

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

**GENERAL OPTICAL COUNCIL**

**F(11)04**

**AND**

**MOHAMMED HAROON KHALID (01-24499)**

**Wednesday, 13 July 2011**

**SUBSTANTIVE HEARING**

**SUBSTANTIVE HEARING: MOHAMMED HAROON KHALID (01-24499)**

**Wednesday, 13 July 2011**

Committee Members: Ms Margaret Hallendorff MBE (Chairman) (Lay)  
Mr Alan Baldwin (Lay)  
Professor Nizar Hirji (Optometrist)  
Mrs Geraldine Huka (Lay)  
Dr Ronald Stevenson (Optometrist)

Legal Adviser: Mr James Watson QC

Hearings Manager: Mr David Henley BEM

For the GOC: Mr Christopher Whalley

For the Registrant: Ms Eleanor Sanderson  
Ms Ella Power

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*[Hearing commenced at 09.35]*

**Ms Hallendorff:** Good morning. I am Margaret Hallendorff, a lay member of the Hearings panel, and I have been elected by the Committee to chair today's hearing. The Committee is made up of two optometrists and three lay members, and I will ask the members of the Committee to introduce themselves and the capacity in which they sit. *[Introductions]*

To my right is Mr James Watson 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 matters 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 has been 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. The remaining persons sitting in the Hearing room, rather than 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 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 transcript will be redacted accordingly.

Are there any applications before the allegation is read out?

**Mr Whalley:** Madam, I have one application if I may please? That is an application to amend one of the allegations. If I can ask you to turn to page 1 of the Council's bundle, allegation No. 6. The date should read 20 August, and not the 22<sup>nd</sup>. That is reflecting the document as it was filled in. Where it has failed to declare an application dated 22 August, it should be 20 August. It is No. 6, the date to be 20 August, not 22 August.

**Mr Watson:** Is there an issue about this application?

**Mr Whalley:** I understand there isn't, sir.

**Ms Sanderson:** No, there is certainly no objection from me.

**Ms Hallendorff:** Thank you. Ms Sanderson, did you have any applications?

**Ms Sanderson:** No, Madam.

**Ms Hallendorff:** Mr Henley, I will then ask you to read the allegation.

**Mr Henley:**

### **Allegation**

The Council alleges that you, Mohammed Khalid, a registered optometrist:

1. On 1 July 2001 received a reprimand from the Metropolitan Police for possessing a controlled drug (class B – cannabis) on 1 July 2001;
2. On 20 July 2006 received a police caution for possessing a controlled drug (class C – cannabis) on 20 July 2006;
3. On 27 June 2006 at Birmingham Crown Court were convicted of:
  - i) Assault occasioning actual bodily harm,
  - ii) Damaging property,For which offences you were on 25 July 2006 given a community sentence and ordered to carry out unpaid work for 50 hours before 25 July 2007;
4. On 1 October 2009 received an Adult Formal Warning for possessing cannabis on 30 September 2009;
5. Failed to declare, in your application dated 29 August 2005 to the General Optical Council for student registration, that you had received a reprimand on 1 July 2001;

6. Failed to declare, in your application dated 20 August 2006 to the General Optical Council for retention, that:
  - i) you had received a reprimand on 1 July 2001;
  - ii) you had been convicted on 27 June 2006;
  - iii) you had received a caution on 20 July 2006;
7. Failed to declare, in your application dated 9 July 2007 to the General Optical Council for retention, that:
  - i) you had received a reprimand on 1 July 2001;
  - ii) you had been convicted on 27 June 2006;
  - iii) you had received a caution on 20 July 2006;
8. Failed to declare in your application dated 2 July 2008 to the General Optical Council for retention, that:
  - i) you had received a reprimand on 1 July 2001;
  - ii) you had been convicted on 27 June 2006;
  - iii) you had received a caution on 20 July 2006;
9. Failed to declare, in your application dated 26 January 2009 to the General Optical Council for full registration, that:
  - i) you had a reprimand on 1 July 2001;
  - ii) you had been convicted on 27 June 2006;
  - iii) you had received a caution on 20 July 2006;
10. Failed to declare, in your application dated 26 March 2009 to the General Optical Council for retention, that:
  - i) you had received a reprimand on 1 July 2001;
  - ii) you had been convicted on 27 July 2006;
  - iii) you had received a caution on 20 July 2006;

And by virtue of the matters set out above your fitness to practise is impaired by reason of your:

- (a) Caution;
- (b) Conviction;
- (c) Misconduct.

**Ms Hallendorff:** Thank you. We then come to the admissions. Are the facts set out in the allegations admitted?

**Ms Sanderson:** There are a number of admissions in this case. I will take you through them, Madam. Allegation 1, the reprimand on 1 July 2001 is admitted. Allegation 2, the police caution on 20 July 2006 is admitted.

Allegation 3i) that on 27 June 2006, there was a conviction for assault occasioning actual bodily harm, is admitted. Allegation 3ii) that there was a conviction for damaging property is admitted.

Allegation 4 relating to an Adult Formal Warning is admitted.

**Mr Watson:** Is the rider to 3i) and ii), in other words the nature of the sentence passed admitted?

**Ms Sanderson:** Yes, that's admitted. Allegation 4, the Adult Formal Warning given on 1 October 2009 is admitted. Allegation 5, that there was a failure to declare a reprimand on an application dated 29 August 2005 is admitted.

Allegation 6i), there was a failure to declare in an application dated 20 August 2006, that there was a reprimand, is admitted. Allegation 6ii) in relation to the conviction is admitted. Allegation 6iii) in relation to the caution is admitted.

Allegation 7 concerning similar matters in an application dated 9 July 2007, 7i), 7ii) and 7iii) are admitted.

Allegation 8 concerning similar matters in an application dated 2 July 2008, allegations 8i), 8ii) and 8iii) are admitted.

Allegation 9 concerning similar matters in an application dated 26 January 2009, allegation 9i), 9ii) and 9iii) are admitted.

Allegation 10 in relation to a similar failure to allegation to declare, allegation 10i), 10ii) and 10iii) are admitted.

In relation to whether or not fitness to practise is impaired by virtue of caution, conviction and misconduct, that is not admitted.

In relation to the next stage of proceedings, I have had some discussions with my learned friend as to how we might proceed at this stage, and whether or not there needs to be one set of deliberations in relation to those allegations, and another set in relation to whether or not they amount to misconduct.

**Ms Hallendorff:** Thank you. I was about to ask you that question.

**Ms Sanderson:** Yes. Now, in terms of misconduct, there are admissions, regarding which of those matters amount to misconduct. It is slightly more complex than it would usually be in this case – and again, this is something that I have discussed with my learned friend – because there are four individual allegations, which the Registrant and also, I believe, the Council, agree would not amount to misconduct; however, there are a number of others which do. So if I can perhaps explain a little more about this?

In terms of Allegation 6i), 7i), 8i) and 9i), it is agreed that there is in fact no requirement on those forms to declare a reprimand, due to the wording of the declarations that are sought. So with regard to those four discrete matters –

that being 6i), 7i), 8i) and 9i) – I believe both the Council's position and also the Registrant's position is that those individual matters would not amount to misconduct.

**Mr Watson:** So you are saying that although, as a matter of neutral language, there was a failure to make a declaration on the form in each of those three cases, the Council does not allege that in those instances it was a culpable failure?

**Mr Whalley:** That is right. It cannot be alleged because there is no specific wording of a duty to disclose a reprimand. That wording was changed in the middle of 2009.

**Mr Watson:** But just so that I am clear, it is the nature of the form and the questions that were asked that altered? Clearly, it is accepted there was a requirement, was there, to make the declaration in August 2005? That is paragraph 5?

**Ms Sanderson:** There was then –

**Mr Watson:** There was then and then there ceased to be –

**Ms Sanderson:** Then the form changes and there is no requirement on 6i), 7i), 8i) and 9i). Then the form changes again and it should have been declared in 10i). So I am sorry for the slightly convoluted -

**Mr Watson:** No, no. My hesitancy was because I assumed that there would have been similarly no requirement in August 2005.

**Ms Sanderson:** There was, on that form in 2005, but then it changed before 2006.

**Mr Watson:** It's an unusual instance of forms becoming less onerous as time goes on!

**Mr Whalley:** Absolutely!

**Mr Watson:** Yes. But then reverting to their old format. All right?

**Ms Sanderson:** It may be because one is the form for application for student registration and one is the form for retention.

**Mr Watson:** I am sure to short circuit – and please do intervene, Chair, if I am over-intervening – but it would appear that, if the Council accept that there was no question posed on those forms that placed an onus on the person filling them in to mention a reprimand, then unless the Council is advancing a case that there was nevertheless a professional onus to add to the form, it would appear by your allegation, which closes with the words, “And by virtue of the matters set out above, your fitness to practise is impaired by reason of” – (a), (b), (c), that if you do in fact concede that there was neither a question nor an onus, it might be appropriate to consider an amendment to the word ‘misconduct’, which would be an exception. “Misconduct, save for the matters

in 6i), 7i), 8i) and 9i)”. I suspect you would not rely on those as grounds for impairment then?

**Mr Whalley:** No, absolutely, sir. If they are not being relied on as a misconduct they obviously cannot be relied on as impairment, so that must be a sensible suggestion.

**Mr Watson:** Now, the parenthesis – it is a matter for the Council really to decide upon – but it may be that if you presented an amendment with a parenthesis, ‘(By virtue of the matter set out above save for those paragraphs)’, then although the facts, as it were, form part of the background context, they would not form part of an allegation of criticism, let alone impairment.

**Ms Sanderson:** Yes. On that point of whether or not they form an allegation of criticism, there is perhaps an alternative, and I regret I have not canvassed this with my learned friend yet, that allegations 6i), 7i), 8i) and 9i), rather than having a complicated finding in relation to misconduct, could be effectively removed.

**Mr Watson:** It is for the Council to decide whether they are necessary in any way to add to the background facts but, on the face of the charge, of the allegation, it would appear that it is not relevant to the Panel’s consideration of misconduct or impairment. It is not relevant whether other matters on the form were or were not mentioned, whether it is a matter of criticism or not. For example, there might be a date error on the form but that is not relied upon, sensibly, as being a ground of misconduct; similarly with the reprimand. It might save time in that the Council – otherwise, the Panel, once seized of the allegation, will have to deliberate themselves.

**Mr Whalley:** Sir, if I may then take very brief instructions from the solicitor behind me?

**Ms Hallendorff:** Yes, indeed.

**Mr Whalley:** Thank you, Madam. I think it probably would be easier for everybody concerned if they are simply struck out.

**Ms Hallendorff:** You are asking that 6i), 7i), 8i) and 9i) are struck out and we don't amend the 10 by virtue of misconduct? We leave that as it stands?

**Mr Whalley:** Yes, please, Madam.

**Ms Hallendorff:** Mr Baldwin, are you happy with that? Professor Hirji? Mrs Huka? [Agreed] In that case, we are agreed that we will strike out 6i), 7i), 8i) and 9i) and just for completeness of the record, that refers to “You had received a reprimand on 1 July 2001”. Those are now deleted from the allegations.

**Mr Henley:** Madam, the charge shows them as ‘withdrawn’ in the allegations.

**Ms Hallendorff:** Withdrawn, thank you.

**Ms Sanderson:** And as such, of course, any admission in relation to those is withdrawn.

**Ms Hallendorff:** Yes, indeed. Thank you.

**Mr Watson:** And indeed, for the transcript, there was never an admission that those formed any basis of criticism.

**Ms Sanderson:** No, there certainly wasn't.

**Ms Hallendorff:** We then turn to the way in which we handle these, coming back to the order and how we should deal with it.

**Ms Sanderson:** Yes. I would submit that you may make your findings in relation to the allegations and indeed, whether or not they amount to misconduct, within one session, if I can call it that. Of course, that will not take you on to considering the matter of impairment and that will be the next stage in proceedings.

**Ms Hallendorff:** Indeed. Mr Whalley, do you have any comments to make on that?

**Mr Whalley:** I agree. We have discussed it earlier, Madam, and it seems the sensible way forward.

**Mr Watson:** And so that the Panel, as a matter of housekeeping, can see the way ahead, for the purpose of determining facts and misconduct, is it proposed to call evidence at that stage? Or just to deal with that stage by way of submissions? At what stage do you envisage that evidence, if any, will be brought?

**Ms Sanderson:** Again, having discussed this this morning, I understand that on behalf of the Council my learned friend will wish to take the Panel through the allegations. There are some documents in the bundle. There are, as I understand it – he can speak for himself – no live witnesses on his part. I intend to call Mr Khalid to give evidence, and I would suggest that that is better done at the stage before impairment is considered, and hopefully to deal with all matters upon which I seek to call his evidence so that there is, if impairment is found, no requirement to call him again.

**Mr Watson:** So, in other words, he will give evidence for once, as you envisage at this stage, at the first stage, and you will seek to adduce evidence on all relevant matters, even though some of the evidence will not yet be relevant, if indeed it becomes so?

**Ms Sanderson:** Yes, quite.

**Ms Hallendorff:** Thank you. In that case, we turn to Mr Whalley.

**Mr Whalley:** Thank you, Madam. As my learned friend has already indicated, there are no witnesses for the Council today but I will briefly take you through the documents, if I may, that you have in the Council's bundle. Can I firstly confirm that you do have the correct bundle? I did send an amended index – two weeks ago, it may have been – which moved some of the pagination around. Hopefully, you have numbers 5, 6 and 7 within the documents re the incidents on 15 January 2006. Number 7 on the index should be at page 33.  
[Pause]

**Ms Hallendorff:** That's correct.

**Mr Whalley:** I am grateful, Madam. Before turning to the facts, I remind you of course that it is the Council that bring the case today and the burden of proof is on them to prove that case. That burden is the civil standard, which is the balance of probabilities. We have already discussed the decision-making process and obviously, at this stage, you are considering the facts, which indeed have been admitted and whether the facts, particularly at allegations (5) through to (10) amount to misconduct.

Firstly, turning to allegations (1) through to (4), the allegations are set out on page 1 and allegations (1) through to (4) concern the criminal cautions, reprimand and conviction. The first caution, or reprimand, on 1 July 2001, was received for possession of cannabis, at the time a class B drug. The details of this can be found at pages 10 and 11 of your bundle. At page 10 we have a printout from the Police National Computer which, in very short terms, sets out the nature of that reprimand. It states that the Registrant was found at a community centre, which had been boarded up, and was in possession of a rolled cigarette containing cannabis.

The second caution, on 20 July 2006, was again for possession of a controlled drug – cannabis now a class C drug at that time – and the details of that caution can be found at pages 34 through to 41. At page 41, we have the details of the charge there and that states that,

“On 20 July 2006 at Uxbridge Road, UB1, you were in possession of a class C drug, namely one bag of herbal cannabis valued at £100 in contravention of the Misuse of Drugs Act”.

The final adult warning, again for possession of cannabis, is at allegation (4) and that was on 30 September 2009. At page 51 is a relevant entry in relation to that adult warning. This is a document at the bottom you see it, a CRIS report. Essentially, this is an investigative report that includes all information concerning any arrests and investigations which are entered on this document. This states that the Registrant admitted possession of cannabis and said that it was for his own personal use.

Allegation (3) is that Mr Khalid was convicted on 27 June 2006 at Birmingham Crown Court for two offences, one of assault occasioning actually bodily harm and a second offence of damaging property. The documents in relation to that conviction are found at pages 12 to 33 of your bundle. At page 33 is the

Certificate of Conviction, which sets out the details of the conviction of two offences and the sentence that was passed on 25 July 2006. If I can ask you to turn to page 14. We have there a summary of that offence, as prepared by the Crown Prosecution Service. That states that,

“In the early hours of Sunday 15<sup>th</sup> January 2006 the defendant in this case was acting in a drunken manner and was standing in the middle of Thorpe Street, City Centre, Birmingham, holding a glass bottle stopping oncoming traffic from passing.

The defendant was with a group of other males but was the only one who was standing in the middle of the road blocking the traffic.

The occupants of a vehicle that he had caused to stop requested him to move out of the road to enable them to carry on with their journey.

The defendant refused and then, without consent, attempted to sit on the bonnet of the car.

The defendant then fell off the bonnet of the car on to the floor.

It was at this point he got up and approached the vehicle and was now joined by a number of his friends that were also present.

The defendant and his friends then surrounded the vehicle and began to strike it.

The attention of passing police officers were drawn to this disturbance and they began to make their way up to the scene.

En route, one of the officers witnessed the defendant raise his right arm above his head and then smash one of the vehicle's windows, causing approximately £150 damage and also injury to a passenger who was struck by a piece of glass, causing a 45cm cut between her right eye.

The witnessing officer arrested the defendant on the scene”.

That is the background to the circumstances of that arrest and later conviction.

At pages 30 and 31, you find the sentencing remarks of Mr Recorder Jenkins, who was the Crown Court Judge dealing with this case. If I may, I will just read a section at page 30, which I say is relevant to your deliberations in relation to this conviction. Mr Recorder Jenkins says, paraphrasing,

“You are an intelligent man. You know exactly what is worrying me. Needless to say, violence to people going on the streets in their motor cars cannot be tolerated. Innocent women going down the road, having their car window smashed, one of them having a cut, albeit

slight, to the eye, all that indicates to me people who are acting under the influence of alcohol and I would not condone it in any way in our society. Neither would I condone injuries to those persons.

However, I have to bear in mind that you have never been in these courts before, have you? I bear in mind also in your favour that you have shown contrition. You have shown remorse, you have never been here before and I am treating it, therefore, as a complete one-off.

That complete one-off in these circumstances asks me whether I have to go by my first thoughts. My first thoughts are a sentence of imprisonment. I come to this conclusion that, because of everything else that works with this, it would be inappropriate and excessive to sentence you to a sentence of imprisonment but also inappropriate to give you a conditional discharge, as indicated in the report I have. In the circumstances, I do make a community order with unpaid work requirement and I am going to make an unpaid work requirement of 50 hours which seems to me to be about the right sort of period in the circumstances.”

So you can see there, Madam that the Recorder clearly sets out his concerns about the seriousness of this case and the violence involved, but equally, gives Mr Khalid credit for the matters which he sets out.

That is a very brief background in relation to the allegations at (1) through to (4). Again, of course, those have been admitted. Allegations (5) through to (10) concern Mr Khalid's disclosure and indeed, failure to disclose the information concerning those cautions and conviction to the Council of his different applications. The first application was the student registration on 29 August 2005. There were then later applications for retention on 20 August 2006, 9 July 2007 and 2 July 2008 and his application for full registration on 26 January 2009 and application for retention on 20 March 2009. The relevant pages of those forms, if I can ask you to refer to each one, the relevant section being the point where Mr Khalid is asked to disclose that information indeed, then sign the documents.

At page 57 is the first application from 29 August 2005 and we can see on this page (1) part 4 declaration: *Are you the subject of a criminal investigation or proceedings or have you been the subject of a criminal conviction or caution or other criminal matters?* And the box is ticked 'No'. Then, at the bottom of that page we can see that has been signed and dated 29 August 2005.

At pages 60 and 61 is the form of 20 August 2006. At page 60 at the top again, section 4.1, the same question asked as before and again the box has been ticked 'No'. And the declaration of information at page 61, again that is signed and dated 20 August. There is more information on this form; the declaration there specifies what has been declared:

"I declare that I have read, understood and complied with the GOC's conduct for individual registrants. I declare that the information given in this form is true and accurate".

Page 64 and 65 – this is for the form dated 9 July 2007 – again on page 64 the same question is asked in terms of convictions and cautions and again, at the declaration at page 65, the form has been signed and dated.

At pages 68 and 69, the application dated 2 July 2008: again at page 68 you find the same question as to convictions and cautions and the box ticked 'No' and the declaration signed and dated 2 July 2008.

At pages 73 and 74, the same question asked at page 73 and the box ticked 'No'. Then the declaration signed at page 74 and dated 26 January 2009. The final form is at pages 77 and 78, at the relevant sections. At page 77 again the question asked about criminal matters and the box ticked 'No' and that form, again, dated 20 March and then signed at page 78.

So on six occasions the Registrant stated that he does not have any cautions or convictions and signed a declaration stating that the information in the form is true and accurate.

At the end of the bundle, there is a letter from Mr Khalid and this is dated 14 April 2010 at page 100. This is where he sets out the matters which we now know about the conviction and caution and explains the circumstances of those. You will note on this form that Mr Khalid does not provide any information in relation to the warning he received for possession of cannabis on 1 October 2009. Of course, this letter is dated April 2010, so whilst he mentions the other matters, that warning is not mentioned in that letter in terms of any disclosure –

**Mr Watson:** It was a caution, was it not?

**Mr Whalley:** An Adults Formal Warning on 1 October 2009.

**Mr Watson:** Whereabouts in the allegations –

**Mr Whalley:** Sorry, number 4.

**Mr Watson:** Adult Formal Warning – right. Where was the document concerning that warning? You took us to the adult caution for cannabis at page 10 and the 2006 caution at page 41. I was just wondering where the Panel will find the Adult Warning document. It may be that you are coming to it.

**Mr Whalley:** That is at page 51. This is the Crime Report, concerning that –

**Mr Watson:** I cannot remember, I have to say, any details of them giving an adult warning or reprimand. Isn't there a signed indication of the warning? Or is this computer-driven record – is that all that one has?

**Ms Sanderson:** In my understanding, yes. Madam, you will notice at the bottom, that it says, "He did not fall into one of the special categories that would require him to be arrested", and of course, if a caution is going to be administered, that would require an arrest first, so this falls somewhat lower than a caution. It is a policing technique. Without going into the details, I don't understand if it has been developed in recent times for dealing with minor matters when a person is found in possession of cannabis –

**Mr Watson:** This is one of the new varieties of lesser disposals?

**Ms Sanderson:** Yes, quite. It is not a conviction or a caution.

**Mr Whalley:** It is an on-the-spot ticket, essentially, as a warning. I believe the police will have had a copy, I am sure, and are adduced to retain one. Unfortunately, I cannot provide that to you today.

**Mr Watson:** I only wanted to highlight where the document was and the nature of that warning, so the Panel have it in mind when comparing the letter at pages 104/5.

**Ms Sanderson:** Yes, there is a statement here where it is said that there was a stop and search. So the police will have had a form that they had to record that on but it may well be that that is not given to the suspect.

**Mr Watson:** Yes.

**Ms Hallendorff:** May I ask for clarification whether a juvenile reprimand and an adult warning are the same? Is one a grown-up version of the other?

**Mr Whalley:** They are not, Madam. The police instructions have changed. A reprimand is essentially a juvenile caution, as far as my understanding is concerned. An adult warning is a new introduction to save arrest. So you would have to be arrested to receive a reprimand and a caution. You would not necessarily be arrested to receive an adult warning, if that makes sense.

**Ms Hallendorff:** Thank you.

**Ms Sanderson:** As I understand it, a juvenile can be cautioned. However, a reprimand is something that may come before that point. There would be a reprimand followed by a final warning followed by a caution in ordinary circumstances, followed by a prosecution. So there are a number of steps along the way for youths, because of the overriding objective to keep them out of the courts.

**Mr Whalley:** My understanding is different. It probably does not matter too much. My understanding is that it would be a reprimand, final warning, then you would be charged.

**Mr Watson:** But in the adult context, which is where we are, the Panel probably for these proceedings simply need to understand, subject to your

representations, that a disposal by way of a warning is something below a caution.

**Ms Sanderson:** Yes.

**Mr Whalley:** That is correct, yes. Madam that is all I wish to say in relation to the facts and of course, it is fairly straightforward but perhaps not as straightforward as they were to start! But all the matters have been admitted in terms of those factual allegations.

So turning to the issue of misconduct and briefly address you on that point in relation to the allegations (5) through to (10), which are of course the allegations concerning any misconduct –

**Mr Watson:** Where does allegation (4) then sit because that is neither a caution nor a conviction?

**Mr Whalley:** That is correct. In that case, Madam, I think it is probably right that you consider that at the misconduct stage as well.

**Mr Watson:** If it is anything, it would fall into the embrace of misconduct.

**Ms Hallendorff:** It would indeed.

**Mr Watson:** Because I think the definition of the ground for impairment relating to a conviction only specifies a conviction or caution, as I recall it, under Section 13 of the Act.

**Mr Whalley:** It does, sir. That is correct and it may well be the Council's rules will have to be amended at some point, to incorporate all the new alternatives to cautions and reprimands. But there we have it. It is right, and thank you to the Legal Assessor for pointing that out.

**Mr Watson:** So you are going to address the Panel on paragraphs 4 to 10 in terms of your opening as to how you put, as it were, those paragraphs into the context of an allegation of misconduct?

**Mr Whalley:** Yes, sir.

**Mr Watson:** Thank you.

**Mr Whalley:** So firstly, Madam, on allegation (4): misconduct in my submission can be deliberate or can be reckless. Allegation (4) has to be an example of deliberate misconduct, given that the Registrant has previous cautions and reprimand for possession of cannabis. Essentially it is a repeat offence, if I can put it like that and this of course is a more recent warning for possession of cannabis. In my submission, it has to be an example of deliberate misconduct and indeed cannot be befitting of a registrant to be receiving warnings, cautions, whatever they may be, for possession of cannabis. It is simply not fitting with a registrant's ability to demonstrate that they are at that

point fit and proper and on that basis, it has to be misconduct. Reckless, I would say, because of course Mr Khalid would know that using cannabis is illegal – of course, it has been downgraded but it is still illegal – and as such would amount to misconduct in these circumstances. It has really to be taken into consideration with the other matters because of course it is a lower threshold. It is not a caution or conviction, but it is a third occasion when Mr Khalid has been stopped by the police and indeed found to be in possession of cannabis. So it has to be looked at within the chronology of the previous offences particularly for those of cannabis.

Allegations (5) through to (10), again in my submission are examples of at best reckless misconduct and at worse, deliberate. The forms are very clear in terms of what must be disclosed, particularly in relation to the convictions and cautions. Each of the forms that I have referred you to has a very clear question that is asked as to whether the registrant has any criminal convictions or cautions, and of course then they are asked on the final page where they sign the document to ensure that they have declared everything and that the form is indeed true and accurate. There are in total six forms that were submitted to the Council in terms of applications and retention applications and not understanding a form, being misled, may be an excuse on one occasion but, I say, on six occasions that has to be an example of misconduct, given that the forms clearly state the matters that need to be disclosed. Mr Khalid, of course, signed the fact that he had disclosed information and that the form was true and accurate.

In referring to misconduct, I ask you to consider the Codes of Conduct for registrants and in particular, Codes 10 and 19. I see you do not have them in front of you unless they were in this bundle but there are what I say, Madam, are the two relevant codes in relation to allegations (4) through to (10).

Madam, those are my opening, indeed my submissions on the facts and misconduct unless I can assist you any further.

**Mr Watson:** I do not believe the Panel have the Code of Conduct in their standard bundle, but just so that the transcript is clear - you have made reference to it – the clauses of the Code of Conduct that you rely on are:

“(10) Be honest and trustworthy”

and

“(19) Ensure your conduct, whether or not connection to your professional practice, does not damage public confidence in you or your profession”.

**Mr Whalley:** Thank you, sir.

**Ms Hallendorff:** Do you have anything you wish to state further?

**Mr Whalley:** No, Madam.

**Ms Hallendorff:** Thank you. Just before we turn to you, Ms Sanderson, are there any questions from my Panel? [*No questions*] Thank you very much. Ms Sanderson, if you would like to proceed that is fine, thank you.

**Ms Sanderson:** Madam, may I say I have got no submissions to make on this particular issue at this stage of the proceedings. You have heard the admissions that have been made –

**Mr Watson:** As to misconduct?

**Ms Sanderson:** As to indeed the allegations set out in terms of convictions and also in relation to the failures to declare.

**Mr Watson:** Just so that I am quite clear, therefore you are not advancing any submissions on the issue of whether or not the facts that have been admitted may amount to misconduct?

**Ms Sanderson:** They may amount to misconduct, yes.

**Mr Watson:** Yes. You are not making any submissions to the contrary.

**Ms Sanderson:** No.

**Mr Watson:** But you are reserving your position for later argument as to whether or not, even if they are misconduct, they are sufficient for impairment?

**Ms Sanderson:** Quite so, yes.

**Ms Hallendorff:** Thank you.

**Mr Watson:** One matter that I wanted just to raise, therefore, was paragraph 5, in terms of misconduct. Paragraph 5 is the failure to declare the reprimand and, so we are all clear about it, this is an allegation that it was an act of misconduct to fail to declare in his application form in August 2005 the reprimand that he had received four years before, in July 2001. That is the allegation?

**Mr Whalley:** Yes, sir.

**Ms Sanderson:** Yes.

**Mr Watson:** I just wanted to be clear, so that the Panel are clear, on what limb you put that allegation, because we had the form at page 57. It is a declaration asking the applicant this question: “Are you the subject” – so it is in the current tense at that point –

“Are you the subject of a criminal investigation or proceedings?”

And these may be the relevant words,

“Or have you been the subject of a criminal conviction caution or other criminal matter?”

I presume that you put your case on the basis that he had an obligation to refer to a reprimand under the words ‘other criminal matter’?

**Mr Whalley:** Yes, sir.

**Mr Watson:** Because we have been talking of cautions and so forth. I wanted to be clear where that allegation was placed.

**Ms Sanderson:** Yes. I wonder whether at this stage I might just take five minutes with Mr Khalid to ascertain the position in relation to that wording.

**Mr Watson:** I think you should. I have raised it in the interests of justice – I do not want this hearing to be diverted into over-technical matters - but the form itself places an onus to declare whether he has been the subject of an ‘other criminal matter’. I do not know, because I cannot recall, what term in the Rehabilitation of Offenders Act applies to a reprimand. Or, in this case, it is simply a reprimand at the age of 16 when he was at that stage, just after his 16<sup>th</sup> birthday technically he was of course then still a child. A reprimand of that category at that time is a matter that could conceivably have been spent within the four years that then elapsed. I think that is a matter that, in the interests of justice, you should check.

**Ms Sanderson:** Yes. Can I, please, take a moment?

**Mr Watson:** Unless I have missed it, although on later forms I am aware that there is a specific indication that matters should be declared, whether or not they are spent, there is no such notice on the 2005 form. I raise it for deliberation. It is a rather small matter but I think you should check your position.

**Ms Sanderson:** Yes. Can I do that now, please?

**Ms Hallendorff:** Yes. In that case we will adjourn – 25 past? Shall we say ten minutes – will that be sufficient?

**Ms Sanderson:** Yes, I would hope so.

**Ms Hallendorff:** Thank you.

*[Hearing adjourned at 10.24]*

*[Hearing resumed at 10.37]*

**Ms Sanderson:** On behalf of the Registrant, it is accepted that a reprimand may be a criminal matter. It is indeed spent immediately but it is accepted that it may be a criminal matter. The question of whether it can amount to misconduct, you may find that it does but I do not make any submissions in relation to that.

**Ms Hallendorff:** Thank you.

**Mr Watson:** I am sorry to have spent time by raising the matter but the Committee will take it into account.

**Ms Hallendorff:** Thank you very much. Mr Whalley, do you have anything you wish to add?

**Mr Whalley:** No, thank you, Madam.

**Ms Hallendorff:** Thank you. I am sorry to have brought you in for such a very brief matter. We will now adjourn again, while we consider misconduct.

**Mr Watson:** I suppose, technically, I should give advice to the Committee. It can, in the circumstances, be relatively short. As has been indicated to you in opening, the burden of proof does lie on the Council. The standard of proof is the civil standard, whether matters are more likely than not. In reality the civil standard would normally apply but the standard of proof, as it were, would only apply to disputed facts. There are no disputed facts in this case so you may have little difficulty in satisfying yourself that the facts that have been admitted should indeed be found proven.

As to whether or not those facts amount to misconduct, again the burden does lie on the Council to persuade you that the facts that are admitted are sufficient to amount to misconduct. Bear in mind that misconduct in this context is misconduct of a kind which may, subject to further submissions and evidence, alter the position, at this stage may be sufficient, may be capable, of forming a basis for a finding of impairment.

That is, I think, all the advice I need to give you in these circumstances at this stage. Any comments?

**Mr Whalley:** No, thank you, sir.

**Ms Hallendorff:** Ms Sanderson?

**Ms Sanderson:** No, thank you.

**Ms Hallendorff:** Thank you.

*[Hearing adjourned at 10.39]*

*[Hearing resumed at 11.08]*

**Ms Hallendorff:** Thank you.

**Finding in relation to the conviction, caution and in relation to misconduct**

1. When the hearing was opened the allegation was amended in two respects:
  - a. Firstly in paragraph 6 the date was amended to 20 August 2006.
  - b. The matters alleged by paragraphs 6(i), 7(i), 8(i), and 9(i) were withdrawn.
2. The Registrant admitted the following facts of the allegation: 1, 2, 3i), 3ii), 4, 5, 6ii), 6iii), 7ii), 7iii), 8ii), 8iii), 9ii), 9iii), 10i), 10ii) and 10iii), and accordingly, the Committee found him proved.
3. In reaching its determination the Committee has accepted and taken into account the advice of the Legal Adviser, and the evidence adduced by the Council. The Registrant made no submissions at this stage. The Committee has borne in mind the fact that the burden of proof lies on the Council. It has also given consideration to the standard of proof when considering the evidence before it.
4. The Committee therefore found Mohammed Khalid guilty of misconduct.
5. The Committee will now hear evidence and submissions from the parties on the issue of whether impairment arises by reasons of the conviction and matters of the misconduct proven.

Can I turn to you, Mr Whalley?

**Mr Whalley:** Madam, I can make submissions on impairment but it may be that is for Mr Khalid to give evidence, and thereafter I can make submissions and then my learned friend can make submissions.

**Ms Hallendorff:** Thank you; Ms Sanderson?

**Ms Sanderson:** In that case can I please call Mohammed Khalid.

**MOHAMMED HAROON KHALID, called and affirmed  
Examined-in-chief by MS SANDERSON**

**Ms Hallendorff:** You will be asked questions by Ms Sanderson and then Mr Whalley; may I ask you when addressing your replies to address them to the Committee, and because of the needs of the transcriber, to speak up clearly. Thank you.

**Ms Sanderson:** Mr Khalid, could you state your full name please?

**A.** Mohammed Haroon Khalid.

**Q.** And whereabouts do you live?

**A.** I live in Southall in West London.

- Q.** Now, I will be taking you through a number of matters which we have heard about this morning. First of all, can we just deal with a bit of your background, please? How old are you?
- A.** Twenty six.
- Q.** And whereabouts did you grow up?
- A.** I grew up in West London, in Shepherds Bush, and then I moved to Southall where I currently live when I was about 10 years old.
- Q.** Who did you grow up with?
- A.** I grew up with my parents, my mum and my dad, and I grew up with three sisters and my brother. One of my sisters is younger and I have a younger brother and two older sisters.
- Q.** In terms of your family life, did you live with your parents as well?
- A.** Yes.
- Q.** Did your parents work?
- A.** My father worked. My father was a cab driver for about 30 years. He used to work long hours, he worked night shifts, and my mum was a housewife.
- Q.** In terms of optometry and how you came to the optometric profession, can you describe that, please?
- A.** I did my work experience during GCSEs in an optical practice in Ealing which is close to where I live. During that time I was shown all the different aspects of optometry, the clinical side, so the side of the whole biology and the health side of it, and also with respect to the physics side, the micro side, the lenses and the dispensing. I always had an interest in science during GCSEs and when I was growing up, and to me it just brought both of them together. It linked them both together and I knew from then when I did work experience this was something that I wanted to pursue as a career. I chose my A-levels accordingly so I could get myself on to an optometry course.
- Q.** Pause there, you are going quite quickly so perhaps if we can take it a little more slowly? How old were you when you did the work experience?
- A.** I was 15.
- Q.** Then you say you chose your A-levels to pursue that?
- A.** Yes.
- Q.** What A-levels did you do?
- A.** I did Physics, Maths and Biology.
- Q.** Then from doing your A-levels, what happened next?
- A.** After I did my A-levels I went on to apply for university, and I chose Optometry. I achieved two A's and a B in my A-levels, and my choice of career was already optometry so I applied for optometry through my college and through UCAS.
- Q.** Where did you study then?

- A.** I studied at a private college where my father paid for me to go. Like I said he used to work long hours, so he put in a lot of work for me to go to the private college, because it was something which I always wanted to do. I always wanted to achieve the best that I could out of this, and we had a discussion about it. He did speak with me and he said 'Would you be interested in going to private college?', and I said 'Anything I can do to improve my getting these grades I will do'.
- Q.** So you went to university; which university did you attend?  
**A.** I went to Aston University.
- Q.** And that is where you did your studies?  
**A.** Correct, yes.
- Q.** Now, I want to take us on to the matters which concern the Committee today, so first of all I would like to deal with a reprimand which you received in 2005. How old were you then? Sorry – it was earlier than that, I have the wrong date, it was 2001.  
**A.** It was 2001. I had just turned 16, so just after my sixteenth birthday.
- Q.** Were you living at home then?  
**A.** Yes.
- Q.** If we turn to page 10 and 11 of the bundle, do you have those in the bundle there Mr Khalid?

**Mr Henley:** Can we call those C1 please?

- Ms Sanderson:** Yes, C1 please, pages 10 and 11. This refers to you being on premises, a boarded-up building or community centre, and there you were found with a rolled cigarette containing cannabis, and reprimanded. Can you explain what the circumstances were?  
**A.** It was me and a group of friends. Just close to where I live there is a small park there and a building which used to be an old clinic, and we were standing in the foreground of the building. There were a few of the group that had some cannabis with them. They took out the cannabis, and whilst we were standing there I was given some cannabis to hold while one of my other friends prepared to roll the cigarette of cannabis. During this time the police had come and I was found in possession of cannabis.
- Q.** Who were these friends? Were they people you knew well?  
**A.** They were people who lived around our local area. There were a couple of us who were close friends, and then because it was at the park where all of the youths from the area would hang around, there would be people that you would see around. There would be people that were friends with you and some people that you would not be good friends with but would class as friends.
- Q.** You say that the police came along and you had cannabis on you. What happened then? What did the police do?

- A.** The police then arrested me for possession of cannabis and took me to the police station.
- Q.** So who went to the police station?
- A.** I went to the police station along with my father; because it was close by to my house he was there at the time, at the scene, so my dad went along with me to the police station.
- Q.** What was your father's view of all of this?
- A.** He was shocked. He was shocked to find out I was involved with drugs. He had never thought that I was with people that were involved with drugs. He always knew that I was involved in sports and I was not somebody who would get into smoking or drugs or anything in a sense, so it was just a huge shock for him at the time – and it was a disappointment as well. He was very, very disappointed. He has a lot of aspirations for me, he sees me doing well and he was very proud of me, and then this was a huge shock for him to see his son in this situation.
- Q.** So what did he say to you? Was he annoyed with you?
- A.** Yes, he was very annoyed with me. He gave me more of a talking-to than the police probably did, and he made me aware that it is not the way to go if you are looking to pursue a career. If you are looking to go down this route this is not what you need to do, and he did make this clear to me. He just pointed out the fact about how disappointed he was in this.
- Q.** Now, I would like to turn next please to the incident of your conviction for actual bodily harm and criminal damage. In terms of this matter we are moving on in time, are we not, to 15 January 2006, is that right?
- A.** Yes.
- Q.** If you have a look at page 14, does that set out all the facts?
- A.** It does describe the situation at the time.
- Q.** In terms of you being out that night, what was going on?
- A.** It was just after our examination period. It was me and a group of friends from university, and we went out to a student night. I was out with the party and a number of my friends were having a drink and said 'It is the end of the exam period, have a drink, try it'. I had never drunk alcohol before in my life; I had never tried it -
- Q.** Hang on; how old were you then?
- A.** I was 20.
- Q.** You were 20, and you say you had never drunk alcohol?
- A.** No.
- Q.** Is there any reason for that?
- A.** Because of my religious beliefs.
- Q.** What religion are you?

A. I am Muslim.

Q. So here you are on 15 January, and you say you drank alcohol on that night?

A. Yes.

Q. What effect did it have on you?

A. It had an effect in the sense that I was completely out of character. I did not know – I was not controllable, as in controlling by my emotions or my speech. I did not feel the way I would normally feel. I used to hear people saying that they had drunk the night before and they could not remember the night before, but because I had never experienced that I never knew what effect alcohol could have on you, and I experienced that on that night.

Q. You wrote a letter to the GOC on 14 April, and may I turn to that please at page 100? You set out there at the bottom under paragraph 2 what happened in relation to that night, do you see that?

A. Yes.

Q. What you have said is:

“As a Muslim I should not have drunk alcohol. I guess as most of my friends and the majority of others were drinking I decided to drink. I committed the offences when I was drunk and under the influence of alcohol. In truth I cannot remember exactly what I did that night.”

Is that the truth?

A. Yes.

Q. It goes on to describe what happened, and then you ended up arrested by the police and charged with offences, is that right?

A. Yes.

Q. Now, presumably you came in front of a magistrates' court to start with?

A. That is correct.

Q. What happened there?

A. At the magistrates' court I was represented by a solicitor who I got in touch with at the police station. It was a duty solicitor that was given to me, and the advice that was given at the time was 'We want to take this to a Crown Court', so they had a discussion at the magistrate's court and the representation that I had said that we wanted to take this to a Crown Court. It was taken out of court at that point and taken straight to a Crown Court.

Q. You then appeared in front of the Crown Court and you pleaded guilty to both those offences.

A. Yes.

Q. I think we can see at page 23 what was said on your behalf; Mr Brar, as it says there, was he representing you?

A. That is correct, yes.

**Q.** What he says there is:

“I invite your Honour to give credit for the plea of guilty. It was his first opportunity. ... He is a person who has hitherto been of previous good character, and he is a very young man, 21 years old.”

So you had turned 21 by that time?

**A.** I had turned 21 by that time, yes.

**Q.** It goes on to set out that you had consumed alcohol which you did not normally do. It sets out your education, and also then further down that you felt remorse, and it was genuine remorse at misconduct. Did that reflect how you felt about it?

**A.** Yes, because at the time my actions were not how I would normally behave. My friends who I had spoken to or who had heard about the incident were all surprised and said ‘This is out of character for you, this is not how you normally behave’, and I knew that is not something which I would normally do. With the description of it at the time of the court, it was that I was standing in the middle of the road and I was causing a block to the traffic, when actually what happened was in my recollection of it that we were crossing over the road – and by the way, the car had come round the corner, so it was not the fact that it was merely passing by and I had intervened and caused a problem with the car. The car had come around the corner, it had driven at speed towards the road, and I happened to be in the middle of the road at that point.

**Q.** Okay, but you pleaded guilty to these offences?

**A.** I did, I pleaded guilty.

**Q.** You were sentenced to 50 hours’ community service?

**A.** That is correct.

**Q.** Can you describe what you did for that community service?

**A.** We did a number of different things. We did some gardening work; there is a local primary school which joined an alleyway which was known for drug use and youths hanging around, so we cleared out the whole area, which was a huge area. We had done some gardening at an old people’s home -

**Q.** Sorry, slow down a bit because you are talking very quickly. So you did some work in a school, you did some work clearing out an alleyway?

**A.** Yes and we did some more work clearing out local parks. There were other local passageways that needed cleaning and we took part in that, painting fences, general clearing up.

**Q.** Okay. I would like to hand another bundle to the Panel, Madam, if I may?

**Ms Hallendorff:** We will call that R1.

**Ms Sanderson:** Yes, please. [*Bundle distributed*] Do you have a copy there Mr Khalid?

**A.** Yes.

**Q.** I will take you to various bits of these bundles, but I would ask in due course that you do read through all of the testimonials. Can I just take you to page 2 at this time? We see a reference here which says:

“I have known Mohammed for the past five years since he attended the unpaid work programme in July 2006.”

If we look at the top, that is from a Mr K Pierre.

**A.** Yes.

**Q.** On the next page we can see who that is: K Pierre, Community Service Unpaid Work Supervisor. What was his role in your unpaid work?

**A.** Kenny was one of the probation officers that used to work out of the office and supervise us on the unpaid work.

**Q.** So he came along when you were doing this clearing out?

**A.** Yes, he was there supervising us.

**Q.** I will draw various parts of that to your attention in due course when I make submissions, Madam. I would like to go now to the third incident, which is the incident in which you were cautioned. Again this is in 2006. This relates to some cannabis which, as we understand it, was found in your car.

**A.** That is correct.

**Q.** Can you describe what happened on that day, if you can take it slowly?

**A.** On that morning I had met two of my friends. I collected one of them from his house because I was driving, and then collected my other friend. We were on the way to the hospital to go and see a friend of mine who had broken his leg in a football injury.

**Q.** Which hospital were you going to?

**A.** Ealing Hospital, on Uxbridge Road.

**Q.** So you were going to Ealing Hospital and you picked up two of your friends?

**A.** Yes.

**Q.** Describe what happened from then on.

**A.** On our journey, just as I had collected my second friend from his house we were on our journey to the hospital and I saw another friend of mine, who I had known for some time. We grew up on the same road after I had moved from there, so I had known him for some time. He was carrying a bag. He said ‘Mohammed, I am going to my mum’s house, could you just take care of this bag for me and I will pick it up off you later on? It is quite heavy; I’ve got to get on the bus and it will take me a while to get there’. He was going to Uxbridge which is about half-an-hour bus ride from there, so he said ‘When I come back I will collect it off you later on’. I thought I was just doing a favour.

**Q.** So you were given a bag by this friend; what did you do with the bag?

**A.** I told him to put the bag in the boot, so he himself opened the boot, put the bag in the boot. I had no contact with the bag or anything at all. He put the bag into the boot, closed the boot and he said 'I will give you a call once I am back later on and I will come and collect it off you later'.

**Q.** So this friend you had known for some time; how did you come to know him in the first place?

**A.** We lived on the same road.

**Q.** So he gives you a bag; describe what happened then, please.

**A.** Once he had given me, because they had certain allotted times that we could visit my friend at the hospital, we made our way to the hospital. As I was in the car park I was stopped by a police vehicle for a defective tyre, which is what they stopped me for at the time. The police officers then checked the car and did a search of the vehicle and they found the bag in the boot of the car. The officer proceeded to open the bag and he found another bag inside that containing cannabis.

**Q.** So were you then arrested?

**A.** Yes, I was then arrested for possession of cannabis.

**Q.** And you were taken to a police station?

**A.** That is correct.

**Q.** Once you had got to the police station did you speak to anyone at all?

**A.** After some time, yes. I spoke to a lawyer who came and gave me some advice on the situation.

**Q.** You say 'after some time', did you want to speak to a lawyer initially?

**A.** Yes.

**Q.** So somebody came to see you; what discussions did you have with them?

**A.** The solicitor asked me the situation and asked me what had happened. I explained the situation to him. I told him that I was going to visit my friend in hospital, I had met a friend of mine who had put a bag in the back of my car in which they found cannabis, and I had no idea of this. I explained to him that I had told the police officers they could verify the bag, they could check finger prints, they could check that I had no affiliation with the bag whatsoever other than the fact that it was in the boot of my car. He advised me that 'This could go further, this could go to court, so my advice to you is to admit possession because it is in your vehicle, and to take a caution for it'.

**Q.** Were you interviewed by the police in relation to this?

**A.** Yes.

**Q.** If you turn to page 47 of bundle C1, we see there that it says:

"All the three subjects were interviewed on tape regarding this matter.

Khalid" –

- Presumably that is you?
- A. Yes.
- Q. “- admits possession of the cannabis, stating that a loose friend had met him earlier that day near the park. The ‘friend’ asked [you] to look after the cannabis in a blue bag and he would phone later to arrange its collection.”
- A. That is correct.
- Q. Is that what you said to the police at the time?
- A. Yes. I told them that I was not aware that there was cannabis in the bag, and he had just told me ‘I am going to leave my stuff with you and I will collect it from you later on’, and that is exactly what I had told to the police at the time.
- Q. You say that having spoken to your lawyer he advised you to accept a caution in this respect?
- A. That is correct.
- Q. What was the reason he said that?
- A. His reasoning behind it was that ‘This can go a lot further, this can go to court, you can have a worse sentence if you go to court, you can get yourself into a lot more trouble over this, so the best thing for you to do now is stop it where it is, accept a caution, and that will be the end of the matter’.
- Q. What did he say about the offence itself, about being in possession of cannabis?
- A. I understand the severity of it, but at the time he weighed it down to me a little, said that ‘It’s a caution, it is not going to have much effect on you’, which I realise now, and he said ‘It is the best route for you to go down rather than contest this and try to prove your innocence which may prove difficult. Accept the caution, and it is not going to have much of an effect on you. It is a lot lighter than you are making it out and that is my advice to you’.
- Q. So you admitted possession of the cannabis to the police?
- A. Correct.
- Q. If we turn back to page 37 we can see in slightly difficult handwriting it says on the second line from the bottom “Caution accepted as” – something which looks a bit like “admitted” or “admissible”. Do you see that there?
- A. Yes.
- Q. And that is because you accepted a caution, is that correct?
- A. Yes.
- Q. Finally, as regards these first allegations we have the issue of an adult formal warning. This occurred on 1 October 2009, do you recall that?
- A. Yes.

- Q.** Can you describe where you were at the time and what was going on?
- A.** I was in a local car park with a group of friends who were parked up, and there were quite a few of us just met together there. We would occasionally meet there just to get together, and a few of my friends were there. They were smoking cannabis, cannabis was being passed around. The police had approached us; they found a small quantity of cannabis. It was a rolled piece of cannabis in my possession, and they cautioned me.
- Q.** Slow down a moment; so you were in the car park with your friends and you say they found a small piece of cannabis on you?
- A.** That is correct.
- Q.** We can see a report of that at page 51. What they say there is that you were searched. At paragraph 4, when asked about the packet you admitted that it was cannabis and that it was for your own personal use. Now, you were informed that they would be recorded as being responsible for the crime on the Police Crime Report, and that you would be informed that the matter would be shown as detected against you, and it was recorded on Form 67 and you signed this entry as being true and accurate. Do you recall signing something at the time?
- A.** I don't recall clearly signing something, because I was not given a copy of anything at the time.
- Q.** Were you asked to sign their notebook?
- A.** I think it was a bag that I signed where they had put the confiscated cannabis into that I had signed.
- Q.** So some sort of exhibit bag?
- A.** Some sort of exhibit bag?
- Q.** It goes on to say that you did not fall into a category that would require you to be arrested, and you were given an adult formal warning for that. Did you admit that it was for your own personal use, the cannabis?
- A.** Yes. The cannabis use – throughout my life I have maybe used it four or five times. I can count it on one hand. At that time I was going through quite a stressful period, and although it was a stressful period it was nothing which I would do regularly. It was something where I was with a group of friends, I was not working at that time, and I decided to experiment with the cannabis, and unfortunately I was in the wrong place. It was a grave mistake on my part to even try the cannabis, because I have seen the effects it has had on people and that it is a criminal offence. However, I think my state of mind at the time may have led me to experiment with it.
- Q.** So that takes us through the different criminal matters, and now I want to turn please to the issue of failing to declare. If you turn to page 56 please Mr Khalid, this is an application which was signed on 29 August 2005. On page 57 we see a Part 4 declaration, do you see that?
- A.** Yes.
- Q.** It says:

“Are you the subject of a criminal investigation or proceedings, or have you been the subject of a conviction, caution or other criminal matter?”

You have ticked ‘No’ on that page. Can you explain why you did that?

**A.** From when I read the statement I knew that a reprimand was not a conviction, it was not a caution. I did know it was an offence which I had committed, but I did not think it was something which I needed to declare, as I was not aware that it would go on my record. I had the impression that it was something which was given at the time and not something which needed to be declared later on.

**Q.** I think you accept that it was a criminal offence, is that right -

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

**Q.** - to be in possession of cannabis?

**A.** Yes, of course.

**Q.** But it did not occur to you to declare it at this stage?

**A.** No.

**Q.** Now, turning to page 60 please, we have a form a year later on 20 August 2006. At this point of course you had been convicted in the Crown Court, is that right?

**A.** Yes.

**Q.** And you have received your sentence.

**A.** Yes.

**Q.** Section 4 says “Have you been convicted of or cautioned in relation to a criminal offence?” and you have said “No”. Why did you do that?

**A.** My reason for that is that I was at university at the time, and I was half-way through my studies. I knew I’d had to study very hard for me to get to the point where I was. I understand the sacrifices made by my parents for me to get there, and my view on it was if I am stopped in my tracks where I am at the moment I will not be able to obtain my degree, I will not be able to further myself in my career. I was scared of just losing everything that I had worked for up until that point.

**Q.** So you accept that you should have declared it?

**A.** I should have declared it, yes.

**Q.** How do you feel now about not having declared it?

**A.** I am ashamed that I have not declared it. I have affected my whole career and my future, my life. I understand that. I hold my profession in the highest regard. I have taken away the decision; it is something that I know I should have left to the GOC to make a decision and not make the decision myself, and I regret making that mistake at that point. I regret not declaring it, and just having it affect my whole career, my whole future.

- Q.** If you turn to page 64, this relates to 2007. It is a year later; why did you not declare it at this stage?
- A.** Again for similar reasons. I was just inferring that everything would come to a stop, everything would be taken away from me, and I would not be able to proceed with my training, with my degree. It was sort of spiralling out of control. I always knew that it was something that I needed to declare, and I always knew that eventually it would come out. There would come a point that would come to an end and I would need to declare it. I was never under the impression that I was fooling anybody and that I was going to get away with it, but it just got more and more difficult for me. I had not declared it on one form, I had not declared it on the second, and it got more and more difficult. It just spiralled out of control, and thinking about it over the years, the impact that it would have on my future, on my family, on my parents, it just led me to make silly decisions, foolish mistakes.
- Q.** So then we come to 2008 and again there is a form at page 68. You speak about it spiralling out of control; what was the situation then, in 2008?
- A.** In 2008 I was doing my pre-registration year, so it was a vital point in my career which I knew that had I not completed my pre-registration year I would not be able to continue with my profession. I had previously just before then not declared it and I would not be able to complete my exams. Again it was out of fear for my future that I made these decisions. I know now that I should have sought some sort of advice from somebody, or come forward and dealt with the matter at that point. From talking to friends and people who were not really aware of the situation or the severity of these things, and listening to advice from them, I took the wrong steps and I made the wrong decisions in doing this.
- Q.** Now we come to 2009, and there are two applications in that year, one for registration and one shortly thereafter for retention.
- A.** Yes.
- Q.** And you did not declare it on those occasions?
- A.** That is correct.
- Q.** How do you feel about that now?
- A.** I feel ashamed. I feel like I have jeopardised my whole future, my whole career. I have seen that through my actions I have not been able to further my career, I have not been able to work as an optometrist, I have not been able to continue progressing in what I want to do. I know I have brought this upon myself, but it has made me feel very, very ashamed of these actions.
- Q.** You spoke about knowing that it would eventually come out; how did it come out, what prompted that?
- A.** I think it was at the point when I had now qualified as an optometrist. I went to apply for my ophthalmic list number -
- Q.** To whom do you apply for that?

- A.** The local PCT, Primary Care Trust. On the form it had a declaration – and I had been thinking about this the whole time, that I needed to resolve this, this needs to come out -
- Q.** Pause there a moment; why did it need to come out? Explain.
- A.** It was wrong. It was wrong for me to withhold it. It was not the decision for me to make, for me to withhold this information and try and get away with not declaring my record.
- Q.** You said you had been thinking about it and you had to apply to the PCT for a list number?
- A.** Yes.
- Q.** So what prompted this to come out?
- A.** Because this was the point where I was now no longer a student, I was no longer training, I was mature, I was at the point where I knew 'If I keep it any longer this will be the end of my career'. When I applied for the PCT I told the gentleman at the PCT about everything I had put down on the form -
- Q.** So you say you told the PCT?
- A.** Yes.
- Q.** About what you put on the form?
- A.** That is correct. I went there to the PCT and filled in the form for the application with the gentleman, and I explained everything to him and put it on the form as well.
- Q.** So you filled out a form and you included your convictions?
- A.** That is correct, yes.
- Q.** Why did you do it at that stage?
- A.** Because like I said this was the point where I was no longer a student, I was old enough to take responsibility for my actions. After all the years I have had this, every time I filled out the form I would know I was making a mistake in not filling it in. I knew I needed to end this at some point, because I can't continue like this. I had made a serious mistake in doing this. I had made a serious, serious error in not declaring it, and I need to be honest. I need to come forward and resolve the matter.
- Q.** At the time were you working at Specsavers?
- A.** That is correct.
- Q.** That employment then came to an end, is that correct?
- A.** That is correct.
- Q.** As a result of these matters?
- A.** Yes.
- Q.** And you spoke to them about your convictions?
- A.** That is correct.

**Q.** And also about your failure to declare matters, is that correct?

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

**Q.** If we turn to page 96 of the bundle, please, and this is an interview on 15 July 2009, about halfway down you say you were scared about your future in the profession, and then you are asked the question:

“Would you agree that in not declaring your convictions it was deliberate, and the reason you did it was because you were afraid you would be thrown off your course or lose your job?”

and you say “Yes”. Did you realise at that time that you should have declared it?

**A.** Yes. I knew that I should have declared it. It was more of a desperate act, more I knew how important it was to my parents and to me that I finish my education and that I could proceed with this -

**Q.** Sorry, which was a desperate act?

**A.** The whole not declaring my convictions on the forms.

**Q.** In terms of your employment at Specsavers, and hopefully I will take the Panel back to this in due course, can we just understand who a couple of people are, Mr Khalid? If we take R1 and have a look at page 6 please, who is Nawaz Haque, please?

**A.** Nawaz Haque was one of the directors at the Specsavers practice where I was working. He was also my supervisor during my pre-registration year.

**Q.** He is an optometrist?

**A.** That is correct.

**Q.** He speaks there about what you were like at work, is that correct?

**A.** Yes.

**Q.** He knew about what happened, is that right?

**A.** Yes.

**Q.** And also if we look please at page 10 we have a reference here from Elaine Lac; is she the Practice Manager at the Greenford store?

**A.** Yes.

**Q.** One of the points it says at the bottom of that page, and it speaks of you being “honest and trustworthy” and you being trusted with all aspects of the practice “including handling money for banking and opening the store”. Does that reflect what you had to do?

**A.** That is correct, yes. On occasion I would have the store keys so I would open the store, I would also close the store on some days, and also at the end of the day I would be involved in the banking as well.

- Q.** We have heard how that came to an end; since you stopped working for Specsavers have you been in work?
- A.** I have, yes. I am currently working with Optical Express at their practice in Shaftesbury Avenue, which is one of their busiest and largest practices in central London.
- Q.** You say you are working there, are you practising as an optometrist there?
- A.** No, I am working as an optical adviser at the moment.
- Q.** Because you are not allowed to practise at the moment, are you?
- A.** I am not, because I have not got my PCT number, and it has been very difficult for me to have employment as an optometrist. When I applied at Optical Express I made them aware of this. I wanted to stay in optics, I didn't want to sway from it, I did not want to lose any insight into optics or lose any knowledge or skills, so I decided although I am not working as an optometrist to stay in optical practice and work as an optical adviser.
- Q.** At page 4 of that same bundle, R1, you see a letter there from Tom Thorne, which says on page 5 is your Regional Manager?
- A.** Yes.
- Q.** It says:
- "I first interviewed Mohammed in March 2010 for a potential position. At our first meeting Mohammed was open and honest about his current situation regarding his registration and his ongoing case with the GOC."
- A.** Yes.
- Q.** Can you describe the discussion that you had with Mr Thorne?
- A.** When I went along to the interview one of the first things I spoke about with Tom Thorne was the situation which I am in. I explained to him that I am a qualified optometrist, however I cannot practise as an optometrist because I do not have my Ophthalmic List Number. Although I am on the GOC Register I was aware that it is very difficult for me to practise as an optometrist. If, for example, I had performed an eye test on a patient and it came back and they were able to claim from the NHS, I would not be able to sign the form. I made him aware of this at that point.
- Q.** Did you tell him as it says in here about the ongoing case with the GOC?
- A.** Yes. I told him about my cautions, about my convictions, about the fact I did not declare these to the GOC, and that it was currently under investigation.
- Q.** Why did you explain those things at your first meeting?
- A.** I understood at this point the severity of what I had done. This was my career which I wanted to follow, this was a new job for me, a new start for me, and I did not want to start this on bad terms. I did not want to start this with any misleading information, so I was up-front and honest at everything at the initial interview. As soon as I went to the interview it was one of the first things I

discussed with him, and he said 'I am happy to proceed with the rest of the interview albeit you have told me what your current situation is'.

- Q.** If we turn to page 12 we have a reference there from Nitin Jain.  
**A.** That is correct.
- Q.** That is the General Manager, is that right?  
**A.** Yes.
- Q.** Is that someone you see often?  
**A.** On a daily basis.
- Q.** On a daily basis, and I will take the Panel back to various aspects of that in due course. Turning then to page 14 we have a reference from Vicky Roberts; what is her job?  
**A.** She is one of the more senior optometrists at Optical Express. We do laser eye surgery and she is involved in more of the complex cases. She is one of the senior optometrists.
- Q.** On the next page we have Monal Shah?  
**A.** Again Monal Shah is an optometrist at Optical Express. She is also a friend of mine that I went to university with and have started working with since I joined Optical Express.
- Q.** Aside from your work we also have a reference on the very first page from Mr Sufi Mohammad Saleem. Who is he?  
**A.** He is one of the Imams at the mosque which I attend. He has been a family friend of ours for a long time. I think for more than 30 or 40 years he has been a family friend of ours, and he is somebody who I see on a regular basis when I go to the mosque. He leads our Friday prayers; during Ramadan he is the lead Imam, and if there are any events at the mosque he organises and arranges them and we have to work with him if we are involved in any of those. Any community programmes we are involved in it is Sufi Saleem that we meet and that we talk with and work with.
- Q.** How often do you go to the mosque?  
**A.** I go two to three times per week. I go for my Friday prayers every Friday and I also attend when I can during the week. I either have a Saturday or a Sunday off at the weekend, so I go either on the Saturday or the Sunday because they have a class there for some young children where they teach the Koran, so I go there and I help out. Then one day during the week –
- Q.** Pause a little bit, you are going very quickly again. You say you go with the class a lot?  
**A.** Yes.
- Q.** For the younger children who are learning the Koran?  
**A.** Yes.
- Q.** And what other involvement do you have with the mosque?

- A.** Also during Ramadan we help to set up the mosque for the evening prayers, we help to clear up the mosque afterwards, which can involve being in the mosque for four or five hours in the evening. We help with community events, if there is anything in the community. In Greenford, which is close to where I live, we have a fair which goes on there and we often set up our own stalls and help out. There is a local Islamic primary school which is in Hounslow and they do a summer fair every year, and all the mosques from the surrounding regions contribute towards that, and I am part of the team that contributes towards that.
- Q.** In terms of the Imam, how often do you speak to him?
- A.** When I see him at the mosque, which is on most occasions when I go, I have a word with him, a small chat with him. Over the last few years I have become a lot closer with him as I have been growing up. He has been aware of my situation.
- Q.** When you say your 'situation' what are you talking about?
- A.** He is aware that I have been in trouble with the police for cannabis, he is aware I had the incident where I drank alcohol. He is one of the first people I went to, to speak about this.
- Q.** What happened when you said that to him?
- A.** One, he was a bit surprised that it was me who was in that situation; secondly, he gave me some fatherly advice about how you need to refrain from these things, how these things can get you into bad situations, and the company that you choose. He was more trying to explain to me the seriousness of what would happen if I continued like this.
- Q.** Just to complete our tour through the bundle at R1, at the very back you can see a letter from someone at Nacro, who is the Head of Resettlement Information at Nacro, which is the crime reduction charity. Is this somebody you went to see?
- A.** That is correct, yes.
- Q.** And you discussed your offending with him, is that right?
- A.** That is right, yes. I wanted to talk to somebody so I could get a little bit more insight or more information about how this could affect me, how this could affect my future, and somebody I could get some advice from.
- Q.** In terms of how you feel now about your convictions and about your failure to declare, what would you want to say?
- A.** I want to say that I am very ashamed for my past actions, for the way I behaved on that night, for the circles I would choose to hang around with, the friends I would choose. I am very ashamed for the fact that I have not declared any of this in my forms to the GOC. I am aware that it has affected me in a number of ways on a personal level, for my future, for my career. Mostly I am just ashamed, and I am sorry that I have made these mistakes, and I just want to continue with my future. I have had this on me for the last few years now; like I was explaining before I always knew that this was a

mistake I was making. I always knew it was out of desperation for me that I made these mistakes, because it was that fear that I would lose everything.

My dad would work 15 hour days as a cab driver and send me to private college, and he paid a lot of money for that, and I could not disappoint him. I could not see that disappointment in him. My family is not very well-off; I am the eldest son, I would be somebody who will be providing for them. I had, and have, a passion for optics and for being an optometrist, and this is always something I have wanted to fulfil and I have never swayed from that. I have had this on me for a long time, for the past two years.

**Q.** If we go back to bundle C1, looking at a letter you wrote before, if we look at page 102, the second paragraph down where it talks about you sticking your head in the sand. You say:

“I am now facing it, and I recognise by not declaring it I have made a serious matter much more serious.”

**A.** Yes.

**Q.** You talk about being in a worse position by not being at the front “- and declaring my cautions and convictions”. What is your answer now to you declaring your cautions and convictions?

**A.** My attitude towards it now is that it is something which I should never have done in the first place. I have made a serious situation a lot more serious. I have made the decision to take away the role of what the GOC should have done and put it in my own hands by not telling them.

**Q.** What do you mean by that?

**A.** I mean I should have declared it on the form, everything that I had been cautioned or convicted for. I should have allowed the GOC to make the decision on my registration. I understand how serious it is that not declaring this, making false statements on the form; especially as a professional we should be honest, we should be reliable, we should be trustworthy. We are dealing with the public; we are dealing at times with vulnerable people, with young children. I understand that we should be trusted, and it is something that I have learned a huge, huge lesson from – that it is shameful. It is very, very shameful.

**Q.** If you will wait there Mr Khalid, I am sure there will be some more questions for you.

**Ms Hallendorff:** Thank you; Mr Whalley.

**Mr Whalley:** Thank you Madam.

#### **Cross-examined by MR WHALLEY**

**Q.** Mr Khalid, I just have a few questions if I may please, in relation to the evidence you have given, about the cautions first of all.

A. Yes.

Q. The first caution was July 2001, and it is your evidence that you were with some friends and you were holding the cannabis when the police came.

A. Yes.

Q. Do you accept at that time you were not using cannabis?

A. Not at that time, no.

Q. And the second caution, and I must get the correct term, is in July 2006, which was a caution for taking cannabis.

A. Yes.

Q. Your evidence is that you had taken the bag and it was put in the boot; again at that time were you using cannabis?

A. I had used cannabis at that time. I have never used it regularly; I have never used it on a social basis. It would never be when I would get together with friends and we would smoke cannabis purposely for smoking cannabis, but I had tried it. I am not going to deny that. I had tried it on one or two occasions, maybe at a party or at a gathering or something, but it was nothing which I would regularly use.

Q. So did you intend to use some of the cannabis that was in your possession?

A. Not at all.

Q. If I can ask you to look at C1, page 97 please? This is your interview with Specsavers. At the top of page 97 you were asked by the interviewer:

“Given your cautions in 2001 and 2006 would it be fair to describe you as a recreation drug user specifically related to cannabis?”

and you replied “It was very rarely”.

“Q When was the last time?

R Second year at university.”

A. Yes.

Q. When you say “Very rarely” and you talk about the two cautions, you were talking about other times not in 2001 when you were under caution and 2006?

A. That is correct, not with relation to those. I was explaining to the gentleman that I had tried cannabis and really in a sense on one or two occasions whilst I was at university, and not something I would class as recreational use where I would purposely meet my friends to socialise with cannabis.

Q. And the warning in 2009, on your evidence you said that you accept that it was for your use at that time?

A. Yes.

- Q.** Of the three matters before the Committee today, you accept that on one of them you were in possession on all three occasions, and one of them it was the only occasion when you were actually using it for personal use?
- A.** At that time I was not working. I had a whole load of weight on my head. I was in that situation and I did smoke some cannabis at that time. With regard to cannabis use I have a younger brother who has grown up in the same environment as me, in the same place as me, and I have always explained to him about the effects. We have grown up around people who have used cannabis, we have seen cannabis used a lot around where we live, and my brother has just graduated as a dentist and we have both stayed away from this. I have never been a hypocrite where I was to tell him not to use it and still use it myself. I have always been involved in sports since I was a young age. I knew how it could affect my health, smoking, it is not something which I ever been fond of or anything I have ever wanted to get involved with.
- Q.** In your evidence you said that you used cannabis maybe four or five times?
- A.** Four or five.
- Q.** So it must be the case then that four or five times are outside the times that you are found in possession here. If you were found in possession on three occasions, only one of them using it at the time, there must have been a number of other occasions, three or four times, when you used cannabis throughout this time. Is that right?
- A.** I would say from a young age up until my second year of university there was a handful of occasions where I would have tried cannabis, maybe five times. There was not more than that. There were not more times when I would smoke a little bit and not class it as using cannabis or anything. There was only a handful of occasions that I have tried cannabis.
- Q.** It is just that you were in the wrong place at the wrong time in 2001 and 2006?
- A.** I think so.
- Q.** Do you recall when the last time it was that you used cannabis?
- A.** It would have been second year of university, possibly around the Christmas period, during the holidays. I always knew with cannabis it is something I have seen the effects of, I have read about the effects it has on people. I have never been one to see the point in having something that is going to make you feel like that, and how you are going to get what you might call a buzz from it, or how it will make you feel any better or anything. It has never appealed to me. I have been more involved in sports and playing football and going to the gym. I have been more health-conscious rather than anything like that. At university I was around people who would consider it something normally done, which it is 'cool' to do, and on those occasions I would just try it, just out of curiosity maybe. I am at university, I am away from home, I haven't got to go back home to parents, I am living away.
- Q.** When was the second year of university? I think you did not say this earlier, so which year would that be?
- A.** That was in 2006.

- Q.** So the last time you used cannabis was in 2006?
- A.** Other than that I did use it once, but during that incident in 2009 that was a one-off incident that I used it.
- Q.** Right, so second year of university and a one-off in 2009? Is it not the case that there was a pattern, and you are pretty sure yourself that your attitude to it is that it is a recreational drug for you?
- A.** No. That is not the case, because if I was not sure I would not be somebody who would be using cannabis recreationally, I would be using it more often. That is not the case. I have used it at university a couple of times like I said, and later than that, during that period once I was out of work and I was with some friends, I had used it at that point.
- Q.** Turning to the conviction in 2006 Mr Khalid, you said you had drunk alcohol and you hadn't much idea of what was going on. You said that you remember being with friends and you mentioned about the car coming towards you very quickly, it was driving at speed, so you do remember some of it?
- A.** At the actual time when I was interviewed I did not have a clear memory of it, then slowly bits did start coming back to me of what happened that night. I am not 100% sure of what happened. I can't tell you exactly the events that happened, but going over it, talking to people, when I was interviewed or when I was at court, people telling me about the events – the view I had of it, that is not how it happened. In my view, and it might have been because I was intoxicated, because I was drunk, I will be honest and say that I cannot say to you 100% that those are the facts, but because I was with friends from university and also from what they told me that was the incident. There are bits that I remember clearly about that. There are bits that I remember although I do not remember the whole incident, it is all sort of hazy beginning to end but there are bits that I do remember from it.
- Q.** So the car was coming towards you and your friends at speed; do you remember what happened next?
- A.** Yes. The car came round the corner and we all noticed the car. There was a group of people around there. The car came around the corner and a number of people were annoyed at the way the car had come round. We were standing sort of at the side of the road, but I would not say in the middle of the road but again I cannot be clear exactly what happened. I don't think I sat on the bonnet of the car. I did not sit on it, but again I cannot be clear about that. I do remember being nudged by the car, or pushed by the car. I fell over, I got up and I confronted the driver. I don't remember striking the window with any instrument or with anything. We were at a student party where they give us plastic cups, so even if you have a drink there are no glass bottles, there are no weapons or anything in there, so there was nothing which I had. I did not intentionally mean to break the window, I was merely trying to get the attention of the driver and confront the driver and say 'What's going on?' Again I think that was more because I was under the influence of alcohol.
- Q.** So if you only had a plastic glass you must have struck the window with some force to smash it.

- A.** I must have done. I did not intentionally mean to break it. That was not my intention. I did not intentionally mean to injure the passenger.
- Q.** Would you accept that whilst you may have drunk some alcohol that does not excuse your actions?
- A.** Of course not, no. I am not trying to excuse my actions at all.
- Q.** I would like to refer back to page 97 of C1 please; a third of the way down the page you were asked:

“Would it be fair to say that as a consequence of your actions you have brought the profession into disrepute?”

You accept that, yes. Do you accept that your actions in terms of the conviction and the cautions, and also the failure to declare this, bring the profession into disrepute in terms of the General Optical Council?

- A.** Of course. My actions are something which were out of character for me, and it is not the way I would normally conduct myself. I do see myself as somebody who is professional and a responsible person, and by not declaring this and by those actions I have made a bad impression for the profession and I have learned my lessons from that. I have learned the mistakes that I have made and I have seen the effect that it has had on me.
- Q.** You referred in your evidence to the letter of 14 April last year at page 100, and by this time you had finally faced up to the fact that you had not disclosed the conviction and cautions, and you were trying to be open with the Council and lay everything on the table, as it were. Why is it that you did not disclose the fact that you received a warning for possession of cannabis, given that you had received the adult warning?
- A.** I honestly did not think the other one was something which I needed to disclose. I did not think it was any sort of conviction, any sort of caution it was something which you are charged with. I was just under the impression from what I was told at the time it was like ‘A receipt of the incident which happened today, it is not on your record, it is nothing you need to say anything about’. I did not think it was something which I needed to declare. I was not arrested for it or anything; I was just told ‘We are giving you a warning at this time’.
- Q.** If you look back at page 77 in the same bundle, C1, this is a form completed in 2009. Question 1 asks:

“Please provide full details of any convictions or cautions ... or any investigations in relation to a criminal offence.”

Of course we know at this time you did not declare those, and it seems that then you were not being entirely honest were you, as you were in April 2010? Perhaps you thought ‘This one is quite recent; better not tell them about that one’?

- A.** No, not at all.

**Ms Sanderson:** Can I just interpose at this stage? None of the allegations was of a failure to declare the warning. The facts of the warning may amount to misconduct, that is correct, but there is no failure to declare that in a letter as to any other allegation.

**Mr Whalley:** The reason I am asking is because Mr Khalid is saying in April 2010 he had faced it and disclosed matters, but that is not the case because he had not disclosed the warning.

**Ms Sanderson:** I don't know if there is any particular requirement that you have to take Mr Khalid to?

**Mr Whalley:** The form in 2009 –

**Ms Sanderson:** Of course it had not happened then.

**Mr Whalley:** It had not happened then, but if it had been the case that form in my submission would require it –

**Ms Sanderson:** With respect, had it been the case that it had already happened is rather a speculative matter. 'Had it been the case', then all sorts of things can happen, I would have thought.

**Ms Hallendorff:** Perhaps we can have some legal advice on this?

**Mr Watson:** It is absolutely right to say that there is no allegation of separate, as it were, misconduct relating to a failure to declare the adult reprimand or caution at paragraph 4, the adult formal warning; so that allegation of failure to declare, or that aspect of the criticism, is not one that on the face of the charge as it sits now is open to the Council to pursue. Respectfully, although it is a difficult piece of gymnastics, it is a question that the Council is entitled to raise with the Registrant, which goes only to his credibility in relation to the rest of his evidence, and that is as far as the question goes.

**Ms Sanderson:** Yes, I simply wanted to make sure that was clear at this stage so there wasn't any failure being put, but of course my learned friend is entitled to ask questions about how he felt about that matter.

**Mr Watson:** His general evidence is indicating explanations for other matters which he is entitled to be tested on by reference to this, but it is not a criticism.

**Ms Sanderson:** No, indeed; right.

**Mr Watson:** That is right, and I would say that this goes to the issue of the facts, and I think Mr Khalid has answered the question once.

**Ms Hallendorff:** Thank you.

**Mr Whalley:** That was my final question, Madam.

**Ms Hallendorff:** Thank you very much. Before I turn to the Panel did you wish to say something Ms Sanderson?

**Ms Sanderson:** Yes, there were just a couple of questions in re-examination.

**Mr Watson:** It is probably more convenient for the re-examination to go first, before the Panel, then.

#### **Re-examined by MS SANDERSON**

**Q.** One of the points you made, Mr Khalid, is that this was out of character, and you talked about having learned lessons since then. Do you feel that you are the same person now that you were then?

**A.** No, not at all. At that time, then –

**Mr Watson:** What is the time, when you say “then”?

**Ms Sanderson:** In relation to these matters of smoking cannabis and failing to declare convictions.

**A.** At that time I was a lot younger than I am now. I have matured since then; I have become a lot more responsible, and seen the effects that this can have on my career and on my future. That has evolved in me a huge, huge amount. By having all of this ongoing it has made me think about my life, it has made me think about my past, what I have done; the mistakes I have made. It has given me a completely different view on this, where it has just completely changed my whole outlook on this.

**Q.** Thank you; that is the only question in re-examination.

#### **Questions from the Committee**

**Ms Hallendorff:** Thank you; if I can turn to the Panel, there is one question I would like to ask you Mr Khalid. On page 102 in the second paragraph down, you say that you had applied to the PCT and you were keen to see the CRB form “As I was aware the CRB form would show any conviction or penalty” and you decided at that point to declare it. I construed from that, or I had the impression, that you had decided to declare it because you felt it was wrong, not because you felt a CRB check might find it out?

**A.** No, because I knew it was wrong. I knew that it was something that I had to put forward, something which I had to bring out. At that time it came to the point where I knew I needed to bring it out. Yes, I was aware that it would be on the CRB check, but it was not the fact that ‘I have the CRB check, now I have to tell them’, it was always on my mind that I had to come forward. It was something which I knew before all of this happened, before I went to the PCT, I had made a decision to tell the PCT about it.

**Q.** Thank you. Mrs Huka?

**Mrs Huka:** Mr Khalid, I am going back to 2006 and the incident then with what was put in the boot of your car. How well did you know this friend of yours?

**A.** I knew him quite well, I grew up with him. When I first moved to Southall I was about 10 years old and I lived on the same street as him until I was about 16, so we lived close to each other for about six years. Following from that I knew him for some years, so I had known him for about 10 years or so.

**Q.** Would it be fair then to say that you knew that he dabbled in some form of cannabis?

**A.** He was a friend of mine in the sense that I knew him. I knew he would hang around in circles that dealt with cannabis, or he might smoke it, but I considered him as a friend, and he knew I was not somebody who was involved in this stuff. When I saw him he always would ask me not about anything other than 'How are the A-levels going, how is the university going?'. I did not have any other relationship, other than that, in the sense where I would know his activities or anything.

**Q.** So you did not know him very well then, did you?

**A.** I would say he was a friend; he was someone that I knew. I had known him for a long time but he was not a close friend of mine. I would not call him a close friend.

**Q.** Do you know what happened to him after this incident with you?

**A.** No. I saw him once after that, and his response was 'I don't really care what trouble I have got you into', so I haven't really seen him. I do not speak to him, I have cut my relations with him.

**Q.** Just to go back to 2001, was he one of the young people that hung around in this deserted building or whatever it was?

**A.** No, he was not. No.

**Dr Stevenson:** Thank you. Mr Khalid, may I ask you about the fear you had about all this upon your career prospects?

**A.** Yes.

**Q.** Going back to university, how did it affect your studies? Obviously you got your degree okay – what degree did you get?

**A.** I did Optometry and got a 2:2.

**Q.** And then you did your pre-reg?

**A.** Yes.

**Q.** And that was successful?

**A.** That is correct.

**Q.** And then the difficulty was at that point that you were registered but you needed to apply for your number?

**A.** Yes.

**Q.** Was that the first thing you had to do when you registered?

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

- Q.** To get your number, and that is when the problems came to the surface?  
**A.** Yes.
- Q.** How has that affected your thinking on your prospects? You are working – did you say as an Optical Assistant?  
**A.** An Optical Assistant, yes.
- Q.** Essentially what does that involve?  
**A.** That is tasks such as dispensing, helping customer collections, just general booking appointment diaries and working on the shop floor basis. I also have other roles, including I check the jobs which are sent from the labs to make sure they are made correctly, to make sure that they are quality-checked, things like re-makes, so if a patient is struggling with their spectacles they come to me first before they are sent for a re-test with an optometrist or anything like that, I do the check beforehand. However it is more general duties within the store, banking duties, I have been trained as a laser counsellor and occasionally do laser counselling, but because they see how much of my impact on the shop floor, because of my knowledge, they keep me on the shop floor to help and assist with the daily dispensing and contact lens tasks.
- Q.** But you don't have the interaction that you would have obviously if you were doing it professionally?  
**A.** Of course not, no. I have seen the effect that it has had on my career; I have always loved the clinical side of optometry, I have always wanted to further myself, go on to do some sort of further education and further studies in it, and my actions have stopped me from doing all of that – from progressing as an optometrist, from doing extra training, just furthering myself as an optometrist.
- Q.** Going back to your difficult time of applying for your number, etc., you seemed to get on with your supervisor okay?  
**A.** Yes.
- Q.** Were the problems discussed at any point prior to your applying -  
**A.** It had not been discussed with him at any time before, but I got on very well with him. I still see him. Until this day I still visit him.
- Q.** You are aware that you had come to the point of registration and that would be the point where obviously information would need to be given?  
**A.** Yes. I knew I had made a mistake. I just did not want to lose everything that I had. I did not want to put my whole future, my whole career on that, and I could see that I had done that. I had made serious mistakes. I had made a serious mistake and made it a lot worse for me than what it would have been or could have been. I am not sure, but I have brought this upon myself, and I have seen the impact that it has had on my whole life in general.
- Q.** Have you discussed that situation with your parents, at this difficult time?  
**A.** Yes. I have spoken to my parents about it. My parents were again very, very disappointed. My mum was more concerned; because of my being the oldest

son she was very concerned. My dad is working part-time at the moment, he has worked 15 or 16 hour days for about 40 years seven days a week, and he is not in the best of shape now. He works two or three days a week and I help out with costs at home as best that I can. My little brother is at university, my little sister is at university, my two older sisters are married and they do not live with us. I have seen the impact it has had on my parents just in general, just the way they are.

**Q.** Thank you.

**Mr Baldwin:** I have a couple of questions that are related to attitude. If you turn to page 103 in the longest paragraph on that page it says:

“However my actions that day are classed unfortunately in the way they are.”

Would you like to explain what you mean by “unfortunately”?

**A.** Yes; what I am trying to say there is that I have been charged or it is classed as actual bodily harm or assault, whereas I was not intentionally wanting to assault anybody. I did not intentionally want to hit anybody or hurt anybody, and unfortunately that is the way it has been, so without any insight into that, without any extra information, if somebody was to see that on my record it could be that I have had a fight with somebody, I have intentionally assaulted somebody, but that is not who I am. That is not my character, and it is not something which I would ever condone.

**Q.** Has it never occurred to you that the consequences of your actions could result in even more serious charges and a custodial sentence in any event on these charges?

**A.** Yes. I have thought about that, that it could have been a lot worse. At the time I was worried about them, anything about them. I did not have any indication as to how serious it was or as to what effect it could have or what I could be sentenced with. I was in the dark about it, and I knew this was serious. I never diluted it down to think that because I had not directly hit somebody I had not assaulted anybody; I knew the seriousness of what I had done, and I am ashamed to this day about that, about my actions. Whether I had been drinking or not it is not right for anybody to act like that, and it is certainly not in my character to be like that at all.

**Q.** Secondly, to use your phrase ‘diluting’ the seriousness of it, you said just now that a number of people were annoyed at the way the car came around.

**A.** Yes.

**Q.** But that is not something which your Counsel put forward at all is it? In fact turning to page 23, when your defence was put forward in mitigation it was on the basis that you quite wrongly assumed that this car, which was clearly going about its business quite innocently, had driven towards him, so your own Counsel put it forward on an entirely different basis to what you have put before us.

**A.** When I had this case I was represented by a duty solicitor that was given to me at the police station. I explained the situation, but I had very little dealings with him in explaining my version of events. I was asked to go and see him; I gave the best I could at that time. I was just asked to turn up to court at that time. I met Mr Brar for the first time on that morning; I did not have a chance to speak with him. I went straight into the courtroom, and it was dealt with in the way it was dealt with on the day.

**Q.** Thank you.

**Professor Hirji:** Good afternoon Mr Khalid.

**A.** Good afternoon.

**Q.** Can I ask you to turn to page 40 of bundle C1? "One blue plastic bag containing a large quantity of herbal cannabis" – can you read that?

**A.** Yes.

**Q.** What was the quantity?

**A.** It was a small carrier bag – I am not precisely sure how much cannabis it was, but when they showed me the evidence when I was interviewed it was a carrier bag sort of a quarter full.

**Q.** Who was driving the car at the time?

**A.** I was driving the car.

**Q.** So you were driving the car – and was it your car?

**A.** Yes.

**Q.** May I ask you to turn to page 46? This is from the police, and it says here:

"A small piece of cannabis was found in a cigarette pack in the driver's door pocket" –

In your car, that you were driving, so it was not just the chap who dropped a bag to you and you said 'Put it in my boot'. Here is some evidence that there was something in the car door, in your car, that you were driving. How do you explain that?

**A.** There were a few of us in the car. I don't know exactly how that would have got there. There were two or three of us, and one of my friends with us was somebody who I know smokes cannabis and is a regular cannabis user.

**Q.** It is interesting that it is in the driver's part and you were the driver and you owned the car.

**A.** Yes.

**Q.** But you do not know how it got there. This 'loose' friend of yours on page 47 that you described to my colleague as someone you used to know; have you named him before?

**A.** Yes.

- Q.** And he would not admit it, would not take any responsibility?  
**A.** I did ask him. I did go to him and I asked him, but he would not.
- Q.** Can I ask you to turn to the other bundle, R1, and look at page 2? I would like to go back to this question of you not being at all aware – in the second-last paragraph you said to this person, Mr Pierre I presume, that:
- “- a quantity of cannabis was found in the boot of his car that now he tells me he was not aware of.”
- I find it difficult to reconcile that with the fact of this cannabis in the door as well.
- A.** I can see that. At that time I did not know that the bag that was put in my car, in the boot, that I had cannabis in the car. That is the honest truth. The cannabis that was in the front of the car, that was in a cigarette box that one of my friends had passed me and I put in the side of the car, that I had previously put in the side of the car. I was not aware of the fact that there was cannabis in my car.
- Q.** Turning to page 14 of R1, you said to my colleague Dr Stevenson that you practise effectively as an optical adviser?  
**A.** Yes.
- Q.** In the front of the practice?  
**A.** Yes.
- Q.** Administrative work including dispensing?  
**A.** Yes.
- Q.** Perhaps doing some data collection fields and that sort of stuff?  
**A.** Yes.
- Q.** This person Vicky Roberts has known you for a year; how has she formed a view about your excellence as an optometrist?  
**A.** Because I have always wanted to stay in ops, I have always wanted to continue as an optometrist, I often sit with Vicky and I talk to her about patients that she has seen, about things that I have read. She has seen me and has tested – not tested me but has spoken with me or debated with me about knowledge that I have and asked me questions on this, so she has seen how I can [answer], and she has seen the way that I deal with patients. She has seen how I come across, the way that I -
- Q.** Yes, I accept all that, but how has she seen you working as an optometrist? She has never seen you working as an optometrist.  
**A.** No, she has not seen me working as an optometrist.
- Q.** So in her statement “Haroon is an excellent optometrist” seems to be a little bit much; either you are an optometrist and she has seen you working as an optometrist and can make a comment on it, or she has not.

**A.** She has not seen me. Perhaps she meant to say I would make a great optometrist or that in her view that I would be a good optometrist.

**Q.** This is in the current tense, “Haroon is an excellent optometrist”.

**A.** Yes.

**Q.** So that means to say that you are an optometrist in this practice, and I am concerned. On one hand you say you are not an optometrist, you do not have an optometry role because you can't, by definition.

**A.** Yes.

**Q.** On the other hand we have a reference that says you are; where this person has only known you during the period of time that you spent within the practice.

**A.** Yes; she has only known me for one year. She has not seen me practise as an optometrist. Maybe she is relying on the basis of the knowledge that she has heard from me, or how she has heard I would deal with patients. Sometimes we discuss patients, like for example with CET points or something we would discuss a patient's management or something, and she has made that conclusion from there.

**Q.** Thank you.

**Ms Hallendorff:** There is one further question I would like to ask you, Mr Khalid; I was under the impression that when students are going through their course they receive a letter – and I cannot be certain whether this is under the GOC or your AOP, or in this case the ABDO – on the role and duties and code of conduct of optometrists. I am led to believe that that included the filling-in of the form and the necessity to fill it in honestly and correctly. Is that not the case?

**A.** I do not recall that. I just remember having the forms sent to me and filling them in.

**Q.** I would have to defer to my optometric colleagues, but I was under the impression that this was a standard part of the training of an optometrist. May I turn to my colleagues?

**Professor Hirji:** It is my understanding that the curriculum for undergraduates does include legal and professional aspects, and that would be the kind of issue that might be covered – perhaps not in depth, but certainly the obligations would be covered. Would you concur with that?

**Dr Stevenson:** Certainly, with the one that I am aware of in Glasgow that would be the case. I assume it is the case in all departments.

**Ms Hallendorff:** So you are not aware of any that?

**A.** No, not at all.

**Q.** Thank you; Mrs Huka, you want to ask a further question?

**Mrs Huka:** Yes, please; Mr Khalid, in 2006 when this incident happened did you say that in fact the police stopped you in the car park because a flat tyre?

**A.** Yes.

**Q.** In that case, can I please ask you to look at page 46 of C1? I am looking in particular at paragraph 3 where it says "The vehicle smelled strongly of cannabis and was searched". The police seem to be saying that they searched the car because of the smell of cannabis, but nothing about the flat tyre.

**A.** It was stopped, because we were in the hospital car park when we were stopped. There was a police vehicle parked in the car park, and as we came around the corner the police vehicle initially stopped me and said –

**Mr Watson:** May I ask you to pause? It may be that I have not taken complete note of the evidence, but I recall the time that he indicated he was stopped in the car park when he gave evidence was related to October 2009. I do not recall him giving evidence that he was stopped in a car park in the 2006 incident.

**Mrs Huka:** Right.

**A.** This was on the way to the hospital, in 2006.

**Q.** Okay, in that case thank you.

**Ms Hallendorff:** May I turn then to our Legal Adviser?

**Mr Watson:** I do not have any questions.

**Ms Hallendorff:** Thank you. Ms Sanderson, is there anything which you wish to follow up?

#### **Re-examined by MS SANDERSON**

**Q.** One short matter, in relation to whether or not you had a lecture at university telling you what to say on the forms, is it right that you read what the forms said that you were submitting?

**A.** Yes.

**Q.** And you did not declare it?

**A.** Yes.

**Q.** And you accept that you should have declared it?

**A.** Of course, yes.

**Q.** Thank you.

**Ms Hallendorff:** Mr Whalley?

#### **Further cross-examined by MR WHALLEY**

**Q.** If I may just come back on the last question from Mrs Huka following on from Professor Hirji's questions. Page 46: if I may I would just like to ask about the section where it says "The vehicle smelled strongly of cannabis and was searched". That would suggest that somebody in the vehicle was smoking cannabis. Do you know who that was?

**A.** Like I said before, my friend who was in the car does smoke cannabis and had been smoking cannabis.

**Q.** So at the time he was in your car he smoked cannabis?

**A.** He had smoked cannabis in my car, yes.

**Q.** Thank you.

**Ms Hallendorff:** Thank you; before we release the defendant may we ask for your official legal advice?

**Mr Watson:** I think at this stage, firstly we do not know whether any further evidence will be called, and secondly, I think you need to hear submissions from the advocates before I tell you my advice.

**Ms Hallendorff:** Thank you; does anyone have any further questions for Mr Khalid? [No further questions] In that case Mr Khalid you may stand down.

[The witness stood down]

Ms Sanderson, do you intend to call any further evidence?

**Ms Sanderson:** No, I do not intend to call any further evidence. You have the bundle R1 and I would like to refer to various aspects of that in submissions, but I do not intend to take you through individual references now.

**Ms Hallendorff:** Thank you. Mr Whalley, do you have any evidence further that you wish to call?

**Mr Whalley:** No, thank you Madam.

**Ms Hallendorff:** Thank you, then we go on to the question of impairment. It is the Council first, so Mr Whalley would you like to start?

**Mr Watson:** Just looking at the clock, maybe a short break?

**Ms Hallendorff:** Yes, perhaps this is a natural break.

**Mr Watson:** It is entirely up to you as to how long the Council would need to address you.

**Mr Whalley:** I can say I will be fairly brief.

**Ms Hallendorff:** It can be anything from 10 minutes to an hour-and-a-half.

**Mr Whalley:** No, five or 10 minutes Madam.

**Ms Sanderson:** It might be helpful, obviously depending on when you want to break for lunch Madam, to hear both sets of submissions before breaking. That would make lunch a little later, though.

**Ms Hallendorff:** Right. I am not trying to pressurise you; will your evidence on impairment be lengthy?

**Ms Sanderson:** My submissions will be longer than my learned friend's, yes.

**Ms Hallendorff:** Let's press on now for a short while. We will carry on, thank you.

**Mr Whalley:** Thank you, Madam. You must now consider this by reading the cautions and conviction on his conduct and Mr Khalid's practice is impaired of course under the present-day test.

First, I would turn to the cautions, of which there were three: a reprimand, a caution and the adult warning. We know the differences between those, and you are fully aware of the difference between a warning and a caution. The dates of course are important because the first one is July 2001, the second matter July 2006, and finally October 2009. That suggests use of cannabis over a period of time, and it is clearly not a one-off indiscretion. Indeed Mr Khalid admitted as much in his evidence. He accepted that he has used cannabis five or six times during that period. He did say that on two of the occasions as alleged he was not using cannabis; he was found in possession of it but not at the time using it, so that may suggest that there are other occasions outside of those that he was using cannabis, but clearly it is not a one-off incident, and that of course will affect your decision on impairment.

In terms of his use of that cannabis you will also of course assess his credibility in the evidence that he gave. In my submission there were uncertainties in his evidence, firstly about when he last used cannabis. He first of all said it was the second year of university, in 2006, then realised of course that there was the warning in 2009 and changed his evidence that it was in fact 2009, and that will again affect your decision on impairment and his credibility on that particular issue.

Also going to his credibility is the explanation he gave in relation to matters that he was asked about lastly by Professor Hirji and Mrs Huka. On page 46 he was asked about the finding of the cannabis and his evidence was that it was in the boot of the vehicle, but clearly there was some other cannabis on the driver's side of the vehicle and he was driving that vehicle. Again the evidence suggests that the vehicle smelled of cannabis, so somebody in the vehicle was smoking cannabis. Again I ask you to assess his credibility on that point, and of course his credibility on that point does indeed go to impairment in my submission.

The conviction is the more serious of the criminal matters before you, and indeed it is the conviction in these matters which were brought before the

courts. That demonstrates that he is capable of violent behaviour, and in my submission alcohol cannot excuse that type of behaviour, and of course Mr Khalid has accepted that. You have to assess his evidence in terms of his alcohol use at that time, but it is a very serious matter and that is reflected in the sentencing remarks by the Recorder. I referred to them in my opening submissions and I will not do so again, but I do ask you to take them into account. You will of course be familiar with these matters, and will assess that conviction in the scheme of his experience.

The other matters are concerning his failure to disclose the conviction, cautions and reprimand. What I say is that this raises questions over his trustworthiness and his integrity. Mr Khalid accepts that his actions were dishonest; in the documents and also in the evidence he accepted that, but again I have to ask you to consider and assess his evidence in terms of how honest and forthcoming he was in declaring all matters of a criminal nature.

Looking at the letter of 14 April 2010, there was no mention of the warning in 2009. That is not a separate allegation of course, and we have that point, but I say it does go to impairment because his evidence was that he was facing up to all these matters and disclosing everything, but clearly he was not because the other warning was not mentioned in that letter.

I have one case I wish to refer to, if I can ask for copies to be distributed. I have handed a copy to my learned friend.

**Ms Hallendorff:** We will call this document C2. [*Document C2 circulated*]

**Mr Whalley:** This is a case from the Administrative Court from April of this year, and it is a recent case of the *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council and Paula Grant* [2011] EWHC 927 (Admin). Essentially this was an appeal by the Council for Healthcare Regulatory Excellence against a decision of the NMC not to find Ms Grant impaired. It is a long decision, Madam, and if I can just refer you to some passages which I will not read out because you can consider those matters in your own time.

Essentially what this case says is that Committees in regulatory bodies and healthcare regulatory bodies should consider public policy issues as well as clinical practice when considering this issue of impairment.

Referring first of all to paragraphs 74 and 76, as I say Madam I do not propose to read them out but they are paragraphs which I would ask you to consider when you retire; then paragraphs 89 through to 94; and finally 101 which summarises in some ways the determination of Mrs Justice Cox. At 101 she says:

“The Committee should therefore have asked themselves not only whether the Registrant continues to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be

undermined by finding impairment of fitness to practise was not made in the circumstances of this case.”

This in many ways reinforces the matters of public policy with which you will no doubt be familiar. I will simply hand it up because it is a very helpful summary of those factors, and of course is a recent case, and I would say is very relevant to this case and your findings of impairment.

In my submission when considering those policy and public interest matters set out in that case, and looking at conduct in this case, you can properly find that Mr Khalid’s fitness to practise is impaired. Of course the allegations concern the Registrant’s conduct with his professional clinical practice, but in my submission the public interest factors of public confidence in the profession and declaring and maintaining proper standards of conduct and behaviour should be uppermost in your considerations on impairment.

Madam that is all I wish to say at this stage, unless of course you have any questions for me.

**Ms Hallendorff:** Thank you. Does anybody have any questions? [*No questions*] Thank you. Ms Sanderson?

**Ms Sanderson:** Thank you. My submission is that you should not find Mr Khalid impaired in this case, and I base my submission primarily on the difference between Mr Khalid as he appears in the papers before you dated from 2001 to the adult formal warning in 2009, and how he appears before you today, the evidence he has given, and the references that you have before you.

In terms of the law, and as my learned friend has just referred to can I just make a brief point about the case of *Grant*, and then I will refer you also briefly to the case of *Azzam v GMC* [2008] EWHC 2711 (Admin) which you no doubt have well in mind. First, I would make the point that all decisions turn on their facts, and this case itself was before the High Court because in relation to findings against the midwife Nurse Grant the Panel had entirely failed to consider the public interest in that case and matters that were raised by my learned friend. No doubt of course that is something they should consider, and that is why the case came up for appeal, and that is why the appeal was allowed.

There were some very serious allegations made against Nurse Grant on that occasion relating to the death of newborn babies and also whether or not babies had been born alive, and she had failed to ascertain these matters. She had left people to cope in difficult circumstances and she had criticised the parents of those children for being upset, effectively, at the time. The manner in which she was determined to have acted was extremely discourteous, and also incompetent in the manner in which she dealt with the matters.

Crucially, however, the case came before the High Court because there had been a failure to consider on the part of the Panel the public interest, and of

course you will consider that I have no doubt, and on the part of the Council there is no doubt that you will consider that. You will be advised I would imagine in due course, and that is something you have to consider; so although some points are set out in the case of Nurse Grant, I would submit that this does not particularly take you much further in relation to the facts of this case.

In terms of any other case law referred to, you will no doubt have in mind the decision in the case of *Azzam*, which summarises the matters which you have to consider in relation to impairment. They are set out at paragraphs 40 to 42 and there are some points raised from the case of *GMC v Meadow* [2006] EWCA Civ 1390, and also the case of *Cohen v GMC* [2009] QB 462. I simply draw these matters to your attention, firstly in the case of *Meadow* when the Master of the Rolls said at paragraph 32:

“In short, the purpose of FTP proceedings is not to punish the practitioner for past misdoings, but to protect the public against the acts and omissions of those who are not fit to practise. The FTP first looks forward not back. However, in order to form a view as to the fitness of a person to practise today, it is evident it will have to take into account of the way in which the person concerned has acted or failed to act in the past.”

That is an important point on which I base my submissions, because the fitness to practise first looks forward and not back.

There is another matter which is from the judgment in *Cohen* from Mr Justice Silver, where he said:

“It must be highly relevant in determining a doctor’s fitness to practise is impaired that first, his or her conduct which led to the charge is easily remediable, second that it has been remedied, and third that it is highly unlikely to be repeated.”

In my submissions I will touch on those matters – whether the conduct is remediable, whether it has been remedied, and whether it is likely to be repeated.

If I can first turn to the convictions and the cautions in this case, because those are the first allegations which appear on your list, and I would ask you to look at the circumstances of each one individually. Firstly, in relation to that reprimand he was a young man –

**Mr Watson:** Just pause; is it accepted that that is either a conviction or a caution?

**Ms Sanderson:** No, sorry, I am talking about the misconduct; I am talking about the particular matters involving the police. I thought it helpful –

**Mr Watson:** It is, I just did not want the Panel or you to confuse yourself. You indicated that you were going to deal firstly with the matters of conviction and

caution, and then you referred to the reprimand which is not in those categories.

**Ms Sanderson:** I am sorry if that is confusing, I simply wanted to refer to the matters concerning the police which you might consider separately to the failure to declare, and maybe that is a helpful way to consider matters.

In terms of the reprimand no doubt you will have in mind what is often said to be the greatest mitigating factor, which is that of youth. Although we are not at the stage just of mitigation yet that is something which you will consider in terms of how serious the matter was. He was shortly thereafter picked up by his father it seems and taken down to the police station, and I would submit that that is something you may want to take into account in determining how you treat that reprimand. He said his father was far more annoyed with him and gave him more of a telling-off than the police did at the time, so it is evident he had some sort of helpful support from his family at that stage, and that was taken into account.

As regards the reprimand, that was spent at the time, and that is also a matter which you will take into account.

Considering the caution that he received and which came in 2006, in the summer before he was sentenced for the convictions to which I will turn shortly, the circumstances again at the time were that it seems he accepts his behaviour was then unacceptable. He accepts that he went to the police station and admitted matters. It seems he had legal advice, and whilst he does not accept that he knew about the cannabis in the boot of the car it seems that he spoke to the solicitor there and then, the solicitor advised him 'You should admit to this and accept a caution', and that is indeed what he did.

In terms of the amount of cannabis that was in the car at the time, that was something which was raised by the Panel. You have heard evidence that it was a matter of £100-worth, which I would submit in the grand scheme of matters falls very much at the bottom of the level, and that is perhaps why a caution was deemed to be appropriate rather than a prosecution. Of course the police take into account those matters when deciding how to dispose of matters, so it is something that they considered and no doubt acted upon. He accepts again that he admitted it there and then at the police station.

Turning to the convictions, the matters which I submit you should take into account are the seriousness of those convictions, the sentence that he was given, and the sentencing comments of the judge at the time, Mr Recorder Alan Jenkins. The role that alcohol played in that offence does not provide him with a defence but it does provide some sort of explanation, and also the remorse that he has shown.

As regards whether he accepts the nature of that assault conviction it was said in evidence, and I hope you would accept, that he never intended to hurt anybody, and that is certainly not the situation that arises from the papers –

that he deliberately set out to hurt someone. It may be to the non-trained legal eye that somebody who does not intend to hurt anyone should not be convicted of assault; whether it is recognised by the criminal courts and by the law, if a person is reckless as to whether or not that assault occurred, whether or not any injury was incurred, that would amount to a finding of guilt, and that would amount to guilt of the offence.

If I can turn back briefly to the sentencing remarks, you will find them and I will start at page 23. That sets out on his behalf where the judge was invited to give credit for a plea of guilty and his previous good character was recognised, and also his youth, him then being 20 years old at the time of the offence. It speaks of him consuming alcohol as something he does not normally do, and also the fact that he expressed genuine remorse for his conduct. That was in reference at F down the page to a pre-sentence report which had obviously been prepared by Probation on that occasion, and he impressed upon the author of that report as to the remorse that he felt.

Turning on to the judge's sentencing comments - you will find those at page 30. It has been drawn to your attention by my learned friend on behalf of the Council that the judge considered custody in this case. It may be suggested that that makes the offence more serious, but I would submit that the judge was bound to consider all disposals available to him, but the important feature is that he did not deem custody to be appropriate because the matter was less serious than that. A judge must always give the least serious sentence that he can give that matters.

He goes on to say that he bears in mind that Mr Khalid has never been in the courts before, and also that he has shown contrition, that he has shown remorse. He had never been there before and it was being treated as a complete one-off. He said that his first thoughts were of sentencing him to imprisonment, but it was due to Mr Khalid's personal features and his personal mitigation that that sentence was not imposed. He goes on to say:

"I have come to this conclusion because of everything else that works with this it would be inappropriate and excessive to sentence you to a sentence of imprisonment."

So therefore you must not consider this offence on the basis that it merited imprisonment; the judge expressly says that imprisonment would have been excessive, so he must have found that the offence was less serious than that.

He then goes on to say that he will make an unpaid work requirement of 50 hours, and that was to be part of a community order. As you may be aware, Madam, the ascending rank of sentences in this case would first have been one of fine, secondly a community order, then a suspended sentence, and then an immediate sentence of imprisonment, so you may find that this was at the bottom of the range of sentences which could have been imposed; and secondly, the amount of unpaid work that was given. You may be aware that the courts have that disposal of between 40 hours and 300 hours, so indeed 50 hours falls at the bottom of the spectrum. I would ask you to take that into

account, because you will no doubt in considering whether or not the conviction must result in a finding of impairment consider that this offence was very much at the bottom of the scale of those matters which come before the court. Indeed, I would submit that due to the Recorder stepping away from the issue of custody, he found that there were exceptional circumstances in this case.

Finally, turning to the formal warning in this case, again that is not a conviction or a caution and I should follow the Legal Adviser's helpful legal advice and draw that to your attention now. It is not something that the police thought sufficient to prosecute at the time, it is not something that they thought had to be dealt with by way of arrest, and you will be aware of the different disposals open to the police in matters of this kind. At the bottom of page 51 you will see that those matters were taken into account, at paragraph 7 where it says:

"The suspect does not fall into any of the special categories that require him to be arrested" -

and not that cannabis was being smoked in public view, that he had no more than one previous cannabis warning, he was not considered vulnerable, and it was not considered to be a local policing problem, and he was not smoking inside the vicinity of the premises.

Those are, as no doubt you will see, the matters that caused the police to take these offences more seriously, and he accepts that it was of course a criminal offence. He accepts that, and he has been I would submit contrite in accepting that cannabis smoking is not something that he should be involved in, and indeed is no longer involved in.

In terms of the next matters, which are those failures to declare his previous convictions, I would submit that he has given you a candid account today as to what he has done wrong – and indeed I would like to give you some insight in due course, but he has recognised what he has done wrong and he has spoken of his reasons for it. He has not sought effectively to 'get out' of what he did, but admit that he was scared and he felt that he was concerned that this would jeopardise his future, and he now recognises that that was wrong. He made what I would submit is one quite telling point when he said 'It is not for me to decide', he said 'It is for the GOC to decide whether or not I should be registered', and that is indeed the reason why we are here today. However, of course that is something that he now recognises should not have been within his gift; it should have been within your gift to decide whether or not he had to be dealt with in this fashion.

I would submit that he has learned his lessons, and you have heard about the evidence and the testimonial to which I drew your attention before from the Regional Manager at Optical Express, who said in that first reference at his first meeting that 'He came in and told me about matters'. That I would submit reflects the change in attitude upon Mr Khalid's part, that he now sees why those forms were wrong, why he should have declared those matters, and

indeed recognised in his interview when that took place at Specsavers – and you will find it at page 96 – that his reasons for doing that were wrong.

We now find ourselves from 2009 when that interview took place, which is at page 96, some almost two years later. It is in that two years that I submit sufficient matters had changed for you not to find Mr Khalid impaired today. Indeed it might have been a conclusion that you could have come to before when he was not the man as he has appeared before you today.

If I can turn now to some of the references that you have before you, I will just take you to a few points that you have within those, firstly as to his convictions and secondly as to his character, because those are both properly matters which you will consider in reaching your decision on impairment.

Page 1, which you have heard is from the Imam at the mosque where he worships. It is about half-way down the first paragraph where it says:

“He has been honest with me about the fact that he drank alcohol, which is strictly forbidden in the Muslim faith, on the night that he was arrested for his actions.”

That it would seem to the Imam at the mosque is perhaps one of the most concerning matters about this, his drinking of alcohol, which is strictly against his faith. I would submit you have heard compelling evidence about that and its effect upon Mr Khalid.

In terms of character it says at the bottom four lines:

“I can say knowing Mohammed that he is an honest incredible man. He feels ashamed of his actions and has made foolish decisions in the past which he sees have cost him greatly. I believe Mohammed has learnt from his actions.”

So that is I would submit somebody who knows him well and recognises the difference between Mr Khalid then and Mr Khalid today.

Turning to the next reference, where you have I would submit a helpful reference from the supervisor of his community service. In terms of the conviction he says in the third paragraph down:

“Mohammed has never come across as the type of individual who would normally be associated with such behaviour.”

That is relevant I would submit to the likelihood of this sort of behaviour being repeated.

He then goes on to speak about:

“After hearing the details of the events which led to the conviction I believe that was an isolated incident and somewhat unfortunate.”

This is from somebody, it must be recognised who regularly supervises people on community orders. That is their job, and this is somebody who comes into contact very often with young men and women, and indeed older men and women, who have found themselves before the criminal courts. I would submit it casts a very conspicuous look at Mr Khalid's character, and has some experience in this regard. In the last sentence on page 3 he refers to it, saying:

"I am inclined to believe Mohammed as I know him to be an honest and truthful individual."

Again this is somebody with some experience of young men and women who come through the criminal courts.

As regards page 4 and Optical Express, I have already made reference to the fact that Mr Khalid was open and honest in the first meeting. It refers to his character, and indeed at the bottom of that page it says:

"Mohammed is an honest and hard working and trustworthy individual", and it then goes on to say, "He would be an asset to our team".

Concerning again convictions and character at page 6 I draw your attention to the last paragraph, which refers to him being "an honest and loyal character". It may be worth remembering that this is somebody who worked with Mr Khalid back at the time of Specsavers before he left that job where he had been working as an optometrist, somebody who had some experience of him then. It refers to him then above that paragraph as being "honest, reliable and trustworthy".

At page 8 another person from Optical Express, an optometrist, talks about how he might be a future asset to Optical Express, and refers to him as "a man of great integrity", and that is somebody who works with him regularly.

You have already been referred once to page 10, which was the reference from Specsavers in Greenford, which refers to Mohammed being:

- "an honest and trustworthy individual and never failed to show this in the time that he was working with me in the practice, he was trusted with all aspects of the practice including handling money for banking and opening the store."

It then goes on to say that he appreciates and has seen the gravity and the seriousness of his decisions, and how it has affected him since the matter came to light.

The reference from Nitin Jain also refers to him being trustworthy, and being much more than an optical adviser, and working late shifts every day including the banking, so that is something he does for Optical Express.

Also a similar colleague, an optometrist from Optical Express, refers to him being:

“- patient and maintaining a positive mental outlook through the past stressful and difficult year”.

In terms of the point which was raised as to whether or not he was an excellent optometrist, it obviously conflicts with the evidence that Mr Khalid has not been practising as an optometrist, and I would submit that this is not something Mr Khalid can answer for. It is quite clear from his evidence that he has not been practising, but it may be in writing this reference Ms Roberts has wanted to take an optimistic view and express her regard to the Panel, so that is not something which should be held against Mr Khalid, because she obviously holds him in high regard. It would, I would submit be a shame to criticise her for being so optimistic on his behalf. I would submit that the evidence that Mr Khalid gave about not practising is supported by all those other references from Optical Express, who referred to what he is doing at the moment in terms of his job.

Another colleague, at page 15, refers to him being “hard working, honest and well-motivated”, and at the top of that page refers to the job that he undertakes on pre-screening duties, IOP measurements and fields examination, and then goes on to say contact lens teaching and care and explanations.

Finally, with regard to those matters which I have mentioned coming from the case of *Cohen*, whether conduct is remediable, whether it has been remedied, and whether it is likely to be repeated. The final document within this bundle I would submit is of great assistance to you here, and that is the report from Mervyn Barrett who met with Mr Khalid. This really goes to the heart of the submission I make that before you today is a different man to that which he has been before. I am not going to reiterate that, and you can read it yourselves, and I would ask you to read it.

It speaks as to his expertise, which is *Recruiting Safely*, a widely disseminated guide for employers, and also amongst his responsibilities he manages the Nacro helpline, which deals with employees and employers, and he is looked on as an authority on everything referring to criminal record checks, offence terminology, and importantly assessing risk. That is no doubt something that you will need to consider in your decision on impairment, and that is the risk: the risk to the public and the risk to the public interest, and indeed the risk to members of the public in his practice, which could be matters which are determinative of your findings.

What the report goes on to discuss is the relevance of the reprimand of the court and the conviction in terms of his work, also the pattern of offending, and that may be something that has concerned you in your discussions and questions asked today in listening to the evidence. The last sentence of that says:

“Effectively this means statistically Mr Khalid is no more likely to get into further trouble than those people who have never been in trouble. This is somebody with significant experience of this area who is looked on as an authority in terms of risk.”

Then it says:

“If you discount the cannabis warning from 2009 Mr Khalid has gone five years without offending.”

It goes on to say that he admits to making mistakes, and then in terms of the offender it takes into account where it says he is on firmer ground, discusses the offences that he has freely admitted to, and then it goes on to say:

“Research shows that whilst it takes younger men longer than young women, most young people stop offending when they enter their twenties and take on personal and social responsibilities.”

That is something you have heard in terms of Mr Khalid's evidence that he gave, that he has changed greatly in the last two years. He says he has matured, he recognised that these convictions had to come out, he feels very differently about matters now, and of course he has been in responsible employment. He is no longer a student, as he said.

At the top of page 18 it says “Changed circumstances”, and as I have said that is an important submission that I make. It goes on to say “He was never an offender in the conventional sense”, and this is not somebody who has set out to write a hagiography for Mr Khalid, it is somebody who had a great deal of experience in this regard. It says that he was never an offender in the conventional sense, although he is a bit more circumspect about the people with whom he associates. He says that:

“He comes from a good family with an interest bordering on passion for optometry.”

It goes on to say, and this you may find interesting, “Listening to him he clearly is of good character”. Now that conflicts with the normal meaning of that sentence, because of course somebody with convictions would not be thought of in the legal sense as being of good character, but it says “Having a record is not necessarily evidence of the contrary”, and that assessment of good character may be perhaps taken in a wider sense as to the sort of man that Mr Khalid is.

In summary, I would submit that this conduct was remedial, with the efforts that he has made now to declare those convictions and disassociate himself with the people with whom he previously associated. It has been remedied. He sought to change his life, and you have seen from the references in front of you that he is, I would submit, a different man. In terms of those declarations he has made the right declarations, he has done the right thing in

returning to new work now in Optical Express. He admitted on the first occasion he met them about those convictions and about this investigation.

You have heard how he profited from the community service he did, and that is another way I would submit in which his conduct has been remedied. In terms of the likelihood of repetition you have the report in front of from Mr Barrett of Nacro. You also have those current declarations that have been made and the reports of Optical Express.

I would submit he now understands completely what his obligations are. We have had the evidence that he gave, and you heard how he regrets those previous decisions. He is up-front about the way he made them and I would submit that shows, but also he accepted that he should not have done that because, as I have already raised the point, it was the role of the GOC to do that it was not his role. That is something which he sits in front of you today and fully recognises.

In terms of what has changed, you see the references, you can see the differences in his employment, and also I would submit you see a far more mature attitude towards things today. He recognises both the seriousness of the convictions and also the seriousness of his conduct thereafter, and that is something which is set out in a letter which was written previously to the GOC saying that he realises now that he made a serious situation far more serious. That is not the man you see before you today, and as I previously said the decision as to impairment is whether he is impaired here and now. For all those reasons I have set out I submit, finally in this case, that he is not.

**Ms Hallendorff:** Thank you.

**Mr Watson:** It is my duty therefore to offer advice to the Panel which they may either accept or reject, although if they reject my advice they should give reasons for doing so, in order that the parties identify what those reasons are.

The task that falls to the Panel now is to decide whether, on the basis of the facts found proved and indeed admitted, the practitioner is impaired. Impairment, as has been often said and as this experienced Committee is aware, is not a matter of the application of strict burden of proof, it is rather a matter of judgment for this committee, taking into account all the facts and matters which have been canvassed in evidence before you, and the findings of fact and the submissions that you have heard – including when I refer to evidence, not only the evidence of the practitioner Registrant himself, but also the testimonial bundles which you have before you.

Sometimes discrete issues of fact arise, or may arise, which do not appear on the face of the allegation, which arise out of the evidence which the Panel consider is unnecessary to resolve when approaching their consideration of impairment. If such issues do arise then the Panel should, particularly where those facts may be or are adverse to the Registrant, in those circumstances strictly apply both the burden of proof (which lies on the Council) and the standard of proof (which is that of probability), and should give heightened

examination to such uses of fact where they arise or have serious implications.

Turning to the question of conviction and caution and misconduct, which are the three grounds on which it is alleged that an impairment arises, the ground of caution of course arises out of paragraph 2 of the allegation. The conviction relates to the conviction in paragraph 3, (i) and (ii) of the allegation, and the misconduct relates to paragraphs 4-10.

In respect of both conviction and caution, the Council have proved the fact of that conviction and the fact of that caution. This Committee is entitled to and should look at the surrounding circumstances as well as the inherent nature of the conviction and caution in each instance.

The Committee is entitled to take into account the sentencing remarks of the judge in the Crown Court, for example, and are entitled to take into account the sentence that was indeed passed. However, the Panel must be mindful that its task in taking those into account is quite different from the function that was being performed by the judge at the Crown Court. This Panel has to consider the question of impairment in the context of the role that it has to judge whether a practitioner may be, or is, impaired in the context of the public interest and the standards required to remain on the Register, or to remain on the Register without qualification or condition. I will turn back to those matters in a moment.

Misconduct firstly, if I can deal with the matters that apply to misconduct: misconduct is an ordinary word, and indeed you have found that misconduct did arise out of the relevant paragraphs of the allegation. In the context of impairment misconduct of course refers to the falling-short of the standards of conduct, behaviour and propriety which are expected of a professional in this profession. The Code of Conduct to which the Council referred in opening identifies two relevant aspects of that Code, first, the duty to be honest and trustworthy; and secondly, the duty to ensure that your conduct, whether or not connected to your professional practice, does not damage either public confidence in you or in your profession.

It has been emphasised that misconduct in the context of, and misconduct which may give rise to, a finding of impairment does not mean any breach of duty or any falling-short of those standards. It connotes a serious falling-short; indeed it connotes a departure which by its nature and seriousness indicates that the Registrant's fitness to practise is impaired. It has been referred to as being similar, and indeed no lower in terms of a threshold, to the concept of serious professional misconduct, which it has replaced.

There is a significant difference between the old concept of serious professional misconduct and the new concept of impairment in relation to when it is judged. In the context of impairment - the test that you must apply - the concept of impairment is a test which must be applied now. It is a test or a question which asks whether the Registrant's current fitness to practise is impaired, and whilst it is both necessary and appropriate to have regard to the

facts found proven in relation to past conduct, and it is necessary and appropriate to gauge fitness to practise today by reference to past conduct. It is now and to the future that the Committee must direct the focus of that question.

Whether a registrant's fitness to practise should be regarded as being impaired must take into account all the facets of the public interest which are set out in the General Optical Council's guidance, which is a public document, and can be referred to. To remind you, the concept of impairment takes into account both the need to protect the individual patient, the collective need to maintain confidence in the profession, and the need to declare and uphold proper standards of competence and performance.

The purpose of these proceedings is also an important factor to bear in mind when judging impairment. The purpose and function of these proceedings is not to punish registrants for errors of failings but to protect the public from those who are not fit to practise or to be retained on the Register, either at all or without qualification or restriction.

In this case you are invited by the Council to look at both past misconduct and past convictions. There are some cases in which the Panel may be entitled to conclude that fitness to practise is currently impaired, because the Committee judges that the nature and gravity of the past conduct is such that it violates the standards and rules of the profession in a way which must lead to a conclusion of impairment, if proper standards of conduct and proper public confidence in the maintenance of those standards are both to be upheld.

The Committee may also conclude that a practitioner is impaired today because, despite an acknowledgement or an admission that may have been made, the Committee finds that there is no insight or that remediation, insofar as it is possible, has not in fact occurred or sufficiently occurred. However, having put those matters in the pot, the Committee must equally have regard to the fact that there are cases where past incidents of misconduct and past convictions, which may at the time have signified or warranted a finding of impairment, can no longer be said to warrant that finding. That is particularly so if the Committee finds that a registrant has both acknowledged failings, has acquired proper insight, and taken prompt and effective steps insofar as he is able to remedy the matters of past impairment.

It follows therefore that the Committee will weigh up both the nature and gravity of the past conduct and convictions and caution, the context of those events, the Registrant's behaviour since it occurred, the Registrant's own level of insight, and the degree to which you judge he has addressed or remedied those matters in the past. You will have particular regard to the risk of repetition either now or in the future. It has been urged upon you that there is a contrast to be drawn in this case between the younger man who committed these acts of misjudgment, error and criminality, and the older more mature man who comes before you today. It is a matter entirely for this Committee to weigh up, but in doing so you are entitled to take full account of

the testimonial evidence before you, and the evidence within that bundle, which are fully admissible matters to put into the balance.

Those are the matters which I seek to put before you by way of advice, unless either advocate wishes me to correct or amplify any aspect of my advice?

**Mr Whalley:** No, thank you.

**Ms Sanderson:** No, thank you.

**Ms Hallendorff:** Thank you very much. In that case we will adjourn now. It is 1.30, so can I ask you to be here again by 2.30? I cannot tell you exactly how long it will be. Thank you.

*[Hearing adjourned at 13.34]*

*[Hearing resumed at 15.38]*

**Ms Hallendorff:** Thank you.

#### **Findings regarding impairment**

1. In reaching its determination the Committee has again accepted and taken into account the advice of the Legal Advisor, and has had regard to the facts found in its determination at stage 1 of the proceedings. It has also heard and considered the evidence adduced at this stage and the submissions made on behalf of the Council and on behalf of the Registrant.
2. The matters relating to his conviction and the caution and those concerning misconduct took place over a period essentially between 2006 and 2009.
3. The incident in 2001 would not in itself have any relevant impact on his competence to practise. He was 16 years of age at the time and matter was at that time a one off episode.
4. The incidents of January 2006, the summer of 2006 and September 2009 were relevant and also serious. In relation to his conviction for assault and damage he told the Committee that his actions were not excusable but he sought to explain them not only by reference to having drunk alcohol but also because he claimed the car had been driven in a provocative way. That suggestion had not been advanced in mitigation by his Council in the Crown Court.
5. In relation to his explanation of the circumstances in which the caution for possession of cannabis arose in 2006, the Committee was satisfied that the Registrant's account which conflicted with that of the police records, was not complete and

frank. In common with other parts of his evidence he claimed that his occasion arose because his friend's action caused him to become unwittingly involved in carrying a bag containing cannabis in the boot of his car. However, the Committee noted that the police account referred to a strong smell of cannabis in the car and that their search found not only a bag hidden in the compartment in the boot but also a small quantity of cannabis in the cigarette box in the driver's door pocket. The Registrant's comment on this when questioned by the Committee was evasive. It is an important feature that the Registrant was both the driver and owner. It is also an important feature that he had allowed his friends, one of whom was smoking cannabis, to travel with him and that this incident occurred only five days before he was due to be sentenced at the Crown Court for the assault matter.

6. The Registrant claims that his cannabis usage was occasional and that it ended in 2006. Yet he was again cautioned in October 2009 for the same behaviour. The Committee was not satisfied that his usage was as occasional as he claimed in evidence.
7. His persistent failure to complete the declarations properly showed a repeated lack of integrity. Although he told the Committee that it was he who eventually made a conscious decision to declare all these matters the fact remains that this occurred at a time when any application to the local PCT to join their NHS Performers' list would have required a CRB check which, as he well knew, would have revealed this history in any event.
8. In short, the Committee, having listened with care to his evidence were not satisfied that his explanations were credible. Nor were the Committee satisfied that he has demonstrated sufficient insight.
9. In the judgment of this Committee the history of offending, in particular the violent behaviour and the lack of integrity shown on repeated occasions in making false declarations to the GOC, and the lack of insight which his evidence has shown, are all factors which satisfy them that his fitness to practise is impaired. Such a finding is in any event necessary in order to declare and uphold proper standards of conduct in the profession and to maintain public confidence.
10. The Committee finds the fitness of Mohammed Khalid to practise as an optometrist is impaired.

Thank you.

**Mr Watson:** As I listened to you reading, in the first paragraph may I look over your shoulder to see the text. In the first paragraph line 4 you say 'it has also considered and heard and considered the evidence adduced at *this*.' I think the word probably 'stage' is missing, just listening to you.

**Ms Hallendorff:** Yes.

**Mr Watson:** Just to correct it.

**Ms Hallendorff:** Thank you.

**Mr Watson:** I think we now proceed to -.

**Ms Hallendorff:** We now proceed to sanctions.

**Mr Watson:** Unless either party needs time to consider your determination.

**Mr Whalley:** I don't need more time.

**Ms Sanderson:** No thank you

**Ms Hallendorff:** We then turn to sanctions and I turn to Mr Whalley.

**Mr Whalley:** Thank you, Madam. Firstly I commend to you the GOC Guidance relating to sanctions. There is a helpful guidance document. Forgive me for not checking whether it is in the bundle.

**Mr Watson:** It's not in the Legislation bundle. I know that from previous experience. There was a copy in the Red Book but please be aware that the copy in the Red Book from recollection is not the most up-to-date edition which is 31 December 2009. The copy in the Red Book - if you tell me when you've reached the right page - the edition is dated what - December 2009?

**Ms Hallendorff:** 2009. I'm not sure.

**Mr Watson:** I don't think that are any differences between either of the previous edition or the current edition save for guidance as to the burden of proof. I think that was the only change from recollection. But the addition which is currently available on the website describes itself as revised 31 December 2010.

**Ms Sanderson:** Mine appears to be revised 18 January 2011.

**Ms Hallendorff:** Yes, that's right.

**Mr Watson:** Then I'm out-of-date then. I don't know where the revision is.

**Mr Whalley:** In any event, Madam, I think the learned Legal Adviser is right in saying that the only amendment to that guidance is in relation to burden of proof. In terms of the sanctions stage, the sanctions are the same and the

guidance in relation to what sanction should be imposed and considerations about the sanctions are the same. So perhaps if you could consider the most up-to-date version which is January 2011. I can certainly make sure copies are available for all the Committee members when you do indeed retire.

The available sanctions are set out in Section 13F(3)(a)-(c) and Section 13H of the Opticians Act 1989. They are a power to impose a financial penalty, conditions of practice up to three years, suspension of up to twelve months, and finally, erasure. In terms of those what I would say, with regard to this case, is that in my submission conditions are not appropriate given the nature of the allegations and of course your findings. Conditions are usually reserved for cases involving clinical practice incompetence, and of course this is not such a case.

Those sanctions should be considered in ascending order starting at the bottom working your way up, until you've reached the appropriate sanction for this case. The purpose of those sanctions is to protect patients and the wider public interest, and of course is not to punish Mr Khalid. When viewing those sanctions, you should also consider the principle of proportionality balancing the interest of the public with those of Mr Khalid. Of course, the seriousness of the allegations as reflected in your decision is a relevant factor when considering what a proportionate sanction would be.

In terms of any aggravating factors, I would say that these are the aggravating factors in this case. First, the fact of course is that there are four criminal matters. In your decision you have stated that the first one in 2001 would not necessarily fall under the same category as the others. I completely accept that and of course 2006/2009 is a more relevant period, but then indeed there are still then three criminal matters. One of those is a conviction for an offence of violence, a serious offence, and they are committed over a period of time 2006 to 2009, based on your decision.

Allegations 5 through to 10 are allegations of dishonest actions on behalf of Mr Khalid, which is an aggravating factor I would say. Finally, from your decision you have found a lack of insight on behalf of Mr Khalid based on his evidence today, and that again I say is a relevant factor when considering what sanctions to impose. Madam, that's all I wish to say in relation to sanctions unless you have any questions for me. [*No questions*]

**Ms Hallendorff:** Thank you. Miss Sanderson.

**Ms Sanderson:** Thank you. If I might advance a few matters of mitigation in relation to Mr Khalid. Turning first to the convictions and other criminal matters to which you have had regard today. No doubt they are serious matters in the eyes of the Panel and you've taken that into account, Madam, in terms of your finding that Mr Khalid is impaired at this stage.

As regards that first matter, as you've already heard, I've submitted that that reprimand was while he was a very young man and that's something that you've considered already. In terms of his two convictions which brought him

before the Crown Court, it's notable, I would submit in mitigation, that he pleaded guilty to those offences. In relation to the reprimand, he obviously accepts his guilt there and then. In relation to the caution which came later, he accepted a caution from the police. In relation to that adult formal warning, again he accepted the facts of his conduct as were alleged.

I would submit he's a man who has always sought to deal with certainly the police in an up-front and sensible manner. Indeed, that was something which was noted at the time, for example, in relation to his caution when he was detained. It's notable looking at the custody record, which you have for that matter. I might just take a moment. It's at page 35 in your bundle, C1. It might seem a small point but in my submission it reflects well on the character of Mr Khalid in terms of his acceptance of these matters. It simply refers to

“At 15.40 hours the person detained was brought into custody. ... He's calm and compliant and thereafter he made no requests at this time. Later he asked to speak to a lawyer.”

He dealt with the police sensibly, and accepted the caution he was offered at that time. So I would submit some mitigation in terms of his acceptance along the way of those criminal matters. He has not sought to deny matters and fight trials in court in relation to those. That I submit is mitigation.

In terms of the two convictions you have before you, although again, it's said by my learned friend those are serious matters, I would ask you, Madam, to take into account the full spectrum of the range of criminal conduct that falls before the courts. Although they're matters of concern, both the sentence for the criminal damage and also for the assault occasioning actual bodily harm, fell at the very lower end of the sentence that might have been imposed. Although that may not have impacted upon your decision in relation to impairment, no doubt you considered it but it's not something you found availed the Registrant at that stage. It maybe that you consider it a matter of mitigation that with the options open to the court and up to five years custody, which could have been imposed for the assault occasioning actual bodily harm, the sentence was at the very lower end of the range.

In terms of his failures to declare matters up to date, I would submit that those were fully accepted by him in evidence, also at the time when he made those declarations to the PCT and also to his employers. I submit that in relation to those matters he has shown significant insight as to why they need to be declared as he sat there and gave evidence to you as to the difference in the way he understands now the requirement to declare them. That has, I would submit, resounded through the evidence since 2009 when those matters came to a head and he found himself firstly dealing with the PCT and then also with his employers. He has been upfront about those convictions ever since that date, I would submit. That's a matter which is of some mitigation I would say.

The reasons why he didn't declare them, I submit he's also been candid about those. He hasn't said that he didn't think he had been convicted or anything of

that nature. He said he was scared and it was effectively an act of desperation, completely. You found dishonest action. He admitted it was dishonest but bringing the circumstances to bear on that, as you've heard about at the time, his panic, his upset, his not wanting to let his family down but at the same time knowing there was something he needed to do. As he gave evidence, he described how he knew it would come out at some point and he was simply trying to defer that day. That's not something to be commended, it's something to be disapproved of but it has perhaps allowed you to understand how he got himself into that situation. Even if the panel has no sympathy with it, it allows you to understand how he came to be there. When he gave evidence about it spiralling out of control, I submit again that was a candid account of how things continued and he persuaded himself that 'if I haven't said it now I won't say it this year'. This is going to happen at some point but deferring that day. As I said, it's not appropriate behaviour, it's behaviour you've found to be substantial enough to find impairment of course, and he accepts that. I hope you would have some regard as to how he got himself into that situation in the first place. It was one wrong act, one dishonest act that he then found himself compounding. That's something that's regrettable, but as I submit I hope it's in some way something the Panel can not understand but get to grips with how he found himself there.

You see, as I said, a difference now I submit in his conduct and in terms of his employers, that failure to notify has been rectified, not only through his contact with his employers but also through the process of these proceedings and this hearing as he sits before you now. That's given him more time to reflect on matters.

In terms of mitigation regards his skills and his career, I would take you back briefly to the reference bundle because there are significant matters written about him by those who've worked with him and worked above him, which I would submit really reflect his passion for optometry and as I say, his dedication to that profession since the age of 16 as you heard earlier.

Looking through those references I don't comment again on the first or the second because they were matters more to character, but as regards his career, the reference from Tom Thorne, the Regional Manager, I suggest really sets out his particular skills and his particular talents in this field. One of the points he makes in the first paragraph is that,

"Mohammed showed great enthusiasm and willingness to pursue his career in optics and work in an optometric practice to further himself in optics and keep up to date with his knowledge and skills. I felt he would be a great future optometrist and can I say that I was impressed with his honesty about his situation."

It goes on to talk about his responsibilities at work and then says

"His attitude towards customers and patients is excellent, he shows great professionalism."

It goes on to talk about a scheme of a mystery shopper, and then refers to a patient's letter to the store manager praising his service and help during their visit to the store which shows a high level of commitment. It is notable, I would suggest, that he has kept up-to-date with his knowledge and skills as is set out in the first paragraph. Due to the fact that he couldn't work as an optometrist he hasn't gone and done something else, he hasn't sought different work, he has a passion for what he does and that's kept him, as I say, in Optical Express this time as an assistant.

The reference from Specsavers at page 6, again I've taken you through different parts of it before but I just remind you of what it says there about showing

“considerable commitment, enthusiasm and dedication to performing his functions and enjoyed working as an optometrist.”

It goes on to say he had good patient rapport. In fact, quite a few of the patients he saw ask about him even now.

Again, referring to another reference on page 8 which is that of the Senior Optometry Development Manager; so somebody in a position of some significance who states in her fourth paragraph,

“I'm involved in recruitment of optometrists for Optical Express and Mohammed would be a future asset for Optical Express and I'd be happy to provide further information.”

So that's somebody who, knowing what they know about him and having seen what they've seen, still would wish to employ him. The Specsavers Greenford reference I've already taken your attention to but it refers to him showing great enthusiasm in learning new things and improving his skills, saying they have no doubt he would make a great optometrist. It goes on to refer to his pre-registration here and the fact

“he's extremely delighted and eager to get started as an optometrist, eager to tackle new challenges, positive attitude towards his work and willingness to improve himself. He quickly became a vital member of our team and showed exceptional skill as a pre-reg optometrist.”

That's not somebody who continues to work with Mr Khalid, that's somebody who has wanted to volunteer that information for this Panel that he showed exceptional skill during that year.

On the second page of that reference on page 11 the point is made by Elaine Lac that in her opinion, given a second chance, Mohammed would make a credible optometrist and would be a value to any optical practice. I'll come back to that point shortly.

The glowing reference on page 12 makes reference to Mr Khalid being “the best member of staff in the team since I've been Store Manager.” You might

think that's quite high praise. It goes on in the second paragraph to describe his skills about checking spectacles sales and verifying the sale has been done correctly. They go on to say

“Any new members of staff that join the team or the company I get them to spend their training time with Mohammed so he can go through all the computer systems and product knowledge with them along with the whole customer service journey.”

So somebody there who is impressed enough with Mr Khalid that they ask their trainees to go to him to learn what they need to know. On page 13 they go further and say,

“If he was a full time optometrist I can safely say he will become the very best in the business”,

and then goes on to talk about the mistakes he made but then says

“has the key qualities to be successful. He shows hunger, desire, excellent patient care and above all the passion and commitment to always give 100% whilst at work into his profession as an optometrist.”

It goes on to say

“when he leaves to be an optometrist he would leave a massive gaping hole in the team.”

This reference on page 14 refers to the point I raised earlier in terms of Mr Khalid wanting to maintain his knowledge, wanting to maintain his skills, wanting to stay in touch with optics. It says in the last sentence of the second paragraph,

“He's always eager to further his knowledge getting involved in some aspects of laser vision correction and also maintaining his CET points.”

This is a man who's not been able to practise as an optometrist since July 2009 when he left his employment at Specsavers. You might think it's a matter of some mitigation and shows some dedication on his part that he has for the last two years been concerned in getting involved with different matters, learn new matters and also maintain his CET points.

The final professional reference is from an optometrist again at Shaftesbury Avenue Optical Express which refers to him as being honest and well motivated. Also it says

“The times I've worked with him I've observed the highest of standards from him. This shows me he's a true professional.”

So that's what I submit to you in terms of his professional abilities and the respect he commands amongst those that work with him; work with him, work

above him and including his regional manager, those who've worked with him before knowing all about things came out and how he finally admitted those convictions about which you've heard today.

In terms of his personal circumstances, you've heard that he's now 26 years old. He lives at home with his family. He's told you how his father is working less and he also tries to support them. He instructs me that he pays whatever he can at the end of the month to help his mum out. He has two younger siblings who live at home. As you've heard, he's the eldest son and throughout his career in terms of his progress through school and university and then through work until today he's no doubt made them very proud. He's also made them very upset by what's been brought upon them with these convictions and the reasons he comes before the court today. You've heard about the attitude of his parents to that but he is a man I submit with good characteristics as well as those that you've found he lacks. He plays an active part as you've heard in his local mosque; he is dedicated to the community programmes there, taking time to work with schools or work with the summer fair or work during Ramadan to help clear things up in the mosque afterwards. That's something which I would submit he evidently enjoys and gains a lot from. He's a man who's close to those around him and close to his community leader. That's the Imam for who you saw the reference on the first page.

In terms of sanctions for today; if I can turn to that issue. It's said on behalf of the Council that conditions in this case wouldn't be appropriate and that may be your finding. It maybe that you consider that there could be some conditions put in place; whether that would be to report his convictions to all employers, to report the identity of his employers to the GMC. If you were concerned that he's spent two years not practising you could of course place a condition of supervision upon him. Those might be matters which you consider reflect the gravity of this case.

However, if you're not persuaded that conditions will be sufficient and if you were to go on to consider the other sanction of suspension there are some matters which I draw to your attention. Of course, it's something that he'd regret but it's something that he would certainly have to live with. You've heard from his dedication to date he's not a man who wants to leave optics. He spent two years working in that assistant role in Optical Express in order to remain in contact with the profession. Looking at the indicative sanctions that I have in front of me, the question is on that case does the seriousness of the case require temporary removal from the Register, and then will it be sufficient.

If you were to find temporary removal was a possibility I'd invite you to look down that particular list of matters which might be appropriate factors to consider when considering sanction. A serious instance of misconduct where a lesser sanction is not sufficient: if you were to find, as you have done in terms of your reasons regarding impairment that this is a serious instance of misconduct you might find indeed that a lesser sanction was not appropriate. I would submit that what you've heard is not fundamentally incompatible with continuing to be a registered professional.

You've heard about the matters concerning drugs and I'd suggest from his conduct today and the evidence he's given you that that's not something which persists in his life. Indeed to help you in reaching any decision on that you, have the report from Mervyn Barrett, the Head of Resettlement Information. He lists his concerns and describes the conversations that he's had with Mr Khalid and says that it means statistically, he's no more likely to get into further trouble than those people who've never been in trouble. He goes on to say that Mr Khalid admits making mistakes but should you choose to believe him, there's mitigation. He then goes on to say, as I've already raised this, arguably that Mr Khalid now aged 26 has moved on. That would be something which I would submit is not fundamentally incompatible with continuing to be a registered professional.

As regards his professional behaviour, I've already been through that and the various references as set in front of you. In terms of failures to declare, whilst you considered there might be difficulties as to insight as regards those convictions and his behaviour then, I would submit that there can be no questions as to his insight regarding the requirement to declare his convictions. This has been a matter now of some two years that they've been in front of the appropriate bodies. Since 2009, he recognises fundamentally what has needed to change and he's adjusted his behaviour accordingly. Without taking you back to it, no doubt you'll have in mind the reference from the Regional Manager which refers, and I emphasise this point, to the very first time that he met Mr Khalid he went through his convictions in front of him. I submit he does show insight into that. When he spoke to you about it being a matter for the GOC but not a matter for him, again that shows insight into the function of his regulatory body and the gravity and seriousness of these proceedings.

In terms of repetition of behaviour, of course, you have seen in front of you the same behaviour over a number of years in relation to cannabis. It's of note that this is now some time since that last occurred and changes have occurred in Mr Khalid's life. You've heard about that; how these proceedings have had an impact on him, how he's learnt to understand the problems with his behaviour and also that's set out again in the report of Mr Barrett about how his behaviour has changed and about how he's grown up. I would submit that there's no risk in this case of repetition of behaviour and also that there hasn't been since 2009.

I've already addressed you as to insight. Whilst matters have been raised as regards insight into convictions, you've heard, as I said, he accepted all of those matters. He pleaded guilty in the Crown Court, he undertook his sentence and he gained from that I would submit some insight into his behaviour. We see that in the reference from the Community Service Unpaid Work Supervisor at page 3.

It maybe if you were to impose a period of suspension, turning to this last matter, you might consider a Direction Review Hearing which would turn to his current state of work, what he was doing and whether there had been any

difficulties in the mean time. In considering that matter of suspension, I would again draw to your attention that he hasn't been practising to date and he has had already two years to reflect on his position, and the fact that he's not able to practise as an optometrist.

Turning to the other potential sanction; one of erasure. I would submit if you reach the stage of considering that, there are significant reasons why you would feel able to step back from that in the case of Mr Khalid. I've been through a number of them and I don't seek to repeat them *ad nauseum* in this case, but it's partly the acceptance of his behaviour, it's the willingness to change, it's the statement you see from Nacro. I really would ask you to take into account that this is a person who is experienced and an authority on considering people with previous convictions. No doubt, you are of course all ideally placed to consider that also, but I would submit it's useful information for you. It is also useful to recognise that not all persons with previous convictions have to face the end of their professional development. There may be good reasons not to bring it to an end. That was the point I said I'd return to earlier which was the issue of the second chance.

I would submit there are good reasons in this case to give Mr Khalid a second chance. It's there at page 11 which is referred to by his Practice Manager at Specsavers. One of the points which is set out in the Indicative Sanctions is two quotations from previous cases. There's one at page 25 which emphasises the point in *Bolton v The Law Society* [1994] 1 WLR 512, that the reputation of the profession is more important than the fortunes of an individual member and that membership of a profession brings many benefits, but that's part of the price. That's undoubtedly true, but turning to the previous page, that's page 24 of my addition, which refers to *Bijl v GMC* (Privy Council Appeal No. 78 of 2000), however, it emphasised that a committee should not feel it necessary to remove

“an otherwise competent and useful registrant who presents no danger to the public in order to satisfy demand for blame and punishment.”

That's what I submit you can see from these references that Mr Khalid is. He is an otherwise competent and useful registrant, someone who is highly respected and someone who has fought hard over the years and worked hard over the years to obtain the position he is in now where he has those qualifications. You heard about how he came to want to be an optometrist when he was 16, then went on to chose his A-Levels accordingly, went on to study at university making his parents proud as you've heard as the oldest son in the family.

It maybe that you consider this is a more serious matter than might be met by conditions. Maybe you feel there would be no workable conditions but were you to come on to the issue of suspension I would invite you to stop there. There are many good things that people have to say about Mr Khalid. He has made errors in the past, he's tried to rectify those and he's succeeded in many ways in rectifying those in terms of his declaration. There have of course been lapses of judgment throughout his youth. Sitting here today as a

26-year old man, I would suggest you can see a change in him, you can read about a change in him and I would ask you to let that change continue and for him to continue to prove himself as the credible and respected optometrist that so many people say he would be.

Those are my submissions.

**Ms Hallendorff:** Thank you.

**Mr Watson:** The advice that I tender to the Committee for the Committee to accept or to reject with reasons is that you should approach this stage of proceedings by way of your decision on sanction bearing in mind two overarching guiding principles, first, the purpose of these proceedings and secondly the principle of proportionality. The underlying purpose and function of these proceedings, as I remind you, is not to punish registrants for errors or misdoings, but to protect the public from those who are not fit to practise or not fit to practise without conditions or restrictions on their registration.

You have reached a finding of impairment and now in judging what sanction is appropriate, you first have regard to that fundamental purpose, and secondly to the principle of proportionality. In electing what is the appropriate sanction and what is the proportionate sanction, you should approach matters by looking at the least available sanction. Indeed, you should bear in mind that having found the Registrant's fitness to practise impaired, it is for you to judge firstly whether any sanction should be imposed at all. If a sanction is to be imposed, you should work up as it were the ascending order of options and decide what is the appropriate or proportionate penalty. Proportionality means that you balance the interests of the public and the public interest, the two not necessarily being the same, against the Registrant's own interests.

You also put into the equation the seriousness of the allegations found proven. You will take into account everything you know about the Registrant, the testimonial evidence that needs to be revisited now in the context of sanction. You will bear in mind, first, the nature of the surrounding circumstances to the convictions which you have already considered and indeed the nature and context of the misconduct which is alleged. I remind you that the charge in relation to misconduct, although it may have been put in different ways, is in this case an allegation that he failed to declare on each of these occasions. It is in that respect that misconduct is alleged. I don't propose, unless encouraged, to offer you any other detailed advice at this stage. You will simply weigh all those matters in your mind.

**Ms Hallendorff:** Thank you. Do you have anything further you wish to say?

**Mr Whalley:** No, thank you, Madam.

**Ms Hallendorff:** In that case we will clear the room and we will consider the sanction stage.

*[Hearing adjourned at 16.15]*

*[Hearing resumed at 17.26]*

**Ms Hallendorff:** Thank you.

### **Sanctions**

1. In reaching its determination the Committee has again accepted and taken into account the advice of the Legal Adviser, and has regard to the facts found in the determinations at stages 1 and 2 of the proceedings. It has also taken into account the submissions made by both parties and has reviewed the testimonials and mitigating factors advanced.
2. It has in particular born in mind the public interest factors set out in the Indicative Sanctions Guidance and the principles of proportionality.
3. The Committee has considered that a sanction is required. Neither a financial penalty nor conditions would be appropriate.
4. The Committee consider that in this case suspension was the appropriate sanction. The Committee has paid particular regard to the factors outlined in pages 23 to 25 of the Guidance. It considers that the seriousness of these matters, already outlined in the proceeding determination stage, warrants this action. It has also weighed carefully whether the elements of lack of insight shown by the Registrant are serious and entrenched or whether they do in themselves pose a risk to the public. On the other hand, it has taken account of the testimonial evidence, including that emanating from his employers which indicate that there has been no difficulties and no suggestion of any lack of competence. On the contrary, he has shown ability. It has also born in mind the fact that the Registrant's failure to make the required declarations came to light in early 2009 and that since that time, and because of those revelations, he has worked only under supervision and without being able to join any PCT's Performers' List.
5. These factors lead the Committee to conclude that a period of suspension of five months is the appropriate and proportionate sanction in this case. The same factors also lead the Committee to conclude that in the circumstances of this particular case no review hearing is required.

Thank you.

*[Hearing concluded at 17.28]*