

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

GENERAL OPTICAL COUNCIL

F(06)12/13

AND

**MARTYN CARL ALLEN (01-17630)
CAROL ANN SINCLAIR (01-8096)**

DETERMINATION OF THE INQUIRY: 17-18 APRIL 2007

On 17 April 2007, the Fitness to Practise Committee of the General Optical Council met to consider the following allegation against Martyn Carl Allen and Carol Ann Sinclair:

ALLEGATION

The Council alleges that the fitness to practise of **Martyn Carl Allen** (a registered optometrist) is impaired in that:

Between 12 March 1999 and 11 August 2004 Mr Allen failed to manage Patient A appropriately in that:

- (a) Mr Allen did not undertake adequate examinations of the patient's visual fields, optic nerve heads and intra-ocular pressures;
- (b) Mr Allen did not refer Patient A;
- (c) Mr Allen failed to act appropriately in view of Patient A's signs and symptoms.

AND

By reason of the facts set out above Mr Allen is guilty of deficient professional performance.

The Council alleges that the fitness to practise of **Carol Ann Sinclair** (a registered optometrist) is impaired in that:

Between 17 January 1997 and 12 July 1998 Miss Sinclair failed to manage Patient A appropriately in that:

- (d) Miss Sinclair did not undertake adequate examinations of the patient's visual fields, optic nerve heads and intra-ocular pressures;
- (e) Miss Sinclair did not refer Patient A;
- (f) Miss Sinclair failed to act appropriately in view of Patient A's signs and symptoms.

AND

By reason of the facts set out above Miss Sinclair is guilty of deficient professional performance.

DETERMINATION

Findings in relation to the particulars of the allegation

The Committee finds that Mr Allen did not carry out an intra-ocular pressures examination on 7.9.02 when he should have done.

All remaining allegations against Mr Allen and Miss Sinclair are not proved.

Exercising the power implicit in the definition of "substantive hearing"; pursuant to the advice of the Legal Adviser and with the concurrence of the parties, the Committee has proceeded to determine the facts and to consider the question of deficiency. Following the announcement of this determination the Committee will go on to consider the question of impairment, should it arise. The allegations against the Registrants are shown above.

The Committee finds it convenient to deal with the issue of Mr Allen's intra-ocular pressures examination as a discrete issue hereafter.

The Committee does not find that the remaining elements of the allegations against the registrants were proved. The Committee's reasons for such findings are as follows:

- (1) The Committee heard expert evidence from Dr Barnard called on behalf of the Council and Dr Eperjesi called on behalf of the Registrants. The Committee was struck by the balanced manner in which Dr Eperjesi gave his evidence. His evidence struck the Committee as being more reflective of the contemporary academic standards and more in tune with the relevant professional standards of practice.

- (2) It has not been proved to the satisfaction of the Committee that optometrists practising at the level of the Registrants should have known of the condition of which Patient A has now been diagnosed or of the potential consequences.
- (3) Both Registrants gave evidence. Both were frank, open and credible. Mr Allen relied upon the action of Miss Sinclair, his former supervisor. It was not proved to the satisfaction of the Committee that he was wrong in doing so or that during the period of his care there was anything which was accessible to mainstream optometrists (whether in the form of literature or otherwise) which should have prompted him to take any step other than to continue with the course of management which he had taken over from Miss Sinclair.
- (4) PDS is a rare condition about which mainstream optometrists know little and are taught little. Indeed the College of Optometrists' Guidelines makes no mention of it.
- (5) On the evidence before the Committee, over the course of 30 years whilst signs were there to be seen, Patient A's eyes had been examined by 6 or more practitioners apart from the Registrants. It appears that for whatever reason none of these practitioners took a course different from that adopted by the Registrants. Such evidence does not in itself exculpate the Registrants if their treatment had otherwise been deficient but the evidence does support Dr Eperjesi's testimony.

Accordingly, we find Miss Sinclair not guilty of deficient professional performance.

Turning now to the allegation that Mr Allen did not examine the patient's intra-ocular pressures:

It is the fact that Mr Allen's manuscript note of his examination on 7.9.02 does not record the IOP's.

Patient A gave evidence on oath that no such examination was carried out on that date.

Mr Allen could not specifically recall the occurrence of 4½ years ago but he assured the Committee that it was his invariable practice to carry out an IOP examination on patients over 40 years of age (Patient A was born in 1960).

In support of his evidence, Mr Allen produced 7 anonymised records of other comparable patients to show that he did carry out such examinations routinely and recorded the results of each.

Mr Allen's record keeping was impressive and the Committee found it hard to accept that had he carried out an IOP examination on the patient, that he would not have recorded it.

Having seen, heard and assessed the patient and balancing her account against the assertion of Mr Allen and the general standard of his record keeping, the Committee is satisfied that on 7.9.02 he did not carry out an IOP examination.

Both experts have agreed that a failure to carry out an IOP examination on a patient over 40 years of age would be to fall below the standard of a reasonably competent optometrist. Dr Eperjesi told the Committee that a patient over 40 without symptoms should have a IOP examination to assess the issue of raised pressures. We find that in failing to undertake this test Mr Allen failed to manage Patient A appropriately and that this amounts to deficient professional performance.

Findings regarding impairment

The Committee is satisfied that Mr Allen's fitness to practise is not impaired.

The Committee has found deficient professional performance in relation to a single incident over 4½ years ago at a time when the registrant clearly was taking IOP measurements, as evidenced by exhibit R2.

The Committee has been assisted in reaching their conclusions by the detailed, complimentary and relevant references in relation to the registrant's practice over at least the last 5 years. They come from a consultant eye surgeon with relevant experience of Mr Allen's referrals, an employer with knowledge of this case and patients from a wide variety of walks of life. These statements stress Mr Allen's cautious, appropriate and exemplary practice in their eyes. Mr Allen has also undertaken considerable CET in a wide variety of subjects, well in excess of the minimum requirement.

Weighing up this evidence, we are therefore satisfied that he is fit to practise.

We have given consideration to whether a warning would be appropriate but given all the circumstances we find it would be neither proportionate nor appropriate to give a warning in respect of a single incident.