



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

F(08)24

**GENERAL OPTICAL COUNCIL
AND
WILLIAM JOSEPH BYRNE (SO-2100)**

SUBSTANTIVE HEARING (CONTINUED)

Monday, 28 January 2010

**SUBSTANTIVE HEARING (CONTINUED): WILLIAM JOSEPH BYRNE (S0-2100)
28 January 2010**

Committee: Mr P North (Chairman) (Lay)
Dr D Azubike (Lay)
Mr R Varley (Lay)
Ms E O'Donoghue (Optometrist)
Professor S Taylor (Optometrist)

Legal Adviser: Mr A Coleman

For the GOC: Mr C Alder

For the Respondent: Mr S Singh
Ms E Power

Hearings Manager: Mr D Henley BEM

[Proceedings commenced at 09.30am]

Mr North: Good morning. I am Peter North. I was, as you recall, elected by the Committee to chair this hearing which commenced on 6 October 2009. You will recall that the hearing was adjourned due to there being insufficient time on the day to complete matters, and we recommence today at the sanction stage.

The Committee today is again made up of two optometrists and three lay members: Dr Dozie Azubike, Mr Rod Varley, Ms Elizabeth O'Donoghue and Professor Stephen Taylor, and myself as the third lay member.

To my right is Anthony Coleman, once again 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 and procedure to arrive at a result which is fair and just. The Legal Adviser, I remind you, may accompany the Committee should it sit in private to deliberate.

I again remind the parties present that the Hearings Manager, Mr Henley, sits next to our transcriber, who will be keeping an official record of all that is said today during the sessions of the hearing in which the parties are present.

I also remind parties again that if details of patients are to be discussed those patients have been given letters A to E in the allegation.

As I mentioned in my first remarks, we commence today with the hearing at the sanction stage, and Mr Alder, may I ask you to open, please?

Mr Alder: Thank you, sir. If I could just check with members of the Committee that the Committee has still available to it – I’m conscious it’s been some time since the adjourned hearing - a copy of the hearings bundle, and whether the Committee has had an opportunity to review the transcript from the previous day’s hearing, in October?

Mr North: Perhaps by colleagues would confirm that that is the case? [*Confirmed*]

Mr Alder: I won’t review any of that transcript with the Committee – I’m sure you will be pleased to hear - I would refer the Committee to the findings which were made at the impairment stage, and ask the Committee to take those clear findings into account when considering, at this stage, whether to impose a disciplinary order, and if you decide that a disciplinary order is appropriate, to consider what the appropriate and proportionate order should be. Very much this stage is a matter for the Committee; it’s a matter entirely for your judgement, to consider which would be the appropriate order, if one is appropriate, from a spectrum of sanctions available to the Committee.

I would just flag very brief submissions, that the role of a disciplinary order, the role of a sanction, is not to act punitively, it doesn’t seek in any way to punish a registrant for those matters that have been found proven, and clearly in this case they are significant issues, focusing as they do on issues of dishonesty, as are clearly set out in the transcript and the allegation.

The principal focus for you, the Fitness to Practise Committee, is the public interest at this stage, and you will need to consider which would be, as the Council would suggest is appropriate, a disciplinary order which would reflect the public interest, taking into account and considering what disciplinary order would be appropriate to reflect and protect the reputation of the profession, which disciplinary order would be appropriate to maintain the standards of the profession, and as well as that, in the public interest, to consider which disciplinary order would be appropriate to maintain public confidence, not only in the reputation and standards of the profession, but equally, in the ability of a regulatory authority such as this, which is a profession which is self-regulating still at this period in time.

Clearly, the disciplinary order will articulate to the profession and to the public what are the standards expected of optometry, of optometrists, but equally, a disciplinary order in this case will articulate what standards are expected of student optometrists, which is very much the focus of this particular case.

Given the clear findings that this Committee has made in terms of the factual basis for misconduct and impairment of fitness to undertake training, the Council suggests – but they are merely submissions, no more than that – that a disciplinary order is appropriate and proportionate, and given the gravity of the allegations, as the Committee has very clearly set out in your findings, it is a fundamental requirement that optometrists and dispensing opticians must be honest and trustworthy, and the Committee is in no doubt that this equally extends to students who are undergoing training to join this profession. Given the fundamental nature, the issues of honesty, integrity and trustworthiness

which are expected of those in the profession and those aspiring to be a member of this profession, I would suggest that a higher order sanction would be appropriate in this case.

Of course, the Committee has the opportunity to consider whether to impose any conditions upon the registration of Mr Byrne: I would just make broad submissions on that, to the extent that the Committee would need to consider very carefully, given the nature of the allegations, but equally given Mr Byrne's current registration status, whether actually a conditional registration could be appropriately imposed, monitored, enforced, and all those other broader contextual issues of a CRO that you would need to take into account.

So, sir, fairly broad and brief submissions, which just reflect at this stage, it's a matter entirely for the Committee, and entirely for your consideration as to which disciplinary order would reflect correctly the public interest. Thank you, sir.

Mr North: Thank you, Mr Alder. Do my colleagues have any comments or questions they would like to make of Mr Alder? [*No comments*] Mr Singh.

Mr Singh: Thank you very much. Sir, no doubt – and this is obviously accepted, and accepted by Mr Byrne throughout his evidence, that – the element of dishonesty involved in this case, you will see seriously, and we accept that. I also accept the fact that it's connected with the profession is also a factor you will take into account. My submission is, though, that there are some mitigating factors that are important and actually, some factors that are rather exceptional in this case, one of them being Mr Byrne's current registration status, which I'll come onto in a moment.

In my submission, in this particular case, the appropriate sanctions bracket is in the financial penalties/conditions range. I accept that in other cases similar to this higher sanctions may be appropriate, but in my submission, this case falls outside that, for these reasons - there are six headings. Can I give you those headings now, and I'll speak to each of them during my submissions.

The factors I ask you to take into account are these: first of all, Mr Byrne's early admissions on the facts and misconduct in these proceedings, and also before, during the investigation by the College, the way he conducted himself then. The second is that, whatever the circumstances were that arose during his pre-registration year, he accepted personal responsibility for what he did, and sir, you and your colleagues will recall from reading his evidence that he said on more than one occasion, the fault is his, it wasn't anyone else who falsified records, it was him, and the admissions, combined with the way he expressed it, in my submission, does demonstrate insight, both into why it all occurred and into his responsibilities as an optometrist.

Thirdly, I say, whatever the circumstances, there was evidence about the circumstances that you heard, and in my submission those are important and relevant to what happened during his pre-registration year.

The fourth point is this: these matters were isolated, in the sense that this was a course of conduct embarked on, that was unprecedented in his life, in terms of dishonesty. I will refer you to the references, sir that you and your colleagues have in the bundle – they portray a completely different character to that which took the very stupid decision when he was under pressure.

Number five, there has been no repetition of this conduct since, and of course, he submitted correct records as part of his assessment after this, and there was no difficulty with those, and that, really, is a sure indication of two things: one, of how he will conduct himself in the future, and two, that he has learnt his lesson, and that such behaviour won't happen again.

Number six, which I have a big star next to in my notes: there will be no repetition of this conduct. The problem is now, sir - you will remember some discussion about this at the last hearing – Mr Byrne hasn't been allowed to retake the final exam that he didn't pass. The College of Optometrists only allows such a retake in exceptional circumstances, and our understanding is they have been very restrictive in how that's been interpreted. It was decided they didn't apply to his case, and so, inevitably, at the end of these proceedings, he will have to be removed from the register because he doesn't comply with the conditions of either studying for or intending to study for, under the College, studies to become part of the optometric profession.

Your learned Legal Adviser gave helpful advice last time, to the effect that, effectively he remains on the register until such time as he is removed by the Registrar under that condition, so we would expect he will remain on until the end of the registration period this year, which I think would be August, but he will probably before then, depending on the outcome of this, be removed in any event from the register. The other effect of that – just so it's clear – is obviously that he remains now on the student register, and so that has consequently affected what work he can do, and what work he has been doing since the date of the last hearing, indeed, since the date of his failing of that exam.

So that's an outline. All of those factors, taken into account, in my submission, would justify following the course of action that I have suggested. Can I, just on a practical note, say this, so you know where I'm going: if it's in the bracket of conditions and a financial penalty, I agree with Mr Alder, in the current situation and given the nature of the misconduct, it would be difficult to see what conditions could be appropriate in any event, and also, whether they would serve any useful purpose, given the fact that he won't remain on the register. So, in those circumstances, in my submission, it should be a sanction of the level of a financial penalty.

Now, implicit in that, I have a statement of means, a financial statement, which I'll hand up in due course. His earnings are obviously limited, in light of the fact that he's on the student register, and sir, you and your colleagues, if you follow that course, I'm sure will take into account whether its proper to impose a penalty at all in these circumstances, and, if it is, what level of penalty to impose. If you are not with me on that, and it must be a higher

sanction of erasure or suspension, in my submission, erasure would be disproportionate in the circumstances of this case, and I would urge you, if you're not with me, to consider suspension, not erasure.

Sir, could I just put a bit more flesh, briefly – I won't take long, because you've obviously read the transcripts and you will have a recall of what happened last time – can I just speak to those six matters, please, that I gave you the headings of. Sir, number one was the early admissions, and you will recall from the evidence that when Mr Byrne was confronted by his assessor, when the records were presented, he admitted to the record in question being a false one. There was then a hiatus and a meeting with the College, and at the beginning of that meeting he attended and was asked, is there anything else you want to say, he says, yes, there are a number of other records which are false, they are these ones, and he gave the details of all five of them.

Sir, I don't know if you and your colleagues have the hearing bundles to hand, but I can give you a reference to that. I know, Sir, you said it was 2009, it feels like 2008, but many moons ago, we gave it the reference C1, and it's behind divider 5, page 63 at the bottom right. Sir, this is a transcript, essentially, a note of the meeting that was held. Sir, I simply direct your attention, you and your colleagues, to where it says 'RB asked' and 'WB answered', 'Are there any other issues you want to tell us about now?' 'Yes, there are there other records'. So that was the full admission, and it was subsequently confirmed, you will recall, that having looked at all of Mr Byrne's records, it was decided only those five that he admitted to were false, so he admitted the extent of his dishonesty from an early stage. Also, that continued in the fitness to practise hearing, he made early admissions of the facts and misconduct, so I'd ask you to take those into account as mitigation, and as a reflection, really, of his true character, and the fact that he felt it proper to own up.

That leads me on to the second heading, which is the acceptance of responsibility. Sir, it was a theme at the time of the original investigation, and throughout his evidence, that he viewed the responsibility as his. Can I also just direct you to one of the pages in the bundle again: it's page 67. Sir, if you see right at the bottom of that page, it's the final paragraph - it's the conclusions and recommendations from the investigation. The bottom two paragraphs, but in particular the final one:

"The trainee did own up to the degree of falsification when given an opportunity at the outset of this investigation, and did cooperate with the investigators in the process. His attitude was one of concern, and the realisation of what he'd actually done was obvious throughout the process".

So that's from a very early stage, and also, sir, if I give you the reference to this transcript – it's pages 35 and 43 – whatever the circumstances which arose, he accepted that it was his fault. Sir, in my submission, that counts for a lot in a case involving dishonesty, it does demonstrate insight and remorse into what's happened – those are both relevant matters, in my submission.

Sir, section 3, the circumstances leading up to this: in my submission, the circumstances were significant in this case, and can I start, please, with the conclusions of the investigators in the investigation: page 67, where we were a minute ago, and page 68, but in particular, the last paragraph on page 68, which says this:

“We felt that the breakdown in certain relationships within the practice, and his concern over losing his pre-reg. position had contributed to his reluctance to ask for help when he found that gaining the relevant experience was difficult. Today we would say that the trainee was helpful and honest in his conduct during the investigation process”,

It goes on to say that he has obviously admitted dishonesty.

Sir, the investigators took the view that there were some - if I can put it this way - contributory factors towards all of this happening, and that's all the submission I make, that there were in this case some important factors. It flows – and you'll have read the transcript again – but it flows from the breakdown of relationships between Mr Byrne and others supervising him, the fear of him losing his pre-reg position was very great, and it's in that pressurised situation that he did, stupidly and wrongly, what he did.

I would ask you to consider that he was a student, still young at the time, and under significant pressure, and to take into account everything that happened to him. But I would say this. Please do not penalise him for telling his disciplinary tribunal what happened to him during his pre-reg year. The original situation is that the assessors investigated and accepted it, and I'd ask you to accept it as well, but to penalise him for giving his account, you may feel, may discourage possibly the most vulnerable members of the profession from being able to be open and honest with their disciplinary body. So, sir, please take those into account, and please don't hold it against him that he has felt it appropriate to say exactly what did happen, even if it may not have made easy listening.

Sir, can I run four and five together, the fact that it's out of character and there's been no repetition – I can deal with this rather shortly. It's sad that, in panic and fear, he's done exactly what an optometrist should not have done, and the reason he did it was because he wanted so much to be an optometrist. It's an odd situation that he found himself in, but he also did something that was completely alien to him, and I hope from the character evidence, that is clear.

Sir, can I just take you and your colleagues very briefly to a couple of passages: I think we called this R2, and there was a bundle with the expert report in it. Sir, I won't read out parts, because I'm sure you have read them, but the first reference is from John Byrne, his brother: the third paragraph, the second long paragraph, in particular I rely on – it may help if they're just marked up at this stage, and I'll just go through them quickly. The second one is Alice Wrigglesworth, the second paragraph, “never questioned his honesty and integrity as a friend”. The third page I think is an anomaly, I don't know if

it's been removed, but the third reference is Leigh O'Brien – again, the third paragraph of that:

“William not only had a great thirst for knowledge, but was a hard-working and diligent student. As long as I have known William, he has always been a very trustworthy, sincere and honest person”.

The fourth reference, from Shamsa Hameed – again, the third paragraph in that,

“As a friend, I have never cast any doubt on his integrity or his honesty, I have always found him to be honourable and reliable. He has always shown sincerity in all regards of life, and is very approachable”.

Next one from D McKeefrey, in the middle paragraph:

“Throughout my interactions with him, I found William to be a courteous and earnest individual, and at no time did I have any doubts about his honesty or integrity. He listened to advice attentively, and was able to work independently”.

Next, Kim Unwin, the practice manager at Auckland Opticians, second paragraph:

“I always found him to be trustworthy and friendly towards colleagues and patients”.

Roger Auckland, again from Auckland Opticians, the middle paragraph:

“I found him to have a pleasant manner. William was extremely trustworthy and professional at all times”.

And finally, Samantha Armstrong, the middle paragraph and the final paragraph:

“William is not afraid to ask questions when unsure about anything, and has always seemed an honest and open person”.

The point I make from all of that is that these events were out of character for him, and I ask you to take that into account as well.

Sir, the final heading, the exceptional effect of these proceedings, I have outlined the situation he's in now. In large part, the reason it is such a difficult position for him to take is because largely it's because of his own doing. The stress of these proceedings – and the final exam was very shortly before, there was an adjourned hearing, and then there was the last hearing, the final exams were close in proximity to those. There was, one can understand, a lot of stress involved and a lot of worry involved in relation to these proceedings. That has all been caused by the fact that he himself falsified records when he shouldn't have done, so the knock-on effect of his original misconduct has

actually been huge in his case, and has resulted in him being unable to pursue the profession, at least in this country. I'd ask you to take that into account because the exceptional effect is relevant as to what sanction it is appropriate to impose, because obviously the sanction is not intended to be punitive, this part of it has been on him, and I hope you can weigh that in the balance as well.

Can I just make this point briefly, while I remember? Please don't, and I'm sure you won't, punish him for not passing that exam in this sanction, because, the consequences of that have flowed from the failure of the exam. The sanction that you are imposing only relates to the misconduct and the facts that have been proved, and shouldn't go beyond that to reflect anything else, in my submission.

So, sir, those are all the circumstances. What do I ask you and your colleagues to do? As I have said, the bracket of conditions or financial penalty, but because no conditions would realistically be appropriate, I urge on you a financial penalty in this case. You will obviously be considering whether the public looking on this would feel that that was appropriate – could I make these two points, please: it's not only the sanction, but also the finding of impairment in this case, and the comments that you and your colleagues made in your finding of impairment. The finding of impairment is an important one, but the consequences in Mr Byrne's case are exaggerated, for this reason because he has to start again now. Whether he chooses to try and stay in the optometric profession, but potentially elsewhere, or he goes to another profession, the finding of impairment will stay with him, and will almost inevitably fall to be disclosed. Now, that finding will be a very significant hindrance to him and possibly a more significant one in his case because he cannot pursue this profession in this country. That, combined with your comments on impairment, which were,

“The circumstances that he has raised, even if correct, could not have justified what he did,”

and that was, essentially, to cheat – those send a message, in my submission, loud and clear, to other students, to the public, to explain that this conduct will not be tolerated. So it's not only the sanction imposed that would uphold public confidence, it's the finding of impairment and what you and your colleagues said about it at the time.

But secondly, a financial penalty is a significant sanction, and it will be a burden on Mr Byrne to pay it because of his reduced financial position as he's still on the student register. But the public would no doubt look at the circumstances and look at the exceptional factors that I've outlined, and say, in this case, such a penalty was a proportionate sanction for what has actually happened, and for what has happened since.

Sir, finally, if you are not with me on this, the question is, would it be suspension or would it be erasure? You will obviously take a bottom up approach. In my submission, looking at your indicative sanctions guidance, if

you are not with me on the fact that it's exceptional enough to bring it down to a financial penalty, the case would fall into many of the factors in the sanctions guidance for a suspension. My firm submission would be that erasure would be disproportionate in this case, when having regard to the fact that this is not a case concerning patient safety – none proved, and I refer you to the testimonials on the other hand – all of the mitigating factors that I have also outlined to you, the early admissions in particular, and the fact that this is out of character and hasn't been repeated. In my submission, it would fit far more readily into suspension than erasure, and that is what I would urge on you, if it must be a higher sanction. But you have my submissions on how to approach it – anything else would be repeating myself.

Sir, unless I can assist you and your colleagues any further, those are my submissions on sanction.

Mr North: Thank you, Mr Singh. Do my colleagues have any questions? [No questions] I have no further questions at this point. Legal Adviser, perhaps you will assist us before we retire *in camera* to consider the matter?

Mr Coleman: Mr Chairman, there is perhaps one question that I wish to ask of Mr Singh: you have referred to the decision made by the Council in relation to the College, as to whether or not Mr Byrne can retake. Do you have any documentary evidence that confirms that, because it may be of assistance to the Committee?

Mr Singh: Sir, I don't, but could we get some? I'd have to take some instructions – I'm sure we could get hold of some.

Mr Coleman: It's only if the Committee decides that it's necessary, or that it might be helpful, but I was just asking in case you did have something with you today.

Mr Singh: Can I turn my back, just briefly, and see whether we could –

Mr North: Please do.

Mr Singh: Sir, I'm fairly confident that whilst you and your colleagues are deliberating we could be in touch with the College and ask them to confirm it.

Mr Coleman: Mr Singh, doubtless, if the Committee decide that they would like to see something along those lines then they will obviously let the parties know.

Mr Chairman, moving on, therefore, to my advice on the question of sanction: you've already determined that Mr Byrne's fitness to undertake training as an optometrist is impaired, and it is now your task to decide what, if any, sanction needs to be imposed. According to the Opticians Act, the sanctions available to you, in ascending order, starting with the least severe, are a) to make no order – I say that because looking at Section 13F(3)(c), it states that if the Fitness to Practise Committee find that

“a student registrant’s fitness to undertake training is impaired, they may if they think fit give a direction specified in subsection (3) or (4) below”.

The use of the word ‘may’ indicates that the Committee also has power not to give a direction, so to that extent, that confirms my advice that you do have the power to make no order.

Secondly, you have the power to impose a financial penalty that cannot exceed £50,000, but if you are minded to impose a financial penalty, the quantum of the penalty must reflect the means of the registrant whose case you are considering. I know that Mr Singh did refer to a statement of means, but it hasn’t actually been handed in – I see that there is one, for your consideration, if you regard that as being necessary to your consideration. Perhaps you may feel that you should receive that document, in any event, before you go *in camera*.

Mr North: Can we deal with that matter, can we take that, please, and I think that should be R3. [*R3 is handed over*] Thank you.

Mr Coleman: Thirdly, Mr Chairman, you have the power to direct that Mr Byrne’s registration is to be conditional on his compliance for a period not exceeding three years, with such requirements as you see fit to impose for the protection of members of the public, or in Mr Byrne’s interests. You must bear in mind at all times that conditions must be workable and enforceable, and you may feel that it is necessary that they should serve a useful purpose.

Fourthly, you have power to direct that Mr Byrne’s registration be suspended for a period not exceeding twelve months. Fifthly, you have power to direct that Mr Byrne’s name be erased from the register. You must consider these options in an ascending order of seriousness, starting from the least serious – that is, making no order – and only proceeding to the next most serious if you are satisfied that the lesser sanction would be inappropriate.

In making your decision, you will doubtless bear in mind what is set out in the indicative sanctions guidance published by the Council. Questions of the burden or standard of proof do not arise – it is a matter for your independent judgement as to what order you make. At all times, you should have in the forefront of your minds, the following considerations: the need to protect patients, the need to maintain public confidence in the optometrists’ profession, and the need to declare and uphold proper standards of conduct within that profession. Your concern that public confidence in the profession should be maintained should not be such that you should feel it “necessary to sacrifice the career of an otherwise competent and useful professional person, who presents no danger to the public, in order to satisfy a demand for blame or punishment” – that is a citation from the case of *Bhij v General Medical Council*, in which I have substituted for the word ‘doctor’ in the original, the words ‘professional person’. And that guidance is entirely apt and relevant to these proceedings as well.

On the other hand, the Privy Council, in another medical case, the case of *Gupta v General Medical Council* [2002] 1WLR 1691, has stated that,

“The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price”.

Your primary objective should be not to punish Mr Byrne, but rather to protect the public, and to seek to maintain high standards of behaviour amongst registered optometrists, whether fully qualified or in training. In all respects, your determination should be a fair, reasonable and proportionate response to Mr Byrne’s misconduct, having regard to all of the evidence, including the oral evidence you heard on the last occasion, the documentary evidence that has been placed before you, and the submissions of counsel.

Mr Chairman - that concludes my advice.

Mr North: Thank you, that’s very helpful. Do my colleagues have any points they wish to raise at this stage, before we go *in camera*? Are there any comments in respect of the Legal Adviser’s advice? [*No comments*] Accordingly, we will retire into camera. Thank you.

[*Hearing adjourned at 10.08 am*]

[*Hearing resumed at 12.25 pm*]

Mr North: I shall now read the remaining portion of the Committee’s determination, the sanction:

The Committee accepted the advice of the Legal Adviser, and noted the submissions on sanction by the representatives, but noted that the matter raised no direct issues of patient safety, and that consideration needed to be a balance between the Committee’s task to maintain standards and public confidence in the profession and the interests of the registrant. In reaching its findings, the Committee reminded itself that any sanction should reflect the seriousness of the facts found proved, and the earlier judgement with respect to impairment of fitness to undertake training, but should be proportionate, and not punitive.

The Committee has carefully considered and accepts that there are a number of matters to be taken into account by way of mitigation. In particular:

- The Committee accepts that Mr Byrne made a full and frank admission at the first opportunity that he had falsified five patient records for the purpose of his assessment.
- The Committee has taken into account Mr Byrne’s evidence as to deficiencies in his pre-registration supervision, which the Committee accepts may well have affected his judgement during the assessment process.

- The Committee has noted and accepted Mr Byrne's evident remorse and his insight following the discovery of his misconduct.
- The Committee has taken account of the numerous references and testimonials as to Mr Byrne's previous good character and conduct, which would indicate that his misconduct is unlikely to be repeated.

However, the Committee has already determined that it is a fundamental requirement that optometrists and dispensing opticians must be honest and trustworthy at all times, that that requirement extends equally to students who are undergoing training to join the profession, and that cheating for the purpose of making progress in one's student training is an extremely serious matter.

The Committee is satisfied that its first duty must be to maintain public confidence and to uphold proper standards of conduct within the profession. In the circumstances of this particular case the Committee has concluded that it would not be appropriate to deal with this case by way of the imposition of a financial penalty. The Committee is satisfied that there are no conditions that could be imposed on Mr Byrne's registration that would be appropriate, workable, or serve any useful purpose.

After weighing in the balance the seriousness of Mr Byrne's misconduct against the matters that Mr Singh has urged on the Committee in mitigation, the Committee has concluded that it is both necessary and proportionate to suspend Mr Byrne's registration for a period of three months. In arriving at this period, the Committee took into account the fact that the hearing commenced in October 2009, and has only been concluded today, at the end of January 2010.

Since it is unlikely that Mr Byrne will be able to undertake any further training in the foreseeable future, the Committee has decided not to order a review hearing.

That concludes the determination. Thank you, Mr Singh, thank you, Mr Alder, and that is the end of business for today.

Mr Singh?

Mr Singh: Just in terms of when the suspension will commence, at present you have made no other order in respect of that, and it is 28 days from today – can I just turn my back and take some brief instructions.

Mr North: You may, indeed.

[Pause]

Mr Singh: Sir, bearing in mind the very unusual position that Mr Byrne is in, and that inevitably when the appropriate time comes he will – if I can use this term – ‘fall off’ the register, I’d ask you and your colleagues to consider an order making suspension immediate, rather than to start in 28 days. That would essentially bring the matter to a conclusion within a shorter time period, and then the decision can be taken by the Registrar, I suppose, at a sooner stage, when the whole sanction has come to an end.

Mr North: Mr Alder, what do you say?

Mr Alder: Sir, I don’t have any objection to that application, I’m just conscious of looking at Rule 13I with you, on page 31 of the Handbook, if only just to reflect on the discretion available to the Committee. It says there at 13I(1),

“On giving –

(a) a direction for erasure or a direction for suspension, under section 13F(2) above’

– which is the situation in which we find ourselves –

“the Fitness to Practise Committee, if it is satisfied that to do so is

- (i) necessary for the protection of members of the public;
- (ii) otherwise in the public interest; or
- (iii) in the best interests of the individual or body corporate, may order the registrant shall be suspended forthwith”,

so it’s a matter for this Committee to be satisfied that it is – and looking on those headings, I would suspect either that it was otherwise in the public interest, or in the interests of the individual, that that suspension happens immediately. The Council place no real strength behind any submissions before this Committee – it is a matter entirely for you and your colleagues, sir, but just drawing attention to the discretion that you have at this stage.

Mr North: Thank you, Mr Alder. Legal Adviser?

Mr Coleman: Mr Chairman, you have correctly had your attention drawn to Section 13I(1), so you need to be satisfied as to any one, or perhaps more, of the three conditions as to protection of members of the public, public interest or in the best interests of the individual. Perhaps the only other matter I would draw to your attention, which perhaps should merit some consideration on your part is this: what was your intention when you determined that there should be a three-month suspension? If it was your intention that effectively Mr Byrne should remain suspended until a certain date, then Mr Singh’s application is effectively an application to bring forward that date by 28 days, so that is a question you need to consider as to whether that did form an important part of your reasoning or whether it didn’t; but other than that, I have no further advice at all.

Mr North: Thank you. We’ll go *in camera* for a short period just to consider that matter. Thank you.

[Hearing adjourned at 12.33pm]

[Hearing resumed at 12.38pm]

Mr North: Mr Singh, Mr Alder, thank you for your submissions. The Committee is not intending to make an order under Section 13I(1). Thank you very much.

[Hearing ended at 12.39pm]