

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

IO(10)02

**GENERAL OPTICAL COUNCIL
AND
LYNDON CLARKE (SD-3865)**

**THIRD REVIEW OF INTERIM ORDER
Wednesday, 20 July 2011**

THIRD REVIEW OF INTERIM ORDER: LYNDON CLARKE (SD-3865)
Wednesday, 20 July 2011

Fitness to Practise Committee: Mrs Margaret Hallendorff MBE (Lay) (Chair)
Ms Abi Grute (Lay)
Mr Rod Varley (Lay)

Legal Adviser: Mr David Marshall

Clinical Adviser: Dr Nick Seivewright

Hearings Manager: Mr David Henley BEM

For the Council: Ms Vicky Lord

The Registrant was neither represented nor present

[Hearing commenced at 09.28]

Mrs Hallendorff: Good morning, I have been elected to chair today's review of the current Interim Suspension Order. The Committee today is made up of one dispensing optician and two lay members. I will ask the members to introduce themselves and the capacity in which they sit. *[Introductions]*

To my left is the Council's Clinical Adviser, Dr Nick Seivewright, who will provide clinical advice to the Committee on any matters of health which may arise in the course of the hearing. The Clinical Adviser may accompany the Committee should it sit in private to deliberate.

To my right is Mr David Marshall is the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee and ensure the proceedings are conducted in accordance with the rules of procedure, so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate. In the event that any matter arises during the course of the Committee's deliberations from which the Committee seeks advice, the parties will be invited to return to hear the matter which the Committee has raised and the advice to the Committee. Where advice on any issue is not accepted by the Committee, this will be indicated in the course of its decision on that issue.

To your right is Mr David Henley, the Hearings Manager, who will provide administrative support to the Committee. Next to Mr Henley is Mr Charles Nisbet, the transcriber, who will be keeping an official record of all that is said today during the sessions of the hearing at which the parties are present.

You should be aware that it is the Council's policy for the determination of the Committee and a transcript for the proceedings to be displayed on the Council's website for public viewing, but where matters of health are being discussed, the determination and transcript will be redacted accordingly.

Do you have any applications, Ms Lord?

Ms Lord: Madam, there are a couple of applications to be made today. The first is the application to proceed in the Registrant's absence. The second application will be for you to determine whether parts of the hearing should be held in private, due to the Registrant's health. Then, Madam, the application for substantive application in respect of the continuation, or not of the Interim Order of Suspension.

If I could first of all deal with the matter of proceeding in absence, Madam. If I could ask you to call the Service of Notice of Hearing bundle, C2, please Madam and the substantive bundle, which you should have received in advance of the hearing, as C1, I would be grateful.

Madam, in respect of proceeding in the Registrant's absence, it is a matter of your discretion as to whether or not you choose to proceed or not. The relevant rule, is Rule 21 of the Fitness to Practise Rules, where it states:

"Where the Registrant is neither present or represented at the hearing the Committee may nevertheless proceed if –

- (a) They are satisfied that all reasonable efforts have been made to notify the Registrant of the hearing;"

Madam, you have here a screen print at page 1 of C2 of the registered address for the Registrant, Mr Clarke; a letter at page 2 of that bundle addressed to the registered address providing notification of the hearing, Madam; and a copy of the Track and Trace at page 6.

In addition to that, Madam, you also have questions to the Registrant at page A of the bundle C1. The question is asked, "Will you be attending the hearing" and the answer is "No". The next question is:

"If you are not attending the hearing, are you content for the hearing to proceed in your absence?"

And the answer is "Yes". You will see a signature and it is dated by Mr Clarke on 21 June 2011. I can confirm that the Council's solicitors did have occasion to speak to him post receipt of this document, and he confirmed that the answers contained in this document were correct. In those circumstances, Madam, you may think that the first test is, in effect, met.

Turning then to the second part of your decision-making process:

“Having regard to all reasons for absence which have been provided by the registrant, they are satisfied that it is in the public interest to proceed.”

There is no reason given by Mr Clarke in relation to that, but what is clear, Madam, is that he is content for the hearing to proceed in his absence, and in those circumstances, Madam, I would invite you to proceed, because were you to adjourn the hearing today, it is no more likely that on a further occasion that the Registrant would indeed attend. You may consider, given his answer, in respect of that Form A that he has, in effect, voluntarily waived his rights to attend today. So those are my submissions in respect of that application.

Mrs Hallendorff: Do we need to clear the room to discuss it, or are you happy to proceed? [*Confers*] I will ask the Legal Adviser for his advice on the decision to proceed.

Mr Marshall: I will not come on to the reasonableness of the decision, but you always have two questions to answer. One is whether all reasonable efforts have been made: that is a question of facts and you have ample evidence to satisfy you as to that. The second is the question of discretion, whether it is in the public interest to proceed, and you have seen that the Registrant himself is content for you to proceed and therefore that issue should present little difficulty as well.

Mrs Hallendorff: Thank you, in that case we will proceed.

Ms Lord: I am very grateful, Madam.

Madam, as you are aware from having read the agreed bundle before you, there are health issues in relation to this case so I would make an application in respect of having the hearing heard in private in respect of the relevant parts that relate to the Registrant's health. Rule 23 (3) says:

“Subject to paragraph (4), the Fitness to Practise Committee shall sit in private where they are considering the physical and mental health of the registrant.”

Madam, you will note that there are reports in respect of the Registrant's health contained in the bundle. In those circumstances, I would ask that the hearing continue in private session.

Mrs Hallendorff: [*Confers panel*] Thank you.

Mrs Lord: I am grateful, Madam.

[*In camera*]

Determination of the 3rd Review of an Interim Order

20 July 2011

The Fitness to Practise Committee reviewed an 18 month interim suspension order in respect of Lyndon Clarke made on 18 March 2010 and which was reviewed on 10 September 2010 and 17 February 2011.

Service

The Committee is satisfied that all reasonable efforts have been made to notify the Registrant of the hearing. The Committee further determined that it would be in the public interest for the hearing to proceed in the Registrant's absence. The Registrant had indicated in writing that he was content for the hearing to proceed in his absence.

Private hearing

After hearing submissions from the Council, the Committee agreed to hear this matter in private **redacted**.

Decision

Since the date of the last hearing two reports have been obtained. The reports do not reveal any relevant issues. The Committee therefore does not consider that there is any basis for continuing an interim order.

The Committee therefore has to consider whether the information concerning the registrant's convictions justifies the continuance of an order. The three convictions took place in the period from 2005 to 2009. They were all **redacted** and seem also to have been related to a difficult and disruptive personal relationship. That relationship ceased some time ago and the Committee has no information that the Registrant's current circumstances are likely to cause misbehaviour.

On a review hearing, the Committee is required to review the case comprehensively in the light of the current circumstances. Having done so, it does not consider that there is sufficient material to indicate that an order is necessary to protect members of the public on an interim basis. In the absence of risk to the public, the Committee does not consider that the interim order should be continued solely on a public interest basis. A properly informed member of the public would accept that restrictions should not normally be placed on practice until facts have been found to justify it.

The Committee has therefore determined to revoke the interim order.

The Committee wishes to make it clear to the Registrant that this decision relates only to interim restrictions. The Investigation Committee will shortly be considering

whether the facts justify a referral to a fitness to practise hearing. Its decision will be taken on different criteria.

Thank you.

[The hearing concluded at 10.36]