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

GENERAL OPTICAL COUNCIL

AND

SHERAZ MALIK (D-12130)

SUBSTANTIVE HEARING

Wednesday, 11 May 2011

SUBSTANTIVE HEARING: SHERAZ MALIK (D12130)
11 May 2011

FTP Committee: Lady Margaret Wall (Chair) (Lay)
Dr D Azubike (Lay)
Mr D Counter (Dispensing Optician)
Mr R Hensley (Dispensing Optician)
Mr R Varley (Lay)

Legal Adviser: Mr A Coleman

Hearings Manager: Mr D Henley BEM

For the GOC: Ms G Gillet
For the Registrant: Mr R Payne

[Proceedings commenced at 09.36]

Lady Wall: Good morning. My name is Margaret Wall and I am a lay member of the hearings Panel and I have been elected by the Committee to Chair today's hearings. The Committee today is made up of two dispensing opticians and three lay members and I will ask the members to introduce themselves and the capacity in which they sit. *[Introductions made]*

To my right is Mr Anthony Coleman, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee and ensure that the proceedings are conducted in accordance with the Rules of Procedure, so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate. In the event that any matter arises during the course of the Committee's deliberations, upon which the Committee seeks advice, the parties will be invited to return to hear the matter which the Committee has raised and the advice to the Committee. Where advice on any issue is not accepted by the Committee, this will be indicated in the course of its decision on that issue.

To your right is 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 today of the hearing at which the parties are present. The remaining persons sitting in the hearing room rather than in the public and press areas are members of the respective legal teams.

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

The matter today as been listed as a procedural hearing but I understand that the parties have agreed that it can proceed directly to a substantive hearing so, unless anything has changed, then I will announce the procedural hearing as having commenced and now we go to the substantive element of the hearing.

Now, are there any applications to be made at this stage?

Ms Gillet: I am not sure at what stage it would be best to make this but there is an error, as I understand it, in the allegations as they are currently drafted, inasmuch as they state that his fitness to undertake training is impaired. That is, of course, an error and it should read, 'his fitness to practise'. I should have mentioned it to my learned friend and it escaped my attention earlier. In my submission, there is no prejudice; it is simply a typographical error.

Lady Wall: Right. Any other applications?

Ms Gillet: No, Madam.

Lady Wall: Any applications from you, Mr Payne?

Mr Payne: No, Madam. We accept what my friend says. We have noted that clearly that was an error. Mr Malik has understood the purpose of this hearing is from the outset his fitness to practise.

Lady Wall: Thank you. Would you like to proceed?

Ms Gillet: Yes, Madam.

Mr Henley: Madam, shall I read the allegation?

Lady Wall: Yes, please.

Mr Henley: The Council alleges that,

In relation to you, Sheraz Malik, a registered dispensing optician,

1. On the eve of July 20, 2010, at Stevenage Magistrates' Court, you were convicted of possession of (a) class A controlled drug, cocaine; and (b) class B controlled drug (cannabis/cannabis resin), contrary to Section 5(2) of and Schedule 4 to the Misuse of Drugs Act 1971;
2. You failed to notify the General Optical Council that you had been convicted of an offence, as required by the Code of Conduct for individual registrants;
3. Your action at paragraph 2 above was dishonest.

And by virtue of the matters set out above, your fitness to practise is impaired by reason of your (a) convictions and (b) misconduct”.

Lady Wall: Thank you. Ms Gillet?

Ms Gillet: Madam, I don't know if it is helpful at this point if the Registrant wishes to respond to the allegations?

Mr Coleman: Mr Payne, first of all, are there any admissions that your client wishes to make at this stage?

Mr Payne: Yes. The allegations at numbers 1 and 2 are admitted, that that is misconduct. With regard to the allegation at number 3, Mr Malik – as will be clear from his statement – does not accept that his conduct was dishonest. He accepts, as a matter of fact, clearly, that he failed to notify the GOC of the fact of his conviction but he says, in essence, that was because of his ignorance of the Rules and there was no dishonest intent there. So that is his position in relation to the three allegations.

Ms Gillet: Madam, the Notifiable Occupations scheme was created by the Home Office and allows the police to share information with regulatory bodies, if a member is a professional whose occupation puts them in a position of trust with members of the public. The public interest in these situations is deemed to outweigh the normal duty of confidentiality owed to an individual. In line with this scheme, on 6 October 2010, Police Officer Ian Hunt wrote to the General Optical Council to inform them that an individual registered with the Council – Mr Sheraz Malik – had recently been convicted of two counts of possessing controlled drugs: class A, cocaine, and the other class B, cannabis. This letter can be found at page 21 of your bundle.

The Council had not been notified of this information by Mr Malik, as required by the Code of Conduct for individual registrants. The facts of the conviction are found summarised in the letter already referred to and also in the witness statement prepared by the police to a criminal prosecution.

In summary, on 17 April 2010, Sheraz Malik was stopped in his car by police who conducted a drugs search. A large amount of money was found hidden in the storage compartment underneath the steering wheel. Mr Malik was searched and a plastic carrier bag, containing a large amount of white powder, was found down the front of his trousers. The police also conducted a search at Mr Malik's home address, and at which they found two bags of herbal cannabis and an additional £360 in cash.

In interview, Mr Malik admitted that the white powder was cocaine and, when it was weighed, this amounted to 27.6 grams. Mr Malik stated that both the cocaine and the cannabis were his and for his own personal use, as a result of which he was charged with simple possession and, on 8 July 2010, at North Hertfordshire Magistrates' Court, Mr Malik pleaded guilty to two counts of possession of controlled drugs – one of class A and one of class B – and a formal Memorandum of Conviction can be found at page 1 of your bundle.

Mr Malik was fined £1,250 for the possession of the cocaine and a further £500 for the possession of cannabis.

The Council submits that it is of note that it was three months from the date of the conviction to the letter written by Hertfordshire Police, during which time Mr Malik had ample opportunity to inform the Council of his conviction but did not do so. The Council will say that this action was dishonest.

When considering whether Mr Malik's failure to inform the Council is dishonest, the Panel should first consider whether the action was dishonest according to the standards of a reasonable, honest person and, if they find that it was, the Panel should then go on to consider whether Mr Malik must have realised that what he was doing, by the standards of those reasonable and honest people, was dishonest. The Council submit that by virtue of the convictions of themselves and exacerbated considerably by the failure to inform the Council of the convictions, Mr Malik's fitness to practise is impaired.

Lady Wall: I am just going to ask you a question here, in fact, which either of you may be able to clarify: are there any other proceedings pending, relating to the police taking the money?

Ms Gillet: I have no information to suggest that is the case.

Mr Payne: No, Madam, the money was returned.

Lady Wall: The money was returned? Thank you. And are you able to tell us whether the fine was paid?

Mr Payne: Madam, if I could assist? My friend, Mr Malik, informs me that it was paid on the day – the same day.

Lady Wall: That accords with the information that we have. Thank you very much.

Ms Gillet: The Council do not seek to rely on any live witnesses. The factual events are admitted and of course, by virtue of the guilty plea, are proved beyond reasonable doubt in that sense, so it is simply the paperwork and that all other matters are for the Panel to exercise their professional judgment.

Lady Wall: Thank you. Mr Payne?

Mr Payne: Madam, I call Mr Malik if appropriate, at this stage.

**MR SHERAZ MALIK, called and affirmed
Examination-in-chief by MR PAYNE**

Q. Madam, I believe that it may be that the Panel do not yet have a signed copy of Mr Malik's statement, but I will invite him to provide that so that that can be entered formally into the documents.

Mr Malik, could I invite you to look at the Registrant's bundle – that is the whole bundle of documents which will be on the table in front of you? Perhaps you could see at page 6? Pages 1 to 6 in your statement. Have you found that? Perhaps you could sign that copy? [Pause]

Thank you. Mr Malik, as a formality, can you confirm for the Panel, please, that that is your statement and you wish to adopt the contents of that statement in your evidence?

A. Yes, this is my statement.

Q. I will ask you a few supplementary questions which may assist the Panel in its decision-making process. Now, Mr Malik, firstly could you explain to the Panel what your current working situation is, please?

A. I am currently working as a locum at Specsavers in Harlow. I am there for the whole month, they have got me. I was there the last couple of days, the rest of the week as well, apart from today. I have been working for Mr Sanghera the whole of March. I did a month there. I have just been working at Asda as well – did work in February for them. So I have been keeping myself quite busy really, just working as a locum.

Q. Bear in mind that although the proceedings are being tape-recorded, not to speak too quickly, in case members of the Panel may wish to make a note of some of your evidence. So make sure you speak clearly, so that members of the Panel particularly at this end of the room can hear you as well.

Could I ask you, Mr Malik, about your personal situation? Because your statement describes the personal difficulties you found yourself in with regard to relationships and a proposed arranged marriage for you with your family. Can I first ask you: what is the situation with you in terms of any personal relationships and/or arranged marriages today?

A. Currently, I have chatted to them a little bit more. They are a bit backwards in terms of the way they think since they have come to this country and they are still a little bit like that but I think I have come to terms too, just to believe that that is what they want for me – they really want the best for me. They introduced me to a few girls, I am getting to know them and that is where I am at the moment really. It is not obviously what I would want – but I have learned that actually the girls they have shown me are not too bad and I have come to admit that maybe that is the way it will just be for the best in the end. I have met a couple of girls and hopefully things will work out in the future. So that is the stage I am at at the moment.

Q. Obviously, your statement describes a very strained relationship with your family. From the evidence you have just given, it appears that that situation has changed from the time of the offence. How would you describe your relationship with your family today?

A. I would not say it is the greatest, but I get to go and see my family. I have four sisters as well that are younger than me so it gives me a chance to go and see them as well. I am quite busy because, like, people tend to phone me in terms of work so generally just on weekends now I go and see them, like family weddings – we have a family wedding on the bank holiday and I am

going to go and see them again. I saw them in Newcastle at the bank holiday when we had a family wedding. So it tends to be just family, family dos and I go at the weekend if I can make it, especially to see my sisters, because they are all younger than me and we are quite close.

Q. And you are living in St Ives and your family, in Cambridgeshire?

A. The family is in Birmingham.

Q. Okay. Now with regard to the criminal convictions, what was the extent of your drug use with recreational and illegal drugs, before March 2010?

A. There was nothing really, before that sort of time, or around that sort of time. There was none.

Q. You had not been a user or a dabbler in drugs throughout school?

A. None at school –

Q. Or in university? Can you provide the Tribunal with some further details from the extent of your drug habit? You mentioned it in your statement. How often would you be taking drugs in the period of March and April?

A. Just weekends, recreational really. There would be probably a few people, just at the weekend and it would be on a Saturday night mainly and that would be it. Then that would be over. And Saturday night and Sunday I would just wake up as normal, watch football with my mates and then back to work maybe on Tuesday or Wednesday, depending, because I'm a locum. Monday sometimes. It was just only ever on a Saturday night, recreational really. It just made me forget about things really, about what I was doing in my life. It was nothing in terms of I am sitting there, taking drugs because that is what I do. It was just people were doing it around me and I stupidly fell into the same sort of – and it was only recreational. Again, it was nothing like taking them for any other use.

Q. You have described it as on a Saturday night, effectively?

A. Yes.

Q. You also describe in your statement that you had fallen into this unfortunate habit under the influence of a cousin in London. Can you explain to the Panel the extent of your relationship with that gentleman now?

A. Well, I hardly see him now. The last time I saw him was about a month ago in Birmingham, at a family do again. So really I have not really seen him since then, to be honest, apart from that one time a couple of months ago, a month ago, when his family was up in Birmingham to see my family. So I don't really keep in contact with any more.

Q. And in terms of your cousin and other people that you met when you were taking drugs, to what extent are you socialising with any other people that you met at that time?

A. There were a few mates, obviously, around where I live but it was mainly down in London. But from what happened to me and the way I dealt with things, I made I think the people around me realise as well, so it is not my life any more. Even the people that are around, they stopped as well. So from

the convictions and what has happened to me has been like an eye opener really.

Q. Can I also ask you: you are a Muslim and you explain in your statement and in your evidence about some of the difficulties with the arranged marriage, but you are now reconciling to that? What part does your religion play in your life at present?

A. I would not say I am the strictest Muslim, like my parents are. Maybe it is just the way we are all brought up, in a western society maybe, it is just a bit different. But I wouldn't say I am strict. When I go back to Birmingham, I do do the Friday prayers like my dad wants me to; I do try to keep to the values that they tried to bring me up with but I have a few drinks – I do drink – but I would not say I am a real practising Muslim. I do what I do, what I can, what my family wants me to do but I would not say am I there preaching or I am there praying five times a day or anything along those lines. I play football. Saturdays, I want to play for the local football team. I am more westernised.

Q. But would it be fair to interpret from that answer that it does still have some influence?

A. Yes, it does have some influence, definitely. In terms of the way when I was living at home it had a lot of influence, I would say, because it was 24 hours a day, when you get home it was just very strict. But since I moved away, obviously, I have tried to work but when you go back home it is difficult because they are trying to tell you to do this, do this, 'You've got to go to the Mosque,' 'You've got to go to the Mosque,' 'You've got to see this girl, you've got to do this.' It's always just like there is this influence from them – it's just too much. Obviously being brought up here, it's just different and I don't think they've come to realise that, they are just stuck in their ways and that is the way it is, unfortunately. I just don't know how to get around it.

Q. So the difficulties you describe are shared perhaps by many other young men of your -

A. I think by many other people, definitely I think so.

Q. Again, I mentioned to the Panel in response to the earlier inquiry but, can you confirm in evidence, going back to the conviction, when you paid the fine, please?

A. I paid the fine as soon as I got convicted. I went into the bank and paid it there and then.

Q. Now, in terms of your drug use, from your evidence, it lasted for – how long Mr Malik, please? Perhaps you could confirm to the Panel how long -

A. I think it was a couple of months really, from the March time to end of May, start of May – something like that. That sort of region, yes. That was it. Then I attended, obviously, I think it is in the bundle there - well, I attended it for my own. I did it for myself, just to see what drug use does to people who have gone way far down the line. So I went to this Addaction I know in Cambridge, which is a rehabilitation centre, just to see what goes on, really.

- Q.** Can I ask you to clarify then? You were arrested in April. When was the last time that you used drugs? Was this after your arrest?
- A.** I think it was just after the arrest, yes. End of May – towards the back end of April, beginning of May.
- Q.** Thank you. When you were using drugs during this two-month period, what thought did you give to your profession, and the reputation of members of your profession, whilst you were using drugs?
- A.** During the week I would work hard as anything. You have some statements that show that. I don't know. I think when you are on drugs you tend to forget reality a little bit and you don't tend to think about the consequences of what you can cause to the profession. I deeply regret that. But it was a difficult time for me back then. Obviously, now I look at it, I am ashamed of what I did and the perception it has on the profession but when you are taking them, I think you forget about that. It just makes you feel better. I think it was at the time, anyway.
- Q.** Again, you have touched upon it, both orally in your written statement, but what would you summarise as being the lessons that you learned from the counselling when you attended at the Addiction Centre?
- A.** It was a real eye opener. When I got there, the lady said, 'Listen, you're nothing like the people that we've got here in terms of their drug use, because they're way down the line. You're someone that's obviously using it for some recreational purposes, but you are here and I am just going to show you what could have happened to you if you had carried on or let it take over your life.' She goes, 'You're a young man. You're a professional. You've got your whole life ahead of you and you've just had a little blip'. They put me through a bit of acupuncture and they made me sit with people that were way down the line, just to show me, and if you put me next to them, it was like I am a totally different person. They were talking to me and asking me questions about what I do and stuff like that. They were really shocked by it. It was an eye opener to me really and it made me think. I helped those people as well. I talked to them and said, 'It's not all right. You should get into education.' 'You should do this,' 'You should do that,' 'I made a mistake.' But it was a real eye-opener, and it was really good. They did a bit of acupuncture and they did a few things on me, but it was more just to get an eye-opener about what drugs do to people and how it affects people's lives, and why you should not do it. It was good. It was a good month or so I spent there.
- Q.** You describe it as an 'eye-opener' on the effects of drugs upon peoples lives. So what conclusions did you personally take from that experience? And what is your view of drug use now?
- A.** I condemn it now, obviously, totally condemn it. It was just the wrong thing to do. It's something like that, when I look back at the whole situation, it was just the stress and the pressure, and the main thing was that I couldn't talk to anyone about it. It was really difficult to talk to anyone about it, to understand where I was coming from. Drugs are a bad thing. It makes you a totally different person to what you are and I just really regret doing it.

- Q.** You have mentioned that when you were using drugs, it would be on a Saturday night. What do you think was the practical impact of your drug use upon your patients or customers, where you were working at the time?
- A.** I always made sure that if it happened, I always had work in my head as well, that I would never let anything like that interfere in terms of my work, the drugs or anything like that. You can see from the statements where I work and even then, the phones would start ringing in terms of people wanting me to work for them because of word of mouth. In terms of the way I work as a dispensing optician, it's high class and that is what I do. So the drugs were never, ever an issue in terms of work. I would never let it interfere in terms of any work incidents or anything. You could have all the Specsavers people in a pile and ask every single person there and I guarantee you every single person would say that I am probably the best dispensing optician they have probably worked with, in terms of the way I work. It never interfered with work. I am really smug about the way I work. I know I am good – I am good – I am the best at what I do and the statements prove it.

So it never interfered in terms of my work. It was a Saturday night and Sunday I would wake up, I would be fine. Like I said, the football – I watched football with mates and then I would be right back into it at work on Monday or Tuesday, whenever I'd go back. As a locum, I could decide, so –.

- Q.** So as per your oral evidence and as per your statement, you assure the Committee that there were no adverse effects on any of your customers or your patients?
- A.** No way, 200, 300, 400 per cent no way. No way.
- Q.** Can I ask you to clarify before moving on from the offence itself, perhaps just to clarify for the Committee's benefit? We have seen mention of this money, which was in your car at the time, that was returned to you. Can you just explain to me how long it had been in your car for, how it had got there and so forth? I think it was somewhere around £2000.
- A.** Yes. It was just in my car, basically. It was taken out over a while and it was left in the car. I think I was working on the Saturday – I think it was – and I was meant to go and put it in the bank but the banks close at one o'clock, so it was left in the car. I just left it in there. I have a tracker on my car, I had a BMW tracker and everything. I just left it in the car. I thought, 'Monday morning, I'm going to go and pop it into the bank,' and that was it. Then I have shown the statements to the police and they were like, 'Fine, there's your money back,' and they were happy and that was the end of it.
- Q.** They were obviously happy. They've given the money back to you. Can I just ask you again, to clarify in the interests of accuracy? At page 21 of the GOC bundle, there is a letter that my friend referred to earlier, from the Hertfordshire Constabulary to the GOC. [Pause] Do you have that, Mr Malik?
- A.** Page 21?
- Q.** I am looking at the final paragraph, four or five lines up – it says:

“Regarding the money found, he said he withdrew £2000 the previous year to buy a car,”

And of course, you were stopped in April. That is wrong, that piece of information, is it?

- A.** I showed a bank statement, showing the £2000 paid out of my account then, yes.
- Q.** So again, just to clarify, it had not been taken out the previous year. It was, as you have told the Panel – a matter of days before? It may be a minor point, Madam, but I thought of it in terms of clearing up potential inaccuracies.

Thank you. Mr Malik, what assurances can you give the Committee regarding any potential temptation to use drugs in the future?

- A.** I can assure the Council that it 100 per cent won't happen again. That sort of lifestyle, like I said – it was over a couple of months ago really. In my 28 years that I have been alive, I have been in education most of my life and over two months I made a mistake, a big mistake, and I regret it. I don't hang around in the circles that I used to, like I said, with my cousin in London. I don't even go down to London any more and meet him. I am playing football now, Saturdays, for St Ives, the local town team – doing really well there, we got promoted in the week. I am just trying to get my head down really. The next stage is I am looking to open a practice hopefully and I am taking a bit of time out, doing a bit of research, putting a bit of work into that and the locum work is still as great as ever. All this month I'm booked up, next month as well, I'm getting phone calls for. I've been locuming, like, it's unusual for a locum to be employed by so many opticians for two years running as well and that is a lot of money for someone to be paid in a day. Obviously the work that I do for the service I provide customers, I have been with Huntingdon Specsavers as you will see for two years for Gemma – that is a good three, four days non-stop – and then for Mr Sanghera a month at a time as well. So I have been a locum for three years now so my work is exemplary, really.
- Q.** Mr Malik, you told the Committee that you turned to drug use at a time of particular pressures in your personal life. Again, at the moment upon your evidence your circumstances have changed, but what assurances can you give this Committee about how you will cope with any future pressures?
- A.** Talk to people. I think the main thing I have realised is there are a lot of professionals out there that you can talk to, by going to Addaction, talk to them. It solves the problem really. It is mainly just talking to someone who does not know anything about me and just opening up a bit more. The problem I have is that I don't have that in my life. You go and chat to my parents about it and they just give you this Muslim, strict law, whatever it is. I realise, I have got to talk to people. And I have met people now in life, friends and people that you can open up to and chat about these problems and I think that is what it is really.

I think that drugs was just a weak, easy way of getting out of things, seeing people having a good time and forgetting about their problems and that was just not me and I have just realised I need to talk to people really. There are

professionals out there social workers, there's friends now I've got. I just need to open up a bit. Directors - Mr Sanghera is a good person that I can chat to about things and I just need to trust people a bit more. I just didn't have that.

Q. Again, I think you said a second ago, you hinted about your aspirations for the future and if you are allowed to continue practising as a dispensing optician, perhaps you can spell out a bit more what your aspirations for the future would be, professionally?

A. Yes. Well, opening an optician's. I think that is what I want to be doing, hopefully, obviously if everything goes well. That is going to hopefully happen. I am working at it now. I have found a little property where I can get a lease on and that is where I am at at the moment, in terms of my future. The locuming has gone well – don't get me wrong, the work is still as strong as ever for me – but I think it is time to move on and just progress my career a little bit. I have looked into opening a practice. Where I live in St Ives, they have a nice little shop there which I could open and that is where I am at at the moment. I have got a few reps in from Safilo and Luxotica about frames and stuff and yes, it's going well. I am just moving forward really, trying to think positive.

Q. So those ideas are under active consideration. What about in your personal life? You have told the Panel that you are reconciled to a certain extent to your parents' wishes for future marriage. What would be the timescale for any future marriage there? Are you able to tell the Panel that?

A. I think next summer, it's looking at the moment. By next summer, yes, 2012. Like I said, I have met a few girls and it is going quite well, I do like one in particular and let's see how it goes really. Hopefully we may be engaged by this summer and married by next year.

Q. So that would be an element of stability for you?

A. Yes, definitely, yes.

Q. Turning now to the allegation of dishonesty, which of course relates to your failure to notify the conviction to the GOC, last year, what was your understanding of your obligations to the GOC?

A. Well, every year you get a retention form and obviously I read that every year and you see a section on there that says, 'Criminal convictions: do you want to declare any criminal convictions?' I'm probably like a lot of people and the Code of Conduct I probably read at the early stage of my career and then you tend, once you start working, forget about them – well, not forget about them but just not realise, or not knowing it all properly. To me, it was just a case of when my retention was due obviously not writing it in the retention, which I did. That was my understanding of it and that was the way I have read – that is obviously because every year when you get a retention you read through it and it says, 'Any criminal convictions?' There is nothing that says in there, like in brackets, 'If you have been convicted'. It does not say, like, when you have been convicted or whenever there is a conviction – I know there is a Code of Conduct and you have to tell the GOC straightaway. But it does not say to me in the retention – I don't understand what that means, 'a criminal

conviction'. When you get criminally convicted, do you have to do it straightaway? Or was it at the end of the 31st? To me it seems like I can just return it on 31 March –

Q. So your understanding was that you had an obligation and you felt you would deal with it on the retention form?

A. Yes, on the retention.

Q. When you were being defended in the criminal proceedings, was any advice given to you by your legal defence team about these obligations at the criminal stage?

A. Yes. He said to me, 'Listen, you don't really need to tell them.' I was, like, 'Well, my retention's due and it says on there' – and he goes, 'Well, tell them on your retention then. Let them know when your retention is due that this is your criminal conviction and take it from there.' So that is what I did.

Q. No helpful advice then?

A. Not really, no. That is the advice he gave me so I thought, 'Okay'. And that is what I was going to do.

Q. So the advice was incorrect, in that way, in terms of your obligations to the GOC -

A. Yes, it was incorrect, yes.

Q. That was the extent of the advice that you were given?

A. Yes.

Q. Did it not occur to you to make your own enquiries about this matter, as a professional dispensing optician? Did it not occur to you to make your own enquiries as to where your obligations lay?

A. Don't get me wrong. I knew that I had to tell them, from the Code of Conduct, that I had to tell them. But I was just going through such a stressful time that I have been through. This is the first time in my career I have ever been in trouble in my life. I had been to the police - I have not even told my parents still to this day what happened and it is difficult to tell them. The pressure of going through it and the stress it was causing me, just outside of work, it was just like – I used to enjoy going to work because it would relieve it, going to see the customers, having a day at work. Then obviously I used to come home and I would just sit there and think, 'I've got this on my head. I have to deal with this.' I just wanted a bit of breathing space. It happened in April, over July, and I just wanted to have a bit of breathing space, sort out my life and then just tell them in March and obviously, here we are now. That is the way I wanted it to happen. Okay, it is probably wrong, what I did, but I was just going through all that criminal thing, being locked up in a cell, this and that, this inquiry, this going on, that going on, papers through the door every day about criminal conviction or whatever going on – it just got too much.

I am a human being at the end of the day and it just got so stressful, especially when your parents don't understand, you've got no-one really to talk to about things and you've just got your mates, who really don't

understand that much. They are just, 'Oh, you're in trouble', and it just got to me really and I just wanted a bit of breathing space, a bit of time out and, like I did, I told them in the retention and here we are now, trying to sort it out.

Q. Of course, the allegation is that you have been deliberately dishonest, that you knew very well that you ought to do it straight away and you had not done so.

A. I don't agree with that. I did tell them. It clearly says in the retention, 'Any criminal convictions'. I just don't see, I don't understand. It says in the retention, 'Any criminal convictions or anything', and I wrote it in there. It does not say in brackets, 'or while if you have been convicted in July, you need to let us know' – well, I understand you need to let them know. Because you need to let them know straightaway but then you have also got that in the retention form as well, so I think I was understanding, I did tell the GOC. So the dishonesty was if the police did not write to you and I did not tell you in the retention, then I would hold my hands up high and say, 'Yes, I was dishonest'. But every year you are given a chance to declare any criminal convictions and I declared it.

Q. And your statement of course indicates that, at that stage, as you have told the Panel, you have not reviewed the Code of Conduct recently.

A. Yes. I will read through it again and I realise exactly what you need to do. I am just a human being at the end of the day. I went to university, I did a dispensing course. You are given a sheet with the Code of Conduct at the start, with the GOC, you read it and then that's it, it's at the back with the licence, somewhere at home, down somewhere. That is the way it was. I am probably not the only person.

Q. Finally, Mr Malik, in your statement you have apologised to the Committee, obviously, for this conduct. Again, can I ask you then just to summarise your position today with regard to the decision the Council are to make which, of course, will be whether or not you are fit to practise? Would you like to summarise to the Panel?

A. Yes. I am 100, 200 per cent fit to practise. Statements from the people I have worked for recently show that. I am the best at what I do. Seriously, I am the best at what I do. If I go into a practice, I am the stand-out performer. I am the one who makes the most money. I am the one who customers come back and see. I am young, smart, I am always – you can see me, the way I'm dressed – I am always out there, working hard. My fitness to practise is no way impaired. I understand what the GOC have to do in terms of going through this, making sure obviously the drug use and stuff like that – I can assure the Panel that I am 100 per cent committed to my work. I am fantastic at what I do. You just have to read the statements. We can get more statements like this if you want. We can get people standing up in court and telling you –

Q. We have the evidence here before the Panel –

A. Yes, but you have got all this evidence here and you just have to read it and you can read it yourself.

- Q.** I will do that, Mr Malik. Forgive me, the Panel may conclude that you come across as somewhat boastful and full of yourself in what you have just said to them. However, you are indicating that your record will back up -
- A.** My record is exemplary, yes. Everywhere I have gone, they have wanted me to come back and work there full time. But I have always been inclined, because the work that they give me is so regular and they pay me such a high wage for me to set these high standards at work and people to follow what I do – so.
- Q.** Thank you very much, Mr Malik. If you wait there, I have no further questions at this stage but my colleague and the Panel may well have further questions for you.

Cross-examined by MS GILLET

- Q.** Mr Malik, if I can take you back now to the issue of drug use?
- A.** Yes.
- Q.** The amount that was found on your person when you were stopped by the police, according to the Memorandum of Conviction, is 27.6g. Your evidence today and your evidence in the bundle is that you took drugs, or took cocaine, on a Saturday night. How much did you pay for 27.6g of cocaine?
- A.** What he gave me there, he wasn't meant to give me that. He gave me the wrong, whatever it was. I gave him, like – what did I give him? It was about £200, I think it was, or whatever it was. But I don't understand what you are trying to say.
- Q.** I think you do understand what I am trying to say, Mr Malik, from the answer that you just gave me. You are saying that a drug dealer accidentally gave you substantially more cocaine than you were paying for -
- A.** Well, he gave me something that I did not ask for, yes.
- Q.** And you accept that 27.6g, I assume from the answer you have just given me, is worth considerably more than £200?
- A.** Probably, yes. I don't know. I'm not a dealer.
- Q.** What I am going to suggest to you – and it is a matter for the Panel, how they feel about this – but that 27.6g would take someone taking an occasional amount on a Saturday night – years?
- A.** Well, that wasn't just for myself, do you know what I mean? There were other people probably there. It was not just –
- Q.** But you understand that you pleaded guilty to simple possession?
- A.** Yes, it was possession, yes, just for myself. That is what I pleaded, yes. But all this – the story – we dealt with this in court, so there is nothing in terms of –
- Q.** And you understand that possession is very strictly defined as 'for your own personal use'?
- A.** Yes, and that's what we did.

- Q.** And that possession with intent to supply, if you have an amount of drugs which are available for other people to use, is an entirely different criminal matter.
- A.** Yes. But what did I get convicted of?
- Q.** But, Mr Malik, do you accept that 27.6g for personal use on a Saturday night is a substantial amount of drugs?
- A.** Yes, but – I understand what you are trying to say, yes, but –
- Q.** In relation to the cannabis that was found in your property, in fact if I am right in understanding your position your drug use at the time was not simply in relation to class A. You were also using cannabis recreationally?
- A.** [Nods]
- Q.** And presumably, if you are taking cocaine on a Saturday night, you are taking cannabis on other nights?
- A.** Presumably, yes.
- Q.** My understanding is that cocaine is an upper, cannabis is a downer -
- A.** Yes, so - ?
- Q.** You would not take them both at the same time.
- A.** Why wouldn't you?
- Q.** So if you were taking cocaine on a Saturday night, what night were you taking cannabis?
- A.** Saturday night.
- Q.** Mr Malik, I am going to suggest that that is not true. Again it is a matter for the Panel to decide how they -
- A.** That is for the Panel to decide, isn't it? And you are not the one taking the drugs, so –
- Q.** And in relation to the cannabis that was found, it was one tennis ball sized lump and one golf ball sized lump, is that right?
- A.** Yes.
- Q.** And again, your evidence to the Panel is that this was for your own use, occasionally, on a Saturday night?
- A.** Yes.
- Q.** You have suggested in your evidence that you understand why the General Optical Council needs to bring these proceedings, don't you?
- A.** Yes.
- Q.** You understand – or you seem to understand from your witness statement – the serious ramifications on your person, not just on your profession, from having built a habit, rather than necessarily an addiction, to illegal substances?
- A.** [Nods]

- Q.** Yet do you still stand by the view that you gave in your evidence that there was no impact on your day-to-day life from having taken those substances?
- A.** No impact whatsoever.
- Q.** I understand it is sometimes difficult to be objective about these issues but try to think about it objectively – even having seen those individuals that you have described to the Panel at Addaction, you still feel that there was no impact on your day-to-day life from the drug use?
- A.** No. I wanted to go and see them to see what it was doing to people's lives down the line. I wanted to go and see what drugs did. The only place you can go and talk about drugs is when you go to a rehab centre, just to talk about them. And that is what I wanted to do.
- Q.** There is absolutely no criticism of that action. I understand – it is not for me to understand – but the Panel may well have sympathy with that action but what I am trying to get to the bottom of is, having seen those individuals, that you say it was a real eye-opener, it was only at that point that you could understand the impact on an individual from taking what you saw as a recreational activity. Even at that stage you still do not accept that there was a physical impact on you during the rest of the week?
- A.** No way. You can read there – like I said, you can read the statement. I turn up fresh. I am the first one in the door, the last one to leave. I'm 100 per cent at work, the best always, every day.
- Q.** I just want to touch very briefly on the money that you were found with. I know you say that this money was to buy a car and that you had taken the money out a few days before.
- A.** Well, the money was taken out whenever it was taken out. I showed the police and the police statement and they gave me the money back – end of story. I don't understand what the money has got to do with my fitness to practise. I just don't understand. I had taken the money out of the bank. The police said, 'Where did you get the money from?' I said, 'I got it from the bank.' They said, 'Can you produce a statement?' I went to the bank. I got a statement. And I gave it to them and they gave me the money back.
- Q.** Mr Malik, I am just trying to understand the chronology properly, to make sure that all the information is –
- A.** There is nothing simpler than that. You take cash out of the bank. You show the police where you got it from and they give it back to you.
- Q.** In relation to when you took the money out of the bank –
- A.** What's it got to do with –
- Q.** Is it the receipt that the police officers found when they searched your property – is that the receipt that you then showed to the police, to demonstrate -
- A.** No. They took my bank accounts. And I took it out of my bank account –

Q. If I could just ask you to look at page 13 of the bundle of documents that you have before you – our bundle, not your bundle -

A. Page 13, yes? [Pause]

Q. Halfway down the smaller of those pages, it says,

“It was also identified to me that PC Eagles seized a Lloyds TSB statement receipt dated 7 April 2010, which showed a balance of £2,242.”

It may be that I am misreading it -

A. It could have been that day I took it out, but I don't know. It is just on my bank statement. I took it out and they gave me my cash back. It could have been on the 7th – I don't know.

Q. To be fair to you Mr Malik, I, when I read had it out loud and seen the word 'balance', that may well be a receipt that shows how much money is in your bank rather than that you taking the money out on that occasion.

A. Yes, I see that now. I don't understand why that question is relevant anyway.

Q. Move on to the dishonesty issue. You are obviously an intelligent man. You have studied for some considerable amount of time. Why, do you think, the Council needs to know about criminal convictions of their registrants?

A. Obviously just to make sure the public is safe.

Q. If we apply that as the general test – I agree with you that that should be the general test – how would the Council be able to protect members of the public if there was, legitimately in your understanding, a gap between when a conviction occurs and when the Council are aware of it? From your perspective, you are suggesting that your understanding was there could be a gap of up to 11 months and three weeks between a conviction and needing to notify the Council.

A. No, no. What I am saying is, in the Code of Conduct it says there – I am not making excuses, I am just saying that it is roundabout then, I left it till the 31st for retention. But I am saying it clearly just shows that you can declare it on the 31st. If it was a rule across the board that any conviction you have to immediately obviously declare, across the board, then fine, you should not have that little piece written in your retention form then, as well. To me, I just wrote it in there because that was what I was going to do, each year.

Q. Mr Malik, can you just try to concentrate on the question that I have asked you?

A. Yes.

Q. You have properly identified why the Council need to know of convictions. I assume you were aware that that was the reason at the time that this conviction took place?

A. Sorry?

- Q.** I assume that you were aware that that was why the Council would need to know about convictions, at the time that you were convicted?
- A.** That is why they wanted to know then? I understand, yes, what you are trying to say.
- Q.** You understood that then, if that makes sense?
- A.** Okay.
- Q.** So you say now you understand that the Council need to know about convictions to protect the public?
- A.** To protect the public. No, I understand that you have to declare the conviction once you get it – yes, I understand that.
- Q.** Yes. And did you know that at the time you were convicted?
- A.** Did I know that? Yes, you have to tell the Council, yes.
- Q.** Mr Malik, what I am trying to get at – and perhaps I am asking my question badly – as an intelligent man, knowing that the Council need to know in order to protect members of the public, how could you think they would do that by only being informed once a year of new convictions?
- A.** To me, it's in black and white. They have said if you have any criminal convictions, declare it. I was going through a stressful time. I'm a human being, at the end of the day. I had no-one really to turn to and when you have go the police on your case, you've got to do this, you've got to pay this, you've got to go to work, and things to do, you just want a bit of a breathing space. I didn't want to go straight from a criminal conviction that is basically more or less like – maybe not like obviously going to places like America, Australia or things like that, or whatever and then go straight into another hearing like this. I just wanted a bit of time to just gather my thoughts and just get back to normal. It was stressful. I was stressed out.
- Q.** And you did not want this conviction to have an impact on your ability to earn the good money you earned as a locum – is that right?
- A.** No. Nothing to do with that. My work is exemplary. It had nothing to do with my work, it was to do with stress –
- Q.** Listen to my question before you answer.
- A.** I understand, yes.
- Q.** You did not want your conviction to have an impact on your ability to work, did you?
- A.** I didn't want my conviction to have an impact –
- Q.** To stop you working – your conviction to stop you working – did you?
- A.** No, I didn't want to stop working.
- Q.** And you were hoping you would get away with it, weren't you?
- A.** No. I told you, the retention form, I wrote it down, so I knew this day was coming.

- Q.** You wrote it on your retention form after -
- A.** Well, that's your fault then. You should have just left it and then if I didn't advise, it was dishonest. I did tell you. Dishonesty is not telling someone something that they ask.
- Q.** Mr Malik, answer my question, please. You only told the Council on your retention form *after* the Council were already aware. Is that right?
- A.** Yes, that's right.
- Q.** And that's -
- A.** Well, that was up to you then. You could have just left - seen if I wrote it in my retention then. Then I was dishonest. Dishonesty is telling you something that obviously - that you need to know about, that they tell you. And every year, the retention form, it is written at the bottom, 'Any criminal convictions?' and I wrote it in there.
- Q.** I have no further questions, Mr Malik.

Lady Wall: Do you have any other questions in re-examination?

Mr Payne: No.

Lady Wall: The Committee may have some questions to ask you, Mr Malik.

Questioned by the Committee

- Dr Azubike:** Thank you, Chairman. I just want to confirm a few things with you. You were admitted to the Register in 2005. Is that correct?
- A.** I think so, yes, about then. 2005? Yes.
- Q.** And you received the Code of Conduct then, did you?
- A.** Yes. Code of Conduct? Yes, 2005, yes.
- Q.** You did receive the Code? Are you aware that the Code changed in 2010 - it was amended in 2010?
- A.** No, not really. I don't think I did in 2010, no.
- Q.** Do you receive any correspondence at all from the GOC?
- A.** Yes. Obviously, I do sometimes. I read through it but all I can say is I didn't really go through it properly.
- Q.** So you are not aware that the 2005 Code was changed in 2010?
- A.** Was changed, no, not really.
- Q.** So which Code are you then working to now, if you are not aware that the Code of 2005 has changed?
- A.** Yes. That is something that I need to obviously make sure of. That is my ignorance, obviously. That is my fault. I should have been aware each time it did change, but I didn't.

Q. Also, something I want to be clear about: you said, in answer to Ms Gillet, that you were aware that your condition stops you from getting a visa to Australia or America. Is that correct? Is that your answer?

A. No, no. What was the question?

Q. Right. In answer to a question from the advocate for the Council, you said that you were aware that your condition stops you from going to America or Australia -

A. Going to places? I just meant in, like, it stops me from doing things that I could have done freely if I wasn't convicted. But obviously, I've got a conviction.

Q. The reason I am asking the question is, so you were aware that there were consequences for you getting that conviction – for instance, not going to America or Australia? You were aware of that?

A. Yes, obviously, if you get convicted you can't do things, yes. I'm not really clued up in terms of what with a conviction you can do or you can't do. I obviously know little things like when I was at the police station she said you might not be able to do things like going to America and things like that, whilst I was there. So it is just things obviously I picked up like that. When I was sat there in the interview room, she said, 'If you get convicted, you might not be able to go to places' – that is where that came from. It hinders you to do things.

Q. Just one final question: I think your explanation for the reason why the GOC needs to be aware of convictions is that you said something along the lines of 'to keep the public safe'. That was your answer. If somebody is convicted in April and the GOC does not become aware of it until the following year's March, that means you have eleven months -

A. July, I was convicted.

Q. You were convicted in July? So according to your explanation you were not going to tell the Council until March.

A. Yes.

Q. So in those intervening months, how would the Council be able to protect the public if they don't know about that conviction?

A. I agree with you. I understand what you are trying to say in terms of that but, like I said, I was just going through a stressful time, personal life – very stressful. I don't know if you can understand my background. You probably do or you have read it. It was just a very stressful pace of life and I just wanted a bit of time, just to recuperate and tell you and that's it. It's nothing else.

Q. Thank you, Mr Malik.

Mr Counter: My colleague has just cleared up the questions that I was going to ask, thank you.

Lady Wall: Mr Varley – any questions? [No]

Mr Hensley: Can I ask, was every employer that you locum-ed for informed once convicted that you had a conviction? Were they all aware?

A. Not all of them, I would say. Mr Sanghera was, who I mainly worked for as well. So not all of them were, no. Not all of them.

Q. Also, once convicted in court, did you, to be clear, take any steps to ask any officer of the GOC for advice about at what point you should declare these convictions?

A. No, I didn't, sir, no.

Q. So, as we know -

A. I took advice from my solicitor that was there at the time, saying just, in your retention form on the 31st, declare it.

Q. In the weekday working, away from the weekend, am I correct that you are saying that you were absolutely together about your work, level headed -

A. 100 per cent. Just read the statement. I was 100 per cent together about work. If I would go into an interview now, I would walk it, like I say, I am confident about that, in terms of work.

Q. So in your working week, you would say -

A. I was 100 per cent fit to practise, no problems.

Q. The drugs were having no influence -

A. No, no way.

Q. On your business life during the week?

A. 100 per cent professional, yes.

Q. Thank you.

Lady Wall: Mr Malik, can I ask you about your use of cannabis?

A. Yes.

Q. Can you tell us something about your use of cannabis?

A. It was just again people round a table, chatting and then passing cannabis and that was it really, just smoking cannabis, talking and nothing else, really.

Q. So when did you start this -

A. It was the same sort of time, I think it was, roughly the same sort of time as the cocaine. And again, just recreational, just chatting and having a laugh with some friends. And that is all it was.

Q. So when were you actually taking the cannabis?

A. On Saturdays, Saturday nights, as well. So it would only be on, like one night a week whenever I would do anything, on a Saturday night, over those couple of months.

Q. But it is my understanding that the cannabis was actually found at your home?

- A.** Yes, it was, yes.
- Q.** When the police searched -
- A.** Yes, it was at the house.
- Q.** So were you using the cannabis at your home?
- A.** At the - ?
- Q.** At your home?
- A.** At home, yes, on a Saturday, yes.
- Q.** So on the same Saturdays you were using cocaine in London -
- A.** Yes. No, no. The cocaine, you see, I was arrested on the way back home –
- Q.** Yes.
- A.** So the Saturday night, it was just the cannabis I would use – like, if you read the statements, it was every other weekend I was going to London, when I was with my cousin. Then the other Saturdays, when I wasn't, I was either, with my family or I used to be just sitting at home and I would smoke cannabis on a Saturday.
- Q.** So there were other people at your home and when the police went round there, there was a strong smell of cannabis and indeed, there was quite a lot of cannabis -
- A.** Yes, but I was not at home that night, was I? It was a friend that was left there. So he had smoked, obviously, the cannabis. So it wasn't me, it was him. And I was obviously in the police station all that night so I was not at home. So the cannabis smoke was from –
- Q.** No, I was just asking generally about your use of cannabis.
- A.** Oh, I see.
- Q.** Given that you have said that you were using drugs, to cope with the stress that you were under, and given that it was at your home that you said you were taking the cannabis in London with your cousin, what though happened with cannabis use was at your home -
- A.** What was the pattern, you say? Like I said, it was on a Saturday night, when you had finished work or the day after – I never used to work Sundays - so it just used to be a bit of a stress relief really, to help me relax.
- Q.** So when you were working at Asda, you were not working five days a week?
- A.** No, no. It was just like, with Asda, bits and bobs, here and there. With Huntingdon as well. That is the beauty of being a locum, you can just do work when you want and not work when you want. So I never let it affect my life in terms of the drug use.
- Q.** When you went to the Addaction centre, did the counsellor in the care home explain the effects of the use of drugs?
- A.** Yes. She said to me that, 'Listen, you're a guy that doesn't need to be lectured', she said first of all. She goes, 'I'm just going to show you what

drugs do do to you when you go down the line, if you rely on them.’ She said to me herself, when she heard the story and went through everything, I was just a recreational user, ‘You have gone through stressful times in your life. Obviously you need to talk about these things.’ It was nice going to someone that would openly talk about things and she gave me all these leaflets and chatted through to me what happens, in terms of long term users of drugs or the effects of drugs and what happens. Like I said, it was an eye-opener and made me think totally differently about what was happening over the course of those few months.

Q. What I am really asking is whether they explained the effects of drugs on yourself, not necessarily your social or economic level – falling into shoplifting and all of that -

A. I see, yes.

Q. But actually what it did to your brain functions if you used drugs regularly.

A. It is just like the person you are, isn't it? I don't think she went into it too much. She explained that you could obviously suffer from this and suffer from that, of course memory loss and things like that. But with me, she realised that it was just a way of getting away from things over a few months and she did not see to think anything was really causing me problems. She did a few things with me – acupuncture – but I understand what you are trying to say, the effects. And she did describe what could happen, obviously.

Q. What sort of things did she describe?

A. Memory losses and not aware of who you are. We did not go into it too much, because I was nowhere near that sort of stage. She just thought that I was a guy earning good money, going through a few difficulties in life and should have dealt with things better than the way I did. And that is the sort of things really we went through. Then she took me to a few classes, showing me, ‘This is what we do to some patients and this is what we're – ‘

Q. But when she explained that it could lead to memory loss and things like that, did it occur to you that this could be having an effect on your patients without you realising it?

A. I don't think so, because like I said, it was over the course of a couple of months. I don't think we were anywhere near that sort of stage, where it was causing a problem. And she saw that. She was, like, ‘You don't need to be here.’ I said, ‘I want to be here to see what it could have done to me. I want to see what drugs do to people, what it causes.’ We did not really get to that stage because it was nowhere near evident that that is the sort of thing that – because I was always just willing to work and I was a hard worker and things like that. I understand what you're trying to say but it was nothing – it never affected me in terms of my work or memory loss or anything like that. It never affected my work.

Q. But did you maybe consider that it might have, without you necessarily realising it.

A. Not for one second did I think that the way that I was going about it was going to affect my work or might affect my work because I am just that sort of guy. I

understand what your question is trying to get at but I am not like a drug user over a long time. I don't know what drugs do to people. You lot seem to know a lot more about them than to me. I can only tell you what happened over the course of a couple of months in my life and it was nothing. We were just taking a bit of drugs and then back to work, like, nothing further. You can see from the statements I am like exemplary to my work. So if anyone did know something was wrong, I am sure they would have written it, or said something. No-one would keep me as a locum for such a long time as well, working for somewhere, if they thought there was a problem. They would just get rid of you – just a text or a phone call to say that. So there was nothing in terms of – I understand what you are trying to say but I don't think it –

Q. Thank you. Are there any other questions?

Mr Counter: One has just come to me to check something, if I could? Mr Malik, we have heard you say a lot about how you feel your fitness to practise is unimpaired and that you are very good at your job and so on and so forth. But looking back at the events of Spring last year, how do you feel, truly feel, about what you did then?

A. I feel really bad, remorseful about what I did. I am just, like, just so ashamed about what I have done. It is embarrassing every time, sitting in front of new people and explaining to them what I have done. It affects me, don't get me wrong. I'm a human being at the end of the day. You get emotional. Life is so difficult for me. I haven't even told my parents yet. That is going to be the biggest stage, obviously, to get to. That is how much I am frightened of them, like it's been over a year and I haven't even told them. It is difficult for me, over the course of a whole year, all I have been doing is being stressed about something that happened over two months of my life. I'm 28 years old, I've got my whole life ahead of me. I made a mistake over two months and it just seems to be – it's difficult. But I am really sorry for what I've done and it won't happen again. I've just made a mistake and hopefully, I can move on and better my career and be the best that I can be – which I know I am. I am deeply sorry but, it was over two months. Nothing was affected. I was stupid in what I did and obviously I am really sorry that the perception you give everyone at the GOC in terms of the profession. I am really sorry about what I've done. And it won't happen again.

Q. Thank you. Thank you, Chairman.

Lady Wall: Any other questions? Right, do you have some advice for us, please?

Mr Coleman: I think firstly, if Mr Malik would care to return to his seat?

[The witness stood down]

Ms Gillet, do you have any submissions on the issues relating to the allegation?

Ms Gillet: In relation to the facts, no. I do have submissions relating to fitness to practise but obviously, that will come later.

Mr Coleman: Obviously, those are matters for a later stage.

Ms Gillet: A later stage, yes.

Mr Coleman: At this stage, the Committee is only involved with the –

Ms Gillet: The factual allegations. No, sir.

Mr Coleman: Mr Payne?

Mr Payne: Yes. In brief, the fact, obviously, that is in dispute, is that of dishonesty. There is no dispute as to facts. Clearly, Mr Malik did not notify the GOC immediately, as we have heard. My submission upon that: clearly the fact-finding exercise is upon the balance of probabilities standard of proof but essentially this is really an element of judgment – the judgment and the standard of proof are merging – because the account that we have is of Mr Malik. Therefore, the impression that he has made upon the Committee and the way in which he has given his evidence will, presumably, be the foremost factor in the Committee assessing whether or not what he says is true.

My submissions, purely on that fact, are these: it is submitted that he is telling the truth. He has told the truth to this Panel today, that he was not dishonest, he has made a mistake. The Panel may or may not be of the view that certain aspects of this client's evidence have been given in perhaps a brash or even a cocky manner and that self-confidence maybe spilled over the line into those adjectives. They may or may not think that. If the Panel does think that, he has submitted that even if that were the conclusion given, that would not equate, of course, to dishonesty and that would be wrong to equate the manner in which certain of the evidence was given to come to the conclusion that that meant that what was talked about would justify a conclusion of dishonesty.

The essential submissions on this part, extracting them from Mr Malik's oral and written evidence, are these really: he gave his account at the time, that he was aware certainly of the retention form and the requirement on that because he completed it every year. He therefore, as he said, he admits his ignorance of, it seems from evidence, both the 2005 and 2010 Code – or the pre-2010 Code and the 2010 Code – he was ignorant of that. And he also has told the Panel that he took advice from his solicitor who, it can be assumed from the evidence given, was perhaps not an expert on GOC matters but was adept at advising mitigating on criminal matters in the magistrates' court.

Those matters, taken together, are his evidence as to why he had not given that. If you look at the totality of the evidence as well, clearly he is convicted in any event of the drugs charges but he has, it is submitted, answered the questions to the Panel openly today. He has described that he feels a mixture I think from his cultural background as well, since he has not been able to speak about matters, but he has described – and particularly summarised in

answer to Mr Counter's last question – his overall embarrassment and shame about the entire proceedings and so on and so forth. It is submitted that, taken together, that is consistent with the account that he has given on this one point of dishonesty.

I remind the Panel that his evidence was that this was, in an otherwise unblemished life in terms of studies and profession, at a time of great personal turmoil for him. Therefore, that was the driving factor, rather than any dishonest intent. He has said that he knew in any event that this was going to catch up with him, as it were.

So in summary, those are the submissions on this one point. It is strongly denied that there was any dishonest intent at all and in fact, when Dr Azubike asked Mr Malik about his understanding of the obligations to the GOC, the need to inform the GOC, of course he answered it was to protect the public and so on and so forth. That clearly was part of it. But it was also clear from Mr Malik's evidence that the self-assuredness – if I can put it that way – that he possesses in his abilities was clearly a factor in him feeling that the public were not at risk in any way. The evidence that he has given is that there had not been any complaints either pre- his drug use, during his drug use, or post his drug use, about his professional competence. For those reasons he had clearly held the view himself that the public were not at risk. It is not for him, of course, to make that decision, plainly. However, that was the view that he had put to the Committee and to the Panel that he held and again, that was another reason which, in my submission, tends against the allegation of dishonesty. It tends towards him being truthful. It may be his understanding of who has to make that decision is wrong but it does not mean that he was dishonest in not declaring it at those stages.

Those would be the submissions, Chairman, unless there are any other matters you would like me to clear up?

Lady Wall: Would you like to summarise?

Mr Coleman: Madam Chairman, the task for you at this first stage is to decide whether the facts alleged have been found proved. Looking at the allegation, you will see that there are three parts to the allegation. Firstly, that on 8 July 2010 at Stevenage Magistrates' Court, Mr Malik was convicted of possession of cocaine and possession of cannabis/cannabis resin. Secondly, that he failed to notify the GOC that he had been convicted of those offences, as required by the Code of Conduct for individual registrants. And thirdly, that his failure to notify the General Optical Council was dishonest.

Mr Malik has admitted, both in his written statement and in his evidence to you, that he has admitted the convictions on 8 July 2010. He has admitted the failure to notify the GOC. Ultimately, however, it is for you to make the determination as to whether those facts alleged are found proved, although in circumstances of Mr Malik's submissions you doubtless have little difficulty in reaching that conclusion.

Before I move to the third part of the allegation, I do, however, wish to stress one matter and that is that the conviction at Stevenage Magistrates' Court relates to possession of cocaine and possession of cannabis. Any evidence that you have read or heard that might cause you to believe or to suspect that there may have been some supply connotations, that there may have been possession with intent to supply to other people – those thoughts must be excluded from your consideration. Because the police charged Mr Malik with simple possession, he pleaded guilty to simple possession and he was dealt with on the basis of simple possession. Therefore this is not a case of possession with intent to supply or supply. If it had been the Council's wish to take the matter beyond the scope of the conviction as it was open to them, had they so chosen, it would have been open for the Council to have worded the allegation such that not only was there reliance on the conviction but to go further and say that in the Council's estimation and in their judgment, this was a case of possession with intent to supply. But there is no such allegation brought against Mr Malik by the Council, nor has there been any application to amend the allegation to insert such a case. Therefore, you must confine your attentions to the terms of the conviction for simple possession of cocaine and cannabis.

Moving on, as I must, to the third particular under the allegation, that is that the failure to notify the GOC was dishonest. As Ms Gillet has correctly explained to you at the outset, it is for you to decide whether, according to the ordinary standards of reasonable and honest people, Mr Malik's admitted failure to notify the GOC of his conviction was dishonest. If it was not dishonest by those standards, then that is the end of the matter. If it was dishonest by those standards, we must go on to consider whether Mr Malik himself must have realised that what he was doing – rather than probably not doing – in failing to notify, was by those standards dishonest. You must reach your decision on this point on the evidence and on the material that is before you and your decision must not be based on speculation or lesser forms of evidence. It is important that you bear in mind that the burden of proving the dishonesty is on the General Optical Council throughout. The standard of proof is on the balance of probabilities and, insofar as you may wish to have further guidance as to the meaning and the application of the standard of proof, I would simply remind you of the contents of pages 6 and 7 of the Guidance that is available to you and indeed available to the public also.

Finally, I think it is right and proper that I should make an allusion and a reference to the previous good character of Mr Malik. Because the evidence is that, before the conviction in July of last year, he was of good character with no previous convictions and with a good and sound professional and personal record. The evidence, even today, is that he has no previous convictions for dishonesty because his conviction in July was for possession of drugs, not an offence of dishonesty.

His previous good character – the fact that there are no previous convictions for any offence of dishonesty – has a relevance in two respects. Firstly, inasmuch as Mr Malik has given evidence, he is entitled to his previous good character in the absence of convictions for dishonesty in support of his

request and plea that you should accept that he has given honest and credible evidence to you. Secondly, it has a relevance inasmuch as since there is no evidence and no record of past dishonesty as per criminal convictions, it is less likely that in this case Mr Malik was behaving dishonestly as opposed to culpably, when he failed to give the required notification to the GOC.

Unless there are any matters that Ms Gillet or Mr Payne wish to draw to my attention, that concludes my advice on this point.

Ms Gillet: Sir, only on one point: I don't know whether the Panel wishes me to address them on my questions in relation to considerations of issues that go or seek to go behind the conviction? My learned friend is absolutely right: the allegations are worded specifically and in relation to allegations 1 and 2, they exist as they do and no consideration should be given to anything in addition.

The reason, if I may go so far, for my questions, was in order to assist the Panel with their assessment of the credibility of the witness in relation to the degree of his drug use and in that respect, more likely to assist the Panel in their consideration of his fitness to practise. That is, of course, that occasional recreational use is entirely use from a more sustained, regular drug use. It was certainly not my intention to seek for the Panel to go behind allegations 1 and 2.

Mr Coleman: Madam Chairman, I can confirm that that would be a wholly valid purpose in cross-examination and of course if it had no relevance at all it would have been incumbent upon me to have intervened to prevent questions being asked and dealt with there. Mr Payne, do you have anything you would wish to add?

Mr Payne: Mr Coleman, I am grateful for that application and Ms Gillet indeed for that line of questioning. But Madam, my submissions to you of course were only in relation to the third matter in any event, so, no – nothing further to say.

Lady Wall: Right. Thank you very much. Would you like to withdraw, please?

[Hearing adjourned at 10.58]

[Hearing reconvened at 11.50]

Lady Wall: This is the Committee's findings in relation to the facts:

Mr Malik has admitted that on 8 July 2010 at Stevenage Magistrates' Court, he was convicted of possession of cocaine and possession of cannabis, as alleged. He has also admitted that he failed to notify the GOC of these convictions. Having considered all the evidence, the Committee formally finds these allegations proved.

The Council's allegation of Mr Malik's failure to notify the GOC of his convictions was denied by him.

In this respect, the Committee has accepted and acted on the advice of the Legal Adviser.

The Committee has not found Mr Malik to be either an impressive or truthful witness. The Committee does not accept his evidence in a number of respects, in particular in relation to (a) the quantity of drugs found in his possession by the police, (b) the money that he stated was to pay for those drugs, and (c) the nature and extent of his drug usage at the time of these offences.

The Committee rejects his evidence as to why he failed to notify the GOC of his convictions. He accepted that the GOC needed to know about convictions in order to protect the public. The Committee does not accept his explanation that it would have been acceptable for the GOC to find out about the conviction many months after the Registrant's court appearance.

The Committee has also noted that, according to his evidence, Mr Malik has failed to inform all of his employers of his convictions.

In the circumstances, the Committee is satisfied that Mr Malik's failure to notify the GOC of his convictions was dishonest; and this last allegation is found proven also.

Mr Coleman: Madam Chairman, may I just draw your attention to the fact that the words "was dishonest" should be inserted after the word "convictions" in the second paragraph, just for the purpose of the record, so that it reads that, "Mr Malik's failure to notify the GOC of his convictions was dishonest was denied by him."

Lady Wall: Thank you.

Mr Coleman: Second paragraph, after, "to notify the GOC of his convictions", insert the words, "was dishonest" – that being the allegation.

Lady Wall: Accepted.

Mr Coleman: It is a matter for you; it is your determination.

Lady Wall: Yes, indeed, it is our determination. But you have accepted that we have made that amendment?

Ms Gillet: Yes.

Lady Wall: Right. Perhaps you can now address us on misconduct?

Ms Gillet: Well, Madam, having found the facts in relation to the first two allegations to be distinctly proved, I appreciate that it is a matter for the Panel and that is exercising their judgment, but I understand that there is no attempt to dissuade the Panel from finding that the possession of the drugs would amount to misconduct, by my learned friend.

Mr Coleman: I don't think that is right, is it? That is the conviction, which is admitted and found. Therefore that does not constitute misconduct. Misconduct is simply the failure to notify and also now the finding that the failure to notify was dishonest.

Ms Gillet: Indeed. Was dishonest. No, I agree; in relation to the conviction there is, of course, no need to take the extra step. It is just looking at the totality of the case in relation to the way that the Panel may want to approach their determination of Mr Malik.

In relation to the misconduct in having not notified the General Optical Council and that, therefore, being dishonest, I would submit should be dealt with in one way. They are certainly not matters which naturally ought to be determined separately. The fact that the failure to notify was dishonest, in my submission the Panel should have no difficulty in finding that that amounts to misconduct. It goes to the very heart of the conduct which is expected of registrants by the Council and that honesty and trust between the Council and the public who they seek to protect is seriously undermined by such behaviour and therefore, in my submission clearly amounts to misconduct.

Mr Coleman: Obviously, to an extent. Though it is a question of different stages and it is necessary for the Committee to consider the finding of fact that is alleged to amount to misconduct. The Committee has made its finding but it does then need to consider, perhaps as a matter of formality, whether that would amount to and does amount to misconduct. So that is the only issue that needs to be considered now, Mr Payne.

Mr Payne: Absolutely, sir. I think in view of the Committee's findings Mr Malik accepts that that would constitute misconduct on all three of the matters in relation to the Code.

Lady Wall: Thank you very much. [Pause] It does, as you say, follow from the findings and the details of findings in relation to the facts that this is in fact misconduct. So I think we can move on to the next stage.

Mr Coleman: Which, Madam, is impairment.

Ms Gillet: Madam, the Council of course submit that Mr Malik's fitness to practise is impaired as a result of the allegations which the Panel have found proved. In relation to an individual's drug use, the Council will say that any involvement in recreational drugs *may* lead the Panel to consider that a fitness to practise is compromised and remains compromised.

I would draw the Panel just to a number of points in relation to the particulars of Mr Malik's situation. That is the amount of drugs which were found on Mr Malik and the degree of insight that he was able to offer the Panel as to whether or not his drug use would or may have had an impact on the end user or on the public who he was seeking to serve. I would submit that it would be very telling that he was unable, despite being given ample opportunity, to demonstrate that insight. Simply as a result of his drug use, I would submit that whether or not it is something that he has dealt with, it is a matter that may affect his fitness to practise currently and in the future. In particular, when there is that degree of lack of insight, the Panel may feel that Mr Malik did not understand why the Council is concerned about his drug use, apart from the fact that he was caught. In those circumstances, he may feel it appropriate to take it upon himself to continue to use drugs in the future, if he feels that it would have no impact on his career, as long as he was not found out.

Madam, of course the fitness to practise should be seen as a two-stage test, the first of that being the personal elements that apply to Mr Malik and the second being the public perception of such behaviour. There is a need to have regard, under the public protection interest, when determining questions of impairment, to the fact that the public should be protected and a need to defer and uphold proper standards of conduct so as to maintain the public confidence in the profession.

Madam, there is a recent case on this issue. It is of course something that has been decided on previous occasions but I think it is dealt with very succinctly in the case of *CHRE v NMC & P Grant* [2011] EWHC 927 (Admin). My learned friend has seen a copy of this. I am going to pass six copies. I will not ask you to read the whole case unless you feel it appropriate. In particular, I would ask the Panel, when they retire, to consider this issue, to look at paragraphs 69 to 75. Then, towards the back of the transcript there are the findings of the Court and those are at paragraphs 83, but in particular 89 to 94.

What those final paragraphs show is the High Court, making some criticism of previous Panels' findings – although it was entirely different Councils, having not addressed their minds in relation to fitness to practise to the public issue and of course, it is very easy in these situations to look at an individual and say, 'Yes, they did use drugs. Everyone makes mistakes and an individual should be allowed to move on from that if they have demonstrated to the Council that they have done,' – but that one should not forget the need to maintain public confidence in the profession and that that is a very important aspect to the regulatory role.

Madam, the Panel may feel that an individual who has convictions such as these continuing to practise may damage the reputation of the profession as a whole. That is perhaps overshadowed, in my submission, by the finding of the Panel that Mr Malik has been dishonest – dishonest not only to the General Optical Council in the way that he has dealt with his conviction but

dishonest to the Panel here today when he has given his evidence. In those circumstances, Mr Malik's fitness to practise is indeed a very serious issue.

Lady Wall: Yes. Is there any particular part that you wish to address us on? I should just say that this is C2 in terms of evidence.

Ms Gillet: Madam, the paragraphs, as I have mentioned, that I would draw the Panel's attention to are paragraphs 69 through to 76. In essence – and I summarise – it is restating the need to have a regard to the wider public interest in determining questions of impairment of fitness to practise.

Lady Wall: Yes.

Ms Gillet: Then in particular at paragraph 90, where there is criticism, if I can put it in that way, of the decision of a previous hearing in not referring to the wider public interest in relation to their deliberations. Madam, in my submission there is nothing new in this case, it simply usefully summarises and reminds all regulatory bodies of the dual aspect of the fitness to practise test. But if I can just reiterate, in some respects this is overshadowed by the Panel's finding in relation to dishonesty.

Lady Wall: Right. Thank you. Mr Payne?

Mr Payne: Yes, Madam, if I could perhaps then deal with my friend's submissions firstly, before making more general points on the fitness to practise on behalf of Mr Malik. My friend has said that the amount of drugs found and the degree of insight demonstrated by Mr Malik, whether or not his drug use may have had an impact on him, was very telling and she says he was unable to demonstrate insight and, as a result of his drug use, it may affect his fitness to practise currently. She also said that because of the lack of insight, he may take it upon himself to use drugs in the future if he felt that it would have no impact on his career. Madam, that point in my submission is particularly speculative.

In my submission it is wrong to say that his evidence demonstrates that he had no insight because what Mr Malik did, almost immediately following the arrest prior to the conviction, was to take steps himself, as we have heard from his evidence, to the Addaction service. We also heard from Mr Malik, in my submission, that he certainly did demonstrate insight. He told us that the advice that he was given from the counsellor there, drawing distinction between what could be described as social and recreational users, whose use had not yet developed into a problem in the sense of it becoming an addiction and taking over their lives – I cannot recall the precise words Mr Malik used – but the import of it was that the usual client of that clinic was somebody whose problems with drug use was substantially more serious than his.

In drawing that distinction, I in no way seek to detract from the seriousness of Mr Malik's drug use. That is important for insight because Mr Malik addressed the Committee and was told by the people at Addaction that he was not yet at that stage and he, in his evidence, took the view that he was not at that stage,

that his use was, as we have heard, recreational upon a weekly basis and he strongly refuted that at any stage his use of either cannabis or cocaine had any impact upon his patients and clients. He did say, however, that his experience there and meeting and talking to others – he described in his statement and his oral evidence – that he heard stories of other people who had not been as fortunate as himself and whose problems with drugs were more serious and had had a particularly destructive impact upon their lives. He described how he heard all of that and appreciated all of that and in my submission, therefore, it is wrong to say that he did not have insight.

It is true that his opinion to this Committee was that his drug use had not adversely impacted upon his patients and customers. He certainly gave that view. But that does not mean that he did not have insight as to the potential perils of future drug use.

Therefore, it is submitted that it is wrong to say that he was unable to demonstrate insight and therefore that impacts currently on his fitness to practise. In fact, the contrary is true because he immediately took steps to deal with this matter and in addition to just talking about it, he backed up his words with actions. He ceased all recreational drug use. He ceased, effectively, contact with the social circle that he was in at that time and was mixing with. Obviously, his cousin, you have heard, was implicated to begin with and the cousin remains a family member. But we have heard that the lifestyle that Mr Malik was leading at that time has completely changed. He described how he does not see that crowd and his cousin at weekends. He plays football and he sees his family and so forth.

So again, in summary, it is submitted on his behalf that he does have insight and therefore, the fact that he does have insight as to what could happen had the drug use developed and become more serious is a factor that he certainly is aware of. Indeed, it was one of the wake-up calls – ‘eye-openers’ as he described it – that led to him removing drugs completely from his life. It is submitted, therefore, that the second suggestion by my friend that he may therefore take it upon himself to use drugs again in the future if he feels that he can get away with it – in essence, the submission – has no force at all and there is no evidence before the Panel that would support that.

With regard to the case of my friend, if I deal with that before going into the rest of the submissions on Mr Malik’s behalf: the recent decision of *Grant & the Midwifery Council*. With regard to the paragraphs that you have been referred to in particular – between paragraphs 64 and 69 onwards – of course they refer to the test that Mr Silber had previously mentioned. At paragraph 70 of that decision, they refer to the test whereby there is a necessity of determining whether the misconduct is easily remediable – a three-stage test – whether in fact it has been remedied and whether it is highly unlikely to be repeated. I will return to that in a minute.

Of course, at paragraph 74, over the page, it is held that,

“In determining whether a practitioner’s fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.”

I underline the phrase “in the particular circumstances”, which reminds the Panel that although there are clearly judicial principles applicable to the generality of such proceedings that each case has to be determined on its own merits and in accordance with its own facts. Of course, at paragraph 76 they repeat the test that Dame Janet Smith in the *Shipman* report also set out at (a), (b), (c) and (d) – I will not read those all through; the Panel doubtless will consider them – and made it clear that those matters in the public confidence element, as it were, would equally apply to other health professionals. It is submitted that, whilst this case does indeed, as my friend has said, restate the importance of considering the public considerations, as well as that three stage test, in my submission even taking this into account the Panel would be justified in making a finding in this particular case that Mr Malik’s fitness to practise is not impaired.

In terms, of course, of the mitigating factors on behalf of Mr Malik, prior to the Panel’s finding this morning, there were no findings of any sort in relation to any dishonest nature and that should still be accorded significant weight in relation to fitness to practise. There is no allegation of dishonesty in relation to his professional dealings with members of the public. In terms of the drug use now – the misconduct – and indeed I suppose in terms of the dishonesty that the Panel has found it could be submitted that there has not been evidence of any direct impact upon any identifiable victim. There is no evidence before this Panel that any member of the public was directly put at risk at all. The offences themselves were not connected to Mr Malik’s profession in any way. They were outside his work and do not relate to any dishonesty within the workplace, do not relate to any allegations of malpractice or such like within his profession. They did not involve an abuse of trust in that sense.

As indicated earlier, it is submitted that in fact Mr Malik has shown insight – showed instant insight – in making those arrangements to deal with his problem and in fact, to have halted altogether his escalating drug use by the time he had pleaded guilty. And he made arrangements to deal with that prior to his conviction.

Again, I remind the Panel this was a first offence for him in terms of criminal matters and in disciplinary terms. Again, it is submitted that there is not any risk to the public, there is no evidence of any risk to the public, before the offences with the drugs were committed, or during the time when he was using drugs or indeed after. Likewise, there is no evidence either of any poor professional practice or standards in terms of his dealing with the public, either before or after the offence. It is submitted that, when one looks at this young man’s life overall – he is 28 now – and as his statement describes, the

majority of his life has been dedicated in the confines of his strict Muslim upbringing to advancement and to education, both at school, thereafter at university and then within his professional career. It is submitted that, notwithstanding the Panel's finding of dishonesty on one particular aspect, that should not detract from the Panel's ability to find that the vast majority of his evidence and certainly evidence that would be important as to mitigation of fitness to practise is true. It is submitted that it is demonstrably the case that he had not been in any sort of trouble and not been a drug user before and, upon his evidence had not – even, I dare say there were many opportunities, possibly at school, undoubtedly I would imagine at university for him to have used drugs had he chosen to do so. There is no reason for the Panel to reject the evidence that he gave there that he had not been interested at all at that stage. It was only as a result of those very particular circumstances of his life, outlined in his statement and in his oral evidence, that led to him taking the unfortunate path and using drugs under the influence of his cousin.

Again, I would invite the Committee to give full weight to the circumstances that Mr Malik found himself in and not to underestimate in any way the social pressures that he faced – social pressure that perhaps many others from his background face, whether male or female, born to strict Muslim Pakistani parents, whose social and religious standards and mores may be different from those of their offspring, growing up in a more liberalised western country and society. One can only imagine the true emotional despair and difficulties that Mr Malik did face as described in his statement, whereby he not only had what had been a very significant relationship for him of some four years had come to an end, causing him distress, but it also at that stage appeared to him that his family relationships were fracturing. There was clearly a considerable worry for him that he may lose contact with his family as well.

Again, the Committee are reminded - I hope it is uncontroversial that those would be accepted – I invite the Committee to find that those matters and the explanation he has given of those circumstances are entirely accurate and trustworthy and that he was, therefore, placed in a position where he felt under very, very considerable pressure, the confluence of various influences upon him, which had the effect of him feeling extremely pressured and unhappy. As we have heard, owing in part towards the cultural difficulties of not having any colleagues from the same work background as him, it led him to seek advice and discussion and understanding with his cousin, who could appreciate those difficulties.

We have heard – and he has been, he has submitted, frank – in his evidence about his drug use with the cousin and that is the path he took. But again, in the context of his life, the Panel are reminded that it was only a two-month period and that, set against everything he did before and everything he has done since, was a very small period of his life and was demonstrably, it is submitted, as a result of the confluence of those particular factors at that time.

Dealing first with the three stage test before going back to the public, could that of course be remedied in terms of the drug use and that element of the conduct? Well, it is submitted that clearly it could be remedied, whether it is

easily remediable, whether or not 'easy' would be the adjective Mr Malik would use, I am uncertain, but the submission and the evidence is that he has remedied, that it has not been easy, as he explained to you. The family pressures remain, he has still not been able to tell his family about the distress and the shame, as he described to the Panel, that he feels. But in terms of the misconduct and use of drugs – is it easily remediable? Well, it is remediable, it is submitted. The second part of that, whether it has been remedied, the submission is that it clearly has.

Thirdly, a matter of judgment for the Panel to a certain extent – I have addressed my friend's comments about whether or not it is likely to be repeated – I refer you to the comments I made earlier upon that in terms of insight. But also, I invite the Panel to consider and contrast the circumstances that Mr Malik was dealing with and subject to at the time of these offences, with his current circumstances and, perhaps more significantly, with his hopes for the future. Of course, he told the Committee that he has perhaps with some reluctance but nevertheless, bowed to the inevitable and bowed to family pressures and his family wishes and he is now cooperating with his family in terms of the search for a wife. He has given evidence to the Panel that that is likely to be an arranged marriage, although he has met a number of potential suitors, as he explained, and he has indicated that that is likely to take place next year.

He has also indicated to the Panel – clearly subject to the Panel's decision - that, all being well, his future intentions would be, after gaining experience in a number of places as a locum, to set up on his own business and actually to run a business. Clearly, therefore, he has plans that he would wish to put into action and, if he is able to do so, there would be two very significant factors that would, I hope, give the Panel confidence that there would be stability in this young man's life. The responsibility of actually running and set up a practice if he were able to do that in the future is clearly an onerous and all consuming one as the Panel members will be aware. Secondly of course, on the domestic front and the familiar front, there will be stability and hopefully cause for great celebration for him next year and a relationship that clearly he is going to want to make work. These are all matters that are taking him speedily and further down the road away from that path of drugs. There is absolutely nothing in what he has said and in the evidence presented to you that would, in my submission, give the Panel any indication that he is at any stage about to do a U-turn and head back down that road, to drugs.

At this stage, the Panel is able to take into account testimonials and if I get my page numbers right I would refer the Panel in the Registrant's bundle, please, to the three references submitted on Mr Malik's behalf. The first one is at page 10 of the Registrant's bundle, headed 1 May. This is from Mr Sanghera, who as we have heard was aware of the conviction, was surprised by it but, as you can see – I will not read the reference through, the Panel will have seen that; I would urge you to consider again when considering your fitness to practise decision – but he does describe Mr Malik as,

“The most reliable and efficient, hardworking and honest person I have come across. He is a true professional.”

He was very surprised when he heard about the conviction and he says that he would in terms, hope to see him working again, he would certainly be happy to employ him. He of course as a dispensing optician is aware of the importance of these proceedings and it can be inferred that Mr Sanghera clearly is absolutely confident in Mr Malik’s ability to practise efficiently.

The second one, at page 11, from Mr Patel, who is a pharmacist, is a personal reference in terms of the fact that he is not somebody who has worked with Mr Malik in the past. But he does know him and he gives information upon his personal qualities. He considers that the incident, as you can see – and this is somebody who has known him for some time, for six years, and his family – he describes the drug incident as being completely out of character. He considers that Mr Malik has learnt from it and he confirms that he was under stress. It is also clear that he has had, it would also appear from the penultimate paragraph, a discussion with him about obligations upon professionals as a pharmacist.

The third reference at page 12 is from Gemma Claridge. Miss Claridge does not mention the conviction. She is not aware of the conviction, Mr Malik said, or was not aware of it when she gave this reference. I can confirm that Mr Malik and certainly my firm have been attempting to get in touch with Mrs Claridge – or Miss Claridge – to see if awareness of it would have made any difference. But I am not sure whether she is on holiday but we have not been able to go back to her. In fact, in my submission, that does not detract from the reference at all. In fact, on the contrary, it adds weight to it because unencumbered, if you like, by any knowledge of the background and the conviction, Miss Claridge concerns herself solely with how Mr Malik was at work. You can see that she worked with him from October 2008 to November 2010 and of course that would have included the brief period, I believe – yes, Mr Malik has confirmed – when he was using drugs. Again, she backs up in fact what he told you in evidence that he has always presented professionally, he is punctual and he had worked to achieve better than expected results. His rapport with customers was good and so and so forth. She also describes his sales as being to the highest standard and he has exceeded his targets.

So again, the evidence that is before the Panel of his current fitness to practise all points positively towards Mr Malik. Again, when Mr Malik gave his evidence, in relation to the findings of dishonesty, the Panel have indicated that there were certain aspects of the factual evidence that the Panel were not persuaded by and it may well be that the Panel were not impressed, perhaps, by the cocky manner – if indeed the Panel found some of the sentiments or the manner of their expression to be cocky – from Mr Malik. But he told you that the reasons that he had painted himself in those terms was because where he had worked, I think he described it in terms of being best in the various jobs that he had undertaken. To a certain extent, those references do speak very highly of his professional expertise and his relations with staff. Therefore, although the Panel may well themselves have chosen to put

across points in a different manner – I may well have done – that is Mr Malik's personality and the essential submission is that he has done his best at all times for his customers. There is no evidence that, notwithstanding this difficulty at a certain point in his life, his fitness to practise was impaired.

Of course, the case of *Azzam v GMC* [2008] EWHC 2711, and indeed the guidance for the GOC, stresses that it must behave as a Fitness to Practise Panel to consider facts material to the practitioner's fitness to practise looking forward and for that purpose, taking into account the evidence as to his present skills or lack of them and any steps taken since the conduct criticised to remedy any defects in skill. Well, it was also held in that case, I think by Mr Justice Coombe, that evidence of a practitioner's overall ability is relevant to the question of fitness to practise. With regard to the central points, it is submitted that the only evidence is that this gentleman is fit to practise – the only evidence is not estimated on competence but competence plus. It goes beyond that. He has always performed extremely well wherever he has worked. Indeed, he told you that himself. During the finding of certain of his evidence, you may have treated that with some scepticism or been tempted to but for the fact that there is additional and independent evidence from two professional sources, which back up his high standards in practice.

It does not of course follow from the conviction that his fitness to practise is impaired. In terms of the Panel's finding of dishonesty, of course that has only been made in the last hour. Mr Malik has not had the opportunity to demonstrate ongoing good fitness to practise. It is submitted that that ought not to detract from the Panel's overall finding, particularly when there is no evidence at all of any dishonesty in the direct professional content – by that, I mean in his day-to-day dealings as a dispensing optician with clients and members of the public.

Therefore, in brief, looking forward, the evidence, it is submitted, is that fitness to practise is not impaired at all and it is submitted that he has demonstrated that, on his own evidence and on the evidence of his referees. Indeed, he said earlier in evidence and you will have given it such weight as you consider appropriate – and again, I draw the distinction between the manner in which the evidence was given and the evidence itself – but Mr Malik's essential point was that he did not feel that the public were at any risk at all, because he was getting good feedback, as it were, from his various employers. Therefore, he did not feel, notwithstanding his conviction that the public were at risk. We know he was aware of the GOC's function to protect members of the public. As already indicated, it is not for him to take that decision, of course. It is for this Panel today. But that was his belief, which may very well have been mistaken.

In terms of returning then to the point my friend makes, which is aside from the personal elements, the Panel's duty to look into the public interest, as restated in the case before you, as indicated clearly public confidence in the profession can be undermined and it is important, if a finding of impairment were not made in particular circumstances, it is what the paragraph 74 is looking into. The Panel has to consider particularly the public issue and the

need to uphold those standards of public confidence. It is submitted that *if* the Panel were to make the finding that Mr Malik's fitness to practise was not impaired, that would not impact on public confidence at all, because if the Panel were so persuaded to make such a decision, it would behave that as per these submissions, the misconduct which was essentially unrelated to the actual profession at that stage and was for a very small period of time, would have been placed into context by the Panel. Hopefully, the Panel would have been persuaded that there are no ongoing issues and there is no evidence of issues.

Whilst it is absolutely essential that public confidence in the profession is maintained, where, as in this case, there are no allegations relating directly to members of the public, it is submitted that the Panel can consider the obligations towards maintaining public confidence and when looked at in the particular circumstances of this case and looking at everything that Mr Malik has done since that, the public do not need to be protected from this Registrant at all. The evidence is that in fact his continuing as a practising dispensing optician would be to the public benefit, in particular in relation to his evidence and indeed those of his referees.

So unless there are any other points upon which the Panel specifically wish me to deal with, the submission is that notwithstanding the admitted misconduct and the findings of misconduct, that does not equate to fitness to practise and looking at being impaired and looking forward, taking into account the totality of the evidence and the demonstrable sincerity of the shame that Mr Malik feels, and the embarrassment, there is unlikely to be any repeat of this conduct. He just wishes to concentrate upon establishing his career.

So, Madam Chairman, unless there are any other points that you or your colleagues specifically wish me to address, or need to address those, those would be the submissions at this stage.

Lady Wall: Thank you.

Dr Azubike: Just one thing to clarify for me, Mr Payne, because I was not quite clear: you refer to the drug use being over a two-month period.

Mr Payne: Yes.

Dr Azubike: I got slightly confused whether you were arguing that it was an isolated lapse and that the drug use did not extend over a prolonged period. I was not clear what the evidence meant.

Mr Payne: I was suggesting that the evidence is that the drug use – I used two months because the evidence was March and April and I think right at the beginning of May, so I used 'two months' as a shorthand. But in the context, in my submissions, of Mr Malik's life, that is a short period. Clearly, it was extensive during that two month period, Doctor, but that is the submission, that taken into context there was no prior and there has been no use since.

Dr Azubike: Okay, that is fine.

Mr Coleman: Madam Chairman, the question that you have to determine at this stage is whether Mr Malik's fitness to practise is impaired by the reason of the misconduct and/or the convictions that you have found proved.

In relation to impairment, questions of the burden and standard of proof have no application. They are matters for your professional judgment, having regard to all of the material available to you. I am grateful to Ms Gillet for a copy of the authority of *Grant* but, having looked through it as quickly as possible, there is nothing in it that adds or improves on the excellent synopsis of the treatment of the issue of impairment that is to be found in the Guidance that you have copies of and which is freely available on the GOC web site. For the record – and also for the benefit of Mr Malik and Mr Payne – I shall read out the relevant paragraphs, all of which remain valid and, as I say, notwithstanding anything said by Mr Justice Cox in the *Grant* case. The Guidance, which I uphold and commend to you, reads as follows:

“There is no statutory definition of impairment for fitness to practise. It is clear from case law that the decision on impairment should be a separate decision from the decision on whether what has been found proved amounts to misconduct, deficient professional performance or adverse physical or mental health, etc. Having made that decision, the Committee must go on to determine whether, as a result, fitness to practise is impaired. It may be that, despite a registrant having been guilty of misconduct, for example, a Committee may decide that his or her fitness to practise is not impaired. The Committee must also take into account in determining impairment whether the conduct that led to the allegation is remediable, whether it has been remedied and whether it is likely to be repeated. Certain types of misconduct – for example, cases involving clinical issues – may be more capable of being remedied than others.

In coming to a conclusion on impairment, the Committee must look forward, not back. It may be that what the registrant has done is so bad that looking forward, the Committee is persuaded that the registrant is simply not fit to practise without restrictions or maybe at all. On the other hand, what the registrant has done may be such that in the context of an otherwise unblemished career and taking into account remedial steps taken by the registrant, the Committee may conclude that looking forward, fitness to practise is not impaired, despite the misconduct.”

So it has emphasised the point and the time for considering determining the issue of impairment, not the time when there was the misconduct performed and/or when the criminal offences were committed.

Unless there is anything else that is urged upon you, that would conclude my advice to you on this issue of impairment.

Lady Wall: Thank you very much. In view of the time, it would seem sensible to break now and to come back at two o'clock?

Mr Henley: Everyone to be available, say, from an hour from now? Then we can always call them in.

Lady Wall: Yes. All right. So a quarter to two. That allows plenty of time to go and have a break. Thank you very much. We will let you know at quarter to two where we are up to.

[Hearing adjourned at 12.39]

[Hearing resumed at 14.12]

Lady Wall: These are the Committee's findings regarding impairment:

The Committee has already found that Mr Malik did not give reliable or truthful evidence about his drug use and the reasons for his failure to notify the GOC of his convictions in July 2010.

In the discharge of his responsibilities to the public, the public interest and its duty to uphold the reputation of the profession, the Committee is seriously concerned about a number of matters.

The evidence is that in April last, 2010, a little more than a year ago, Mr Malik was found in possession of large quantities of cocaine and cannabis. Although he has subsequently attended a drug rehabilitation centre in Cambridge, there was no material before the Committee that corroborates Mr Malik's evidence that he has remained drug free since last May. The Committee has heard that Mr Malik has failed to disclose his convictions to all his employers and, furthermore, that he has not yet informed even his parents of his drug use and convictions.

The Committee is satisfied that Mr Malik lacks insight into the effects of his drug use on himself or those around him. In particular, it attaches importance to the fact that in his evidence Mr Malik flatly denied even the possibility that his drug usage may have had an adverse effect on his patients and customers.

In the circumstances, while it accepts that Mr Malik has taken some steps to remedy the causes of his appearance before it, the Committee is satisfied that Mr Malik's fitness to practise as a dispensing optician is, and will remain impaired for so long as these causes for concern remain outstanding.

It occurs to us that both representatives might like a short break at this stage to consider the implications of our findings.

Ms Gillet: Thank you, Madam.

Lady Wall: Five, ten minutes?

[Hearing adjourned at 14.14]

[Hearing resumed at 14.27]

Ms Gillet: Madam, in relation to the Council's submissions on sanction it is a matter of course entirely for the Panel in deciding in their professional judgment. I would only seek for the Panel to be aware of – although of course you are – that in a matter of dishonesty you have found against the individual and in those circumstance, it would be proper to mark the misconduct against him.

Lady Wall: Thank you.

Mr Payne: Madam, can I first seek clarification? Obviously, I have made a note of the reasons given, because it goes, obviously, to what my instructions are and in terms of sanction. I think, Madam, he said that failed to disclose to all of his employers and it may be that there was some ambiguity in the way that I read that, because of course, his evidence was that he had told some employers but not others. And is that what the finding was? Or was the finding that he had not disclosed it to any of them at all?

Lady Wall: The finding was that he had not disclosed it to Specsavers, so it was 'all' in that sense. Yes, we accept that two employers knew, but not all.

Mr Payne: Thank you. I thought that was the case but the way I had recorded it at some place. In terms of the potential sanctions, obviously Mr Malik has heard the brief summary and again, if my short note was correct, the Committee was concerned about quantities of drug use and that there was no corroborated evidence – ie: no evidence other than what Mr Malik has told you – about him no longer being a user of drugs. That was the one thing. The Committee was satisfied from the evidence that Mr Malik had not demonstrated insight into the effect of the drug use and that he had denied it had an effect upon his fitness to practise, the second point. And that, flowing from that, further the Committee was satisfied that the fitness to practise is currently and will remain impaired, for so long as those causes remain outstanding. So that if I have said that correctly, we are looking at two matters then of corroborative evidence that there is no longer drug use and secondly, the demonstration of insight.

Now, before addressing you directly on the sanctions, my instructions from Mr Malik are clearly that he is willing to do whatever he can and to demonstrate to the Committee and to the profession that these should no longer be concerns and that his fitness to practise should not be impaired. To that extent, I suppose I am asking the Committee for some guidance almost as to what you have in mind. Because in terms of looking at the sanctions, obviously it follows from that, presumably, that the Committee is considering sanctions. I do not know at this stage whether the Committee would be

prepared to indicate what sort of sanctions are being considered, because it may have an indication as to how I address you.

Lady Wall: The Committee has an open mind, although it is fair to say that the last clause of the last sentence may indicate some preferences.

Mr Payne: Yes. Well, that being the case, perhaps in addressing the Committee upon sanctions clearly the purpose of that sanction, as the Guidance made clear of any sanctions, is not to punish the registrant but is to protect patients and the wider public interest. Of course, from the summary given there and indeed from the evidence, there is no evidence of direct threat to members of the public in that sense and I take it there is a broader concern on the insight issue and the potential consequences of that, unless the Committee can be satisfied that that insight is reliably demonstrated. Taking that into account, Mr Malik, obviously, faces a problem in that he has told the Committee and the Committee have accepted but remain concerned about it, that he felt that in his very brief period of drug use, his professional abilities were not impaired and he feels that that was borne out, of course, by the testimonials that he produced covering that period. So, with regard to that aspect of it and his ability at the time, he is in difficulties because he does not feel that he can say anything different about that. That was the past and that is the matter that he is on record as having said.

So looking forward of course, in order to demonstrate that he does fully appreciate that drug use and so forth can, clearly, affect one's professional performance and abilities and thereby can clearly affect members of the public, he would be, in looking to satisfy the Committee as to that in the future, it would seem starting at the lowest, that a financial penalty is not going to assist in those concerns at all because that would not begin to address the ongoing concerns of the Committee.

Looking up in ascending order, as it were, in terms of conditions to be followed by a review, it would be submitted that that would be the most appropriate and proportionate way to deal with matters. Clearly, we should consider them in ascending order, starting with the least severe. For the reasons given it seems that a financial penalty, although within your ambit, would not address your ongoing concerns and the Committee would need to be able to address those concerns and also to be satisfied on review that those have been dealt with. It is submitted that again perhaps going up the ladder a suspension and review of up to 12 months would not be proportionate in this case, particularly in view of the evidence and record of the actual care that has been provided.

I draw distinction here between the testimonials, which do demonstrate objectively that the public has not been put at risk and do demonstrate objectively that the public has continued to receive a good service. What those testimonials cannot and indeed do not deal with – or perhaps the personal one offers a personal opinion – but clearly those testimonials cannot deal with the concerns that the Committee has expressed in the summary of reasons. So they cannot really take us any further in that regard but it is

submitted that due weight should be given to them in considering sanction, because what they can do is provide weight to the registrant's submission to you that the public would not be put at risk by him continuing to practise.

You have heard from the Registrant that in fact he has plans, his future plans – subject of course to the disciplinary sanction being imposed by the Committee – would in the fullness of time be to look to run his own practice. Clearly the Committee would have concerns, dependent upon your decision, of that happening. So the Committee again would need to be satisfied that your concerns have been addressed in whatever aspect, frankly, Mr Malik continues to practise, whether as an employee, as a locum, or looking in the future, to have his own business.

So, Madam, members of the Committee, the suggestion would be, given that a financial penalty would not address your concerns, if you accept my submissions upon that and you accept the submissions on suspension, the way that this could be dealt with would be by means of conditions. Now again, thinking of matters – and I will bow to the Committee upon this and of course your Legal Adviser as to any potential suggestions – but matters that strike me would be that the best evidence of somebody being free of drugs is drug testing, whereby clearly they are very sophisticated hair analyses and various other samples – I do not purport to be an expert upon the same – but they certainly can demonstrate over considerable periods of time that somebody is free of drugs. For example, on Mr Malik's instructions if he were to be tested today, what he says is that that would demonstrate that he is free. Again, I am not an expert but the drug testing, if it was a hair sample, may be able to tell you how long he was free - and I am sure that the members of the Panel know more about this medically than I do and would have some idea about what indication that could give as to the past. It may be that that should be looked into at a future date, perhaps one or two future occasions as well, at suitable intervals.

That would seem to me to be a way of physically demonstrating incontrovertibly and incontestably that what Mr Malik is saying to the Committee is true. That would provide corroborative evidence for such a period as the Committee would consider appropriate that he is no longer using drugs. Indeed to the extent that tests can establish past lack of use, it can corroborate what he said about that.

In terms of the insight and the understanding, again it would seem that a condition may well be appropriate, whether or not there will be further courses of any nature or continuing education that the Committee would consider appropriate for Mr Malik. I am thinking aloud really – and that is why I asked for the Committee's guidance on this – as to ways that the Committee itself could be satisfied that Mr Malik could demonstrate to you that he has reached a level of understanding, an insight of the damage that the use of drugs could have.

So, Madam, it strikes me that conditions would be appropriate in that sense. Clearly, these findings will be publicised and any future employer, locum or

otherwise, will be aware in any event. So any condition to notify anybody may well be superfluous but the Committee may feel that that is absolutely appropriate as well. Those really would be the submissions that the suspension, looking into proportionality and of course, the purpose being not to punish the Registrant but to protect the public, the submission would be that taking into account the evidence – and of course as I said earlier, just to summarise, the brief reasons that we did not mention the public, other than in the broader sense of the insight point – so the submission would be that Mr Malik should be allowed to continue in practice but with such conditions as the Committee think would be appropriate to address those specific concerns.

I have suggested the drug testing. I have suggested perhaps courses or education. We have had stuff from Addaction but it may be that the Committee will have other points in mind. All I can do is stress upon this client's behalf, on his specific instructions in the brief adjournment that the Committee were kind enough to grant us, that he has indicated that he will do whatever he can to demonstrate and as soon as he can or within what timescales the Committee would consider appropriate, but this of course this matter may not be uppermost in your mind. You may want to have demonstrated over a period of months that the insight and so forth is developed.

So, Madam, unless there is anything else that I can assist the Committee with at this stage?

Lady Wall: No, we don't have any further questions at this stage but what you have said has been very helpful. Thank you.

Mr Coleman: It is for me to give advice about this stage of sanction but I propose to give no advice other than to refer you to the Guidance in that you have received, in relation to available sanctions, and which the purpose of sanctions is clearly set out and the relevance and importance of proportionality and reasonableness are emphasised. So those relevant pages in the Guidance are pages 18 and those following page 18, all the way through to page 23. So those are a matter of record and you will doubtless consult them as and if you regard it as necessary. I don't think there is any further advice that I can give.

Lady Wall: Please withdraw. Thank you.

[Hearing adjourned at 14.42]

[Hearing resumed at 16.54]

Lady Wall: Ms Gillet, this is the Committee's decision. Nevertheless, we are asking whether you have any observations.

Ms Gillet: Madam, thank you very much for the time. It has allowed me to take instructions in relation to some matters which have come to my attention. The Council are concerned in relation to the Panel's findings on impairment and

therefore the proposed sanctions. The reason for that is that the Council have not alleged and do not seek to allege that Mr Malik continues to use illegal substances. The allegations are quite succinct in that sense, that by virtue of his convictions simply possession on that occasion and his dishonesty in not informing the General Optical Council of those convictions, therefore his fitness to practise is impaired. On the view of the Council, there has been no evidence put before the Panel on behalf of the Council or by Mr Malik either intentionally or inadvertently during his evidence to suggest that he is.

Of course, all that is said with the utmost respect for the Panel's right to make a decision on and findings that they see fit from the evidence that you have heard, in order to protect the public. However, in light of those submissions, the Council do respectfully ask the Panel to consider their decision in relation to impairment. I appreciate that that is a step which we have already moved on from and in that sense we are now considering the issue of sanction. However, again on instructions and having had some time to consider the issue, it is felt that it is inherent in your powers to do so, if you are minded to, although that stage has now passed.

In my submission, if I can take it away from the facts of this particular case, if we were to imagine that a simple error – technical, legal error, for example, which of course this is not, but if this were a simple technical error – it would be illogical to suggest that the Panel should not revisit it at this stage, rather than seeking to go through a much more lengthy, potentially more onerous alternative route at a later stage.

Lady Wall: This is not a technical error, this is a very carefully considered and drafted finding regarding impairment –

Ms Gillet: Please be sure that the General Optical Council is in no way suggesting that that is not the case. It is simply the case that, as those were not the facts that we alleged, it was felt that it would be necessary formally to state at this stage that we are not, on the Council's behalf, alleging that Mr Malik is currently using illegal substances.

Lady Wall: I think we accept that that is the Council's position but this is an independent Committee and we have carefully considered all the evidence which we have heard and we have heard what Mr Malik has said about that. [Pause] Mr Payne?

Mr Payne: Madam, in view of my friend's comments, I have heard what she said and am grateful that she has sought to raise the matter at this stage. Clearly, as she has said, it is not a technical matter and it would be within your gift if, in my submission, the Panel were minded to wish to look at it again. I am afraid I do not have the references at my fingertips but I know my analogy with the Civil Procedure Rules that even at a stage – because it happened in a case in which my firm was engaged in this week, in a civil case, where a judgment had been handed down, subject to editorial corrections – that even at a late stage it is possible to make applications to amend in that regard. But

it may even be, Madam, in view of your comments that the Panel would not be minded to look at that.

Madam, I would support my friend to this extent, that clearly the Panel are entitled to come to such decisions on matters of judgment as they can and that is an entitlement. I clearly support my friend in the way that she puts this point for consideration now, in that the GOC did not put the matter that way and I could also accept that this is an independent Panel, with discretion to deal with matters. But my only observation would be with regard – it may be that my observations and comments, likewise, ought to be more suitably dealt with if appropriately advised at a later stage – but in fairness as the issues have been raised at this point, I would simply say that when Mr Malik was available for cross-examination on this point of whether he was currently using drugs, my recollection – of course, I have not made a note of everything – is that I dealt with it in examination-in-chief. He was not challenged on that point by my friend, or my recollection was that he was not challenged in any detail by members of the Panel, which would lead, obviously, to an examination of the evidence that led the Panel to come to those conclusions.

Those would be my observations on a preliminary basis, if the Panel were minded to re-look at the matter as my friend has indicated. I could not refer you chapter and verse but I believe it would be inherent at this stage for the reasons I have given.

Mr Coleman: Mr Payne, have you read the latest provisional copy of the Determination?

Mr Payne: Yes, I have.

Mr Coleman: Have you seen the reference to the fact that the Committee would be making no finding?

Mr Payne: Yes.

Mr Coleman: So can you please clarify: in what respect do you say, what reasons does the Committee need to revisit its decision as to impairment and presumably also as to sanction, in the light of that proposed finding?

Mr Payne: These are the conditions. I have not seen full reasons of findings. But the note of the original, the summary decisions, followed that – I think it is not in there, in the new draft – but what was stated earlier was that the Committee had found that that wasn't any corroborative evidence in relation to Mr Malik's assertion that he was no longer taking any drugs. Then the following point being that that led to the Committee's belief and judgment that there wasn't insight. They were not satisfied, it was clearly inferred that the Committee were not satisfied that he had ceased to take drugs from that wording. That is the way I understood it, Madam, saying, the way it was expressed in that regard, that there was no corroborative evidence. Then the other parts of the Committee's findings, as summarised, as I saw it, flowed directly from that. They were certainly connected with that on the insight point as well.

These of course are the conditions and it is certainly the case that that has moved in the conditions but I think those were separate to the question of the actual findings.

Lady Wall: The Committee found, if I go back to findings regarding the impairment, that Mr Malik did not give reliable or truthful evidence about his drug use and the reasons for his failure to notify the GOC and we have found in that respect he was dishonest. That is very clear in the first sentence and that was our starting point. We also know that he has failed to disclose his conviction to all of his employers and that, furthermore, he has not yet informed his parents.

That is a matter of concern to us and I am sure that any Committee that has the responsibility that we have to balance Mr Malik's and also the needs and concerns of the public, is going to lead, as we are told very many times, to a balancing act and is a matter of judgment. I don't think that those findings to which I have referred can actually be disputed.

Mr Payne: Madam, this is my friend's application, in which you have invited me to make comment. I am not making an application –

Lady Wall: But you appear to be supporting her?

Mr Payne: I am, yes. But it is not my remit –

Lady Wall: But it is those comments you address further, it is clear –

Mr Coleman: Madam Chairman, may I suggest that there is a limit to the amount of argument or submission that can be given over to this issue at this particular time? I am aware of no judicial basis that will enable you to return to your finding of impairment. This is not a case of an error or a smear that can be corrected at this stage. It is not an instance where you have made or can be shown to have made a mistake on the evidence or there is other evidence that you have overlooked that therefore means that you have to go back to revisit the issue of impairment. You have made your decision and the reasons are clearly stated. Even if I could be prevailed upon to advise you that you did have power to revisit, it would be inevitable, in my advice, that any further findings would have to be more favourable to the Registrant rather than less favourable. As it is, on the basis of the finding of impairment made, you are proceeding to impose conditions, so it would seem, and those conditions involving drug-testing are exactly the very conditions that are being proposed by Mr Payne on the Registrant's behalf.

In the circumstances, I advise you to consider what you have heard from Ms Gillet and from Mr Payne and to have a brief discussion *in camera* as to whether, in relation to your determinations on impairment and/or on sanction, there is any revision that you would care to make, make your decision *in camera* and then conclude the matter in the usual way. However, I still feel slightly unclear and vague when I invited and suggested that you might hear from Mr Payne. I was not necessarily asking for Mr Payne to be making

submissions in connection with Ms Gillet's application, more as a matter of whether he had any comments to make about the proposed order that you were going to make on sanctions. So before perhaps you go into *camera* finally, you could call on Mr Payne just to indicate whether he has any further comments to make in relation to the proposed draft Determination and sanction.

Mr Payne: Thank you, Mr Coleman. Again, I had understood, Madam, that you were inviting me to comment on my friend's application, which is why I did so. But as I say, it was my application and I would have held my tongue otherwise. But if I spoke out of line, then I apologise. But that was what I was understanding you were inviting me to do.

With regard to the proposed directions, yes, I am grateful for the discussions that I had with Mr Coleman and my friend earlier and I can see that certain amendments have been made. Could I just raise a couple of practical points, again bearing in mind the purpose of the conditions that the Panel wish to impose to protect the public, and so forth? Number 3 is the obligation to notify the Registrar within 14 days of commencement of any professional appointment that Mr Malik may accept.

The difficulty with this is that Mr Malik informs me he is doing a lot of locum work and sometimes, these could be for as little as a day. They may be for two or three days, they may be longer. My concern is that the Registrar may be bombarded with matters and notifications when, by the time a notification is received, Mr Malik may already have moved on and if he were to go back to the same place, they may need to receive the same again. It seems to me that that may be unduly bureaucratic, not least for the staff here to process all of this and that that may not necessarily serve the purpose behind the condition. So I would invite the Committee to consider whether or not they would consider that needs to remain as presently drafted, or whether perhaps it should be clarified to be any permanent professional appointment, or any appointment of such length of time – a contract may be two or three months – that the Committee may consider appropriate, if the Committee agrees with me, that otherwise this may cause problems for the GOC whilst not protecting the public.

There is of course at No. 7 in any event, the obligation upon Mr Malik to inform whoever is employing him of these conditions and of course, that clearly says to include any locum agency or any prospective employer when he is going for a job. So the obligation upon Mr Malik is to let anybody know, whether he is there for a day, or there for two days or three days, that he is subject to this conditions and I make no argument about that. It is really that the burden at number 3, on the Registrar.

Just that point at number 3; with regard to orders at 9 and 10, Mr Malik will of course, as ordered, seek immediately to undertake the steps in number 9. With regard to 10, the testing is said to be monthly. Again, as I indicated earlier and I repeat, I do not have the scientific evidence as to how long and how effective the tests that the Panel have in mind would be but again, I do

wonder whether monthly may be slightly too onerous in terms of the bureaucratic burden and whether or not six weeks or every two months would be appropriate which, in my submission, would still, particularly added to the obligation at number 8, have the desired effect, hopefully, of continuing Mr Malik's education in this matter and protecting the public.

The other and final practical point is that since these are conditions imposed by the GOC for the benefit of the public, the conditions are 9 and 10 are silent upon the question of costs of reports and random drug tests. I know not precisely how much these things cost but I assume it would be in order for the GOC to be forwarded the invoices and to pick up the tab, as it were, for these, because these are being ordered by the GOC and for the GOC's benefit, rather than by Mr Malik. So I would ask for consideration of the cost and whether that should be in the order as to who should bear the costs of those tests.

Subject to those observations, I am grateful for the amended order and those would be the only comments I have at this stage, Madam.

Lady Wall: Thank you very much, Mr Payne. It is often a problem when we are imposing conditions that we obviously use a bank of standard conditions and no case is exactly the same. So the Committee is perfectly willing to entertain the practical arrangements and we are happy to do so now, if you withdraw.

Mr Payne: Thank you very much, Madam.

Ms Gillet: Madam, may I very quickly say, in relation to the costs, my understanding is - I will seek clarification - that those would not be something that would be paid for by the General Optical Council. But I will seek clarification and I will let your learned Legal Adviser know during your deliberations.

Lady Wall: Thank you.

[Hearing adjourned at 17.12]

[Hearing resumed at 17.28]

Lady Wall: I would like to make it clear initially that we have listened to your submissions and comments but we are not revisiting our reasons for findings of impairment. This is our determination of the sanctions:

Determination

The Committee has had regard to the Fitness to Practise Panel's hearing guidance and indicative sanctions.

The Committee has concluded that a financial penalty would be inappropriate in this case.

The Committee's decision is that the imposition of conditions on Mr Malik's registration is both necessary and proportionate in the circumstances. The Committee has had particular regard to the principle of the protection of the public. While it makes no finding that Mr Malik is currently using drugs, the Committee remains concerned that there may be a recurrence of the family and social stresses and pressures that, according to his own evidence, led him to resort to the use of cocaine and cannabis in the first place. The Committee is also concerned about his continuing lack of insight as to the effects of his past drug use. With a view to addressing these concerns, the Committee imposes the following conditions on Mr Malik's registration for a period of 12 months:

1. The GOC will enter these conditions against your name in the Register save any conditions which relate to your health. You must allow the Registrar to share any information. The GOC will enter these conditions against your name in the Register, save any conditions including confidential information with any employer, supervisor, professional colleague or any organisation for which you provide ophthalmic services for the duration of your conditional registration.
2. You must also allow the Registrar to share this information with other regulatory bodies and the Department of Health.
3. You must notify the Registrar within 14 days of commencement of any professional appointment you accept while you are subject to these condition – this includes any teaching posts – and provide contact details of your employer and if providing ophthalmic services under an NHS contract the PCT on whose ophthalmic practitioners' list you will be included (this includes any equivalent employer in the EC).
4. You must inform the Registrar within 14 days of any criminal convictions, police cautions or formal disciplinary proceedings taken against you from the date of this determination.
5. You must inform the Registrar
 - a. If you cease working;
 - b. If your work takes you out of the UK for a significant period of time; or
 - c. Of any employment you apply for outside of the UK (and in which countries), as conditions of registration only apply to practice undertaken in the UK (you must consider whether your time out

of work of out of the UK will allow you to fulfil the conditions during the period of conditional registration). The Registrar may inform the relevant competent authorities in that country of your current conditions of UK registration.

6. You must continue to fulfil the CET requirements under the GOC CET scheme to secure appropriate points for continued inclusion on the GOC Register.
7. You must inform the following parties that your registration is subject to conditional registration:
 - a. Any organisation or person employing or contracting with you to undertake ophthalmic services, to include any locum agency;
 - b. Any prospective employer (whether within the UK or the EC);
 - c. The Chairman of the Local Optometry Committee;
 - d. The PCT in whose ophthalmic practitioners list you are included or seeking inclusion.
8. You must ensure that your GOC registration is renewed by 15 March annually while you are subject to the GOC FTP conditional registration procedures. Should you fail to renew your registration a review hearing will be arranged immediately.
9. Redacted.
10. Redacted.
11. Redacted.

A review hearing will be held approximately four weeks before the expiration of this order. The review Committee will need to be satisfied that the Registrant has fully appreciated the gravity of the offence, has not re-offended and has maintained his or her skills and knowledge and that the Registrant's patients will not be placed at risk by the resumption of practice or by the imposition of conditional registration.

That is the end. Thank you very much.

Mr Payne: Thank you, Madam.

[Hearing concluded at 17.35]