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

GENERAL OPTICAL COUNCIL

AND

NAFTALI EVERARD BASTIEN (01-22033)

APPLICATION FOR AN INTERIM ORDER HEARING: 14 FEBRUARY 2007

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NAFTALI EVERARD BASTIEN (01-22033)
14 February 2007**

Fitness to Practise Committee: Mrs Corinna Kershaw (Chair)
Ms Elizabeth O'Donoghue (Optometrist)
Lady Margaret Wall (Lay)

Legal Adviser: Mr Christopher Kinch QC

Hearings Manager: Mr David Henley DEM

For the GOC: Mr Bradley Albuery
For the Registrant: Mrs Sandhya Kapila

[Proceedings commenced at 10.05 am]

Mrs Kershaw: Good morning. I am Corinna Kershaw, and I have been elected to chair today's hearing of the Council's application for an interim order. The Committee today is made up of one optometrist and two lay members. I will ask the members to introduce themselves and the capacity in which they sit. *[Introductions made]* To my right is Mr Kinch, QC, who is the Committee's Legal Adviser and 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.

At the desk in front of the Committee, to my left, is the transcriber, who will be keeping an official record of all that is said today during the sessions of the hearing at which the parties are present. Next to the transcriber is Mr Henley, the Hearings Manager, who will provide administrative support to the Committee. The remaining persons sitting in the hearing room are members of the respective legal teams.

Mrs Kapila: Madam, before we begin, could I just confirm whether you have the bundles? I wonder if they could be passed to the Committee before we begin or would you like me to pass them?

Mr Albuery: There are bundles upon which the Association of Optometrists would like to rely, which I have seen in advance and I am happy, of course, for you to see if it will help inform your judgments on these matters. In relation to two documents, the Council has some comment to make upon them but I have no objection to you seeing them so long as you understand this: that in relation to the report prepared by Deacon Harle, the Council will be saying later that there is no evidential basis before you laying the foundation for some of the expert judgments to which he comes. Secondly, the Council will say that without more explanation, a referral guideline from the West Sussex Health Authority, when you are dealing with a case in Hampshire, is of no relevance. But, subject to those things, which I put in your mind as you read them, I am happy for you at least to read them.

Mrs Kapila: Thank you.

Mr Albuery: You have quite a lot to read, because there are lots of references as well as –

Mrs Kapila: Yes, there are. Madam, I apologise for the lateness of the papers but, as you can imagine, we had very little time to piece it all together. We do have some additional references that have, in fact, come in this morning, which I will hand to Mr Henley.

Mrs Kershaw: And have these been seen by Mr Albuery?

Mr Albuery: I saw them this morning, thank you.

Mrs Kershaw: And are you happy for us to receive these at this point?

Mr Albuery: Yes, I am. Madam, bearing in mind how much there is for you to read –

Mrs Kershaw: I was going to seek an adjournment, I think.

Mr Albuery: I think we grant it, if that is not impertinent.

Mrs Kershaw: Legal Adviser, I think you would agree?

Mr Kinch: Certainly, you do not always need to read all the documents in advance, but if the parties think it makes sense then it is essential you should have the chance to read them.

Mrs Kershaw: I think it would be helpful if we were familiar with them. In that case, we will adjourn for reading time, which I am hoping will not be very long and we will recall as soon as we are ready. Thank you.

Mr Albuery: Thank you very much.

[The Hearing adjourned at 10.08 am]

[The Hearing resumed at 10.30 am]

Mrs Kershaw: Thank you for that time. Are there any applications besides that one?

Mr Albuery: Not by me, or from me.

Mrs Kapila: No, Madam, I am quite content for the hearing to proceed.

Mrs Kershaw: Mr Albuery?

Mr Albuery: Yes. Madam, this is an application by the Council for you to consider making an interim order, restricting the practice of Mr Bastien. Madam, I propose, if you and your colleagues would find it helpful, just to tell you something about the legal framework against which such applications are brought to you and then tell you something about the facts. Would that be a helpful way to proceed? Can I just check before I do that, that you have had an opportunity to read the documents which in a moment I will be referring to? The Council's documents comprise a statement of facts in support of the application and then a bundle of documents, numbered from 1 to 16.

Mrs Kershaw: I think we have them all.

Mr Albuery: Thank you very much. And can I infer from that answer that you have read them?

Mrs Kershaw: Yes.

Mr Albuery: Thank you. Madam, from time to time, the Council receives complaints about the conduct or competence of optometrists and opticians and the Council has a statutory duty to investigate those complaints. Once some investigation of them has been undertaken, the Council's Investigation Committee considers the complaint and decides whether or not to refer it to a Fitness to Practise Panel for a substantive hearing. In October of last year, the Council received a complaint concerning the conduct of Mr Bastien – or his competence, I should say – from Specsavers, and you have seen in your bundle the letter from Mr Carroll which triggered the investigation.

Madam, when the Committee determines whether or not a case should be referred for a substantive hearing, it considers at the same time whether, for public protection reasons, it ought to request that consideration be given to the making of an interim order. That power or requirement is found in the Opticians Act, at Section 13D(9), which for those of you interested is on page 26 of the new *Opticians' Handbook*. I will read that, if I may, for the sake of the record. It is Section 13D(9), page 26:

“If the Investigation Committee are of the opinion that the Fitness to Practise Committee should consider making an order for interim suspension or interim conditional registration under section 13L [below] in relation to the registrant ... they shall”

- and then it sets out a number of things that they must do. I do not need to trouble you with those things, they are about notification to the registrant and I think it is accepted that that which the Council should do has been done. That is why Mr Bastien is there. That is the power, as it were, that allows the Committee to ask you, before any determination on the merits of the substantive issues, to consider an interim order. Then, if you turn with me please to Section 13L, which is at the top of page 34, you will see the section which deals with the judgment you have to make today. This is Section 13L, reading from the first subsection:

“Where the Fitness to Practise Committee are satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of a registrant, for ... his registration to be suspended or to be made subject to conditions:”

- then, moving on to the last sentence,

“the Committee may make an order specified in subsection (2) below”.

Madam, this case is not about entries relating to specialities or particular proficiencies so 1(b) does not apply.

Just breaking down then what is said in Section 13L, the Council has to satisfy you – that is the word used – that it is necessary for an interim order of some sort to be made. The burden is on the Council through me and the standard of that burden is accepted to be that you must be satisfied so that you are sure – we used to call it, ‘beyond reasonable doubt’. So it is a high burden and, you might think, rightly, because without hearing the full facts you are being asked in some way to intervene

in the legitimate expectation that Mr Bastien has that he should be allowed to unfetteredly go about his practice. So that is the burden and standard of proof and the law requires that you be satisfied that it is necessary.

There are three ways in which you may say that it is necessary: that it is necessary for the protection of the public, or that it is otherwise in the public interest or is in the interests of the registrant. You can determine that it is any of those things, or indeed none, of course. The Council says in this case it relies on the requirement that you protect members of the public. It is not suggesting that it is in the interests of the registrant and I, for one, cannot think of any other way in which it is in the public interest other than for the protection of members of the public, so I think I should candidly and fairly to Mr Bastien say that the Council nails its colours to the mast, as it were, and says that you should make the order because it is necessary to do so for the protection of members of the public.

What are the orders that you can make? They are set out for you in Section 13L(2) and in summary, you can make one of two orders, or none. The two orders that you can make are that you can impose an interim suspension order, which would mean that Mr Bastien could not practise at all, or you could impose conditions upon his registration, so that he could continue to practise but subject to whatever conditions you determine must be imposed.

In some cases – and if you have read transcripts you will have seen it – the Council makes it clear that it seeks, though it is ultimately a matter of your judgment, a suspension order, so concerned is it as to the public interest test. In this case, it leaves open to you what order you think would be appropriate. It may be, having read the papers that you think the only way that the public can properly be protected is by an interim suspension order. It may, however, be, bearing in mind the particular facts of this case, that you feel justice could be served both to the registrant and to the public, by the imposition of conditions. If that, at a later date, is in your mind, the Council would suggest from experience that it might be helpful for an indication at some stage, once you have retired, as to what conditions you may be thinking of, so that the Council, if appropriate – and indeed, Mr Bastien’s representatives – can make some submissions as to the appropriateness of the conditions and indeed the enforceability of them, because there is no point imposing conditions which cannot properly be enforced, not that, I am sure, you or your colleagues ever would.

Madam: that is the legal framework. The rules which govern these proceedings are found at the back of your handbook at page 95, the 2005 Fitness to Practise Rules. And the rules governing interim orders are those found between Rules 17 and 19 inclusive. Madam, I do not think these rules help us particularly. They set out things that the Council must do before you can hear the case. Those things have been done. They set out timescales – well, we are here and they have been complied with. Rule 19 deals with various evidential matters and we may or may not need to refer to that later, but I do not anticipate that that may trouble us. I refer to it for the sake of completeness. I am not here to advise you on the law; your Legal Adviser is and you must take the law from him and not from me, but I hope that is a helpful summary of what I understand the law to be.

Madam, may I now deal with the facts of this case? You have the benefit – and I hope you did find it a benefit – of reading the statements upon which the Council will rely on at a later date. This may not be the totality of the evidence. Certainly, an expert has already been instructed – Dr Harper, from Manchester University – to prepare an expert report on the matters which caused the Council concerns, and it may be that there will be some more evidence. But it is the evidence upon which at

the moment the Council relies to ask you to come to the view that it is appropriate for an interim order of some sort to be made.

Madam, for the sake of the record, and for anyone that may read it and has not had the benefit that you have had of reading the papers, can I just remind you very briefly of the chronology? Mr Bastien was first registered with the Council in the Register of Dispensing Opticians in May 1994 but did not register as an optometrist with the Council till October 2005. So he is still, and was at the time of these allegations, a relatively inexperienced optometrist, and that is a matter which you can properly, it seems to me, take into account. On 22 August of last year, he saw Patient A and at page 16 of your bundle is what is I believe, an agreed copy of the patient record for his examination of that lady on that day. You will see that the appointment time is 16.40, which is recorded at the top of the page – an important matter, you might think, and one I will turn back to later.

In terms of familiarisation with the record, I will be referring to these aspects of it: the ocular history, which you will find on the left hand side of the form, about halfway down, which reads, “None. Pressure been high before but test” – something – “two years ago. Not referred”. Then towards the bottom of the form,

“Advice given. Action taken. Return for dilation. Refer on pressures only. Fundus examination”.

Madam, the pressures which were brought to the attention of Mr Bastien on that day were 49 and 50, though they came down slightly to 45. They were reported to him by the optical assistant, Miss Styles, whose statement you have already read. The Council’s view, and the view particularly of the optometric members of the Investigation Committee, is that it is very rare indeed to see IOPs of that level and that, without more –

Mrs Kapila: Can I just request Mr Albuery to point out where exactly we find references to the fact that it is ‘very rare indeed’ to see pressures of that order? If that is what the Investigation Committee members saw we need to have some evidence of it.

Mr Albuery: Yes. That is a fair point, to some extent, but this is an interim order application and, although the rules of evidence as though it were a substantive hearing are imported into these proceedings, the view taken about these proceedings before has been that they are more akin to a preliminary application, like a bail application in criminal proceedings, where evidence in its proper form would not be expected by a Committee. I cannot give evidence, I accept that, though I sort of have. The amount of weight you attach to what you hear, of course I accept, is maybe another issue. But if it is suggested I am not allowed even to say what I have just said, or you should, I having said it, ignore it, it would be helpful to have some direction or ruling or advice from your legal adviser about that.

Mrs Kapila: May I just respond to that? I must say that even if we are in a situation where obviously the strict boundaries of evidential law cannot be applied by the very nature of this application, we cannot have facts literally plucked out of the air without some backing, somewhere, to enable you to consider them. Otherwise it would become very difficult for a respondent in these circumstances to defend himself.

Mr Albuery: It would not, because Mr Bastien can simply, if he wishes to, give evidence. He is an optometrist. You have an optometrist on the Panel. And he can tell you what he thinks about the rarity or otherwise of readings at that level.

Mrs Kapila: However, Madam, I would say that what is being suggested to you is that optometrists sitting on the Investigation Committee have come to this conclusion that it is extremely rare to see this in practice. You have just been informed by Mr Albuery that Mr Bastien recently qualified as an optometrist. I ask you to consider how you are expected to weigh that sort of evidence. It is highly prejudicial –

Mr Kinch: Let us approach this, if I can suggest, with a little sense of moderation. This Panel has to act on the material that is put before it. It is not a full hearing that proceeds to a determination on every issue of fact. That said, when assertions are made, they are made in the context of this hearing and one of the issues concerns the finding of pressures and the level at which they are recorded. Whether that was a high or a very high level is clearly a matter on which the Panel is going to have formed a view and it is a matter of fact and record that there is an optometrist on the Panel. So the assertion that is made in Mr Albuery's opening is not made in a vacuum in that sense, because it is made to a Panel which has the ability to form its own view of whether that is a valid assertion or not.

I think that is the first point to understand. Secondly, there is, as I understand it – though we will hear you develop it in due course – material in your bundle relating to this issue. So again, that is going to provide a context. And in due course, you will have the opportunity when making your submissions to point out where any assertions that have been made in the opening by Mr Albuery have not had evidence or what you may wish to argue is proper material in any proper form put before the Panel to substantiate it, and that in that sense the argument is not made out.

But to go beyond that, unless you are suggesting that there is some particular course the Panel should take at this stage, in which case I would be happy to advise them, I do not, for my part, see that I can advise them other than to bear in mind the matter you have raised and to wait and hear what material is put before them and the submissions that are made by both sides at the end of whatever evidence and material each side wishes to put before them.

Mrs Kapila: I understand the comments just made to me, and it is because I think there should be a degree of moderation in the way in which this matter is presented before this Committee that I raise this issue. Because so far, in the papers, there is no mention of the rarity or otherwise of seeing such pressures in practice and I think therefore no opportunity for our expert to have addressed his mind to that issue. And in the absence of that, and in the absence of this Committee, and perhaps it will be argued this goes to the weight, we are being asked to take into account the views of members of the Investigation Committee with all that that particular title carries and it is my submission that that is an instance of use of evidence in this slightly looser environment, which makes it harder for Mr Bastien to counter what is being suggested should be done to him. It is merely that moderation that I myself sought, that there should be some basis on which this was raised, instead of being introduced at this stage. But I will abide by the advice of your Legal Adviser.

Mr Kinch: My advice at this stage, in the absence of any application for a discharge of the Panel or an application for an adjournment to obtain further evidence, is that this is a matter – we have heard it now elaborated with some force by Mrs Kapila – on which you should reserve judgment and hear submissions in the proper order as those developed before you by both sides.

Mr Albuery: When Mr Bastien saw Patient A, he was aware and accepts that he was aware, of the level of intraocular pressures, which were so high that according to Mrs Esmond, whose statement you have in your bundle, there should have been an

immediate referral. Clearly, that is a view of others whose evidence you have read in the form of statements and letters; and I rely particularly on the correspondence that you have seen also from Mr Carroll, which evidence is also in the bundle. Madam, the essence, therefore, of the alleged deficient professional performance, which is the nature of the substantive charge which Mr Bastien will, at a later stage, face, is that even without more he had sufficient information before him on 22 August which would have caused a reasonably competent optometrist to have referred, and that was based on the level of the intraocular pressures; and that further testing, dilation, putting of tests, is all an irrelevance, bearing in mind the very high level of those intraocular pressures.

Now, Madam, I accept that you do not have, because of the emergency nature of this hearing, expert evidence from the Council before you. But I would like, if I may, to make some comment upon the expert evidence that you have received from Mr Harle. You will see that on page 2 of the report, Mr Harle begins his analysis of the evidence with the words, "The facts of the case as I see them are". I mentioned before you read the report a concern the Council had about the facts. Mrs Kapila, quite properly, has addressed you on your need to have evidence of fact before you and there are some matters referred to by Mr Harle which the Council says through me have no foundation in fact before you. And I will go through those with you, if I may, because they, in part at least, may affect the conclusions to which he has come.

In paragraph 1, he says that the patient attended for an eye examination and was not seen by Mr Bastien until 5.15. There is no evidence before you that I have seen that that is the case. The appointment was made for 4.40. That is in evidence before you from the witnesses whose statements you have read and indeed, that time appears on the patient record. Now, I accept that it may be that time was pre-printed and was an expectation of the time that this patient was due to be seen and that it may not be unusual, particularly at the end of the day, for an optometrist to be running late. But the fact is the evidence before you is not that she was seen at 5.15. Indeed, Mrs Esmond states that when she came out at 5.30 from her meeting, Mr Bastien had already left by that time and the practice was still open and indeed, remains open until quarter to six. That is in direct contradiction to what is suggested by Mr Harle as a fact in paragraph 1. You have read the representations made by Mr Bastien in this case and at no stage did he ever suggest, in those representations, that he did not see this patient until 5.15. The evidence, therefore, before you is that she was seen earlier than that and that it is not correct to say that the practice was closing at 5.30, bearing in mind, in terms of availability of resource, the evidence before you is 5.45. Now, it may be that Mr Bastien intends to give evidence about these matters but it is not before you yet.

In relation to paragraph 3 of Mr Harle's report, Mr Harle makes ill-informed, the Council says, criticism of Mrs Esmond by suggesting that she chose not to take clinical responsibility for the IOP measurements. Madam, the narrative here, as you know and your colleagues know having read the papers, is that the optical assistant, Miss Styles, took the IOPs – that is quite common practice, no criticism of that – and that, alarmed at the level of them – and I cannot be criticised, I think, for saying that, because she says it in her statement which you have – she took them to Mrs Esmond. But Mrs Esmond took the view that, since it was not she but Mr Bastien who was going to be the optometrist seeing Patient A, it was obviously appropriate for him to take appropriate action in relation to those high levels of IOPs. She was in a meeting, interviewing someone, I think. So that criticism, other than demonstrating a rather partisan approach to the writing of an expert report, is you might think inappropriate and does not assist you and one which you can, indeed, reject. It was

not Mrs Esmond's job to do that which Mr Bastien should have done. He was a qualified optometrist. He was seeing Patient A, not Mrs Esmond.

Madam, in paragraph 4, there is a suggestion by Mr Harle that the practice was closing. I have dealt with the lack of evidential basis for that, I hope, already and I will not again. He says, "He arranged for Patient A" – fourth line down – "to be seen the following day by the in house optometrist". That is not the evidence before this Committee insofar as you have evidence from Mrs Esmond and Miss Styles, in which you will see there is reference to an appointment being made for the following week. I have to say that we rely not just on that evidence before the Committee but also on the patient record itself.

If you refer back to it at page 16 in your bundle you will see that Mr Bastien has made no mention whatsoever of the urgency, as he now says he saw it, of this re-examination which may then have led to a referral. He says only, "Return for dilation. Refer on pressures only". He makes no reference whatsoever there, in relation to his suggestion now, that he expected that to be the following day. And a good optometrist, I say, if that had been the case would have done so and evidence for that again is in the letter from Mr Carroll, who deals with his concerns. You will find that letter, or several letters, at page 12 to 13, is the main one, where you will see he sets out in the second, third and fourth paragraphs, concerns about that.

Madam, in the same section of Mr Harle's report, at number 4 but at the second paragraph, he asserts this:

"It appears from the notes that I have been given, that Mr Bastien's concern was that with raised IOP, Patient A may have primary open angle glaucoma".

But no reference – I do not know what notes he has seen – to that as being a concern is made on the patient record by Mr Bastien. Again, if that is a fact upon which he relies, one would hope to see the notes upon which he relies or some evidence for that, because evidence is as good or bad, of course, according to the evidence upon which they are basing their judgments. Madam, in paragraph or section 5, it refers again to Mr Bastien suggesting that there be some re-check or re-examination and dilation of Patient A the following day. I make the same point about that as I have made about other points about the evidential basis for it.

Madam, in section 6(i), Mr Harle asserts – quite inappropriately, the Council says – that if Mrs Esmond felt that the high IOP measurements warranted immediate referral, she could have taken that action the previous day having been informed of the results by Miss Styles. The evidence as I understand it, and you have read it, is that in fact she became aware of that the following day and indeed, it was the following day that she took immediate action and some considerable effort, you might think, to trace and track down Patient A, through her son, to arrange that immediate referral to the hospital where immediate treatment then began. In any event, Mrs Esmond was not the optometrist who saw Patient A and whose responsibility, therefore, it was to manage her appropriately.

Can I turn now to section 7? In this section, Mr Harle appears to link outcome to mischief, and that is not appropriate. In a sense, though it may at the substantive hearing in terms of seriousness and sanction if we get that far, this may be relevant. But the fact that somebody was seen and the fact that somebody did begin a course of treatment and therefore may not have suffered adversely as a result of one's own incompetence, seems to me not a terribly attractive matter for Mr Bastien to put before the Committee through his experts. Because of course, the reasons all those

things happened was because Mrs Esmond did the following day that which Mr Bastien should have done the previous day. That is the point the Council makes about that.

Madam, Mr Harle then makes comment in (a) of section 7, the penultimate paragraph, in relation to the records and says, necessarily the records should look sparse because the rest of the clinical examinations were yet to completed. I think he has probably made comment about the record card because one of the bases of the referral to the full Fitness to Practise Panel is inadequate record keeping. To the extent that it is relevant to your determination today, and I think it does have some relevance because you have before you a record card which you need to try to make some judgments upon, can I refer you to the comments at pages 12 and 13 of Mr Carroll, who is a qualified optometrist in relation to the record card? Mr Harle's defence of the record card appears to be that you cannot record that which you have not done and he had not yet finished the examination. Even if you find that to be at all persuasive – and it is quite a curious way to approach things, you might think – there are certain things which Mr Bastien did do which are not recorded and Mr Carroll deals with them in his letter, third paragraph.

“You describe your findings relating to the cornea and anterior chamber in your letter [but] there is no reference to these on the patient record”.

You may take the view, I invite you to take the view, that there should have been.

“The record does contain a note that ‘pressure was high before last test 2 years ago – was not referred’ which is contrary to the comment in your letter that this had been referred and investigated”.

Now, the relevance of that, it seems to me, is this: that either Mr Bastien is right when he says, as he does in his record, that she was not referred before, and he has accurately recorded it, or he is right now and in his representations to the Council, when he says that one of the reasons that led him not to refer more immediately was the fact that she had been referred before. In his own pen, he says that she was not. And, just on that point while I deal with it, the Council's view, in any event, is that the high level of the IOPs in this case is such that there should have been an immediate referral even if there had been a previous referral and that, in any event, the duty of the optometrist – and I say this with respect, I know there is an optometrist on the Panel – is to consider matters both subjectively and objectively and that relying in any event on what a patient may tell you is not the be-all and end-all of your job as an optometrist. But, Madam, I rely on it in this part of the hearing in relation to the record card.

Then, thirdly, Mr Carroll makes a point which I adopt, and would have made, I hope, had he not made it anyway, which is that in relation to the referral, the inadequacy of the record card is made clear by its wholehearted absence of any timing relating to that referral, the importance of it and the urgency of it, particularly if Mr Bastien says now he was expecting that to be the following day.

He refers Mr Harle does, in subsection 7(b) of the practice closing for the evening. You have evidence before you that it was not closing for the evening and, in any event, the Council's view is that Mr Bastien should have done more, as I have said before, than he did before he left the practice. And we know that he had left by 5.30, because Mrs Esmond came out of her meeting and he had gone. He had already gone by then.

So, those are the Council's comments on the expert evidence that you have before you, both in terms of the judgments to which Mr Harle comes, which the Council does not accept and the absence of evidence before you of some of the judgments which he has formed.

Madam, can I just have one moment? [Aside] Can I return, please, to the referral guideline which is submitted as part of the expert report? You will see that there are various headings, one of which is, at the bottom of the left hand corner, 'West Sussex Health Authority'. I think Fleet still is in Hampshire, so I am not sure about the relevance of guidelines issued to West Sussex. You may take the view that had this been a College or Association National Guidance, it might have more weight than a local health authority's does. No doubt we will hear about that in a moment. It is just a matter that I am asked to point out to you and I do so. Madam, can I also refer you to the various headings, 'Same day', 'Soon', 'Intern', etc., 'Optometrist managed'? You will see, in relation to glaucoma, under the heading 'Soon', that there is an expectation of soon referral where the IOPs – intraocular pressures – are greater than 30. Here, they are not just over 30 – 31, 32, 33 – which might require a more immediate or same day referral, but they are 49 and 50. You do the maths in case I get it wrong, perhaps, but in percentage terms it is a huge increase over – I will not say what optometrists might 'normally' see because I might be criticised for doing so – but what is expected even as a 'soon' referral at 30, even on the document which is relied upon by the AOP on behalf of Mr Bastien.

The other facts are all set out in the documents before you. No benefit is gained by me going over them. But, in summary, I concede this. This is one patient on one day and sometimes, when interim orders are sought by the Council there is a pattern of conduct or alleged deficient professional performance which, taken together, is such that causes a concern about public protection. The reason in this case why the Council brings it to you is because the Council's case is this: that so extraordinarily high are these intraocular pressures that any reasonably competent optometrist would have seen that more immediate referral was required before any other tests were carried out. That is the Council's position and what causes the Council particular concern in relation to this relatively young and inexperienced optometrist is the fact that, even when these matters were brought to his attention, he lacks the insight to understand the seriousness of what had occurred in relation to his omissions. That is an ongoing cause of public concern, or concern of the Council in relation to public protection, particularly when you have read, as you have, in Mr Carroll's letter, that Mr Bastien is, or was certainly when the matter was referred, may still be, a locum whose deficiencies are more difficult to manage in terms of supervised practice by the employer.

Madam, unless I can assist you or your colleagues further, that is the application of the Council.

Mrs Kershaw: Thank you.

Mr Kinch: Mr Albuery, there is no requirement for the statements to be read into the record? They have been put in and read by the Panel and that is sufficient in the view of the Council?

Mr Albuery: Yes. It is in our view and it has been the practice which has been adopted before, not that that makes it right.

Mr Kinch: But it is of some comfort. Mrs Kapila, you are content that the statement of facts elaborated upon, subject to the reservation you have expressed forcefully and the

references Mr Albuery has made in his opening and argument make it superfluous to read out formally for the record all the material in the bundle.

Mrs Kapila: Yes, certainly.

Mrs Kershaw: Mrs Kapila?

Mrs Kapila: Madam, before I start, I will just point out that the allegations that are to be considered, for which this matter has been referred to the Fitness to Practise Committee in due course are the following issues: failure to perform, interpret correctly intraocular pressure measurements – I think that should be read as ‘failure to perform and interpret correctly intraocular pressure measurements’; failure to detect chronic open angle glaucoma; and inadequate record keeping. So that is the basis on which this matter has been referred to the Fitness to Practise Committee and it is against those allegations that I now refer to the immediate application before you, which of course is made on an emergency basis, on the basis also that it is extremely important that Mr Bastien be stopped immediately from practising or conditions be attached to him, because what he is, in effect, is a danger to the public. That is the basis of this application in its essence. You are being asked to consider this man such a risk that you are asked to interfere with his right to practise his profession.

Before I turn to the facts in the case, I think it is important, since we seem to have started and ended Mr Albuery’s submissions on this matter on this report from Mr Harle, to point out a couple of things. It has been suggested to you that Mr Harle’s report has no evidential basis but of course, Mr Albuery did say that perhaps it was based on what Mr Bastien had now told Mr Harle. So where you find indication of a 5.15 start, it is based on what Mr Bastien has told Mr Harle and Mr Bastien is here to clarify that, should the Committee need to hear from him. You will find, Mr Albuery has stated, that there was no mention of this in the letter to the Council in response to the papers sent to him, but if you look at the manner in which comments were sought from a member on the papers presented to them at that very early stage, there are no allegations set out, there are no issues really set out. It has to be worked out from the papers. So Mr Bastien’s response at that time was what he felt was geared to the papers given to him and if he did not mention it at that time, it certainly, in my submission, is no indication that somehow, post that event, he has made it up. He may not have felt it necessary in that particular letter to address that particular issue; it may not have been coming out to him as a factor. It certainly was not highlighted as one when his comments were sought.

Further, this report, which has been dissected at length, which, it has even been suggested to you, has partisan elements, is made by an optometrist – and I think it is important you should know who this optometrist is – and I will read the first two paragraphs of his CV, so to speak. He is Mr Deacon Harle. He graduated in Ophthalmic Optics from Aston University in 1994,

“Became a Member of the College of Optometrists the following year. I have postgraduate certification in Ocular Therapeutics, Diabetic Shared Care, Glaucoma Shared Care, Visual Impairment, Advanced Ophthalmic Investigation and Binocular Vision. I gained a Master of Science in Clinical Optometry with distinction from City University, London in 2000. I have also been awarded certification in both Diabetic Eye Care and Glaucoma by The College of Optometrists and was awarded the higher Diploma in Ocular Conditions by The College of Optometrists in 2004.

I have been a practising optometrist for eleven years and currently I am in private optometric practice in Tonbridge, Kent. I am the Professional Services Director and former Joint Chief Executive and Clinical Director of the Institute of Optometry, London where I also lecture and tutor. I am also an examiner for the College of Optometrists and a CET (continuing education and training) approver to DOCET (the Directorate of Optometric Continuing Education and Training) and to Vantage Technologies who administer an education and training registration scheme on behalf of the General Optical Council. I am a former research optometrist at the vitreo-retinal clinic of the eye department of St Thomas' Hospital, London and have acted in the past as an expert witness in a number of litigation cases involving optometry".

– not a person, I suggest to you, who would not be aware of the significance of pressures of the nature that this lady displayed in the practice that day.

I will come back to that report, for obvious reasons, but I would like you to bear in mind that this urgent application, which has been made to you by the Council, is based on a number of statements and letters and other documents which I will refer to. In particular, the first statement I will go to is that of Mr Carroll who is the Specsavers director. It is on his word that this matter is partly before you, because he feels that this patient should have been referred the same day. He says, in paragraph 7 of his statement,

“The pressure readings were significantly high on this occasion to warrant an urgent referral”.

It has also been suggested to you that the lady, Mrs Esmond, who is the resident optometrist in this practice, did not know of the raised pressures until the following day. That has been Mr Carroll's evidence and was pointed out to you a few moments ago by Mr Albuery. But I would like to take you to the statement of Mrs Esmond herself and indeed the statement of Bernadine Styles. Perhaps you would go to the statement of Mrs Styles on pages 7 and 8?

She is talking about 22 August, 2006, paragraph 4 of her statement:

“I recall the patient on this day and remember that her test results showed extremely high pressures. I knew that this would be of concern to the optometrist.

One of our optometrists, and branch Director, Ms Esmond, was interviewing a potential employee in the practice. I interrupted the meeting to show her the pressures as I thought she would be seeing the patient”.

So it was clearly the view of this Bernadine Styles that in fact the optometrist who would be seeing this patient would be Mrs Esmond.

“Ms Esmond agreed the pressures were high and told me that the locum optometrist would be reviewing the patient and that I needed to bring them to his attention. He would then take the appropriate action”.

No doubt then that this patient's pressures were pointed out to Mrs Esmond on the day.

Mr Albuery: Madam, can I just – it may help Mrs Kapila, I do not mean to be rude by interrupting here – try to make the point again that I tried to make first? It is not Mrs

Esmond's knowledge of the IOPs that I was referring to. It was the fact that she did not realise until the following day, I had hoped I had made that clear, that she had not been referred by Mr Bastien. And if you look in Miss Styles's statement, at page 2, paragraph 8, you will see it says,

"The problem was discovered when I came into work the following day. This alerted Mrs Esmond to the fact that Mr Bastien" –

It is the knowledge of Mrs Esmond that she had not been referred, not the level of the IOPs that I was referring to. And I apologise to Mrs Kapila if I did not make that sufficiently clear first time round.

Mrs Kapila: That is fine. It is just that earlier on in a letter, Mr Carroll does refer to the fact, and I think it is common knowledge that I can take the Committee to that letter. He does say, in fact, that she did not find out about the high pressures until the following day. So just for clarification, it is important for this Committee to know, in my submission – and I will come to why I feel that it is important – that she did know that these pressures were high on that day. In fact, if we look at page 12 of the bundle for this interim hearing, we do see that reference to the following day in the letter from Mr Carroll. On page 12, he says,

"The high IOP readings were brought to the attention of Mrs Esmond the following day".

I just wish to clarify because, as I say, I will refer to the reasons later, why that is an important factor.

Mr Kinch: We have Mrs Esmond's statement in which she deals with it, the narrative of it, quite clearly, before us as well, haven't we?

Mrs Kapila: Exactly. As I say, the reason I point it out is simply to highlight it and to say that it was originally thought that it was the following day by the director of the practice.

Mr Kinch: Yes, but if you are taking them to the material it is important that the Panel should also have in mind Mrs Esmond's statement, in particular paragraphs 5, 6 and 7, where she makes it quite clear that the readings were drawn to her attention during the interview that she was conducting.

Mrs Kapila: Yes, and I would want to point that out in due course as well, thank you. So absolutely clear then, that she saw them on the day.

What you have before you in the statement of Miss Styles is a statement from someone who took the pressures and then went in and gave this information to Mrs Esmond. What you do not have before you is a statement from the person who actually made the appointment. There is nothing here from the lady or the man – I do not know who did it – who put the appointment down in the book. We have reference to it in Miss Styles's statement, and I will go to that: "After the examination", she says in paragraph 7,

"Mr Bastien asked one of my colleagues to book an appointment for the patient to be dilated the following week. As far as I am aware he gave no instruction that this should be an urgent appointment".

This is second-hand evidence. I know that we are not here looking at the strict rules of evidence and so on, but you are, nevertheless, being asked to make very serious emergency decisions on Mr Bastien's ability to work and you do not have any direct evidence from the person who actually made this appointment. I would submit that it is rather surprising that, whilst it has been suggested that Mr Bastien ought to have done all manner of things in respect of the pressures of this patient and the referral, there is far less on what perhaps Mrs Esmond might have been doing in terms of the referral, since she knew of those pressures on that day.

I would ask you to bear in mind for the moment that Mr Harle's report refers to this patient being seen at 5.15. And I think Mr Albuery has conceded that even though the appointment might say 4.50, or whatever the appointment book said, patients are not always seen on time in practices. We know that the patient could speak no English, so she needed her son to translate what was going on. This is the situation Mr Bastien found himself in. And we know that, in order to dilate this lady's eyes, he would have had to put in drops –

Mr Kinch: Sorry. One of your colleagues is not following?

Mrs Kapila: I am sorry; perhaps I should go straight to Mr Harle's report? Perhaps that would be an easier way to deal with this? Bear with me, please, as I think it is important that we go through it because otherwise, I accept that the Committee is going to be wondering where I am coming from. He sees the facts of this case – and as I have said, this is based on what he saw, which is what you have – before him and what Mr Bastien has told him and, as I say, Mr Bastien is here to clarify that particular point.

Mr Albuery: Can I just ask, for clarification? It is helpful that Mr Harle is in the privileged position of knowing what Mr Bastien says, but we do not and we keep hearing reference to the fact that Mr Bastien may be here to answer questions but the point I make and I made, I hope, when I opened the case, was that if Mr Bastien wants to rely upon some of the judgments formed as relating to facts told him, then you, the Committee, must hear those facts. It is not a question of him being here to answer questions that you might have. He should be called to give evidence and he can be cross-examined by me and you, to lay the foundation for those facts. That would be my suggestion for consideration.

Mrs Kapila: I am more than happy for Mr Bastien to be called at any stage that the Committee would wish me to call him. But I would just go through Mr Harle's report, then perhaps we could call him to talk about the facts that he has outlined in here. I would ask you to bear in mind, though, when it comes to examining Mr Bastien, that you have a position here where Mr Bastien is here, because this is his Hearing and of course, at any time the Committee, whether or not I had stated I am willing to put him forward for evidence, can question him and Mr Albuery says he can cross-examine him, but I do not have that advantage in terms of the people, the statements of whom have just been read to you. I cannot cross-examine them and we cannot know what they would say under cross-examination.

Mr Albuery: Had Mr Bastien put in a statement, we would not be in the position that we are in.

Mr Kinch: May I just if it helps? I am sorry, but the repeated interjections, although well intentioned are not necessarily helpful. The point here, it seems to me quite clearly, is this: this expert report on which you rely is based – so the argument has been made and so on the face of it it appears to me, and I will so advise the Committee

unless you show me where in the papers it appears – is based on material that comes from Mr Bastien which is not before the Panel in any form. Now, Mr Albuery has made the submission and it seems to me it is a proper one in the circumstances, that unless that material is before this Committee, then the expert report is subject, at the very least, to criticism, because it does not have that evidential foundation that an expert report needs to have before it gets to first base, some would say. It is certainly a matter that argument would be addressed on as to the weight that should be placed upon it in due course. That can only be corrected at this stage by Mr Bastien giving evidence. It must be a matter for you to decide – not for the Panel to insist upon it seems to me – but for you to decide how to present your case. If you decide to call him then he is liable to be cross-examined and asked questions; that is inescapable.

Mrs Kapila: I totally agree.

Mr Kinch: If you choose not to, then the ground rules are set out. I have given an indication of the provisional view that I have formed, and you have not, so far, taken issue with the principle behind that. But it must be for you to decide whether to call him and at what stage. But plainly, it would make sense before you deal with all the facts, that the Panel have the full package before them on which they are going to deliberate in due course. That is the way in which I would be inclined to advise the Panel, should matters stay as they are. In relation to the suggestion that there is some inequality of arms – well, that is, again provisionally, not something that is a matter of any great weight at this stage. It is simply a result – the procedure that we are discussing is simply a result – of the way matters have progressed, inasmuch as you are relying or seeking to rely up on a report that does not have behind it the evidential basis that it needs to achieve that which you want it to achieve.

Mrs Kapila: Yes. And I will call Mr Bastien to give evidence, because I wish it to be known, through Mr Bastien, quite correctly, that these were the facts as he set them out to Mr Harle. But I do wish to reiterate and I would say this would be the situation perhaps in almost every interim hearing where you have the respondent there for questioning, because it is obviously open to the Committee to question the respondent. He will be there for questioning. So there is an inequality of arms, because what you have against him is statements from people who are not available for cross-examination.

Mr Kinch: Let us leave that argument, upon which Mr Albuery would be entitled to respond, for submissions in due course.

Mrs Kapila: Certainly. But I just make the point in terms of the fact that Mr Bastien is here to be examined and cross-examined; the other witnesses are not. So I think it would be best for me to call Mr Bastien so that everything is before the Committee, before we refer to Mr Harle's report.

Mrs Kershaw: I think that would be helpful. I am minded to take a short break first, so that we can all have some coffee, and return at – quarter to twelve?

[The Hearing adjourned at 11.30 am]

[The Hearing reconvened at 11.50 am]

Mrs Kershaw: Mrs Kapila?

Mrs Kapila: Madam, Mr Bastien will give evidence now.

MR BASTIEN called and sworn
Examined by **MRS KAPILA**

Mrs Kapila Mr Bastien, as you know, I am going to ask you a number of questions, then Mr Albuery will be asking you questions and then possibly the Committee. Would you please address your responses to the Committee? Mr Bastien, could you give the Committee your full name and address, please?

Mr Bastien Mr Naftali Bastien, 2 Rodborough Road, Golders Green, London NW11 8RY.

Q. How long have you been qualified as an optometrist?

A. Just under two years.

Q. What were you doing before you became an optometrist?

A. I was a contact lens practitioner and a dispensing optician.

Q. Can you tell the Committee whether you have had any experience of dealing with glaucoma patients?

A. I have worked in a hospital environment in St Peter's Hospital under Mr Taplin and I have seen quite a few glaucoma patients there. I have worked with another ophthalmologist, a Dr Fowler, and she has quite a few glaucoma patients under her care as well.

Q. Do you recall seeing the patient in question 22 August 2006?

A. I do.

Q. Can you tell us what time you saw this patient?

A. It was at the earliest, 5.15.

Q. Can you tell us about the patient? Can you tell us whether or not she could communicate with you in English? Could you clarify? (I am leading a little bit on this because I think it is undisputed fact.)

A. The patient spoke no English. Her son, who was doing the translation, his English was not very good as well.

Q. Were you given a reading of her pressures by the optical assistant?

A. Yes.

Q. And those are the pressures that were noted on your record?

A. Yes.

Q. Can you tell us what went through your mind when you saw those pressure readings?

A. I was thinking that pressures that high could be closed angle glaucoma, which is an emergency, which I wanted to rule out first of all in my examination.

Q. And did the patient have symptoms of closed angle glaucoma?

A. No, she presented with absolutely no pain. Her eyes were not red; her pupils were responding normally. As far as she was concerned she just came in for glasses. She was very happy.

Q. After you had ruled out closed angle glaucoma, what were your thoughts then?

A. That I had assessed the optic nerve head. First, I wanted to see what her vision is, to make sure it has not deteriorated to rule out any other indications of a central retinal vein occlusion, which could be a result of high pressures. But I wanted to

have a look at the optic nerve head, to see whether or not she had glaucoma, chronic open angle glaucoma. I could not actually make an optic nerve head assessment, because she had dense cataract.

Mrs Kapila So in view of the dense cataract that you saw, what was your decision with regard to that patient?

Mr Bastien That I would bring her back in the following day, to be dilated, and my colleague who would see her the following day, I had left a message on the record card that I would want her, regardless of the fundus findings and the optic nerve head assessment, to be referred to the hospital that day.

Q. You have stated in your letter to the Council that you did a number of tests that do not appear on your record cards. Could you comment on that, please?

A. These tests would need to have been done again the following day, due to the optometrist seeing the person the following day would have to dilate. They would need to check the van Herricks angles, which are the angles that rule out closed angle glaucoma to make sure that she is suitable for dilation. I did that the following day but whoever would be seeing her the following day would need to do that again. They would need to reassess the pressures as well, before dilating, to make sure that whatever pressures you have before dilation it does not go up after dilation.

Q. Why did you not carry out the dilation and the further investigations yourself that day?

A. Time was a factor and I did not leave the practice until after six o'clock. If I did dilate, it would have taken at least forty minutes for the drops to work – forty minutes being a conservative figure because with somebody with dark pigmentation it could well be that the eye would be dilated for forty minutes, then she would come back to me and the pupils would not be dilated enough, and I would have to put some more tropicamide, which would take another time – another, if you like, lapse in time – for me to have a good look at the fundus. So time was an issue.

Q. Would you be able to do a Perkins test or a contact tonometry?

A. A Perkins test would be possible but again, with time constraints. If I put some anaesthetic in the patient's eyes, after taking a Perkins test I would want the patient to sit down for at least half an hour, to make sure that the cornea – when you put in the drops the cornea is completely anaesthetised, so the patient cannot actually feel anything on the eye. I would not want the patient to go out after me doing a Perkins and go out without having been seated there for half an hour and rub their eyes or anything, because they would have no sensation at all.

Q. So you are talking about two sets of drops, taking twenty minutes each?

A. Yes, for the minimum.

Q. Mr Bastien, what did you tell the person who makes the appointments at that practice?

A. I told the person to book this patient for the following morning, for dilation.

Q. If I take you to your record card? I do not know if there is a bundle there before you? You have said there, "Advice given. Action taken. Return for dilation. Refer on pressures only".

A. That's right.

Q. I have no further questions for Mr Bastien.

MR BASTIEN cross-examined by **MR ALBUERY**

Mr Albuery Thank you. Mr Bastien, may I ask you some questions, please, on behalf of the Council? Thank you. You say that you are just under two years qualified now. When did you register with the Council?

Mr Bastien I think it was October, 2005.

Q. So in August of last year, when you saw Patient A, were you about ten months qualified?

A. Possibly, yes.

Q. Is there ever an occasion, Mr Bastien, in your optometric view, when a patient's intraocular pressures may be so high that without anything else an urgent, same day referral is justified?

A. I beg your pardon?

Q. Are there occasions, in your view, when a patient's intraocular pressures are so high that even in the absence of other symptoms a more urgent referral than you had arranged would be justified?

A. If there are no symptoms, not a same day referral, no. If there are symptoms or clinical findings, same day referral? No.

Q. What type of glaucoma was eventually detected and diagnosed by the hospital? Was it chronic open angle glaucoma?

A. Chronic, open angle glaucoma.

Q. Yes. Does such a glaucoma carry any symptoms with it?

A. Yes.

Q. What are they?

A. Field loss. And optic nerve head damage.

Q. Were visual fields carried out on this occasion, on 22 August?

A. Yes.

Q. By you or by the optical assistant?

A. By the optical assistant.

Q. How many patients do you think you have seen in practice between registering in October 2005 and August 2006? Would it be hundreds, dozens, thousands? Just generally, a figure.

A. Quite a bit.

Q. Had you ever seen a patient with IOPs as high as Patient A's?

A. Yes.

Q. How high was that patient's reading?

A. I cannot remember, but in the forties. I cannot give you an exact '45', '46'.

Q. How rare is it to see patients with IOPs as high as these?

A. I do not have the statistics but it really depends on the demographic area –

Q. In your experience.

A. If you were working in the area that I was working in, quite high. You have a large Afro Caribbean population, which has typically high intraocular pressures.

Mr Albuery But you have only seen one person before in the forties, is that correct?

Mr Bastien No, I have seen quite a few – more than one.

Q. Did you refer any of them?

A. Yes, I did.

Q. Why did you refer them, and not Patient A?

A. I had not had time to conduct a complete test. I could not make an optic nerve head assessment. There were just pressures only – intraocular pressures alone – as a delegated function. I cannot just refer on that alone. I need to refine my referral.

Q. Talking of timing, because you raise it again, you tell the Committee that you did not see Patient A until 5.15 at the earliest. Is that correct?

A. That is definite.

Q. Do you accept that never before in the papers which the Committee has seen, including your representations to the Council, have you made the point that you did not see her until 5.15?

A. It has never been asked directly.

Q. It may not be asked directly, but did you understand that the importance of responding to the Council's request for your version of events was to enable the Committee to form a judgment on those matters. It was your opportunity, was it not, to tell the Committee anything that you thought might be relevant?

A. I did mention it.

Q. Yes. Well, did you not think it was relevant to say that one of the reasons why you did not complete tests was because you did not see your patient until 5.15?

A. Again, because the question was not asked directly, I did not disagree that it was a 4.40 test. I just disagree the time I actually saw the patient. By the time, I think, that the patient was actually supposed to see Mrs Esmond – that is why the clinical adviser went into her to give her those results, it seems strange that she would not come to the optician that she thought was going to see it. The only reason why she went to that room, I believe, is because it was way after 4.40 and she thought that she was going to be seeing that patient.

Q. How long were you with Patient A for?

A. I left the practice at about ten past six, so I would say, from 5.15-ish, just after, to ten past six.

Q. That is quite a long time to be with a patient even whose first language is not English, isn't it?

A. Not if you want to definitely make sure that the symptoms are no pain, no nausea feeling – anything that you would associate with a closed angle glaucoma emergency. It was very hard to get a good – I needed to be animated in the room, because she spoke no English. I wanted to actually make it clear and get her symptoms correct.

Q. Mrs Esmond, in her sworn statement, has told the Committee that she came out of her meeting at 5.30 and by that time you had already left. Is she wrong about that?

A. She is definitely wrong. I need to walk past her room leaving the practice and her door was open and there was nobody in the room.

Mr Albuery She also tells us that the Staff leaves at 5.45. Yet you would have the Committee believe that you spoke to, perhaps it was a receptionist, sometime at 6.00 pm or after, requesting an appointment the following day. Do you want to reflect on that answer?

Mr Bastien Sure. It is not uncommon practice for the other staff to hang around until the optician has finished. That is not uncommon practice.

Q. Who was it to whom you spoke and asked for a next day appointment?

A. I have absolutely no idea. They have at least eight to ten ancillary staff that are giving me boards all day. If the person was standing in the room, I would not be able to tell you.

Q. They may have lots of people there, but presumably the booking of appointments is the task of one or two people, is it? Rather than anyone else who happened to be around in the practice?

A. Anybody can answer the phone and make a booking, any of those eight to ten staff.

Q. Can you describe the person to us?

A. No.

Q. So as you in your mind now picture the conversation you are having, you have no details of that person that you can help us?

A. I cannot tell you who that person was –

Q. Or describe them to us? Was it a female?

A. It could be. I really don't know. All I can tell you is that as far as the patient sitting in the chair was concerned, I told the patient to come in the following day.

Q. How many times before 22 August had you been at that practice in Fleet?

A. As a rule I typically do not normally work for Specsavers, so that was my first time at that particular practice.

Q. So when you say what the custom and practice of that practice was, in terms of people hanging around after closing time, you have no idea what the customer and practice of that particular office is, do you?

A. I have worked with a lot of opticians before and the director never stays around to book an appointment – I have never ever seen that. I am saying common practice throughout the opticians. I have never seen a director stay around to book an appointment, or wait to handle paperwork after.

Q. Yes. Had Patient A been referred before, in relation to high intraocular pressures?

A. Yes.

Q. Can you look with me at the patient record? Have I misread it? What does it say, under 'Ocular history'?

A. "Pressure has been high before. Last test two years ago. Was not referred".

Q. Right. How do you reconcile that comment with your evidence now that she was referred before?

A. She was referred to whatever GP or hospital environment that she would have gone to. There were no abnormalities found, so I would think that she probably had ocular hypertension at the time, which is just high pressures without glaucoma – without cupping.

Mr Albuery Where have you recorded any of that on this record card?

Mr Bastien I have not.

Q. You have not?

A. No.

Q. What is the purpose of a record card, Mr Bastien?

A. To give a history of what the patient has experienced before, to give symptoms.

Q. A sort of 'baseline' upon which the next optometrist could work? Would that be a fair summary of it?

A. Yes.

Q. Do you agree with me that it would be a reasonable inference for an optometrist to draw from the comment, 'not referred', that this patient has not been referred?

A. They can infer that the patient probably did not have drops to reduce any intraocular pressures. It might have been just high pressures that would have not resulted in glaucoma. It could be ocular hypertension.

Q. No doubt it could be lots of things, but if I may just ask you that question once more and if you could answer it? Is it a reasonable inference to draw, from the comment, 'The patient was not referred', that the patient was not referred?

A. Yes.

Q. Thank you. There is some suggestion put to the Committee on your behalf that somehow the omissions where they exist are those of Mrs Esmond. Is it your case that Mrs Esmond should have referred Patient A rather than you?

A. She would have had time to do a complete test on the patient; she would have been able to finish off what I had started –

Q. When?

A. What I started the following day. I referred it on to her for further investigation and yes, I would have expected her to follow my instructions that I wrote on the file: "Refer on intraocular pressures only".

Q. You were the examining optometrist –

A. On the day, yes.

Q. Do you accept, therefore, that the management of the patient is your responsibility?

A. For the clinical findings that I have time to find, yes.

Q. Did you speak to Mrs Esmond before you left the practice?

A. No, I did not.

Q. Why?

A. I took it for granted if I gave an instruction to the clinical advisers to book the following day for a chronic open angle glaucoma, which is not an emergency, there would be no problem for that patient to be booked the following day and Mrs Esmond to finish my further investigations and refer on that basis.

Q. Bearing in mind you had no idea to whom you spoke or to whom you gave that request, did you the next day – or indeed at any time thereafter – ring the practice to check that your instruction had been carried out?

A. No, I did not. I do not think that is common practice within optometry.

Mr Albuery Did I understand your evidence correctly to be that almost regardless of the findings the following day of the further test, there would then be a referral to the hospital?

Mr Bastien Yes.

Q. If that is the case, and the extra findings are irrelevant in terms of the referral –

A. Definitely not irrelevant.

Q. Well, regardless of them, there would still be a referral. Then why did you not refer, on 22 August?

A. Because the intraocular pressures at that time would have been taken by a Perkins, which is a lot more accurate than the non-contact tonometer.

Q. Can you help me and perhaps some others in the room and explain what a Perkins is?

A. Sure. Perkins is a contact tonometry which actually measures the ocular pressures in the eye, which is the basis of a hospital referral. Hospitals do not really like a referral from a non-contact tonometer, because it is not as accurate as a contact tonometer. So contact tonometry would have been done the following day and on the basis of those results, the hospital should be able to make a good basis on a referral – not on a non-contact tonometer.

Q. I see. Did you have in front of you on 22 August when you were in Hampshire, the West Sussex Health Authority's guidelines on referrals?

A. I always keep a protocol with me, yes.

Q. Is that an answer 'Yes' to my question? You had this in front of you?

A. Yes. I had a manual in front of me, which is something that tells you, basically, chronic open angle glaucoma is not an emergency.

Q. Sure. We do not have that. What we have got is this and you rely on this. Did you have *this* in front of you?

A. I did not have it in front of me physically, but I know that piece, if you like. So, no, I did not have it in front of me, if that is the question. But I know of the contents of that.

Q. Did you refer to what you did have, in terms of checking whether you should have referred or not?

A. No, I did not, because I have seen enough glaucoma patients and I know that chart by heart, so I know that intraocular pressures over thirty, without any other findings, is not an emergency.

Q. Just help me with this. It is five years old. Is this still current guidance?

A. I have spoken to Frimley Park, the hospital to which the patient was referred, and they are in the process of making one of these. So as far as patient care is concerned, this is still quite valid, yes.

Q. Do you accept that she was given immediate treatment following Mrs Esmond's referral the next day? This was not a patient who was sent away by the hospital, was it, saying, 'This is too urgent a referral'?

A. There was an intervention. Whether or not it was an emergency intervention that was not the case, no.

Q. There was intervention as –

- A.** As far as reducing the pressure. Anybody going to hospital, the pressure would be reduced, yes. But whether that intervention would have caused, or non-intervention would have caused a problem.
- Q.** I am not asking about that. You accept that there was what you call an ‘intervention’ immediately as a result of the referral.
- A.** That is what she went to the hospital for. Whether it was the same day or the following day, there would have been an intervention, yes.
- Q.** Thank you very much. Thank you, Madam.

MR BASTIEN re-examined by **MRS KAPILA**

Mrs Kapila: I have just a few questions arising from what we have just heard. We have heard from you Mr Bastien that you asked for the patient to be seen the following day. That is what you have told us.

Mr Bastien: Yes.

- Q.** And you have told us that on the record card you have said, “Refer on pressures alone”.
- A.** That is right.
- Q.** Were you expecting the patient to be referred after a full examination?
- A.** Yes.
- Q.** And that was what you were expecting the following day?
- A.** Yes.
- Q.** That is all I wish to ask.

Mrs Kershaw: It may be that the Panel would like to ask you some questions now, Mr Bastien.

Mr Bastien: Sure.

Ms O’Donaghue: I just want to ask you, if we can refer back to the record card, you said that the patient had a dense cataract when you gave your evidence. Can you tell me where that is on the record card?

Mr Bastien: I have got ‘moderate nuclear cataract’.

- Q.** Right. So, which was it - a dense cataract or a moderate nuclear cataract?
- A.** It was sufficient for it to blur the fundus, for me not to make a fundal assessment of the (?)cataract assessment.
- Q.** As well as that you commented that the field test had been carried out by the optical assistant. Where are the results of that field test?
- A.** They did not attach it. But the field test – it just did not make any sense because of the dense cataract.
- Q.** What do you mean it did not make any sense?
- A.** The whole thing was just completely field loss –
- Q.** And what instrument was used?
- A.** I cannot remember. I think it was a Henson Compact 6000.

Ms O'Donoghue: OK. As well, you spoke about having checked the anterior chamber and the cornea and again, why are they not on the record?

Mr Bastien: That would have been done again after the full investigation would have taken place the following day. For me obviously to look at the cataract, I must have had a look at the cornea to see if it was clear and have a look at the pupil reactions but granted, they are not here, because somebody dilating this patient would have to repeat those tests.

Q. Did you use that information to make your decision on the day, as to whether she had closed angle glaucoma or not?

A. Most definitely. I took a van Herricks. I more than took it. I repeated the test of the van Herricks angle. I did a pupils test. The pupils were round, they were not distended as you would expect with high pressures and a closed angle glaucoma. I did everything to rule out a closed angle glaucoma and I could not say for certain if it was chronic open angle glaucoma, because I could not make an optic nerve head assessment.

Q. OK. Do you accept that those findings should have been on the record card?

A. I do.

Lady Wall: Mr Bastien, could I just ask you, what did you actually say to the patient at the end of this consultation?

Mr Bastien: I told the son - my exact words were - I told them to clear the schedule the following day, 'You need to bring your mother back in tomorrow morning'. That is what I told the patient. Those were my exact words to the son.

Q. And do you think that the son understood the seriousness of the situation?

A. I did. I made it quite clear to him that his mother's pressures were quite high and that I could not have a good look behind the eyes and that I would like you to come back in for some further investigations to be done and appropriate action taken.

Q. Right. And what was the son's response?

A. He said, 'OK'.

Q. Did he explain to the patient, his mother, what it was that you were so concerned about?

A. He did. He explained to her. But I think she was not too happy that I was making such a big fuss because as far as she was concerned, she just wanted glasses. So she was, from what I could see her body language – because obviously, I could not understand it – was 'What's this guy making all this fuss about?'

Q. So did you actually satisfy yourself that *she* understood the seriousness of the situation? And would in fact return?

A. I made it crystal clear for him to bring his mother back in the following day, of which I hope he transmitted properly. I could not tell what was being said between him and his mother, but I made it crystal clear to him to clear his schedule. Those were my exact words, 'Clear your schedule for the following day and bring your mum back in.'

Q. Right. I don't think any of that is actually on the record card.

A. No.

Q. Do you think with hindsight that it might have been wise to have made a comment, given the difficulties in communication?

A. Without a doubt, yes.

Lady Wall: My second question is, were you yourself professionally anxious about this patient?

Mr Bastien: I was professionally anxious in the sense that I felt safe in the knowledge that it was not a closed angle glaucoma, it was not just something that has just happened and this woman was going to have a closed angle attack at any minute. I satisfied myself there and that it was not an emergency. I have seen patients in a similar situation and sometimes you might call the hospital and they might tell you to send this patient within a week, within a few days, within a week, whatever.

Q. Did you think of actually ringing the local hospital about this situation?

A. It did cross my mind. But I did not have any other further evidence to give them. All I had was high intraocular pressures. But in hindsight, I probably could have rang the hospital and find out, tell the consultant. I have been in a situation like that before, mind you, and they have told me to send the patient in within a week.

Q. Within a week?

A. Within a week, yes.

Q. With the same readings?

A. With the same type of readings, yes.

Q. Going back to the situation you were in, late in the day, do you think that as you were a locum and you were just there for the one day, that you should have spoken to Mrs Esmond, who after all is responsible for the branch and the continuity of care?

A. Well, I left a message on my file to refer intraocular pressures only, which she would have been seeing the following morning. When I left the practice, I did not actually see Mrs Esmond, but I suppose in hindsight, I should have probably spoken to Mrs Esmond, yes.

Q. How do you know that Mrs Esmond would actually have seen the note you left on the card the next morning?

A. Anybody following up on the care of this patient, because the patient was still, if you like, within the management of the practice, whatever optometrist would have been seeing the person the following day would look at the file and see my entry. If Mrs Esmond was there the following day, then it would have been Mrs Esmond. If it was another optometrist, they would be getting this note.

Q. But my question was how could you be sure that Mrs Esmond, who was responsible and who already knew about the pressures, whether she would actually see the note that you had left?

A. As far as I know, she was in the following day.

Q. But you could not be sure that she would see it, because you had not specifically drawn it to her attention.

A. I did not specifically draw it to her attention, no. But I know that whoever would be seeing her the following day would be an optometrist who would act on my information.

Q. Right. Just finally, did you think in the circumstances, or because you were a locum, that it would have been wise to have left Mrs Esmond a note as to the findings, because you knew that she was aware of them, and what actions you had taken to safeguard the interests of the patient?

A. I wrote a message on the record card here, to return for dilation and, regardless of fundus findings, for her – or, when I say 'her', the consulting optician seeing the

patient the following day – to refer on pressures only, because I was concerned about the pressures.

Q. But she was the manager. You did not leave a note for her, as the manager, to take responsibility to make sure this was all done?

A. I did not. No.

Q. Thank you.

Mrs Kershaw: Legal Adviser?

Mr Kinch: Nothing from me, thank you.

MR BASTIEN re-examination by Mrs Kapila

Mrs Kapila: Madam, I have a few questions arising from what has just been asked of Mr Bastien. One, in fact, arises from an earlier question from Mr Albuery. Mr Bastien, you wrote to the Council regarding a set of papers that were sent to you to be put before the Investigation Committee. Did you say in that letter – these are your words –

“She also told me that she had had an episode of raised intraocular pressure than had been investigated but no abnormality found”?

Mr Bastien: Yes.

Q. That is all I wished to put to you.

Mrs Kershaw: Mr Bastien, I think that is all the questions we have for you, if you would like to return to where you were?

[Mr Bastien steps down]

Mrs Kapila: Madam, in a way that is the beginning of my submission to you, because you have now heard from Mr Bastien himself, as indeed you should have, because we know that at least some of what Mr Harle is saying is directly related to what Mr Bastien said about timings and so on.

First of all, since Mr Bastien has given evidence and matters have arisen in cross-examination in questions by this Committee, I will refer to certain pertinent matters which I think I will address at this stage, while that evidence is still fresh in your mind. Mr Bastien has been given the allegations that are going to be put before the Fitness to Practise Committee against him. He has been told this recently. He was not told this at the time he made any representations initially to the Council. The allegations which are to be heard against him in due course are:

- failure to perform, interpret correctly, intraocular pressure measurements;
- failure to detect chronic open angle glaucoma;
- inadequate record-keeping.

Those are the allegations against him and, as I have said already – and forgive me if I am repeating myself but I am now having to return to the beginning of my submissions – he is now, it is being suggested, as a result of his actions on 22

August 2006, posing such a risk to the public that it is important that you make an interim order against him to prevent him being such a risk.

He has told you that he asked for this patient to be seen the following day at the practice for dilation. There seems to have been no investigation from the papers before you, as to who made the appointment and what happened in respect of that. In fact, we see in the papers that an appointment was made for the following week on the basis of diabetic dilation! We keep hearing about how his records do not say a referral on pressures the next day, but where on this record do you see dilation for a referral on any diabetic basis, or a return for dilation for diabetic purposes? We do not see that. The records say, "Return for dilation. Refer on pressures only". He has already said, "Refer on pressures only". The fact that you do not see the words there, 'tomorrow', whilst they may not be the best form of record keeping, they do not indicate to you so that you are sure that he did not say to the person who made the appointment, 'Come back tomorrow'. You have not heard from the person who made that appointment, 'I was not told this by Mr Bastien'. No. You have a second, third hand version of events from someone who was not directly involved in making that appointment. That is a serious matter, because you are listening to evidence on which you are being asked to suspend or impose conditions upon Mr Bastien's registration. You do not have proper evidence. You have conjecture. Poor record keeping, in my submission, even if it is poor and I am not saying that it is for a minute, but it may well be that it would have been better for him to have said, and he has told you that with hindsight, 'Return for dilation. Refer pressures only' and 'Book for tomorrow'. But that does not mean that he did not say to the person concerned, 'Book for tomorrow'. By no means does that mean that. And we can see a huge contradiction in the fact that the lady is in fact booked in for a diabetic dilation, which is no part of what he has suggested on this record card –

Mr Albuery: Could you just help me with where in the papers there is reference to the diabetic? I just cannot find it. I apologise. Is it page 9? I may have found it now. I think I have answered my question. I think it is on page 9 in a letter from Mr Bastien to Mrs Esmond. Is that it?

Mrs Kapila: Yes.

"He did not refer her to the hospital but he asked for her to be booked in the following week for diabetic dilation".

Mr Albuery: Thank you very much.

Mrs Kapila: So where does the diabetic dilation come from? It is not on the record? The record certainly, in my submission, does not suggest diabetic dilation. It is saying, clearly, "Return for dilation. Refer on pressures alone". This is someone who is obviously conscious that this lady's pressures are high and need to be dealt with. You have these inconsistencies in the evidence before you. You do not have evidence from someone – there is no evidence before you that someone has even tried to get evidence from the person who made the appointment – and yet you are asked to believe what Mr Carroll and Mrs Esmond tell you on how this appointment was booked, which we simply do not know. Why is there no investigation into whether or not the person concerned took those instructions from Mr Bastien or did not? There is nothing. There is nothing that goes to that core that is so concerning the Council.

Mr Bastien has not told you that he would have referred the patient in a week or whatever if he had found evidence – and obviously there was going to be a referral

here, he has told you that – but he has produced before you a West Sussex Health Authority set of guidelines which clearly indicate, “Glaucoma, IOP greater than 30” – makes no mention of 40, 45 or whatever, it just states – “Glaucoma, IOP greater than 30. Soon”. Now, it does not say, ‘Hospital same day. Glaucoma, IOP greater than 40” or whatever. So clearly this is guidance. You have not been given Frimley’s guidance, or wherever the authority was on that day where Mr Bastien worked. It is not available. But it is for the Council, it is not for Mr Bastien, to prove to you so that you are sure, that this was a matter for a same day referral. It has been suggested by the Council that in fact, what weight does this paper carry? Referral Guidelines for Abnormal Ocular Conditions from the West Sussex Health Authority, sent to optometrists – they are still using these guidelines and somehow it is being suggested that perhaps they are of no relevance. Well, they are. Why issue such Guidelines if optometrists cannot rely on them?

Even if somewhere else people were being told to do this as an emergency, it is clear, because you have no evidence before you, that it is not inconceivable that it was considered proper to refer soon as opposed to same day. How can you be sure that this patient should have been referred on the same day, just on those pressures? Where is the evidence for that? Where is the independent evidence for that other than that of Mr Carroll and Mrs Esmond?

I now want to say specifically that that is just as a background to the fact that it was not in fact necessary for Mr Bastien to refer this patient in any event – or for this patient to be referred – just for those pressures on the same day. It is not saying that Mr Bastien had not said that this patient, because of those pressures, should have been seen the following day for possibly a same day or the next day referral, or two days or whatever. All I am trying to say to you is that there was scope for this patient to be seen other than on the same day. In fact, this is the only independent evidence you have of any referral guidelines. You have no other. You have the evidence of Mr Harle and against that, you have the opinion of Mr Carroll and Mrs Esmond and I have already given you Mr Harle’s credentials.

I would now like to take you to Mr Harle’s report. You have heard from Mr Bastien so hopefully there should be no problems with referring to his report. Of course, the Committee will appreciate that this report, too, was repaired as quickly as possible so we could put it before you today. He says: “The facts of the case as I see them” – what he has seen are the papers that the Committee have seen, which are before you, and he has spoken to Mr Bastien and Mr Bastien has told you what his version of events is.

“The facts of the case as I see them are:

1. That the patient attended for an eye examination at Specsavers Fleet to see the locum optometrist, Mr Bastien. She was not seen by him until 5.15pm, 15 minutes before the practice closed”.

He takes that from the statement of Mr Carroll.

- “2. As part of the eye examination, Mr Bastien agreed to delegate IOP (intra-ocular pressure measurements) to a clinical assistant ...

3. Ms Styles passed the clinical results of this IOP measurement to the in house optometrist (Mrs Esmond) prior to passing them to Mr Bastien”.

And here, I would like to point out reference has been made to visual fields, but we have no evidence of any visual fields tests. I have seen no evidence whatsoever. So no evidence that Mr Harle has been able to assess – am I correct in this?

Mr Albuery: In what?

Mrs Kapila: In not having seen any evidence?

Mr Albuery: No. I would not be showing it to you. But there is no evidence of any visual fields test or any comment on it.

Mr Kinch: Other than what Mr Bastien said?

Mrs Kapila: Exactly. But we have no evidence of it and Mr Harle has not been able, therefore, to comment on that. Therefore, I would urge the Committee to recall the fact that it is not in the papers before them. So what we have heard from Mr Bastien is what he saw in terms of visual fields, that it was unintelligible to him and we do not have Mr Harle's views at all. We do not have the set for the optometrists on the Panel to look at anyway.

“3. Ms Styles passed the clinical results of this IOP measurement to the in house optometrist ... prior to passing them to Mr Bastien. Having seen these IOP results, Mrs Esmond chose not to take clinical responsibility for them but rather instructed Ms Styles to pass the results to Mr Bastien and for him to continue the eye examination”.

Mr Albuery: Madam, I do not mean to appear rude, but do you find it helpful to have read to you an expert report which you have already read and which you have got in front of you?

Mrs Kershaw: I think it is fair to say that we have read it through several times and we do know the content of it.

Mrs Kapila: Madam, I appreciate that but Mr Albuery went through it at some length –

Mr Albuery: I made comment on it.

Mrs Kapila: He made comment on it and may I be allowed to make similar comment at least, if not read the whole – I appreciate you have read it but I do wish to comment on what Mr Harle said.

Mrs Kershaw: I think it is helpful if you can make the comment –

Mrs Kapila: I will make the comments as opposed to reading it. I take the point that you have seen the papers. He sets out the facts, so I will not go through them again, in paragraph 4. He has stated that Mr Bastien's concern was that with raised IOP Patient A may have primary open angle glaucoma. The advice that further clinical tests are required is correctly recorded in the clinical record. So that is what Mr Harle tells us about that.

It appears that Mrs Esmond's practice staff did not manage the continuation of the eye examination. That is paragraph 5. And I point this out because I have already said that there is an issue about how the appointments system was managed in this practice. Then paragraph 6 does not need comment, other than to say that, 6(i), Mr Harle is surprised that – and this is important and I do wish to highlight it. This is a

person who is an expert in his field. It has been suggested to you many times now that somehow Mr Bastien, having only qualified ten months ago or whatever at the time, did not know what he was doing. I do not know. But Mr Harle, in my submission, does know what he is doing. And he tells us that,

“If Mrs Esmond felt that the high IOP measurements warranted immediate referral to a medical practitioner, she could have taken that action the previous day, having been informed of the results by Ms Styles”.

He also states that the high intraocular pressures – this is (ii) –

“In the presence of a normal anterior segment suggest open angle glaucoma not closed angle glaucoma” – Mr Bastien has told us that he had ruled out closed angle glaucoma, the symptoms of which I think are well known to any optometrist as being acute pain, red eye, unmistakable symptoms – “In such cases, referral should follow further clinical investigations”

Then Mr Harle sets those out. Then,

“Where necessary” – and I think this is important – “practitioners should consider repeating visual fields assessment to obtain a meaningful result”.

These are College guidelines. Mr Bastien has told you that he did not feel the visual field results that he saw on that day – this is all the evidence we have – were meaningful. So he was quite within his discretion as an optometrist to wish to repeat those tests when this lady was obviously going to be re-examined the following day with dilation. As such, Mr Bastien acted quite correctly in suggesting that further tests were done to complete Patient A’s eye examination prior to referral and arrange for these to be done by Mrs Esmond.

Number 7, in respect of what happened later in receiving correct – yes, of course it is not directly relevant so I do not go into it. It stands as a fact. Mr Harle states,

“There can be no concern on record keeping, since only part of the eye examination was completed ... necessarily, the records should look sparse because the rest of the clinical examinations were yet to be completed.

Professional practice differences are acceptable within legal and good practice constraints”.

He has said,

“If completion of those tests is not possible (for example because the practice where one is working as a locum for a single day is closing for the evening)”

- and you have heard from Mr Bastien that fully investigating this patient, taking proper care of her, would have necessitated administering drops and then looking after her post those drops, and I will come to some further evidence regarding that soon. He therefore did not feel that there was adequate time, particularly as she could not speak English and he was already having to indicate to her the seriousness of the pressures, coming back tomorrow and establish from her what her symptoms were, etc. It was not possible, in his opinion, for him to carry out a full and thorough examination and take the due care that he needed to take for dilation and anaesthetic drops – both of which to take twenty to forty minutes to work, etc. So, bear those timeframes in mind; and bear in mind that he is also doing an examination

and trying to take symptoms, etc., from someone who cannot communicate as effectively as he would have liked.

Then Mr Harle continues,

“It is, in my opinion, quite appropriate to pass the patient care to an optometric colleague who is in a position to continue this battery of tests”.

Who was going to see this patient the following day? – clearly, an optometrist. I do not see where we are given any indication, where any evidence has been put before you, that it was Mr Bastien’s duty to say, ‘This patient must be seen by an optometrist tomorrow’. It follows that if you are asking for dilation and referral on pressures alone this lady is going to be seen by an optometrist. Therefore, I also state the suggestion that has been made, that somehow Mr Bastien failed in some duty in not calling back and saying, ‘Has this patient been referred? Have you seen her and referred her?’ is also put to you purely as a rather exacting standard expected of Mr Bastien, without putting before you any evidence to show you where that is required. So how are you going to be sure that that is what is required of him? On the contrary, why is it not required for the practice director who hears of this high pressure on the day of the examination, to make sure that the patient is referred on that day, if it is so important to have a same day referral?

Then Mr Harle points out that maybe Mrs Esmond erroneously feels that simple high intraocular pressures,

“Without any further clinical findings, constitutes an ocular emergency and in fact misunderstood the diagnosis, referral and management guidelines for open angle glaucoma as compared to closed angle glaucoma”.

This is being said to you by a very experienced individual. This is not being said to you by someone who is not fully aware of what glaucoma involves. It is important that we bear that in mind. He has no reason to be telling you this, at his professional status, if he does not believe it. Neither does he have any reason to tell you what he tells you further on:

“I can see no evidence to suggest that Mr Bastien acted in anything other than a competent and fit manner”.

Those are important words, because you are being asked to assess this gentleman for being a risk to the public.

I have put before the Committee a passage from a book which is used as a handbook by optometrists, called *Clinical Procedures in Primary Eye Care*. I think your copy is asterisked as well. I am by no means going to be reading the whole of this out to you, but it does state:

“In a systematic review of published research between 1933-1999” – it was concluded in the study – “that the risk of inducing acute glaucoma following mydriasis with tropicamide alone is close to zero and the risk with long-acting or combined agents in between”

– and it gives an indication. We know that the tropicamide was what would have been used, but,

“Mydriasis and tropicamide alone is safe even in patients with primary open angle glaucoma. Some clinicians take the view that it is better for patients to have a mydriatic-induced angle closure in their office/practice, where appropriate treatment can be provided, than at home. In situations where you dilate a pupil of a patient ‘at risk’ of angle closure, make sure that you obtain informed consent and be prepared to manage any subsequent angle closure”.

What I am trying to say to you there is that obviously, care has to be taken in the administration of any drops for a patient in that position and that dilation in itself is not a problem in respect of glaucoma patients.

I would like to take you to the basis on which you have been asked to make this order today. This is a statement of Nicholas Leale on behalf of the Council –

Mr Kinch: The statement of fact?

Mrs Kapila: I do not have a page reference in my bundle –

Mr Albuery: It is not in the bundle. It is a statement of facts.

Mrs Kapila: Yes, sorry, it is a statement of facts in support of an application for an interim order. Paragraph 6:

“The basis of the application is that, as a result of the evidence obtained from the witnesses listed below, the Fitness to Practise Committee can be satisfied that it is necessary to impose an interim order for the protection of members of the public”.

These are the three people on whose statements you are asked to rely, none of whom is an expert as such. We are told that an expert is in the process of being instructed. There is no evidence before you in terms of any report. You are asked to rely on the witness statements from Mr Paul Carroll, Krystyan Esmond and Bernadine Styles – again, I would point out, not from anyone who made the appointment.

Then, in paragraph 9:

“It is clear that, notwithstanding the very high intra-ocular pressures recorded by Mr Bastien during his consultation with his patient on the 22nd of August 2006, he did not manage that patient appropriately in that he failed to refer her on an emergency basis”.

Where have we seen evidence that he had to refer her on an emergency basis? Are we being asked to rely on the statements of Mr Paul Carroll, Krystyan Esmond, to tell us that this patient has been referred, so that you are sure that Mr Bastien is a danger to the public? The fact that they think this was an emergency? Mr Harle does not. The West Sussex Authority does not seem to think so. So where is your evidence so that you can be sure that Mr Bastien should have referred on an emergency basis just on those pressure readings that day, without any further investigation?

“The Investigation Committee believe” – this is paragraph 10 – “that Mr Bastien’s fitness to practise is impaired as a result of deficient professional performance” – and then he gives you the reasons.

“The Council is concerned that even when this matter was brought to his attention, Mr Bastien showed no insight about the concerns which were raised with him. Indeed, he appears to suggest that he would do the same thing on another occasion. It is his lack of referral” – again, where do we have conclusive evidence that this must have been done on that day? – “and his lack of any demonstration of insight into the risks associated with such non-referral that cause the Council particular concern”.

In my submission, you have heard evidence from Mr Bastien today. This is not an individual – and I will come to some letters with regard to his clinical competence – who does not understand the importance of glaucoma or of referral or of dilating the person’s eyes and even the risks and management of the patient when they are dilated or when they are given anaesthetic drops. Where is the lack of insight? He has told you that, yes, he should have put these results on the record. He has not said that he should not. But are we really going to make an interim order against an individual on the basis of records that were not complete? That would result in an awful lot of interim orders. What we are looking at here is what, in essence, is a protection of public interest issue and, in my submission, Mr Bastien – and Mr Harle backs him up – has shown a lot of evidence of his insight into this situation. He has told you his understanding of glaucoma and has in fact indicated to you what comes out of this manual as well, that he was not prepared to not give her his full attention and the full protection she needed when she was going to be dilated or given anaesthetic drops. He has that much insight into this patient’s care.

“13: It is the Council’s submission that the evidence obtained so far” – and you have seen what evidence that is – “demonstrates that there is sufficient evidence upon which a fitness to practise committee can properly be satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest that an interim order be made”.

Why - because we have the opinion of Mr Carroll and Mrs Esmond? Because without any evidence of what referrals were supposed to be in terms of same day emergency, their opinion has to count? We cannot treat interim applications such as these lightly. They affect Mr Bastien’s livelihood. They in fact raise human rights issues and I do not think there would be any dispute as to this. It is clear that Article 6.1 of the Human Rights Act is engaged at interim orders’ Committee Hearings. So before there is interference with that, there has to be a proper consideration of the matters that you find before you. There cannot be hysterical reaction based on facts which are not put to you on the basis of proper evidence. In my submission again, it is important that you note that there is no protocol put before you. There are guidelines put before you, telling you that this was an emergency referral, a same day referral. There is not sufficient evidence before you to show that it was Mr Bastien’s fault that this lady was not being seen the following day, as opposed to the following week. But what there is before you is evidence, from Mr Harle and the West Sussex Authority, that in fact this is not an emergency, same day, just on pressures alone referral. This is not closed angle glaucoma. There has to be concern, in my submission, of the fact that this interim order would adversely affect an individual and would be made without, in my submission, proper evidence to show that he is any sort of risk to the public.

Now, I would like to take you to the references that I have put before the Committee and these are important because it is important for you to now what Mr Bastien – I know that it has been indicated to you that Mr Bastien is relatively newly qualified – but it is important for you to know what he is thought of in terms of his clinical experience, and in terms of his honesty, so that you can make a proper assessment

of exactly what sort of risk – and that is what we are talking about – he is posing to the public.

Mr Kinch: Would you bear in mind, Mrs Kapila, when you go to these, that the concession be made that this is not a case where there is a pattern of behaviour. It is based on a single incident. So there is not an issue raised as to general pattern of behaviour and it is that last matter that you touched on – the question of risk to the public – that makes these matters relevant at this stage.

Mrs Kapila: However, the question of risk to the public, you are being asked to assess him in the context of this one incident. And it is important in the context of the public interest and public risk point that attention is drawn to his general clinical abilities, his general honesty and integrity. He has stated to you certain facts which he would like you to believe and it is important that this one incident, even if these facts were all proved, would still be one incident. And that one incident, although it may in the future justify a fitness to practise hearing and an order, does not mean that it is going to justify an interim order. Those are two totally different things and in that context, this background is very important. It is important to see his general abilities and the esteem in which he is held, in order to assess this one incident.

With regard to the references, then, if I may read from them? There is one from Dr Debra Bartholomew. She has known Mr Bastien for three years. She has nine years of experience in ophthalmology gained in Trinidad and Tobago and in the United Kingdom:

“I came to know Mr Bastien professionally initially in my capacity as Senior House Officer and then later as Trust Trade whilst I was attached to the Ophthalmology Unit at St Peter’s Hospital, Chertsey [Surrey]. Mr Bastien attended outpatient clinics under the supervision of Mr Mike Tappin and Mr Ulric Meyer-Bothling and worked closely with consultants as well as myself and the other members of the team. These clinics were General, Retinal, Glaucoma and Corneal clinics.

Mr Bastien was always conscientious and diligent. He was very knowledgeable and skilled in patient examination as well as patient counselling.

He has remained a respected colleague and close friend. In fact, he requested and had a further tenure at the Ophthalmology Unit at St Peter’s Hospital under Mr Mike Tappin”.

Another one from D&A –

Mrs Kershaw: Mrs Kapila, can I just ask? Is it normal procedure to read all the evidence of this nature into the records?

Mr Kinch: We have established by agreement that it is not necessary for all the material in either bundle to be read into the record. My invitation to Mrs Kapila was to bear in mind the issue that she had identified, namely risk to members of the public. And if, Madam, you feel you would not be assisted by a recitation of the contents of one reference after another, then my advice would be that you should invite Mrs Kapila to draw your attention and make arguments based on any particular passage in any reference that is directed to that issue. That you may find of assistance but, bearing in mind that you have read these already and no doubt will again when you deliberate, if you take the view that you would prefer assistance from her on the

matter that you are going to have to decide in due course, then you are entitled to ask her to develop her argument in that way.

Mrs Kershaw: I look to my colleagues. I think it would be helpful really if rather than reading through all of them – we have read them all, we will read them all again while we are deliberating – it would be helpful if there are ones that you would like to pull out the nuggets from, that would be helpful –

Mrs Kapila: Certainly. I appreciate. It has been my normal procedure, as Mr Albuery knows, to read the references out, but I am happy to do it this way because I do appreciate that you have them before you. So I will try to highlight the bits, if you like, which I feel are particularly pertinent, bearing in mind that you will no doubt go away and have a good look at these and assess them.

Mrs Kershaw: If you would like to highlight the particular ones –

Mrs Kapila: Yes, that is what I will try to do. Please bear with me if I am little repetitive because I am having to do it on the spot, so to speak.

If I turn to the second reference I was going to read? This is from the D&A Opticians, where Mr Bastien, I understand, is currently working. They say that he has demonstrated clinical competency – that is current –

“screens our diabetic patients and glaucoma patients who are under the local hospital”.

They also talk about the fact that three months ago – so again, after this incident – he referred someone for a U-shaped retinal tear to the local hospital and she is suitably impressed with his clinical judgment.

On the following page we have a reference from Dr Agble. He talks about Mr Bastien being a person who is exemplary and honest, reliable, God fearing and trustworthy.

From Dr Griffith, the following page: again, he is a person who is trustworthy, of excellent character and worth ethic.

The next page, a reference from Theresa D’Abreu. She says that she has worked with him at Dr Fowler’s practice in Edmonton for over five years and he has shown professionalism and, in fact, she says,

“He expressed concern on the history of Glaucoma in my family. He recommended that I change the type of lenses that I was using and gave me some literature to read before making a final decision”

- and then, how he treated her mother.

Then on the following page, this is from Miss Fowler, who is an ophthalmologist, for whom – and again, this is a current matter – Mr Bastien still works. She has been working for him for ten years. She says,

“When I am away, he is the first person I call on to cover for me. As an ophthalmologist” – she is an ophthalmologist – “my clinic is full of diabetic, glaucoma, cataract and all kinds of retinal pathology, both emergency and cold. I am quite happy to leave my clinic in his capable hands”

– that is current too, after this event. I ask you now to bear in mind the public protection point.

The following is from another doctor, Dr Holder, and again she states, “He is hardworking”, “dedicated”. She has known him for 13 years,

“[An optometrist] in whom I have absolute confidence. I have trusted him with the care of many members of my family include my mother and mother-in-law. He particularly carries out regular Glaucoma assessments on my mother”.

Then moving on to one from Boots Optometrists; again where she talks about a competent, caring optometrist.

One then from Mr Akanni – and I am not going to read all this – but he tells us of the good care that he has taken,

“One of the doctors treating me at Moorfields related to me that I was extremely lucky to have such a conscientious optometrist examining me and referring me to the hospital immediately. This is probably the most profound experience I have had as Mr Bastien’s patient but it is the standard that I have come to expect of him”.

He is willing to discuss matters and to appear in person and to ask Moorfields Hospital to provide his medical records in support of this letter.

I then turn to the next one, which is from Mr Bakhsh, who is the Director of Infocus Optometrists. He talks about Mr Bastien’s skills and says,

“I might add that he was probably more proficient than some practitioners who have been qualified for a number of years”.

Then there is one from Mr Garcha. He is a patient. He again talks about Mr Bastien being a good optometrist and again, Mr Battu talks about the same thing.

Then we have the references that were produced before you today. This is from Fr Lennox McPhilip, who talks about knowing Mr Bastien for over 22 years and he says he is an exemplary individual of the highest integrity.

A deputy head teacher of a West London primary school tells us again that he is man of honesty and integrity.

Mitre Court Buildings – this is the reference of Mr Leonard Woodley, QC. He talks about Mr Bastien again being

“A strictly honest, sober and highly capable man. He is a very caring and conscientious person”.

Again from Reverend Canon finally, telling us that he is an upright person, diligent, hardworking and so on – an honest and true person.

On the basis of that evidence, I ask this Committee to consider whether this one incident makes Mr Bastien such a risk to the public that you are being asked to impose an interim order on him. In my submission, it is clear that he is no such risk. It is not acceptable, in my submission, for someone to be under a suspension order

or a conditional registration order, purely because something is missing from their records. That is not why this matter has been brought. There is conflicting evidence about when this patient was due to return. That evidence cannot satisfy you that Mr Bastien did not ask this patient to return the following day and, in my submission, there is some indication that there was a problem with the manner in which that next appointment was handled, because it talks about diabetic dilation, when that is clearly not what Mr Bastien intended, even from the records. He is talking about referral on the basis of pressures. Diabetic dilation is coming into it from somewhere else.

You have before you statements from Mr Carroll, Mrs Esmond. You have a statement from the optical assistant. You have no statement from the person concerned regarding the making of these appointments and against that, you have an expert report from someone well able to give an opinion on these matters and you have a whole lot of evidence on the competency generally and the honesty of Mr Bastien when he makes his representations to you. I would submit that you bear that in mind. You have not had the opportunity to hear Mr Carroll, Ms Styles or Mrs Esmond being cross-examined today. You only have their assertions in these papers.

You have assertions again as to the fact that there should have been an emergency, same day referral because these pressures were 40 and above, but where is the evidence? There is not sufficient evidence before you to make this very serious order – and again, I remind the Committee this does affect Mr Bastien's human rights – of conditional registration which, no doubt, will have a huge impact on Mr Bastien with all his responsibilities, when it is not called for, when there is no public protection issue. This is an optometrist who is well regarded, clearly very competent, and whose evidence, when it is weighed up against the evidence that the Council has produced and Mr Harle has produced – when all of that is weighed up – in my submission you cannot be sure, at all, that it is necessary for you to make this order.

I have nothing else to say.

Mrs Kershaw: Thank you. Mr Albuery, have you anything you wish to add at this point?

Mr Albuery: I am a little unclear as to the stage we are at, because ordinarily, I think, after I make my application, you might hear some evidence. I see, Madam, you have some protocol in front of you. You may be very clear where we are at. Are we at the point where you are inviting me to close?

Mrs Kershaw: Are we looking at the same sheet?

Mr Kinch: We are. Just so that everyone knows – I call it a crib, that is not to denigrate it in any way – we are at the stage of having invited the Presenting Officer (that is you) to present the application, we have had your application. We have had the registrant's response, including the calling of witnesses. And once the response has been made, we are directed to move to paragraph 2.3, which is reply. That is to invite the Presenting Officer to make a final address, if he wishes, to the Committee. So we are at that stage.

Mrs Kapila: May I just ask where this is, so that I can look at it?

Mr Kinch: There is no reason you should not see it. What it is rehearsing is no more than the traditional and accepted formula where someone is applying for an order, where the applicant makes their submissions, the respondent – that is you – responds. And

then there is a final right of reply by the applicant. It is a different procedure at this stage to a final hearing, subject to any questions of law, where we borrow rules of procedure from the criminal jurisdiction, and where the defendant has the last word before the Tribunal of fact.

Mrs Kershaw: Does that help?

Mrs Kapila: Obviously, yes, I understand what is being said to me. Naturally, I would suspect that if there are any new issues raised, there should be the opportunity to address those?

Mr Kinch: I suspect what will assist the Tribunal – and I am sure Mr Albuery will have this in mind – is that it is a chance to respond to matters that have been raised, for instance the West Sussex protocol and so on, that he has perhaps not had the opportunity to address in opening, because he did not at that stage appreciate how the argument was going to be put. It is certainly not the time – and he will well understand this – for new issues to be raised by an applicant.

Mr Albuery: Madam, I will keep my closing brief, if I may? It might assist you more in that way. I ought though to remind you, because it is fair to Mr Bastien that I do, that the burden of proving that such an order that I seek is necessary is on me. That burden is a high one. You have to be satisfied so that you are sure that it is necessary for the protection of the public that you make such an order. Madam, can I just remind you that this is of course a preliminary hearing [*interim order*] and not a substantive one? So you have heard a lot about the absence of evidence that might assist you and to some extent that is fair comment. But of course, the very nature of these applications, the timescales within which the Council moves, is such that you can only ever be asked to make judgments on the basis of what you have and in time, the substantive Panel may hear more than you have done today. Where such deficiency or omission is relevant in the sense that it does not allow you to be satisfied so that you are sure that an order is necessary, the point made by Mrs Kapila is a good one. Of course it is. But both she and I can ask you to judge these matters only on that which you have heard.

I do not intend to summarise the evidence for you again because it is so fresh in your mind. But I do need, I think, to make this point, that throughout her representations to you, Mrs Kapila was making the point that there is no evidence in relation to the booking appointment procedure, in the sense that you were not actually hearing evidence from the person to whom Mr Bastien spoke to request that there be a next day appointment. I think it wrong to say that there is no evidence. You have evidence from Mrs Esmond in the form of her statement, which says that,

“I found out that Mr Bastien had requested the patient be booked in for dilation the following week”.

That is evidence. The amount of weight you attach to it is a matter for you. But it is in front of you and it is evidence. It is supported by the evidence of Ms Styles, who says,

“Mr Bastien asked one of my colleagues to book an appointment for the patient to be dilated the following week”.

Again, it is evidence. I do not intend to repeat it all, but it is evidence.

Madam, in relation to the application that is made, of course, the Council accepts that Article 6 is engaged in these proceedings. I assume that there is no suggestion that there has been a breach of Article 6, which is about the conduct of the proceedings? So you can ignore reference to the Human Rights Act, it seems to me, because that relates to the fairness of the proceedings and I do not think there is any suggestion that these proceedings have not been fair. Insofar as the referral is concerned – the referral guidance by West Sussex Health Authority – I have made the point I have made already about it in relation to the way I have put questions and I do not intend to make those same points again, because I do not think they will assist you.

It comes down to this, doesn't it? Are you satisfied that, based, I accept, in relation to his treatment of one patient on one day, there is a risk to patients that can only be met by the imposition of a suspension order, or by conditions? If the answer is, 'No, we cannot be so satisfied', then that is the end of it. The investigation will continue and Mr Bastien will, one day, have to answer these matters before a fitness to practise committee. But if the answer to that is yes, then you need to consider what order you should make. It is right, because any order you make be proportionate, that you impose the least 'serious' – if I can put it in that way, though it is not a good way of putting it – order in the circumstances as you find them to be. So it must follow that you first consider whether any concerns you have in terms of public protection can be met by the imposition of a conditional registration order and it is for you to consider what sort of conditions – perhaps supervised practice – that you think may be relevant and helpful. Only if you think that the concerns you have cannot be met by the imposition of such conditions, should you then go on to consider imposing an interim suspension order.

Madam, I think I would repeat myself if I said any more, so I will not. But if you or your colleagues have any questions for me, I will try to deal with them.

Mrs Kershaw: Thank you. I turn to our Legal Adviser for any advice he wishes to give.

Mrs Kapila: Madam, there is just one point of law, I believe, which I should just make a comment on, and that is the conditional –

Mr Albuery: Perhaps not yet. I wonder whether we could just hear whether there are any questions for me from the Committee first, and then –

Mrs Kapila: Sorry. I thought advice was being sought from the Legal Adviser, which is why I interrupted at that stage –

Mr Albuery: Not from me. I am asking, Madam, whether you or your colleagues – I think your Legal Adviser probably could not be regarded as that – have any questions for me?

Mrs Kershaw: No, we do not have any.

Mr Albuery: Thank you very much. I think Mrs Kapila has a matter of law which she wants to raise.

Mrs Kapila: Very briefly, in terms of two points: the Human Rights point that I made is in my submission pertinent here, not because I am saying that he is not being given a fair hearing but because it is important that it is kept in mind when we are looking on the effect on his right to practise and his livelihood –

Mr Albuery: How does that go to Article 6? I am sorry, I should be told that by the Legal Adviser –

Mr Kinch: You had better listen to how I deal with the balancing of issues and then comment.

Mrs Kapila: Sorry, I interrupted. May I make a point on the conditional registration point? If the Council are seeking as an alternative – and obviously they are – conditional registration, then of course I would ask the Committee simply to bear in mind that that too carries problems for a registrant and should not be made lightly as a sort of fall back. But again, the same issues that apply to the consideration of the interim order generally should apply to a conditional registration order.

Mr Kinch: Do you agree with Mr Albuery's invitation that if contrary to your submissions the Panel reach a position where they are satisfied that an interim order is necessary, they are considering conditions, that at that stage they should return and invite submissions on the effectiveness or practicality of any particular conditions they have in mind? Is that a sensible course to follow if matters reach that – I appreciate you are arguing that they should not reach that stage.

Mrs Kapila: If matters reach that stage, then of course it would be helpful for the registrant to know what conditions are being imposed but again, I would state that it is obvious from the references and expert report, such conditions are not necessary.

Mr Kinch: That is a given. Would you like me to advise the Committee? This application arises in the course of an investigation into a complaint concerning the competent and fitness to practise of Mr Bastien. There is no argument but that the matter has been properly referred to this Panel and there is no argument but that the matter has been properly and fairly conducted before you. It is an interim application. It is not a final hearing. And it is important that you understand that that does mean that the matter has not, in certain respects, been as fully developed as it could be at a later stage. Your Committee may make an interim order where you are satisfied that it is necessary to do so for the protection of members of the public. There are other circumstances that apply but those are not engaged as a result of Mr Albuery's concession in opening the matter. The only issue here is whether an interim order is proved to be necessary for the protection of members of the public. As you have been rightly told, the burden of proving that matter to you is in on the Council and the standard they have to achieve in order to satisfy you is a high one: it is proof so that you are sure that an interim order is necessary. It has been observed, and it must be common ground, it is right that the bar is set high in this case, because a finding adverse to Mr Bastien would have serious consequences on his entitlement to practise his profession.

In assessing the matter and in coming to your decision, you must review all the material that has been put before you. You must also take account of the arguments that have been addressed to you, you are not obliged to accept them, and it is for you to decide what material that you have heard and seen is relevant to the issues that you must determine, what weight to place upon any individual document, piece of evidence and in what way to make allowances for the fact that some of that material has not been tested. Some of it is contemporary, in the form of letters, some of it written later in the form of statements. It is for you to decide what weight you place upon any individual piece of evidence or material. You will wish to remember that except in the case of Mr Bastien himself, no witness has been subjected to cross-examination; that does not mean that he stands apart in any sense, he is a

witness in these proceedings and his evidence must be assessed fairly and appropriately.

Both parties have been able to address arguments on the weight that you should apply to the material in the bundles and the conclusion that you should draw or not draw from those documents. It is for you to decide which of those arguments you accept. There is before you a report from an expert witness, in which he gives, as he is entitled to as an expert, opinion evidence. You will no doubt wish to give weight to the opinion that comes from an expert in a given field but you are not bound to accept it; again, the weight is a matter for you.

I do not seek to rehearse the facts of the case but it may help if I give some, I hope, fair and adequate summary of the arguments. The Council's argument, essentially, comes to this. It is that a reasonably competent optometrist in the position in which Mr Bastien found himself in August last year, armed with the facts as he saw them, would have made a referral and an immediate referral, based solely on the levels of intraocular pressures that were reported to him. The Council submit that putting off the further tests is not relevant in the light of those high levels of pressures. It is conceded on the Council's behalf that this is only one case; there is no pattern of poor conduct; indeed, there are references that testify in part - certainly to good performance - on a number of other occasions. But the Council's submission is that this particular incident, the findings, called for an immediate referral and point to the fact that a referral took place the following day when the situation was reviewed by Mrs Esmond. That with the background of the record keeping aspects that you have heard about indicate a situation, submit the Council, that demonstrates that here there is a real risk, or likely future risk, of harm to members of the public. They pose the question: can that then situation only be dealt with by an interim order? If so, are there conditions, such as supervision, that are sufficient to deal with the risk, or can this only be dealt with by suspension.

Those are the arguments – I hope I do justice to them – from the Council. I pass to the registrant's arguments, put before you by Mrs Kapila. No evidence sufficient to conclude that the pressures alone demanded a referral that day, as opposed to within a short space of time. She points to a conflict that she says you cannot resolve, over whether Mr Bastien made the request for a return visit the following day or next week. She submits for you to consider that the findings here permitted Mr Bastien as a reasonably competent practitioner to adopt another course than immediate referral. She relies on the guidance notes you have seen. The expert evidence in the shape of Mr Harle's report says that there is no evidence of sufficient weight to justify the assertion that there was a need for an immediate referral, and in those circumstances, an interim order is not called for and would be an over-reaction. In any event, she says, having regard to the references that have been put before you, you would be entitled to take the view that the risk to members of the public had not been made out.

I remind you that, in giving your decision, you should give sufficient reasons to identify the way in which your decision has been arrived at – not overly detailed, but sufficient – so that the reader can understand what the application was about and why it came to the conclusion that it does.

Does either side wish to comment on that advice?

Mr Albuery: No, thank you.

Mrs Kapila: No, thank you.

Mrs Kershaw: In that case, we will begin our deliberations. It probably has not escaped your notice that lunchtime is passing fast. We will probably take a shortened lunch break and move into deliberation fairly speedily. Mr Henley will collect you when we are ready.

Mr Albuery: Is there a time before which you will not need us? It just helps other arrangements.

Mrs Kershaw: I would say definitely not before two.

[The Hearing adjourned at 1.28 pm]

[The Hearing reconvened at 2.30 pm]

Mrs Kershaw: The Fitness to Practise Committee considered an application for an interim order made by the Council and decided as follows:

Decision

The application for an interim order in this case is based on allegations of deficient professional performance in three aspects:

1. Failure properly to interpret intraocular pressure measurements;
2. Failure to detect chronic open angle glaucoma;
3. Inadequate record keeping.

As to the first two matters, there is conflict of evidence in relation to the narrative history and what amounts to proper professional practice, which is difficult to resolve at this stage on the material before us. We cannot be satisfied that these matters establish such a risk that can only be dealt with by an interim order.

Turning to inadequate record keeping, there is evidence of defects in the record card that we have seen and, to some extent, this was recognised by Mr Bastien in evidence. This has caused us concern, particularly as we have no other examples of his record keeping for purposes of comparison. That said, applying the criminal standard of proof, we cannot be sure that there is such a risk as to require the imposition of an interim order for the protection of the public.

The Council's application is, therefore, refused.

[The proceedings concluded at 2.32 pm]