



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

**IO(08)06**

**GENERAL OPTICAL COUNCIL  
AND  
PETER MICHAEL COLBEAR (D-3122)**

**REVIEW OF INTERIM ORDER : 4 DECEMBER 2008**

**REVIEW OF INTERIM ORDER:  
Peter Michael Colbear (D-3122)  
4 December 2008**

Fitness to Practise Committee: Mrs Corinna Kershaw (Chair)  
Mr Alan Baldwin (Lay)  
Mr Richard Hensley (Dispensing Optician)  
Mr Arif Khan (Lay)  
Ms Sue Southgate Dispensing Optician)

Legal Adviser: Mr Anthony Coleman

For the GOC: Miss Nirupar Uddin

Hearings Manager: Mr David Henley BEM

The registrant did not appear and was not represented

*[The meeting commenced at 10.35]*

**Mrs Kershaw:** Good morning. I am Corinna Kershaw and I have been elected to chair today's review of the current interim suspension order regarding Peter Michael Colbear.

The Committee today is made up of two dispensing opticians and three lay members, and I will ask the members of the Committee to introduce themselves and the capacity in which they sit, we will start to my right. *[Introductions made]*. To my right is Anthony Coleman, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee and ensure that the proceedings are conducted in accordance with the rules of procedure so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate.

In the event that any matter arises during the course of the Committee's deliberations upon which the Committee seeks advice, the parties will be invited to return to hear the matter which the Committee has raised and the advice to the Committee. Where advice on any issue is not accepted by the Committee, this will be indicated in the course of its decision on that issue.

At the desk in front of the Committee, to my left, is the transcriber who will be keeping an official record of all that is said today during the sessions of the hearing at which parties are present, and next to the transcriber is David Henley, the Hearings Manager who will provide administrative support for the Committee.

Can I just ask you all if there is anything else you would like to raise first with the service?

**Miss Uddin:** Thank you, Madam. Madam as the registrant is not here today, the first step we need to take is to consider whether to proceed in his absence. I am aware that you have the white edition of the Handbook in front of you, so I will be referring to that.

Given the nature of this review hearing, I will in due course ask this Committee to proceed in his absence.

The first stage is whether the Rules have been complied with in terms of notice and service of documents. If you find that they have, you still then go on to consider whether to exercise your discretion.

If I can ask you to look at page 96 of the Handbook, I will read out Rule 21 which is the relevant Rule. Rule 21 states:

“Where the registrant is neither present nor represented at a hearing, the Fitness to Practise Committee may nevertheless proceed, if -  
(a) they are satisfied that all reasonable efforts have been made to notify the registrant of the hearing; and  
(b) having regard to any reasons for absence which have been provided by the registrant, they are satisfied that it is in the public interest to proceed.”

That confirms that you have the ability to proceed in the absence of the registrant.

If I can now ask you to look at page 102 of the Handbook, that is Rule 60. That sets out the requirements on the Council in terms of the notice of the review. Rule 60, for the record, states:

“The registrar shall serve on the registrant notification of the date of the proposed review of an interim order, a conditional order or a suspension order together with -  
(a) a copy of any statement, report or other document which  
(i) the registrant has not previously been sent; and  
(ii) is relevant to the review; and  
(b) the information set out at Rule 26(2) (a) to (c).”

Rule 26(2) is at page 97 of your Handbook which is in relation to the interim order and it states there:

“The notification shall inform the registrant:  
(a) of his right to attend the hearing and to be represented at the hearing in accordance with rule 20;  
(b) of the power of the Fitness to Practise Committee to proceed in his absence under rule 21;  
(c) of his right to adduce evidence in accordance with rule 46 and to call and cross-examine witnesses; and  
(d) of the Committee’s power of disposal under Section 13F to Section 13I.”

So, Madam, I submit that the Council has served the notification of this review hearing under Section 23A(1)(c) by sending it by a registered letter; Special Delivery is a registered letter that is recorded.

I know that your Hearings Manager has a service bundle for you, so I will refer you to that. In that service bundle there is a letter to the registrant, dated 24 October 2008.

**Mrs Kershaw:** I believe we have the bundle with the service and notice of the review hearing.

**Miss Uddin:** Madam, in that document there is the letter dated 24 October 2008, that is at pages 2 to 3 and that encloses the notice of the review hearing which is at page 4.

As you will see from the letter to the registrant dated 24 October, the Council has complied with the requirements of Rule 26, subsection (2) (a) to (c). You will also see that the document is addressed to the registrant at 109 Picasso Way. The registered address for the registrant is set out at page 1 of your service bundle. You will also see that the letter to the registrant, dated 24 October 2008 has a sticker with a reference number at the top middle of the letter. At page 5 of the service bundle you will see a screen print from Royal Mail, that confirms the same reference number being therefore the same document that is being served on the registrant at his registered address, 109 Picasso Way.

Madam, I would ask you to conclude that the Rules have been complied with, in terms of notice and service of documents and the service bundle establishes that the Rules were complied with.

Madam, that as I have said, is the first stage and the second stage is that you need to consider how to exercise your discretion.

I can refer the Committee to the criminal case of *R v Jones* and in that case, the House of Lords gave the Courts criteria which they should consider when deciding whether to proceed in the absence of a registrant. I have a copy of that judgment with me if your Legal Advisor would like a copy of that. Madam would you like me to go through those criteria, or are you happy for your Legal Adviser to give you that advice?

**Mrs Kershaw:** [*Confers with the Committee*] I would like to hear them, please.

**Miss Uddin:** The first criteria is, although it may seem surprising, in fact the seriousness of the offence is not relevant. Bingham LJ, in the case of *Jones*, stated that the overriding principle was to have regard to the overall fairness of the trial and that it should lead to a just outcome, whether the charge is serious or relatively minor.

Secondly, the nature and the circumstances of the defendant's behaviour in absencing himself from the trial, or disrupting it, as the case may be, and in particular whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear.

Thirdly, the likely length of such an adjournment: now, what I can say about this, is that the Council has always to give seven days' notice and therefore bearing in mind administration matters and putting together a panel, realistically this is unlikely to be before 14 days. If this case is adjourned, your Hearings Manager will be able to give you some indication about when the case could be re-listed.

The fourth criterion is whether the defendant, though absent, is or wishes to be legally represented at the trial, or has by his conduct waived his right to representation. Madam, we do not know about this, as the registrant has not put that information before us and there is no one here today.

The fifth criterion, whether an absent defendant's legal representatives are able to receive instructions from him during the trial and the extent to which they are able to present his defence. Again, that is not relevant, because there is no one here.

Number six - the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him.

Madam, the registrant has had an opportunity, even if he did not want to attend today, to put any documents in front of you and that is not the case.

Number seven - the risk of the jury – that is you – reaching an improper conclusion about the absence of the defendant. Madam, I am not going to give you any advice about that and your Legal Adviser can give you some advice about that if necessary.

Number eight, the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time to the events to which it relates.

Number nine deals with the effect of delay on the memory of witnesses, that is not relevant today, and nor is the tenth criterion because it relates to a case where there is more than one respondent.

Madam, it is of course a matter for your discretion, but I submit that all of the tests have been met to determine that this hearing can take place in the absence of the registrant.

Now, unless I can assist you any further, it is for you to decide whether you are content to proceed in his absence.

**Mrs Kershaw:** Thank you. Does anyone have any queries before I ask our Legal Adviser? [No queries raised] Do you have any advice to give us?

**Mr Coleman:** Very little. Madam Chairman, you have been correctly referred to the appropriate sections in the Rules, you have power to proceed if you are satisfied that all reasonable efforts have been made to notify the registrant of this hearing and you have the letter to him, dated 24 October 2008, which on the face of it seems to be wholly compliant with the requirements of Rule 26. You also have the power to proceed if, having regard to any reasons for absence which have been provided by the registrant, and none has been given, you are satisfied that it is in the public interest to proceed. I should remind you, finally, of the fact that this is a review of an interim order. The registrant in the determination the first time round was made aware of the fact that there would be a review, so it cannot come as any surprise to him to receive the notification to which I have already referred.

**Mrs Kershaw:** Thank you, we will now make the decision as to whether to proceed. I am just looking to my colleagues to see whether anyone wants any further discussion. [Confers] We are satisfied that the necessary requirements have been met and that it is in the public interest to continue today.

**Miss Uddin:** Thank you, Madam. Madam, I will move on to my application. This is a hearing to review the terms of an interim order, imposed by the Fitness to Practise Committee on 8 July 2008. The Committee will need to look at a copy of that order, and that is at pages 7 to 8 of the evidence bundle. Madam, that evidence bundle should run from page 1 to page 22 and I understand that you will have pre-read the bundle, so I will proceed on that basis.

**Mrs Kershaw:** We have received the bundle, but can I just check with Mr Khan?

**Mr Khan:** I have read it.

**Miss Uddin:** Thank you, Madam. Madam, in that bundle there are a number of documents involving the registrant. Most importantly, from pages 9 to 22, you will see the

transcript of the interim order application which took place on 8 July 2008. As way of background for you, on 8 July 2008, the Fitness to Practise Committee made an interim suspension order for 18 months in relation to the registrant and today is the first interim order review hearing. In relation to the law, can I please refer you to page 34 of the Handbook? There you will see, Section 13L(3) and that states:

“Subject to subsection (9) below, if the Fitness to Practise Committee make an order under subsection (1) above, the Committee -

- (a) must review that order within the period of six months, beginning on the date on which the order was made, and must also, for so long as the order remains in force, further review it.”

Madam, under Section 13L(4), your powers today in reviewing this order are: first, you can revoke the order; secondly, you can allow the order to continue, unchanged, and that is my application; thirdly, you can replace the interim suspension order with an order for interim conditional registration.

In all that you do, Section 13L makes it clear that the criteria you must use are these: you must be satisfied that it is necessary for the protection of members of the public, or is otherwise in the public interest, or is in the interests of the registrant for some sort of interim order to continue.

The Committee will need to decide whether it is necessary for an interim order to remain in effect and if so, decide whether the interim order should be varied or replaced by an alternative interim order. I will be guided by you, but in view of the fact that this is an interim order review hearing, I don't propose to go through the evidence which was available to the Committee on 8 July 2008. I hope to highlight any new issues which have arisen and also give you a short summary of the facts and hopefully that will assist you in coming to the view that this interim order should continue. Are you content for me to proceed in that way?

**Mrs Kershaw:** We have all read the bundle, so we are content to proceed.

**Miss Uddin:** Thank you, Madam. I will give you a brief summary of the facts in this case. The registrant worked as a full time dispensing optician at the practice listed at page 6 of your bundle. Concerns were raised by the registrant's colleague to the Police at the Child Protection Unit that the registrant had been viewing and downloading adult and child pornography at work and images were saved onto the registrant's external hard drive.

The registrant was arrested on 26 April 2008 by Essex Police for downloading child pornography. The registrant was bailed pending further enquiries. The practice then held three meetings with the registrant and you will see at page 3 of the evidence bundle that the registrant admitted the offence and had handed over a mobile hard drive to the Police containing the images.

At the second meeting at the practice, the registrant informed his employer that he had been relieved to be arrested as his behaviour was out of control, that he had started by downloading normal pornography and had quickly progressed to child pornography and that he was worried what he was going to do next.

At the third meeting, a disciplinary interview was held with the registrant and the transcript of that interview may be found at pages 4 to 5 of the Council's bundle.

Now at the interim order hearing on 8 July 2008, particular concerns were raised in relation to public safety and those were that the registrant had admitted to downloading child pornography within the disciplinary process with his employer. This was on two occasions: on 27 April 2008, which is at page 2 of your evidence bundle and also on 10 May 2008, which is at page 3 of your evidence bundle. The other concern was that there is the possibility that the registrant, although he has resigned from that practice, may take up employment at another practice in the future, and the information following his resignation from that practice, and also the Council's investigation, may not come to light. The nature of the allegations suggests that patients, especially child patients, could be at significant risk from the registrant behaving in an inappropriate manner. This is especially relevant as the pornography was viewed at work.

Madam, I will now highlight the new evidence that the Council has obtained since the interim order hearing on 8 July 2008. Due to the nature of the criminal investigation, it was not possible for the Council to send this letter to you previously. I understand that you have received a copy of those documents - can we call those C1 and C2, Madam?

**Mrs Kershaw:** In which order?

**Miss Uddin:** C1 which is the letter dated 2 December and C2 which is a copy of the Council's letter, dated 3 December. Thank you.

**Mr Henley:** Can I just clarify? C1 should be the evidence bundle, C2 should be the letter dated 3 December.

**Miss Uddin:** Thank you.

**Mrs Kershaw:** In that case, would you also like to include the service bundle as part of the C numbering, for future reference, or not because if so, we ought to call the service bundle '1' and the second bundle – the big bundle – '2' and then these two '3' and '4'?

**Mr Henley:** I think we ought to leave the service bundle out, so that we identify that as 'the service bundle'.

**Mrs Kershaw:** Right, okay, fine. So the main bundle will be C1, the Essex Police letter will be C2 and the GOC letter will be C3.

**Miss Uddin:** Thank you, Madam. A letter was faxed from the Child Abuse Investigation Unit on 2 December 2008 to the Council. Subsequently, on receipt of this letter, a copy was sent to the registrant on 3 December 2008 via Special Delivery; that is C3. This letter was sent as a result of various telephone conversations with the Police in order to try to get some more information.

On 2 December 2008, the Council received a faxed letter from Miss Clare Talbot. I will read that letter out:

"Dear Miss Uddin,

Thank you for your letter dated 26 November 2008. I can confirm the following information:

On 28 October 2008, the registrant was charged with 18 counts of making indecent images of children and one count of possession of 15,888 indecent

images of children. He is next due in Court on 17 December 2008. The images range from level one to level five on the COPINE Scale. This included film footage of the most serious level of abuse.

During his initial interview with Police on 26 April 2008 [the registrant] admitted searching for and sharing indecent images of children via the Internet. He admitted that he took an external hard drive containing the images into his place of work and connected it to a computer at work. He denied ever having viewed the images whilst at work.

There are no transcripts of the interview available at this stage; they will only be completed if he enters a 'Not Guilty' plea at court on 17 December 2008. I am anticipating a 'Guilty' plea.

At this stage, [the registrant] does not have any criminal convictions. I do not believe there are any documents which I could provide which will assist your decision making process. If you can be more specific, then I will of course assist with this."

Madam, the rest of the letter is not relevant for the purposes of today.

Therefore, Madam, a court date has been set for 17 December 2008. I would like just to clarify that this case has not yet been considered by the Investigation Committee at the Council because we are waiting for the criminal case to be concluded and delays have been caused in the criminal case due to the Police needing more time to retrieve and analyse the files on the computer hard drive.

Now in relation to the reference to the COPINE Scale, if I could give you an indication about how that scale works. In the case of *R v Oliver*, which is a 2002 case, the Court of Appeal established a scale by which indecent images of children could be graded and a sliding scale of severity from 1 to 5. If I read out those levels for you:

"Level 1: images depicting nudity or erotic posing with no sexual activity.  
Level 2: sexual activity between children or solo masturbation by a child.  
Level 3: non penetrative sexual activity between adults and children.  
Level 4: penetrative sexual activity between children and adults.  
Level 5: sadism or bestiality."

Madam, the investigation by the Police is currently being undertaken and until this time, due to the nature of this case, it is the Council's submission that the evidence obtained so far demonstrates that there is sufficient evidence upon which a Fitness to Practise Committee can properly be satisfied that it is necessary for the protection of members of the public and is in the public interest that the interim suspension continue to run.

The Council's general function, under Section 1(2) of the Opticians' Act, is to promote high standards of professional education, conduct and performance amongst registrants. The registrant's behaviour is clearly inconsistent with the proper standards of conduct and behaviour expected of a registrant. It is my submission that the only means practicable to achieve the necessary protection of members of the public is to continue with the interim suspension order. In the circumstances, the Council's submission is that the interim order, which runs for 18 months, should continue.

Madam, those are my submissions.

**Mrs Kershaw:** Thank you. I am just going to check in case any Committee members have any things which they wish to raise?

*[There were no further issues]*

I turn to our Legal Adviser.

**Mr Coleman:** Madam Chairman, my legal advice can be very brief. You have been correctly referred to the provisions of Section 13L of the Opticians' Act 1989, save only to remind you that this is not a fact-finding exercise at this interim stage, all the matters have been covered by Miss Uddin, with whose assessment of the legalities I entirely agree.

**Mrs Kershaw:** Thank you. We will now deliberate.

*[The hearing is adjourned at 11.00 am]*

*[The hearing recommenced at 11.20 am]*

## DECISION

**Mrs Kershaw:** The Fitness to Practise Committee reviewed an interim order of the suspension of Peter Michael Colbear (a registered dispensing optician) made by the Council on 8 July 2008.

The Committee is satisfied that the Council has complied with Rule 17 and that all reasonable efforts have been made to notify the registrant of the hearing. It determined that it would be in the public interest for the hearing to proceed in the registrant's absence.

The Committee has considered the information that was before the Fitness to Practise Committee on 8 July 2008. It has further considered, and attached weight to, the letter from Essex Police, dated 2 December 2008.

On all the information before it, the Committee agrees with the reasoning of the earlier Committee and it is satisfied that it remains necessary for the protection of the members of the public and in the public interest for the interim order of suspension to continue.

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.

Thank you. That concludes today's business.

*[The hearing ended at 11.21 am]*