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

**GENERAL OPTICAL COUNCIL
AND
OLIVER WRIGHT STEVENS (01-7678)**

6 July 2010

REVIEW HEARING

REVIEW HEARING: OLIVER WRIGHT STEVENS (01-7678)

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Committee Members: Lady Margaret Wall (Lay) (Chair)
Ms Margaret Hallendorff MBE (Lay)
Mr Rod Varley (Lay)
Ms Alison Hudson (Optometrist)
Mr Gordon Ilett (Optometrist)

Legal Adviser: Mr Michael Parroy QC

Hearings Manager: Mr David Henley BEM

For the Council: Ms Kate Steele

For the Registrant: Mr Sandesh Singh
Ms Gerda Goldinger

[Hearing commenced at 9.48 am]

Lady Margaret Wall: Good morning. I am Margaret Wall, 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 two optometrists and three lay members. I will ask the members to introduce themselves and the capacity in which they sit. *[Introductions made]* To my right is Mr Parroy QC, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee and ensure that the proceedings are conducted in accordance with the Rules of Procedure, so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate. In the event that any matter arises during the course of the Committee's deliberations upon which the Committee seeks advice, the parties will 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 are remembers 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. Should we ascertain whether or not anybody thinks that there are health issues today?

Mr Singh: Madam, there are. We discussed this briefly before we came into the Tribunal Room. Both of us agree that there are health issues to be discussed in the application for an adjournment which I would like to make in a moment. My application was that you and your colleagues should hear the application for an adjournment in private, pursuant to Rule 23 of your Rules. I do not know, Madam, if you and your colleagues wish me to go through the Rules now and make the application or whether you have formed a preliminary view on it.

Lady Wall: We are familiar the Rules.

Mr Singh: Perhaps I could take you to them, just for completeness' sake.

Lady Wall: For the purpose of the transcript, I think that would be wise.

Mr Singh: Yes, of course; absolutely. Madam, it is Rule 23 of the Fitness to Practise Rules. Ms Steele and I are both working from a printout, so I am afraid I do not have the page number to hand. But if you and your colleagues have that, Rule 23(1),

“Subject to paragraphs (2) to (5) below, hearings before the Fitness to Practise Committee shall be held in public”,

and subsection (2) gives the Fitness to Practise Committee the power to determine that the public should be excluded from proceedings, i.e. that the proceedings should be held in private, if the balancing exercise, if I can put it that way, falls in that direction. Subsection (3), subject to the same balancing considerations, states that where matters of physical or mental health of the Registrant are to be considered, the presumption is that the hearing shall be in private rather than in public unless there are good reasons to depart from that.

Our submission is two-fold, that whether you and your colleagues, Madam, consider this under Rule 23(2) in the balancing exercise, or Rule 23(3), the position would in our submission be that this application to adjourn should be held in private. We would submit that subsection (3) bites in this case, because you will be considering the health of the Registrant in the application to adjourn, and therefore the presumption is that it should be private. However, you may not need to determine that point if there is a disagreement over it and we may not need to waste time over that, because if you and your colleagues decided in your discretion that this application to adjourn should be held in private in any event, we may not need to go into that.

When considering the balancing exercise, if I can put it that way, clearly the Registrant's health is a private matter, and it would be in his interest for those matters to remain private. On the other side, you may feel that there is no public interest to be served by publishing details of his health on the internet.

The important point here is the conditions. If you did not accede to the application to adjourn, that is the part which obviously the public would be interested in. But, in my submission, there is no public interest in publishing the details of his health. So in our submission, the balancing exercise falls firmly in favour of the hearing being private.

Lady Wall: Ms Steele?

Ms Steele: Mr Singh has taken you to the relevant Rule, which you have already said you are familiar with. It is not entirely clear whether it is appropriate for you to be basing your decision under Rule 23(3) on the basis that the application that you are about to hear relates to the Registrant's health and therefore automatically the presumption should be that those parts of the proceedings are heard in private, or whether as Mr Singh has said, you choose the alternative approach – and no doubt you will receive some advice from your Legal Adviser shortly – that it should be a decision made under Section 23(2). But in either event, I do not have any objection on behalf of the Council to the matters relating to the Registrant's health not being made public for the purposes of this specific application for an adjournment, although, subject again to any advice that you may receive, I would say that it would be appropriate for the ultimate conclusion as whether we are going to adjourn or not today to be made public. I do not think there is any dispute about that.

Mr Singh: I have no objection to that all. It is simply the substance of the application.

Lady Wall: Mr Parroy, do you have any advice for the Committee?

Mr Parroy: There is a distinction, as you have rightly been told, between the fact, if the Committee were to come to such a conclusion, that the matter is to be adjourned, and the reasons for the Committee coming to that conclusion. There is no reason why the former cannot be made public in the ordinary way.

Insofar as the reasons are concerned, where they relate directly to the health of the applicant, then either under Rule 23(2) or Rule 23(3) – and to some extent in this situation it seems to me something of a distinction without a difference – these are private matters which can and should be kept private. Therefore, if and insofar as the Committee finds it necessary to refer to any detail of any health matters, that is an issue which should be dealt with in private. But the determination, if there is one of an adjournment, is a public matter which need not refer to the details of health, beyond the statement that for reasons – whatever wording is thought appropriate – of the applicant's health or something in that respect that the Committee is not proceeding today, then there is no reason for the detail to be made public.

Lady Wall: Thank you. Can I ask you withdraw while the Committee considers this matter?

[Hearing adjourned at 9.51 am]

[Hearing resumed at 9.58 am]

Lady Wall: The Committee has considered the advice that we have been given about the application which has been made. We have decided to hear this case in private under Rule 23(3), that:

“The Fitness to Practise Committee shall sit in private where they are considering the physical or mental health of the Registrant”.

We do not consider that in this case there is a public interest element. Thank you.

So is an application being made?

Private hearing

Details redacted

Public hearing

[Hearing adjourned at 10.23 am]

[Hearing resumed at 11.05 am]

Lady Wall: This is our determination:

DETERMINATION OF THE REVIEW

An application was made under Rule 23 by Mr Singh, on behalf of the registrant, for an application to be heard in private. The application was not opposed by Ms Steele, for the Council. The Committee granted the application to sit in private session under Rule 23(3).

Determination redacted – announced in private.

The adjourned hearing to take place on 1 October 2010.

Thank you.

[Hearing concluded at 11.06 am]