



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

**IO(11)02**

**GENERAL OPTICAL COUNCIL**

**AND**

**L (an Optometrist)**

**HEARING OF AN APPLICATION FOR AN INTERIM ORDER**

**Tuesday, 10 May 2011**

**GENERAL OPTICAL COUNCIL  
AND  
L (an Optometrist)  
10 May 2011**

Panel: Sir Alistair Graham (Lay) (Chairman)  
Mr A Baldwin (Lay)  
Mr Rakesh Kapoor (Optometrist)

Legal Adviser: Mr David Marshall

For the GOC: Ms A Dowgray

For the Registrant: Mr A McGee  
Ms F Mitchell

Hearings Manager: Mr David Henley BEM

*[Proceedings commenced at 09.31am]*

**Sir Alistair Graham:** Good morning. I have been elected by the Committee to chair today's hearing of the Council's application for an interim order.

The Committee today is made up of one optometrist and two lay members, and I will ask the members to introduce themselves. *[Introductions]*

To my right is Mr 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 and 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.

Please note that in accordance with the Council's protocol, the identity of the Registrant will not be revealed until such 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, but 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 the transcript of proceedings to be displayed on the Council's website for public viewing but where matters of health are being discussed the determination transcript will be redacted accordingly.

Can I now enquire whether there are any applications apart from the interim order?

**Ms Dowgray:** No, Sir.

**Sir Alistair Graham:** Are any health matters going to be discussed where the parties might wish to apply to be held *in camera*?

**Mr McGee:** No.

**Sir Alistair Graham:** If not, can we proceed with the application, then?

**Ms Dowgray:** This is an application for an interim order for conditions on the Registrant's practice under section 13L of the Opticians Act 1989. I understand you have had the opportunity to review the bundle of documents that has been filed in this matter, together the statement of facts. I propose to walk you through briefly the background to matters.

The Registrant is, of course, a registered optometrist. On 31 August 2010 Mrs A made a complaint to the General Optical Council with regard to her son, Patient A. Mrs A explained that she had taken Patient A to see the Registrant for eye examinations on 20 August 2009 and 4 March 2010. At the first examination on 20 August the registrant reported that Patient A's eyesight was good, Mrs A was advised that there was a loss of sight in Patient A's left eye which was not, however, a major concern as the right eye would compensate for this. It was recommended that he be recalled in six months' time.

At the second examination on 4 March the Registrant examined Patient A again, again Mrs A was told not to be concerned with the left eye as the right eye would compensate for it and as a result no prescription was issued to Patient A and a further six months' recall was advised.

**Mr Marshall:** Can I just check there are no issues about patient confidentiality – it's a public hearing?

**Sir Alistair Graham:** Do you think there are?

**Mr Marshall:** It perhaps wouldn't be normal in a public hearing to refer to the patient by name.

**Ms Dowgray:** Patient A, perhaps.

**Sir Alistair Graham:** Patient A? Yes.

**Mr Marshall:** Particularly since the patient is a child.

**Ms Dowgray:** Yes, I do apologise. Subsequently, in June 2010 Patient A underwent an eye examination at his school and was referred to a child specialist optometrist in Preston after failing the examination. After receipt of Mrs A's complaint, the GOC wrote to the Registrant, notifying him of the allegation regarding the services provided by him at his optician's in Preston.

On 5 April 2011 Claire Slade, the Professional Services Manager at Asda, reported to the Optical Council in respect of Asda's investigation into the complaint made by Mrs A. As part of its investigation Asda conducted three interviews with the Registrant, on 28 September 2010, 9 March 2011 and subsequently 16 March 2011. In addition, Professor Steve Taylor undertook an audit of 15 randomly-selected children's records under the age of fourteen, as well as Patient A's record created by the Registrant in the six months leading up to Mrs A's complaint.

With regard to the case of Patient A, Asda's findings as set out in Ms Slade's correspondence with the Optical Council were that he had two conditions that the Registrant had failed to pick up at the first examination. At the time of the second examination he detected one of the conditions, however he had failed to recognise the significance of this and subsequently manage the condition appropriately. You can see Ms Slade's detailed e-mail with regard to the finds at pages 7 and 8 of the bundle, Sir.

With regard to the audit of the children's records conducted by Professor Taylor, he prepared a report for Ms Slade at Asda and you can see that report at pages 93-95 of the bundle. Taking account of Professor Taylor's report, Asda's findings were that there was a shortfall in the standard of record-keeping and inconsistency in the methods employed to test and prescribe for children. Asda also ascertained from its interview with the Registrant that there was a lack of a structured approach to continuing education and training. Asda found that the Registrant did not deliberately set out to not detect the serious condition and treat Patient A, but rather had a limited understanding of the conditions that can affect children's eyesight development and the proper tests which are to be employed to check such conditions in children.

In summary, Asda treated this as a capability issue and a risk management contract has been developed. I understand you have had the benefit of seeing an updated report from Ms Slade, which my friend is no doubt going to refer to in due course on the matter.

The Council submits that it is necessary for the protection of the public and otherwise in the public interest for an interim conditions order to be made in this case. At paragraph 16 of the statement of facts we set out a suggested appropriate order. The Registrant's practice with children has been independently audited by Professor Taylor, and it is submitted there is a pattern of behaviour apparent from the audit, namely inconsistencies in the clinical routine and prescribing in respect of children under the age of fourteen. It is submitted these are serious allegations in that this amounts to a course of conduct as opposed to an isolated incident. It is submitted that these patients are particularly vulnerable, being children, and I remind you at this stage you are not making any findings of fact but simply dealing with the potential risk in relation to this matter.

While there are arrangements in place locally, put in place by Asda, and obviously the Registrant can be commended for the engagement that he has undertaken in respect of these arrangements, there is no guarantee that the Registrant will remain at Asda for the period for rehabilitation, and/or that he would not seek to work as a locum optometrist whilst also working at Asda or as a sole source of employment. The performance management process in place for the Registrant at Asda is a process limited to that particular workplace, Sir, and the GOC is unlikely to be aware as to whether or not the Registrant has sought or would seek to work as a locum elsewhere and/or remain at Asda for the period of rehabilitation.

It is therefore submitted that this is monitoring at a local level, Sir, rather than a national level and that an order is necessary for the protection of the public. It is submitted that the consequences for the order to the Registrant are not disproportionate to the need for that order.

Unless I can assist the Committee further, those are the submissions for the Council.

**Sir Alistair Graham:** Thank you very much. Mr McGee?

**Mr McGee:** Sir, on behalf of the Registrant, the Committee should have received a small bundle of material which I trust the Committee has had the chance to at least peruse if not read thoroughly at this stage.

**Sir Alistair Graham:** Do we want to number the different –

**Mr Henley:** Can I suggest that you number the Council's bundle C1 and this is R1?

**Sir Alistair Graham:** Thank you. Yes, we received it this morning, we had not too long a chance to – no doubt you'll take us through again.

**Mr McGee:** I will. Before I do that, the Registrant relies on the material contained in that bundle, but I also intend to call the Registrant briefly to give evidence on some other matters in relation to this application that lies before the Committee, and I do so now.

**THE REGISTRANT called and affirmed  
Examined-in-chief by Mr McGee**

**Sir Alistair Graham:** It would be helpful, Mr L, if you could keep your voice up, please.

**Registrant:** I will try.

**Mr McGee:** Can I reiterate that, because you are right at the end of the room from me. Can you hear me properly?

**Registrant:** Yes, I can.

**Mr McGee:** If you can keep your voice up, but if you can direct your answers over towards the Committee, because it's very important they hear what you have to say, and if you can go at a fairly steady pace because there are people in the room who need to take a note of what you are saying.

It's right, isn't it, that you attended Bradford University to study optometry and you graduated in 2001?

**A.** It is, yes.

**Q.** You completed your pre-registration training, registered with the GOC in 2003?

**A.** Yes.

**Q.** And that between February [year redacted] and October [year redacted] you worked at Specsavers in Skelmersdale?

**A.** Yes.

**Q.** Then in October [year redacted] you took a job at Asda?

**A.** I did, yes.

**Q.** And you became a registered optometrist at Fulwood branch in Preston?

**A.** Yes, I did.

**Q.** And that's where you are currently now back at work.

**A.** I am.

**Q.** So you have been at that particular Asda practice throughout a period of over six years, from October [year redacted]?

**A.** That's correct.

**Q.** At that practice, you have worked mainly alone as the resident optometrist?

**A.** Yes.

- Q.** It is also right that you did have other responsibilities, some staff management responsibilities, and some administrative responsibilities, is that correct?
- A.** Yes.
- Q.** And that though you undertook them, properly belonged to other members of staff, is that right?
- A.** That's right.
- Q.** But for various reasons we needn't go into, you had to take over some of those responsibilities.
- A.** I did.
- Q.** How did you find that that impacted on your normal workload?
- A.** Obviously, it's more stressful to have extra jobs put on you, with certain time restrictions for things like testing as well.
- Q.** Was that particularly a problem in 2009-10?
- A.** I would say so, actually, yes.
- Q.** It's something that you raised with Claire Slade, in interviews about this particular complaint, is that right?
- A.** Yes.
- Q.** You are now back at work full time, as of 5 April, is that right?
- A.** Yes.
- Q.** Have those staffing issues been resolved?
- A.** They will be resolved once a new dispensing optician comes in.
- Q.** And that is to be when?
- A.** In about a month's time.
- Q.** There's no dispute that a complaint was made to the General Optical Council, and that complaint was passed on to Asda. It's right, isn't it, that you had an initial meeting with Claire Slade, Professional Adviser to Asda, in September 2010?
- A.** Yes.
- Q.** You were made aware of what the complaint was, and you were suspended.
- A.** I was.
- Q.** In October.
- A.** Yes.
- Q.** Asda undertook their own investigation including obtaining hospital records of the patient about whom the complaint had been made, and commissioning their own expert.
- A.** Yes.

- Q.** You were aware of that?  
**A.** Yes.
- Q.** You are also aware that the outcome of that investigation was that Claire Slade considered that you had made mistakes but they were not what she described as ‘wilful’ but born out of a genuine gap in your knowledge, you are aware that that was the conclusion?  
**A.** Yes.
- Q.** Did you accept at the time that there was this genuine gap in your knowledge and this deficiency in your approach to handling child sight tests?  
**A.** Yes.
- Q.** Do you still accept that?  
**A.** I accept that now, yes.
- Q.** In light of that finding from Asda, the Committee heard that a personal development plan was put in place.  
**A.** Yes.
- Q.** As part of a performance management contract.  
**A.** Yes.
- Q.** Who drafted and designed the personal development plan?  
**A.** It was me.
- Q.** Did you have any assistance in doing that?  
**A.** Andrea helped me with the timescales of when I should complete each one of them.
- Q.** You mentioned Andrea – who is Andrea?  
**A.** Andrea is my mentor.
- Q.** When you say mentor can you explain that a little bit more?  
**A.** She’s an optometrist who advises me with any aspects of practice, if I have any concerns or anything I’m not sure of, I can always get in contact with her.
- Q.** So your evidence is that she has been involved almost right from the start of this process helping you to draft what I’m going to call the PDP.  
**A.** Yes.
- Q.** Can we turn, when you have a Registrant’s bundle in front of you, to tab 2 of the Registrant’s bundle – what is that document? Is that the PDP that you put together with Andrea?  
**A.** It is, yes.
- Q.** If you look at the right hand column, it may be blindingly obvious, but what does the far right hand column indicate?  
**A.** It just indicates what I’ve actually completed.

- Q.** Everything with 'completed' against it is exactly that, you've already done it?  
**A.** Yes.
- Q.** The column immediately to the left of that, that is the target date for when you complete various aspects of training, is that right?  
**A.** It is.
- Q.** Going up to the end of quarter 4. Some are to be completed in quarter 4.  
**A.** Right, yes.
- Q.** What does quarter 4 mean?  
**A.** Quarter 4 is actually the end of the year. Asda work on quarters, quarter of the year.
- Q.** Yes. So a target date for the completion of this PDP is roughly the end of the year, is that right?  
**A.** Yes.

**Sir Alistair Graham:** Roughly the end of the current calendar year?

**Mr McGee:** Yes, the end of the current calendar year. So by quarter 4, you mean –

- A.** December.
- Q.** December, the end of December?  
**A.** Yes.
- Q.** It's also right, isn't it, that on a monthly basis you are going to be meeting with Claire Slade, to confirm the progress that has been made on this PDP, is that right?  
**A.** Yes.
- Q.** And also to have, if you like, mini performance reviews about what you've learnt, how you've learnt it, and tests, scenario tests about how you would apply that in practice – is that your understanding of what is going to happen?  
**A.** That's correct.
- Q.** What will your contact be, if any, with Andrea during the period of this personal development plan - what can you use her for, if I can put I like that?  
**A.** I'm always in contact with Andrea, actually, usually at least twice a week to discuss how things have been in practice, or how my extra studying is going along.
- Q.** Is it your understanding that once you've completed this personal development programme to the satisfaction of Asda and Claire Slade, that you will then be in a position to undertake sight tests with children but that those will monitored on a three-monthly basis?  
**A.** Yes.
- Q.** How would you describe your working relationship with Claire Slade?  
**A.** It's fairly good, actually.

- Q.** Have she and Asda been supportive of you during this process?  
**A.** I think she has been very supportive in everything I do, really, because obviously she values my opinions from just working frontline in practice, really.
- Q.** Have you any plans to leave Asda?  
**A.** None at all.
- Q.** Would there be any reason for you to leave Asda?  
**A.** No there isn't, no.
- Q.** Have you ever worked as a locum?  
**A.** Never.
- Q.** Would there be any reason for you to want to work as a locum now?  
**A.** No.
- Q.** You are now back in full time employment with Asda, is that right?  
**A.** I am, yes.
- Q.** As of 5 April. And you are aware, are you, that Claire Slade and Asda have indicated that they would feel duty bound if you left Asda or they were made aware that that was your intention, or to seek any other form of employment, to alert the General Optical Council?  
**A.** I'm aware of that, yes.
- Q.** Would you have any objection to authorising Asda in writing to share information about your personal development plan, your performance management contract and your progress on those with the GOC?  
**A.** No.
- Q.** Just bear with me a moment. Have you any desire to work with patients under the age of sixteen before you and your employers are happy that you are fully able to do that?  
**A.** No.
- Q.** Is there any reason why you should want to short-circuit this process and try to work with children before this process is complete?  
**A.** There's absolutely no reason.
- Q.** Are you aware of what the impact on your professional career would be should you want to do that for any reason?  
**A.** Yes.
- Q.** What do you think would happen?  
**A.** If I did, Asda would sack me anyway, probably.
- Q.** I have no further questions for you. It may well be that my friend does, or the Committee.

**Ms Dowgray:** I don't, Sir.

### Questioned by the Committee

**Sir Alistair Graham:** Can I just, having looked at your personal development plan, in view of that, I'm hopeless on pronouncing these technical terms, amblyopia and anisometropia, 'able to detect these in children of school age', it says, and it says you've completed that. But you still wouldn't feel qualified, would you, to examine children under the age of sixteen yet, is that right?

**A.** I would want to make sure I complete everything first before I even go anywhere near children. I just want to make sure I've got all bases covered, and everybody's happy with anything before I go anywhere near that.

**Q.** Okay, thank you very much.

*[There were no further questions from the Committee]*

*[The witness stepped down]*

**Mr McGee:** Sir, I'll try and be brief in these submissions. You have the correspondence from Claire Slade both in the GOC bundle and in the Registrant's bundle. You have also been able to see the handwritten notes from all stages of the Asda investigation in relation to the original complaint. What is striking about that is that there is, from the start, a full and frank recognition by this Registrant of his shortcomings. He is a conscientious and committed young optometrist at the start of his career. He has spent six years as the sole resident optometrist at that branch of Asda, no evidence of any other complaints, any other disciplinary issues, any performance issue whatsoever, he is weak, it appears, in this one area, and of course it is an important area. But it's fortunate that he, as the General Optical Council recognises, works for an employer, namely Asda, who obviously value him as a committed and responsible young optometrist, because they have, to use that cliché 'stepped up to the plate', and decided to support him, and to support him in a very, very practical, but also responsible way.

You may very well think that neither the Registrant nor Asda have put a foot wrong since this complaint was made, and that's an indication of how genuine this Registrant's commitment to dealing with this issue is. There was an interview where the complaint was put to him, there was the initial investigation, Asda suspended him – they're not attempting to whitewash any of this, they recognise there is a problem. They undertook their own extensive investigation, perhaps in the experience of this Committee the investigation is far broader than one would expect normally to be undertaken, involving hospital records, and instruction of their own expert.

Two further detailed interviews with the Registrant in which the Registrant accepted he had problems. The finding, as is very fairly laid out by the GOC, was not one of wilful incompetence or anything of that nature, it's a capability issue, as Claire Slade says in her e-mail to the GOC, it's not wilful but rather limited understanding of the conditions which can affect children's sight

development, and the proper tests which should be employed, and there was a shortfall in record-keeping. As a result of that, and bearing in mind the regard in which Asda clearly hold this Registrant, they have put into place a performance management contract, you can see the detail of that contract below tab 3 – it is a very, very structured, time-bound, monitored process, of for no other reason that it has flow diagrams. It is quite clear that this is a process which is taken very seriously by Asda, and one in which they set realisable targets so that everybody is happy that there is a target for improved performance, and path towards it.

It is this Registrant who has put together, with assistance from his independent mentor, the actual performance development plan that you also see below tab 2 – that has been fully reviewed and endorsed by Claire Slade on behalf of Asda. Everybody is happy with this, and everybody is now signed up to it, as a result of which this Registrant returned to work on 5 April. You will already have noticed that significant proportions of this have already been completed. You will see from Claire Slade's e-mail under tab 4 of the Registrant's bundle a detailed e-mail setting out what Asda regards as the way forward. You will notice that they are very concerned to ensure that this personal development plan is properly monitored on a regular basis with this Registrant providing proper evidence of the completion of tasks, with him being, if you like, examined on the relevance of what he has learned to scenario-based examples. That is going to be a regular process. Claire Slade thinks that it may take a year or up to the end of the year to complete the PDP, and once they're happy that the PDP has been properly completed, it's only at that stage that Asda will allow this Registrant to work again sight testing children, and at that stage there will be continued monitoring, both of record keeping and particularly of the way those sight tests are conducted. Asda are taking this hugely seriously, and they have put in place, if I can put it this way, trip wires to make sure that this is a process which is properly completed, and this Registrant is taking this, you may think, very seriously indeed.

All of this background is important, the Committee may feel, because it shows Asda's commitment to the Registrant and the Registrant's commitment to Asda. He knows he has a weak area, he wishes to remain with Asda, he has cooperated fully in an exercise which is going to achieve that. He has no incentive or motive whatsoever to want to leave Asda, or to work as a locum, or to work with children. It's one of the first rules of advocacy that rhetorical questions are to be avoided, but I'm going to be shameless and ask a rhetorical question: why would this Registrant want to work with children, and in order to achieve that, leave Asda, or register as a locum? What possible incentive or motive has this young man at the start of his career to take what could only be a completely kamikaze course of action, jeopardise and ruin his own career at this stage, when he has put down roots in a hugely supportive company, and is at the start of his career with them. It's right to say, there's no evidence that he has ever taken work outside Asda, or would ever do so.

A belt and braces approach, which I suggest with great respect is what can characterise the GOC's application, can sometimes be wise. Sometimes it

can be unnecessary and otiose, sometimes it can be unfair. In this particular case I suggest that it's both of the latter of those – it's unnecessary, these conditions on registration, and unfair. The GOC will know if this Registrant attempts to leave Asda to go to other employment or if he actually does that, not that there is the remotest chance of that happening, but they will know that, because Asda has undertaken and feels it is their duty to tell the GOC, so no condition is required in relation to that.

You have heard this young man with no history of ever working as a locum, no need to do so for financial reasons because he's back in full-time employment now and not suspended. It's also the case that, of course, to register as a locum, references are required, things of that nature as professional members of the Committee will know, there is no need for that condition either. There are already mechanisms in place that would pick that up.

A prohibition against working with patients under the age of sixteen, well, that is all linked in – there is no evidence at all, quite the reverse, that this is a Registrant who wants, for completely perverse reasons, to start doing something he knows and recognises he can't do properly yet. And more to the point, he would have to make a positive decision to leave Asda or covertly in some way to become a locum in order to achieve that. It is a possibility and a risk which reaches the vanishing point, in my submission.

The second requirement to advise the GOC within three working days, that happens anyway – that will happen. He's not going to leave Asda but Asda would do that and they have undertaken so to do. And you've heard in relation to the third proposed condition, 'Mr L to allow the GOC to exchange information with Asda' – he's perfectly prepared to sign an authority letter to Asda, and will do so today, lodge a copy with the GOC authorising Asda to do that. Of course, it can't be made a condition of his registration that Asda discloses information. I'm sure they will, but it can't be a condition of his registration obliging Asda so to do; all he can do, and is perfectly happy to do, and all he's being asked to do, is to allow them so to do, and he will do that, and it does not require a condition because it can be completed today.

I indicated that this application and the conditions requested are otiose, they are also, in my submission, unfair, and I don't mean that in a belligerent sense as far as the GOC are concerned. I don't suggest that they are intending to be unfair, but it does have dis-prejudicial effects. They are asking for an order with what we say are otiose conditions but in any event, an order, lasting for eighteen months, and that would be a ban on working with patients under sixteen for eighteen months, as of today's date, if you accede to this application. It's quite clear that Asda, whose planning and whose approach to this has been commended by the GOC, very fairly, envisage a PDP that ends at the end of this year or thereabouts, and then a supervised return to working with children beginning in the early part of next year. So a year or thereabouts from now, perhaps slightly less than that, according to Asda's very thorough proposals, is when they would expect this Registrant to be back working with children, not in eighteen months' time. If there is an order in

terms of eighteen months, it may very well be that Asda is perfectly happy that this Registrant has successfully improved his skills in that area and they are happy for him to work with children again, but he's not allowed to do so and he has to mark time for another six months or thereabouts. That's not fair to this Registrant, who can only properly start to remedy any deficiencies by having the training, improving his skills and then beginning to work with children in a structured way. An order as sought, for the length as sought by the GOC, will impede that progress.

For all those reasons, I urge the Committee not to grant this application, and to allow in the circumstances of this case, to allow the very comprehensive safeguards that have been put in place without the benefit of conditions, to continue.

**Sir Alistair Graham:** Ms Dowgray, do you want to come back?

**Ms Dowgray:** Just one point, Sir, the order would be reviewed in six months' time, and I think that if there's any suggestion that there's been progress then obviously the matter is reconsidered and a further six months' order might be granted, it might not, so just bear in mind there is the reviewability on an interim order, Sir.

**Sir Alistair Graham:** Thank you. Could I just see if my Committee members wish to clarify – certainly I would like to clarify a couple of points: can the Council tell me, is there going to be a substantive hearing arising from this -

**Ms Dowgray:** The matter is still in the early stage of the investigation, Sir, that's as much as I can say at this moment.

**Sir Alistair Graham:** Right. Because normally an interim order is prior to a more substantial case and a substantive hearing –

**Ms Dowgray:** I don't know whether the case is such – it's at the stage where it's been put forward to a hearing, Sir, but it's at the initial stages of the investigation.

**Sir Alistair Graham:** And can I just clarify before I invite my colleagues, one other point, Mr McGee: you're opposed to an interim order of any sort?

**Mr McGee:** Yes.

**Sir Alistair Graham:** Yes, because of the conditions.

**Mr McGee:** It's otiose, it's unnecessary and it's unfair.

**Sir Alistair Graham:** And the disadvantage of an interim order, if it was in place, to your client, to the Registrant, is primarily around the eighteen month issue?

**Mr McGee:** It is the length, it's also simply the fact of a conditional registration which, if it's not necessary, should not be in place, in my submission. But the matter

of particular prejudice is certainly that an order of eighteen months in length, even if reviewable, has the potential to prejudice the Registrant, it also means that if it is, as my primary submission suggests, otiose, we are back in six months for no reason.

**Sir Alistair Graham:** In an earlier statement Ms Dowgray said that what was being proposed was a proportionate approach to protecting members of the public - do you challenge that issue of proportionality?

**Mr McGee:** Yes, it's neither necessary nor proportionate under the circumstances. There is already in place a series of safeguards which achieves, informally, what the GOC seek to achieve by putting in place otiose conditions. You've seen the Registrant give evidence. You may very well have formed the conclusion that he is a sensible and level-headed young man, he is not, you may think, a maverick with a death wish who wishes to jump from a very supportive employer to another just to work with children, or to undertake semi-covert work as a locum just to work with children. You have heard him say that he is very concerned to get this right in the context of an organisation that's providing him with great support. So in those circumstances, it's neither necessary nor proportionate.

*[There were no further questions from the Committee]*

**Sir Alistair Graham:** I'll now ask the Legal Adviser to advise the Committee on how we should approach this issue. You didn't wish to come back at all?

**Ms Dowgray:** No, Sir.

**Mr Marshall:** Certainly, Sir. This is an application for an interim order on the basis that it is necessary for the protection of members of the public. Under section 13L of the Opticians Act, you do not have jurisdiction to make an interim order on this basis unless you are satisfied that it is necessary; it is not enough that an order is desirable. If an order is necessary, you have the power to make either an interim suspension order or an order for interim conditional registration, in either case for a period of up to eighteen months.

The Committee must consider whether there is credible evidence that an interim order is necessary, however the question of whether or not an interim order should be made is not a question of proof, rather it is a question of judgement. In deciding whether or not to impose an interim order, the Committee must balance the need to protect the public against the potentially severe professional and financial consequences which an order may have on the Registrant. In doing so, the Committee must be satisfied that the likely consequences are not disproportionate to the risk identified.

The Committee has heard evidence from the Registrant, however this is not a fact-finding hearing; if an allegation is denied, it is not the function of the Committee to resolve such a dispute. The Registrant's evidence will, however, be of great importance in assessing his personal circumstances and the effect of an order on him. Before making an interim order imposing conditions on a

Registrant's practice, the Committee should consider whether amongst other things appropriate, realistic and verifiable conditions can be formulated which are sufficient to protect the public, and the extent to which it is likely that the Registrant will comply with such conditions.

Unless there is any other matter I can assist you with, that is my advice.

**Sir Alistair Graham:** Do you wish to comment in any way on the legal advice that's been given to the Committee? If not, I think the Committee will now meet in private, so if I could ask Mr Henley to clear the room.

*[Hearing adjourned at 10.17am]*

*[Hearing resumed at 11.06am]*

**Sir Alistair Graham:** This is the determination of the Committee of an application for an interim order: *[Reads]*

### **DETERMINATION**

'The Fitness to Practice Committee considered the Council's application for an interim order on 10 May 2011.

#### **Decision**

The Committee decided that it was not necessary at this time to impose an interim order. The Committee accepted the advice of the Legal Adviser.

The GOC has applied for an interim order against the Registrant on the basis that it is necessary for the protection of members of the public. The background to the application is the concerns that have been raised where the Registrant's competence in performing eye examinations on children arising from a complaint by a parent on behalf of their son. The Registrant has been suspended from carrying out such examinations by his employer, Asda, until he has completed the personal development programme arranged by Asda. The GOC's investigation is at a very early stage and it is not yet clear whether there is sufficient evidence to justify a substantive hearing.

The Committee has carefully considered the documents presented, most of which come out of the investigation and remedial programme arranged by Asda. The Committee also heard evidence from the Registrant, although it has borne in mind that this is not a fact-finding hearing.

The Committee is very impressed by the framework put in place by Asda for bringing the Registrant's skills up to the required standard. There is a comprehensive personal development programme in place and a mentor has been appointed. The Committee was impressed by

the Registrant's commitment to remaining with his employer and completing the programme. The Committee is satisfied that the Registrant's progress is being carefully monitored by Claire Slade, the Professional Services Manager of Asda Opticians. Her e-mail to the Association of Optometrists, dated 9 May 2011, and I quote,

"I am very pleased to report that to date [the Registrant] has been proactively engaged in this process and his approach has been exemplary. He has willingly adopted the advice and guidance offered by both myself and the professionals working with him".

The Committee is satisfied that so long as the Registrant remains in his employment with Asda, there is no risk to the public. The Committee is confident that the Registrant intends to remain in his employment and complete his personal development programme. The Committee is reassured by the fact that Asda has committed itself to informing the GOC if the Registrant were to leave its employment. In these circumstances the Committee is not satisfied that an interim order is necessary for the protection of members of the public.

Should the Registrant's circumstances change significantly it would be open to the GOC to make a further application'.

That is the decision of the Committee, so unless there are any further points to be raised I think this brings this hearing to a conclusion. Thank you very much.

*[Hearing concluded at 11.10am]*