



**F(07)05**

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

**GENERAL OPTICAL COUNCIL**

**AND**

**ROBERT RANDAL DAVIES (01-22396)**

**SUBSTANTIVE HEARING: 19 JULY 2007**

**SUBSTANTIVE HEARING: ROBERT RANDAL DAVIES (01-22396)**  
**Thursday, 19 July 2007**

Fitness to Practise Committee: Ms M Hallendorff (Lay Member) (Chair)  
Mr G Ilett (Optometrist)  
Mr R Varley (Lay Member)  
Ms C Viner (Optometrist)  
Lady Margaret Wall (Lay Member)

Legal Adviser: Miss S Goodrich

Hearings Manager: Mr D Henley BEM

For the GOC: Mr N Leale  
Mrs C Withall

The Registrant was not represented or present

*[Proceedings commenced at 9.35 am]*

**Ms Hallendorff:** Good morning. I am a lay member of the Hearings Panel, and I have been elected by the Committee to chair today's hearing. The Committee is made up of two optometrists and three lay members, and I shall ask members of the Committee to introduce themselves and the capacity in which they sit. *[Introductions]* To my right is Ms Goodrich, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee, and ensure that the proceedings are conducted in accordance with the Rules of Procedure so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate. In the event that any matter arises during the course of the Committee's deliberations upon which the Committee seeks advice, the parties will be invited to return to hear the matter which the Committee has raised and the advice given 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 Fiona Shipley, 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 David Henley, the Hearings Manager who will provide administrative assistance to the Committee. The remaining persons sitting in the hearing room, rather than in the public and press areas, are members of the respective legal teams.

I turn to our Legal Adviser here. May I ask your advice on the copy of the email we have just received?

**Ms Goodrich:** I think it is probably preferable for the application to be made and then proceed thereafter.

**Ms Hallendorff:** Thank you. Mr Leale, would you like to make an application?

**Mr Leale:** Madam, as no doubt you and your colleagues are aware, this case relates to an allegation of testing sight while unregistered over quite a lengthy period in recent years on the part of Mr Davies. You have no doubt seen the Notice of Inquiry that it would appear was served, obviously in good time, and Mr Davies did have sufficient notice of the hearing. It was dated 19 March but, in any event, he has been in contact with the Council. You, as I understand, have had an opportunity to see an email note written by Mr Ireland of the Council in relation to a conversation that he had with Mr Davies on Tuesday. Before I refer to that, may I just inform you and your colleagues, Madam, that this is an issue that has been raised before by Mr Davies? I do not know whether you have been provided with copies of the Notice of Inquiry and the telephone note dated 21 March that is attached to that – do you have that, Madam?

**Ms Hallendorff:** Yes.

**Mr Leale:** I have only just seen this so it may well be that you know more about it than I do, if you have had an opportunity to read it. Just so that we take matters chronologically, the procedural hearing in this case took place on 19 March, and as far as the telephone note dated 21 March, Ms Withall, who sits on my right-hand side, took the call from Mr Davies on that date. He stated then that he had been unwell and had only just returned to the practice to find the letter of 12 March advising of the procedural hearing on the 19<sup>th</sup>. He was asked how long he had been unwell and he said he had ‘flu for two weeks. Mrs Withall advised him that he and his representatives were served with the Notice of Hearing in February. A conversation followed but, in short and more importantly, he raised the issue on that occasion that he had been unwell and that combined with what he claimed to be the case, that he had not received the Notice of Inquiry, was why he had not attended the procedural hearing.

On Tuesday, as you will have seen from Mr Ireland’s email note and email sent to myself on Tuesday afternoon, he called the Council. Mr Ireland called him back at 5.05 pm. He said to him in a conversation that he was not well enough to travel from South Wales to attend today’s hearing but, when pressed, it seems he could not indicate why he was not well enough and why he was not fit to travel. He specifically asked, and this is important as it is something that you should know and something that you must consider, that the hearing be postponed until he was feeling better.

Mr Ireland said to him that that was short notice but, more importantly, he said it was important that he sent something through so that there was some sort of support for the suggestion that he was unwell and, therefore, the hearing might not be able to go ahead today. He said he did not have access to a fax but that he would write a letter confirming that he was unwell. He volunteered the information, it seems, that he was due to see his general practitioner

yesterday, Wednesday, no doubt in relation to whatever this illness is. However, nobody knows what it is as he did not volunteer that information. It was suggested to him that he should obtain a letter from his general practitioner to support his medical position so that that could be put before you today. It was reiterated to him that written evidence should be put forward to support his position and that it was important that you had that in time for you to be able to consider this application, if that is indeed what it is, properly.

Nothing has been received, no correspondence at all and no further contact with Mr Davies, and no letter has been received from him, no note from his doctor, nothing beyond the fact that he rang the Council on Tuesday claiming to be unwell, and he was told that he ought to produce some kind of supporting evidence. Madam, you are in this position really, that he has raised the issue with the Council that he would like the matter postponed. That would suggest that he would like you to consider postponing this matter, although since his telephone conversation with Mr Ireland on Tuesday, there has been no further contact with him, and he was on clear notice on that occasion of the fact that it was important that he produce some kind of medical evidence in support of his application.

Nothing has been forthcoming, so it is not entirely clear as to whether he is asking for an adjournment today or not. The suggestion certainly is that he claims to be unwell and that is what he wants, although he was informed that it was something that you would have to consider on the day, and it would be extremely helpful and supportive to his position if he were to be able to put something before you in support of what he is saying. However, he has not done that. All in all, no doubt as a matter of caution, you will wish to consider, irrespective of whether it is clear or not that this is what he is asking for, whether it is appropriate to continue today given the fact that he has raised the issue that he is ill.

Madam, I oppose any suggestion that this matter ought to be adjourned in these circumstances. All you have is a brief reference to a conversation that took place between Mr Davies and a representative of the Council on Tuesday. He, it seems, refused to give any sort of detail as to what was wrong with him in the course of that conversation, despite the fact, as you can see from the note of the email, that he did not indicate why it was that he felt he could not travel and be here; he just said he was not feeling very well. He has not provided anything in support of that and, as I have explained to you, this is an issue that he has raised before in the past without proper support. You have nothing further in support of the fact that he is unwell, despite what he was told during the course of that conversation.

Madam, I appreciate that, in such circumstances, you have to be cautious and consider all the circumstances carefully so that you are satisfied that, in the interests of justice, it is the right thing to proceed. Two witnesses have attended at the Council today, so that that is clear: Mr Coe, the Registrar of the Council in relation to registration issues is here today, as well as Rosemary Fletcher from the Health Board who has attended from South

Wales. She travelled up yesterday, stayed overnight and is waiting here to give evidence today.

One of the main overriding cases which summarises the factors that you should consider in these sort of circumstances is that of *R-v-Jones*, a criminal case that outlines a number of factors that you may wish to consider when deciding whether or how to exercise your discretion in these circumstances as to whether you should proceed or not. This is to an extent like a criminal case although, of course, you are in a slightly different situation because you cannot compel Mr Davies to attend. Whereas a criminal court could adjourn and compel someone to attend with the help of the authority, you cannot do that. This case has to be considered in that context, although it is a very helpful case in that it refers to the various factors that you should consider when exercising your discretion and deciding whether, in fairness to the respondent [*registrant*], this matter should proceed today or not.

Those circumstances are as follows and I shall look at them all briefly. The nature and circumstances of the respondent's behaviour in absenting himself from the trial – or the hearing in this case – and in particular whether his behaviour was deliberate, voluntary or such as plainly waived his right to appear. It is fair to say that he has not waived his right to appear in one sense in that he has not said, "I am unwell but I do not want to be there, carry on". He is saying that he would like to be here but that he cannot be here today due to illness. However, as you know, he has been asked for some further evidence in support of that and was asked to provide some information as to exactly what was wrong with him when the conversation took place on Tuesday. None of that was forthcoming.

The second factor is whether an adjournment might result - and I shall use the criminal jargon as that is what is used in the judgment – in the defendant being called or attending voluntarily or not disrupting the proceedings. You do not have the power to make him attend, to get him here. He either attends voluntarily next time round if you were to adjourn or he does not. Given the fact that this issue has been raised before without any support in March, and he has, in the circumstances, been unable to provide any supporting evidence for the fact that he is ill, you may feel that the purpose of what an adjournment achieves might be fairly insignificant as we may well, given the history, find ourselves in a similar situation again, where he raises the issue but is unable to provide anything in support of what he is saying.

The next question concerns the likely length of such an adjournment. I suspect that the length of such an adjournment would be significant. Time would have to found for the matter to be heard again within the Council's timetables and all that that it involves.

The next point is whether he wishes to be legally represented at the trial or has waived his right to representation. He is not represented. He has been told before that he should gain representation and, at one point during these proceedings, he did have representation but he does not any more it seems.

There is obviously no-one here, it has to be accepted, to assist him in his absence if you were to proceed.

The next point that *Jones* refers to is whether his legal representatives are able to receive instructions and present his defence. He is not represented so I cannot really address that matter.

The next point is the extent of the disadvantage to him in not being able to give his account of events having regard to the nature of the evidence against him. That is true. If the matter were to proceed today and he is not here, he will not be able to put his defence forward if, indeed, he has one.

The evidence in the case, however, is fairly straightforward and relates to whether he was registered or not, and whether such claims were made. It is not for me to judge whether he has a defence or not. If he is here he can put it, if he is not he cannot, I have to accept that. It may be that, if he has a genuine defence, he will be denied the opportunity to put that by not being here but, of course, it is only one factor. Is there a risk of you reaching an improper conclusion in his absence? Obviously, there may be if he has a proper defence that he would put forward if he were here.

The next point is that, in the general public interest, matters should take place within a reasonable time and the effect of delay on the memory of witnesses. That probably does not apply here because it is predominantly a paper-based case but, in fairness to both parties, which is another point the case refers to, it is important that you consider the fact that two witnesses have attended today, and one has attended from South Wales.

Madam, in conclusion, you have to exercise caution in these circumstances and there is other case law beyond the case of *Jones*, and no doubt your legal adviser will refer you to them if appropriate. There are cases that make it very clear that where illness is raised as an issue, you have to be cautious. However, in this sort of circumstances, in my submission, it would not be appropriate to adjourn this matter to enable Mr Davies to attend on another occasion. All he has done is suggest to the Council in a telephone conversation that he is unwell; he has not divulged any further why it is he cannot travel, why it is that he is not well enough to come. He has just said he would like to come on another day when he feels better. He was then granted an opportunity and said himself that he was going to see his general practitioner yesterday and be able to provide some kind of supporting evidence. However, none of that has been forthcoming. Madam, in those circumstances, in my submission you can exercise your discretion in favour of the Council and those witnesses who have attended here today and proceed with this matter. If there was some kind of supporting evidence, the situation would be different but there is not, and this is something that Mr Davies had raised before without support. In those circumstances, Madam, in my submission it would be quite proper for the matter to proceed today. Thank you.

**Ms Hallendorff:** Thank you. [*confers with Committee members*] Mr Leale, you said at one point that he had representation but no longer has it. On what basis is that?

**Mr Leale:** I have some correspondence that indicates to me there was a time when he was represented by the AOP but it is quite clear now that they have ceased to represent him. It is clear from the correspondence that he no longer has legal representation and it would appear he is not seeking legal representation either.

**Ms Viner:** I have a small question regarding the fact that no communication has been received as to the nature of the registrant's ill health. He was seeking advice from his GP yesterday but mentions in the email that he has no access to a fax so that it would be impossible for him to fax that information. Is it possible that something has arrived this morning?

**Mr Leale:** May I have a moment?

**Ms Viner:** Sure.

**Mr Leale:** [*Confers*] There has nothing been received this morning, I am told, and he was also advised, so I am told, that he could ask his GP to fax any information through that the GP might provide to the Council, but nothing has been received.

**Ms Hallendorff:** Mr Varley?

**Mr Varley:** I have no questions.

**Ms Hallendorff:** Mr Ilett?

**Mr Ilett:** I have no questions.

**Ms Hallendorff:** May we turn now to our Legal Adviser?

**Ms Goodrich:** I wonder if I might ask some questions. With leave of the Chair, I would like to ask two questions in order to clarify. You will appreciate that my function here is to ensure that the proceedings are conducted fairly, especially when a registrant is not present. You have referred the Committee to the attendance note of 21 March 2007, and have relied upon this as being similar circumstances – I paraphrase this – this is not the first time that this has arisen?

**Mr Leale:** Yes.

**Ms Goodrich:** I would like perhaps to clarify one or two matters. My understanding from this document is that there had been a procedural hearing which Mr Davies had not attended. It is not the case, as I understand it, that he had asked prior to that hearing for that hearing to be adjourned by reason of illness - is that correct?

**Mr Leale:** That is correct.

**Ms Goodrich:** Secondly, you referred to the email of 21 March as indicating that this had happened before. Have you any information that suggests that the illness that Mr Davies was talking about in March is the same illness that he is suffering from now?

**Mr Leale:** It seems, Madam, no. There is nothing to indicate that the two are linked. There is an indication in the first paragraph that he had 'flu in March and that did post-date the procedural hearing, as you have said. The circumstances were somewhat different but the similarity is that he raised the matter of illness.

**Ms Goodrich:** The position, therefore, is this. There has been, and this is a relevant matter under *Jones*, no previous application by this registrant for an adjournment?

**Mr Leale:** That is correct, Madam. I simply refer to it just to ensure the Committee are aware of the fact that he has raised illness before on an earlier date, although in different circumstances. It was not in relation to any possible adjournment of an earlier hearing.

**Ms Goodrich:** Thank you. There are a number of other matters contained in that email that have some bearing upon representations that you made. On a number of occasions in the course of that email, if it is an accurate account, Mr Davies indicated that he was very anxious for the proceedings to be concluded on, I think, three occasions. Is that agreed?

**Mr Leale:** I agree.

**Ms Goodrich:** He also raised an aspect in relation to fairness, that he felt he had been adjudged to be guilty already. He disputed a view put to him that he was not engaged in the process, is that right?

**Mr Leale:** Yes.

**Ms Goodrich:** And, in relation to representation, he said he had thought that AOP were representing him and that he felt let down, and he did not understand why they had not represented him. That presumably relates to the procedural hearing?

**Mr Leale:** Yes.

**Ms Goodrich:** So would it be fair to say that on the face of this note, the indications are that he thought that he would be represented at the procedural hearing?

**Mr Leale:** I am told, Madam, that the AOP had told him in advance of the procedural hearing that they would not be representing him.

**Ms Goodrich:** On the face of this note, what he said to the person who recorded the note is that he had thought that the AOP would be representing him at the procedural hearing. That may be something that is disputed –

**Mr Leale:** Indeed.

**Ms Goodrich:** - but that was in his mind.

**Mr Leale:** He certainly says that.

**Ms Goodrich:** That is the point I am getting at, it is the state of his mind. I would now like to ask one or two questions in relation to the email. In opening you used the word that Mr Davies was “claiming” to be ill on a number of occasions, and you also said that he refused to give information. Could I take you to both of those parts? First, do you have any evidence to place before the tribunal to suggest positively that Mr Davies is not ill as he was saying in the conversation on 17 July?

**Mr Leale:** I do not have anything positive to put forward. What I can say from the note is that he was not prepared to divulge any information as to what is wrong with him, despite the fact that it was suggested to him that he should gain some kind of medical evidence. Indeed, he said he was going to see his GP but nothing has been put forward in support of what he says.

**Ms Goodrich:** You have no positive evidence to suggest that in fact his assertion that he is unwell is not true. Could I just take you to a second point in relation to the email? The email says: “He indicated to me that he was not well enough to travel from South Wales to attend the hearing on Thursday, 19 July. He did not indicate why. He asked that the hearing be postponed until he was feeling better.” Help me but I cannot see anywhere in that note any indication that he was positively asked what the nature of his illness was. Do you have any information other than this email?

**Mr Leale:** No, I haven't.

**Ms Goodrich:** That is fair, isn't it?

**Mr Leale:** Yes, it is fair to say that he did not divulge any information as to the nature of his illness, although, not knowing anything more than is in this email, I don't know whether he was specifically asked that. Perhaps it is not appropriate for me to put it as highly as the fact that he refused to give that information. Probably, more fairly I should say that he did not provide that information rather than refused to, in fairness to Mr Davies.

**Ms Goodrich:** He did not proffer.

**Mr Leale:** Indeed.

**Ms Goodrich:** It is important when one is using language to be very precise about it in fairness, because the registrant is not here.

**Mr Leale:** I accept that and I make it clear again that I don't know anything further than that which is contained within this email as to the specific content of that conversation.

**Ms Goodrich:** Can we turn on then to the apparent advice that he was given in relation to seeking medical advice?

“He also advised that he had an appointment with his GP tomorrow and I suggested he should try and obtain a letter from his GP to support his medical position, as this would assist the hearing's panel in their decision as to whether to consider an adjournment. I told him it was the hearings panel who would decide whether to proceed with the hearing or not and that written evidence to support his position would be beneficial to his case.”

Do you have anything other than this email to suggest that any stronger advice was given than that which is contained and is before the Committee?

**Mr Leale:** No, I do not, Madam.

**Ms Goodrich:** Thank you very much. The writer goes on to say: “I did indicate the panel may not receive his written request or the GP's letter in time for them to be considered.” This conversation took place shortly after five o'clock on 17 July.

**Mr Leale:** Correct.

**Ms Goodrich:** Assuming that the appointment with the GP was yesterday, as was said by Mr Davies, it is unlikely that any letter even if written by the general practitioner that day would be received at these offices by now. Would that be right?

**Mr Leale:** I think if he saw his GP during the day yesterday, one would expect if the GP had written the letter on the day, and if he had been given the information that it was very urgent that the GOC receive that information, it may be the letter would have been received this morning or a fax might have been received.

**Ms Goodrich:** Let us leave faxes aside for one moment. You think that a letter posted yesterday afternoon would have reached here by now?

**Mr Leale:** I have lost track of the postal strikes, I am not sure there is one on at the moment, so it certainly might be expected to have been received.

**Ms Goodrich:** So far as that note of 17 July is concerned, there is no indication in that note that Mr Davies was advised to ask his general practitioner to forward by fax any evidence that he could provide to the tribunal.

**Mr Leale:** There is nothing in the note about that but, as I understand it that was something that was said. I am told that Mrs Withall was present during the course of the conversation that took place, and she asked that Mr Ireland gave that instruction and it was given that a fax might be appropriate in the circumstances, Madam.

**Ms Goodrich:** Thank you. So far as procedure is concerned, could I just clarify one matter? There is the issue about whether or not the panel should proceed but there is also, perhaps intertwined with that, what appears to be an application for an adjournment. Are you agreed that it would be sensible in this case for all matters to be considered together?

**Mr Leale:** I think that one has to be cautious and one has also to accept from the nature of the conversation that this is probably an application to adjourn isn't it? Although he has not provided any supporting evidence, he has made it clear in that conversation that he would like to come when he is feeling better and not today, so that, in those circumstances, really is an application for an adjournment.

**Ms Goodrich:** Let us clarify because it is important that we define the issue that the tribunal will be considering. First, there is an application to adjourn which you oppose.

**Mr Leale:** Yes.

**Ms Goodrich:** Secondly, if the Committee decide to reject that application to adjourn, they nonetheless have to go on to consider Rule 21 and the specific tests in relation to that as to whether or not they are satisfied that all reasonable efforts have been made to notify the registrant of the hearing. Having regard to any reasons for absence which have been provided by the registrant, they are satisfied that it is in the public interest to proceed. I just want to clarify whether you are content that you have put before the panel all matters relevant to Rule 21, and it is your application that it is right to proceed in this case?

**Mr Leale:** Indeed, Madam.

**Ms Goodrich:** Thank you.

**Ms Hallendorff:** May I ask our Legal Adviser to advise the Committee on these matters?

**Ms Goodrich:** I apologise for the fact that I have asked quite so many questions but it is important in a case where somebody is not represented and there is material before the Committee that that is explored, because, as has been correctly pointed out, a decision both in relation to adjournment and indeed whether to proceed in the absence of a registrant is not to be taken lightly. It is a decision to which the panel should proceed with very necessary caution. The overwhelming reason for that necessary caution is that the fundamental

concern of this panel is to ensure that the proceedings are fair, not only to the public but also fair to the interests of the registrant.

You have been very properly and correctly directed to the case of *Jones*, which sets out the various factors that a panel should carefully consider when considering whether or not to proceed in the absence of a respondent. For the purpose of simplicity, I shall direct my advice in relation to proceeding in absence as that, in itself defines the nature of the issue here.

Reference has been made to the fact that the case of *Jones* is a case concerning criminal jurisdiction. My advice to the Committee is that, nonetheless, it is applicable to these proceedings and has indeed been approved and cited by the High Court when considering the very issue of adjournment and proceeding in absence in regulatory proceedings, most recently the specific case of *Mahmoud v The General Medical Council*.

The particular circumstances relevant to this case to which I draw the Committee's attention are that you should consider all the circumstances, including the nature and circumstances of the defendant's behaviour. In this case, of course, there is no behaviour, the defendant has not attended today but he has been in contact with the General Optical Council to say that he is unwell. In relation to the second matter of whether an adjournment would resolve the matter that deals with whether or not an adjournment will result in the matter being satisfactorily concluded on another occasion. There are cases where one adjournment follows another adjournment, follows another adjournment and a tribunal may reach the view, in some cases, that it is likely that an adjournment would result in the matter never being resolved.

My advice to the Committee is to be very cautious about that matter. This is not a case where there has ever been an adjournment granted before and, indeed, as was perhaps apparent from what was said earlier on, the relevance of the earlier illness in March was not such that it resulted in any adjournment or, indeed, aborted proceedings. It is apparent from the email before you in relation to that March matter that Mr Davies's state of mind was that he thought he would be represented at that hearing. It would be wise to approach this on the basis that it this is the first occasion when an issue in relation to the future of these proceedings has been raised by Mr Davies himself.

Another matter you need to consider is the likely length of an adjournment and there is very little evidence before you in relation to that. If adjourned, there is the issue of how long it would be for a hearing to be reconvened. It is perhaps important to bear in mind the evidence before you, which suggests that certainly, as at March of this year, Mr Davies was very keen for the proceedings to be concluded, which may or may not assist you in how you approach that matter. There is no evidence as to how long it is likely that the defendant will be ill or unable to attend, and my advice to you is that there is not a great deal before you in relation to that aspect. Of course, it is a matter entirely for you.

The next matter that is perhaps relevant in the context of this case is the extent of the disadvantage to the defendant in not being able to present his account of events. This has been very much addressed upon the basis that the evidence supporting the factual allegations in this case is perhaps within short compass. It is a matter of documentary evidence rather than live evidence, and the question is raised by the Council as to whether or not there is really any disadvantage to the defendant in these circumstances: is there likely to be any dispute in relation to the facts?

My advice to the Committee is that these proceedings, as you all know, do not simply involve the determination in relation to the facts. You will have to go on to consider the issue of whether or not there is any impairment of fitness to practise and, if you find that established, you will have to go on to decide upon whether or not a direction should be made. So far as those matters are concerned, they are equally important or, in some cases, more important than the facts, where it may be that the facts are not greatly in issue. Therefore, my advice to the Committee is consider very carefully the extent of the disadvantage to the defendant in not being able to present his account of events and explain to you why it is that the facts, if they are proven, occurred.

The next matter links to that and that is a risk of you as fact-finders and decision-makers reaching an improper conclusion about the absence of the defendant, or indeed reaching an improper conclusion about the significance of his absence in a circumstance where he has said, "I am not able to come today because I am unwell".

Another very important matter is the general public interest that a trial should take place within a reasonable time. In that context, the Committee will want to bear in mind this is not a case where there has been a previous adjournment of a substantive hearing. It is plainly in the public interest that matters should be concluded within a reasonable time and it is equally a matter for the Committee to consider that it is important that proceedings are conducted with the fullest of information and are dealt with fairly. The effect of the delay on the memories of witnesses is a matter that was raised in the question of *Jones*. As is fairly conceded, this is not a case that is dependent upon witness memory, although it is the case that, if this matter were not to proceed today, two witnesses will have been put to the inconvenience of attending a hearing to no avail. That is something that you will explicitly have to balance up against the overall interests of justice and your view as to whether or not it is right to proceed in the circumstances.

Considerable weight has been placed on the fact that there is no medical evidence before you to substantiate what has been put as the claim of Mr Davies that he is unwell. My advice to you is to be extremely cautious in relation to that. As has already been alluded to by a panel member, the conversation on 17 July was late in the day at half-past five. According to that note, Mr Davies said he was attending his general practitioner the next day, and the Committee will perhaps want to use their common sense and judgment as to whether one can infer anything at all from the absence of any medical evidence before you given the shortness of time between the advice

given and the terms in which it was given on 17 July, and the fact that you are here now in the early morning of 19 July.

That said, all these matters are for the panel to consider and to weigh up, balancing the various interests but bearing in mind that there is a considerable public interest, not merely that regulatory proceedings should be dealt with and concluded, and should be dealt with fairly. There is also a considerable public interest in those proceedings being scrupulously fair to a defendant, so that the public may have confidence that all relevant matters have been considered and any decisions made have taken the interests of justice firmly into account. My advice in relation to the absence of medical evidence is that you should consider that very carefully as to whether, in the circumstances of this case that really assists you one way or other.

Madam Chair - that is all the advice that I would wish to give to you. Could I perhaps ask whether there is any advice that you think has been omitted or wrongly stated in what I have said?

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

**Ms Hallendorff:** [*consults with other members of Committee – no questions*] May we ask Mr Henley to clear the room so that we can go to consideration. I suggest you take a coffee break at this stage and we shall call you back when we have made our decision.

[*Hearing adjourned at 10.18 am*]

[*Hearing reconvened at 11.22 am*]

## Determination

**Ms Hallendorff:** The General Optical Council and Robert Randal Davies, determination of the inquiry of 19 July 2007. Adjournment application. The registrant contacted the Council during the afternoon of 17 July 2007 indicating that he was not well enough to travel from South Wales to attend today's hearing. He asked that the hearing be postponed until he was feeling better. In these circumstances, we have treated this as an application to adjourn. The Council's legal representative relied heavily upon the absence of any medical evidence substantiating that the registrant was too ill to attend the proceedings. We note that the registrant said that he intended to see his GP the following day (18 July) and was advised that he "should try to obtain a letter from his GP to support his medical condition" and that such evidence "would be beneficial to his case". At the time the hearing commenced, no further communication had been received from Mr Davies or anyone on his behalf. We have considered carefully the various matters to which we should have regard as set out in the case of *R-v-Jones*.

We have considered carefully all the evidence and submissions made and have received advice from the Legal Adviser. Whilst there is plainly a public interest that these proceedings are brought to a conclusion, we consider that the proceedings should be adjourned in the interests of justice.

It is plainly in the public interest that the proceedings should be heard as soon as possible. In order that a date for the hearing can be arranged, the Committee directs that the registrant provides medical evidence by 12 pm on 6 August 2007 which sets out the nature of his illness and stages when, in the opinion of the medical practitioner, the registrant will be fit to attend. A further date for the hearing will then be made. Thank you. Mr Leale, do you wish to say something?

**Mr Leale:** Madam, yes. Do I understand then that you would not want to seek to fix a new date now; you would rather wait to find out what medical evidence is produced and what the nature is of his illness?

**Ms Hallendorff:** That is correct.

**Mr Leale:** Our only concern is how matters progress once the medical evidence has been received, or if it is received. By the nature of what you said, you would expect that to be produced and provided to the Council and then it would be considered and the matter hopefully prefixed administratively by the Council subsequently, if that appears to be a sensible course given the nature of his illness. If that is what is in the mind of members of the Committee, that is the basis upon which we shall work. We shall await to receive the evidence and fix it administratively when we know what he has said.

**Ms Hallendorff:** That is correct. *[No further comments from the Committee]* Thank you very much indeed.

*[Hearing concluded at 11.27 am]*