



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

**F(08)01**

**GENERAL OPTICAL COUNCIL  
AND  
RONALD JAMES PREEDY (D-9144)**

**12-14 April 2011**

**SUBSTANTIVE HEARING**

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**SUBSTANTIVE HEARING: RONALD JAMES PREEDY  
DAY ONE  
Tuesday, 12 April 2011**

FTP Committee:	Mr Peter North (Lay) (Chair) Duncan Counter (Dispensing Optician) Mr Hilary King (Dispensing Optician) Mrs Geraldine Huka (Lay) Ms Fran Jones (Lay)
Legal Adviser:	Mr Gerard Pounder
Hearings Manager:	Mr David Henley BEM
For Council:	Mr John Hepworth
For Registrant:	Mr William Graham

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*[The hearing commenced at 9.40]*

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

To my right is Mr 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 given 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 Council's legal team and members of the public.

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

At this stage of the proceedings, do I have any applications from either of the parties?

**Mr Graham:** Sir, I have a preliminary application which I would like to address you upon if I may.

**Mr North:** Indeed. Mr Hepworth, are you making any applications?

**Mr Hepworth:** No, I am responding to the application.

**Mr North:** Right, Mr Graham.

**Mr Graham:** I am much obliged to you. This is an application pursuant to Rule 35 following an adjournment of these proceedings. The basis of that application is to do with and exclusively the health of the Registrant in this matter, Mr Preedy. Yesterday, we received from his medical practitioner a medical note, together with a document in respect of a blood sample.

**Mr North:** Is this the document that has been issued to the Committee?

**Mr Graham:** It is, sir.

**Mr North:** We shall make that D1. Thank you, do continue.

**Mr Graham:** I am much obliged. In any event, during the course of the day, having become aware of this matter, I sought to bring it to the attention of the Council and, indeed, to my friend for the Council, and copies of those documents were sent to them during the course of yesterday, so that they would not be taken by surprise in respect of this application today. I sought to bring it to their attention at the first available opportunity upon which this information was conveyed to us.

This is ultimately a matter for your panel members' discretion. However, there are some authorities that give some guidelines on how this application should be treated. I have, if I may submit, one of the leading authorities in this area. I put before you the relevant authority, as well as provide one to my friend. I have three copies, I apologise that I do not have more than that, and I hope you can manage with that.

**Mr North:** We shall list that as D2 – sorry, R1 and R2, excuse me.

**Mr Graham:** This is a House of Lords decision which is *R v Jones* [2002] 2AllER 113. Mr Chairman, I invite the panel to go to page 5 of that judgment and, in particular, to the bottom part of paragraph 6 which states as follows:

“The existence of such a discretion is well-established, and is not challenged on behalf of the appellant in this appeal. But it is of course a discretion to be exercised with great caution and with close regard to the overall fairness of the proceedings; a defendant afflicted by involuntary illness or incapacity will have much stronger grounds for

resisting the continuance of the trial than one who has voluntarily chosen to abscond.”

I invite Mr Chairman and the panel to move forward to page 7, in particular paragraph 13, which I have highlighted hopefully for everyone’s benefit:

“...the discretion to commence a trial in the absence of a defendant should be exercised with the utmost care and caution. If the absence of the defendant is attributable to involuntary illness or incapacity, it would very rarely, if ever, be right to exercise the discretion in favour of commencing the trial, at any rate unless the defendant is represented and asks that the trial should begin.”

That authority, in my view, supports the proposition when a party on the first occasion such as this presents a medical note of this type, it would be right and proper, in my submission, for that discretion to be exercised in favour of the Registrant, Mr Ron Preedy. Although I do not have the authority in front of me, there is another case, and the Legal Adviser may assist, which is that of *Farmer v GMC* [2008] EWHC 753. The Registrant in that case was entitled to a couple of adjournments but, ultimately, the matter proceeded as a consequence of too many adjournments. However, in this specific case, it is not a case where we are seeking to make this application twice or thrice; it is the first time that this application has been made. It is certainly a new development for us, it is not something we have foreseen and upon it being brought to our attention, in my humble submission, we have acted correctly and properly in bringing it to everyone’s party’s attention. In light of those authorities, in my view, it would be right and proper to grant this application.

**Mr North:** Thank you, Mr Graham. What do you say, Mr Hepworth?

**Mr Hepworth:** Can I direct your attention, first of all, to the 2005 Rules at page 140 of the booklet which you have before you? I raise it in order to deal with it, that Rule 21 of the 2005 Rules stipulates that:

“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.”

Rule 21 does not directly apply to this case because the Registrant is represented but, sir, I don’t think anybody would argue that you have a discretion whether or not to proceed in the absence of the Registrant, even though he is represented. That is the discretion which, of course, you exercise in the interests of justice. I accept the submissions made by my friend in relation to the authority of *Jones*. Of course, that was a criminal case

relating to a criminal court, Crown Court trial, although I believe the case of *Tait v The Royal College of Veterinary Surgeons* [2003] UKPC 34 approve that for use in relation to regulatory proceedings.

Sir, the authority which has been provided to you is the House of Lords authority in the case of *Jones*. One can see at paragraph 13, at page 7 of the judgment that approval is given to almost all of the criteria which were set by the Court of Appeal as this matter progressed its way through the courts. Perhaps it would be helpful if I refer you to those criteria within the Court of Appeal judgment while I am setting out the legal framework when you are exercising your discretion - if you give me a moment. [*Pause*]

The relevant criteria are set out in paragraph 2 of the judgment of Rose LJ, and the paragraph reads as follows:

“In our judgment, in the light of the submissions which we have heard and the English and European authorities to which we have been referred, the principles which should guide the English courts in relation to the trial of a defendant in his absence are these: (1) A defendant” –

and, of course, where the word “defendant” is used, you can substitute the word in this case “registrant” –

“(1) A defendant has, in general, a right to be present at his trial” –

again, substitute the word “hearing” –

“and a right to be legally represented. (2) Those rights can be waived, separately or together, wholly or in part, by the defendant himself. They may be wholly waived if, knowing or having the means of knowledge as to when and where his trial is to take place, he deliberately and voluntarily absents himself and/or withdraws instructions from those representing him. They may be waived in part if, being present and represented at the outset, the defendant, during the course of the trial, behaves in such a way as to obstruct the proper course of the proceedings and/or withdraws his instructions from those representing him. (3) The trial judge” –

in this case you –

“has a discretion as to whether a trial should take place or continue in the absence of the defendant and/or his legal representatives. (4) That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place, or continuing, particularly if the defendant is unrepresented. (5) In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution” –

and, although they are not equivalent parties, of course in this case there is a Registrant and the Council –

“must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular: (i) the nature and circumstances of the defendant’s behaviour in absencing himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear; (ii) whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings; (iii) the likely length of such an adjournment; (4) whether the defendant though absent is, or wishes to be, legally represented at the trial, or has by his conduct waived his right to representation; (v) whether an absent defendant’s legal representatives are able to receive instructions from him during the trial and the extent to which they are able to present his defence; (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him; (vii) the risk of the jury” –

in this case again you, as you are the tribunal of fact –

“reaching an improper conclusion about the absence of the defendant”.

The next criterion was not approved by the House of Lords, so I shall not bring that to your attention, but the next approved criterion is:

“(ix) the general public interest and the particular interest of victims and witnesses” –

and I shall give some submissions about the witness in this case in due course –

“that a trial should take place within a reasonable time of the events to which it relates; (x) the effect of delay on the memories of witnesses”.

The last criterion relates to where there is more than one defendant; that, of course, does not apply here. However, the next part of the judgment relates to the need to make sure that, even if the hearing continues in the absence of the defendant, efforts are made to ensure that the hearing is fair.

Sir, I believe that gives you the legal framework. The Council’s position is one of neutrality. It is a matter for you whether or not to proceed and, in effect, to reject the application for an adjournment which is currently before you.

It falls incumbent on me, however, to draw a few matters to your attention in relation to the medical evidence which you have before you. Can I start off with this point? If you accept that the medical evidence before you is genuine, and that the Registrant’s illness prevents him from attending today, or from giving instructions to those who represent him so that his case can be put, if you find he is being prevented from doing that because of his medical

condition, you may decide the only course of action is to allow the application. However, I ask you to look at the evidence which is before you quite carefully.

First, this letter does not say that the Registrant is unfit to attend, or that he is unfit to give proper instructions to those who represent him even if he is absent. That seems to be reinforced by the fact that the person who prepared this medical note is going to see the Registrant again in two weeks' time, so it is not an urgent situation, in the Council's submission.

You may be a little concerned about the imprecise language which is used in the medical letter. [Redacted].

[Redacted]. There is no evidence before you as to why this condition has become worse so as to prevent the Registrant appearing before you today or, as I said, being able to give instructions even if absent.

Within the bundle of documents which would be put before you on behalf of the Registrant, there is a reference from somebody at the same practice, I don't know if it is the same person who prepared this letter, but clearly there is a familiar relationship between the Registrant and the surgery.

Ultimately, sir, based on those considerations, may I suggest that your first decision is to decide whether or not you are satisfied, because this is an application by the Registrant so the burden falls on him to establish the grounds for his application, that the Registrant's medical condition would prevent him from attending or being able to give instructions even if absent? If you decide that is not made out, then, of course, you have a general discretion to proceed and, for a number of reasons, the Council would ask you to exercise that discretion in favour of proceeding. Those grounds, in very brief terms, are as follows.

The conviction to which at least one of the allegations relates was four years ago, this is an old matter and there is perhaps a need that does not need to be stated about the requirement to make swift progress such as is compatible with the interests of justice with any case to maintain public confidence in the profession and the regulatory proceedings. I should say this matter has already been listed on two previous occasions for a substantive hearing: in July 2008 when the matter just related to the conviction and again in January 2011, when the Registrant applied for an adjournment. I should say that in July 2008, the Registrant applied for an adjournment because he was appealing against his conviction, and again in January 2011 there was an application by the Registrant to adjourn because he had shortly before the hearing lost his legal representation. You may be relieved to know that he, again, is today represented before you, so that situation has been resolved.

There is a witness from the NHS Counter-Fraud Department, Dave Horsley, and this is the second occasion on which he has attended. He attended in January and attends again today. He is ready to give evidence and, of course, has other massive constraints on his time. I have been making the point as I go through but this is a Registrant who is represented before you

today, so I draw you to the comments that are made in the case of *Jones* about how that is a valid criterion for you to take into account when deciding whether or not to proceed.

Sir, those are the submissions that I make and, in summary, they are these. Whether or not you decide to reject the application is a matter for you. If you decide that the Registrant's medical condition is not such that it prevents him from attending today, and you are deciding within your general discretion whether or not to proceed in the absence of the Registrant, if you reach that stage the Council would encourage you to proceed.

Sir, I do not know whether those submissions have been sufficiently clear as to not require any further explanation but, if you require such an explanation, I shall endeavour to provide it to you.

**Mr North:** Thank you, Mr Hepworth, that was helpful. Mr Graham, do you have any further remarks?

**Mr Graham:** Thank you, sir, I am much obliged. First, my friend has taken you through the guideline in a case which is a criminal case but some matters are applicable to today's proceedings. The first rule which he referred to you, which is relevant to this case in my view, is that it would be only in a rare exception for a case to proceed. In my view, this is not a case that is rare to enable you, I submit, to exercise your discretion to proceed. The courts say that great care must be taken. It is not a case of the defendant absconding himself, it is a question where a genuine, proper medical note has been produced to the panel. Of course, it is always difficult when one receives a medical note a day before a hearing to put before the panel perhaps more detail. However, I can only put forward that medical note as it was received by me in good faith. I have not sought to go back to the general practitioner to seek to change that note. That is the note as it has been presented to me – time would not have permitted me to do so in any event. However, it does say:

“[Redacted].”

In my humble submission, against that it is difficult to conclude other than the fact that the Registrant has genuine, serious medical issues which he has put before you in good faith.

[Redacted]

My friend has referred to the fact that the conviction was four years ago. The matters that are the subject of that conviction go back to 2004/2005, and it is now 2011. The fact that these proceedings are adjourned for a matter of months, in my humble submission, against the background of this case, I don't think a few months can be seen to be proportionately prejudicial to the Council's case. In the legal authority in which he referred to witnesses' memories, we have, if you like, a professional witness here in David Horsley who – and we have not seen his bundles – has clearly spent many man hours

in this case and has put together substantial witness statements. I do not believe for one moment that there will be any issue concerning his memory or recollection of what was said. It is a contemporaneous note made at the relevant time when he was involved in these proceedings.

Furthermore, he is, ultimately, a public servant, a professional witness, and it would not be unusual for someone of his nature to be called before panels on different occasions and on such occasions proceedings may not proceed. Indeed, there were several Crown Court appearances when I understand he was there and during those proceedings matters were not necessarily concluded but were adjourned. Therefore, in my humble submission, that submission does not hold any water, nor does the submission concerning a further delay due to the considerable length of time it has taken to bring this matter before you. If it is likely that this matter is to be adjourned for a number of months, against that background it is no grounds to consider my friend's submission.

Ultimately, I refer back to the authorities which I must. The courts have said, and I have highlighted it, that it would be very rare for a panel to proceed when the Registrant's absence is due to involuntary illness or incapacity. Of course, it is unfortunate, we are here today convened but these things do happen and the courts recognise that fact and make allowance for it. The normal allowance is to exercise discretion properly and grant an appropriate adjournment, and that would be my submission.

**Mr North:** Thank you, Mr Graham. Is there anything that you wish to add, Mr Hepworth?

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

**Mr North:** We now move to questions from the Committee but, before we do so, I would like to get one or two matters clear. In this piece of evidence at R1, is that PTPC – what is that in fact?

**Mr Graham:** I think it is a public trust, health trust.

**Mr North:** We don't know what this organisation is?

**Mr Graham:** I think it is a public health trust, just using common sense, but I cannot say specifically.

**Mr North:** I am not sure if it is an S or a P at the beginning, you see.

**Mr Graham:** I am sorry, that is my understanding.

**Mr North:** What is your understanding, Mr Graham?

**Mr Graham:** That it is a reference to his local public health trust.

**Mr North:** Right. When did you last speak to Mr Preedy?

**Mr Graham:** I spoke to Mr Preedy yesterday upon receipt of this information, seeking instructions as to what I should be proceeding with today.

**Mr North:** So he was able to talk to you and instruct you yesterday?

**Mr Graham:** On that limited basis, yes.

**Mr North:** Thank you. When did this information come to you?

**Mr Graham:** It came through to my offices yesterday.

**Mr North:** At what time?

**Mr Graham:** Late morning.

**Mr North:** Late morning, thank you, that has been very helpful. They were just one or two points that I thought it might be helpful to clear away before I invite my colleagues to ask any questions they might have.

**Mrs Huka:** I have one question which is for both the legal representatives. [Redacted] Quite clearly, I am concerned that as a panel we might be in a situation where we are adjourning *sine die*. That is why I am asking whether or not you make a distinction.

**Mr Hepworth:** If I may answer first, one of the difficulties that the Committee may have this morning is that there is absolutely no prognosis that is provided, so the Committee simply does not know, if indeed it interprets this as saying that the Registrant is unfit to attend and unfit to give instructions, when that situation may change. Of course, the Committee cannot speculate and it simply does not have that information.

**Mr Graham:** I specifically contacted the surgery to ascertain that position yesterday afternoon, and the practitioner was not there. I was informed that he returns to his clinic at 11 o'clock today and I have tried to speak with him again this morning before coming before this panel, anticipating that question. It may well be, with your leave and I appreciate it is ten past ten, that is a line of enquiry that I may pursue.

**Ms Jones:** I am confused in terms of your response. Are you saying that you are trying to get a prognosis and attach that to a time at possibly 11 am, or you are just trying to speak with the doctor in general terms about the health of Mr Preedy?

**Mr Graham:** The purpose of my telephone call to the practitioner was to ascertain how long he considered Mr Preedy to be subject to this illness, so that I could inform the panel as to when he is likely to recover from the same. I have not been able to speak to the doctor on that specific point, although I have tried hard both yesterday afternoon and again this morning.

**Mr North:** Thank you. Would it be my colleagues' feeling that would be helpful if Mr Graham were to ascertain the likely duration of the illness?

**Mr Graham:** In my submission, it may be helpful and I would invite perhaps a short adjournment of 15-20 minutes to see what further enquiries I can make. It may well be that the practitioner has arrived at the surgery early and I can get some clarification of that position.

**Ms Jones:** May I raise a further linked query?

**Mr North:** Indeed, Ms Jones.

**Ms Jones:** My understanding is that the doctor has indicated that there is a common language – [Redacted] - but he has referred the Registrant to somebody else to get a diagnosis. So I am not sure what the doctor could add if he is not going to be the point of diagnosis.

**Mr Graham:** That may well be the case, Madam. I don't really know until I speak to the doctor.

**Ms Jones:** Right, so one of the things is to ascertain whether he can provide that answer.

**Mr Graham:** Absolutely.

**Mr North:** Would my colleagues find it useful to have an adjournment until, let us say, 10.30 while Mr Graham makes those enquiries, and we shall meet again at 10.30 to see where we are then?

**Mr Pounder:** It may be useful to find out when Mr Preedy first went in connection with this treatment, whether it was only yesterday or whether it is a long-standing thing?

**Mr North:** That is a very helpful suggestion. Ms Jones?

**Ms Jones:** I was wondering whether the panel could take five minutes *in camera* to think about the questions that it might be useful to ask such as that, so that, assuming Mr Graham can reach the doctor, we are not then saying we would like to have known something else. Would that be acceptable?

**Mr North:** I think that is a very helpful suggestion. Legal Adviser? [Agreed] Let us take five minutes now and we can share our thoughts on any further matters that might helpfully be addressed to the doctor.

**Mr Graham:** I am much obliged.

**Mr North:** Thank you, Mr Graham; thank you, Mr Hepworth.

[Hearing adjourned at 10.12]

[Hearing reconvened at 10.27 in camera]

**Mr North:** Thank you, that short pause has been very helpful to the Committee. Before I list the questions we would like you to put to the medical practitioner, Mr Graham, the Committee decided it would be better that this part of the proceedings should be held *in camera* as it involves details of Mr Preedy's medical condition and so on.

[Redacted]

[Hearing adjourned at 10.30]

[Hearing reconvened at 11.07 in camera]

[Redacted]

[Hearing adjourned at 11.15]

[Hearing reconvened at 13.00 in camera]

[Redacted]

[Hearing adjourned at 13.05]

[Hearing reconvened at 13.10]

**Mr North:** Right, I shall cut to the chase. Mr Graham, can you have the information available for us by 14.00 please? Also my colleagues would be interested to learn whether the doctor considers that Mr Preedy is fit to work. Mr Hepworth, in terms of your witness, what is the nature of his commitment tomorrow?

**Mr Hepworth:** It is a work commitment that requires him to be away from London tomorrow and Thursday. Sir, if you require further details, I can obtain these during this next break.

**Mr North:** How long do you anticipate him being in giving evidence?

**Mr Hepworth:** In chief, because his evidence is within the bundle, he will be no longer than about 15 minutes. Cross-examination I cannot say, of course.

**Mr North:** That is very helpful, thank you.

[Hearing adjourned at 13.12]

[Hearing reconvened at 14.00 in public]

**Mr North:** Mr Graham, you are about to give us more information I understand?

**Mr Graham:** I am, sir.

**Mr North:** Is it of a nature that requires us to be *in camera*?

**Mr Graham:** Not necessarily, sir.

**Mr North:** You don't feel so. Okay, so be it then.

**Mr Graham:** The position is this. As you may imagine, there have been ongoing telephone calls and I was eventually able to speak with Dr Toosy at approximately 1.57, he had just come out of clinic. He acknowledged receipt of my email communication, to which I referred earlier on, which set out the precise questions. I asked him could he deal with those questions now over the telephone and he said he would deal with them immediately. He has chosen to deal with them in writing and he will email them back to me. I apologise that my mobile phone is on because I am anticipating a response; that is why I have brought it into this chamber live. That is the position, he is dealing with those outstanding enquiries but in writing, I don't know what he is going to say but it should be with us in a matter of minutes.

**Mr North:** A matter of minutes?

**Mr Graham:** Email technology is quite quick, that is exactly what he said, he is dealing with them immediately, he will send them by email and we should have them within a matter of minutes.

**Mr North:** We have invested a lot of time thus far - perhaps another 15 minutes would not go amiss. Would that be acceptable?

**Ms Jones:** It seems to make sense.

**Mr Graham:** This may be something now – I am hoping to get something for you as quickly as I can.

**Mr North:** We shall wait here, Mr Graham. We want to proceed and this information is required, so the moment that information is available, let us move forward. Mr Hepworth, any comment?

**Mr Hepworth:** I think it is a matter for the Committee as to how much longer it is prepared to give.

**Mr North:** Would my colleagues be agreeable to a further 15 minutes? [*Agreed*] It could be sooner if the information becomes available.

[*Hearing adjourned at 14.05*]

[*Hearing reconvened at 14.45*]

**Mr North:** Mr Graham, I hope that additional time has been helpful?

**Mr Graham:** Sir, thank you for your patience and indulgence. If I may start with the series of questions and the answers which have come through?

**Mr North:** Are we to have a copy of the document eventually?

**Mr Graham:** Once I have conveyed the information, I shall do my best to have it printed out in some form or another. We have asked it to be faxed here to a number that has been given to us.

**Mr North:** Thank you, please carry on.

**Mr Graham:** Is that acceptable? You were kind enough to give us a fax number and we have asked that the response be faxed to that number.

**Mr North:** It has yet to arrive.

**Mr Graham:** It hasn't arrived.

**Mr North:** However, we can hear your oral evidence now and take the document as soon as it appears.

**Mr Graham:** I am much obliged.

**Mr North:** Right, shall we proceed?

**Mr Graham:** I spoke about my email this morning to this practitioner and said:

"We appreciate you are extremely busy and, of course, your patients come first. However, you are aware we are before the General Optical Council today in respect of the proceedings against Mr Ronald Preedy. I want to raise some questions in respect of the medical note which are as follows:

1. Can you please elaborate and provide more details in respect of the previous history [redacted] and associated treatment in respect of Mr Preedy?"

His answer to that is not particularly helpful in that he says:

"I can if you write to me and I can write a report from his record.

2. Can you clarify how you established that Mr Preedy is not able to think and comprehend?"

His answer to that is:

"I have been a general practitioner since 1977. I see several patients in this situation and have to make assessment to assess their [redacted]. My assessment what I wrote in my note to you yesterday is the same.

3. Are you registered under the [redacted]? Did you make the diagnosis on that basis or is it a non-clinical diagnosis of [redacted]?”

His answer to that is:

“No, I am not registered under [redacted]. But have sufficient experience to assess patients if they need treatment or refer to [redacted]. He has already been referred to the [redacted] in Sutton Hospital.

4. To assist the panel, are you able to provide any prognosis, i.e. when he is likely to be fit to attend?”

His response is:

“About prognosis? When I get the report from [redacted] and treatment give then I will be able to assess” –

*[Pause while counsel confers with instructing solicitor]*

**Mr North:** Take your time.

**Mr Graham:** I know from memory he said he is seeing the patient in two weeks’ time to review the situation. He asks that in future should I require information on Mr Preedy, I should remit to him the appropriate consent as one would normally expect but, in this case, he has been kind enough to furnish those answers. That is the extent of the answers that he has volunteered to me and which I have now relayed to you.

**Mr North:** Thank you, Mr Graham. Do you have any further comments you would like to address to us?

**Mr Graham:** Referring to the matter before the last recess, there has been an update on the medical note. It is not a situation where he has gone along to see his practitioner; he seems to have a long history to such a degree of severity that he has now been referred to a [redacted] for further treatment. He continues to receive treatment, this is an ongoing situation, so the evidence that is before you is evidence I received yesterday, evidence which I again received this morning all in good faith and, in my humble submission, it would be difficult to conclude, as I said earlier, that this registrant is not fit to attend these proceedings.

**Mr North:** Thank you. Mr Hepworth, what do you say?

**Mr Hepworth:** Sir, I have no further submissions in addition to those that I have already made. As a practical matter, if Mr Henley has been able to get on-line, the email could be forwarded to him and then printed and made available for the Committee. However, in relation to submissions, I have nothing further to add.

**Mr North:** Thank you, that is very helpful. Do my colleagues have any questions?  
[No questions from Committee] Legal Adviser, would you like to address us.

**Mr Pounder:** This is an application by Mr Graham on behalf of Mr Preedy who has attended here pursuant to Rule 35 of the 2005 General Optical Council Fitness to Practise Rules, which entitles at any stage a party to apply to the Committee for the adjournment of a hearing. That is the application that he makes today. Mr Hepworth, on behalf of the Council, has pointed you to Rule 21 of the same rules under the heading “Proceeding in the absence of the registrant”, and I shall read it out so that it is on the record:

“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.”

As there is no issue on (a), he has been notified of the hearing and is aware, because he has instructed Mr Graham to attend on his behalf, it is (b) and you have to look at the “regard to any reasons for absence which have been provided by the registrant”. You have to satisfy yourselves that it is in the public interest to proceed. Both parties have put forward the case of *Jones*, which is the definitive House of Lords case on this issue. It is a criminal case but it is applicable to disciplinary hearings. I shall read out the passage in *Archbold* which very succinctly summarises both positions. It is at page 318 of the 2011 volume of *Archbold* at Chapter 3, paragraph 197 and it says:

“In the *R v Jones (Anthony)* [2003] 1AC 1 House of Lords it was held that a judge had a discretion to start or continue a trial in a defendant’s absence, though it was to be exercised with great caution and with close regard to the overall fairness of the proceedings. A defendant afflicted by involuntary illness or incapacity would have much stronger grounds for resisting the continuance of the trial than one who had voluntarily chosen to abscond. If the absence of the defendant was attributable to involuntary illness or incapacity it would rarely, if ever, be right to exercise the discretion in favour of continuing the trial at any rate until the defendant was represented and asked that the trial should begin. It was generally desirable that the defendant should be represented even if he voluntarily absconded.”

The next paragraph 198 which summarises the tests states:

“The House of Lords approved with one exception the checklist of matters relevant to the exercise of the discretion which had been drawn up by the Court of Appeal” –

and it refers to the Court of Appeal case of *Jones* which is reported in volume 2001 QB 862. It states:

“Whilst the list was not exhaustive, it provided an invaluable guide. The Court of Appeal had said that, in exercising the discretion, fairness to the defendant” –

i.e. Mr Preedy,

“was of prime importance but fairness to the prosecution” –

i.e. the Council,

“should also be taken into account. The judge should have regard to all the circumstances including:

- (a) the nature and circumstances of the defendant’s behaviour in absenting himself from the trial or disrupting it and, in particular, whether the behaviour was voluntary or so plainly waived the right to be present;
- (b) whether an adjournment would resolve the matter;
- (c) the likely length of such an adjournment” –

The wisdom is that, if it can be a short adjournment, that is a matter which assists the application. If it is going to be a long adjournment, it is a matter which the court would want to take into consideration.

“(d) whether the defendant, though absent, wished to be represented or had waived his right to be represented.”

It is quite clear here that he is represented by Mr Graham.

“(e) whether the defendant’s representatives were able to receive instructions from him and the extent to which they could present his defence, and as to there being no distinction in principle between instructions received before and instructions received after the date on which a defendant absconded;”

That is a question as to whether or not Mr Preedy’s team feel that they are in possession of all instructions for them to be able to represent Mr Preedy in the case if it goes ahead.

“(f) the extent of the disadvantage to the defendant in not being able to present his account of the events;”

because if he is not here, he will not be able to give evidence on his own behalf.

“(g) the risk of the Committee reaching an improper conclusion about the absence of the defendant;”

and in this case that probably does not arise, because there is medical evidence in respect of why he is not here.

- “(h) the general public interest that a trial should take place within a reasonable time; and
- (i) the effect of the delay on the memories of the witnesses.”

The last one is the matter where there are co-defendants, which it is accepted does not arise in this case. So you have to look at the evidence that has been provided in the report by Dr Toosy and the matters which Mr Graham has been able to provide the Committee over the adjourned period. It is a balancing exercise, both parties' interests have to be taken into consideration, and you have to look at the competing arguments. Mr Hepworth makes the point that this case has been listed for final hearing in July 2008 and in January 2011, and this is the third time the case has been listed for hearing. Mr Graham makes the counter point that, if you look at proportionality, this case has been going on since 2004 so any further delay has to be seen in terms of that timescale and not a short timescale. I think I summarise that point correctly. So that is the evidence and that is the decision you have to arrive at.

**Mr North:** Thank you, that is very helpful. Do either of the parties wish to make any comment on the Legal Adviser's advice?

**Mr Hepworth:** Not for the Council, thank you.

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

**Mr North:** Do my colleagues have any further issues that they would like to air before we go *in camera*?

**Mrs Huka:** For the sake of completeness, Mr Graham, is it right to say that, although the GP will be seeing Mr Preedy in two weeks' time, we have no idea when the [redacted] will see him?

**Mr Graham:** It is correct to say I do not have a specific date on that appointment.

**Ms Jones:** One of the points that the Legal Adviser has read out, or one of the things we should take into consideration, is, as I understand it, the Registrant's representative would be unable to represent his case should it go forward. We have had no comments from you on that aspect.

**Mr Graham:** Yes, it is clearly a difficult matter, Madam. Depending upon the outcome of the decision before the Chairman and yourselves, I would have to take instructions on that point.

**Mr Pounder:** I think the question is really about whether you have instructions?

**Mr Graham:** Not at this stage and some issues do arise as far as the competence of those instructions.

**Mr North:** In reply to an earlier question from myself, I understand you spoke to Mr Preedy yesterday?

**Mr Graham:** That is right, sir.

**Mr North:** Thank you. We shall proceed into *camera*.

[Hearing adjourned at 15.00]

[Hearing reconvened at 15.18]

**Mr North:** The Committee has reached its decision. The application is not granted and the case will not be adjourned and we shall move to the next stage of the procedure. The normal procedure, of course, is to ask the Registrant to stand and the Hearings Manager will then read out the allegation. However, would both parties be content in this instance if the allegations are simply read into the record as part of the transcript?

**Mr Graham:** Professionally, I shall need to take instructions first from Mr Preedy in so far as I can as to the decision that has been made.

**Mr North:** Legal Adviser, may we have some advice there?

**Mr Pounder:** How long would you need? I presume he is contactable by telephone?

**Mr Graham:** I expect to speak to him by telephone, yes.

**Mr Pounder:** How long?

**Mr Graham:** I would certainly plan on departing from this room to call him immediately.

**Mr Pounder:** So five minutes you think?

**Mr Graham:** I shall do my best.

**Mr Pounder:** I am asking you to give an indication which is essential before we can take it to the next stage.

**Mr North:** I should add that our reasons will form part of the overall determination.

**Mr Graham:** Thank you.

**Mr North:** So is it your case then, Mr Graham that you would like five minutes now to speak to Mr Preedy?

**Mr Graham:** It is, sir, yes.

**Mr North:** That is acceptable and we shall see you back here at, let us say, 3.30.

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

*[Hearing adjourned at 15.20]*

*[Hearing reconvened at 15.32]*

**Mr North:** Mr Graham?

**Mr Graham:** I am much obliged, sir; just some housekeeping. I have received the document which I read out earlier on today, signed by Dr Toosy, which you may want to have for your purposes?

**Mr North:** Yes, if we could hand up copies of that which will be marked as R3. *[request for copies to be made]* Are both parties content with my suggestion that the allegation is –

**Mr Graham:** I have a further matter to draw to your attention. I withdrew to take instructions from Mr Preedy following your decision. I rang his number and could not get through, so in that respect I am without instructions. Clearly, I am dealing, first, with an issue as to whether someone is competent to give instructions and, secondly, instructions in any event. From a professional point of view, I would find it difficult to continue in this case at this stage without seeking ethical guidance on my decision in terms of continuing to represent Mr Preedy; this does give me considerable concern.

**Mr North:** Mr Graham, were you active in preparing the case with Mr Preedy up until yesterday?

**Mr Graham:** Yes, I was.

**Mr North:** So you have received a degree of instruction from Mr Preedy in relation to this stage of the proceedings?

**Mr Graham:** Indeed, I have, sir.

**Mr North:** Thank you. I turn to the Legal Adviser.

**Mr Pounder:** It is a matter for counsel to consider whether he is sufficiently well instructed to be able to present the case. It is a sort of multi-stage process, of course. The first stage is whether he has sufficient instruction to indicate whether or not the case will be contested or not, and whether or not he is able to participate in the proceedings on the basis of the instructions he has. He is entitled, if he wishes to do so, to phone the Bar Council who will give him the same advice as I am giving you. It is a matter for individual counsel, they are not usually helpful in those circumstances I am afraid but that is how it works.

**Mr Graham:** I am grateful for that direction. I am not counsel, I am a solicitor.

**Mr Pounder:** Sorry, I believe it is the Law Society.

**Mr Graham:** I really must ring the Law Society to seek some direction on this matter. This case has, as my learned friend will point out, some history in terms of Mr Preedy and his previous representatives and complaints of that nature, and I do not really want to be in the same situation.

**Mr North:** Are you making a further application to us, Mr Graham?

**Mr Graham:** I am simply seeking a short five or 10-minute recess so that I can speak to the Ethical Council to make sure that the steps I am taking are correct and proper.

**Mrs Huka:** May I please ask something? Mr Graham, is your difficulty that you think the instructions you received in the past are in some way quintessentially different from what you have received between yesterday and today? Is that what the issue is for you?

**Mr Graham:** The issue is this. There has been medical evidence put forward to question the medical competence of the practitioner in terms of giving instructions following the application to adjourn, and whether he wants to elect to continue to proceed by way of representation, or whether he does not, and whether he wants me no longer instructed in the matter.

**Mrs Huka:** So it is turning on the medical evidence?

**Mr Graham:** Indeed, it is.

**Mr North:** Mr Graham, in a sense it is down to you. Do you wish to talk to the Law Society at this point?

**Mr Graham:** I do, sir, yes.

**Mr North:** We shall give you 10 minutes to do that.

**Mr Graham:** Thank you.

**Mr North:** Are my colleagues in agreement? [*agreed*]

[*Hearing adjourned at 15.35*]

[*Hearing reconvened at 16.00*]

**Mr North:** Mr Graham, where are we?

**Mr Graham:** Not in a very satisfactory position because I am asked to continue to represent someone who, in my submission, is medically ill and probably

[redacted], and I am asked to present his case despite that position, and that may be considered by another forum at a later date. I cannot obtain competent instructions from Mr Preedy in terms of the continuity of this matter. However, as things stand with regard to my own professional position, it is unclear, it is undefined, but it seems to me in my professional judgment that I shall have to carry on as best I can at this stage. That may change, who knows.

**Mr North:** Thank you. So you plan to continue to represent Mr Preedy at this point?

**Mr Graham:** Yes.

**Mr North:** Fine, let us continue then. My point about the allegation now comes into play. Would both parties be content if the allegations were simply read into the record? *[Agreed]*

### ALLEGATION

The Council alleges that you, Ronald James Preedy (a registered dispensing optician):

1. Tested the sight of patients listed on Schedule A whilst not registered as an optometrist, an ophthalmic medical practitioner, a medical student or a student optometrist;
2. Forged the signature of Dr Moustafa Yaqub on GOS1 and GOS3 forms in relation to patients identified on Schedule B;
3. Made false claims for payment for sight test examinations (GOS1 claims) and for the supply of prescriptions (GOS3 claims) in relation to patients identified on Schedule B;
4. Failed to declare that you were the subject of a criminal investigation when you were at the time being investigated by Counter Fraud Services;
  - 4.1 On an application for retention form dated 19 January 2006;
  - 4.2 On an application for retention form dated 21 December 2006;
5. Appeared at Southwark Crown Court on 16 March 2007 and were convicted upon your own confession of nine counts of obtaining a money transfer by deception and were subsequently sentenced to nine months' imprisonment, suspended for two years, with a Supervision Order to include one hundred and twenty hours of unpaid work;
6. Failed to declare that you were the subject of a criminal conviction on an application for retention form dated 22 December 2007 when you had been convicted at Southwark Crown Court on 16 March 2007;
7. Your actions described at paragraphs 1, 2, 3, 4 and 6 above were:

- a) Dishonest
- b) Not of the standard of conduct expected of a dispensing optician

and by reason of the facts set out above your fitness to practise is impaired by reason of the conviction and misconduct.

It then falls to you, Mr Graham, are there any admissions?

**Mr Graham:** No, sir.

**Mr North:** May I then turn to you, Mr Hepworth, for your opening statement in evidence under Rule 45?

**Mr Hepworth:** Indeed. May I confirm that within the allegation you have both Schedule A and Schedule B, which are referred to?

**Mr North:** Sadly not.

**Mr Hepworth:** Sir, it should not delay you too long. It is on this memory stick, so if I hand it to Mr Henley, I am sure that he can prepare copies as we go. It certainly will not affect my opening which will be brief.

The Registrant is a dispensing optician. Under Section 24 of the Opticians Act, he is not entitled to test sight. He ran a practice in Surrey part of which was that he would visit homes to test residents' and wardens' sight and, following those visits, GOS 1 and, in appropriate circumstances, GOS3 forms would be submitted for payment. It is the Council's case that the Registrant tested sight when he was not entitled to do so. I do not think there is any dispute that he tested the sight, he maintains that he was entitled to do so.

In relation to GOS 1 and GOS 3 forms, he forged the signature of an OMP, a Dr Yaqub. Dr Yaqub was authorised to conduct eye tests. That was done in an attempt to disguise the fact, in the Council's submission, that the Registrant was not so authorised. The GOS 1 and 3 claim forms that were sent in were false, because the Registrant was not allowed to claim, he was not authorised to carry out the test or to claim for those tests. The forms were also false because of the forged signature. I shall go through the chronology, if I may, and then come back to a point.

The NHS Counter Fraud service became involved, carried out an investigation and there was a criminal prosecution which ended in the defendant pleading guilty on a particular basis, and being convicted. It is the Council's case that, in addition, the Registrant failed to declare the investigation and later the conviction on various applications for retention forms which were returned to the Council.

I shall make a few general points if I may and then deal with a few specific issues. First of all, you will note in the allegation that there is an allegation of dishonesty. That is alleged as a fact, the burden falls on the Council to prove that fact to the balance of probabilities. The test which needs to be applied

when you are assessing whether or not the registrant was dishonest is the test that first came in a criminal case of *R v Ghosh* [1982] QB 1053 and in regulatory proceedings, the case of *Twinsectra v Yardley & Ors* [2002] UKHL 12. In effect, the test is twofold. There is an objective part of the test and a subjective part of the test.

The objective part is: were the actions of the Registrant dishonest by the standards of reasonable and honest people? Secondly, did the Registrant know that his actions were dishonest by those standards? It is only find both parts proved that you can find that the Registrant was dishonest. Dishonesty is alleged in relation to several particulars and, of course, you will need to assess dishonesty in relation to each particular separately.

Some other general matters if I may. While we are at the facts stage, the burden to prove any fact falls on the Council; the Registrant has to prove nothing. The standard to which any fact needs to be proved is on the balance of probabilities. Put in summary form, if after hearing the evidence you conclude that a particular fact is more likely than not to have occurred, you can and must find that fact to be proved.

The evidence to be put before you, as far as the Council is concerned, is in two forms. It is in the form of one live witness, Dave Horsley, and in the form of a rather large bundle of evidence which contains the two statements prepared by Mr Horsley together with his exhibits and other statements taken. I shall explain that bundle as I go on.

What I need to make clear from the outset is the basis upon which the allegation is drafted. Schedule A, which will be provided to you, relates to a series of patients, including those in relation to which the conviction was entered. Schedule B lists a series of patients but excluding those in relation to which a conviction was entered, and that is for this reason. When the Registrant pleaded guilty, he pleaded guilty on a particular basis.

Each count on the indictment alleged three particulars. The general offence was a matter of fraud by false representation in three particulars. First of all, on the forms that were submitted for payment, the Registrant had represented falsely that the eye tests had been carried out by Dr Yaqub. Secondly, he had falsely represented that Dr Yaqub had signed the claim forms. Thirdly, that Preedy, the family opticians, were entitled to claim for the work carried out. I make this as clear as I can do that the Registrant pleaded guilty and his guilty plea was accepted on the basis only of the second particular. He accepted and was convicted of falsely representing that Dr Yaqub had signed the claim forms, so he accepted that he had forged the doctor's signature on the claim forms but accepted nothing else, and was convicted in relation to nothing else. Of course, you are not bound by any prosecution decision not to pursue the other matters, the prosecution chose not to pursue those. Therefore, Schedule A includes those patients in relation to which the conviction was entered, because the Registrant was not convicted of carrying out eye tests in relation to those patients when he was not entitled to do so. There is no legal

problem with you considering whether or not he did so in relation to those patients.

In relation to the next two particulars, you will see that they refer to Schedule B. Sir, the allegation of forging a signature relates only to those patients where a conviction was not entered, because the conviction deals with those other patients.

As far as the failing to declare various matters, the evidence for that is in relation to various claim forms which are in the bundle, again to which I shall draw your attention. The conviction speaks for itself and the issue of dishonesty is a matter in relation to which I have already addressed you.

I have been as brief as I can with my opening, because I am aware of the time constraints which we have. What I propose to do, sir, is to hand to you the evidence bundle upon which the Council relies, to call Mr Horsley to give evidence. I shall get him formally to confirm the contents of his statement and the exhibits in brief form but I shall, for your benefit, perhaps get a little more evidence from him just to give you the background and in summary form to help you set the whole case in context.

Sir, the first thing I would like to do is to hand to you the evidence bundle which is in two parts. [*Documents handed out*]

**Mr North:** Just a couple of housekeeping points before we go further, gentlemen. I have slightly lost track of the listing and the sequence, so would this be C1 and C2 as it is in two folders. File 1 of 2 would be C1 and file 2 of 2 would be C2. Are you content with that? [*Agreed*] Equally, the Committee is minded, if necessary, to sit beyond five o'clock.

**Mr Hepworth:** I am grateful for that indication, sir, and perhaps then my speed can come down a little bit. I have indicated that I would show you whereabouts these retention forms are. The matter is introduced of the evidence of Laura Hytti which starts at page 530 which is in C2. So, sir, that evidence gives a chronology of the Registrant's registration, and you can see that the documents which follow relate to the various retention forms. As the hearing goes on, I shall perhaps take you to those in a little more detail, but remember that when I opened briefly, I indicated that I would show you where those documents are.

Again, briefly looking at the set-out of the bundle, you can see that the evidence of Mr Horsley and his exhibits takes up the whole of the first bundle and some of the second bundle. You then have the evidence of Ms Hytti to which I have already drawn your attention, and the remaining evidence is of people who indicate that their sight was tested by the Registrant.

At the end of the bundle, starting at page 702, so right at the end of C2, you have the certificate of conviction relating to the matter before Southwark Crown Court. At page 703, you then have a transcript of the sentencing hearing and I shall draw your attention to that in a little more detail in due

course. Behind that, starting at page 764, you have the transcript of the first hearing at the Crown Court in which the guilty plea was entered. Those documents, the Council submit, are important because they set in context the admissions that were made and the conviction that was entered. The last document at pages 781/2 you may find helpful, which is a case summary of the whole operation which was undertaken by Counter Fraud. That is perhaps a good point at which to introduce the Council's live witness, whose name is Dave Horsley, who was involved in that operation.

**DAVID WILLIAM HORSLEY called and affirmed  
Examined-in-chief by MR HEPWORTH**

- Q.** Good afternoon. Could I ask you please to give your full name to the Committee?
- A.** David William Horsley.
- Q.** You should find on the table in front of you two bundles of documents. Could you open the bundle please which is marked 1 of 2 and turn to page 1. You can see that is a document that runs from page 1 to page 3. Could you confirm please whether or not it is your signature on the end of each page?
- A.** Yes, it is.
- Q.** Is this in fact your first statement prepared in relation to these proceedings?
- A.** That is right, yes.
- Q.** Have you had the opportunity to read your statement again recently, and are the contents still accurate to the best of your recollection?
- A.** Yes.
- Q.** Could you then please turn to page 29 within the same bundle? You can see that is a document that is rather longer and it runs to page 54. Again, could you confirm if it is your signature on the bottom of each page of that statement?
- A.** Yes, it is.
- Q.** Again, have you had the chance to read that statement recently?
- A.** I have.
- Q.** And are you content that the contents are accurate?
- A.** Yes.
- Q.** You will see within the bundle that you adduce various exhibits which run from DH1 to DH28. Rather than take you to each, can I ask this question? Have you had the opportunity today to look through those exhibits in the bundle in the format in which they now are?
- A.** I have.
- Q.** And are you content that the exhibits which are in the bundle are those exhibits which you have produced in your statement?

- A.** As far as I can see. There are an awful lot of pages there but I have no reason to doubt that they are as they should be.
- Q.** And, as far as you are able to verify, are you content that the contents of those exhibits are accurate such that you can confirm that?
- A.** Yes.
- Q.** The Committee may not have had the opportunity to look at your evidence in any detail, so I am going to ask you a few general questions if I may. The Committee is aware that your investigation and the subsequent proceedings ended in a conviction of the Registrant in this case, Mr Preedy. Could you just describe for the Committee, bearing in mind the basis of the conviction, which is in relation to forging a doctor's signature on claim forms, what your investigation showed about what was happening at the practice?
- A.** To summarise it, the investigation showed that Mr Preedy, who is a registered dispensing optician, had been conducting sight tests, predominantly in cases of domiciliary sight tests for a number of PCTs throughout London and the Southeast. The claims that had been submitted to the various Primary Care Trusts following those sight tests and prescriptions for vouchers as well had all been made through his company Preedy Family Opticians, latterly known as PFO Limited, and each of those claims had been signed purportedly by Dr Moustafa Yaqub, who was on the ophthalmic list for each of the PCTs that those claims were posted to.

Interviews that are undertaken with patients and their carers established that it was not Dr Yaqub who had undertaken the sight tests as the claim forms purported to show but, in fact, it was Mr Preedy who had undertaken them himself. Enquiries were made through a forensic document examiner who looked at the claim forms and was able to form the view that the signatures of Dr Yaqub on those claims were forged.

- Q.** Could I pause there for a moment and ask you to turn to page 216 within the first bundle, bundle 1 of 2? You have just referred to someone conducting some sort of signature analysis. You can see that behind page 216 there are statements of a Steven Cosslett, is this the evidence that he produced after conducting the analysis about which you have just given evidence?
- A.** That is right. He is the document examiner.
- Q.** I am sorry, I interrupted you. Perhaps you would carry on?
- A.** Mr Preedy had been arrested in November 2005, and was interviewed about these matters. He made no comment to all the questions that were put to him. He was granted bail and subsequently charged with a number of offences for which I produced a copy of the indictment as an exhibit. There are some 27 counts in relation to false claims to various PCTs, and another seven for matters to do with unregistered sight-testing.

He was brought before the court and, after a long series of court appearances, he ended up at Southwark Crown Court where he entered guilty pleas to, I believe, nine specimen counts of those 27, and the remaining counts were ordered by the judge to be left on file, i.e. neither treated as guilty

or not guilty. The judge allowed for the seven matters relating to the Opticians Act to be dealt with by the GOC as opposed to the court, so they were not dealt with criminally. As a result of the guilty pleas, he was convicted and sentenced to a suspended prison sentence.

- Q.** While you are giving evidence about the court proceedings, could I ask you a supplementary question? I shall not get you to repeat in detail the contents of your statement, because you have confirmed them and the Committee have them before them. However, could you please turn in bundle 2 of 2 to page 720, which is within the transcript of the hearing before HHJ Rivlin at Southwark Crown Court? This is a sentencing hearing. It is page 720 and I am talking about the handwritten numbers in the bottom right-hand corner. You can see that on that page, Mr Dent, who I believe was prosecution counsel, at paragraph D refers to civil proceedings, and indicated that the fraud service were bringing civil proceedings to recover the full amount of monies paid to the defendant. I just wonder whether or not you are able to tell the Committee what happened in relation to those proceedings?
- A.** Yes. In relation to those, there have been a large number of court hearings. However, the present situation is that, although Mr Preedy has continually sought to appeal various decisions that were taken at court, we have judgment against him for the full sum of money that we say he has been paid fraudulently through each of the Primary Care Trusts, which is in the region of £128,000.
- Q.** So judgment has been obtained. You will forgive me, I am not a civil law expert, I don't know if any of the panel has that expertise, but as I understand it, once a judgment is entered, one then seeks to enforce the judgment?
- A.** Yes. Either Mr Preedy makes suitable arrangements to repay that money, or, if he fails to do so, we have to seek an application to the court for various enforcement actions that may be taken. We are currently in the situation where we are not able to go full steam ahead with enforcement action, because there is an outstanding appeal which has to be dealt with. However, as of now, I can say that Mr Preedy has not paid any money whatsoever back following that judgment.
- Q.** Excuse me if you will. I am going to ask you please to turn again within the first bundle to page 232?
- A.** Yes.
- Q.** The Committee will see that your exhibit DH/15 starting at page 232 and then going on for some distance relates to various GOS forms and on each exhibit label, there is reference to a count number which I presume relates to a count on the indictment?
- A.** That is correct.
- Q.** Okay. Were you the person responsible for sending various claim forms to the handwriting expert for his analysis?
- A.** Yes.

- Q.** Take time to look through them if you need to but regarding the various forms referred to within DH/15 – as I said it is a rather large document which goes into the second bundle – are you able to confirm to the Committee whether or not all of those documents went to the forensic handwriting expert for analysis?
- A.** No, I would not like to say that. I do not recall which names went.
- Q.** Could I ask this question then? Were you selective in which signatures or which forms you sent, or did you send them all?
- A.** The way I looked at it, and obviously there is a cost implication for sending documents for analysis, I looked at the nine counts on the indictment, each of which related to a specific day's activity. Where we say Mr Preedy went to a nursing home and undertook a number of sight tests on that day, we did not feel that it was necessary to send each and every application form based on that day's activity, so we selected one from that group. Therefore, for each day's activity, one form was selected at random and that went.
- Q.** I have no more questions for you but, if you wait there, there may be some questions from my left-hand side and then from the Committee.

**Cross-examined by MR GRAHAM**

- Q.** Mr Horsley, dealing first with some of the questions which my friend has just asked. He referred to the civil proceedings, yes?
- A.** Yes.
- Q.** Do you accept that Mr Preedy has been given leave to appeal those proceedings?
- A.** The current situation is that he has been given leave to appeal the rate at which the order is to be repaid. He does not have leave to appeal against the judgment; that is exhausted. The only outstanding appeal on the civil action is to do with the amount. He had offered in the region of £10 a month to pay the £128,000 back, which we obviously rejected. He lost that application for variation of it and, as I have been told today, he has put in an application to appeal the decision to refuse him to repay it at £10 a month.
- Q.** Regarding the matters that are subject of the civil proceedings, are they in any of the bundles which are before the Committee?
- A.** Not that I am aware of, no.
- Q.** Turning to your witness statement, if I may, at page 5 –

**Mr North:** It would be helpful, Mr Graham, if you gave the overall bundle number.

**Mr Graham:** I have three bundles. I have bundle part 1 – that is all I have. I suspect that page 5 is probably the first part of your bundle.

**Mr North:** Excuse me, Mr Graham, please continue.

**Mr Graham:** I was referring to the statement of Mr Horsley. I believe that particular care was taken by the judge in the crime proceedings as to the nature of Mr Preedy's plea, and it was made very clear that Mr Preedy's plea was on a specific basis.

**A.** Yes.

**Q.** At page 5 is the indictment in the statement, part ii represents that part of the guilty plea. Page 6 refers to count 2 and section 2 represents the extent of the guilty plea.

**A.** Absolutely, yes, that is the extent of each of the counts.

**Q.** I am grateful for that. We move forward to page 9 which is count 8 - that is another one of the guilty pleas in respect of section ii.

**A.** Yes.

**Q.** Then we move forward to page 11, which is count 12, again part ii represents that aspect of the guilty plea?

**A.** Yes.

**Q.** We move over to page 12, that is count 14 which I believe represents one of the guilty pleas at section ii?

**A.** Yes.

**Q.** Then again at the same page, count 15, section ii represents the extent of the guilty plea?

**A.** Mm

**Q.** If we move on to page 14, which is count 19 and again section ii represents the extent of the guilty plea.

**A.** I am entirely in your hands here as to which of these counts you say are the ones he pleaded to, because my papers are not marked accordingly.

**Q.** Finally, two more matters, page 16, count 23, again section ii. You will be glad to hear that, finally, page 17, count 25. I think perhaps it is count 26, I apologise for that. My friend may help me out there – it is count 26 he pleaded guilty to and not 25.

In any event, in terms of all of those pleas, the monies which are the subject of the transfers total £3,186.16.

**A.** If you say so, I could not tell you what it adds up to but it sounds in the right area.

**Q.** Do you accept that there was no conviction or any finding by the criminal courts other than those matters to which Mr Preedy pleaded guilty?

**A.** Yes, that is correct, though Judge Rivlin did make comment that he accepted these were just a specimen sample of cases and that the criminality was admitted in court as being in the region of £50,000-£65,000.

**Q.** I shall come back to that. The fact is that those other counts remained on the file and were neither proved nor pleaded to?

A. No.

Q. And the prosecution were quite happy to proceed on that basis?

A. Yes.

Q. Therefore, in effect, Mr Preedy pleaded guilty to claiming services in respect of a limited number of counts to the value of £3,186?

A. Mm

Q. In your statement, if I can ask you to read page 2 –

**Mr Pounder:** It is page 768 which sets out the counts to which he pleaded guilty. They are counts 1, 2, 8, 12, 14, 15, 19, 23 and 26, to particular 2 in respect of all matters.

**Mr Graham:** So 1, 2, 8, 12, 14, 15, 19, 23 and 26, that totals £3,186.

**Mr Pounder:** It does not specify the amount but those are the counts.

**Mr Graham:** I think you will find that each count does specify the amount.

**Mr Pounder:** Not the total but I take your point.

**Mr Graham:** Can I continue? [*To witness*] I was referring you to page 2, paragraph 8, where you state:

“We instructed our forensic expert to examine the GOS forms, who concluded that all Dr Yaqub’s signatures had been forged.”

A. Yes, that is right.

Q. That is your statement. If I can ask you please to move forward to page 217, this is the forensic evidence of Steven Cosslett, yes?

A. Yes, that is correct.

Q. At page 218 the items received, carries on to page 219. About half-way down, they represent the specimen signatures of Dr Yaqub upon which Mr Cosslett could base his conclusions, yes?

A. Yes.

Q. Do you accept that the bulk of the signatures in respect of Dr Yaqub are in respect of a period of time different from the bulk of specimen signatures of Dr Yaqub?

A. Absolutely. There is a good reason for that of course. Dr Yaqub principally was not in this country at the time when the offences were committed, and he refused to make himself available for interview.

Q. Paragraph 3 at page 221. The expert sets out the specimen signatures in respect of the GOS1 forms and the GOS3 forms, ranging from 5, 8, 9,19, 20 onwards through to 137. Paragraph 3 page 221.

**A.** Yes, the items go up to 190.

**Q.** Page 222, in the final sentence in paragraph 3 states the expert concludes:

“It would not therefore be possible to determine whether Mr Preedy wrote these signatures in respect of all those samples.”

**A.** Well, a document examiner cannot say who did write something. All he can really say is who didn't write it.

**Q.** As I understand it, Schedule B, which has been supplied in this case, relates to the fraudulent claims in respect of the signatures.

**A.** Can you take me to Schedule B?

**Q.** This document here.

**A.** What page is that?

**Mr Hepworth:** Schedule B is not in the bundle, it is in the bundle I gave to Mr Henley earlier today.

**Mr Graham:** They have been disclosed to me and I would like to present them to the Committee and indeed to the witness if I may. [*Circulated*]

**Mr North:** This document is R4.

**Mr Graham:** To assist the panel, as I understand it Schedule B relates to the allegations that these were the forged signatures?

**A.** I don't know, I don't think I have created this document.

**Mr Pounder:** These are the non-indictment counts, aren't they?

**Mr Hepworth:** That is right and this witness is right in that he obviously would not have been responsible for drafting the allegation.

**A.** If it helps the panel, there is one of my exhibits in the bundle which does set out the names of each of the people in the indictments, the various GOS forms they relate to and the amounts of money claimed.

**Mr Graham:** In terms of that schedule and the names thereon, paragraph 3 refers to various GOS1 and GOS3 signatures. For example, DWH5 Louise Jarvis, DWH8 Irene Harris, DWH19 Beatrice Sushams, DWH24 Beatrice Sushams are not on Schedule B, is there any reason for that?

**A.** As I said earlier, the documents that went to the examiner were one of a batch of sight tests that were conducted on a particular day. We did not refer all the forms relating to that day's activities to the document examiner.

**Q.** In any event, I have referred you to the paragraph where the examiner concludes:

“It would not, therefore, be possible to determine whether Mr Preedy wrote those signatures in respect of those various GOS1 and 3 forms.”

- Do you accept that?
- A.** Yes.
- Q.** On the same page at paragraph 6, he concludes that samples 9, 20, 25, 29, 48, 87 and 137 are similar to the signature and specimens of Mr Preedy.
- A.** No, he says they differ significantly specimens of Dr Yaqub. He also says they are similar to the specimens of Mr Preedy.
- Q.** He says that, in his opinion, there is conclusive evidence that he wrote, i.e. Mr Preedy.

**Mr Hepworth:** So that the witness is not becoming confused, I think it ought to be pointed out to him that in paragraph 6, the reference is to handwriting, whereas elsewhere to which you have drawn the witness's attention there is reference to signatures. It may be that it needs someone else to explain but, clearly, the forms to which these claims relate have both handwriting and signatures.

- A.** Sorry, I had missed that point; it is handwriting it is referring to.

**Mr Graham:** Could I ask you to jump forward please to page 227, those are his conclusions having examined the specimens on the GOS1 forms and 3 forms from pages 225-226? The expert concludes:

“In my opinion, these differences provide conclusive evidence that Dr Yaqub did not sign any of the questioned signatures.”

but there is no evidence therein that Mr Preedy made those signatures as far as he is concerned.

- A.** No, he is saying that deliberate attempts have been made by some other person to copy the signature but, as I said earlier, he is not in a position to say who did try to copy it; that is not how a document examiner works. All he was seeking to achieve there was the authenticity of those signatures.
- Q.** Could I ask you to move forward to page 230, paragraph A(a) says:

“Another signature and name towards the bottom of this form, the position of these impressions is consistent with them originating from another GOS1 form.”

- A.** Would you accept that there are some GOS1 forms which Dr Yaqub did sign? I don't think I would go so far as to say that. Looking at the statements, all he is saying is that there are impressions of what might appear to be a genuine signature on another document which was placed on top of the one being examined by him, and that the position of that writing is consistent with it being a GOS1, but he could have been anything at all.

**Q.** Equally, it could have been Dr Yaqub's signature?

- A.** I think he is saying that – [pause]

**Mr Hepworth:** Can I say that I am a little concerned that this witness is being asked to interpret what another witness may have meant when that witness made a statement? I am not sure that this witness is competent not to do that in the legal sense of the word, rather than in the pejorative sense. The Committee will not be hearing from the witness who made this statement, Mr Cosslett, and it may not have those questions able to be answered. Of course, that is a matter that will have to be considered in due course but I am not sure that this witness can place himself in the mind of a forensic handwriting expert. If my objection is misplaced, I apologise, but I am concerned about the evidence that this witness is being asked to give.

**Mr Pounder:** It seems to me that interpretations of findings is a matter best left to Mr Cosslett, after all he is a handwriting expert. Therefore, it is not really in this witness's knowledge to be able to answer questions. Points may be made in the closing address about the findings of Mr Cosslett, but it is a bit unfair to this witness, because he does not have any expertise in handwriting evidence. I think you can make the points later on, Mr Graham, when you close.

**Mr Graham:** Thank you. Just referring back to paragraph 8 where I opened at page 2, would you accept that is perhaps a mistake where the forensic expert concluded that all Dr Yaqub's signatures had been forged?

**A.** I don't know. Certainly, the part you have taken from that statement said that all of those exhibited GOS forms, in his opinion, did not bear the signature of Dr Yaqub.

**Mr Pounder:** I think your point is that he did not test all the forms and, therefore, he cannot say that. That is an elision which is perhaps not really the right way but for those forms that he tested, he can give those remarks, but he did not test all the forms, so that paragraph is probably a little optimistic.

**Mr Graham:** I am grateful. These offences took place many years ago, primarily in 2004, is that right?

**A.** Sorry, can I come back on that last point? When I said in my statement he concluded that all his signatures have been forged, clearly I was referring to all the signatures that had been given to him to test, not the entire population of signatures, that is the point you were trying to make.

**Q.** We'll come back to that later, thank you. I understand that most of these matters go back to 2004, is that right?

**A.** Yes.

**Q.** And some to 2005?

**A.** Yes.

**Q.** At page 3, paragraph 13, you state that:

"The evidence produced at court established that Dr Yaqub was not employed by PFO during this period and was either abroad or elsewhere when the sight tests were performed."

What is the basis of that statement, what is your evidence to support that statement?

**A.** We have the witness statements of other employees at the practice, both admin and clinical staff, who were employed at that time, throughout the period of the offences, and were able to make comment on Dr Yaqub's absence. Particularly, the members of staff who did the administration for booking sight tests for domiciliary were able to say that Mr Preedy had done all of the domiciliary sight tests during that period. We referred to Dr Yaqub's own CV which made no reference whatsoever to working for Preedy Opticians during the period in question, and a letter that he had written to the Child Support Agency in relation to allegations raised by his wife, I believe, to do with divorce proceedings and maintenance for which he had a letter dated 2004 in which he said, "I have not worked for Preedy Opticians for more than four years".

**Q.** Looking at the CV of Dr Yaqub which begins at page 68 in the bundle and runs through to 98, it is a pretty impressive CV.

**A.** It is certainly lengthy.

**Q.** It is extensive, yes.

**A.** It is very thorough.

**Q.** There are a lot of eminent entries in that CV.

**A.** Yes.

**Q.** Would you accept that one would not expect to see in a CV of this nature the fact that Dr Yaqub worked for a very small dispensing opticians in South London?

**A.** On the contrary, I would. I would expect to see a continuous period of employment where there had been one, because he would want to fill in the gaps. I would also note there are other appointments in there where he has done locum work. I would suggest that, if he is going to put down his locum work as an appointment, there would be no reason not to put down his employment at Preedy's. For example, towards the bottom of page 69, he has put down in the last but one entry, "visiting registrar". It is only a period of some two years but a visiting registrar rather suggests that it was a somewhat *ad hoc* appointment.

**Q.** May I suggest there is a difference between eminent hospitals in the United Kingdom and a very small, local dispensing practice – would you accept that is a fair observation?

**A.** That is a matter for him to decide what he wanted to put in and what he didn't want to put in but I simply make the point that it is a very extensive list of appointments covering that period of time and he seems to enter every one of those that are on there but Preedy Opticians is absent.

**Q.** I shall make the observation that Preedy Opticians is neither an eminent hospital or an academic institution. I ask you to move forward please to page 32 which is your second statement, and if I may ask you to go to paragraph

16. There is reference therein to a Dr Sujatha, and she is quite clear in that statement that eye tests were being carried out by Mr Preedy.

A. Yes.

Q. Indeed, she further states in the same paragraph that Mr Preedy had referred patients on to her following sight testing.

A. Mm

Q. Would you think it correct that this doctor considered it appropriate and in order for Mr Preedy to carry out eye tests?

A. No. It was my view all along that Mr Preedy was not qualified to undertake sight tests.

Q. That is your view, of course, but it is not the view of Dr Sujatha.

A. I think I can go so far as to say that Miss Sujatha did not have the view that he wasn't entitled to undertake sight tests. She simply didn't know one way or the other. I believe she made the assumption, so far as I understand, that because he was doing it and referring patients to her, it was in order that he was doing it. It was his business, she did not see it was her place to question his qualifications.

Q. You accept that this specific doctor was aware that Mr Preedy was carrying out eye tests, nothing abnormal, and she was happy to accept referrals from him?

A. Yes.

Q. Thank you. Paragraph 18 on the same page, you refer to the letter of Dr Yaqub to the Child Support Agency. Ultimately, based on real life experience, it is not uncommon for parties who are pursued by the Child Support Agency, rightly or wrongly, not to give complete clarity with the information with which they furnish the agency, would you accept that as a statement?

A. As an investigator, I have to scrutinise all evidence we receive and no one piece of evidence is likely to be conclusive. I would look at evidence in conjunction with other material that is gathered. I used to work for the Department of Work and Pensions, and I know full well some of the issues with which the Child Support Agency are faced in trying to track down absent fathers and getting payment, so I would not necessarily take that at face value. I looked at that in conjunction with his CV to check that his CV did bear out that fact, that there was no reference to him working at Preedy Opticians in the four years preceding 2004. There was nothing in his CV that contradicted that letter.

Q. We have already canvassed the point and the reason why perhaps it is not in there, yes?

A. You have made some points, I do not say that I would agree with them.

Q. Paragraph 19 deals with the email exchange between Mr Preedy and Dr Yaqub.

A. Yes.

- Q.** Forgive me, I am trying to locate the page reference there for that exhibit, if my friend can help me? It is page 105, thank you. Clearly, this email of June 2005 post-dates most of the matters that are the subject of your investigation in terms of the GOS1 and GOS3 forms, yes?
- A.** I think it coincides with the end of the period that the claims were being made. It was during that period of time leading up to June 2005 that a lot of the enquiries were being made. I could not be specific about the date but it wasn't too far away from the end of June 2005 where we took steps to make sure that no further payments were made to Mr Preedy, so there were claims in June 2005 and there were claims for every month up to June 2005.
- Q.** It is difficult to reach a conclusive view when the email says: "It has been such a long period that you have been away". We do not have any definitive dates as to when he was in the country and out of the country.
- A.** Absolutely not, it is open to speculation as to what he means by "such a long period of time", but I exhibit that because I feel it overlaps, to some extent, the later period of claims that were made under Dr Yaqub's name. It also supports the CV which was suggesting he was spending long periods of time working overseas.
- Q.** I have referred earlier to his *curriculum vitae* from pages 69-105. Would you accept that Dr Yaqub is quite a distinguished and eminent practitioner?
- A.** Yes.
- Q.** Page 34, at the very bottom of the page, you state:
- "Mr Cosslett stated that there was conclusive evidence to support that Mr Preedy wrote the claims, declarations, voucher type and ophthalmic list numbers parts of the questioned GOS1 and GOS3 forms."
- A.** Yes, that is right.
- Q.** Is that statement not inaccurate?
- A.** Can I refer back to his statement just to check that?
- Mr Hepworth:** It starts at page 216, that is the exhibit sheet.
- A.** Thank you. [*Searches for reference*]
- Mr Pounder:** If it helps, the bottom of page 222 is the part that deals with the GOS1 and GOS3 forms.
- A.** Forgive me if you think I have misunderstood but my understanding of this statement was that, in relation to the entries, claims, declarations, voucher type and ophthalmic list number in relation to those exhibits that he has examined, he has said, "In my opinion there is conclusive evidence that he wrote it", referring to Mr Preedy.
- Q.** Yes, we accept that but that is in respect of a limited number.
- A.** It is in relation to those that he was asked to examine.

- Q.** I would submit that it is probably, ultimately, best for the panel to place such weight on the expert's evidence rather than your good self, would you accept that?
- A.** Absolutely. I am getting confused as to what you are asking me to say now, because I am reading that paragraph 24 on page 33 and 34, and I am struggling to see where you think it is inaccurate.
- Q.** It reads as if he concluded that all the samples that were sent to him by you were conclusive that he wrote those claimed declaration forms. The evidence does not support that from Mr Cosslett.
- A.** Okay, if you feel there should be a different emphasis placed on that – that is my interpretation of his statement but I appreciate that is *my* interpretation.

**Mr North:** For my own clarity, paragraph 5 on page 222 refers to handwriting, it then refers to the GOS forms which form part of the specimen charges, and at paragraph 6 the handwriting is referred to again, and Mr Cosslett's opinion is that there is conclusive evidence he wrote it – sorry, Mr Preedy wrote it. Is that our shared understanding?

**Mr Graham:** It is the understanding that is correct in respect of those specified items which I have highlighted – 9, 20, 25, 29, 48, 87 and 137. If we go to page 34 in your evidence in the second statement, right through to page 54, this is the evidence where he carried out eye tests, yes?

- A.** Yes, that is right.
- Q.** Dealing exclusively with the eye tests, not the claim submissions, carrying out those eye tests was not a dishonest activity.
- A.** I don't think I agree with that. By virtue of the fact that he represented himself as being able to do that, he represented himself dishonestly, because the patients would have believed that he was entitled to do that. Why else would they have allowed him to do it? Dishonesty is not just what you write down on paper, it is dishonest actions. The fact that he turns up dressed as an optician with a lot of sight-testing equipment I would say are dishonest actions.

- Q.** Those are not matters to which he pleaded guilty at the Crown Court, did he?
- A.** As you know, those matters were not put before the Crown Court. Judge Rivlin –

**Mr Pounder:** Can I help? These are summary only matters; they are committed under Section 41 of the Criminal Justice Act 1988, and he would have a choice as to whether or not he accepted them or not. If no, they are usually sent back to the Magistrates' Court for disposal, that is how they work. If you go to page 19 and see the schedule of these matters, you are right that dishonesty is not the only component part of the offence. However, ultimately, dishonesty is a matter for the Committee, isn't it, and not for this witness – he cannot really help us on that.

**Mr Graham:** Clearly, Mr Preedy has seen a lot of patients over a lengthy period of time and, on the whole, none of those patients really complained as to the conduct of his treatment?

- A.** I cannot say, I am not privy to what any of his patients thought, I have only seen a small proportion of the number of patients that he has seen. If it helps, when the search was carried out at his shop, there was correspondence in relation to a complaint that was made to the GOC, I believe, about the way a particular patient was treated and that was dealt with and concluded. That is the only evidence I have seen of an unhappy patient but that is not to say that there weren't others.
- Q.** You have obviously interviewed a lot of patients as part of this inquiry and established certain facts. There is no pattern emerging, singly or collectively, of poor treatment or poor conduct of Mr Preedy's activities.
- A.** It depends on what you mean by the way he conducted himself. If you are talking technically as a clinician, there isn't any, but I would say that the patients are not in a good position to make any evaluation of his competence. As far as his manner when dealing with people, I accept that there were no complaints about the way he dealt with people but I do not believe that is the issue before the GOC.
- Q.** We have visited this point before but in your statement at page 53 at paragraph 97, you say you found that "all the signatures on the sampled GOS1 and GOS3 forms have been forged". Would you accept that is perhaps an overstatement?
- A.** I don't think so. My recollection is that of all the same GOS forms that were sent to Mr Cosslett, his findings were that all of them were forged. I am not saying that all of the GOS form signatures received by all the PCTs were forged because they weren't all tested. My understanding is that all of those that were tested were found to be forged. I certainly have no recollection of a single GOS form being received by a PCT in the name of Dr Yaqub which was found to be genuine.
- Q.** Mr Preedy has raised the issue in these proceedings in respect of delegated authority.
- A.** Yes.
- Q.** What is your knowledge of delegated authority?
- A.** I wouldn't say it is that extensive. My knowledge of it is based on information I have gathered during the course of the investigation, and that comes primarily from researching it on the internet and interviewing witnesses, particularly at the college where he studied, who gave their understanding of what delegated functions authority means, and another witness for the College of Optometrists it might have been – I can't remember the name of it. What I understand is the intention behind the qualification was to enable unqualified practitioners, and it is principally aimed at dispensing opticians, and furthermore it was aimed at dispensing opticians from overseas, to get some experience of work outside the dispensing field that enabled them to become more employable if they were working at, say, Boots or Specsavers where they were hard pushed to get every sight test conducted in its entirety by a qualified practitioner. Someone who demonstrated that they had knowledge of certain aspects of sight-testing through disqualification could, in certain circumstances, be trusted to undertake certain functions, certain tests of a

patient under the guidance of a qualified practitioner without the practitioner physically having to do the test themselves. However, having done those tests, the results of those tests are to be assessed by the qualified practitioner, not by the person who has undertaken the tests.

**Q.** We have heard evidence earlier on about how the doctor found it quite normal for Mr Preedy to carry out eye tests and make referrals, yes?

**A.** Yes, but that would not have been under delegated functions.

**Q.** What basis would it have been?

**A.** Simply because she had no knowledge about what his qualifications were, it wasn't her place to question whether she should or should not be doing it. Is that not covered in her own witness statement?

**Q.** Mr Chairman, I wonder if, as I have been up since five this morning, I could have a five-minute break before I resume my cross-examination. Would that be feasible?

**Mr North:** Indeed, Mr Graham. I think a short break would be welcome in several quarters.

**Mr Hepworth:** Perhaps the witness should be warned that, given he is under oath, he is not to discuss any matters –

**Mr North:** Indeed, I was about to do so, Mr Hepworth. [*To witness*] I think you have acquired the thrust of that, haven't you? You cannot speak about the case, you are still sworn and you cannot talk about the case until your evidence is completed.

[*Hearing adjourned at 17.35*]

[*Hearing reconvened at 17.50*]

**Mr Graham:** If I can put before the Committee a bundle I have prepared in this case for the Registrant as well as for the witness?

**Mr North:** And that will be R5.

**Mr Graham:** If I may resume, sir?

**Mr North:** Mr Graham, just before you continue, how much longer do you plan to be, do you have any time estimate?

**Mr Graham:** You will be glad to know that I suspect probably 40-45 minutes.

**Mr North:** Thank you, that is fine.

**Mr Graham:** [*Continues cross-examination of witness*] Before we had that short adjournment, you were dealing with delegated authority, your understanding of the functions aimed at dispensing opticians who want to get experience,

widen their knowledge, carry out sight-tests under the guidance of a practitioner and referring to the practitioner for checking. I have placed before you a bundle and I invite you to go to page 20. This is a document beginning at page 6 that is called *Advice and Guidelines on Professional Conduct for Dispensing Opticians*. If we go to paragraph 32 –

**Mr North:** Before we continue, Mr Graham, one of my colleagues has just pointed out that this is a document issued in 2007.

**Mr Graham:** In terms of the searches we have carried out, our own office has made enquiries with the Ethical Council and this is the document to which they have referred us and this is the document upon which we are sourcing our information based upon what they told us.

**Mr North:** Thank you, that is very helpful.

**Mr Graham:** So at paragraph 32c it refers to delegated functions in support of the medical or optometric profession, yes?

**A.** Yes.

**Q.** Paragraph 34 says:

“Certain delegated functions e.g. refraction, visual fields, muscle balance, tonometry etc., may be carried out by a registered dispensing optician with the appropriate skills and knowledge, or at the direction of an optometrist or registered medical practitioner as part of a full eye examination.”

Would you accept that a dispensing optician can carry out eye-tests?

**A.** No.

**Q.** Would you like to say why?

**A.** Because it quite clearly says you can carry out those particular functions which are tests within the overall eyesight test. It is saying that you can do them there in the way of stand-alone tests, or you can do it at the direction of an optometrist or a registered medical practitioner as part of a full eye examination. It is not saying you can do full eye examination. You can either do stand-alone tests, or you can do them as part of the full eye examination under the direction of a registered practitioner.

**Q.** You accept that it is an alternative?

**A.** Yes, it is one or the other, but we are talking about claims made for full eye examinations here.

**Q.** Okay, but you accept there is a principle of delegated functions?

**A.** Absolutely, I have said that, I have told you my understanding of what delegated function is and what the purpose of it is. It is to take the pressure off qualified practitioners to enable more sight tests to be carried out.

**Q.** If I may ask you to stay with this bundle and I apologise if the numbering is wrong. Perhaps you could move forward to page 30, which is a document called *Centre for Applied Optics*.

**A.** I have seen this document before.

**Q.** This simply shows that Mr Preedy has attended a course in delegated functions associated with refraction, oculomotor balance assessment, visual field assessment and tonometry, yes?

**A.** Yes.

**Q.** The following pages deal with Mr Preedy attending other courses.

**A.** Which following pages are you referring to?

**Q.** The next page is a diploma in ophthalmic dispensing.

**A.** Forgive me but I cannot see where it says that Mr Preedy attended it.

**Q.** I'll leave it there. If I could ask you again to move forward to page 38, which is a letter dated 3 August 2007 from Sanjay Sachdeva.

**Mr Pounder:** It seems to me, and I am just trying to be helpful, that the middle number, the one that is typed, is the better one so if you could refer to that, it would make things much clearer for everybody.

**Mr Graham:** Perhaps I can borrow that bundle overnight.

**Mr Pounder:** No, this is fine, we can follow it but if you use the one in the middle of the page, it is much easier because someone has obviously prepared it that way.

**A.** Did we establish that Mr Preedy had attended this Diploma in Ophthalmic Dispensing?

**Mr Graham:** I don't believe it is evidence with which would assist the panel.

**A.** You asked me to comment on whether it is a course that he attended, and all I am saying is there is no reference there that he did.

**Q.** It would be my submission that he did, I have not asked you any further questions on it. In that statement, this practitioner concludes that it was normal for Mr Preedy to carry out eye-tests and, if appropriate, to refer them on for further examination.

**Mr Pounder:** That is what the statement says but I do not think that Mr Horsley can really comment on it. In due course, you will be able to take the Committee through all the statements and what they contain, but I do not think that Mr Horsley is really in a position to comment on that, he has no personal knowledge of the contents.

**Mr Graham:** Very well. We shall move back to your statement which is in the first bundle at page 53, paragraph 98. Would you accept that Mr Preedy believed that he was able to conduct eye-testing pursuant to delegated authority?

- A.** I don't think I could say what his state of mind was at the time. All I can go on is the evidence that I uncovered. If you want my personal opinion, which I believe is what you are asking for, I took the view that, if he thought he was entitled to do the sight-tests, there would be no need to forge somebody else's signature on the claim form. Similarly, I think he would have registered to go on the Ophthalmic List of the various Primary Care Trusts as a dispensing optician who held a Delegated Functions qualification.
- Q.** It is also your case that those forms which were filled in by him in the name of Dr Yaqub where when Dr Yaqub was not around to sign those forms?
- A.** Yes.
- Q.** Save for the matters to which he has pleaded guilty, would you accept that he conducted those eye-tests under the belief that he did have delegated authority?
- A.** I can't say what was in his mind as to why he did it. All I can repeat is that, if he thought he was able to do that under delegated authority, then why not come clean and say that is what I have done? Specifically, that question was raised when he was interviewed and he did start answering questions. He brought up the subject of delegated functions and he said, 'I hold a qualification in delegated functions'. I then asked him as the next question, 'Is there anything within delegated functions which you are not entitled to do?', and from that moment on he went, 'no comment'.
- Q.** I think he had professional advice at that time advising him to make no comment, but I don't think we are going to progress matters by going back over that.
- A.** Sure, but you asked me what his state of mind was and whether he believed –

**Mr Pounder:** This is simply speculation on behalf of Mr Horsley as to what was his state of mind. You can address the Committee as to what your instructions are on the point but I do not believe that Mr Horsley is in the position to enter into someone's mind in the absence of something being said by, for example, Mr Preedy as to his state of mind.

**Mr Graham:** Moving on to page 54 in bundle 1, you conclude that the people who had these tests were exposed to risks to their health.

- A.** Mm.
- Q.** There are many interviews which you have conducted, I pressed this point earlier on this afternoon, but there has not been any complaint as to his clinical judgments and operations?
- A.** There was in relation to one patient who mentioned the fact that it was her belief that Mr Preedy failed to notice that she had macular degeneration, which is a serious eye condition that he ought to have spotted.
- Q.** That was very much an isolated complaint.
- A.** You just said to me there has been no complaint and I am telling you that there was one.

**Q.** You are only aware of one?

**A.** I am only aware of one.

**Q.** Thank you. At page 61 of bundle 1, this is the statement of Jason Graham Bryant who is an optical technician who states at paragraph 3:

“I had always believed that Mr Preedy was legally qualified to conduct sight-testing. I believed this because he had a certificate saying that he had qualified in refraction, and I always assumed that refraction meant eye-testing.”

So, rightly or wrongly, he was of the opinion that Mr Preedy could conduct eye-testing?

**A.** Yes.

**Q.** At page 63, he states in the second paragraph that other doctors such as Dr Rabindra, Bhachech and Sujatha, also conducted eye-testing on Saturdays within the framework of the practice?

**A.** Yes, that is right.

**Q.** He also says further down about Dr Yaqub:

“I saw him once on a Saturday, he popped in about five years ago, he used to do sight-tests at Preedy’s maybe three years ago or longer. I know this because he tested my daughter’s eyes at Stafford Road.”

So Dr Yaqub did carry out eye-tests on behalf of Preedy’s

**A.** Yes.

**Q.** Then we go forward to the statement of the hospital doctor at pages 65-66, and this doctor states about half-way down that she has done domiciliary sight-testing on behalf of Preedy Opticians –

**Mr Hepworth:** That is not what she says. Her statement reads, “on no occasion”.

**Mr Graham:** I beg your pardon, thank you for that correction. I meant to draw your attention to the fact he knows that Dr Yaqub worked at Preedy’s Opticians. At page 66, the following page, this doctor states:

“I have not seen Mr Preedy sight-testing but I know he has done sight-testing because he has referred patients to me following his sight-testing. I am aware that Mr Preedy has carried out sight-tests throughout the time that I have worked for him. I used to re-check those that he referred to me but I cannot say he prescribed for the patients that he saw and did not refer to me.”

So this hospital doctor is quite happy with Mr Preedy carrying out eye-testing and, where appropriate, making referrals to the doctor.

**A.** Yes.

**Q.** Then you did conduct a detailed interview of Ann Preedy, Mr Preedy's wife, and it is fair to say that she was very helpful and gave you as much information as she good. Is that a fair statement?

**A.** Yes.

**Q.** I am going forward to page 146 and, in particular, to page 152, half-way down Mrs Preedy states that again: "Dr Sujatha, Dr Rabindra, Dr Bhachech and sometimes Dr Yaqub when he is around but he is away at the moment." These were people who would work for Preedy Opticians.

**A.** Yes.

**Q.** At page 153, this witness whom you describe as being helpful and giving a full explanation, she perhaps more than anyone else gives an account as to Dr Yaqub:

"Dr Yaqub worked for Preedy's about eight or nine years I think, I can't be specific but about eight or nine."

**A.** Can I just pick up on one point? You describe her as a witness, I would not describe her as a witness. This is a record of an interview after her arrest.

**Mr Pounder:** She was a potential co-defendant, it was an interview under caution wasn't it, and, obviously, what she says when under caution is evidence against a co-defendant in a criminal trial.

**A.** She never made a witness statement.

**Mr Graham:** She states on the same page:

"Does Dr Yaqub work anywhere else?  
Not at the moment because he is in Egypt but he has been working at hospitals."

To conclude, Mr Horsley, it is correct to say that Mr Preedy pleaded guilty to nine counts, totalling £3,186.16.

**A.** Mm.

**Q.** He was not found guilty of anything else, or pleaded guilty to anything else. There is a principle called delegated authority -

**A.** Yes.

**Q.** - which does involve an element of eye-testing.

**A.** Yes.

**Q.** To Mr Preedy's belief, he thought he could conduct eye-testing pursuant to that delegated authority?

**A.** I can't comment on his state of mind.

**Q.** Would you accept that, ultimately, it is a matter for the Committee to place such weight as they see fit and interpret the evidence of the forensic expert as they see fit?

**A.** Absolutely.

**Q.** Those are my questions, sir.

**Mr North:** Thank you, Mr Graham. Mr Hepworth, any re-examination?

**Mr Hepworth:** Sir, no. Do you or your colleagues have any questions for this witness?

**Mr North:** Indeed, I was about to ask my colleagues.

### **Questioned by the Committee**

**Mrs Huka:** I just wondered, as a point of clarification, whether it is relevant that Mrs Preedy's interview record is not signed.

**Mr Pounder:** It would not be signed because it is not her statement. You would have a statement by the police officer exhibiting it as a record of a taped interview.

**A.** It is simply a transcript of the tape.

**Mr North:** Thank you, that was helpful. *[No other questions]* I have no questions for this witness. Mr Horsley, thank you very much for your testimony today, it has been most helpful, and for your patience and indulgence in allowing us to complete this aspect of the case today. Thank you.

**Mr Hepworth:** Sir, on behalf of the Council, and no doubt on behalf of Mr Horsley, thank you for sitting so late to ensure that he can make his appointment tomorrow. I presume, sir, that you do not wish to go any further tonight?

**Mr North:** I think that would be a very reasonable assumption, Mr Hepworth. Mr Graham and Mr Hepworth, thank you, we shall see you again tomorrow at 9.30. Mr Horsley, you are now released and thank you very much for your contribution today.

*[The witness stood down]*

**Mr Graham:** Mr Chairman, could I indulge you. On the safe assumption that Mr Preedy is not coming here tomorrow and, if he were giving evidence-in-chief, it would take up a significant part of the morning. As a purely selfish request and since I was up at five o'clock this morning, would anyone object to starting at 10 o'clock tomorrow?

**Mr North:** In fairness to Mr Graham, do my colleagues agree? *[Agreed]* That would be quite acceptable. We shall reconvene at 10 o'clock tomorrow and thank you everyone for your help today.

*[Hearing adjourned at 18.20]*

**DAY TWO**  
**Wednesday, 13 April 2011**

[Proceedings reconvened at 10.05]

**Mr North:** Good morning everyone; now, as I recall we had just finished the evidence of Mr Horsley, and the matter is still with you at the moment, Mr Hepworth?

**Mr Hepworth:** Indeed, sir. The evidence upon which the Council relies is, as I indicated, the oral evidence that you have heard from Mr Horsley and the documentary evidence within the bundle, comprising of two level-arch files, which you have before you.

Sir, my current plan is not to deal with the documentary evidence at this stage because it is before you now, but to deal with it in closing. Sir, assuming that you will deal with this matter in the usual way, dealing with it in four stages (if indeed the latter two stages become necessary, or indeed the latter three stages become necessary), sir, when I do close I will close restricting myself to the facts, and of course I will make further submissions in due course if those are necessary.

Sir, the oral evidence that you have before you and the documentary evidence which you have before you are the Council's case.

**Mr North:** Thank you Mr Hepworth. Before the Registrant's opening statement and evidence, do any of my colleagues have any questions concerning the materials we have been provided with over the last few days? [No questions] Fine, it is over to you, Mr Graham.

**Mr Graham:** As we know Mr Preedy is not here, and we know why, so in terms of presenting his case I have a witness statement, of which I have several copies which I would like to present to the Panel (R6). [Papers distributed]

**Mr North:** Do you wish us to read this document?

**Mr Graham:** I can do one of two things, sir; as you can see it is rather a lengthy document and it is not something that you can digest in five or 10 minutes. I can read it out to you if you like, and am happy to do so, or alternatively as you wish I am quite happy to leave it to you to read and then we can resume in about 15 minutes, but it is obviously very important that the matter is considered before the matter steps further.

**Mr North:** Yes, I think a helpful way ahead would be for myself and my colleagues to read this *in camera* as it were, and then you can speak to it.

**Mr Graham:** At half ten? It is quite long.

**Mr North:** Yes, I think that will be fine; it is about 30 pages one of my colleagues advises me.

**Mr Graham:** Or at 10.40? It is quite time-consuming.

**Ms Jones:** Can we not call parties back in once we have read it?

**Mr North:** I think that is a very sensible suggestion, Ms Jones. Why don't we leave it at that, and if you would retire to your rooms as it were, once my colleagues and I are assured that we have read it sufficiently we will then invite you to return. Thank you.

*[Hearing adjourned at 10.09]*

*[Hearing resumed at 10.57]*

**Mr North:** Thank you *[Housekeeping details]*. Mr Graham, I believe you are now about to lead us through Mr Preedy's statement?

**Mr Graham:** I can, if you wish; of course my principal concern during the last recess was for the Committee to read through that statement meticulously, which they clearly have done because they have afforded at least 45 minutes for that exercise.

**Mr North:** Indeed.

**Mr Graham:** I assume therefore that the Committee are well-versed with the contents of that witness statement. Naturally in closing I will take the opportunity to emphasise further relevant parts of that statement in direct relation to the allegations.

**Mr North:** Thank you; before you go further, this is Mr Preedy's statement dated the 11<sup>th</sup>, i.e. this Monday?

**Mr Graham:** That is the date, yes.

**Mr North:** Have you had any further instruction in relation to the statement since?

**Mr Graham:** I have had no further instructions since that statement.

**Mr North:** So this will in effect be his evidence-in-chief?

**Mr Graham:** That will be his evidence-in-chief, yes.

**Mr North:** And obviously there will not be the opportunity to examine him or cross-examine him?

**Mr Graham:** Clearly not, as a consequence of his decision.

**Mr North:** Right; fine, thank you. Would you then proceed?

**Mr Graham:** I am grateful, sir.

## Representations

I put before the Panel yesterday afternoon when cross-examining Mr Horsley a bundle prepared in this case on behalf of the Registrant. With leave, I would like to take the Committee through that bundle.

The opening pages of that bundle deal with the ongoing training of Ronald Preedy, and it demonstrates the type of courses and the type of training that he has undertaken from 2/07 to 2/08. I would invite the Committee to conclude as a sample of his ongoing training that clearly this is a committed optical practitioner, with a positive attitude, clearly enthusiastic and clearly someone who has a great love for his job.

The next document in this bundle is at page 8 (hopefully) – I will be going through the bundle consecutively, so if there is any problem with the page numbers it should iron itself out as I go through sequentially the documents as they appear in the bundle. The next document is the Advice and Guidelines for the Professional Conduct for Dispensing Opticians. I invite the Committee to move forward to paragraph 32, where the guideline states at 32(a):

“Registered dispensing opticians may wish to offer their patients other supplementary services to meet particular needs.”

Providing of course that:

“If the registered dispensing optician is satisfied that he/she possesses the necessary knowledge, either by existing training and examination or by additional knowledge and skill acquired through continuing education and training –”.

It would be my submission in this case that Mr Preedy, as I have stated previously, is a very dedicated dispensing optician who keeps abreast of developments in his field. Indeed it states at 32(c):

“Delegated Functions in support of the medical or optometric profession.”

So this principle again appears, this notion of a “delegated function”. In my submission this is further expanded if we move down to paragraph 34:

“Certain delegated functions, e.g. refraction, visual fields, muscle balance, tonometry, etc., may be carried out by a registered dispensing optician with the appropriate skills and knowledge” – they do that exclusively and/or together - “or at the direction of an optometrist or registered medical practitioner, as part of a full eye examination.”

So there is an element of eye functioning activity that can be carried out.

I invite the Panel to move forward to the next document, which hopefully is page 30 in your bundle. This document is simply where in 1997, a number of years ago, the practitioner Registrant completed a delegated function course and achieved a satisfactory standard in various scales including refraction, ocular motor balance assessment, visual field assessment, and tonometry. That is dated 31 July 1997 and signed off by the Head of the school here in the City of London.

The next document is an illustration of a course which he attended in respect of a delegated function in January 2003. I note from reviewing my bundle last night that, regrettably, there is a page missing from your bundle which is the second page in respect of the programme associated with that course. With your leave I have had copies made which I would like to submit to be included within your bundle.

**Mr Pounder:** Which will be R7.

**Mr Graham:** Indeed. [*Document distributed*] As you can see from that syllabus there is a series of skills associated with a specific area for dispensing opticians. The programme as you can see on the next page is very detailed, and I am sure was of considerable benefit to Mr Preedy and his clients at that time, and indeed going forward. Again this is clearly someone who is keen to keep abreast of developments, and keen to expand his skill and knowledge base.

The next document is a letter from the City & Islington College. It is dated 6 December 2005, which is page 32 in your bundle. Mr Botten, the author of that letter, states:

“As far as I am aware, we have no specific written Rules for the practice of delegated functions in our possession.

The functions must be delegated to you by a responsible practitioner” – defining what a “responsible practitioner is – “(Optometrist, Ophthalmologist, OMP, GP)” and of course he does say “but the critical point is that you must not issue a prescription to the patient. If such a prescription is issued, it must be issued by the Delegator who takes responsibility for the Rx [examination].”

However it does say that there is an element of delegated functions which can be carried out by the optician.

The next page then is a letter from RA Jacques at page 33 addressed to his former solicitor representing him in the criminal proceedings on 18 September 2006:

“In response to your letter dated 1.9.2006, it is true that I ran a course in Delegated Functions at City and Islington College, London, and that

Mr Preedy was a regular and enthusiastic participant. He seemed as honest as the next man.”

He adds at paragraph 2:

“It is worth adding that the course trained participants to refract (measure the eye’s refractive error), assess the state of balance of the oculomotor system, investigate the continuity of the eyes’ central fields of vision, and to measure the intraocular pressures. One does not need any formal qualifications to carry out these procedures, but only a doctor of medicine or a registered optometrist can sign and issue a prescription for glasses. All participants in these courses were told this on many occasions.”

If we then turn over to the next page at 34, which is a statement from the distinguished and eminent practitioner Mr Moustafa Yaqub dated 30 January 2007, he states:

“I confirm that I have delegated Mr Ron Preedy (based on his “Delegated Function Diploma” and my personal knowledge of his optometric skills) to do sight testing in my name. We have had continuous discussions of all cases over the phone during the week. All patients requiring urgent referral were then referred by Mr. Preedy to their GP and/or the appropriate ophthalmic department. All other patients with questionable findings were then brought to the practice at Stafford Road, where I saw them on the weekends. Some of these patients were later referred to the hospital eye clinics.

I have signed the NHS sight test forms and spectacle vouchers for all the patients I have seen when I attended Mr. Preedy’s practice at the weekends.

During my stay in the United Kingdom I worked in various ophthalmic departments in my capacity as a consultant ophthalmologist during the week, and I have spent the weekends in the practice at 39-41 Stafford Road.

I have known, and worked with Mr. Ron Preedy for the past 10 years. Mr. Preedy in my view is a competent and responsible optical practitioner.”

He makes a further statement later on the same year, which is at page 35 in your bundle. He expands slightly further:

“I am Moustafa K M Yaqub. I am a consultant ophthalmic surgeon. One of the areas of expertise is glaucoma.

I have worked at a number of opticians including Preedy’s Optical Eye Centre. I joined the practice around 1996 as an Ophthalmic Medical

Practitioner. ... I applied for the position after seeing an advert in a hospital notice board.”

I worked mostly on Saturday at Preedy’s Medical Eye Centre. This was because I held a full time position at various hospitals. Mr Preedy is a dispensing optician and his job involves interpreting and dispensing optical equipment according to the results of the optical examination. I was also aware that Mr Preedy had a contact lens practice. The procedure involved in this area is to check tear film stability and production, as well as Refraction including astigmatism.”

The distinguished and eminent practitioner states:

“I was entirely satisfied with Mr Preedy’s competency and judgement. Mr Preedy as a dispensing optician could examine eye pressure; check the front of the eye using the slit lamp, and examine the optic nerve in the back of the eye for conditions like glaucoma. If the eye was red or painful or showed symptoms of pathological problems Mr Preedy would refer the case to me. Based on the number of times I attended the examination of patients by Mr Preedy, I was quite satisfied for Mr Preedy to carry out these procedures without recourse to me or any ophthalmic medical practitioner.

The system operated at Mr Preedy’s practice was what can be described as a tuso-tier system where Mr Preedy would always refer the cases to me. Thus would occur when there were signs of a defect in the eye. I trusted Mr Preedy to act responsibly and I was fully satisfied that he did act responsibly.

Mr Preedy has a real passion for his work and he would often discuss with me patients who had very little wrong with their eye or none at all. The particular ocular problems of my interest (mainly Glaucoma) were very much discussed in great details, so as not to miss an early asymptomatic case.

I was qualified to conduct optical procedures under the National health Service.

I was registered with a number of Primary Care Trusts and part of the procedure was that the Ophthalmic Medical Practitioner was given a claim number.

In relation to the testing of eyes it is too simple to state that a practitioner carried out a sight test. There are a number of different forms of sight testing. Some tests are so complex that even a junior doctor would have difficulty interpreting the results.”

He continues on the next page:

“The equipment to carry out the complex tests are so expensive that most high street practices are unable to attend the cost. However, one of the most important reasons for my work with Mr Preedy was the availability of such instruments as the computerised Humphrey Perimeter for testing the visual field. Mr Preedy was quite keen right from the start to perform the test by himself, a task some of my senior house officers are unable to perform.”

He goes on to say why he is not in the United Kingdom which is due to his state of health.

We then move forward to hear a further and more detailed explanation from Dr Sanjay Sachdeva of whom we heard yesterday. She makes a statement on 3 August 2007, stating:

“I am a fully qualified Optometrist registered with the General Optical Council. I was asked by Mr Preedy to work as a locum Optometrist in January 2006 to March 2007, I met Mr Preedy through a mutual friend.

Mr Preedy's Practice goal as I was aware was to always put his patients clinical Interests first. These included patients that had been seen under what was an established two-tier Sight Test/Delegated Functions system on certain days when I was not scheduled to attend. All the patients told me that Mr Preedy had mentioned to them the system, and his role within it.

All the patients that were seen by Mr Preedy were discussed with me either before hand in the mornings, or just before I was ready to see the patient. I found this system very convenient as it enabled me to concentrate on what the earlier discussions had suggested to me to target, for example in the first few months of my working with Mr Preedy I found his work exemplary. In his two-tier Delegated Functions System. Mr Preedy had completed the refraction, IOP, Visual Fields and Ocular Motor checks accurately. During this time any other abnormal external eye condition Mr Preedy had noticed would be pointed out to me in the morning briefing.

Mr Preedy always made patients aware of his qualification being limited and the need for them to see an optometrist to conclude their eye examination. I have always found his findings very useful. Mr Preedy and I share the same interests in advancing our knowledge in ophthalmology. We would discuss topics that Mr Preedy had read, done in his CET's, seen in “The Optician Journal”, including “OT” or a case in the day, as well as some patients that were seen on Mr Preedy's home visit clinics. I myself am continuing with my MSc studies at City University London.

In conclusion Mr Preedy has always worked to high clinical standards in work undertaken by himself. This included contact lenses fitting, and dispensing. In my 15 months attendance in his clinics I always found

him to be an honourable man, full of integrity, who always strived to better himself and ultimately benefiting his patients.”

Then we move forward to page 39, which in fact is an affidavit sworn by Dr Yaqub dated March 2008, and it goes from pages 39 to 41. Under oath he states:

“I worked as an ophthalmic medical practitioner in Preedy’s Medical Eye Centre since January 1996, performing sight testing and ophthalmic evaluation for patients of the centre.

In 1997 Mr Ron Preedy completed a Delegated Functions-Sight Testing Diploma. This allowed him to perform advanced aspects of sight testing (like visual fields examination), under my personal supervision.

Under the scheme of ‘Delegated Functions’, I was happy for Mr Preedy to perform advanced sight testing on my patients in the practice. It is my understanding that Mr Preedy also holds a diploma from the Applied Optics College at the City & East Islington College in London, which enabled him to fit contact lenses and perform sight testing.

All the patients seen by Mr Preedy were then checked either by me, or by the other ophthalmologists working in the medical eye centre in Wallington. A good number of those patients were also referred to the hospital for further management. All the doctors in the practice (including myself) have served as staff members in NHS hospitals.

The range of services offered at the Wallington centre included home visits for a number of elderly patients. Those were then encouraged to come to the clinic for further testing and/or hospital referral. This way, we (I and the other ophthalmologists in the clinic) were able to confirm the correct diagnosis, perform more testing, and sign the appropriate forms for further management.”

Then on to page 2 of this affidavit which is page 40 in your bundle:

“From January 2004, I had to visit Egypt many times per year, because of my father’s advanced illness -”. Then “Patients seen in my absence by Mr Preedy were asked to come back to the clinic to see me for further work up and/or referral. Many of my patients were happy to do so, and those who could not wait for my return were referred to my colleagues in the practice.

Based on my experience of his work under the delegated function scheme, and the positive feedback that I had from my patients, from referring general practitioners, and from my colleagues in the practice over more than six years, I was quite happy to delegate Mr Preedy to perform the initial sight testing on my patients, prior to them seeing me.”

The remainder of that affidavit primarily deals with issues concerning the Crown Court and his non-attendance.

The next document in your bundle is a statement from Mr Preedy's son at pages 42 to 43. Again as we all know in this case there are issues in respect of previous representation. I simply will read the extract which is at the very bottom, dated 25 February 2009:

"I personally witnessed Mr Yacub sign and pre-sign large numbers of them (about 200 at a time) on many occasions in my presence at the practice and later at my home –".

That is a statement from his son.

The next page, which is page 44, before these proceedings as we know there was an article in the local Press which clearly had a significant impact on his business when he was described as a "bogus optician", and Mr Preedy sought to take issue with that, which he felt was defamatory. That simply supports that statement which has been made.

The next document, which is pages 45 and 46, goes to support Mr Preedy's position about how unhappy he was with the representation which he had in the criminal proceedings, and how he instructed further solicitors to take issue with that as best they could, and clearly those solicitors wrote to his former solicitors setting out various grounds of complaint and inquiry.

The next document in your bundle at page 47 is simply a letter in which he complains to the Legal Complaints Commission, and they ordered his former solicitors to make a payment to him in the sum of £500.

The next document at pages 49 and 50 is the ongoing reference to the European Court.

The next document again is clearly in handwriting and it is not particularly easy to read, but I will do my best to read it for you. This is Mr Preedy's basis of plea at the Crown Court, which we have heard much about. He states the basis of his plea, what he is pleading to the nine counts. He qualifies that by saying:

"In respect of any eye testing I carried out, I maintain my position that I was entitled to do this work and was qualified to do it under the delegated functions system."

**Mr Pounder:** Can you help us as to the first paragraph please? It is not very easy to read, I am afraid.

**Mr Graham:** No, I agree and I sympathise. I will do my best:

"I am today pleading guilty to 9 counts of obtaining a money transfer by deception in that I accept that I falsely represented that Dr Yaqub had signed a number of GOS/1 and GOS/3 forms, and in the circumstances that was dishonest."

Does that help?

**Mr Pounder:** It does help, thank you.

**Mr Graham:** I would conclude by saying that in terms of the second part of the second paragraph of that statement:

"It follows that I believe Mr Preedy that family opticians were entitled to claim for the work carried out."

That further is endorsed I believe by Counsel, Dominic Cox. I think this may be his handwriting:

"The defendant only pleads guilty to each charge on the basis of accepting the 2<sup>nd</sup> particular of the particulars of offence. He does not accept particulars 1 and 3 of each offence."

**Mr Pounder:** The last answer by prosecution's Counsel seems to say "The Crown are fully aware of the basis of the plea", is it Kevin Denton? It is not very clear. Then the next page, page 52 – Goodyear is it not?

**Mr Graham:** I was going to move forward to page 55, if I may?

**Mr Pounder:** Can you just help us with this? The Goodyear direction is an application to the court on an entirely Without Prejudice basis; if someone pleaded guilty today what was the highest sentence a person would get? That usually binds the court or that Judge to 28 days, and gives the person the opportunity to come back. Is page 52 the application for the Goodyear direction?

**Mr North:** I think it would be helpful if we went through that, if we could?

**Mr Graham:** I will do my best!

"I have today asked my barrister to ask the judge for a Goodyear direction – that is, an indication of sentence.

I understand that this does not bind me to plead guilty. However, I am also aware that I should not ask for a Goodyear direction unless I am seriously considering plea of guilty. I understand also that if I do not plead guilty at this stage no future Judge will be bound by the indication. The prosecution, similarly, are not bound by any offer after it is turned down.

I have been advised by my barrister and solicitor in regard to this indication. However, the decision to ask for one was taken by me freely and independently.”

**Mr Pounder:** They are both signed by the same person, but they are in different writing. [*Discussion*]

**Mr Graham:** If I might move forward to page 55, this appears to be the attendance note of the solicitor who is representing Mr Preedy in the criminal proceedings at Southwark Crown Court. At page 55 there is reference by Counsel for the prosecution in respect of a Newton hearing. I highlight it at this stage because I will in due course be taking you through in part the judgment of His Honour Judge Rivlin, as he was particularly careful and anxious that the matters which were before him were distinct and confined to those matters in terms of Particular 2, and not other matters which form part of the prosecution case and bundle at that time, and indeed the bundle before you today.

There is then reference, if I can ask you to move forward please to page 58 –

**Mr North:** Could you just repeat clearly for me, Mr Graham, the document beginning on page 55, I just noticed in the Index it is just given a generic title.

**Mr Graham:** I believe that to be the attendance note of the representatives of Mr Preedy in the proceedings which were before the Crown Court on 15 March 2007. That is pages 54 through to 61.

**Mr North:** Thank you, that is helpful for the record.

**Mr Pounder:** Can I ask you, is it all there and is it in order? It does not necessarily follow at the end of each page.

**Mr Graham:** I cannot answer that; I was not the instructing solicitor, and that is a document which has been presented to me. Page 58; I simply highlight; there is reference half-way down:

“Prosecution will not seek recovery of money”.

Rightly or wrongly, Mr Preedy has interpreted that to mean he would not be pursued civilly, but that was not the case.

Now, if I may move forward to page 62, clearly the investigation as we all know had devastating consequences for Mr Preedy. Indeed as a consequence of that investigation as I understand it various letters were written to the various patients that Mr Preedy had seen. Of course it is our case, and I will refer to it later on (and I know Mr Horsley referred to one isolated incident yesterday) but on the whole there were not any difficulties or problems with the clinical treatment which Mr Preedy applied.

I will read this letter. It is dated 1 May 2007 and it is from JA Taylor. This party states:

“Some months ago a visiting card was put through my letter box a Mr. Horsley and I believe it stated he was with the Fraud department of the N.H.S., it requested me to contact him phone. My first reaction was one of surprise and even concern, as I could not understand why someone from that department would have reason to contact me.

However I duly telephoned the gentleman, when he asked me if a Mr. Preedy had tested my eyesight on the 8<sup>th</sup> of October 2005, I confirmed that he had, I remembered the date as it was on my sister’s birthday. He then wanted to know if the test had been carried out at my home address, I informed him that, as usual, I had attended Mr. Preedy’s premises in Wallington. He also asked if I would be prepared to make a statement to this effect, when I hesitated, being unsure of what this was about, he then asked me if I was aware that Mr Preedy was unqualified to carry out such tests.

I was completely shocked by this statement, as I had been going to Mr. Preedy since 1972, had always received most excellent service and was completely satisfied with the treatment and care provided. He then said that other people were not satisfied and restated that Mr. Preedy was not qualified and what would have happened if someone had a serious eye problem. I explained that if ever I had a problem over which Mr. Preedy was in doubt, he always referred me to an eye specialist. In fact over the years I had been referred to a Mr. Hungerford, an Indian Lady (whose name I cannot remember) and more recently a Dr. Yaqub.

From 1972 until the year 2000 I had always worn contact lenses and it was in the year 2000 Mr. Preedy referred me to Dr. Yaqub who confirmed that I had developed cataracts in both eyes which needed attention. I subsequently had the cataracts removed and Mr. Preedy now prescribes distance lenses for me.

I should also state that Mr. Horsley also sent me an email, again asking if I would make a statement regarding my treatment by Mr. Preedy, I did not reply to this as I could see no point in doing so. As far as I was concerned, I had complete confidence in Mr Preedy and felt sure he would not have been so efficient over the twenty eight years he had looked after my eyes, had he not been qualified.

Finally, I should state that I am unable to confirm certain dates as they were not recorded by me at the time, but the other information is, as I recall it.”

Page 63, there is a reference from Raza Toosy who is the junior practitioner and I believe the son of Tahir Toosy who we heard of yesterday. He simply states in April 2008:

“This is to confirm that we have known Ronald Preedy, as his local General Practitioner, for at least the last 10-15 years by my father and six years by me. He has always been very well thought of by our patients and highly regarded by me. He was always willing to go out of his way to help the patients and has always been approachable, amiable and friendly.”

In another statement at page 64 from Stuart Stanley Lowe:

“I have known Mr Preedy for over thirty years and found him to be reliable, truthful and honest.

He has shown great kindness to the elderly and disadvantaged often providing tea, coffee and refreshment in his shops free of charge to no commercial advantage.”

We then have a statement from a priest at page 65, Fr. Zeferino D’Souza. He states in August 2008:

“I, the undersigned, have been visiting [the] U.K. regularly since 1989. I have rendered services in various parishes in U.K. since then.

Mr. Ronald James Preedy is my personal friend since 1989 as I was rendering services in his parish that year and time to time he has dispensed spectacles to me and taken care of my eyes and also he has dispensed spectacles and contact lenses to all those whom I recommended to him. All are satisfied and have excellent treatment since then.

Mr Preedy is a man of principles and integrity and his honesty cannot be compromised. He has proved himself as a man of sincerity, patience, generosity and helpful to those in need. His personal approach is excellent, polite and very human.”

We then have a statement from Mr Nim Solanki which states:

“I had a dispute with my local council regarding business rates”

and Mr Preedy helped this issue to be resolved on a voluntary basis, which simply concludes:

“I have only known Mr Ron Preedy for a short while, but his efforts in what I can only describe as humanitarian work, has now helped me to concentrate on building up my new business.”

The next page at 67 is a further statement from Father Zeferino D’Souza, more or less repeating what he said previously, that he has known him for 20 years, that he has been based in a church in Farnborough for the preceding month, and that:

“Mr. Preedy is a man of integrity, honesty and good moral character and can be trusted for any responsible task. He is hard working person and ready to perform any duty with efficiency and professional touch.”

The next set of documents, which goes from pages 68 to 81, is a series of sample letters: 2004, 2005, 2006, 2006, again 2006, 2007, as well as from a surgery. These letters primarily were hospitals, surgeries, who have treated referrals of patients made by Mr Preedy.

There are two further documents which are not in your bundle but they were in the disclosure bundle provided to us by my friend, but ultimately not in the bundle which is before you and presented to you yesterday. They are two letters which I will hand up shortly, letters from Mr Preedy to the General Optical Council.

**Mr North:** Thank you; those will be marked as R8.

**Mr Graham:** You can if you like add them to the existing bundle numbered sequentially, that is entirely up to you sir.

**Mr North:** We will take them separately to avoid confusion.

**Mr Graham:** Right. [*Documents distributed*] This is 82, 83 and 84. Now, the first document is a two-page letter from Mr Preedy to the GOC, 6 August 2007. Perhaps I can read out the contents of this letter:

“Thank you for your letter of the 19<sup>th</sup> of June 2007. I do not wish my letter of the 16<sup>th</sup> June to be put before the Investigation Committee as my representations in this case. I should however very much like this letter to be put forward as my representations.

I have read the documentations, which was sent to you to me enclosed with your letter of the 15<sup>th</sup> June 2007. The first comment I would like to make is that the enclosed complaint from the NHS. Counter Fraud Service signed by Mr. Horsley, and dated 7 February 2006 has been overtaken by events. There are in addition paragraphs in it which I consider irrelevant to any complaint to the General Optical Council. And in particular I single out the penultimate paragraph dealing with Mr Yaqub.

I now refer to the certificate of conviction, and the transcript of the criminal proceedings, which was enclosed I admit that I was found guilty of the charges as shown on the certificate of conviction. I would like to emphasise the fact that the prosecution did not seek to allege that my practice had claimed for the sight tests that had not been carried out. Secondly, the prosecution did not seek to allege that any of the tests that had been carried out were carried out incompetently or resulted in any physical harm to any of the patients involved. Finally, no other charges were proceeded with in my view of my admission resulting in the conviction mentioned above.”

On page 2 of that statement he states:

“As far as the question of my conducting sight tests is concerned I was under the impression at the time or times in question that sight testing functions had properly been delegated to me by Dr Yaqub who was satisfied with my competence to perform those functions.

As you know I am less than happy about the way in which the NHS Counter Fraud Services investigated my practice, and the way in which my prosecution proceeded. I accept that this letter is not the appropriate medium to enlarge on this, but I reserve the right to do so in the future if necessary, and also to develop the other points which I made in this letter, and indeed with other aspects of the matter referred to in the complaint, and accompanying documentation which I have not done so far.

I hope that this will be helpful to the investigating committee.”

Then the second letter which I presented to you this morning:

“Thank you for your letter of the 24<sup>th</sup> of November 2008. I must apologise for what I can only say is an oversight in failing to declare in both applications as you say my criminal and disciplinary proceedings. I do not recall deliberately doing so, as I was in a rush to compete them in time, and filled in the forms as I usually do.

I have been representing myself in both the civil and criminal appeal due to the failure of my legal representatives to defend me properly, and this has resulted in a great deal of stress, and confusion in my normal applications.

May I respectfully say to the GOC that there was no intention to deceive or hide the facts from the GOC who are well aware of all the criminal and civil disputes in respect of which I have kept them informed of developments at all times.”

That is the bundle submitted on behalf of the Registrant Mr Preedy.

I would like now to go to the Allegations 2 and 3 in these proceedings. Allegation 2 is, as I repeat, that he:

“- forged the signature of Dr Moustafa Yaqub on GOS1 and GOS3 forms in relation to patients identified on Schedule B”

and in Allegation 3, that he:

“- made false claims for payment for sight test examinations (GOS1 claims) and for the supply of prescriptions (GOS3 claims) in relation to patients identified on Schedule B.”

You may recall yesterday, although surprisingly not in your bundle was that schedule to which these allegations refer, and I presented to you yesterday a Schedule B. Clearly you will note on Schedule B that there are a number of patients who have been seen and various dates of the GOS1 and the GOS3 forms.

It is my understanding that allegation 2, in respect of those patients listed in Schedule B, in my humble submission must rest upon the evidence of Stephen Costlet.

**Mr Hepworth:** I hesitate to interrupt at this point, but if he is no longer presenting evidence on behalf of the Registrant and is now seeking to make a closing statement, and of course nobody would deny him that opportunity, that comes after and I would not want him to give his speech now because of course as representing the Registrant he rather than I have the last word.

**Mr Graham:** I will assist my friend in that regard, and indeed the Committee. The next two elements of evidence which I wish to draw everyone's attention to, I can either do it now or in closure, but certainly in both cases I would offer the submission at this stage it was just to go to that evidence and take the Committee through that evidence in terms of the points which the Registrant wishes to make in terms of how that fits with the case made by the Council. I would prefer to do that rather than make primary points in closing of the evidence.

**Mr Pounder:** Is it evidence that you are calling yourself as part of your case, or is it really comments on the evidence of the Council?

**Mr Graham:** It is of course comments on that evidence.

**Mr Pounder:** Right; I think the way it works is that it compartmentalises the hearing, so this is your turn to put forward the evidence, and then the next stage is obviously that the Presenting Officer has a chance to call rebuttal evidence, and then you move on to the question of closing submissions. If what you are going to do is really a comparative exercise going through the Presenting Officer's case, and as I say that is why this is unreliable. This is really a speech matter is it not? Either way it will be heard.

**Mr Graham:** Either way it will be heard, it is a question of what fits best with the procedure for these proceedings. Ultimately we will only be hearing one live witness, won't we? [Correct] So it is not if you like a standard type of case, in that various witnesses are coming before the Committee to give evidence. A lot of the submissions and the conclusions to be drawn in this matter are to be made upon the assessment by you in respect of that written evidence presented to you in the bundles. It just seems to me pragmatic and sensible in the configuration of the presentation of the case if I were to deal with that evidence now, and then rather than take you through that evidence again by way of reference to the bundle – and of course I can, if you like, it is entirely up to you –

**Mr Pounder:** The way it works is that in terms of closing submissions the Presenting Officer goes first, so it may be of advantage to you to listen to how he is putting together the evidence, and you have that right to go after what he says. That is the distinction.

**Mr Graham:** Very well; I would also highlight the point that I will ultimately be seeking to take the Committee through relevant extracts of the Judgment from HHJ Rivlin as well in the context of this case, but if you want me to do that at that latter stage rather than at this stage, that is fine. It simply means that my closing remarks might be slightly longer than they are in the opening remarks, but as long as I am permitted to make them I do not see that being a major issue.

**Mr Pounder:** Is there anything more you want to say, Mr Hepworth, on this point?

**Mr Hepworth:** Sir, no, thank you.

**Mr Pounder:** So my advice at this stage is obviously that it is compartmentalised. At this stage one has to deal with the evidence, and once the evidence is put before us, as Mr Graham is doing – and he has put forward various statements and various documents – then one goes into the next stage after the questions are asked of Mr Graham or whatever. We then go through into the closing submissions, and comments on the evidence are best left for closing submissions. My advice is that this has to come during the closing submissions stage rather than now; that is the point that I am making.

**Mr Graham:** As you will be well aware, in terms of Allegation 1 it refers to “Testing the sight of patients listed on Schedule A”, and again I do not believe that there was in the bundles presented to you a Schedule A – although I may be wrong? Have you received that, because I have not received that? [*Schedule A shown to Counsel*] Again I have some comments to make on that, but in light of your recent direction I will make those at the later stage.

Based upon the witness statement which I presented to you this morning in the absence of Mr Preedy, together with the evidence I have taken you through, that would be the case for the Registrant.

**Mr North:** Thank you, Mr Graham; there may be some questions at this point. Do any of my colleagues have questions at this point? [*No questions*] I have no questions myself; are there any comments, Mr Hepworth and Mr Graham, further at this point? [*No further comments*] I think this is a natural point at which to take at least a 10 minute break before we take the matter any further. I am grateful, thank you.

[*Hearing adjourned at 12.01*]

[*Hearing reconvened at 12.14*]

**Mr North:** Let us begin again; we have heard the Registrant's evidence under Rule 46. It is open to you Mr Hepworth to present rebuttal evidence under Rule 47 at this point?

**Mr Hepworth:** Sir, there is a matter that I need to raise in relation to that. Sir, perhaps if I raise it and once I have raised it I can take instructions from you as to the best way forward?

**Mr North:** Indeed.

**Mr Hepworth:** Sir, after hearing the evidence on behalf of the Registrant, and the emphasis that was placed on the evidence of Dr Yaqub, I conducted an inquiry on the GMC's website and have found the current registration status of Dr Yaqub. It is the only Moustafa Yaqub within the GMC's records, and I have available but only in electronic copy at the moment a print-out of his current entry on the Register.

It is a matter that I am going to seek to put before you, but of course you will need to have it in hard copy form and at the moment it is only an electronic copy, so sir, I can deal with in two ways. I can either tell you the contents orally and then provide a hard copy at an appropriate time; or you could take lunch now and I will obtain it in the luncheon adjournment. I am entirely in your hands, sir.

**Mr North:** How would my colleagues wish to proceed? Would you prefer an early lunch at this point? [*Confers*] You would like to see the document? Could we in fact then take 45 minutes for lunch at this point and we can then have the document available and address the afternoon, hopefully replete but still alert? Thank you.

[*Hearing adjourned at 12.16*]

[*Hearing reconvened at 13.01*]

**Mr North:** Thank you; Mr Hepworth, I think the baton is with you at this point.

### **Rebuttal by Mr Hepworth**

**Mr Hepworth:** Sir, thank you. Of course as an advocate I am not a witness and so the document that I provided to you is hopefully self-explanatory. Can I please hand out copies, and then I will explain the contents? I hope there are sufficient for everybody; it is a two-sided document, a separate document on each side. [*Documents distributed*] This would be C3.

Sir, can I then ask you to start please with the sheet which has as its heading 'Regulating Doctors Ensuring Good Medical Practice'? You can see at the bottom of that sheet it comes from a GMC website address. You can see within the main body of that sheet that it refers to results where the search values were surname of Yaqub, and going up a little bit higher a list of registered medical practitioners. You can see there that there are 14 records

which match that search criterion, and you can see that amongst those about half-way down is a Moustafa Kamal Mohammed Yaqub, whose gender is down as a man, and whose status (although it is cut off) is down as “Not registered”.

If you then turn the page you can see that matching that GMC reference number 4362430, there was an entry relating again to Moustafa Kamal Mohammed Yaqub. It gives his primary medical qualification and his full registration date of 19 November 1996. It states that the doctor is not on the Specialist Register; he is not on the GP Register; and his status is Not Registered for an Administrative Reason.

The next line down “Information for Employers” states that “This person is not on the Medical Register and may not practise as a doctor in the UK.”

One can see in the next box the Doctor History. Sir, I will take them out of order if I may to make chronological sense. You can see from 20 October 2005 to 25 August 2006 the doctor is down as registered. There is then an Interim Orders Panel which takes place on 25 August 2006, for what I am afraid I do not know, and then from that date 25 August 2006 to 9 March 2007 the doctor is suspended. On 9 March 2007 his status goes from being Suspended to Not Registered for an Administrative Reason.

The last bit of information upon these two sheets that I wish to draw to your attention is just above the Doctor details, where it gives the date and time of the search, 13 April 2011 at 11 minutes past 12, presumably using the 24 hour clock just after midday. You can see that is reinforced in the bottom right-hand corner of each sheet the date, 13 April 2011.

Sir, that is the evidence that I wish to submit in rebuttal. I will make submissions about it when I reach the next stage.

**Mr North:** Thank you Mr Hepworth. You have received a copy Mr Graham? [Yes] Do you have any comment at this point?

**Mr Graham:** Not at this stage, no.

**Mr North:** Thank you. Accordingly, then, I believe we return to you Mr Hepworth.

### **Closing Submissions**

**Mr Hepworth:** Indeed sir, and I now make my final submissions in relation to the fact stage of these proceedings. I will not stray beyond that.

May I start please, because it will be fresh in your minds, with these two documents on the one sheet that you have before you, the GMC entry in relation to Dr Yaqub.

I will refer you if I may to page 33 of the R5 bundle, the Registrant's bundle. I am using, if it helps, the typed numbering at the bottom centre of each page. Already I have made a mistake, I am sorry, it is page 34 of that bundle.

You can see that is a letter purportedly signed by Dr Yaqub dated 30 January 2007, at which point he was suspended from practice as a doctor. He makes no mention of that within the letter. I will make some preliminary points and then I will make a global point when I get to the end of this section, if I may.

On the next pages, pages 35 and 36, you have a statement again from Dr Yaqub, who helpful this time gives his name as Moustafa KM Yaqub, so matching the entry on the GMC Register which you have before you. In the first line of his statement at page 35 he describes himself as a "Consultant Ophthalmic Surgeon". He does not indicate, as you might expect him to have done, that he was currently suspended from practice by the GMC, so within the jurisdiction of the GMC, and indeed you can see that he was removed from the Register two days later.

The third document to which I draw your attention is the affidavit of Dr Yaqub which starts at page 39 of the same bundle. This affidavit is dated 4 November 2008, so after the point at which he had been removed from the Register, and although he indicates that he worked as an ophthalmic medical practitioner in Preedy's Medical Eye Centre, he does not indicate that he has since been removed from the GMC Register.

The reason why I bring those three documents to your attention is for this reason: clearly the evidence of Dr Yaqub may be of some importance to you when you come to consider this case, and it is right that you assess his reliability as a witness. He is, or was, a doctor within the UK, and ordinarily such professional witnesses might expect to have a fair amount of reliance placed on their evidence, and they may expect to give their evidence with a certain amount of authority.

However, what goes with that is a duty. It is the duty to make sure that if, giving evidence in whatever format, a doctor – in this case Dr Yaqub, makes sure that all relevant information is placed before the audience of those documents, and it is clear that he would have been aware of his registration status at the time that he made each of those documents. He, for whatever reason, did not enter what you might consider an important detail within his statement. You may conclude, I think safely, that as a result the amount of weight that you can place on his evidence, the reliability that you place on his evidence, is rather limited in those circumstances, and that is the reason why the GMC Register entry is before you.

I mention that point as an aside point as that is a document that was before you, but if I may I will now deal with the substance of the Council's closing address.

Can I make first of all, please, a further preliminary point which is this: the schedules that you have before you, Schedule A and Schedule B, are not

evidence. They are part of the allegation, because the allegation refers to Schedules A and B, and all Schedules A and B are is a list of the patients who are alleged to have been involved, because had they been placed in the body of the allegation, the allegation would have been unwieldy. So it is not evidence, it is just part of the allegation, and I am glad that I think you have now both Schedules A and B before you.

If you will permit me, so that there is absolutely no confusion perhaps I can take you through the basis of the exhibits to Mr Horsley's statement, and try to explain how the Council's case comes together.

I am going, if I may, to take as an example – and it is just an example – count 3 on the indictment. That is a count that was ordered to lie on file, there is no conviction in relation to that count, but hopefully it explains the way in which the file is structured. Count 3 is at page 6 of C1, and you can see that alleges an offence of obtaining a money transfer by deception under the Theft Act 1968 in a particular sum, £337.02.

That you may cross-refer to page 22 of the same bundle, which is the schedule to which Mr Horsley alluded when he gave his evidence. If I ask you to turn to page 22 you can see that the schedule is prepared in a particular way. If you come down the various rows to where it says "Indictment Count Nos. 3" to that particular section, you can see that there are six patients listed there. You can see there is reference to a GOS exhibit. You can see that there is then a series of figures, which I think relate to the GOS1 claim in relation to that particular patient. You can then see in the next column reference to a GOS3 exhibit and an exhibit reference number, and then in the next column along the value of the GOS3 claim. In the next column you can see the witnesses that helped to establish that count, which PCT area was involved, and the corresponding PCT witness to confirm that payment was made.

If one adds up all of the values of the GOS1 claims and the GOS3 claims from that session involving those six patients, they add up to the amount which is alleged on the count on the indictment, so that is the way that the counts were structured to band together certain visits, usually to residential and nursing homes, and to take if you like one visit per count.

They cross-refer again in relation to those counts which were ordered to lie on file, because of course the others were subject to a conviction, but for those that lie on file they are then cross-referred to the GOS1 and GOS3 forms which Mr Horsley produces in his voluminous exhibit DH15.

In relation to count 3, the relevant forms start at page 232 within C1. One can see at page 232 that there is reference there to DH15 and count 3 and the relevant GOS forms follow on, and they are sub-divided into counts.

I need if I may then to further cross-refer you. This time I refer you to the evidence of Stephen Cosslett, the forensic document examiner. I will if I may take an example within count 3 of a patient, who I will only refer to by her

initials. The patient is MN. I am sorry to ask you to go back to page 22, to (c) within Mr Horsley's schedule. You have a patient here, MN; the GOS1 exhibit reference number is DWH64. That then cross-refers to the evidence of Stephen Cosslett. In this case the statement is at page 217, that is where it starts, and you can see at page 219 that he indicates that one of the items that he looked at was DWH64, which was a GOS1 form in the name of MN. Of course the date also corresponds with the date on the GOS1 form. You can see, as you already have done, his findings in relation to that particular GOS form, which start at page 221 and go on to page 222, and his overall opinion that there is strong evidence that there are attempts to copy Dr Yaqub's signature.

You will remember the evidence of Mr Horsley, that the approach taken by the investigator was to ask this forensic document examiner just to look at usually one GOS form per visit, because of course the evidence upon which the Council relies establishes that the people conducting the visits would not have changed in the middle of the visit, so if there is a forged signature on one of the documents the Council would ask you to accept that there is a forged signature on all of the documents.

I then ask you please to go to page 35 within C1, which is that section of Mr Horsley's statement that deals with count 3. You can see there he details his investigation and his inquiry, and he refers to a witness within the Day Care Centre involved, which is a woman, Jacqueline Appleton. He indicates in his statement that he took a statement from Ms Appleton and gives it an exhibit number. That exhibit is also within the bundle; on this occasion it is at page 476, which has gone over into File C2. You can see starting at page 476 what Ms Appleton said about the people that came to conduct the eye test being "Ron and Ann" and giving descriptions, and giving descriptions of what happened. That then is how the bundle ties together.

Also you will see in relation to some patients that after the criminal investigation but during the GOC investigation, other statements were obtained from other patients where they were still alive and where they were able to be located and were willing to help, and they are towards the end of C2. I do not think in relation to count 3 there are any of those additional statements which were able to be obtained, but that as an example hopefully takes you through the bundle and explains how the evidence is arranged.

Sir, I come on then if I may to the allegation itself. I will take them in stages and deal with each factual allegation separately.

What should be added to the epithet "Never work with children or animals" should be added "IT". Part 1 of the allegation, the allegation that the Registrant tested the sight of patients on Schedule A whilst not registered as any one of those four groups. In the Council's submission this is quite a straightforward factual allegation, because I think the Registrant does not deny that he carried out sight tests. There is no dispute that he is not an optometrist or an ophthalmic medical practitioner or a medical student or a student optometrist. If you need further evidence of that you can read it in the

Registrant's own statement, where he gives his history, and also in the statement of Laura Hytti within the Council's bundle, which also details his registration history. The Registrant has never been anything other than a dispensing optician, although with a specialist contact lens qualification.

The real issue in relation to that allegation is whether or not the Registrant was entitled to carry out sight tests, and as far as that allegation is concerned that is not a relevant consideration for the facts stage. It will be, in relation to other of the factual allegations, but not in relation to that one. In the Council's submission that is quite a straightforward factual allegation.

The second allegation, that the Registrant forged the signature of Dr Yaqub on various forms in relation to patients on Schedule B, and these are the patients where there was no conviction, I refer you to the web that I have just laid out and to the evidence of the forensic document examiner in relation to that.

As far as Allegation 3 is concerned, the allegation that the Registrant made false claims again in relation to those patients where there was no conviction, the Council allege that the claims were false in two ways: first of all, because the signature was forged; and secondly, because the Registrant was not entitled to carry out the eye tests.

I think if you find that either one of those pathways is made out you can find the allegation proved, because the claim would be false if either of those two alternatives or cumulative are proved; but if you do find that you need to decide at this stage whether the Registrant was entitled to carry out the eye tests for which the claims were made, then I had better made some submissions about that.

There has been a lot of mention about 'delegated function'. Of course sir, you are helped by the fact that two of the members of the Committee are dispensing opticians, and so understand one would imagine the extent of delegated functions. In the Council's submission it is clear that dispensing opticians are not entitled to carry out eye tests. They may aid an optometrist or an OMP, but are not entitled to carry out the eye test themselves which is what happened in this case.

If you need any further guidance as far as that is concerned can I refer you to Section 24 of the Opticians Act? It is within your Handbook at page 59. Section 24(1) makes it clear:

"Subject to the following provisions of this section, a person who is not a registered medical practitioner, or registered optometrist shall not test the sight of another person."

The following provisions of the section, sub-section (2) relate to medical students. Sub-section (3) then deals with people training as optometrists or any prescribed class of such persons in such cases and subject to compliance with such conditions as may be prescribed by the Rules, so those

three sub-sections deal with the four categories which are alleged in Allegation 1. Perhaps it is so obvious as not to need stating but I shall anyway, that there is no power within that section for dispensing opticians to test sight.

The Registrant raises the issue that he was being supervised, primarily by Dr Yaqub. Well, first of all I refer to the submissions I made in relation to the reliability of Dr Yaqub's evidence, but also even on Dr Yaqub's own evidence he was away a lot and when he was at the practice he was there mostly at weekends. That could not, in the Council's submission, ever amount to adequate, effective, supervision of the Registrant's testing. To put it bluntly, the Council's case is clearly that this Registrant was not entitled to test patients' sight.

As far as Allegation 4 is concerned, you will see at the beginning of the allegation there is a word "failed". The Council accepts that that word has two separate constituent parts. Firstly, the Council has to establish that there was a duty upon the Registrant to do something; and secondly, the Council has to prove that the Registrant did not do that thing.

I do not think there is any question that the Registrant was under a duty to declare the investigation, and later the conviction, on his Application for Retention forms. The fact that he did not declare is I think established within the Registrant's own statement. He accepts that he did not complete those forms, and the relevant documents are in the Council's bundles as well. Perhaps if I give you those references that may help you when you come to deliberate on the matter.

The retention form in January 2006 is found at page 550 (this is within C2). You can see at page 552 under section (4) the question is "Have you ever been convicted of, or cautioned in relation to, a criminal offence or are you currently being investigated in relation to a criminal offence?". The Registrant has ticked 'No' and that is wrong, because he was under investigation.

In relation to the application to inform in December 2006, that starts at page 554 within C2.

**Mr North:** Sorry, what date was that?

**Mr Hepworth:** It was December 2006; there is an issue that I need to address you on in relation to that, but it is December 2006. You can see that the allegation refers to 21 December 2006 at page 557, so the last page of that form you can see that the date is 22 December 2006. We are talking about the same form. We are talking about the Application for Retention form in December 2006, but you may need to indicate when you give your reasons the correct date of that form.

In any event, again at page 556, section (4), the registrant is asked this question:

“You must declare any conviction or caution in relation to a criminal offence; or  
Are you currently being investigated in relation to a criminal offence which you have not declared before? You have been asked to declare at this retention by the Registrar, has it occurred at any time since the last registration?”.

Well, he had not declared the investigation before, so was under a duty to declare it in this form – and he did not. Again this is still in the investigation phase of the criminal proceedings.

Can I say that there is no doubt that the Registrant knew that he was being investigated, because he was arrested, as is established in the evidence of Mr Horsley on 1 November 2005? You will remember the oral evidence of Mr Horsley, that he remained then on bail and through court proceedings until the conviction was entered in March 2007.

I will come back globally to the issue of failing to declare, if I may.

As far as Allegation 5 is concerned, the Certificate of Conviction which proves the conviction is at page 702 within the bundle. I do not need to draw your attention to it now because it is a straightforward document which establishes the conviction, and the Registrant does not deny that he was convicted.

Allegation 6 again refers to a failure to disclose on Application for Retention forms. This one is the form in December 2007. Again you can see that Allegation 6 refers to a form dated 22 December 2007. If you look at page 561 of C2 then you can see that the form is dated 21 December 2007 but we are talking about the same form, and again you may need to reflect that in your reasoning.

In any event the Declaration is at page 560, and the question which the Registrant was asked is “Have you been convicted of, or cautioned in relation to, a criminal offence?” Then there is a further sub-clause, and then there is the word “which”, which then refers to the bottom of the page, which then refers to having been asked to declare “or has occurred at any time since the last retention”. Of course this conviction was entered since the last retention, and so he was under a duty to report it and he did not.

Again he was at court when he was convicted and was sentenced, and so would have been aware of the fact that he was convicted. This is not a case where he was convicted in his absence.

We then move on to Allegation 7 and the issue of dishonesty. I accept that dishonesty is a matter which is alleged as a fact, and it is a matter which it falls on the Council to prove to the civil standard. I gave you I think an indication of the test when I opened. It is the Council’s case that the Registrant’s actions in relation to Allegations 1, 2, 3, 4, and 6 were dishonest, and on this basis: in relation to Allegation 1, much along the lines of the evidence given by Mr Horsley – that the registrant was testing sight whilst not

entitled to do so. In the Council's case he deliberately misrepresented to patients that he was entitled to carry out those tests, by the fact that he intended to carry out those tests and then did so. It is perfectly reasonable for you to accept that those patients would have expected that anyone who came along to test their eyes would be appropriately qualified so to do, or else one would not imagine that they would have allowed their eyes to be tested in the first place.

In the Council's submission the Registrant knew he was not entitled to carry out eye tests, because if he thought he was entitled why did he not make an application to the PCTs to go on their practitioners' list? Why was there this need to forge people's signatures? Why was there this need to carry out tests in the name of someone else? If he genuinely thought that he was acting perfectly appropriately to carry out these tests, he could have applied to the PCT, applied to go on the practitioners' list, submitted his application, and seen what the outcome was.

I am afraid that the Registrant's own actions count against him because he chose not to do that. He chose to forge someone else's signature whom he knew was entitled to carry out the test.

Even if the Registrant is given a bit of leeway, and if you accept or if you find that he knew he was not entitled to carry out tests on his own but that he was acting under the authority of Dr Yaqub, why then did he sign Dr Yaqub's name? Why did he not sign his own name and then put in brackets after '(Acting under delegated powers given by Dr Yaqub)'? He did not, and in the Council's submission he did not because he knew that he was not entitled to carry out those tests. If he knew he had no right to carry out the tests and yet did so, in the Council's submission that is a dishonest act.

As far as forging the signature is concerned, so Allegation 2, that perhaps is quite straightforward; that if someone is forging someone else's signature in order to make a claim for payment from the NHS, it is hard to see any circumstances in which that could not be dishonest, because of course you are making the recipient think that someone else carried out the eye test. That is the effect of signing in someone else's name.

Allegation 3 as far as the false claims are concerned, in the Council's submission as with Allegations 1 and 2 those false claims were dishonest, precisely because the Registrant was leading the recipient to believe that someone had carried out those tests when that person had not. That was a deliberate act.

I will take Allegations 4 and 6 together if I may, this failure to disclose the investigation and then the conviction on applications for retention. It is fanciful, in the Council's submission, to suggest that the Registrant was not aware that he was under investigation or he was convicted. It must have had a massive effect upon him, to be arrested and then interviewed and to be told that he was under investigation for wide-scale NHS fraud. One would imagine that he would have spent most waking hours thinking about it, so when those

questions came up on the form it is inconceivable, in the Council's submission, that he would not have remembered that he was under investigation or subject to a conviction, given that his livelihood and his liberty were on the line. If he deliberately omitted to inform the Council of the investigation and the conviction, in the Council's submission that is a dishonest act.

You can see in that particular allegation that there is an alternative, but if you find the Registrant's conduct was not dishonest it is still open to you to find the allegation proved on the basis that the conduct of the Registrant was not of the standard expected of a dispensing optician. I can take that relatively quickly in these terms: that there must be a duty on every dispensing optician to ensure that whenever completing official forms that he or she takes care with those forms, and is not careless. Likewise when exercising powers one would expect a dispensing optician first of all to be aware of the powers that he or she has, and if there is any doubt to make the proper enquiries – enquire with the GOC, perhaps with ABDO, but certainly make the proper enquiries to be certain that the power that you purport to exercise is a power which you can exercise, and at the very least the Registrant's conduct fell far below the standard to be expected of a dispensing optician.

I wish to say nothing further about the Council's evidence but I do have some submissions to make in relation to the evidence which has been put before you on behalf of the Registrant. I will keep those as brief as I can, but the points I make start with the witness statement of the Registrant. Some of these points will be obvious, but I make them nonetheless.

The Registrant is not here; I have not had the opportunity to cross-examine him, you have not had the chance to question him, and so the amount of weight that you are able to place on his evidence as represented by his statement in the Council's submission needs to be looked at very carefully. Within his statement there are sections which are demonstrably wrong, and that in the Council's submission should make you look very carefully at this statement before accepting it as worthy of any weight whatsoever. I will go through the statement if I may, and then pick out those points which I wish to bring to your attention.

The first point is a general point; there is within the Registrant's statement a good deal of hearsay evidence, and of course not only have you not had the opportunity to test the evidence of the Registrant but those witnesses with whom he spoke, and whose conversations he has reported, are also not before you. I am thinking particularly of Mr Adoki, if you find that relevant, and you have heard no evidence that those other witnesses could not have been brought to the hearing to give live evidence even if the Registrant is not here, so again be very careful about the amount of weight that you can place on that hearsay evidence.

Could I refer you please to paragraph 38 of his statement? In that section the Registrant indicates that the NHS admitted in court that the claim that he had stolen over £100,000 was "an outright lie". There is no such admission in the

transcripts of the two Crown Court hearings which you have before you, there is no evidence placed before you by the Registrant to show where the NHS in court admitted that – demonstrably wrong, in my submission.

At paragraph 51 if you would; there seems to be some sort of insinuation that as part of this plea agreement, that there would be no GOC hearing. Well, there is no evidence of that, and of course the GOC could not be bound in any event. One would imagine that Mr Horsley, who is supposedly part of this discussion, would have known that the GOC could not be tied in that way, and of course he was not cross-examined about that.

At paragraph 53 further down that page, this is referring to the Crown Court sentencing hearing, 13 April 2007, the transcript of which is in C2. Towards the bottom of that the Registrant states:

“Mr Dent the NHS counsel was allowed to rant and rave against me for over two hours”.

Well, you have read the transcript, and there is no ranting and raving. You will remember that the Judge, quite the opposite, was absolutely clear to make sure that the case was being presented on the limited basis to which an admission had been made.

At paragraph 54 there is reference that:

“- almost everything that was agreed on with the Prosecution and indicated in the Goodyear direction was reneged on.”

Again the Judge was absolutely clear in relation to the Goodyear direction. There was certainly no back-tracking at all. Later on in paragraph 54, turning over the page, we have there reference to hearing transcripts:

“This is despite the fact that in the hearing transcripts the prosecution barrister Mr. Dent asked his honour Judge Rivlin three times not to award any costs against me as per the deal the NHS made with me if I signed the Plea Agreement.”

I have to say I have not been able to find that, and if it is within the transcript then it is something which has evaded my eyes. Indeed you will remember that during the sentencing hearing His Honour Judge Rivlin specifically referred to costs, this was whilst talking with Mr Cox, Counsel for the Registrant, and he suggested the sum of £20,000 and gave Mr Cox lunch to make submissions and to talk with his client, and after lunch when the Judge repeated that figure Mr Cox had nothing to say. Well, had there been this deal one would have expected him to have raised it at that point.

Paragraph 59 refers to the hearing on 15 March 2007. The Registrant alleges in his statement that he was threatened by Judge Rivlin, saying that he would add more sanctions against him if he told the probation officer that he was innocent. You are welcome to read that transcript, whether or not there was

any threat, and in the Council's submission there was not. Judge Rivlin was entirely proper and sought in great detail to ensure that the Registrant was entering Guilty pleas because he wanted to and intended to.

Paragraph 60 refers back to the sentencing hearing in April 2007, and the Registrant alleges that:

“The Judge ordered me to go into the dock and repeat that I was guilty of the charges.”

That is not in the transcript, and one would have expected it so to be, and in the Council's submission that is demonstrably wrong.

Paragraph 88, if I could direct you to that paragraph? The Registrant in this paragraph is seeking to explain why he did not disclose the investigation on his application for retention form. He says that “I believe myself to be dyslexic”, but there is no medical evidence of this and no indication even from the Registrant that he has ever sought any diagnosis of that particular condition.

Paragraph 93, if I can: I raise it at this stage even though it relates to matters which ordinarily would come before you at a later stage, because in the Council's submission it goes to show the Registrant's unreliability as a witness. He says:

“Since these allegations I have concentrated on improving my optical knowledge by doing CET's ... I normally do at least twice or three times the required amount each three year period.”

Well, the only evidence that you have before you is that he did some CET ending in June 2008, so contrary to what he says he has not done any, at least in a form which is before you, for getting on for three years.

Those are the issues which I bring to your attention at this stage in relation to the Registrant's statement. I now, if I may, take you to R5, which is the bundle of evidence put before you by him. He refers to these guidelines, beginning at page 8 dating from December 2007, and I am not sure they help him. I say that for this reason: that at page 9 paragraph 6 there is a clear distinction drawn between the prescriber and the dispensing optician, and in the Council's submission that is precisely what the position is, and that shows if you like the end of a dispensing optician's ability to practise.

You were referred to page 16 and to paragraphs 32 and 34 in relation to delegated functions, and it is clear in the Council's submission that 'delegated functions' are not synonymous with an ability, an entitlement, to carry out eye tests, and that is clear from the content of that part of the document.

Could I refer you then to pages 31 and 31A? I was listening carefully and I noted down that my friend indicated that 'This was a course which the Registrant attended'. Just like me he cannot give evidence, and you do not

have evidence within those two sheets that the Registrant attended that course. All you have is the programme of the course.

Now to page 32 if I may, and this is a letter from Mr Botten who makes the explicit point that:

“- a DO” in this case the Registrant “must not issue a prescription to the patient.”

I am going to ask you as you retire to consider this case to look through the GOS3 and the GOS1 forms where the Council allege that the Registrant signed and carried out the eye tests. There are ticks to indicate that a prescription has been issued, and on GOS3 forms there are details entered of that prescription. Well, it is clear what was happening in this case, and that is that the Registrant was carrying out the eye tests and giving those prescriptions.

Could I now please direct your attention to page 37 within the bundle? Two points to make about this document: first of all it is not signed, and you have no evidence before you of its provenance; and secondly, the period during which this woman worked at the practice, if she is the author of this document, post-dates the period that is being considered in relation to these allegations. In fact by this point the Registrant had been arrested and was under investigation for fraud, so its value to you in deciding in relation to these allegations may be very limited.

I now please refer you to page 50 within the Registrant's bundle. I make a brief point if I may that the avenues of appeal open to the Registrant in relation to his conviction have now closed, because the European Court of Human Rights declared his application inadmissible, so that appeal ended. Of course one can only appeal to the ECHR once one has exhausted all the appeal opportunities within one's domestic jurisdiction, so the conviction stands. It perhaps does not need me to say anything further as far as that is concerned.

At page 55 if I may within the same bundle, these appear to be the notes taken by the solicitor. At page 55 it appears at the top of the page, which appears to have come from another page continuation; what is happening at the beginning is that the author of the notes is writing down what the Judge is saying, and at section 4 there is a clear indication from the Judge, and I read it out, “I hope that it is appreciated”, and makes it clear that it is up to the defendant that he pleads guilty, and that should he plead guilty then the defendant will not be allowed to come back and say that he did not understand, so again that shows that the Judge was absolutely clear and keen to ensure that the Registrant knew the position that he was in, and given his options.

At page 62 if I may, this is a letter which has been referred to you by a JT, and I will refer to the person by initials. Again I am not sure this helps the Registrant because it confirms in the second paragraph that it was the

Registrant that tested her sight on 8 October 2005, and later on she indicates that:

“- if ever I had a problem over which Mr. Preedy was in doubt, he always referred me to an eye specialist.”

That says two interesting things, first of all that had there not been a problem there would have been no referral, so the test would have been carried out by the Registrant alone; and secondly, it is only problems over which Mr Preedy was in doubt that got referred, so one could imagine that not all problems were referred, which again shows that there was little, if no, supervision and certainly no effective supervision of this Registrant.

You then have in the following pages some character references. I think I accept that given you are dealing with an allegation of honesty you may find it relevant to assess what other people say about the Registrant's honesty; but I am afraid you have to set that against what the Council submit is an overwhelming weight in the counterbalance, and that is that this Registrant is a convicted fraudster, a convicted dishonest man. Those character references which you have in the Council's submission do not come close to counterbalancing that great weight.

You then have a few referral documents, and there is no allegation against this Registrant in relation to referrals *per se*, but most of the letters in any event (and I am afraid I have not counted them up) relate to periods outside the periods connected with the allegation.

The last point that I make is in relation to what I have noted down as R8, so these two additional letters which were sent at various points to the GOC. Interestingly on 6 August 2007 when he is writing to the then-Registrar of the GOC asking for representations to be placed before the Investigation Committee, in that letter he does not indicate that his conviction was wrongly entered. He does not deny that he forged signatures, and in any event the conviction was correctly entered when he pleaded guilty, let us not forget that, and all of his avenues of appeal have now been exhausted and he has been unsuccessful.

Sir, those are the submissions which I make at this stage.

**Mr North:** Thank you. Mr Graham?

**Mr Graham:** Sir, in the light of those submissions I wonder if I might ask for 15 minutes just to be in a position to respond, if I may?

**Mr North:** I think 15 minutes would be appropriate; would my colleagues agree?  
[Agreed]

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

[Hearing adjourned at 14.01]

[Hearing reconvened at 14.27]

**Mr North:** Yes, Mr Graham?

**Mr Graham:** I am much obliged, sir.

Thank you sir. Dealing first with the latest entry of evidence concerning Dr Yaqub, clearly he was registered up until August 2006. It is my submission that the matters that are the subject of this investigation pre-date that time, and of course we do not know the reason for the suspension but it appears from March 2007 he has not renewed his registration. In my view this is entirely consistent with the view which has been taken that he is no longer in the UK, and perhaps there is no longer any need for him to register with this specific jurisdiction. In my view it would be foolhardy and sinister to read anything into that clear and true statement, that there is nothing untoward and since August 2006 Dr Yaqub is no longer practising under the jurisdiction of the GMC. Indeed it already has been accepted by Mr Horsley when I put it to him that Dr Yaqub is both a distinguished and eminent member of his profession, so it would be wholly wrong to accept his evidence in the light suggested by my friend.

The allegations.

Allegation 1: I think it is worth stating here that Mr Preedy is aged 68. It is clear that he has spent his working life serving his community for many years, and clearly the evidence presented shows that he is a competent, capable and dedicated optician. It is his case clearly we accept in terms of the allegation that Mr Preedy visited and carried out eye tests on several patients. It is his understanding that he did that pursuing what he believed to be the scheme of delegated authority. This notion or principle of delegated authority is not some fanciful invention, and as I sought to demonstrate this is something real and applies daily within the profession, and has done so for many years.

I sought to introduce into the bundle his evidence, that he has secured a diploma for delegated functions, which in essence entitled him to undertake those functions on behalf of and under the supervision of fully qualified ophthalmic medical practitioners.

You have heard how in 1997 he obtained a further diploma from the Applied Optics College at the City of Islington. You have seen the programme which he attended, which entitled him to undertake advanced aspects of sight testing, again under delegation, and to fit contact lenses.

We have heard evidence from practitioners, in particular Dr Yaqub, who for a period of time worked alongside Mr Preedy as an ophthalmic medical practitioner, and Dr Yaqub was more than happy and quite content for Mr Preedy to perform eye tests on his patients. Where appropriate he may on occasions have checked those eye tests.

We have also heard the evidence of Sanjay Sachdeva, albeit not applicable at the time but evidence to demonstrate that there was nothing unusual in Mr Preedy engaging in eye testing, and where appropriate making further referrals.

You have heard evidence from Colleges to say they recognise the principle of 'delegated authority'. Indeed, Mr Horsley in his evidence accepted that dispensing opticians could carry out eye tests, although I accept that he said in qualified circumstances.

So, was it so unusual for Mr Preedy to carry out eye tests in conjunction with and under direction? An optician sees many patients over the years, and at the relevant time he had been engaging in eye testing, so was it so unusual for him to carry on with that activity?

In his witness statement, which I will just locate, his pursuit was always the welfare and circumstances of the patient. He states in paragraph 75 of his statement:

"So I constantly reminded myself of the three main criteria, which I made myself adhere to on the home visits every single day.

1. Were the elderly patients looked after in the best possible manner? Was all that could be done to make their eye health and lifestyle as good as possible?
2. Was I upholding Mr Yaqub's good name, reputation and trust in me?
3. Was the standard of work in keeping with the reputation of my 40 year old family opticians practice?

If the answer was No in any of the above three, I would have cancelled all my practice's domiciliary visits."

His statement elaborates and particularises on certain specifics of patients, and I think it is fair to say that at all times he had the welfare and concern of the patient as his primary and paramount importance.

It is recognised that:

"My Eye Centre offered a range of services which included arranging home visits for a number of elderly patients", and patients with mobility issues. "I would generally complete the initial testing of these patients at their homes and they would then be encouraged as necessary to come to my practice to see one of my OMP's (ophthalmic medical practitioners) for further examination, or hospital referrals as necessary."

You have seen several samples of evidence in '04 and '05 and subsequent years of that specific activity, where there was a complication that the matter was referred on.

Moving on, I will refer in part of the proceedings of His Honour Judge Rivlin. I would ask you to turn to page 705. Halfway down at section D it states:

“In fact, the vast majority of his opening note seems to be addressing the prosecution’s view as to why it is that Mr Preedy was not entitled to do those eye tests, and this was a matter on which we agreed to disagree, and it was felt that a Newton hearing was not necessary. In those circumstances, it is a concern given that justice has to be seen to be done, that the Crown, it appears, are going into a considerable amount of detail and present as the truth the whole area that it was agreed and that we were going to disagree on this.”

On the next page at 706 at paragraph C:

“I have also been informed by Mr Dent [who appears for the Crown] that were Mr Preedy to tender pleas of guilty at this stage, the Crown would be prepared to open the case upon that basis, and accept that in behaving dishonestly, as alleged, his conduct was confined to the allegations set out in sub-paragraph (2) of each and every one of those counts.”

The point of course is that in those proceedings there was never any finding, and indeed the Judge was very particular to ensure that there was no finding in terms of Mr Preedy conducting the general principle of eye testing.

The Judge further says at page 706:

“So one has to be extremely careful. Given that the pleas have been accepted on that basis, and I do recall that the Crown was very helpfully instrumental in dealing with the case in such a way that Mr Preedy was able to plead guilty on that basis, then it would not be right to open any other aspect of the case.”

It is my submission that what my friend for the Council has simply done is to present to the Committee the prosecution case as it was before the Judge, and ultimately invited the Committee to come to findings upon which the Judge clearly would not go, and did not want to consider.

At page 707 Judge Rivlin states at paragraph D:

“That was before you accepted his pleas of guilty, and I am not prepared to put in the position of the Crown facing in two different directions at once. In the first place, it would mean that I would not know what I was dealing with this man for, and it would not be right. In the second place it would mean that he was not being treated as he ought to be, and also would not be right. I did actually mention this at the last hearing; I did say ‘Mr Dent, it is going to be necessary for you to tailor your opening in such a way as to confine yourself to pleas of guilty that have actually been offered and which have been accepted.’”

The Judge further comments, if I can invite you to move forward to page 721 paragraph F:

“Thus far it is not suggested that any of the tests that were carried out were carried out incompetently, or have resulted in physical harm. Do I have that right?”

The prosecution responded “To a degree, your Honour, that is right.”

Paragraph F on the subsequent page, page 722:

“I was told specifically that it was not suggested that any of these tests had been carried out incompetently or that harm had been caused, and I am simply not going to be put in the position of being told one thing on one occasion and giving an indication, in good faith, on that basis, and being told something different on another occasion. It would not be right, and I caution again not to do it.”

Although it forms part of Allegation 7, which we will come to later on, but clearly is intrinsically linked to Allegation 1, it is the case that Mr Preedy carried out eye tests, but he did it in the belief (i) that he had the competence; (ii) that competence is shared by others; (iii) having received indications both from colleges, courses and indeed even though they post-date the fact of these allegations, the note I referred to in paragraph 34 in the guidance, each of those pieces of evidence ultimately support the principle of delegated authority, and in my view it is simply impossible and not correct to go behind that scenario, which was operative at that time in terms of the way he engaged, and why he carried out those eye tests – because he believed that he could correctly and properly do so. Indeed it seems on the face of it he was encouraged by a practitioner, Dr Yaqub, to do so, and again with the subsequent allegations there was never any rebuff or direction from any of those practitioners to say ‘No, Mr Preedy, you should not be doing eye tests’. That simply did not happen. He did them in that genuine belief, not exclusive to his own mind but clearly supported by exterior reasons which I have put before you.

If I can ask you to go to a lot of evidence which we have heard, Stephen Cosslett at page 217; the allegation is that he forged the signatures of Dr Yaqub on all the forms in respect of Schedule D, which is a considerable Schedule listing numerous patients, and is before you. I sought to take Mr Horsley through this evidence yesterday. I am not sure whether it is my friend’s case or not, that his submission was that the samples on GOS1 are all in Schedule B or not, but on an analysis of the case certain matters in Form B are referred to in the report of Stephen Cosslett and other matters are to. Perhaps it may not be so significant, save that it appears the forensic expert as you know reaches different conclusions, although he does conclude on page 222 at paragraph 5, 8, 19, 24, 28, 35, 47, 64, 86, 105, 110, 136, 188 to 190, those are the extent of the expert’s findings in respect of signatures which he believes were written by Mr Preedy.

I know my friend has taken you through how the Council wanted to present their case and their analysis by way of linking examples to group visits, but in my view it would be wrong to come to any view other than that restricted to those conclusions of Mr Horsley in respect of those specific examples.

It would be further my submission that in terms of the plea entered, which is set out in some detail in his witness statement, pages 2 to 4, that the total value in respect of which he took responsibility for and pleaded guilty to totalled £3,186.16. As I have said before, nothing else was proved in the Crown Court, or indeed accepted. In my view it would be wrong to go behind those findings which took place in that jurisdiction.

It is his case that ultimately he attempted the same allegation, and such claims for payments in respect of those sight examinations under what he believed to be his delegated function, which I have referred to at some length in terms of Allegation number 1.

In terms of his declarations I would invite you to consider page 564; that is his declaration in respect of his application for retention for the year 2009/10 and is dated at page 565 as 27 February 2008. Clearly in this instance he has to give a full declaration, and although that is not one of the allegations it relates to the previous forms; however, it is not inconsistent with the explanation that he has given and the particulars presented by way of the letter which I presented to you this morning.

He had been in correspondence with the GOC since 6 August 2007 on this issue, and he apologises as to his error in his letter of 27 November 2008, so despite all the difficulties he was facing at this time, and to be frank they were many, he set out to clarify the position in good faith with the GOC.

In terms of Allegation 7, it is worth reminding the Committee that my friend has of course touched on this area today. However in terms of this consideration of dishonesty against the facts which are put before you, it is a case of *Regina v Ghosh* [1982] QB 1053, which I am sure your Legal Adviser is well aware of. It is about the first two tests.

The first test is an objective test, which is one where according to the ordinary standards of reasonable, honest people what was done was dishonest. Well of course, we have heard what my learned friend said about Mr Preedy attending on the patients. He went to see these patients in good faith when he had the relevant competence, and pursuant to what he believed that he could do under the delegated authority principle. None of those patients I believe, and I may be corrected on this, but certainly on the bulk of those statements there is no complaint from any of those patients, who ultimately are in my view the overriding people of importance in terms of the activities of a dispensing optician, i.e. the treatment received and the manner of that treatment. In my submission none of them have stated that they would have considered the activities of Mr Preedy as dishonest.

Moving further on to another limb for you to consider, if you did take that view then you must consider whether Mr Preedy himself must have realised that what he was doing was by those standards dishonest. As I have said, Mr Preedy's concerns were the patients and the competence of the treatment received, and that was his motivation and concern, to ensure that they had good treatment – which indeed I submit was the case.

In my submission in relation to the first part of that test, irrespective of Mr Preedy's conviction, in this case reasonable and honest people, i.e. his patients had full knowledge of those delegated functions, which would I submit imply that he was operating correctly and properly. I would not conclude that he had been dishonest. Looking at that test, in my submission those people – ordinary people – would take that view.

If it helps, the GOC's Code of Conduct focuses primarily I believe, and quite rightly, on the care of patients, like Mr Preedy. It is my submission that Mr Preedy has had an extremely good history with clients and there has never been any cause for concern with regard to any of the treatment that he has administered. In light of that fact, his conduct could not be regarded as falling below the standard of conduct as emphasised in the Code.

My friend has referred to Rule 24 within the Code. In my view it must be considered within the context of this case and Allegation 1, that Mr Preedy genuinely believed he could engage in eye testing, and was safe to do so.

**Mr Pounder:** This is looking at page 141?

**Mr Graham:** I am, yes.

**Mr Hepworth:** As there has been a slight break in my friend's address, I was referring, as indeed page 59 refers to, to Section 24 of the Act rather than to any Code of Conduct.

**Mr Graham:** That is correct. Yes, that is right.

**Mr North:** Thank you, Mr Hepworth. Do continue, Mr Graham.

**Mr Graham:** I am grateful. In terms of Mr Preedy's witness statement, yes, we know that he is not here and we know the reason, but there is ample evidence I submit in the bundle of his evidence which is submitted to you which supports his explanation in terms of carrying out the eye tests, seeing that he considered it to be a delegated authority principle.

We accept that Mr Preedy has been and continues to be most troubled by the Crown Court proceedings, taking it to Appeal, taking it to the European Court. Perhaps it is not surprising against that background, and my friend makes comments in terms of paragraphs 51, 53, 54, 59 on what went on in those court proceedings, it is not surprising that he makes these emotional outbursts against his continued complaint as to how he was dealt with in those proceedings. It is immaterial of that fact that they are in my view only but very

small texts of his witness statement, none of which in my view go to deal with the core issues of the subject of the allegations.

[Pause] Visiting Allegation 4, the explanation which was given both by letter which I have dealt with and again in his witness statement is that he is dyslexic and the paperwork was left to the last minute and filed in a rush. This failure we submit was no more than an error, and did not involve any conscious decision to deceive or act in any way dishonestly towards the GOC. That is most surely amplified by his subsequent letter of apology.

To the best of his recollection and his witness statement he thought there were some e-mails around dealing with the investigation with the GOC. It clearly was a serious matter, and there must be something to that explanation, something that was in another department that they were aware of and not something that was not unbeknown.

To conclude, we have heard from the bundle character evidence on behalf of Mr Preedy. Mr Preedy's life has clearly been destroyed by these proceedings. Mr Preedy pleaded guilty to matters involving the sum of just over £3,000. Mr Preedy was clearly a good optician, well-respected, well-liked, and did many a good deed in his community. Mr Preedy may well have, and has, made a mistake; of that there is no doubt.

It is difficult to say that Mr Preedy is inherently a dishonest person. It is difficult to conclude that Mr Preedy does not treat and consider his profession with the highest regard, one might say obsessive, with his care for his patients.

Against that background it would not be improper for you to conclude that Mr Preedy is not inherently dishonest, nor is he someone who is cavalier to the standard of conduct expected of a dispensing optician.

Those are my submissions, sir.

**Mr North:** Thank you very much Mr Graham. My colleagues may have some questions for you.

**Ms Jones:** Yes, I do have one. I am sorry, I cannot find the page reference, but you told us yesterday that Mr Preedy is unemployed. I think the evidence indicates that he is a locum?

**Mr Graham:** At present he is not acting as a locum. He has acted as a locum in the past, but at present is out of work.

**Ms Jones:** Okay, thank you.

**Mr Hepworth:** I think it is paragraph 111 of his statement, if that helps.

**Mr Pounder:** It is paragraph 94, that says he is now doing some locum work.

**Mr Hepworth:** Yes, indeed.

**Mr North:** No, I have no further questions, thank you, Mr Graham. Before we reach our decision regarding the facts alleged of the case, which we do under Rule 50, can I ask the Legal Adviser to address us prior to withdrawing *in camera* to reach our decision on the facts alleged?

**Mr Pounder:** If I can take you in a step-by-step process, you are aware that the case is brought by the Council and they have to prove it on the balance of probabilities, which as Mr Hepworth said at the outset means that you have to be satisfied that it is more likely than not. If one looks at a set of scales of the pan Mr Hepworth has to bring the pan down slightly in his favour. That is how it works.

You have then dealt with the question of dishonesty, and you have been referred to the judgment of the late Lord Lane, Lord Chief Justice as he was in the case of *Ghosh*. It is indeed a two-stage process. The first part is called the objective test and the second part is the subjective test. Many cases resolve simply on the objective test, but in this case you have been addressed on the subject of the test so you have to examine both limbs and have to come to conclusions in respect of both.

How do you approach it? Well, I quote from Lord Lane determining whether it has been proved that the Registrant was acting dishonestly, you must first decide whether you are satisfied on the balance of probabilities that according to the ordinary standards of reasonable and honest people, that what was done was dishonest. If it was not dishonest by those standards then that is the end of the matter as regards dishonesty.

But what if you decide that it was dishonest by those standards? You then must consider the second limb, the subjective limb, which is whether the Registrant himself must have realised that what he was doing was by those standards, i.e. the ordinary standards of reasonable and honest people, dishonest. That is the two-stage test.

The other point that has been raised, the third point, is for good reason Mr Preedy has not attended today or yesterday. You have heard and had submitted to you evidence from him in form of a witness statement, of which obviously you have to take on board the contents, but you also have to bear in mind that he has not been subject to any cross-examination, nor that his evidence has been tested whilst being cross-examined, either under affirmation or on oath.

The other matter which you have been addressed upon is the question of good character. This is slightly complicated, because you know within the background that he has pleaded guilty to nine counts, contrary to Section 15A of the 1968 Theft Act as amended, of obtaining a money transfer by deception which has implicit as part and parcel of that count an element of dishonesty.

So how do you approach that? Like anybody who has effectively a good character and has reached the age of 68, he is entitled to have that taken into consideration in his favour. However, it works in two ways: first of all it makes it less likely that he at this age would start to commit these offences, or these allegations that are made, because he has led a blameless life. Also it makes what he says, and indeed what he says in this context and what he says in his statement, more credible and more believable, so you have to take that into consideration in his favour.

You also have heard from various character witnesses who say in essence that he is a very good man and has also helped them in various aspects of their lives. Again that makes it a situation where he is entitled to ask you to accept that this is something that shows he is somebody of positive good character, which makes it again the more important in terms of his particular status.

However there are two *caveats* that you have to bear in mind. Everybody starts out in this world with a good character. Some people lose it on the way, and the mere fact that somebody is of good character does not mean that they cannot commit an offence, because that would be illogical, and so it is not obviously a defence against any allegation made.

The second matter, which is something which you have to consider in this context – rather like going back to the analysis of a set of scales – obviously these matters are factors which can be put in the pan in his favour. However on the other hand you know that he has pleaded guilty to these nine matters, which are proven allegations or acceptance of dishonesty, which does actually counter the fact of his good character.

That is how you approach it. That is all I wish to say.

**Mr North:** Thank you. The Committee will now retire *in camera*. I think it would be helpful to do a little bit of timetabling here. I am aware of the time. It might be helpful if we went into *camera* for five minutes just to sort out the way ahead, as it were, and then if you would return within five minutes that would be helpful. Thank you.

[Hearing adjourned at 15.18]

[Hearing reconvened at 15.26]

**Mr North:** Thank you, that pause was helpful to the Panel. The way ahead is as follows: we would like to dismiss you for the day now, and if you could make yourselves available from nine o'clock tomorrow morning. I cannot guarantee that we will have a written determination immediately available at nine o'clock but I would hope it would be imminent, and accordingly it would be helpful if you were here from nine o'clock prompt, please.

**Mr Hepworth:** Sir, in relation to that I will be here as close to 9.00 as I can, but I have a difficulty in that part of my journey involves a boat, and if that runs late I might be slightly late; but I will be here as early as I can.

**Mr North:** From the Isle of Wight?

**Mr Hepworth:** Sir, that is right.

**Mr North:** Okay. Thank you very much, that is all for today. Thank you.

*[Hearing adjourned at 15.27]*

**DAY THREE**  
**Thursday, 14 April 2011**

[Hearing commenced at 10.10am]

**Mr North:** Good morning, everyone. Mr Hepworth, Mr Graham, what we plan to do is to read our determination in relation to the application and the main matter in respect of facts. Obviously the full determination will include details of the allegations and so on, as a complete document, but it would be helpful in terms of case management this morning to proceed with those two areas of the determination. Are you content with that? [Confirmed] Thank you. I will begin with the application: [Reads]

**APPLICATION**

Mr Preedy did not attend on 12<sup>th</sup> April 2011 for his final hearing. He was represented by Mr Graham, his solicitor. Mr Hepworth appeared on behalf the General Optical Council.

Mr Graham applied for this hearing to be adjourned and made his application in pursuance of rule 35 of the General Optical Council (Fitness to Practise) Rules 2005. This provision gives a Committee the power to adjourn. In support of the application Mr Graham relied upon a medical report from the Registrant's doctor, Dr Toozy, of the Park Road Medical Centre in Wallington. This handwritten document consisted of one page dated 11<sup>th</sup> April 2011. [Redacted].

In addition, Mr Graham helpfully liaised with Dr Toozy on 12<sup>th</sup> April 2011 in order to provide the Committee with further information about the Registrant's condition. Mr Graham had also been in contact with the Registrant for instructions on 11<sup>th</sup> April 2011. The Committee is grateful to Mr Graham for his assistance.

Mr Hepworth has drawn the Committee's attention to rule 21 of the 2005 Rules which permits the Committee to proceed in the absence of the Registrant or his representative. The Registrant was clearly aware of the date of the hearing. Thus the Committee focused on sub section (b), which requires the Committee to have regard to the reasons for absence, and to be satisfied that it is in the public interest to proceed.

Both Mr Graham and Mr Hepworth helpfully drew the Committee's attention to the reported case of *R v. Anthony Jones* [2003] 1 AC 1 HL and are agreed that this case, although a criminal case, was the authority to be followed. In *Jones*, the House of Lords gave guidance as to the principles that should be applied by a tribunal when seized with an application to proceed in the absence of an accused. The Committee acknowledge that it is always desirable that a hearing should proceed in the presence of an accused wherever possible. The

Committee has to act fairly, and fairness to the Registrant is of prime importance. However the Committee also has to take into account fairness to the Council. It is a balancing exercise for us to conduct. The Committee accepts that the Registrant is depressed, but the Committee has no evidence placed before it as to when it is likely that his condition will be resolved. The Committee also notes that the report does not specifically state that he is unfit to attend this hearing. Clearly an adjournment could resolve this matter but it is likely to be of some time. Mr Graham pointed out that any application for an adjournment should be viewed in terms of the timescale in this case, which goes back to the period between 2004 and 2007. Any further delay is not going to contribute much to the already lengthy time this case has taken to be resolved. Mr Hepworth pointed out this was now the third time that this case had been listed. The first time was in 2008. It was last listed in January of this year. He submitted that any further delay will obviously impact on the memory of the witness required to testify.

The Council's case has been submitted in a written format. The Registrant is represented and has given Mr Graham instructions on the Council's case which allow him to put forward his answers to the allegations made. Obviously Mr Graham argued that it would be more advantageous to him if the Registrant is present and we have some sympathy with that argument. However, the Committee noted that one of the factors identified in *Jones* is that there is a general public interest that a trial should take place within a reasonable time. There is also a question of maintaining the confidence of the general public in that matters of professional regulation are dealt with expeditiously and are not allowed to drift. It is also in the interest of the Registrant that matters should be brought to a conclusion sooner rather than later. The Committee thus concluded that it was in the public interest for this matter to proceed, and thus the Committee refused the application.

I'll move on now to the determination, and our findings in relation to the particulars of the allegations: [*Reads*]

## **DETERMINATION**

### **Findings in relation to the particulars of the allegation**

1. The Committee heard from Mr Hepworth for the General Optical Council (GOC), Mr Graham for the Registrant, Mr Preedy. Mr Horsley gave evidence on behalf of the GOC. Mr Preedy was not present but the Committee had the advantage of reading a 32 page statement made by him very recently and dated 11<sup>th</sup> of April 2011. In addition the Committee received into evidence the contents of three bundles and various supplementary documents. The Committee accepted the advice of the Legal Adviser.
2. In terms of the history of this case, the matters which give rise to the allegations took place during the period 2004-2007. The

Registrant is a dispensing optician. During this time the Registrant undertook to provide a domiciliary service to a number of care homes and day care centres in the South East of England. The majority of the patients involved were elderly and potentially vulnerable. The Registrant's service - Preedy Family Opticians - involved provision of a full eye care service which he promoted actively to expand his business.

3. At some stage during 2006-07 the NHS Counter Fraud Service received allegations of irregularities in the Registrant's practice and conducted an investigation. Mr Preedy was arrested and interviewed. Pursuant to legal advice, he, in the main, exercised his right to silence. He was charged and subsequently Mr Preedy appeared at Southwark Crown Court to face a 27 count indictment alleging, in essence, that he had dishonestly obtained money transfers from the NHS by deception. On 16<sup>th</sup> March 2007, after receiving a Goodyear direction from HHJ Rivlin QC to the effect that he would not be sentenced to an immediate term of imprisonment, Mr Preedy pleaded guilty to 9 counts on the indictment on the basis that he accepted that he acted dishonestly and that he forged the signature of Mr Yaqub. The other counts were left on the file. The case was adjourned for the preparation of a Pre Sentence Report. On the 13<sup>th</sup> April 2007 Mr Preedy was given, on each count concurrently, a sentence of 9 months' imprisonment which was ordered to be suspended for a period of two years. In addition for those offences which post dated the 5<sup>th</sup> of April 2005, he was made subject to a supervision order together with a requirement that he carried out 120 hours of unpaid work. He was also ordered to pay £20,000 in costs.
4. The Committee makes the following general comments.
5. Investigations and criminal proceedings bear directly on the registration requirements of the GOC. Registrants are required, as part of the annual renewal of registration process, to declare investigations or convictions to the Council.
6. Further, the tasks properly conducted by Dispensing Opticians are made clear in Section 24 of the Opticians Act (1989) as amended, GOC guidance, and reinforced by professional custom and practice. Similarly, the Rules and guidance for the granting of delegated functions to Dispensing Opticians are equally clear. Dispensing Opticians are not qualified nor permitted to undertake a full eye examination and any delegated functions they do perform must be clearly defined and supervised by a registered optometrist or registered medical practitioner.
7. Similarly, the standards and behaviour required of registered optical practitioners are set out in the GOC Code of Conduct. Notably, the Code requires *inter alia* optical professionals to:

1. Make the care of the patient his/her continuing concern
  2. Be honest and trustworthy
  3. Recognise the limits of his/her professional competence
  4. Avoid abusing his/her position
  5. Register with and maintain registration with the GOC.
8. The allegation made by the GOC falls under 7 different particulars. The Committee makes the following findings of fact in respect of those particulars. Some of these findings obviously overlap and are cumulative. However the Committee has looked at each particular separately.
9. Particular 1 alleges that the Registrant tested the sight of the patients as listed on Schedule A whilst not registered as an optometrist, an ophthalmic medical practitioner, a medical student or a student optometrist.
10. It is not disputed, and the Registrant admits, that he conducted those sight tests. It is also not disputed that the Registrant did not fall into any of the 4 categories of practitioner set out above. There is evidence in the bundles from a number of witnesses who attest to the fact that their eyes were tested by the Registrant. The Committee has also read the statements of the receptionist Mrs Berry and Dr Sujatha. Both state that the Registrant carried out eye tests and indeed this evidence has not been challenged. At paragraph 28 [page 10] of the Registrant's statement of evidence, he accepts that he carried out domiciliary eye tests.
11. The Registrant's case is that he carried out those tests under the delegated authority of Mr Yaqub. We have read the statements and the affidavit of Mr Yaqub which are contained in the Registrant's bundle. We have also heard from Mr Horsley who agreed with the suggestion put to him by Mr Graham that based on the information in Mr Yaqub's curriculum vitae it was clear that he was an eminent practitioner in his field and qualified to carry out eye tests.
12. The Committee later learnt by way of evidence in rebuttal, that on the 25<sup>th</sup> of August 2006, a Mr Yaqub was suspended by the GMC. From the 9<sup>th</sup> of March 2007, Mr Yaqub was no longer registered to practise medicine in the UK.
13. The Committee has no doubt that this is the same person as Mr Yaqub. He has 3 first names which match and the details of his MB BCh from Ain Shama University in Cairo are featured on both the document from the GMC and Mr Yaqub's curriculum vitae.
14. Mr Hepworth made the point that none of this was disclosed in any of Mr Yaqub's documents. The Committee has concluded that this is a significant omission and that it does undermine in the

Committee's opinion the credibility of Mr Yaqub as a witness of truth. The Committee have thus approached his evidence accordingly. Due to ill health, Mr Yaqub has not appeared before the Committee and it thus has not had the advantage of hearing from him directly.

15. But even if the Committee accepted what Mr Yaqub has said about his supervision of the Registrant, it is clear that Mr Yaqub was in the Middle East for much of the period that the Committee is concerned with. The information on Mr Yaqub's curriculum vitae places him in Assiut in Egypt from November 2004 and in Dubai from April 2004. The Committee is of the view that the geographical separation between the Registrant and Mr Yaqub would have made it impossible for Mr Yaqub to carry out effective and proper supervision of any eye test carried out by this Registrant during the period in question. Thus it is clear to the Committee that the Registrant could not be said to have been acting under a delegated authority at the material time.
16. There is also the question of the forgery of Mr Yaqub's signature by the Registrant. The Registrant has by his pleas of guilty acknowledged that he forged Mr Yaqub's signature. If he was acting properly, as he claimed that he was, why would there be a need to forge that signature? The Registrant could have signed the documents in his own name or put "pp Mr Yaqub". He did neither but signed the document as Mr Yaqub thus purporting to anyone who later read the same that it was Mr Yaqub who had carried out the eye tests. Mr Yaqub was entitled to test in his own right, until his GMC registration was suspended; the Registrant was not at any time. It is likely, that if the Registrant had signed the documents in his own name, later scrutiny of the various forms would have revealed the Registrant's lack of official capacity. Had that happened payment would not have been forthcoming to the Registrant.
17. The Committee considered the evidence of Stephen Cosslett. He is a forensic handwriting examiner and is undoubtedly an expert in his field. The Committee takes on board the comments made by Mr Graham that Mr Cosslett was only required to test but a proportion of the various forms and thus the Committee should be careful about jumping to conclusions about the untested documents. However it seems to the Committee that a distinct pattern has emerged and it has not heard any expert evidence which undermines the conclusions reached by Mr Cosslett.
18. Thus the Committee finds that particular 1 is proved.
19. Particular 2 alleges that the Registrant 'forged the signature of Dr Moustafa Yaqub on GOS1 and GOS3 forms in relation to patients

identified on Schedule B.' These are in fact those patients who did not feature in the indictment counts.

20. The Committee has already identified various factors that are relevant to particular 1. There are obvious overlaps in the Committee's findings. It is clear that the Registrant carried out the tests. The tests were signed in the name of Mr Yaqub. The Registrant kept close control of the various forms. These forms were essential for the authorisation and release of payment. The payments were made to the Registrant. Mr Yaqub was not in the UK for most of this period. The Registrant has accepted by his pleas of guilty that he forged Mr Yaqub's signatures on various forms. If he was prepared to do this in respect of the forms on Schedule A [indictment counts], why would he stop at those forms on schedule B? It makes no sense and the irresistible inference which the Committee has drawn is that the Registrant forged the Schedule B Yaqub signatures as well.
21. Further, Mr Hepworth has drawn the Committee's attention to the fact that Mr Cosslett examined the GOS1 form relating to the patient MN, which is dated the 30<sup>th</sup> of November 2004. This is exhibit DWH/64. This form features in Schedule B. Mr Cosslett, at page 222 of the GOC bundle, states that in his view there is conclusive evidence that the Registrant wrote out the details on the form and that Mr Yaqub did not. This evidence reinforces the conclusion that the Registrant was the author of the forged Yaqub signatures on the forms in Schedule B.
22. The third particular alleges that the Registrant made false claims for payment for sight test examinations (GOS1 claims) and the supply of prescriptions (GOS3 claims) in relation to patients identified in Schedule B.
23. There is no dispute that the Registrant submitted the forms GOS1 and GOS3. The only area of dispute is whether or not they were false in the sense that they purported to be something that they were not, i.e. forms signed by Mr Yaqub. For the reasons the Committee has already set out, it is the view of the Committee that they were false in that they claimed to be *bona fide* forms signed by Mr Yaqub, when obviously they were not.
24. Particular 4 alleges that the Registrant failed to declare that he was the subject of a criminal investigation on 2 documents [a] an application to the GOC for retention on the register dated the 19<sup>th</sup> of January 2006 and [b] a similar application dated the 22<sup>nd</sup> of December 2006.
25. At paragraph 20 of Mr Horsley's statement, he states that the Registrant was arrested on the 1<sup>st</sup> of November 2005. He was also interviewed as was his wife. He was charged. He instructed

solicitors on his behalf and was committed by the Magistrates Court to the Crown Court for trial. The Registrant must have known that he was the subject matter of a criminal investigation. On neither form did he bring it to the attention of the GOC and indeed represented in the way he filled out the form that no such investigation was taking place. Indeed the Registrant accepts these omissions in his statement of the 11<sup>th</sup> of April 2011. The Committee finds that this particular is proved.

26. The Registrant appeared at Southwark Crown Court on the 16<sup>th</sup> of March 2007. On that day he pleaded guilty to 9 counts. This is not disputed and the Committee has read the various transcripts of the Crown Court proceedings.
27. The Committee has heard that Registrant alleges that he was threatened by the learned judge into pleading guilty. The Committee find that there is no evidence of that from the transcripts and comment that it is clear that HHJ Rivlin QC approached the matter with the utmost care and attention and dealt with the matter in an entirely appropriate manner as befits an accomplished judge of his standing. Such allegations of threats by the judge are totally without foundation.
28. Particular 5 deals with the facts of the hearings at Southwark Crown Court. These facts are accepted by the Registrant. The Committee finds particular 5 proved.
29. Particular 6 concerns the failure of the Registrant to declare to the GOC that he was the subject of that criminal conviction when he submitted an application form dated the 21<sup>st</sup> of December 2007. The Committee has examined the form itself. The conviction is not disclosed and it is represented in that document that the Registrant is without conviction. The Committee find that this particular is proved.
30. Particular 7 alleges that the Registrant's actions in particulars 1, 2, 3, 4, and 6 were [a] dishonest and [b] not to the standard of conduct expected of a dispensing optician.
31. The Committee concludes that the Registrant was dishonest. The mere fact that he pleaded guilty to 9 counts of dishonesty proves this fact. The public have a right to expect that those in practise will carry out their tasks competently. The Committee has found that the Registrant was not entitled to carry out sight tests in the manner in which he did. The fact that none of the persons tested have been adversely affected is not the point. A member of the public is entitled to expect that the person who puts himself forward to conduct sight tests is properly qualified and supervised where appropriate. The persons concerned in this case were mainly the elderly residents of care homes. They and those responsible for

their care placed their trust in the Registrant and acted on the basis that the Registrant was properly qualified to carry out the tests. This was not correct. The Registrant did nothing to correct the false impression that he gave to the residents. A person falsely purporting to be authorised by a professional body to conduct sight tests clearly undermines the good standing of the profession in the eyes of the public. Forging the signature of a person who would be qualified in order to cover up this deficiency in qualification further undermines the public trust. The Committee considers that the conduct of this Registrant fell far below the standard expected of a dispensing optician”.

We move to the next stage which, Mr Hepworth, I think it's open to you to begin.

**Mr Hepworth:** Sir, thank you, and before I do, I think as I was noting it down I may have missed in relation to particulars 2 and 3 of the allegation, that you find them proved. I think from the indication you gave that both are found proved, but I missed the indication that you gave. Have I –

**Mr North:** Yes, indeed: both are found proved.

**Mr Hepworth:** I'm grateful for that indication. So sir, the next stage is to decide whether or not, if I call it the 'gateway' is made out, and two gateways are alleged, that of conviction and of misconduct. Clearly, given your findings of fact in relation to particular 5, that particular which relates to the conviction, the conviction side of this decision is rather straightforward. As far as misconduct is concerned, clearly that covers the remaining allegations.

Sir, when you are making this decision you no longer have to concern yourselves with the burden or standard of proof, it's a matter for you and your colleagues' judgement as to whether or not the question of misconduct is made out, and so I'll make only brief submissions if I may, because of the findings of fact which you have made. You have found that this is a registrant who was dishonest, you have found that this is a registrant who exercised powers that he had no right to exercise, you have found that he dishonestly misled his professional body as to the investigation and the conviction because of his failure to disclose. Sir, the effect of testing sight when not qualified to do so, forging the signature and then making false claims, as is alleged in particulars 1 to 3, is that this is a registrant who defrauded the public purse. Sir, you yourself when you gave the decision on the facts referred to the code of conduct, and I can do no better than to refer you to your own decision as far as that is concerned. There is no doubt, in the Council's submission, that this is a very serious case, and one where the question of misconduct is certainly made out, without any doubt whatsoever.

Sir, I've been brief because of the serious nature of the case and your own decision, so there is nothing else I wish to add at this stage. Of course I'll seek to make further submissions if you find the conviction and/or misconduct made out, when you then come to consider the question of impairment.

**Mr North:** Thank you, Mr Hepworth. Mr Graham, what do you say?

**Mr Graham:** Well, clearly you find all allegations against Mr Preedy, clearly following your own guidelines on conduct associated with findings of dishonesty, it would be a herculean task on my part to persuade you to disengage from the guidelines which assist you in conclusions of misconduct following from earlier findings in respect of dishonesty, and it would not be my contention to seek to misdirect you in respect of your own internal guidelines upon such findings.

All I can really say is simply, Mr Preedy did conduct those eye tests on the belief on his part, clearly mistaken, that he could do so, and did those eye tests competently. Furthermore, in terms of his errors in respect of allegations 4 and 5, if they were stood alone it may well be that the findings of misconduct would not be before you, in the sense that he subsequently did get through disclosure and there was a background of ongoing dialogue with the GOC during the period of time which those forms were made, but it's a matter within your discretion. As I said, it's a herculean task and the guidelines set out what channel you must follow.

**Mr North:** Thank you, Mr Graham. Anything further you'd like to add at this point? Can I, then, turn to Mr Hepworth: do you have any comment in rebuttal?

**Mr Hepworth:** Sir, thank you, no.

**Mr North:** No, so are there any questions from my colleagues on the panel, of either of the representatives? [*There were none*] Thank you. Legal Adviser?

**Mr Pounder:** I have in essence nothing to add to what has already been said.

**Mr North:** Okay, well we'll now retire into *camera* to consider the issue of misconduct briefly. Thank you.

[*Hearing adjourned at 10.37am*]

[*Hearing resumed at 10.54am*]

**Mr North:** Before I read out the findings in relation to misconduct and conviction, for the avoidance of doubt, the Committee has amended the determination text, to make it quite clear that allegations 2 and 3 were found proved. In effect, it is clear from the text, I realise you didn't have the advantage of the document in front of you, but for the avoidance of doubt we have inserted two short sentences to ensure that there is indeed no doubt.

These are the findings of the Committee in relation to misconduct and conviction: [*Reads*]

### **Findings in relation to misconduct and conviction**

The Committee has considered whether the actions of the Registrant were dishonest and fell far below the standards expected of a dispensing optician. The Committee refer to the previous findings of fact. It is clear from the convictions alone that he has been seriously dishonest and has defrauded the NHS. The Committee found that his conduct was patent, premeditated and persistent.

In these circumstances and given the seriousness of his convictions, the Committee found Ronald Preedy guilty of misconduct”.

We move now to impairment, and again, Mr Hepworth, it’s for you to lead.

**Mr Hepworth:** Sir, thank you. Again at this stage you exercise your judgement, rather than it being a matter of a burden and standard of proof. Of course what’s unique about this stage is you judge the decision today, is the registrant’s fitness to practise impaired, judged in the present tense. So of course it’s a matter for you, but perhaps I can give you a few matters that you might like to take into account: first of all, there’s no insight by the registrant into the serious nature of his conduct. What you can see in his statement and his case ably put by Mr Graham throughout these proceedings, is that he was entitled to do as he did, there have been no admissions, there has been no remorse either. In fact, you may consider it was quite the opposite.

Sir, I think for the first time at this stage, I’m going to have to address you about the value of the fraud in relation to which the conviction was entered, and you’ve heard my friend talk about that figure of just over £3000. Can I say at the outset that that’s a sizeable sum in itself, and in addition, of course, you have found that he submitted other false claims for which he was not convicted, so the amount goes up and up and up? But I do, please, want to draw to your attention what the counsel acting for the registrant said during those criminal proceedings, and perhaps if I can try your patience a little by asking you to refer to page 751 within bundle C2. Mr Cox, counsel for the registrant, makes a speech within page 751 starting around paragraph D, and this is, I think, in response to what the prosecution counsel had said, and counsel for the defendant says:

“The figure that Your Honour had in mind with the Goodyear direction at the very beginning of it, and I discussed this with my learned friend, was £50-65,000, not the £80,000 that the prosecution mentioned in the opening. What Your Honour said at the Goodyear direction, it is not, I think, in your print-out there, but I think that figure was mentioned before that transcript had started, but it is the figure that me and my learned friend are agreed was what was said on that occasion”.

So it is clear, in the Council’s submission, that the agreed value of the fraud related to the conviction was around £50-65,000. Whether or not that was appropriate in the criminal proceedings is not a matter for you, but I ask you to accept that counsel for the registrant fairly put the registrant’s position, which was the fraud was equivalent to that sum. I make the point that I’ve made before again, perhaps an obvious point, this is a fraud against the public

purse, and a fraud that was only able to be carried out because of the registrant's position, because of course ordinary members of the public don't have access to GOS forms and the claims that they represent. Dishonesty is of course a matter that is fundamental in any professional, and this registrant has, on a massive scale, failed to come up to that particular standard.

The only other matter that I draw to your attention in what is, the Council anticipates, a relatively straightforward case at this stage, is the criteria in relation to which you exercise your judgement at this stage, and that's the need to protect the public, the need to maintain public confidence in the profession, and the need to declare and uphold proper standards of conduct and behaviour.

Sir, I don't think there's anything else I can usefully add at this stage.

**Mr North:** Thank you, Mr Hepworth. Mr Graham, what do you say?

**Mr Graham:** Just taking the first of my friend's points, sir, if I may. In terms of the issue of insight, clearly it is the case that these matters happened many years ago – 2004, 2005 were the commission of the offences – and I appreciate the investigation went beyond that date as of course it must, but ultimately these are matters which go back to 2004, 2005, in respect of which tests were conducted competently. Clearly time has moved on significantly and we've heard as of late, only of this week, as to the [redacted] profile of Mr Preedy and areas there which do cause some concern and alarm, so I would have to, with respect to my friend, check the observation in respect of insight. He has quite rightly said that Mr Preedy has canvassed the point and has pleaded guilty to offences of just over £3,100 which of course we know is not an insignificant sum, and ultimately he did appear before the Crown Court, pleaded guilty and most importantly, was punished. We are all aware of the consequences of that punishment, it's something I'll address you on further shortly. So he has discharged his duty to society in that forum and received the appropriate sentence.

As my friend has touched upon, the issue of impairment is a matter for you, as I understand it there is not statutory definition of impairment of fitness to practise. The guidance given indicates the registrants must demonstrate safe and competent practice. It is suggested that in order to do this registrants must establish and maintain proper and effective relationships with patients and colleagues alike; their positions in society as respected professionals also dictate that there must be a relationship of trust between the registrant and the patient and patients are entitled to expect a good standard of care. It does not automatically follow the fact that you've come to findings of misconduct that fitness to practise is necessarily impaired.

In determining impairment, one has to consider, in my submission, whether the conduct in question is remedial and whether it is likely to be repeated. In my humble submission, clearly in terms of both those limbs, the Committee may sit and rest easy. Clearly, in terms of remediation of that conduct, firstly, all of Mr Preedy's former patients are no longer with him, they are elsewhere,

the practice has finished as a consequence of the earlier criminal conviction, he has paid that debt to society. Is this conduct likely to be repeated in the future? Well, clearly he is 68. Is he going to be setting up a new practice from nil? He has been doing some locum work as and when he can find it - I was instructed six days in the month of March - but at present is without locum work, and it's most likely following the findings of fact now he will be unemployable for the rest of his life in a sector which he had dedicated his working life to.

My friend has touched on some other points which I'm sure the Legal Adviser will direct you upon, namely this: there are two elements, in my submission, in respect of considering impairment. Firstly the personal component, the competence of the registrant. Hopefully we've heard sufficient evidence in terms of his clinical competence, I'll come shortly to the character references and of course the public component, the need to protect service users and uphold the proper standards of behaviour and maintain public confidence in the profession. However, it does not necessarily mean that this clearly fundamental misconduct on his part going back to 2004 and 2005, in my submission are not likely to be repeated in the future. As my friend has quite rightly said, the test is as at today the past is so long ago, it can be clearly distinguished, in my submission you could still properly conclude based quite rightly, even all the findings have been against him, the finding of misconduct, taking into the account the number of years which have passed, subsequent conduct, it doesn't necessarily mean to say his fitness to practise has been impaired. The registrant has not caused any harm to any patients, he has put before you evidence of character as to himself as an individual as well as to evidence of character with regards to his competence and how other members of the public thought of him in society.

He is, as I state, age 68, these events go back to 2004, 2005. Although it's not a rule which is applicable to you, it's interesting to note in this area of jurisprudence both the General Medical Council and the Royal Pharmaceutical Society, if matters are five years or more old, as a general statement, they are not necessarily pursued. It would be my submission that this must be an area of concern as to the length of these findings, this must be an area of concern as to the commission of these offences upon which these findings are based.

It is a difficult task for you, but on the face of it, is there going to be a repeat of any behaviour in the past? Clearly, no, following the conviction. The website entry on the GOC, the local press – all of these matters ultimately led to the decline of the Preedy family business. Mr Preedy today is, was and remains a dedicated and competent dispensing optician, one who would like to have the opportunity to continue to engage in that profession in so far as he can, finding work from a charitable employer. At this point in time that is not the case, he is unemployed.

So finally in my submission, in terms of the impairment, the fact of these convictions does not necessarily automatically mean that his fitness to practise is impaired. The test is as of today, these offences go back to 2004,

2005, the criminal conviction was 2007 or thereabouts, of which he has discharged his debt to society and it would not be unconscionable, unreasonable, for you to come to a conclusion, despite the findings which you made, that his fitness to practise is not impaired. These are my submissions.

**Mr North:** Thank you, Mr Graham. Mr Hepworth, anything you'd like to come back on?

**Mr Hepworth:** Sir, no.

**Mr North:** Just again, for the avoidance of doubt, in respect of the previous part of the proceedings, where we were deciding on misconduct, we received no further advice from the Legal Adviser, I just say that for the record. Legal Adviser.

**Mr Pounder:** In essence, you have to consider the question of whether you find that Mr Preedy is impaired from continuing his practise, and you have to look at the various components: as Mr Graham says, there is the personal component, you have to look at his situation; there is also a public component, and you'll be aware, obviously, of the case of *Bolton v The Law Society* [1993] WLR 512, which deals with allegations where dishonesty is a fundamental part of the findings. In that case the late Master of the Rolls stated that

“when considering it you have to look at the reputation of the profession”,

and his judgment at paragraph 16 says that the

“essential issue is the need to maintain among members of the public a well-founded confidence that any (and it says ‘solicitor’, but read in terms of ‘optician’) whom they instruct, will be a person of unquestionable ‘integrity, probity and trustworthiness’. The reputation of a profession is more important than the fortunes of any individual member. Membership of a profession brings benefits”,

but that is part of the price, so you have to balance it, but it seems, on my advice, that when you do carry out the balancing exercise, because they are matters of dishonesty in the public component as Mr Graham refers to it, it has precedence.

**Mr North:** Thank you. Do either of the representatives have any comment on the advice we've been given? [*There was none*] We'll now retire into *camera* to consider the matter of impairment.

[*Hearing adjourned at 11.11am*]

[*Hearing resumed at 12.36pm*]

**Mr North:** Thank you. I'll now give our findings with regard to impairment: [*Reads*]

## Findings regarding impairment

The Committee has considered the question of current impairment in the light of its earlier findings of fact and misconduct. The Committee has heard submissions on this point from Mr Hepworth and Mr Graham.

The Committee has taken into consideration various references that have already been put before it. The Registrant is now 68 years of age. Hitherto he has enjoyed an unblemished career and has devoted many years to serving the community as a dispensing optician. The Committee also notes the charitable work he has carried out. This case is clearly a personal tragedy for him and may well have had a negative effect on his health and general wellbeing. All these matters the Committee has taken into consideration.

However, the fact remains that the Registrant has been convicted on his own admission of defrauding the NHS. It is axiomatic that health authorities must be able to place complete reliance on the integrity of practitioners. If that principle is not upheld then it is inevitable that public confidence in the profession will be undermined and the reputation of the profession as a whole will suffer. This was not a minor fraud. The Committee is reminded that it was accepted on the Registrant's behalf at the sentencing hearing in April 2007 that the extent of the fraud amounted to between £50,000 to £65,000. These nine offences were treated by HHJ Rivlin, QC as specimen offences. Prosecution Counsel told the court that the number of forms thought to be involved was in excess of 2,000.

The Committee is also concerned at the complete lack of recognition on the part of the Registrant as to the seriousness of his conduct. In paragraph 4 of his witness statement, which was signed on Monday of this week, the Registrant demonstrates his complete lack of insight as to the seriousness of his conduct. He is clearly in denial. The Committee has little confidence that he has learnt from his lesson and will not repeat this behaviour.

The Registrant puts faith in the fact that he did not receive any complaints about the treatment he administered; treatment that he was not qualified to provide. In the Committee's view this misses the point completely and is yet another illustration of the Registrant's complete lack of insight.

The Committee has an obligation to ensure the high standards of this profession are upheld. That is what the public are entitled to expect. Membership of a profession carries many benefits but it also carries responsibilities. The Registrant's conduct is so serious that it cannot simply be brushed under the carpet. The Committee accepts that the

allegations have taken some time to resolve but the Registrant must accept some of the responsibility for that state of affairs.

The Committee has decided that the Registrant has departed in a serious way from the appropriate professional standard. The Committee has seen no evidence of any action to remedy this situation. With Mr Preedy's continued lack of insight into the potential consequences and seriousness of his actions, the Committee can only conclude that his fitness to practise as a dispensing optician is impaired.

We now, then, move to stage 3. Before I do so, do either of the parties have any issues in relation to the findings regarding impairment, in relation to matters of fact that I have just included within the statement that I have read out? [*There were none*] Thank you. So, we're going to move now to stage 3 and sanctions. Mr Hepworth, we'd like to hear from you, please.

**Mr Hepworth:** Sir, thank you. Of course, the choice of sanction is a matter for you, again exercising your judgement. Could I, perhaps, refer you to section 13F of the Opticians Act, at page 35 of your handbook, starting, if I may, at Section 13F(2), it reads as follows, as far as it's relevant to this case:

"If the Fitness to Practise Committee find that a registered dispensing optician's fitness to practise is impaired - they may, if they think fit, give a direction specified in subsection (3) or (4) below"

Then section 13F(3) says,

"The directions specified in this subsection are that –

- (a) Except in a health case the name of the registrant be erased from the appropriate register;
- (b) the registrant's registration be suspended (that is to say, is not to have effect) during such period not exceeding twelve months as may be specified in the direction;
- (c) the registrant's registration is to be conditional on his compliance during such period not exceeding three years as may be specified in the direction with such requirements so specified as the Committee sees fit to impose for the protection of members of the public or in his or its interests".

Subsection (4) doesn't apply in this case because it refers to a case of deficient professional performance.

Sir, that outlines your sanction powers, and this is not a health case, so you do have available to you the sanction of erasure if you think that is the appropriate and proportionate sanction.

Sir, I think that anything I said at length would repeat that which I have already said at both the misconduct and the impairment stage. I think, sir, all I can do

is reflect back to you the words that you have just used when giving your decision on impairment: the amount of money involved, the fact that it was a fraud against the public purse, and the persistent nature of such fraud, coupled with the lack of insight shown by the registrant, the fact that you have concluded that he is in denial, and the ongoing risk that he poses in that state of affairs. Sir, I raise it only because I think it falls incumbent on me to do so, to refer you to the indicative sanctions guidance.

Sir, the only other thing that I raise at this stage is that, as I'm sure you are aware, if you make a direction for erasure, or a direction for a suspension order, you do have the power to impose an interim suspension order to cover the period of any appeal, likewise if you make a direction for conditional registration you have the power to impose an interim order. Sir, I only raise it now to say that if you do impose any of those sanctions then I would wish to make submissions to you in relation to the advisability of an interim order, but Sir, I'll perhaps wait before making those submissions until I am aware of the substantive sanction which you impose.

**Mr North:** Thank you, Mr Hepworth. Mr Graham, what do you say?

**Mr Graham:** Thank you, sir. I think I'll begin by saying this, that, in my submission, the first principle for you to begin with at this stage in the proceedings is, we're not here to punish the registrant for past misdoings, but in my submission to protect the public against the acts and omissions of those who are not fit to practise. In my submission, the Committee must not look back, but must look forward. This registrant has – I'll touch on this later - already received a substantial punishment by society, pursuant to his criminal conviction. He has served that debt to society. The wider public interest has been recognised. Can the Committee have confidence that Mr Preedy holds the interests of his patients at heart, and can be trusted to continue to do so? We submit, yes, based upon his clinical treatment and subsequent years when there has been no grounds or any issue of complaint in that specific sector.

Furthermore, if you are with me on that submission, in my respectful opinion, then in that regard the public interest is protected. Mr Preedy is unlikely to be any harm to any patient, thereby the public can maintain confidence in the profession. The Committee can safely conclude, in my submission, that Mr Preedy can be relied upon going forward to provide a service to all patients at the highest level.

In terms of the impact of these proceedings and indeed these previous proceedings, which in my submission are all relevant in terms of the original principle which I've referred you to, if I can invite you to go to page 738 of your bundle? I'm just going to adopt in part some of the submissions made by my learned friend, Mr Cox, in the proceedings in 2007, it begins at paragraph F, where he stated, or submitted:

“Mr Preedy has been a dispensing optician for decades, really since the 60s. His obsession is eyes, it is the things he is happiest talking about, and he ran a successful although difficult business for a long,

long time, and the whole effect of these proceedings have been absolutely devastating for him, not just from the financial position where, however one looks at it, he has gone from a position where he had two shops operating, he employed a number of people, a number of them turned out to be prosecution witnesses that he employed a number of people, doctors who used to come in generally on a weekly basis, different doctors for different days of the week, and receptionists, members of his family”.

As a consequence of those proceedings that has all now gone. He has lost the income not just for him but for other members of his family who worked in the practice, his wife and one of his sons. It's the end of a 30-year business which he clearly worked hard to build up and do his best in terms of acquiring and expanding on his optician skills.

Now, I opened up by saying it's not the Committee's concern to punish but to look forward. In this case, he has been sentenced by the Crown Court, in addition he was ordered to pay a £20,000 costs order, and you heard from Mr Horsley earlier in the week in terms of the civil proceedings in respect to of which I understand the National Health Service have a judgment against him for £120,000 or thereabouts. Clearly, one has to ask, how far does one need to be punished, and in my submission it clearly must be based upon that established principle, one necessarily not need go any further. It's quite obvious to everyone that these proceedings, both civil, criminal and these sets of proceedings have all led to the destruction of Mr Preedy and his livelihood.

In the remarks concerning impairment, observations were made, is he ever likely to repeat such behaviour? Well, clearly, in my submission, no, he's not ever going to set up another practice. As a consequence of the findings both in fact and the impairment, they will be on the GOC website, they will also be reported in the press. I did comment that in March of this year he received six days' locum work. The consequence of the impairment finding will clearly mean that opportunities for work in the future – and he was in a position to take some possible locum work, but a lot of that would depend on the outcome of these proceedings – clearly, his ability to do so is going to be severely restricted as to whether an optician will consider taking on Mr Preedy as a consequence of the finding of impairment, independent of any other findings which you may find following these submissions. So the offences go back to 2004, 2005, since that date there hasn't been any inkling, indication, threat or suspicion of any such repetition or likely repetition of such conduct. It is done, it's gone and it's been punished by society.

Mr Preedy at present is 68. His wife is 68. He lives in a bungalow with his wife, his two sons, Stephen and Robert, and one of their partners, Cherry, and a child of four and a half years old, Adam. He does not own his own home, he has no properties, he has no savings, he is overdrawn to the tune of £1200. His income primarily consists of a state pension.

In discharging your duty, you must take on board the concept of proportionality. Where is proportionality in this case, from several different

factors: one, the fact that he has already been punished both criminally and is now the subject of a substantial civil judgment; the fact that these proceedings go back to 2004, 2005; the fact that he is 68. Taking those factors into account and acting proportionately, it is within your remit to consider those factors and not make a sanction in respect of erasure, and indeed, taking on board the punishment he did, together with the proportionality, the proceedings in themselves, the findings, the finding of impairment in some cases may be considered sufficient sanction in itself without moving on to any further specific sanctions.

What has Mr Preedy left? Very little, other than a glimmer of hope that a distinguished, capable optician may at some date be able to continue to serve the community in a way which he has done admirably over so many years. The only way he will ever be able to cross that threshold is for you today to exercise your discretion in accordance with the principle not to punish, in accordance with the principle of proportionality, to consider a sanction other than erasure. Would it be right and proper to consider a sanction of suspension? In my submission, yes, that is further demonstration of your discharge of your duty in terms of protection of the public and putting the public interest first.

So, despite the gravity of the findings, they are in respect of matters going back over a number of years ago, it does not necessarily follow that the finding of erasure must follow. I would ask you to consider not imposing such a sanction, against the background of my submissions.

**Mr North:** Thank you, Mr Graham. Before I ask the Legal Adviser to offer any advice that may be necessary, do any of my colleagues have questions of either of the two representatives? Mrs Huka.

**Mrs Huka:** Mr Graham, when did you last take instructions from Mr Preedy?

**Mr Graham:** I took instructions from Mr Preedy, as I outlined, on the opening day of this case in respect of the medical.

**Mrs Huka:** So you'd already got the means enquiries and everything done by then, had you?

**Mr Graham:** I had, yes.

**Mrs Huka:** Thank you, that's all I wanted to ask.

**Mr North:** The medical aspect aside, have you had any further instructions?

**Mr Graham:** No.

**Mr North:** Thank you. Legal Adviser.

**Mr Pounder:** Just two points, in essence: the options are, as has been stated by Mr Hepworth, in section 13F, and I don't need to repeat those, there are three

options available to you. In terms of what was being said about the sanction, it's clear that any sanction – I'm quoting from Lord Bingham in the case of *Bolton* – have a number of components, and one of the components is the punitive part or element of any sanction, and you have to bear in mind the points made by Mr Graham that in essence Mr Preedy has already to a certain extent undergone a sentence as imposed by society in respect of the criminal matter.

But if one goes and follows paragraph 15 of the judgment, there are also two additional purposes involved: the first is to be sure, if you are satisfied it is appropriate, that the offender does not have the opportunity to repeat the offence, and that can be dealt with by way of a number of different sanctions; and the second purpose, which is the most fundamental of all, to quote Lord Bingham, is

“to maintain the reputation of the profession, as one in which every member, of whatever standing, may be trusted to the ends of the earth.”

**Mr North:** Thank you. We will retire into *camera* now, and I think we'll combine our deliberations with a brief lunch break. If you could be back here for quarter to two, please. Thank you.

[Hearing adjourned at 12.57]

[Hearing resumed at 13.57]

**Mr North:** I confirm that the Committee received no further legal advice from the Legal Adviser during our deliberations. I will now read our findings in relation to sanction:

### Sanction

The Committee has considered the question of what is the appropriate sanction to be imposed. It has heard from Mr Hepworth and Mr Graham. It has accepted the advice of the Legal Adviser.

The Committee acknowledges that Mr Preedy has already been subject to a sanction from the Crown Court for his conduct and thus has already been punished. However, the Committee has a responsibility to ensure that Mr Preedy does not have the opportunity to repeat his misconduct. Further, the Committee does have the obligation to ensure that the reputation of the profession is maintained. The Committee has reminded itself that the reputation of the profession is more important than the fortunes of the individual.

The Committee has decided that neither a conditional registration order nor a suspension order would allay its fears that Mr Preedy would repeat his mischief, nor is a financial sanction appropriate considering his declared means. Mr Preedy has been dishonest on a repeated

basis. He has defrauded the NHS. He has chosen to ignore the legal requirements and standards of the profession. He has exposed patients to a risk of harm. He has repeatedly failed to disclose to the Council the fact of his criminal investigation and his subsequent criminal conviction. He shows no recognition of the seriousness of his conduct and remains in denial. He presents a continuing risk to the public and to the good reputation of the profession. In these circumstances the Committee is driven to the conclusion that the only sanction that is appropriate and proportionate in this case is to direct that the name of the Registrant be erased from the register and accordingly the Committee directs that Ronald James Preedy is erased from the register of dispensing opticians.

That's the end of our determination. Mr Hepworth, I understood you wished to make submissions on an immediate order.

**Mr Hepworth:** Sir, indeed. I wonder if you'll give me just one second to find the relevant section within the Act.

**Mr North:** Thank you. Would you like five minutes, would that be helpful, or –

**Mr Pounder:** It's 13I, isn't it?

**Mr Hepworth:** I'm grateful. I think in those circumstances I won't need to ask for any time. It's page 41 within your handbook, I'm grateful for the assistance of your Legal Adviser. Sir, to make sure I'm getting my terms right, I think I previously referred to it as an 'interim' order, and of course in the Act, now that my eyes properly are functioning, it's an immediate order, and I'll try to remember to use that term.

So Section 13I(1) of the Act states,

“On giving –

(a) a direction for erasure - under section 13F(2) above” –

and that's the direction that you've just given, then again joining the relevant parts of the subsection:

“if satisfied that to do so is –

- (i) necessary for the protection of members of the public;
- (ii) otherwise in the public interest; or
- (iii) in the best interests of the individual

may order that the registration of the registrant shall be suspended forthwith”.

Such an order, if you make it, will last until either the lapse of any appeal period to 28 days if no appeal is lodged, or if an appeal is lodged, will last until

that appeal is determined. As you know, sir, the substantive order that you have made, the direction for erasure, does not take effect until 28 days and if there's an appeal, until that appeal is disposed of.

Sir, the Council would certainly ask you to consider making such an immediate order, for these reasons, and they are relatively brief reasons. Sir, you have indicated in your reasons when making the order for erasure about the repeatedly dishonest conduct of the registrant. You have indicated that there has been no recognition of the seriousness of his conduct, and you spoke about a continuing risk that this registrant poses. You indicated that the only proportionate and appropriate sanction was that of erasure, but briefly that this Registrant cannot any longer practise as a dispensing optician, and Sir, the effect of that is to remove him from the register, but such an effect would not take effect today, unless you impose in addition an immediate order. In a sense, you would have declared that this is a registrant who should not practise as a dispensing optician, but then allow him to practise as a dispensing optician for at least 28 days, and perhaps longer if he lodges an appeal.

Sir, in the Council's submission, given the strength of the findings which you've made and the decision which you've made, you ought to strongly consider making such an immediate order. Sir, unless I can help further those would be the Council's submissions.

**Mr North:** Thank you, Mr Hepworth. Mr Graham.

**Mr Graham:** Without my client, I have no specific instructions on that submission, and in the absence of such instructions I don't feel I can make any response.

**Mr North:** Thank you Mr Graham. Do any of my colleagues have any questions that they wish to address to either of the representatives? [*There were none*] Legal Adviser, do we have any advice at this point?

**Mr Pounder:** Only that the discretion is set out in these three tests, as set out in section 13I(1)(b)(i)(ii) and (iii):

- “(i) necessary for the protection of members of the public,
- (ii) otherwise in the public interest; or
- (iii) in the best interests of the individual ...”

and those are the criteria that you have to approach the question of whether or not the registration should be suspended forthwith.

**Mr North:** Thank you. Far be it from me to comment on advice from our learned Legal Adviser, but I think it's 13I.

**Mr Pounder:** Sorry, it's I, you're absolutely right, forgive me.

**Mr North:** We'll go into *camera* now, and deliver our decision as promptly as we can. Thank you.

*[Hearing adjourned at 14.05]*

*[Hearing resumed at 14.29]*

**Mr North:**

**Immediate order**

The Committee was asked to consider the making of an immediate order of suspension. The Committee has concluded that unless Mr Preedy is made the subject of an immediate suspension order he will continue to practise. The Committee has heard in evidence that Mr Preedy was practising as recently as March of this year. The Committee felt that this measure is necessary for the protection of members of the public, otherwise in the public interest and in the best interests of Mr Preedy. The Committee so orders that an immediate suspension takes place in pursuant of Section 131 of the Opticians Act 1989 as amended.

That concludes our determination. Before you rise, may I thank both Mr Hepworth and Mr Graham for their very helpful assistance during this difficult matter.

*[Hearing concluded at 14.30]*