



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

**GENERAL OPTICAL COUNCIL**

**IO(10)07**

**AND**

**STEPHEN KIMBERLEY (01-19733)**

**Thursday, 17 February 2011**

**1<sup>st</sup> REVIEW OF AN INTERIM ORDER**

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STEPHEN KIMBERLEY**

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Fitness to Practise Committee: Ms Margaret Hallendorff MBE (Lay) (Chair)  
Mr Rod Varley (Lay)  
Mr Rabesh Kapoor (Optometrist)

Legal Adviser: Mr David Swinstead

Hearings Manager: Mr David Henley BEM

For the GOC: Ms Kate Steele

The registrant was neither appeared nor was legally represented

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*[Hearing commenced at 12.53]*

**Ms Hallendorff:** Good afternoon. I am Margaret Hallendorff and I have been elected to Chair today's review of the current interim suspension order. The Committee today is made up of one optometrist and two lay members. I will ask the members to introduce themselves and the capacity in which they sit. *[Introductions]*

To my right is Mr David Swinstead, 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 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 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 session of the hearing at which the parties are present. The remaining persons sitting in the hearing room rather than the public and the press areas are members of the respective legal teams.

You should be aware that it is the Council's policy for the determination of the Committee and a transcript of proceedings to be displayed on the Council's

website for public viewing. Where matters of health have been discussed, the determination and transcript will be redacted accordingly.

Ms Steele, do you have any applications?

**Ms Steele:** I do Madam. The first, as may be apparent by the circumstances, is to invite you to proceed, notwithstanding Mr Kimberley's absence at today's hearing. Before I do so, might I just check that the members of the panel have copies of all the documents before them that I anticipate they do? The first is a bundle that has been prepared by the Council which runs to 90 pages.

**Ms Hallendorff:** We will call that C1.

**Ms Steele:** I am grateful, thank you. The second is a letter that has been submitted by Mr Kimberley, which is dated 14 February.

**Ms Hallendorff:** We don't seem to have that.

**Ms Steele:** It may have been circulated in advance, but perhaps I could ask that letter could be handed up to you now, if you don't have it.

**Mr Henley:** I emailed it, didn't I?

**Ms Hallendorff:** I had seen it, yes. We will call that C2.

**Ms Steele:** Thirdly, I believe you also all have a copy of the short service bundle.

**Ms Hallendorff:** That would be C3.

*[C2 and C3 are distributed]*

**Ms Steele:** Thank you. In that case, if I may, I will proceed to make an application on behalf of the Council under Rule 21 of your Rules. Members of the Committee will no doubt be familiar with the Rule that deals with proceeding in the absence of the registrant and states that:

"Where the registrant is neither present nor represented at a hearing, the Fitness to Practise Committee may nevertheless proceed if –

- (a) they have been satisfied that all reasonable efforts have been made to notify the registrant of the hearing; and
- (b) having regard to any reasons for absence which have been provided by the registrant, they are satisfied that it is in the public interest to proceed."

Dealing first with 21A, the first part of that test, perhaps the easiest way of dealing with it would be in the service bundle, although it is also in the main bundle. At page 1 of the bundle you will see you have confirmation of Mr Kimberley's registered address and details as held by the Council. On the second of the pages on that small bundle you will see that you have a copy of

the notification of hearing letter that was sent to Mr Kimberley at his registered address by the Council on 13 December 2010 and that was sent by Special Delivery, first class post and email, thereby complying with Section 23A of the Act and Rule 65 of your Rules, in terms of the method and delivery of service. You will see that letter makes reference at its outset to the current interim suspension order that was imposed on the registrant's registration, that being the one imposed on 25 August 2010; the details are set out there of today's review hearing, including the place, date and time of the hearing.

Over two pages in my bundle and I suspect it will be the same in this one, page 4 of the service bundle you will see that you also have the formal notice of hearing, the same details, together with details of today's Panel that was enclosed with the letter to Mr Kimberley and on the page that follows, page 5, a copy of the email that was sent to Mr Kimberley attaching that letter. You will see from the face of the letter that it was also sent by email. Finally on page 5, the Royal Mail proof of delivery, confirming that it was signed for, the name printed at the bottom you will see is S Kimberley, the date being 14 December 2010 and the signature there. You will see that you have the number at the top of that page, but also at the top of the letter itself should you wish to satisfy yourselves that those are the same documents that have been sent.

Turning, if I might at this stage, to the letter that has been submitted by Mr Kimberley, which you also have before you as C2. You will see that it is dated 14 February 2011 and that it is addressed to yourselves as the Fitness to Practise Panel. In the first paragraph you will see that Mr Kimberley states that he wishes to make a comment to you with regards to the review of his interim order, evidence, in my submission, that he did indeed receive the notice of hearing and is aware of today's proceedings. He goes on to state that he would have preferred to have attended this review, but is unable to do so due to the financial constraints put upon him from the outcome of the previous order and he states this is also why he is unable to be represented at this time by a member of the legal profession.

He goes on to state that the interim order hearing comes only a matter of two months before the full hearing of this matter and it is at that hearing that he hopes to present matters in his defence and request that he remain on the General Optical Council list. He then goes on to make some short submissions outlining those matters that he will put forward at the hearing and I invite you to consider those if you are minded to proceed today in his absence, but don't invite you to read them now for our purposes in terms of my application.

Moving down to the last paragraph of the letter you will see that he states:

"I can only request that the Panel consider the effect that a suspension and/or removal from the GOC list has had, and the future consequences to myself and my family will incur if suspension or removal is sought."

You will see it is signed:

“Yours faithfully,

Stephen John Kimberley”

Just by way of explanation, if it assists you, the reason the copy of the letter you have before you is not signed is it was sent electronically to myself on behalf of the Council on the day it is dated, 14 February of this year.

Madam, my submission is that on the basis of these two documents yourself and your fellow panel members can be satisfied that Rule 21A has been complied with in that reasonable efforts have been made to notify Mr Kimberley of the review hearing and, in fact, you will see he is aware that it is taking place today and has made submissions to you.

Part 2 of your test, under your Rules, 21B requires you to consider having regard to the reasons put forward by Mr Kimberley for his absence, it is nonetheless in the public interest for you to proceed with the hearing today. That will plainly be a matter for this Committee’s judgement on the basis of the documents that you have before you and I would accept, on behalf of the Council, that it is a judgement you must exercise with due caution. However, I submit that you can properly proceed today under the Rules on the basis of the information you have available to you.

I am mindful that you are an experienced Committee and you will, no doubt, hear shortly from your Legal Adviser before making a decision, but it might be helpful if I briefly draw your attention to some factors from the criminal courts, which have been incorporated and adopted in regulatory proceedings which deals with matters that ought probably to be considered by a panel or a court when deciding that it is appropriate to proceed in a registrant’s absence. They come from a Criminal Court of Appeal case, called *R v Hayward* [2001] EWCA Crim 168 and they were applied and adopted by the House of Lords when that case went to appeal, slightly confusingly under a different name, which was *R v Jones* [2002] UKHL 5. I propose, if you are happy for me to do so, to take them relatively briefly and in sections to assist in moving things forward.

The first three of those factors which I ought to draw your attention to are the nature of the defendant’s behavioural reasons for absencing himself, or in this case, the registrant, Mr Kimberley, whether, in your opinion, an adjournment would result in his voluntary attendance and the likely length of any adjournment that might be required. Madam, taking those three together, you have seen from Mr Kimberley’s correspondence that he is aware of the hearing, he has indicated that he would prefer to attend in person, but has stated that he is unable to do so at the moment because of financial constraints. You will note that he doesn’t, in his letter, make a request that the hearing be adjourned to enable him to attend and I would therefore submit to you that he has voluntarily absented himself, notwithstanding the reasons that he has submitted and put forward to explain why he is not in attendance.

On that basis I would submit on behalf of the Council that an adjournment of today's review hearing is unlikely to secure Mr Kimberley's personal attendance at today's hearing.

The next two factors I invite you to bear in mind are whether the defendant wishes to be legally represented in these proceedings and, perhaps not appropriate in this particular case, but whether those legal representatives could obtain instructions. Again, you will have noted from his correspondence that Mr Kimberley indicates he is unable, for financial reasons, to obtain legal representation for today's hearing, but you will no doubt have seen from the transcript that you have before you that he was legally represented at the original interim suspension hearing that took place in August 2010. Whilst it is entirely a matter for you, you may therefore feel that you do, before you today, have some indication of the submissions that would be put forward by Mr Kimberley in respect of an interim suspension order, were you to proceed to consider the matter in his absence. You also have the submissions that he wished to put before you in writing in his letter of 14 February.

In respect of the other factors, the sixth factor that was laid down by the case law I have referred to is whether there is a disadvantage, or what disadvantage there might be to the registrant, being unable to be here to give his account of the events, having regard to the case and the evidence against him and also whether there is a risk of an improper conclusion being drawn by the Panel about the reasons for the registrant's absence. Madam, as you and your colleagues will be aware, in terms of today's proceedings you are not a tribunal of fact and you are not being asked to deliberate on any factual matters. You are invited to review the interim suspension order imposed on Mr Kimberley's registration, reconsider the test that was considered by your colleagues at the previous hearing and the material available to you today and determine whether that order remains necessary and proportionate in accordance with the test under Section 13L of the Act. You will have the benefit of legal advice and you also have Mr Kimberley's written submissions and I would invite you to take account of those if you are minded to proceed and also not, of course, to draw any adverse inferences from the reasons for Mr Kimberley's failure to attend today. Indeed you have details from him as to the reasons such as he puts them forward.

The final factors are perhaps of less weight in respect of your consideration of this particular case today, but are the seriousness of the offence involved, the public interest in a trial taking place within a reasonable time and the effect of any delay on witness recollection. The reason I say they are perhaps less important for you today is that this is not a substantive hearing or a fact finding hearing. Whilst the allegations against Mr Kimberley are clearly serious, you are not being asked to make factual findings about them, but to review a suspension order that is already in place in respect of his registration. I would submit to you that it is in the public interest but also, clearly, in Mr Kimberley's own interests that the order that is currently in place on his registration be reviewed in a timely manner in accordance with the rules. I accept, on behalf of the Council, that it is matter for you and your judgement whether you are minded to proceed today having weighed the criteria I have mentioned and

any others you consider to be appropriate and also having due regard to the material you have before you from Mr Kimberley.

In light of the submissions that I have made, I would like you to conclude that it is in the public interest to proceed and that therefore it would be appropriate for you to do so under the Rules. Madam, unless I can assist you with any of the documents that you have before you, or anything I have said, that is all I propose to say in making applications.

**Ms Hallendorff:** Thank you. Does the Committee have any questions? [No] May I turn to our Legal Adviser?

**Mr Swinstead:** Ms Steele, you have invited the Committee to consider the case of *Jones* and I noted in the previous case this morning somebody again representing the Council relied on the case of *Jones*. There is a problem with the case of *Jones* that the Act requires that an order be reviewed within six months and, indeed, the order that the last Committee made was that there shall be a review within six months. That period is going to run out next week. Isn't the difficulty with seeking to apply *Jones* to this case as opposed to a substantive case where the Committee are making a final decision that this Committee is under a timing constraint and that therefore it may well be in the public interest to proceed in an interim case where different considerations may well come into play in the final substantive case?

**Ms Steele:** Indeed sir, and I will submit that the criteria that I have outlined are nonetheless relevant in broad terms, but I would accept entirely the advice that the Legal Adviser has given, which is that unlike a substantive panel there is an obligation under the Rules for this matter to be reviewed within a certain time period. Indeed, as the Legal Adviser has indicated, that does mean that any adjournment that you could seek to allow would be very limited in practical terms.

**Mr Swinstead:** Thank you. Madam, Rule 21 provides that if you are satisfied that all reasonable efforts have been made to notify the registrant of the hearing and you have the service bundle which assists you on that issue and having regard to any reasons for the absence which have been provided by the registrant, you are satisfied that it is in the public interest to proceed, you may order, nevertheless, the matter to proceed to be heard today. You have had urged upon you the various matters raised in the case of *Jones* as it was in the House of Lords. The only relevant and important issue from that decision is effectively that you have a discretion whether to proceed and that is a discretion you must exercise with great care, but as I have said in my exchange with Ms Steele, one of the matters that you have to consider, and it is essentially a public interest consideration, is that in any review of an interim order there is a time limit and in this case that time limit, in fact, runs out at the end of next week. That is a matter properly which you have to consider when balancing the interest of the registrant to be present with the public interest that this matter proceed because there is a time limit.

Madam I don't think I can assist you further. I am not sure how much you are assisted by the case of *Jones*. Your Rules make it quite clear to what matters you should have regard and I don't think I can assist you further, unless Ms Steele wishes me to assist further.

**Ms Steele:** No, thank you.

**Ms Hallendorff:** [*Confers*] We are happy to proceed.

**Ms Steele:** I am grateful, thank you. I will move onto the substantive matter before you today which, as you have already heard, is the review of the interim suspension order imposed on Mr Kimberley's registration. I am mindful that you have read the papers and I therefore propose to take things relatively briefly, if I may. However the background facts bringing us to today's hearing are quite helpfully summarised in the determination of the previous Committee that considered this case. Perhaps I might invite you to turn to it? It is at page 63 of the main bundle, C1 - a little over halfway down in the decision and your colleagues in the previous Committee summarised the background facts as these:

"The Registrant was initially arrested on 24 May 2009 and charged by police on 29 January 2010 with making and possessing indecent photographs or pseudo photographs"

Which is the wording taken from the legislation;

"- of children"

The Committee learnt and heard at that hearing that the General Optical Council first became aware of the matters when they were notified by the registrant's then employer, some time later in 2010. The previous Committee note there that the registrant himself did not inform the General Optical Council of his arrest or subsequent charge. At the time of that hearing in August 2010 the registrant had been convicted and had made a guilty plea at the Crown Court to one charge, there being several others on the indictment that you will have seen, you have before you in the papers and at that stage was awaiting sentence. The Committee helpfully summarise in their determination that the charge to which Mr Kimberley had pleaded guilty involved video images which were said by the Crown Prosecution Service to be on Level 4 on the Oliver scale, which I will come back to, if I might, in due course.

Having appropriately noted the advice of the Legal Adviser, the Committee indicated that they were satisfied on that occasion in August 2010 that it was necessary for the protection of members of the public or otherwise in the public interest to make an interim order and that order should be an order for suspension. You will see that the Committee noted that the conviction was in respect of a serious criminal offence involving vulnerable members of the public. They also noted that it appeared that in their view the registrant had failed to fulfil his professional responsibility to notify the Council to the matter

and were of the view that taking no action would affect public confidence in the profession and would not be in the public interest. The Committee at that stage felt that it wouldn't be in the public interest to allow Mr Kimberley to practise until both the criminal process was concluded and the substantive hearing before this body, the General Optical Council, had been undertaken. They indicated that it was a case where it was both necessary for protection of members of the public, particularly children and young people, those who are vulnerable and also in the public interest that an order be made. As I have indicated, it was their unanimous decision that the only appropriate and proportionate order was one for suspension. You will see there that they go on to deal with the review and we are, indeed, at that first review or hearing.

Madam, as I am sure members of the Panel will be aware, as this is a review hearing, under Section 13L(4) of the Act you are effectively being invited today to reconsider the test that was considered by the previous Committee when looking at the case and determining whether the interim suspension order that is currently imposed on Mr Kimberley's registration remains necessary for the protection of the public or in the wider public interest and proportionate, in all the circumstances of the case, based on the material before that Committee and also the updated material that is available to you today. Under your powers the options available to you are to revoke that order if you feel that the test is no longer met, to continue the order for the remainder of the 18 month period or, if you consider it appropriate and proportionate to do so, you may replace the interim suspension order with one for conditional registration.

Madam, I propose to update you briefly at to matters that have arisen since the previous hearing and it might assist you and your colleagues if I say at this stage that the order that the Council is inviting you to make today is to continue the current interim suspension order for the remainder of the 18 month period, pending consideration of Mr Kimberley's case in full by a substantive Fitness to Practise Committee.

By way of update, first in respect of the criminal proceedings, you will know from the papers that Mr Kimberley has now been sentenced in respect of his conviction for making indecent photographs, or pseudo photographs of children. If I invite you to turn to page 76 in the bundle C1, you will see that you have there an updated Certificate of Conviction in respect to Mr Kimberley, confirming at the beginning, as with the previous Certificate of Conviction, that he was convicted on 20 July 2010 at Stoke-on-Trent Crown Court; that was the information that was before the previous Committee. Below that on 9 September 2010 he was sentenced to a community sentence for three years with the supervision of a probation officer at all times and you will see a little further down this also included participation in community sex offender group work for internet users. You will see that it was a requirement in his sentence that Mr Kimberley be placed on the Sex Offenders Register for a period of five years from the date of his conviction, 20 July 2010, but also that he was required to pay £500 towards the cost of his prosecution, which is payable within 12 months of the date of that order.

You will also note that there is reference to the ISA, which is the Independent Safeguarding Authority, which has the power to prohibit Mr Kimberley undertaking certain activities and, given the nature of the offence it is likely, although I am unable to confirm it on behalf of the Council, that the Independent Safeguarding Authority will be considering whether it is appropriate for Mr Kimberley to have contact with children, young people or other vulnerable adults, but as I say, that is not something I am able to confirm on behalf of the Council at this stage of the proceedings.

**Ms Hallendorff:** May I interject? Is that in perpetuity or for the same period of five years?

**Ms Steele:** I believe it goes wider than the entry on the Sex Offenders Register, but I don't have the details to hand, so I wouldn't want to mislead you as to that being a certainty. My understanding is they are a separate authority, but obviously that it comes about as a result of a conviction. It might be something that the Legal Adviser is able to assist you with in due course, if it would be helpful; when you are *in camera* I can check that.

**Ms Hallendorff:** No, that's okay, thank you.

**Ms Steele:** You have, Madam, copies of the transcript from both the original Crown Court trial and from the Sentencing Hearing. I don't invite you to turn to them at this particular stage, but if it is helpful, the original transcript runs from page 65 of your bundle and the Sentencing Hearing transcript from page 77 of the bundle and I would invite you to consider those when you are making your deliberations. In my submission on behalf of the Council the pertinent facts that arise from the Sentencing Hearing, which is the update since the previous hearing of the General Optical Council – perhaps if I could first of all deal with the conviction because it might be helpful for you if I summarise that he was convicted on one of the counts that were in the indictment that you have before you in the papers. That count you will see, from both the Crown Prosecution Service and the sentencing judge's comments, relates to the downloading, viewing and storage of four separate sections of video footage, each running for between 10 minutes and 20 minutes in duration, which were categorised as Level 4 on the Oliver Scale, which is the second to highest of the gradings used by the police and the Crown Prosecution Service for such images. You will see there are comments in the transcript from both the CPS lawyer and the judge that those images showed both male and female children, including a female child as young as seven years of age engaging in oral and penetrative sex with an adult male. I don't think for the purposes of today's hearing it is necessary for me to go into any further details, but you do have those for you in the bundle.

In addition, it might assist if I explain that although the Crown Prosecution Service took the view that it was not necessary in light of Mr Kimberley's admission and guilty plea in respect of one count, that being the most serious count that I have described on the indictment, to pursue the other allegations made against him on the basis that the Crown Prosecution Service took the view that it would not add anything to the ultimate disposal of his case by the

sentencing judge. Those were not, if I may put it this way, acquittals; they were made on the CPS file and the Court file and could be reopened with the permission of the Court, although in the circumstances that seems somewhat unlikely.

I will also draw your attention to the sentencing remarks of Judge Glenn and in particular at page 85 of the bundle where he notes that the activities of Mr Kimberley and those like him, who search for and access such material encourage those who do abuse children. It is a point that was put forward by me, you may have seen in the transcripts, at the original suspension order hearing and it is one that, in my submission, does remain relevant to your consideration of the case today. I would also invite you to note Judge Glenn's comments that, in his view, at the time of sentencing, he considered that Mr Kimberley was minimising his responsibility, notwithstanding his guilty plea, was preoccupied by sex and has some form of sexual attraction to young children. That, again, you will find within Judge Glenn's comments in the sentencing transcript. You may feel that those comments in particular are of some relevance to you in considering the case today.

By way of update in respect of these proceedings before the General Optical Council, I am pleased to say that the matter has now been listed for a substantive hearing and that hearing is listed to take place from 18 to 19 April of this year. Therefore, whilst the General Optical Council is inviting you to continue the interim suspension order for the remainder of the 18 month period, it is hoped that the substantive hearing will be dealt with and concluded on 18 and 19 April 2011, so within the next couple of months.

Madam, you and your colleagues have seen from my application in the bundle for an interim suspension order, the transcript of the comments that were made by the Council at the previous hearing, those submissions on behalf of the Council and I don't propose to repeat them, but I do adopt them in terms of my submissions before you today and invite you to consider them. In Mr Kimberley's absence I will also draw you to the submissions that were put forward on his behalf at that hearing, which you may also feel are still relevant to your consideration at the case today and, of course, Mr Kimberley's letter of 14 February of this year, in which he outlines the effect he considers the interim suspension order has had on him and, as with the matter of proceeding in absence, it will be for you to balance the public interest and my submissions on behalf of the Council with the effect of an interim suspension order being imposed on Mr Kimberley. That is a matter for you and your judgement, but in my respectful submission I would indicate that the changes since the previous hearing in terms of Mr Kimberley's sentencing and the listing of the substantive case do not in any way negate the very serious concerns identified by the previous Fitness to Practise Panel that considered his case and resulted in the interim suspension order being imposed. On that basis and for the reasons I have highlighted to you and that are documented in the bundle, I invite you to continue the order imposed on 25 August of last year for the remainder of the 18 month period, pending full consideration of Mr Kimberley's case by the Fitness to Practise Committee.

Madam, unless I can assist you or either of your colleagues any further, that was all I propose to say at this stage on behalf of the Council.

**Ms Hallendorff:** Thank you. [No questions from the Committee]

**Mr Swinstead:** Madam, this is a review of an order made by a Committee on the 25 August last year. I remind you that as a review you must carry out a comprehensive reconsideration of the initial order in the light of all the circumstances as they now are, but also having regards to the circumstances as they prevailed at the time of the earlier order. Before you can continue, replace or vary an order, you must be satisfied that there continues to be the possibility of impairment to the registrant's practice, which poses a real risk to members of the public, or may adversely affect public interest or the interest of the registrant and that it is therefore necessary to make an order to protect the public, or is desirable, or it is in the public interest, or indeed the interest of the registrant, as the case may be, for the interim order to continue. Whether or not it should continue in the same terms, or in different terms is a matter for you to consider.

In carrying out your consideration of the registrant's case you should balance the interest of the public and those of the registrant, and you must act proportionately. I remind you that in considering the registrant's position and acting proportionately you must bear in mind the consequences for the registrant of the making or indeed continuing of an order, which will be likely to interfere with his ability to practise his profession and to undermine professional reputation and standing. Madam, when I use the words "necessary" and "desirable", I remind you of the case of *Sandler v General Medical Council* [2010] EWHC 1029 (Admin), where the judge emphasised that necessity concerns the protection of the public, but the judge said that with regard to the wider public interest the word "desirable" would be appropriate, so that an order may be desirable in the public interest.

The last matter is this, the question you raised about safeguarding. Madam, I am not sure I can take it very much wider than this, that there are under the Act various lists and the registrant's name would go on a list, I think it would be on what is called List 1, and under certain lists there is a right to make representations as to whether or not you should remain on the list and in others, depending on the nature of the offence, you cannot make representations. I can't assist you very much further save this, that I am aware in the case that this regulator will be considering tomorrow, which involves similar offences, case whether or not representations have been made, but it is contained within the bundle a letter from the Safeguarding Authority indicating that that registrant will no longer be on the list. Whether or not representations have been made in that case, clearly there can be a time limit for some offences. If you wish me to check the offences for which this registrant was convicted were identical to the ones in the other case I would be able to do that. I have only had the briefest chance to check through and I can give you more detailed advice if you wish.

**Ms Hallendorff:** No, that covers it sufficiently, thank you.

**Mr Swinstead:** Madam, that is the advice I would give, unless, Ms Steele, you would wish for something further.

**Ms Steele:** No, thank you, sir.

**Mr Hallendorff:** Thank you very much. In that case, Mr Henley, if you could clear the room.

*[Hearing adjourned at 13.29]*

*[Hearing reconvened at 14.08]*

**Ms Hallendorff:**

### **Determination**

The Fitness to Practise Committee reviewed an 18 month interim suspension order in respect of Stephen Kimberley made on 25 August 2010.

#### **Service**

The Committee was 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.

#### **Decision**

The Committee took account of the submissions of Ms Steele on behalf of the Council and has accepted the advice of the Legal Adviser.

The registrant was initially arrested on 24 May 2009 and charged on 29 January 2010 with making and possessing indecent photographs or pseudo photographs of children. The Committee learnt that the GOC first became aware of these matters when it was notified by the registrant's then employer in February 2010. At the time of this hearing the registrant had been convicted by his plea of guilty in the Crown Court to one charge on 20 July 2010, at which time he was placed on the Sex Offenders Register for a period of five years. The charge to which he pleaded guilty involved video images which are said to be of Level 4 on the Oliver Scale. On 9 September 2010 the registrant was sentenced to a community order for three years with a requirement to attend the Sex Offender Group Work Programme for internet users.

The Committee noted the advice of the Legal Adviser and the requirements of Section 13L of the Opticians Act that it needed to be satisfied that it was necessary for the protection of members of the public, or it was otherwise in the public interest, to continue the interim order.

The Committee noted that the conviction was in respect of a serious criminal offence involving vulnerable members of the public. Further, it appeared that the registrant had failed to fulfil his professional responsibility to notify the General Optical Council of the matter. This remains a case where it is both necessary for the protection of members of the public, in particular children, young people and those who are vulnerable and is also in the public interest, that the current order remains in place. Accordingly, the Committee has decided that the registrant should remain the subject of an interim order of suspension.

The Committee orders that the registrant's registration be suspended for the remainder of the current 18 month period. 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.

*[Hearing concluded at 14.11]*