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

GENERAL OPTICAL COUNCIL

AND

NATHAN SIVAJOTI (SO-4917)

PROCEDURAL LEADING TO SUBSTANTIVE HEARING

Tuesday, 16 February 2010

**PROCEDURAL LEADING TO SUBSTANTIVE HEARING
NATHAN SIVAJOTI (SO-4917)**

Tuesday, 16 February 2010

Committee Members: Lady Margaret Wall (Lay) - Chair
Dr D Azubike (Lay)
Miss J McCrudden (Optometrist)
Ms Y Norgett (Optometrist)
Mr A Khan (Lay)

Legal Adviser: Mr N Levisieur

Hearings Manager: Mr D Henley BEM

For the GOC: Mr B Albuery

For the Registrant: Mr J Hodivala

[The hearing commenced at 10.50 a.m.]

Lady Wall: Good morning. I am a lay member of the hearings panel, and I have been elected by the Committee to Chair today's hearing. The Committee today is 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 made]*

To my right is Mr Nick Levisieur, the Committee's Legal Adviser who will provide legal advice and assistance to the Committee, and ensure that the proceedings are conducted in accordance with the rules and procedure so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate. In the event that any matter arises during the course of the Committee's deliberations upon which the Committee seeks advice, the parties will be invited to return to hear the matter which the Committee has raised and the advice to the Committee. Where advice on any issue is not accepted by the Committee, this will be indicated in the course of its decision on that issue.

To your right is Mr David Henley, the Hearings Manager, who will provide administrative assistance 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 in the public and Press areas are members of the respective legal teams.

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

I understand that this hearing today will commence as a substantive hearing following on immediately from the procedural hearing, and both parties have agreed to this? [Agreed] Now, I think I should just also establish whether there are any applications to be made at this stage? [No applications] We should also establish whether or not there are any health matters to be discussed at the hearing, and whether the parties wish to apply for the hearing to be held *in camera*?

Mr Albuery: Neither.

Mr Hodiala: No.

Lady Wall: Right, thank you very much. Mr Albuery?

Mr Albuery: Madam, because your Rules require there to be a procedural hearing in every case I wonder whether the first thing we should do is formally open, or you open, as a procedural and then you move on to a substantive? That might seem an odd thing to have to do but I think your Rules require it, and I say that for this reason: that Rule 25(1), page 97 of your Handbook, says:

“Where an allegation has been referred to the Fitness to Practise Committee –
(a) there shall be one or more procedural hearings”,

so we do not have the choice because of the way that your Rules are drafted. So we have to have a procedural hearing, but by virtue of Rule 31:

“the parties can agree that a substantive hearing immediately follow on the procedural.”

Lady Wall: So Mr Albuery, you will be inviting me to say that effectively we are having a procedural hearing at this point, and I am then asking you whether there is anything you wish to add to that?

Mr Albuery: Madam, I am not asking you that, your Rules require it, but if we are at a procedural hearing my only comment would be that there are no directions we seek and we would ask and invite you to move immediately to a substantive hearing. Then there is no procedural irregularity.

Mr Hodiala: And we would endorse that approach.

Lady Wall: We therefore have held a procedural hearing according to Rule 25?

Mr Levisseur: Not quite. Forgive me; this clearly is, I say, a procedural charade. However, at the procedural hearing the Fitness to Practise Committee may consider the completed hearing questionnaires, but of course does not have to; may invite representations from the parties if present, but of course does not have to; may establish a timetable for the disclosure of evidence by either party, but of course does not have to; and shall make directions for the further

conduct of the matter, and so you are required to give further directions as to the conduct of this matter and those further directions will no doubt be that this hearing will conclude and will move straight into a substantive hearing.

Mr Albuery: Yes, please.

Lady Wall: We therefore, following the Rules, have had a procedural hearing. We have considered whether or not we should make any of those directions, and we have decided that it is not necessary in this case. We therefore conclude the procedural hearing and move straight on to the substantive hearing. Mr Albuery?

Mr Albuery: Madam, should the allegation then be read to the Registrant, there being no preliminary applications?

Mr Henley: Madam, it is at page 3 of your *aide memoire*.

Mr Levisaur: Mr Henley should normally do it, although he does not have to.

Lady Wall: Mr Henley, I am very happy for you to read it.

Mr Henley: The allegation:

The Council alleges that in relation to you, Nathan Sivajoti (a registered student optometrist):

1. On 5 March 2009 at Harrogate Magistrates' Court you were convicted of assault occasioning actual bodily harm, contrary to Section 47 of the Offences Against the Person Act, 1861.

And by virtue of the matter set out above your fitness to undertake training is impaired, by reason of your conviction.

Mr Hodivala: Could I just indicate on behalf of the registrant that the following admissions are made: it is admitted that Mr Sivajoti is a registered student optometrist. It is admitted that on 5 March he was convicted of assault occasioning actual bodily harm, and it is also admitted in this case that his fitness to undertake training is impaired by reason of his conviction.

Mr Levisaur: I take the view that the wording of the Rules requires the Committee to make findings of fact no matter what admissions are made. Clearly it would be almost perverse to make findings of fact which are against those admissions made through counsel. Nevertheless strictly speaking, it is necessary for those matters to be proved, and it would be necessary in due course for me to warn the Council of the burden and the standard of proof – but it makes your task, Mr Albuery, rather easier than it might otherwise have been, it seems to me.

Mr Albuery: Yes. Madam, there is obviously flexibility in your Rules as to whether you deal with all these matters in one stage or two or three. It would help me

in the way I present the case for you to indicate to me how you and your colleagues want to deal with it. The first issue would be of course whether you are satisfied of the facts, which is the fact of the conviction.

Lady Wall: Yes. The Committee has had all the papers in advance and been able to study them, and we do accept the facts as they have been sent to us of the actual conviction.

Mr Albuery: Thank you Madam. Madam, I think then we move on to the impairment stage, and obviously notwithstanding the admission, you must be satisfied in your own judgment, not now of course a matter of proof, that you also think as Mr Sivajoti does of himself that the conviction amounts to an impairment of his fitness to undertake training.

Madam, the Council do not intend to call any witnesses, and I rely therefore only on documentary evidence which I will take you to in a bundle, which I hope was sent to you before today and a further copy of which is provided for you today. It has 24 pages starting with the Memorandum of Conviction and then an e-mail from Mr Sivajoti to Ms Tahera received on 20 May. Madam, could we call that C1, and can you confirm that you and your colleagues have had an opportunity to read all of those documents before today please?

Lady Wall: The document is named C1, and yes, we have all had an opportunity to read it.

Mr Albuery: Thank you.

Madam, then starting with the conviction on page 1 of the bundle you will find there a Memorandum of Conviction, which is evidence of the fact that Mr Sivajoti appeared at Harrogate Magistrates Court on 5 March. He pleaded guilty, to his credit, to one offence contrary to Section 14.7 of the Offences Against The Person Act 1861, that is ABH, and for that offence having taken into account his mitigation and guilty plea he was sentenced to a community order which required him to undertake 150 hours of unpaid work by 4 March 2010, to pay compensation to the victim of the assault in the sum of £75, and costs of £45.

If you then turn with me to page 3, you will find beginning there a number of statements and CPS documents which were generated as a result of the criminal investigation and trial, and I will take you to parts of them upon which I rely.

Firstly on page 3 reading from the case summary, this demonstrates that Mr Sivajoti was one only of five defendants, and indeed as you have read already in the papers the magistrates were prepared to proceed, and did proceed, on the basis that he was not the most culpable of them, and that he was not the instigator of the incident which caused the violence that then occurred. However reading then from the case summary four lines down:

“White” – that is the victim – “states he believes he was punched to the floor inside the takeaway by an unknown assailant. The argument has then spilled on to Kings Road where White remembers a group of males attacking him and his friend. As a result of this White was knocked to the ground and kicked numerous times to his body, head and legs by the group.”

Madam, on page 4 is the charge sheet, and we do not need to spend any time looking at that, but from page 5 appears the victim’s statement given to the police and dated 12 January 2008. I will read extracts of that out to you so you can judge the seriousness of the assault.

In the second paragraph, beginning “The argument carried on” four lines from the bottom he says:

“- I then fell to the floor and started to get kicked all over my body.”

Then two lines down:

“The kicks were continuous and repetitive and I think I was kicked approximately 15 - 20 times all together, all over my body.”

Now Madam, obviously I concede that Mr Sivajoti was only one of the assailants, and we will come very quickly to that part in the assault which he played, which is that for which he can be held culpable; but the injuries received by this victim as set out in the penultimate paragraph beginning “The next morning” on page 6, where in the second line he says this:

“- I received swelling and bruising around both of my eyes and nose. My left shoulder was badly bruised and the bottom of my back in my lumbar region was also very bruised and painful. My right hand was very sore, stiff and painful and this was diagnosed at the hospital as soft tissue and ligament damage around my thumb. All of the bruising and swelling has now subsided but my right thumb is still painful but the mobility has now returned. I have been advised that the damage to my thumb is not permanent.”

Madam, PC Rotchell gives a statement at page 8, and on page 9 viewing the video camera he says what it shows this registrant doing as part of the attack, and under Mr Sivajoti’s name he notes the video recording as showing this:

“At 03:56:47 hours on CAM 11 [Mr Sivajoti] is seen to kick the victim whilst he is laid on the floor. The kick is made with his right foot and appears to connect with the right side of the victim’s head or neck.”

And then two bits of a second later:

“[Mr Sivajoti] is seen to kick the victim once in the head with his right foot whilst the victim was on the floor.”

So Madam, that is the involvement of this registrant: two kicks to the victim whilst that victim was on the floor, one kick certainly to his head with his right foot and the other kick to either his head or his neck.

On page 10, sticking with the same police officer's statement, he says in relation to the victim of this assault:

"Throughout the incident he" – that is the victim – "does not appear to act in a physically aggressive manner in any way, it can be seen that at the beginning of the incident he was involved in a verbal altercation", and then it says "- he is seen to run towards" –

and then it takes out various people's names. However I have accepted, I hope fairly, to this registrant that he did not start the incident that caused it. He was interviewed by PC Nickson and a summary of what was said in interview appears for you at page 12. In the course of that interview, looking at the third section – and DP stands as you know for Detained Person – it says this:

"States that he had been out drinking with friends" and he named them. "He confirmed that he was drunk, and whilst inside a takeaway an argument began between his group and two other males. They went outside the takeaway and the argument broke into a fight. [He] Stated that he remembered [*Name deleted*] punching a male and then the fight spread to Union Street where a male was knocked to the floor. Stated that he recalled that people were kicking the male while he was on the floor but he cannot remember what, if anything, he had done."

Madam, he was then shown the CCTV footage, and to his credit – but perhaps he had no alternative, after all he was shown on the video doing it – he then admits his involvement, and reading the extract of the interview as follows:

"Confirms the CCTV shows him and his friends as already identified involved in a fight. Confirms that [another male] is seen to punch a male to the floor, and then [the detained person]" – that is Mr Sivajoti – "and all his friends gather round the male. Confirms that CCTV clearly shows him kicking the male on the floor twice in the head whilst he is defenceless and no threat to anyone. Further states that his actions shown on CCTV were deliberate and vicious and could have had very serious consequences. Confirms that the incident was a violent fight and that onlookers would have been scared for their own safety and for that of the victim who they were kicking."

Madam, I was not there and obviously you will be addressed on this later, but I anticipate that Mr Sivajoti was asked a number of leading questions and he gave answers to them that allowed the police officer to summarise it in that way, because those are the ingredients of various offences that I think the police officer was seducing out of Mr Sivajoti.

Then you have the custody record from page 13. That does not have any relevant information certainly so far as the Council is concerned upon it.

Ms Sarita Khaira from the in-house legal team of the General Optical Council has sought to find as much information as she can for you about these matters which had not already been obtained via the police. She communicated with the court service and on 25 June she received an e-mail from the Legal Adviser to the Bench on the day, a Mr Andrew Barton. I propose if I may on page 20 to read that out to you to complete the knowledge of the facts as we understand them to be, and in fairness to Mr Sivajoti.

“As you know from our telephone conversation this afternoon the information I have on my file is limited in that Mr Sivajoti entered a guilty plea on the first hearing. That plea is termed a timely guilty plea, and it went to his credit when the magistrate sentenced him and his co-accused. The magistrates heard a great deal of mitigation regarding the case primarily focused upon the fact that Mr Sivajoti was up until the court appearance of good character. Nevertheless the magistrates were fully aware of the serious nature of the offence, and that there were five men attacking the victim which clearly aggravated the case.

The bench indicated their intention to impose a curfew order and unpaid work orders in this case but after a great deal of discussion between the defence advocates and the bench it was decided that curfew orders were impractical. Therefore community orders and unpaid work together with costs and compensation were imposed. Mr Sivajoti was not found to be the most serious offender in the group. The bench were addressed by the probation service as regards Mr Sivajoti’s suitability for the unpaid work order and the bench was satisfied that he was fit and able to undertake the work and the bench therefore made the orders.

It is fair to say that the magistrates were very loath to impose the unpaid work order without the curfew but were finally convinced that it was not practical to do so in view of the individual circumstances of each of the defendants. If it had been possible to impose a curfew order the bench would certainly have done so as they considered that both orders would have been proper punishment for the offence committed.”

Madam, although I have read that out, the fact is they imposed the order that they imposed, and it is probably wrong to conjecture too far as to what they may or may not have done had other circumstances been in existence; and in any event the sentence that was imposed, bearing in mind that your function is quite different, is only part of your decision-making.

Madam, again to his credit Mr Sivajoti did bring these matters to the attention of the Council, albeit very late and by e-mail seen on page 23 dated 27 April, but no doubt we will hear from him and I will not guess as to why that late disclosure was made.

Madam, we are only at the impairment stage. In relation to impairment as you know it is not limited to clinical competence. It includes the confidence in the profession and the reputation in the profession, and this registrant by the commission of these offences has fallen far short of the standards that could properly be expected of members of this profession, and for that reason I ask you to agree with him that his fitness to undertake training is impaired.

Madam I will deal, if you find impairment, with matters which may affect sanction at a later stage.

Lady Wall: Thank you. Mr Hodivala?

Mr Hodivala: Madam, I know that Mr Sivajoti has accepted impairment. The only additional document which I would wish to draw to the Committee's attention is the document at page 24 which is a letter written by Mr Sivajoti, and you will see in the penultimate paragraph, having set out the circumstances leading up to the incident itself, reads:

"I deeply regret my actions. I rarely drink, and being drunk on this occasion was a one-off occurrence. This is the first time I have been in trouble with the police for any reason, and I intend to make sure it is the last."

I bring that to your attention not to seek to persuade you not to find impairment, but so that you are fully familiar with all of the submissions that could be relevant to your conclusion on this particular aspect; but as I say it is accepted that Mr Sivajoti's fitness to undertake training is impaired in this particular case.

Lady Wall: Is there anything else that you wish to say to us?

Mr Hodivala: At this stage I am working on the assumption that you and your colleagues will conclude whether or not you agree with the registrant's admission that his fitness to practise is impaired. Obviously there are further submissions in evidence that I would like to lead at the sanctions stage – assuming we reach that stage – but I will give you and your colleagues perhaps a moment to decide whether you want to adjourn to formulate your reasons or whether you would rather just continue hearing evidence and hearing submissions on the sanction, and then conclude the hearing by inviting the parties to adjourn so that you can formulate your reasons on all aspects of this case.

Lady Wall: [*Confers*]

Mr Albuery: Madam, would it help you to know – and I apologise, you were asking for legal advice but I am afraid I did overhear it – that at the next stage, though this may run into that next stage, I understand it is the intention of Mr Sivajoti to give evidence, and also a number of witnesses will be called on his

behalf. The only issue is whether you want to stop now and find or not find impairment, or whether you want to do the whole thing together?

Lady Wall: [*Confers*]

Mr Levisaur: The Committee has a duty to find facts, whether or not those facts had been admitted. It also has a duty, whether or not impairment has been admitted or not, to consider whether in its opinion this particular registrant is impaired and is impaired now by reason of facts alleged – which in this case of course is the conviction. The difficulty that the Committee might face is that no doubt members might want to ask questions. Put bluntly there is nobody of whom to ask any questions at this stage. The advocates have properly restricted themselves to two matters, one of which is the conviction and the other of which is the issue of impairment, and in those circumstances my advice is that you should now proceed to make findings of fact such as they are, particularly in relation to impairment, before continuing to the next stage which of course is the sanction stage, or may be a sanction stage.

Can I just remind you of one matter about impairment: impairment does not mean inhibited or prevented, it means ‘impaired’ which is not the same thing as ‘prevented’. Of course you have already been told that you must consider your public duties, that is to say matters which relate to the public, when you consider impairment: the protection of the public and of course public confidence generally in the way in which this profession is administered, and the conduct of professional members, student or otherwise, of it.

I apologise; *sotto voce*, do either of you wish to correct or add anything to that which I have just said?

Mr Albuery: No, thank you.

Mr Hodivala: No.

Lady Wall: Right, well Mr Sivajoti, what we will do now is to consider the whole matter of impairment, which is a matter for us even in spite of what has been said on your behalf and the Council’s behalf, so would you all withdraw please?

[*Hearing adjourned at 11.20 a.m.*]

[*Hearing reconvened at 11.45 a.m.*]

Lady Wall: I will now read out our findings, some of which will be obvious but it is all for the purpose of the transcript and a proper record.

Determination

Findings in relation to the particulars of the allegation

The registrant admitted the allegation and the Committee found the allegation proved.

Findings in relation to the conviction

The registrant admitted the conviction, and the Committee found the conviction proved.

Findings regarding impairment

The Committee finds that this student registrant was convicted on 5 March 2009 at Harrogate Magistrates' Court of an offence against the 1861 Offences Against The Persons Act Section 47. The Committee is satisfied that as a result of that conviction that the registrant's fitness to undertake training as an optometrist is impaired. This was a serious and nasty offence, as the registrant himself has admitted. Public confidence in the profession would be severely undermined were the Committee to reach any other conclusion.

Thank you.

Mr Albuery: In that case Madam can I call Nathan Sivajoti?

Nathan Sivajoti, called and affirmed Examination-in-chief by Mr Hodivala

- Q.** Mr Sivajoti, can I just ask you please to confirm your full name?
A. Nathan Sivajoti.
- Q.** And in terms of your history and qualifications and things like that, is it right to say that you were a student at Manchester University in 2008?
A. In 2008 over to 2009, yes.
- Q.** Yes, so you started in Manchester in 2008?
A. Yes.
- Q.** And we have obviously heard briefly some facts in relation to an incident that happened in December of 2008, yes?
A. Yes.
- Q.** We will perhaps come back to that briefly in a moment, but since December 2008 the next matter of the chronology is your appearance and conviction in March of 2009?
A. Yes.
- Q.** Yes; and then we have heard that there was an e-mail that you sent to the General Optical Council. Do you have a bundle of documents there in front of you?
A. Yes.
- Q.** Can you turn to page 23 of that bundle? This is an e-mail that was sent by you to the Registrar on 27 April 2009, yes?
A. Yes.

- Q.** And just to deal with any potential for delay between the conviction in March and the e-mail in April, can you just explain to the Committee why it was that it just took a little bit of time to send the e-mail to the Registrar?
- A.** Well, once I had been given the conviction I spoke to my personal tutor at the university, who advised me to speak to the AOP. I spoke to Steven King, who advised me to draft a letter to the GOC, which I sent to him and he checked and sent back, and then I sent this to the GOC – so just the process of all those different stages was the delay.
- Q.** All right; and so you notified the GOC as it were off your own back rather than anybody at the GOC finding out about this conviction and requesting further information from you?
- A.** Yes.
- Q.** All right. That then is in broad outline the chronology. Can I just go back a little bit, because we have heard obviously that you were a student at Manchester in 2008? Why was it that you wanted to study optometry in the first place?
- A.** The profession appeals to me as a whole, due to the variation in the profession. Each different patient is a different challenge sort of thing, and also the aspects of helping people and the rewarding aspects, the gain from that.
- Q.** Was a career in the area of medicine and the human body something that you had considered you had always wanted to do?
- A.** Yes, I have always had an interest in the biological side of study rather than English or those sorts.
- Q.** What A-levels did you do?
- A.** A-levels? I did Maths, Further Maths, Biology and Chemistry, so it is all in the maths and science section.
- Q.** And grades?
- A.** I was straight A's in all of them.
- Q.** What about GCSEs, just very briefly?
- A.** Grades at GCSEs, three A-stars, five A's, two B's.
- Q.** So you applied to Manchester to do which course?
- A.** I applied to do optometry.
- Q.** And was there anything work experience-wise that persuaded you that a course in optometry was something that you wanted to do?
- A.** I did a little bit of work experience with an optician and his day-to-day interaction with patients – he gets different patients in and it is different each hour or half-an-hour or so, so it is totally different, which was always something which appealed to me.
- Q.** All right. Apart from your specific optometric experience what other kind of summer jobs or work have you done throughout your life so far?

- A.** I have done a lot of work with the elderly. Not last summer but the three summers before I have been to a hotel in Southend to help with elderly people that stay there, on day trips or just around the hotel. I have done a little bit of work experience in a hospital, the leg ulcer clinic. I can't think of much else off the top of my head.
- Q.** Have you done any charity work at all?
- A.** Yes. I have done quite a lot of charity work, me and my family between us organised a fundraiser for the tsunami.
- Q.** And how much did you raise?
- A.** We raised over £12,000.
- Q.** How did you raise that?
- A.** It was at the local golf club that I was a member of at the time. Just using my dad's work associates and contacts to organise a golf day, with raffle prizes, etc. and the competition itself and an auction, and things of those sorts.
- Q.** Okay; what about your character and personality? Have you ever been involved in a fight before or since?
- A.** Never. This was absolutely a one-off occasion, and myself, I was shocked myself at the CCTV, that I was capable of those sorts of things when I was drunk, and I have gone about changing my lifestyle to stop that from happening again.
- Q.** In what way?
- A.** I abstained from alcohol for around four months straight, and I now rarely drink and if I do it is only a couple of social drinks and then move on to soft drinks, to stop myself from putting myself in that position ever again.
- Q.** Can I ask you about what you are doing at the moment?
- A.** At the moment I am – because my accommodation in Manchester had already been arranged before I knew I was not going to be at university, and I do not receive financial support from the university as I am not a student this year, I have just been having part-time jobs to keep myself going financially in the hope that this year I will be able to continue my studies.
- Q.** Let's just take that in a little bit of detail. So you started in September 2008 at Manchester, yes?
- A.** Yes.
- Q.** Conviction in March of 2009, yes?
- A.** Yes.
- Q.** And then presumably you were due to start your second year at university in September of 2009?
- A.** Yes.
- Q.** Did you start in September of 2009?

- A.** No, because I was aware that I was going to be given a sanction here today, so I would not have been able to finish my year, so it seemed obviously a waste of money on the tuition fees if I was unable to finish the year.
- Q.** Right; why would you not have been able to finish the year, if there was for example a period of suspension?
- A.** Because the examinations at the end of the year I would not have been able to undertake due to a suspension.
- Q.** I understand there is a practical aspect?
- A.** Yes, the practical aspect.
- Q.** You would not have been able to complete that aspect had you received a period of suspension; all right. So you have not started the second year?
- A.** No.
- Q.** What is your plan for going back to study optometry?
- A.** Well, if everything goes according to plan then I have been accepted to start my second year of optometry this September.
- Q.** And is optometry something that you really want to do?
- A.** Yes, it definitely is. Once this conviction had come about I could have given optometry up and started a new course last year, but I decided to put my life on hold for a year and really pursue this and go through all this to really push for optometry, because that is where my heart is.
- Q.** Can I ask you about your admission that your fitness to undertake training is impaired? Why is it that you accept that your fitness to undertake training is impaired?
- A.** I understand that the profession of optometry has a reputation to uphold, and that there is a public confidence issue, and that the public has to have confidence in the people that are treated as such, so if the Committee was not to give any sanction then it sort of lowers the name of the profession.
- Q.** Finally, can I ask you this: how old are you now?
- A.** I am 20.
- Q.** And back in December of 2008 you were 19, is that right?
- A.** I was just turned 19, yes.
- Q.** Just turned 19; so when was your birthday?
- A.** On 11 December.
- Q.** Okay. Mr Sivajoti, those are all the questions that I wanted to ask of you. If you wait there, there will be some further questions.

Mr Albuery: Not from me, Madam.

Mr Levisaur: Did you say you were not going to ask any questions?

Mr Albuery: I am not, no. I am not asking any questions, thank you.

Mr Khan: Can I ask Mr Sivajoti, is your home in Manchester or were you away at university?

A. My family home is in Leeds, but where I was living was at Manchester.

Q. So was it the first time that you were away from home, at university?

A. Yes, for a long period of time, yes.

Ms Norgett: I just have one question. You said that your family was involved in some fund-raising projects. Can you just tell me what your personal role in that was?

A. Well, I instigated it. It was my initial idea, and I needed my family's help, like using my dad's business contacts and contacts at the golf club to organise it, and between me, my two older brothers and my dad we organised the whole day.

Dr Azubike: I have two questions, just for clarity because I did not quite understand your answer when you answered the question. You said you did not register for the second year because you thought you were going to be suspended?

A. Yes –

Mr Hodivala: No, it was just a question of sanction. He was indicating – perhaps I can clarify this for the witness? Mr Sivajoti, you said that you had started in September 2008; when obviously this incident happened and the GOC became aware of the conviction you decided against starting your second year in September of 2009, yes?

A. Yes.

Q. Why was it that you decided against starting your second year in 2009?

A. Because to study that second year, tuition fees would have had to have been paid, etc. but with this hearing coming up I would never have been able to finish this year, because the sanction would prevent me from finishing my exams at the end of the year.

Dr Azubike: Sorry, on what basis? Nothing has been done -

A. I was told that the likelihood was that a suspension would be put in place minimum, so to take that risk it was not financially viable.

Q. Right, I have the answer to that. The second point is I think on page 23 of the bundle C1, in the third paragraph, can you just read out what it says there? The third paragraph.

A.

“I have only just become aware that I should inform you of this, otherwise I would have done so sooner.”

Q. The reason why I asked you to read it out is that I want to reconcile that with the answer you gave when you were asked the question with respect to why it took you some time to tell the Council of the matter.

- A.** It was just the process that I went through advice first. I went to my personal tutor for advice, who referred me to the AOP, and then I had a couple of e-mails sent back and forth to them and it was just the process of that advice that took me the time to send the letter. I did it as soon as I realised that I had to, that I should make you aware of this, make the GOC aware of this, I went about it as quickly as I could.
- Q.** I am just worried that the third paragraph that you just read out does not quite gel very well with the answer you have given to the previous question, which is – perhaps I should ask you directly: when did you become aware that you should have reported the matter?
- A.** Once I spoke to the AOP. I spoke to my personal tutor who advised me to speak to the AOP, and it was not until I spoke to the AOP that I realised that I was required to tell the GOC about the matter, and as soon as I was told I drafted a letter to send.
- Q.** Okay, thank you.

Lady Wall: Thank you. I have one question to ask, and that is have you been in touch with the university about re-starting in September?

- A.** Yes, I applied for an interim year, and there is a letter I think that says that I have been accepted for the second year to start in September – if I am allowed to.
- Q.** And what sort of part-time jobs have you been doing in between?
- A.** Just part-time I worked in a club night in Manchester up until January, but then because the club night ended it closed down, and I have been looking for jobs since new year, and I've got a couple of interviews coming up.
- Q.** That is not very much to keep going on.
- A.** Well, it is just paying my rent and just enough to keep me sort of surviving until – I have managed on that.
- Q.** Thank you. Are there any further questions? [*No further questions*] We have no further questions, thank you.

Mr Hodivala: Thank you very much, perhaps Mr Sivajoti can return to his seat.

[*The witness stood down*]

Mr Hodivala: There is a bundle of testimonial evidence and a supplemental statement as well; can I hand those out? [*Documents distributed*] There are three testimonials in particular that you have in writing; however we have the authors of those testimonials here to briefly give oral evidence as well, so what I propose to do is to call Karuna Sivajoti, who you will find at page 1 of your testimonials, Jonathan Hack you will find at page 3 of your testimonials, and Carolyn Eyre, who you will find at page 6 of your testimonials, to give oral evidence, and perhaps it might be appropriate to call that evidence now and then we will read through the character references to read them into the record once they have completed their oral evidence.

Lady Wall: Yes, that seems satisfactory.

Mr Levisaur: I think that is very wise.

Mr Hodivala: Could I in that case call Jonathan Hack first of all, please?

Lady Wall: The Index is R1?

Mr Hodivala: It is, sir, and perhaps if we have the Manchester letter as R2.

**Mr Jonathan Hack, called and affirmed
Examined-in-chief by Mr Hodivala**

Q. Mr Hack, can you give your full name please?

A. Jonathan Charles Hack.

Q. Mr Hack, you know Nathan Sivajoti?

A. Yes, I do.

Q. How long have you known him for?

A. I have known him for 15-16 years.

Q. In what capacity?

A. As a friend, and the son of a business colleague.

Q. Were you able over that period of time to form a general impression of Nathan's character?

A. I was, yes.

Q. And I suppose in those years you have seen him develop into the 20-year-old that he is today?

A. I would like to say I have known him from that height, but I don't think he has ever been that height! He has always been virtually as tall as me, for years.

Q. Now, when you first heard of the fact that Nathan had the conviction for assault, how did you feel about that knowing Nathan as you did?

A. I first thought there had to be some underlying reason for what happened. It was only once I had spoken to Karuna that I got the true facts of what went on, and I was shocked that Nathan would do that.

Q. Why were you shocked that Nathan would do something like that?

A. It is totally out of character. It is totally out of character. He is a lovely, gentle, man, always has been.

Q. And do you know Nathan to frequently get drunk and generally lose control?

A. I have never heard of that before. The family Nathan comes from, you know, they are a fine family and none of them would get drunk or anything.

- Q.** Were you able to assess his intelligence over the years that you have known him?
- A.** Yes, he is very bright, very bright, and dedicated to his studies. He always has been. He is single-minded when he wants something.
- Q.** When you talk in your reference about him having sporting activities, what kind of sporting activities are you aware of?
- A.** When I have been down there I have seen him play golf, and he wipes the floor with me. He is a fine sportsman.
- Q.** All right; as far as you are concerned, and knowing Nathan as you do, do you feel that the incident that we have heard about in December of 2008 is an incident that is ever likely to be repeated by Nathan?
- A.** No. It will never be repeated.
- Q.** As far as you can tell, do you feel that Nathan has learned any lessons from the involvement with the police and obviously the involvement with the GOC?
- A.** I feel that he has learned, as every young boy does, to stay away from drink. He would not have behaved like that had he not been drinking – a young 19-year-old boy, had he not been drinking would never have behaved like that.
- Q.** All right. Mr Hack, those are all the questions I wanted to ask. I don't know if there are any further questions?

Mr Albuery: Not from me, thank you.

Lady Wall: Questions from the Committee? [*No questions*] No; well, thank you very much for coming and giving evidence, it has been very helpful.

[*The witness stood down*]

Mr Hodivala: The next witness is Carolyn Eyre, page 6 of your bundle.

**Carolyn Eyre, called and affirmed
Examined-in-chief by Mr Hodivala**

- Q.** Can you give your full name please?
- A.** My name is Carolyn Eyre.
- Q.** And Ms Eyre, in terms of your knowledge of Nathan Sivajoti, how long have you known him?
- A.** I have known him since he was about 12. My children started at high school with Nathan and they became friends, and so we have known him since then.
- Q.** Just looking at your reference I see that you are employed by Education Leeds as a manager of the Health, Safety & Wellbeing team.
- A.** Yes.
- Q.** Does that involve you having frequent contact with teenagers and school-aged people?

- A.** It does not now. It did when I was a practitioner. Now my work is more managing allegations; I am Senior Officer for allegations, managing CRBs, risk assessments of convictions and cautions.
- Q.** In that time when you used to have regular and frequent contact with people of school age did you know Nathan?
- A.** No, I did not know Nathan when I was a practitioner. I was working in the child protection field by then.
- Q.** All right; but as far as you are concerned how would you describe Nathan's character and personality?
- A.** Nathan is a very mild and very focused lad who is very good company. He has always been welcome in our house. He has certainly been welcomed enough for us to have taken him on holiday for a few years with my own children and Nathan and his brother. I think the first time we took him on holiday was when he was about 14 – three weeks' camping in France.
- Q.** As far as you are concerned you describe him in your reference at page 6 as "intelligent" and amongst other things "respectful" towards other people?
- A.** Yes, he is. One of the years that we took him on holiday we also took my god-children who are much younger children. They were hard work! Nathan and David, my son, spent an awful lot of time playing quick cricket, taking them to the pool, looking after them for us. He is a very tolerant lad, who the children adored and family members – my children's grandparents love Nathan and the rest of his family. People warm to him very, very quickly. He is engaging, he is studious and like I said he is very, very mild.
- Q.** In your role when you were as it were practising on a hands-on basis with regard to school-aged children, did you ever have to conduct risk assessments with regard to those children?
- A.** No, the only risk assessments I do of children are children who are sexually harmful, and we make decisions about whether they should be placed in mainstream education. The risk assessment part of my work is about clearing teachers, classroom assistants and education professionals to work with children, so when CRBs are undertaken with a teacher or a learning mentor if there is a criminal conviction or cautions we undertake this kind of process, and I oversee that process.
- Q.** Obviously it is ultimately a matter for the Committee -
- A.** Absolutely.
- Q.** - but you have some experience in balancing risks posed by individuals to those with whom they come into contact. Knowing Nathan as you do and knowing the facts of the conviction for assault, were you able to come to any conclusions yourself – obviously, not in an expert capacity but yourself bearing in mind all your experience – about the risks that Nathan continued to pose?
- A.** I think the most pressing thing for me and my family when we first heard about this was the fact that it had happened at all. It was really difficult to assimilate this information about this court case which was coming up, because we knew

about it before the court case that this was coming, that this incident had happened. It involved a number of my son's friends and it was not just Nathan, and the whole concept that it had happened and that there had been drink involved was part of what we talked about as family and what we talked about with our children and with Nathan.

I have to say on the basis that I have been taking him to France since he was 14 there are lots of issues, when you are camping with a big crowd of teenagers (which we did for many years). There are lots of issues about how young people manage alcohol, do not manage alcohol, but we never, ever had to talk to Nathan about inappropriate use of alcohol. We never found them sneaking around or getting into trouble on the campsite like some of the other teenagers, so the whole thing for me was about 'This is so different from the young man that we know'. All of my instincts are that despite what is written on a piece of paper, the technicality of this being an ABH conviction, this was so far removed from the way that he presents himself, the way that he usually upholds himself, that I cannot conceive that he would do this again.

Because I am speaking as somebody who thinks an awful lot of him but also has a professional responsibility here for children, young people, vulnerable adults, I would be very anxious about putting myself on the line if I did not absolutely believe that this was something that he would never do again.

Q. All right, thank you, that is all I wanted to ask again. I do not know if there are any further questions?

Mr Albuery: No, thank you.

Lady Wall: Any questions from the Committee? [*No questions*] No, and I have no questions, so thank you very much for coming here today.

[*The witness stood down*]

Mr Hodivala: Thank you; can I finally then call Mr Karuna Sivajoti?

**Karuna Sivajoti, called and affirmed
Examined-in-chief by Mr Hodivala**

Q. Can you give your full name please?

A. Karuna Sivajoti.

Q. Mr Sivajoti, you are Nathan's father, and you have provided a reference in writing at page 1 of the bundle that the Committee have, but I just want to ask you please on a personal level how you would describe Nathan and his character. Let's start first of all with his growing up and his siblings and family environment. We see that he is the third-oldest of your four children?

A. That's right, yes.

Q. And the other children that you have are reasonably successful academically, is that fair?

- A.** Yes. How would I describe Nathan? Nathan is as you say one of four boys. The other two have finished university life. They both got good degrees and one is a trainee actuary and the other is a para planner administrator/financial adviser, following in my footsteps. Nathan himself academically has been brilliant. You have heard the results that he has managed to produce so far, and also in the first year at university he has been superb. He has got through that and the University have asked him in fact to carry on and start his second year.

Growing up he has been very kind to his younger brother, he still helps him with his homework. He gets on great with his older brothers. You have heard about his sporting activities -

- Q.** Let me just ask you a bit about that. We see again in your statement that he loves cricket, football, golf, tennis, those sports being amongst his favourites, and you say that he likes to play and is pretty good at them. What kind of qualities do you think that Nathan has showed in his sport that reflects on his character and personality in day-to-day life?

- A.** I think it is fair to say that Nathan likes to lead. He likes to be the one that gives the directions. If there was a group of his mates, Nathan tends to arrange the evenings out, and you will see him on a cricket field he was made captain. Despite not being the best player in the team he was made the captain, and the fact that he was a very good leader for his colleagues. He could always encourage, but at times he would say a few choice words to his men to motivate them. So he is a leader, he is not one who sits around, he is not idle, he wants to do things.

- Q.** All right; let me move on to your knowledge of Nathan's charity work and voluntary work. We have heard about the tsunami fund-raising event; whose idea was that?

- A.** I had just returned from a holiday, and in fact John was with me. We had just come back and the tsunami happened days after we had returned from Sri Lanka. We had just returned and we were watching the television – [pause].

Lady Wall: I am sure we all realise that this was particularly distressing, so perhaps we could move on and change the subject?

Mr Hodivala: It is right to say that there was a large amount of money, £12,000 raised?

- A.** Yes.

- Q.** And that effectively as a result of Nathan's involvement he was instrumental in that particular fund-raising event?

- A.** Yes, I do apologise for that. He was sitting there watching all these things, and Nathan basically said 'We need to do something, Dad'.

- Q.** Okay.

- A.** And it went on from there.

- Q.** Voluntary work: we can see from your testimonial that Nathan has done some work at a hospital?
- A.** Yes, at the local Harrogate hospital.
- Q.** And as far as you are concerned how do you view the incident involving Nathan in December 2008?
- A.** It is, as everybody has said, wholly out of character. He is not that type of boy. He comes from a family who – you know, we don't have these things. It just doesn't happen. We have not brought him up that way.
- Q.** All right; Mr Sivajoti, those are all the questions I wanted to ask. I do not know if there are any other questions?

Mr Albuery: No, thank you.

Lady Wall: Do we have any questions? [*No questions from the Committee*] Thank you very much.

[*The witness stood down*]

Mr Hodivala: Can I then read into the record the remaining references that we have? I will start at page 7. This is a reference from Brent Pickles dated 10 January 2010 addressed to Ella Power, the Company Secretary of the AOP:

“In reference to Mr Nathan Sivajoti, and request for a reference. Taking your questions in order, my reference is as follows.

1. My current role is one of Supplies Manager at RSL Steeper, in Leeds, and have been in this post since October 2001.
2. Nathan is the same age as my son Gavin and I have known him and his family since around 1995 when they moved to Wetherby.
3. The time I spent longest with Nathan is when he was a member of a Junior Cricket Team I run. Nathan played in the Under 13 and Under 15 sides of Wetherby Cricket Club of which I am the Junior Representative, and at that time managed the sides that Nathan was involved.

Cricket is a game that has high standards of etiquette inbuilt into its law and ethos. It is often difficult with very competitive teenagers to uphold these standards throughout the games. Nathan although not the best player in the team displayed some of the best leadership qualities and sense of fair play I have ever seen in a player so young. For that reason he was the team captain for all that period. There were many instances in match situations where Nathan would contribute to ensure the game proceeded fairly even to the detriment of his own side.

4. I have seen a copy of the allegation and was aware of the case when it appeared in the local newspaper. I will say that I was shocked to see Nathan's name involved in such an incident, and I am sure he regrets his involvement greatly, and any harm he has caused to other parties.

My shock was not that incidents of this nature occur, for as we know they have always been commonplace, but that it was totally out of character for Nathan.

I feel strongly that many people learn greatly from their mistakes and young people can become stronger for this learning. I am sure that Nathan has learnt a lot from this harrowing experience and will in many senses use this regret to become a stronger person.

I hope your association will take this into consideration as many people have undertaken regrettable actions in the heat of the moment. That fortunately for them has not come under the jurisdiction of the Law. I hope your association will afford Nathan a second chance, as I am sure that in future he will bring much credit to your Association."

The next reference is from Mr Phuman Singh dated 31 December 2009:

"Dear Sirs,

I am now retired following a 20 year career in the financial services industry as a mortgager packager with my own business.

I have known Nathan since he was born, initially as a business associate of his father and how a close friend of the family. Nathan is a capable and caring person who is always eager to help others. He is honest and trustworthy which can be seen from his sporting activities, for some of which he has been given the responsibility of captaincy. He is a respected leader and team player.

Nathan is a very intelligent and able student gaining A grades at A Levels in Maths, Further Maths, Chemistry and Biology. He was very excited to begin his Optometry course and has passed his first year.

I have no hesitation in recommending Nathan to you as a thorough and decent individual who I would trust do anything to the best of his ability and with good humour.

I confirm that I have seen a copy of the allegation Mr Nathan Sivajoti faces and also I am aware that my reference will be relied upon at his hearing before the Fitness to Practise Committee."

The next reference is from Sam Pepper received on 14 September 2009:

“To whom it may concern

I am aware of Nathan’s conviction for assault causing actual bodily harm and I am also aware that this reference will be used in a hearing.

I have been friends with Nathan’s older brother for many years and have spent many hours in the family home and in company with Nathan. He has always been very polite and I have always got along with him very well. He is a chatty individual and never has a bad word to say about anyone. When I heard about his conviction I didn’t believe it and had to ring his brother for confirmation, because this is something so massively out of character for him. A few days after hearing I bumped into Nathan at the golf club and asked him what had happened. He was obviously still shaken up by the experience with the police and avoided the subject as much as possible, but it was clear he was not himself. I believe Nathan has learnt from his faults the hard way and judging on how badly his run in with the police effected him I very much doubt Nathan would like to repeat them. I also believe Nathan not be aggressive in the slightest and his outburst was a mistake in an otherwise flawless character, which he has actively tried to rectify by cutting down on drinking after a long period of quitting completely.”

A reference from Robert Cooke dated 11 September 2009:

“To whom it may concern

Nathan and I have been good friends for 15 years, first meeting at the start of primary school. As well as being classmates in primary school, we also attended the same secondary school and now attend the same university. In addition to this we have also taken part in many sporting activities together including golf, tennis, tennis, football and cricket and have been on holidays together.

I therefore know Nathan very well probably better than many other people, and I believe his actions to be out of character. Over the many years I have known Nathan I have no knowledge of Nathan being in a fight previous to this occasion or since, so I was extremely surprised to hear of these events.

I believe this has had a profound effect on Nathan which has resulted in Nathan reflecting on this incident and making significant changes to his lifestyle. It’s clear to me Nathan was bitterly disappointed and embarrassed by his actions so he has accepted that excessive drinking played a huge part in this incident, and I believe he is making changes to ensure this does not happen again.”

The next reference is from Paul Appleson. His first reference confirms that the reference that I am about to read was provided in knowledge of the details

of the allegation, and he is aware that his reference will be relied upon at the Fitness to Practise Committee, and that he stands by the contents of that reference. The reference itself is dated 2 September 2009:

“To whom it may concern

I am writing this letter as a personal reference for Nathan Sivajoti. I am aware of the conviction against him for actual bodily harm.

I have known Nathan as a patient in our practice since 1996, where with the rest of his family he has attended many times for eye examinations and contact lens appointments. He also spent some time with me in 2008, gaining some work experience in the practice, prior to applying to study optometry at university.

At all times I have found him to be intelligent, sensible, courteous and reliable.

I trust that this information will be of assistance and will be happy to provide further information if required. I am aware my reference will be used in a hearing on 2nd of September.”

The next reference is from Mr P Henstock, who is the proprietor of the Grosvenor Hotel:

“To whom it may concern

The Grosvenor Hotel specialises in holidays for the less able, elderly, disabled mentally and physically, and is highly commended by Age Concern and Social Services. In 2007 we won the Community award for the whole of Essex. The hotel is run on a “Social Inclusion” regime, i.e. non profit making.

During the summers of 2006, 2007 and 2008 Nathan spent 3 weeks of his summer holidays with us as a volunteer helping these people. He originally came for some work experience in the kitchen but was so popular with our guests he progressed to helping them with trips out on our minibus, pushing the wheelchairs and by just listening to them which is vital to their well being.

Nathan did not come to us in 2009 as he was travelling through Thailand and other countries in the Far East before he settled into his chosen profession. His absence was missed by our regular customers who asked after him.

Nathan has kept in touch with us and I was very shocked to hear of his problems with the police. This is totally out of character for him and I know he bitterly regrets his actions.

He is not violent or argumentative and I would have him working with me and our customers any time he so wishes, he has been a credit to us and his family.

I understand this statement is to be used at a hearing. I have no hesitation in recommending Nathan for any position dealing with the public.”

The next statement is from Michael Large:

“To whom it may concern

I am aware of Nathan’s conviction for assault causing actual bodily harm and also that this reference will be used in a hearing.

I am a supervisor at Morrisons supermarket and Nathan worked under me for about a year. In his time with me he was always pleasant and interacted with customers and staff very well. I was extremely shocked to hear of Nathan’s conviction, as this is immensely out of character. After speaking to Nathan, since the incident, I can tell he is sincerely regretful for his actions and clearly embarrassed to have stooped as low as he did. I cannot tell you enough how much I believe this is a one off incident and that Nathan has learnt from his mistake.”

The next reference is from David Bean, who is associated with the St John Fisher Associated Sixth Form, dated 11 January 2010:

“Dear Ms Power,

I write at the behest of my colleague, Mr Chadwick, whom you approached for a character reference for **Mr Nathan Sivajoti**. It is our policy that the student’s erstwhile Senior Tutor, possessed of full access to all records, is responsible for any such reference.

I was Mr Sivajoti’s Senior Tutor in the Sixth Form from September 2006 to July 2008. I had responsibility for overseeing his academic progress, personal welfare and development and application to University/Employment and liaised with him on at least a weekly basis. I have been employed at this school since 1993 and have held my current position as Senior Tutor since 2002.

Nathan arrived in our Sixth Form with excellent academic and personal references from his previous school, Wetherby High. He adjusted reasonably well to his new environment and the demands of Advanced Level study, although I feel it fair to say that he did not always work to the very best of his potential. Nevertheless, he consistently presented as polite and co-operative with a calm demeanour and lively sense of humour. He enjoyed good relationships with staff and peers alike and conducted himself in an appropriate fashion throughout his time here. Mr Sivajoti took part in a number of sporting and fundraising events in

which he demonstrated reliability and integrity, as well as the ability to work well with others. At no time did his behaviour, manner or degree of honesty give cause for concern.

I confirm that I have seen a copy of the allegation Mr Sivajoti faces and would, based on his record here with us, regard his criminal conviction as out of character.

I should be pleased to provide any further information you require.”

The next reference is from Andi Ellis. It is an e-mail to Nathan Sivajoti, and I should explain that Mr Ellis was the Probation Service officer:

“Mr Sivajoti was on a Community Order with the requirement of 150 hours unpaid work (Community Service). Mr Sivajoti complied well with his order and there have been no issues with compliance or motivation.

Mr Sivajoti was a well liked young man and I received a lot of positive feedback from staff on his motivation and his positive behaviour.

I am fully aware of the offence that was committed and the implications within the offence.

Mr Sivajoti is assessed as a low risk offender, that of being low risk of harm and low risk of re-offending.”

You should have at page 17a a further letter signed by Mr Ellis which is undated on Ministry of Justice headed notepaper saying this:

“Dear Sir or Madam,

Mr Sivajoti was previously on Probation and was on a 12 month Community Order with the requirement of 150 hours Community Punishment.

Mr Sivajoti was a well liked young man and expressed a positive attitude to complete his Community Order.

Throughout the order I received positive feedback about Mr Sivajoti’s behaviour and attitude.

Mr Sivajoti is assessed as a low risk offender, that of low risk of harm to the public and low risk of harm of re-offending.

I feel that Mr Sivajoti has completed and received enough punishment for his actions and that any further punishments, reprimands and loss would only hinder Mr Sivajoti’s positive progress in society.”

Then we have a letter from Caroline Edwards confirming that effectively Mr Sivajoti has completed his unpaid work requirement, and it concludes by saying:

“I would like to send you my good wishes for the future, and thank you on behalf of all the people you have worked for and for your efforts whilst attending Unpaid Work.”

There are then in R2 some further letters. I am just wondering whether I can perhaps summarise these. The first letter from Andrew Stokes – perhaps with your permission Madam I can summarise these for the purposes of the record, unless you wish me to read them?

Lady Wall: They are letters from three different people and they are quite short, so I think they should all be read into the record, since it is really very significant in terms of Mr Sivajoti’s future.

Mr Hodivala: So be it. The first letter is dated 4 February 2010 from Manchester University. It is from a gentleman called Andrew E Stokes who is the Teaching Fellow of Optometry at the Faculty of Life Sciences, University of Manchester in Sackville Street. It is addressed:

“To whom it may concern

Nathan Sivajoti has been in my tutor group since the start of his course at the University of Manchester. He has been a reliable student in both the theoretical and practical aspects of the course. His first year examination results have given Nathan the opportunity to progress to the second year. I am not aware of any reason why the University is not happy for Nathan to progress.

As far as I am aware he has worked well individually and in small groups. I have been pleased with his grasp of the technical details new to the majority of first year students.

Nathan is obviously keen to further his studies and I hope the details that I have provided help with the decisions that are to be made regarding his future.”

There is then a letter from Dr David Boam who is the Chief Examinations Officer at the Faculty of Life Sciences at the University of Manchester dated 13 January 2010 and addressed to Nathan Sivajoti:

“Dear Nathan
Re: period of Interruption

I am writing to inform you that the Faculty of Life Sciences has given you permission to interrupt your studies for one year with effect from June 12, 2009. You will return to full time study on September 20, 2010 to start the second year of your degree.

Prior to your return to study, you will be contacted by the Student Support Office to discuss your re-admittance to the degree programme.”

It goes on to give a contact number and e-mail address if Mr Sivajoti has not been contacted up to a few days before his return.

“Please note that during your period of interruption you will not be a registered student of the University, and your right to be on University premises will be that of a member of the public. You may not undertake work on University premises as you are not covered by our insurance arrangements.”

It then goes on to describe the requirement for him to keep in touch with the University via his personal adviser and programme director, and that is signed “Dr David Boam”.

There is then a further letter from Dr Boam dated 6 July 2009 –

Lady Wall: If I may just interrupt you there, I notice that that letter is copied to three other people. Can you just explain who they are? Mr Stokes we know about –

Mr Hodivala: Yes, I beg your pardon, I see down at the bottom there. [*Confers*] Dr Liz Sheffield, Head of Faculty at Life Sciences; Mr Stokes you are aware of, his personal tutor; and Professor Christine Dickinson is the Head of Optometry.

Lady Wall: Thank you.

Mr Hodivala: The letter from Dr David Boam dated 6 July 2009 addressed to Nathan:

“Dear Nathan,

I am pleased to inform you that you have passed the First Year Examination. Your individual marks are listed overleaf.

Next academic year begins on Monday 21st September 2009. We will write to you again later in the vacation to inform you of arrangements for Registration for the Second year.

Please note that if you wish to change onto a different degree programme for your second year, the deadline for submitting your completed Programme change form is Tuesday 1st September 2009. Programme changes will not be considered after this date.”

Then over the page you have a list of the results for Mr Sivajoti's first year course. I do not propose to read those out into the record unless you wish me to, Madam – or any of your colleagues wish me to. [No]

Lady Wall: Thank you very much. Are there any questions about any of those? [No questions] Thank you very much, that has completed our considerations of R1 and R2.

Mr Hodivala: Yes, it has. That is the evidence on behalf of Mr Sivajoti.

Lady Wall: Is there anything else you wish to say Mr Hodivala?

Mr Hodivala: There is. I do not know if the GOC wants to make any representations at this stage?

Mr Albuery: Yes, you might want to hear first from me, Madam, so that the registrant's representative speaks to you last.

Madam, as you know under Rule 50 the Council does have an ability to make any submissions, if thought appropriate, in relation to what sanction if any you should impose. Rule 53 in fact says:

“Where the determination of the Fitness to Practise Committee under rule 50 is that an allegation is proven”,

(that is an allegation of impairment which we have already found proven):

“- the Committee may receive further evidence” – I have none – “and hear any further submissions from the Presenting Officer and the registrant as to the appropriate order.”

Madam, the orders that you can make as you know are set out in Section 13F of the Opticians Act, and in ascending order are a conditional registration order, a suspension order, or erasure, and you can impose a fine in addition or instead of any of those orders.

In this case the Council invites you to conclude that any sanction you impose in this case should be at the higher end of the scale. There is no doubt that there are a lot of good things that can be, and have been, said about Mr Sivajoti. He is bright, he appears to come – and clearly does – from a good family, and those who know him better than any of us assess him, most importantly the Probation Service, as of low risk of offending. That is relevant in terms of your assessment of public protection.

But Madam of course public protection is only one aspect of the matters you need to consider in terms of considering what sanctions to impose, and in that regard Mr Ellis misses the point, if I may say so, at page 17a of the reference bundle, the Probation Officer, when he says in the last paragraph “- Mr Sivajoti has been punished enough” and he must be allowed to move on and make his way in society, because of course we all know that your function has

nothing to do with punishment at all; rather it is to do with the proper standards or the maintenance of proper standards in the profession and the confidence that the public can have in the profession.

Irrespective of whether or not there is a public protection issue here, the Council submits that the reputation of the profession can only properly be maintained, and the confidence the public have a right to expect in it, if a sanction is imposed which shows not Mr Sivajoti but others that this is a profession that will not tolerate vicious attacks, like this one by Mr Sivajoti as a member of a group who kicked on two occasions whilst the victim was on the floor, that victim in the head and the head/neck area. Madam, of course you will receive advice later in relation to proportionality and matters such as that.

In terms of previous good character the Council accepts that Mr Sivajoti of course is a man of good character, and that there are no other disciplinary orders or sanctions made against him.

Mr Hodivala: Can I deal first, turning to the registrant's submissions at this stage on sanction, with the offence itself. You have been taken by the Council's representative in a little detail with regard to the facts surrounding this offence. There is very little that I wish to say with regard to the fact of the offence itself, save to say this: that it is obviously common ground that Mr Sivajoti was one of a number of individuals and who was involved on this particular night.

When it comes to the decision on sanction I would just invite you and your colleagues to put into its proper context Mr Sivajoti's involvement on this particular evening. It is two kicks, obviously. There is nothing that I say that seeks to minimise Mr Sivajoti's involvement, but it is two kicks that take place over the course of two seconds. That is the first point.

The second point is that clearly in terms of the seriousness of the incident itself although it was charged and he pleaded guilty to assault occasioning actual bodily harm, there being a number of individuals involved, certainly the magistrates who dealt with this guilty plea felt it appropriate to retain this in the magistrates' court for sentence rather than commit it up to the Crown Court for sentence. Likewise, emphasising that point, the magistrates felt that this offence did not cross the custody threshold – in other words the magistrates themselves felt when sentencing, that this was an offence that did not merit a sentence of imprisonment. It is just that context that I ask you to bear in mind, when obviously looking at the sanction that you find appropriate, bearing in mind that it is a conviction for assault occasioning actual bodily harm.

You have heard through his police interview the regret and remorse that he has expressed at the time. You have obviously heard through various witnesses themselves the regret and remorse that Mr Sivajoti has obviously demonstrated for his behaviour that particular evening.

Against what is obviously, as I hope the Committee will treat it, an out-of-character incident, and what may frequently be described as a "moment of madness" on behalf of this young man, you have a number of startling positive

attributes for Mr Sivajoti. You have heard from people who know him, and know him well. In particular you have heard from Ms Eyre, who describes him as mild, focused, good company, respectful and intelligent. People warm to him, and he is studious, and the fact of his intelligence is in my submission borne out by his A-level grades, because that is the most recent demonstrable yardstick that you have with regard to his intelligence. To say that a gentleman who has four As who wishes to conduct himself in optometry, who wishes to complete their optometry course and serve the public as an optometrist, clearly Mr Sivajoti has the intelligence to do that. The single question for you and your colleagues to decide is whether today means that those opportunities are brought to a premature conclusion.

The reality of the situation is that when you and your colleagues determine the sanction it is appreciated and acknowledged, and has been by Mr Sivajoti throughout, that you will either be looking at a period of suspension of Mr Sivajoti from the student register, or you will be considering erasure of Mr Sivajoti from the student register. It certainly seems to us that there is little merit in imposing conditional registration, and certainly a warning would not meet the aggravated features of this particular case and the serious nature of this particular case.

However, the power to order a financial penalty is in addition to any sanction that you feel fit to impose, and if this Committee felt that bearing in mind Mr Sivajoti's personal circumstances that a period of suspension on its own did not adequately punish Mr Sivajoti for his conduct on the evening of 27 December 2008, or adequately mark the public interest in seeing that the profession is being monitored adequately, then we would invite the Committee to consider imposing a financial penalty on Mr Sivajoti as an additional punishment to any period of suspension.

The incident itself we submit can avoid the ultimate sanction of erasure, for the following reasons: this is not an incident related to the workplace or patients in any way, shape or form, whether inside work or outside work. It is not a question of Mr Sivajoti assaulting a patient that he has seen previously or is due to see. It is completely unrelated to the workplace. It is, as I have described already, two or three seconds of madness for an individual, completely out of character. It is accepted that Mr Sivajoti was peripheral in his involvement in this particular incident itself in terms of him not being the ring-leader, not starting the incident, and you may well readily accept that an individual whose involvement is confined to two or three seconds is not the ring-leader as such.

In my submission, Mr Sivajoti has shown remarkable insight into his position as well, and insight is obviously a pertinent feature that you and your colleagues will consider when deciding whether the only sanction that you can impose in this particular case is one of erasure. He was barely 19 at the time of this particular incident, is 20 years old now, and at the time of the incident in December of 2008 he was barely three months into the first year of his optometry course.

One factor that, if the Committee agrees with this submission, we would invite you to consider in your deliberations is that an optometry degree is not simply about learning about the eye, the physiology of the eye, diseases and so on and so forth, but is also about a learning process as to how an optometrist has to conduct themselves, because it is right to say obviously that membership of the Register is a privilege and not a right. Three months barely into his optometry course Mr Sivajoti conducts himself in this appalling way, for which he has always admitted his involvement and co-operated with the police and co-operated with the courts, and we would suggest is co-operating with the GOC as well.

You may find that there is some limited merit to the argument that it is a different standard, or different scenario certainly, that applies to an individual who has been in practice for some 20 years as to that which applies to Mr Sivajoti, given his youth, relative immaturity, and his having commenced the course barely three months prior to this incident. However in all other respects Mr Sivajoti is a dedicated individual who has chosen the profession of optometry.

He is in all other respects an exemplary character to the profession, and in our submission a period of suspension would demonstrate adequate punishment for these two reasons. It would be something that obviously Mr Sivajoti would have to declare to future employers in terms not just of the conviction but in terms of the sanction that was imposed by the General Optical Council, and it would also be something that would be widely reported on the media in terms of the optometric media, and I am sure you and your colleagues know that the optometric media is a close-knit community. So it would demonstrate via media reporting, and indeed on the GOC website, that conduct such as Mr Sivajoti engaged in on 27 December simply will not be tolerated.

However, just stepping back and looking at the overall circumstances of the case, looking at the testimonials and looking at his personal circumstances, in our submission, adopting a proportionate approach to the sanction and adopting what is sometimes called the bottom-up approach to sanction, a period of suspension would adequately reflect your public duties in this particular case.

Unless I can assist you any further Madam, those are my submissions.

Lady Wall: Thank you very much. [*Confers*] Are there any other responses? [*No*]

Mr Levisaur: I shall give the Committee some advice, and I do so. Section 13F(2) of the Act provides that if the Fitness to Practise Committee finds student registrants' fitness to undertake training is impaired - and you have so found - they "may" if they think fit give a direction specific in sub-section (3), that is to say a direction for erasure, a direction for suspension for a period not exceeding 12 months, or they may direct that there be conditions imposed upon the registrant's registration. It follows from the use of the word "may" that the Committee is not required to give any such direction. This is a matter for the Committee. It "may", and you are not required to do so but you "may".

In any case other than a health case which the Fitness to Practise Committee have a power to impose any of those three directions, they may impose either in addition to the direction or instead of it a financial penalty order. That is limited to a maximum of £50,000. Your attention has been drawn to this power. I remind you that you have also heard this young man in effect has no money whatsoever; he is presently unemployed, is seeking part-time or full-time work. You have had no evidence of any savings, and you may well conclude that any penalty would simply be paid by his parents. That, however, is entirely a matter for you, but you must bear those factors in mind in considering whether to impose a financial direction.

In addressing the issue of sanction will you please remember that sanction is not punishment. It may have that effect but it is not punishment, and the point was well made that whatever the Probation Service might or might not think this is not an issue of punishment. You are of course to have regard to your duty to protect the public and also to maintain public confidence in the profession, and you must bear in mind the need to be proportionate when imposing sanctions, consider both this registrant and of course the needs of the public, consider the issues that bring him before you, and his character and antecedents. You will consider all of the matters which have been urged on you by Counsel for the registrant, and you will give such weight to the testimonials and to the oral evidence adduced today as you think fit.

You should give proper consideration to what is often termed "insight". Clearly neither that nor the registrant's previous good character can prevent the imposition of sanction if that is what is required. However, the extent to which you consider that the registrant has insight into the factors giving rise to, and the seriousness of, his behaviour in attacking a blameless member of the public whilst in drink, and as part of a group of young men at four o'clock in the morning, is a factor that you may properly take into account in considering sanction.

You may take the view that the registrant's underlying character, about which you have heard, his insight and his forbearance from drink, and indeed his youth, tend to suggest that there is little risk to the public in this case. The real area of concern for you will not doubt be to uphold public confidence in the profession.

That is all that I wish to say by way of advice to the Committee. Gentlemen, you of course have the right to correct or add anything.

Mr Hodivala: No, thank you.

Mr Albuery: No, thank you.

Lady Wall: Right, thank you very much. It is just after one o'clock. Everybody needs lunch after a long and testing morning, and the Committee need to deliberate and also to formulate their reasons, which always takes quite a long time. We think that returning at three o'clock and giving everybody a

long lunchtime is reasonable, unless there are any suggestions to the contrary? [No] Thank you very much.

[Committee adjourned at 1.00 p.m.]

[Committee reconvened at 3.35 p.m.]

Lady Wall: Mr Sivajoti, would you like to stand up please?

Decision of the Committee

The Committee has heard evidence on behalf of the registrant and submissions on behalf of the Council and the registrant. It has accepted the advice of the Legal Adviser.

The Committee reminds itself that the offence for which the registrant was convicted was a serious one involving violence inflicted on an entirely innocent member of the public. The registrant was a 19-year-old undergraduate when, in drink, he took part in an attack on another young man at four o'clock in the morning, kicking him twice while he was lying on the ground. This is unacceptable behaviour in anyone and not to be tolerated in a student member of a caring profession.

The Committee has heard evidence from the registrant and from three others and has received a number of character references. The Committee is satisfied that this was behaviour which was totally out of character. The registrant is a hard working young man who has involved himself in charitable endeavours, playing a great deal of sport and who has applied himself to his studies.

He was away from home for the first time at the end of his first term at university. His behaviour since the attack has demonstrated a great deal of insight. Recognising that drink was an issue, the registrant took steps to prevent this affecting his behaviour in future. His family have been mortified by his conduct; dealing with them has been a salutary experience for this young man. He has shown a great deal of remorse and admitted his impairment to the Committee.

The registrant told his tutor promptly of his arrest and sought help. He reported himself to the Council and then voluntarily removed himself from his academic studies at university. The Committee regards this as being of considerable importance. The registrant was told that his behaviour was so serious that his professional body was likely to suspend his registration. He accepted the advice and pre-empted the decision by ceasing his academic training at the end of his first year at university. The consequence will be that the registrant will not be able to qualify for at least a year after his peers. That in turn means that he will never be able to recover that year's lost earnings.

The Committee has considered whether the public requires protection from this registrant. It is satisfied that this registrant has learnt his lesson and is

very unlikely to behave in this way again. That said, public confidence in the profession would undoubtedly be undermined if no sanction were to be imposed. This is not a case for the imposition for conditions. Counsel for the registrant realistically submitted, at the very least, this was an appropriate case for suspension.

Recognising this to be an exceptional case the Committee has decided that the appropriate order is for a direction that this registrant's registration be suspended for a period of three months. An order for suspension will remain on this registrant's record for life. He will necessarily have to declare it on each occasion that he seeks to register or re-register.

The Committee is minded, in this instance, not to order a review hearing. A review after such a short period of suspension whilst the registrant has voluntarily removed himself from academic study would serve no purpose.

If no appeal against this sanction is lodged, this suspension will take effect 28 days from today.

Mr Sivajoti, do you understand?

Mr Sivajoti: Yes.

Lady Wall: Right. Thank you very much, the hearing is concluded.

[Hearing concluded at 3.40 p.m.]