

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

GENERAL OPTICAL COUNCIL

IO(11)01

AND

MARK MORGAN (01-19963)

FIRST REVIEW OF AN INTERIM ORDER

Wednesday, 29 June 2011

FIRST REVIEW OF AN INTERIM ORDER - MARK MORGAN (01-19963)

Thursday, 29 June 2011

Fitness to Practise Committee: Mr P North (Lay, Chair)
Mr A Baldwin (Lay)
Mr P Charlesworth (Optometrist)

Legal Adviser: Mr P Kilcoyne

Hearings Manager: Mr D Henley BEM

For the GOC: Mr G Micklewright

For the Registrant Ms E Sanderson
Ms G Goldinger

[Proceedings commenced at 9.35 am]

Mr North: Good morning. I am Peter North and I have been elected to chair today's early review of the current Interim Conditional Registration Order. The Committee today is made up of one optometrist and two lay members. I will ask the members to introduce themselves and the capacity in which they sit. *[Introductions]*

Mr North: To my right is Mr Paul Kilcoyne, 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 Mr David Henley, the Hearings Manager, who will provide administrative support to the Committee. Next to Mr Henley is the transcriber, Fiona Shipley, 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.

You should be aware that it is the Council's policy for the determination of the Committee and the transcript of the proceedings to be displayed on the Council's website for public viewing. Where matters of health have been discussed, however, the determination and transcript will be redacted accordingly. I would ask both counsel to be alert to that issue in this matter and, if necessary, ask of me for the appropriate indication and it will be annotated and obviously redacted from the determination and transcript.

At this point, I need to ask for applications. Mr Micklewright?

Mr Micklewright: Apart from the substantive application, sir, there are no applications. There are only two preliminary matters that I would raise, firstly in relation to your suggestion about any matters that need to proceed in private. The route which we took on the last occasion would appear to be quite practical and helpful, simply for the advocates to indicate when they were going to mention matters of health and therefore for that to be noted on the transcript and for that to be led in private without there being any argument as such in a more formal manner as to whether or not we should go into private. I do not know whether my learned friend is agreeable to that route, should any reference have to be made to any of those health matters contained either within the previous transcript or any of the documents.

Ms Sanderson: I certainly would endorse the approach that was taken on the previous occasion.

Mr North: With both parties in agreement, let us proceed accordingly.

Mr Micklewright: My second point is a very minor one and I am sure that the Committee has already spotted it in fact. If you look at the index with which you have been provided, item 2 –

Mr North: Actually, in the bundle that we have been given, which I will now formally mark as C1.

Mr Micklewright: Thank you very much, sir. In C1, that being C1 for today's hearing rather than the C1 from the last hearing, which is contained in your bundle from pages 1 through to 78.

Mr North: Then for the avoidance of doubt in this matter, could we make this in effect C4? There was a C3.

Mr Micklewright: Perhaps it would be C2, and that was a point I was going to raise. C3 is mentioned there and that is an erratum because it should actually have been R1.

Mr North: Right. So let's amend first at heading 2, bundle R1. Yes, okay, we have marked that now. Shall we make this bundle for today's hearing C2?

Mr Micklewright: Yes.

Mr North: Okay. Good, that is helpful.

Mr Micklewright: Sir, the application is under Section 13L(3)(b) of the Opticians Act, and the application is that the Interim Order should be changed from one of conditions to an order for suspension. The sole ground on which the Council make their application is that, on the basis of new evidence which has been received, it is now necessary for the purposes of protecting the public for an order for suspension to be imposed. You will recall, sir, that on the previous occasion an order for conditions was imposed by the Committee, that being the hearing on 24 March, on that sole ground of protecting the public and not in respect of the part of the application which was that it was considered to be otherwise in the public interest. That second part is not an argument which the Council seeks to either rehearse or expand on today.

Sir, I can helpfully flag up at the outset – and I am sure that no objection will be taken to me doing so – that it will not be submitted by the defence that this should be a case where conditions, either on the same basis as they were previously or on some alternative basis, should be imposed. They are not going to oppose in substance the application for a suspension. However, it is right to say that there is some water between us, as it were, in that the basis of the Council's application is that we say that the Registrant has not complied with the conditions which were imposed on 24 March. As I understand it, the Registrant's position is that those conditions are in fact no longer workable and so there is a degree of difference there.

Dealing with the facts very briefly, sir, I am sure you have already fully acquainted yourself with these. The application on 24 March arose from a complaint which was made by a Mr Sheppard, who was a manager at an opticians called Wilton *i*. He had engaged the Registrant from 11 May until the termination of his employment with Wilton *i* at the beginning of August as a locum optometrist. During that time, as part of his duties, Mr Morgan had carried out a number of tonometry readings on a large number of patients: indeed, he had carried out, on Mr Sheppard's view, some 67 examinations, 50 of which were on patients aged 40 or older.

At some point during the course of the early part of August, Mr Sheppard developed some concerns about Mr Morgan's activities and, to cut the story short, he came to the conclusion – which proved to be the correct conclusion – that Mr Morgan had been fabricating tonometry readings in patients' notes. He conducted a review, recalling a number of patients and, out of the 31 patients he recalled, 30 patients confirmed to him that tonometry had not been carried out during their original examination by Mr Morgan, notwithstanding that such readings were recorded on their patient notes.

It was submitted by the Council that, so far as it had been the case that it was necessary for the protection of the public for an order to be imposed, that Mr Morgan's clearly dishonest actions, and his attempts to cover up his actions in the manner that he did, in not carrying out the tonometry and putting, as he was, a substantial number of patients at risk, made it necessary for an order for suspension to be imposed. It was submitted that it would not be appropriate for conditions to be imposed in part because his demonstrable and accepted dishonesty were such that it meant that, in short, he could not be trusted to be able to comply with any conditions that may be imposed on him.

It was submitted by Mr Singh, who appeared on his behalf, that the situation had changed vastly between what it was in August 2010 and the situation as it was in March 2011. His submissions are perhaps helpfully summarised if you look at page 107 in C2.

Mr Singh made three points as to why it was that the dishonest conduct had taken place, and why it was that the position had changed such that there need not be the level of concern that the Council invited the Committee to have. Firstly, it was said that in August 2010, Mr Morgan did not have the level of insight into his conduct that he did in March 2011. Secondly, it was said that his health position was such that it put him in a frame of mind whereby he was more likely to commit the conduct that he did. Finally, it was said that a further contributing factor was the stress he was suffering as a result of his domestic situation.

In respect of how those matters have changed, he said the following. In the second paragraph, Mr Singh said that,

“First of all, there is no doubt about the insight shown by the Registrant into what had happened.”

That is something which the Council did not contest because, clearly, it was something that was admitted by the Registrant in his submissions to the Investigating Committee, and something which was rehearsed on his behalf at the hearing in March.

The second point that was made, and this is at the third paragraph on page 107, was that his

“health position has improved markedly.”

The third point which was made was that his domestic situation has also improved, and that point is made in the final paragraph of that page, where it is said that worries in respect of his daughter’s education, his wife’s death and various other financial matters had been addressed and had moved on.

Over the page, onto page 108, Mr Singh said in the second paragraph that

“the risk is lower today than it would have been in August 2010.”

In response to the submission which was made by me on behalf of the Council that the nature of Mr Morgan’s misconduct was such that he could not be trusted to comply with any conditions which were suggested to be imposed on his registration, he said this at page 111 in the third paragraph from the bottom. He summarises the Council’s submission as being:

“because these were offences that related to dishonesty last year, how on earth can you trust this man to comply with the conditions?”

He said, and this is three lines up from the bottom:

“There is in my submission no strength in that submission. You can see a completely changed attitude in this practitioner since last year, and he assures you through me that he can be trusted to comply with conditions.”

In our submission, it has been the case that what has occurred subsequent to the hearing in March has shown that actually the assessment made by the Council when submitting that this is a registrant who will not comply with conditions has proved to be an accurate one.

On page 110, as part of the setting out of the conditions which he proposed on behalf of Mr Morgan that the Committee could impose and, if they so imposed, would satisfy them over any concerns which they may have, Mr Singh said this at paragraph 4:

“The third condition we propose is that we must confine your practice to positions within Scrivens Opticians, and limited to the area managed by the Southern Regional Area Manager Paul Smith.”

Then, further down in that paragraph:

“One of these concerns raised were, ‘Would his employer know about the conditions, and would his employer know about the allegations?’ and in my submission, that concern is completely addressed by that condition, because Paul Smith will have all of the information and will pass it on.”

If we then turn to the Committee’s determination, which is contained on pages 122 to 124 of your bundle, we can see the conditions imposed set out and that is on page 123. The first condition set out there is that:

“1. “The Registrant should be employed by Scrivens Opticians and should work only at branches of Scrivens within the Southern Regional Area currently managed by Mr Smith.”

In my submission, it would be clear to Mr Morgan, and it was clear to Mr Morgan, both through the way in which the conditions were set out and indeed on the basis that the submissions put forward by his legal team were put, that he would be working at Scrivens Opticians, and Scrivens Opticians only. In doing so, as you can see, he was to be supervised by Mr Smith.

If you turn behind tab 4, there then appears a chain of email correspondence between Kisha Punchihewa, who was Head of Fitness to Practise at the General Optical Council, and Ms Goldinger, who is the solicitor who represents Mr Morgan. On page 125, there is an email from Miss Punchihewa to Ms Goldinger, and this is an email some two weeks after the order had been imposed, asking for various matters to be confirmed and for information to be provided in order that it can be demonstrated to her that the conditions imposed were being complied with. It is right and fair to say, as she says in the second paragraph, that the Committee did not set out specific dates for compliance with any given condition. However, it is right to say of course that the order itself was to apply from the date on which they imposed it.

On page 127 there is a response from Ms Goldinger dated 15 April, so this was approximately 10 days later, where she says that Mr Morgan was due to meet with Mr Smith on 12 April, but that Mr Smith cancelled it and the meeting was rearranged for the following Tuesday.

Over on page 129, four days later, Ms Goldinger writes to inform Ms Punchihewa that Mr Smith has cancelled the meeting again. You can see this in the second sentence where she says,

“I understand that all the conditions will be complied with but will confirm this as soon as I am advised.”

The next piece of correspondence from Ms Goldinger appears to be some seven weeks later, on page 131 in an email dated 3 June. She writes to inform Ms Punchihewa that

“Mark Morgan is currently working as a locum for both Scrivens and Boots.”

Then she goes on to say,

“However, neither of those practices are able to support the conditions that the GOC have required to be put in place.”

She says,

“Our member is willing to have any reasonable conditions placed on him that either of these companies feel they can support. He continues to work for both of them.”

On page 133, there is correspondence in response to that, on the same day, from Ms Punchihewa, saying that she is concerned about the information that she has been provided with. In the third paragraph, she says she would be grateful for confirmation of when exactly Mr Morgan began to work for Scrivens and Boots. And for some further information for that, she says in the next paragraph down that it is the GOC’s view that he is responsible for ensuring that he complies with the conditions. She says:

“I would therefore request that Mr Morgan stop working until this matter has been resolved. Please note that the GOC is gravely concerned that Mr Morgan continues to practise in breach of the interim order imposed upon him.”

There is then an email forwarded finally at page 135, containing some information from Mr Morgan which is quoted there, and you can see that he says:

“I have informed Paul Ritchie of Boots that I have had to stop testing as of now.”

He then gives details of where that practice is.

Sir, I know you are not a Committee that makes any findings of fact at this stage in the proceedings and I am conscious of the fact that there is always the potential for an allegation to be made for a failure to comply with conditions at a substantive hearing. However, we would nevertheless invite you to infer on the basis of the material before you that it is a correct conclusion to draw that this is a registrant who has been continuing to practise at Boots, in full knowledge of what the conditions are and knowing that practising at Boots Opticians is not something he is allowed to do within the terms of the interim order that was imposed. In our submission, the conclusion which one can only draw from this is that, in light of the conduct which led to the application for the interim order in the first place, this is an individual who demonstrates either an inability or a reluctance to comply with his professional obligations and, in this case, the requirements of his regulatory body. The only order which can now ensure that the public are protected is one, in my submission, of suspension. There are no conditions which would be workable, were any even proffered by the defence, which could deal with that fact.

Sir, unless I can be of any further assistance at this stage, those are my submissions.

Mr North: Thank you Mr Micklewright; that has been helpful. Do either of my colleagues have questions at this time? *[No questions]* Ms Sanderson, what do you say?

Ms Sanderson: Sir, it was submitted, as you were aware, on the previous occasion by Mr Singh that the conditions that might be imposed would meet the concerns for the protection of the public in this case. Those conditions as imposed on the previous

occasion have proved to be unworkable and remain unworkable as matters stand today. I am also not in a position today to offer any alternative conditions that could allay those concerns. For that reason, on behalf of Mr Morgan I am not in a position to oppose the Council's application for interim suspension on grounds of protection of the public and, for that reason, I do not contest it.

There are some other matters raised in this case, as to whether or not there has been any breach of conditions and indeed any deliberate breach. In my submission, it would seem that the Council agrees that there is no need for you to make any finding of fact today. At the previous hearing, there were concerns as to public protection and concerns as to the conduct of tonometry and also the fabrication of results. It was our submission that those concerns could be met with conditions that addressed that list. As I said, these are no longer workable and, as regards whether there has been a breach of those conditions, that is not a decision you have to make today. Whether or not, as my learned friend says, that has been deliberate or through an unwillingness to comply, those are matters which are not conceded on behalf of Mr Morgan. However, I submit that, once again, that is not a decision you have to make today. It has been said that you may infer that there is a deliberate breach, or some sort of breach, that will impact upon your findings but, again, I would submit that that is not something you need to decide today. If there is an allegation made in due course to any breach of those conditions, that is something that can be determined in the proper forum as a finding of fact in due course.

It is the hope of Mr Morgan that this Committee may be able to review the order in due course if there is fresh evidence, or indeed if there is any further update as to the health position. We would indeed hope to come back before the Committee at some stage for a review of this suspension. However, I understand why my colleague wishes to put on the record the various concerns that the Council has and to refer you to those emails. As I have said, that is understood on our part. However, it is not a finding that you have to make today and I would submit that you should not make it today but, on behalf of Mr Morgan the application for an Interim Suspension Order on the grounds of protection of the public is not opposed.

Mr North: Thank you, Ms Sanderson. Once again, do either of my colleagues have any questions? [*No questions*] We will then turn to the Legal Adviser.

Mr Kilcoyne: Sir, I propose to give the following advice. Where an Interim Order has already been made and the case comes back before a Fitness to Practise Committee, this Committee has the following powers and options pursuant to Section 13L(4) of the Opticians Act 1989. The Committee can revoke the order or revoke any condition imposed by the order; confirm the order; vary any condition that is part of the order, or replace the current Interim Order with another order. I would remind the panel that they are not bound by the decision of the previous Committee.

When considering a review of the continuation of an existing Interim Order, the Committee should remember that such an order can be made on any one of three grounds: firstly, that such an order is necessary for the protection of the public; that such an order is otherwise in the public interest, or when you are satisfied that such an order is in the interests of the Registrant concerned. Mr Micklewright has indicated that it is that first ground on which he seeks to argue that the Interim Order should continue, namely the protection of the public.

For an order to be necessary for the protection of the public, the Committee must be satisfied that there is a real risk of significant harm to the health, safety or wellbeing of patient, visitor, colleague or other member of the public, if an order is not made. It is not enough for the Committee today to take the view that such a step would be desirable: it has to be necessary.

Relevant factors with regard to all three issues will include the seriousness of the allegations that the Registrant faces; the likelihood of the conduct alleged being repeated before the final hearing of the case; the steps that could be taken to guard against the risk of harm; the severity of the harm likely to result should the alleged conduct be repeated, and aspects of the Registrant's previous character and employment history. The Committee should also direct its mind to the extent of any hardship likely to be caused to the Registrant by an interim order. The Committee should remember the potentially devastating effect on a registrant, both financially and personally, if such an order is in place and continues to be in place.

In deciding whether to exercise its powers today, the Committee must remember that at this stage it is not in a position to make a final assessment of the strength of the allegations against the Registrant and that it has not had an opportunity to hear his full account of the matters alleged.

I will go on to consider the question of Interim Conditions of Practice, although you have heard submissions that the Registrant is content for a Suspension Order. This is obviously a matter for you ultimately. Before making an Interim Conditions of Practice Order, the Committee should consider amongst other matters (a) the practicality of the order it proposes to make; (b) how detailed and specific the conditions should be; (c) the extent to which the conditions are likely to provide the necessary degree of protection for the public or the Registrant himself; (d) whether the registered professional and/or his employer are likely to co-operate, and (e) what mechanisms are available to monitor and report back to the Committee the degree to which the conditions are observed. As indicated, it does not seem that Interim Conditions of Practice will be an issue in this case, bearing in mind the observations made by Ms Sanderson. That is the advice I propose to give.

I would also add that, in relation to the observations made by Mr Micklewright, you are obviously not a fact-finding Committee as far as today is concerned. You have been given an explanation of the background as to why this matter has come back for review. Obviously, in relation to any potential failure to comply with the interim conditions, that may of course be the subject of an allegation at a substantive hearing.

Mr North: Thank you, that is very helpful.

Mr Kilcoyne: Are there any observations on the advice given?

Ms Sanderson: There are no observations as to legal advice. I just wanted to make sure, for the benefit of doubt, that there is no failure to comply with the conditions as accepted.

Mr Kilcoyne: If I may follow that; that may or may not be an issue on another occasion.

Mr North: Is there anything further, Mr Micklewright?

Mr Micklewright: Yes that goes in relation of the issue of the extent to which you can, as a matter of law, consider the question of whether the breach was deliberate: (a) was there a breach and (b) was it deliberate? You have to consider whether or not it is necessary to impose a suspension and you can do that based on the submissions you have heard, of one or both of two factual scenarios. The first one on which you can do it is to say that you have been told that there are no workable conditions. The premise upon which that is put is shown by the fact that the conditions have not been complied with in the way in which they were ordered. Therefore, by default, a suspension has to be imposed because we, the defence, accept that it is necessary for an order to be imposed but, were we able to offer workable conditions, that would be the level at which it went. Alternatively, you could go further than that and say that, on the basis of the information you have heard, you are actually concerned that this is an individual who is deliberately breaching conditions and, for that reason, you consider it appropriate to impose a Suspension Order. The two are both in play and they are legitimate reasons you can give when deciding whether or not it is appropriate to impose an order for suspension, because you need to make a determination as to whether it is necessary for an order for suspension to be imposed.

Neither the fact that you are not a fact-finding tribunal, nor the fact that the defence do not oppose the way in which the application is put – i.e., they do not oppose that there should be an order for suspension – hamstrings you from being able to deliberate on that issue. There is a difference between not making a finding of fact and not being able to come to any sort of conclusion on the basis of the material you have in front of you, in order to make a reasoned decision as to what order – at this *preliminary* stage of the proceedings – should be imposed. Were the submission that it is not proper for you to consider the issue of whether or not there has been a deliberate breach of conditions correct, then it would be extremely difficult for any Interim Orders Committee to do its job where there is a disagreement as to the background facts on which the application of any regulatory body is based. It may be that you do not feel that you need to go as far as considering that but, in my submission, it is entirely proper and legitimate for you to consider that because it is the basis on which the Council puts its case.

Mr North: Ms Sanderson?

Ms Sanderson: Concerns have been raised as to whether there has been a breach of the conditions in this case and, secondly, whether there has been a deliberate breach of conditions in this case. Those are raised and they may be matters to which you have regard. However, neither is accepted – neither a breach, nor a deliberate breach – on the part of Mr Morgan. It is my submission that you should not find any fact, there should not be a finding of fact, in relation to whether those conditions have been breached or not. If there is an allegation in due course that they have been breached, that will fall before the relevant committee to be determined. Similarly if, on behalf of Mr Morgan, further review is requested in due course, and the submission is made that conditions should be imposed instead of suspension, no doubt that will be a matter for your consideration on that occasion, whether or not there has been (a) a past breach and whether or not there has been (b) a deliberate breach. Concerns are raised in this case and you will no doubt consider those but I would submit that no finding may be made about those matters because, I would submit, you have been correctly advised, respectfully, by your learned Legal Adviser, that you do not fact-find today. There are a number of reasons for that: this is an interim hearing and you have not heard all the relevant matters today.

As regards Mr Morgan's position, it was accepted on his behalf at the previous hearing that, for the protection of the public, conditions may be imposed, and that would satisfy the concerns of the Committee as to the risks of harm to the public. It follows as a matter of logic that, if there can be no conditions which are workable imposed today, then that risk to the public cannot be met. It is for that reason that the Council's application in this case is not contested.

Mr North: We have now heard from both parties on this matter. I do not know whether our Legal Adviser has anything further he would wish to say.

Mr Kilcoyne: Could I just add, Ms Sanderson that I noted your emphasis on the word 'deliberate' in terms of breach? It is correct, is it not, for the Committee to accept today that, on the face of it, your client was working at Boots, which would be contrary to the conditions of practice?

Ms Sanderson: I do not concede a breach of the conditions that were imposed on the previous occasion. There are matters which would need to be dealt with in due course, as to those conditions and as to any unanticipated difficulties with those conditions, and as to the issue of compliance that was rightly raised on behalf of the Council, so I do not make any concession today as to whether or not there has been a breach.

Mr Kilcoyne: But does your client accept that, obviously, as he was working at Boots –

Ms Sanderson: He does, yes.

Mr Kilcoyne: But you say that, for whatever reason, that was not a deliberate breach of the last order.

Ms Sanderson: There may have to be submissions made in due course as to whether or not (a) that amounted to a breach and (b) whether or not, if it was a breach, it was a deliberate breach, yes. Neither of those is conceded at this stage.

Mr Kilcoyne: I am just thinking this through. My only concern is that obviously, if the matter comes back before a Committee for a review, whether a condition has been breached or not is something that the Committee needs to know, or express a view about, because it is relevant to what action they are going to take.

Ms Sanderson: Yes. No doubt, if it comes back for review and there are submissions made that conditions could be workable in this case, and should be workable in this case, then there will need to be consideration as to whether there has been previous compliance or not. For today's decision, I simply make the submission that the Council's application for suspension is not contested.

Mr Kilcoyne: But in the review today, is it not something that the Committee needs to know about? I know you are conceding that, as far as your client is concerned, there should be –

Ms Sanderson: I do not contest it.

Mr Kilcoyne: You do not contest interim suspension.

Ms Sanderson: I submit that it needs to go no further than that for today's purpose.

Mr Kilcoyne: Do you not accept that the Committee can draw inferences from the papers they have before them as to whether, on the face of it, there has been non-compliance with the order?

Ms Sanderson: The concerns may be raised by the Council and no doubt those will be taken into consideration. However, I would submit that, on the face of it, there should not be any finding as to whether or not there has been a breach. That is something which I submit may and should be aired in due course, should there be a further review of this matter.

Mr Kilcoyne: Could I just ask Mr Micklewright another point? Is it likely that this potential breach of the Order, if I may put it neutrally in that way, is something that will be investigated by the Council?

Mr Micklewright: I am in no position to say yet, sir. I am not in a position to say because I do not have any instructions on that. As you might imagine, it is the sort of thing on which the Council would ordinarily consider its position after there has been a hearing of this sort. My learned friend, for reasons which I can readily imagine, has clearly decided not to be forthcoming with the Committee today as to her position on the breach, save to say that she does not accept that a breach has occurred. Ultimately, that is a matter for her, whether to do that or not. She seeks to say, as you have heard, that the ambit of this hearing can actually be very narrow, simply because she concedes it and you can consider that it is sufficient for your reasoning to go no further than that and impose the suspension which the Council requests. Obviously, we say it can go further than that. However, in respect of what the Council will do, that is a review and a decision which has yet to take place and so I cannot give you an answer on that.

Ms Sanderson: I have to correct one matter there. I would not have it said that I have not chosen to be forthcoming. I have made submissions in this case and the ambit of the hearing *is* a narrow one. The fact that I do not contest the Council's application follows, as a matter of logic, from the submissions made by Mr Singh on the last occasion, that conditions would meet the concerns of the Committee. Whilst those conditions are not workable, it must follow that there remain concerns for protecting the public, which can only be met in the absence of conditions by suspension in this case.

Mr Kilcoyne: Sir, the only advice I would give is that you have heard the submissions made. It is correct to say that, so far as today is concerned, you are not a formal fact-finding body, although you will obviously be permitted to draw inferences from the documents before you and the submissions made in relation to how you exercise your powers today.

Mr North: Thank you. That has been helpful. Let me thank both parties for their assistance thus far and we will now retire into *camera*.

[Hearing adjourned at 10.18]

[Hearing resumed at 11.18]

Mr North: The Fitness to Practice Committee conducted an early review, on the request of the Council, of an Interim Order for the imposition of conditional registration of Mark Morgan for a period of 18 months made by the Fitness to Practice Committee on 24 March 2011.

Decision

The Committee today has considered whether it is necessary for an Interim Order to continue and whether the current Conditional Registration Order should be replaced with an Interim Suspension Order pursuant to Section 13L(4) of the Opticians Act 1989.

The Committee has reached its determination taking into account the material placed before it, the submissions of Counsel and the advice of the Legal Adviser.

The Committee has considered the representations made by Mr Micklewright on behalf of the Council. The Council's position is that an Interim Order remains necessary for the protection of the public. This position was accepted by Ms Sanderson, on behalf of the Registrant. Further, Mr Micklewright contended that the current Conditional Registration Order should be replaced with an Order for Interim Suspension. Again, Ms Sanderson accepted this position on the basis that the Registrant had been unable to comply with the conditions set out in the determination of 24 March 2011.

The Council also alleged there had been a breach by the Registrant of the Conditional Registration Order in that the Registrant had worked outside the terms of the order. Ms Sanderson did not accept that there had been a breach, deliberate or otherwise, by the Registrant.

The Committee has not concerned itself today with the issue as to whether there has been a breach of the Conditional Registration Order. Both parties agreed that the Committee should make an Interim Suspension Order today and that there are no workable conditions to replace the existing conditions.

The conduct alleged against the Registrant amounts to a prolonged period in which he dishonestly recorded tonometry examinations on patients which he had not carried out. He has admitted that this was the case. The Committee is satisfied that in the light of these allegations it is necessary for the protection of the public to continue the Interim Order and to replace the current Conditional Registration Order with an Interim Suspension Order. It leaves open the issue as to whether there has been a breach.

The Order will be reviewed in six months' time from today unless all matters are resolved within that time, or earlier should new evidence be made available, or if the Registrant, at any time after three months from today's date, requests an early review.

Thank you. That concludes today's proceedings. Thank you for your assistance, Ms Sanderson and Mr Micklewright. The Committee is now closed.

[Hearing concluded at 11.22]