

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

IO(12)02

GENERAL OPTICAL COUNCIL

AND

TANVIR KAHLON (01-21980)

Wednesday, 18 January 2012

INTERIM ORDER HEARING

INTERIM ORDER HEARING: TANVIR KAHLON (02-21980)

Wednesday, 18 January 2012

Committee Members: Ms Fran Jones - Lay Chair
Mrs Geraldine Huka - Lay
Professor Stephen Taylor - Optometrist

Legal Adviser: Mr Mark Lucraft QC

Hearings Manager: Mr D Henley BEM

For the GOC: Mr Bradley Albuery

For the Respondent: Mr Sandesh Singh
Ms Ella Power

[Proceedings commenced at 2.13 pm]

Ms Jones: Good morning. I am Fran Jones, and I have been elected to chair today's Hearing of the Council's application for an Interim Order.

The Committee today is made up of one optometrist and two lay members, and I will ask the members to introduce themselves and the capacity in which they sit commencing on my left. *[Introductions]*

To my right is Mr Mark Lucraft QC, 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 the advice on any issue is not accepted by the Committee, this will be indicated in the course of its decision on that issue.

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

remaining persons sitting in the Hearing Room rather than in the public and press areas are members of the respective legal teams.

Please note that in accordance with the Council's protocols the identity of the Registrant will not be revealed until such a time as the Committee announces its decision. Where the Committee decide that an order should be made then the Registrant's details will be revealed, but alternatively if the Committee decide that an order should not be made then the Registrant will remain anonymous. Throughout the hearing the Registrant will be referred to as "the Registrant".

You should be aware that 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, but where matters of health have been discussed the determination and transcript will be redacted accordingly.

Can I enquire whether there are any applications to be made at this stage?

Mr Albuery: Not by me, Madam.

Mr Singh: No, not by me.

Ms Jones: My understanding is that this is not a health case? [*Correct*] Thank you. In that case, can I hand over to Mr Albuery?

Mr Albuery: Madam, I appear for the Council in this case, and my learned friend Mr Singh appears on behalf of the Registrant. Madam, have you and your colleagues had an opportunity to read the Statement of Facts in support of the application, and the bundle of documents which comprises 188 pages?

Ms Jones: We have.

Mr Albuery: May we mark that as C1? [*Agreed*] Madam, other papers have been handed in to you and perhaps we should deal with those now, for the record, as well. These are papers relied upon by the Registrant and her legal team. Should we call that R1?

Ms Jones: That would be very helpful, thank you.

Mr Albuery: Madam, this is a case in which under Section 13L of the Opticians Act the Council seeks the imposition of an interim order, and for reasons I will explain later seeks as is mentioned in the application, an order for suspension.

Madam, I am able to tell you that the imposition by you of an order will not be challenged by my learned friend. He accepts that it is ultimately a matter for your judgment that an order is necessary. The dispute between us is whether it should be an order imposing conditions or a suspension order, and knowing

that, and knowing that you have all read the papers, I will keep the summary of facts brief because it is, I think, relatively uncontroversial.

Madam, the Registrant was first registered with the Council in October 2005, and has therefore been practising for six-and-a-bit years. She has no previous adverse fitness to practise history. She saw Patient A first in 2008, and you have the patient record for that in your bundle between pages 18-21, but I will deal not with that examination, only the ones which occurred on 16 April 2010 and then on 15 April 2011. The patient record card for the examination on 16 April 2010 may be found between pages 13-16 – and I do not ask you to turn to it now unless you want to – and for the subsequent visit a year later on 15 April 2011 between pages 7-11.

In relation to that visit in April 2010 it appears from the record card of the examination that, apart from thinking that his near vision might be slightly worse than when he attended previously two years before, Patient A had no significant symptoms. The Registrant performed routine ophthalmoscopy, and she detected what she believed to be a lesion, and you will have read that she recorded it thus:

“large pale lesion inferior nasal obscuring” then crossed out “BV (blood vessel/s) not distorted. reasonably flat”.

She recorded this as a long-standing lesion retinoschisis – have I pronounced that correctly, Professor Taylor? [Yes] Thank you – and advised the patient of this. This, the Council says, was perhaps surprising bearing in mind the fact that she had seen Patient A herself two years earlier and had detected no such abnormality.

The Registrant took a photograph of the patient’s left eye and said that it showed an area of discolouration and a speck. She asked if the patient had received an injury to his eye in the past, and he said that he had got a bit of metal in one of his eyes previously but was not sure which one. The Registrant indicated that she was unsure whether this was scar tissue and that she wanted to monitor the eye, and for that reason she asked him to come back in 12 months’ time. There was no referral at that stage.

The Council submits that at the very least what this Registrant should have done, or what a reasonably competent optometrist would have done in the absence of referral, which she should at least have considered, was a next visit much earlier than 12 months; she should have advised him to come back in perhaps six months’ time and certainly not 12 months’ time if she felt it was important to monitor what she saw.

The next eye examination was on 15 April 2011, when the Registrant saw Patient A again. Patient A says in his complaint to the Council which you have read that he told the Registrant that his vision when reading was not as

sharp as it had been, and also that whilst the peripheral vision test was being undertaken he had completely lost sight at one point of the main light.

The Registrant took another photograph and, having considered it, determined that it was what she had said, that it was scar tissue. She made no referral but prescribed some reading glasses for the drop in vision and asked the patient to come back again in 12 months' time. You will have seen from the patient record card that after dilation she recorded the lesion as:

“large pale lesion retinoschisis”.

She indicated its size as 2DD, meaning two disc diameters across.

Madam, you have the photographs, in colour I hope, in your pack, and they appear between pages 32 and 39. If you turn with me for example to pages 36 and 37 you will see the retinal image taken as I understand it in 2010, and you can compare that with the retinal images in terms of the size and position of the lesion in 2011 at pages 32 and 33, and also its proximity to the optical disc.

Madam, the Council submits that it is particularly concerning that, notwithstanding the significant increase of the lesion in size in 12 months, its progression towards the disc, the reported drop in vision, and the reported visual field defect, that the Registrant did not refer but requested that Patient A return in 12 months' time.

To complete the chronology, four months later in August 2011, by which time it is accepted that the symptoms Patient A had had become worse, he was diagnosed with a tumour and, as you have read, had surgery to remove his left eye. That surgery was undertaken on 23 August 2011.

In your bundle you have not only the record cards from Boots, which includes those of the practice when it was Dollond & Aitchison, but also the GP records and the records from both Manchester Royal Eye Hospital and then the Royal Liverpool Hospital where I believe the surgery was undertaken.

Madam, the Investigating Committee of the Council will consider the substantive matters in March 2012, but I can tell you that in written representations which have already been received by the Council, and about which no doubt you will hear more later, this Registrant does accept that she made a clinical error, which the Council submits is a very serious clinical error, in her examination in April 2011. I hope I have made it clear, and I repeat it for further clarity, that the Council says both her failure to refer and/or refer back earlier, so request that the patient come back earlier than 12 months' time in 2010, as well as her failure to refer in 2011, is culpable and can form the basis of the application which is made today for an order of suspension. However, I fully accept that it is particularly aggravating in 2011 that, bearing in mind what she saw, she did not refer at that stage.

The Council accepts that it is not the job of an optometrist to diagnose, but it is the job of an optometrist to interpret correctly what he or she obtains as a result of the tests that they have undertaken. I should in fairness to the Registrant make it clear that this is not a case, as so many are, brought on the basis of a failure to undertake the correct tests. The tests were undertaken, but it is a failure properly to interpret what she saw as a result of those tests.

You know that for you to impose an interim order of suspension on the basis of public protection, which is the only limb upon which the Council relies in this case, you have to be satisfied that it is necessary to do so, although if that is your judgment you can, and no doubt will, take account of the fact that properly and very well represented the Registrant accepts that it is necessary for you to make such an order; so if you agree with that, the only issue is what order to make.

Madam, the Council accepts that it must assist you in approaching this in a proportionate manner, and that you must first consider whether there are any conditions which can be imposed which will meet the concerns which you might have, and that if they can be you should not go further than imposing those conditions. The secret of the fact that the reason we come into this room late, and both I and Mr Singh are grateful to you for your indulgence of time, is because we have been considering conditions advanced to us and I have been taking instructions on those conditions. Mr Singh will relate the proposed conditions to you and I will not, but what I should say is that having carefully considered them the Council does not believe, much as it might want to come to a position where conditions would be enough, that those proposed are enough.

The Council does not want to take otherwise good optometrists away from their practice, but in considering its primary duty to protect patients it has concluded that in the unusual circumstances of this case, where the Registrant works alone and with no other optometrists, what is being offered in terms of remote supervision, if it is that, just does not meet the concerns – particularly bearing in mind the fact that the Registrant will not have the support of an on-site optometrist who would not just review records on a random basis but actually be brought into a consulting room, give a view there and then, look at images, etc. It is the lack of that - and I want you to understand that the Council has considered this very carefully - that causes the Council to remain at the position it was at when the application was written, that actually if you have the concerns it does, it must be an order for suspension, albeit you have read the Registrant has shown insight and has begun to do a number of things, all very much to her credit and for which she should be praised to try and remedy the defects which she has seen concerning her own area of practice.

So Madam, the order sought by the Council in this very serious case is an order for suspension for 18 months. If you conclude that an order is necessary and that the proportionate order is one of conditions, then as is customary here I would ask that you give both me and Mr Singh an opportunity to consider the sorts of conditions you are thinking of imposing in terms of their workability from the Council's point of view.

Madam, unless I can help you or your colleagues further, those are my submissions.

Ms Jones: Thank you. Mr Singh?

Mr Singh: Madam, you are looking at me quizzically; is there a question that you have?

Ms Jones: I am listening, Mr Singh!

Mr Singh: It is good to see you concentrating, thank you very much! Madam, can I just outline where we are, although Mr Albuery has outlined it very well to you already? We accept that an order is necessary on the basis of public protection. However, for a number of reasons we would submit that the risk as it stands today can be managed by the imposition of conditions on the Registrant's practice, and that an order for suspension would be disproportionate in light of the fact that there are, as I have said, workable conditions we would suggest, bearing in mind the impact on the Registrant and her family financially if suspension were imposed and also the impact, if a suspension were imposed, on her ability to demonstrate remediation in the long run at any final hearing.

Can I just deal with the background in just a few sentences to give you an idea of the Registrant's history, and also of her current working practice? She qualified as you have heard in 2005 from Manchester and worked for first years at Dollond & Aitchison as a pre-reg, then in a different branch moving on as an optometrist. There was a merger, as you will know, between Dollond & Aitchison and Boots some years ago, and she then essentially went over to Boots, and in 2007 obtained a franchise which you have heard about in Stretford in Manchester towards the end of 2007.

She is the only optometrist that works there, but she employs two other members of staff who are not qualified. They deal with dispensing, management, matters of that sort. It is a relatively small practice and it is one where the Registrant habitually works three to four days per week, and the rest of the time is spent on various family commitments including her daughter who is now nine months old. I should probably say that her husband is a dentist and he sits in the room today for support. She would see on average around 13 patients per day, so 13 patients three to four days a week is the average. It is not an exceptionally busy practice as you can see from the amount of work done and the figures.

On the days that she is not testing sight the practice remains open, but there are no sight tests booked. There are no locums that come in. The practice remains open to deal with dispensing, to book appointments and matters of that sort, but as I say no-one else is employed to test sight.

The first point I made arising out of that background in support of our submissions is this: that in those years there has never been a complaint made against her in respect of her clinical ability, either internally within Dollond & Aitchison or within Boots, to her as part of the practice or to the GOC. This is the first matter in relation to clinical issues which has arisen at all, and I hope you will take that into account in determining the level of risk and the ambit of that risk. Is it a risk that extends to the entirety of her practice, or is the specific kind of case here of some relevance to the risk going forward? I will return to that in a moment.

Just so it is clear, I should probably make this point: given the short timescales, and it is no criticism, these matters inevitably come on very quickly, notice was sent on 6 January and received a couple of days later. It therefore has not been possible to put before you the testimonials because time has been spent gathering evidence of other matters in the bundle that I have already handed up as R1. I hope you will not see that as an inability to put them forward but rather a prioritisation in terms of the material we were trying to obtain to put before you in the short time that we have had. However, I hope you can take her thus-far-unblemished record as an indication of her general ability.

Can I then move on to what essentially are the allegations and the material that you have before you? You are not concerned to find facts today, but it would help you to know briefly perhaps the Registrant's position as to the matters in the bundle. One of the factors that I think may be something you will consider is insight and the effect of insight on the risk to the public, because my submission will be that the Registrant has developed considerable and genuine insight into what went wrong in this case, and she has already embarked on the road of trying to remedy that. As she walks further down that road it must be the case that the risk to patients reduces as a result, and my submission will be the risk as it stands today is significantly lower than it was last year, and it will continue to reduce as she does more training.

Dealing with Patient A, I should mention, as the optometrist on the Committee will appreciate, ocular tumours such as this are pathologies that an optometrist may see only a couple of times throughout a whole career. However, that does not detract in this case from the fact that more should have been done for this patient, and that the outcome was nothing short of tragic. Those are all matters which the Registrant acknowledges, both

through me today and also in her representations to the Investigating Committee which I understand is due to meet in March.

I will not go into the detail of it because perhaps it does not concern you now, but it is apparent from the records that the Registrant misinterpreted what she saw in relation to these retinal images on the second occasion, and that she accepts on the second occasion a referral certainly should have been made. Probably the case is that on the first occasion in hindsight she accepts that at the very least a second opinion should have been sought, and so in terms of looking at the allegations and the matters that are before you, it is not open to me to say that they are baseless. It is quite the opposite, and the Registrant acknowledges that there were shortcomings in her treatment.

The question, you may feel however, is this: has the Registrant learned from this? Has she learned anything from her errors? Whilst you are not making any factual findings I will ask you to accept that the Registrant would act entirely differently if faced with this situation now. Clearly one thing that contributed to no small extent to the incorrect path taken here is the rarity of the condition and presentation. I mention that to say that this is not a case where deficiencies have been identified in multiple areas of the Registrant's practice. This is not a case as one sees often where records have been reviewed and, for example, there are five, six, seven, eight or more individual areas of concern. It is quite the opposite, and so when we look at this case I ask you to look at it in the context of the error that was made and in the context of the presenting condition. One cannot divorce that from what happened.

The second point I make is in terms of what she has learned; she is trying to focus her efforts moving forward on learning much more about ocular tumours, and you can see from the bundle R1 that she has already organised a large amount of learning on that issue. If you accept for the purposes of today that the nature of the condition was at least a contributing factor to the errors that were made, then her efforts to address that undoubtedly reduce the risk in the future of a similar error being made.

I should also point out that you may feel that one should not underestimate the effects simply of this issue being drawn to her attention and the outcome of it, in terms of this Hearing and the potential referral to the Fitness to Practise Committee. It has of course affirmed to her the need to be extra-specially cautious in any similar circumstance, and that is something I am sure you can imagine will engrain itself in her practice in the months to come, and so moving forward, I would suggest that the risk is reducing all the time.

Her insight is confirmed, so could I just deal briefly with bundle R1 please, and the amount of effort she has already made to date? Could I ask you to take R1 and turn to the first document, which is a personal development plan? I hope it is clear from the document itself that whilst this particular format has been typed up in this way to present to you and your colleagues, the matters

which this relates to have not simply come about as a knee-jerk reaction to this Hearing. Notice was only given, as I say, on 6 January. If you look at the first item on there:

“Distance learning, DOCET CD from College of Optometry, date to achieve goal: 06/11/11”.

In fact this is an objective that has already been achieved, and one can see from that that the personal development plan started back in October of last year. I just want to make it clear that it does demonstrate some genuine insight on the Registrant’s part, and not just a knee-jerk reaction as I say to try and put information before this Committee.

Running down it one can see that the Registrant is very keen to increase her knowledge and understanding of referral criteria in relation to ocular tumour, and she has set out her objectives there. They involve the distance learning which has already been done; attending two lectures on that area which have already been booked and I will come to in a moment; and to “directly approach clinical specialists during above lectures”. It says “To be confirmed”, and in fact that approach has already been made with the help of her mentor, a lady to whom I will refer in a moment.

Certainly Professor Taylor will be aware of Professor Damato, who is obviously a very distinguished expert in the field of ocular tumour. You will see from these documents that very soon after all of this the Registrant approached Professor Damato and asked whether she could sit in on some clinical sessions. There is an indication in the bundle, to which again I will come in a moment, that Professor Damato has agreed to provide the first session next week, and as I say as these things are attended the risk certainly will decrease.

I know that in a previous case very recently relating to ocular tumour a Registrant had attended Professor Damato for I think two sessions of observation; the determination of the Fitness to Practise Committee stated that within those two sessions that optometrist had been able to observe 36 cases of ocular melanoma, which is probably – I don’t know – 15 times what most optometrists would ever see in a career, in the job. There are four sessions coming up, and one can understand how much experience the Registrant is likely to glean from those sessions.

Can I then very briefly run through the bundle? Working on from the PDP, the second tab is simply confirmation of the lecture with Dr Damato on 6 February all relating to ocular tumour. The second page of Tab 3 highlights a lecture on 24 January also relating to ocular tumour. If you go down to the bottom of that page you will note that 2 December 2011 was when the request was made, so again well before this Hearing was even contemplated. Tab 4 is the confirmation of the sessions with Professor Damato, 23 January, 26 January,

30 January, and 2 February, so in the next two weeks four sessions. I hope it is also clear from the email at the bottom on 16 January where the heading is “Clinic Placement”, that is not the first contact that was made, just on the off-chance that Professor Damato may assist. Contact was made some time before.

Madam, the other document is CET, which is Tab 5, and I will not trouble you with that now. Tab 6, if you would not mind turning to that, Andrea Kay is a registered optometrist who practises in Stockport. There is some dispute about how far away it is from Manchester, we thought 15 minutes and Mr Albuery thought otherwise, but it is relatively close to Manchester from Stretford where the Registrant works at present. Andrea Kay as you will see was Appointed Clinical Mentor by the Association of Optometrists’ Legal Department. She has considerable experience of mentoring in these circumstances. She has put herself forward, essentially, to assist the Registrant in implementing her personal development plan, but as you will have seen from the emails (for when we come on to conditions) she has volunteered to have a much more hands-on role. I leave that for now, but I will return to Andrea Kay in a moment.

Madam, can I just draw my submissions together and make these three small bullet points please: Number 1, the Registrant has considerable insight into what went wrong and what needs to be done to make sure that the public are protected; Number 2, she has learned much even at this stage, and will act much more cautiously in the future; Number 3, my submission is that the risk is lower than it was last year, and can only diminish as this further training takes place. That is relevant when I move on to the next stage in terms of management of this risk by conditions.

I move now on to the question of necessity. We accept an order is necessary and the Registrant appreciates that you may well have concerns about essentially the fact that something could be missed in the future. You will almost certainly be concerned by the gravity of the consequences in this particular case, however unusual, and so in those circumstances we accept an order is necessary. The primary question perhaps for you today is what order to impose.

What is the risk, because to formulate conditions one has to know first of all what you are dealing with? As the Council has outlined in the Statement of Facts, it is the concern of a misinterpretation of what is before the Registrant, and a failure to refer. That is the concern that the Council have. They are parts of the same issue. What they focus upon is whether the Registrant can properly interpret what is before her in the form, for example, of a retinal image as we have in this case.

Can I just make two points about what the risk is, or rather what it is not? First of all the risk is not in relation to whether the Registrant can perform the correct tests in the correct circumstances, and I think Mr Albuery has

conceded that. It is the misinterpretation of those findings. The second point is this: given the Registrant's general ability and the lack of any evidence of concerns in other areas, the risk must relate to matters similar to this, of the detection of pathology. I hope I am not being flippant but this is not a case for a concern about whether the Registrant has got her refractions right, whether she has dispensed the right contact lenses. It is specifically about detection of pathology.

Going on to conditions to meet those issues, can I hand up some typed conditions - which are of course just a basis for discussions if you decide to impose conditions, and it is of course entirely a matter for you - and you may criticise my drafting as they were drafted relatively quickly in the time that you afforded to us this afternoon. [*Documents handed up*]

Ms Jones: Can I ask whether Mr Albuery has had a copy of this?

Mr Singh: Yes, indeed.

Mr Albuery: I have seen them, yes, thank you.

Mr Singh: Madam, by way of introduction what we have endeavoured to do is to put forward conditions which allow for a degree of supervision of the Registrant's practice, and to ensure that pathology is not missed.

The thing that we have had to deal with is the circumstances of the Registrant's practice, which is as I say that she is the only optometrist working at the franchise of Boots in Stretford. Financially, it simply isn't viable for another optometrist to be employed to come and supervise the Registrant I am afraid, and we have looked into that to see whether that is something we could present to you. Unfortunately it is not, and I will deal with the Registrant's financial obligations in due course. It will rarely be the case that another optometrist can be employed solely for the purpose of supervising a registrant in a practice where they are the only optometrist available.

Is that fatal? You may think not. You may think that in every single case where an optometrist cannot employ someone, for example, to come in and supervise them there must be other ways of protecting the public. The conditions that we have put forward in our submission do meet those concerns that have been raised, so can I just run through them now?

The Registrant must place herself under the supervision of another registered optometrist who has been approved for the purpose by the Council. The supervisor must be available for advice and assistance on clinical issues at any time that the Registrant is testing sight, but need not be present at the Registrant's place of work. If I can term this 'remote supervision' as Mr Albuery has used the term, it would entail another registered optometrist being

available on the telephone and via email to provide support, advice and assistance whenever necessary.

Now, one has to factor into that modern technology and the fact that the Registrant has the facility to take and send via email digital images, not only of the retina for example, but of course of the exterior of the eye as well if she wishes to, but really what we are talking about is pathology, and retinal images will be of importance in aiding diagnosis. What of course is possible is that if an issue does crop up where the Registrant is unsure or requires further assistance, she can contact her supervisor via telephone and can send via email any retinal images that would assist in diagnosis and in determining what to do. Of course, if that facility was available in this case it may well be that something else would have been done in 2010. There is the further possibility that the supervisor can request further images, different angles, different aspects, and that is another essential safeguard, so it does not end with the images that the Registrant takes initially. That is the first strand of the supervision that we propose.

The second strand is this: it is perhaps something over and above what would normally be part of supervision even if an optometrist was present on the premises, and it is this, that the Registrant shall meet with a supervisor on at least a weekly basis and provide them with all retinal images that she has taken in the previous week, and a random selection of patient records from the previous week chosen by her supervisor for review.

Can I explain what the condition in bold is? This is an alternative which is possible, and I have confirmation that it is possible which I think you have seen. It is an alternative Level 2 if I can put it that way, if you are not satisfied that a random selection of records every week could be sufficient to protect the public. You have not seen the emails yet so I will pass them up in a moment, but it says this:

“The Registrant shall meet with her supervisor or supervisors at least every two days and must provide them with all retinal images that she has taken on the previous two days and all records relating to patients examined in the previous two days for review.”

So if I can turn to them as follows: Level 1 would involve meeting Andrea Kay, the supervisor, every week and providing all retinal images and a random selection of whatever number of records you and your colleagues, Madam, determine to be appropriate for review. Level 2 is more strict, and it would involve essentially bi-weekly reviews of every single one of the Registrant’s patient records and retinal images. The reason we say bi-weekly is because a review of all records by one person twice a week would be extremely onerous. We have two people who would be willing to undertake that task; for the first two days the records would be reviewed at the end of the two days by one supervisor. At the end of the second two days, the records would be reviewed by the second supervisor, and so it is clear the Registrant would

only work four days a week. Thus what you have is a periodic review of every record card that the Registrant has filled out in respect of patients that have been seen.

Either one of the two levels provides, you may feel, an additional safety net, that if in the unlikely circumstance that the Registrant, being cautious now as she is, has not already referred the matter to her supervisor in the first instance with retinal images, then there is a second check either every week or every two days of the records, to ensure, as I say, that no pathology is missed, because that is the issue here.

That is what we suggest in respect of supervision. Can I hand up the emails?
[Documents handed up]

Ms Jones: For the record we will refer to this as R2.

Mr Singh: Thank you. Madam, what I have handed up first off is an email from Andrea Kay, the lady who was willing to be the mentor, confirming that she is happy to have weekly sessions with the Registrant to discuss patient management.

“All retinal images will be assessed and a selection of records, picked by myself as a ‘spot checking’ exercise completed. Should she have a patient emergency or need to clarify any management decision I am available by mobile or email at all times.”

Madam, that has to be read in addition to the other email which she has provided, and that is the Level 1 supervision which could all be done by her, and she is happy to do that.

Can I refer to the second batch of emails please, which will be R3? Madam, did you give the conditions a number as R2? *[No]* That is fine, then we are on R2 and R3.

Ms Jones: Shall we put the conditions in as R4 or do we need to put those in as R2?

Mr Henley: It doesn't matter, but R4 is clearer.

Ms Jones: Thank you for bringing that to my attention.

Mr Singh: Madam, the second batch of emails relates to what I have termed Level 2. It is first of all an email confirming that Andrea Kay is happy to assess records after two days of practice, and again the fact that she is available on the telephone to supervise her.

If you go over the page, a second individual, Susan Parker, again a registered optometrist practising in Stockport, has again volunteered in relation to supervision. It is on the basis of the two days a week review of records, so I am in the fortunate position of being able to offer two potential resolutions by way of supervision with confirmation that those people are willing to carry that out, so we have named individuals attributed to it even today.

Madam, can I just finish the conditions and deal with how this would protect the public? Condition 3:

“The Registrant shall refer any patient in respect of whom concerns are raised by her Supervisor to another registered optometrist, for a second opinion and/or treatment.”

Madam, it is a matter for you but at least that makes clear what should happen in the event that an issue is raised by her supervisor as part of the two-day reviews. It perhaps could be refined to make that clear, rather than any concern raised by her supervisor on the telephone, that if something has been missed by the Registrant and it is not picked up until a two-day review the patient should then immediately be referred for a second opinion on management. However, that is a matter for you as to whether and in what form you would like that condition.

Condition 4 simply relates to the reports. I have put it on a monthly basis and perhaps that is the best thing at the beginning, so a close eye can be kept on matters by the Council. It should perhaps have a couple of words in there saying that ‘The report should be provided to the Council on a monthly basis’ as well. It may be if you impose conditions that they go well that the reporting provision can be relaxed in due course, but for the beginning we are happy for monthly reports.

Condition 5 really just allows the other conditions and supervision to work, restricting her practice to that one practice in Stretford where there is the retinal imaging capacity as well, and a maximum of four days per week to ensure that there are no days unsupervised.

I should also make clear that if one or other supervisor is not available in accordance with Condition 1, then the Registrant simply cannot work. That is the effect of the conditions, and that must be the effect of the conditions.

If we go on to Number 6, that simply relates to observation with a consultant ophthalmologist, i.e. Professor Damato, putting it in condition form as to what is intended in any event.

How would they protect the public? I do not wish to state the obvious, but if interpretation of an image and interpretation of tests conducted is the concern, then this would allow two strands of protection for the public: first of all the ability for the Registrant to refer any concerns to a supervisor, and secondly

the ability for the supervisor or supervisors to check and make sure, even if it has not been referred, that something has not been missed.

In those circumstances we would suggest that this is enough to protect the public. The reality you may feel is that given all of the matters I have said about insight, the Registrant is highly likely to take a very cautious approach and to seek a second opinion on any case which is of concern.

Can I just deal then briefly with the issue of whether the fact that the supervisor is remote and is not in the practice is fatal to your consideration of this? Really you have to determine whether the fact that the person will not be in the practice means that the Registrant should be suspended; that really is the stark decision that you and your colleagues have to make. Please consider how much of a difference in practice there is in terms of public protection between the supervisor being available on the end of the telephone and with email access or being in the practice.

Of course supervision on site would only become involved if the Registrant asks for it, essentially. What is not being suggested by the Council is that someone stand over the Registrant and check everything she does. Clearly that does not need to happen because the difficulties and the concerns do not span the whole of the practice. If the supervisor is on site then he or she would become involved if the Registrant said 'Can you please check this?'. In reality, given that we are concerned about the patient's pathology, you may feel that the help that the Registrant could obtain over the telephone with the views of retinal images is comparable to the help she could have by a supervisor in the practice. If she asks for the help she can obtain it, and as I say if the supervisor requires more information by way of different images, by way of further testing done, of course those can be carried out and the advice can be given. The difficulty is not with the Registrant performing the tests adequately.

Whilst some years ago I can appreciate it may have been the case that the supervisor in all circumstances had to be in the practice, modern technology you may feel means that this restriction does not necessarily have to be there.

Those are my submissions on that, that those conditions would be sufficient to protect the public.

May I just turn briefly now to the last matter: why would suspension be disproportionate? The financial position is as follows: the Registrant and her husband have a nine-month-old daughter. They have a significant mortgage, as they bought their house as first-time buyers and were not able to find a particularly good interest rate – although that seems to be the position of most people buying for the first time, in recent years.

Her husband is a dentist, self-employed, and deals with the majority of the home expenses if I can put it that way. The mortgage is paid through his salary, and the majority of other home matters are paid through his salary, but it leaves him with very little else. The Registrant has put pretty much all she has and more into the franchise over the last few years, and in particular there is a large amount of debt. There is around £40,000 on a business loan which she repays herself. There is, ironically, the digital imagery facility, which has been purchased for £15,000 and payments are being made in respect of it, so there is other credit in respect of equipment for the practice.

After expenses are met by the Registrant she is left with around £6,000 per year, so £500 a month. When I say 'expenses' I mean the loans, business expenses, etc. That goes primarily on travel, telephone, things like that, and also obviously her child. Finances are extremely tight, and if she were suspended the likelihood is that she would lose the franchise and have to go bankrupt, given the amount of debt that she has, and that they simply could not meet if she was not working.

There is a possibility, which she will try to retrieve, to save the business if she were suspended, although whether that would work I simply do not know and neither does she. It would involve trying to employ somebody else and her working as a non-qualified person, essentially, as management. However if that happened she may be able to save the business, but they would not be able to meet the expenses that they have – certainly not the business loan, certainly not the equipment. Thus either way the effect of a suspension, I hope you can accept, would be devastating financially, and it would mean that something has to give. Hopefully it will not be the mortgage because it houses the family, but the business would have to be the first thing to go. That is the financial position, and, Madam, it is a matter that you should consider when considering proportionality.

The second issue is a point which is made in the case of *Shiekh v General Dental Council* [2007] EWHC 2972 (Admin), which I will not recite because you know it very well. The effect of a suspension is to deprive a practitioner of the ability to continue to work to earn a living, and importantly to show that in the time between the allegation coming to light and the final determination of the case, that he or she has conducted him or herself well in the interim, and has remedied, through putting into practice whatever he or she has learned, any deficiencies that have been highlighted by the matters which are the subject of the allegations. That would be the case here and probably for a significant period of time, at least nine to 12 months one would imagine following referral and the case being listed. That would be devastating in any clinical case, but especially so when a Registrant has already embarked very well on the road to rehabilitation, so in this particular case it would be a significant step backwards. It is a matter again for you to weigh in the balance.

Given that, you have conditions which are workable I would suggest, there are many reasons why a suspension would be devastating for the Registrant, and you have on any view a serious matter but one patient and not representative, I would suggest, of the Registrant's general practice.

Madam, in those circumstances I would invite you to find that an order is necessary, but that conditions would adequately protect the public, and that suspension would be disproportionate.

Ms Jones: Mr Albuery, do you have any final comments before I ask the Committee if they have any questions?

Mr Albuery: No, thank you.

Ms Jones: Thank you. May I ask if the Committee has any questions?

Professor Taylor: I have a couple of questions. The conditions and so on: would there be any impact because this is a franchise with the Boots position?

Mr Singh: Can I just take some instructions? I don't think so, by my understanding. Boots are aware of the allegation, and the first port of call I make clear was to see whether anyone else within Boots was able to undertake a supervisory role. I am sure you can imagine that other franchisees in competition on the three mile radius surrounding her practice are probably not jumping at the opportunity to take time out to supervise a competitor, but there we are. No-one has come forward within Boots to supervise, for whatever reasons I don't know, but Boots are certainly aware of everything and supervision will not be a problem in terms of her retaining the franchise.

Professor Taylor: Right; and not in terms of the patients that are seen by your external mentors either?

Mr Singh: Do you mean in terms of data protection? [Yes] The patient names can be redacted to initials. That may well deal with the issue.

Professor Taylor: The situation of suggesting that you can take additional images in different positions and so on really means that the patient would have to be there while this is all being worked through. Are you guaranteeing that the mentor will be at the end of the phone at all times at a moment's notice, to be able to look at these pictures and suggest taking additional pictures? Or are you assuming that the patient would come back?

Mr Singh: No, we are envisaging this all being done on the same day.

Professor Taylor: There is a difference between 'the same day' and 'immediately' while the patient is there, because if you have dilated you will not want to put drops in again later on.

Mr Singh: No, I appreciate that. In terms of advice being given, the understanding would be that the mentor would be able, if they are free immediately to take the call or if they are for example conducting an examination, to be able to deal with it almost immediately, I would say within a few minutes. Certainly when we tried to speak to Andrea Kay today it took around five or 10 minutes for her to be able to come out of whatever she was doing to speak to us, and that is the kind of response time that we are thinking of.

Professor Taylor: That is slightly different, then, to having then to go back and look at the images, get the images over to her, talk about them, because if you have your own patient there it is very difficult to do. I am just trying to think about the workability of it again.

Mr Singh: There may be some delay but we are not envisaging any significant delay, put it that way.

Ms Jones: Can I tie into those questions, because mine are about technology and what is possible?

Professor Taylor: I have one further question, if I may, which is not related to that.

Mr Singh: Can I just add that in terms of someone coming in to check, if for example there was another optom on the premises and he or she was testing, you may well end up with the same difficulty – that the person is in the middle of a test and they are not available for 15 minutes, and then the patient has to wait for a short amount of time. It would be a very rare circumstance I would suppose where there is someone simply sitting in a side room waiting to come in and review the patient if necessary. There is always likely to be some delay of some sort between that person coming in, even if they are in the practice.

Professor Taylor: I understand what you are saying, but if you are on the premises you can look at the patient direct rather than going through the technology so you can get a different image. You will not have to do all the other bits requiring them to go back and take more photographs from different angles.

Mr Singh: I understand, yes.

Professor Taylor: Can I ask the other question afterwards, after you?

Ms Jones: Okay; one of my questions is about you saying the technology is available. Is it possible to send images and so on to an i-Phone or does the person at the other end need to be on a laptop system?

Mr Singh: It is possible to send to an i-Phone or an i-Pad, but that would not be what we are proposing. It would be to a computer.

Ms Jones: I am just thinking about the exchange of e-mails and thinking about people's movements. These proposed supervisors work in practice? [Yes] Both of them? [Yes] Full time?

Mr Singh: I understand full time, yes.

Ms Jones: Thank you, I think that is all I wanted to ask.

Professor Taylor: The other question was again really to do with the third party, because you are then asking if the mentor supervisor individual feels that somebody needs to be seen again, you will then send them to a third optometrist.

Mr Singh: The other optometrist referred to does not have to be a third optometrist, it could be the supervisor.

Professor Taylor: There is no difference, because the patient is going to have to make their way to the other premises, wherever they happen to be.

Mr Singh: I think you make the point in distinction to going to another surgery in the same building, for example?

Professor Taylor: There isn't another optometrist presumably on the same site? So yes.

Mr Singh: So that is your point, I think, rather than going to a different surgery in the same building? [Yes] That would have to be the case, because there is no other optometrist on the premises – but it may be that the advice I suppose is 'Refer to hospital' for example, and if that is the case there would be no need for the other optometrist, but if a concern is raised they would have to go and see another optometrist it would either be to another branch of Boots in the Manchester area, and as I say there are three branches within a three-mile radius and I think two within a mile-and-a-half, or to one of the supervisors.

Professor Taylor: And who would pay for the referral? That is the other issue.

Mr Singh: I have to say that is something I haven't considered.

Professor Taylor: Because someone else will have to look at that patient and there will be a cost implication for somebody who does that. Who takes final responsibility I suppose is the ultimate question.

Mr Singh: The other option is that there does not need to be a referral on, and simply that the patient is treated by the Registrant or is dealt with by the Registrant in accordance with the treatment plan devised by the supervisor and the Registrant. I think that makes sense, so if a concern is raised a treatment plan moving forward is devised, whether that is 'Refer to the

hospital' or it is 'Dilate and undertake this examination', it is done under the direction of the supervisor.

Professor Taylor: And that would therefore be there insurance, presumably?

Mr Singh: It would be mainly the Registrant who carries on with the treatment.

Professor Taylor: Okay.

Ms Jones: Does that answer your question, or is this a pause for consideration?

Professor Taylor: I am still trying to work through it.

Mr Singh: I don't see the difference between someone on the telephone suggesting what the correct course of action would be, or the supervisor who is in the next room suggesting what the same course of action would be. The supervisor then does not take responsibility for the patient wherever he or she is.

Professor Taylor: It depends on the way it is set up.

Mr Singh: The ultimate responsibility would have to rest with the Registrant, as it would do I think in any supervision situation that would be envisaged.

Professor Taylor: I think it would depend on how it was set up, but okay. The issue with photographs, and the Registrant has actually been very good here because what is seen on the images is not visible on the normal standard photograph, so having looked and having seen something almost outside the standard photograph. Are you suggesting that if they just look at a normal photograph, not necessarily meaning that you are picking up anything, the reason for looking at all photographs and records is for what purpose?

Mr Singh: The reason for looking at all photographs and all records is to provide the level of safety that nothing has been missed by the Registrant. Now as I say the concern in this case as I understand it could be the interpretation of what the Registrant has produced as opposed to whether she is conducting the right tests, and so anyone who is reviewing the records would be in a position to work from the results that have been obtained as a result of the test correctly carried out by the Registrant.

Professor Taylor: Okay, so we are assuming that additional photographs would be taken where necessary, as opposed to just standard imaging?

Mr Singh: It would have to work on the basis that the Registrant has taken photographs where necessary, but we have to be careful, sir, not to start importing additional concerns that are not supported by the evidence.

Professor Taylor: But an ordinary photograph would not have shown this up, so this was done as a matter of an addition to the basic routine stuff, so we are assuming that would be done as a matter of course and you would see all of those photographs.

Mr Singh: My submission would be at this stage that you would have to proceed on the basis that proper photographs will be taken, because they always have been. There is no evidence to suggest that they haven't been, and if you were to say 'We don't know whether she would or would not take the right photographs' would be essentially to go ahead and make findings without any evidence to support it.

Professor Taylor: What I am trying to ask is if you see something outside of what is on a normal photograph you would have to take an additional one, whatever you considered it to be, whether you considered it to be normal or non-normal.

Mr Singh: In this case the Registrant did take the additional photographs –

Professor Taylor: Absolutely, and presumably you do not do that every time you see something outside the standard area.

Mr Singh: So it is clear, not every single patient would have any photographs at all, necessarily, if they had simply come in for a routine sight test and there was nothing whatsoever which indicated, for example, anything like this or indicated the need to take a photograph. We have to be mindful obviously that if it is the Committee's view that a photograph should be taken for every single patient then so be it, but it may not be necessary to do so.

Professor Taylor: That is not really what I am saying. I am saying that if the Registrant sees something outside of the normal standard photograph position and decides that it is not relevant to anything, normally you would not take a photograph of it. I am suggesting that in this case where a supervisor would be able to understand whether they are seeing things or not seeing things or making the right decisions, you would have to take a photograph of everything you see outside the normal.

Ms Jones: You would have to do more in order to allay any doubt.

Professor Taylor: Absolutely because where you have made the decision as the Registrant that there is nothing there, or there is nothing of concern in what you have seen, because you see more than just a picture when you look into the eye. That is the issue.

Mr Singh: Of course, absolutely.

Professor Taylor: So if you see something outside that area of 45 degrees and the decision is made 'Oh, I don't think there is anything serious with that', nobody else would know if you don't take a picture of it.

Mr Singh: Yes, I see that point, but as I say the allegation and the evidence does not suggest that the Registrant is not taking photographs of things which look abnormal, for example as in this case. Maybe we are speaking at cross-purposes.

Professor Taylor: Yes, possibly. It may well be. I am saying that anything that is seen outside of that normal area of a normal image should also be imaged so that the supervisor would see it, otherwise you don't know when you are making a decision that that one is not important when it might be important.

Mr Singh: Because there is no photograph of it?

Professor Taylor: Because there is no photograph of it.

Mr Singh: Yes.

Professor Taylor: Maybe I am not making myself clear.

Mr Singh: No, I understand your point, but all I am saying is I don't think you can proceed on the basis that the Registrant will not take a photograph of something outside the normal area, because there is no suggestion on the evidence that she doesn't do that. Does that make sense?

Professor Taylor: There is no evidence that you do do it on every patient where there is something that you consider to be normal.

Mr Singh: You only have one patient, you are dealing with one patient –

Professor Taylor: But I want to protect every patient.

Mr Singh: I accept that, but you can only assess the risk by reference to what is in the evidence before you, and the evidence before you suggests the opposite of the concern that you are putting forward – that she does take an image of anything that seems to be abnormal, but it is the interpretation of that.

Ms Jones: I think what is being suggested is that it would be very hard to supervise that if you did not have the images of all that was possible to know that that had been the correct analysis.

Ms Jones: Can we pause this for one minute? I will ask you both to think about it and please come back and give it one more shot, so that we all have an understanding. Do others have any questions on this discussion?

Mrs Huka: I am just following what is being said now, because I see that this is a question of interpretation; but there is also a question, i.e. who is making the decision to interpret and express the concern. In this case it is the Registrant. She will be saying to the supervisor 'I have some concerns' and pass them on, but she will also be deciding that there are things that she will not pass on. If the supervisor does not see those then the supervisor is unable to decide whether the interpretation of that fact is relevant or not.

Mr Singh: Absolutely. It would be exactly the same if the optometrist was in the practice or outside the practice. Unless you have someone in the room supervising the Registrant as a pre-reg optom - or even more than that what we are talking about is someone standing over her and looking at every single thing she does and checking whether it is right. I do not think I have ever seen a condition of supervision to say that. Whether the supervisor is in the practice or remote, he or she will only be reviewing records which the Registrant has taken, and will only be involved in checking patients if the Registrant asks. That was my point, that the supervisor, whether it is supervision on or off the premises, only becomes involved when he or she is told to. Does that make sense?

Mrs Huka: Whilst it makes sense there is also the issue that there is quintessentially more value in the supervisor, if it were possible, to be there rather than be at arm's length.

Mr Singh: A separate point that Professor Taylor had made about that is something that you will have to consider, and I accept that. Those are things that you will have to consider in my proposal that it does protect the public, but I suppose that is a separate issue. When the supervisor becomes involved I would suggest is wherever he or she is based.

Mrs Huka: Yes, okay.

Ms Jones: Professor Taylor?

Professor Taylor: I can think of an example; if the Registrant sees in the periphery what they consider to be an old choroiditis, which is a slightly pigmented area which can have been there for some time, you would not necessarily normally take a picture of it. I don't know if this is true of this Registrant, but normally you would not because you would assume it was old. I am suggesting that in this instance you would take a picture of that because there has been some dispute as to whether your interpretation of what you see is correct or incorrect, so where you make a decision that 'Yes, there is something there but it is perfectly normal', that should be imaged as well for the supervisor to look at. That is really the only thing I am saying.

Mr Singh: It may be, and I certainly do not know as much about optometry as you do, that is where I am going wrong in terms of this. I see exactly that it may

be that it could be dealt with by a condition which states that the Registrant must image, as you say, anything which is not a normal presentation in the eye, or something along those lines, whether it would normally be imaged by her or not. That is a condition which could deal with it. I see your point.

Professor Taylor: Okay.

Ms Jones: Mr Albuery, do you have any further comments?

Mr Albuery: No, I don't think I do!

Ms Jones: I am sorry, Mr Singh, do you have any final comments?

Mr Singh: I don't want to go over the same ground again, but in this case obviously, which is all we have to go on, the Registrant did take a photograph of something she saw as a long-standing lesion, something that she was not necessarily – wrongly - concerned about but she still took a photograph. In any event you have the concern that Professor Taylor has raised and the condition which I suggested.

Professor Taylor: Actually it does raise one other point, because normally you charge for those images. The patient has to pay for those images.

Ms Khalon: Actually I no longer charge for those images.

Mr Singh: No, there is nothing further thank you.

Ms Jones: Thank you; in that case can I invite our Legal Adviser to advise us?

Mr Lucraft: Certainly. Can I go back to the section in the Act, Section 13L, which makes provision:

“Where the Fitness to Practise Committee are satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or the interest of the registrant for –

(a) his registration to be suspended or made the subject of conditions,

the Committee may make such an order.”

There are those three gateways, but it only the first one which is relevant in the facts of this case, “necessary for the protection of members of the public”. That is a question to which you must apply your collective judgment.

Some mention has been made of the case of *Shiekh*, but in the light of what is conceded by Mr Singh on behalf of the Registrant, that it is necessary in this case for an order to be made, I need not take you through all of what it said in

Shiekh, but I will refer to one section where Mr Justice Davis deals with the implication that is brought about by that word “necessary”.

It is quoting from paragraph 16 of his judgment, and these are words I am sure that the Committee will have heard before:

“It is a very serious thing indeed for a dentist or a doctor to be suspended. It is serious in many cases just because of the impact on that person’s right to earn a living. It is serious in all cases because of the detriment to him in reputation and terms. Accordingly, it is, in my view, likely to be a relatively rare case where a suspension order will be made on an interim basis on the ground that it is in the public interest.”

As I have indicated, it is conceded here that such an order is necessary, but of course having said that it is still a matter for this Committee to determine whether in fact it is necessary.

The watchword in cases such as this is ‘proportionality’, a need to balance what terms the order should be in, and the approach that I would urge you to take is simply this: to consider first of all whether it meets the test of being necessary; secondly, if an interim measure is required, ask yourselves whether conditions would be sufficient, and if not ask yourselves whether this is one of those relatively rare cases where suspension is justified. Proportionality must consider first of all conditions, and then if you are not satisfied that the conditions meet the requirement then whether suspension ought to be ordered.

Ms Jones: Thank you. Are there any final comments? [*No final comments*] Thank you; Mr Henley, could you please clear the room?

Mr Albuery: Madam, I am sorry to trouble you with something that did not get out between the first Hearing and this; is there a time before which you think it unlikely you will be back, to allow us to get out and buy a sandwich?

Ms Jones: By all means. I cannot really see us being back before 4.15 or later.

[*Hearing adjourned at 3.57 pm*]

[Hearing resumed at 5.32 pm]

Ms Jones:

Determination

The Committee accepted the advice of its Legal Adviser.

The Registrant is a registered optometrist. She was first registered with the GOC on 5 October 2005. She has had no adverse fitness to practise history. The allegations now made concern eye examinations she carried out on 16 April 2010 and 15 April 2011. The allegation against the Registrant is one of repeated, serious clinical failings which may have caused harm to a patient. It is alleged that on two occasions the Registrant incorrectly diagnosed the patient's tumour as retinoschisis which led to a delay in the patient receiving treatment for the tumour. The patient's eye had to be removed. It is submitted that the failings of the Registrant in not taking more action in 2010, not calling the patient back for a review before 12 months had elapsed, and in not referring the patient on to an ophthalmologist in 2011 is evidence that she fell below the standard that might reasonably be expected of a competent optometrist. This matter is currently before the Investigations Committee. On behalf of the Registrant it is conceded that she did fail on these occasions: more should have been done by her in relation to both examinations.

The Council submission is that this is a case where it is necessary for the protection of members of the public that an interim order of suspension be made. On behalf of the Registrant it is conceded that this is a case where an order is necessary for the protection of the public, but that the facts of the case can be met by conditions rather than an order for interim suspension. The Committee has considered all of the background facts giving rise to the allegations in this case, and to the guidance given in the case of *Shiekh*, referred to by the Legal Adviser. The Committee is of the view that the underlying failings of the Registrant in the two examinations in 2010 and 2011 and her failure to interpret the effect of what she had seen, are such as to satisfy it that an order is necessary for the protection of the public.

Having come to that conclusion, the Committee considered whether this case could be met by the imposition of conditions to her registration. On behalf of the Registrant, Mr Singh placed before the Committee some draft conditions for consideration by it. The Registrant works as a sole optometrist at a franchise of Boots. The conditions proposed by Mr Singh are premised on a form of remote supervision. The Committee considered the option of remote supervision and was concerned that such supervision would not meet its concerns for the protection of the public, nor would those conditions provide a satisfactory level of service for members of the public visiting the practice. The Committee is of the view that this case can be dealt with by conditions, but in order to protect the public such conditions must provide for direct supervision.

The Committee is of the view that the conditions set out below are appropriate and proportionate.

The Committee ordered that the Registrant's registration be subject to conditional registration for a period of 18 months from today. 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.

LIST OF CONDITIONS

1. You must place yourself and remain under the supervision of a specified registered optometrist workplace supervisor who is registered with, and has been approved by, the GOC. Your supervisor must be present at the practice where you are testing sight and be available for advice and assistance at any time.
2. Where you take a clinical decision that a retina shows a feature that is non-normal, an image must be taken of that feature.
3. You must meet with your supervisor on a weekly basis and provide them with all retinal images that you have taken in the previous week (including those set out in condition 2 (above)) and a random selection of patient records from the previous week, chosen by your supervisor, for review.
4. You must obtain from your supervisor a report on a monthly basis relating to your compliance with conditions 1-3 regarding any cases of concern that have been noted or confirming that there are no such cases. You must submit the report to the GOC within three days of receipt.
5. You must attend as an observer at least four sessions with a consultant ophthalmologist specialising in the management and treatment of ocular tumours and send notification to the GOC by 30 April 2012 that you have done so.
6. 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, 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.
7. You must also allow the Registrar to share this information with other regulatory bodies and the Department of Health.

8. You must notify the Registrar within 14 days of commencement of any professional appointment you accept whilst you are subject to these conditions (this includes any teaching posts) and provide contact details 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).
9. 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.
10. You must inform the Registrar:
 - a. If you cease working;
 - b. If your work takes you out of the UK for a significant period of time; or
 - c. Of any employment you apply for outside of the UK (and in which countries)

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

11. You must continue to fulfil the CET requirements under the GOC CET scheme to secure appropriate points for continued inclusion on the GOC register.
12. 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 EC);
 - c. Chairman of the Local Optometric Committee;
 - d. The PCT in whose ophthalmic practitioners' list you are included or seeking inclusion.
13. You must ensure that your GOC registration is renewed by 15 March annually (for optometrists and dispensing opticians) 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.

Thank you all very much.

Mr Singh: On the transcript, can I just raise the issue which we were discussing before you came in, in relation to imagery? It may be that clarification from you is enough. There is a condition, I believe Condition 2, where if the retina is non-normal then an image must be taken. The point was passed through that it may be that a practice where the Registrant can be supervised is not one where there is a facility to take an image. Is it your determination that any place that she works must be a place which has the facility to take an image? Is that the effect of your decision?

Ms Jones: Yes.

Mr Singh: Yes? All right, thank you very much.

[Hearing concluded at 5.38 pm]