

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

**GENERAL OPTICAL COUNCIL
AND
AMANDEEP SANDHU (SO-1640)**

Tuesday, 25 and Wednesday 26 May 2010

Substantive Hearing

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DAY ONE

SUBSTANTIVE HEARING: AMANDEEP SANDHU

Tuesday, 25 May 2010

Committee Members: Sir Alistair Graham (Lay) (Chair)
Mrs Geraldine Huka (Lay)
Ms Helen Tilley (Optometrist)
Ms Catherine Viner (Optometrist)
Mr Arif Khan (Lay)

Legal Adviser: Mr Alexander Milne QC

For the GOC: Mr John Hepworth

For the Registrant: Mr Andrew McGee

Hearings Manager: Mr David Henley BEM

[Proceedings commenced at 09:32]

Sir Alistair Graham: Good morning. My name is Alistair Graham. I am a lay member of the Hearings Panel and I have been elected by the Committee to Chair today's Hearing.

The Committee is today made up of two optometrists and three lay members, and I will ask the members of the Committee to introduce themselves and the capacity in which they sit. *[Introductions]*

To my right is Mr Alex Milne 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.

The remaining persons sitting in the hearing room, rather than 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.

Can I now ask whether there are any applications that you would like the Committee to consider?

Mr Hepworth: Sir, there are two on behalf of the Council. The first is to amend the allegation being faced by the registrant, so I will let you know what the application is and then I will take you to your relevant Rule.

The application is to amend particular 2(a) (ii) faced by the registrant, and you can see there that it relates to a caution that the registrant received for a Section 39 assault by beating and battery. It is said there to be contrary to Section 39 of the Offences Against a Person Act 1861.

Sir, first of all there is no Act, Offences Against a Person Act, and secondly, sir, the offence of battery is contrary to Section 39 of the Criminal Justice Act 1988.

Sir, I think it was a slip of someone's legal knowledge. I don't think there has ever been any doubt that the registrant was cautioned for a battery, but, sir, it is clear, of course, that we must be accurate about the offence for which the registrant –

Sir Alistair Graham: Can you say that again? The Criminal Justice Act –

Mr Hepworth: 1988, sir.

Sir Alistair Graham: Thank you.

Mr Hepworth: Sir, the power which you have to amend the particulars of an allegation are at Rule 34 at page 98 of your Handbook.

Mr Khan: Can I just ask? This still remains assault by beating, though?

Mr Hepworth: Yes, the offence doesn't change.

Mr Henley: Could I ask Mr Hepworth read out what the amended section should be?

Mr Hepworth: Yes, so reading from 2 (a) (ii) it would read, 'Section 39 assault by beating (battery) contrary to Section 39 of the Criminal Justice Act 1988'.

So Rule 34(1) says that the presenting officer may apply to the Fitness to Practise Committee for the particulars of the allegation contained in the notification served under Rule 26(1)(a) to be amended, and that is the application before you now.

Rule 34(2) says that the Fitness to Practise Committee may grant such an application where they are satisfied that it is just to do so, and then Rule 34 (3) does not apply to this position.

So, sir that is the discretion which you have; that you can amend the particulars if it is just to do so, and so in the Council's submission it is just. There is no prejudice to the registrant; it is just correcting an error, but everyone has always been clear that the registrant was cautioned for that battery. It is just clarifying the act under which the offence lies.

So Sir, that is the application on behalf of the Council.

Sir Alistair Graham: Thank you very much. Mr McGee?

Mr McGee: It's not opposed, sir. On the contrary it is in the registrant's interests that the allegation is correct.

Sir Alistair Graham: Is the Committee happy? [*Agreed*]

Thank you very much. The Committee are happy to accept that application.

Mr Hepworth: Thank you, sir. In that case, sir, the second application on behalf of the Council relates to particular 1(a)(i) being faced by the registrant, that on 2 February 2007 he shouted and swore at members of the public.

That, sir, is a particular that the registrant will deny, and the Council were planning to call a police officer, PC Finch, who the Council puts forward as an eye witness to that shouting and swearing.

Once it was notified to the Council that the registrant was denying that particular, efforts were made to secure PC Finch's attendance, and so rather than take you through the history, can I just say that as of yesterday he had indicated that he would attend. His attendance was authorised by his sergeant and his inspector, and at the close of business yesterday the Council was expecting him to attend at 9:15 this morning.

So it was 8:30 yesterday evening when PC Finch emailed my colleague that has been dealing with this matter on my behalf saying that he could no longer attend. Apparently another officer had become involved – how I am afraid I don't know – and he had indicated that PC Finch could only attend if a certain procedure was followed. That procedure had not been notified to the Council or to my colleagues previously.

PC Finch also indicated for the first time in that letter that he had some practical difficulties involving, amongst other things, child care, but sir, that hadn't been raised when he had indicated his ability to attend previously.

So, sir, in the Council's submission the actual reason why he is not here today is because of the involvement of a different senior officer.

But of course, sir, that caused some consternation and my colleague that is dealing with this matter on my behalf has approached the Divisional Commander for the officer and has spoken with the Commander's PA and as I understand it was either speaking personally to the Divisional Commander or was allowing the Divisional Commander to consider the position at about ten past, quarter past nine, and so I am awaiting the outcome of that enquiry.

So, sir my second application is for a bit more time to allow that enquiry to be made, allow the Divisional Commander to consider the position, and in effect see whether or not he is prepared to release PC Finch to come and give evidence before you either today or tomorrow.

Sir, once that answer is known the Council then will be able to make a decision as to the future conduct of the case. But, sir all I am asking for at the moment is a little bit more time to allow that enquiry to complete and then I can come and make any applications that then follow.

Sir Alistair Graham: What do you mean by 'a little bit more time'? Are we talking about ten minutes, half an hour, an hour?

Mr Hepworth: Sir, I would ask till ten o'clock, which is 20 minutes I see on the clock behind you. Sir, I don't know at that point whether or not the Divisional Commander will have considered the matter.

I am of course entirely in his hands, but sir I would hope that if he was beginning to consider it at 9:15 that he will have considered it by 10:00, but the one thing I don't know is whether or not there are other matters which are across his desk which he may consider to be more urgent. I don't know that because of course I am not privy to the workings of the Divisional Commander of Nottinghamshire Police.

Sir Alistair Graham: Thank you. Mr McGee?

Mr McGee: I don't oppose that application at this stage.

[Sir Alistair Graham consults with the Committee and the Legal Adviser]

Mr Milne: You are entitled to adjourn and to allow more time. It is clearly a matter of discretion for the Panel.

Sir Alistair Graham: Well, as it clearly relates to the central allegation before us, I think the view of the Committee is that we should agree to that adjournment

and as there is no objection from the other parties, Mr Henley, can I ask that we adjourn until 10:00am and clear the room until that time?

[Hearing adjourned at 09:42]

[Hearing reconvened at 10:07]

Sir Alistair Graham: Mr Hepworth?

Mr Hepworth: Sir, thank you for that time. Hot off the press I have received an email from my colleague who tells me that he has made enquiries with the Divisional Commander who is in a meeting and can't be disturbed. So, that is the current position, as unsatisfactory as it is. I am afraid I don't know for how long he will be in the meeting, what the nature of the meeting is and for how long he will be prevented from considering the position.

So, that is where we are. Sir, can I say I think it is a matter for you and your colleagues. I understand you are prepared to give this Divisional Commander some more time before you say, 'Well, enough's enough. Let's try and make some progress.' Sir, if that is your decision then the Council will make an application for the substantive hearing to be adjourned. Sir, I am in your hands as to how much longer, if any time at all, you are prepared to give this matter to be resolved.

Sir Alistair Graham: Mr McGee?

Mr McGee: Sir, can I invite the Committee to say that enough is enough? We don't know whether the Divisional Commander has considered this matter at all; whether he is even aware of it, what his meeting is about, how long he is going to be in it, if or when he is going to take a decision this morning or even today, and in those circumstances it is quite clear that we could still be here at 12:00 or later waiting on a Divisional Commander to consider this.

In my submission, it is now time for the Committee to make progress with this matter and to hear whatever applications the GOC has to make.

Sir Alistair Graham: Yes, the Committee while you were out gave it some consideration but we haven't formally come to a view. I suspect the Committee will not want to allow this to drift on the off-chance that the Divisional Commander will make himself available and may or may not come to a conclusion about whether this particular police officer can be made available; I think that would be most unsatisfactory.

I wonder if it would be better if we can, rather than adjourn and the Committee come to a view about this, we could hear your application for an adjournment so that when we do adjourn we can consider that alongside what you have said previously and we can hear from Mr McGee, and then come to a conclusion about whether we are willing to agree to an adjournment.

When we take an adjournment I think that we will look for other dates for this hearing to be held when this witness can be available. Is that what you are likely to be putting to us?

Mr Hepworth: Sir, that's right.

Sir Alistair Graham: Yes.

Mr Hepworth: I don't mean to interrupt you, sir.

Sir Alistair Graham: No. I am just saying have you explored any other alternatives? There is a whole list of allegations here; is it possible to hear other allegations in the absence of that particular one?

Mr Hepworth: Sir, it would be possible. The danger with that is that then if you have heard some of the case you and your colleagues would be part heard, and if the case is then to be adjourned to deal with the issue that PC Finch can deal with, it may be that in the long run you couldn't get yourselves back together in the same run any quicker than if a new panel heard the case on an adjourned date. But, certainly, that is one option that could be pursued.

Sir Alistair Graham: Have you explored with the General Optical Council whether it is absolutely critical to have that element of the allegations for the case to stand up?

Mr Hepworth: Sir, I have taken instructions and my instructions are to seek to pursue that allegation, yes.

Sir Alistair Graham: Yes, okay. Well, we should hear your application if my colleagues are happy at this stage.

Mr Khan: Can I just ask one question before you make that application? How sure are we that the police will send somebody, because this is the sort of thing where they may say, 'Well, that is what we recorded at the time, and that's it'.

Mr Hepworth: Certainly the police officer may say that. Obviously we can't predict what he will say in his evidence. I have to say that I don't know if the required procedure is followed whether or not the police will authorise the release of PC Finch. I should say that I have never known a police force not do that, but I don't know if they would, but of course if they won't then there is the option of obtaining a Witness Summons to compel his attendance.

Sir Alistair Graham: I think one of my other colleagues would like to ask you a question.

Mrs Tilley: Is it just 1(a)(i) that he is giving evidence about?

Mr Hepworth: I think that is the only allegation in relation to which his evidence is necessary because that is the only allegation which I understand will not be admitted.

Sir Alistair Graham: Can I suggest you now proceed with your application for an adjournment of this particular hearing and the Committee will consider that alongside the other option of giving you more time?

Mr Hepworth: Sir, thank you for that indication. Sir, I think you understand the reason why PC Finch is not here, and as I said, at the close of play yesterday the Council was fully expecting him to be here. It is a matter of complete surprise.

Sir, it is right that particular 1 to the allegation relates to the incident on 2 February 2007. As I indicated, the Council puts forward PC Finch as an eye witness to the registrant's behaviour when he allegedly shouted and swore at members of the public. That matter resulted in the registrant being issued with the fixed penalty notice that is detailed at particular 1(b)(i) which he signed as detailed at 1(b)(ii).

Sir, that incident is completely separate from particular 2 and 3 and 4 as a factual incident, but in the Council's submission it is relevant to your deliberations and it is important because it is of a similar nature to the incident detailed at particular 2.

Both incidents involve unacceptable behaviour in public in the early hours of the morning by the registrant. In the Council's submission to you, the colloquialism 'loutish' behaviour by the registrant in the early hours of the morning in public.

There being two such incidents, you may think that that begins to establish a pattern of the registrant's behaviour in that regard. So that is why it is important in the Council's submission.

The registrant does not accept allegation 1(a)(i) and so of course the Council needs to bring evidence to prove that allegation, live evidence and that is what it seeks to do by calling PC Finch.

The Council has no other live evidence to put before you in relation to 1(a)(i). I should say that when you see the fixed penalty notice you will see reference to a PC O'Leary. He is on long term sick so he is not going to appear as a witness.

Sir if you don't hear from PC Finch you will not be able to hear any live evidence from the Council about what happened on that day. There may well be an application for PC Finch's evidence to be admitted as hearsay, but you won't be able to hear live evidence from him and of course I think everyone accepts live evidence is the best evidence.

The Council say that is important because you won't be able to properly assess the registrant's conduct, you won't properly be able to come to a just decision in this case.

I would say that no criticism can be laid at the Council's door because of the last minute surprise nature of PC Finch's non-attendance; that's because his attendance had been secured, and of course, sir, when you are making the decision about whether or not to allow the adjournment you will exercise that in the interests of justice and that means justice to both sides – yes, to the registrant; I accept that – but also to the public and in the Council's submission the interests of justice demand that all the relevant evidence is heard.

Sir, can I say that your Rule as far as an adjournment is concerned is Rule 35 at page 98 of your Handbook and Rule 35(1) reads that,

“At any stage, a party may apply to the Fitness to Practise Committee for the adjournment of a hearing”.

Rule 35(2) says,

“Such an application shall be heard either at the hearing at which the application is made”,

and we don't need to go any further with that Rule because that is the point at which this application is being made.

Then Rule 36 gives you the power to make the adjournment; Rule 36(1) says,

“Upon the hearing of an application under Rule 35 or of their own motion, the Fitness to Practise Committee may adjourn a hearing”.

Then Rule 36(2),

“When announcing their decision the Committee shall, if granting the application, fix a new date for the hearing”.

So, sir you have a discretion to adjourn the hearing, and as I said that should be exercised in the interests of justice.

It is clearly a matter for you, sir, whether or not you feel that allegation 1(a)(i) is potentially important such that you need to hear evidence about it and come to a proper decision about whether or not the registrant acted in the way as is alleged, and for the reasons that I have outlined, the Council would submit that it is important and forms part of that pattern.

Sir, I have been brief; hopefully I have been helpful. There is nothing else I wish to add unless you have any questions of me.

Sir Alistair Graham: Well, we will come back to the issue of questions later on. Mr McGee.

Mr McGee: Sir, can I be equally brief. The GOC has been on notice that what Officer Finch says about this incident in February 2007 is not accepted by the

registrant since at least 16 March of this year when he wrote to the GOC indicating that he didn't accept that he had been shouting at members of the public in the way described, and he laid out in that letter his account of what had happened.

We were asked on 26 April to confirm formally whether we accepted the allegations laid out in allegation 1, or accepted the facts, and I have to say to be completely fair to the GOC there was an exchange of emails whereby an email from those instructing me on 6 May it was indicated that those allegations, and allegation 1 those facts, were admitted in their entirety. That was a mistake which arose out of a confusion over a paragraph numbering in completing emails and documents.

By an email on 11 May that was corrected and so certainly from 11 May it has been a matter formally recorded that this registrant does not accept that he was shouting and swearing at members of the public as alleged by Officer Finch.

My learned friend hasn't indicated the timescales and the chronology in relation to when the GOC first approached Nottinghamshire Police or Officer Finch directly.

Bearing in mind that this is a matter that they have been on notice of, certainly constructive notice since 16 March, and actual notice since 11 May, it perhaps might assist the Committee if my learned friend was able to say at some stage in his application when it was that Nottinghamshire Police were first approach, because it appears that things have gone wrong in this case because a proper procedure hadn't been followed.

That tends to suggest that this was a rather last-minute attempt to get a witness here for today's hearing, and had the GOC acted in a timely fashion, at least from 11 May, any difficulties with the correct procedure not being followed would have come to light some time ago and the Divisional Commander's undivided attention could have been sought at a time earlier than the first morning of the Substantive Hearing.

So for those reasons I suggest that no adjournment should be granted. In essence, in the absence of any further information from my learned friend it appears that the GOC may not have acted with due expedition in securing the attendance of this witness.

The second point is this. Is this an important witness? Certainly an allegation that has been specified, a factual allegation that has been specified by the GOC, is disputed. They say it is important because it reveals a pattern of loutish behaviour.

In my submission, sir, it doesn't. The registrant accepts that he was arrested; he accepts that he signed a fixed penalty notice, even though he doesn't necessarily accept that he read it in detail before he signed it, and he would

be prepared to accept that his behaviour was not what it should have been in the early hours of the morning.

He doesn't, however, accept what he says is the mistaken and exaggerated account of what he was doing by Officer Finch.

The GOC submits that it discloses a pattern and that both the 2007 incident and the 2008 incident are examples of loutish behaviour. Of course, there is a crucial difference between the 2007 fixed penalty notice and the battery matter in 2008, and that is this; that in the 2008 matter it is entirely accepted by the GOC that Mr Sandhu was cautioned as a result of his behaviour following an attack upon himself.

There is no dispute that this was not anything to do with drink, anything to do with the – if I can put it this way – proactive behaviour of Mr Sandhu in either encouraging or looking for trouble. He and his friends had been the subject of racist abuse, threats, physical antagonism, he himself had been attacked and he responded at the end of this attack inappropriately with two swift kicks in anger.

In my submission, that is not at all the same thing as what could be described as verbal loutishness a year before.

So it may very well be that the Committee feels that in fact the allegation 1(a)(i) is not, in the grand scheme of things, that significant or that important to the overall matters that have to be dealt with by this Committee. Indeed, the Committee may feel that the really serious allegation that this registrant faces is allegation 3/4 where the GOC is alleging that the registrant deliberately misled a Fitness to Practise Committee, and that is where the real thrust of this hearing will be.

Of course I accept that in the absence of Officer Finch there is little that the GOC can do other than to make a hearsay application. Can I indicate in advance, because it may assist you in your considerations, that hearsay application, if it comes, would be vigorously opposed?

It is right to say that this very stressful set of proceedings has been hanging over this registrant for some time. If it is adjourned to a hearing perhaps weeks or months away, it means he has to continue in this limbo of not knowing what is to happen to his career and also in the professional limbo of being employed as a student optometrist, but having completed his pre-qualification year, having completed all his examinations, he will not be able until this matter is resolved, to move on to the full Register and progress with his career.

So it only fair to him that this matter be dealt with as quickly as possible, and when that perhaps is put in the context of the GOC's I suggest what appears to be tardiness in alerting Officer Finch to his required presence today, that their application for an adjournment should not be granted in those circumstances.

Sir Alistair Graham: Thank you very much. Do you wish to come back?

Mr Hepworth: Sir, other than to say that if you wish for me to give you a chronology about what has happened since 11 May, then I can do that although I will need to just get my dates precisely in order. So I should say that, as you saw a member of staff just appearing, that my colleague needs to speak to me urgently so it may be, sir that the issue in relation to the Divisional Commander has moved on since this resumed part of the hearing began.

Sir Alistair Graham: Do you want a short adjournment to take that telephone call?

Mr Hepworth: I am in your hands, sir.

Sir Alistair Graham: Do you oppose that, Mr McGee?

Mr McGee: Not at all; it is entirely sensible that we know exactly what the position is.

Sir Alistair Graham: Well, can I suggest we have a very short adjournment – five or ten minutes or so for you to clarify that and then come back at shall I say twenty to?

[Hearing adjourned at 10:29]

[Hearing reconvened at 10:41]

Sir Alistair Graham: Yes, Mr Hepworth.

Mr Hepworth: Sir, again thank you for that. The Divisional Commander has considered the matter and is content to release PC Finch to come and give evidence. PC Finch, as I said, was on duty yesterday and finishes duty about 11:00 at night. He is now off duty and efforts are being made to contact him, but as a matter of logistics what the police are saying, which may be the only option, is that they will secure his attendance here before you tomorrow morning.

Sir, I don't think they can guarantee to get him here this afternoon for the following reasons. First of all, he is in Nottingham, and secondly he is off duty.

Sir, if you were minded to deal with it in this way, then what I would propose is as follows; that I open the facts in relation to the admitted particulars of the allegation, that you make a decision in relation to the facts which are denied as far as particular 4(a)(i) and (ii) are concerned, a very discrete issue, and that then the hearing stands adjourned today; that we resume tomorrow to deal with the one remaining factual dispute – that in relation to particular 1(a)(i) and then go on to consider whether or not such behaviour amounts to misconduct, and then deal with the questions of impairment and sanction if that stage is reached tomorrow.

Sir, it will mean that we don't have a full day today, although, sir, you will of course have to spend some time reading the hearing bundle which has not been distributed in advance, and, you will have to make a decision in relation to one factual part of the allegation, so it should mean that the day won't be completely wasted.

Sir, I am in your hands, but that would be the Council's proposal given the position that we now find ourselves in.

Sir Alistair Graham: Can we just go over again exactly what you would expect us to hear? That we deal with those items in the allegations that are admitted.

Mr Hepworth: Sir.

Sir Alistair Graham: And apart from reading any bundle that might be available, that we leave over until tomorrow the case relating to those which are disputed.

Mr Hepworth: Sir, no, not exactly. There are two areas of dispute; the one relates to PC Finch's evidence which will have to be kept over until tomorrow.

Sir Alistair Graham: Which is 1(a)(i).

Mr Hepworth: Sir, that's right, but also I understand 4(a)(i) and (ii) are denied, although particular 3, which is connected, is admitted. Sir, because that is a discrete issue, it may be that you are prepared to deal with that as far as the facts are concerned today.

Sir Alistair Graham: Okay. Mr McGee?

Mr McGee: Sir, I agree with that approach. It is right to say that there are two factual issues that you will have to determine at some stage, 1(a)(i), which can be left over until tomorrow when you will have the advantage of hearing from Officer Finch and hearing him cross-examined.

The other factual issue relates to 4(a)(i) and (ii). It is right to say that allegation 4 is linked to allegation 3 and the facts of allegation 3 are in fact admitted. There is no factual dispute that the question outlined in 3(a)(i) was asked and the answer was, 'No'.

It is the Council's position that that was a deliberately dishonest and misleading answer, and it is the registrant's position that it was neither of those things; it was not deliberately dishonest nor was it deliberately misleading.

So there is a factual issue to be determined in relation to that and there is no reason why that can't, in my submission, be determined. Even though it concerns the fixed penalty notice, it is entirely separate to the actual facts of

the fixed penalty notice, so it doesn't require any input from Officer Finch and could be dealt with discretely today.

Sir Alistair Graham: Okay, so we seem to have agreement of a possible way forward for today.

Before I invite the Legal Adviser, can I just see if there are any points my colleagues wish to clarify? [*There were none*]

Do you wish to give us advice?

Mr Milne: There is nothing that I think I need to really add on that. You are entitled to order the proceedings as you see fit as long as both sides are obviously heard on each point, so that would cause no problems.

So if you wish to deal with these issues first and leave over until tomorrow, when evidence can be heard again if necessary from both sides, on first point 1(a)(i), then that would work perfectly well.

Sir Alistair Graham: Can I just check with my colleagues, do we need an adjournment on this, or are we happy as both parties are agreed to proceed in the way that has been suggested? [*Agreed*]

I don't think we need an adjournment. The Committee is happy to proceed in the way that you have suggested, Mr Hepworth. There is no dispute between the parties on this matter.

Mr Henley: Sir, can I just get a steer? We have an interpreter sitting outside on an hourly rate and I just want to know roughly when she may be used if at all today, or stand her down until tomorrow.

Mr McGee: She won't be required at all today. We don't know, sir, whether she will be required tomorrow, but certainly not today.

Mr Henley: Can I get a rough time for tomorrow?

Mr McGee: We don't know, sir, whether she will be required tomorrow, but certainly not today.

Mr Henley: So she should come tomorrow.

Sir Alistair Graham: Is this relating to factual matters or character witnesses?

Mr McGee: No, it is related to character, so it is certainly nothing that need trouble an interpreter today.

Sir Alistair Graham: So it is more likely to be tomorrow afternoon.

Mr McGee: Certainly, yes. May I suggest that the interpreter is on stand-by and we will make a decision either this afternoon or first thing tomorrow morning?

Mr Henley: In that case, if I stand the interpreter down now and ask her to be on stand-by to attend possibly tomorrow?

Mr McGee: Yes.

Sir Alistair Graham: Yes, I would have thought probably tomorrow afternoon we are talking about, aren't we?

Right, we now need to clarify what is admitted. First of all we need to go to the allegation.

Can I invite the registrant to stand, please? [*Mr Sandhu stands*]

Can I ask the Hearings Manager to read out the allegation?

Mr Henley:

ALLEGATION

The Council alleges that in relation to you, Amandeep Sandhu, a student optometrist:-

1. (a) (i) On 2 February 2007 you shouted and swore at members of the public;
- (ii) You refused to leave the area outside Mode nightclub, Goldsmith Street, Nottingham when requested to do so by an officer of Nottinghamshire Police force;
- (iii) You were arrested on suspicion of breach of section 5 of the Public Order Act;
- (b) (i) On 2 February 2007 Nottinghamshire Police issued you with a fixed penalty notice for causing harassment, alarm or distress contrary to section 5 of the Public Order Act 1986;
- (ii) You signed the fixed penalty notice;
2. (a) (i) On 8 June 2008 you received a police caution for possession of cannabis, a Class C controlled drug contrary to Section 5 of the Misuse Drugs Act 1971; and
- (ii) Section 39 assault by beating (battery) contrary to Section 39 of the Criminal Justice Act 1988
3. (a) (i) At an Interim Order hearing of the Fitness to Practise Committee of the General Optical Council on 19 August 2009 you were asked by Counsel representing you whether you had previously been in any trouble with the police, or words to that effect;

- (ii) Your answer was “No”, or words to that effect;
4. (a) Your actions referred to at paragraph 3(a)(ii) above were
- (i) Dishonest;
 - (ii) Misleading.

And by Virtue of the matters set out above your fitness to undertake training as a student optometrist is impaired by reason of your:

- (a) Misconduct
- (b) Caution”

Sir Alistair Graham: Thank you. Can I ask the registrant, or you, Mr McGee whether any of the facts set out in the allegation are admitted?

Mr McGee: They are, and perhaps if I go through the allegations one by one and indicate what is admitted.

Sir Alistair Graham: You may sit down now.

Mr McGee: 1(a)(ii) is admitted, 1(a)(iii) is admitted, 1(b)(i) is admitted, as is 1(b)(ii), 2(a)(i) and (ii) are admitted, 3(a)(i) and (ii) are admitted.

Essentially therefore 1(a)(i) is not admitted and 4(a)(i) and (ii) are not admitted.

Sir Alistair Graham: Thank you very much. Mr Hepworth, do you want to proceed on those matters?

Mr Hepworth: Yes, sir, and I will start if I may with particulars 3 and 4 and I will open the others as we get to them.

Sir, what I will do now if I may is I will hand to you the hearing bundle. It contains three documents, although the index indicates that it contains four, and there is a reason why it only contains three. I will explain that as we go, but, the hearing bundle contains a fixed penalty notice, the record of the caution and the transcript of the relevant interim order hearing. Sir, it is to that transcript that I will draw your attention as I open the facts in relation to this section of the allegation being faced by the registrant. *[C1 is distributed]*

Sir Alistair Graham: Before we go any further, I do wish to check that one of my Committee members, Mr Khan, how we can deal with this documentation.

Mr Khan: I would suggest that the Counsel should carry on and if they are referring to something to read it out and I will catch up with it tonight or during the lunch hour.

Sir Alistair Graham: Well, we may be able to assist you.

Mr Khan: I should have disclosed that I have read the Interim Hearing transcript which was placed on the register, 19 pages of it, that I think is one of the documents here, isn't it?

Sir Alistair Graham: So if I could ask both Counsel if they are specifically referring to something, if they could read out the contents of that that they are specifically referring to so that that can assist Mr Khan in considering.

Mr Hepworth: And so helpfully the document to which I am going to draw your attention as I open the facts in relation to particulars 3 and 4 is the transcript of that application hearing, which does indeed run to 19 pages.

Mr Khan: Thank you. That will just convince you that I have read it.

Mr Hepworth: So, sir, on 19 August 2009 there was a hearing of an application that the registrant be made subject to an interim order. You can see that the transcript of that hearing starts at page 20 of the hearing bundle and runs through to page 38.

Sir, can I say that the majority of that transcript does not need to concern you, but I draw your attention particularly to page 31 of the bundle, to the second paragraph on that page.

Sir, this section of the transcript is part of Mr Hodivala's submissions that no order should be made. Mr Hodivala was the registrant's counsel on that occasion.

Sir, the section that I will read out to you starts at the second sentence of the second paragraph, and reads as follows:

"But we submit to you that the fact that he has no previous convictions or cautions recorded against him and the fact that he has not been in trouble with the police before, combined with what we would suggest is his genuine remorse in his letter dated 15 May, can safely lead you and your colleagues to conclude that here is a man who has had an aberration in his personal characteristics, rather than demonstrating a fundamental flaw which causes concern".

Sir, the trigger for the application for an interim order was the matters which form particular 2 to the allegation before you, the incident which led to the caution for battery and possession of cannabis.

So Mr Hodivala's reference to the fact that he had no previous convictions and cautions of course meant he was correct at the time because I don't think – and I will stand to be corrected. Sorry, sir, you will have to give me a second; I may be in the process of inadvertently misleading, and I would hate to do that.

Sorry, my mistake. When Mr Hodivala said that he had no previous convictions or cautions, he meant other than the caution which was the trigger

for the application for an interim order and that is the caution on 8 June 2008 at particular 2.

Sir, the important part of that sentence is what comes after that. Mr Hodivala said that, 'He has not been in trouble with the police before'.

Sir, as you can see from particular 3(a)(i) and (ii), that information was given by counsel to the Committee based on information which counsel had in fact, and in turn, been given by the registrant because counsel had asked the registrant whether or not he had been previously in any trouble with the police and the registrant replied, 'No'.

That question clearly meant, 'Have you been in trouble with the police previously other than the caution?' because everybody knew about the caution because it was a subject matter in the application for the interim order.

Sir, so the facts aren't disputed. Counsel asked that question and got the answer, 'No'. That clearly was incorrect because on 2 February 2007, as the registrant accepts, he was issued with a fixed penalty notice for an offence under Section 5 of the Public Order Act; that is of course harassment or alarm or distress.

So if I may be so bold, the issue for you is why that answer, 'No', was given and what the effect of that was.

Sir, on the wording of particular 4(a), the issue is whether or not the registrant's actions were dishonest or misleading. Can I start please by trying to help you to define the word misleading? Misleading clearly should be given its ordinary, everyday meaning, which means, in my submission, 'tending to mislead'.

It is perfectly possible, in my submission, to innocently mislead someone. The person misleading does not need to intend to mislead or be dishonest.

If one gives inaccurate information to another that is misleading because it causes the other person to believe something which is not in fact correct. That inaccurate information can be given dishonestly, yes, but can be given just as easily innocently in error, but that information is nevertheless misleading.

So in this case when the registrant gave that, 'No' he misled this counsel, and that is evidenced by the fact that the counsel then gave that inaccurate information to the Committee. And indirectly the registrant misled the Committee, because the Committee was given information which was incorrect and they accepted that information as being correct, so they were misled as to the truth.

Sir, you can find that the registrant's actions were misleading, and I emphasise this, without having to find that his actions were dishonest or that he deliberately misled.

Sir, as far as particularly 4(a (i) is concerned, of course that is in a completely different category. Sir, you could only find that proved if you were satisfied on the balance of probabilities that at the time the registrant gave that answer, 'No' to the counsel, that he knew that that was inaccurate. In effect he told a lie. Of course, sir, that will be a matter for you to consider but *prima facie* if someone gives inaccurate information, and that information that they can be expected to know, then the inaccuracy, as I said, is *prima facie* dishonest.

It is the Council's submission that having been arrested by the police in the circumstances in which he was on 2 February 2007 and receiving a fixed penalty notice would have been a very memorable event and he could be expected to have remembered it by August 2009, and therefore when he gave that answer, 'No', in my submission *prima facie* you can accept that he would have known that he had previously been in trouble with the police and therefore he knew that his answer was inaccurate and therefore that his answer was dishonest.

Sir, clearly we are at the facts stage as far as particulars 3 and 4 are concerned and you have to make your decision on particular 4.

The burden of proving that particular 4 is on the Council, not on the registrant; he has to prove nothing, and the standard to which this particular has to be proved on the balance of probabilities. Put simply, after hearing the evidence, if you are satisfied that a fact is more likely than not to have occurred, then you will find it proved.

4(a)(i) and (ii) are not descendant altogether; you must assess the evidence in relation to each independently and it would be perfectly proper if you come to that conclusion for you to find particular (i) not proved but particular (ii) proved.

Of course if you find particular (i) proved, it would be a very strange decision if you then found particular (ii) not proved, but that is technically a decision to which you could come.

So, sir, that is the opening as far as that allegation is concerned, and the only evidence upon which the Council relies is the transcript, and that particular section of the transcript to which I have drawn your attention.

Sir, that then is the Council's case as far as particular 4 is concerned.

Sir Alistair Graham: Thank you. Mr McGee?

Mr McGee: Sir, I will be calling the registrant to give evidence in relation to count 4. There is, however, an agreed Witness Statement from Ella Power of the AOP dealing with matters that are relevant surrounding backbone matters that are relevant to the evidence that you will hear from the registrant. It is a statement that is agreed by the GOC, and I would ask that you read this statement before the registrant gives his evidence, because it will assist you

in understanding the contents of his evidence and also shorten that evidence. So if I could ask you to do that?

Sir Alistair Graham: This is not in the bundle; this is separate?

Mr McGee: No, this will be R1.

[R1 is distributed]

Sir Alistair Graham: This is going to be R1. Mr McGee.

Mr McGee: Sir, if I could call the registrant, Mr Amandeep Sandhu.

Sir Alistair Graham: May I just remind you that that Witness Statement is designated as R1?

**MR AMANDEEP SANDHU, called and affirmed
Examined in Chief by MR MCGEE**

Q. Mr Sandhu, I am going to be asking you some questions from quite a long distance, so I will try and keep my voice up. Can you try and keep yours up as well? Can you go at semi-pace, because it is important that people who are taping you are able to do so, and can you direct your answers over towards the Committee, because it is important that they hear what you have to say?

It is right, isn't it, Mr Sandhu, that you enrolled to do your undergraduate training at Aston University in 2005?

A. That is correct, yes.

Q. And that the incident that led to the fixed penalty notice that the Committee has already heard about happened in February of 2007.

A. That is correct, yes.

Q. It is also right, isn't it, that you made an application for retention on the register for the year 2008/2009 on 1 June 2008?

A. That is correct, yes.

Q. And at that stage you declared that you had no convictions or cautions?

A. That is right, yes.

Q. Why at that stage didn't you declare the fixed penalty notice?

A. From the application I was filling in, it didn't have a specific section to prompt me to say you need to declare the fixed penalty notice.

Q. The Committee has also heard, and will hear more, in relation to an incident on 8 June 2008 which led to your acceptance of two cautions. Is that correct?

A. That is, yes.

Q. One for an offence of simple possession of cannabis.

- A.** Yes.
- Q.** And another for an offence of assault by beating, otherwise known as battery.
- A.** That is correct.
- Q.** When did you first report, or disclose, those two cautions to the GOC? Do you remember exactly when that was?
- A.** 15 May 2009.
- Q.** And what led you to disclose those cautions on 15 May 2009?
- A.** It was during my pre-registration year for my third competency that I was studying competency 2.5, it became clear about the rules and regulations of a registered optometrist. I had discussions with my assessor at the time when I had my final third visit, and he advised me to seek advice from the AOP.
- Q.** Just pause there. So you made an application for retention on 1 June; that is before you accepted the cautions.
- A.** That is correct.
- Q.** And were you aware, having accepted the cautions, at that stage that they should be disclosed to the GOC?
- A.** I didn't, no.
- Q.** And, have I understood you correctly, you became aware that you had an ongoing duty to disclose while you were doing competency 2.5.
- A.** Could you please repeat that?
- Q.** You became aware that you had a duty to disclose them when you were doing competency 2.5.
- A.** That is correct, yes.
- Q.** And if I understood you correctly, you discussed that with your assessor.
- A.** That's right.
- Q.** And then you sought advice from your professional body.
- A.** That is correct, yes.
- Q.** And that was on 15 May of 2009 – I don't think there is any dispute about that.
- A.** I think it was a couple of days before 15 May.
- Q.** When you sought advice from the AOP, you clearly told them about the two cautions. Did you tell them about anything else that you thought you should disclose?
- A.** In my original letter to the AOP I had a paragraph informing them of the fixed penalty notice and giving an explanation of the fixed penalty notice as well.
- Q.** But when you say 'in your letter to the AOP', was this a letter to the AOP or a letter to the GOC and you wanted the AOP – sorry to use all these acronyms – to check for you before you sent it?

- A.** It was an original letter that was going to be sent to the GOC, but it was going to be sent to the AOP first in order to get it looked at.
- Q.** Was it your intention at that stage, as at May of 2009 to disclose to the GOC not only the cautions but the fixed penalty?
- A.** It was, yes.
- Q.** And what advice did you receive from the AOP about that letter?
- A.** I was informed that I don't need to include the fixed penalty notice; I should leave that paragraph out but to go ahead with the cautions and send that on to the GOC.
- Q.** And is that what you did?
- A.** That's right, yes.
- Q.** So as at May of 2009 am I right in thinking that as far as you were concerned the AOP were aware of the full extent of your involvement with the police?
- A.** That is correct, yes.
- Q.** It is also right, isn't it, that having disclosed those two cautions to the GOC, they initiated an investigation, a fitness to practise investigation?
- A.** That is correct, yes.
- Q.** And that in July of 2009 against a background of that investigation you applied, having passed your qualifying exams, for full registration?
- A.** That is right, yes.
- Q.** When you applied for full registration, did you enclose any documents from the Criminal Records Bureau in relation to Enhanced Disclosure?
- A.** No, that was from the PCT, the Enhanced Disclosure.
- Q.** Oh, right, so they obtained that; the PCT?
- A.** That's right, yes.
- Q.** And where was that sent?
- A.** A copy was sent to myself and a copy to the Dudley PCT.
- Q.** And was this at any stage forwarded to the GOC?
- A.** No, it wasn't.
- Q.** If I can hand you this document which will end up being, I think, R2, just so you can identify it?
- A.** Yes, it is an Enhanced Disclosure for myself.
- Q.** And that is dated July 2009?
- A.** That is correct, yes.
- Q.** And you were aware of that and contents as at that date, as at July 2009?
- A.** Yes I was, yes.

[R2 is distributed]

Sir Alistair Graham: Are you going to explain to us the background of this document?

Mr McGee: Yes. And just to be clear, your understanding of this document was that it disclosed all the records, everything held about you that would ever be disclosed by the Criminal Records Bureau? That is your understanding?

A. That is correct, yes.

Q. And that it is an Enhanced Disclosure that had been obtained as part of your application for registration, and you had seen it?

A. Yes.

Q. Again, there is no dispute that as of May 2009 or thereafter, triggered by your disclosure of your cautions, there was an investigation commenced and the FDP Investigation Committee recommended that there should be an application for an interim suspension order. Is that right?

A. That is right.

Q. And there was a hearing in relation to that on 19 August of 2009.

A. That is correct.

Q. And you have heard the facts that the General Optical Council relies on in relation to that hearing that you were asked a question and you replied to that question. Who was it who asked you the question, 'Have you ever been in trouble before; previously been in trouble?'

A. It was my solicitor from the AOP.

Q. So who was that?

A. Ella Power.

Q. And when she asked you that question and you answered, who did she pass the answer on to?

A. On to Jamas Hodivala.

Q. Okay, so you will accept that during the course of Mr Hodivala's submissions he caused the question to be asked of you which you answered?

A. That is right, yes.

Q. Can you remember precisely what the question was?

A. 'Have you been in trouble with the police before?'

Q. Are those the exact words or just words to that effect?

A. Something similar to that effect.

Q. Now, when you were asked that question, what did you think? What information did you think was being sought? What did you think that question meant?

- A. I thought she was asking me whether I had been in trouble with the police before, apart from the stuff she already knew.
- Q. So you are saying that when you were asked the question, 'Have you been in trouble with the police before?' you took that question to mean, 'Over and above what I have already told the AOP'?
- A. That is correct, yes.
- Q. And again so that there is no doubt, what had you told the AOP by the date of that hearing?
- A. I had informed them of the fixed penalty notice, that being allegation number 1, and I had told them about the two cautions from 2008.
- Q. And in relation to the fixed penalty notice, was it your view at that stage that it had to be disclosed in any event?
- A. I was advised that it did not need to be declared.
- Q. Did you dishonestly answer that question?
- A. No.
- Q. Did you think to yourself, 'I do not want this Committee to know I have a fixed penalty notice and therefore I will tell Miss Power and through her my counsel that I have not been in trouble with the police before'?
- A. No, definitely not, no.
- Q. Were you attempting, deliberately, to mislead the Fitness to Practise Committee at that period?
- A. Not at all.
- Q. Now, again there is no dispute, the Fitness to Practise Committee at that hearing didn't grant an interim order and as a result of that you renewed your application to join the full Register by way of a letter to the Registrar on 18 September.
- A. That's right, yes.
- Q. And again, to cut a long and rather complicated story short, it is right, isn't it – and can I indicate to the Committee I am leading this witness with permission so that his evidence isn't unduly congested – that letter went astray and was re-sent at the end of October to the Registrar?
- A. That is right, yes.
- Q. As far as the Registrar's reconsideration of your application, she wrote to you on 2 November of 2009 asking you to confirm the details of any convictions and cautions and whether there was anything else that you had to disclose.
- A. That is right, yes.
- Q. And as a result of that letter, you took further advice, didn't you, from your professional body?
- A. I did.

- Q.** And what was that advice?
- A.** I was advised that theoretically I do not still need to declare the fixed penalty notice, but there is an option of a voluntary disclosure if I feel I wanted to do that.
- Q.** So you were told you didn't have to disclose the fixed penalty notice, but if you wished to do so voluntarily, you could?
- A.** That is correct, yes.
- Q.** What was your decision, having received that advice?
- A.** I decided to declare it and write a letter in reply to the letter I had received informing the Registrar of the fixed penalty notice.
- Q.** And again I don't think it is a matter of dispute that you wrote disclosing that fixed penalty notice on 30 November of 2009?
- A.** That is right, yes.
- Q.** Thereby triggering yet another investigation by the Fitness to Practise Committee.
- And by way of completeness, it is right, isn't it, that you wrote to the Registrar on 16 March 2010 explaining the history of this fixed penalty notice?
- A.** I did, yes.
- Q.** Explaining the advice that you had received and explaining what question you thought you were being asked on 19 August during the interim order hearing.
- A.** Yes, that is right.
- Q.** Have you ever attempted to conceal from the GOC a conviction, caution, fixed penalty notice or anything else involving involvement with the police? Have you ever deliberately attempted to conceal that?
- A.** I haven't, no.
- Q.** In your mind have you ever, whether deliberately or inadvertently concealed that information?
- A.** No.
- Q.** I have no further questions for you at this stage, Mr Sandhu. If you remain there, I am sure my learned friend for the GOC may have some questions for you, as may the Committee.
- A.** Sure.

Sir Alistair Graham: Mr Hepworth.

Cross-examined by MR HEPWORTH

- Q.** Sir, thank you. Can I start, please with the last question that you were asked? One of the alternatives was whether or not you accepted that you had inadvertently misled the Committee at any point. Don't you accept that on 19

August 2009 at the Interim Order Application Hearing, that is precisely what you did; you inadvertently misled them?

A. It wasn't my intention to mislead the Committee or my counsel, and if I did then I can just apologise for that.

Q. But they were misled, weren't they?

A. Yes, from what I said, they were – yes.

Q. Am I right in thinking that you have only been in trouble with the police on two occasions?

A. With the fixed penalty notice and the cautions, yes.

Q. Yes and I would imagine that each incident was fairly scary for you, and must have caused you a great deal of concern?

A. Yes.

Q. And would you say that today you can remember what happened in both incidents?

A. I can, yes.

Q. So therefore on 19 August 2009, you could remember what happened on both incidents?

A. Yes.

Q. I am going to go on now, if I can, in some details of 19 August 2009. I think in your evidence you said that it was Ella Power that asked you the question, 'Have you been in trouble with the police before?'

A. That is right.

Q. And are you sure about that, or could it have been Jamas Hodiwalla that asked you himself?

A. No, I am positive it was Ella Power.

Q. When she asked you that question, you knew, didn't you, that that information was going to be given to the counsel?

A. Yes.

Q. And when she asked you, 'Have you been in trouble with the police before?' you knew that you were giving the answer, 'No'; you weren't mistaken as to the answer you gave?

A. I wasn't, no.

Q. So you knew, didn't you, when you told her that, when you said, 'No', that the information you were giving to her was inaccurate?

A. From my point of view I had already informed the AOP of all my involvement with the police, so I was under the assumption that everybody that was representing me, especially from AOP, would know what I had been involved in and what advice was given to me, and so they would be aware of the full circumstances around the case.

So what I answered at the time, and today sitting here, was from my point of view true to the best of my knowledge.

Q. But the question was not, 'Have you been in trouble with the police, other than the things you have already told us about?' – she didn't ask that, did she?

A. She didn't. It was words to the effect of, 'Have you been in trouble with the police before?' – something along those lines.

Q. So had you been honest on that occasion you would have said, 'Well, there is a fixed penalty notice'. Do you remember we spoke about that earlier? You would have said something along those lines, wouldn't you?

A. Possibly. At the time I was under the assumption she knew everything that was going on.

Q. And after you gave that information, you were there weren't you in the room, when James Hodivala told the Committee that section that I have read out, that you had never been in trouble with the police?

A. I was in the room, yes.

Q. And what he said to the Committee was that you had no previous convictions or cautions recorded against you, and he also referred to the fact that you had not been in trouble with the police before.

When he gave that information to the Committee, you knew that that was wrong, didn't you?

A. At the time of the hearing my feelings were all over the place. I was just a bag of nerves, so what was being said at the time was possibly just going over the top of me. I was there, sitting there, but whether I was paying full attention to what was being said and what was going on, I do not know. It was a stressful time for me.

Q. Were you not listening, then, to what was happening in your relation to an application to suspend your registration?

A. I was listening, but like I said, the way I was feeling was I was maybe not really attentive to what was going on. I was stressed.

Q. But if you were listening, then you would have heard James Hodivala saying that you had not been in trouble with the police before.

A. That is right, yes.

Q. You heard that?

A. I would have heard it.

Q. Perhaps if I asked you the direct question, did you hear him say that or not?

A. I didn't, no.

Q. You didn't?

A. No.

- Q.** On that date when the application was made, you didn't want an interim suspension order to be made, did you?
- A.** No.
- Q.** And is the case that you thought that if the Committee knew about that fixed penalty notice matter, it might hurt your case and it might make them more likely to make the order?
- A.** Not really. I thought the opposite, really, to be honest. If the Committee was aware of the fixed penalty notice, they may have looked at it in a different light of actually disclosing the information that I do not need to.
- Q.** So you were thinking about the fixed penalty notice during that hearing then, were you?
- A.** No, prior to the hearing. That is when I informed the AOP of the fixed penalty notice when I didn't need to.
- Q.** I am talking about what you were thinking during the hearing itself.
- A.** I'm sorry.
- Q.** Please don't apologise; the question probably was unclear. So concentrating on what you were thinking during the hearing itself, did you think about the fixed penalty notice during that hearing?
- A.** No, I was concentrating on the matter in hand.
- Q.** I just wanted to clarify what your evidence is. I don't want you to feel in any way misled today, because what I suggest is that you were well aware of your fixed penalty notice during that hearing and you deliberately withheld it from Ella or your counsel because you thought it may hurt your case. Isn't that actually what happened?
- A.** No.
- Q.** That in fact you were being dishonest when you gave Ella or your counsel that answer, 'No' to that particular question? Isn't that actually what happened?
- A.** I did say at the time I never had any trouble with the police before, I did, but it wasn't my intention to deliberately lie or mislead anyone. I honestly thought my representations knew of the involvement that I had been in with the police. I was not deliberately trying to persuade anyone or hide anything.
- Q.** But it was a straightforward question, wasn't it; 'Have you been in trouble with the police?'
- A.** Yes, it was and I was under the assumption that she was asking me, 'Have you ever been in trouble with the police before apart from the caution and the fixed penalty notice that the AOP are already aware of?'
- Q.** But that's not what she said.
- A.** That is what I interpreted it as.
- Q.** I have no more questions.

Questions from the Committee

Sir Alistair Graham: I have no questions. I wonder if the Committee have any questions.

Ms Viner: Can I just clarify, please, that you were talking about competency 2.5 as a part of your registration period? I just wanted to confirm if my recollection is correct, is that the one about having an understanding of the question about cautions, etc?

A. It is.

Q. And also just from the chronological point of view, I notice that you renewed your registration on 1 June 2008, so that was for 2008/2009 and then you received a caution on 8 June 2008, so possibly a week after re-registration and your form had been sent off.

Can I just ask, were you aware when you received the caution that that would be something that you would need to do something about as regards the -?

A. At the time, I didn't, no. With the police officer at the time I asked him, 'Would this impair me going for jobs in the future?' and he said, 'It is a caution. It's not a criminal record as such', and we just left it at that. This conversation took place as I was leaving the police station by the custody area. It wasn't in the police interview at all, but I had that little conversation with him.

Q. Right, okay, but you talked earlier about you hadn't declared your fixed penalty points because there was no section on the form to prompt you to do that. Can you recall what sections on the form there were that would have prompted you to declare everything else?

A. Well, now I am aware that there are specific sections and a caution does appear on the form, but at the time I just didn't think of it.

Q. Okay, thank you.

Sir Alistair Graham: Mr Khan?

Mr Khan: No,

[There were no further questions from the Committee]

Sir Alistair Graham: Can we finish with this witness?

Mr McGee: I was going to make some submissions.

Sir Alistair Graham: We can finish with this witness, then?

Mr Hepworth: Sorry, sir was that directed to me? Of course, sir, yes.

Sir Alistair Graham: Thank you very much.

[Mr Sandhu stands down]

Sir Alistair Graham: Do you wish to make your closing submissions?

Mr Hepworth: I just want to make one point, sir. I would refer you to my opening; it wasn't very long ago, and there is nothing that I wish to add to that as far as that is concerned.

Sir, there is a conflict of evidence between the two witnesses called on behalf of the registrant. Ella Power's statement says at paragraph 9:

“Counsel asked Mr Sandhu part way through his submissions whether he had been in any trouble before with the police and he' – obviously referring to Mr Sandhu – ‘answered ‘no’”.

The registrant's evidence was that it was Ella Power who asked that question rather than counsel, so sir, there is a conflict of evidence. Of course it is a matter for you whether or not that is of any significance, but I raise it.

Sir, under cross-examination the registrant accepted that even though he says he was asked the question by Ella Power that he knew that the answer would go to counsel in any event.

So, sir, I raise it just because it is an issue; it is a matter for you whether or not you find it to be of any significance. Other than that I have nothing else to add.

Mr McGee: Sir, I hope to be perhaps not quite as brief as that, but certainly brief. The nature of the GOC's allegation in relation to particulars 3 and 4 is absolutely clear; that Mr Sandhu deliberately told a lie with the intention of misleading the Fitness to Practise Committee at the hearing on 19 August.

They are saying; their allegation clearly is that he is a dishonest individual who has in a calculated and deliberate fashion attempted, and indeed, succeeded in concealing from the Fitness to Practise Committee on that occasion the fact of the Fitness to Practise Notice.

That is the issue, the factual issue that you have to determine, and in my submission the history of this registrant's disclosure of the fixed penalty notice and the convictions and cautions both before that hearing and subsequently is highly relevant to your assessment of whether he was dishonest, or as he says, 'mistaken in what he was being asked'.

What do you know about that history? Well, you know that he fully and voluntarily disclosed the two cautions when he realised that he had to. He was under no obligation to disclose those cautions on 1 June of 2008 when he applied for retention for the very obvious reason; that they hadn't happened by that stage.

He was cautioned on 8 June and he fully and frankly accepted he didn't realise at that stage he was under a continuing obligation to disclose those matters as and when they arose.

He only became aware of that ongoing obligation when he was doing, to put it in shorthand, his Ethics Module under competency 2.5. As soon as it is drawn to his attention that he is obliged to disclose those matters he discusses it with his assessor, goes to his professional body with – and this is significant – a draft letter that he wishes to send to the GOC that contains not only details of the two cautions, but also details of the fixed penalty notice, and that is as at May 2009 he wants to disclose it.

He is advised, quite properly by the AOP that he is under no obligation to disclose the fixed penalty notice, and indeed he is not under any obligation to do so then; he is not now.

The letter is, on the AOP's advice, edited to remove a reference to the fixed penalty notice and it is sent. But there is a registrant who is keen not to conceal anything, and he is told, 'Well, you don't need to disclose the fixed penalty notice', so he acts on professional advice for which he pays his subscription, unsurprisingly.

He then also – and this is significant in my submission – he applies for full registration and at that stage he becomes aware of the Enhanced Disclosure document that you have got. That is a Criminal Records Bureau check, an enhanced check on all the material that is held about him in relation to involvement with the police, and of course it is right to say the fixed penalty notice doesn't appear on this enhanced disclosure, as it would not. It is not a final warning, it is not a caution, it doesn't fall to be captured, as is obvious from this document, by the Enhanced Disclosure process.

My simple point in relation to that is this; that as of July 2009 this registrant, who is an intelligent man, knows that even an Enhanced Disclosure document from the Criminal Records Bureau would not reveal a fixed penalty notice. He knows that as of July 2009.

At the hearing on 19 August, therefore, this registrant knows several things. First of all he knows that the AOP, his professional advisors, as an organisation are fully aware of the fixed penalty notice and the two cautions.

He is also fully aware that that fixed penalty notice wouldn't come to the attention of the GOC via the Enhanced Disclosure process.

He is asked a question at that hearing. There appears to be a slight difference between what he says and Miss Power says; whether he was asked directly by Miss Power or by Jamas Hodivala, his counsel. The Committee may very well think that nothing turns on that. It is clear that Mr Hodivala didn't break off from making his submissions to turn round and talk to Mr Sandhu.

That's not reflected in the transcript. It is absolutely normal practice for counsel to indicate by way of a note to whoever is sitting with them that they want a question asked on their behalf, that answer is passed back to them and then they incorporate it in their submissions as they go along. You may very well think that absolutely nothing revolves around that point.

The issue is no dispute that that question was asked and that answer was given. Again, it is important to bear in mind what the registrant knew when he was asked that question.

First of all he knew that the AOP was fully aware of both the fixed penalty notice and the caution. He was also aware that there was no obligation to disclose the fixed penalty notice.

In those circumstances, I submit it is entirely reasonable that he should interpret that question as meaning, 'Over and above what you have told us, is there anything else? Have you been in trouble with the police before beyond the fixed penalty notice which we know of, beyond the cautions?'

And of course the fixed penalty notice wasn't being specifically raised during the course of that hearing because there was no issue in relation to it and there is no obligation to disclose it, so he was not suspicious in any that it wasn't being raised by the AOP, even if his counsel has known about it, which in fact Ella Power did not.

That is the registrant's explanation, and I would submit to you an entirely reasonable one; that that is what he thought he was being asked and so that is what he said. 'No, there is nothing else', essentially.

What subsequently happens though in relation to that fixed penalty notice is, in my submission, of really great significance in your deliberations, because we wouldn't be here today had the GOC not become aware of that fixed penalty notice, and they became aware of the fixed penalty notice, not through Enhanced Disclosure, not through any other means, but simply because this registrant told them. He told them when he had been specifically advised that he was not obliged or required to do so, and he told them when he knew that even an Enhanced Disclosure check would not reveal a fixed penalty notice, and that in effect there would be no way for the GOC of its own volition to find out about this fixed penalty notice if he chose to keep quiet about it.

The GOC's allegation is that on 19 August this registrant, quite calculatedly and deliberately concealed from the Committee the fixed penalty notice. How does that allegation sit with his subsequent actions?

He is invited to make any further disclosure he wants on 2 November, he takes advice and is told, 'You don't have to say anything about the fixed penalty notice if you don't wish to', and yet he does.

That is either the act of an honest man who hadn't been dishonest or attempted to mislead anyone on 19 August, or it is the actions of a complete idiot, because having, if the GOC is right, successfully concealed this fixed penalty notice he then voluntarily lands himself, to use the vernacular, 'right in it' by informing the GOC as the investigation process is continuing, that he does in fact have a fixed penalty notice, inviting only one result, and that result flowed from that revelation.

This registrant has consistently been honest about his involvement with the police. He wanted to disclose the fixed penalty notice in May of 2009, before any hearing.

Thereafter, after that hearing at which allegedly he quite deliberately conceals it, he voluntarily discloses it, not because he has to, because he didn't; not because he knows it might come to light through other normal channels, because it won't. He does it honestly and openly. Those are not the actions of someone who a matter of weeks before has been deliberately dishonest on that very topic.

In terms of the allegation itself, I accept that it is technically possible for you to find that he wasn't dishonest but was inadvertently misleading, and I emphasise the word 'technically'. It may very well be, sir, that you and members of the Committee seize the *gravamen* of this allegation; that it is dishonest, intentional misleading of the Committee, and that splitting hairs in relation to whether it is possible to find misleading, is neither here nor there.

Suffice it to say, if the Council had thought that this was an inadvertently misleading statement, we wouldn't be here today. Their whole case is, it is not only dishonest, it is deliberately misleading and I ask you, in the interests of common sense, to read the word, 'deliberately' into 4(a)(ii) 'misleading' and to find neither factually proved.

Sir Alistair Graham: Thank you very much.

Mr Milne: What I would say at this stage is that my advice to the Committee would be not to make final findings as to fact until such time as you have heard all of the evidence, rather than break it down and take it piecemeal, a stage at a time.

I would recommend that all of the evidence be heard tomorrow. Clearly submissions have been made on these matters so far, and the Committee at some stage, after it has heard the rest of the evidence, can reach its final conclusions.

Mr McGee: Could I say with respect I don't agree with that advice? My understanding of my learned friend's application supported by me was that this was a discrete factual issue which it is, which could be determined today so that the decks are cleared.

Any evidence that you may hear tomorrow doesn't bear on the discrete facts that are a subject of contention today, and in my submission it would be quite possible, and indeed quite proper, for you at this stage to make this determination in relation to the facts surrounding 4(a) and (b).

Sir Alistair Graham: I always prefer committees to take decisions when they have heard the arguments and they are fresh in their minds. Is this a central -?

Mr Milne: No, the normal procedure is based upon two things. Certainly for judges in court it would normally be the case that whilst they will hear arguments at various different stages, in relation to a decision as to facts they would normally wait until they heard all of the evidence before making a final decision.

I accept that there is a distinction to be drawn between what has been argued today and what will be argued tomorrow, but I take it that we may also hear from the registrant tomorrow as well and that you will call him again to give evidence in relation to the second matter.

Mr McGee: Yes, we may do in relation to the facts of the fixed penalty notice.

Mr Milne: Right, well I am being cautious simply in case there is any risk that there may be any overlap between them.

Mr McGee: There won't be because I think I can say in turn that there are some very, very discrete issues relating to what actually happened on 2 February which are completely unconnected with what happened on 19 August of 2009 two years later.

Sir Alistair Graham: We won't be going back over the ground relating to the interim order?

Mr McGee: No, the only connection between those two pieces of evidence is the fact of the fixed penalty notice. The evidence to be heard tomorrow is what the actual facts were; why it was that this registrant came to be arrested.

It is a completely separate issue about whether that fixed penalty notice being in existence he deliberately tried to conceal it, so there will be no duplication; there will be no going over the evidence that you have heard today. It is totally separate.

Sir Alistair Graham: Mr Hepworth, what was your intention when you put before us the procedure that we are now seeking to follow, apart from hearing this particular issue in relation to 4(a) and 4 (ii) today. Did you intend, or did you have in mind the Committee may come to a conclusion on that particular aspect of the factual stage, leaving over until tomorrow the issue of 1(a)(i)?

Mr Hepworth: Sir, yes.

Sir Alistair Graham: So you would also disagree with the advice from the Legal Adviser on this one?

Mr Hepworth: Although I hesitate to do so, I do support the stand that is taken by my learned friend.

Mr Khan: I suppose another distinction is that the matter contained within 4 is to whether he was honestly misleading, whereas the other matters are factual matters with no connection to misleading or dishonesty.

Mr McGee: Yes, more to do with unacceptable public disorder, as opposed to what is frankly a far more serious allegation relating to the deliberate and successful, is the GOC's point attempt to mislead a professional body.

Mr Milne: Well, if you wish to treat today's hearing effectively as a discrete part of the process, then it is open to the Committee to go ahead and make a finding as to fact at this stage, but to go no further than that.

In doing so, clearly you have to have regard to all the evidence that you have heard and as rightly has been pointed out the standard of proof that will be applied will be that of the balance of probabilities; that is more likely than not.

The issue that you have to concern yourself with here is essentially the question of honesty, since it seemed that the large part of the facts are not in dispute, that is what the Committee should apply their minds to.

Sir Alistair Graham: Do you think we need any advice on the issue of misleading? It is just I am conscious when we come to discuss this matter this issue of misleading, Mr Hepworth put a particular gloss on the issue of misleading.

Mr Milne: The counsel for the registrant has urged you to read it in terms of deliberately misleading. That, I think in any event, would probably be the position that the Council would take since it has been submitted on the basis of it being misleading.

Mr Hepworth: That's not the Council's submission and I think I made the position clear in opening. You have heard the Council's case which is that there was a dishonest act, but misleading can be found as an alternative without the requirement to read into that the word, 'deliberate'. The word deliberate is not there and should not be read in.

Of course, whether or not you find that fact proved does not matter in itself, because if you find that whatever happened did not amount to misconduct, then the matter would go no further in any event, but the Council's case is not that the word 'deliberately' should be read into that; in fact, quite the opposite.

Mr Milne: Forgive me. I think we have been at cross-purposes. Clearly the Council's position is that it was deliberately misleading.

Mr Hepworth: Yes.

Mr Milne: I think that is probably where we would agree, yes.

Sir Alistair Graham: Okay, thank you very much.

Mr McGee: Sir, perhaps it might assist you – I have produced a very short chronology of significant dates which my learned friend has seen and agrees, and it may be of assistance if that document is with you during your consideration. My learned friend is happy for that to be handed to you.

Sir Alistair Graham: Yes, okay. Shall we mark that R3?

[R3 is distributed]

Sir Alistair Graham: Well, if there are no further representations to be made, then I think it is a matter for the Committee to consider. It is nearly 12.10 – should we see if we can reconvene at 1.30? We can perhaps let you know if there are any difficulties about that, but shall we plan on the assumption, including lunch, that we reconvene at 1.30?

Thank you very much.

[Hearing adjourned at 12.07]

[Hearing reconvened at 13.26]

Sir Alistair Graham: Thank you for coming back a little early, but seeing as we have come to a conclusion, we need not delay.

For the purposes of the record, I need to deal with the applications as well as the determination in relation to 4(a)(i) and (ii).

APPLICATION

Mr Hepworth for the Council made two applications

1. That allegation 2(a)(ii) be amended to read 'Criminal Justice Act 1988' in place of 'Offences Against a Person Act 1861'
2. In relation to allegation 1(a)(i), due to the police witness withdrawing his attendance at very short notice, that Mr Hepworth be given the opportunity of clarifying the situation regarding arrangements for the police witness to attend.

Both applications were not opposed by Mr McGee for the registrant, and the Committee granted the applications.

FURTHER APPLICATION

Due to the police Divisional Commander, who was required to make a decision regarding the attendance of the police as a witness not being

available, Mr Hepworth made an application to adjourn the hearing until the police witness situation is resolved. The application was opposed by Mr McGee.

The Committee granted Mr Hepworth leave to resolve the situation. The Committee subsequently heard that the police Divisional Commander had authorised the police officer to attend as a witness on 26 May 2010.

DETERMINATION

Findings in relation to the particulars of the allegation.

The registrant admitted particulars 1(a)(ii), 1(a)(iii), 1(b)(i), 1(b)(ii), 2(a)(i), 2(a)(ii), 3(a)(i), 3(a)(ii) of the allegation, and the Committee therefore found those particulars of the allegation proved.

The Committee found particular 4(a)(i) of the allegation not proved.

The Committee found particular 4 (a) (ii) of the allegation proved.

Findings in relation to the non-admitted facts.

The Committee was asked to take these allegations out of sequence due to the non-availability of a police witness on the first day of the hearing, otherwise the matter may have had to be adjourned until the following day. Both parties agreed to this procedure.

Allegations 4(a)(i) and (ii). The Committee has considered all the evidence presented, including that of the registrant and the transcript of the Interim Order Hearing of 19 August 2009. It has also considered documents presented on behalf of the registrant by his counsel.

The Committee in applying the standard of proof appropriate to such matters is not satisfied that the Council has demonstrated that the registrant acted dishonestly in its dealings with the Fitness to Practise Committee in its interim suspension hearing of 19 August 2009.

The Committee finds that on a balance of probabilities that the information the registrant provided may have had the effect of misleading the Committee, but accepts that such misleading was unintentional on the part of the registrant. The Committee had before it evidence that the registrant had disclosed to the Council that he had been in receipt of a fixed penalty notice dated 2 February 2007 and that he had voluntarily disclosed this information, having been advised that he was not required to do so by the Association of Optometrists.

So that is the determination that we have come to as far as 4(i) and (ii) are concerned.

I don't think we can probably take any further matters today.

Mr Hepworth: Sir, what I can do is I can open the facts in relation to particular 2 and I can do that briefly and that at least then will deal with the facts side of that particular; of course particular 2 having been admitted.

Sir Alistair Graham: Okay.

Mr Hepworth: Sir, I think as you are now aware Mr Sandhu, the registrant, notified the Council on 15 May 2009 that he had been cautioned by West Midlands Police on 8 June 2008 for the offences that you can see detailed within particular 2, the offence of battery and possession of cannabis.

Sir, the Council accepts that a caution may only be given to a suspect if in this case he admits the offence or offences and if he agrees to be cautioned.

There is no process before a caution is given to resolve any conflicts in the evidence. The caution can only be imposed, therefore, on the basis of the version of events put forward by the suspect.

Sir, the Council's case in relation to those two offences as detailed in particular 2 are based upon the account given by the registrant in that police interview, and I have made that clear.

Sir, after discussion a Statement of Facts has been agreed between the parties which we hope fairly summarises the content of the interview which the registrant had with the police, and it is for that reason that the transcript of the police interview is no longer in your hearing bundle.

Sir, can I please hand that up to you and your colleagues and then I will read it through?

[C2 is distributed]

Mr Hepworth: Sir, the Statement of Facts in relation to the offences for which the caution was issued reads as follows:

“1. Mr Sandhu stated in interview that he was driving down a main street in Birmingham with some friends in the early hours of the morning. A group of men started throwing items at the cars in which Mr Sandhu and his friends were travelling. Mr Sandhu's group pulled their cars over. The group of older men who had been throwing items at the cars then approached, issuing racist abuse.

2. One of the men threw a punch at Mr Sandhu which hit him in the jaw. Mr Sandhu punched him back once in self-defence. At this point, a second man walked towards Mr Sandhu and began to throw punches at him. This man was holding something in his hand. Mr Sandhu managed to avoid his punches, and wrestled the man to the floor.

Whilst on the floor the pair traded punches. Mr Sandhu was able eventually to free himself and stand up.

3. At this point, and not acting any longer in self-defence, Mr Sandhu kicked his assailant (who was still on the floor) twice in the thigh area of the leg. He did this because he was angry about what the man had done to him.

4. Mr Sandhu then ran away. He was chased by someone who he did not realise was a police officer. When confronted by a uniformed police officer, he stopped and co-operated.

5. Mr Sandhu sustained injuries to his arm, and received a black eye and a bloodied nose. He saw a nurse at the police station.

6. A small joint of cannabis was found in Mr Sandhu's pocket. Mr Sandhu said that this was for his personal use."

So, sir, that is the facts behind the caution. Sir, you can see at page 2 of your hearing bundle the actual record of the caution and going through this so that is clear to all members of the Panel.

Sir, you can see in the 'Details of Offender' section that the registrant's details are there. In the 'Offence details' section you can see that the caution was in relation to possession of cannabis, a Class C controlled drug as it was at the time, and a Section 39 – assault by beating, a battery.

Sir, you can see in the section which is headed 'Adults only', that the registrant has signed to say, 'I have received and read the leaflet entitled 'Notice to Persons Cautioned'' and also signs to say, 'I admit to the Offence(s)'

There was no appropriate adult, and so Section 3, 'I consent to this caution being issued' was not completed. And you can see at the bottom of that page that there is a signature there from a police officer certifying that he was the person who cautioned the registrant.

Sir, those are the facts and that is my opening in relation to particular 2. Particular 3 we have dealt with, particular 4 we have dealt with. Sir, as far as particular 1 is concerned although parts 1(a)(ii), (iii) and 1(b)(i) and (ii) have been admitted, so it may make sense to deal with those all together tomorrow, and so if you are minded to do that I am afraid to say that that would be where today's hearing has to end until PC Finch arrives tomorrow. I am told, sir, that he will be here at 9.15 tomorrow morning. I know he will be travelling from Nottingham, so as long as the trains are on time he should be here for a 9.30 start.

Sir Alistair Graham: You had nothing to say about the facts?

Mr McGee: No, they are agreed facts derived from the registrant's interview under caution.

Sir Alistair Graham: Just in terms of clarification – it may not be appropriate at this stage – but at some point it would be interesting to know was anybody else charged in relation to this offence?

Mr Hepworth: Sir, I don't know is the answer.

Sir Alistair Graham: We are not aware of that?

Mr Hepworth: I am certainly not aware that anyone else was charged, sir.

Sir Alistair Graham: Okay, thank you. Well, if that is all we can do today, that adjourns the hearing for today and we will reconvene at 9.30 tomorrow morning.

Mr Henley: Can I just check on the availability of the translator? Do we think from two o'clock tomorrow afternoon?

Mr McGee: Perhaps we can talk when she is available.

Sir Alistair Graham: Because the police officer is the only witness tomorrow, is that right? Apart from if we get to character witnesses at a later stage.

Mr Hepworth: I think the registrant may wish to give evidence on that particular fact.

Sir Alistair Graham: I see, so we will have two witnesses.

Okay, thank you very much.

[Hearing adjourned at 13.38]

DAY TWO

Wednesday, 26 May 2010

[Proceedings commenced at 09.28]

Sir Alistair Graham: Good morning. I think we got to the stage where we said we would deal this morning with allegation 1(a).

Mr Hepworth: Sir, that's right. I know that I haven't opened the facts at all in relation to particular 1, but of course some of that particular have been admitted, but, sir, because the officer's evidence chronologically would come first, I will call to give evidence. That is PC Darren Finch.

PC DARREN FINCH, called and sworn Examination in chief by MR HEPWORTH

Q. Officer, you will be asked some questions from me to start with, then some questions from my left-hand side and latterly the Panel who are to your right; they may have some questions for you as well.

I am going to ask you about the incident which took place in the early hours of the morning on 2 February 2007. Before I do that, could you tell the Committee, please for how long you have been a police officer?

A. I have been a police officer for six and a half years, all served in the City Division, Nottinghamshire Police.

Q. And could you tell the Committee, please for what period of that service have you been a patrol officer in uniform?

A. For about five years; I have done a bit of time in the CID as well.

Q. I am going to take you back, then, if I can to 2 February 2007. Is it right that you were on uniformed duty on that occasion?

A. I was, yes; that's correct.

Q. Can I take you to a time about three o'clock in the morning, and could you please tell the Committee what happened at that time on that day?

A. At that time there was an incident at a night club called Halo in Nottingham. We didn't initially attend, but officers, colleagues of mine did. Based on what my colleagues saw they clearly felt the need for more officers to attend and duly shouted up over the radio. Myself and my colleague were the first to respond to that call.

Q. Can you just pause there if you would? Now, this night club – whereabouts in Nottingham was it? You only need to give the location, so was it in the City centre, or was it in the suburbs?

A. It is in the City centre.

Q. And for those who don't know the city, could you tell the Committee, please, how busy or quiet Nottingham is in the early hours of the morning; how vibrant a night life does it have?

A. At the weekend, and we generally refer to it as a Thursday to a Sunday night, it can be very, very busy. There have been estimates of 100,000 people generally enjoying the night life.

Q. I interrupted you – I think you said that you had been called to the night club. What happened then?

A. We are quite fortunate. We have tram tracks which we can drive up which lead right up to the night club stops on these tram tracks. We did what all officers do; we did a quick scan to see where your points of danger are going to come from. There was quite clearly a group of predominantly Asian males sat at the tram stop just adjacent to my vehicle. They were the people I initially looked at and concentrated on.

Q. Carry on if you would.

A. My attention was drawn to Mr Sandhu, and that is two-fold. First of all I had received information over the radio that that group of males were responsible for the majority of the trouble.

Q. Okay and what was the second reason?

A. His behaviour out of the rest of that group was the one that I identified the most as the one I needed to talk to out of the whole group and monitor.

Q. And what was it about his behaviour that identified him to you as someone you needed to speak to?

A. It was aggressive behaviour.

Q. What was he doing?

A. Gesturing with his arms, throwing himself around in an aggressive stance. He seemed to be mouthing off a lot when I was in the vehicle. When I got out he was swearing quite loudly.

Sir Alastair Graham: Did you say 'swearing quite loudly'?

A. Yes.

Mr Hepworth: And how would you describe the volume of his voice?

A. It was instantly identifiable. I could hear what he was saying, but that was above the ambience of everyone else that was talking and shouting. There was a lot of noise at that time, but I could hear what he was saying.

Q. And what was he saying?

A. I can't recall the exact detail, but it was generally abusive language.

Q. I know you can't remember exactly what he was saying, but are you able to tell the Committee generally what the gist of what he was saying was?

A. As I approached him he was telling me to fuck off.

Q. At that stage, what was the volume of his voice?

- A.** Loud.
- Q.** Before he spoke to you, are you able to say if his language had been directed towards anyone else or anything else?
- A.** No, it was just being blurted out – it was not any particular person.
- Q.** What happened then?
- A.** I directly approached him, asked him politely to calm down and leave the area.
- Q.** And what was his reaction to that?
- A.** He continued with his behaviour, particularly swearing.
- Q.** And what was the volume of his voice then?
- A.** It was still loud, still at the same level; it had not changed.
- Q.** Carry on then, if you would.
- A.** After giving him the warning I was approached by a member of the door staff from that night club.
- Q.** I am going to stop you there. I don't want you to tell the Committee anything about the area you were just about to go to, but what action did you then take?
- A.** He was arrested by me for a Public Order offence.
- Q.** I see. And for which offence did you arrest him?
- A.** Section 5.
- Q.** And could you just briefly tell the Committee what a Section 5 offence is?
- A.** It is the use of threatening and abusive or insulting words and behaviour, or disorderly behaviour, and it has to be within the sight and hearing of a person likely to be caused harassment, alarm and distress.
- Q.** And what action did you take after you had arrested him?
- A.** He was handcuffed and transported to Bridewell.
- Q.** And why was that?
- A.** Because of his behaviour prior to my engagement with him, it led me to believe that for my safety and his, particularly during the transportation, that he needed to be restrained.
- Q.** I think that after he got to the police station by another officer he was given a fixed penalty notice.
- A.** That is correct.
- Q.** I am going to ask you a general question. Could you explain to the Committee, please about this fixed penalty procedure?
- A.** A fixed penalty procedure is available to you for certain offences which are normally low-level and you are eligible for one if you have no previous criminal conviction for that type of offence and you are willing to accept that ticket.

Q. You said that the person who is given a fixed penalty notice has to accept the notice.

A. That is correct.

Q. Does that person have to admit to having committed the offence which leads to the imposition of the notice or not?

A. They don't have to admit it, no. It is more that they accept the ticket; I don't think there is any acceptance of guilt.

Q. Can I ask? Before this incident on 2 February 2007 had you met Mr Sandhu previously?

A. Not to the best of my knowledge, no.

Q. Thank you. I want to go back, then if I can to 2 February and cover a couple more areas.

How many people in total were involved in this incident outside the night club?

A. Ten to 15 people probably that I saw.

Q. Please forgive me. Can you give me just one moment?

Thank you. I have no more questions, but if you wait there will be some questions from my left hand side.

Cross-examined by MR McGEE

Q. Officer, I have just a few questions for you. I am asking questions on behalf of Mr Sandhu.

A. Sure.

Q. You have given evidence that you were called to outside the Halo night club – is that right?

A. Yes.

Q. Is that near the Mode night club?

A. Yes. It has changed names.

Q. Oh, it is the same night club?

A. It is the same night club.

Q. I don't think anything revolves around the name of the night. And when you arrived, you saw at least one group of Asian males, is that right?

A. Yes.

Q. Can I suggest to you there were actually a lot of Asian males on the same side of the road as the tram stop?

A. That's incorrect.

Q. Can I suggest to you that there were three groups of Asian males?

- A.** No, there was one that I concentrated on.
- Q.** One that you concentrated on?
- A.** Yes.
- Q.** You concentrated on a group at the tram stop.
- A.** That's correct.
- Q.** So it is entirely possible, isn't it, that there were other groups of Asian males on the same side of the road that your attention wasn't immediately drawn to?
- A.** That is possible.
- Q.** Just to make things clear, officer, I am not going to be suggesting that Mr Sandhu wasn't behaving in what could be described as a disorderly fashion, and I am not going to be suggesting you yourself did anything wrong or improper in dealing with him. All I am going to suggest to you is this, because at the tram stop you said that there were about ten to 15 Asian males; can I suggest to you that there were about seven or eight – would you be able to argue with that?
- A.** I wouldn't, no because of the timeframe.
- Q.** And that they all formed one group, they were all together – would you be able to argue with that?
- A.** No.
- Q.** And that Mr Sandhu was in fact having an argument with a member of that group?
- A.** Not from what I recall he wasn't.
- Q.** And that he wasn't shouting generally to all and sundry. He was actually having an altercation with one or two members of that group?
- A.** Not from what I recall, no.
- Q.** And that when you approached him it is accepted that he didn't immediately calm down. You asked him to leave and you also asked him, didn't you, to leave in a particular direction?
- A.** That I cannot recall.
- Q.** And that in fact you were trying, quite properly, to move him and his group away from that location in a particular direction.
- A.** I particularly didn't direct that group anywhere. Whether colleagues of mine did, I can't answer that.
- Q.** And then you said words to him to the effect, 'Calm down, can you leave?' and gestured to him to move in a particular direction?
- A.** The gesture I didn't make.
- Q.** And that at that stage he did say to you that he didn't want to go in that direction because it was the wrong direction for him; that he would leave, but

he wanted to go the other way in a direction that you didn't want him to go in. Do you recall that?

A. I don't recall that.

Q. And that when you insisted, or confirmed your instructions to him to move off in a particular direction he did shout at you and he did swear at you. Do you remember that?

A. He did continue to shout and swear, yes.

Q. And that you handcuffed him.

A. Yes.

Q. But thereafter he was perfectly cooperative.

A. He was compliant, yes. Once we got to custody he was completely compliant.

Q. So things calmed down very rapidly.

A. As soon as we got to custody, he was absolutely fine.

Q. And you have indicated, haven't you, the fixed penalty notice is a disposal that is normally made by the police in cases of what is regarded as low-level incidents?

A. That is correct.

Q. It is not in fact an admission of culpability; it is simply an acknowledgement of the service of a fixed penalty notice.

A. Yes, it is a method of disposal.

Q. But you yourself took no part in that fixed penalty notice procedure other than making your statement which has to be attached to it and another officer dealt with that.

A. That is correct.

Q. Just bear with me for a moment, officer. Yes, the only other matter I have to put to you is this; that you indicated that when you first arrived on the scene at the tram stop, Mr Sandhu you say was throwing himself around.

Can I suggest to you that he wasn't throwing himself around; that he was gesticulating at another person?

A. For me that is the same thing – throwing his arms around. He wasn't throwing himself on the floor.

Q. But in – and I will use a neutral phrase – an animated way he was gesticulating at another person. Would that be correct?

A. At another person, I don't know, but he was gesturing.

Q. Thank you, officer.

Re-examination by MR HEPWORTH

- Q.** I have one more question if I can in re-examination. It was suggested to you that Mr Sandhu shouted and swore at you and you said, 'Yes, he did continue to shout and swear'. When you said, 'He continued to shout and swear', that would imply that he was shouting and swearing before.
- A.** He was, yes.
- Q.** And from what point in the incident that you described to the Committee was he shouting and swearing?
- A.** As I got out of the car and as I approached him directly.
- Q.** I have no more questions, but if you wait there I am going to ask the Committee members if they have any questions for you.

Questions from the Committee

Sir Alistair Graham: Yes, I think members of the Committee may wish to ask you questions.

Could I just start just to get a better feel of the context in which you arrested Mr Sandhu? I think we have all probably had experience of city centres late at night where there are large numbers of people, presumably many of them fuelled by drink.

- A.** Absolutely.
- Q.** Seeking to get taxis or night buses or whatever it is, all milling around. And you explained to us that you were part of the sort of back-up force in the centre – is that right?
- A.** Just to be clear – because we weren't the first there. An officer was called to it, they clearly got there and thought, 'It is just two people in the car, there need to be more than this', so they shouted up for more officers and that's why we went.
- Q.** And as you were explaining, you arrived and you have to make a judgment about, 'Where can I best use my services?' in a sense to try and avoid potentially dangerous situations.
- A.** Absolutely, yes.
- Q.** And you said you concentrated on this group of Asian people, but presumably it wasn't just Asian people who were around this night club area, was it?
- A.** No, there were other races there as well – whites, blacks – but that group was the one that I immediately identified as the one I needed to keep an eye on.
- Q.** And that because of the group, or just because of Mr Sandhu?
- A.** Primarily because of Mr Sandhu, but the group first of all just because you look at the groups there are and that is first group I laid eyes on. I had stopped the vehicle and it was purely his gesturing that made me think, 'Right,

he's the one'. There was no other officer talking to him, so I thought, 'I need to go and speak to him and make sure that –'

Q. So that was you using your judgment as to, 'How I can best assist this potentially dangerous situation from a Public Order point of view?'

A. Yes, because at that point there was just four of us there. When I got there, there were two other officers and me and another colleague; just four of us there.

Q. And were many people arrested that evening?

A. No. I think Mr Sandhu might be the only one from that incident.

Q. You immediately identified there was a group of Asian people; was that quite common from your experience?

A. No, that was the group that stood out, and he was the one that stood out from that group.

Q. Okay, thank you very much. Do any of my colleagues have any questions?

Mrs Huka: Yes. Officer, when you were called to help your officers that were on the scene, what did they actually say to you?

A. When I arrived, or on the way there?

Q. On the way there.

A. I will be honest, I don't know because I am the one driving and with the blue lights and tootings, don't take in any other information apart from what is in front of me because if I think too much about what I am going to I might not get there, because you need all your concentration to drive at speed to get to these incidents because the tone of my colleague's voice as it came over the radio suggested that we needed to get there now and not ask questions, but get there and when we get there we will see what we have in front of us.

Q. And when you did get there, are you saying that the officers called you in this agitated way just for one group of people; that everybody else was fine?

A. There were a lot of other people around, I never got to speak to the officer in question and I didn't know who the hot spots were or who was causing the most problems, but as I got out the car at the scene, my initial risk assessment, which we do every time we get out the car, was concentrated on this group.

Q. Now, when you saw Mr Sandhu gesticulating and talking loudly in what I presume was an animated fashion, was anybody responding to him or was he just doing this in isolation?

A. It wasn't in isolation; it was a group with him and people passing by – ordinary night revellers probably not connected with the group – they were passing by. It didn't appear to be, from what I can recall, anybody in particular or any group in particular.

Q. So there was no response from anybody?

A. No, not that I could see. Whether people responded as they went past and as they were walking away from me, I don't know. There were certainly people walking away from around them, not walking directly past them, so whether they were responding to their actions I don't know.

Q. Thank you officer.

Sir Alistair Graham: Can I just come back to one point which I should have posed before? Was there any evidence that Mr Sandhu was under the influence of drink?

A. I have not put it in my statement so I can't recall, but normally if they smell of intoxicants or they are unsteady, I would normally put that in my statement. That was not evident at that time.

We have another offence called a Drunk and Disorderly. If you look at it in the Law Book it is completely different. In reality, practical policing, they are very similar and the only element is the drunkenness.

Q. So the fact you used Section 5 points to the fact that drink was not a factor?

A. No, it wasn't a predominant factor, no.

Mr Khan: Can I ask? I have three simple questions. I have not yet fully been able to picture the event. When you approached Mr Sandhu you say he was gesticulating or shouting and swearing, so that wasn't because of your approach?

A. No, I don't believe so.

Q. That was happening.

A. Yes.

Q. And he alone was doing that in the group?

A. There were others doing similar but not as bad as Mr Sandhu. He was the one I identified out of the group.

Q. He was the loudest?

A. Yes.

Q. And quite versatile in his language, is that what made you select him?

A. Yes.

Q. I see. And secondly, what day was 2 February?

A. It was a Friday morning – what we generally refer to as a Thursday night, so it was a Thursday night going into Friday morning.

Q. Thank you for that. And lastly, I know you arrested him at three o'clock if I have understood that correctly.

A. Yes, that is correct.

Q. And after how long was he served with a fixed penalty notice?

A. I honestly don't know. It would have been whatever time the Bridewell staff got to him in the morning. It would have been in the morning I would imagine, but I can't honestly say.

Q. What, after four hours, five hours, six hours?

A. Unfortunately I had to deal with a suspicious death that same morning, which delayed my getting off duty. I didn't get off duty until, I think it was 8.30, and that is when I submitted my statement so he was still in custody at that point.

Q. So he was in custody for more than six or seven hours?

A. Yes.

Q. Thank you.

Ms Viner: I have just one area to clear up, which is you have mentioned that there can be an estimated 100,000 people perhaps enjoying the night life in the City centre on the weekend nights, so in your experience how typical would this kind of incident be in this area; so how often would somebody need to be arrested to resolve the situation?

A. It is fairly common, and we use the Section 5 as a preventative tool. For every one person I arrest for Section 5 there are probably eight that have heeded my warning and gone that could have been arrested but they decide to calm down and they go.

It is one of those things where you think, 'I can arrest him now if he doesn't heed my warning', and I will do that at a low level rather than escalate as it generally does do if we don't jump on it – well, not jump on it; that is the wrong term – if we don't be positive with the people that are causing the most problems, it will generally will escalate further and it may end up in assaults, etc., or big fights.

Q. So would this be one person a night on those weekend nights, or ten people a night that would end up back at the police station?

A. On a weekend night it could be myself probably three or four, maybe five arrests for this sort of thing, and there is probably a shift of 15 of us on that may make similar arrests.

It purely depends on how many officers there are and generally the fewer police officers there are on duty, the less arrests are made because in the back of your mind you are thinking, 'It's low level. If I arrest him I will be off the streets for 45 minutes and it is one car down', and if it is three or four making the same arrests you might be left with two or three officers on the street, and it is a judgment call at the time.

Sir Alistair Graham: Is this the hot spot? Is this the place where you always get called to?

A. That end of the City is the hot spot, and that night club in question has since closed down, having lost its licence.

Q. Because of -?

A. Because of like offences and more serious offences.

Ms Viner: So this event that you described to us is something that is fairly typical?

A. Yes, it is not out of the ordinary by any means.

Sir Alistair Graham: Any more questions? [*There were none*]

I think that is all the questions we wanted to ask.

Mr Hepworth: Sir, then I would ask for this officer to be released if there are no more questions for him.

Sir Alistair Graham: Can I thank you very much, Police Office Finch for coming so far to help us in this particular, and we appreciated that considerably.

A. It is my pleasure. Thank you very much.

[*The witness stood down*]

Mr Hepworth: Sir, before I go any further could I perhaps direct you and your colleagues to page 1 of the hearing bundle, because it deals with a question raised by Mr Khan?

If you look on the left column of page 1 – this is one side of the fixed penalty notice – you can see that in the section at the top which is headed ‘Part 6A’ there is a description of Mr Sandhu, then there is a section, ‘Reply to Caution’ with ‘No Reply’ written, and then at 08.54 on 2 February 2007. So, sir it would appear from that that the fixed penalty notice was given at around nine o’clock that morning, so that would be about six hours after arrest.

Sir Alistair Graham: And that would be quite common, would it, to have that sort of gap?

Mr Hepworth: Sir, I would imagine so, especially in a busy Bridewell, especially after a night out.

Sir, I think as far as the facts are concerned for particular 1(a)(ii) that is the Council’s case.

Mr McGee: Sir, can I call Mr Sandhu to give evidence in relation to this matter and some brief evidence in relation to the 2008 caution?

**MR AMANDEEP SANDHU, recalled and affirmed
Examination in chief by MR McGEE**

Q. Mr Sandhu, you gave evidence yesterday, so you know it is important to keep your voice up, go at a steady pace and direct your answers over towards the Committee so they can hear you.

We are dealing with an incident that led to you being issued with a fixed penalty notice in the early hours of Friday, 2 February 2007. Do you recall that?

A. Yes.

Q. You have heard evidence from the officer that he attended the scene at about three o'clock in the morning outside what was then Mode Night Club. Is that correct?

A. That is correct, yes.

Q. Were you outside Mode Night Club?

A. Yes.

Q. Had you been in the night club?

A. Yes.

Q. How long had you been in the night club?

A. We probably got there about half eleven, left when it was closing, so around three o'clock.

Q. You say, 'we' – who were you with?

A. A group of friends.

Q. How many?

A. Seven.

Q. And were they Asian friends?

A. They were all Asian.

Q. And how were you dressed?

A. I was wearing a red tee shirt and dark jeans and white trainers.

Q. And were your friends dressed similarly?

A. Yes. A few of us were wearing the same sort of coloured tee shirts.

Q. Where had you been before the night club?

A. We were at a friend of a friend's halls who went to Nottinghamshire University, so we were staying at the student accommodation.

Q. So when you say 'halls' you means halls of residence, is that right?

A. That's right, yes.

Q. By the time you came to leave the night club, had you had something to drink?

A. I did, yes.

Q. How much would you say, if you can remember, you had had to drink?

A. I had a fair amount.

- Q.** And how would you describe the effect that that drink had had on you? Were you tipsy, merry, drunk? You describe.
- A.** I would say I was fairly drunk at the time.
- Q.** Now, did you leave the night club with your group of friends?
- A.** Initially a few of us left and then everyone else followed on afterwards and we reconvened by the area that we were going to meet to go home.
- Q.** And you say you reconvened in the area where you were going to meet before going home. Where was that?
- A.** It was by the tram stop.
- Q.** How many of there were you in your group?
- A.** At the time of the incident?
- Q.** Yes. At the tram stop – how many people actually reconvened?
- A.** From my group I would say there was about four of us at the tram stop.
- Q.** Now, beyond your group of four at the tram stop, were there other people around in the vicinity at that time in the morning?
- A.** There was, yes.
- Q.** How many would you say on your side of the road?
- A.** There were different large groups of males just scattered around in different places.
- Q.** Just pause there. When you say large groups of males, are these white males, Asian males?
- A.** Mostly Asian.
- Q.** How many people would you estimate were around and about by the tram stop outside the night club on your side of the road?
- A.** About 20.
- Q.** And on the other side of the road?
- A.** It was fairly quiet, so possibly about five or six people.
- Q.** So there were quite a few people around.
- A.** There was, yes.
- Q.** You have indicated that you and your group left the night club and reconvened by the tram stop. What was your plan of action; what were you going to do?
- A.** We were going to reconvene – everyone was going to meet up at that tram stop and then we were going to head off towards the halls of residence and get some food on the way home.
- Q.** Right. Now, you have heard evidence from the officer that when he first pulled up near your group he became aware of you shouting and gesticulating and being fairly animated, to put it like that.

A. Yes.

Q. Do you accept that?

A. I do, yes.

Q. What were you doing? Why were you animated?

A. We were arguing amongst ourselves as to what to do. Some were saying that we needed to wait for everyone else to come, some were saying that we needed to go back to the halls of residence because we had to get up in the morning, some were saying they wanted to grab some food, so everyone was just sort of having banter between themselves as to what to do and whether we should actually wait for everyone to reconvene.

Q. And you accept that you were shouting and gesticulating?

A. I was, yes.

Q. Were you doing that in a bad-tempered way?

A. I suppose I was getting annoyed at the situation because nothing was actually getting resolved; we were just in the same situation going around in circles, so I would say I was fairly heated.

Q. So you accept you were fairly heated. Was your voice loud, can you recall?

A. It was.

Q. And do you accept that you swore?

A. I do, yes.

Q. At whom was this irritation, this bad temper, this gesticulation, aimed? Who was it aimed at?

A. The people that I was with.

Q. Any one individual in particular, or the three or four that were there?

A. Just the three or four that were with us.

Q. Right. And were you getting any response? Were you arguing by yourself or the people actually with you?

A. No, they were responding back.

Q. When the officer approached you, how did you react to the officer?

A. At first I was still in a loud state, so when he did approach me I was still being loud.

Q. Just pause there. When you say that you were still being loud, what do you mean by that? Were you still shouting?

A. I was, yes.

Q. Do you recall what the officer either said to you or asked you to do?

A. I recall that he asked me to leave the direction of where we were and just pointed in a direction to leave the area, just sort of, 'calm down and just get out of the area'.

- Q.** Right, so you accept he said to you, 'Calm down'?
- A.** Yes.
- Q.** And do you accept you frankly needed to calm down?
- A.** I do, yes.
- Q.** And then he asked you to leave the area and he, as far as you were concerned, indicated a direction that you had to go in?
- A.** That is right, yes.
- Q.** Were you happy to leave the area? We will come to the direction in a moment, but were you happy to go?
- A.** Yes.
- Q.** What was your reaction to being told you had to go in a particular direction?
- A.** I have not been to Nottingham often. I have been a few times, and the way that we needed to go back to the halls of residence was one particular direction that I knew, so I was happy to leave the area but I needed to go in that particular direction. I was sort of being stubborn with him and saying, 'I do really need to go in that direction' and I kept pointing in that direction.
- Q.** So you accept you were stubborn with him.
- A.** Yes.
- Q.** And you accept that, as the officer said, you refused to leave the area in the direction that was indicated.
- A.** That is correct, yes.
- Q.** Am I right in suggesting that you also accept that you shouted at the officer and you swore at him?
- A.** I do, yes.
- Q.** No dispute that the officer at that stage took the decision to arrest you.
- A.** That is correct.
- Q.** You were handcuffed.
- A.** Yes.
- Q.** But it is right, isn't it, that you were entirely cooperative thereafter?
- A.** I was, yes.
- Q.** So you are taken to the police station.
- A.** That is right, yes.
- Q.** Had you ever been in a police station before?
- A.** No.
- Q.** Ever been in a police cell before?
- A.** No.

- Q.** And how long did you spend in the police station in a cell?
- A.** They got me checked in and after that I was put into a cell, so checking in took about half an hour, an hour – it was busy – there were quite a lot of others that were arrested, so I was in the actual cell for about four and a half hours.
- Q.** Were you aware of anybody else being arrested as a result of what happened outside the night club?
- A.** Yes, there was another group of members that were directly outside the Mode Night Club. We were by the tram stop and I can recall that the Asian males that were actually in the Mode Night Club prior that we had seen inside, that I saw again at the police station.
- Q.** So it was a fairly busy police station when you arrived in the early hours of that Friday morning?
- A.** It was indeed.
- Q.** And you spent you estimate about four and a half hours in a cell.
- A.** That's right.
- Q.** Did you sleep?
- A.** Yes.
- Q.** You did. And when you woke up, to be blunt, did you have a hangover?
- A.** Yes.
- Q.** How were you feeling beyond the hangover; how were you feeling generally?
- A.** I felt rough, I felt tired. I just didn't know how I was going to get home and things like that.
- Q.** Were you frightened at finding yourself in the police station?
- A.** I was, yes.
- Q.** Now, there came a time when you were presented with a Nottinghamshire Police fixed penalty notice which you signed.
- A.** That is right, yes.
- Q.** Before you signed that fixed penalty notice, did you have the opportunity to consult with an independent legal adviser of any description?
- A.** I had a 'phone call from a duty solicitor that I had a 'phone conversation with while I was reading the rules and things like that.
- Q.** So you talked to the duty solicitor. Did you receive specific advice about a Section 5 offence itself?
- A.** No.
- Q.** Did you receive specific advice about the facts of this particular case? Did you tell the solicitor what had happened, what the officer had done, what you had done?

- A. No.
- Q. What advice were you given, then? What was it focussed on if it wasn't focussed on the offence?
- A. The conversation was very brief between the solicitor and I. He informed me there were two options, 'Either you can go to court and pursue the case, which if proved can lead to a criminal record, or just sign the fixed penalty notice, pay the £80 and nothing will happen'.
- Q. So you decided to sign the fixed penalty notice?
- A. Yes.
- Q. Why was that?
- A. Because he told me nothing would happen; there would be no court proceedings and there would just be a simple fine.
- Q. When you signed the fixed penalty notice – in fact, if you can be given a copy of C1 of the bundle – if you look at page 1 and you will see on the right hand side your signature. Can you see that half way down on the right hand side? 'I acknowledge receipt of this penalty notice'.
- A. Yes.
- Q. Above that, to take a step back, did you actually carefully scrutinise the contents of this fixed penalty notice?
- A. I did not, no.
- Q. Did you in fact read it all?
- A. I didn't.
- Q. So looking above your signature, there are some offence particulars. It says
- "You (offence particulars) shouted and swore at members of the public and refused to leave the area when requested by police"
- Did you read that?
- A. I didn't, no.
- Q. When you signed that document were you, by implication or otherwise accepting that you had shouted and swore at members of the public?
- A. No. The solicitor that I had spoken to on the 'phone simply said, 'If you sign the fixed penalty notice, nothing would come about it. You just pay the £80 fine', so when the officer gave me the receipt and said, 'You have got to sign there', I just signed it.
- Q. How do you feel now about your behaviour in the early hours of 2 February 2007?
- A. I am ashamed of my behaviour that occurred that night. It was out of order. I shouldn't have done what I did and I am ashamed of it.

Q. Have you behaved like that, or had you behaved like that prior to 2 February on any occasion?

A. Not at all, no.

Q. Have you behaved like that subsequently to 2 February 2007?

A. No.

Q. And in terms of going out to have a drink, do you still do that?

A. I do, but in moderation. I mean, there was a time when I never drank for a whole year. Now when I go out I just have two drinks or so.

Q. Can I move you forward to June of 2008 and your acceptance of two cautions in relation to an incident when you were at least initially attacked?

You have heard read out to the Committee an agreed statement of facts in relation to that incident which very briefly to paraphrase indicates that you and a group of your friends were racially abused, items were thrown at your cars, you were then yourself attacked by one individual and punched, and you hit him back once in self-defence.

A second individual then attempted to attack you and he may or may not have had a weapon in one of his hands. Both of you ended up on the floor where you struggled with him. You managed to get to your feet and you kicked him twice, and you admit that this was out of anger rather than in self defence. You kicked him twice in the thigh. Is that a correct account of what happened?

A. It is, yes.

Q. And is it also correct to say that you yourself sustained injuries which required medical attention?

A. I did, yes.

Q. When you were arrested after that incident, found in your pocket was a very small quantity of cannabis rolled into a joint. Is that correct?

A. Yes.

Q. Can you tell the Committee how that got there? Why did you have it?

A. Prior to going home I was at a friend's flat who usually smokes, and we had just finished the finals, there was an end of term party, he was smoking. I admit I did smoke at the time with him in his flat, and then I asked him to prepare me one and I just put it in my pocket.

Q. You say you asked him to prepare you one. Why was that?

A. We had a wedding the next day, and I just asked him to make me one for the next day.

Q. Prior to that evening, had you ever had cannabis before?

A. Not at all, no.

Q. Have you ever had cannabis or any other drug since?

A. I haven't.

Q. Just bear with me for a moment. I have no further questions for you, Mr Sandhu; if you want to stay there.

Cross-examined by MR HEPWORTH

Q. I am just going to ask you a couple of questions about 8 June 2008 and I then I will go back to what happened in Nottingham.

On 8 June 2008 you were involved in a fight in the street. Do you agree with that?

A. I was, yes.

Q. Late at night.

A. It was around twelve o'clock, half twelve.

Q. But this is half twelve am.

A. It is, yes.

Q. And that fight involved you kicking someone when they were on the floor.

A. It did.

Q. Can I then move on to 2 February 2007, now moving to the Nottingham incident?

You said that you had a fair amount to drink that evening and that you were fairly drunk at the time of the incident. Do you accept that that drink may have affected your memory about what happened subsequently?

A. No.

Q. Do you accept the officer's evidence that at and before he pulled up on these tram tracks; that you were the loudest in your group and that is what drew his attention to you?

A. Yes.

Q. I think he said as well that you were being aggressive; would you accept that?

A. Like I've stated, I was not being aggressive. I was pointing my hands like this, pointing at my friends and just asking what are the sorts of issues; what were we going to do.

Q. But someone who is shouting and swearing and gesticulating with their arms, that can appear aggressive, can't it?

A. It can, yes.

Q. The officer then came to speak with you, and I am going to suggest he did not direct you which way to go; he just told you to leave. Do you accept that he is right about that?

A. As far as I can remember, he asked me to calm down and he just pointed, 'Can you just please the area?' and gestured in a particular way.

Q. But in any event, do you accept that you told the officer to fuck off?

A. Yes.

Q. Concentrating then on the allegation which you face; the allegation is that you shouted and swore at members of the public, I think the only point of dispute that you take is that you admit you shouted and swore; it is just you are saying you were shouting and swearing to your friends rather than to members of the public.

A. That is correct.

Q. But there may not be much that hangs on it as far as the Committee is concerned.

Can I just check one thing, though, when you signed the fixed penalty notice, at that point were you aware that the offence for which you were getting the notice was a Public Order offence?

A. I didn't. As far as I saw it was I had been acting in an inappropriate manner on a night out. I was arrested because of my behaviour. A solicitor that had a word with me in the morning said, 'Look, this is the situation – sign the fixed penalty notice and that's the end of it', so what offence it was, what I did or anything like that I was not aware of what the underlying facts were.

Q. But do you accept that your behaviour at that time was disorderly?

A. It was, yes.

Q. That you had been saying abusive words?

A. I was swearing, so as you said, abusive words, possibly – yes.

Q. And telling an officer to fuck off is fairly abusive, isn't it?

A. It is, yes.

Q. And do you accept that if a member of the public was walking past where you were and heard you and your group shouting and swearing, that that may well have caused them a certain amount of distress?

A. It would do. However, at that point in time at three in the morning there were large groups of Asian males that were all out clubbing so there weren't immediate public out at 3.00 am that would be distressed by that, but I can understand the point you are trying to make and, yes, I agree totally with what you said.

Q. And Nottingham is a very busy city, isn't it, at night?

A. Yes, it is.

Q. A very popular place for people to go for a night out?

A. Yes, especially on a Friday and Saturday night.

Q. And this I think was a Thursday night going into a Friday morning.

- A. This was a Thursday night, yes.
- Q. But Thursday night is a busy night in Nottingham.
- A. Yes, it's a student night.
- Q. And so even though it was three o'clock in the morning, Nottingham City Centre is still a busy place isn't it?
- A. The club closes around quarter to three, so most people had diffused, so it was pretty busy but not as busy as it might have been.
- Q. But it was still pretty busy?
- A. Yes.
- Q. All right. The one last matter that I have to put to you is that I am going to suggest that you were swearing and shouting towards the public generally rather than towards your group – do you accept that or not?
- A. No.
- Q. I have no more questions.

Sir Alistair Graham: Do you wish to come back?

Mr McGee: I don't.

Questioned by the Committee

Sir Alistair Graham: Well, the Committee would like, I am sure to ask you some questions.

Can I first of all ask, do you consider yourself a person who has strong self control?

- A. I do, yes. I mean, especially after this incident that occurred I think I have reflected on my actions and the repercussions that it has had on my life and my career and the people around me and I have become a person that is completely different to what this is stating.
- Q. I mean, we all might, if we have children, be aware of boisterous behaviour by young people, particularly when they go to university, but this is a fair old record you have built up here, isn't it? How do you think people are going to consider you as a professional with a record of this background?
- A. I mean, if we just look at the facts and just look at it on a piece of paper I can see how it would look to the public and the public confidence, but I hope they look at the bigger picture and see how I have developed and what I have become and what steps I have taken to ensure that this sort of behaviour never occurs again. So I hope they will look at both sides and then decide on what they think of me as a person and as a professional.
- Q. So your message to us is that you have learnt from these experiences.
- A. Definitely.

- Q.** And will you be a very different person in the future; is that what you were going to say?
- A.** Not only myself but people around me, my friends, my colleagues at work, everything that has happened, they have learnt the implications that this sort of thing can have and they have all made changes.

Like you said, when you are young, you do silly and stupid things, but there are professionals that have been in the profession for 20 years that might get into things like this, but with what I have gone through and they have had a look inside into themselves and seen that this sort of behaviour can lead to being here today.

- Q.** But presumably professionals can be provoked by bad behaviour by other people and they have to show self control.
- A.** Definitely.

- Q.** How could we be satisfied that you would show the sort of self control that we would expect professional people to show, even when provoked by racial abuse or other matters; that you would show that necessary self control?
- A.** At the time all this happened I was young, I was immature, I was easily led. I have grown into a person now that I have enough self control and I have learnt from my mistakes in order to just walk away, just leave it and not have any repercussions from an incident that may occur.

I have to think about the bigger picture, and I have to think about my career, my family and the people around me, so I would endeavour to never get involved in anything like this again and just walk away from situations if they ever occurred.

- Q.** How have your family reacted to this situation and the fact that you have been brought to a professional hearing of this sort?
- A.** They have been really mortified –

- Q.** If you want five minutes. [*Pause in proceedings while Mr Sandhu leaves the room*]
- A.** They have been mortified by what I have done. My younger brother is doing his GCSEs at the moment, and he has always looked up to me and I have always taught him how to behave and things like that. So he is just shocked, because he never knew that this was all going on until I declared to the AOP. So when I informed him and I told him he was very taken aback as to why, 'Here is the one who tells me how to behave and yet he has gone and done all this'.

I mean, I am ashamed about everything that has gone on. I don't really like talking about it with family members or at home. It has had a big affect on myself and my family.

- Q.** Okay, thank you very much; any questions from members of the Committee?

Mrs Huka: If I may. Mr Sandhu, just going back to the Nottingham incident, when the officer came to where you and your friends were near the tram, did the officer move all of you on or just you?

A. When he came towards us he was talking to us all but he was pointing and gesturing, 'Just move on, calm down and just move out of the area'.

Q. And what did the others do?

A. After my arrest they left the area.

Q. So before your arrest, nobody moved on?

A. No.

Q. Were any of those people in that group local to Nottingham? I know you weren't, but were any of the others?

A. No.

Q. Okay. Thank you.

Mrs Tilley: On the incident on 8 June, had you or your friends been drinking before that?

A. I had one bottle of Budweiser.

Q. Thank you.

Mr Khan: The Chairman really has asked the questions I was going to concentrate on, but there is one which I would like to ask. Have you had any help by the university, the youth community, elders, Gurdwaras, etc on such matters where you could be helped for the future?

A. I have tried to participate with the Gurdwara with the youth community. I am not getting help for any of my personal issues or anything like that, but I have been part of an active youth group where we do football tournaments for the children and things like that, and participate in community events, but I think the question you are trying to ask me is if I have had any help with any problems that I have. Was that the question?

Q. Well, these are the two incidents – if there is a drink problem or anger problem, whether you would go along and have some help.

A. Yes, I would but from my point of view these situations were a long time ago in my past and I don't feel as though I have any problems. But if you felt that I did, I would be happy to go ahead with anything like that.

Q. Tell us more about this voluntary work.

A. It is just basically a youth centre in the community in West Bromwich and we participate in that and arrange football tournaments, cricket, things like that and take the children out to camps where they are taught about Sikhism and generally just a week's summer camp where they get to go on a surprise trip. It is usually Alton Towers or a safari park or something like that.

I used to attend it when I was a child and I just kept attending and now we have a youth centre in the West Bromwich centre I am able to use it frequently.

Q. Does it happen at weekends, holidays?

A. Yes, it is open most of the time but at the moment there is quite a lot going on because it is funded by the National Lottery and the Government. Unfortunately I don't think the Government is going to be funding it any longer, so it may be closing down.

Q. It is something that is supported by the Gurdwaras.

A. That's right, yes.

Ms Viner: Can I just ask you something about the time that you were given advice by the solicitor over the 'phone about the fixed penalty notice? You brought up that you had been given two options; either you go to court and pursue the case or you sign the fixed penalty notice, pay the £80 and then matters wouldn't go any further, and you were told that there would be no court proceedings with that.

It may seem quite obvious – I just want to hear from you – why was it that you chose route two, which was to sign the fixed penalty notice and not pursue the case?

A. Yes, sure. I never thought I would ever get in any trouble with the police, and this incident was just a whole complete shock to me at the time and I thought if I go to court it will just be really bad for myself and for my family and I just wanted to get things dealt with there and then and just move on.

So without any reading into the matter further, which I should have done, I just signed it at the time and left it at that because I thought that would be it and there wouldn't be any repercussions from it.

Q. Okay, so when you said it would be really bad for you and your family, what particular bad things do you think would happen to you if you were to go to court and pursue the case?

A. If I went to court it might have led to a criminal record, which might have affected me in the future.

Q. So when you say it might have led to a criminal record and might have affected your future, were these things that were going through your mind in the police station when you had spoken to the solicitor?

A. Yes.

Q. And when you say it might have affected your future, in what sort of way do you think it might have affected your future?

A. My career.

Q. So at that point in time when you were in the police station you were aware that if you obtained a criminal record it could affect your career?

A. Yes.

Q. Okay, thank you.

Sir Alistair Graham: Any more questions? [*There were none*]

I think that is all the questions which we have.

Mr McGee: Could I ask just one or two questions arising out of the questions that the Committee have asked?

Re-examination by MR McGEE

Q. Mr Sandhu, can I take you to the June incident where as we all know you were attacked by two individuals?

Did you prior to getting up off the floor, having wrestled with your second assailant on the floor, did you prior to that have any chance or opportunity to walk away from this incident?

A. I didn't, no.

Q. If you had had an opportunity to walk away, would you have done so?

A. Yes. I mean, I shouldn't have gone up to them in the first place; I should have just left it and not get involved at all, but I would have definitely if I had had a chance to just -.

Q. Have you, either before that incident or since, been involved any other occasions where you have had aggressive confrontations with anyone in your social life or professionally?

A. I haven't, no.

Q. Would you say that you were an aggressive character?

A. No.

Q. No further questions.

Further cross-examined by MR HEPWORTH

Q. Sir, just one more question. On 8 June 2008, you did have the opportunity to walk away, didn't you, at the point when you were stood up and the man was still on the ground? That was your opportunity to walk away, wasn't it?

A. When I was what, sorry?

Q. When you were stood up and the man was on the ground that was your opportunity to walk away, wasn't it?

A. At that point in time he had been holding me while I was on the floor, so once I have got up there was still a bit of a scuffle between our legs, so I could have run away, yes, but I never.

Q. No, and that's why you would accept that when you kicked him on the ground, that was an offence?

A. It was, yes.

Q. Thank you. No more questions.

Sir Alistair Graham: Thank you. I think we have finished and you can stand down now. Thank you very much.

[The witness stood down]

Mr Hepworth: Sir, can I revisit, perhaps, the matter that was raised by the Legal Adviser, and it is in relation to particular 1(a)(i)? At the minute, that is not admitted, but it appears that the only point of dispute is whether or not the shouting and swearing was directed towards other members of the registrant's group or towards members of the public generally.

Sir, the Council is prepared to concede that whatever your decision on that, it is unlikely to affect this case in the long run. In any event, there was shouting and swearing in the early hours of the morning in public. That included shouting and swearing at a police officer, including telling that officer to fuck off.

Sir, that is, in my submission, an absolutely clear offence under Section 5 of the Public Order Act and the fixed penalty notice was perfectly appropriately given.

Sir, I only raise this because it has been raised by your Legal Adviser, but one way forward would be for me to apply to amend particular 1(a)(i) so that it would then read, 'On 2 February 2007 you shouted and swore in public'.

Sir, that, then, I would imagine would deal with the issue of you having to make a decision and it wouldn't change the case at all. It would just be reflecting what the mischief truly is, which is public disorder.

Sir, I raise this with you, and under Rule 34 I think that it is the presenting officer who may apply for the particulars of the allegation contained within the notification to be amended, and so if it is a useful way forward I am perfectly happy to make that application.

Sir Alistair Graham: I suspect that is a very helpful suggestion.

Mr Milne: I see no obstacle to that being done.

Mr McGee: I think it is a perfectly sensible suggestion and it is one I would support, and if that particular is amended in that way then it would be admitted.

Sir Alistair Graham: It would be admitted?

Mr McGee: Yes, it would.

Mr Milne: It would be amended to read, 'On 2 February 2007 you shouted and swore in public'.

Mr McGee: Yes.

Sir Alistair Graham: So are you formally proposing making the application to make that amendment?

Mr Hepworth: Sir, I do, and to remind you of your power under Rule 34 (2) you may grant such an application where you are satisfied that it is just to do so.

Sir Alistair Graham: And you are confirming that?

Mr Milne: That is correct, and you would be entitled to do that almost at any stage up to the end of the proceedings.

Sir Alistair Graham: Can I check with members of the Committee that they would be comfortable with accepting such an application? [*Agreed*]

Yes, well I think we are willing to accept that application. It would be helpful if, Mr McGee, whether you could say on behalf of your client that he is willing to admit?

Mr McGee: He most certainly is, and the amended particular is admitted.

Sir Alistair Graham: Thank you very much. Well, we would need in our determination at some point to include the fact that that particular 1(a)(i) was proved and admitted. We can perhaps do that at some later stage.

Does that take us on to the next stage relating to impairment?

Mr Hepworth: Sir, I think it takes us to the next stage, which is whether or not particulars 1 and 3 amount to misconduct.-

Sir, and it may be helpful in this case if that is dealt with as a distinct phase because then you will know what matters go forward to the consideration of impairment.

Sir, can I start by dealing rather strangely with particular 2? Clearly the facts in relation to particular 2; that is the issue to do with the caution have been admitted, and so the second stage is also passed because caution is in itself a route through to impairment.

Sir, as far as particulars 1 and 3 and 4 are concerned, of course they are in a different category and you have to decide in your judgment, not as a matter of proof, whether or not particulars 1, 3 and 4 amount to misconduct, so I will make my submissions in relation to those particulars.

Sir, allegation, particular 1 involved the registrant acting in a disorderly manner in the early hours of the morning in Nottingham City Centre; a busy time, Nottingham being a popular place for night time leisure activity.

You remember the officer's evidence that it was the registrant who was the loudest of his group, the one to whom his attention was drawn most clearly, and the registrant's abuse included telling the officer to fuck off.

He was arrested and issued with the fixed penalty notice, so in the Council's submission that is behaviour which clearly falls below the standard to be expected of a student optometrist.

Sir, I should say that of course when you are assessing whether or not the registrant's conduct amounted to misconduct, you have judged the conduct at the time the conduct was carried out, so it is the conduct itself that you judge.

As far as particulars 3 and 4 are concerned, I think, sir, it is a matter for you and your colleagues as to what duty is placed upon a registrant when appearing before the Fitness to Practise Committee of the Council. Clearly there is a duty on a registrant not to be dishonest, and you have found that the registrant was not dishonest.

The question for you, sir, is whether or not there is more of a duty on the registrant. Was there a duty on him not only to not be dishonest, but also to take steps to ensure that he did not inadvertently mislead the Committee as you found that he did?

Appearing before one's professional body is of course a very serious matter and the only way that the Fitness to Practise Committee of the Council could carry out its function is if registrants are prepared to be accurate and careful in the information which they provide, and in the Council's submission the duty on a registrant appearing before the Fitness to Practise Committee does extend to being careful and to being accurate in the information which he or she gives to the Committee.

So by inadvertently misleading the Committee and allowing the Committee to have inaccurate information before it, in the Council's submission the registrant's conduct amounted to misconduct; fell below the required standard.

Sir, I think that is everything that I wish to say in relation to misconduct. Of course I will make further submissions when we get to the impairment stage.

Sir Alistair Graham: Mr McGee.

Mr McGee: Sir, can I deal with particular 4 first in relation to your finding that on 19 August the registrant, Mr Sandhu, did not act dishonestly and that what he said was unintentionally and inadvertently misleading? In essence, he

mistook the question that he was being asked and answered it honestly according to what he thought the situation was.

In my simple submission, sir, inadvertently making an error of that nature cannot amount to misconduct on any known definition of misconduct. Inadvertence is exactly that – it is inadvertent. It is an error; it is a mistake. There is no suggestion here now that that was anything other than an honest misunderstanding of the question he was being asked and the information that he thought that his legal advisers had.

There is no suggestion here of a reckless disregard for accuracy, still less an intentional disregard for it. This registrant was asked a question which he answered as far as he was concerned absolutely accurately and absolutely honestly.

As it turned out, he had made a mistake about what he was being asked and it is right to say that the Committee may have been misled by his answer as transmitted through the counsel, even though of course the determination centres at that stage very much on the absence of previous convictions or cautions, not any other matters, but certainly to suggest that there is a duty on a registrant never to make an innocent mistake, and that making an innocent mistake and inadvertently giving inaccurate information is misconduct would, in my submission, open the floodgates to actions in relation to misconduct across this and every other profession.

This was a genuine misunderstanding and a mistake, and as you know from the evidence given yesterday, this is a registrant who in all other respects when it came to his cautions, when it came to the fixed penalty notice, has acted proactively and honestly to disclose all the material that he feels that he is obliged to disclose.

So this is someone who knows the standard expected of him in relation to these matters, and has consistently abided by those standards. So in terms of particular 4 I would suggest that it simply does not amount to misconduct.

In relation to allegation 1, again this registrant has been very frank indeed about the way he behaved in the early hours of the morning on 2 February 2007; a very brief incident where he was - and this is not to excuse him any way - perhaps fuelled by alcohol.

It is now accepted that in fact he was having an argument with members of his own group, at least initially. This is not a case where a young man is berating members of the public in the street and behaving in a, if I can put it this way, classically public disorder fashion. He wasn't doing that at least initially, or at all.

He now accepts, as he always has done, that when approached by the police officer he refused to move and that he swore at the police officer, which is clearly inappropriate and reprehensible behaviour.

But in my submission, that single incident in and of itself, regrettable though it is, isn't sufficiently serious to amount to misconduct and it is right to say there are two classic tests of what amounts to misconduct in the case law, *Roylance v General Medical Council No 2* [2001] AC 311 – and Lord Clyde in that case defined misconduct as:

“A word of general effect involving some act or omission which falls short of what would be proper in the circumstances. The standards of propriety may often be found by reference to the rules and standards ordinarily required to be followed by (an optometrist) in a particular circumstances.”

That is one definition. There is a case from the Privy Council called *Doughty v General Dental Council* [1988] AC 164, in which the Privy Council defined misconduct as follows:

“Conduct connected with his profession in which the registrant concerned has fallen short by omission or commission of the standards of conduct expected amongst registrants and that such falling short it is established should be serious”,

and in my submission on the test in *Doughty*, of course this isn't conduct which is connected with the registrant's profession, and although it may be felt to fall somewhat short of standards of conduct which would be expected in those circumstances, in my submission it hasn't been established that this is serious.

I don't by saying that, and nor does the registrant, seek to belittle his behaviour on 2 February 2007. It is not pleasant and he is deeply ashamed of what he did, particularly swearing in that way at a police officer and causing himself to be arrested.

But, as you have heard, the police issued a fixed penalty notice because this was, as the officer described it, 'a low-level incident'. This was not an incident which was in the officer's mind, or in the mind of the police generally, marked as serious.

The officer gave evidence that regrettably in this hot spot in the centre of Nottingham, especially on what appeared to be elongated Nottingham weekends starting on a Thursday and ending on a Monday morning, upwards of – I did briefly the maths – 60 or 75 arrests may happen on any one evening, and that is only with one group of officers, and that this incident was – again regrettably – fairly typical and that others in that group didn't move on when they were requested to do so, even though they don't appear to have been shouting or directing their comments towards the officer in the way Mr Sandhu was.

But this is not in the opinion of the police a serious incident of public order, and you heard the officer say that Section 5 Public Order offences are used as preventative measures, and the officer gave a statistic, for every eight

times he would ask people to move on, on one of those occasions, one in every eight, where his warning was not heeded he would use his powers under Section 5 of the Public Order Act to arrest. So it is a common, low-level incident prevalent amongst young men in Nottingham and elsewhere.

It is not related in any way to his profession as an optometrist, and in those circumstances, while not seeking to suggest that it is a trivial and unremarkable incident – it clearly isn't – it doesn't meet the threshold test to amount in and of itself to misconduct.

Mr Hepworth: Sir, one matter that I just want to check. If my learned friend is suggesting that any conduct which is not connected with the registrant's practice as an student optometrist can never amount to misconduct, then, sir I would wish to make submissions about that but I will need ten minutes to prepare. But I am not sure if that is the submission that he is making.

Mr McGee: I am not suggesting that there has to be in every single case a direct link between the behaviour and the registrant's profession.

Sir Alistair Graham: Because you did quote the dental case didn't you?

Mr McGee: Oh, yes, I quoted *Doughty* and that is certainly the *dicta* of the Privy Council in *Doughty*. I quote that, though, more for their insistence that the falling short of the required standards should be serious.

It is quite right that in *Roylance* which is a later case, 2001, there is no direct reference to any link between misconduct and the registrant's profession; that is a broader test and I have also quoted that to you.

So I don't say that you cannot find misconduct in this case on the basis of the facts of the fixed penalty notice because it has no connection with the registrant's profession.

Mr Hepworth: Well, I think, sir in that case I don't need to make further submissions because I think my learned friend and I agree. And of course when you are looking at the test of misconduct, I accept that conduct has to be more than trivial to amount to misconduct, but of course before you there is no requirement for misconduct to be serious misconduct as exists with other regulators.

You may find of most assistance that test set out in the later case of *Roylance* which refers to 'conduct which falls short of what is proper', and, Sir, I submit that that is a correct test for you to apply.

Sir Alistair Graham: Thank you very much. Could our Legal Adviser give us advice on this matter?

Mr Milne: I would agree with what has just been said; that it does not have to be linked to the professional performance. It is something that can exist outside

the realm of the professional if it is likely to have an impact upon the view that the public would take of the profession.

Other than that, it is a matter, as has rightly been pointed out, you have to determine in your discretion; it is not one to which a standard of proof can be applied, it is simply a matter of discretion for the Committee.

And that, of course, will apply in relation to both of the areas that you are considering. First of all, the incident of February 2007 and the incident of 19 August 2009 which was the statements made during the course of the Interim Hearing.

In relation to the caution, because that of itself does form grounds for impairment – it doesn't necessarily follow but it forms grounds for impairment – no decision has to be taken at this stage and that can be dealt with at a later stage.

For the moment, the Committee is purely considering whether or not misconduct is made out, not whether impairment follows from that, and the Committee will hear further from both counsels before that is considered.

Sir Alistair Graham: Any comment on the advice that has been given to the Committee? [No]

Okay, Mr Henley, I think clear the room while the Committee considers this issue of misconduct in private.

[Hearing adjourned at 10.58]

[Hearing resumed at 11.32]

Sir Alistair Graham: Right, first of all to cover the points relating to the earlier application.

APPLICATION

Mr Hepworth, for the Council, following evidence given by PC Finch and the registrant, made an application to amend allegation 1(a)(i) to read, 'On 2 February 2007 you shouted and swore in public'. Mr McGee, for the registrant, did not oppose this application and the Committee granted the amendment.

Following the amendment to allegation to 1(a)(i) the registrant admitted the allegation and the Committee thus found the allegation proved.

Findings in relation to the caution

Allegation 2. The caution has been admitted by the registrant. A record of caution was provided to the Committee and the Committee thus found the caution proved.

Findings in relation to misconduct

The Committee has carefully considered the evidence presented before it.

The Committee has made findings of fact in relation to allegation 3 and 4. The Committee has considered allegation 1 relating to the events on 2 February 2007 whether they amount to misconduct. In the light of evidence of PC Finch for behaviour accepted by the registrant of swearing, abusive language and specifically telling the police constable to "Fuck off" the Committee is of the view that this does amount to misconduct. Although this was an isolated incident, the behaviour is serious and involved abuse of a public official carrying out his duty.

In respect of allegation 3 and 4 the Committee does not accept that the unintentional misleading of the Committee - which it finds to have been a simple error - amounts to misconduct.

The Committee therefore found Mr Sandhu guilty of misconduct in relation to allegation 1 and not guilty in relation to allegations 3 and 4.

I think that does now take us on to the issue of impairment. Mr Hepworth.

Mr Hepworth: Sir, again you and your colleagues are exercising your judgment. It is not a matter of proof. Of course, sir, it has to be a matter for you and how seriously you judge the behaviour of the registrant to have been on 2 February 2007 and 8 June 2008.

Sir, clearly you have already heard all the facts in relation to those two incidents and I only say a few words in submissions.

Sir, in the Council's submission those incidents are both examples of loutish behaviour on behalf of the registrant. In February 2007 he was involved in abuse late at night in public in the street, including abuse towards the officer.

On 8 June 2008 the registrant got involved in a fight late at night in the street. That fight involved him particularly kicking someone whilst on the floor.

Clearly, sir, that is serious because anyone who is a professional or a student professional expected to maintain appropriate standards of personal conduct.

Sir, I don't think I can say anything else – those would be my submissions.

Sir Alistair Graham: Thank you very much. Mr McGee.

Mr McGee: Sir, there are two bundles and a single reference to be handed up at this stage. There is one bundle of references and a bundle of confirmatory

letters relating to those references which indicate that the referees are aware of all of the matters before the Committee today, and there is also a free-standing reference which wasn't incorporated in the bundle, but which you should have as well.

[R4, 5 and 6 are distributed]

I would ask members of the Committee in due course to read those references. What I propose to do at this stage is to call the registrant very briefly again to give general evidence in relation to the impairment issue and to call to live witnesses in relation to his character.

Sir Alistair Graham: We have three documents here. The 'References' is R4, the 'Confirmatory Letters' is R5 and the final letter from the Centre Manager is R6.

Mr McGee: May I call again the registrant, Mr Sandhu?

**MR AMANDEEP SANDHU, recalled
Examination in chief by MR MCGEE**

Q. Yesterday, Mr Sandhu you gave some brief evidence relating to your career and training as an optometrist. It is right, isn't it that you went to Aston University between 2005 and 2008?

A. It is, yes.

Q. And that you graduated in late June of 2008?

A. Yes.

Q. What have you been doing since by way of training and placements? Can you give the Committee a brief resumé of that?

A. Sure, yes. I started my pre-registration year on 21 July 2008 and I completed the scheme for registration in July 2009. Since then the whole investigation process has been going on and I have just been working as a student optometrist in the practice where I did my original pre-registration year.

Q. So when you say you are currently working as a student optometrist, what sort of work are you undertaking at the moment?

A. At the moment I am dispensing spectacles. We have not had enough space for testing and things like that due to two pre-registrants who are doing their pre-registration year this year, so I have just been on the dispensing side of things.

Q. And are you working full-time?

A. I am, yes.

Q. Are you being paid?

A. Yes.

- Q.** But you are being paid as a student optometrist?
A. I am, yes.
- Q.** In terms of your private life, are you involved with any voluntary or charitable work?
A. Yes, I mean like I stated before, currently at the youth centre where we do football tournaments and sporting events and things like that.
- Q.** Can you give the Committee a little bit more detail about that? How long have you been involved in that?
A. It is roughly four years. Most of the sporting activities occur over the summer period. During the week days over the year it is just activities such as aerobics, running and things like that which are all based in the centre itself, and workshops, lectures, crafts; that sort of thing.
- Q.** And what specific role do you have in those activities?
A. I participate in setting football tournaments up with the youth of the community. There is a local school which has an Astroturf where we can organise football tournaments and things like that.
- Q.** And the youngsters that you are dealing with; what is their age range?
A. There are some as young as eight up to 16.
- Q.** So you are dealing with teenagers as well?
A. Yes.
- Q.** And are they always well behaved and cooperative?
A. They are most of the time, yes, but on occasions you do get a few which are playing up a little bit, yes.
- Q.** And in your leadership role do you have to deal with conflicts between youngsters involved in your sporting activities?
A. Yes, especially during football, which is a competitive sport they do tend to get really competitive and argue amongst each other and get pretty worked up about things.
- Q.** Do you play football yourself?
A. I do, yes.
- Q.** And what sort of team do you play for?
A. I have represented my university team, the optometry team at Aston and whilst I was there we entered a football tournament. Recently I played for Boots Opticians in a football tournament which was a league, and also a tournament, so there are quite a few things going on with Boots.
- Q.** Is that a local league or a national league?
A. It is a local league for where I work.
- Q.** And are these, to use the vernacular, hard-fought games? Are they serious games?

- A.** They are, yes.
- Q.** Have you ever had any aggressive confrontations while you have been playing football?
- A.** Yes. I mean, it is a routine thing. The area that we play for is pretty rough, so we do get quite rough challenges that occur while we are playing football and there are quite a lot of confrontations in competitive sport.
- Q.** And how do you deal with that?
- A.** I try to keep as focussed as I can and just concentrate on the game and just play as a team and do the best that we can.
- Q.** Have you ever been provoked into inappropriate behaviour on a football pitch?
- A.** I have, yes. I have been hit around while we were playing football, barged into quite a lot.
- Q.** What I was asking you was, you may have been subject to barging and unfair tackles and whatever. Have you ever lost your temper and responded?
- A.** I haven't, no.
- Q.** And when you play for Boots are you playing with work colleagues?
- A.** I am, yes.
- Q.** Can you describe the branch of Boots that you work for? It is the Merry Hill branch, isn't it?
- A.** Yes, it is a flagship store, Boots Opticians in Merry Hill. It is a pretty large store based in a shopping centre. We get a wide range of customers and patients that we see, and it is quite varied in the custom that we get.
- Q.** Would you say that you have challenging patients, or some challenging patients?
- A.** We do, yes.
- Q.** And have you ever been the subject of any complaint or adverse criticism from any patient or anyone you have dealt with, any customer at Boots?
- A.** I haven't, no.
- Q.** Have you been the subject of complimentary observations and commendations from customers and members of staff?
- A.** Indeed, yes – I have, yes.
- Q.** I am going to ask you this baldly because it will be something that may concern the Committee. Have you a problem with alcohol?
- A.** I haven't, no.
- Q.** Have you a problem with drugs?
- A.** No.

- Q.** Have you a problem with any sort of substance misuse?
A. No.
- Q.** Do you have a problem with, as the vernacular goes, anger management?
A. I haven't, no.
- Q.** How would you describe your temperament?
A. I would describe myself as calm, laid-back and easy-going.
- Q.** I have no further questions for you at this stage. It may very well be that my learned friend does.

Mr Hepworth: No questions at the moment.

Questions from the Committee

Sir Alistair Graham: Well, that leaves the Committee.

- Q.** Mr Sandhu, I won't go back over what I dealt with earlier, but are you currently employed by Boots?
A. I am, yes.
- Q.** And you said you work as a team.
A. Yes.
- Q.** And they know that you are at this hearing today, do they?
A. They do, yes.
- Q.** Have they stated their position as far as you as an employee in the future?
A. Yes. They have offered me a position within the company, a contract subject to getting fully registered with the GOC and the PCT.
- Q.** Okay, thank you very much. In terms of this youth group that you work for, is it in a particular area? Is it just for Asian young people, or is it for the whole of that community?
A. No, it is open to the whole community but you do tend to get mostly Asian groups because it is provided by the Gurdwara. It is open to all communities, but it does usually attract more Sikhs, but there is a wide range. I have played in tournaments with different religions that have been on my team representing the same sort of view, so it is open to the wider community.
- Q.** Thank you very much; any questions?

Mr Khan: I have just one. Are you still living with your family?

- A.** I am, yes.
- Q.** You are?
A. Yes.

Q. Thank you.

Ms Viner: Can I just ask you? You mentioned that Boots Opticians have offered you a position subject to you becoming fully registered with the GOC and registered at the PCT, and yesterday we looked at the Enhanced Disclosure document that I think you had received from the PCT.

Have the PCT given any indication as to how they would proceed?

A. Yes. They have had a committee meeting and I have been informed that they will mirror whatever the GOC decide, so if I was to get my registration they would be happy for me to go on the PCT.

Q. Right, okay. Thank you.

Sir Alistair Graham: I think that is all the questions we have.

Mr McGee: There are no further questions from me.

Sir Alistair Graham: Okay, I think you can stand down, Mr Sandhu.

[The witness stood down]

Sir Alistair Graham: Can I just clarify one point before we go any further? A member, Ms Viner, has alerted us that she sometimes does some work in relation to students at Boots.

Ms Viner: Yes, it is freelance work running mock exams employed on a freelance basis by Boots Opticians, so it is possible that I may have come across Mr Sandhu in these mock exam processes, although I have no recollection of him at all, and it is only at this point with hearing about his work for Boots Opticians that it is possible that might be a –

Sir Alistair Graham: We just want to clear that there was no difficulty as far as both parties are concerned with Ms Viner remaining as a member of the Panel?

Mr Hepworth: From the Council, sir, no objection.

Mr McGee: May I take brief instruction?

Sir Alistair Graham: May I just clarify?

Mr McGee: No objections. I am being told that in the 'Confirmatory Letter' bundle the entirety of that matter is reproduced and it is a letter from Sarah Forbes, Boots Opticians. She has taken the trouble to repeat everything word for word.

Sir Alistair Graham: Thank you for that.

Mr McGee: Sir, may I call Sakina Morris? Members of the Committee will find a character reference from Sakina Morris at the second page. I apologise for the fact that the bundle isn't paginated.

**SAKINA MORRIS, called and affirmed
Examination in Chief by MR MCGEE**

Q. Just for the record, can you give your full name?

A. Sakina Faith Morris

Q. And you work for Boots?

A. I do.

Q. And what is your work for Boots?

A. I am a Practice Manager of the Merry Hill store.

Q. I am going to be asking you some questions about the registrant, Mr Sandhu. Could you keep your voice up and could you go at a steady pace, because people have to take a note of what you are saying? If you could direct your answers over towards the Committee so that they can hear what you are saying?

A. Okay.

Q. There should be a bundle of references on the desk before you, and if you turn to the second page of that, I think you will find a letter signed by you. Is that right? Is that the letter you wrote on behalf of Mr Sandhu?

A. Yes, I did.

Q. And do you confirm and stand by its contents?

A. I do, indeed, yes.

Q. And it is right, isn't it, that you have travelled from Birmingham? You travelled yesterday and you were here all day yesterday, and you are here again today to speak on his behalf?

A. I travelled down on Monday evening actually.

Q. Can you describe the Merry Hill store? What sort of area is it in?

A. It is in Dudley in the West Midlands, which is not the most affluent of areas. It is in quite a multi-cultural area; it is very, very multi-cultural, and it is a large shopping centre run by Westfield Centre Management.

We are directly linked to the Boots the Chemist which is next door, however we are a free-standing unit. We are open seven days a week from nine in the morning until nine in the evening Monday through to Friday, Saturday until 7.00pm and on Sunday as well, so it is an extended hours; it is a flagship store. Boots grades its stores in turnover and we are a £1m store, so it is one of the largest in the company.

Q. Do I take it from all that it is a very busy store?

A. It is indeed.

- Q.** And how many staff do you have?
A. 24 currently.
- Q.** How would you describe your customer base, if you can make generalisations about your customer base?
A. Well, everything really. In the past it was an out of town shopping centre, which was predominantly between 25 and 45 shopping age, but obviously with the economic climate things have changed and we are now very much a residential shopping centre and we have a variation of clients from children right through to – I think our oldest patient is 97.
- Q.** Would you describe any of your customers as challenging?
A. Most of them. Most of them – it is the public at the end of the day, and because of the economic area that we are in, most of them are challenging around cost and absolutely they want customer service and they want the best of the customer service for what they are paying.
- Q.** And are they forthright?
A. Very much so.
- Q.** How has Amandeep dealt with customer care?
A. We have a customer care measure, which is an online and a 'phone survey where customers get to give feedback directly, and we encourage every patient that walks through the door to give feedback directly, and we actually give names so that they can make comments on specific members of staff. Aman is always exemplary, and I have never had a customer complaint about him.
- In fact, I have more compliments for Aman than I do for a lot of the other staff, which would lead me to think, 'Well, what does Aman do that they clearly don't?'
- Q.** Have you either seen yourself or had experience of Mr Sandhu behaving inappropriately in any way in relation to a customer, challenging or not?
A. No, never. Never. We had a customer in last Thursday, Mrs Barber, who I am sure if needed to be she would happily tell you how wonderful he is, who I dealt with because Aman wasn't in on that day in particular and she asked could she see him. Obviously I said that he wasn't there today and I would deal with her.
- She actually bought chocolates in for him, which unfortunately there are 23 women, so he probably won't get the chocolates. But he is exemplary – honestly – I wouldn't have him working with me if I didn't think so.
- Q.** How would you describe his temperament?
A. He is very laid back; very laid back. Nothing seems to faze him. He always takes things in his stride. He is very, very mature for his age.
- Q.** Would you say he is the sort of person who responds badly to provocation?

- A.** No. Aman played 5-a-side football on a Sunday to represent Boots Opticians. We had a mini league in the shopping centre and I only have three male members of staff, and obviously Aman being one of them, play in a 5-a-side football team and two of Aman's friends played for Boots Opticians, because obviously I have only got three boys and they got to the semi-finals.

In the semi-final they were against a team who were indeed quite hostile towards them, and Aman's attitude and behaviour, once again, was exemplary, and that was out of work and in an environment where he didn't need to impress his boss and absolutely he was very responsible, very mature and again, nothing seems to faze him – he is really, really cool.

- Q.** You say in your reference that you find him to be of outstanding character.

A. Absolutely.

- Q.** Briefly, why do you say that? What leads you to say that?

A. He is a role model. Obviously Aman is quite young, but I have younger members of staff and in everything that he does he thinks about training, can he help with anything, again leading by example with his customer service.

I do have two much younger members of staff who are locals and it is quite difficult to say, because it sounds like I am being prejudiced against anybody that lives in Dudley, but they are slightly, I would say, more coarse in their behaviour and their mannerisms because of their accents or however they are.

Aman is always exemplary in as much as put the customer first, put yourself in the customer's shoes, how would you feel if that happened. He really, really does lead by example, and it is about his time-keeping and his appearance. Everything about him is exactly what Boots and myself would be looking for in a professional.

- Q.** And we have heard that Boots is, subject to his registration, happy to put him on a contract and employ him full time. Can you confirm that?

A. I absolutely can confirm that, and the one thing that I would like to say personally is right throughout the investigations that he has had, he has remained committed and loyal to the company that have offered him a contract.

With everything that has gone on, anybody of a lesser person might have thought, 'Well, I just won't go in today'. He turns up every day and he is on a pre-registrant's salary. Because the salary scales of a customer service adviser obviously is higher than that of a lowly student, bless him, I did try and say, 'Well, okay, in the interim whilst these proceedings are going on, I will see if we can give you a bit of a pay rise' and the company said, 'Well, no, unfortunately, because we had offered pending registration, we couldn't give him a pay rise', and he is still committed and loyal every day.

- Q.** I have no further questions for you, Miss Morris, but if you stay there, there may be some questions for you either from my learned friend or the Committee.
- A.** Okay. Thank you.

Cross-examined by MR HEPWORTH

- Q.** There is just one question from me. Are you registered with the Council?
- A.** No.
- Q.** Thank you.

Sir Alistair Graham: Okay – you have no questions?

Questioned by the Committee

- Ms Viner:** I just wanted to ask very briefly – you talked about the football tournament. Can you just give me an idea of when that was?
- A.** I am not really sure. It was freezing cold, and that is the time of the year. Was it around February time? Yes, February 2009 and subsequently we have been asked back. Boots Opticians have been asked back because they played so well. But I remember it was after hours, it was on a Sunday, so again it was a Sunday evening so all of the guys played in their own time, and it was absolutely freezing.
- Q.** Okay, thank you.
- Sir Alistair Graham:** Okay, thank you very much for coming today.
- A.** Thank you.

[The witness stood down]

Mr McGee: And now Kevin Blake.

**KEVIN BLAKE, called and affirmed
Examination in chief by MR McGEE**

- Q.** Can you give the Committee your full name?
- A.** My name is Kevin George Blake.
- Q.** I am going to be asking you some questions, Mr Blake. Can you keep your voice up and can you go at a steady pace for people who need to keep a note?
- A.** I shall try.
- Q.** And can you direct your answers over towards the Committee, because it is very important that they hear what you have to say?
- A.** That's right.
- Q.** You work for Boots Opticians, is that right?

- A. That is correct.
- Q. You prepared a written reference on behalf of Mr Sandhu, didn't you?
- A. I did, yes.
- Q. And I think you should have a bundle of those references on the desk near you, is that right?
- A. Yes.
- Q. And if you turn to the second sheet, is that your reference?
- A. What do you do for Boots; what is your position?
- Q. I have a couple of hats that I wear for Boots. I am mainly a contact lens optician, and I am also responsible for training of contact lens opticians within Boots to make sure that their supervisors are working to a tight schedule as far as getting them through the academic educational requirements to get them through their exams to qualification.
- Q. Just pause there. You say you are involved in that training. Is that just at the local area, nationally?
- A. My areas of responsibility are from Kingston-Upon-Thames up to the Scottish Borders.
- Q. So how many trainees do you see over a year?
- A. It is diminishing. So at one time it was about eight and now it is one or two, so it is diminishing.
- Q. In addition to your work with Boots, do you do any work for your professional association?
- A. I do, yes. I am a contact lens practical examiner for ABDO. I have lectured at Aston University and I have worked in the hospital.

Sir Alistair Graham: Sorry to interrupt you. You gave some acronym there.

- A. Sorry, for the Association of British Dispensing Opticians, I am a contact lens practical examiner.

Mr McGee: So that is ABDO.

- A. That is correct.
- Q. So you are an examiner, and how much of that examining do you do?
- A. Every six months a group of examiners are sent to different venues – London or Birmingham – to examine candidates for certification in contact lens qualification.
- Q. You also work as a lecturer?
- A. Yes, I did up until last year.
- Q. So in the course of your work for Boots Opticians, your training work, your examining work, would it be right to say that you come across a lot of people in your profession who are either optometrists or training to be optometrists?

- A.** An incredible number, yes.
- Q.** And part of your responsibilities as an examiner and a trainer is to form impressions about their competence and their personalities as far as their professional work goes.
- A.** That's right.
- Q.** Would you consider yourself to be a good judge of character?
- A.** I would feel that experience has put me in that category, yes.
- Q.** What do you say about Mr Sandhu's character?
- A.** I know Mr Sandhu's character from a professional capacity and also from a recreational sport capacity and a social capacity also.

As far as professional capacity, as far as my teaching and indeed in the contact lens knowledge, the way Amandeep picks up things, his integrity, the way he is received by patients when I have taken over his contact records, his actual fullness and his neatness and the actions and recommendations in relation to his contact lens records for a patient are impeccable.

He, without any shadow of a doubt, makes more than adequate decisions that is to the wellbeing of a patient when I have taken over his records.

- Q.** Just pause there. You say when you have taken over his records, so you are aware of any observations made by patients about him from those records?
- A.** That's correct, and I am also aware of verbal content from patients when patients have said to me in the past that, 'Amandeep has tried me with new lenses; he has said they will be better and more comfortable', and he has explained reasons to the patient why he has taken the actions that he does, and the confirmation from the patient that his actions have made a difference to their lives has been something that I am very aware of with his records.
- Q.** Have you either personally or in terms of written records ever seen negative feedback about him?
- A.** At this point right now I can't recall any, sir.
- Q.** Something I should have mentioned earlier on before we move on, or asked you about; other than your professional commitments for ABDO, do you do any work of any description for any other professional organisation?
- A.** I have been doing some work for the GOC in regard to expert witness reports and professional assessment reports.
- Q.** And just to expand on that, you have appeared as a professional witness on behalf of the GOC; is that right?
- A.** I have just completed an expert witness report which is ongoing. As far as actually appearing yet, I haven't.
- Q.** But you also do assessments on behalf of the GOC?
- A.** I do assessments on individuals and registrants, yes.

Q. You mention that outside work and your professional knowledge of Mr Sandhu, you know him recreationally and socially. Could you just explain a little bit more about that?

A. Sure. In relation to Boots Opticians, occasionally we get invited to play in what is called Power League 5-a-side tournaments, and it is a knock-out sort of a tournament. We have done it a few times where we have put a team in from Boots, and played the tournaments. There have been a couple of occasions where the actual games have been particularly nasty and spiteful.

The one thing that has been shown, since I have become aware of the allegations against Amandeep, is the composure and the restraint that has been shown during this one particular semi-final that we had, whereas I would probably say it would be easier for some people to lose composure and get very violent. But that wasn't the case in this particular fiery game with Amandeep. He showed extraordinary restraint.

Q. How would you describe his temperament generally from what you know about him professionally and personally?

A. Quiet. I would say that he is quiet, certainly not aggressive. The allegations when I first read about them really surprised me, but he was a second year immature student and I would probably say that this has turned him into a man right now, and to coin a legal term, without any shadow of a doubt you will not be seeing Aman in this room again.

Q. I have no further questions for you. If you just stay there for a moment, it may be my learned friend does or the Committee does.

Mr Hepworth: No questions from me.

Questions from the Committee

Mrs Tilley: Can I just clarify? Are you involved in the training of dispensing opticians or optometrists, or both?

A. The pre-registration optometrists, it is when they come to me and say that they are having trouble getting through their competency for contact lenses or they would like to know more information. Amandeep approached me on one occasion and said about his contact lens competency, 'Can you help me with it?'

Q. So you are involved with both?

A. Yes, but I am more involved with ABDO but I am approachable to any optometry registrant.

Sir Alistair Graham: Mr Khan?

Mr Khan: No, I have no questions.

Mr McGee: May the witness be released?

Sir Alistair Graham: Yes, I think we can release you now. Thank you very much.

A. Thank you very much.

[The witness stood down]

Mr McGee: In relation to impairment, I am going to make some brief submissions now that you have heard from Mr Sandhu and from Miss Morris and Mr Blake.

The Committee will be familiar with the principles around the exercise of your discretion at the impairment stage. Of course, what you have to consider is whether Mr Sandhu is currently impaired by reason of his past misconduct and the two cautions. What I would ask you to bear in mind are these matters when you are considering the exercise of your discretion.

In my submission, you need to consider not only the conduct, the misconduct itself and the facts of the cautions, but the way that Mr Sandhu has acted in the past both before and after 2007 and 2008, his career as an optometrist, the context of his misconduct, his current level of insight, whether his misconduct is capable of remedy and whether in fact it has been remedied, whether it is likely to be repeated, and of course you will have in mind an element of the public interest.

With those factors in mind, can I just make these observations about the misconduct itself and the cautions?

The GOC in their submission have indicated that they regard both the 2007 incident and the 2008 incident as examples of loutish behaviour. It is certainly the case in relation to the 2007 incident that as Mr Sandhu has very properly fully and frankly admitted, he behaved very badly in a short-lived incident which I am going to submit to you was totally out of character.

Some drink had been taken, not that I would seek to excuse his behaviour on that ground, but it puts it in context. This isn't a young man who has before 2007 and in my submission not since, behaved in a loutish way in public. It is not his habit so to do. He is not an individual who misuses drink to the extent that he is regularly, or at all, in trouble. Still less is he someone who without the influence of drink behaves improperly.

The 2008 incident, as I observed to the Committee at the beginning of these proceedings yesterday, is in my submission not a similar sort of conduct.

The crucial and very obvious difference between the 2007 incident and the 2008 incident is that in 2008 Mr Sandhu was attacked. He was the subject of racist abuse, he was himself assaulted by one individual, and he punched back in self defence. That would have been the end of the incident had he not then been assaulted by a second individual who may or may not have had a weapon in his hand. That resulted in Mr Sandhu ending up on the ground struggling with an assailant.

His culpability arising from that incident is that having struggled free he then temporarily lost his temper and kicked twice at the thigh of his assailant who was still on the ground.

Culpable and wrong behaviour, he accepts that, but that has to be seen in its context. Attacked twice, assaulted, significant injuries, he loses his temper for a split second and kicks twice, not necessarily to a vulnerable area of the body at that.

It is not excusable behaviour, but seen in its context, the Committee may very well think that it does not indicate at all someone who has generalised anger management problems, who behaves loutishly, or who resorts to violence as a first or any option in terms of his interaction with others.

This incident – those two kicks – split second reaction, would not have happened at all had Mr Sandhu not himself been attacked.

So there is a lack of similarity in my submission between the 2007 incident and the 2008 incident. They don't, in my submission, indicate any form of pattern developing or otherwise. And of course it is more than obvious from the evidence that you have heard that prior to 2007 Mr Sandhu has not been in any sort of trouble whatsoever, and after June of 2008 he has not been in any sort of trouble whatsoever, and you have heard from Mr Sandhu and from Miss Morris and Mr Blake that both professionally and socially he has been on a routine basis in challenging positions having to deal with individuals who are not easy, who are forthright, if not on the sports field downright hostile.

You have heard what Miss Morris says about him as an employee and as a person and I commend her reference to the Committee and her evidence to you as indicating that as an experienced professional in this field, running a very busy flagship store, with as she says a potentially and often challenging customer base, she regards Mr Sandhu as outstanding and exemplary, particularly in the area of customer care. Particularly when he is dealing with people who are forthright, who can be difficult, his customer service as she says is outstanding and he is a beacon to other members of her staff.

You have heard from Miss Morris and Mr Blake about Mr Sandhu in a sports contest on the football field where aggression is part of the game, but has to be controlled and unfortunately oftentimes, especially in amateur leagues, that aggression is not controlled and every day of the week up and down the country there are confrontations and fracas on the football field during the course of matches.

You have heard from both Miss Morris and Mr Blake, who is a fellow player, of how Mr Sandhu's composure, his even-temperedness which he demonstrates at work, is translated into a context of straightforward confrontation. He doesn't get involved, he is not provoked, he keeps his cool.

You also heard from Mr Sandhu himself about his voluntary work for a community youth centre. Again, he is dealing with young people, teenagers, in situations where they are not always properly behaved, where they are playing confrontational sport along with him, and you have heard how he diffuses situations.

He wouldn't, in my submission, be employed, if I can use that term loosely, in that role working with young children and teenagers if there were any doubt at all about his temperament, his ability to deal with confrontation, and his leadership and role model skills, and there is a separate reference from the youth club involved.

All that creates, I suggest, an entirely accurate impression that this is a very level-headed, responsible, reliable professional young man.

He entirely accepts that his behaviour in 2007, the matter perhaps of ten minutes of drink-fuelled stupidity, was entirely wrong. It is not characteristic of him at all, and in my submission the Committee can be sure of that.

In 2008 a brief temper loss after the most profound provocation, and it is difficult to think of any provocation which could be more affecting than to be attacked not once but twice, having been racially abused. It is only after such extreme provocation that he kicks twice and then leaves the scene, so this is not a young man who has within his character any traits which may lead the Committee, in my submission, to consider him to be currently impaired.

It is right to say that the decision on impairment is a matter for the Committee's discretion. It may be of assistance to the Committee to bear in mind Dame Janet Smith's test in the Shipman Report where she indicated that in considering impairment it can be of assistance to committees to consider the following question: would a reasonable person who had heard the evidence that you have heard think it appropriate for a registrant to practise without restrictions?

If the answer to that question is yes, then that would suggest that there was no impairment. If the answer to that question is no, then clearly there would be impairment.

In considering whether a reasonable person would think it appropriate for the registrant to practise without restrictions, consideration should be had of the need to protect the public, the good standing and reputation of the profession, what lessons have been learnt by the registrant and what actions have been taken, if any, to put any problems right.

You have heard about his levels of customer care. There is, in my submission, no issue here whatsoever in relation to protection of members of the public. He is an outstanding and exemplary student optometrist, both technically and when it comes to his interaction with members of the public.

It is right to say that you have to consider the good standing and reputation of the profession. These matters were some time ago in 2007. Certainly the 2007 matter although reprehensible was described by the police officer as frankly fairly typical.

I won't repeat the facts of the 2008 incident, but both of these incidents have no connection whatsoever with his work as an optometrist, there is no suggestion that they reflect on him as an optometrist at all. It is quite clear from his evidence that he has certainly been profoundly affected by the fixed penalty notice in 2007 and by the acceptance of the cautions in 2008 and he has clearly learnt from that. You saw his reaction earlier on this morning. It is clearly something which has affected him deeply and has been, as Miss Morris points out in her letter, a salutary lesson for him.

It is also right to say that you have his unchallenged evidence that he has no drink problem, no problem with drugs and that in June 2008 that was the first time he had taken cannabis – and the last. He has never been in possession of it before nor since, and there are no medical issues relating to his impairment.

It may be interesting to note at that this stage that when the Investigation Committee referred this matter to the Fitness to Practise Committee they did not feel it necessary to order any sort of health assessment, so in my submission this isn't a case where there is any evidence at all that substance misuse might be an issue, even though there is a caution for drugs.

Going back to the Dame Janet Smith test; would a reasonable person think it appropriate for a registrant to practise without restrictions, having heard the same evidence that you have heard, in my submission a reasonable person, having heard the evidence yesterday and today, and especially what has been said on Mr Sandhu's behalf by his two character witnesses, and what is referred to in the bundle of references, a reasonable observer may very well conclude that this is an exemplary, an outstanding young optometrist who has fallen below the required standard on two isolated occasions some years ago, has learnt from that and is on the verge of a very successful professional career where at a young age, and still not fully on the register, he is clearly hugely highly regarded by those who work with him and by people who have, like Mr Blake, wide professional experience of dealing with, examining and training young people.

As Mr Blake has told you, he regards himself by dint of experience if nothing else a good judge of character.

In those circumstances I invite you to conclude that Mr Sandhu is not currently impaired.

Of course, sir, you and your colleagues will be aware that it is open to you not to find impairment, but nevertheless to mark the fixed penalty notice and the fact of the cautions with a warning, but that is all I would say in relation to that.

Unless I can assist you further, those are the submissions on behalf of Mr Sandhu.

Mr Hepworth: Sir, before you take advice from your Legal Adviser, can I just make two brief points? One is in relation to the bundle of references which you have before you. Some parts of some of the references touch on the registrant's competence as a practitioner. That is not before you today; that is not an issue before you today. Those comments, in the Council's submission, are irrelevant.

The registrant is entitled to be put before you as a competent practitioner; it is simply not a matter before you to consider, so I don't need to go, I would hope, line by line through the references, but my submission applies to any reference within the references themselves to the registrant's competence. In any event, sir, Miss Morris is not a registrant so her opinion as to the registrant's competence perhaps doesn't carry much weight.

Sir, the only one last thing that I would raise, and this is my second brief point, when my learned friend was going through the criteria that we need to take into account, I am not sure, and I may not have been paying sufficient attention, whether or not he indicated that one of the criteria will be the declaration and upholding of proper standards. So if that wasn't mentioned, then of course that is a criterion which you take into account when judging this particular question.

Sir, other than that I have nothing else to add.

Sir Alistair Graham: Thank you very much.

Mr McGee: Sir, may I simply say in relation to the first submission by my learned friend? I invite you to consider Mr Sandhu in the round. I invite you to consider the entirety of the references. Part of professional competence is to do crucially in an optometrist's role with his interaction with patients, and that reflects on his character and to that extent his competence is relevant. But it is entirely a matter for you, but I invite you to take the entirety of those references into consideration.

Sir Alistair Graham: Thank you very much. Can I ask for legal advice from our Legal Adviser on the issue of impairment?

Mr Milne: Yes, certainly. The issue that is before the Committee based upon the allegation is of course on the fitness to undertake training which is because he remains as a student optometrist.

The Committee will bear in mind that whilst that is obviously correct for technical reasons, the evidence now is that Mr Sandhu has effectively reached the end of his training and would have registered but for this matter having come before you, and there any decision that the Committee takes

will necessarily have an impact upon his fitness to practise as well as his fitness to undertake training.

The determination that the Committee makes is whether either or both of the specific instances, and by those I mean the incidents of 2 February 2007 and that of 8 June 2008, whether either or both can be found to be proven to render the fitness of the registrant to undertake training or to practise either individually or in combination, one with the other.

It is a question of judgment for the Committee to determine. Again, it is not a judgment that requires you to apply a specific standard of proof.

The Committee is entitled to consider all of the material that has been placed before it so far, including the agreed and found facts arising from the two incidents, the explanation given by the registrant, and you are entitled to take into account the character references and the material that has also been called before the Committee.

The Committee may wish to place in bounds of course the fact that the incidents upon which the Council refer dates back in one case to a period of more than three years ago when the registrant was 19 years of age, and the second very close to two years ago when he was 21 years of age. He is now of course 23 and both took place at a time when he was an undergraduate and had not at that stage graduated.

The Committee should bear in mind, clearly the overriding concerns, which are the duty of the Committee to protect the public, to maintain public confidence in the profession and to uphold proper standards of conduct and behaviour, and the Committee should consider whether he demonstrates safe and competent practice in a general sense.

In doing so you may have regard to whether you are satisfied that he has maintained proper and effective relationships with colleagues, customers, including the vulnerable and challenging, and that he can maintain the trust and respect from both.

It is right to point out that the allegations in this case which have been found to constitute misconduct fell outside the remit of his professional life and you have heard evidence in relation to that, and as has properly been pointed out, this is a matter in which if you were not to find that there was an impairment of his fitness to practise you would still have the option, should you choose to do so, of giving him a warning concerning his future conduct or performance.

If you were to do so, then the registrant or indeed Mr McGee on his behalf should be given the opportunity to address the Panel first. Mr McGee has touched upon it and if you wish you may invite him to make a further comment at this stage or leave that for a later stage altogether.

That is all I wish to say in relation to my advice at this stage.

Sir Alistair Graham: Right, are there any issues that you wish to raise as far as the legal advice is concerned?

Mr McGee and Mr Hepworth: No, sir.

Sir Alistair Graham: Do you wish to say anything further about the option open to us in relation to a warning?

Mr Hepworth: Sir, it must be a matter entirely for you.

Mr McGee: I agree.

Sir Alistair Graham: Okay, well if there are no other issues to be clarified then I think we can break there to allow the Committee to consider the issue of impairment in private and it seems sensible to try and link it to luncheon break.

What if we were to get back here for 1.45; would that make sense? [*Agreed*]
Okay, thank you very much.

[*Hearing adjourned at 12.36*]

[*Hearing resumed at 13.43*]

Sir Alistair Graham: Thank you for coming back so promptly. I would now like to announce the Committee's findings regarding impairment.

Findings regarding impairment

The Committee, having considered all of the evidence before it, has concluded that although it regards both of the incidents as constituting misconduct, it does not conclude that the current fitness to undertake training as an optometrist of the registrant is impaired.

In reaching this conclusion, the Committee has had full regard to the need to protect public confidence in the profession and to uphold proper standards of conduct and behaviour.

Both of the incidents which constituted misconduct occurred at times when the registrant was an undergraduate student at Aston University. There are no earlier, or subsequent events of a similar nature. The Committee has considered whether the two incidents could be said to suggest a pattern of rowdy or loutish behaviour. The incident of February 2007 was unpleasant drunken behaviour outside of a night club; the incident of June 2008 was an instance of over reaction in response to provocation including racist abuse. The Committee does not find that these incidents could be said to constitute a longer term pattern of behaviour which places the public or patients at risk.

The Committee was greatly impressed by the registrant's own evidence, his candour and insight, and particularly his awareness of the distress he had caused to his close family. The Committee attached considerable weight to the evidence of his current employers who gave evidence as to his ability in dealing with very challenging clients in a depressed area of Dudley. The Committee also took into account the voluntary work he undertakes with a youth group.

The Committee is, nonetheless, acutely aware of the need to uphold confidence in the profession and to uphold the highest standards of behaviour amongst registrants, and it has therefore decided that it is appropriate in all the circumstances to issue a warning about his future conduct and that such a warning should be placed upon his professional record for a period of 3 years.

That is the conclusion of the Committee. Thank you very much to everybody for attending the hearing.

[Hearing concluded at 13.46]