

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

**GENERAL OPTICAL COUNCIL**

**AND**

**MR IQBAL NABI (D-11818)**

**Friday, 28 May 2010**

**REVIEW OF INTERIM ORDER**

## REVIEW OF INTERIM ORDER: IQBAL NABI (D-11818)

Friday, 28 May 2010

Committee Members: Lady Margaret Wall (Chair)  
Ms Francesca Jones (Lay member)  
Mr Andrew Cripps (Dispensing Optician)

Legal Adviser: Mr James Watson QC

Hearings Manager: Mr David Henley BEM

For the GOC: Mr John Harding  
For the Registrant: Mr Arshad Mohammed

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*[The hearing commenced at 9.34 a.m.]*

**Lady Margaret Wall:** Good morning everybody, it is good to see that you are here. We have had all the papers in advance so we have been able to read them, and I hope that reassures everybody.

My name is Margaret Wall, and I have been elected to Chair today's hearings review of an interim suspension order regarding Iqbal Nabi, which was made on 21 December 2009. The Committee today is made up of one dispensing optician and two lay members. I will ask the members to introduce themselves and the capacity in which they sit. *[Introductions]*

To my right is Mr James Watson QC, 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, 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 the parties are present. The remaining persons sitting in the hearing room – of which there are none today – 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, are there any applications to be made at this stage?

**Mr Harding:** No, Madam.

**Lady Wall:** And are there any health matters to be considered at this hearing?  
[None] Right, thank you very much. Mr Harding?

**Mr Harding:** Madam, Mr Nabi is registered with the General Optical Council, and the case before you today as you have indicated is a review of an interim suspension order imposed on 21 December 2009, pursuant to Section 13(01) of the Opticians Act.

On 21 December 2009 after hearing submissions from the registrant and Council, the Panel made an order suspending Mr Nabi's registration for a period of 18 months, in circumstances where there were ongoing police enquiries in relation to allegations of fraud that are set out in the Statement of Facts which is contained in your bundle, and I know that you have had an opportunity to read that.

**Lady Wall:** We have, yes.

**Mr Harding:** Thank you. The purpose of today's hearing is to conduct a review of that suspension order, as is required by the legislation pursuant to Section 13L(3)(a) of the Opticians Act.

Madam, may I summarise the developments that have taken place since the interim suspension order was imposed on 21 December of last year? At pages 6-8 of your bundle you will see that there has been e-mail correspondence between Mr Kevin Oliver at NHS Counter-Fraud and the Council. It can be seen from this exchange that the case is still being prepared and considered by the prosecution authorities, namely Detective Constable Tillyer from Sussex Police, and they are still awaiting further information.

Further enquiries, Madam, have been made this week of the police, and I have handed in this morning an e-mail which has been copied to my friends as well, and it can be seen now that there has been some progress in that the case has now been passed to the Crown Prosecution Service, for them to consider whether there is sufficient evidence to bring charges in this case.

**Lady Wall:** Do we have a date for the passing of the case to the CPS?

**Mr Harding:** I do not, Madam, I am afraid. All I can say is that as of 25 May the case had been passed to the CPS. Clearly you have within the e-mail exchange in your bundle which in April indicates that the police were still considering it, so I surmise from that that somewhere between April and May this week the case has been passed to the CPS.

**Lady Wall:** Thank you.

**Mr Harding:** The role of the Panel today is to decide whether the interim order should continue, and in deciding that you must be satisfied that it is necessary for protection of members of the public or otherwise in the public interest. Those are the two grounds upon which the order was made on the last occasion. It would of course balance that against the interests of the registrant in this case, Mr Nabi.

The submission of the Council is that the investigation is ongoing. It is now in the hands of the CPS, and therefore it would seem to the Council that the justification and reasoning for imposing the order in December of last year has not changed, and the order should continue. The recent decision is in your bundle at page 9.

Of course if the position changed and the CPS made a decision that there should not be charges, then it is open to Mr Nabi to have the matter listed in the light of that new development for the interim order to reconsidered, but at this stage I would invite the Panel not to make any order today but to allow the order to continue.

If there is anything I can assist you with further, that is all I have to say at the moment, thank you.

**Lady Wall:** Thank you. Mr Mohammed?

**Mr Mohammed:** Madam, I have read the bundle and I am aware that the matter was fully argued last time, and there is no change in circumstances. I have discussed it with Mr Nabi at length and in those circumstances we are not seeking any change today.

We are also in touch with the police and DC Tillyer to whom I spoke a few weeks ago. I understand that the matter is under review at the CPS. It may be that at the forthcoming bailed-to-return hearing no decision is made and a further re-bail date will be given. Although we have some concern at the length of time it is taking - I think matters were initially investigated back in November last year - we accept that there is no change in circumstances, and the interim order is to continue.

**Lady Wall:** When is Mr Nabi returning from bail?

**Mr Mohammed:** It is on 28 June, Madam.

**Lady Wall:** Right. So those are your submissions?

**Mr Mohammed:** Madam, yes.

**Lady Wall:** And you have nothing to add?

**Mr Mohammed:** Madam, no.

**Lady Wall:** Right, thank you. I think it is now for the Committee to ask any questions which they may feel appropriate.

**Mr Cripps:** I do not think I have any, Madam, thank you.

**Ms Jones:** No, I have no questions.

**Lady Wall:** I think I have already asked the questions relating to dates and times, which are obviously important in this case, but the responses have not helped us very much because it is not possible. [Confers] Mr Watson will give us formal legal advice so that it is clear to both parties and on the transcript.

**Mr Watson:** Thank you. The Committee's task today is a requirement under the rules that it must carry out a review of an interim order. The interim order in this case was made I believe on 21 December last year, and therefore the matter must be reviewed under the Act at 13L(3), as has been highlighted by Mr Harding in his opening address.

The rules state this to be a review, and the rules do not limit in their structure the framework within which a review shall be carried out. Therefore I would advise you that whilst this is a review and whilst you do therefore take into account the decision that has been made in December, and you will no doubt give that such weight as you see fit, there is nothing in the rules which limits your discretion in any way, and you must ask yourself whether, on the basis of the material that you have read including the material presented on the initial occasion, and giving any weight that you wish to the decision of the previous Panel, whether you are satisfied that the grounds on which that order was made still exist.

It is, however, the case that both parties have accepted that there has been no fundamental change in circumstance since the last occasion, which you should take into account, and it is not advanced before you on behalf of the registrant that they oppose the continuation of the order, bearing in mind the fact that the underlying criminal investigation is now with the CPS for review. It may well be that a decision one way or the other as to whether that criminal investigation will proceed in any way or be abandoned will come to light relatively soon.

Clearly when that decision is made that may well amount to a change of circumstance, and as has been identified by Mr Harding if the circumstance justifies it, it will be open to the registrant to make a further application even earlier than the next six month review period at any stage for this order to be reviewed in the light of that new evidence. However, at this stage, whilst in principle entitled to exercise your own judgment as to the matter as to whether the justification for the order still exists, you are asked to do that without there being in fact any new material which you should take into account and which was not available to the previous Panel.

I think that unless I am encouraged to do so there is little need for me to expressly advise this Panel as to the requirements that they should consider, if both sides are content that I restrict myself to that economical approach. Thank you.

**Lady Wall:** Do you wish to respond in any way, Mr Harding?

**Mr Harding:** No, thank you.

**Lady Wall:** Do you wish to respond, Mr Mohammed?

**Mr Mohammed:** No.

**Lady Wall:** Very well, then I think it falls to the Committee to make their determination, so could I ask you all to withdraw please?

[Hearing adjourned at 9.47 a.m.]

[Hearing resumed at 10.36 a.m.]

**Lady Wall:** The parties have now returned to the room, and we will read our determination of the review of the interim order of today.

#### **Determination of review of an interim order**

The Fitness to Practise Committee reviewed an interim suspension order made by the Fitness to Practise Committee on 21 December 2009 in respect of Iqbal Nabi; the order being for 18 months in duration. The Fitness to Practise Rules Part 13L(3)(a) require that the committee must review such an order within the period of six months to decide whether the order should be maintained.

In reaching its decision on this review the Committee have heard and taken into account submissions of Mr Harding on behalf of the Council and those of Mr Mohammed who represents the registrant who is here today. The Committee has also received and accepted the advice of the Legal Adviser and has received no further advice *in camera*.

On behalf of the Council it is said that there has been no significant change in either the evidence or the grounds upon which the Interim Suspension Order was made. The only development has been that the police have continued their enquiries to the point where the matter has been referred to the CPS, who are currently reviewing it. On behalf of the registrant, Mr Mohammed has indicated that his client remains on bail, and the next occasion on which he is due to answer his bail is 28 June 2010. He accepts that there are no changes in circumstances which lead him to oppose the continuing of the order and, he goes further, and does not resist its continuation at this stage. Both advocates have highlighted the fact that if circumstances do change

between now and the next required six month review stage then an earlier review can then be requested.

Against the above background the Committee have approached this review on the basis that, whilst it is entitled to exercise its own independent judgment and to approach the matter fresh, there is no material before it which persuades the Committee that it should depart from the reasons or grounds given in the determination dated 21 December 2009. This Committee takes the same view of the matter as the Committee of 21 December 2009, and considers that the grounds and reasoning given for the making of the order should be adopted now in support of maintaining it at this stage.

The Committee ordered that the current suspension order be maintained. The order will be further 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.

Is that clear?

**Mr Mohammed:** Madam, yes.

**Lady Wall:** Then that is the end of the hearing. Thank you very much.

*[Hearing concluded at 10.30 a.m.]*