



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

**GENERAL OPTICAL COUNCIL**

**F(08)03**

**AND**

**JANINE ELIZABETH VALI (01-20943)**

**SUBSTANTIVE HEARING (resumed)  
Monday, 25 January 2010**

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**SUBSTANTIVE HEARING (resumed)  
JANINE ELIZABETH VALI (01-20942)**

**Monday, 25 January 2010**

Fitness to Practise Committee: Ms Fran Jones (Lay, Chair)  
Mrs Geraldine Huka (Lay)  
Miss Janice McCrudden (Optometrist)  
Mr Rakesh Kapoor (Optometrist)

Legal Adviser: Mr David Marshall

For the GOC: Mr Bradley Albuery  
Mr Nick Leale  
Mr Guy Micklewright

For the Registrant: Mr Jamas Hodiala

Hearings Manager: Mr David Henley BEM

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*[Proceedings commenced at 9.00am]*

**Ms Jones:** Good morning. I have been elected by the Committee to chair this hearing that commenced on 2 November 2009. As you will recall, the hearing was adjourned at the end of the day on 3 November, due to there being insufficient time on that day to complete matters. We recommence today at the stage where we have to make a decision as to whether the facts found proved amount to deficient professional performance and/or misconduct.

The Committee today was to have been made up of two optometrists and three lay members. *[Introductions]* Mr Peter North, a lay member, is unable to be here today, and I myself am the now second lay member. I will return to this in a moment.

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

To your right is Mr David Henley, the Hearings Manager, who will provide administrative support to the Committee. Next to Mr Henley is the transcriber, Mr Nisbet, 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.

All parties are again reminded that where details of a patient are to be discussed, that patient has been allocated the letter 'A' in the allegation and the patient should only be referred to by that letter. Where the patient's name is mentioned in the course of the hearing, the transcriber will delete the name from the transcript and replace it with the words 'Patient A', or 'the Patient'.

I have already informed you that Mr Peter North is unable to be with us today. Rather than a majority of three lay members and two professional members, we are reduced by one. The rules permit that the Committee may sit in this format, or we may recuse one of the professional members. Can I establish from both parties your preferences?

**Mr Leale:** Madam, on behalf of the Council, I submit that you should remain as you are. Obviously, ideally, there would be a lay majority. The quorum is of course three and, if you were to go to three, you would have to have a lay majority, but there is no requirement for you to reduce to three: that is just the minimum requirement. Madam, in the Council's submission, there is nothing inappropriate in you proceeding as four and indeed the Council's view that it is more appropriate that you should remain as four because there is no reason, by way of the rules, for you to reduce to three.

The Registrant is also provided something of a protection by it remaining four, because the voting rules allow for the fact that if you were to be evenly split, two-all, on any element on which you still have to deliberate, that draw would be dealt with in favour of the Registrant. The Council's view therefore is that you should remain as the four that you are and should not recuse one of your members.

**Ms Jones:** Thank you. Mr Hodivala?

**Mr Hodivala:** We agree.

**Ms Jones:** Thank you. We will continue then, and not recuse anyone. Thank you.

Are there any applications?

**Mr Leale:** No.

**Ms Jones:** Mr Leale, can I invite you then to begin?

**Mr Leale:** Yes, Madam, as you will recollect, you have deliberated on all of the factual issues about which you had to make decisions. In fact, all of the facts have been found proved: Nos 1(i), (ii) and (iii) by way of admission at the start of the hearing, and Nos 1(iv) and 2 (i) and (ii) on the basis of your findings on the earlier date. So all matters are found proved with regards to factual particulars as alleged in the allegation, and you now move on to decide whether those facts that you have found proved, in your judgment, amount to deficient professional performance and/or misconduct and thereafter, if you make such a finding, whether there is a current impairment of fitness to practice and then what the sanction should be if indeed you find that. Madam, at this stage, I make submissions solely in relation to the issue of deficient professional performance and/or misconduct on the basis of the facts admitted and found proved.

You will recollect, Madam, as there has been some time since the earlier hearing that Patient A was from Kenya and saw Ms Vali with his son on 26 July 2005. On that date, the intraocular pressure measurements were found to be 28 mm/HG in the right eye and 17 mm/Hg in the right eye. These were abnormal and unusual readings, the upper limit of normal pressure levels ordinarily being around 22 mm/Hg. Particularly in the right eye therefore, the reading was very high and the difference, being more than 5 mm/Hg

between them, was highly unusual: there was in fact a difference of 11 mm/Hg between the two eyes. Those readings were so high, the Council's expert said, that there was an increased risk of central retinal vein occlusion, which can cause sudden loss of vision. Madam, as you have heard, this patient was also at an increased risk of glaucoma in any event, due to his black African ethnic origin, because such people are at higher risk of glaucoma than white Europeans, for example. There was also, it appears by way of the notes, a question mark concerning a possible family history of glaucoma as well, so there were two possible risk factors there.

Despite this, as all parties accepted at the hearing, Ms Vali did not re-test those IOPs at another time of day, nor did she do a visual field test. That was agreed. Indeed, this might have been excusable if there had been a referral to a medical practitioner for further investigation but, as you have found on the basis of the evidence that you heard, that was not done. It was always that there was no proper written referral but, on the basis of your findings, there was not even an oral mention of the concerns that there should have been, concerning the high IOPs. You accepted, by way of your decisions last time, Patient A's son's evidence that there was no mention made of the IOPs by Ms Vali at all and that, if there had been, he would have arranged for this to have been followed up on behalf of his father. So, despite the readings, there was no mention of it, no referral and no further tests at all: nothing was done, effectively, in relation to that, despite the highly unusual readings.

Moving on to allegations 2(i) and (ii), you found that Ms Vali's actions in those circumstances were not in the best interests of Patient A and not to the standard expected of a registered optometrist. You found that her practice fell below all reasonable standards and was potentially damaging or harmful to Patient A, as indeed it was because, when he next saw an optometrist at home in Ethiopia in May 2007, thinking that all was fine – given that he had not been told that there was anything wrong, bar the mention of cataracts in 2005 – he was found to have lost the sight in his right eye and he needed drops for his left eye, in which the IOP had also become high, with a reading of 20 mm/Hg. Thus there were grave consequences following what Ms Vali did not do for Patient A on this occasion.

The issue you now have to decide is whether that amounts to deficient professional performance and/or misconduct and, in my submission, you must consider both of those issues separately. The Council says that this conduct does amount to misconduct and deficient professional performance or, if not, one or the other, but let me be clear that the Council says that there is argument in support of it being both.

I will remind you of your finding. You found on the facts that the actions of Ms Vali were not in the best interests of the patient. Her practice fell below all reasonable standards to be expected of a reasonably optometrist, and you have heard the consequences thereof. Giving basic, common meaning to those words, 'misconduct' and 'deficient professional performance', on the basis of your finding, in my submission on behalf of the Council, that is sufficient for you to judge that misconduct and deficient professional performance are made out. However, it is important in the circumstances – and I have no doubt that you will be referred to this judgment – that you consider the judgment of *R (on the application of Calhaem) v General Medical Council* [2007] EWHC 2606 (Admin) separately and in addition when considering whether these facts amount to DPP and/or misconduct.

What that judgment says, and I refer you to it now, and in particular – and I am sure you will be handed copies of this judgment, or reference will be made to it and if you would like to see copies of the judgment I am sure you can, but I am referring to paragraph 39

in subparagraph (1). In this part of that judgment, five principles are laid down in relation to consideration of this aspect of this type of case and it is said at subparagraph (1):

“Mere negligence does not constitute ‘misconduct’...Nevertheless, and depending upon the circumstances, negligent acts or omissions which are particularly serious may amount to misconduct.”

The Council says, Madam, that Mrs Vali’s conduct in this particular case was particularly serious, both in the act and in relation to the consequences. What she failed to do here was something that you may consider to be quite a run-of-the mill, basic, ordinary act in response to the high IOPs – particularly in the circumstances with the risk factors that were present, and the difference in reading between the two eyes.

The signs were clear and obvious and the Council’s evidence was to that effect. Indeed, the expert who appeared on behalf of the defence accepted that something should have happened – either the re-testing or the referral but indeed as you know and have found, none of those things happened. The consequences were, in addition, particularly serious for this gentleman, as I have already outlined.

Subparagraph (2) of that paragraph of *Calhaem* also says this:

“A single negligent act or omission is less likely to cross the threshold of ‘misconduct’ than multiple acts or omissions. Nevertheless, and depending upon the circumstances, a single negligent act or omission, if particularly grave, could be characterised as misconduct.”

For the reasons I have already outlined, Madam, these were grave acts or omissions in Mrs Vali’s case, and indeed the consequences were grave for this man.

Moving on to deficient professional performance, the judgment says this:

“‘Deficient professional performance’ ... is conceptually separate both from negligence and from misconduct. It connotes the standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the doctor’s work.”

As you know, this was a single patient, single event case and all that we are talking about happened on one day. You may find it reasonably straightforward to reach the conclusion that the performance was unacceptably low, given your factual finding, and that the actions of Ms Vali were not to the standard expected of a registered optometrist.

It has to be accepted that you are not being demonstrated here, performance unacceptably low by reference to a sample of Ms Vali’s work, but you have one occasion, one patient – but perhaps that is, as much as anything else, a consequence of the profession we are dealing with, and the circumstances we are dealing with. It is unlikely in a case such as this that you are likely to be provided with a sample of work over a number of occasions: this was reported to the Council on the basis of the serious shortcomings in the standard of practice and the grave consequences for this man. That is why it is before you, but it does not change the fact that it is a serious set of circumstances with grave consequences and particularly serious for somebody who is a qualified optometrist and who is faced with the circumstances of the high IOP measurements, with the risk factors that Ms Vali was, in this case.

As subparagraph (4) says,

“A single incident of negligent treatment, unless very serious indeed, would be unlikely to constitute ‘deficient professional performance’.”

This is a separate issue from misconduct, which we have already talked about. With regard to deficient professional performance, this is very serious indeed. Those IOPs jump out of the page and there were three options: re-test, do a visual field test, or refer; or re-test, do a visual field test, and the likely result would have been a referral. None of those happened, despite the readings.

That is all I wish to say. There were those three options but none of them was taken and that is what makes this such a serious set of circumstances.

**Ms Jones:** Thank you. Mr Hodivala?

**Mr Hodivala:** I will come to *Calhaem* in a moment, but could I refer you and your colleagues, Madam, to bundle C4, which was the bundle of documents that was provided to you and your colleagues in relation to the application to amend the allegation to include misconduct. This is behind a green tab in my bundle, which I think is the third tab. There is Mr Taylor’s first report dated 22 January 2008. Could I invite you please to turn to page 32 because, in Mr Taylor’s initial report, what he was saying in his conclusions was, at the fourth bullet point?

“From a single case it is of course impossible to say whether this represents a systematic failing in Ms Vali’s clinical practice, or a single error in failing to notice and follow up the signs detected during this particular sight test.”

That is a point to which I shall return in a moment when addressing you on DPP. He goes on to say:

“In January of 2008 it is possible that a performance review may be useful to determine Ms Vali’s current knowledge and practice, particularly with respect to detecting signs of glaucoma.”

Obviously, you have no evidence before you of any performance assessment being conducted in respect of Ms Vali, such that you can safely conclude that any error that you have found proven in respect of the examination in 2005 was symptomatic of a wider lack of knowledge on Ms Vali’s part, or some sort of systematic failure on her part. So when it comes to consider deficient professional performance, in my submission it lies ill in the mouth of the General Optical Council to say that you will rarely have a case where there is evidence of multiple failures when the GOC’s own expert is saying that there may well be a way forward here, which would be to conduct a performance assessment. In other words, the GOC had the opportunity in January of 2008 to investigate whether there was a wider, systematic difficulty with regards to Ms Vali’s state of knowledge and practice. However, that was not pursued and so you do not have this evidence before you in this hearing.

I would like to put into a little context, please your findings of fact. You heard from Mr Taylor that this was a routine examination. It was not a referral to Ms Vali for specific concerns. It was a 15 minute or so examination. The IOP readings, as you have heard in the course of the evidence, were themselves taken before Ms Vali’s examination: they were provided to her on a slip of paper which, as I understand it, is reasonably common practice amongst practices generally. Ms Vali translated or transposed those readings into the patient record card.

This is certainly not a case, in our submission, of prolonged or protracted failures on Ms Vali's part. When I turn to the facts of *Calhaem* in a moment, I will hope to emphasise that the Queen's Bench Division of the Administrative Court found in the case of *Calhaem* that individual failures on their own did not amount to misconduct. I would seek to draw an analogy between the fact of *Calhaem* and the facts which you have found proven in this case when you are considering misconduct and deficient professional performance

Misconduct, in our submission, connotes conduct which would be regarded as deplorable by fellow practitioners. It connotes conduct which otherwise brings the profession into disrepute. Deficient professional performance connotes a standard of professional performance which is unacceptably low and demonstrated by a fair sample of the registrant's work.

The facts of *Calhaem* were these. I know that you and your colleagues are fully familiar with the facts and the background but I hope you will bear with me for a moment or two while I go through them for the purpose of these submissions. Mr Calhaem was described in the judgment as an experienced consultant anaesthetist. He was practising as an anaesthetist in a hospital in Staffordshire and Patient A was admitted to the hospital for a polypectomy. Mr Calhaem's role in respect of that was to administer the anaesthetic and supervise Patient A throughout the course of the operation and indeed her recovery. The patient was admitted at about 11 o'clock that day. Mr Calhaem's involvement effectively ceased at about four o'clock.

This was a period of about five hours during which the Administrative Court was considering the failures which were alleged against Mr Calhaem by the General Medical Council. Those failures included aspects of failure to record base levels, so that there was some yardstick by which any progress or regression of the patient's condition could be considered. It also considered allegations that Mr Calhaem had failed to accept the assistance of a fellow consultant anaesthetist. It considered allegations that Mr Calhaem had effectively left Patient A in the recovery room when there were serious and obvious concerns and, despite those serious and obvious concerns, he had carried on treating other patients. This had obviously severely restricted his ability to properly supervise Patient A and her progress – particularly when Patient A had been unconscious for several hours.

In respect of each of these allegations, the Administrative Court concluded that the individual allegations did not amount to misconduct when considered on their own. Rather, it was looking at the wider picture and the catalogue of errors that had happened over a period of five hours that resulted in the Administrative Court concluding that, looking at the wider picture, the serious failures, whilst not individually amounting to misconduct, when considered in totality, amounted to misconduct. There was the irresponsible conclusion to proceed to surgery, for instance, at paragraph 44, was considered and, despite the fact that the patient had inadequate circulation, inadequate oxygenation and also tachycardia, and was not in a fit state to undergo the operation, for instance, the court concluded that, in isolation, that did not constitute misconduct.

What I seek to do, therefore, is to highlight to you and your colleagues the level of gravity with which misconduct is rightly viewed by regulatory bodies. Of course, I would commend to you that high yardstick.

Turning next to paragraph 39 of the *Calhaem* judgment, this has quite properly been drawn to your attention already. It is right to say that mere negligence does not constitute misconduct. It is again right to say,

“...depending on the circumstances, negligent acts or omissions which are particularly serious, may amount to ‘misconduct’.”

When you are considering whether the actions are particularly serious, two things flow from that. Firstly, you have by your reasons concluded effectively that there were failures in the way that Ms Vali conducted the examination in 2005. In our submission, there are errors of judgment that amount to, potentially, negligence, but they do not satisfy the high threshold in relation to misconduct.

The second thing that flows from the fact that mere negligence does not constitute misconduct in paragraph 39 of the *Calhaem* judgment, is that we would urge you to exercise a great deal of caution before adopting the GOC’s stance that the consequences are a relevant consideration, on the facts of this particular case. We suggest that in fact, in this particular case, the consequences are not a relevant consideration when considering whether misconduct is proven. This is for the simple reason that one can think of examples, for instance, where a negligently conducted examination, or indeed to put it perhaps into a slightly more graphic context, a negligently conducted *operation* by a consultant, potentially has disastrous consequences. Mere negligence, in any way, shape or form, can potentially have disastrous consequences but it is clear from *Calhaem* that mere negligence on its own does not constitute misconduct. It is thus the level of culpability that you and your colleagues must look at when you are considering misconduct, as opposed to a reliance on the potential consequences or actual consequences. In our submission, the level of failures in this particular case by Ms Vali do not constitute misconduct.

You do not have reference to a representative sample of Ms Vali’s work in order for you safely to conclude that deficient professional performance is made out in this particular case. You will no doubt be advised in due course that unless exceptional circumstances exist, you ought not to find deficient professional performance unless you can safely conclude that the matters which you have found to represent failures in 2005 do represent that sufficient representative sample. In our respectful submission, there is nothing exceptional about the facts of this particular case that entitles you to depart from the general guidance in *Calhaem* that deficient professional performance requires wider samples of a practitioner’s work.

Just stepping back for a moment, to put the facts into a little context in relation to the law, this was a 15 minute examination. It did not form part of a wider course of treatment by Ms Vali in relation to Patient A, such that you can look at the wider course of treatment as a whole. You have the IOP readings themselves, taken by a third party before the examination was conducted and, effectively, the failure of Ms Vali, as you have found, was a failure to refer for the raised pressures. This was a routine sight test, with the only presenting symptom being a reduction in distance and near vision, with existing spectacles. With regard to that, this was not a situation whereby, for instance, the patient was complaining of various other symptoms that ought to have led Ms Vali to conclude that it must have been glaucoma that was the issue. Indeed, the evidence from Mr Taylor was that there is no certainty whatsoever that Patient A was suffering from glaucoma at the time of the examination in any event. This was potentially an unusual set of circumstances, was Mr Taylor’s evidence.

I also ask you to bear in mind that, although there had not been a referral specifically, by your findings, in relation to glaucoma, nevertheless there had been advice by Ms Vali that Patient A saw a practitioner upon his return home in relation to the cataracts. Although I do not seek to put that forward as justification for there not being a referral for the glaucoma, nevertheless, in my submission, it is a factor that you can consider when

looking at whether, in the totality of the evidence, the failure to refer specifically for a glaucoma is such that misconduct or deficient professional performance ought to be found on the facts of this particular case.

Madam, those are my submissions.

**Ms Jones:** I invite the Legal Adviser to advise us.

**Mr Marshall:** The questions for the Committee at this stage of the inquiry are whether, on the basis of the facts found proved, the Registrant is guilty of (1) misconduct and/or (2) deficient professional performance – both concepts as referred to in section 13 D of the Opticians Act.

This question is a matter of judgment for the Committee. There is no burden of proof to be discharged by either party. Misconduct and deficient professional performance are different concepts and you must approach them in different ways. When considering an allegation of misconduct based on a single incident of poor professional practice, you should bear in mind that there is a spectrum of professional standards. At the top of the scale is best practice, to which we all aspire. As one moves down the scale, one reaches the point where the Registrant has acted in a way that no reasonably competent registrant in that position would have done. That is the point at which civil liability for negligence arises in a claim for damages in the courts. It is what Mr Justice Jackson in the *Calhaem* case calls ‘mere negligence’.

The courts have long made it clear that mere negligence is not enough to invoke regulatory sanctions, but something more is needed. It is for you to judge whether the Registrant’s conduct in relation to this patient fell sufficiently far below the required standard that it can properly be regarded as misconduct. I agree with Mr Hovalala that it is the degree of culpability that is the most important factor, rather than the consequences. As we all know, a minor slip can sometimes have very serious consequences, while a very serious error can sometimes – fortunately – have no adverse consequences.

Deficient professional performance is a different concept. It carries with it a suggestion that the registrant is not up to the job and often, it will be proved by a performance assessment. It is at least in principle possible to form a view that deficient professional performance has been established by a single incident but, as *Calhaem* makes clear, that is likely to be in an unusual case.

I commend to you the five principles that Mr Justice Jackson sets out in *Calhaem*, which are a comprehensive guide to how you should approach the two issues in this case and, in particular, there is the third principle, in which Mr Justice Jackson describes deficient professional performance and says that

“It connotes a standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the doctor’s work.”

In this case, you only have a single incident to consider and you will have to form a view as to whether you are able, on the basis of that incident, to come to the conclusion that this Registrant’s professional practice is deficient within the meaning of your Act.

Unless there is any other matter I can assist with, that is my advice.

**Ms Jones:** As the case of *Calhaem* is referred to by both parties, we would like copies of the document, please. Mr Henley, could you arrange that for us? If there is nothing further, Mr Henley, would you please clear the room? Thank you.

[Hearing adjourned at 10.15 am]

[Hearing resumed at 10.24 am]

**Ms Jones:** There are two matters I would like to bring to your attention. One is the question of the legal advice, which we will come to in a moment. The second is that one of my panel colleagues has a back injury and may at some points today need to stand or move. This is just to let you know that nothing is happening.

**Mr Marshall:** The Committee has asked me a question about the interaction between the concepts of misconduct and deficient professional performance – for example, whether one is more serious than the other. My answer is that they are simply different concepts. In this case, there is a factual relationship between them but, very often, they are quite unrelated concepts. Misconduct needs no explanation and it is just conducting oneself in a way that is not acceptable to the professional body. For example, if an optometrist makes a sexual advance to a patient that would normally be misconduct but it has nothing whatever to do with the general standard of the optometrist's practice. Similarly, if an optometrist has become deskilled and is not safe to continue in that way that does not necessarily give rise to any issue of misconduct but it is simply a matter that must be addressed in terms of retraining or conditions or whatever.

My answer to the question therefore is that these are two concepts that you must keep separate. There can be circumstances, and it is argued that this is one of them, where the same facts can justify a finding of one or the other or even of both concepts, but they are conceptually different and the Committee should approach them in a different way. It would not be right to regard them as points on a scale in relation to the matters that are alleged against this Registrant.

**Mr Hodivala:** The only addition I would make is that, in both cases, it appears from paragraph 39 of the *Calhaem* judgment – as you know, the Legal Adviser says that they are separate considerations but, in both cases, a single incidence of negligent treatment, unless very serious, is unlikely to constitute deficient professional performance as has been discussed. Likewise, it says at paragraph 39 that negligent acts or omissions that are particularly serious may amount to misconduct. I do not seek to go behind your Legal Adviser's advice, because the two are distinct principles, but it seems that there is a commonality to the extent that the level of failure in both cases must be particularly serious, or very serious, depending on the approach that you take with regard to the wording of paragraph 39 of *Calhaem*.

**Mr Leale:** I have nothing now, Madam, thank you.

**Mr Marshall:** I have nothing further to add.

**Mr Jones:** Thank you. Mr Henley, would you clear the room, please?

[Hearing adjourned at 10.27 am]

[Hearing resumed at 12.05 pm]

## Decision

**Ms Jones:**

### Findings in relation to misconduct and deficient professional performance

The Committee has found that on 26 July 2005 Ms Vali was consulted by Patient A. She recorded intraocular pressure measurements of 28 mm/Hg in the right eye and 17 mm/Hg in the left. A difference of this level is abnormal and unusual. It required further action from the optometrist. However Ms Vali failed either to repeat the measurements or to perform a visual field test. She did not make a referral to a medical practitioner. The Committee has found that her actions were not in the best interests of the patient and were not of the standard expected of a registered optometrist.

The Committee first considered the question of misconduct. It was borne in mind that a single negligent act or omission is less likely to cross the threshold of misconduct than multiple acts or omissions. However, there was a particularly serious failing in this case. This was not a routine presentation. The difference in ocular pressures measured for Patient A was strikingly unusual and worrying. This was particularly so, given that the patient was in a high risk category, due to his age and ethnicity. Ms Vali did not take any appropriate action in response to her measurements. The Committee could not understand how an optometrist could have failed to act on something that was so obviously wrong and it has concluded that Ms Vali's failings were so serious that they amount to misconduct.

The Committee went on to consider the question of deficient professional performance, bearing in mind that it is a different concept from misconduct. The Committee has not seen a performance assessment and does not have any other evidence as to the general standard of Ms Vali's performance. The Committee has considered whether the single, very serious incident in this case enables it to form a view as to the standard of Ms Vali's performance at the relevant time. It is important that the failing in this case was not an error of judgment. The readings were obviously highly abnormal and even a member of the optical support staff might have questioned them. However, Ms Vali failed to take any action. The Committee found it incomprehensible that a competent practitioner could fail to take any action in this situation. Her performance was not at a level that would be acceptable to the profession or the public. The Committee has concluded that Ms Vali was guilty of deficient professional performance in relation to the facts that have been proved.

I understand that in the period whilst the Committee was *in camera*, Mr Leale has been called away. Are you able to update me – I am sorry, I do not have your name.

**Mr Micklewright:** My name is Micklewright, Madam. Madam, the situation is this. You rightly say that Mr Leale has had to be called away and that is due to a very pressing personal emergency, as I understand it. Therefore, without any discourtesy towards the Committee, he has unfortunately had to leave without any notice. I, as the only available advocate at Blake Laphorn solicitors, was asked to attend and arrived just a little over an hour ago.

I have had an opportunity to look at the papers which Mr Leale left, but unfortunately it has only been a very short opportunity indeed. It is right to say

that at the moment the biggest issue between the Council and the respondent is the question of whether or not there should be an adjournment of this matter. As my learned friend will doubtless explain to you shortly, that is something which the defence are very anxious to avoid, for reasons which I am sure can be immediately appreciated. Then again, however, on the contrary at the moment the issue for the Council clearly is that they have lost the ability to have an advocate who has been instructed in good time, and who has had a suitable opportunity to become acquainted with the issues in the case, to be able to appear on behalf of the Council. Clearly, there is the public interest that the case is adequately prosecuted on behalf of the Council.

It is perhaps of note in that regard that I understand, very helpfully, from my learned friend, that he intends to call his client to give evidence and, furthermore, that he will intend in due course to call two further witnesses to give character evidence on behalf of his client. I have not as yet at least had an opportunity to have any idea what those witnesses will say.

Where we are at the moment, Madam is this. Mr Albuery, with whom I suspect members of the Committee may well be very familiar, has agreed at very short notice to come up to take charge of this case. The benefit which the Council has, of course and which indeed the Committee would have as well is that Mr Albuery is a far more experienced advocate than I am. He is a far more experienced advocate particularly before this Committee – and he may well therefore be in a far better position to be able to assist with this case this afternoon.

The default position, however, may well be that the Council has to apply for an adjournment. The position at the moment is that the time is now nearly 12.15 pm, and we anticipate that Mr Albuery will be with us at about 12.45 pm or thereabouts. He is presently on a train which will arrive at Waterloo at 12.30 pm and from whence he will take a taxi here. My suggestion might be as follows. If the Committee were minded to adjourn for, say, 40 or 45 minutes, and perhaps take an early lunch or something of that nature, that would at least allow the Council an opportunity for Mr Albuery to arrive and for the matter to be discussed in further detail, and for final instructions to be received. If there is then to be an application for an adjournment, then that application can be made at that time. If there is a way to be found to continue to proceed today, then that is something which, if I may say, would better be achieved once Mr Albuery has arrived and we have had further time to become acquainted with the issues in the case, and therefore to be able to take better quality instructions in due course.

**Ms Jones:** Thank you very much.

**Mr Hodivala:** We see that as a sensible way forward, rather than adjourning the case at this stage. Obviously, whilst we have every sympathy with the GOC, and particularly Mr Leale's personal predicament, obviously balanced against that is the fact that this matter has been hanging over Ms Vali's head for a considerable period of time now and she understandably wants to resolve it today if there is any conceivable way in which that can be done. Perhaps we could revisit the question at 1.15 pm.

**Ms Jones:** That would be good. Mr Henley, could you clear the room? We will reconvene at 1.15 pm.

*[Hearing adjourned at 12.13 pm]*

*[Hearing resumed at 1.15 pm]*

**Ms Jones:** Good afternoon and welcome, Mr Albuery. Before we go further, I omitted to record that we received the case of *Calhaem* in the last session and that should be recorded as R4 - my apologies for not recording that. Mr Albuery, can I invite you to take us forward?

**Mr Albuery:** Yes. Madam, after the hearing but perhaps not now, I will apologise for any inconvenience caused to you and your Committee and explain why I am here rather than my colleague. Perhaps at the outset I should say that, although I am fully briefed and I am grateful to everyone, including my learned friend, for the assistance they have given me, if I say something which is not correct in terms of the facts which you have found proven, or the judgment that you have made, then I know you will give that no weight and put it out of your mind.

Madam, you have now found that those facts which were not admitted, in addition to those which were, have been found proven and also that those facts amount both to deficient professional performance and also to misconduct. I have had an opportunity of reading your judgment. Madam, you now have to consider, and again this is a matter of judgment rather than proof, whether in your judgment those facts and that deficient professional performance and that misconduct amount to impairment. Unlike your last assessment of the issues, of course you now have to assess matters as they are today and also as they may be. Having said that, in assessing impairment, you have to, and can properly – case law says – look backwards to determine your current assessment as well as what the position is now.

Madam, although the Council concedes that the allegations related to one patient on one day, the seriousness of the omissions demonstrated by Ms Vali has allowed you to find not just misconduct but also deficient professional performance, assessing as you have that it is really incomprehensible that any competent practitioner would have failed to refer or, in the alternative or in addition, to have undertaken more tests and particularly a visual field, so that she could make an informed decision on referral. Madam, in terms of the position now, impairment as you know is not defined in any statute but may be regarded by you, subject to submissions from my learned friend and your Legal Adviser, or fitness may be regarded, as an ability to practise without restriction. I have seen a number of testimonials which are to be relied upon, although I do not know whether you have yet. I have also been given, which you will be shown, a record of Ms Vali's current and historic continuing education record. The Council remains concerned as to her fitness to practise and believes that nothing which it has seen persuades it that the concerns which you found, and found to be very serious, have properly been addressed by her, such that you can be satisfied that there is little likelihood of recurrence. Madam, you will obviously hear more about that from my learned friend.

Also in terms of current impairment, the Council submits – because I understand this to be the case – that the continued, even in 2009, assertion by Ms Vali that, had you found the conversation between her and her patient and/or son to have occurred, that oral referral, as she put it, to be a proper referral as required, is evidence of the fact that not just historically but currently you can be satisfied that there has been insufficient, if any, insight into the failings and to the seriousness of them.

Madam, for those reasons, and without repeating back to you what you have said in your two judgments so far during the course of the case, the Council asks you to say that impairment is established. If you are against the Council in relation to that and find that impairment, in your judgment, is not established, then may I simply remind you of

your power under Section 13 (5) to issue nonetheless this registrant with a warning as to her future conduct or performance? That is at page 28 of the Handbook.

I will pause there to ask whether there are any matters which I should have mentioned at this stage but have not, before I fully close. [*No matters remain*] Madam, those are my submissions.

**Ms Jones:** Thank you. Mr Hodivala.

**Mr Hodivala:** I call Janine Vali.

**Janine Elizabeth Vali, called and affirmed  
Examined-in-Chief by Mr Hodivala**

**Q.** Ms Vali, could you give your full name, please?

**A.** Janine Elizabeth Vali.

**Q.** Ms Vali, you have already given your evidence in relation to your recollection of what happened during the examination in 2005. Could I just put a little context in relation to when your chronology of experience happened? Is it right that you graduated from the University of Bradford in 2003?

**A.** Yes.

**Q.** And you had a 2:1 in optometry?

**A.** Yes.

**Q.** And you completed your pre-reg year with Vision Express in York in 2004?

**A.** Yes.

**Q.** And then from August until November 2004, you were working for Vision Express in a mobile position?

**A.** Yes.

**Q.** And then things seemed to stabilise a little, because there was a lot of travelling around that was involved in that role, and a stable, suitable position then arose in Leeds with Specsavers?

**A.** Yes.

**Q.** You started there in Leeds in about February 2005?

**A.** Yes.

**Q.** And then you stayed there for about 12 months until a similar position became available at Vision Express in Whiterose?

**A.** Yes.

**Q.** And that is the position that you currently maintain, at Vision Express at Whiterose?

**A.** That is right.

**Q.** Can you just describe to the Committee, please: in 2006 you became secondary supervisor to a pre-registration student, is that right?

**A.** That is correct, yes.

**Q.** What kind of role did you play during that year as your secondary supervisor role?

- A.** That was one of the reasons, another reason that I worked with Vision Express was the opportunities, and one of those was to take our pre-registration students. Because, at the time, the College requires you to be qualified for a full three years before you have a pre-reg of your own, and I was able to take up a secondary supervisor position, along with a colleague who was the primary supervisor. They were able to take the main duties and my duty was the direct training of the student on a day-to-day basis.
- Q.** Are you still a supervisor? Do you still act as a supervisor?
- A.** I was primary supervisor for two subsequent years. This academic year is the first year when I have not had a pre-registration student of my own. What I do now, within the company I work for, is that I am a pre-reg mentor for the region, which involves liaising between supervisor and student, visiting them and making sure that they are achieving the competencies that they should be, and trying to aid them if they are not.
- Q.** And you began acting as a supervisor at the University of Bradford as well, is that right?
- A.** Yes, I have just come into my fourth academic year now, as a supervisor at Bradford, which I do one day a week and which is separate from my employment. There, I teach second and third year and whole-career progression students who are already qualified as dispensing opticians and contact lens opticians, to convert to being optometrists.
- Q.** You obviously accept that you examined Patient A on one occasion, 26 July 2005.
- A.** Yes.
- Q.** In your professional career to date, apart from this one incident that arose on 26 July 2005, have you had any other complaints made against you about your professional capacity, courtesy, or anything like that?
- A.** Nothing, no.
- Q.** I want to ask you, please, about how these proceedings have affected your approach to your professional duties. First of all, have they affected your approach to professional duties?
- A.** Yes. I feel, as you go on and gain more experience, you become a different and better type of practitioner anyway but with this, it has made me more aware of communication with patients, and also of backing up any kind of advice with written confirmation about the advice, such as letters, leaflets and the like.
- Q.** I think you were first notified of these proceedings in 2007.
- A.** That is right.
- Q.** And you were aware at that stage of the allegation in relation to the failure, substantively, to refer patient A following the observation that he had measurements of IOP in the right eye of 28 mm/Hg and in the left eye of 17 mm/HG, yes?
- A.** Yes.
- Q.** Have you undertaken any continuing training in relation to glaucoma and cataracts?
- A.** I always do my CET (continuing education and training) anyhow. I would do that in relation to glaucoma, cataracts and anything else that was available, because it is important for all aspects. One of the main things I was interested in was that I got in touch with the College and I am in the process of hopefully taking the diploma. I want to do it in ocular conditions, which includes both glaucoma and diabetes, but with timing, it may be that I take the glaucoma one first.
- Q.** All right. Can I ask you to look at this list? Madam, I have copies of the CET record. [*Document R5 distributed*]

**Ms Jones:** For the record, I will record these as R5.

**Mr Hodivala:** Thank you. This is a print-out of your CET points statement, to the cycle ending December 2009.

**A.** Yes.

**Q.** You can see on the first page that you obviously maintained your requirements for CET. Could you turn to the last page, please, which is page 4 of 4, in the top right hand corner. We can see the first entry for 5 February 2007, which relates to a development one-day programme. There is then reference to a course on Classification of Cataract on 21 February 2007, yes?

**A.** Yes.

**Q.** Then I think the next reference to glaucoma explicitly is back on page 3, where we can see a glaucoma assessment clinic on 5 July 2007.

**A.** Yes.

**Q.** Can you recall what that particular assessment clinic involved?

**A.** I cannot recall it in detail. It may have been an afternoon course, or even an article that I would have completed. For one point, it might have been an article.

**Q.** All right. A little earlier in time, but slightly further down on page 3, we have an entry on 10 May 2007 in relation to a peer review session. Do you see that?

**A.** Yes.

**Q.** Could you just describe to the Committee what that peer review session involved?

**A.** The company decided to become a little more active about peer review within Vision Express. I was asked whether I would go and attend a course where I took part in peer review, and then I was also able to facilitate the peer review to optometrists within my own region. That was actually about glaucoma on that day.

**Q.** You have already mentioned a diploma that you are in the process of attaining through the College.

**A.** Yes.

**Q.** When did you first decide that you wished to obtain this diploma?

**A.** I first researched and decided I wanted to do it probably in the summer time of 2008. I had given myself enough time to get all the research and everything that I needed, and then hopefully to take the exams in 2009.

**Q.** Right and when were the exams scheduled for?

**A.** Unfortunately in the same week as the hearing –

**Q.** So the adjourned hearing in November 2009?

**A.** Yes.

**Q.** So you were unable to take the exams in November 2009, is that right?

**A.** Yes and I informed the College at the time that I would take them at the next available session.

**Q.** When do you now plan to take the exams?

**A.** The next sitting is in June but unfortunately I will not be able to take it in June because I am expecting a baby in July, so it will probably be in November this year.

**Q.** And that diploma is in relation to what? What specific aspects - ?

- A. Glaucoma.
- Q. What particular studies have you undertaken in respect of that diploma?
- A. They give you a list of articles, different studies on glaucoma, and also textbook-led research and knowledge. Then what would happen is that we would be revising about all of those aspects, and also submit some case records from patients you have seen that you have either referred for glaucoma or it could be someone who has a number of problems with glaucoma. You then discuss those with the College panel.
- Q. As far as future practice is concerned, and indeed your present practice, if a patient presented to you with differences in their intraocular pressures, would you be concerned by that?
- A. Yes.
- Q. Why would you be concerned by that?
- A. Because if it is unusual, it may indicate glaucoma.
- Q. And what steps would you take to deal with a patient who presented to you with different IOPs?
- A. The options that are available are to repeat the pressures, to take them with a different type of instrument, and perform a visual field. Ultimately, you would inform the patient of a potential problem and the action that we may need to take, and refer that patient to an ophthalmology department to be investigated.
- Q. Bearing in mind everything that has been raised in the course of evidence during these proceedings, would you be content to simply orally refer that patient to an ophthalmologist?
- A. No.
- Q. What steps would you take to refer that patient on to an ophthalmologist?
- A. Either give them a letter in their hand to take straight to their general practitioner, or send a letter to their GP advising them so that they could be referred on to ophthalmology.
- Q. I am just wondering whether there is anything else. *[Pause]* As far as your current employment situation is concerned, we have heard that you are still employed at Whiterose.
- A. Yes.
- Q. How do you feel about your current practice and expertise? How do you view your current practice and expertise?
- A. I consider myself to be a good practitioner. I work along with other colleagues and we regularly work together. We help each other and ask for advice. I am also involved in the training of all staff, including pre-registration optometrists. I am asked to go to other places within the company, other practices, to share my experience with people.
- Q. As far as Patient A is concerned, are you of the view that that represented a flaw generally in your practice – in other words, not referring Patient A on 26 July 2005 – or do you take the view that that was a one-off and that it is not something that has been repeated since?
- A. That was a one-off.
- Q. Thank you. Those are all the questions I wanted to ask.

### Cross-examined by Mr Albuery

- Q.** Ms Vali, may I ask you some questions please, on behalf of the Council?
- A.** Yes.
- Q.** You will forgive me if I ask questions to which you think the Committee will know the answers because I will not have heard them. Have you seen patients with abnormally high intraocular pressures since this incident with Patient A?
- A..** Yes, I will have done. Yes.
- Q.** You say you would have done, but have you?
- A.** Yes, I have.
- Q.** In the last four years, how many patients do you think you have seen with high intraocular pressures?
- A.** Quite a number of patients, although I could not give you a numerical value; but quite a number.
- Q.** Have you handed into the Committee any sample patient record cards to show the Committee how you have managed those high IOPs?
- A.** I have not, no.
- Q.** Is this a full set of your training record in R5, from February 2007 until October 2009?
- A.** Yes, it will be.
- Q.** Bearing in mind the particular concerns which the Council had raised with you, are the only matters of relevance on here to high IOPs and tests for glaucoma those which your barrister has pointed out to the Committee?
- A.** On this record, yes. The largest one that I feel would be going for the diploma in glaucoma. That would give you more information there.
- Q.** Of course. I will come back to that, if I may. In February 2007 on R5 at page 4, you get one point for training in relation to classification of cataract. Should the Committee infer, from it being one point, that that was you reading an article?
- A.** Most likely, yes.
- Q.** And then, over the page, on 5 July 2007, I think you have already said that that probably also – the optometry-led glaucoma assessment clinic – involved reading another article, did it?
- A.** Probably.
- Q.** Yes. And then since July 2007, which was two and a half years ago – apart from the diploma, which we will come back to – would it be fair to say that there is nothing on here which establishes training relevant to glaucoma or the referral of high IOPs?
- A.** Not directly on here, no.
- Q.** Thank you. Tell me then if you would, or the Committee more importantly, a little more about the diploma. Firstly, you have not yet sat the exams, have you?
- A.** No, I have not.
- Q.** So would you agree with me that the Committee cannot assess how much you may have learned or otherwise from that course, because you have not passed it?
- A.** That is right, yes.
- Q.** What practical content did the course have, if any?

- A.** The course is going to – I can learn and I can become more expert in other techniques that generally are not used in everyday primary care practice.
- Q.** Just pause there. When you talk about in the future, what has happened so far on this diploma course?
- A.** There is the reading, but if you are asking me about practically –
- Q.** Yes.
- A.** I am in quite a fortunate position at the university, where most people are quite experienced in types of techniques such as focimetry, which is measuring corneal thickness, and also corneoscopy looking at the anterior angle, and they are able to help me and better those techniques. That will be demonstrated when I sit the exams.
- Q.** Yes, the Committee will understand that better than I, and certainly the professional members on the Committee. However, I should have restricted my question to practical training in relation to the issues of measurement of intraocular pressures, the analysis of the results and the referrals. What aspect of the diploma, if any, covers that, or has covered that?
- A.** There is all the background reading that you can do on different types of glaucoma and different risk factors for glaucoma.
- Q.** I only ask this because I don't know anything about the diploma: is there any practical assessment of your abilities?
- A.** They have not been assessed yet, but they will be when it comes to taking the exam.
- Q.** But none yet?
- A.** No.
- Q.** Thank you. When you gave evidence last year, did you maintain at that point, and was it your belief at that point, that if the Committee had found that there had been some sort of conversation between you and the patient or his son, that that would have constituted a proper referral? Was that your position?
- A.** I believe that in the evidence I gave the last time as well, I said that there should be a written referral.
- Q.** So you accepted that an oral referral wasn't enough?
- A.** Yes.
- Q.** I see. Thank you. I will just pause there for a moment. *[Pause]* Ms Vali, thank you very much. Those are all my questions.

**Mr Hodivala:** Does the Committee have any questions?

**Miss McCrudden:** Could I ask one? In taking this diploma, have you sat in on any specialist glaucoma clinics, with a glaucoma specialist, in a hospital environment?

**A.** No. That is something I intend to do and I have been in touch with our local hospital, to organise that.

**Miss McCrudden:** Thank you.

**Ms Jones:** No further questions, thank you.

*[The witness stood down]*

**Mr Hodivala:** There are two professional character witnesses whom I would like to call. Madam, I don't know whether you and your colleagues would feel able to have a bundle of character references that would include the two character references that are professional references, and put from your minds for present purposes those references that are not professional references when listening to the evidence that is about to be given, or whether you would simply rather just listen to the evidence and then deal with the written statements in the usual way.

**Ms Jones:** I suggest that we receive the evidence and then receive the statements.

**Mr Hodivala:** So be it. In that case, can I call Amran Mehboob?

**Mr Amran Mehboob, called and affirmed  
Examined in chief by Mr Hodivala**

**Q.** Can you give your full name, please?

**A.** My name is Amran Mehboob.

**Q.** Is it right that you are currently employed at Vision Express in Whiterose Centre in Leeds?

**A.** Yes, that is true.

**Q.** And you are a full-time, resident optometrist, is that right?

**A.** Yes.

**Q.** Qualifications?

**A.** BSc (Hons), MCOptom.

**Q.** How long have you been in your current position?

**A.** Since January 2008.

**Q.** Would you have any knowledge of Janine Vali in your capacity at Whiterose?

**A.** Yes.

**Q.** How long have you known Janine Vali?

**A.** Since 2003.

**Q.** And in the time that you have known Janine Vali, have you been able to form an opinion about her professional abilities?

**A.** Yes.

**Q.** What views do you have about her clinical abilities?

**A.** She is very competent. She is a very good communicator with her patients and she does her utmost to make sure that they have the best solutions and care that they need.

**Q.** As far as her role at Whiterose is concerned, is it just seeing patients and conducting examinations? Or is there any other role that she plays at Whiterose?

**A.** She is actively involved in the training of staff members as well. She also represents – she has like a mentor role for pre-reg's in the whole region, so that if they have a problem they go to her. She supervises my pre-reg as well, sometimes.

**Q.** And the level of respect I suppose, for want of a better phrase, shown by others towards Ms Vali? Is that present?

- A. That is very present, yes.
- Q. And how do you feel about working alongside her? Do you have doubts about her clinical abilities?
- A. Not at all.
- Q. Finally, can I ask you, Mr Mehboob: how would you describe Janine Vali?
- A. She is very experienced. She is a respectable team member. She is very good with patients and she is always willing to help. She always goes that extra mile for everybody. She is liked by everybody as well and I am glad to be working with her actually, in the store.
- Q. Thank you very much, Mr Mehboob.

**Cross-examined by Mr Albuery**

- Q. How qualified are you?
- A. I qualified in April 2007.
- Q. Right. Did you say you were in your pre-reg year?
- A. Yes.
- Q. Being a pre-registration student, do you think that puts you in a position where you can comment easily or at all on the competency of others?
- A. As a pre-reg?
- Q. Yes.
- A. Not really, no. But when I am qualified, then I think I can make a comment like that, about how they are.
- Q. I am not trying to trick you. You are a pre-registration student at the moment?
- A. I am not.
- Q. I am sorry, then I am being confused.
- A. I qualified in April 2007 as a qualified optometrist.
- Q. You said something about Ms Vali supervising - I thought you said 'my pre-reg'. Is that your pre-reg student?
- A. That is my pre-reg student. I am acting as a secondary supervisor.
- Q. Thank you, I appreciate that. Thank you very much. Do you sit in with Ms Vali when she sees her patients?
- A. No, but I have in the past when I was a pre-registration student myself. I used to work one day a week in the Whiterose centre, because I was going to sit my exams. I used to sit with her and watch her do the eye exam.
- Q. When was that?
- A. That was when I was a student and it was before 2007.
- Q. So before 2007, you had direct experience of her relationship with her patients, her clinical competency?
- A. Yes. I would sit in and just observe.
- Q. Since then, as a fully qualified optometrist, you have not done that, have you?

A. No.

Q. So when you say, for example, that she is a very good communicator with her patients, how do you assess that, if you do not see her with her patients?

A. Because when we come outside our rooms, once we have tested them, and when we do the handover procedure which is between the retail associates and the optometrist and the patient, the information has to be relayed across. Ms Vali does a three-way handover, so that everything is communicated to the associates and the patient about what they need and require.

Q. So you are assessing it from that handover?

A. Yes.

Q. In relation to her being, as you put it, 'very competent', do you assess that on the same basis?

A. No, because we talk about other patients sometimes. We just sit there and we have little discussions about general things. The knowledge that she has is up to scratch – that is what I feel.

Q. Yes. But in terms of her managing her patients, informing herself of proper results of tests and so on, because you do not sit in the room with her, do you agree with me that you cannot properly comment on that?

A. No, but I could look at her past records, which we do – because there are quite a few of us in the store. There will be times or episodes where I will see the same patient as she has seen, and I can easily refer back to her notes and have clear knowledge of what she has made and done.

Q. Thank you. In terms of your own ability to comment on her competence, other than your pre-reg student, have you been involved in training or supervising yourself?

A. I don't understand the question, sorry.

Q. Are you a trainer of other optometrists?

A. No, except my pre-registration student.

Q. Just one moment. That is all, thank you very much.

A. Thank you very much.

**Miss McCrudden:** May I ask how many of the practitioners you have worked with in the store?

A. Does that include contact lens opticians as well?

Q. No. How many consulting rooms are there?

A. There are four, three downstairs and one upstairs, but there are mainly just three in at the same time.

Q. Are these all qualified optometrists?

A. Yes, they are.

Q. Thank you.

**Mr Kapoor:** Have you ever had a time when you have had to ask Ms Vali's opinion about a patient that you planned to refer?

A. I am normally quite confident in referring people if I need to but, for a second opinion, I would go and ask Janine as well, just to pick her brains – but that's it.

- Q.** When you say 'second opinion', during that, have you asked her to examine a patient on your behalf?
- A.** No. I have asked her to come into the room to have a look, and asked her whether she agrees with what I have seen, just for a second opinion and that's it.
- Q.** Do you recall any time when there was a glaucoma suspect patient, when you have had to do that?
- A.** I can't recall, no.
- Q.** Have you ever had any discussion about patients and glaucoma referral?
- A.** Yes. Sometimes if I refer somebody, I say, 'For the interests of my students, do you mind me standing there?' And I will say, 'Look at these photos', because we have fundus photograph machines at work, so we can always compare the photos and say, 'What do you think?'. You know things like that – we just discuss things about structures at the back of the eye.
- Q.** But not specific to glaucoma?
- A.** It could be glaucoma, or it could be the macula. It could be all sorts. I have been working with her since 2008 and there have been episodes where we have sat down and discussed –
- Q.** I am sorry to interrupt but do you recall any time specifically to do with glaucoma?
- A.** Yes, I do – but I can't remember when it was or what time, or which day or month. But I have, in the past.
- Q.** Were you satisfied with the answer you got?
- A.** Yes.
- Q.** You can't recall the actually time, or what the case was?
- A.** No, but I could pop in and say that I was confident with her answers as well.
- Q.** Okay, thank you.
- Ms Jones:** I have a question for you. You have talked about the three-way handover but, in this case, it was Patient A, or Patient A's son, where English was not the first language of one of them. You said Ms Vali has good communication skills.
- A.** Yes.
- Q.** Do you frequently see Ms Vali in situations where it is a four-way handover, or anything differs?
- A.** Yes, because there are Asians coming into the store with different type of ethnicity backgrounds who come in, and they can't all speak English sometimes, but she does everything she can. If there is an interpreter, then everything would be relayed across to that patient as well.
- Q.** Thank you. Are there any further questions? [No] Thank you very much.

*[The witness stood down]*

**Mr Hodivala:** Jane Mckay, please.

**Jane Mckay, called and affirmed  
Examined-in-chief by Mr Hodivala**

**Q.** Could you give your full name, please?

**A.** Jane Ellen Mckay.

**Q.** Miss Mckay, what is your current employment situation?

**A.** I currently work for Vision Express opticians in Leeds, as an assistant store manager/dispensing optician.

**Q.** How long have you held that particular post?

**A.** Nearly 15 years.

**Q.** Is it right that you have been working pretty much throughout those 15 years at Vision Express?

**A.** Yes. I have worked for Vision Express now for 20 years, a portion of that in Hull and the rest in Leeds.

**Q.** When did you qualify as a DO?

**A.** 1999.

**Q.** In your role as manager, or assistant store manager in Leeds, do you have regular contact with Janine Vali?

**A.** Yes.

**Q.** Have you been able to form an opinion about her competence, in your role as assistant store manager?

**A.** Yes.

**Q.** When was it that you first came to know of Janine?

**A.** She applied for a position at the Whiterose branch when she was a student at Bradford University, and I employed her in 2002 in that capacity. She became an optical assistant on the retail floor, helping and aiding customers in dispensing spectacles. She then did her pre-reg position with Vision Express at the York branch. She briefly left Vision Express for a time to work for Specsavers and then returned to us at Whiterose in Leeds as a resident optometrist.

**Q.** Okay. In terms of her competency, what would you say about that?

**A.** It is very high. She cares very greatly about achieving the best results for her patients and she is very passionate about customer care, both for the patients she sees and for everybody who comes through our doors.

**Q.** How have you been able to form an opinion about her clinical competence?

**A.** I regularly deal with Janine in terms of dispensing. She regularly does handovers to me and to the other members of staff, which I observe closely, as my position allows me to, so I understand that from that point of view. I regularly consult with Janine if a dispensing issue comes up that requires an optometrist's input – i.e., somebody who might be going through for a re-check. So yes, I have a very clear view of her competency. Effectively, she is my 'go-to' girl: if I have a question, nine times out of 10, it will be Janine who I will look to.

**Q.** Thank you. If you wait there, there may be some further questions for you.

### Cross-examined by Mr Albuery

**Q.** You are not an optometrist, are you?

**A.** I am a dispensing optician.

**Q.** Yes, but you are not an optometrist.

**A.** No.

**Q.** So do you agree with me that you cannot easily or at all comment on the competence of an optometrist?

**A.** From a dispensing point of view, I can do, although obviously not from an optometrist's point of view.

**Q.** Yes. And do you understand that the concerns that this Committee has found relate to the non-referral of a patient with high intraocular pressures, and failing to undertake other appropriate tests?

**A.** Yes.

**Q.** It is an optometrist who can comment, rather than a dispensing optician, isn't it, on those matters?

**A.** Absolutely.

**Q.** Thank you. I have no further questions.

**Ms Jones:** Thank you very much.

*[No questions from the Committee.]*

*[The witness stood down]*

**Mr Hodivala:** We could hand you copies of these references.

**Mr Marshall:** Mr Hodivala, what are these?

**Mr Hodivala:** These are professional references that go to Ms Vali's clinical competence and ability. I understand that the GOC agreed to those going in at this stage.

**Mr Marshall:** The issue may not be squarely in front of the Committee. It may well be the Committee are prepared to receive them at this stage but the Committee will be aware that at this stage you are considering impairment. Questions of competence and so on, and professional development since the events in 2005, are relevant but pure testimonial evidence may not be and counsel will be well aware of the distinction. It is quite a fine distinction and you may have to rely on them to some extent but you should be aware that, if you are admitting this, and if some of it is pure testimonial evidence, it may well not be relevant at this stage when you are deciding the issue of impairment. It would be relevant at a later stage, should you get to a later stage, when deciding sanction.

**Mr Hodivala:** Certainly, we would not encourage it. There are obviously professional references which, in certain respects, touch on the personal characteristics of Ms Vali, but we would not seek you to rely on the personal aspects of those references at this stage. However, certainly the professional aspects of those references concerning her clinical abilities that go to the question of her current fitness to practice, we would submit, are relevant for consideration. I am sure you and your colleagues will be able

to put from your minds any aspects of a reference which, strictly speaking, would not be relevant at this stage in any event.

**Mr Albuery:** Madam, I am happy for you to receive them now knowing, as I do, that this experienced Committee will understand the difference and also separate out in your mind that which is relevant now, and that which will be relevant later. Certainly, had any of the references been purely personal, I would not have been content for them to have been put in now. However, as my learned friend has said, they also touch on matters which you may think are relevant at this stage. All I would say is that you will bear in mind, I am sure, the date of them, back in the summer of 2008.

**Ms Jones:** Is there a need for anything to be redacted before we see them?

**Mr Hodivala:** I do not think it would be productive: it would take longer to redact it than for you to cast your eye over them. In fact, I am rightly reminded that it is the last two references that are simply personal references and so perhaps you could just read the bundle excluding the last two pages.

**Ms Jones:** We will call this R6.

**Mr Albuery:** I apologise, Madam: we should not chat amongst ourselves when you are speaking and I apologise for that. I am just checking that the references I have are all those which will be submitted, bearing in mind my late entry into the case. Madam, I am just checking one thing, if I may. [*Looks at documents*] Thank you.

[*R6 is distributed*]

**Ms Jones:** Mr Hodivala, do you wish us to read them, or will you be taking us through them?

**Mr Hodivala:** I will take you through them briefly in any event when I make my closing submissions to you, but no doubt you will spend a little more time than the time I am going to allow you, when you are deliberating, because you will be able to consider them in their context.

**Ms Jones:** In that case, Mr Albuery, could we proceed? We will read the documents when we are in camera.

**Mr Albuery:** Yes, of course. Madam, I infer from what you have said that you are expecting to hear from me again.

**Ms Jones:** I was.

**Mr Albuery:** Well, I have already made my submissions on impairment.

**Ms Jones:** And you have nothing further to add?

**Mr Albuery:** No, but I think probably my learned friend wants to make some submissions on impairment now.

**Mr Hodivala:** Yes. When you are considering Ms Vali's current fitness to practise, the first point I would urge you to bear in mind is that this allegation arose in 2005, which is clearly a substantial period of time ago. You and your colleagues may feel that it accords with common sense, as well as Ms Vali's evidence, that an individual practitioner is likely over the passage of time to improve their own particular state of

knowledge – particularly since Ms Vali had recently qualified in 2005. You may feel that, in terms of her level of knowledge and experience, that will only have improved since that date.

The second point which, we submit, can safely lead you to the conclusion that her current fitness to practise is not impaired is the salutary experience that these proceedings themselves have had on Ms Vali. As you heard her explain, quite aside from her own personal development and experience, as one may associate with the passage of time, she has used these proceedings herself to improve her written and communicative skills with regards to patients. Again, you may have some sympathy from a purely common sense perspective, with that as an approach. Any individual, let alone an individual who comes across their regulatory body so early in their career, is likely to take on board the criticisms that are levelled against them, and adapt their practice accordingly. In my respectful submission, that is exactly what Ms Vali has done, and that is the evidence she has given to you herself, and also you may feel that Mr Mehboob supports her clinical abilities as an optometrist.

As far as any DO side is concerned, obviously Ms Mckay has given evidence. I suppose there is a question over the aspect of the examination in 2005 and how that related to Patient A's prescription. You have heard from Ms Mckay for that simple reason but, if you feel that that does not really advance your state of knowledge with regards to Ms Vali's current fitness to practise, then so be it: you will attach what weight you see fit in the circumstances.

If I can turn to the character references that you have for a moment, they all portray Ms Vali as an individual who has no current concerns over her fitness to practise. At page 1, you have Mr Mehboob, from whom you have heard. At page 2, there is a reference from Dr Heron, who is an associate of the University of Bradford, and you will see that he has obviously worked in post-doctoral research assistant posts and, during that time, has had experience and certainly contact with regards to Ms Vali and her clinical abilities. Dr Heron himself clearly held Ms Vali in high regard.

Over the page you have Ms Mckay, from whom you have heard evidence. Ms Desai is currently a local optometrist and has been working with Vision Express for over five years and it seems has had regular and frequent contact with Ms Vali and is able to formulate with regard to Ms Vali's ability. In the fifth paragraph down in Ms Desai's statement, you will see Ms Desai describing Ms Vali as having many loyal patients:

“Patients from her previous practices have sought her out and have followed her to this store. She is highly respected by colleagues and patients alike, due to her high level of clinical skills and approachable demeanour.”

Over the page, there is a reference from Paula Baines, again portraying Ms Vali as someone who is very clinically competent. With regards to Mr Holland, over the page, he is someone who has worked with Ms Vali in several different capacities and has formulated an opinion on that basis with regards to her clinical competence. Madam, I do not think it will serve much useful purpose if I just skim over these references in this way: the remainder of the references can be looked at in detail. All of them speak highly of Ms Vali's professional competence and ability. Bear in mind that, although these references were provided for a hearing that was scheduled to take place in 2008, nevertheless one can associate, with the passage of time since the original hearing was due to take place, an increase in her own clinical abilities and knowledge.

We submit that although the CET itself perhaps does not portray, as the GOC observe, numerous and detailed glaucoma sessions and glaucoma CET points, as Ms Vali has

pointed out, the key passage with regards to her own personal development with regard to glaucoma is this diploma that she has undertaken. She has undertaken the research with regard to glaucoma. At the end of the day the criticism which fundamentally has caused this Committee such concern in relation to the July 2005 examination was the failure to refer a patient in circumstances where it would have been obvious that a referral was needed. I would invite you, in the light of all the evidence that you have heard, to treat that as an oversight on Ms Vali's part, an error for which you and your colleagues have found there to be misconduct and deficient professional performance, but not a symptomatic portrayal of her clinical abilities and judgments. Rather, it seems on the evidence, it is confined to that examination in July of 2005.

There is certainly no suggestion that there is a repeated demonstration by Ms Vali of her inability to recognise the impact that differing IOPs have or, indeed, that there have been other patients with glaucoma and that she has been unable to identify potential candidates who need referrals. Indeed the evidence, in my submission, points to the fact that Ms Vali recognises that there are individuals who need referrals and she takes appropriate action when that is needed.

Just stepping back for a moment, Ms Vali is an individual now four years on from when this allegation initially arose, who has learned a very valuable lesson, no doubt from the GOC's intervention in these current proceedings. Whilst I would obviously invite you and your colleagues to find that there is no current impairment of fitness to practise, bearing in mind all the evidence that you have heard, we acknowledge that you may well find it appropriate in the circumstances of this case to issue a warning to Ms Vali about any future behaviour or conduct with regard to what you have heard, evidence-wise, in relation to Patient A.

Madam, those are my submissions.

**Ms Jones:** Thank you very much; my apologies for getting the procedure wrong earlier.

**Mr Albuery:** No, not at all: thank you for the invitation to address you again.

**Ms Jones:** May I invite the Legal Adviser to advise us?

**Mr Marshall:** Certainly. The question for the panel at this stage is to decide whether, on the basis of the facts found proved and your findings of misconduct and deficient professional performance, the Registrant's fitness to practise is impaired.

The law at present is that, on this issue, there is no burden of proof to be discharged but the question is one for your judgment. Although you have found both misconduct and deficient professional performance that does not mean that fitness to practise is automatically impaired: the question is whether Ms Vali's fitness to practise is *currently* impaired. In deciding that question, you must consider both the events in 2005 and subsequent matters. In relation to deficient professional performance, it is obvious that if the deficiencies have been remedied then there may be no current impairment.

In relation to misconduct, the process was explained by Mr Justice Cranston in a recent case concerning doctors, called *Cheatle v General Medical Council* [2009] EWHC 645 (Admin). In that case, the judge said that:

"The context of the doctor's behaviour must be examined. In circumstances where there is misconduct at a particular time, the issue becomes whether that misconduct, in the context of the doctor's behaviour both before the misconduct and to the present time is such as to mean that his or her fitness to practise is

impaired. A doctor's misconduct at a particular time may be so egregious that, looking forward, a panel is persuaded that the doctor is simply not fit to practise medicine without restrictions or maybe at all. On the other hand, the doctor's misconduct may be such that, seen within the context of an otherwise unblemished record, a fitness to practise panel could conclude that, looking forward, his or her fitness to practise is not impaired, despite the misconduct."

As Mr Albuery has already indicated, if you find that fitness to practise is not impaired, you have the power to give a warning under Section 13F(5) of the Act.

Unless there is any other matter I can assist you with, that is my advice.

**Ms Jones:** Thank you very much. Mr Henley, could you clear the room please?

*[Hearing adjourned at 2.10pm]*

*[Hearing resumed at 3.21pm]*

**Ms Jones:**

## **Decision**

### **Findings regarding impairment**

The Committee has found that Ms Vali is guilty of misconduct and deficient professional performance in failing to act appropriately when abnormal ocular pressure measurements were found at a consultation in July 2005.

The incident occurred four and a half years ago. The Committee has considered very carefully whether Ms Vali's fitness to practise is currently impaired. The presentation of the patient in 2005 was a very clear indication of possible glaucoma. Most cases are much less clear. The Committee has looked for evidence that Ms Vali has developed a good level of skill and knowledge to enable her to identify possible glaucoma issues. The Committee was disappointed by the evidence that was presented. It has seen a CET record but most of the points gained have been from reading general articles rather than undergoing courses and very little of the material has been relevant to glaucoma.

Ms Vali gave evidence and told the Committee that she has commenced a diploma course in glaucoma but she has not yet been able to sit the exam. She submitted no evidence as to the content of her studies to date, no records and no independent confirmation. In her evidence she was not able to identify any specific consultations when possible glaucoma issues arose. She did not present any records of patient consultations when glaucoma issues had arisen to show how she had managed such cases.

The Committee accepts that Ms Vali has gained 4.5 years of general experience but nothing in the evidence presented indicated that the deficiencies in her practice and her insight, especially in regard to glaucoma, have been remedied.

The Committee heard evidence from two of Ms Vali's colleagues. One was a recently qualified registered optometrist, who had not observed Ms Vali conducting examinations since qualifying. He was complimentary about her general abilities but he did not give evidence about her skills in relation to glaucoma. The other witness was a registered dispensing optician. Again, she was generally complimentary but she

accepted that she was not able to give evidence about Ms Vali's skills in diagnosing glaucoma.

The Committee also received written references concerning Ms Vali's professional skills. It has disregarded two personal testimonials at this stage. The references had been prepared for a hearing in 2008 and had not been updated. None of them dealt specifically with glaucoma and did not deal in detail with Ms Vali's specific clinical skills.

The Committee has concluded that despite the passage of time and the opportunities it presented to Ms Vali to make specific improvements to her practice in relation to glaucoma, her fitness to practise is impaired."

Mr Albuery?

**Mr Albuery:** Madam, you are at that stage now when you must consider whether to impose an order and, if so, which one. Your powers may be found by you on page 27 of your Handbook, at Section 13F. In addition to those recorded there, you also have the power of course to impose a financial penalty under section 13H, although you may think – bearing in mind any sanction imposed by you must be proportionate and relevant to the concerns you have – that a financial penalty in this case would not be appropriate.

Madam, there are no previous adverse findings recorded against Ms Vali and so you must treat her, up until this matter, as a woman of previous good character in terms of her regulatory experience. You will have available to you the indicative sanctions guidance. In terms of approach to sanction, that is a matter more properly coming from your Legal Adviser than from me, so I will not trespass into his territory.

May I take instructions as to whether there is anything else I am asked to say at this stage? [*Takes instructions*] No, there is not, thank you. Those are my submissions, Madam.

**Mr Hodivala:** Madam, throughout the course of this hearing you have found that there are specific and focused concerns which, in our respectful submission, could be dealt with by way of conditions on Ms Vali's registration. It is difficult in some respects to see how any financial sanction could be relevant to the facts of this particular case. In the circumstances, I suppose you may feel it appropriate to give some consideration to whether or not at this stage, using a bottom-up approach, conditional registration is the appropriate sanction to impose. Certainly, we would submit that suspension or erasure from the register is a disproportionate sanction, bearing in mind that there are issues which could be dealt with by way of conditions to the registration, such as supervision, mentoring, or the provision of some kind of objective yardstick by which the Committee could be satisfied in the future that lessons that Ms Vali has given evidence that she has learned have in fact been learned. That would obviously also allow Ms Vali to continue practising in the interim, to maintain her income, particularly bearing mind as you have heard that she is expecting a child at some point this year.

If you and your colleagues feel that conditional registration is an appropriate way forward, then we would invite conditions on her registration that allow some kind of mentoring process to take place, focused on those issues of concern that you feel still exist in relation to the examination that was conducted in 2005.

I do not think I can assist further.

**Mr Albuery:** Madam, could I ask one matter? If you decide that a conditional registration order would be appropriate, it would assist the Council, which would obviously have to monitor and enforce any such conditional registration order, to see it in draft, for reasons which you and the Committee are well aware of. I am sure that my learned friend would also like to see it, for similar reasons. I think that has become common practice here, Madam, and at other places. Thank you.

**Ms Jones:** Does anyone on the Committee have a question or comment?

**Miss McCrudden:** May I ask if Ms Vali has claimed her CET training grants over the previous years, to enable her to purchase CET?

**Ms Vali:** Yes, I have done.

**Miss McCrudden:** Did you purchase any specific CET with these?

**Ms Vali:** No. What happens is that my CET grants go straight to the company that I work for, and at Specsavers they accumulate CET for us.

**Ms McCrudden:** Thank you.

**Ms Jones:** Could I ask the Legal Adviser to advise us?

**Mr Marshall:** The question for the Committee at this stage is to decide what sanction, if any, to impose. The decision on sanction is yours alone and you must exercise your own independent judgment. In considering sanction, I know that you will have regard to the indicative sanctions guidance. You should consider in turn each option available to you, in increasing order of seriousness. You have the option to make no direction; you have the power to direct conditions for up to three years; to suspend the registration of the Registrant for up to 12 months, or to erase the Registrant from the register. You also have the power to impose a financial penalty order, in addition to or instead of making a direction: the maximum amount is £50,000.

You should bear in mind the principle of proportionality. You must balance the public interest against the Registrant's own interests. Any sanction you impose should be no more restrictive on the Registrant than is necessary to meet the public interests you are here to serve. The public interest includes the protection of members of the public, the maintenance of public confidence in the professions and the GOC, and declaring and upholding proper standards of conduct and performance.

Unless there is any other matter with which I can assist, that is my advice.

**Ms Jones:** Thank you. Mr Henley, would you clear the room please?

*[Hearing adjourned at 3.29 pm]*

*[Hearing resumed at 5.33pm]*

**Ms Jones:** We have given you the draft conditions to consider; are there any matters to raise?

**Mr Hodivala:** Could I just raise one point? I know that Miss Goldinger has to leave us at six o'clock, so if she gets up and leaves that will be no disrespect to anybody.

**Ms Jones:** We also have the challenge in that somebody on the Committee has to catch a flight at 7.30 pm from Heathrow, with the added security matters and so on.

**Mr Hodivala:** Yes. We will try to be as quick as we can.

**Mr Albuery:** Madam shall I then start and talk quickly? Thank you for giving us the opportunity to look at these. I have taken instructions from the Council, who will obviously have to monitor these conditions.

In relation to the first suggested condition, it is asked that you put a timescale on it, within which you expect Ms Vali to submit herself to supervision. It is suggested –

**Mr Marshall:** I am sorry to interrupt but –

**Ms Jones:** We don't have a copy.

**Mr Albuery:** I apologise.

**Mr Marshall:** I am sure that you can continue with general points, but the Committee do not have copies of it.

**Mr Albuery:** Would you like me to pause, Madam, until you have a copy in front of you? Or shall I remind you, because you will have to consider them anyway? Madam, the first question is that one which requires her to be in workplace supervision and the only suggestion of the Council is that you indicate a time period within which she must place herself under such supervision. The suggested time period is 28 days. Bearing in mind that the order will not take effect in any event unless you say that it takes effect immediately, and I am not instructed to ask you to do so, she would actually have 56 days. It is suggested that the GOC have 14 days in which to indicate their agreement or otherwise to the proposed supervisor and that any change in supervisor be indicated to the Council within seven days. I think all of those timescales are acceptable to Ms Vali if you and your colleagues find them acceptable. Would you like me to carry on?

**Ms Jones:** As we go through, can I check with my colleagues that they find them acceptable? Are there any problems? [*Colleagues indicate agreement*]

**Mr Albuery:** Good, thank you.

**Mr Marshall:** Shall we have a note of those?

**Mr Albuery:** Shall I repeat it?

**Ms Jones:** It would be useful if, at the end, we can ensure that we have agreed the final set.

**Mr Albuery:** Yes. Madam, I will not go until that is done but probably others do not need to be delayed for that.

Madam, in relation to the ninth condition, which is working with the nominated supervisor to formulate a personal development plan, again it is suggested that there be a period indicated by you as to the period in which that plan must be formulated. I am not suggesting, because that would be impertinent, a timescale to you, because you will know what is in your mind when you impose that condition.

**Ms Jones:** It would be helpful, Mr Albuery, if the parties have had a discussion, if you would suggest a timescale. I will check, so that we can do as much as possible with everyone here.

**Mr Hodivala:** We have not discussed a final timescale with regards to that. One of the issues is what it is that you, as the Committee, want to happen to that personal development plan and whether it is something that the supervisor and Ms Vali come to an agreement about, and the supervisor includes in the biannual report, or whether it is something that the Committee themselves would wish to set a timescale for, so that there is some sort of structure to the personal development plan implementation. I think that is the issue.

**Ms Jones:** So it is whether it is in the six-monthly reporting, or if it is a separate submission.

**Mr Hodivala:** It is whether it is something purely for Ms Vali's personal development, in conjunction with her supervisor, so that her supervisor is satisfied that there is a personal development plan that is being constructed and adhered to, or whether you and your colleagues wish the supervisor to report back to the Committee in the six-monthly report with regards to the personal development plan itself.

**Mr Albuery:** That is it.

**Miss McCrudden:** Weren't we mindful of her personal circumstances, which is why we were not too stringent about putting dates on? Perhaps it might be better –

**Mr Albuery:** Madam, the Council's position is that if you expect the Council at any stage to monitor any of these, then it just needs to know what is required of it.

**Ms Jones:** I believe that when we discussed it, we were looking at reports being submitted after six months and so, if this forms part of that report –

**Mr Albuery:** Part of the report of the supervisor to the Council, Madam?

**Ms Jones:** Yes.

**Mr Albuery:** Thank you. In relation to 10A, it is asked that you clarify what you mean by 'directly supervise'. This is quite important because you will understand that supervision in this profession has recently been litigated at some length. Madam, it can mean only that somebody need be on the premises and capable of intervening. The use of the word 'directly' by you may mean more than that, particularly when you read it in relation to 10B. You are asked to clarify what you mean by that, by the Council, and whether you actually anticipate somebody being in the room with her.

I have to say that there is a whole other issue about 10, which my learned friend will raise, but that is an issue raised by the Council.

Lastly, so that you can stop having to listen to me, in relation to 11, I am asked to ask you to clarify the period of time in which you anticipate Ms Vali attending the 12 sessions, if it is to be a shorter period than you anticipate the order lasting for. Obviously, we do not know what that is yet. So it is mainly, in Council submissions, about timing and then the supervision issue.

**Ms Jones:** I hope you find this helpful. We were speaking about a two-year period, because we wanted to recognise that Ms Vali may be taking some time from her career shortly. In regards to 10A, the discussions of the Committee were that there is peer

review: each record would be signed off. I do not believe that we ever discussed the need for somebody to be in the room for the examination. Is that helpful?

**Mr Hodivala:** Could I just indicate at this stage that it is absolutely right that there is a more fundamental issue that we have with regard to paragraph 10? Perhaps before we descend into the minutiae of paragraph 10, you could hear our submissions.

This is a case in which there has not been any kind of interim order in place for the protection of the public and so, for the last four and a half years, Ms Vali has been able to conduct the kind of examination which you and your colleagues have considered at paragraph 10 in an unrestricted way. One can understand why, in the light of your findings, a personal development plan specifically with regard to glaucoma and its management might be something that a supervisor would want to draw up in conjunction with the Registrant. Likewise, there would be six-monthly reports performed by that supervisor. Paragraph 10 as it is currently drafted obviously requires all patients over 40 years of age, regardless of the actual individual circumstances, to be signed off – if I have understood you correctly – by peer review. That is an onerous obligation, not just on the Registrant herself, because she would not be able to conduct any kind of examination of a patient over 40, regardless of their presenting complaint or why they are at the practice. It obviously imposes a substantial burden on third parties as well. Given that this has not been a case in which the General Optical Council have seen fit to apply for an interim suspension order to restrict or for public protection reasons to prevent Ms Vali from examining patients over 40 given the risks involved, we do just question whether, in the light of all the other conditions that you and your colleagues have imposed, there is an absolute necessity for paragraph 10. If you conclude that there is an absolute necessity for that, then we can discuss the minutiae of how that would work in practice, obviously.

**Ms Jones:** This is quite a fundamental issue and one which the Committee spent some time discussing. I think we may need to go in camera just to discuss item 10.

**Mr Albuery:** Before you do, may I make just one brief representation? You have very helpfully given us an opportunity to look at the mechanics and how the conditional registration order would work in practice if you imposed it. I hope that I have restricted the Council's observations to that. I understand fully why my learned friend makes the representation he does but it seems to me that that is to seek to persuade you fundamentally to alter the sort of order you have in your mind. I am not sure that that is appropriate, or the purpose for which you gave us the draft order. That is all I will say.

**Ms Jones:** Could I just go to item 11 before we go in camera, just in case we need then to discuss that. Could you repeat the issue you raised?

**Mr Albuery:** Madam, thank you for telling us that your anticipated length of order is two years. If you anticipated that the 12 sessions be completed in that two-year period, then nothing more needs to be said. If you anticipated that it would be a period within the two-year period, then it would need a timeframe. That is all.

**Ms Jones:** It is 'by two years'.

**Mr Albuery:** Thank you - that is the clarification.

**Mr Hodivala:** Likewise, just with regard to paragraph 11, again I do not wish to be impertinent if I am misinterpreting the purpose behind giving these draft directions. Again, with regard to the obligation in paragraph 11, it creates an obligation on a third party, which it will be difficult for Ms Vali to have any control over. Likewise it would be

difficult for the General Optical Council to maintain inasmuch as it appears, as paragraph 11 is currently drafted, that the consultant optometrist or medical practitioner who is obliged to submit the information to the Registrar is actually the optometrist or medical practitioner who is conducting the work at the hospital, not under the aegis of the General Optical Council, the Association of Optometrists or the registrant. One can thus see that there may be practical difficulties with regard to paragraph 11 and its application and enforcement. Again, we just wondered whether there is another way in which the objective which you and your colleagues are trying to achieve in paragraph 11 can be done without imposing that obligation on a third party.

**Mr Marshall:** The obligation could be imposed on Ms Vali with an obligation that she tries to obtain sign-off of her records or something like that.

**Mr Hodialva:** Something like that may be more practical.

**Ms Jones:** Were there any further matters you wished to raise?

**Mr Hodialva:** No, I don't have any.

**Mr Albuery:** No thank you, Madam.

**Ms Jones:** We will confer in camera for a moment. Could you clear the room, please?

*[Hearing adjourned at 5.45pm]*

*[Hearing resumed at 6.11pm]*

**Ms Jones:**

## Decision

### Sanction

The Committee was firmly of the view that the matters found proven were of a serious nature and that to take no action would be an insufficient response.

The Committee next considered the sanction of conditions. It noted that both the GOC and the Registrant's representative favoured conditions being applied to rectify the deficiencies found in relation to Ms Vali's clinical practice. The Committee agrees that Ms Vali's deficient professional performance and impaired fitness to practise in relation to glaucoma could be addressed through CET learning and the application of appropriate conditions.

The Committee has taken account public perception of the profession and the safety of the public, who have a right to expect a good standard of care when consulting optical professionals. The Committee considered whether suspending or erasing Ms Vali's registration might be necessary but was satisfied that those sanctions would be disproportionate. Conditions will be sufficient to meet the public interest.

The Committee has therefore decided to impose the conditions attached below to be achieved within two years of today. The period of two years has been chosen because Ms Vali has told us that she is pregnant. A sufficient period must be allowed for her to complete the steps required by the Committee.

A review hearing will be held within four weeks of the expiration of this order. The review committee will need to be satisfied that Ms Vali has remedied the deficiencies that brought her before the GOC and is safe to resume unrestricted practice.

**JANINE VALI (01-20842)**  
**LIST OF CONDITIONS**

1. Within 28 days you must provide details of a proposed supervisor to the GOC. The GOC is to agree or otherwise the suitability of the supervisor within 14 days or thereafter. You must place yourself and remain under the supervision of that supervisor who would be prepared to monitor your compliance with conditions and provide reports to the Registrar every six months, providing details of any progression or regression in relation to compliance with these conditions. You must advise the Registrar of the nominated supervisor's contact details and of any proposed changes to the supervisor."

**Mr Hodivala:** Could I just interrupt and say I think that should say 'within seven days of such a change'?

**Ms Jones:** That is what you proposed. I think we have concluded any discussions.

"2. The GOC will enter these conditions against your name in the register. You must allow the Registrar to share any information, including confidential information, with any employer, supervisor, professional colleague or any organisation for which you provide ophthalmic services for the duration of your conditional registration. You must allow the Registrar to share this information with other regulatory bodies and the Department of Health.

3. You must notify the Registrar within 14 days of commencement of any professional appointment you accept whilst you are subject to these conditions and provide contact details of your employer and if providing ophthalmic services under an NHS contract, the PCT on whose ophthalmic practitioners list you will be included (this includes any equivalent employer in the European Community).

4. You must inform the Registrar within 14 days of any criminal convictions, police cautions or formal disciplinary proceedings taken against you from the date of this determination.

5. You must inform the Registrar:

(a) if you cease working;

(b) if your work takes you out of the UK for a significant period of time,  
or

(c) of any employment you apply for outside of the UK (and in which countries),

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

6. You must continue to fulfil the CET requirements under the GOC CET scheme to secure appropriate points for continued inclusion on the GOC register. Twelve of these points (in total, over the period of the conditions) must relate specifically to glaucoma and its management. At least 50 per cent of the points relating to glaucoma must be obtained by personal attendance at courses.

7. You must inform the following parties that your registration is subject to conditional registration:

- (a) Any organisation or person employing or contracting with you to undertake ophthalmic services (to include any locum agency);
- (b) Any prospective employer (whether within the UK or EC);
- (c) Chairman of the Local Optometric Committee;
- (d) The PCT in whose ophthalmic practitioners list you are included or seeking inclusion.

8. You must ensure that your GOC registration is renewed by 15 March annually while you are subject to the GOC Fitness to Practice conditional registration procedures. Should you fail to renew your registration a review hearing will be arranged immediately.

9. You must work with your nominated supervisor to formulate a personal development plan, submitted six-monthly, specifically designed to address the deficiencies in the following areas of your practice:

- a. Glaucoma and its management.

10. While in daily practice you must:

- (a) Not carry out examinations of patients over 40 years of age **unless** supervised, because of the increased risk of glaucoma in such patients. The supervisor (who must be a registered optometrist) is not required to be present during your examinations but must view and approve the record of those examinations within seven days.
- (b) Maintain a log detailing every case where you have undertaken examinations of patients over the age of 40 years which must be signed by the supervisor; and
- (c) provide a copy of the log to the Registrar on a six-monthly basis or confirm that there have been no cases where such procedures have been necessary.

11. You must attend a glaucoma specialist clinic in a hospital eye department as an observer for a total of 12 sessions over the period of this order. Where an opportunity presents itself, you should discuss the procedure with the hospital optometrist or medical practitioner. A record of attendances and content is to be maintained by you and countersigned by the hospital optometrist or medical practitioner to be submitted to the Registrar on completion of the 12 attendances.

12. You must not undertake any locum work in any form without the prior agreement of your supervisor and the Registrar.

13. You must not act as a professional mentor or to supervise student optometrists.”

**Mr Marshall:** Madam, when you read out the period of two years, I think you said ‘two years from today’ but, strictly speaking, it will be two years from the date when the order takes effect, which is 28 days from today. That, I think, was the intention.

**Ms Jones:** My apologies.

*[Hearing concluded at 6.18 pm]*