

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

**GENERAL OPTICAL COUNCIL
AND
OLIVER WRIGHT STEVENS (01-7678)**

Monday, 12 September 2011

THIRD REVIEW HEARING

THIRD REVIEW HEARING: OLIVER WRIGHT STEVENS (01-7678)

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Committee Members: Mr Peter North (Lay) (Chair)
Professor Helga Drummond (Lay)
Dr Vicki Harris (Lay)
Mr Paul Reeves (Optometrist)
Professor Stephen Taylor (Optometrist)

Legal Adviser: Mr Adam Hiddleston

Hearings Manager: Mr David Henley BEM

For the GOC: Ms Kate Steele

For the Registrant: Mr Jamas Hodiala
Ms Fiona Mitchell

[The Hearing commenced at 09.53]

Mr North: Good morning. I am Peter North. I am a lay member of the hearings Panel and I have been elected by the Committee to chair today's Review Hearing. The Committee today is made up of two optometrists and three lay members. I will ask the members to introduce themselves and the capacity in which they sit. *[Introductions]*

To my right is Mr Adam Hiddleston, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee to ensure that the proceedings are conducted in accordance with the Rules of procedure so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate.

In the event that any matter arises during the course of the Committee's deliberations upon which the Committee seeks advice, the parties will be invited to return to hear the matter which the Committee has raised and the advice to the Committee. Where advice on any issue is not accepted by the Committee, this will be indicated in the course of its decision on that issue.

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

The remaining persons sitting in the hearing room rather than in the public and press areas are members of the respective legal teams.

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

Before we continue, I'll just speak into the record the fact that we have a bundle from the respondent and three documents - C1, C2 and C3 – from the Council. Thank you.

Are there any health matters likely to be involved in the discussion today Mr Hodivala?

Mr Hodivala: No sir, I think you've been informed by your Legal Adviser as to the reason for Mr Stevens' non-attendance today.

Mr North: I think it would be helpful if we had that on the public record.

Mr Hodivala: Redacted.

Mr North: Redacted.

Mr Hodivala: Thank you very much, yes.

Mr North: Thank you. Do we have any applications before you open your case?

[There were no applications]

Mr North: Thank you. So can we proceed to the substantive case?

Ms Steele: We can indeed. Can I just for clarity ascertain which of the two Council's documents that were handed up this morning have been labelled 'C2' and 'C3'?

Mr North: Yes, I can assist you on that, I think: the letter dated 1 September 2011 has been marked as C2, and the letter dated 29 March 2011 is C3.

Ms Steele: I'm grateful, thank you. As members of the Committee will be aware, this is a Review Hearing in connection with the Registrant. The Registrant is a registered optometrist based in South Wales, and he has been registered with the Council, I understand, since 1967. This case first came to the attention of the Fitness to Practise Committee in November 2007 when the Committee met to consider allegations of impaired fitness to practise in respect of the Registrant and those are here for your ease of reference at page 1 of your bundle C1.

In summary, you will have seen from your pre-reading that the allegation is one of impaired fitness to practise on the basis of deficient professional performance, and that it relates to Mr Steven's record-keeping between March 2001 and January 2005, and that the allegations cover deficiencies in respect of the records of some 20 separate patients.

You will have seen from page 2 of bundle C1 that the Fitness to Practise Committee heard the case in November 2007, and determined that there was a consistent pattern of the Registrant failing to record sufficient details in the records that were before the Committee in evidence. In particular the Committee found that he had failed to record sufficient information in respect of the reasons why the patients were attending for those appointments, their presenting symptoms and their clinical history. The Committee also found a lack of detailed records in respect of external and intraocular examinations, visual field testing and intraocular pressure testing.

The Committee on that occasion went on to make a finding of deficient professional performance and impaired fitness to practise. The Committee did note an improvement in Mr Steven's record-keeping between 2005 and the date of the Hearing in 2007, but identified a consistent failing that the Committee felt was such that patient care was potentially compromised.

The Committee therefore went on to make an order for conditional registration and those conditions appear at pages 3 and 4 of your bundle C1. So in summary they covered tutorial sessions, continued education and training and the appointment of an authorised supervisor to mentor and monitor Mr Steven's record-keeping on a twice-monthly basis between March and December 2008.

You will have seen that there have been previous Review Hearings in respect of this case. On review on 21 May 2009 those conditions were reviewed, and on that occasion a report presented by the two supervisors acting during the period between the original Hearing and that review in 2009. The Committee confined itself quite properly to considering the adequacy of Mr Stevens' record-keeping on that occasion, and they found that a number of the conditions had been complied with. However, they noted a lack of tenacity in the way in which the Registrant had sought to comply with one of the conditions, condition 2, which related to attendance on professional courses, and determined that he had failed to comply fully with that particular condition.

Overall the Committee also found that although there was some improvement in his record-keeping, he needed to continue to improve that area of his practice and that on that basis his fitness to practise still remained impaired. The Committee, you will see from the Determination in the bundle C1, also felt that the Registrant was unlikely to maintain the reflective standard of record-keeping required without further restriction on his practice, and a further

period of conditions was imposed. I don't invite you to turn them up now, but just for your reference those further conditions appear from page 7 of your bundle C1.

Sir, at the most recent Review Hearing, which took place on 1 October 2010, the Committee found Mr Stevens to be in breach of one of the conditions, condition 1, which required him to appoint a supervisor to monitor his record-keeping. You will have seen from your reading that the Committee concluded that ultimately the responsibility for that fell to Mr Stevens, and that he had therefore failed to comply with that condition. The Committee also felt on that occasion that Mr Stevens had failed to fully remedy his deficiencies in respect of record keeping and that his fitness to practise therefore remained impaired and again further conditions were imposed and those appear on page 9 and over the page on page 10 of your bundle C1.

Sir, at this Hearing, this Committee is required to again review those conditions, the conditions that appear at page 9 and 10 of your bundle, and determine on the basis of the information before you and any evidence you hear in the submissions from both parties whether Mr Stevens continues to be impaired on the basis of his record keeping, and on the basis of the decisions outlined at previous Hearings. Your powers today, as you will be aware, appear under Section 13F(13) of the Act, and permit the Committee, having made a finding in respect of impairment, to impose a number of orders, those being in summary the orders available to the original Committee and the other Committees reviewing this case. Of course, if you make a finding that there is no current impairment, an appropriate course of action is to revoke the current conditions that are imposed.

Sir, I propose if I may to briefly deal with the issue of compliance in respect of each of the conditions on the basis of the documents that you have before you. You may also be aware that Mr Hailes, the current supervisor who has been monitoring Mr Stevens' record keeping, is present today and is available to give evidence if that is of assistance to the Committee. You will have seen the documents that have been presented and prepared by Mr Hailes in advance of this Hearing, and the Committee may feel that it would be assisted by a little more detail in respect of the records that Mr Hailes has reviewed, and for that reason the Council has made Mr Hailes available today and is proposing to call him later on this morning, but I am very much in your hands as to whether the Committee would find that of assistance.

Perhaps I can deal first with the more straightforward matters of compliance. Perhaps if members of the Committee could keep one finger in page 9 where the conditions are set out: in respect of condition 1, which requires the Registrant to provide details of an authorised supervisor and for that supervisor to be agreed with the General Optical Council, I would invite you to turn to page 12 of bundle C1 where you will find a letter from the AOP on behalf of Mr Stevens to the General Optical Council dated 8 November 2010

proposing Mr John Hailes as a supervisor in accordance with condition 1. Overleaf on page 13 you will see a letter in response from the Council dated 9 November 2010, confirming that the Council agrees to Mr Hailes taking on the role of authorised supervisor for Mr Stevens. On that basis on behalf of the Council I would invite you to find that condition 1 has indeed been complied with.

Condition 2 relates to the process to be adopted in respect of the supervision. If I can invite you to turn to page 18 of your bundle C1 you will see there that you have a letter from Mr Hailes dated 14 May 2011 confirming that since November 2010 he has received a list of patients from Mr Stevens which he has reviewed and from which he has selected randomly ten per cent of the records to be sent to him - copies of the records to be sent to him - for his consideration, that he has reviewed those records and that he has responded back to Mr Stevens with his comments in respect of those records. Sir, in respect of the second part of condition 2, provision of a report, you have on page 18 the report that was provided by Mr Stevens to the Council and you have seen the subsequent correspondence that has taken place between the Council and Mr Hailes in order to elicit further information and you've heard that he's available here to give evidence today. Perhaps if I may I might deal with compliance with the other aspects of the conditions briefly first before we return to Mr Hailes' evidence.

In respect of condition 3, which requires the Registrant to notify the General Optical Council of the hours when his practice is open, if I can invite you to turn to page 11 of the bundle C1, you will see a letter from the AOP on behalf of Mr Stevens dated 11 October 2010 confirming the practice hours in respect of Mr Stevens' practice at that time, and on behalf of the Council I would invite you to find that that is in accordance with condition 3.

Condition 4 relates to two unannounced visits that shall take place by the appointed supervisor at Mr Stevens' practice. If I can invite you to consider the letter which was handed out – I believe it's the first letter of bundle C2 – it's a letter from Mr Hailes to the Council's solicitors dated 1 September 2011. You will see that there is confirmation that the two unannounced practice visits took place, the first on 6 April 2011 and the second on 15 August 2011, when Mr Hailes examined a random selection of record cards, and again provided his comments to Mr Stevens.

Perhaps I can deal with some of the conditions that follow rather briefly: I can confirm that in respect of conditions 5, 6, 7, 8 and 10 – which could perhaps be referred to as the standard notification conditions – the Council has no matters to bring to the Committee's attention and no concerns in respect of compliance.

In respect of condition 9, which relates to continuing education and training, you will have seen within the defence bundle R1 at tab 2 that you have copies

of the relevant CET documents from the Registrant in the past annual period, in the period since the last Hearing – I anticipate that you may hear more about those in due course from those who represent Mr Stevens, but on behalf of the Council I can confirm that that information was properly provided to the Council and that there were no issues at the time that the Registrant was maintained on the Register when last renewal was considered by the Council.

In respect of condition 11, there was a requirement that was made by the last Committee for the Registrant to renew his registration by 15 March annually while he is subject to fitness to practise proceedings. You will see that you have from page 14 of the bundle a copy of the relevant application for retention from the period 2011-12. You will see from the top of page 14 that the form was received by the Council on 22 March 2011 and from page 17 that it is dated by the Registrant 21 March 2011. Whilst members of the Committee will appreciate that those dates are not prior to 15 March 2011, in the circumstances I would not invite you to make any adverse finding or conclude that there is any material breach of that condition in that regard. The form was submitted and has been processed in due time by the Council.

You will also have noticed in your pre-reading of page 17 of bundle C1 there is a declaration section - it's Section 4 of that retention form. There is a question at question 2 of Section 4 which requires the declaration of any matters arising since the last retention that include adverse findings by the General Optical Council. In those circumstances the Committee may be surprised that there isn't reference at Section 2 to the Determination of the Fitness to Practise Committee in October 2010. It's of course a matter for you, sir, but in circumstances where the Council is plainly aware of those ongoing Fitness to Practise proceedings, on behalf of the Council I do not invite you to make any adverse finding today in respect of that omission by the Registrant, but as I say, that is a matter for you in your consideration of the case today.

Turning back, if I may sir at this stage, to Mr Hailes', the supervisor's, reporting on Mr Stevens' record keeping, it will of course in due course be a matter for this Committee, exercising its professional judgement, to determine whether or not Mr Stevens has remedied the deficiencies identified by the previous Committees to such an extent that his fitness to practise in respect of that record keeping is no longer impaired and that he is fit to practise without restriction. You will have seen in the bundle C1 two letters, the first dated 14 May and the second 15 August 2011.

You have also had this morning two further letters in bundle C2 from Mr Hailes, outlining his findings in respect of Mr Steven's record keeping, and you have three documents at C3 which it might be helpful if I briefly explain the provenance of: the three letters that you find at C3 were obtained by both parties this morning from Mr Hailes, and they are copies of his correspondence to Mr Stevens on the dates set out at the top of the letters –

29 March, 14 May and 10 August – and they relate to his findings and opinions of the selection of records that he had reviewed during the preceding period.

Sir, in summary perhaps I can put it this way: Mr Hailes' reports indicate an improvement in the Registrant's record keeping during the period in question and you will see that he confirms that the most recent records he personally has found to be satisfactory. Of course, the ultimate decision-making in this case is a matter for the Committee, but if you would find it of assistance, sir, I propose at this stage to call Mr Hailes to give evidence to you about his findings and obviously to be available to the Committee to answer questions if the Committee has questions to put to him.

Mr North: I'll check if my colleagues would find that helpful?

Professor Taylor: Would it be possible to spend some time going through these records, because they've just been presented this morning?

Mr North: Yes, I think that might be helpful.

Ms Steele: Perhaps in that case I might be able to assist in this way before you take time to review the records: the records that appear at bundle R1 behind tab 1 are records that have been provided on behalf of Mr Stevens, and I'll be corrected if I'm wrong, but my understanding is they form some but not all of the records that Mr Stevens has provided to Mr Hailes. Members of the Committee may have seen from bundle C2 the second letter dated 31 August 2011 is a copy of a letter that was sent by Mr Hailes to the Council's solicitors and originally did enclose some copies of the records that Mr Hailes had obtained. That letter did not reach the Council or the Council's solicitors, and therefore copies of those records that were provided by Mr Hailes are not available. The Council understands that a number of those records do appear behind the first tab in the bundle R1, and if it assists Mr Hailes has been given a copy of R1 and has had an opportunity this morning to familiarise himself with the records that do appear. He also has access this morning to any notes that he has retained in respect of Mr Stevens, should he need to refer to them when giving evidence before you. I hope that that assists in terms of the information that Mr Hailes has available to him today.

Mr North: What do you say, Mr Hodivala?

Mr Hodivala: I am perfectly content with the course as proposed. Just for the sake of completeness, the records that form part of the defence bundle, the Registrant's bundle today, were provided by Mr Stevens with a view to assisting the Committee today when he was aware that there was obviously an issue regarding Mr Hailes' report and the brevity of the report, if I can put it that way, appreciating there may well be further issues that the Committee wish to explore. Mr Stevens has sought to assist the GOC by providing those

records which, to his recollection, he provided to Mr Hailes in the first place. So you certainly have some of the records, not all of them as has been made clear, but hopefully it's as much assistance as Mr Stevens could provide today.

Mr North: I think in the interests of fairness we seem to have achieved a consensus here that it would be appropriate at this point for the Committee to adjourn, whilst we examine the records. My professional colleagues probably can give the most accurate time estimate, I think - how much time would you require?

Mr Reeves: Half an hour.

Mr North: Twenty minutes to half an hour? Let's make it half an hour and we'll reconvene at quarter to eleven.

[Hearing adjourned at 10.15]

[Hearing resumed at 10.49]

Mr North: Thank you for your patience, I'm sure that short adjournment has been of use to the Committee. Ms Steele, would you like to continue?

Ms Steele: Sir, yes. As I was saying before the short adjournment, I propose on behalf of the Council to now make Mr Hailes available to the Committee. I'm very much in your hands as to whether you would find it helpful for me to ask him some general introductory questions first, or whether you're happy to treat his reports that appear in the bundle as read, and simply have him available to answer questions from the Committee. I'm very much in your hands as to which you would find most of assistance to you, sir.

Mr North: My personal view would be that it would be helpful if you led him through some sort of general introduction – would that be the view of my colleagues?

Mr Hiddleston: Yes, the only thing I was going to add if I can do, Chair, is of course that I think he's being tendered, is he not, as an expert witness, and effectively the Panel don't have before them, because of the nature of the documents which have been provided by Mr Hailes, any detailed background which establishes his expertise. It may be, Ms Steele that it would be appropriate to deal firstly with the foundation of the expertise and then take it from there.

Ms Steele: I'm happy to do so, thank you.

Mr North: Shall we proceed accordingly then. Thank you.

**MR JOHN WARREN HAILES, called and sworn
Examined-in-Chief by MS STEELE**

Ms Steele: Mr Hailes, thank you very much for making yourself available to the Committee today. I'm going to start by asking you some questions. There's a gentleman to my right who is taking notes, so if you can endeavour to keep your voice up and clear that would be of assistance to him and to the Committee, who sit on your right. There may then be some questions from the gentleman who sits on my left, and also from the Committee, but could I start by asking you to confirm your full name?

A. I am John Warren Hailes.

Q. Perhaps I could ask you to outline your relevant qualifications for this Committee.

A. I've done several of them over the years because the goal posts have changed: I qualified as a Fellow of the British Optical Association and I've de-registered from the GOC because I'm now retired, but you can't take my qualification away from me, I'm a member of the British Optometrists Association.

Q. And you indicated just now that you had retired, perhaps for the benefit of the Committee you could confirm when that was.

A. Yes, I sold my last sole practice back in November, and I didn't renew my membership of the GOC at the end of March, so I technically de-registered at the beginning of April of this year.

Q. Thank you, that's helpful. It's right to say that you owned, prior to that time, a practice in South Wales relatively close to where Mr Stevens, the Registrant in this case, is based?

A. In as much as it was in South Wales. It's 40-odd miles between Cardiff and Llanelli, and yes, I had five practices in and around the Cardiff area, and Mr Stevens is in Llanelli, which as I say is 42, 43 miles away.

Q. Geography perhaps being a relative term. You've acted as Mr Stevens' supervisor in respect of his record keeping since November 2010?

A. That is correct, yes.

Q. Perhaps you could just briefly explain for this Committee how that worked in practice.

A. When approached by the AOP, via Mr Stevens, if I would be prepared to do this, I obviously asked the question, what does it entail? It was outlined to me what in fact I would be expected to do, and so since the end of last year and through this existing year on a two-monthly basis I had a list of patients that Mr Stevens had seen sent to me by him, and out of those I randomly selected roughly ten per cent of them to ask for photocopies of the record cards to be sent up, which I then assessed and wrote back with comments where necessary. Twice within the period, at the beginning of April – 6 April, I believe it was - and the middle of last month, 15 August, I paid unannounced visits to his practice and again randomly selected from his records some patients.

Because it was out of the record cards a lot of them were outside the period of this brief, but nevertheless I fortunately picked one or two of the more recent ones and could see a difference in the record keeping.

Q. The Committee have had copies of your correspondence with the Council in respect of Mr Stevens' record keeping, but perhaps you could orally explain to them how you found those records at the end of last year when you began supervising Mr Stevens?

A. First of all, before I do that, I think it fair to comment that as a sole practitioner he was the only person that saw the patients that he saw, and as a result he built up a very, very close bond with most of his patients, they were mostly repeats, not all obviously, but if it was a new patient it was invariably a relative or a sibling of one of his existing patients. The records were certainly not lacking any important factors that he was finding. All his findings, I noted in the first ones I saw, were recorded in his records, but to the outside person it wasn't necessarily easy to follow a greater depth of that - the family connections weren't possibly recorded because he knew them. It wasn't a question of necessarily omitting them from his records. As I say, he told me he had a close bond over 40-odd years with these people, he didn't always write everything down. So in the early stages I wrote back to him, having assessed the proportion of cards that I did, and made some suitable comments along these lines.

Q. Was there improvement over time in response to those comments?

A. I would say undoubtedly, yes. Almost immediately, I think it only fair to say, my comments were taken on board in general terms, and the second batch even were certainly more able for me to build up a picture of what was going on, the past history of this patient, and familial connections, so if there was a family who didn't have any diabetes it was recorded 'No diabetes in the family', and similar things of this sort, which were omitted before, not because he meant to omit them but because he knew that, knowing the family.

Q. That's helpful, thank you. When was the last set of records sent to you for you to review?

A. The last ones were July, and then I went down to the practice in August and selected a few of my own. On the second visits, in the middle of August, I picked up a selection of record cards which I also have photocopies of, but they don't all relate to the more recent period that we're talking about.

Q. So perhaps for understandable reasons because when you did your unannounced visit in August you were selecting record cards at random. Perhaps we can go back to the June, July records that were sent to you by Mr Stevens, which relate to the patients that he saw in that period: how did you find those? Can you summarise your conclusions, your findings in respect of your review of those records?

A. Yes. I know that I have written to you along these lines, there was no question in my mind that I could pick up a record card from a more recent batch and in

general terms could follow not only what had happened at that examination but also build a better picture of the family and any subsequent connections that may have been associated with that particular patient, whether they be positives or negatives. As I said just now, there were certainly more comments that there was no hypertension and no history of diabetes made on the card, although he already knew these things.

- Q.** That's helpful. You will be aware that this Committee's role today is to look at matters as they stand today, and make a decision about whether there is any impairment of fitness to practise in Mr Stevens' case in respect of his record keeping. You've had an opportunity to review his records from November 2010 up to around July/August of this year – on the basis of your assessment of those records, do you have any concerns about the standard of his record keeping now or looking forward into the future?
- A.** I think the honest answer is 'no', because as I've already stated, I have picked up the more recent records and been able to tell within an assessment of that care not only what has happened at that visit, but relating to factors previous or in fact as I say, the negative factors were recorded where previously they weren't.
- Q.** That's very helpful. I don't have any further questions for you myself, Mr Hailes, but I anticipate there might be questions from my learned friend to my left and from the Committee.

Mr Hodivala: I don't have any questions, thank you.

Mr North: Thank you, Mr Hailes. I'm sure my colleagues on the Committee will have some questions for you, and before they ask you their question, they'll also introduce themselves and their role on the Committee.

Questioned by Committee

Dr Harris: I'm Vicki Harris, I'm a lay member of this Committee. I'd just like to ask you a few questions more about your qualifications, skills and experience relevant to supervisory work. You tell us that you have your qualification as a Fellow of the British Optical Association.

- A.** 1966, I'm afraid to admit, but there we are.
- Q.** Well, some of us are the same generation as you. You have been working in practice since 1966?
- A.** I did my pre-registration year with a local optician and within six months of completing my pre-registration year I opened my first practice, which was a small part-time one, and when I tendered my notice to my then principal, he said, what are you going to do in between, and I said, I'll do some locum work. He said, you'll do locum work for me, if you wish, I'll continue to employ you. Most helpful. That's when I started my first practice.

- Q.** After 1966, did you take any further professional qualifications?
- A.** No I didn't, no. I was one of the first batch to include contact lens fitting and practice within the course, and it's a bit of a joke now, because CET, continual educational training, is a necessity for every optometrist in the land, but we had a very active local association in the Cardiff area which met six or seven times through the winter months, and I took it on board to attend all those lectures, which specialised in various subjects which I was interested in, and kept myself up to date as far as that was concerned. No supplementary qualifications.
- Q.** No post-qualification qualification, so to speak. Can you tell us a little bit about the experience you have of formal supervisory work?
- A.** Yes, I can: over the years I've had five pre-registration students under my wing. I've been involved, I'm a Rotarian, and as far as the supervisory bit is concerned this doesn't apply, but I've been asked on various occasions to Rotary functions to give an overview of what I do and how I do it. I felt that I was in quite a strong position when approached to do this job on behalf of Mr Stevens, and that I hopefully could do it adequately.
- Q.** You drew to our attention that you had been active in your CET: to what extent were your CET courses and lectures focusing on record keeping and other associated aspects with the record keeping arrangements?
- A.** It was one of the chosen subjects that was covered, I didn't have a specialist interest in that particular field, but most certainly, I've been to postgraduate meetings and lectures dealing with this matter, as you quite rightly say, within the CET training. Prior to CET being introduced, as I said, I used to go regularly to the local association meetings where we had lectures on all sorts of subjects and yes, one or two of those covered record keeping, but I must say more latterly it's a subject which has been brought up in the last 20 years more than the first 20 years of my qualification. When it was introduced it was taken on board, and I certainly have had some advanced instruction on how to look after records.
- Please may I just add a bit: I also fell into the same sort of category that Mr Stevens has found himself in, some years ago, I had a post-payment verification visit from our local LHB, and one of the things that was mentioned to me that the records were lacking one or two details in the history. Now, being a sole practitioner, only myself or one of my colleagues would see any patient in any practice, and they were given the opportunity to choose which of us they would see, so I say myself, there were certain things which I knew but possibly didn't write down. But when it was pointed out to me, of course, I took it on board.
- Q.** Conversion on the road to Damascus.
- A.** Absolutely.

- Q.** Can you just for the record, and without meaning to embarrass you, clarify, you've never faced any disciplinary or other formal criticism –
- A.** No –
- Q.** Just in order to sort that out, since you mentioned, I thought I ought to.
- A.** Certainly never to do with record keeping or anything of the like. Two years ago it was found that some of our FHSA payments had been wrongly claimed – not what you wanted?
- Q.** I wanted just to clarify that there had been no issues formally registered against you, and that's what you've told us, and I don't think we need to go down that avenue, but thank you for volunteering it. Could you just remind us when your five pre-registration students were supervised, how recently was that?
- A.** The most recent one qualified and registered three years ago now. Anything over the previous 40 years, they were spread out fairly sensibly – the first pre-registration student I had was in 1973.
- Q.** Thank you. Can you tell me, I notice from the papers which you will have seen in front of you, page 12 refers to the request relating to your appointment, you've been chairman of the Local Optical Committee – can you just tell us a little bit about that and when that was? My understanding is that this is an elected position?
- A.** It is, yes, one I was very proud to fulfil, actually. As I mentioned already, more than once, we have a very active local association in Cardiff, and apart from the social programme as well we have this series of lectures every winter, and I was elected to be chairman very early on in my tenure. It would have been 1968-69.
- Q.** Did you serve after that?
- A.** I served on the committee for many, many years, but that was when I was actually chairman.
- Q.** What contacts did you have prior to this supervision with Mr Stevens?
- A.** We trained in the same year, he was one of the 13 people in Cardiff that year who trained to become optometrists. From that time until six years ago I had not seen him once, and six years ago another of our colleagues of that year of training, 1962, celebrated their 40th wedding anniversary, and had a bit of a big bash and invited all of us to go, and that was where I first met Mr Stevens again after that long period. Because of the mileage between us we don't see each other on a regular basis, and since then, apart from this existing year, I've only seen him perhaps four times in the last three years.
- Q.** Always on a professional basis?
- A.** No, on the contrary, until this year it has only been on a social basis.

- Q.** Thank you. One little other area, if I may: I wanted to ask you if you could give us the precise dates on which the various bi-monthly reviews took place. I wasn't able from your letters to know exactly when they were, and I wonder if you have your records there, you could –
- A.** I don't think I have the actual dates; I have copies of the letters that I sent to him.
- Q.** You started in November 2010, and there was a review in that month, was there?
- A.** That was the first batch, I had them in December – I'll just check my copies and I'll tell you now.
- Q.** If you look at the conditions that were imposed on Mr Stevens, which are set out at the bundle on page 9, for your assistance, there was a requirement within two months of today – and that was 1 October, so by 1 December – for Mr Stevens to notify you, so I rather assumed it might have been –
- A.** October/November I had a series of records sent to me and then the second one was December/January, February/March, etc every two months. The way it worked, he would send me a list of all the patients that he'd seen in that period - at this stage of his career he's not working full time and hasn't done for some time, he was about half time only - and he sent me a list of everybody that he'd seen in that period and I would randomly pick out approximately ten per cent which he would then send me copies of the records.
- Q.** Could I just get from you, then, the numbers involved, so that we can get a feel for how many you saw on each occasion? There should be about five reviews prior to mid-August when you went to visit the practice, so you could you just tell me how many patients? We know from your letter of 29 March that there were five patients that you picked out on that date, could you just tell me how many there were on all the other occasions? Take me through it.
- A.** I can't give you exact figures offhand, but I can certainly tell you, the second group there were twelve –
- Q.** What was that date?
- A.** That was the end of January, I would have had those in February.
- Q.** Right, and there were twelve. And the first group there were how many?
- A.** The first group of all, five.
- Q.** And the third group was five according to your letter of 29 March. The fourth group, between April and June?
- A.** [Refers to notes] I think I can give you that figure exactly, because it would have been in the same proportion – let me just check. No, I don't seem to have the exact figure of that one.

- Q.** Okay. Let me just then ask the question which most interests me: you say you randomly selected, on what basis was the randomisation undertaken? Was it a stratified sample?
- A.** No, it was almost a pinprick: there was a list of people, and I just went through and picked one here and there. I thought that was as random as you could get.
- Q.** Right, so there was no basis on which you could say that that was a representative sample then?
- A.** None whatsoever, really. That was, I understood, what the random bit was. The list of all his patients seen in the period was sent to me, and I just literally randomly picked out a percentage. Then when I saw the record cards I could assess if they were up to scratch or not. I wrote back to him - I don't know if you have copies of those letters – itemising what I'd found, and various points I felt could be improved on at the time.
- Q.** Right. Just one final question: did you have an opportunity prior to undertaking the supervision to look at the Determinations that led up to –
- A.** No, the answer is no. I had no previous knowledge of what had gone on.
- Q.** You were not aware, then, of any of the deficiencies that had previously been identified.
- A.** Not at all.
- Q.** Very well, thank you very much.
- A.** My pleasure.

Mr North: Mr Reeves, do you have any questions? Professor Taylor?

Professor Taylor: A couple of things. You mentioned that Mr Stevens is part time, and on page 11 of the bundle you've had it says the days the practices are open with a responsible member of staff present - does that mean he works with somebody else, or is he on his own?

- A.** No, he's certainly a sole practitioner. He has a very, very longstanding receptionist who runs the practice for him, and whether that was referred to as a 'responsible member of staff' I'm not too sure. Just to broaden the picture a little bit, he lives about half a mile away from the practice, and I know for a fact that if someone came in with a problem his receptionist would be on the telephone and down he would be.
- Q.** A 'responsible member of staff' I would have thought was a clinician, but I don't know whether that's what other people would have perceive it.
- A.** Fair comment.
- Q.** A couple of comments: one is that the records we have here, actually one is 2009.

A. Because on my unannounced visits I just picked out records from the files, and some of those were outside the period that we were dealing with I understood.

Q. But our consideration presumably is covered from the last meeting, therefore you retain no records from November 2010, which rather restricts the numbers here.

Mr North: Could my colleagues be careful to pose questions, rather than offer comment.

Professor Taylor: Are there any other records that we should be aware of and see?

A. Certainly, my brief at the time from the AOP was that when I made these unannounced visits just to look at records from the record files, not that they had to be within a particular time.

Q. Thank you. There are a number of comments on the records generally: very few of the records suggest when the next visit should be – is that your interpretation as well?

A. It's one of the things that I've mentioned here on my letters to him – 'no follow-up or recall indicated', and I think you'll find in the later ones there is certainly comment on the bottom of the records to say, to be seen in twelve months, or –

Q. Unfortunately the latest one I can find is May 2011, and that isn't the case.

A. Are you aware that a bundle has gone astray – is the Committee aware of that? Unfortunately our dear friends the Post Office let us down very badly in the last week, and they've lost a package of records that I sent to Kate.

Mr North: For clarity, is this the matter that is referred to in the document C2, second page?

Ms Steele: It is indeed, sir, and I can assist the Committee further if needs be either now or in due course when we get to that stage. We did touch on it briefly, it is indeed a matter that is raised at C2 page 2, the letter dated 31 August 2011.

Mr North: I think you can advise us in due time.

Professor Taylor: May I ask another question: I don't see any CD ratios, cup-to-disc ratios, on any of the records – is that something you would expect?

A. Well, an actual ratio as such I always used to put down, but that's quite true, and it's something else which I've raised with him in more recent terms. There are some, but it's not regular, at least in the earlier stages it was not, as you say, related as a CD ratio, but there are some in the latter ones which refer to –

Q. Would you anticipate that being on all the records rather than just some?

A. I would hope that that's going to be the case. As I say, this is something that's definitely shown an improvement.

Q. But he's still not actually putting that on every record, as far as you're aware?

A. The ones that I have picked out, not every single one had, but it did relate to the cupping or non-cupping of the disc, where some of them didn't even have that in the early stages.

Q. The ones that we have here don't have that either. I have some comments on the individual records, I don't know whether you have the records.

A. I have some here.

Q. The first one that I have, I'll put as 'JMA' for patient confidentiality and not use the name.

Mr North: Sorry, could we have the bundle reference followed by the page number, please?

Ms Steele: I believe we're in R1, which Mr Hailes has a copy of.

Professor Taylor: I don't have the listing R1 –

Dr Harris: I wonder whether we might paginate the pages so that my colleague can refer to them, so JMA would be 1-3, would that make some sense? I have actually done pagination, so when he goes I'll prompt him in the first place.

Mr North: That's a very helpful suggestion, Dr Harris, we'll do that for that first case and then annotate as required.

Ms Steele: Mr Hailes might need to paginate this copy of the bundle. So it's the R1, which you should have.

[Short pause while pages are numbered]

Mr North: Now, does everyone have a copy now, suitably annotated?

Ms Steele: I'll catch up – Mr Hailes has one, which is the most important.

Mr North: Just for the future, unlike my colleagues, I am from Norfolk, so I do like things nice and clearly set out, please. And one would expect bundles to arrive before this Committee paginated.

Mr Hodivala: I'm sorry about that. Can I just say that for reasons I won't trouble you with now, this has all been put together relatively recently?

Mr North: Noted, Mr Hodivala, but the principle continues to apply.

Mr Hodivala: I understand, yes.

Mr North: Are we ready to continue?

Professor Taylor: So, beginning at page 3, there's a note on that page 'Diabetic' – would you have expected to see any other information around that?

A. It shows me that he's asked the question, he's actually gone through the routine which included the response which he has there. In the internal examination he says that the media are clear, there are no suspicious discs –

Q. I'm not thinking so much of that, I'm thinking in terms of what type of diabetes, how long it's been there, whether it's treated.

A. Yes, I see where you're coming from, type 1, type 2, etc. The fact that there isn't any would suggest that there would be no further comment needed, I would have thought. There's no diabetes, no diabetes.

Q. So you wouldn't put 'diet controlled' if there's no medication?

A. It's difficult to know how far you go, are you going to put down every element that is being administered to the patient, with the medical treatment as well, so be it, you would expect to find that. In my own personal feeling, since the patient is under medical supervision there is no indication that there would be medication being provided that would have any adverse effect on day-to-day vision, although we know that diabetes has a long term effect on vision.

Q. Can I ask you, would you record that sort of information?

A. I probably would have, yes.

Q. Thank you. If we move to page 5, in Family History, 'Mother father glaucoma'.

A. Yes, indeed.

Q. Would you expect a pressure test to have been recorded?

A. I would, and I wrote back to tell him that.

Q. And when you say 'No field defects' would you expect a threshold to have been recorded?

A. Well, again, that was also on my list of comments to him, I'm sure. This was back in January – this is one of the earlier patients that I had a review of.

Q. My understanding of your comments, 'clear and concise, no comments necessary', on this one.

A. Which one was that?

Q. GB, the last one in March.

A. I have the feeling that this was the second time I had seen this record, because this particular one that you've picked out was one that I had words with him on the telephone as well as a letter, and I think he sent this back to me a second time, I don't think this is the actual one. If the comments that I

made in my notes, on 29 March, wasn't it – is that the one you're talking about?

Q. It's bundle C3, yes, 29 March.

A. It was certainly something I discussed with him.

Mr North: Excuse me, Mr Hodivala, you want to make a point?

Mr Hodivala: I do, yes. If you look back at page 4, there's written down just underneath, 'Dec/Jan', and I don't know if that assists the witness with regards to his answer to the question. I don't know whose writing that is. Is that your writing there?

A. No, I did not write on these records at all.

Mr Hodivala: Okay.

Mr North: Can we return to the question, please?

Professor Taylor: So you think there is another record that we haven't –

A. I'm sure there's a gap, and I remember this page particularly, as you've rightly pointed out. There were a number of comments that I had to make on this one, and I'm pretty certain that I've seen him again on a more recent one which doesn't happen to be in this bundle. It may actually be in the missing lot, which is no good to us, but –

Q. So, presumably your prompt –

A. My memory seems to suggest there was some action taken and the follow-up shows that.

Q. Would that mean calling the patient back in?

A. For further review? I suspect that happened.

Q. But we have no way of being sure.

A. I feel there's another record, but please bear with me. As I say, unfortunately we had a bundle gone astray which is not much help to you or me.

Q. I appreciate that. Can we move to page 7?

A. Yes, indeed.

Q. This was in May. At this stage had the next visit issue been dealt with, because this shows no next visit.

A. No, this was a young girl, wasn't it, that came in and rushed off, and obviously needed a prescription, and it says 'Not dispensed, later', but there's no date that I know of –

Q. Or for the examination rather than the dispensing, which is more important.

- A.** I suppose that's also true, yes. I would suspect, I may be wrong in my suspicions, that when the dispenser dispensed the date of further follow-up would have been made, but I can't be sure of that fact.
- Q.** Do you think that's normal practice?
- A.** It varies from person to person, I suppose. I always make a record myself of a review date at the time of examination, but I know for a fact that my wife who is also an optometrist worked in a practice which would make the review date from the time of final dispensing, so there's a variation. I must say, I can't say that I'm one hundred per cent sure which method Mr Stevens used on that occasion.
- Q.** Thank you. If we move to page 9, assuming that tonometry uses the Perkins, and that's what the 'P' stands for?
- A.** He has several tonometers, one of which is a Perkins. He has a non-contact as well tonometer.
- Q.** So if you were reviewing these records, how would you read the 'P'?
- A.** Yes, as you say, the Perkins, I was agreeing with you.
- Q.** Would you expect to have seen what drops were used?
- A.** Again, looking at this as a review, he's used a Perkins tonometer and I would obviously understand that he used an anaesthetic, otherwise he couldn't have –
- Q.** Wouldn't he record which one it was?
- A.** I personally wouldn't necessarily record that myself, having indicated I'd actually used the tonometer.
- Q.** On this particular patient, who has had sudden onset of double vision, would you have expected a visual field to be done, possibly?
- A.** Yes, I would.
- Q.** And again, that's missing on that one.
- A.** I don't think it was done, but you asked me a question – I personally would have, not at that visit necessarily, but I would have made a further appointment, which doesn't appear to be on the record. The fact that it was a comparatively short term diplopia, and it seemed to have subsided, he may have assessed it and – I don't know whether there is a recall on this one, I can't think, 12 May. If you look in the additional tests, there's a comment about, if it's still a problem to return within a few weeks, or if there's a further problem, to return within a few weeks. The double vision had gone away, obviously, but it wasn't just pushed to one side.
- Q.** It hasn't gone away, because it's 'persists', rather than 'returns'.
- A.** Well - looking at the notes initially, in the history of symptoms, it said double vision lasted for three weeks, which suggested it's been and gone.

- Q.** 'Double vision for the last three weeks', I would suggest that is, rather than it lasted three weeks.
- A.** Right, could be. Fine, point taken.
- Q.** On record number 13, or page 13, we have a situation where there's a family history of 'Mother brain haemorrhage' - again, wouldn't you expected a fields to be done, normally?
- A.** Not normally, no, I personally wouldn't think there was going to be enough evidence to suggest that at this stage of the game.
- Q.** And when we see IOP 'Not recorded' does that mean it was carried out and not recorded –
- A.** No, it means that it wasn't recorded because the child was either nervous or whatever. We're talking about a comparatively young person here, I believe.
- Q.** 38.
- A.** 38, yes. That would suggest to me that it wasn't recorded, wasn't carried out, in other words.
- Q.** Can we go to page 21: I appreciate that this is from 2008, so presumably this is why it's not followed through, but it says 'Headaches', and then no information about headaches - again, would you expect further information normally?
- A.** Yes indeed, of course I would, and as you quite rightly pointed out, this was 2008, prior to the conditions which have made these Hearings necessary. There were a few items on that particular record which I felt was wanting but you're quite right, no further investigation of the headaches in that case.
- Q.** On page 27, and this may just be a function of the protocols in the area where you are, but with a pressure of 25, even though someone is under the HES, would you drop a note to the GP?
- A.** I personally wouldn't do that, I'm not going to say I would and I didn't say I wouldn't, if I examined the patient and there were no other symptoms, then I would tend to, again, request an earlier than normal review, but not to panic at that stage of the game.
- Q.** Of course, on here there is no review date.
- A.** Yes. Again, this was in the fairly early stages of my supervision. I don't know whether it is in one of my letters, but it is one of the points I made to him. But I would agree with you, yes, a review at a less than standard time would be appropriate in this case.
- Q.** Can I ask, did you make comments on all of these records that we're seeing?
- A.** No, some of these I haven't actually physically seen. There are one or two of these which I didn't physically see. I have the same bundle here, I'm not saying that I've seen all of these records – we discussed it, Kate, didn't we?

Ms Steele: I don't know whether I can assist the Committee: the bundle the Committee have as R1/tab1, which is the bundle we have paginated this morning, is a bundle, as you heard earlier, produced by the defence, and I understand I'm right in saying that Mr Stevens believes that these are records that he provided to Mr Hailes. Mr Hailes, as you've heard, there was some difficulty obtaining the copies of the records Mr Hailes had retained. Mr Hailes has had an opportunity to review the bundle R1 this morning, and has identified those records that he clearly recalls seeing, and it may be that in the circumstances it might assist the Committee.

The only difficulty I anticipate with what I'm about to propose next is that the copy that Mr Hailes had this morning was not paginated. I could easily undertake during the course of the next few Committee questions to paginate that copy, as I'm aware that Mr Hailes kindly folded down the pages of the ones he distinctly recalls seeing. In the circumstances it might be difficult for Mr Hailes to say categorically whether he saw every record or not, but there were some in R1 that he definitely recalls seeing, and if it is of assistance to the Committee I am very happy to paginate the copy with the folded down pages, if that would elicit further clarity for the Committee as to which certainly Mr Hailes recalls having seen in bundle R1.

Mr Hodivala: Alternatively, may I suggest you simply ask which he recalls seeing.

Mr North: Thank you for those helpful suggestions. Professor, do you intend to pursue this line of questioning much further?

Professor Taylor: No, I have run through as many as I intended to run through.

Mr North: So really, I think that is surplus to requirements.

Ms Steele: Thank you, sir.

Mr North: Professor Drummond?

Professor Drummond: No questions, thank you.

Mr North: I have one or two personally, if I may, Mr Hailes: when you carried out this supervision, I'm trying to get it clear in my mind, who actually approached you to undertake the task?

Mr Hailes: Mr Stevens actually telephoned me to see if I would be prepared to do it, and he said that the AOP had recommended that he got an independent, and he put several names forward to them, and mine was the one that was drawn out of the hat first, I believe. I had a telephone call on the same day from the AOP, confirming that I had been chosen, if that was in order.

- Q.** So you indicated that you would be willing to undertake –
- A.** That's right. I was approached initially by the AOP, yes, I was approached initially by the AOP to see if I would be prepared to act in this capacity for Mr Stevens.
- Q.** Now, you'll have to excuse me, I am a lay member of the Committee, so excuse me if my questions lack the professional vocabulary, but when you actually started this task, what was the yardstick you were measuring these records against? Was there a document –
- A.** Not at all, no, I was using my experience and the fact that I had been through this similar pattern of record cards not complete for a third person to look at some years before. So I was taking on board the factors that I had pointed out to myself, and I'm pretty certain had addressed in the most case, so I was making a comparison with my most recent record cards and record keeping, compared with Mr Stevens'.
- Q.** So, just to get this clear in my mind, it was your own experience plus your experience when you had advice from the LHB?
- A.** That's true, and also of course, I mentioned right at the beginning of the Hearing, I had been to postgraduate meetings dealing purely with record keeping.
- Q.** Quite so. At any stage while you were being briefed for this task did you have any specific advice from any authority, as it were, on the particular aspects that had formed the issue in the last Determination?
- A.** No, I was just told that Mr Stevens' records had not come up to expectations, and it was an area that was being looked at by the GOC, and would I be prepared to act as his mentor over the next twelve months or so.
- Q.** Thank you. That was very helpful to me, do my colleagues have any further questions they would like to ask at this point? [*No further questions*] Any comments from either of the representatives?

Re-examined by MR HODIVALA

- Mr Hodivala:** A question that just arises from Professor Taylor's questions about dates for review: if we just look at page 1 of the bundle R1, is this a document that you've seen before? When you were doing your samples, were you aware of next appointment date cards in with the files themselves?
- A.** No, today is the first time that I have seen that sheet.
- Q.** I see, okay, so you can't assist with regard to what happens or how this document is produced.
- A.** I don't have had any advance notice on that one, I'm afraid.
- Q.** Okay, thank you very much. That's the only thing I wanted to ask.

Mr North: Thank you, that's been very helpful.

Mr Hailes: It was my pleasure.

[The witness stepped down]

Mr North: Ms Steele.

Ms Steele: Thank you, sir. I only have a few very brief further submissions to make. Members of the Committee will be mindful that you have two aspects to your consideration of this case today: the first relates to whether, in your professional opinion, Mr Stevens has complied with the conditions that were imposed on him in October of last year, and you've heard my submissions on those points earlier this morning. The second matter, in my submission, that you are tasked to consider, is whether or not Mr Stevens' fitness to practise is currently impaired at today's date, in respect of his record keeping, on the basis of all the information you have available to you today in paper format and also the evidence that you've heard from Mr Hailes. It is very much a matter for you as a professional Committee what weight you attribute to the information and evidence before you, both the documentation and the oral evidence that you've heard from Mr Hailes.

If you find on the basis of the material you have before you that there has been compliance with the conditions and that on the basis of the evidence you have there is no current impairment in respect of Mr Steven's record keeping, then the appropriate course would be for you to make a finding of no impairment and to revoke the conditions that are currently imposed on his registration. Members of the Committee will be mindful that the onus in this sort of Review Hearing is on the Registrant to produce evidence to satisfy the Committee that he has remedied the past deficiencies which have been identified in this case in respect of the Registrant's record keeping.

You have heard the efforts that have been gone on to try and secure additional information to assist the Committee today, and I would invite you to consider the totality of the information you have before you. If you are not satisfied on the information before you that Mr Stevens has remedied the deficiencies in his record keeping to a standard that would lead you to be content on the standard his record keeping today and going forward, then it is a matter for you to find continued impairment, and if you do, I would invite you to consider your sanction powers that are available to you. If you are considering making a further order for conditional registration of course, and you will no doubt have legal advice in due course, any conditions you impose must be addressed to the Registrant and they must be workable in the circumstances of his case as you understand it to be on the basis of the information before you.

Sir, unless I can assist you or any of your colleagues further with the documents that have been submitted by the Council or any of the other material that is before you today, those are all the submissions I propose to make on behalf of the Council today.

Mr North: Thank you, Ms Steele, that's helpful. I'll just check with my colleagues if there is anything further. [*Nothing further*] Right, I'd like to take a short administrative break – sorry, Mr Hodivala.

Mr Hodivala: I will address you in fact, there's just a matter that my instructing solicitor and I have just considered, and I was going to ask for just two minutes to look at that position in any event, so I don't know whether it would be –

Mr North: Well, our intentions coincide, so we'll take five minutes.

[*Hearing adjourned at 11.50*]

[*Hearing resumed at 12:05*]

Mr North: Thank you. I hope that short pause was helpful. Mr Hodivala, did you have a point before opening?

Mr Hodivala: No, it was to deal with a point that had been raised. As you know, there have been previous Review Hearings, and somewhere in the back of my mind and indeed my instructing solicitor's there was a recollection that a point had been dealt with in a previous Hearing, so I was just taking a few minutes to flag up the particular passages, which I'm going to read out. I have discussed it with my learned friend and we've agreed this particular way forward.

Can I just bring the Registrant's position to a close? You've heard that Mr Stevens is an individual who has been practising for a substantial period of time, 40 years. Since these proceedings in 2007 there have been no further complaints brought against him, and in my submission that is something that you are entitled to look at in judging the overall question of whether his current fitness to practise is impaired. You have in the defence bundle R1 a copy of his CET, behind the second tab. I'm not going to go through it all page by page, but I hope that the impression you get from that CET is that if it's not 100 per cent that he's been getting in those particular CET exercises, he has certainly been doing very well, so in my submission this isn't a case where there is any clinical competence that's questioned that might impinge on his fitness to practise.

Here we have the picture of a man, clinically competent, practising for 40 years who is, as you may have gathered from previous Determinations, a valued member of his local community. He is a sole practitioner, and the point

that I wished to just clarify was in relation to the question of his receptionist being present at the practice. It may be that I am being overly sensitive to it, but I do wish to deal with it, given that it was raised as a point. On the previous Review Hearing, on 1 October 2010 – you won't have transcripts of this particular passage, but I'm going to read it out so that at least you are aware of what Mr Stevens left that Hearing under the impression of. Mr Singh, who represented Mr Stevens at that particular Review Hearing, made submissions about other people who are at the practice, and he submitted,

“Mr Stevens employs two or three staff on a part-time basis who have been working with him for around 25 years. He has kept all of them on, even with the reduction in profit, simply because for them to be out of a job completely would probably affect them very much as well. In terms of his actual profit for the business it's not very great”.

That was a section of the submissions by Mr Singh when he was dealing with the impact these proceedings have had on Mr Steven's business and his profitability, and so on.

When the conditions were then imposed, there was a short adjournment and Mr Singh re-visited the question of what the Committee meant by 'a responsible member of staff', because obviously he being sole practitioner, there was some clarity sought with regard to what his position was. In respect of the 'responsible member of staff' at page 3, Mr Singh asks, what did you mean by a responsible member of staff, because obviously Mr Stevens is the only optometrist practising there. If it simply means an employee of the business who is able to be there during the time of the inspection, then absolutely. I think it was the Chair of the Committee who responded,

“We use that phrase intentionally because we realise that Mr Stevens might not be there, but having heard from you about his employees that has kept on for 25 years, we thought that this was a proper phrase. However, we did also mean that somebody who dropped in to have a look at the IT was not going to be considered a responsible member of staff”.

So quite clearly, in terms of what the Committee had in mind, it didn't mean somebody who occasionally popped into the practice to have a look at the computers, to make sure that toilets were flushing properly or whatever, was clearly not a responsible member of staff in the eyes of the Committee.

The receptionist that Mr Stevens employs is one of the part-time employees that he has employed for the last 25 years, and how Mr Stevens runs his practice is although you have his opening hours, and he's open, I think it's eight hours a day on certain days of the week and shorter other days of the week, he isn't actually there at the practice for those periods of time, he lives very close to the practice. What happens is if there's an appointment that

needs to be made for a patient's convenience at, say half past four in the afternoon, he's aware of that so he can be in the practice for when that patient arrives, to conduct any treatment. Otherwise if there's anything that arises at short notice he can get to the practice relatively quickly, within a few minutes. So, I hope that puts into context any residual concerns that the Committee may have had about the receptionist being treated by him as a responsible member of staff.

In my submission, this isn't a case where there have been breaches of the conditions that were imposed by the Committee on the last occasion, and certainly, I don't think the Council suggests the contrary. Here is a gentleman who has complied, in my submission, with the conditions that were imposed on him on the last occasion. Of course, I am hopefully going to be realistic about this, there will be cases that come to this Committee on review that are clear examples where the Registrant has complied with conditions and is now a shining light in the optometric field, and there are going to be cases, no doubt, that you and your colleagues are aware of where an individual comes to a review and has wholly failed to engage with the advice or assistance that is being offered to them, and likewise, but for wholly different reasons, the decision on review is a very easy decision for the Committee to make because there has been either wholesale refusal or it has been a shining success in terms of the conditions.

In terms of this case, there may be some residual concerns that were picked up on in the course of questioning Mr Hailes, and it may be that the Committee feels that this particular case falls somewhere in between those two extremes that I've put forward before the Committee as examples. But in my submission, just looking at the overall picture that Mr Stevens has painted, both in terms of his history, his clinical competence and his ability to have people, certainly on previous occasions, who have spoken up and given references on his part, here is an individual whose fitness to practise is not currently impaired.

There may be certain criticisms of one or two records, but looking at the overall position, certainly Mr Hailes' view, having been into the practice, having conducted dip samples of the records, having had random samples of the records sent to him, is that having all that experience and having all that knowledge that he has gained from reviewing Mr Stevens' practice, that overall the standard of the records is that of a competent practitioner. In all of those circumstances, in my submission, having been subject to conditional registration since 2007, the time has come to now remove any further conditions on Mr Steven's registration.

You will have seen from Determinations there may have been some previous concern about lapsing back into bad habits, but in my submission, it seems from Mr Hailes' evidence that Mr Stevens has taken on board the advice and criticisms that Mr Hailes has put forward to him, clearly again from the random

samples of records that have been sent to him, the dip samples, Mr Stevens has acted on those, and in my submission it is a present concern that the Committee needs to have regarding his fitness to practise, as opposed the possibility of future concerns. If there are future concerns, or future lapses in his record-keeping, then no doubt the Council will intervene at an appropriate stage and bring further proceedings. So what I'm trying to say is that here is an individual, Mr Stevens, who has cooperated with Mr Hailes and has complied with his conditions, and now re-presents as a competent practitioner.

Sir, I don't know, but there may be some perceived concerns about Mr Hailes' report or his involvement. Of course, none of that falls at Mr Steven's door, and I invite you to conclude that Mr Stevens has throughout complied with requirements that the GOC has placed on his conditional registration. Unless I can assist you further, those are my submissions.

Mr North: Thank you, Mr Hodivala. Do any of my colleagues have any issues they would like to clarify with Mr Hodivala? [*No further issues*] I turn, then, to the Legal Adviser.

Mr Hiddleston: Sir, thank you. This, as the Committee knows well, is a Review Hearing of an order of conditions first imposed on Mr Oliver Stevens' registration by a Fitness to Practise Committee sitting on 28 November 2007. You are aware, obviously, that this matter has been reviewed on other occasions, you have the documentation before you which shows you what was decided on those occasions and what conditions were imposed. As such, of course, your task today is to conduct a comprehensive review of the whole matter, you should consider with care all of the material that has been placed before you today, together with any oral evidence which has been presented, and of course the submissions of both parties, and I'll have a little bit to say about that at the conclusion.

You have also had expert evidence given before you today through Mr Hailes. As an expert he's entitled to appear, he is entitled to express his opinion, but you will know perfectly well that you are not obliged to accept that opinion simply because he is presented to you as an expert. The decision as to the evidence that you accept and the evidence that you reject is very much a matter for your Committee and or Committee alone.

You will also be aware of the stages that you need to consider at this stage with care in your deliberations. First of course, you should consider whether Mr Stevens has complied with the conditions currently in place. If so, go on to consider whether his fitness to practise remains currently impaired. If you are not satisfied, you do have the power, and you should, revoke the current order. You have the power at that stage, having heard from the parties, to issue a warning. Otherwise, your powers as to sanction, which is the next stage and final stage that you would consider if you get that far - as you know

well, as set out in the Opticians Act 1989, reference has already been made to them, as amended at Section 13F(13).

In summary, I advise you that you may confirm the current order and may extend it for a period for which it has effect, but in respect of conditions by no more than three years at a time; you may vary the conditions of the current order; you may suspend for a period not exceeding twelve months; and you may finally, of course, erase the Registrant's name from the register. I remind you that you should only impose an order if one is necessary, and if so, any order imposed should be proportionate in all the circumstances of this case, bearing in mind all that you know about it, all that has been presented, all that has been put before you. You should always approach the orders that you impose, if you think one is necessary, in an ascending order of seriousness, only proceeding to a more serious sanction if you are satisfied that the one you are considering is not sufficient to meet the seriousness of the concerns identified, and you should at all times bear in mind the serious consequences for this Registrant in the making of any order.

Finally, although you have heard submissions on behalf of each party, which you will no doubt consider with care, they are not evidence, you are not bound to accept what has been said to you by either of the parties, either on behalf of the General Optical Council or indeed on behalf of the Registrant himself, but you should of course consider them with particular care. The final decision in this case must be one for this Committee and this Committee alone. Of course, whilst I give this advice to you to guide you, I don't direct you, the final determination as to matters of fact of law remain with this Committee, bearing in mind the tests that I have set out to you in the advice I have given you this afternoon, and coming to a conclusion in your determination by exercising fairly your own professional judgement.

That's the advice I have to give the Committee at this stage, unless there are any questions that the Committee has of me, or indeed any observations that either party has to make about the advice that I have given.

Mr North: Ms Steele, Mr Hodivala?

Mr Hodivala: The only comment is, you've obviously been advised about sanction – the Registrant would simply submit that, if you find there is impairment, the appropriate sanction would be a further period of conditional registration; certainly suspension or erasure would be disproportionate in the circumstances. Alternatively, as you have been reminded, I remind you of your ability to issue a warning if you find that there is no current impairment.

Mr North: Thank you. In terms of matters of administration, what I would propose to do is if the Committee takes a short lunch now and then begins its deliberations, and accordingly if the representatives could be available again

at, let us say, twenty past one? Thank you very much for your assistance this morning.

[Hearing adjourned at 12.20]

[Hearing resumed at 14.37]

Mr North: Before I begin to read the determination, I just wish to be certain that both parties were of the same mind that we were reaching decisions on compliance and if necessary on impairment at this stage, that is the case.

Mr Hodivala: Yes.

Mr North: Thank you, Mr Hodivala, thank you Ms Steele.

DETERMINATION

Compliance with conditions

The Committee has taken account of the submissions of Ms Steele on behalf of the Council and those of Mr Hodivala on behalf of the Registrant. It has accepted the advice of the Legal Adviser. It noted that the requirement under condition 2 of the Determination of 1 October 2010 was that the Registrant was to arrange for his supervisor to provide this Review Hearing with a report for consideration at this Hearing today.

For the Hearing today the Committee was provided with extremely brief letters from the Registrant's supervisor with no detail of how his failures had been remedied. The Committee believes that these letters fail to address the failures originally identified, and noted in particular by the Committee on 1 October 2010 with regard to the recording of the reason for a visit, notes on patient management, visual acuity, vision and CD ratio. The Committee did not believe that the letters amounted to a report as envisaged by condition 2.

The Committee was able to question the Registrant's supervisor as part of the Hearing today and was presented with a small selection of record cards, some of which did not bear directly on the Registrant's current fitness to practise. However, it was concerned by a number of factors: firstly it noted that the supervisor was unaware of the failures identified in the 1 October 2010 determination, he neither read the original determination nor had he been briefed in any other way on the background to the case. Secondly, advice to the Registrant was not linked to any national or professional guideline or professional standard, but rather general instruction based on the supervisor's personal experience and practice, which lacked structure, detail and

objectives. The supervisor had little recent experience in a mentor's role and no specific training in remedial supervision. The Committee was subsequently unable to attach significant weight to his evidence and to be reassured that the failures in the Registrant's record keeping had been addressed and remedied.

The Committee also received a small bundle of copies of 16 patient records of which six fell outside the review period in question. A number of these records have not previously been reviewed by the supervisor nor were many of them specifically linked to his letter to the GOC.

Consequently, the Committee was unable to agree with the Registrant's submission that the records were of an acceptable standard. The Committee noted that Mr Hodivala recognised the possibility of residual concerns that the failures in record keeping had not been remedied. Indeed, many of the criticisms made of the evidence submitted to the Committee on 1 October 2010 and ventilated in their Determination apply equally to the evidence heard today.

Accordingly the Committee was not satisfied that there had been an acceptable and meaningful level of compliance with condition 2.

Findings regarding impairment

The Committee notes the responsibility to comply with the requirement of any condition was primarily that of the Registrant. The task before him was to present robust evidence in the form of a report that would satisfy the Committee that the concerns identified in his practise had been accepted, addressed and remedied. The Committee did not believe that it has been provided with this evidence today. The Committee concluded that deficiencies in record keeping have not been remedied sufficiently and for these reasons the Committee concluded that the fitness of Oliver Wright Stevens to practise as an optometrist remains impaired.

We move to stage 3. Ms Steele, I believe you begin.

Ms Steele: I'm grateful, sir. In light of the findings that this Committee has made in respect of compliance in particular with condition 2 and in respect of continued impairment in respect of record keeping, I would invite you to have regard to the sanction options available to you at this stage under Section 13F(13) of the Act. In particular, you have the power to direct that the current period of conditional registration be extended for such period from the time when it would otherwise expire as you may specify, bearing in mind, as you've heard from the Legal Adviser earlier today, the maximum period of conditional registration permitted at any one time. You also have a power to suspend.

I don't seek to direct you to the other powers, but no doubt you will bear in mind the full range of disposal powers available to you. On behalf of the Council, I would invite you to have close regard to the history of this matter when determining what is the appropriate sanction in this case. It's clearly important that you act proportionally and consider the sanctions from the least serious working upwards. In respect of conditions, I would invite the Committee to have careful regard to the workability of any conditions in the circumstances of this particular Registrant. You will have seen the conditions that have been imposed previously and you have made comments in your Determination in respect of compliance with those conditions, and will be mindful of the level of improvement you as a Committee consider there has been to date when considering what, if any, conditions might be appropriate going forward. In respect of what order it's appropriate to impose, that is a matter for this Committee exercising its professional judgement in light of all the material it has before it today, and the overall history of the matter to date.

Sir, I don't think I can assist you any further but if there are any specific matters I'd be happy to deal with those.

Mr North: Thank you, Ms Steele. Mr Hodivala, what do you say?

Mr Hodivala: This is a difficult case, no doubt, for you and your colleagues, to this extent: that as far as your finding is concerned, clearly there was a condition on the Registrant to obtain these reports and ensure that the supervisor communicated the content of any report to the GOC. It may well be that in light of your considerations and having heard Mr Hailes, that you may agree that a certain lack of support and robust criticism and assistance from Mr Hailes may have contributed to the situation in which Mr Stevens finds himself today, in other words his inability to satisfy you and demonstrate the required standard that he is fit to practise. If that is the position in which you and your colleagues find yourselves, in my submission that is something that, whilst obviously Mr Stevens cannot rectify at this stage, he simply hasn't provided the evidence to satisfy you, it may well be that a different supervisor could remedy.

Against all of this, of course, I ask you to bear in mind that whilst Mr Stevens had suggested the supervisor to the GOC, this was a supervisor that the GOC themselves had agreed to appoint in the circumstances – you've seen the correspondence, I think, in the bundle. With an individual who perhaps took a more proactive approach, hands-on approach, and was able to demonstrate in the course of their reports that they had taken that hands-on approach, it may well be that Mr Stevens would be able to in due course satisfy a Committee that he is fit to practise.

So in my submission, clearly a warning would not address the concerns that you have; in terms of the other sanctions that are open to you, conditional

registration in my submission would be the most appropriate. Certainly suspension and erasure, in my submission, would be disproportionate, particularly against the background to this unfortunate case. I would ask you to bear in mind, sir, if you agree that conditional registration is the appropriate way forward, Mr Stevens' personal financial situation: he is working part-time now, the costs of paying for a supervisor to both conduct the supervision element of the record cards and also producing the report is not a cheap cost. Whilst of course, Mr Stevens would wish to do everything that he can to remain registered, I would ask the Committee to bear in mind if it feels that conditional registration is appropriate, that obviously the longer the period of conditional registration the more reports that need to be prepared and so on, and obviously the more cost is going to be incurred on his part. So I would invite the Committee to bear in mind that element of proportionality particularly if there are residual concerns based on the lack of guidance that he has received. If that's something that could be remedied in a relatively short timescale, then obviously that may well be reflected in a further period of conditional registration.

I don't think I can address you any further, unless there's anything particular you wish me to address you on.

Mr North: Thank you, Mr Hodivala. I'll check at this point and see if my colleagues have any issues they'd like to put forward to the representatives. [*No further issues*] Ms Steele, you do have the right to reply to Mr Hodivala.

Ms Steele: I'm grateful, sir, I don't intend to, thank you.

Mr North: That's been very helpful, thank you. I now turn to any advice from the Legal Adviser.

Mr Hiddleston: Sir, earlier on today I gave a very full advice that was essentially advice which included advice to this Committee in relation to the question of sanction. I did so because as I understood it was agreed that the Committee could proceed if it felt that the fitness to practise of this Registrant remained impaired to the question of sanction without delay. That may have been my misunderstanding, but I understand certainly the reason why the Committee have chosen to follow a more conventional course and to hear submissions in a little more detail before the question of sanction is determined.

So in light of that, can I repeat for your benefit what I said in relation to sanction: you have the power at this stage, having heard from both parties, to impose a sanction as set out in the Opticians Act of 1989 as amended. You have had reference made already to Section 13F(13), which sets out the options available to you. You can confirm the current order, you can extend the period for which it has effect, but obviously in respect of conditions on practise by no more than three years at a time, as you've already heard. You can vary the conditions of the current order, you can suspend for a period not

exceeding twelve months, and you may finally as a final resort erase the Registrant's name from the register.

In relation to the question of conditions on practice, I remind you that any conditions which you impose must be appropriate, they must be workable, they must be measurable and they must be proportionate. I remind you, you should only impose an order if one is necessary, and if so any order imposed should be proportionate in all the circumstances of this case. You should always approach the orders that you may impose, if you think one is necessary, in ascending order of seriousness, only proceeding to the more serious sanction if you are satisfied that the one you are considering is not sufficient to meet the seriousness of the concerns identified. Of course you should bear in mind - and submissions have been made in this regard - the serious consequences for the Registrant in the making of any particular order.

Finally of course, you've heard submissions from both parties, you've been reminded a number of times but I remind you finally again, that of course, in relation to the question of what is the appropriate sanction to impose in this case, that is a matter for this Panel and this Panel alone, weighing up all of the competing interests and concerns that you have identified, and considering what is the proportionate and appropriate sanction to impose in this case, exercising fairly your own professional judgement.

That is the advice I have to give to the Panel at this stage, unless there are any questions that you and your colleagues have of me, or indeed any observations that either of the parties have to make about the advice that I have given.

Mr North: No comments from the representatives? Thank you. We will now withdraw into *camera*.

[Hearing adjourned at 14.50]

[Hearing resumed at 17.11]

Mr North: Thank you for your patience, ladies and gentlemen. I believe the Legal Adviser has a small matter he would like to review with the representatives.

Mr Hiddleston: Yes, sir, thank you very much. The position is this, that a matter has arisen in relation to the question of whether or not an immediate order needs to be imposed in relation to this case. I am going to say very little more about it at this point – I can say for the benefit of Mr Hodivala that I have discussed the matter with Ms Steele, and I don't know if she has had an opportunity to speak to you about it. My understanding is that it is not the GOC's position that an immediate order would need to be imposed in this case. That accords certainly with my reading of the rules. However procedurally, I think it is probably correct that we ought to hear what the Determination is in relation to

sanction and then address that issue, but it's perhaps just a warning that that's what's going to come up.

Mr Hodivala: Thank you.

Mr North: These are the findings of the Committee in respect of a further order:

Further order

The Committee has considered the submissions of Ms Steele on behalf of the Council and those of Mr Hodivala on behalf of the Registrant, and accepted the advice of the Legal Adviser.

Before setting out its finding on sanction the Committee reminded itself that this matter has now been active for a period of almost four years. Mr Steven has received advice from no less than five previous supervisors, and the support he has received has yet to address the Committee's concerns. The Committee hopes that the Registrant will seize this renewed opportunity to address the Committee's concerns.

It is determined that the order for conditions should continue for a further period of 13 months. A Review Hearing will be held in the final month before expiration of this order.

The conditions are as follows:

1. You shall, within 28 days, provide the details of a registered optometrist who is an experienced mentor and assessor acceptable to the GOC, who has agreed to review your record keeping as set out in condition 2 below.
2. Within six weeks of the appointment of your agreed mentor, and every six weeks thereafter, you are to:
 - a. Send a list of all patients seen by you in the previous six weeks to the agreed mentor;
 - b. Arrange to meet and review 20 records selected by the mentor from that list, or all records if less than 20 in the relevant period;
 - c. Meet with the mentor to review and discuss records selected and agree any necessary remedial actions.
3. Within 21 days after a meeting with your mentor, you are to send a detailed mentor's report on issues discussed in the meeting and copies of all records reviewed, suitably redacted, to the GOC. The mentor's report should summarise the remedial actions proposed and particularly in respect to the areas of concern in your record

keeping identified in the determination of the Committee on 1 October 2010 and earlier determinations.

4. Not less than 28 days before any Review of this order, you are to supply a detailed report, together with any supporting documentation from your mentor summarising the remedial actions taken in respect to the areas of concern in your record keeping identified in the determination of the Committee on 1 October 2010 and earlier determinations.
5. The GOC will enter these conditions against your name in the register. You must allow the Registrar to share any information, including confidential information with any employer, supervisor, professional colleague or any organisation for which you provide ophthalmic services for the duration of your conditional registration. You must also allow the Registrar to share this information with other regulatory bodies and the Department of Health.
6. You must notify the Registrar within 14 days of commencement of any professional appointment you accept whilst you are subject to these conditions (this includes any teaching posts) and provide contact details for your employer, and if providing ophthalmic services under an NHS contract, the PCT on whose ophthalmic practitioners list you will be included.
7. You must inform the Registrar of any criminal convictions, police cautions or formal disciplinary proceedings taken against you from the date of this determination.
8. You must inform the Registrar:
 - a. If you cease working
 - b. If your work takes you out of the UK for a significant period of time; or
 - c. Of any employment you apply for outside of the UK (and in which countries)

as conditions of registration only apply to practice undertaken in the UK (you must consider whether your time out of work or out of the UK will allow you to fulfil the conditions during the period of conditional registration). The Registrar may inform the relevant competent authorities in that country of your current conditions of UK registration.

9. You must continue to fulfil the CET requirements under the GOC CET scheme to secure appropriate points for continued inclusion on the GOC register.

10. You must re-inform the following parties that your registration is subject to conditional registration:

- a. Any organisation or person employed or contracting with you to undertake ophthalmic services (to include any locum agency);
- b. Any prospective employer;
- c. Chairman of the Local Optometric Committee;
- d. The PCT in whose ophthalmic practitioners list you are included or are seeking inclusion.

11. You must ensure that your GOC registration is renewed by 15 March annually whilst you are subject to the GOC FTP conditional registration and procedures. Should you fail to renew your registration a review hearing will be arranged immediately.

Mr Hodivala, in the absence of the Registrant, you will take a copy on his behalf, I assume?

Mr Hodivala: I certainly will. It's been very difficult to keep up with all the conditions, I'm afraid, and I would appreciate an opportunity to see those conditions in writing so that I can just briefly take instructions on the practicalities, because the last thing I want to do is find that we walk away from here and they're unworkable for whatever reason. So I would much rather have the opportunity now over five minutes to just consider them briefly and see whether there are any issues.

Mr North: It's rather late in the day, I'll have to consult my colleagues.

Mr Hodivala: It is late in the day, I appreciate that, but obviously I would welcome the opportunity.

Mr North: [*Consults*] The feeling of my colleagues is, Mr Hodivala, that is our decision. If there are subsequent representations to be made, let them be made, but that is our decision.

Mr Hodivala: So be it.

Mr North: Now, I understand there is a further matter that the Legal Adviser wishes to address briefly.

Mr Hiddleston: It's simply this question in relation to an immediate order now. Looking if I can do at Section 13L(2), the power to order immediate orders in relation to impairment of fitness to practise, it's quite clear that that power is only mentioned as being applicable to an order made under 13F(2) or 13F(4)(c). Clearly that is in relation to the original substantive order as I

understand it, so there is no suggestion there that the power to order an immediate order arises under the provisions that the Committee are working on at this stage under 13F. Furthermore, although the powers under 13F(13) that I referred to before refer to one of the powers being that

“the current period of conditional registration be extended for a further period from the time when it would otherwise expire as may be specified in the direction”,

I read ‘the direction’ there as meaning specified in the original direction. It then goes on to refer in (d) to “or”. It seems to me that must be “and/or”, because otherwise it doesn’t seem to make an awful lot of sense, it would simply mean if one was to exclude the possibility of “and” in that situation that if 13(d) applied in that exclusive way then one of the powers not available to this Committee would be to make any further order of conditions of practice other than the one that currently was extant, and that seems to me to make no sense at all.

So my reading of the rules, if it is to be approached from a purposive point and if it is to make any sense whatsoever, is that any order imposed, and in particular in relation to the order of conditions of practice which has been imposed today by this Committee, is that they take effect from today, as I understand it.

Mr Hodivala: Forgive me, they do take effect –

Mr Hiddleston: They do take effect from today.

Mr Hodivala: As opposed to take effect from the expiration of the existing order?

Mr Hiddleston: That’s my understanding at the moment. If there are other submissions to be made, then let me know and I will look at it again, that’s my understanding – Ms Steele may disagree with that, I don’t know.

Ms Steele: I think if I followed you correctly, I don’t have any observations to make that would deviate from the legal advice you have heard. [*Confers*] Apologies, sir.

Mr North: Would it be safe for me to assume that all three, the representatives and our Legal Adviser, are of one mind?

Mr Hiddleston: Correct.

Mr North: That is most reassuring. Thank you everyone for your assistance today. A copy of this Determination will be available from Mr Henley, and I thank you for your patience and your assistance today.

[Hearing concluded at 17.23]