

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

**GENERAL OPTICAL COUNCIL**

**F(10)18**

**AND**

**STEPHEN JOHN KIMBERLEY (01-19733)**

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**DETERMINATION OF THE INQUIRY: 18-19 APRIL 2011**

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On 18 April 2011, the Fitness to Practise Committee of the General Optical Council met to consider allegations against Stephen Kimberley.

**ALLEGATION**

The Council alleges that you, Stephen Kimberley (a registered optometrist):

1. On 20 July 2010 at Stoke-on-Trent Crown Court were convicted of making indecent photograph or pseudo-photograph of child.

By virtue of the matter set out above, your fitness to practise is impaired by reason of your conviction.

**DETERMINATION**

**Findings in relation to the conviction**

The Committee noted that the facts of the registrant's conviction were admitted. The Committee accepted the advice of the legal adviser. The Committee was shown a certificate of conviction in the Council's bundle dated 26 July 2010 and thus found the facts of the conviction proved.

**Findings regarding impairment**

The Committee accepted the advice of the legal adviser.

The Committee has no doubt of the seriousness of the offence that the registrant pleaded guilty to on 20 July 2010 at Stoke-on-Trent Crown Court and for which he was subsequently sentenced on 9 September 2010.

Following the conviction he is now serving a 3 year Community Sentence Order with a specific requirement for sex offender group work in addition to overall supervision by the Probation Service. He is also now listed on the Sex Offenders Register and subject to its notification requirements.

The offences occurred over a 20 month period involving downloading and viewing indecent moving images, one of them involving a child aged 7 and being classified and accepted as a level 4 image on the "Oliver Scale". The Committee was conscious that a level 4 image is second highest on a scale of 5, described by His Honour Judge Glenn as "disgusting".

The conduct by the registrant was clearly in breach of paragraph 19 of the Optometrists Code of Conduct which requires an optometrist to 'Ensure your conduct, whether or not connected to your professional practice, does not damage public confidence in you or your profession.'

The Committee has no hesitation in concluding that the registrant's grave criminal conduct damages public confidence in the profession and that Mr Kimberley's fitness to practise as an optometrist is impaired.

### **Sanction**

The Committee accepted the advice of the legal adviser.

The Committee has taken into account the submissions of both representatives and in particular the arguments in mitigation as set out by Mr Leach. These submissions were :-

- a. the registrant was hitherto of good character and had not committed any previous offences;
- b. the registrant had not actively sought child pornography on the internet though he acknowledged he had been involved in what he described as "reckless browsing" and he was aware that this may lead to accessing child pornography sites;
- c. there were only four moving relevant files on his computer which were saved under 'My documents' on his computer hard drive and this storage may have happened through the use of "lime wire" software;
- d. he had never paid through his credit card for any child pornographic images;
- e. he had cooperated with the police and had never sought to argue, as he could have done so, that other members of his household may have downloaded such illegal material;
- f. he had suffered considerable shame as a result of what had taken place;
- g. there was no suggestion that he had been involved in any impropriety at his workplace;
- h. the Court had accepted that he had no contact with children and that there had been no distribution to any other party of the downloaded images.

Ms Steele, on behalf of the Council, drew attention to the general principles set out in the Fleischmann case as outlined in paragraph 54 of the case judgement together with the further guidance given in paragraph 56.

She also drew attention to the General Optical Council Fitness to Practise Panel's Hearing Guidance and Indicative Sanctions. The latest version of this document dated 31 December 2010 also highlights the principles of the Fleischmann case.

The Committee went on to consider whether no sanction was appropriate and to each sanction in an escalating order.

Given the seriousness of the criminal offence the Committee was clear that a sanction was appropriate and that a financial penalty was not appropriate in the circumstances of this case.

The registrant's representative submitted that Mr Kimberley, having been subject to an interim order for suspension, had already suffered a penalty which had had severe financial consequences on him and his family. Therefore the Committee could consider applying a conditional registration order which provided that Mr Kimberley had no contact with patients under the age of 18 years.

The Committee rejected this approach because of the practical difficulties which may arise and concluded that it was inappropriate for somebody still in the early stages of their sentence to be allowed to continue to practise.

The Committee went on to consider whether suspension from the register was the appropriate sanction in the circumstances of this case.

The Committee was conscious that it could only suspend Mr Kimberley for a period of up to 12 months and it believed the seriousness of the offence, and the length of the sentence imposed by the Court, made this an inappropriate sanction.

The Committee concluded that the appropriate and proportionate sanction was one of erasure. The Committee has borne the public interest in the forefront of its mind including the maintenance of public confidence in the profession and the associated need to declare and uphold proper standards of conduct and behaviour.

The Committee was satisfied that the registrant's conduct was a serious departure from the relevant professional standards as set out in the Code of Conduct for registrants, particularly as the offences involved child pornography. The Committee was also conscious that erasure was the appropriate sanction because the registrant is involved in the early stages of a Community Rehabilitation Order. The Committee has also noted that His Honour Judge Glenn, in his sentencing remarks, had said the following: "I take the view you are continuing to minimise your responsibility despite your plea. You are trying to put the best gloss on the events that you can. You need to acknowledge reality. The probation officer's view – and I share it – is that you are preoccupied with sex and you have some form of sexual attraction to young children..." The Committee was not shown the pre-sentence report or any other documentary evidence which demonstrated that anything had changed since this sentence was given.

In all these circumstances, the Committee orders that Mr Kimberley's name be erased from the register.

**Immediate order**

The Committee invited representations from the parties regarding the imposition of an immediate suspension order. Having heard such representations the Committee concluded that it was necessary both for the protection of members of the public and in the public interest that an immediate suspension order be imposed.

**Revocation of interim order**

The Committee hereby revokes the interim order for suspension of registration that was made on 25 August 2010.

**Chairman of the Committee: Sir Alistair Graham**

Signed \_\_\_\_\_ Date 18 April 2011

**Registrant: Stephen John Kimberley**

Signed \_\_\_\_\_ Date 18 April 2011

<b>FURTHER INFORMATION</b>
<p><b>Transcript</b></p> <p>A full transcript of the hearing will be made available via the GOC website in due course.</p>
<p><b>Appeal</b></p> <p>Any appeal against an order of the Committee must be lodged with the relevant court within 28 days of the service of this notification. If no appeal is lodged, the order will take effect at the end of that period. The relevant court is shown at section 23G(4)(a)-(c) of the Opticians Act 1989 (as amended).</p>
<p><b>Council for Healthcare Regulatory Excellence</b></p> <p>This decision will be reported to the Council for Healthcare Regulatory Excellence (CHRE) under the provisions of section 29 of the NHS Reform and Healthcare Professions Act 2002. CHRE may refer this case to the High Court of Justice in England and Wales, the Court of Session in Scotland or the High Court of Justice in Northern Ireland as appropriate if they decide that a decision has been unduly lenient and/or should not have been made, and if they consider that referral is desirable for the protection of the public. CHRE is required to make its decision within 40 days of the hearing (or 40 days from the last day on which a registrant can appeal against the decision, if applicable) and will send written confirmation of a decision to refer to registrants on the first working day following a hearing. CHRE will notify you promptly of a decision to refer. A letter will be sent by recorded delivery to your registered address (unless CHRE has been notified by the GOC of a change of address).</p> <p>Further information about the CHRE can be obtained from its website at <a href="http://www.chre.org.uk">www.chre.org.uk</a> or by telephone on 020 7389 8030.</p>
<p><b>Effect of orders for suspension or erasure</b></p> <p>To practise or carry on business as an optometrist or dispensing optician, to take or use a description which implies registration or entitlement to undertake any activity which the law restricts to a registered person, may amount to a criminal offence once an entry in the register has been suspended or erased.</p>
<p><b>Contact</b></p> <p>If you require any further information, please contact the Council's Hearings Manager at 41 Harley Street, London, W1G 8DJ or, by telephone, on 020 7580 3898.</p>