



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

**GENERAL OPTICAL COUNCIL
AND
CHARANJEEV SINGH VIRDEE (01-17157)**

F(09)09

THURSDAY, 27 MAY 2010

**SUBSTANTIVE HEARING
DAY 2**

**SUBSTANTIVE HEARING – DAY 2: CHARANJEEV SINGH VIRDEE (01-17157)
Thursday, 27 May 2010**

Committee: Ms Francesca Jones (Lay) (Chair)
Dr Vicki Harris (Lay)
Mrs Geraldine Huka (Lay)
Ms Yvonne Norgett (Optometrist)
Mr Mark Lomas (Optometrist)

Legal Adviser: Mr Nicholas Leviseur

Hearings Manager: Mr David Henley BEM

For the GOC: Mr John Hepworth

For the Registrant: Mr Sandesh Singh

[Proceedings commenced at 9.42 am]

Ms Jones: Good morning. I am Fran Jones, a lay member of the Hearings Panel, and I have been elected by the Committee to chair today's hearing. The Committee is made up of two optometrists and three lay members and I will ask the members of the Committee to introduce themselves and the capacity in which they sit. *[Introductions made]* To my right is Mr Leviseur, 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 Mr Nisbet, the transcriber, who will be keeping an official record of all that is said today during the sessions of the hearing at which the parties are present. The remaining persons sitting in the hearing room rather than in the public and press areas are members of the respective legal teams.

When we adjourned this hearing on 18 January 2010 we had just completed the impairment stage and had found Mr Virdee's fitness to practise as an optometrist impaired. We now go on to the sanctions stage, and if there are

no applications to be made I will invite Mr Hepworth to address the Committee.

Can I just check before we go any further that there are no health issues that have arisen in the meantime in relation to this case?

Mr Singh: No, there are not.

Ms Jones: Then Mr Hepworth.

Mr Hepworth: Madam, thank you. I will be brief.

Can I start, please, by saying what of course will be obvious to everyone in the room, which is that impairment you found on the basis of Particular 1 in the allegations, the conviction, and, importantly, the conviction alone.

As to the particular sanction you should impose, of course that is a matter for you and I do not make any submissions as far as that is concerned.

I can tell you that, according to the Council's records, the registrant has no previous fitness to practise history, as far as the Council is concerned.

As far as the facts are concerned, I can do no more than refer you back to your own decision on impairment which can be found at page 60 of the transcript of the previous hearing. I will not read it out unless you require me to do so but the paragraph to which I refer you is the third paragraph within the reasons for impairment and it is the paragraph which starts "The Committee is, however, deeply concerned". That paragraph seems to reflect your view of the seriousness of the matters which led to the conviction.

Other than that, I am not sure there is anything I can usefully add at this stage.

Ms Jones: Thank you. For the record, I think we should record that as C3. Mr Singh?

Mr Singh: Thank you. I assume that you and your colleagues have read C3 and refreshed your memory of what happened last time. I know it was only January but it feels like longer.

I will probably be slightly longer than I would have been if we had followed straight on, just to set the scene again and to cover all relevant matters.

The first point is obviously you are dealing only with the conviction and you will take, when you approach sanction, a bottom-up – I am not particularly keen on that phrase so possibly ascending approach to sanction, starting with no sanction and working up from there. I am not urging you to follow the no sanction course, given what you have said in your reasons at page 60. The next rung up, however, is of a financial penalty, and from there conditions, suspension and erasure.

I would ask when you are considering sanction, please, to stop and think very carefully at the next rung up, which is a financial penalty, and consider our submission which is that in the particular circumstances of this case and this registrant, a financial penalty would be appropriate and proportionate, and I say that because it will be a financial penalty in conjunction with the finding of impairment that you have already made in strong terms and, of course, you have been referred to that today.

Why is a financial penalty appropriate and proportionate? I have six headings. Can I just set them out in bullet points, please, and then you will know where I am going, and I will outline the detail afterwards. The first is this.

- Mr Virdee's conduct, it is clear from the evidence, was totally out of character.
- The second is that there are a number of factors which relate to the offence itself that mitigate its seriousness and, although I accept and Mr Virdee accepts, that it was deplorable behaviour, there are factors which you should consider, we would submit, which do lower its seriousness in the criminal calendar, if I can put it that way.
- Thirdly, that Mr Virdee has demonstrated insight and remorse; that is by his words on the last occasion and of course by his conduct before that.
- Number four is that he is not a danger to the public through practice. This is not an incompetence case or a case where he is not sufficiently qualified or competent in practical terms. I will address you and your colleagues on what that means for this sanction because obviously what you and your colleagues said in your determination on the last occasion and what clearly this is about is upholding the standards of the profession, rather than protecting the public, and so that in my submission is an important factor when considering sanction in this case.
- Number five is a relatively short one but these proceedings as a whole, long-running as they have been, have had a very significant effect on Mr Virdee, and that is relevant, I would submit.
- Number six, which will probably be the most detailed submission, is that the effects of a more severe sanction – and when I say that I mean suspension or erasure – would be disastrous in his current situation and would, you may feel when you have heard the circumstances, disproportionately affect this particular registrant, the main reason being that his first child, a son, was born two weeks ago and so the considerations really do go to proportionality of the sanction.

Madam, can I deal with those six headings and flesh them out, please. The first one, that this was out of character. It is accepted there are no previous convictions other than this, or disciplinary findings. The references that you have in your bundle – I do not know if you remember, there was a bundle R1 which had 12 references in them. I will not read them out again but I would ask you and your colleagues to refamiliarise yourself with all of those because

they become very relevant at this stage. Really, you may think when you read them and also refer to the live evidence that was given, they show a person who is usually completely honest and acts in a way completely the opposite to what he did on those days when he used the badge. It is relevant, in our submission, to sanction for this reason: that anyone really is likely to be more lenient to someone if it is a one-off course of conduct and not someone who habitually resorts to that kind of conduct. Mr Virdee is in the former category, not the latter. In our submission he is entitled to some leniency from this Committee because it is not something he has ever done before and it is not something that has been repeated. So his character is relevant in that sense. I would ask you to consider those references very carefully.

In relation to the offence itself, because you are dealing only with the conviction, you have to assess how serious that is in the context of a professional obviously. Mr Virdee is, of course, the first to admit that dishonest conduct is not acceptable at all, but you will, from reading the transcript, no doubt have picked up these points which are at pages 15 to 17 for your note, but there are three of them. The first is that within the time period that he had this disabled parking badge it was not used every day and, in fact, was used as – the words he used and it is a phrase I adopt – a last resort when he was unable to find parking for other reasons. That is relevant because it was not a constant and regular flouting of the law; it was used on five to ten occasions and that was the unchallenged evidence that he gave.

The second point: as I say, used as a last resort when he was not able to find parking due to, for example, parking suspensions and matters of that sort.

The third point, and this is important, this is page 17: what he used to do was park the car in a bay if there was not a facility to park it, and then later in the day return to it to move it so that it was not remaining in the bay all day. You will recall that on the day in question there was a witness who was at the car when he returned to it and there was a conversation there. The point I make is that, as Mr Virdee said on page 17, there was no other reason for him to return to the car on that day because obviously he was working at the practice, and so that was evidence, we submitted and do submit now, that that is what he used to do; he used to return to the car and move it into a bay when one was available. I simply raise those three points because they are points which lower the seriousness of this offence, and when you take them in conjunction, you may feel, with the fact that the offence was dealt with in the Magistrates' Court and that a financial penalty was imposed, that – not meaning to go behind your findings at all in terms of how you view this kind of dishonest behaviour – but it is at the lower end of seriousness of this kind of offence under the Fraud Act. So that is something, in our submission, that is relevant when you consider what sanction is necessary here in the disciplinary proceedings.

Heading three - insight and remorse. It is something that Mr Virdee was very, very quick to realise and recognise and that is, we submit, to his credit. His evidence on the last occasion (I am sure you will recall but from reading the transcript) was punctuated by expressions of regret, disappointment, disgust

in his behaviour, understanding that his conduct was (a) unacceptable and (b) why it was unacceptable. I am sure you will accept he is deeply ashamed of what he did. That embarrassment, remorse and insight is mirrored in his conduct in his interview with the local council where he admitted it immediately and also when he pleaded guilty at the earliest stage in the Magistrates' Court. Of course, there has never been any dispute as to his wrongdoing in respect of that part of the allegation in the disciplinary proceedings. You may be able to conclude this will never happen again because of the insight and effect this has had on him, and again that is a significant mitigating feature when it comes to sanction, we would submit.

Heading four. Now that I have made those general points, can I come on to what may be an important point in your consideration that this is not a danger to the public case and, whilst that is important by itself, I would like to go a bit further and see what the purpose of sanction is today and what it is that this Committee will be seeking to do. My starting point is page 60 of the transcript where you and your colleagues said in the second paragraph of your decision:

“The question the Committee asks itself (and quite properly, may I add) is whether or not the public would feel it right and proper to allow a professional man to avoid the professional consequences of such an act of mean-minded dishonesty.”

That, as I say, quite properly, was the question you asked because this is a case which deals with upholding public confidence in the profession and the fact that this Committee will take action against this kind of conduct.

The question really arises: What are the professional consequences of this conduct? The professional consequences are not only the sanction. They are the finding of impairment itself as well. In this case when you are considering what sanction is appropriate and the purpose of these proceedings, you may feel it relevant that a finding of impairment has been made in strong terms and what the public would perceive as proportionate and appropriate in the circumstances attaches to both sanction and impairment.

This is a case where obviously your strongly-worded comments will be published on the internet against Mr Virdee's name, and the finding of impairment will attach to his registration for as long as he is an optometrist. The public, looking at that, would feel that that, you may think, is the professional consequence of doing what he did.

The question that you have to ask is what level of sanction has to be imposed as well? Does it have to be a more severe sanction, for example suspension, or would it be appropriate to impose a financial penalty to uphold public confidence in the profession as well as the impairment?

It goes further, you may think, and there are two other matters that I simply raise for your consideration and you may think are relevant when thinking about what the public confidence would feel, public confidence in the

profession. This was dealt with in the Magistrates' Court originally and this registrant has already literally paid the criminal penalty; he has already been fined for it, he has already been dealt with through the criminal courts. This is, of course, the same conduct being looked at for a second time in these circumstances. There is nothing wrong with that of course because the professional consequences must follow, but it must be within your consideration the fact that he has already been sentenced for this and that it is necessary for you to keep your response here in terms of sanction proportionate in all of the circumstances.

The second point is that it was dealt with by way of a financial penalty in the Magistrates' Court which is a lower level of sentence in any event. That does not bind you at all because you are considering different things, but given the purpose of the sanction here to uphold public confidence in the profession, not public protection, you may want to think about inconsistency potentially between the level of sanction imposed in that case and the level of sanction imposed here when dealing with precisely the same conduct, and see whether there should be any parity between them. That is point four.

Point five is the effect of these proceedings. I can make it very shortly. The original incident happened in June 2008; we are now May 2010. It has obviously been a very worrying time for Mr Virdee, especially the extra time between January and now. I know it feels like for ever for us; I suppose if you multiply that by a hundred you would realise how long it has felt for Mr Virdee given the worry and given his anxiety to know his fate, so please take that into account as well when considering sanction.

Point number six, the final point, you will be pleased to know, is his current situation. As I said, he was fortunate in that his first child, a baby boy, was born two weeks ago. With all of that happiness obviously there comes a lot of responsibility both emotionally and financially. This is all relevant because if you were thinking in the direction of suspension it is right that you are aware what the consequences of suspension would be on his family and financially on the business, so can I set them out in this way. His wife is obviously now going to be on maternity leave, planned for 12 months. She worked in the practice, not as a qualified optometrist, so he has had to employ another member of staff, not an optometrist, but at a rate of £19,500 per annum.

Can I give you some figures, just to explain the effect of this? Assuming that he was able to continue working at the current rate that he does, which is six days a week really, and testing five days to six days, testing as much as he possibly can, he was able to draw a salary of £750 per month, and dividends are paid through the company at £24,000 per annum to him. Last year they were £19,200 but it is expected that this year, if he were to continue working, it would be around £24,000. So the salary and dividends projected for this year would amount to £33,000 per annum after tax; that is take home pay, not gross. His wife was earning £9,000 per annum post-tax and no dividend. That income will obviously not be received if she is not working. She will be receiving maternity pay and I have calculated it here. It is different figures each month but the statutory maternity pay, and it comes to £5,203.93 instead

of the £9,000. I do not know what the tax implications are but that is after any deductions that are necessary if any are made. I am told not and I accept that. That is the amount she will receive. The total income therefore is £33,000 plus £5,203.93, and in addition to that there is a flat that is rented out – and I will come on to that in a moment – but that brings in a rental income of £7,200 per annum which is applied to the mortgage. So the total income to the family whilst his wife is on maternity leave is £45,403.93.

To weigh against that, there is the expense of employing the other member of staff, and that is £19,500. That is the pre-tax amount they would be paid and obviously that would be set off against tax within the business. We have calculated that. That is £15,360 as an expense. That is after being set off. I see one member of the Panel shaking their head.

Ms Jones: We will ask questions at the end.

Mr Singh: Our calculation was £15,360 per annum, and that expense in addition to other expenses, and can I list them like this. That Mr Virdee's mortgage on his house is £7,200 per annum. The mortgage on the flat which brings in the rental income is another £7,200 per annum. It is £600 a month income and £600 a month mortgage, so they cancel each other out essentially. Other general expenses: telephone bills, £1,200 per annum; food – there is an increase because of the new child – is £300 per month, which is £3,600 per annum; other bills, £200 per month, £2,400 per annum. That is just general expenses. Other living expenditure equates to the child, etc. Those figures come to £21,600 on general expenses, £15,360 on paying the other member of staff. That leaves, if one subtracts those figures from the £45,403.93, an income that is left of £6,240 per annum. That is if he is working at the rate, as he was, of five to six days per week. That leaves him approximately £500 per month of spending money. With a child, things are obviously very, very tight. If he were to be suspended, the cost of a locum would be £500 per week of suspension for a locum who would be testing two days per week and not the usual five or six days, because that is all he would be able to afford. One can see, leaving aside the issue that might be raised in respect of how much it is going to cost him for the member of staff, if that expense was incurred, one, it would be very difficult to do it on the income he has, and, number two, the testing this locum would be able to do would be nowhere near as much as he has been doing. That would have a knock-on effect. It is only him and his wife when she works in the practice; it is only the two of them. That would obviously have a knock-on effect on profit and on the number of dispenses done as a result of that, and again a knock-on effect on profit. So the £24,000 of dividends may not be, if it is only a two-day locum working for however many weeks, may not be what his income is.

In addition, as I'm sure the optometrist members will know, when it is a small family run business, not a multiple organisation, client base is very attached to the specific optometrist that is working there, and if he is suspended and a locum is put in, there is the unknown damage to reputation and whether clients will remain at that practice. It may be whilst the locum is there for all of

that time, neither his wife or him are there, some of the client base simply will not attend, so that also has a knock-on effect on profit.

That is the situation, and in the circumstances of this particular case we would submit for those reasons that a suspension, even a shorter period of suspension, would have a disproportionate effect on this registrant in this particular situation.

It is right to say, and I should say this, that he was hoping to organise some locum cover for a couple of days a week during June so that he could spend a bit more time with his wife, but that would not preclude him from working some of the other days in the week if the locum was working two days. So profits would still be at a similar level, hopefully, if required. If he is suspended, obviously the income from the business is limited solely to the two days a week that the locum is testing, and any other consequent matters on other days. Obviously if he were to arrange locum cover and was not suspended he would still be able to have a hand in the business and keep it going. If he is suspended he would not be able to test. That is the difference in situation.

Putting it all together, considering this case, we accept that it is an offence of dishonesty and that cannot go un-noted. You have noted that by your finding of impairment. Your duty is to impose, you may feel, a proportionate sanction for this registrant and we would submit that your consideration should conclude when you go up the scale at a financial penalty because of all the matters that I have outlined.

If you are against me, I would ask you, for all the reasons I have outlined, to keep the period of suspension as short as possible. It probably does not need me to say it but my submission on erasure is that it would be disproportionate in this case, given his admissions, his insight, his good character, the fact it has not been repeated, and that he is not a danger to the public.

Madam, unless I can assist you or any of your colleagues – I think there may be a question from my left – those are my submissions.

Ms Jones: Thank you, Mr Singh. Before I take any panel questions, Mr Hepworth, did you have any comments or questions you wished to make?

Mr Hepworth: Madam, thank you, but no.

Ms Jones: Can I begin on my right with any comments or questions? Dr Harris?

Dr Harris: Frankly, I am having difficulty with the figures you provided. It may actually assist the Committee if you have them set out in writing.

Mr Singh: I can have them set out in writing.

Dr Harris: I think that would be helpful. I do not understand how you have arrived at the figures that you have provided for the person who is going to be

employed. Can we know, Mr Singh, who Mr Virdee has employed? Is it a family member or someone completely –

Mr Singh: It is a family member. It is his cousin. She was employed previously on the salary of £19,500 pre-tax at her previous post, which is why she is being paid that at this post. How did we arrive at the figure of £15,360?

Dr Harris: Mr Singh, perhaps I could help you out. Are these figures prepared by an accountant?

Mr Singh: No, they are not.

Dr Harris: So there is nobody with a professional qualification whose calculations we could just rely on to make it simpler.

Mr Singh: No, this is a calculation that has been done between myself and Mr Virdee taking his instructions and setting it out as best I can.

Dr Harris: If you let us see them, rather than going through, it would be much easier.

Mr Singh: Yes, of course.

Dr Harris: Can you tell us a little bit about the fact that there seems to be income coming in from a flat, as you put it, which income appears to balance off the mortgage? This is just a buy-to-let type of thing, is it?

Mr Singh: Exactly. It is a flat that has been bought. The rental income pays for the mortgage. The rental income is taxed.

Ms Jones: Excuse me. Can I suggest that when you write out the income and expenditure, you could do it in a column fashion, in and out? That would help us. If there are any particular notes about property or other assets, a little footnote will help us.

Mr Singh: Yes, we will do our best.

Dr Harris: Indicating, for example, you have other liabilities in respect of this. I am just finding this slightly confusing at the moment because you have just chanced on one thing. Is it taxed? It should be taxed, £7,200, but it could be offset against the mortgage interest. We do not really know. You are inviting us to draw some conclusions from figures. Can we assume that regardless of this case, Mr Virdee's wife would have had maternity leave anyway?

Mr Singh: Yes, of course she would. She would certainly have had maternity leave. The issue that we are dealing with is, regardless of this case she would have had maternity leave; she has had maternity leave and this case does exist. The question is what is the effect of all of these things happening now on your consideration of sanction.

Dr Harris: One final question. Was Mr Virdee planning on anything other than two days a week in June? Was he planning on any paternity leave other than that?

Mr Singh: There was a plan to have locum cover for two days a week for the month of June, and that would then allow him to take some time away from the practice, but it would not preclude him, as I say, from working as necessary. That is the point. I hope I made that clear.

Dr Harris: I just wanted that clarification. Thank you very much.

Mr Lomas: Can I just clarify that Mr Virdee is still seeing NHS patients initially and allowing them the value of vouchers and sight tests?

Mr Singh: Yes, he is.

Mr Lomas: Has he any idea how much he is losing per month because he does not have an NHS contract?

Mr Virdee: I think there was a time when I did keep accounts, but I don't really have them for that figure. It's a significant amount to I think the sum – not per month but this is the total amount – probably around £20,000.

Mr Lomas: £20,000.

Mr Virdee: Yes, in total.

Mr Lomas: Because I think it is 20 months that you have been without a contract, so £1,000 a month, which I would think would be reasonable for a one-man practice. Thank you.

Ms Jones: I have no questions, thank you.

Mr Singh: Thank you. We will set those out now as quickly as possible and get them to you.

Ms Jones: We would appreciate that. If you could include in that the implications for loss to date on the NHS contracts, that would help, and any other financial matters you think are relevant.

Mr Singh: I may ask Mr Henley if I can borrow a computer; that may make it easier.

Ms Jones: Handwritten will be fine. We do not want to hold up this process. In that case, can I invite our Legal Adviser to advise us?

Mr Levisaur: I am just thinking about the process of considering matters before submissions are finished being made. If you are to submit a document those are submissions. I am not myself clear that I should give advice and tell the Committee how they are to approach that task without those submissions having been put before it and without me having had an opportunity to look at

them to see if there is some guidance that needs to be given about them. I am also conscious of the fact that the Council has a right to see those and to make submissions. For instance, it might be that there is a self-evident, at least self-evident to the Council, error which means that somebody's income has been misstated by, let us say, thousands of pounds, which might have a significant effect, and it is not appropriate for the Committee itself to turn itself into a forensic accountant. If the conclusions that you wish to draw are X, then those should be your submissions, and really the Committee can either take it or leave it. What they should not be doing is doing their own calculations.

Mr Singh: I agree with that. If I am given just a few minutes, I have the figures here, I will be able to put them into a format to submit.

Ms Jones: In that case I suggest we adjourn and reconvene at 10.40. If you should need more time, please let us know and we will extend the period. If we can have photocopied versions for the Committee and Mr Hepworth, that would be helpful.

Mr Leveseur: It would be very helpful for me if Mr Hepworth were to see them before they are given to the Committee.

[Hearing adjourned at 10.21 am]

[Hearing resumed at 11.16 am]

Mr Singh: Madam, thank you for the slightly longer time than anticipated. It is not *War and Peace* but it is somewhere close. I am glad that the points have been raised quite properly because it has helped us in setting it out to clarify matters and explain it hopefully more clearly than it was earlier. Can I hand up a spreadsheet and can I say that, having spoken to your learned Legal Adviser who advised that what myself and Mr Hepworth should do on the basis of that spreadsheet and what is in it, attempt some calculation which we are both content with to explain what overall this registrant's income is, how much worse off he is by the fact that his wife is now not going to be working and they have to employ another member of staff, and what the disposable income is at the end of the day.

Ms Jones: And where is that figure?

Mr Singh: That is what we have just been doing before we came into court, and that is what I am going to give you and your colleagues now. *[Document handed over]* That is the data, that is what you have there.

Ms Jones: I think what we asked you for was the final figure, so if you could let us have that final figure.

Mr Singh: Yes, of course. The final figure is that income into the family – I am saying “the family” as a whole – is reduced from what it would normally be by approximately £11,800 per year. That is as a result of a reduction in dividend

because of a drop in profit because of having to employ the other member of staff, and what we had not appreciated fully is that there is obviously an offset between the fact that his wife will not be being paid a salary by the business, so the business is £9,000 better off as a result, but then it has to expend £19,500 on this new member of staff, so both of those figures are now in there. The family is around £11,800 worse off per year. The family's income is approximately £33,500 per year, and disposable income following those general expenses that are there, that is the mortgage payments in relation to the family home, food, bills and telephone, is in the region of £11,500 per year, which equates to just under £1,000 per month.

Ms Jones: Thank you. Can I clarify, this is a submission you are making, so should this be classed as R2?

Mr Singh: Yes, please.

Ms Jones: Before I take any Committee comments, any comments, Mr Hepworth?

Mr Hepworth: Of course, these are all self-reported figures by Mr Virdee. I do not think I can comment on their accuracy or otherwise but I have been through the maths with my learned friend and I am content that the maths make sense and, of course, that final figure of about £11,500 is disposable income after the expenses that are listed in the outgoings column have come out and also after tax.

Ms Jones: Yes, that is helpful.

Mr Hepworth: Madam, I do not know, as you are concentrating on the registrant's finances, whether or not it would help for you to be told the current position with the PCT. Mr Camilleri is here and I have had the opportunity of speaking with him. He, of course, was a witness whose evidence was agreed.

As far as the registrant's contract with the PCT is concerned, that has been terminated. Of course, the registrant can apply for a new contract but the current position is if he applies it will be considered in the usual way as to whether or not the contract will be granted, but it currently is terminated. He still remains on the performers' list. I understand that the practitioner performance decision-making group of the PCT will consider his presence on the performers' list following the decision of the Council today.

The registrant's current position as far as publicly funded work is concerned is rather complicated. He cannot claim for publicly funded work done within his own practice because he has no contract with his PCT for that work, but because he is on the performers' list he can still sign the various GOS forms and if he was employed as a locum or otherwise by an employer the GOS forms which he signs could be submitted by the contractor, the employer, to the relevant PCT for payment. He would then, of course, receive a salary from the employer. So he is not barred from submitting GOS forms, just on claiming payment whilst working in his own practice.

Madam, I have tried to simplify that position and hopefully that is clear. Other than that, I do not think there is anything else I can usefully add.

Ms Jones: That is helpful, Mr Hepworth; thank you. Mr Singh, do you have any final comments before I ask the Committee if they have questions and take the Legal Adviser's advice?

Mr Singh: Madam, it may be more helpful, I suppose, if the Committee have any questions they can direct those to me and then if there is anything I need to say after them; I do not think there will be.

Ms Jones: [*Confers*] There are no questions from the Committee.

Mr Singh: Thank you very much. I do not want to repeat what I have been saying but the only point I make is that now you have a final figure in terms of monthly income, bear in mind then the effect of suspension and the fact of the figure given of £500 per week as the two day a week cover, and please consider how realistic it would be for him to employ a locum and the effect on his business.

Thank you very much.

Ms Jones: Thank you very much, Mr Singh, and our thanks for the information presented in this way.

Now that we have all the submissions, can I invite our Legal Adviser to advise us?

Mr Levisaur: In considering sanction, you should approach the task by reminding yourself that you are charged with upholding public confidence in the profession and with upholding appropriate standards of behaviour in it. You should also remember that the purpose of sanction is not to punish. It may have that effect but that is not its purpose. As Mr Singh reminded you, the Committee should adopt an ascending order of gravity of sanction, sometimes referred to as the "bottom-up approach". Consider the least serious level of sanction first. If you are satisfied that that level is appropriate you should stop there. Only if you are not satisfied should you consider the next higher level of sanction. Mr Singh has told you that he does not urge on you the option of imposing no sanction. He urges on you the option of a financial penalty. These, however, are matters for you; it is not for Mr Virdee or those who represent him to tell you what sanction, if any, is appropriate. Submissions in the end are simply that.

Consider the references which you have at R1 and give them such weight as you think appropriate. Likewise, you will give credit for the fact this man has no previous findings of impairment.

You have heard the matters in mitigation put before you by Mr Singh this morning. Consider them carefully and give them such weight as you think fit. It is said that the registrant is not a rich man, who has little disposable income.

Clearly any financial penalty should be proportionate to the gravity of the conduct.

You have been told that he has no PCT contract but that he may apply for one. He is on the performers' list but that, of course, will be reviewed following your decision today. It appears that he has lost some £20,000 because he does not have a contract. He has an income of some £33,500 a year and a disposable income after tax and proper domestic expenses of about £11,500 a year.

You will also bear in mind the question of insight, but that in itself does not, of course, dispose of the issue of sanction. You have found that the registrant has admitted mean-minded offences of using a disability badge to which he had no right. What in those circumstances is the appropriate sanction?

That is the advice that I give to the Committee.

Ms Jones: Thank you very much.

Mr Hepworth: Madam, I do not know if your legal adviser wishes to draw to your attention the provisions of Section 13H(1) of the Act. I do not think it has been specified yet that your power to make a financial penalty order is either in addition to or instead of any of the sanctions set out in Section 13F, which is the power to erase, suspend or make a conditional registration order.

I have invited your Legal Adviser to do that and I think I may have gone rather further than that myself, but I suppose we have all ended at the same place.

Mr Levisour: That is always the desirable thing to do because it saves me. Thank you for reminding me of that fact, and the Committee, of course, now, as it were, hears the same thing from me.

Ms Jones: Thank you. Mr Henley?

Mr Henley: Madam, would you like to mention the numbering of the C documents?

Ms Jones: Indeed. Earlier I made an error. I noted that the document, the recording of the substantive hearing of 18 January as C3. I should have noted it as C2. My apologies for the confusion caused. Thank you, Mr Henley.

It is 11.30 now. Can I suggest, in view of the matters, that we reconvene at 12.15, having had lunch?

Mr Henley: If you want to allow the others time to have an early lunch you may want to extend that to 12.45; to be available from 12.45.

Ms Jones: Let us make it 12.30.

[Hearing adjourned at 11.28 am]

[Hearing resumed at 1.03 pm]

Ms Jones: Mr Virdee, would you please stand? [Reads]

Sanction

The Committee has heard submissions as to sanction from both parties and has reminded itself of the contents of the testimonials before it and has read the transcript of proceedings before it in January of this year. It has accepted the advice of the Legal Adviser.

At the heart of this case is the admitted fact that the registrant used a disabled badge to park his motor car when he had absolutely no right to do so. This mean-minded behaviour took place in January 2008.

The Committee is satisfied that it would not be appropriate to dispose of this matter without sanction.

The Committee accepts the evidence before it that this was uncharacteristic behaviour on the part of the registrant and notes the testimonials which are before it which speak highly of the registrant in both a professional and personal capacity.

The Committee has heard evidence as to the financial effect that this behaviour and these proceedings have had on the registrant. He has lost his primary care trust contract for the provision of services under the NHS which has reduced his income by about £20,000 since August 2008. He remains on the performers' list but that will be reviewed once these proceedings have finished.

The registrant told the Committee and it accepts that he has felt deep shame about this behaviour and in the effect it has had on his reputation in the community. The Committee has no doubt that the effect of these proceedings has been serious and that they have been hanging over him for 18 months with all the strain that this involves.

The Committee is satisfied that the registrant has shown remorse for his behaviour and has done so from an early stage in the proceedings. In the Committee's judgment there is little risk of future dishonesty on the part of this registrant.

Given the insight shown, the financial effect which this has already had on the registrant and the time which has elapsed, the Committee is satisfied that the appropriate way in which to deal with this matter is by way of financial penalty.

The registrant is a sole practitioner with a young dependant family. Having had regard to his likely disposable income the Committee is satisfied that the proportionate and appropriate order is that the

registrant be ordered to pay the sum of £1,000 by way of a financial penalty order by 1 October 2010.

Thank you; please sit. I believe that concludes matters for today. Thank you very much.

[Hearing concluded at 1.06 pm]