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

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AND

**NATHAN BENJAHMAN HILL (SO-1668)
(A STUDENT OPTOMETRIST)**

DETERMINATION OF APPLICATION FOR INTERIM ORDER: 8 MAY 2007

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NATHAN BENJAHMAN HILL (SO-1668) A STUDENT OPTOMETRIST
8 May 2007**

Fitness to Practise Committee: Mrs C Kershaw (Chair) (Lay)
Ms F Jones (Lay)
Mrs H Tilley (Optometrist)

Legal Adviser: Mr C Kinch QC

Hearings Manager: Mr D Henley BEM

For the GOC: Mr C Alder and Mrs C Withall
For the Registrant: Not represented

[The Hearing commenced at 1pm]

Mrs Kershaw: Good afternoon. 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 is made up of one optometrist and two lay members. I shall ask the members to introduce themselves and the capacity in which they sit. *[Introductions made]* To my right is Mr Kinch QC, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee and ensure that the proceedings are conducted in accordance with the Rules of Procedure, so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate. In the event that any matter arises during the course of the Committee's deliberations upon which the Committee seeks advice, the parties will be invited to return to hear the matter which the Committee has raised and the advice to the Committee. Where advice on any issue is not accepted by the Committee, this will be indicated in the course of its decision on that issue.

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 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 room are – you!

Would you like to present the Council's application?

Mr Alder: Thank you, Madam. The Council's application is to seek an interim order in respect of this case. I am aware that you have a bundle of documents available to you and I understand that you will have pre-read them, so I will proceed on that basis.

Mrs Kershaw: We have read them. We received them some days ago and we have read them, and an extra document which I requested as well has been read.

Mr Alder: Thank you, Madam. Prior to making that application, the first step for you to take, I understand, is to consider whether to proceed today. Mr Hill is not here. The Council have heard nothing from him, as I understand, at all and therefore I cannot confirm whether he is intending to come. Given the nature of this application I will in due course ask that this Committee proceed in his absence. The first step for this

Committee to take is to be able to conclude that Mr Hill has been served in accordance with the rules. That provides, at Part 5 of your rules, Rule 18, that seven days should be given prior to the date of this hearing. I understand that Mr Henley has made available for you a pack of information which sets out the notice of this hearing, dated 26 April.

Mr Kinch: Sorry, Mr Alder, can you just help us because the panel have their bundles with them? If you could direct us to the –

Mr Alder: Indeed, sir. If I could direct the Committee to page 95 of the Handbook, it is then Part 5 of the Fitness to Practise Rules, 2005, and I refer you to Rule 17 initially, which sets out the basis of the documents to be provided and the information to be provided to Mr Hill. More importantly, at Rule 18, it sets out there the date of interim order hearing. It is for you to be satisfied that seven days have elapsed from the service of the notification, a copy of which is at pages 1 and 2 of the bundle in front of you now.

You will see, Madam, that that document is addressed to Mr Hill at 107 Darleydale Avenue, being his registered address. You will see also on there a small code in the middle top of that page, which sets out the particular reference number for this particular document and that tallies, as you will see at page 4, with a screen print from Royal Mail, which confirms the same reference number, being therefore the same document which has been served on the registered address, 107 Darleydale. Madam, the registered address for Mr Hill is set out between pages 5 and 6, which is a copy, if it can be, a screen print, of the register for Mr Hill. The only point you may note is that the postcode is slightly different, marked as B44 0UW as opposed to B44 9UW, as on the Register. But given the clear reference to this document being delivered at 107 Darleydale Avenue Madam, I would ask you to conclude that this has been served on the registrant and that good service in good time in accordance to the rules has been provided to Mr Hill and he has had adequate notice of this hearing today.

Mrs Kershaw: Does our Legal Adviser have any comment at this stage?

Mr Kinch: All I can say is that Mr Alder has properly taken you to Rule 17 which sets out the documentation that has to be included for the registrant and has pointed to the letter which is clearly dated more than seven days in advance of the hearing. If you are satisfied that that letter and its contents were delivered, then under Rule 21 you have the power to proceed in the absence of the registrant, if you are satisfied that all reasonable efforts have been made to notify him of the hearing. You have heard about that.

Mrs Kershaw: I have a faint concern here, which I think one of my colleagues has as well, in that the electronic proof of delivery has no name. It says, 'Print Name: not applicable'. Obviously in the time before it got quite so automated, you were able to have a signature as well to know that it has reached the destination. Knowing that this is, presumably, a student house and knowing what students can be like, do you have any comment to make about the extent of the evidence?

Mr Alder: I have a brief observation, if I may, Madam? The Council's obligation is to serve on the registrant in accordance with Rule 17. That has been provided for. You will see at the top of the letter of 26 April 2007, 'This letter is delivered by Special Delivery'. There is a slight distinction that I am aware of between 'Special' and 'Recorded' delivery, in that a Recorded Delivery document is signed for specifically by the individual. If not, it is sent to a central delivery area that the registrant can go

and collect and sign for. Special Delivery confirms that this document is served at the registered address. It is served at that address. Therefore, it does confirm this has been served at the household of the registrant.

Mrs Kershaw: Someone in the household received it, yes.

Mr Alder: Indeed, Madam. But of course, as you will appreciate, the Council can only take reasonable endeavours to ensure bringing notice of these hearings to registrants –

Mrs Kershaw: Indeed.

Mr Alder: And in that regard, I would suggest that this has been properly served. Madam, I am aware of additional information which has come to me from Mr Packham, who is the Secretary Registrar of Aston University. It may be that your Legal Assessor [*Adviser*] deems that it would be perhaps inappropriate for me to put this in the form I propose to, but given the nature of your concerns, it may be relevant at this stage. I spoke to Mr Packham at the middle of last week, and asked him for any further information. As you will be aware, he has provided a copy of a letter to the Council. He confirmed to me that Mr Hill had been aware of the hearing and had referred to the General Optical Council. Madam, that is the sum total of that information. It may not go sufficiently to assist you.

Mrs Kershaw: I think that will help us.

Mr Alder: Mr Packham did ask me the question as to whether Mr Hill had been notified of where we had got to.

Mrs Kershaw: I think that does help us. I raised the query in fairness to the registrant, on the basis of students' houses and the implications of that. But if he has actually passed on that information, that is of help.

Mr Alder: [*Pause*] Madam, I understand – again, by way of anecdote perhaps if no more than that – that there has been previous correspondence with the registrant in respect of this particular investigation. All of that correspondence has been served by Recorded Delivery, none of which has been returned. That may assist you; it may not.

Mrs Kershaw: Thank you. I think we are content to proceed on the basis that we accept that the documents have been served at that address and that, therefore, reasonable attempts have been made.

Mr Alder: Thank you, Madam. Can I take it from that that you and your colleagues are content to proceed in the absence of Mr Hill?

Mrs Kershaw: We are.

Mr Alder: Then, Madam, it falls to me to present the Council's application for an interim order in this particular case. I am grateful to you for your indication that you have read the papers. Therefore, I propose not to go into them in great detail. The burden of the Council is to satisfy that it is necessary, pursuant to Section 13L of the Opticians Act, for you to be satisfied that it is necessary for the protection of members of the public, or is otherwise in the public interest for the registrant's registration to be suspended or to be made subject to conditions. Madam, when you retire, that is at page 34 of the Handbook, at the very top. The Council have significant concerns, as you will appreciate from the background of this case, set out

in the papers, that the conduct of Mr Hill is sufficient to allow you to be satisfied that additional or an interim order should be imposed upon his registration.

As you will appreciate, the Investigation Committee first considered the allegations, which are presented to them by Aston University, and that was initially in a copy of a form submitted by Dr Frank Eperjesi. A copy of that is at pages 1 and 2 of the hearings bundle. That set out quite clearly concerns that Mr Hill had been accused of harassing a female student and committing an offence of a sexual nature in the university library. That then leads the investigation and did so to conclude that there was a significant matter of public concern here, which should result in this application before you and to request that you consider imposing an interim order. My submission on behalf of the Council is that an appropriate conclusion for you to draw would be that an interim suspension order would be the appropriate particular finding in this case, when I hope that you will agree with me that there is sufficient evidence available.

Madam, I appreciate that you and your colleagues have read the background of the facts. I am aware, however, that this is a public hearing and therefore I briefly propose to summarise those facts, if only for the record. Mr Hill was a second year optometrist student at Aston University; in November 2006 he was undertaking in effect his second year.

On 10 November 2006, a report was made to the library enquiry desk by a female student, who was working in the library. Mr Hill is said to have approached her over a period of time and then sat down next to her and began to masturbate next to her. That happened at around twelve o'clock in the afternoon, which is of some concern, given the very public nature of a university at that time of the day. This is not in any way suggested to be some drunken high-jinks of a student acting at two o'clock in the morning. The female student was rightly concerned and somewhat shaken by the events. She reported her concerns to the library desk and security was called.

The further context of this matter is that Mr Hill continued to seek to be close to this particular female student but also that he refused to identify himself initially to security. And it was not until some time later during the investigation that security following the involvement of the Police, were able actually to identify him as a particular student. Some would perhaps have additional concerns that he in some way refused to identify himself when first approached by security and the Police.

Madam, a full disciplinary report is available. It is contained within the bundle. That provides further detail for you and it is at pages 13 through to 17 of your bundle. That is a disciplinary report which was completed by Sarah Davies, who is the Assistant Registrar at Aston. She put that report together following an interview with this particular female student and it raises a number of concerns, I would suggest, about the particular conduct of the registrant.

Following the investigation by the university, it came to Mr Packham's understanding that this particular registrant, Mr Hill, had been charged with a Public Order Act offence, that being Section 4(a) – the full text of the Act and that alleged offence is set out in the email from Mr Packham to Sarah Davies, and that is at page 7 through to 8. That initially, Madam was brought to their attention by the student, who was the subject of the indecent act. That led on to further investigations being undertaken, and my calls to Mr Packham in the middle of last week, seeking absolute clarification as to whether Mr Hill had been charged. As you will be aware from the letter available to you, which is not part of the bundle, that confirms in his letter to me,

“I am writing to confirm that West Midlands Police have informed the university that Mr Nathan Hill has been charged with an offence under the Public Order Act, Section 4(a), *Intent to cause harassment, alarm or distress* and that Mr Hill is next due in court on 10 May 2007”.

Madam, Mr Packham was unable to assist me as to the nature of that hearing. It may just be a pre-trial review to set out the direction for the future court hearing. But the conclusion that you are able to draw from this, and I would suggest that you are able to, is that the Crown Prosecution Service have concluded that there is sufficient evidence to allow them to go on to charge Mr Hill and in some way to conclude that there may be a reasonable prospect of success, based upon the evidence which is available to them. Madam, I am conscious that that evidence is not before you. That is a matter for the police and the Crown Prosecution Service and, despite my best efforts, they have not provided me with any further evidence on that behalf.

That evidence will also assist you, I hope, to the extent that there is not a witness statement in here from the particular female student. This, I would conclude, would be a matter to be considered in due course by a Fitness to Practise Committee sitting in full hearing. At that stage, a witness statement will be sought from the particular female student in question. It would be, some would say, inappropriate for the Council to seek that at this stage, given that the police proceedings and the Crown Prosecution proceedings are still on foot and one would not to be said to be prejudicing in any way that investigation.

Madam that is a brief background as to the facts of this case. It is for you to be satisfied that there is a risk to the public, that the public need protecting in some way by the imposition of an interim order and that can be undertaken on either one or both grounds set out in Rule 13L – either that there is a need to protect the public or that there is a public interest in imposing an interim order. It is my suggestion and submission that both grounds of Rule 13 are satisfied and in somewhat distinct ways. Clearly, the nature and the type of behaviour as exhibited by Mr Hill as is set out in the papers is to place patients at risk. That is, Madam, I suggest quite clear from the papers. It is also a concern, as you will be aware, of Aston University (which is why they have suspended Mr Hill completely from the university), that at this stage of his studies he would now, or should now, be going on to be testing the sight of members of the public. As you will be aware both from your expertise as an optometrist but also from your and my understanding of having your eyes tested and my eyes tested, very often examinations are undertaken in quite an intimate environment. That would, I suggest, be to place, potentially, females at risk in that one-on-one situation. Placing members of the public and patients at risk in that way must be, I suggest, one very clear factor in your conclusions that this interim order should be imposed upon Mr Hill’s registration.

The public interest, I suggest, is also very much triggered by the nature of this conduct, not only because patients have a right to be unmolested, to be able to have a very free mindset when they have their eyes tested, that they are not likely to be the source of inappropriate sexual behaviour or unlikely to be – as indeed is set out in the charge – the subject of harassment, alarm of distress. That is triggered, I also suggest, very much in the public interest, but also the public interest is triggered in the sense that the Council must seek to maintain the standards of the profession and what it expects of the conduct of its registrants, be they full registrants or student registrants. As I have, I hope, alluded to before, this is not a case of a drunken student; we have all heard of the reputation of medical students who have too much to drink and enjoy their student life. This is more serious, I suggest, and much more sinister than that, Madam.

The first point for you to consider will be that you are satisfied that the public requires protection from this particular registrant and, thereafter, that there is a public interest in such an imposition of an interim order. Your starting point will be to consider as a lower threshold of sanction whether it is appropriate to impose conditions on his registration. I would like to be able to suggest to you some conditions which could achieve both the public protection and also would satisfy the concerns set out potentially triggered by the public interest. To my mind – it may be my naivety – I have not been able to consider any conditions which could be both reasonably or proportionately imposed upon the registration of Mr Hill would could satisfy both of those tests – both protecting the public and securing the public interest. I would, therefore, suggest and set out the Council's very clear concerns in this case, exhibited by the behaviour of this registrant, that the correct and appropriate conclusion – and it is proportionate to the conduct exhibited by Mr Hill – that an interim suspension order is in fact the most appropriate sanction. I use the word 'sanction'. It is not a punitive order, but a sanction on his registration.

Madam, I am very conscious that I have skated over the facts. You have the bundle of documents available to you. Unless I can assist you further, that is the Council's application.

Mrs Kershaw: Do my colleagues have anything that would like to ask? In that case, I turn to our Legal Adviser.

Mr Kinch: I am going to ask, if I may, Madam, for Mr Alder's assistance on two points. These arise particularly because the registrant is not here and Mr Alder will understand that we all have a duty to be alert to any points that might be taken in favour of an absent litigant, to ensure that the proceedings are as fair as they possibly can be.

The first issue, Mr Alder, is simply this: that as a student registrant, in terms of this Committee's powers, Mr Hill stands in no different position to a practising registrant. Is that correct? There is no distinction to be drawn for these purposes?

Mr Alder: That is correct.

Mr Kinch: That clears that hurdle. Then, in relation to the question of protection of the public and the public interest, what view does the Council take in relation to the action that the university has taken? I am looking at page 9 of the bundle and the letter suspending Mr Hill from his course and from the campus. It might be argued on his behalf that that action had effectively taken care, to some extent at least, of any potential danger to the public, if he is not allowed to continue on his course and that, in those circumstances, there would be a question mark over whether this Committee needed to go further by suspending his registration. I do not know whether that is something you would wish to comment on?

Mr Alder: Indeed, if I may, Sir? It was a point I had thought about addressing the Committee on, whilst considering this case over the Bank Holiday weekend, to the extent that it could be argued very clearly that it is in the public interest that the Council, if nothing else, support the actions of Aston University or one of the training establishments, when it takes a course such as this. One could argue that it is very clearly in the public interest that the Council reflect the steps to suspend. Of course, Sir, whilst the university has taken steps to stop the registrant from completing his studies at this stage, pending the outcome of the criminal proceedings, there is currently nothing to stop the registrant seeking perhaps summer employment, to say,

'I am registered as a student with the Council and therefore I would like to come to you for some additional training and supervision'. Without that additional step, I would suggest the public still remain at some risk and there is a clear issue of public protection which the university cannot itself satisfy merely by preventing him from continuing with his studies. So indeed, I suggest that this Committee can and should reflect that which Aston has already undertaken but the powers of this Committee go beyond that and serve a separate purpose to that which has been undertaken by the university itself.

Mr Kinch: So it is not a duplication – that is your submission?

Mr Alder: Indeed, Sir, no duplication at all.

Mr Kinch: Those are the matters I wish to ask. I am ready to give any legal advice that is required whenever you call on me.

Mrs Kershaw: Do you have any particular you would like to give at this moment?

Mr Kinch: You are not going to have any response or reply, so it is probably appropriate if I do. I have very little to say because Mr Alder has taken you to the law. The key question is whether there is such a risk to members of the public as to require protection. Mr Alder has advised you, properly, that you should first look to see whether there are conditions. He has not been able to think of any. If you can, they are matters that you should give an airing to because the registrant is not here to put points in his defence or in mitigation. That said, the test has been properly put before you. There is some helpful advice in your chairman's pack, which I will quote from, because it reflects the legal position. That is that:

"The kind of circumstances that may lead you to the view that interim measures are necessary are likely to involve allegations that show a real present or likely future risk to a member or members of the public. The public interest may also require that the practitioner themselves be protected from future practice and you may consider that ground as sufficient to make an order. There may be other relevant matters, bearing in mind the interests of the practitioner and wearing your obligation to protect the public and to uphold the good name of the profession and of the optician. These orders may be made without the practitioner present and, in such a case, you should bear in mind that he has not been present to defend his position and you should be careful to make the order only where there is clear evidence of real risk to the public and/or to the practitioner or some other strong public interest requiring the action in question".

You have been directed to the status of the material before you. It is not evidence in the sense that it would be in front of a full Fitness to Practise Committee hearing but, at this stage, you are entitled to take matters on a hearsay basis or on the basis on which they are put before you and have been put before you in this case. It is for you to determine what weight you place on printed material, on reports and on letters, where you have not actually heard from the people in question. But you are also entitled to take into account the fact, as Mr Alder has informed you, that the Crown Prosecution Service has determined that criminal proceedings should be taken which does, as a matter of law, mean that someone in that organisation has considered the matter and considered that there is sufficient evidence for criminal proceedings to be pursued and litigated to a conclusion.

That is the legal background. I say nothing more about the facts. Obviously, they are entirely your province and unless there are any issues that I have not covered, either from Mr Alder or from you that is all I have to say.

Mr Alder: Thank you, Sir.

Mrs Kershaw: Thank you. At this point, I will ask the Hearings Manager to clear the room so that we may consider.

[Adjourned at 1.30 pm]

[Reconvened at 2.05 pm]

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

“The material we have seen concerns allegations that have led to a criminal charge being laid against the registrant and to action by his university authorities. On the basis that the allegations are correct, they reveal a situation that clearly requires action to protect the public. The alleged incident occurred around midday in the university library and the conduct alleged was persistent. Furthermore, his alleged response when challenged was uncooperative and unprofessional. We are satisfied that the only means practicable to achieve the necessary protection of the public is an order for immediate suspension. We have in mind that practitioners operate within close and intimate situations. We are also concerned to uphold professional standards and public confidence in the profession. We have ordered that the registrant’s registration be suspended for a period of 18 months from today. The effect of this order is that the registrant’s registration will be suspended for this period, or until the early determination of his case. The Committee will review the order within a period of six months from today and also as long as the order remains in force will further review it before the end of the period of six months beginning on the date of the immediately preceding decision, or, if after the end of the period of three months beginning on the date of the decision of the immediately preceding review, the registrant requests an earlier review, as soon as practicable. The order will also be reviewed if new evidence relative to the order becomes available”.

Mr Alder: Madam, thank you for that. I wonder if I can crave your indulgence a bit further? I am conscious that the decision was taken by you and your colleagues to proceed in the absence of the registrant. It may be seen by some who are considering the transcript that perhaps reasons should be given for that decision to be absolutely transparent in this particular matter. It may be that just my note is not sufficient and that you gave reasons at the time. It is just that, given that the registrant is not here, there may be some value to ensure transparency, that you give brief reasons to assist anybody reading the transcript to be sure of the reasons for your decision - that it is fair to proceed in his absence today.

Mrs Kershaw: Thank you. That is a fair point.

Mr Kinch: I think we had overlooked that, knowing that we had dealt with it earlier on. But it is a point well made.

Mrs Kershaw: May we add a sentence to cover that, along the lines of: “The Committee considered whether to proceed in the registrant’s absence and were satisfied” –

Mr Alder: Madam. Would it assist you for five minutes briefly, to confirm off the record the background for those reasons?

Mrs Kershaw: Yes. If we can clear the room for just two or three minutes, we can formulate that sentence which will cover the issue for you.

[Adjourned at 2.10 pm]

[Reconvened at 2.17 pm]

Mrs Kershaw: The determination I read earlier still stands but we have added the following paragraph to the beginning:

“We are satisfied that the Council complied with Rule 17 and that all reasonable efforts have been made to notify the registrant of the hearing. We determined that it would be in the public interest for the hearing to proceed in the registrant’s absence”.

Mr Alder: Thank you, Madam.

[Proceedings concluded at 2.18pm]