

**IO(11)08**

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

**GENERAL OPTICAL COUNCIL**

**AND**

**LEE WILSON (D-12584)**

**INTERIM ORDER HEARING**

**Thursday, 1 December 2011**

**INTERIM ORDER HEARING: LEE WILSON (D-12584)**  
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Committee Members: Sir Alistair Graham (Lay, Chair)  
Mr Andrew Cripps (Dispensing Optician)  
Mrs Geraldine Huka (Lay)

Legal Adviser: Mr Mark Lucraft QC

For the GOC: Mr John Hepworth

Hearings Manager: Mr David Henley BEM

The Registrant attended in person and was unrepresented

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*[Hearing commenced at 13.00]*

**Sir Alistair Graham:** Good afternoon. My name is Alistair Graham, and I have been elected by the Committee to chair today's hearing for the Council's application for an Interim Order. The Committee today is made up of one dispensing optician and two lay members. I will ask the members of the Committee to introduce themselves and the capacity in which they sit. I should explain I sit in the capacity as a lay member. *[Introductions made]*

To my right is Mark Lucraft QC, 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.

Please note that in accordance with the Council's protocols the identity of the Registrant will not be revealed until such time that the Committee announces its decision. When the Committee decide that an order should be made, then the Registrant's details will be revealed. Alternatively, if the Committee decide 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 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.

Mr Wilson, I note that you are not represented today, and of course, the rules do allow for that, but I thought it may assist you if I explain how the hearing today will take its course. Firstly, the Council's presenting officer will present the Council's application. This will include a background explanation of the issues and why the Council found it necessary to make the application. You may then have the opportunity to respond. You may call any witnesses including yourself in support of you, and those witnesses can be questioned by yourself, the presenting officer, the Legal Adviser and the Committee. The Legal Adviser is an objective observer of the legality of the proceedings, and not here to advise you, but will answer any questions that you may have about the course of the proceedings today, and to try and resolve any confusion or ambiguity that there may be in your mind about what is going to happen today. So do you have any questions at this stage?

**Mr Wilson:** No, thanks.

**Sir Alistair Graham:** Right. The next thing is to enquire, apart from the interim order application, which we are going to hear about shortly, are there any other applications that anybody wishes to make? [*There were no applications*] Perhaps we can then proceed to invite you, Mr Hepworth, to present the case as an Interim Order application.

**Mr Hepworth:** Sir, thank you very much. Before I do so, could I just check, please, that you and your colleagues have had the opportunity to read the statement of facts supplied in support of the application together with the hearing bundle?

**Sir Alistair Graham:** Yes we have, and they have been labelled C1. I think there is also a statement from Mr Wilson, which has been given the number R1. This is just for reference purposes.

**Mr Hepworth:** Thank you for that indication. I think my submissions then could be rather shorter than otherwise they would have been. Can I start then, sir, by setting out the statutory framework? You have the power to impose an interim order, and that power comes from Section 13L of the Opticians Act 1989, and

it might be helpful if I read out the provisions of that section. Subsection (1) reads:

“Where the Fitness to Practise Committee are satisfied that it is necessary for the protection of members of the public or it is otherwise in the public interest, or is in the interest of a Registrant, for –

(a) his registration to be suspended or to be made subject to conditions;”

and subsection (b) does not apply in this case

“the Committee may make an order specified in subsection (2) below.”

The orders in subsection (2) reads as follows:

(a) the Registrant’s registration in the appropriate register shall be suspended (that is to say, shall not have effect)...during such period not exceeding eighteen months as may be specified in the order...; or

(b) his registration...shall be conditional on his compliance, during such period not exceeding eighteen months as may be specified in the order, with such requirements so specified as the Committee think fit to impose...”

So that then sets out your power to impose an interim order and the grounds upon which an order can be made.

So I will refer you now, if I may, to the statement of facts document. As far as the facts are concerned, I just refer you to the section headed ‘Facts’. I don’t think there is anything else that I wish to add as far as that is concerned. Clearly, the investigation is not yet complete, and the case has not yet been considered by the Investigation Committee to decide whether or not the substantive matter should be referred for a hearing. The matter has clearly been referred from the Investigation Committee to this Committee for consideration of the question of imposing an interim order.

I then, if I may, come down to the submissions section, and you can see at paragraph 14 of the statement, that it is the Council’s case that an order is necessary to protect the public and is otherwise in the public interest. If I may, I will just highlight a couple of the points which I have made under the heading ‘Protection of the Public’, but I refer you to the submissions that I have made in that statement in addition. In essence, the Council’s case is this; it is a fundamental error in the Council’s submission for this Registrant to have carried out fitting the contact lenses when he was not qualified to do so,

something which should have been known, which would have been obvious to any dispensing optician.

The fitting and issuing of contact lenses is clearly a big part of the Registrant's practice. I refer you to paragraph 17 as far as that is concerned, where he indicated in a letter to the NHS that he had a:

“very good and loyal contact lens patient base that I miss seeing and being part of.”

and, indeed, on his letter head, the name of the practice is given as Portsea Island Opticians – The Contact Lens Centre. So in the Council's submission those two factors together give rise to a substantial risk that the Registrant will continue to fit contact lenses. He remains unqualified to do so. Fitting contact lenses whilst unqualified carries with it, in the Council's submission, a risk of harm to patients. Why else would a dispensing optician need to be qualified to fit contact lenses if there was no risk attached to that practice.

As far as the second heading is concerned, that an interim order would be otherwise in the public interest, I refer you to the section of the statement of facts which deals with that, and just one point that I highlight in relation to that section, and that is that it was a fundamental misunderstanding of his ability and his powers of practice to have thought that he had the right to fit contact lenses, and because it was so fundamental, in the Council's submission, to allow him to practise unrestricted in the interim would have an adverse effect on public confidence in the profession, and this is one of the relatively rare cases such that even if you do not find that an order is necessary for the protection of the public that you could still make an order on the grounds that it is otherwise in the public interest alone.

As far as the documents are concerned in the bundle of evidence put forward by the Council, sir, I think they speak for themselves, and I do not want to waste your time by going through them at length unless there are any issues that you wish me to address, but it is clear in those documents, the Council submits, that the Registrant accepts that he had been practising outside of his qualification. There is no real issue about that before you today. Other than that, there is nothing I wish to add.

The last thing that I say as part of my submission is that if you wish to see them – I don't think you necessarily will – but I do have copies of the General Optical Council contact lens qualifications, etc rules, which just set out the provisions through which a dispensing optician may fit contact lenses, but I don't think in this case there is actually an issue about that. The Registrant does accept, I think, that he was practising outside his qualification. So I hope I have been brief. There is nothing else I wish to add in support of the application unless I can be of any particular help.

**Sir Alistair Graham:** Do you want to confirm how long the order is you wish for?

**Mr Hepworth:** Sir, you are absolutely right, and I apologise for not having mentioned that before. As it says in paragraph 14 of the statement of facts, the length of order sought is one of 18 months to allow for the substantive proceedings if there is a referral to the Fitness to Practise Committee, as I think must be likely in this case, that there is time then for those proceedings to conclude before the order expires. So, thank you for that invitation.

**Sir Alistair Graham:** Are you happy, because you are not bringing any witnesses in, if the Committee want to ask any questions about what you said.

**Mr Hepworth:** There are no witnesses and no other evidence to put before you. I will seek to deal with any issues which the Committee may have.

**Sir Alistair Graham:** Can you just touch on the 18 months. In what looks like a fairly straightforward case, is 18 months required to allow time to bring proceedings by the Council?

**Mr Hepworth:** Sir, I think the 18 months is asked for as an endpoint. Clearly if there is an interim order in place, then the Council will deal with it as an absolute priority, not that it is slow with other cases, but this would be dealt with as a priority, and an interim order would only last until the substantive hearing takes place. So it is hoped that any interim order would last for considerably less than 18 months.

**Sir Alistair Graham:** But you cannot give us any estimate of how long it would take to bring the full proceedings?

**Mr Hepworth:** Sir, I am afraid not, other than to say it would be dealt with as a priority. The investigation has not yet completed and so the matter is not before your Committee on a substantive basis. Therefore, estimating a timetable would be guesswork at this stage.

**Sir Alistair Graham:** Thank you very much. Do any of my colleagues wish to ask any questions? [*No further questions*] Thank you very much. Mr Wilson, it is now your opportunity to set out your case.

**Mr Wilson:** Thank you for the opportunity to talk to and address you, sir.

**Mr Lucraft:** Just before you start, Mr Wilson, you have two opportunities. You may want to consider giving what you want to say to the Committee on oath, on the witness stand. It is a matter entirely for you as to whether you want to do that. As the Chairman explained, I am not here to advise you on the law, but I am here to help, as it were, and make sure that things are dealt with according to the general principles. Now, if you were to give evidence on oath or on affirmation, it may be thought that actually it gives what you say greater weight because you can be questioned about what you say, and of course if

you take an oath to tell the truth, then the Committee may give greater weight to that from simply you sitting where you are at the moment and doing it.

The second thing I should say is that you very kindly brought copies of your statement, and I know that the Committee have read them, so you may, if you want to, expand on some of what you have said there. You can then be questioned by Mr Hepworth or by the Committee, but it may be if you want to do that you would prefer to do it from the witness stand, so again you are giving evidence on oath. It is entirely a matter for you.

**Mr Wilson:** Obviously I am fairly nervous. I produced a statement, but with the fact file, I am not here to deny that what I was doing was wrong. It was wrong. All I just want to try and do is to explain how I reached this point.

**Mr Lucraft:** Yes. I think if you are going to do that, it would certainly be my advice that you do it from there simply because if there are questions, you can deal with them. It may be thought, certainly, that if you are giving that on oath that what you say then carries with it greater weight.

**LEE WILSON, called and sworn  
Examined-in-chief by Mr LUCRAFT**

**Q.** Mr Wilson, as you settle yourself, before you embark on saying anything to the Panel – clearly you have indicated you want to expand on some of this – can I just ask you to confirm that the document that we have been provided with is your statement setting out the position, and that statement is true?

**A.** Yes.

**Q.** By asking these questions, Mr Wilson, rather than you simply reading this out, the Panel will understand this is your statement and they should take it as being –

**A.** My thoughts were to create something for myself to work from and try and just make it nice and clear to the Committee what I was trying to put over.

**Q.** I think I interrupted you just as you were making it clear that you accept the facts. The thing I should point out to you, and I will point this out to the Committee, is that today the Panel are not on a fact-finding exercise. They are simply going to embark upon the question as to whether they should make an interim order pending any full hearing, but clearly the facts are relevant to it, and your explanation of it is obviously important.

**A.** When we arrived today, I believed that today was going to be the final meeting with regards to putting this situation to bed, as such. I did not realise that the suspension period literally meant that I was suspended until the time of the hearing. I do not wish to waste anybody's time. I am agreeing that what I have done is incorrect. It was a mistake that I made when I was reading and when I left college in 2008, my misunderstanding of the information within a pack of documents I was given that has put me into this situation today. What I would like to do, if I may, is just to go back over some

of these points with the Committee, and just run through what has happened to me in the last few years, and forgive me for reading.

Back in the summer of 2008 I completed a day release course at the ABDO College in London, taking all three of the theory paper courses again. When we came to the end of that particular year session, I contacted the ABDO because I had already sat these papers back in I believe it was 1998. My career in optics began, I believe, back in 1995, and in 1998 I originally sat the contact lens course and failed the anatomy examination. From that period in time to 2008 I did not have any opportunity to even think about contact lenses. In fact, I parked the whole idea of practising with contact lenses up until 2008 when the practice itself was requiring reshuffling around with professionals. I thought that for my own personal future it would be a good thing for me to take the contact lens course. I sat the course in 2008. The ABDO told me that I needed to take the anatomy paper to pass and have all three theory courses passed. I subsequently took the examination and passed that examination. So from the summer of 2008 I believed that I was in a situation to start my practical training leading up to the practical examination.

When I left the college in 2008 I knew that because my practice set-up was not correct – the right manpower within the practice – that I wouldn't be practising or learning contact lenses for a period of time after finishing college. It was only in February 2009 that the reshuffling of my internal organisation of the shop allowed me time to spend preparing and building up with regards to starting to see patients for contact lenses. We fitted out the shop with the latest state-of-the-art slit lamps, video capture and image capture systems, and all the contact lens equipment that would be needed to take me through the contact lens learning experience.

At that time, I believed that I had a window of five years to actually learn more about contact lenses internally, go to the BCLA, see lens suppliers and do my own learning before I sat the practicals. At that point, I believed that I needed to make sure that the practice had good equipment, and I had optometry cover for my two optometrists who would supervise me, making sure that everything was running okay, making sure that what I was doing was correct and making sure the decisions I was making with the patients was the right decision. I also at that time fitted out the practice with a computer based practice management system, and what we did was we locked the clinics together so that the contact lens clinic that I was beginning to run ran in parallel with either one or two of my optometrists clinics, so I always had optometrist cover on site, as I believed was what I needed to do, therefore, having an optometrist as a supervisor on site.

One of the reasons it didn't even cross my mind with regards to getting the ABDO to sanctify a supervisor was when we left college we were shown the certificate in contact lens practice conditions. I have a copy here. This is the actual document, and in your fact file – it is page 10, I believe – there is a

photocopy of the page that we were directed to by the ABDO course tutors because of the relevance of case studies. The case studies were the important part, they said, of our practical training. We had to get case studies to the ABDO before a date relative to the practical examination; now, it says on page 10, six weeks before the case studies are sent to the ABDO. Two lines above that, it talks about registering a supervisor and the practice registration application form. When we looked at that form I took on board the fact that it said six months before the practical examination, complete a supervisor or practice registration information application form. To me, this is where I have gone completely wrong. I understood from that timetable of information that I needed to register six months prior to the practical examination, and with that in mind, back at work I then continued with my contact lens training building up confidence, building up clinics with my optometrist on site, with the equipment, and carried on seeing patients.

I would like to stress I always had optometrists on site. I believe that is a really important point because obviously I didn't want to jeopardise the patients' health, and I never had any intention of risking patients' eyesight by not doing the right job. I believed I had all the right equipment and the professional people around me that would ensure that that never happened. When you do send the application form, it asks you to prove that you have a supervisor with the correct qualifications on site and prove that you have the correct equipment on site. If I had done form, which is a free form to send to the ABDO for sign-offs, which I should have done, obviously I wouldn't be sitting here right now, but they wouldn't have found anything different in the practice as to what they would find today in the practice. Therefore, I am trying to point out that nothing I would have done would have been any different if that form had been put into the ABDO when it should have been.

When I received the letter from the Portsmouth PCT on 16 June, I believe it was, the letter obviously shook me up because I thought that I was still in a training mode where I just needed to sit my practicals when I was ready to sit them. I rang up the ABDO and spoke to them. From the conversation I had with the lady at the examinations department I found out that in fact my understanding was incorrect, and that I needed to address the problem with regards to moving forward. They gave me a letter back which explained the route forward which was to re-sit two of the examinations, which now had expired, and then to resend the application for the supervisor.

When I found out from the ABDO and I realised things were wrong, I suspended myself, and that is another major point I would like to make. I actually suspended myself from my own practice, from dispensing and seeing contact lens patients, so I have not been in practice since 17 June in a professional form at all. I had to arrange for a locum to come in and take over the contact lens work because there was too much work at the time for my optometrist to take up, but I have not actually been in the practice in a working capacity since 17 June this year.

One of the reasons for that obviously was I knew I was in the wrong, so I was waiting for the PCT to send back a letter to me to explain how I was to proceed. The PCT did not come back particularly quickly, but taking the advice of the ABDO, I enrolled myself onto the revision courses in preparation for sitting the two examinations on 5 and 6 December of this year. I have actually taken the revision courses and passed the revision courses, and in five days' time I am hoping to sit the examinations up in Birmingham.

I am trying my hardest to put everything right, realising the big mistake obviously I made at the start was the application form. I am trying to do things right. I made an innocent mistake. In hindsight, I realise I never followed the correct procedure. I am not trying to blame anybody, but my interpretation on the application for the contact lens supervisor is that it still doesn't read quite right in the actual book to anybody who was to read that particular paragraph in regards to the application, but I am not blaming that. I should have known better, but made a mistake. It certainly was not intentional.

My practice has been established for over 20 years down in Portsmouth and it has a very good reputation for a very professional practice, and it is my belief that in over 20 years we have never had anyone complain once with regards to contacting the PCT or the GOC. I still don't believe it is a patient who has actually put the complaint together for the GOC or the PCT, but nevertheless, I would have realised the mistake as soon as I had contacted the ABDO to sit the practical examination. They would have made me aware that certain things weren't in place. Whether or not I would be sitting here now, I don't know how it would have been dealt with by the ABDO, but I just would like to say sorry for the problems I have caused and, basically, I am trying my hardest to correct this matter as quickly as can. I have been suspended with my self-suspension, which I believe I needed to do to make sure that the problem I had put in place was not becoming any worse, and obviously my suspension has a financial impact on myself and my business, and with everything going on in the world at the moment, it is having a massive effect on my business. That concludes my presentation. Thank you very much for your time.

**Sir Alistair Graham:** Is there anything else you want to say at this stage or are you happy now to take questions?

**A.** Obviously I wasn't aware this was going to go any further. To be honest with you, I deserve what happens to me, but my point was to try and show that it was a mistake, and I know that it probably was not right but, to me, I don't understand why it needs to go any further. I own up to that, and I will take the penalty, which you grant, on the chin because I am wrong. I don't understand why an investigation will take 18 months to find out that what I am admitting is the case. It is pretty black and white. I have made a mistake. At the beginning I misinterpreted some information, and I have come this far down the line. I am not an evil man. It was not done to gain any monetary benefit. It was just a mistake.

**Sir Alistair Graham:** May I ask Mr Hepworth if there are any questions he would like to ask you?

**Mr Hepworth:** Yes, please, if I may. Could I just ask for your help on one matter? Could you turn, please, to page 35 in the hearing bundle? This is a letter sent by the City of Islington College to Ms Devoy at the Council. That is to introduce it, but I wonder if you could come down that page to the penultimate paragraph. It said that you enrolled on the Year 1 Contact Lens course in September 2007 and sat the anatomy paper in the summer of 1998.

**A.** Yes.

**Q.** Clearly those dates don't match. Did you pass the anatomy paper in 2008?

**A.** I think it is a mistake. Mr Harper, the senior person at the college, I think he has that wrong.

**Q.** And there is no criticism of you, I just wanted you to confirm to the Committee when it was that you passed your anatomy?

**A.** That was what the ABDO, when I spoke to them, advised me to do, to retake the anatomy in 2008.

**Q.** And so the issues are clear. It is right, isn't it, that up until today you have never been in a position where you are qualified to fit contact lenses without supervision?

**A.** That is correct, yes.

**Q.** And the supervision that you say you had in place prior to this practice coming to light, do you say today that that was adequate supervision?

**A.** Yes, I do. My optometrists are superb optometrists. They were including me on problems they were seeing as well as being asked to come in on problems I was seeing, but also with the new equipment we were taking images and videos of problems that we could discuss after clinic time. As I mentioned in my comments, I felt that we had covered everything to make sure there was no grey area and no areas that problems could seep out of. It was pretty much locked down that I was covering myself, if you like, as much as a supervisor would cover.

**Q.** So looking back on it from today then, do you still say that the supervision which you received was adequate given that you could not fit contact lenses without supervision?

**A.** Yes. The optometrists on site were happy with my capabilities. They were happy that I was including them on problems I was seeing, talking to them and, generally, I would say on probably 95 per cent of the contact lens work I was doing, the supervisors would catch that patient themselves on the next visit into the practice. We try to see patients every three to six months, so on the actual cycle of patients coming round there was a huge chance they would catch these patients anyway on the way through. Obviously a great deal of my work was being seen by the optometrist after. Even the more

basic testing of coming down and having a routine contact lens check-up, they would still pick up those check-ups as they go through.

**Q.** So at the point then that you were fitting contact lenses, how many registered members of staff would be on the premises?

**A.** At least one fully qualified optometrist.

**Q.** In addition to you?

**A.** To me, yes. Obviously I was a qualified dispensing optician. With the theory papers I was halfway through my training.

**Q.** Were there any other registered members of staff on the premises?

**A.** No.

**Q.** And, presumably, the optometrist on the premises had his or her own list of patients to see?

**A.** Yes.

**Q.** So the supervisor would not have been in the room when you were seeing your contact lens patients?

**A.** No. They wouldn't be over my shoulder, no. They were there for me to invite to see patients and to step in if they wanted to see patients that they knew were coming in with problems and, like I say, then we discussed patients during the course of the day.

**Q.** So they would be there then as a resource for you to take up if you felt you needed some help?

**A.** In one respect, they would be there as a resource, like the imaging systems were there, but also they were there to come in and step in whenever they felt that they wanted to, to see patients who they had seen, or they wanted to make sure that what I was doing was correct.

**Q.** If you were allowed to practise today without restriction, so if the Committee didn't place any restriction on your registration on an interim basis, would you go back to the same system of supervision that you had previously?

**A.** No. I wouldn't go back to the practice until this was resolved. That is why I was saying that if the Council has to make a decision today with regards to the interim order, to me, it makes no difference. I am not going back to the practice until this is resolved. All I can do is I can take my qualifications. I can try my hardest to come back to a situation where I thought I was, but as regards to going back to the practice and doing any work, I can't.

**Q.** So pending the outcome then of the substantive allegation, the final hearing in this case if it goes to a hearing, are you saying until that day you will not practise as a dispensing optician?

**A.** I have a practice which has about 10 members of staff. For me to go back and practise it would mean I would have to get rid of some of my staff

members. They have been loyal to me, and I cannot do that because if I go back there is not enough space for me back at the practice, and I just can't do that.

**Q.** So looking at the period then between now until the allegations are finally disposed of by the GOC, whether or not you are suspended from practice will make no difference to you?

**A.** It will make no difference to me because I would rather this is resolved correctly. All I am trying to do is get myself back into a position with regards to my examination results so that I can actually move forwards, so whatever the Committee decides I am hoping that the period of time that I have suspended myself will be taken into consideration, and that I can move forward as quickly as I can to actually gain the qualifications the right way round without any confusion on my behalf.

**Q.** I presume that your business plan for your practice is able to take account of you not practising for a number of months until the matter is finally resolved?

**A.** My wife and I today have contacted our mortgage company to take out some money to put back into the business to cover us while we are doing this.

**Q.** I just have one last question, if I may. What if any risk to patients existed whilst you were fitting contact lenses in the period that you were?

**A.** I truly believe that the level of professionalism, the level of support that the patients received was above and beyond what we could have possibly given them. With my knowledge of dispensing from the years that I was a dispensing optician and with the knowledge that the college provided me through the education, I believe that if I had to have sat the practicals, then the practicals would have been passed. I believed that the level of the care they were receiving was 110 per cent.

**Q.** But when you initially took some exams, you failed one. That is right, isn't it?

**A.** In 1998, yes, but we hadn't even began contact lens work back then. That was straight after my dispensing qualifications. The natural progression was to go on to the contact lens, and I believe at the time I even registered to do another course, which was all to do with the eye testing. I cannot remember the name of the course, but I stopped that because what they were trying to achieve on that course just would not have been practical. So I believe the course was actually terminated.

**Q.** Thank you for your time. I have no more questions.

**Sir Alistair Graham:** May I ask if any members of the Committee would like to ask any questions?

### Questions from the Committee

**Mr Cripps:** Yes, Mr Wilson, can you just clarify something for me on the supervision; were the optometrists in your practice aware that you were formally undertaking a system of study towards contact lenses?

**A.** Yes, there were.

**Q.** And they were happy to supervise you in the way that you described?

**A.** Yes, there were. We had a very good relationship within the practice. We have all been there a great number of years, and it was a natural progression for the practice with me moving forward into the contact lenses to become one of the professionals, so the support was there by the optometrists, and they trusted me with what I was doing. The problems that we were seeing when there were problems I was picking up. We were liaising with the QA Hospital down in Portsmouth, sending up patients, referring patients to hospital. We were doing a great deal of work, and the training was going very, very well. I was getting to see a great deal of what could happen in the contact lens world, so my confidence was pretty high with regards to what we were doing.

**Ms Huka:** Mr Wilson, do you still have the same optometrists in the practice now?

**A.** I have. One of my optometrists left at the beginning of this year, in January 2011, but my head optometrist is still in the practice now, so the work that we started he is still there with me now.

**Q.** Can I ask you what would happen if on a day that you just had one optometrist and he was undertaking his own practice of work, and you encountered a problem, what would happen?

**A.** If it was severe, obviously I would pull him out of his clinic, out of his room. We were located very close, so I would just knock the door and ask him to come straight out, which was the understanding. If not, I would ask the patient to just remain in reception for him to come and have a look. It didn't make any difference that we may have a patient waiting. The practice always operates on if there was an emergency, we would see the emergency first.

**Q.** Do you accept that the optometrist could have had his own emergency like you were having yours?

**A.** Absolutely. The chances of that happening are very, very rare, but at the end of the day, if the patients were that severe, they would have been directed straight up to the hospital anyway. So if I had seen something in the clinic that I needed him to see, the patients were kindly asked to wait, and the nature of our patients were that we accepted what we said, and they would wait. Even if it meant waiting for half an hour, even if it meant waiting for an hour, they would have waited until the optometrist saw them. They understand that the eyes are very important.

**Q.** Again, on the occasions when you were expecting just one of your optometrists in the premises and you were seeing a patient, and the optometrist called in sick or something, what happened then?

**A.** The clinic would be shut down.

**Q.** Just for my own benefit, please, can you give me some idea of what you understood supervision to entail at that time?

**A.** Sure. When I left the college, as I mentioned, the supervisor role, which was talked about in the ABDO manual, suggested that I had to enrol six months prior to the examination. My belief and my understanding was that we work together on the case studies by spending more time together and him having more of an input with regards to how he directed me through the case studies, prepping me up for the practical examinations. I believe that the role of supervisor at practice was to share their knowledge and experience of contact lens work with my learning, and for me to grow more and more confident as time went by. The reason I knew I was going to take a few years to get this right was because I didn't want to go into the examinations unprepared. I was trying to build up as much as contact lens knowledge, confidence that I could which meant sucking as much information out of my optometrists as I could, and they were aware of that.

**Q.** Did you ever think that there was also a role for your supervisor to actually be coming in and observing you in your practice, whether or not you had problems?

**A.** They would come in. With regards to the contact lens work, there is a huge percentage of work which is more of a routine checking where patients would come in if they were wearing daily disposables, for instance, and there would be nothing more. There would just be nothing generally wrong. The times that the optometrists would come in, when I would invite them in, was when there were actual problems with the eye that we could discuss the learning from that session, so they did interact with the clinics. They would come into the sessions with me and monitor what I was doing.

**Sir Alistair Graham:** I would like to ask you one or two questions, if I may. When you were – which you have accepted was wrong – fitting contact lenses to patients, what did they understand about your position?

**A.** The practice has been established for a very long time, and from a dispensing point of view, you get to know patients, and most of the patients, I would say, knew me and knew me from the dispensing side, so then when they saw me in a consulting room environment, they would ask me what was going on, and I would tell them that I am actually training up to obtain my contact lens qualification. It wasn't something I would generally offer as a first line to the patient as they came in if I didn't know them.

**Q.** So there was a possibility that some patients might think that you were fully qualified?

**A.** Absolutely, yes.

- Q.** And you accept that that was, in a sense, conning the public, wasn't it?
- A.** I never set out for it to be that way. There was no indication from myself to tell them any differently I suppose, but obviously they would find out if I had to call in one of my optometrists. I guess they would know from that point onwards but, no, I wouldn't say I was trying to con the public.
- Q.** But most of us when we go to an optician's, whether it is an optician specialising in contact lenses or just a general optician, expect we are going to be dealt with by qualified people.
- A.** You expect to be dealing with people who have the right knowledge. I guess it is probably very similar with regards to spectacle purchasing. When we go to buy a pair of spectacles you expect that person to know what they are selling you and some knowledge about what they are selling you. Nowadays, I know that is not the case.
- Q.** And the only confidence we can have that people have knowledge is if they have passed the appropriate qualification.
- A.** Absolutely, yes.
- Q.** Which in your case you didn't. You referred to the optometrists you have for back-up to deal with any problems, so I take it they were qualified in contact lens work?
- A.** Part of the contact lens work I believe is part of their qualification. When I spoke to the ABDO on 17 June, they sent me one of these forms to actually send into the ABDO to register my supervisor and practice, which I did do, to try and take the practical examinations. I spoke to somebody at the GOC as well to make sure that the gentleman I was using as my supervisor, which is my long-time head optometrist, was qualified, and he was. He had all the qualifications relevant to being a supervisor.
- Q.** You said earlier that you didn't want to go back to doing dispensing optician work in your practice until you were fully qualified because there was a problem of space –
- A.** To do contact lens work? Sorry, I misunderstood you there.
- Q.** No, I think to do dispensing optician work. You are not doing any work in practice now.
- A.** No. That is correct.
- Q.** But in an ideal set of circumstances, even though you do not have the qualification, you would like to go back and do some work, would you?
- A.** Obviously, I need to go and do some work. It is not a case unfortunately I don't need to work. I do need to work. Understanding the severity of what has happened here, obviously if I was allowed to go back to work, I cannot at the moment because I am overstaffed. Unless I made other arrangements with regards to my staffing, I effectively have staffed myself out of a job. I do

not want to get rid of anybody because people's livelihoods obviously depend on our business.

**Q.** So given the decision that we have to take today, given the circumstances you have outlined, what is the best decision that you would like to seek from your point of view?

**A.** If Christmas came early this year for me, I would say that the Committee would see that I am trying my hardest to get my examinations in place to actually continue and finish the course off correctly, which would be to move forward, get my case studies together, and move into a situation where I could take my practical examination. Therefore, it would enable me to have my job back. At the moment we have locum opticians running the clinics with my optometrist and they are seeing the contact lens patients. One of the problems with that is obviously continuity. I guess that is what I was hoping to achieve with my contact lens patients, building up the continuity with them, and we are losing that and obviously losing patients.

**Q.** So if we were to decide to suspend you, you have suggested that 18 months is a very long period of time, what do you think would be a reasonably period of time?

**A.** I understand that I have to have some form of suspension. I understand what I have done is wrong and, as I say, I hope that you can see it was not an intentional reason that I am now here. My six months out already I would like to be taken into consideration. I have done that off my own back because I did not want the practice or myself to get in any more trouble. Ideally for me, what I didn't realise as I said right at the beginning was that this was going to go any further than today. I thought today's hearing would be to decide the future of myself and my career. I didn't realise it was going to go on any further. That has made me think today that the physical distress this is causing myself, my wife and my staff in my business, I am not sure this is all worth it anymore for me. I have problems at work with the practice that need to be resolved. My career comes second to saving other people's jobs, and if I can do that, and do that without the qualifications, then I must do that. I have to be very careful that my wish list does not destroy other people's lives.

**Q.** So you might have a commercial decision to make?

**A.** Yes.

**Q.** Okay. I have no further questions. Are there any further questions from my colleagues? *[No further questions]* Is there anything further you wish to say about this?

**A.** I suppose while I am under oath that this was not intentional. This is all purely a misunderstanding, and I accept that I was wrong.

**Q.** Thank you very much.

*[The witness stood down]*

**Mr Hepworth:** I think Rule 49 allows both parties to make any final submissions, and I just want to make a brief submission, if I may. I don't want to repeat that which I have already said, but it relates to the question of supervision, and if you place no restriction today on the Registrant's registration, then clearly he will be allowed to go back to practise as a dispensing optician, and the rules say – these are the rules to which I alluded earlier, the Contact Lens Rules. They say:

“A registered dispensing optician who does not hold a qualification, certification or provisional certification for fitting contact lenses may do so if the fitting is carried out under the supervision of a person who does hold such a qualification, certification or provisional certification.”

So if you allow this Registrant to return to practise without restriction, he could fit contact lenses as long as he was supervised, and in his evidence – of course, it is a matter for you – but it is the Council's submission that the supervision regime, which he had in place, which he considered to be adequate, was frankly anything but.

It is clear that the optometrist on the premises could be used as a resource, but, as Ms Huka mentioned, he or she would have his or her own set of patients to see, may have to deal with his or her own emergency, may not be able to help, and in any event, it is not really supervision if that optometrist wasn't actively supervising and was just available there as a resource. So that, I think, intensifies the Council's submissions in relation to the risk to the public if you don't restrict this Registrant's registration today, but, sir, I will not repeat that which I have already said, and I have nothing further to say unless you have any issues with which I can specifically help.

**Sir Alistair Graham:** Thank you very much. There was nothing further you wish to say, was there?

**Mr Wilson:** Obviously, with regards to the supervisor role, I still don't really understand if that is what you were saying with regards to a supervisor being there all the time. That is never going to happen in any practice. It would just never be the case, and I think that perhaps the information that is given to the dispensing opticians who are taking the contact lens practice course, perhaps information should be laid out a little clearer, and perhaps some stops and checks should be put in place to enable the ABDO to contact their members who are on courses to remind them of timeframes because since 2008, I have had nothing from the ABDO. I have contacted one of my friends who was actually on the course, and they are under the impression that they have seven years to pass this examination, which clearly is not the case. I think there is a bigger issue here than just my case alone.

**Sir Alistair Graham:** Thank you very much. I will now ask the Legal Adviser to advise the Committee on how they should approach this issue.

**Mr Lucraft:** If I can take you back to Section 13L which is the provision dealing with the applications put before the Committee today. Section 13L makes the following provision:

“Where the Fitness to Practise Committee are satisfied that it is necessary for the protection of members of the public or it is otherwise in the public interest, or is in the interest of a Registrant, for –

- (a) his registration to be suspended or to be made subject to conditions...the Committee may make an order specified in subsection (2) below.”

That subsection (2) deals with the nature of an order either for suspension or being subject to conditions.

At this stage, as I made clear earlier on, you are not conducting a fact-finding exercise as to the allegations. They, of course, make the background for the application as made for the interim order today, and it is for this Committee, in exercising its judgment, to determine that question. There are, therefore, three potential routes that are set out in the section:

“necessary for the protection of members of the public or otherwise in the public interest, or in the interest of a Registrant.”

That third limb does not apply here. No-one says that it does. The General Optical Council in their submissions, which you have in writing, effectively rely on limbs one and two:

“necessary for the protection of members of the public or otherwise in the public interest.”

Guidance on how that is to be applied was given in the case of *Sheik v GMC* [2007] EWHC 2972 (Admin), which I am sure this Panel will be familiar with, if I may just remind you of it. In particular, I am going to take you to a more recent case called *Sandler v General Medical Council* [2010] EWHC 1029 (Admin), which Mr Hepworth has referred to in his document because that case of *Sandler* makes clear how the test is to be applied and, in fact, in the course of that case, reference is made to a panel such as yourself – although in that case it was the General Medical Council Panel – that it should look at the three – in this case, the two – limbs separately; first of all, “necessary for the protection of members of the public” and then “otherwise in the public interest”. What was said by Mr Justice Nicol in *Sandler* when he was dealing with guidance and the approach set out by the case of *Sheikh* was this, in paragraph 9:

“The Legal Assessor advised the Panel to consider first whether an interim order was necessary for the protection of the public. If that was

not the case, it should then proceed to decide whether an interim order should otherwise be made in the public interest. He reminded them of what Davis J had said in *Sheikh* about the need to be clear as to whether the reputation of the profession could be upheld by a final order as opposed to an interim measure. He stressed that 'proportionality' is the 'watchword',

– and so that is a word that, again, I stress to you, that whatever you do it must be proportionate. He went on to say:

"the panel had to balance the interests of the public against Dr Sandler's interests"

– here, of course, that would be Mr Wilson's interest –

"in continuing his profession without restriction. If the panel considered that an interim measure at all was necessary in the public interest it should first ask itself whether conditions would be sufficient and only then ask whether this was a rare case where suspension was justified."

In paragraph 14 in *Sandler*, Mr Justice Nicol goes on to say this:

"There was some debate at the hearing as to whether the IOP could only suspend Dr Sandler on public interest grounds if this was "necessary". In my judgment, the Legal Adviser was plainly right to observe that while the statute allows suspension on public protection grounds only if this is necessary, there is no such qualification to the public interest limb. In *Sheikh* Davis J thought that nonetheless:

"if the public interest is to be invoked in this context under the statute, then that to my mind, does at least carry some implication of necessity; and certainly it at least carries with it the implication of desirability."

He added at 16:

"At all events, in the context of imposing an interim suspension order, on this particular basis, it does seem to me, adopting the words of Mr Winter [counsel for the Claimant], that the bar is set high; and I think that, in the ordinary case at least, necessity is an appropriate yardstick. That is so because of reasons of proportionality."

So to conclude this guidance is that whatever you actually do it should be proportionate. Secondly, you are not making a final fact-finding as to the facts, so the facts of this case set out the background and should influence the decision that you make, although as I say, you are not making a fact-

finding decision itself. In considering the two limbs “necessary for the public protection or otherwise in the public interest”, the guidance in the cases I have mentioned, I hope is of assistance to you.

The final point to say is this; that some mention has been made of the 18 month period. The way in which the application is made, that is the longest period, in fact, that can be made at this stage, but it is not always 18 months before a final decision is made, so it is 18 months in which one hopes that will be arrived, and whereas here, the underlying facts of the case do not appear to be in dispute, one hopes, in fact, an adjudication would be made somewhat quicker than that period. So I hope that guidance is of some assistance to you.

**Sir Alistair Graham:** Thank you. Mr Hepworth, do you wish to comment on the guidance that has been made?

**Mr Hepworth:** Sir, I do not. Thank you.

**Sir Alistair Graham:** Mr Wilson, do you understand the guidance that the Committee has been given by its Legal Adviser?

**Mr Wilson:** Yes, thank you.

**Sir Alistair Graham:** Thank you very much. Mr Henley, can I ask you if we can clear the room now while the Committee deliberates. We will come to a decision as soon as we can.

*[Hearing adjourned at 14.10]*

*[Hearing reconvened at 15.00]*

**Sir Alistair Graham:** Thank you. I can now announce the determination of the Committee as far as the application for an interim order is concerned.

### **Decision**

The Committee heard evidence from the registrant together with submissions from the parties and accepted the advice of the Legal Adviser. The Legal Adviser referred the Committee to the case of *Sheikh* and the more recent decision of *Sandler-v-GMC* and the guidance given in those two authorities to the test to be applied in interim order applications.

The Registrant is a registered Dispensing Optician. He owns and manages an opticians practice. He does not have a contact lens speciality registered with the General Optical Council. The Registrant completed the theory parts of the contact lens qualification in 2008, but did not carry out the practical parts required to complete that

qualification. Issues over his qualification to deal with contact lenses were brought to his attention in June of this year by the NHS and the matter referred to the GOC. He gave evidence that when it was brought to his attention he suspended himself from work within his practice.

It is clear from the material placed before the Committee, and it is accepted by the Registrant himself when he gave evidence, that he was seeing members of the public and fitting contact lenses in circumstances where he should not have been doing so. He said that this was not intentional on his part and was simply an innocent mistake. The Committee is satisfied that anyone seeking to undertake a course leading to contact lens qualification would have been aware of all of the requirements necessary to complete that qualification, and the pitfalls of not doing so.

The Registrant gave evidence that optometrists working within the practice were 'supervising' him in his work although the degree to which they were properly supervising all of the work he did on the provision of contact lenses is of concern. The evidence he gave was that the supervision was of the nature that if a problem occurred one of the optometrists would come and see the patient, and there was discussion of cases within the practice. This is very different to direct supervision of all of his work.

The Committee is satisfied that in the circumstances of the facts of this case it is necessary for the protection of the public, and also is otherwise in the public interest for an interim order to be imposed. The Committee is of the view that the proportionate order in this case is one of suspension. This is so particularly in light of the length of time over which members of the public were being seen by the registrant, and during which he was inappropriately fitting contact lenses. The Committee is satisfied that this is the appropriate order to be made on this Registrant.

The Committee ordered that the Registrant's registration be suspended for a period of 18 months from today. This is a case where the facts are straightforward. In giving evidence to the Committee the Registrant accepted the facts underlying this complaint. As such it is hoped that this matter can be resolved well within that period of time. 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.

*[Hearing concluded at 15.05]*