

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

GENERAL OPTICAL COUNCIL

AND

BIANCA COCCO (01-23189)

Tuesday, 20 July 2010

SUBSTANTIVE HEARING

SUBSTANTIVE HEARING: BIANCA COCCO (01-23189)
Tuesday, 20 July 2010

Committee: Mr Peter North – Lay (Chair)
Mr Alan Baldwin - Lay
Mrs Corinna Kershaw - Lay
Ms Elizabeth O'Donoghue - Optometrist
Mr Gordon Ilett - Optometrist

Legal Adviser: Mr David Swinstead

Clinical Adviser: Dr Nick Seivewright

Hearings Manager: Mr David Henley BEM

For the GOC: Mr John Hepworth

For the Registrant: Mr Sandesh Singh
Ms Gerda Goldinger

[Hearing commenced at 10.18]

Mr North: Good morning. I am Peter North, a lay member of the Hearings Panel, and I have been elected by the Committee to chair today's hearing. Before I continue with this introduction, I am aware that we are all facing the challenge of some fairly warm weather and the Committee has agreed that, if gentlemen wish to appear in shirt-sleeves before these proceedings, we are quite content and we hope that will assist.

The Committee today is made up of two optometrists and three lay members, and I shall ask the members of the Committee to introduce themselves and the capacity in which they sit. *[Introductions]* To my far left is Dr Seivewright, the Council's Clinical Adviser, who will provide clinical advice to the Committee on any matters of health which may arise in the course of the hearing. The Clinical Adviser may accompany the Committee should it sit in private to deliberate.

To my right is Mr David Swinstead, 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, who will be keeping an official record of all that is said today during the sessions of the hearing at which all parties are present. The remaining persons sitting in the hearing room, other than in the public and press areas, are members of the respective legal teams.

You should be aware that 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.

Now I understand there have been developments in this matter this morning and perhaps, Mr Hepworth, you would like to set out the situation where we find ourselves at this point in the proceedings?

Mr Singh: Sir, before Mr Hepworth starts, could I ask that this part of the hearing is heard in private, because it relates to matters concerning heads of charge 2 and 3 which are health matters?

Mr North: Would my colleagues be content with that? [*Agreed*] We agree accordingly. Are there any relevant people in the proceedings at the moment who would need to withdraw? [*No*] Thank you. Mr Hepworth?

Private hearing

Public hearing

Mr North: Would my colleagues be content to proceed on that basis? [*Agreed*] We shall, therefore, proceed on that basis. The second point that I need to raise is, in respect of allegations 2 and 3, Mr Hepworth, were you not offering evidence, or withdrawing the evidence?

Mr Hepworth: Sir, I apologise if I did not make the Council's position clear. The Council was proposing to offer no evidence, then you can formally find parts 2 and 3 not proved and that will be an end to it.

Mr North: Fine. Therefore, what is the effect of that on sub-paragraph (b) of the last line of the allegation?

Mr Hepworth: Sir, if parts 2 and 3 disappear, it would not then be open to you, or possible for you, to find that the registrant's fitness to practise is impaired by reason of her adverse physical or mental health. I am not sure that I could formally offer no evidence in relation to that, because that is not a matter of proof. However, if you dismiss parts 2 and 3 of the allegation, it would flow that you could then make a finding that her fitness to practise is not impaired by reason of her adverse physical or mental health.

Mr Swinstead: That may be sensible and, therefore, when you reach the stage of considering impairment, you simply formally within your determination say based upon the offering of no evidence on 2 and 3, you formally find Miss Cocco's fitness to practise not impaired by reason of any adverse physical or mental health. I think that is what you are suggesting?

Mr Hepworth: Yes.

Mr Swinstead: That would seem common sense.

Mr North: Right, let us then proceed. Mr Henley, could you please read the allegation?

Mr Henley: [reads]

"The Council alleges that in relation to you, Bianca Cocco, a registered optometrist:

1. On 19 February 2007 you received a formal police caution for possession of a Class A drug (cocaine) contrary to Section 5(2) of and schedule 4 to the Misuse of Drugs Act 1971;
2. You are suffering from matters which affect your health, the nature of which are set out in Schedule 1, Part A;
3. You are suffering from matters which affect your health, the nature of which are set out in Schedule 1, Part B.

And by virtue of the matters set out above, your fitness to practise is impaired by reason of your:

- (a) Caution;
- (b) Adverse physical or mental health."

Mr North: Thank you, Mr Henley. Mr Hepworth?

Mr Hepworth: Sir, in relation to parts 2 and 3 of the allegation, the Council formally offers no evidence and invites you to dismiss those parts and subsequently to find that the registrant's fitness to practise is not impaired by reason of her adverse physical or mental health.

Mr North: Thank you. Mr Singh?

Mr Singh: Sir, I have nothing to add to that, thank you. Sir, Mr Hepworth said dismiss them; I think formally find them not proved, that would be the appropriate way to do it. Sir, you are inviting submissions in respect of the allegations?

Mr North: Indeed.

Mr Singh: There will be an admission to head of charge 1 relating to the caution. It is not admitted that Miss Cocco is impaired by reason of that caution.

Mr North: Thank you.

Mr Swinstead: Gentlemen, what would be a practical course, subject to your submissions, would be, bearing in mind there is an admission to particular 1 of the allegation, no evidence offered for particulars 2 and 3, that the Committee would be in a position, and it would be a matter for them whether they would need to retire, to find formally particular 1 proved and particulars 2 and 3 of the allegation not proved. On that basis, there is an admission to the caution and the reality would be that the matter would then proceed to the issue of impairment. If the Committee find it proved, it is unnecessary for them to go on to what we might call the misconduct stage of finding it, because they are effectively finding the same thing twice. A caution or conviction is a finding of is a gateway – if I might use that word – through to the issue of impairment. It occurs to me that it would, therefore, be most practical if the Committee make those findings and then the hearing moves to the issue of impairment, at which point you, Mr Hepworth, deal with the factual basis of the caution and any submissions that you have as to impairment, and when you have completed your case on impairment, Mr Singh will open his. Is that a proposal which attracts both of you as a way forward in this particular hearing?

Mr Hepworth: Yes.

Mr Singh: Yes, it is.

Mr Swinstead: Sir, perhaps I should simply say that, based upon the admission of Miss Cocco as to 1 and the fact that there is no evidence offered on 2 and 3, it is a matter for you now to consider whether you find those proved or not proved. I do not believe that I need give you any other advice.

Mr North: Thank you. Would my colleagues be content to proceed on that basis with the facts of 1 proven and the facts of 2 and 3 not proven following the withdrawal of evidence in respect of those allegations? *[Agreed]* Could the record formally record that? We shall now, therefore, move on to stage 2 and let us hear on the issues of impairment.

Mr Hepworth: Sir, perhaps I should address you first. At this stage, you are no longer concerned with issues such as standards and burdens of proof. You will exercise your judgment as to whether or not the registrant's fitness to practise is impaired by reason of the caution. That part of the allegation is in the present tense. Of course, you must judge her impairment or her fitness to practise, and whether or not she is impaired today in light of what you know today.

As far as the facts relating to the caution are concerned, there are two sources of evidence. The first is the hearing bundle and the other is the statement of facts. Perhaps if I could direct your attention, first of all, to the hearing bundle, starting with page 1?

Mr North: Can we make the bundle C1?

Mr Hepworth: Of course. Page 1 of C1 is the custody record and most things are self-explanatory. The box at the top left-hand corner, the reasons for arrest, may need a little translation just because of the acronyms and so on that are used. I think it reads: possession of controlled drug, not cannabis, but a COZ – I don't know to what that relates – called the Pool Bar EC2 – that was the place where the incident took place – believed drug deal-taking place in ladies toilet. Toilet cubicles searched, person detained, found in possession of believed drug. The next part is the grounds for arrest: the arrest was necessary to prevent the loss of evidence.

The next page in the hearing bundle, page 2, shows the result of the drugs test which took place at the police station. It shows a positive result for cocaine, which you can see from the ringing of the word "yes" against cocaine, and if you turn the page round in the computerised printout of the test results, which confirms under the "drug test outcome" section that there was a positive test for cocaine.

You can then see at page 3 the record of the caution. You can see that in the middle of the page, the registrant has signed to say that she admits the offence detailed overleaf and agrees to be cautioned. She says she understands that she has received an official caution which may be cited or taken into consideration as outlined above, and that refers to the section headed "Information re cautioning process". You can see that the caution was administered on 19 February 2007, the initial incident having taken place on 15 December the previous year 2006.

At page 4, we have the second page of the record of formal caution, which outlines the details of the offence. That is self-explanatory and you can see that the amount of cocaine was just shy of 0.1 of a gram.

Sir, those are the documents to which I would draw your attention, and now I shall read into the record the statement of facts which have been agreed between the parties. I believe you have been provided this morning with a copy of that statement.

Mr North: We shall call this C2.

Mr Hepworth: Sir, thank you. [reads]

"1. The purpose of this statement is to record those facts which are agreed by the General Optical Council and Miss Bianca Cocco.

2. On 15 December 2008, Stoke Newington Police received a call requesting police assistance at the Pool Bar, Curtain Road, EC2 following reports of a possible drug deal taking place in the ladies toilet.
3. PC Paul Mcavoy (Id No. 0290) of Stoke Newington Police and a colleague were despatched to the Pool Bar, Curtain Road, EC2. In the early hours of the morning of 15 December 2006, PC Mcavoy and a colleague entered the ladies toilet. They arrived at the bar and searched the toilet cubicles in the ladies toilet. They found Bianca Cocco in possession of a substance that they believed to be a drug. Ms Cocco was taken outside and lawfully arrested on suspicion of possession of a controlled drug (other than cannabis) at around 2.15am.
4. On arrival at Stoke Newington Police Station, Ms Cocco was offered legal representation by the custody officer which she declined. A copy of the custody record is exhibited to this statement as Exhibit 1. [*page 1 of hearing bundle*]
5. At around 4.00am, Ms Cocco was requested to undergo a test for specified Class A Drug. Ms Cocco consented to providing a sample of her saliva to PC Topp (Id No 756) in order to establish whether there were any traces of cocaine or opiates present in her body. Following the test, Ms Cocco gave a positive reading for cocaine and a negative reading for opiates. This confirmed that at the time of testing Ms Cocco's body contained traces of cocaine. A copy of the result of the drug test is exhibited to this statement as Exhibit 2. [*page 2 of hearing bundle*]
6. On 19 February 2007 at 1.45 pm Ms Cocco admitted to the offence of possessing 0.098 grams of cocaine, a Controlled Drug of Class A, in contravention of Section 5(1) of the Misuse of Drugs Act 1971. Ms Cocco was given a formal police caution. A copy of the record of formal caution and details of offences are exhibited to this statement as Exhibit 3. [*pages 3 & 4 of hearing bundle*]
7. Ms Cocco accepts that she is the subject of the caution as detailed in Exhibit 3 and the circumstances of the caution are as described above."

That has been signed on behalf of the registrant and on behalf of the Council.

Sir, those are the facts that the Council put before you in relation to the caution. As far as your exercise of judgment is concerned in relation to impairment, it is a matter for you how seriously you take the registrant's conduct which led to the caution. The Council accepts that it is a one-off incident which happened, by my reckoning, about three and a half years ago. It goes without saying that there is no evidence before you that the registrant poses a risk to public or patient safety, which is one of the criteria which you

will consider. It is a matter for you whether or not the registrant's conduct adversely affects the public confidence in the profession, and whether or not what she did requires you to find her to be impaired on the basis of the declaration and upholding of proper standards of conduct. Of course, those two matters are ones which you will consider at this stage. Sir, other than that, I am not sure there is much that I can usefully add. The facts rather speak for themselves.

Mr North: Thank you, Mr Hepworth. Mr Singh?

Mr Singh: May I call Miss Cocco to give evidence.

Mr North: Mr Singh, is the point at which you would wish to go into private session?

Mr Singh: I would please.

Mr North: Would my colleagues be content for that to take place? [*Agreed*] Mr Hepworth?

Mr Hepworth: No objection, sir.

Private hearing

Public hearing

Mr Swinstead: Sir, you have now reached the stage where you are required to consider whether or not Miss Cocco's fitness to practise as an optometrist is impaired under Rule 50 of the Rules. The allegation is that her fitness to practise is impaired by reason of her caution. It is a matter of judgment for you to consider whether her fitness to practise is impaired. She has admitted that she has been made subject of a caution. Now you must ask yourselves whether her fitness to practise is impaired as a result. It is first necessary to judge the seriousness of the conduct which led to her arrest and caution, then to set it in context and, finally, to determine whether or not it was sufficiently serious that, even having regard to its context and all the other relevant matters put before you, you conclude that today and looking forward from today her fitness to practise is impaired by reason of that caution.

With regard to the issue of impairment by reason of the conduct which led to the caution, you should have regard to a number of matters, which include the way that she has acted in the past, both before and after the caution. You must consider the context of her behaviour and her current level of insight. If relevant, you must consider whether what she did is capable of remediation and what steps, if any, she has taken to remedy any shortcomings. Finally, you must consider what the risk is of the conduct which led to the caution being repeated.

Your task is to consider whether, by reason of the conduct which led to the caution, her fitness to practise is impaired today and looking forward from

today. In other words, has it been so serious that, looking forward, are you persuaded that she is simply unfit to practise without restrictions or at all. Alternatively, the conduct which led to the caution may be such that, seen within the context of an otherwise unblemished record, and bearing in mind, if relevant, any steps she may have taken to remedy what has occurred, you may conclude that, looking forward, her fitness to practise is not impaired, this conduct notwithstanding.

In reaching your decision, you are entitled to have in mind the public interest in the form of maintaining public confidence in the profession generally and in herself in particular when determining whether the particular conduct which led to the caution qualifies as conduct which currently impairs her practice.

Where a registrant violates such a fundamental rule of the profession, her fitness to practise may be impaired if the public is left with the impression that no steps have been taken to draw to her attention the profound unacceptability of the behaviour which has led to the finding. In such a case, where the firm declaration of professional standards so as to promote public confidence in the profession is required, her efforts, if any, to address the problems and reduce the risk of recurrence may have less significance. It is a matter for you whether a particular case falls into the category of one where steps to remedy shortcomings found have a considerable relevance to the decision on impairment and those where such steps may have less relevance. In terms of remedy here, one would use the expression in its broader sense to include all conduct and insight, i.e. how somebody has acted since the conduct, and deciding whether or not that has relevance or has less relevance because of the public interest issue of maintaining public confidence. That is the advice I give unless either party would wish me to say anything further or, more importantly, to correct anything that I have said.

Mr Hepworth: Sir, nothing from the Council.

Mr North: Thank you. Do my colleagues have any issues they wish to raise at this point? [*No*] It is now one o'clock. The Committee will now go *in camera* but I am aware it has been a long morning, so I would like my colleagues and yourselves to take some refreshments before they begin consideration of the matter. We shall say at least an hour, so if the parties could be available again at two o'clock.

[*Hearing adjourned at 12.57*]

[*Hearing resumed at 14.40*]

Mr North: Miss Cocco, could you just stand please? When I finish reading the determination, could you please move over to the witness stand because you will need to sign copies of the determination? Would you be more comfortable sitting down?

Miss Cocco: I am okay.

Mr North: You are stuck right in front of the air-conditioning, do sit down.

Determination

Findings in relation to the caution

The Committee noted that the registrant admitted that she had received a formal police caution on the 17th February 2007 in respect of an allegation that she had been in possession of a Class A drug, namely cocaine, in December 2006. Consequently, the Committee found Particular 1 proved.

Findings in relation to adverse physical or mental health

The Council offered no evidence in respect of particular 2 and 3 of the Allegation and, accordingly, the Committee found particulars 2 and 3 not proved.

Findings regarding impairment

The Committee found that the registrant's fitness to practise was not impaired by reason of the adverse physical or mental health by reason of its findings on Particular 2 and 3 of the Allegation. With regard to the issue of whether the registrant's fitness to practise is impaired by reason of the caution, the Committee took account of the evidence presented to it and the submissions of Mr Hepworth on behalf of the General Optical Council and those of Mr Singh on behalf of the registrant. The Committee accepted the advice of the Legal Adviser.

In reaching its decision, the Committee took particular account of the following:

1. The single incident which resulted in the caution took place over three and a half years ago in December 2006, and the very small quantity of the drug involved which she had neither bought nor sought.
2. There has been no repetition of this behaviour and the registrant made full admissions both in December 2006 and subsequently.
3. The negative result of recent independent tests for cannabis, cocaine and excess alcohol consumption.
4. There had been no evidence of inappropriate professional practice or risk to patients.
5. Both in her own evidence and in other evidence of her behaviour, the registrant has demonstrated a full appreciation of the professional implications of her conduct.

6. She has also shown a clear understanding of the requirement for appropriate standards in both her professional and private life.

7. The particular personal circumstances that may have influenced her conduct in 2006.

The Committee found the registrant to be a convincing witness. It has concluded that she has learned a very hard lesson as a result, not only of the original conduct but also by reason of the lengthy period that has elapsed between December 2006 and this hearing, and the effect on her professional life. It is satisfied that she has accepted responsibility for her actions and has applied the lessons she has learned. The Committee has concluded that there is no likelihood of repetition of the behaviour which led to the caution and the consequent impact on her professional life. Accordingly, the Committee has found that the fitness of Bianca Cocco to practise as an optometrist is not impaired by reason of her caution.

The Committee went on to consider whether it is appropriate to issue a warning but was confident that Miss Cocco has learned her lesson and the reinforcement of a warning was not required.

Thank you, that concludes the proceedings.

[Hearing concluded at 14.44]