

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

GENERAL OPTICAL COUNCIL

F(10)11

AND

ZAHEER GHANCHI (SO-1123)

Friday, 7 October 2011

SUBSTANTIVE REVIEW HEARING

SUBSTANTIVE REVIEW HEARING: ZAHEER GHANCHI (SO-1123)
Friday, 7 October 2011

FTP Committee: Ms Fran Jones – Lay (Chair)
Ms Margaret Hallendorff MBE - Lay
Mr Alan Baldwin - Lay
Mr Gordon Ilett - Optometrist
Mr Stephen Reily – Optometrist

Legal Adviser: Mr Paul Kilcoyne

Hearings Manager: Mr David Henley BEM

For the Council: Mr Christopher Whalley

For the Registrant: Mr Andrew McGee
Ms Ella Power

[Hearing commenced at 08.58]

Ms Jones: Good morning. I am Fran Jones, a lay member of the Hearings Panel, and I have been elected by the Committee to chair today's review hearing. The Committee today is made up of two optometrists and three lay members. I shall ask the members to introduce themselves and the capacity in which they sit, commencing on my far left. *[introductions]*

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

To your right is David Henley, the Hearings Manager, who will provide administrative support to the Committee. Next to Mr Henley is the transcriber, Charles Nesbitt, who will be keeping an official record of all that is said today during the sessions of the hearing at which the parties are present. The remaining persons sitting in the hearing room rather than in the public and press areas are members of the respective legal teams.

It is the Council's policy for the determination of the Committee and a transcript of proceedings to be displayed on the Council's website for public viewing but where matters of health have been discussed, the determination and transcript will be redacted accordingly. Can I ascertain whether there are issues of health today?

Mr McGee: There may be a fleeting reference to issues of health but I am not making any application under Rule 23.

Ms Jones: Thank you very much. Mr Whalley?

Mr Whalley: No, Madam.

Ms Jones: Thank you. Can I also check if there are any applications today? [None] In that case, I invite you to start, Mr Whalley?

Mr Whalley: Madam, if I may, first confirm that all members of the panel have the hearing bundle, the GOC bundle, which contains a number of documents: 1-84 are documents which were not part of the original bundle at the substantive hearing. You have the determination of that Committee which is at 7-11 and then the transcript from that hearing. The remainder of the bundle from page 85 right the way through to 219 is all the evidence which was served for the substantive hearing, should you wish to consider that.

I can be very brief in my address this morning, Madam. First, if I may set out the rules which you should consider today when considering the suspension order. It is a suspension order which was imposed on 5 October 2010 for 12 months which comes to an end shortly. It is Section 13F(7), paragraph 7 is where the powers are set out of the Opticians Act 1989. That section states that, if you think fit, you can do the following: direct that the current period of suspension be extended for up to 12 months; direct that the name of the student Registrant – in this case Mr Ghanchi – be erased from the register, or direct that his registration is conditional to protect the public. The conditional registration will be for up to three years.

I and my learned friend have had a brief conversation this morning, and I understand that the Legal Adviser has also had a conversation with my learned friend about this. It is our view that to impose a further order, you would have to find that the Registrant's fitness to practise is impaired. That is not specifically stated in the Act, but it seems to be right that it has to be the case that you would still have to find impairment today to impose a further order. Therefore, that is something that will be part of your consideration.

As far as the Council's position, the Council take a neutral stance on whether you wish to impose any further or not as it may be. It is not a matter for the Council to recommend that further sanction should be imposed. One thing I should point out, which I have again clarified with my learned friend, is that it

is correct that the suspended sentence which was imposed by the Criminal Court is still in place and expires on 20 February of next year. That may be something that you may wish to consider when considering the question of impairment. Madam, that is all that I wish to say on this point unless I can assist any of the members further.

Ms Jones: Before we go any further, may I just say that we shall refer to the GOC papers as C1? We have also received at about three o'clock yesterday R1. By my calculation, we had about 300 pages of papers to read in less than a week. The Committee has raised with me that it is less than ideal, the papers are agreed to come to us a week before. May I enquire as to why that was?

Mr Whalley: The GOC papers should have been with you at least seven days before the hearing and it is my understanding that they were.

Ms Hallendorff: We had the redacted transcript a week before; we did not receive the unredacted transcript until Tuesday or Wednesday this week.

Mr Whalley: It may well have been because there initially wasn't agreement about the bundle, and we as the GOC were waiting for the agreement of Mr Ghanchi's representatives as to whether that bundle was agreed. That is perhaps why it was served late, so I can only apologise for that. I believe that is the correct position, I am looking to my learned friend for help with that?

Mr McGee: I am not entirely sure that it is the correct position. The GOC are entitled to serve on the Review Committee...

Ms Jones: I am asking about all the papers, not just the GOC papers.

Mr McGee: Our papers were served slightly late simply because, as you will see, there are some documents which only came to us this week. Indeed, I have some further brief documents to present to the Committee this morning arising out of an activity undertaken by Mr Ghanchi yesterday. That is the difficulty so far as the Registrant is concerned that we asked for further enquiries to be made and further references to be produced, and we are dependent upon the people who are producing them.

Ms Jones: Mr McGee, there is a difference between activities that Mr Ghanchi or anyone undertakes the day before a hearing and papers that are predated, and we ask for these the week before. I would hope that these comments are noted. It makes it very difficult for any committee to receive large volumes of paperwork at four in the afternoon the day before a hearing.

Mr McGee: I accept that.

Ms Jones: Thank you, if you would like to proceed, Mr McGee?

Mr McGee: Madam, you have already referred to the bundle you received yesterday, can that be R1? Also I have material to be handed to the Committee now which perhaps can be R2 and these are a series of clinical observational records in relation to an activity undertaken yesterday by Mr Ghanchi. I shall deal with those in due course, Madam. May I call Zaheer Ghanchi?

**MR ZAHEER GHANCI called & affirmed
Examination-in-Chief by MR MCGEE**

Q. Can you give the Committee your full name?

A. Zaheer Ghanchi.

Q. Even though, Mr Ghanchi, I am the one asking you the questions, can you direct your answers over towards the Committee and can you keep your voice up, as it is very important that they hear what you have to say, and can you go at a steady pace as there are people who need to take a note. It is right, is it not, that you graduated with a BSc Hons degree in Optometry in July 2009 from the University of Ulster?

A. That is correct.

Q. And that, initially, you secured yourself a pre-registration placement with Vision Express in Glasgow in February 2009?

A. That is correct.

Q. And you changed your pre-registration placement so that you were closer to home, and you went to Specsavers in Kirkby in Merseyside in August 2009?

A. That is correct.

Q. The Committee know already about the matters leading up to your suspension and the period of your suspension, so I shall not ask you about those. However, can I just confirm with you that on 18 July of this year the Registrar accepted your application for retention on the student register, is that right?

A. Correct.

Q. Although that is suspended until November of this year?

A. That is correct.

Q. Okay. Can I ask you straight away how do you view now in October 2011 your past actions which have led to you being before the Committee today?

A. I accept full responsibility for everything that I have done. I have dealt with my problems in a very negative and adverse manner, and I have learned a very big lesson from all of this.

Q. How has what you have learned informed the way in which you conduct yourself now?

- A.** I totally appreciate that, in order to be a professional, honesty and integrity are the cornerstone of what it means to be a professional.
- Q.** It is right, is it not, that you have not committed any offences or been in any trouble with the police or any other disciplinary authority since the period of your suspension?
- A.** That is correct.
- Q.** As far as how you have maintained your skills and knowledge during the period of your suspension, what is your current occupation, what is your current job?
- A.** An optical assistant.
- Q.** And where is that?
- A.** In Specsavers in Kirkby.
- Q.** And is that where you are doing your pre-reg training?
- A.** That is correct.
- Q.** So it is the same place?
- A.** Correct.
- Q.** Exactly what are you doing on a day-to-day basis, what tasks are you undertaking?
- A.** Pre-testing patients, visual field examinations, dispensing of spectacles, single vision and multi-focal, non-contact tonometry including the pre-testing.
- Q.** How long have you been doing the optical assistant job for?
- A.** Since the suspension started.
- Q.** And you have been employed full-time during that period?
- A.** That is correct.
- Q.** Where are you currently living?
- A.** At home with my parents in Bolton.
- Q.** And how far away is that from Kirkby?
- A.** Return would be 70 miles in total.
- Q.** And have you been undertaking that return journey every day?
- A.** That is correct.
- Q.** Beyond your paid employment, have you been undertaking training courses and assessments that carry CET points?
- A.** That is correct.
- Q.** How many CET points have you accumulated?

- A.** Thirty-five.
- Q.** Since when?
- A.** Since December 2010.
- Q.** Am I right in thinking that in fact there is no requirement for you as a pre-registration student to do CET at all?
- A.** That is correct.
- Q.** Why have you been doing the CET?
- A.** To maintain my knowledge and skills, and to be up to date with the academic side of optometry.
- Q.** You have also been doing some practical work, haven't you, which has been referred to already. You engaged in an activity yesterday, did you not?
- A.** That is correct.
- Q.** What was that?
- A.** I sat in with an ophthalmologist at the Royal Oldham Hospital at his glaucoma clinic.
- Q.** If there is a copy of R2, do you have that in front of you?
- A.** I do.
- Q.** I shall say this in short order, these are your notes on the observations that you undertook yesterday?
- A.** That is correct.
- Q.** Who designed this form?
- A.** I did it myself.
- Q.** It is also right, is it not, that you have been taking active steps in preparation for returning to the register and working as a pre-reg optometrist?
- A.** That is correct.
- Q.** What are those?
- A.** I attended a two-day course at the Vision Care Institute by Johnson & Johnson.
- Q.** In case the Committee do not know, what does that course cover?
- A.** It covers a range of work such as using the slit lamp, a tutorial of contact lenses training, Volk lens and communication with the patients.
- Q.** There was reference which the Committee will have seen in their pre-hearing reading of the transcript to the fact that you have in the past had some periods of low mood, is that right?
- A.** That is correct.

- Q.** Is it right that you had a period of slightly low mood after you were suspended?
- A.** That is correct.
- Q.** What did you do about that?
- A.** I visited my GP who referred me to the NHS redacted team.
- Q.** What did they say, what was the upshot after they had assessed you?
- A.** They said there was no need for any medical redacted.
- Q.** Right. Did you do that?
- A.** I didn't as such. I felt that speaking to friends and family helped me a great deal.
- Q.** So is that how you dealt with it?
- A.** I did, yes.
- Q.** Did that low mood pass?
- A.** It did.
- Q.** How do you feel now about how you dealt with it?
- A.** I feel much more confident and much stronger about it.
- Q.** Again, so that there is no doubt about this, it is right, is it not, that you redacted since your arrest in 2008?
- A.** That is correct.
- Q.** And that you have been redacted since April 2009?
- A.** That is correct.
- Q.** It is also right, is it not, that you do not attend your general practitioner on a regular basis and your health is fine?
- A.** That is correct.
- Q.** What are your future aspirations for a career in optometry?
- A.** I want to be a practising optometrist and I want to excel and to further my knowledge and skills. I would like to do an MPhil in Optometry and Ophthalmology, I would like to do a PhD research in Visual Sciences later on in life.
- Q.** I have no further questions for you, Mr Ghanchi. I do not know whether my learned friend does?

Mr Whalley: No, thank you.

Ms Jones: Mr Ghanchi, the Committee may have some questions for you.

Questioned by the Committee

Mr Ilett: I have just one question. What degree did you get from Ulster?

A. A Bachelor of Science.

Q. And what grade of degree was that?

A. It was a 2:2.

Q. Thank you.

Re-examined by MR McGEE

Mr McGee: It is entirely my fault but there is a question which I forgot to ask Mr Ghanchi which has been prompted by the question that Mr Ilett has just asked. [*To Mr Ghanchi*] Up to the time that you were suspended, you had completed all your clinical competences up to date, hadn't you?

A. That is correct.

Q. You passed your ocular diseases and abnormalities assessment?

A. That is correct.

Q. Routine eye examination on a presbyopic patient?

A. That is correct.

Q. And you have had two outstanding final examinations, those being contact lenses and clinical decision-making?

A. That is correct.

Q. So everything else you sat and passed at the time of your suspension?

A. That is correct.

Ms Jones: If there are no further questions, I ask the Legal Adviser to give his advice?

Mr Kilcoyne: Madam, I propose to give the following advice. First, you are aware that this is a review hearing. If you are going to impose a further sanction, you must be satisfied that the Registrant's fitness to practise is currently impaired. In relation to impairment, I would just remind you of some recent observations made by Mr Justice Cox in the case of *CHRE v The NMC and Paula Grant* [2011] EWHC 927 (Admin), paragraph 74 where she states:

"In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in

the profession would be undermined if a finding of impairment were not made in the particular circumstances.”

Madam, your powers in relation to what action to take are set out at Section 13F(7) of the Opticians Act 1989 (as amended), and I would remind you that today you can either direct that the current period of suspension be extended for such further period from the time when it would otherwise expire, as is specified in that direction, obviously limited to 12 months. You also have the power to erase if you felt that was appropriate. You can also “direct that the Registrant’s registration is, as from the expiry of the current period of suspension, to be conditional on his or its compliance during such period not exceeding three years”, with such requirements being necessary for the protection of the public or in the Registrant’s own interests.

May I remind you that, when considering what action to take, first of all you must decide what action, if any, is necessary to provide appropriate protection for the public or the Registrant himself? You must apply the principle of proportionality, so your action needs to be a fair and proportionate response, balancing the Registrant’s interests with the requirements of public protection and the need to have confidence in the profession. When considering what action to take, may I recommend also that you consider the least serious sanction or response first until you reach what you regard to be a fair and proportionate response?

I would repeat as far as today is concerned, if the Registrant remains suspended, you should only take any further – if I may call it – positive action if you are satisfied that the Registrant’s fitness to practise is currently impaired. Madam, that is the advice I propose to give. I do not know whether there are any observations?

Mr McGee: There are. First of all, perhaps Mr Ghanchi could be stood down.

Ms Jones: Mr Ghanchi, my apologies for not standing you down a while back.

[The Registrant stood down]

Mr McGee: May I just make these observations? In the main, I agree with what your Legal Adviser has set out before you. What he has set out before you though is the positive action which you can take if you feel there is a need for further positive action. Of course, what will happen if no action is taken is that the suspension will come to an end in November 2011. On the basis of what you have heard, that is what I invite you to do, simply to take no further action. The matters at 13F are in place if further positive action is required. They are stage two, if I may put it like that. I am sure the Legal Adviser will agree with me that stage one is: is there need for any further action or can this Registrant at the normal expiry of the suspension simply return to the register? That is the first consideration.

If you are not satisfied that he should simply return to the register at the natural end of the suspension, it is only at that stage that you would start to look at the various powers you have under Section 13F. From that stage, I agree with what the Legal Adviser has said to you.

Mr Kilcoyne: May I just comment that is correct. You have the option today to take no action at all and to let the suspension order take its full course and lapse. You also have the powers that are set out at Section 13F(7).

Ms Jones: Thank you. Do you have any observations?

Mr Whalley: No, thank you, Madam.

Ms Jones: Thank you very much. Mr Henley, if you would clear the room.

[Hearing adjourned at 09.24]

[Hearing resumed at 09.54]

Ms Jones: From the presentations leading into the last recess, we want to clarify that the Committee will make its decision in a two-stage process: impairment and, if appropriate, then thinking about sanction. We want to raise that with the parties so that there is no confusion that the two items are being taken together. On that basis, I want to check with the parties whether there are any items on impairment that you wish to bring to our attention. We shall then go into camera to consider those, then come back and, if appropriate, think about a sanction stage, hearing any further matters that you may wish to bring to our attention. Mr Whalley?

Mr Whalley: Nothing further from the Council's side.

Mr McGee: There is for the Registrant. In my submission, this is not a hearing where the normal impairment and sanction stage are gone through. The Registrant has been suspended for 12 months. That suspension period comes to an end in November 2011. The purpose of this hearing, in my submission, as it always is, is a tripwire to ensure that the automatic re-registration, if I may put it that way, is still appropriate. It is not a substantive fitness to practise hearing in relation to impairment and then sanction; there is no issue of sanction raised here at all. In my submission, the proper approach is this.

The Committee need, in their professional judgment, to come to a conclusion about whether it is appropriate for the suspension to run its normal course, and for this Registrant to return to the register in the normal course of events in November 2011, i.e. to take no action whatsoever. If the Committee take

no action whatsoever, because they are satisfied that this Registrant can return to the register after the close of the period of suspension, that is fine.

If, however, the Committee feel that this Registrant should not return to the register automatically to practise without conditions, it is only at that stage that Section 13F becomes applicable. For instance, has something happened over the course of the suspension period which means that an automatic return to the register cannot be countenanced, and there needs to be a return with conditions; there needs to be a further period of suspension, or, indeed, has something happened during the course of the suspension which means that no return ever can be envisaged?

For example, and I use this Registrant's case as an example, if during the currency of this suspension it had come to light that further matters of dishonesty had been perpetrated by Mr Ghanchi, that he had made further dishonest representations to the GOC, committed further offences, failed completely to maintain his skills and knowledge, it would be open in those circumstances for this Committee to say: stage one, should he automatically return to the register? No, he should not. Stage two: what further order do we make? In the circumstances of the example I have just given, the Committee may think he has had his chance, he has been suspended, we can now go to a sanction of erasure.

In my submission, however, this is not a normal two-stage fitness to practise test of assessing impairment and then going on to sanction. Impairment and sanction, initially, have absolutely nothing to do with this process. It is a case of: do the Committee believe that they have to take any further positive action, either to prevent or, in some way, to curtail Mr Ghanchi's re-registration or return to the register? If the Committee are happy with what they have heard, that he has, as was indicated in the original determination, fully appreciated the gravity of the offence; if they are happy that he has not reoffended, that he has maintained his skills and knowledge and that the Registrant's patients will not be placed in any risk, stage one is: do we need to take any action of any description whatsoever? If you do not take any action, he will return to the register in November 2011, that is the course which I urge on you.

The consideration of the matters at 13F only kicks in if you are not happy that there should be an unrestricted and unconditional return to practise. It is at that stage that you would have to consider whether he is currently impaired and look at how to do deal with that in an ascending order. Those are my submissions on the proper approach that the Committee should present.

Ms Jones: Thank you, Mr McGee, that is very helpful.

Mr Kilcoyne: Could we hear from Mr Whalley?

Mr Whalley: I agree with the principles set out by my learned friend but there is one additional point I would like to make. In my submission, with regard to public policy issues, which were set out by the learned Legal Adviser when referring to the case of *CHRE v NMC and Grant*, it does not mean you have to find that something happened within the 12 months. You can still consider that, in your opinion, there is a continuing negative impact on his registration. For example, it could be because of the nature of the convictions, because the suspended sentence is still in place until February: these are also considerations that you can, in my submission, take into account. The reputation of the profession can also be a factor when considering if any action is required but I do agree with my learned friend as far as the process.

Ms Jones: That is helpful. This is slightly unusual but I would like to check with members of the Committee whether they have any questions. [*No questions*] I invite the Legal Adviser to comment.

Mr Kilcoyne: May I just check something? One matter I know the Committee were concerned with was whether or not to deal with this in terms of decision-making as a two-stage process. I have heard what Mr McGee says but there is a practice here that indicates a review hearing is also dealt with in a two-stage process.

Mr McGee: Yes, there is a two-stage process but it is a different two-stage process to a full fitness to practise hearing. At a review hearing, stage one is: are we happy in our professional judgment that when the period of suspension comes to an end, this Registrant may simply return to the register. If that is the Committee's view, then no further action will be required by the Committee.

Mr Kilcoyne: May I ask you to pause there? Does that not logically mean that, if the Committee take the view that no further action is required, they are of the view, therefore, that there is no longer any further impairment?

Mr McGee: Yes, in this sense that they have to be happy that, going forward, an unrestricted return to the register is appropriate. Therefore, to the extent that involves whether there has been an impairment that is continuing beyond the end of the suspension period, or that matters have come to light during the course of the suspension which indicate a continuing or different impairment, then yes.

Mr Kilcoyne: Would it not follow that, if the Committee took the view, having heard all the submissions today, a registrant who is on a suspension order is no longer impaired, that would be a reason not to continue the suspension, or to take any further action? If they take the view that he is no longer impaired, they let the order come to an end. Therefore, impairment is a relevant factor to consider.

Mr McGee: The order of the initial Committee, of course, is he was currently impaired at the time of the imposition of the sanction, and that sanction is a period of suspension for 12 months. The issue for this Committee as a failsafe mechanism is whether, on review, that period of suspension can be allowed simply to run its course, or whether there is an indication of material coming to light during the course of the suspension which would mean that, in the Committee's view, they do not feel that they can simply allow this Registrant to return on an unconditional basis.

Mr Kilcoyne: Do you not have to consider impairment to inform that decision on whether to take any action at all, which includes taking no action? You have to consider on the evidence before you whether or not there is current impairment. If the Committee take the view, having heard your submissions, that there is no impairment, that would indicate that there should be no further action taken, the suspension order is allowed to run its course and that is it. If the Committee take the view that there is impairment, they could decide, arguably, again to allow the suspension order to run its course and come to an end. Or the Committee have further options as set out at Section 13F(7). The confusion comes from trying to suggest that impairment does not seem to have any role in relation to the immediate concern that the Committee should have in deciding what action should take place, whether it is no action or whether it is positive action.

Mr McGee: There is not, in my submission, any formal two-stage procedure as there is in fitness to practise matters of impairment and sanction. There, clearly, needs to be a consideration by the Committee of the factors laid out in the original Committee's determination, which I shall read.

Ms Jones: If you could give us the page reference that would help us.

Mr McGee: I do not have your full bundle with me. It is at the top of the fourth page of the determination and it says this:

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

That is the standard rubric that is included in all determinations where there is a suspension. It does not mention impairment; it does not say that, at that stage, there will be a full-blown assessment of impairment as there was prior to the initial determination.

Ms Jones: Mr McGee, one moment please, Mr Henley is just raising the matter.

Mr Henley: May I point out that on page 149 of your Act at 62(2) it states: “The review hearing shall, for the purposes of this rule, be treated as a substantive hearing.”

Mr McGee: Yes, but may I also point out that refers to reviews set out at 59(a), it does not refer to this sort of review.

“Where the Fitness to Practise Committee previously made an interim order, conditional order or suspension order in respect of a registrant, the registrar

(a) shall refer the case to the Committee for the purposes of Sections 13F(10) (which is indefinite suspension), 13L(3)(a) or (9)” –

which is not here in this case, or

“(b) may refer the case to the Committee when new evidence is received by the Council which, in the registrar’s opinion, suggests that the order imposed on the Registrant’s registration ought to be reviewed.”

Mr Kilcoyne: Mr McGee, may I also point out that, so far as the procedural matters are concerned, the red book, the *Fitness to Practise Members’ Handbook* indicates that where there is a review of the conditional registration or suspension, it will be a two-stage process, evidence regarding impairment and submissions regarding impairment and findings. This is in the review.

Mr McGee: Can you give me the reference in relation to that?

Mr Kilcoyne: I do not know whether this is a public document, Mr Henley?

Ms Jones: Mr Henley, can you help us with the status of this document?

Mr Kilcoyne: The status of the red book.

Mr Henley: It is the panel members’ handbook.

Mr McGee: Does that relate to part 9 of the rules?

Mr Kilcoyne: I believe it does.

Mr McGee: Part 9 of the rules are review hearings but only review hearings where the matter has been referred under 13F(10).

Ms Jones: Can I try to move us forward with this? The Committee’s desire in coming back to you was to seek the most appropriate way of considering the

matters. You, Mr McGee, say we should consider them together and make one determination. Mr Whalley, do you have any issues with that?

Mr Whalley: I do not, Madam. There is not too much difference between the approaches to take. The question is whether you take any action, at that stage you will, of course, consider impairment. Whether it is a separate stage or not I am not sure makes that much difference.

Ms Jones: There is some cross-referencing happening which I would say the Committee is unable to keep up with. I would like to suggest, therefore, that we take a short break; that the representatives speak with the Legal Adviser. I want to get to a position where we can proceed and the parties are satisfied and clear as to on what basis we are proceeding, so that we reach a right and fair outcome this morning. Is that an acceptable suggestion?

Mr Whalley: Certainly, Madam.

Ms Jones: Thank you. Mr Henley, can you clear the room and we shall take no more than 30 minutes but please come back to me if you need more time on that matter?

[Hearing adjourned at 10.12]

[Hearing resumed at 10.37]

Ms Jones: We have had a brief adjournment, and you have discussed the approach for the next stage. Could I hear from Mr Whalley first on his representations, and then from Mr McGee?

Mr Whalley: Madam, I believe we are all agreed now that you can indeed adopt a two-stage process. The first stage should be whether any action is required which can, of course, include the test of current impairment. I am not sure we agree that it is called that but the first stage is whether any action is required. Of course, if the answer to that is no, that will be the end of your decision-making for today. If the answer to that is yes, you will go on to the second stage when we shall come back for further submissions.

The only point on which we disagree is what you can consider at the first stage. In my submission, to reiterate what I said previously, you can consider public policy issues, the reputation of the profession, which will include the fact that the suspended sentence is still in place until February 2012. In my submission, those are considerations you can take into account at stage one, not solely considering what the last determination said in terms of requirements that needed to be met. We disagree on that point but, in my submission, you can take those facts into account.

Ms Jones: Thank you very much for that, Mr Whalley. Mr McGee?

Mr McGee: I agree with my learned friend that a broad measure of agreement has broken out at the bar which is an unusual thing. It may just be a matter of semantics but, in my submission, it is important that this hearing is not seen as a substantive hearing in relation to formal reconsiderations of impairment and a review of sanction. I agree in broad terms with my learned friend that it is a two-stage approach. The first stage is whether any action needs to be taken. In my submission, a guide to this Committee about whether any action needs to be taken is found at the top of page 4 of the original determination which I have already read. The criteria set by the first Committee are these. They say:

“The Review Committee will need to be satisfied that the Registrant has fully appreciated the gravity of the offence, has not reoffended and has maintained his skills and knowledge, and that the Registrant’s patients will not be placed at risk by resumption of practice or by the imposition of conditional registration.”

In relation to those, you have heard brief submissions from me about how all of those boxes are ticked by this Registrant as far as his appreciation of the gravity of the offence, the fact that he has not reoffended, there is ample evidence that he has maintained his skills and knowledge and it has never been an issue in these proceedings, at any stage, that the Registrant’s patients have been, or would be, placed at risk. That has simply never been a live issue at any stage, so that box is ticked as well.

If you come to the conclusion that no action is required and that this Registrant can safely proceed back onto the register when this suspension period runs its course and elapses under its own weight - if I can put it like that - that is the end of the process.

Where I disagree with my learned friend about stage one is this. His submission is that you can take into consideration at this stage issues of public policy to do with this Registrant still being under a suspended sentence order. The first Committee, when considering and imposing a sanction, knew full well the nature of the suspended sentence order. They have already imposed a sanction in relation to that, which was one of 12 months’ suspension. Of course, that is the maximum suspension they could put in place but had they considered that public policy on the grounds of a suspended sentence order meant, in effect, that a Registrant with a suspended sentence order should not be allowed to practise, they had the sanction of erasure which they chose not to use.

It is also the case that he has, as you have heard from his own evidence, been retained on the register throughout, and he was retained on the register as recently as this July. That is the practical submission I make in relation to that.

On a more theoretical level, there is an element of double punishment, if any review committee were able to say, we are going to add to the suspension order already in place, simply to mark our view of this particular public policy consideration. Therefore, I warn against that, if that does not sound impertinent.

On stage one, I agree with my learned friend except for the public policy aspect. If you feel that no action needs to be taken, that would be the end of the matter. If you feel that further positive action needs to be taken under Section 13F, at that stage I would invite you to ask the parties to make any further submissions on the nature of any further positive action that is required. Of course, you will have gleaned from my submissions that, with this particular Registrant, I respectfully suggest you need not get past stage one.

Ms Jones: Thank you very much.

Mr Kilcoyne: Mr McGee, may I ask a question about that? Would you accept that, if at stage one the Committee took the view that further action was required, that would have to be on the basis that they take the view that the Registrant's fitness to practise is currently impaired? That is the bedrock of jurisdiction for the purposes of the Committee is it not?

Mr McGee: Yes.

Ms Jones: Do you wish to add anything to what has been said?

Mr Kilcoyne: As far as my advice, Madam, you have had a view taken by both representatives that it is a two-stage step. I would just repeat the point, in relation to the first stage, regarding what action to take, you can only take the view that further action is required if you are satisfied that the Registrant's fitness to practise is currently impaired. If it is not impaired, you have no jurisdiction and, therefore, should take no action at all.

Ms Jones: Thank you. Mr Henley, could you clear the room please.

[Hearing adjourned at 10.44]

[Hearing resumed at 11.33]

Ms Jones:

Findings regarding impairment

The Committee heard submissions from Mr Whalley, for the Council and from Mr McGee, for the Registrant. The Committee accepted the

advice given to it by the Legal Adviser. It was agreed between the parties that the Committee would proceed with this review on a two-stage basis dealing firstly with whether any further action should be taken and, if so, to invite the parties back in for further representation on what further action should be taken.

The Committee heard evidence from the Registrant that since the last hearing he had worked full time as an Optical Assistant, undertaken a two day 'Returning to Work Confident and Refreshed' course, and completed 35 points of CET learning. He has additionally observed specialist services at the Royal Oldham Hospital. The Registrant has demonstrated insight and accepts responsibility for his previous criminal behaviours. The Committee were also informed that he had maintained redacted.

At the substantive hearing in October 2010, the Committee found that the Registrant's fitness to practise was impaired based on the seriousness of the three separate criminal convictions received for drink-driving, being in possession of, and supplying, a controlled drug and theft. Further, the Registrant failed to report these matters in his GOC registration. The Registrant was sentenced at the Crown Court in Belfast on 20 February 2009 for being in possession of and supplying a controlled drug and received a custodial sentence, namely three years and three months imprisonment, which was suspended for three years. This sentence is still in effect and comes to an end in February 2012.

The Committee is satisfied that Registrant has taken action to maintain and improve his practice. The Committee has reminded itself that, when considering whether impairment remains, it needs to consider not only risks to the public but also upholding proper professional standards and public confidence in the profession. Considering the suspended custodial sentence, the Committee found that the fitness to practise of Zaheer Ghanchi to undertake training as an optometrist remains impaired.

Ms Jones: Mr Whalley, would you take us forward to the next stage of sanction, or whether there should be any sanction?

Mr Whalley: Certainly, Madam. I have no further submissions on behalf of the Council but I shall repeat the options. If you now move to Section 13F(7), it sets out clearly the options that are available. They are to direct that the current period of suspension be extended for up to 12 months; to direct that the name of the registrant be erased from the register or, finally, to direct that his registration is conditional. Those are the three options open to you now you have found the first stage. That is all I wish to say, Madam, thank you.

Ms Jones: Thank you. Mr McGee?

Mr McGee: Madam, my submissions are straightforward. First, you should take no action at all and you are not obliged to take any action under 13F - it is permissive. This is a Registrant who has met all the criteria set by the initial Committee. He is maintaining his knowledge, there is no suggestion that he is a risk to any of his patients. He fully accepts and has shown insight into his original behaviour. In those circumstances, even though you have found that he is currently impaired, it is my submission that he be allowed to proceed back onto the register at the end of this suspension period. The suspension period was put in place as a sanction by the original Committee, which they felt was commensurate with, and proportionate to, the allegations that were found proven. Subsequently, the Registrar has seen fit to accept and grant applications from this Registrant for retention on the register. I suggest, Madam, that is an important consideration.

As far as further sanction, it is difficult to see what would be fair and proportionate. Starting with the sanctions available to you at 13F(7), the effect of a further period of suspension would be a redetermination of the original sanction. It would mean that, instead of having a clear-cut sanction of 12 months' suspension based on a thorough consideration by the first Committee, having heard evidence of the culpability of this Registrant, he would be faced with a further period of suspension based on no other consideration than the public policy matter, which was before the original Committee.

This is not a case where there is new evidence that has come to light during a period of a suspension, which could cause the Committee to say to themselves, we feel that a further period of suspension is justified as an additional sanction. Nothing has happened during the course of this suspension period that is new in terms of allegations from the GOC, or of poor behaviour, or of inadequate behaviour in relation to this Registrant. It would be an additional sanction but based on exactly the same facts as known to the initial Committee which, in my submission, would simply be unfair.

In my submission, it would be unfair and disproportionate to consider, for example, erasure. It seems to me, Madam, that sanction under 13F(7) must be completely ruled out; that could not possibly be right in these circumstances.

It is open to the Committee, of course, to determine that this Registrant is allowed to return to the register but with conditions on his registration. It is difficult to see, bearing in mind this is not a matter of performance, it is not a matter of monitoring, it is not a matter of his failure to maintain skills or knowledge, it is a public policy matter, what the appropriate condition would be that met a public policy consideration.

Therefore, in all the circumstances, my submission is this: the Committee take no further action in light of the circumstances of this case. The only

conceivable and applicable action would be an extension of the current period of suspension which, bearing in mind the lack of any new material before this Committee to the detriment of Mr Ghanchi, would not be appropriate. It would be, in effect, a resentencing exercise – if I may import language from the criminal courts – based on exactly the same set of facts as were before the initial Committee. Those are my submissions.

Ms Jones: I invite the Legal Adviser to address us.

Mr Kilcoyne: Madam, I give the following advice. I have already outlined the options that you have under Section 13F(7) of the Opticians Act 1989, and I do not propose to read those out again. I would, of course, remind you that you can undertake no action based upon the submissions that have been made to you today, or you can exercise powers that are set out at Section 13F(7).

What I would remind you of again, in general, is that, first you are not here to punish an individual as far as what action you should take. Your prime purpose is to protect the public and to maintain public confidence in the profession. I would also remind you that, in relation to what action, if any, you take, you must apply the principle of proportionality. Therefore, there needs to be a fair and proportionate response, balancing the Registrant's interests with the requirement of public protection and confidence in the profession.

Can I also remind you that when considering what options to take, if you decide to take any action set out in your powers at 13F(7), you should consider, first, the least serious option until you reach a point where you have found a fair and proportionate response? Madam, that is the advice which I propose to give to you. Do the representatives have any observations?

Mr McGee: I have no observations, Madam. However, in fairness to Mr Ghanchi, there is one thing I should have mentioned, and the Committee may already be familiar with this having read the determination of the previous Committee. There are already issues about the current period of suspension impacting on Mr Ghanchi's ability to complete his pre-registration training. Those are in the process of being resolved but, of course, any further period of suspension may have a decisive effect on whether Mr Ghanchi is able to proceed to complete his qualification. Therefore, if the Committee are considering a further period of suspension, we may return to the position that the initial Committee faced that a period of suspension is tantamount to an erasure. Certainly, a further period of suspension may be tantamount to that, at least in the short term. In fairness to Mr Ghanchi, I make that observation.

Ms Jones: Mr McGee, three of the panel are not in the profession and, if there are circumstances which you say are tantamount to an erasure, you need to explain them to us so we can consider that as part of what we are hearing.

Mr McGee: May I take you, in that case, to the determination? It is right to say that Mr Ghanchi has to complete certain assessments by – and I shall be corrected if I am wrong – 12 months from the start of his assessment period, sorry a two-year period from November 2009. Therefore, he must be able to complete his pre-registration assessment by November 2011. That is the period when the suspension currently comes to an end. There was on the last occasion some debate about whether if he were suspended – as during the period of suspension he cannot undertake these assessments – it should have been for a period of 11 months, to allow him time prior to the expiry of the two-year period to complete all his assessments.

Contact was made on the last occasion with the GOC, and you have seen this from the transcript of the hearing on the last occasion. The GOC took the view that, at that stage, if he did not complete them strictly within two years, it was open to the College of Optometrists to allow him further time; there could be negotiations in relation to that.

The negotiations with the College of Optometrists that happened at that stage and that the AOP have been having, in my understanding, since then, are based on a period of suspension which expires in November 2011. If that period of suspension were to be extended, if there were to be a further period of suspension, what the impact would be on the view of the College of Optometrists I am afraid I cannot say for the moment. In fact, I am told that they are awaiting the outcome of this hearing before they make any decision about whether they will allow Mr Ghanchi to proceed to the completion of his outstanding assessments outside the two-year period.

They are awaiting the outcome of this hearing on the basis that, if the suspension is only for 12 months, that is one set of circumstances which may lead to one decision. If it is longer than that, they may take a different view. If they take the view that, if it is a longer period of suspension, they are not prepared to allow Mr Ghanchi more leeway at the end of that two-year period which comes to an end in November 2011, in those circumstances it may be – and I can go no further than that, there is no definitive answer to this at all and cannot be today – they take the view that they are not going to exercise their discretion to allow him to take the outstanding modules outside the two-year period, if there were to be a suspension for another six months or something of that nature. In those circumstances, he would not be able to qualify and that would be it.

Ms Jones: Thank you, Mr McGee. Do you have any further comments, Mr Whalley?

Mr Whalley: No, thank you, Madam.

Ms Hallendorff: Should the suspension be lifted in November, and I am not making any pledge one way or the other, is there confirmation from the College of Optometrists that they will allow Mr Ghanchi to take these?

Mr McGee: I can answer that definitively because I have been very usefully handed a letter from the College of Optometrists which says: “If the GOC” – and I don’t think they mean the GOC – “allow Mr Ghanchi onto the register to continue with his training, then regulation 7B in the 2011 *Trainee Handbook* would be applicable.” As I understand it, that means that there is a discretion to allow for final assessments to be carried out after the technical expiry of the two-year period. Therefore, he would be allowed to if he is allowed back on the register.

Ms Jones: Do members of the panel have any questions? [*no questions*]

[*Hearing adjourned at 11.50*]

[*Hearing resumed at 13.23*]

Ms Jones:

Further action

The Committee heard further representations from both parties. Further, it accepted the advice of the Legal Adviser.

Mr McGee urged the Committee to take no action as to do so would amount to further punishment and would not be fair and proportionate. Further he indicated that an extension to the current suspension order would be tantamount to ‘erasure’ on the basis that the Registrant might be unable to conclude his pre-registration training in the allotted timeframe. He also relied upon the fact that the GOC’s registrar had accepted the retention of the Registrant on the register to support no action being taken by the Committee.

The Committee rejected Mr McGee’s submission that no action should be taken and the suspension order be allowed to lapse. It does not accept that a further period of suspension would amount to a separate and further punishment. When the matter was last before the substantive hearing, the Committee imposed the maximum period of suspension permissible. It is open to this Committee today to consider further suspension if that is fair and proportionate in accordance with its powers under Section 13F(7) of the Opticians Act 1989 (as amended).

The Committee considered carefully the argument that any further suspension would effectively be an ‘erasure’ of the Registrant’s registration, because the Registrant would be unable to conclude his

pre-registration training. The Committee had no specific evidence on this point, although it was made aware that the College of Optometrists has a discretion in regard to this matter. It is not the business of this Committee to speculate how the discretion of that body will be exercised.

The Committee finds no merit in the argument that the GOC's registrar has accepted the Registrant's retention on the register. This is an automatic process for anybody involved in a fitness to practise process and is not an endorsement.

The Committee went on to consider what action should be taken, applying the principle of proportionality. The Committee also considered the need to uphold proper professional standards and uphold public confidence in the profession.

The Committee went on to consider conditional registration. It considers this to be inappropriate in a case involving serious criminal convictions. It noted Mr McGee's observation that it was difficult to see what conditions would be appropriate in this type of case.

The Committee has concluded that it would be appropriate to extend the suspension order for a period of five months from the date when the current order is due to expire (2 November 2011) in accordance with section 13F(7) of the Act. This will run just beyond the end of the currency of the suspended custodial sentence which expires in February 2012. The Committee has accepted the advice of the Legal Adviser that this Committee's function is not to punish an individual but to maintain professional standards and public confidence in the profession. The Committee is of the view that a reasonable member of the public would not find it acceptable that a person currently the subject of a suspended custodial sentence should be part of this profession.

A review hearing will be held approximately four weeks before the expiration of this order. The Committee is pleased to note the steps the Registrant has taken since the last hearing. It urges the Registrant to continue on this path and would hope at the next review there is further evidence of maintenance of his professional skills and knowledge **redacted**.

Thank you.

[Hearing adjourned at 13.27]

[Hearing resumed at 13.28]

Mr McGee: I am not clear, and it may very well be my fault, when the review hearing has been ordered for, and whether the review hearing falls within the currency of the suspended sentence order?

Ms Jones: It falls three weeks beyond the currency. Are there any further matters?

Mr McGee: No, thank you, Madam.

[Hearing concluded at 13.28]