



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

**GENERAL OPTICAL COUNCIL**

**IO(10)05**

**AND**

**ANTHONY PLIMMER (01-9062)**

**DETERMINATION OF A 2<sup>ND</sup> REVIEW OF AN INTERIM ORDER  
15 April 2011**

**DETERMINATION OF 2<sup>nd</sup> REVIEW OF AN INTERIM ORDER: ANTHONY  
PLIMMER (01-9062)  
Friday, 15 April 2011**

Fitness to Practise Committee: Sir Alistair Graham (Lay, Chair)  
Ms Margaret Hallendorff MBE (Lay)  
Ms Elizabeth O'Donoghue (Optometrist)

Legal Adviser: Mr Gerard Pounder

For the GOC: Mr Christopher Whalley

Hearings Manager: Mr David Henley BEM

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*[Proceedings commenced at 9.36 am]*

**Sir Alistair Graham:** My name is Alistair Graham. I have been elected to chair today's review of the current Interim Conditional Registration Order. The Committee today is made up of one optometrists and two lay members. I will ask the members to introduce themselves and the capacity in which they sit. *[Introductions]*

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

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

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

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

It is the Council's policy for the determination of the Committee and the transcript of proceedings to be displayed on the Council's website for public viewing. Where matters of health have been discussed, the determination and transcript will be redacted accordingly.

I was then going to speak to Mr Plimmer, but Mr Plimmer is not here. The first thing we need to decide, therefore, is whether we can proceed in the absence of the Registrant.

**Mr Whalley:** Indeed, sir, that is correct. It is my application for you to proceed in the absence of Mr Plimmer today. Your powers to do so are set out at Rule 21 of the Fitness to Practise Rules, and that rule says that:

“Where the registrant is neither present nor represented at a hearing” –

I am sorry, I will let you find your place.

**Mr Pounder:** It is easier if we give a reference. It is at page 140.

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

“21. Where the registrant is neither present nor represented at a hearing, the Fitness to Practise Committee may nevertheless proceed if

- (a) they are satisfied that all reasonable efforts have been made to notify the Registrant of the hearing and
- (b) having regard to any reasons for absence which have been provided by the Registrant, they are satisfied that it is in the public interest to proceed.”

Sir, the Council has heard nothing from Mr Plimmer in relation to this review hearing. You will find a service bundle, which has been helpfully prepared, and I hope you have copies of that. If I could just take you through that, at page 1 there is a screen print with the current registration details for Mr Plimmer. You will note that the address given there is different from the address found at page 2, where the letter to Mr Plimmer was sent, enclosing the notice of the hearing.

In relation to that change of address, you will find a memo at page 6, from the registration team, where they explain that Mr Plimmer updated his details on 24 March which, of course, is after the date when the letter was sent on 25 February – changing his address and contact details on his retention registration details. Sir, the rules say that you must be satisfied that all reasonable efforts have been made and in that regard what I would say is that when the notice was sent by the Optical Council to Mr Plimmer, they relied on the current details that he had provided which, of course, at the time on 25 February, were correct so far as we were aware. The details were not updated and changed until 24 March. In my submission, sir, the Council have done all they can and have taken all reasonable efforts to service Mr Plimmer with notice of today’s hearing.

In that bundle at page 8 you will also find a letter from the Association of Optometrists. They have indicated that they are no longer representing Mr Plimmer in these matters. I can confirm that the notice of the hearing was also

sent to them at the time when it was sent to Mr Plimmer in February of this year because at that time, as far as we were aware, they were also still acting for Mr Plimmer and would no doubt have been in touch with him in relation to this hearing. Sir, in my submission, two steps were taken to notify his representatives and Mr Plimmer directly and, as such, you have the power to proceed in his absence today, taking into account Rule 21.

**Sir Alistair Graham:** Thank you very much. Could I ask my colleagues whether there are any questions they would like clarify on that aspect? [*No questions*] Could I ask the Legal Adviser?

**Mr Pounder:** It is as Mr Whalley says. You have to approach this on the basis of the section in Rule 21 of the Rules at page 140. You have to be satisfied that (a) all reasonable efforts have been made to notify the Registrant of the hearing and (b) having regard to any reason for absence which had been provided by the Registrant, you have to be satisfied that it is in the public interest to proceed. If it had just been a letter that was sent out to an old address, then there may well be some question marks. I don't know whether anyone has been in contact with him, or telephoned him, or got a telephone number today, but you also have the fact that, at the time when the notice was sent out, he was represented by the AOP and it is inevitable that they would have been in contact with him as soon as they received the notice. In essence, you have two distinct ways that he has been warned: one may have failed, but the second way, you may consider, would undoubtedly have got to him via his legal representatives.

**Ms Hallendorff:** May I just ask, was any attempt made to send him an email or a phone call?

**Mr Whalley:** Madam, not as far as I was aware, unless the Hearings Manager is able to provide further information.

**Mr Henley:** No.

**Ms Hallendorff:** Thank you.

**Sir Alistair Graham:** So we are relying on the Association of Optometrists to have been in contact?

**Mr Whalley:** We are indeed. Normal practice for a notice of hearing is to send documents by recorded delivery to the registered address and, of course, that was done in this instance, and of course notify the representatives that the Council has been informed are involved, which again was done in this instance, sir. In my submission, although reasonable efforts should be made, it is not necessarily incumbent upon the Council to email and telephone every registrant for every hearing, because that would probably be beyond what the rule actually stipulates.

**Mr Pounder:** Has a phone call been made to the AOP?

**Mr Whalley:** Not today it hasn't, no.

**Mr Pounder:** To see whether or not they warned him? That would be conclusive evidence that he knows about the hearing, would it not?

**Mr Whalley:** It would, sir. I am certainly happy to make that inquiry this morning. I have spoken to someone there this morning already, so I could give them a call.

**Ms Hallendorff:** I think we need some reassurance that the extra mile had been taken.

**Sir Alistair Graham:** It would be helpful if we could adjourn for a short period, if you could just check with the AOP whether they made real attempts to get hold of him and have a discussion with him about his current position.

**Mr Whalley:** Yes, sir.

**Sir Alistair Graham:** We will adjourn for 10 minutes or so.

*[Hearing adjourned at 9.43 am]*

*[Hearing resumed at 9.49 am]*

**Mr Whalley:** Thank you for the time, sir. I have spoken with Gerda Goldinger, who as you can see at the bottom of the letter at page is the Director of Legal Services at the AOP. She last wrote to Mr Plimmer on 4 March 2011, asking him for instructions and also informing him of today's hearing and asking him to make sure he got in touch with the Hearings Manager to confirm his attendance or non-attendance, as it has turned out to be. Since that time, she has had no contact. The reason she informed the GOC that she was no longer acting for him was because she has no instructions from Mr Plimmer and he has not been in contact since February. That is as far as I can take it, sir.

**Sir Alistair Graham:** Does that satisfy you?

**Mr Pounder:** Did you find out which address she wrote to?

**Ms Hallendorff:** If it was 4 March, she wrote to Watford, presumably?

**Mr Whalley:** She wrote to the Garston Drive address. I confirmed that the only address she had for him was that address.

**Ms Hallendorff:** So the chances are that he did not get it, because the one from the GOC came back, returned.

**Mr Whalley:** Indeed, madam, but of course at that time he had not notified the GOC or the AOP.

**Ms Hallendorff:** That is not a criticism, but it is a fact.

**Sir Alistair Graham:** So he hasn't had a letter from the AOP to the new –

**Mr Whalley:** To that address, because that is the only address they have for him. They have not been notified of a change of address.

**Sir Alistair Graham:** So we are relying on a re-direction order, for it to have –

**Mr Whalley:** Sir, the onus must be on the registrant to inform the GOC of any change of address.

**Ms Hallendorff:** Which he did, by the time of the subsequent –

**Mr Whalley:** Indeed, and by the time that information came through, it would have been too late to serve notice of today's hearing, because it was outside the 28 day period, or inside the 28 day period, I should say.

**Sir Alistair Graham:** Shall we adjourn to discuss this? [Yes] We will adjourn while the Committee decides.

*[Hearing adjourned at 9.51 am]*

*[Hearing resumed at 9.59 am]*

**Sir Alistair Graham:** The Committee has given consideration to the application to proceed in the absence of the Registrant. We believe that we are bound by the terms of Rule 21 on page 140 of the Opticians Act. The issue we have been grappling with is the provision of 21(a), where we have to be satisfied that all reasonable efforts have been made to notify the registrant of the hearing. We have decided that we are not satisfied that all reasonable efforts have been made because of the change of address of the registrant that took place and your confirmation, Mr Whalley, that the AOP were in contact with him earlier this year at the old address rather than at the new address. It is very difficult for us to know if the Registrant knows about this hearing and has taken the conscious decision not to attend. We think further efforts need to be made to satisfy the Committee about this matter before we can allow this hearing to proceed.

**Mr Whalley:** Certainly, sir, there will have to be emails and phone calls made after this and contact at the new address, and we will have to list a new hearing, sir.

**Sir Alistair Graham:** We are conscious that it runs out on 26 April, or it has to be reviewed by 26 April.

**Mr Whalley:** Yes, within six months. Of course, that would not be possible in terms of following the rules of notice of hearing, because you have to be given 28 days' notice of the hearing.

**Mr Pounder:** Could you not seek leave to have a short notice, as things have already been started, and it is just a question of dotting an 'i' and crossing a 't'? Can the Committee not adjourn it to another date next week?

**Sir Alistair Graham:** We would be happy to proceed along those lines if that can be arranged.

**Ms O'Donoghue:** Does it have to be the same committee?

**Sir Alistair Graham:** I would not have thought so. I don't think so. I know that the Committee will be sitting next Monday and Tuesday.

**Mr Henley:** Yes, but they have full hearings then. Could I make the suggestion that there could be a few more phone calls to the AOP, just to establish exactly what they said to him? They have all day, and I could go over to the Council to see whether there are any more emails which may assist.

**Mr Whalley:** I do not think the AOP will be able to shed any further light. They have had no instructions from him. They sent letters to the old address, which they thought was the current address. I do not think they can take anything further.

**Mr Henley:** But did they speak to him on the telephone at any point?

**Mr Whalley:** No, they made contact through letters and they have not actually telephoned him.

**Sir Alistair Graham:** The most helpful thing we could do would be to adjourn the hearing until some time next week, so that the Committee can have a further look at the evidence that you are putting forward about the reasonable efforts, and to see what further efforts can be made in that interim period.

**Mr Whalley:** Sir, I think that is an entirely sensible approach. The steps that can be taken, of course, are a letter to be sent out today, emails sent out, and telephone calls made. Once all those efforts have been made, the panel would be well assured.

**Mr Henley:** But I am not sure whether we could get the hearing in next week, and that is the problem.

**Sir Alistair Graham:** But it would not involve a long hearing. Could the Committee that is meeting on Monday and Tuesday take a short period of time before or after lunch?

**Mr Henley:** I don't know, because they might be tied up.

**Ms Hallendorff:** Monday is perhaps a little soon, today being Friday. You could send an email or make a telephone call but you said you would not get a letter out.

**Sir Alistair Graham:** Well, you could get a letter out.

**Ms Hallendorff:** Yes, you could get a letter out, but I doubt it.

**Mr Whalley:** I agree that Tuesday is the better of the two. I agree with the Chair in that I do not think that this hearing would take too long in terms of the substantive review. As such, it may well be possible to put it in before the hearing starts on Tuesday.

**Ms Hallendorff:** When is the next hearing after Tuesday?

**Mr Henley:** It is on 9 May.

**Sir Alistair Graham:** That is why I think Tuesday is the obvious day to try. You could get a letter out today and you could send the email today. You could make further telephone calls today and Monday because they are all working days.

**Mr Henley:** I wonder if you would indulge me for perhaps half an hour or so, while I go over to the Council.

**Sir Alistair Graham:** Okay, to see if you can gather any further evidence. We will adjourn until you have had the opportunity to do that. If we cannot provide any further information, that is probably the best way to proceed.

*[Hearing adjourned at 10.04 am]*

*[Hearing resumed at 10.48 am]*

**Sir Alistair Graham:** *[Following a telephone conversation with Mr Plimmer]* Are we all satisfied, having heard from Mr Plimmer, that he does not object to the continuation of the current order? *[Agreed]* Would you like to proceed, Mr Whalley?

**Mr Whalley:** Sir, can I take it from the conversation that has just taken place between you and Mr Plimmer that you are content to proceed in the absence of Mr Plimmer today?

**Sir Alistair Graham:** Yes, we are.

**Mr Whalley:** Thank you, sir. This is a review of an Interim Order which was first made on 30 June 2010.

**Sir Alistair Graham:** I am sorry, before you go on, I promised that, for the record, I would report what Mr Plimmer said. For the record, can I explain that in the absence of Mr Plimmer here, I have had a telephone conversation with Mr Plimmer to see whether he knew about the hearing that was taking place today. Because of his change of address, he knew that a hearing was coming up but he did not know that it was taking place today. I went on to ask him whether he had any objection to the current order staying in place, and he said that he had no objection. He clearly had very strong views about the allegations that are

being put before him and will want to contest those strongly at a substantive hearing, but he was satisfied that he would be able to do that at the substantive hearing which he was anxious should take place as soon as possible.

The second question I put to him was whether he was currently acting as an optometrist. He said he was not acting as an optometrist but he was acting as a receptionist in an optical practice. He then went on to make some remarks about contacts with the primary care trust which, I explained to him, were not relevant to this hearing. That was the extent of the conversation, which I think other people had the opportunity to hear because it was on speakerphone.

I am sorry, Mr Whalley, but I thought it was important to record that while it was clear in my mind. Please continue.

**Mr Whalley:** Just to repeat what I just said, the application for the Interim Order was made on 30 June. On that occasion, the Committee felt it was necessary to impose an Interim Conditional Order, which is set out at pages 62 and 63 of the Council's review bundle. There was subsequently an early review of that order because one of the conditions had not been complied with by Mr Plimmer. That review took place on 26 October 2010. The matter was again considered by a different committee and on that occasion they once again felt it necessary to impose an Interim Order. That decision and order is set out at pages 65 and 66 of your bundle, and you will see that there was a slight amendment to the conditions. Essentially, they felt it was better to keep that conditional registration order in place.

This review hearing is taking place in accordance with the rules, within six months of the order of 26 October 2010. I handed up two additional documents, sir, one of which is a schedule of the conditions from 26 October 2010 and details of whether Mr Plimmer has complied with those. I also hand up a letter from Hertfordshire Primary Care Trust.

Sir, your powers at this review hearing today are set out in the Opticians Act 1989 at Section 13L(4) which is at page 46 of your Act and Rules bundle. That says that today you may:

- (a) revoke the order or revoke the condition imposed by the order;
- (b) vary a condition imposed by the order; or
- (c) if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of that person, replace –
  - (i) an order for interim conditional registration”

which is the order that is currently in place,

“with an interim suspension order having effect for the remainder of the term of the former.”

There, it sets out your powers today, sir. Of course, in the conversation with Mr Plimmer, he stated that he has no objections to the current order remaining in place as the conditions are set out.

The only point I would flag up in relation to those conditions, sir, looking at the schedule I handed up earlier, is condition 11. This states:

“You must inform the following parties that your registration is subject to conditional registration.”

At 11d, it says:

“The PCT (Primary Care Trust) in whose ophthalmic practitioners’ list you are included”

You will see, from the compliance document and from the letter dated 19 November, that Mr Plimmer had not informed them of that and they raised that with the Director of Legal & Fitness to Practise.

**Sir Alistair Graham:** He clearly has some strong feelings about that.

**Mr Whalley:** He does indeed, sir. That is a matter which forms part of a separate allegation which has now been referred to the Fitness to Practise Committee, and that is the issue he had with that.

I can say that, following the letter of 19 November, Mr Plimmer has informed the Primary Care Trust and indeed did so – I have some emails between the Primary Care Trust and the General Optical Council - he informed them verbally on 21 December last year that he was subject to these conditions. So, whilst he had not done so as at 19 November, he subsequently has done so. He had not complied, but he has now complied with that condition, sir.

As you heard from Mr Plimmer, he is not currently working as an optometrist and so many of the conditions effectively have not kicked in, if I may put it that way, because he is not actually working at the present time. As far as the Council is concerned, at this review hearing, the Council is more than happy with the conditions that are in place, and feels that they are still necessary indeed to protect the public. That is the basis on which they were imposed in the first instance.

If I may update you in relation to the position with the substantive hearing, because it is always important to make sure that cases are being investigated expeditiously, of course, this order is currently in place until December this year.

The initial referral, which you will find at the back of your bundle at page 67, is a letter informing Mr Plimmer that allegations were considered by the Investigation Committee, who determined that there was a case to answer in relation to certain matters. They referred those matters to the Fitness to

Practise Committee and those matters are currently being investigated, with a view to listing a procedural hearing in the next month or two. Expert evidence is being obtained at present, so those matters are ongoing in terms of investigation. I would fully expect the matter to be listed before the end of the interim order.

There is also a further allegation, as I indicated, in relation to the Primary Care Trust, which was referred to the Fitness to Practise Committee in March this year. Mr Plimmer has been informed of that and the intention is to join those two matters up so that there will be one substantive hearing. That is at an early stage of investigation but it is a fairly straightforward matter and I see no problem with those two matters being heard certainly within the next six months. That is to update you on the position with the substantive matters.

**Sir Alistair Graham:** Thank you very much. Could I just check whether my Committee members have any questions? [*No questions*]

Let me ask the Legal Adviser to advise the Committee on how we should approach this issue.

**Mr Pounder:** Thank you, Sir. As Mr Whalley has informed you, this is the second review of the Interim Order which was put in place on 30 June last year. He has referred you to Section 13L(4) of the Opticians Act 1989 as amended, and we have to approach this on that basis. The initial order was made on the basis that there was a need to protect the public and you have to consider whether that situation still exists. You will obviously take into consideration that you have spoken to Mr Plimmer today and he has no objection to the order continuing on the same terms as before. You have now had information that the case is likely to proceed, it would seem, sooner rather than later at this stage.

**Sir Alistair Graham:** Thank you very much. Are you happy with the legal advice that the Committee has received?

**Mr Whalley:** Certainly, sir.

**Sir Alistair Graham:** Perhaps we should just clear the room, Mr Henley, while we consider the issue before us.

[*Hearing adjourned at 10.57 am*]

[*Hearing resumed at 11.09 am*]

**Sir Alistair Graham:** This is the determination of the second review of an Interim Order on 15 April 2011.

## Determination

### Service of notice

The registrant was not present nor represented. The Council was represented by Mr Whalley who applied for the matter to proceed in the registrant's absence pursuant to Rule 21 of the 2005 Fitness to Practise Rules. The committee adjourned so that the registrant could be contacted so that the Committee could satisfy itself that all reasonable efforts had been made to notify the registrant and that it was in the public interest to proceed. The Chairman, in conversation with Mr Plimmer, was able to confirm that he had no objection to the current order remaining in force and for the hearing to proceed in his absence. Mr Plimmer also informed the Committee that he was not currently working as an optometrist but he was working part time as a receptionist in an optical practice.

### Determination

The Fitness to Practise Committee reviewed an Interim Order for the imposition of conditional registration of Anthony Plimmer for a period of 18 months, made on 30 June 2010. An early review hearing on 26 October 2010 was requested by the Council due to the non-compliance of the terms of the original order; the conditions were amended to cater for the changed circumstances of the registrant.

The Committee accepted the advice of the Legal Adviser.

The Committee is satisfied that it is necessary to make a review of the Interim Order for the protection of the public. The registrant's registration will continue to be subject to conditions. The Committee came to this decision having considered the totality of the evidence before it and the material placed before a differently constituted Committee in June and October. The Committee had regard to the matters expressed on the previous occasions and the need to ensure that any decision it makes must be proportionate.

The Committee is satisfied that the conditions as imposed should continue.

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

That is the determination. The list of conditions that applied previously continue to apply.

Thank you all very much. That brings the hearing to a conclusion.

*[Hearing concluded at 11.12 am]*