes to the root of the Registrant's **redacted**. The Committee considered that there is no appropriate condition which could be imposed at the present time which would fully safeguard the interests of the public and the reputation of the profession.

The Committee decided that the next level of sanction, that of suspension, is proportionate under the circumstances of this Registrant. It has decided that a period of suspension of six months followed by a review will give the Registrant the opportunity to demonstrate to a future Committee that he has developed the appropriate insight and that he is then suited to resume work in his profession. He will need to satisfy a future Committee that he is able to remain **redacted** and operate as a fully functioning member of the profession.

### **Immediate order**

Because of the risks to the public and the reputation of the profession, the Committee orders that the suspension will take immediate effect.

### **Review hearing**

A review hearing will be held approximately four weeks before the expiration of the order. The Review Committee will need to be satisfied that the Registrant has fully appreciated the gravity of the offence, has not re-offended and has maintained his skills and knowledge and that the Registrant's patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.

That is our decision.

*[Hearing concluded at 13.40]*