



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

GENERAL OPTICAL COUNCIL

IO(10)01

AND

SYED SHAH (SD-808)

THIRD REVIEW OF AN INTERIM ORDER

Monday, 11 April 2011

THIRD REVIEW OF AN INTERIM ORDER: SYED SHAH (SD-808)

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Fitness to Practise Committee: Sir Alistair Graham (Lay, Chair)
Ms Abi Grute (Dispensing Optician)
Mr Rod Varley (Lay)

Legal Adviser: Mr William Hoskins QC

For the GOC: Ms Sarah Knight

For the Registrant: Mr Riz Majid

Hearings Manager: Mr David Henley BEM

[Hearing commenced at 11.31 am]

Sir Alistair Graham: Good morning. Thank you for being so patient while we have had to resolve the matter of our Legal Adviser, as you are probably aware. The original adviser who was nominated for this, has not turned up, for reasons we do not know yet and therefore Mr William Hoskins has stepped in at the last minute.

If I could just go through the formalities, my name is Alistair Graham and I have been elected to chair today's third review of the current interim suspension order regarding Mr Shah. The Committee today is made up of one dispensing optician and two lay members. I will ask the members to introduce themselves. *[Introductions]*

To my right is Mr William Hoskins who, as I have already explained, is the 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 acceptable to the Committee, this will be indicated in the course of his decision on that issue.

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

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

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

Can I first ask whether there are any applications to be made, apart from dealing with the question of the Interim Order?

Ms Knight: No, sir.

Mr Majid: No.

Sir Alistair Graham: Then perhaps I could invite Ms Knight to deal with the application for the interim order.

Ms Knight: Yes, sir. As you have already mentioned, this is the third review application and so it is not my intention to go into a great deal of detail about the background of the matter. I will go through a brief chronology of events with you and make some submissions at the end of that.

The chronology, sir, is that Mr Shah was registered as a student dispensing optician on 11 October 2005. On 23 November 2009 he was briefly registered as a dispensing optician. However, because the Council was unable to verify his registration status in that he appeared not to be qualified, that status was rescinded and he reverted back to having student registration on 2 December 2009.

In about August 2008, Mr Shah had informed his employers, Specsavers Opticians, that he had passed the relevant examinations in order to hold full registration status with the GOC as a dispensing optician. Unfortunately, that was not true because his assertion that he held full registration was actually a lie. The employers had unfortunately allowed him then to undertake the fitting of contact lenses under false supervision, as part of his practical training. You may be assisted, if you wish to turn to page 22 of your bundle, in which there is a statement from a Mr Ingleby of Specsavers, who leads through the events giving rise to the matters before you today. I will not lead you through that particular statement since I think you may already have had the opportunity to read it.

On 19 November 2009, Mr Ingleby discovered when he was checking the website as part of a normal governance procedure that Mr Shah was only registered with student status, and therefore he should not have been fitting contact lenses. There then followed an inquiry within Specsavers and Mr Shah informed Mr Ingleby that there had been an administrative error and that he was definitely qualified and that he would be liaising with the GOC, and would inform them that they needed to update their register. Again, there is further detail about that in Mr Ingleby's statement. As became apparent later on, however, Mr Shah knew full well at that time that he was not fully qualified and he set out deliberately to mislead Mr Ingleby.

On about 20 November 2009, Mr Shah submitted an application to the GOC for full registration, and that is at pages 8 to 11 of your bundle. You will see, sir, that in Section 3, Mr Shah stated that he had obtained the FBDO qualification in September 2008, and that is on page 9 of the bundle. In Section 7, he certified that the information on the form was true and accurate. Section 8 of the form is required to be completed by Mr Mark Chandler, who is the Head of Examinations and Registration at ABDO, in order to confirm that Mr Shah had satisfied the requirements of that examination body: Mr Shah actually forged the signature of Mr Chandler on the form that he submitted to the GOC. That is established in two emails that are at pages 12 and 17 of your bundle, in which Mr Chandler says that is not his signature.

On 22 November, Mr Ingleby knew that he would be working with Mr Shah and he asked him if he could bring his certificate to work, to prove that he was qualified and

was correctly registered with the GOC. Mr Shah produced the certificate to Mr Ingleby and, when Mr Ingleby examined the certificate, he noticed that the registration number was different from that on the correspondence to Mr Shah from the ABDO. Mr Shah was unable at that stage to explain the discrepancy. The following day, Mr Ingleby asked Mr Shah what had happened and he told Mr Ingleby that it had been an error on the part of ABDO, and that they were going to send him a new certificate. In fact, the certificate produced by Mr Shah was a forgery and that fact has been admitted, as you will hear later. Mr Shah then said to Mr Ingleby that there had been an error on the part of the ABDO which, again, was not true.

A few days later, Mr Shah informed Mr Ingleby that he had been given a new GOC number. Mr Ingleby checked this on the GOC website and was then assured that this administrative error that had been previously made had been rectified. On that basis, Mr Ingleby then allowed Mr Shah to continue fitting contact lenses and seeing patients under supervision. Mr Ingleby undertook further enquiries and on 4 December he was informed that there was still a problem outstanding with Mr Shah's registration, and Mr Shah was registered as a student with the GOC.

Mr Ingleby called Mr Shah into his office and again asked him whether there was a problem with his registration status, but Mr Shah again informed Mr Ingleby that there was not a problem and showed him his GOC registration card. Again, that was another lie on the part of Mr Shah. Enquiries of ABDO confirmed that Mr Shah had not passed all of his examinations. Mr Ingleby arranged a further meeting with Mr Shah and in this meeting he eventually admitted that he was not qualified as a dispensing optician; he had not passed his practical examinations, and he knew that he should not have been seeing patients as a trainee dispensing optician and contact lens fitter. He admitted that the certificate that he had shown Mr Ingleby on 22 November was false and Mr Shah was then suspended from work on that day and subsequently resigned his position with Specsavers.

Sir, as you know, an application for an interim suspension order was made on 3 February 2010 and a transcript of the hearing in relation to that application is in your bundle at pages 39 to 76. Suffice it to say that the order was granted and the period of suspension of 12 months was made from that date. Mr Shah gave evidence at the hearing and, in that evidence, he admitted that he had lied initially when he told his employer that he had passed all of his examinations. If you need to refer to that part of the transcript, it is at pages 62 to 63.

Sir, I will not lead you through an analysis of that transcript because that has already been done at a previous application, unless you would like me to go into greater detail about that. Mr Shah was cross-examined by the Council on behalf of the GOC on that day and, as we have already established, he made subsequent admissions.

The only other matter to which I would refer you is that at page 70 of the transcript you will see that Mr Shah gave information about the difference in salary that he received, which was around £4,000, which he received by virtue of his untruths. Also, the Committee established at that time that Mr Shah was checking the work that had been undertaken by unqualified personnel whilst he himself was unqualified.

The Committee, after having heard arguments regarding the public interest, decided, as we have already established, to continue the suspension order. On 11 January 2011, a further review was undertaken and – I beg your pardon, sir, I have skipped ahead here in my chronology. On 19 July 2010, the Committee determined to continue that order and again, on 11 January 2011, there was a further review undertaken and, once more, the Committee concluded at that stage that it was in the public interest for the

suspension order to continue, and the determination of that second review is at pages 99 to 100 of your bundle.

The Committee at that time expressed their concern at the length of time that the matter had taken to list for a substantive hearing and I am pleased to tell you that that has now been undertaken. The matter is now listed for hearing on 15 July. The Committee stated at that time that Mr Shah had committed a number of deliberate acts of dishonesty that were designed to conceal the fact that he did not have the necessary qualifications in order to practice. They stated that they had considered the case very carefully and concluded that it remained necessary for the protection of the public to continue the interim suspension order.

It is also worth noting, sir, that the Committee at that time did not anticipate that there would be any further review hearings. However, on 7 January 2011, the GOC made an application to the High Court for an extension of the order and that order was made by the High Court by consent. The Consent Order of the High Court is at page 101 of your bundle. You will see that the order extended the time for the interim suspension to 1 February 2012.

Sir, as I have already stated, the matter is set down for hearing in July but it is a statutory requirement of the Council to make an application for a further review. If you would like me to take you to the relevant statutory requirements, they are contained in Section 13L of the Opticians Act.

Sir Alistair Graham: What page is that?

Ms Knight: Sir, I beg your pardon. I have been working from a different bundle, but I think it is page 45. You will see that 13L(1) provides at subsection (3) that the order that was imposed in February 2010 effectively must be reviewed every six months. As we have already mentioned, the Council has already had two reviews subsequent to the original Order, that was on 19 July, five months after the initial order, and on 11 January 2011, which was six months after the previous review. On both occasions, the Committees have determined that they were satisfied that it was in the public interest and proportionate to continue the interim suspension order.

If I may take you to Section 13L(6) at page 46 of your handbook, you will see that this gives the Council the power to apply to the relevant court for the extension of time which, as I have already mentioned to you, they did. At 13L(9), sir, on page 46, you will see that there is a statutory requirement of the Council to apply for a review within three months of the determining order. As that order was on 17 January 2011, just after the last review hearing, we are making this application for a further review.

Sir, I have set out the fact that the statutory requirements are being adhered to. In view of the fact that the matter has now been set down for a substantive hearing, there is very little further that I can add to this matter, save to say that this is an opportunity for the Registrant and for the Council to apprise you of any further information that has come to light since the making of that order. Sir, both parties have now agreed directions in terms of the substantive order. There is nothing controversial to put before you this morning. The allegations that have been set out and put to Mr Shah are in your bundle at pages 103 and 104. You will see that those allegations are of a very serious nature and that dishonesty is alleged.

Nothing has changed since the determination of the two previous Committees and, as you know, the Registrant has already admitted to those facts. Sir, unless you would like me to make submissions regarding the public interest issue, I do not really have anything

further to offer you in terms of further evidence, save to draw your attention to the allegations and the fact of the admission of Mr Shah, which is contained at pages 105 and 106 of your bundle.

Sir Alistair Graham: Are you seeking the order in the same terms?

Ms Knight: I am seeking an order in the same terms, sir.

Sir Alistair Graham: Thank you very much. Mr Majid, is there anything you would like to say?

Mr Majid: There are two points, really. The first is that my client is not opposing the order in the same terms. Secondly, he would like to apologise for not being here today, as he has a hospital appointment with a consultant which, if he cancelled, would have meant spending many more months on a waiting list. He apologises for not being here today.

Sir Alistair Graham: Is there anything further you wish to add?

Mr Majid: Nothing else has happened since the last review. I would just confirm what the Council stated.

Sir Alistair Graham: I will just check whether my colleagues have any points they wish to clarify.

Ms Grute: Yes, just one. Can you tell me whether Mr Shah is still working in optics?

Mr Majid: As I understand it, he is working in optics but in a shop assistant role.

Sir Alistair Graham: So he has no clinical responsibilities?

Mr Majid: Not that I am aware of.

Sir Alistair Graham: I will ask the Legal Adviser to advise the Committee on the legal issues involved in this.

Ms Grute: Before we do that, may I ask a question? Can you confirm then that Mr Shah is being supervised if he is working as an optical assistant?

Mr Majid: I could take instructions on that if you would like me to, but I cannot answer you right now.

Sir Alistair Graham: But you are saying that he is not dealing with any clinical issues?

Mr Majid: Not that I am aware of.

Ms Grute: Okay.

Mr Hoskins: Sir, at this hearing the Committee is concerned to review an interim order that has already been made. As you have heard, the parties are essentially in agreement that the interim order should continue in its present terms but, of course, the Committee bears in mind everything that it has heard this morning in considering whether that is the appropriate course. You bear in mind that the grounds for an interim order are prescribed by the Act, to which you have been taken, at page 45 of the bundle, and you need to be satisfied that an interim order is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the registrant. You

need to be satisfied, on what you have heard, that one or other of those grounds is made out, otherwise you have the power to vary or revoke the order if you take the view that that is the appropriate course.

Sir Alistair Graham: Thank you very much. If there are no other issues raised at this stage, I will ask Mr Henley to clear the room so that the Committee can consider this matter.

[Hearing adjourned at 11.55 am]

[Hearing resumed at 12.14 pm]

Sir Alistair Graham: Thank you. This is the Committee's determination on the third review of an interim order.

Determination

The Fitness to Practice Committee reviewed an interim order for the imposition of interim suspension of the registration of Syed Shah for a period of 12 months made by the Council on 3 February 2010. The order was reviewed on 19 July 2010 and again on 11 January 2011 and continued unchanged on both occasions. On 17 January 2011, the order was extended by the High Court until 1 February 2012. This is a further review which was required by statute.

Mr Shah was not present at the hearing due to a medical appointment. He was, however, represented by Mr Majid.

The Committee was also informed that the allegations against Mr Shah would be considered at a substantive hearing listed for 15 July 2011.

The Committee has comprehensively reviewed the existing order today. The Committee was informed by Mr Majid that his client is working as a shop assistant in an optical practice.

The position remains that Mr Shah committed a number of deliberate acts of dishonesty designed to conceal the fact that he did not have the qualifications necessary for his practice. This exposed the public to risk in that, for over a year, he was practising when not qualified to do so.

The Committee has considered this case very carefully and has concluded that it remains necessary for the protection of the public to continue the existing interim suspension order. Mr Shah's representative told the Committee that the continuation of the interim order was not opposed.

Given that Mr Shah admits the allegations of dishonesty against him, the Committee also considered that it is otherwise in the public interest for the suspension order to continue. This is to maintain public confidence in the probity of the profession.

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

That is the determination of the Committee today on this matter. Thank you very much. Once again, I am sorry for the delay earlier today.

[Hearing concluded at 12.16 pm]