

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

GENERAL OPTICAL COUNCIL

IO(09)03

AND

JOHN DAVID GILL (D-11251)

**DETERMINATION OF REVIEW OF AN INTERIM ORDER
15 FEBRUARY 2010**

The Fitness to Practise Committee reviewed an Interim Order for an 18 month suspension of John David Gill made by the Council on 19 August 2009.

Notification of hearing

The Committee has heard representations from the GOC and has accepted the legal advice given to it. The registrant, John David Gill, has not been served with notice of this hearing. In the circumstances the Council has made an application under Rule 21 for the proceedings to continue in the absence of the registrant. Put shortly, a letter was sent to Mr Gill on 4 January 2010 at his registered address that was returned, not served. On 9 February 2010 the Hearings Manager sent Mr Gill an email telling him of today's hearing. It is highly unlikely that the registrant received that email because he was sentenced to 21 months in prison by the Crown Court at Leeds on 26 January 2010. The Council made enquiries of the Prisoner Location Service on 5 February by email. That was not successful. A telephone call was made by the Council on 10 February 2010 to the Service. The upshot of that was that no information would be provided about the whereabouts of a prisoner without an order from the Court. No such order was sought; presumably because the time between the 10th and the 15th was too short for anything to be done even if the necessary information was provided. Rule 21(a) requires the Committee to be satisfied that all reasonable efforts have been made to notify the registrant of the hearing. The Council has written a letter to the registrant's address. It has been returned. The Council knew that Mr Gill was due to stand trial and to stand trial for an offence, if proved, was likely to result in a sentence of imprisonment. Does this constitute taking all reasonable efforts? The Committee is concerned about this; it accepts that there are practical constraints on the Council but the question in every case is not whether the Council has a general policy of notifying in a particular way but whether in a particular case all reasonable efforts have been made in the particular circumstances applying to a particular registrant.

Having considered all the matters the Committee is satisfied that all reasonable efforts have been made to notify the registrant of the hearing.

Public Interest

The Committee is required by Rule 21(b) to satisfy itself that it is in the public interest to proceed; No reasons for absence have been provided by the registrant.

The Committee has considered the case of Jones. It bears in mind the need to protect the public as well as the interests of the registrant and the need to uphold public confidence in the profession. Mr Gill made it clear at the initial interim order hearing that he did not intend to practice and did not intend to take part in that hearing. He is in prison. It is highly unlikely that any adjournment would result in him engaging in the process. The Committee proceeds with great caution but is satisfied that it would be in the public interest for the hearing to proceed in the registrant's absence.

Determination

The Committee has heard representations from the GOC and has accepted the legal advice given to it.

On 11 November 2009 the registrant was convicted of 2 counts of sexual misconduct for which he was sentenced to 21 months imprisonment. On 19 August 2009 an interim order committee suspended the registrant's registration pursuant to section 13L(2) of the Opticians Act 1989. This review is undertaken pursuant to section 13L(3)(a) of the Act.

The Committee has had the benefit of seeing a certificate of conviction, the Judge's sentencing remarks and the Judge's summing up of the facts to the Jury. The Committee notes that the registrant was found guilty of masturbating in the presence of a 14 year old girl who was his patient and did so in his consulting room whilst ostensibly administering a field test.

Under section 13L(1) of the Act this Committee is required to be satisfied that any order is necessary for the protection of members of the public or is otherwise in the public interest or is in the interests of the registrant.

Whilst the registrant is in prison the Committee cannot know when he may be released. The public must be protected from this registrant. Even were that not so, the Committee is satisfied that public confidence in the profession requires it to continue the interim order suspending this registrant made on 19 August 2009.

The order will again be reviewed within 6 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.

Chairman of the Committee: Mercy Jeyasingham

Signed _____

Date 15 February 2010