



**IO(09)02**

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

**GENERAL OPTICAL COUNCIL**

**AND**

**SABEEN KHAN (01-24690)**

**REVIEW OF INTERIM ORDER: Tuesday, 19 January 2010**

**REVIEW OF INTERIM ORDER: SABEEN KHAN (01-24690)**  
**Tuesday, 19 January 2010**

Committee: Mrs C Kershaw (Lay) (Chair)  
Dr V Harris (Lay)  
Professor N Hirji (Optometrist)

Legal Adviser: Mr N Levisaur

Hearings Manager: Mr D Henley BEM

For the GOC: Mr J Hepworth  
For the Registrant: Mr K Toomey  
Ms F Mitchell

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*[Proceedings commenced at 10.35 am]*

**Mrs Kershaw:** Good morning. I am Corinna Kershaw and have been elected to chair today's first review of the current interim suspension order regarding [the registrant]. The Committee today is made up of one optometrist and two lay members. I will ask the members to introduce themselves and the capacity in which they sit. *[Introductions made]* To my right Mr Levisaur, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee to 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 assistance to the Committee. Next to Mr Henley is Charles Nisbet, the transcriber, 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.

You should be aware that it is the Council's policy for the determination of the Committee and the transcript of the proceedings to be displayed on the Council's web site for public viewing.

Mr Hepworth, are there any applications?

**Mr Hepworth:** Madam, thank you. The application is for the interim suspension order current at the moment to be maintained. Madam, the interim suspension order was made on 3 August 2009. In your bundle, we can see the transcript of that application hearing between pages 39 and 55 and the

Determination at pages 56 and 57. The application was not opposed and was made for 12 months; of course, it has to be reviewed within six months and today is the first review of that order.

Madam, as I have said, the application today is for the interim suspension order to continue. I understand that that is not opposed either. But of course, you have to consider the case afresh today and, notwithstanding that the application is not opposed, you must come to your own conclusion about that.

Can I start briefly, please, by telling you some facts of this case? I will start with 6 June 2009. Registrant A, who is an optometrist, was booked to do a session as a locum optometrist at the Asda store in Southport. In fact, on that day, he was double booked – I think to do a locum shift at Specsavers in Blackburn –

*(Interruption to discuss references to another registrant (Registrant A) and Mrs Khan (Registrant B))*

**Mr Hepworth:** Madam, talking about then about this double booking of Registrant A, could I ask you, please to go to page 20 of your bundle? You will see that this is an email from Claire Slade at Asda to Miss Khaira of the Council and you can see that in that email there is some text in italics, which is Helen Norris's account of what happened during the shift. Helen Norris was the dispensing optician manager during this particular shift at Asda. Interestingly, Ms Norris indicated that she tried to book Registrant A for the shift some time earlier and was told by Registrant B that he was double booked and was working at Specsavers in Blackburn on 6 June. But, Madam, you can see from that text that when she contacted Eye-4-Staff, Ms Norris was then offered Registrant A as a locum. And, Madam, how that came about is explained by page 22 in the bundle in front of you – that is a letter from Mr Ali, the Director of Eye-4-Staff – and that letter confirms that contact was made after Asda's request was received, with Registrant B, who confirmed that Registrant A was available.

Madam, the reason why the Council say that is important is because at the point that Registrant B confirmed to Eye-4-Staff that Registrant A was available, she already knew that he was not. She already knew that he was booked to do a shift at Specsavers in Blackburn and so, on the Council's case, it was at that point that she planned to cover his shift, so pre-planned dishonesty.

Of course, the correct thing for Registrant B to have done would have been either not to indicate to Eye-4-Staff that Registrant A was available or, once that had been done, then to ring Asda and cancel. But she did not do that. She covered his shift. At the time, she was not registered as an optometrist and at that time had never been so registered. When she arrived at Asda to cover the shift, she told Ms Norris, the dispensing optician manager, that Registrant A was ill – that was a lie. She said that she was an optometrist – that was a lie – and said that she would cover the shift. That account is given to you at page 1, the initial letter of complaint by Asda. During her shift at

Asda, she saw 19 patients and you can see, at page 28 of the bundle, the anonymised list of patients, and she was entitled to carry out none of the work which she did unsupervised.

From pages 29 through to 38 you can see various GOS forms that Registrant B completed, and on those forms you can see, for example at page 30, a rather generic signature and on page 32 you can see that where asked to write the practitioner's name, she wrote the first initial and second name of both her and Registrant A. And when required to give her registration number, she gives Registrant A's registration number.

At page 3 of the bundle, you will find the payment invoice – the locum payment invoice – submitted to Asda by Registrant B for that shift, 6 June, and you can see that she prints the name (S Khan) and the top half of the form, you can see she gives Registrant A's registration number and Registrant A's national insurance number – clearly, as far as the documentation is concerned, passing herself off as Registrant A.

Madam, Registrant B's conduct during that day was dishonest. It was pre-planned and she saw and treated patients that she had no right to treat unsupervised – Madam, all for £300 locum payment.

The second incident is on 10 June 2009. At pages 6 through to 8 of the bundle that you have, you will see the statement of Katri Kajava, who works for the Council. She gives you a history of the period just before Registrant B became registered. Importantly, at paragraph 10 you can see that Ms Kajava only entered Registrant B as 'active' on the Register of Optometrists at 16.54 on 10 June; so up until that point she was not formally registered as an optometrist. You can see, at paragraph 11, that it was the day after that Registrant B telephone Miss Kajava and said that she had worked the day before, that Specsavers had found out that she was not active on the Register and were looking into it. So although the details in relation to that are sketchy, there is a further allegation that Registrant B worked on a further occasion, on 10 June 2009, before she was actively registered.

Madam, the current position with the allegations is that they go before the Investigating Committee in February and, of course, will be considered in the usual way.

The statutory framework for interim orders, contained within Section 13L of the Opticians Act – and I will read them slightly out of order if I may – but 13L, subsection (3) says:

“If the Fitness to Practise Committee make an order under subsection (1)” – and that is the power that the Committee has to make, in this case, an interim suspension order – “the Committee –

- (a) must review that order within the period of six months beginning on the date on which the order was made,”

– and then goes on to talk about further reviews.

13L(4) gives you your powers upon review and says that,

“The Fitness to Practise Committee may –

(a) revoke the order”

– or if it was a conditions of practice order revoke the condition. (b) again does not apply in this case – that relates to varying conditions; or

“(c) if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of that person, either replace –

(i) an ... interim conditional registration with an interim suspension order”

– or vice versa.

So, Madam, briefly, your powers today are either to maintain the order, to revoke the order or to replace it with an interim conditional registration order.

Given that you are considering the matter afresh today, I would refer you today, if I may, to Section 13L(i) which gives you the test in relation to interim orders:

“Where the Fitness to Practise Committee are 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 a registrant” – for either registration to be suspended or made subject to conditions – “the Committee may make an order specified in subsection (2)”.

The orders are subsection (2) are a suspension order or an interim conditional registration order. So, Madam that is the test: is it necessary for the protection of members of the public or otherwise in the public interest or in the interests of the registrant. As at the initial application hearing, the grounds relied on by the Council are that such an order is necessary for protection of members of the public and is in the public interest. As far as protection of members of the public is concerned, in the Council’s submission the public needs protection from someone who is prepared to act in such a dishonest, pre-planned, calculated way, someone who shows no respect for the registration requirements of the Council.

The Council submits that as far as public confidence is concerned, such confidence will be preserved only if an interim suspension order is made in this case, given that the conduct of Registrant B goes right to the heart of the profession in the Council’s submission, goes directly to her honesty, her integrity and the need for an optometrist to be registered before practising as such. It goes right to the heart of the registration regulatory regime.

Madam, to repeat the application: that is for the interim suspension order to remain and to run until the next review. Those would be my submissions, unless I can be of any further assistance.

**Mrs Kershaw:** Thank you. Mr Toomey?

**Mr Toomey:** First, if I can offer apologies on behalf of the suspended registrant. She is, clearly, not here today. She lives in Burnley but she means no disrespect to the Committee by her non-attendance. She does have two small children. In the circumstances, this application not being opposed, she is content that the matters be dealt with in her absence.

The order was made on 3 August, as you have heard, on the grounds of protecting the public and that it would be in the public interest for this registrant to be subject to an interim order. The application was not opposed then; the application to continue that suspension is not opposed now.

For our purposes today and, and if you feel it would assist to go into any great forensic detail of the registrant's case, as you have heard, it will come before an Investigation Committee in February. Many of the facts asserted are accepted. On 6 June of last year, the registrant accepts that she worked at Asda when she should not have done so. I make it plain it is not accepted and never has been accepted that she worked anywhere at any other time when she should not have done so, with the exception of, of course, 10 June. You will see at page 18 of the bundle a letter from the registrant where she feels there must have been some sort misunderstanding in the conversation that she had with Miss Kajava. At page 16 of the bundle, Madam, you and your colleagues will see there the local Primary Care Trust has only found evidence to support the allegation on 6 June, that the still registered optometrist had had his GOS number used on more than one occasion on that date; no other incidents have been found and on page 17, you will see Specsavers, Burnley, confirming there that the suspended optometrist did not work on 10 June with them. As I say, for our purposes today, I think my submissions on that point can remain short.

At page 61 of the review bundle, Madam, you will see there a letter from the suspended registrant to the Investigation Committee. Paragraphs 3 and 4 of the letter setting out the position, again confirming acceptance of her conduct at the time – as indeed, she did at the time, not just in August at the application hearing last occasion – her acceptance and her remorse for her conduct. That being the case, Madam, as I say, there is no opposition to this application today. As you have heard, it is a matter for you and your colleagues. Should you and your colleagues feel that you would wish to hear more in terms of details and facts or any further submissions in terms of an amendment to the order; of course I am here to assist. I think for our purposes, it may be that in the circumstances I can keep my submissions quite short thus far, unless of course, you feel differently, Madam. Those are my submissions.

**Mrs Kershaw:** Thank you. Mr Hepworth, do you have anything to add?

**Mr Hepworth:** Madam, no thank you.

**Mrs Kershaw:** Let me check whether my colleagues have any questions? In that case, I will turn to our Legal Adviser and see if there is any advice to us.

**Mr Levisaur:** Thank you, Chairman. As has already been made clear to you, the decision as to whether or not to continue with an interim suspension is a matter for you. Your decision today must be exercised *de novo* and you are not to give undue weight to any decision of any other Committee which has considered this matter. You are to consider all the facts of the matter before you. You will, of course, pay attention to the fact that this application is not opposed but that does not dispose of the question. There are three grounds upon which you would be entitled to impose an interim order. They are set out in Section 13L of the Act. I read that section:

“Where the Fitness to Practise Committee is 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 a registrant, for –

(a) [her] registration to be suspended”,

- then you may do so. You are, of course, to consider the matter as of today, not as at the date of any offence or of any initial suspension. That is such an obvious point that it perhaps does need to be made, that clearly, you must consider on review today, not then.

The Council put this application on two bases: that it is necessary for the protection of members of the public or is otherwise in the public interest. You may take the view that it is not necessary for the protection of members of the public today. This is a registrant who was at all material times entitled to practise, who had indeed put an application form before the Council but who, quite properly, was being required to pay the fee and provide evidence of insurance. She had been properly trained and she was in due course perfectly entitled – indeed you have heard – was placed on the Register on 10 June at 4.54. It would, as a matter of fact therefore, be quite lawful for her to work after five o'clock, or after 4.56, on 10 June. Be that as it may, you must consider whether or not it is necessary for the protection of members of the public for this woman to act as an optometrist because, as I say, perfectly properly trained and perfectly properly entitled to be on the Register. You must also then consider whether or not it is in some other way in the public interest for her to be suspended, for her suspension to be continued today. I am bound to bring to your attention the fact that the courts have made it clear that suspension is not imposed lightly or wantonly. It is a serious step to deprive a person of an ability to earn a living. There must be good, proper and proportionate reason; it is a serious step. The fact the parties agree is neither here nor there. You must be satisfied that there is a proper public interest which overrides her personal and important duty and ability to earn a living.

Those are the matters that I must bring to your attention and do so.

**Mrs Kershaw:** Thank you. We will now proceed to consider the case if you would like to clear the room?

*[Proceedings adjourned at 11.05 am]*

*[Proceeding resumed at 12.28 pm]*

**Mrs Kershaw:**

### **Determination**

The Fitness to Practise Committee reviewed an Interim Order for the suspension of the registrant for a period of 12 months made by the Council on 3 August 2009.

The registrant was not present but was ably represented by Counsel, who appeared for her both today and on 3 August 2009.

The Committee heard allegations that on 6 June 2009, the registrant reported to an optical practice where Registrant A had been booked to perform a session of locum duties as a registered optometrist. The registrant claimed that Registrant A was unavailable due to sickness and that she was a registered optometrist and could substitute for him. She undertook Registrant A's duties and examined 19 patients, signing GOS and other forms using Registrant A's details. She claimed payment of £300. Her statements were false. At that time, the registrant had only student registration and was not entitled to call herself an optometrist or perform unsupervised sight tests.

The Committee has listened with care to the submissions made by the Council and on behalf of the registrant and it has accepted the advice of the Legal Adviser. The Committee reminded itself that in considering the powers given to it under Section 13L(1) of the Opticians Act, it should consider the need for any interim order as of today's date.

The Committee is not satisfied that an order for interim suspension is necessary for the protection of the public. There is nothing before it to call into account the registrant's clinical abilities. The Committee is, however, concerned at the admitted flagrant disregard shown by the registrant for the statutory registration procedure and for what appears to it to be her dishonest behaviour in representing on the ASDA locum payment invoice that she was a registered optometrist, entitled to examine patients and be paid for so doing under the auspices of the NHS.

The Committee regard this behaviour as sufficiently serious to require it, as being “otherwise in the public interest” to continue the interim order for suspension made on 3 August 2009.

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.

That concludes the case.

*[Proceedings concluded at 12.31 pm]*