



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

**GENERAL OPTICAL COUNCIL**

**IO(10)05**

**AND**

**ANTHONY PLIMMER (01-9062)**

**WEDNESDAY, 30 JUNE 2010**

**INTERIM ORDER HEARING**

**INTERIM ORDER HEARING: ANTHONY PLIMMER (01-9062)  
Wednesday, 30 June 2010**

Committee: Mr P North (Lay) (Chair)  
Mr A Khan (Lay)  
Miss E O'Donoghue (Optometrist)

Legal Adviser: Mr M Parroy QC

Hearings Manager: Mr D Henley BEM

For the GOC: Mr C Whalley

For the Registrant: Mr S Singh

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*[Proceedings commenced at 9.45 am]*

**Mr North:** Good morning. I am Peter North, and I have been elected to chair today's hearing of the Council's application for an interim order. The Committee today is made up of one optometrist and two lay members. I will ask the members of the Committee to introduce themselves and the capacity in which they sit. *[Introductions made]* To my right is Mr Parroy 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 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 the parties are present. Any other persons sitting in the hearing room rather than in the public and press areas are members of the respective legal teams.

Please note that in accordance with the Council's protocols, the identity of the registrant will not be revealed until such a time that the Committee announces its decision. Where the Committee decide that an order should be made, then the registrant's details will be revealed, but alternatively, if the Committee decide that an order should not be made, then the registrant will remain anonymous. Throughout the hearing, the registrant will be referred to as "the registrant".

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.

Before we begin, concerning applications, I understand there is a bundle, which has been made available to us, and I propose to call that C1, and we have also had a second document this morning, consisting of two pages, numbered 61 and 62, which I plan to annotate as C2.

Before we go on to the interim order application, is there any application prior to discussing that matter?

**Mr Whalley:** Not on behalf of the Council, sir.

**Mr North:** Mr Singh?

**Mr Singh:** No, sir.

**Mr North:** Right. We then move to the interim order application, and Mr Whalley, what do you have to say?

**Mr Whalley:** Thank you, sir. Sir, as you've indicated, this is an application by the Council for an interim order. I'll first begin by outlining the statutory basis for the application. Section 13L(1) of the Opticians Act 1989 states as follows:

"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 –  
(a) his registration to be suspended or made subject to conditions

the Committee may make an order specified in subsection (2)".

That subsection reads,

"The orders specified in this subsection are that –  
(a) the registrant's registration and the appropriate register shall be suspended ...; or  
(b) his registration ... shall be conditional on his compliance, during such a period not exceeding eighteen months, as may be specified in the order, with such requirements so specified as the Committee think fit to impose."

As far as the application is concerned, the Council submits that an interim order is necessary for the protection of members of the public, or is otherwise in the public interest. Whether this interim order is an interim suspension order, or an order for interim conditional registration, is of course a matter for you, sir.

The first issue for you to consider is whether an order is necessary to protect members of the public, or is otherwise in the public interest. The burden of proving that an order is necessary to protect members of the public, of course, lies with the Council. If having considered the material placed before you, you are satisfied that an order is necessary to protect the public, or that it is otherwise in the public interest to make an order, the next decision you must make is whether the order should be for conditional registration, or whether that would be sufficient to satisfy any concerns you have. Following the principle of proportionality, if an order of conditional registration does satisfy your concerns, then that is the order that should be made. If, however, there are no conditions which you feel do satisfy your concerns, then you will make an interim suspension order.

Sir, as far as the facts of the case go, they are outlined in the statement of facts at paragraphs 3 to 23 in the bundle of documents you have, which is at pages 1 to 5. Sir, I didn't propose and don't propose to read those paragraphs out unless you wish me to do so for the record. If you are happy to take that evidence as it is in documentary form, sir, that would be sufficient, in my submission.

**Mr North:** Are my colleagues content with that? [*Agreed*] Yes, we are content with that.

**Mr Whalley:** In brief, the evidence provided by the registrant's employers, thus far, has identified concerns in relation to customer field tests, record-keeping, the number of re-checks and remakes from customers examined by the registrant, and his failure, on one occasion, to detect a potential glaucoma case. The case is currently under investigation by the Council, and in due course will be put before the Investigation Committee. I asked for an update of the current position with the case this morning, and I've been advised that it is anticipated, and certainly hoped, that the case will be put before that Committee in September. Of course, I can make no promises of that, that is depending on obtaining relevant evidence and sufficient evidence to put before that Committee, but that is a timeline as best I can give as of today.

**Mr North:** That's your best understanding.

**Mr Whalley:** It is, sir, yes.

**Mr North:** September of this year.

**Mr Whalley:** September of this year.

**Mr North:** Thank you.

**Mr Whalley:** Sir, as I've indicated, the grounds relied on by the Council are two-fold: first, that an interim order is necessary for the protection of the public, and secondly, "or it is otherwise in the public interest". The Council's position in relation to those two grounds are summarised at paragraphs 27 to 31 of the statement of facts. At paragraph 27, you'll find there are five bullet points

which set out the main concerns. These are the customers' history and symptoms not being identified or recorded, incorrect prescriptions have been issued to customers, no record of recommendations outlined to customers, lack of detection of a potential glaucoma case, lack of notes relating to those customers whose visual acuity fell beneath the required legal standard for driving.

All these allegations relate to the registrant's clinical practice, so in my submission, protection of the public is a relevant ground to rely upon. The evidence provided by Miss Cooper's reports suggest that the registrant's records do not evidence false eye testing as being conducted in relation to a number of patients. It's unclear at this stage whether the issue is that the registrant has in fact conducted incomplete sight tests, or whether the issue lies with poor record-keeping, and that of course will be investigated and witness statements will be obtained in due course.

The second ground relied upon is that an order is otherwise in the public interest. In relation to this ground, it is my submission that it is not a requirement to prove a necessity, and you should consider if an interim order should be made otherwise in the public interest. That is a principle which is set out in the case of *Sandler v GMC* [2010] EWHC 1029 (Admin), and I have copies of that case if you wish to see them. The relevant section is at paragraph 14. I provided copies to my learned friend earlier this morning, and I can make those available for you if you wish to consider them. Perhaps if I can hand them up now.

**Mr North:** That would be helpful, and we'll annotate as C3.

**Mr Whalley:** Thank you.

**Mr Khan:** Would you repeat the names?

**Mr Whalley:** It's the case of *Sandler v GMC*, and the relevant paragraph, in my submission, is paragraph 14. It isn't paginated so, sir, I apologise for that. Would you like an opportunity read that paragraph?

**Mr North:** Yes, if we could.

[Pause]

**Mr North:** Mr Whalley, would you read out the points which you feel are germane to your case?

**Mr Whalley:** Certainly. This case really is relevant insofar as whether the necessity element comes into whether it's otherwise in the public interest to make an order. Paragraph 14 says as follows:

"There was some debate at the hearing as to whether the IOP could only suspend Dr Sandler on public interest grounds if this was necessary. In my judgment, the Legal Adviser was plainly right to

observe that, while the statute allows suspension on public protection grounds, only if this is necessary, there is no such qualification to the public interest limb. In *Sheikh v General Dental Council* [2007] EWHC 2972 (Admin), which was another case which was before the GMC, Mr Justice Davis thought nonetheless if the public interest is to be invoked in this context of the statute, then to my mind, it does at least carry some implication of necessity, and certainly, it at least carries with it the implication of desirability. He added at paragraph 16:

‘At all events, in the context of imposing an interim suspension order, on this particular basis, it does seem to me, adopting the words of Mr Winter (who was counsel for the claimant), that the bar is set high; and I think that, in the ordinary case at least, necessity is an appropriate yardstick. That is because of reasons of proportionality.’

I certainly agree that a doctor could not be subject to an interim suspension unless this was at least desirable in the public interest. I also agree that the panel must consider very carefully the proportionality of their measure (weighing the significance of any harm to the public interest in not suspending the doctor, against the damage to him by preventing him from practising), but I do with respect think with respect that the Court must be cautious about superimposing additional tests over and above those which Parliament has set”.

So, it is really the beginning of that paragraph that I rely on, and the comments made by the learned judge where he says, and I will repeat:

“In my judgment, the Legal Adviser was plainly right to have observed that while the statute allows suspension on public protection grounds, only if this is necessary, there is no such qualification to the public interest limb.”

So, as I was saying in relation to ‘otherwise in the public interest’ factor that you can consider when making an order, in my submission, given the number of customers who have complained about the registrant, this ground may be relevant if you consider the effect on the reputation of the profession as a whole, maintenance of public confidence in the profession, and the maintenance of good standards of conduct and performance. You should consider whether the public’s confidence in the profession can be maintained if the registrant continues to hold unrestricted registration pending the investigation into his fitness to practise. The Council does accept the leading authority in the case of *Sheikh v the General Dental Council* - not Medical Council - in relation to the second ground. The key principles in that case are set out for you in paragraph 31 of the statement of facts.

Sir, finally I will deal with the length of any interim order you may wish to make. The Council would ask that any order is made for the maximum period of eighteen months to ensure that the matter can be resolved within that period. Of course, the case is, and will continue to be, investigated

expeditiously, but as I said earlier, the current estimate is that it will be put before the Investigation Committee in September. That Committee may, of course, decide that performance assessors should be appointed, and/or expert witnesses may be required, all of which, of course, take time. However, there is, of course, the reassurance to the registrant that an order would be reviewed every six months - or earlier if so requested - and so it would certainly not be the case that if an order was made today for the maximum period that it could not be looked at again for eighteen months. Your powers to review that order are provided under Section 13 L(3) of the Opticians Act.

So those are my submissions in support of my application, unless you have any specific questions for me.

**Mr North:** Do any of my colleagues have questions at this point? [*There were none*]  
No, I have no questions at this point. Mr Singh.

**Mr Singh:** Sir, thank you. Sir, we would ask you and your colleagues to consider whether on the evidence that you've seen and the nature of it, and the points I'm about to make, an order is necessary. If you find that it is, we would suggest that the appropriate order in this case would be one for conditions, and I've formulated some which I've shown to Mr Whalley before we came in. I'll address you on those when I come to it, but we would submit that a suspension in this case, when conditions would be workable and proportionate if you find that an order is necessary, would be disproportionate.

Sir, can I address you briefly on necessity: we simply make this point, that this investigation is at an extremely early stage, there are no witness statements - as you will have seen from the documents - the documents are not formal ones produced for this hearing, and as you've heard from Mr Whalley, there's not been a referral yet, it hasn't even gone to the Investigating Committee, it's still some months away. The burden of proof is obviously on the Council to establish necessity, and one of the matters that you will consider is the nature of the evidence, that's one point.

The second point is this: that there will be a significant number of disputes. It probably became apparent from reading the documentation, that whilst there is some acceptance in relation to one area - which I'll explain - in large part, the allegations will be disputed, if in fact they are referred. Can I just say this in respect of them: they broadly fall under 'performance' and 'note-taking' those are the broad headings? I accept, and Mr Plimmer accepts, one hundred per cent, that this is not the time or the place for factual decisions to be made, he understands readily that that is what will happen at the final hearing if, in fact, there is one after the case has been referred. But it's right that you know in very general terms what the position is.

In respect of the failure to diagnose glaucoma, in respect of patient P, I should say this: there are a number of issues surrounding this, and Mr Plimmer doesn't accept that his conduct in respect of this patient fell below the required standard. You may have noticed some issue about a protocol that's in place at the branch of the optometrist practice that Mr Plimmer was working

at at the time, and the practice there, rightly or wrongly, seems to be accepted to be wrong now - as I understand it the practice has changed now - that visual field tests are conducted by an associate, and they're not shown to an optometrist unless there's an issue. Nothing was shown to Mr Plimmer on this occasion, and being a new employee, essentially, he was not in a position really to question the established practice, although he did raise it, as you will have seen from those documents, on a previous occasion. He did check the optic nerve, it was normal, he was informed by an associate who took the IOPs – the intraocular pressures – they were 13-14, and normal. So in those circumstances, there are a number of issues surrounding that particular allegation.

The second performance issue is the incorrect refractions, which actually takes up a large proportion of the allegations that you've seen in the documentation. The point we simply make is this, which is made in the documents, that Mr Plimmer moved from one testing room to another testing room, which was a smaller testing room. In short, he would have been required to compensate for the different size of testing room, and if one didn't compensate for that you resulted in a phenomenon called overplussing, where the refraction that's given by the test is higher than it would otherwise have been, and this has been the cause of incorrect refractions. There's one patient, which you may have noticed, who went from a positive refraction to a negative refraction. If you were in a position where there's a very, very minor minus refraction and it's been overplussed, it could be the case that it goes from a minus to a positive refraction, that would explain that. So in respect of that, again, there are a number of issues related to that as well.

In relation to note-taking, Mr Plimmer, I think, would accept that there is room for improvement in note-taking, but as Mr Whalley has said, it wasn't clear when the Council wrote their documentation whether it was the fact that he hadn't conducted the tests, or had conducted them and hadn't noted them – it's the latter: full sight tests were conducted, it's just that certain parts weren't noted in respect of a few patients. For example, in respect of the legal limit for driving, if they fell below that. I think in the papers, in fact, one of those, on retesting, wasn't below that.

But there we are: there are issues surrounding note-taking, but some acceptance, at least, that some areas could be improved. It may be that on examination of the records there are other sections in which records could be made, and those will obviously have to be checked as well on the computer system, but it's right that Mr Plimmer struggled with the technology, in terms of the computer-related records at the practice that he was working at.

So, the third point that you may wish to consider on necessity is that Mr Plimmer has been an optometrist now for 38 years; he's not known to the GOC, other than these complaints which have been in very short compass, within four months, at one practice. It may be the case that the difficulties that have arisen are related solely to this practice, and in fact he's moved on to another employer, there haven't been any problems since he's been there. So in considering necessity, please consider the nature of the evidence, the fact

that there will be significant dispute in the long run if it goes that far, and the fact that this is isolated in terms of his long practice as an optometrist.

Sir, if you and your colleagues discern that an order is necessary, at this stage, on the basis of the evidence that you've seen, what are we asking you and your colleagues to do? I would submit, if you do find an order is necessary, that the appropriate order is for conditions on Mr Plimmer's registration. We submit that conditions would be both workable and proportionate, and would achieve the aim of protecting the public in the interim, before these allegations are tested or proven.

Now, can I deal with general legal points in very short order – Mr Whalley has already covered one of them, but it's worth expanding on it here: proportionality, we would submit, is crucial when deciding whether the order should be conditions or suspension, and it's relevant in two respects to this case. First of all, proportionality would require you and your colleagues to balance the public interest and patients' interests with those of the registrant. The second is that the principle requires you and your colleagues to apply the least means to reach your objective essentially, so in practical terms here, if conditions would suffice, you should not suspend if conditions could achieve the aim you wish to achieve.

The second matter is this: it is well-documented in the authorities that suspension of a registrant's practice on an interim basis is a very, very serious and significant step to take indeed, in large part because obviously, the stage that we're at and the fact that things haven't been proven, and the evidence is not in order yet, but there are two points which arise from the case of *Sheikh* which has been handed up to you, and you will have time to consider. They were these: first of all, it would be particularly unfortunate if someone was suspended on an interim basis and in fact weren't suspended or dealt with in that way if it finally came to a hearing, so it's proper to look at the overall nature of the case. Secondly, if a practitioner is suspended, he'll be away from practice and unable to progress if there is an issue – that's obviously relevant to impairment in the end – and remedial steps and the ability of the practitioner to gather other evidence in the interim period, to show that, in fact, he isn't a danger to patients, is something that's taken away from him if he is suspended on an interim basis.

So those are all factors which I'd ask you and you colleagues to bear in mind when considering whether it should be suspension or conditions.

The conditions that we would propose: could I read these out to you, please?  
The first condition we would suggest, if you decide –

**Mr North:** Before we do, are these agreed with Mr Whalley?

**Mr Singh:** I'll let Mr Whalley –

**Mr Whalley:** Sir, agreed – I certainly take no issue with the conditions, but of course, the first step for you to consider is an order necessary for the protection of the

public, or otherwise in the public interest? You then need to go on to consider –

**Mr North:** Indeed, I'm aware of that, but these have been prepared jointly, is what I'm trying to –

**Mr Whalley:** Not jointly, no.

**Mr North:** Okay, fine. So these are conditions that Mr Singh is proposing, and we will take them on that basis.

**Mr Singh:** No, they haven't been prepared jointly, but they've been shown to Mr Whalley this morning. As I understand it, he takes no issue with them, but they are a matter, of course, for you and your colleagues.

**Mr North:** Indeed.

**Mr Singh:** I hope that's a fair summary?

**Mr Whalley:** That's a fair summary.

**Mr North:** I think we are all singing from the same hymn sheet now, so let us proceed.

**Mr Singh:** The first condition is this, and is the main condition:

1. That Mr Plimmer's day-to-day work must be supervised by a named registered optometrist, who has been approved by the General Optical Council for the task.
2. Mr Plimmer must not undertake any locum work in any form, unless advised to do so by his supervisor, and with prior agreement of the Registrar.
3. I thought six months ahead, and that would be 30 December, so I gave a little bit of extra time, so I said by 10 January 2011, because if you do impose an order it will have to be reviewed in around six months, so – by 10 January 2011, Mr Plimmer must have attended a total of - I've left this blank, it's a matter for you and your colleagues - hours of continuing education and training, and/or professional course approved by the General Optical Council, in the following areas:

- (i) Record-keeping
- (ii) Glaucoma and visual field assessment
- (iii) Patient communication.

Those are the three issues which are raised. As I say, I don't want that to be taken as admissions, because obviously, it's far too early for that, but, reading the material, if you are concerned, those are the general areas which you may be concerned about.

4. You must provide the General Optical Council with confirmation that you have completed the courses mentioned in condition 3 above.

And then, obviously the mandatory conditions after that. I have typed all of this up, and I can provide a copy to you and your colleagues if you require it. It runs in the end to eleven conditions, but the only conditions which are non-mandatory ones are conditions 1 to 4, which I've read out.

**Mr North:** Will my colleagues find a copy of the conditions helpful? [Yes] If they could be handed out, please.

*[Copies distributed]*

**Mr Singh:** Sir, whilst those are being copied, in general terms, obviously the main aspect of this is supervision of Mr Plimmer while he is working. If he is supervised, you may feel that if there is any risk to patients by his clinical practice, it is reduced and it is managed, and if so, the main issue the Council raise is neutralised, we would submit, and there's no need for you and your colleagues to go any further, bearing in mind the principle of proportionality. I'll wait for those to be handed to you.

**Mr North:** We'll annotate this document as R1.

**Mr Singh:** You may like to consider, in terms of the application that's made by the Council, that patient safety must be the main ground on which it's made. It is difficult to see what public interest really adds in real terms to the patient safety aspect, but in this case, we would submit that the supervision part of those conditions which I've proposed would readily meet the issue about patient safety if it is an issue. The other conditions to supplement that, locum work, the issue is obvious: if Mr Plimmer were able to locum without a supervisor it would potentially frustrate the first condition, so if any locum work is to be undertaken, it must be in concert with the supervisor and with the Registrar. The further conditions are to address any areas of concern that you and your colleagues may have in the interim.

Sir, Mr Plimmer is willing to comply with those conditions if you make that order. The question of a supervisor: his current employer is Tesco, he's been there a month, so a relatively new employee there. This has been raised with the regional manager, and probably the fairest way I can put it is, Mr Plimmer has been told that they are awaiting the outcome of this hearing, and what you and your colleagues feel it is necessary to do, and then the matter will be considered, in terms of supervision, if that is your order. They certainly have not ruled it out as something that would happen at that location, but obviously, if you made those conditions, and he wasn't able to get a supervisor immediately, he wouldn't be able to practise until he did have a supervisor, so in those circumstances it would meet any issues that could arise.

So, in our submission, the conditions are workable, proportionate, and address the issue of risk head on.

Can I just make my final submission? It is this: why would suspension be disproportionate? In this case, there are two major reasons for that. The first is that suspension for any practitioner, but certainly this practitioner, would have dire financial consequences. He would obviously not have the means to earn in the way that he would normally do so as a member of this profession. He has a mortgage, that depends largely on his input; his wife is a midwife, her salary alone would not be enough to support the mortgage. He has two children aged 21 and 27 – they're not dependent as such, but his 21 year-old daughter lives at home. His savings are not sufficient to meet his mortgage in the long term, and we're talking about an order for eighteen months – that is a very, very significant step to take on someone who has financial commitments like this man does.

The second point is that if Mr Plimmer is suspended on an interim basis, he first of all won't have the chance to put right anything wrong in the interim. For example, if he were to concentrate very hard on his note-taking in the next eighteen months, for example, then that would be something relevant to impairment in the long run, you may feel. The second thing is even more significant: Mr Plimmer wouldn't be able to show that the matters that have arisen, the subject of these allegations, are isolated in terms of relating to that one practice. If he is able to work under supervision and there are no further problems, it may be far more readily the conclusion of any tribunal in the long run that these were matters solely related to his practice within those four months or so. That would be powerful evidence pointing away from impairment, so if he is suspended, he would be denied that.

Just building on that last point, briefly, related to that particular practice, I've made the point Mr Plimmer has been an optometrist for 38 years, not known to the GOC. They all took place in a very, very short space of time, so please take that into account. We also have, just at this stage, one reference, which, obviously it just gives some background as to Mr Plimmer and his previous practice. Sir, if you give me just a moment. I'm sorry, I didn't get a chance to give Mr Whalley this, but it says nothing that would be contentious.

**Mr North:** This would be R2.

*[R2 circulated]*

**Mr Singh:** Sir, that again just simply goes to the issue of his normal practice. Would it help if I read it into the record?

**Mr North:** I think it would assist if you would, please.

**Mr Singh:** It's written by a gentleman called Mr Bimal Wijesingha, it has his address at the top right hand corner and his telephone number, it reads as follows:

"Dear Sir/Madam,

I was very upset to hear that Peter has to face a GOC hearing on Wednesday 30, and wonder how this could have come about.

Over the years I have seen him develop into a very pleasant, well-rounded practitioner, both in terms of personality and his work as an optometrist.

He is easy-going, attentive to others' needs, generous and always seems to create a harmonious working environment/relationship with staff members and the general public. In particular, he is very friendly/patient with the many ethnic patients we happen to have in this area.

We have had very few problems with his patients over the years. In fact, many older patients still ask for him by name, because he could be quite chatty. Nevertheless, his recommendations/handover/conversion rates are always excellent.

Finally, we have never had a situation where a serious eye condition has been missed, and over the years, many patients have expressed their gratitude when Peter discovered their sight-threatening conditions.

If there are any questions, please feel free to contact me.

Yours sincerely,

B. Wijesingha

And it's signed by him.

*[Pause, while Mr Singh consults Mr Plimmer]*

He has worked with this gentleman on and off since 1984 until relatively recently, so that's the breadth of his knowledge of Mr Plimmer.

Sir, when you're considering proportionality, those are the points we ask you to consider: the financial burden of a suspension order in this case, the effects of suspension on his eventual ability to defend any case that's brought, and the fact that these relate solely to one practice in the history of a very long career as an optometrist.

So, sir, those are my submissions, unless I can assist you and your colleagues any further.

**Mr North:** Thank you, Mr Singh. Do my colleagues have any questions? *[None]* Mr Whalley, would you like to come back on any point?

**Mr Whalley:** Not to respond on, sir, thank you. What I will do is hand a –

**Mr Khan:** I do apologise, Mr Whalley, I do have one or two questions, if I may. At the moment, the evidence in the bundle, I know that it's tentative, it needs to be prepared both by the GOC to present its case in detail, and defended by Mr

Plimmer. I need some sort of indication – there is a hint that not only are the records adequate, but there is also failure to do the necessary tests. Is there going to be quite a strong dispute on that?

**Mr Singh:** Are we talking about the issue of whether it is simply failure to note down various aspects, or whether it is failure to do those aspects of the sight tests?

**Mr Khan:** Well, the specialist, Ms Cooper, who was employed to do a report, seemed to suggest that it's not clear whether the record-keeping is poor, or whether there were no tests at all.

**Mr Singh:** I understand. Her point is, from the records, Mr Plimmer isn't able to evidence that he carried out a full sight test. The position is that a full sight test was carried out, it just wasn't noted. There are deficiencies.

**Mr Khan:** So that will be the contention when it comes for a full hearing?

**Mr Singh:** Yes, if there is a dispute, it may be accepted by the Council that the tests were conducted but that certain parts of them weren't noted. There's one other issue that I should raise: in the system, as I understand it, that's used for taking notes - these are all computerised records – there are two sections in which notes can be placed, one is the medical section, so matters such as floaters, for example, would be put in the medical section. I don't think the medical section has been checked, and there may be some issue as to whether certain matters were in fact noted in the other section. So there will be two disputes if it is the Council's position that these weren't done and weren't noted, the first being, things were done, and second of all that some of them may have been notes in other areas of the computerised records.

**Mr Khan:** The GOC – I read this some time ago, so forgive me if I'm asking something that I should know – there are CPD courses, aren't there, prescribed for the GOC, or not? If so, have they been attended by Mr Plimmer?

**Mr North:** I think the question my colleague is asking is, is Mr Plimmer's CPD up to date?

**Mr Singh:** It is up to date, and we can potentially try and get a printout of that, while you're considering your decision.

**Mr North:** Or CET, I think, is the other – too many of these TLAs, I think!

**Mr Singh:** It is up to date.

**Mr Khan:** Thank you, Mr Singh.

**Mr North:** Ms O'Donoghue, do you have any questions?

**Ms O'Donoghue:** No.

**Mr North:** I have one question: could you just clarify for me the situation with regard to the recording of the DVLA requirement? I have a note here, that certain parts of the eye test were not recorded, the DVLA requirement. Did you agree that that was the case, or otherwise?

**Mr Singh:** In respect of, I think it's two patients, where it should have been recorded, the advice was given, but it wasn't noted down that the advice had been given. That's the situation. But Mr Plimmer realises now, obviously, that it must be noted down.

**Mr North:** Fine, that's helpful. I have no further questions. Is there anything my colleagues would like to come back on? [No] Mr Whalley, do you have any further comment?

**Mr Whalley:** Sir, very briefly, just in terms of the evidential points: of course, you're not here to determine those evidential disputes, that is for a substantive hearing, should it get to that stage. What I would say is that in this application you should consider the Optical Council's case at its highest, and given that the interim order is, in my submission, necessary for the protection of the public in particular, that is the test you should apply to the evidence that's before you.

**Mr North:** Thank you, Mr Whalley – we're aware of our task, and I think we were just attempting to assist clarity there in our own minds. But we're aware of the task that confronts us today, and will proceed accordingly. Legal Adviser, do you have any points?

**Mr Singh:** Sorry to interrupt: if I can just, for completeness, hand up a copy of the case of *Shiekh v GDC*, I don't think that was handed up earlier. The case has been mentioned, so I think it's only right that you have copies of them. [*Copies distributed*]

**Mr North:** Yes, I think that would be helpful, and it will be C4.

**Mr Singh:** The two points that I made really arise out of paragraphs 17 and 18 –

**Mr North:** Sorry, just before that, Mr Whalley, is that the extent of your remarks?

**Mr Whalley:** It is sir, thank you.

**Mr North:** Right, Mr Singh.

**Mr Singh:** Thank you. Sorry, I didn't mean to steal my friend's thunder. It's simply just to say, paragraphs 17 and 18 in *Sheikh* are the two paragraphs where the general points are made, and are endorsed as being of general application.

**Mr North:** Thank you, that is noted. Legal Adviser, do you have any points or any advice at this stage?

**Mr Parroy:** Yes, the normal advice, if I may say so, sir. This is an application for an interim order, the relevant rule is 13L, which provides that where this Committee is satisfied that it's necessary for the protection of the public or otherwise in the public interest, then an order should be made. The effect of the authority to which you've been referred, that is to say, *Shiekh v General Dental Council* and *Sandler v General Medical Council*, is that in essence, whether it's under the heading of 'Protection of the public' or 'otherwise in the public interest', the standard is effectively the same, namely, you could not make an order unless you were of the opinion that it was necessary, and that's a high standard.

In coming to your decision, you have regard to patient safety, the preservation of proper standards, and the need for the preservation of respect in the profession. You have regard to the totality of the evidence presently available, bearing in mind, of course, that the investigation is at present at a relatively early stage. You have regard also to the hitherto unblemished background of the registrant. In coming to your decision, you have to bear in mind the need to strike a balance between the protection of the public and the public interest, and the effect which an interim order of any sort would have upon the registrant.

If you come to the conclusion on the basis which I have outlined, that an order must nonetheless be made, then on the principles of proportionality, you approach the matter first of all by considering whether the concerns which the Committee have which give rise to the need for the order can properly be met by the imposition of effective conditions. If, but only if, the Committee is of the view that such a body of conditions as is proposed or other conditions would not meet its concerns, then you go on to consider the question of suspension. In either case you then have to have regard, of course, to the relevant period for which the order will be effective, and you have to provide reasons for your decision when you have arrived at it.

**Mr Khan:** Can I in the open tribunal ask the learned assessor, GOC contends that necessity only applies to public protection, but not to 'otherwise in the public interest' – that was your submission, wasn't it?

**Mr Whalley:** That is a submission which is based on the recent case of *Sandler*, where, as I read out at paragraph 14, the remarks of Mr Justice Nicol, in his judgment, he says:

“In my judgment, the Legal Adviser was plainly right” -

And this is the Adviser for the hearing before the Council,

“to observe that while the statute allows the suspension on public protection grounds only if this is necessary, there is no such qualification to the public interest limb”.

You'll see that Rule 13L is worded that necessary for the protection of the public or otherwise in the public interest, and necessity doesn't apply to that.

Of course, in real terms, there probably is nothing really between them, but those are my remarks on that.

**Mr Parroy:** You have two decisions, both by High Court judges of equal standing, there's no decision of the Court of Appeal of which I'm aware, which has effectively decided this particular point. In fact, I have to say that it seems to me, in this respect I disagree with the learned Legal Adviser in *Sandler*, that the way it's worded, the word 'necessary' governs both elements, but whether that's right or wrong, the safest approach for this Committee would be to assume that the word 'necessary' governs both public interest and public safety limbs, and thus you are effectively faced with a level playing field of standards to apply in either approach.

**Mr Khan:** Thank you.

**Mr Singh:** I endorse that.

**Mr North:** Thank you, Mr Singh. Are there any further matters that either of the parties, or indeed, my colleagues, would like to raise before we move into *camera*? [*No further questions*]

Mr Henley, could you clear the room, and I think it would be safe to say we'll be no earlier than 11.30?

[*Hearing adjourned at 10.31am*]

[*Hearing resumed at 11.50am*]

**Mr North:** This is a determination of an application for an Interim Order, dated 30 June 2010. The Fitness to Practise Committee considered an application for an interim order made by the Council on 30 June 2010.

### **Decision**

The Committee is satisfied that it is necessary to make an interim order for the protection of the public. The Committee came to this decision having considered the totality of the evidence before it and noted the hitherto unblemished record of the registrant. The Committee has had regard to the need to maintain proper standards within the profession, and to preserve the confidence of the public.

The Committee had before it evidence that during the period May to November a series of concerns was raised regarding the practice of the registrant in a number of cases:

- Patients' history and symptoms not being identified or recorded;
- Incorrect prescriptions being issued to patients;
- No record of recommendations outlined to patients;
- Lack of detection of a potential glaucoma case;

- Lack of notes relating to those patients whose visual acuity fell beneath the required legal standard for driving.

In coming to its decision, the Committee has had regard to the need for proportionality. The Committee accepted the advice of the Legal Adviser.

The Committee reminded itself that its task was to consider the evidence presently available, and to reach a decision as required by the remit of this Committee. It was aware that its view cannot pre-empt or bind the views which may be formed by any later or different committee, which will come to its decision based upon the evidence available to it.

The Committee considered that its concerns set out above could properly be met by the imposition of conditions.

The Committee therefore orders that the registrant's registration be subject to conditions for a period of 18 months from today. The order will be reviewed within six months of 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.

### **LIST OF CONDITIONS**

1. You must place yourself and remain under the supervision of a specified workplace supervisor with the agreement of the GOC. The supervisor is to provide reports to the Registrar every three months, providing details of any progression or regression in the following areas of your practice:
  - Record-keeping
  - Glaucoma/visual fields assessment
  - Patient communication

You must advise the Registrar of the nominated supervisor's contact details and of any change to the specified workplace supervisor.

2. You must not undertake any locum work in any form, unless advised to do so by your supervisor and with prior agreement of the Registrar.
3. The GOC will enter these conditions against your name in the register. You must allow the Registrar to share any information, including confidential information, with any employer, supervisor, professional colleague or any organisation for which you provide ophthalmic services, for the duration of your conditional registration. You must also allow the Registrar to share this information with other regulatory bodies, and the Department of Health.
4. You must notify the Registrar within 14 days of commencement of any professional appointment you accept whilst you are subject to these conditions (this includes any teaching posts) and provide contact

details of your employer, and if providing ophthalmic services under an NHS contract, the PCT on whose ophthalmic practitioners list you will be included (this includes any equivalent employer in the EC).

5. You must inform the Registrar within 14 days of any criminal convictions, police cautions or formal disciplinary proceedings taken against you from the date of this determination.
6. You must inform the Registrar:
  - a. If you cease working;
  - b. If your work takes you out of the UK for a significant period of time; or
  - c. Any other employment you apply for outside of the UK (and in which countries)

as conditions of registration only apply to practice undertaken in the UK (you must consider whether your time out of work or out of the UK will allow you to fulfil the conditions during the period of conditional registration). The Registrar may inform the relevant competent authorities in that country of your current conditions of UK registration.

7. You must continue to fulfil the full CET requirements under the GOC CET scheme to secure appropriate points for continued inclusion on the GOC register.
8. You must inform the following parties that your registration is subject to conditional registration:
  - a. Any organisation or person employing or contracting with you to undertake ophthalmic services (to include any locum agency);
  - b. Any prospective employer, whether within the UK or EC;
  - c. Chairman of the Local Optometric Committee;
  - d. The PCT in whose ophthalmic practitioners list you are included or seeking inclusion.
9. You must ensure that your GOC registration is renewed annually while you are subject to the GOC FTP conditional registration procedures. Should you fail to renew your registration, a review hearing will be arranged immediately.

And that concludes the case for today. A copy of the order is available from Mr Henley.

**Mr Singh:** Thank you very much for that determination – can I just raise a matter of clarification? In terms of supervision, just so we're absolutely clear and that Mr Plimmer's employer can work around it, your definition of supervision, for the purposes of this. In the GMC, I know, supervision would constitute not working as the sole optometrist in a practice, although that he can be the only optometrist in a practice at any one time, provided he is under the care of

another, who is readily contactable, and that that person must review his work at least, I think in the GMC it's once a fortnight. That was the general definition of supervision as I understand it, in the GMC.

**Mr North:** Mr Whalley, what do you say?

**Mr Whalley:** My view is the conditions of supervision that have been put forward will be sufficient. Of course, it is a matter for the panel. I'm just thinking of the registrant member who will be more experienced than this – I don't think I could suggest any best definition of supervision. I'm not sure what the registrant's current position at work is, in terms of whether there is another optometrist, or how that supervision would work in real terms. I don't know if that's –

**Mr Singh:** It is something that, his employer is going to have to consider the ambit of what you feel is necessary to protect the public, and he may have to make some changes in terms of where he is, for example, so that he is supervised by another optometrist, and as I say, that hasn't been ruled out. The only question is what level of supervision you and your colleagues require. As I say, if it is, as I understand it to be in the GMC, his work must be reviewed, at whatever interval, and he mustn't work as the sole optometrist in the practice, he must be under the care and guidance of someone else. That's the essence of it.

**Mr North:** We'll go back into *camera* to consider that point.

**Mr Singh:** I'm sorry to raise it now, it's important that what you feel is the ambit is clear.

[Hearing adjourned at 11.55am]

[Hearing reconvened at 12.10pm]

**Mr North:** Thank you. I don't plan to re-read the order *in toto*, but we've amended the paragraph that Mr Singh raised points in respect of:

“You must place yourself and remain under the supervision of a specified supervisor, approved by the Registrar. The supervisor must be based predominantly at your place of work, regularly oversee your professional performance and record-keeping and take responsibility for the care of your patients. The supervisor is to provide reports to the Registrar every three months providing details of any progression or regression in the following areas of your practice” -

which are as listed in the original determination.

Thank you. Copies are available from Mr Henley.

**Mr Whalley:** Thank you, sir.

**Mr North:** Mr Singh, thank you for your help this morning. That closes the hearing.

*[Hearing concluded at 12.12]*