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

GENERAL OPTICAL COUNCIL

AND

EDWARD JOHN ELGAR HOPKINS (01-8997)

FITNESS TO PRACTISE HEARING: 23 January 2007

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Fitness to Practise Committee: Mr R Holdsworth (Chair)
Ms F Jones (Lay)
Mrs Y Norgett (Optometrist)
Mrs H Tilley (Optometrist)
Mr R Varley (Lay)

Legal Adviser: Mr M Vere-Hodge QC

Hearings Manager: Mr D Henley BEM

For the GOC: Mr B Albuery
For the Registrant: Mr B Collins

[Proceedings commenced at 10.45am]

Mr Holdsworth: Good morning, everybody. I am a lay member of the Hearings Panel and I have been elected by the Committee to chair today's hearing. The Committee today is made up of two optometrists and three lay members and I will ask the members to introduce themselves and the capacity in which they sit, commencing on my right. *[Introductions made]* To my right is Mr Vere-Hodge 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 to the left of the Committee 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 assistance to the Committee. The remaining persons sitting in the room, rather than in the public and press areas, are members of the respective legal teams. All parties are reminded that, where details of a patient are to be discussed, that patient has been allocated the letter A in the allegation, and the patient should only be referred to by that letter. Any other patients should be identified by their initials only.

Mr Albuery, good morning. Are you ready to start?

Mr Albuery: I am, Sir.

Mr Holdsworth: And I think you are Mr Collins, is that correct?

Mr Collins: Yes, Sir.

Mr Holdsworth: Equally, you are welcome. And you are ready to start, are you?

Mr Collins: Thank you, Sir, yes.

Mr Holdsworth: Now, I understand, although we have the allegation in the Notice of Inquiry, that there may be a preliminary application, which I think we would do well to hear.

Mr Albuery: Yes, thank you, Sir. It is the Council's application that the particulars of the allegation set out in the Notice of Inquiry be amended in two regards. Before I tell you what that application amounts to, may I remind you of the legal framework against which you must consider it? If you turn in the Handbook to page 98, you will find set out there Rule 34 –

Mr Holdsworth: I have it.

Mr Albuery: Do your colleagues have it?

Mr Holdsworth: They do.

Mr Albuery: Thank you. May I read that then, for the record?

“(1) The Presenting Officer may apply to the Fitness to Practise Committee for the particulars of the allegation contained in the notification served under rule 26(1) to be amended.

(2) The Fitness to Practise Committee may grant such an application where they are satisfied that it is just to do so”.

(3) does not apply here. The application to amend is made upon notice to Mr Hopkins' legal representatives, and indeed at their invitation. So I think I can confidently tell you that it will not be opposed.

The first application is that the first particular be amended so that it now reads:

“Mr Hopkins sent three abusive letters to a third party, pretending that one of those letters had been sent by Patient A”.

The reason for that amendment is to make clear firstly, how many letters were sent, and secondly to clarify the fact that in relation only to one of them was Patient A's details put on the rear of the envelope.

The second application is not really so much an amendment but an application I must make, and that is that I offer no evidence in relation to the original second particular, which alleged, as you have seen, that Mr Hopkins used for the purpose of sending those letters Patient A's confidential records for an in appropriate purpose. The Council is not proceeding in relation to that matter and I offer no evidence in relation to it. But again it is right that I say it for the transcript and so that Mr Hopkins can hear me say it – I know that you will put out of your mind any reference to that matter when determining whether what is left amounts to misconduct and impairment and, if you get that far, what sanction you should impose. It is no part any longer of the Council's case that Mr Hopkins did use confidential records for that purpose.

Those are the Council's positions in relation to the two allegations which were originally set out.

Mr Holdsworth: Thank you. Mr Collins?

Mr Collins: Little to add, Sir. No objection to the application to amend the first allegation. So far as the second part of the application goes, it is noted and we are pleased to note that the Council does not wish to proceed with that allegation.

Mr Holdsworth: Thank you. I will see if my colleagues have any questions on the matter? No? Mr Vere-Hodge, would you like to give the Committee some advice, insofar as we need it, please?

Mr Vere-Hodge: Very shortly, yes, of course. Having read Rule 34(2), the test is, are the Committee satisfied it is just to do so? And here you have, firstly, the application is made and secondly, it is supported and not contested by the representative on behalf of the registrant.

Mr Holdsworth: Thank you. Mr Albuery? Mr Collins? You have nothing to say about that?

Mr Albuery: No.

Mr Holdsworth: [*Confers*] The application to amend is granted.

Mr Albuery: Thank you.

Mr Holdsworth: And you offer no evidence in relation to the second particular?

Mr Albuery: I do. Sir, the Hearings Manager has kindly drafted, in the hope that that would be your decision, an amended allegation and perhaps if not already, that could now be put before you?

Mr Holdsworth: We already have that and it is helpful that that was done. I would like to move on, if I may, from Rule 34 to Rule 44 and deal with what, if any, admissions are made. Mr Collins, are you ready to do this?

Mr Collins: Sir, yes.

Mr Holdsworth: Good. Mr Hopkins is present, is that correct? Thank you. So, what, if any, admissions are made?

Mr Collins: Sir, there are in effect two admissions to make. The allegation, as a matter of fact, is admitted. Secondly, it is admitted that that amounts to misconduct.

Mr Holdsworth: Thank you. Mr Albuery, I think now we would like you to present an opening statement.

Mr Albuery: Yes. Sir, Mr Hopkins is an optometrist who was first registered with the General Optical Council in 1974. He remains registered until the end of March this year. Patient A was a patient of the practice, Black and Lizars, in Edinburgh, where Mr Hopkins works. In 2003, Patient A made a complaint to the Council about Mr Hopkins, which complaint was considered by the Investigating Committee to be inappropriate to refer on to a hearing. I tell you that, only so that you understand that there was some history between the two, which may explain, though not excuse, what happened later. You should not enquire into the substance of that matter and indeed, the Council can confirm that there are no

previous adverse findings against Mr Hopkins, so that you should treat him, for the purpose of these proceedings, as a man of previous good character.

Mr Albuery: Patient A changed opticians. On the evening of 28 October 2004, Patient A received a visit at his home from two police officers. At first, he states that he did not think it unusual to have police officers visiting him at home, because he is a Justice of the Peace and occasionally, police officers would visit him at home for the execution of warrants, etc. However, Patient A was, as he puts it, surprised and shocked when it transpired that the police officers had in fact come to see him in connection with a criminal investigation.

Members of the Committee, when I say 'as he puts it', you will appreciate that Patient A has provided a statement, which has been served on the legal advisers to Mr Hopkins and what I am saying to you is what he would have said had he given evidence. Those police officers handed to Patient A an envelope with his name and address written on the back of it. It transpired that obscene and homophobic letters were being sent to a local resident, who also, many years previously, apparently had been a customer of Black and Lizars, as had been Patient A. He, the receiver of those letters, lived about half a mile from Patient A's house. The police produced the envelope, which had Patient A's name, and address on the back of it as the sender.

Patient A confirmed to the police that the handwriting was not his. He knew of no reason why anyone would pretend that such a malicious letter had come from him. But he remembered the complaint he had made and he did mention the name of Mr Hopkins to the police.

Notwithstanding all of this, Patient A was asked to attend the police station to eliminate him from police enquiries and he agreed voluntarily to attend. His fingerprints were taken, as was his DNA. He described in his statements as – and these are his words – 'humiliating' the experience of having to attend a police station, including having a mouth swab taken. This humiliation was particularly perhaps felt in view of the fact that Patient A was a local Justice of the Peace and well known in that area. It was a month before the negative results of those forensic tests came back. Although Patient A states that he knew he had done nothing wrong, he describes that wait as – and these are his words - 'an unsettling and upsetting time'. Later, Patient A discovered that Mr Hopkins had been charged with a criminal offence.

Had this matter been contested, you would have heard not just from Patient A, but also from P C Freeman, whose statement has also been served upon those who represent Mr Hopkins. He states that it was in October 2004, that those letters, which had arrived in March, April and May 2004, were reported to him. Those were the letters which contained abusive and homophobic references. P C Freeman saw, as I have already told you, in respect of one of them that Patient A's name and address had been written on the rear of an envelope, and it was P C Freeman who had escorted Patient A to the police station, where he was interviewed under caution. And, as you know, whilst there, Patient A, as I have already indicated, gave a number of test results, including mouth swab and fingerprints.

Mr Hopkins, as a result of what the police discovered, was asked to attend the police station in November 2004. When asked to provide DNA and fingerprints he admitted that he had sent the three homophobic letters. It is right, therefore, that he be given some credit for that admission. In interview, Mr Hopkins stated that

he had been under stress when he had sent those letters and that he had purported that they had been written by Patient A and written Patient A's details on the back of the envelope because he – that is, Patient A – had been spiteful to him in the past.

Mr Albuery: Following that interview, Mr Hopkins was charged with an aggravated, homophobic breach of the peace contrary to common law and he was bailed to appear before the Sheriff's Court in Scotland. However, in due course, the Procurator Fiscal made the decision to discontinue proceedings, though I am unclear as to the basis upon which that decision was made. But that was the end of it in terms of criminal proceedings. The matter was reported by Patient A to the General Optical Council, whose Investigation Committee determined that there was a case to answer before you.

Those are the facts.

Mr Holdsworth: Thank you. Do you propose to call any evidence supporting those facts?

Mr Albuery: No. Unless something is said now which takes me by surprise - such that I have to - but I hope not to be in that position.

Mr Collins: Indeed, Sir. It may assist the Committee if I indicate this: that so far as the facts that have just been represented to you are concerned, they are with one very small exception, which I will take you to now, not in dispute. The only exception is a very small point of detail, which is this: the individual who was in receipt of the letters was described as somebody who had many years previously been a Black and Lizars customer. In fact, Mr Hopkins' understanding is that, although Mr Hopkins had seen this individual I think in the early 1980s, it was not as a Black and Lizars customer; it was at another practice. I suspect that nothing turns on that. Save for that, those facts are not disputed.

Mr Albuery: Sir, I do not think anything turns on it. What is most important is that he had been a customer previously of Mr Hopkins. The practice at which Mr Hopkins may then have been working is perhaps irrelevant.

Mr Holdsworth: I understand. Thank you. So, is there anything else you want to say on the question of the facts?

Mr Collins: Not on the question of the facts, no.

Mr Holdsworth: I will see if my colleagues have any points they want to raise? No? Thank you. Now, as far as the findings are concerned, Mr Albuery, is there anything you want to say on that? I doubt there is, but –

Mr Albuery: You have given me something and taken it away! I was just going to suggest, but I am happy to be guided by you and your legal Adviser, that bearing in mind there are four stages, potentially, it might be appropriate for you to record your finding on the fact now, before we go on to consider misconduct.

Mr Vere-Hodge: You say two stages, but would I be right in saying that the global first stage is for the Committee to consider whether the allegation that is admitted amounts to misconduct? Notwithstanding the admissions that have been made, the Committee have to go through that fact finding stage.

Mr Albuery: I think, Sir, there are four stages. First, to find, based on what the Committee has heard and the admission, particularly that the facts are proven; secondly, that those facts amount to misconduct; thirdly, whether that accepted misconduct amounts to an impairment and only then, if it does, the fourth stage: what sanction, if any, the Committee should impose.

Mr Vere-Hodge: Are you saying that you cannot, in a sense, combine, bearing in mind the admission of the allegation and the admission that that amounts to misconduct, they cannot be elided?

Mr Albuery: No, I am not saying that. They can. And it is a matter for the Committee how they deal with it. I just say that my experience of this and other regulators – and others have more experience, I am sure – is that it can be neater if committees deal with each issue separately, particularly bearing in mind the fact that, perhaps only even in short form when there are admissions, reasons for each stage should be given. But ultimately, it is a matter for the Committee to determine how it wants to conduct its business.

Mr Collins: Perhaps another way to approach it might be this: to say rather than to elide two stages, the two stages should be gone through separately but if the Committee wants to do that without coming back in in between, and give us its decision on both of those two issues, then no doubt the parties would be unlikely to complain about that.

Mr Vere-Hodge: I will, obviously, advise – I say now, in public – that that is a two stage process that I shall advise the Committee to go through. But it may be – it is not a matter of advice – that the Committee will find it convenient to deal with both stages again without reconvening, unless there is any submission that should be made, should the Committee find the allegations proved – or the allegation proved. Do you want to say anything about that, Mr Collins?

Mr Collins: No, Sir.

Mr Holdsworth: [*Confers*] Mr Albuery, Mr Collins: we are going to do this in the order of the stages which have been identified, so I am going to ask everyone to leave the room while we deal with the fact finding issue. Thank you very much indeed.

[*The Hearing adjourned at 11.05 am*]

[*The Hearing reconvened at 11.20 am*]

Mr Holdsworth: The Committee found particular (1) of the allegation admitted and proven. The Committee found the admission of particular (1) amounted to misconduct and our reasons are as follows: the Committee are satisfied so that we are sure that the facts are proved – they are admitted by the registrant. The Committee has considered section 13D(2) and are also satisfied so that we are sure that the facts amount to misconduct, which again has been admitted by the registrant.

So we are now on to the next stage, the question of impairment – and Rule 49 in particular. Mr Albuery, do you want to present any further submissions on that?

Mr Albuery: Yes, please, but no evidence. Sir, as you know, impairment is not defined in these rules but you may regard it as an indication that somebody should not be able to practise without restriction. Sending homophobic abusive letters to

anyone, the Council says, is clearly a serious matter. To send them to a former patient, however long ago that might be, pretending that they are sent by another patient, is clearly an aggravating feature in the Council's view, to this case. Patient A appears to have become a victim of this mischief because he had complained to the Council about Mr Hopkins previously and Mr Hopkins said that Patient A had been 'spiteful' to him in the past. Users, the Council says, of optometric services, need to feel that they can make a complaint to the profession's regulator, without fear that such complaint will result in a reprisals. If that is not the case, the regulatory public protection function of the General Optical Council is diluted and frustrated.

Consider the impact and effect of this misconduct on Patient A. It is a significant one. This Justice of the Peace was taken to a police station where, as a result of a wholly false allegation he, first, was fingerprinted, secondly, had a mouth swab taken, thirdly, was interviewed under caution and fourthly, had to wait one month for those negative test results. I will not repeat them, but you heard when I opened the case, the adjectives used by him to describe the effect of all of that on him.

Impairment, as you know, is not limited to clinical matters. It was said in a famous case, by someone much more famous than me that being a member of a profession is a privilege, but it brings a number of responsibilities with it. Any conduct which brings, or has the potential to bring, the profession into disrepute, can amount, even on one isolated occasion if sufficiently serious, to an impairment. That is all you are being asked to say this amounts to at this stage. How serious that impairment might be if found by you can be reflected in any sanction you determine to impose but, upon these bases, the Council says, clearly there is an impairment. Sir, I would not wish to address you further at this stage unless you find that there is an impairment. I should, however, remind you of that which you know well, which is that we are now at a stage when strict proof is not required. You do not have to be sure of impairment beyond reasonable doubt. It is, the case of *Bizwas* says, entirely a matter of your professional judgment.

Those are my submissions on impairment. I should also remind you, of course, that even if you disagree with the way in which the Council puts the case and you do not find that impairment is found, you can still, under Section 13F(5), at page 28 of the Handbook, issue the registrant with a warning regarding his future conduct.

Mr Holdsworth: Thank you. And you are calling no evidence on the question of impairment? Thank you very much indeed.

Mr Vere-Hodge: Can I just clear up? Mr Albuery, can I just ask this: do you say that it was foreseeable that the reaction of the police would be to fingerprint and to take DNA and to interview under caution, as a result of what was done?

Mr Albuery: Well, by putting a name and an address on an envelope, it does invite, once that matter is reported, the police to pay a visit upon that person. I think that is reasonably foreseeable by somebody who puts those details on an envelope.

Mr Vere-Hodge: But the extent of the police inquiry might be a matter of uncertainty, or lack of foreseeability?

Mr Albuery: [Pause] Yes.

Mr Vere-Hodge: Thank you very much.

Mr Holdsworth: [*Confers*] Is it suggested that the Committee should read or know the content of any of these letters?

Mr Albuery: They are no longer available, I am afraid, although we did make proper enquiry in relation to them. Had they been available, I would have put them before you. Those who investigated the case, I know, asked P C Freeman as to whether or not he could remember words used, or phrases used, so that I could give you detail of them, and I am afraid that we have not been able to get that detail for you, perhaps because the letters are no longer available and the passage of time. We know only that they were abusive and homophobic – that is accepted – and that the police felt, at least, that they were sufficiently serious to justify the charging of a criminal offence, although as you have heard, that matter was not proceeded with by the Procurator Fiscal.

Mr Holdsworth: Thank you. Now, Mr Collins, help us on your own position in relation to impairment of fitness to practise and what evidence, if any, you propose to call.

Mr Collins: Just by way of introduction, I propose to ask Mr Hopkins to address you. I will have some submissions to make and it is Mr Hopkins' position that his fitness to practise is not impaired. Before I do so, I wonder if I might ask the Committee to give me a few minutes to take some instructions on a matter which has arisen since we last came into the room? I am sorry to ask you to break again –

Mr Holdsworth: Do not apologise. How many minutes?

Mr Collins: Ten?

Mr Holdsworth: The Committee will therefore ask for the room to be cleared for ten minutes, thank you. If it does not take as long as that please come back in Mr Collins.

Mr Collins: Certainly.

[*The Hearing adjourned at 11.30 am*]

[*The Hearing reconvened at 11.40 am*]

Mr Holdsworth: Mr Collins, have you had sufficient time?

Mr Collins: I am very grateful for that opportunity and I am now ready to proceed.

Mr Holdsworth: Fine. There is one point which has arisen whilst everyone was out of the room, which we feel we need to mention. Mr Varley, who is one of the Panel, sits as a JP in England and Wales. He does not feel that this causes any problem with him remaining as a Panel member. He has never met Patient A, sits in a different jurisdiction in any event, but we feel that it would be appropriate for this to be mentioned, in case anyone wishes to take any instructions and equally, so that you know exactly what the position is. Do either of you wish to take any instructions on that?

Mr Collins: Sir, I probably should speak briefly to Mr Hopkins, if I could do so discreetly?

Mr Holdsworth: If you are happy to do so in here, that would save everyone going out again, but equally –

Mr Collins: [*Confers*] There is no objection. Sir, unless the Committee has any order of events that they would prefer to pursue, my proposal was to call Mr Hopkins straightaway to speak to you.

Mr Holdsworth: Yes. Thank you very much indeed.

MR HOPKINS called and sworn
Examined by **MR COLLINS**

Mr Collins: First of all, can I ask you to confirm your full name for the Committee, please?

Mr Hopkins: Edward John Elgar Hopkins.

Q. And you are the registrant who is the subject who is the subject of today's proceedings?

A. I am indeed.

Q. Mr Hopkins, this is your opportunity to give the Committee your perspective on events. Is there anything that you would like to say at this stage?

A. Well, first of all I would like to thank the members of the Committee for attending the hearing today. And I would like first of all to say how sorry I am about the actions I took back in 2004. They were actions that I had never contemplated doing before in my life and I would never, ever, contemplate doing again –

Mr Holdsworth: Mr Hopkins, forgive me for interrupting. We need to keep a manuscript note and it is very important that we have enough time to keep up with what you want to say.

Mr Collins: Can I suggest? If you watch the Chairman, when he is scribbling away he is trying to write down what you are saying. If you see him scribbling furiously, pause or slow down, and when you see him catch up, feel free to carry on. It is important that he gets a note of what you are saying. Take it nice and slowly if you can do. I will jump in if necessary.

Mr Hopkins: But most importantly – and this is a point I would like to get over very clearly – I would like to take the opportunity here and now to make a very public apology to Patient A, because of the hurt caused by my actions in 2004. It has been very distressful and it has been playing on my conscious.

I would like to give you just a brief background of myself and what my aspirations have been and what my commitments are to what I think is a wonderful profession. I am Welsh, born in Aberystwyth, graduated from Aston University in 1973 and later served with the General Optical Council in 1974. This gave me the licence, if you would like to call it, to practise and this is a privilege that I have treasured, I have treasured very dearly, over thirty years.

In the time I have been practising, I think I have shown achievements and a certain amount of commitment to my profession. I have been quite a longstanding member of the local Association of Optometrists within the Borders and I was Treasurer for many years, a post I treated with diligence and I am still a regular attendee. As far as my commitment to optometry goes, I have been very proud to have been a successful supervisor of pre-reg optometrists – six, I think, over my

career – and I found that a very gratifying, very rewarding part of optometry, apart from just the clinical side of it all. I think it is very important that young optometrists are given a good start. They are taught things at university but not necessarily how to deal with the general public.

Mr Hopkins: Other aspects of my practice over the years is my commitment to several ongoing support schemes. There is an instance here of our local diabetic screening programme, which I have been involved with for over 16 years, and I was one of the first clinical optometrists to get involved with that with a Dr Swire. Also for four years I was involved with the ocular hypertensive clinic, linked with the local Edinburgh Eye Department, which proved to be very successful as well, in keeping patients dealt with in the public rather than holding up hospital time. I have also committed 24 years of my life to sessional work at the local eye hospital. It is not GOS refractive work, it is a supportive role in a post-operative cataract clinic and I am glad to say that our team came top in Britain two years ago – Princess Alexandra Eye Pavilion.

I have also, over the years, taken very seriously since it was instigated, the idea of continual assessment of optometrists. One cannot just sit back and rely on knowledge of thirty years ago. There are ongoing facets and contact lens work, refractive work and other far more important things coming in now, linking optometrists with primary care, secondary care. So I have always kept my points very high. This year I have reached 65 CET points – the requirement is 36 – and I continue to strive to keep up with what is required now for registration. I have also committed 33 years of my life to pretty well one company, a company I have been very proud of – Lizars – and of the last 23 years I have spent in one practice alone, in that part of Edinburgh called Davidson's Mains. It is a small area and it has been a privilege to work there.

As far as my future goes, I am the other side of 55, so my career is not going to be that much longer but I think I am going to keep up the same intensity of my commitment to it but, added to that, I have a lovely wife and two children. One is 13, a boy, my daughter is 11 – and my future commitment is to the welfare and the care of my family and to the rest of my career with the community – that is, the Davidson's Main community – I have had the privilege to serve for 22 years and whose support I value very much indeed. I value their support, not just for myself but for the good name of Black and Lizars, my employers that I have had the privilege to work for for such a long time.

Thank you very much.

Mr Collins: Stay there if you would, there may be a few more questions for you. I wanted to ask you a few. You mentioned your family, your wife and children. What about your parents?

Mr Hopkins: I am afraid my father is my only surviving parent. My mother died three years ago now – it was in March 2003 – a short but rather tragic event and I miss her dearly. My father is well into his eighties. He has been diagnosed with a terminal condition but, there again, he says, 'Well, I'll just go when I go and your mother and I will be united again'. If you like, he is a little bit morbid about it but he carries on. I have a surviving father down in Wales and my brothers are there.

Q. When you lost your mother, when in terms of time was that in relation to the events which we are dealing with here today?

Mr Holdsworth: I think he said it was March 2003.

Mr Hopkins: My mother died on 10 March 2004 – sorry, yes. It is three years coming this March.

Mr Collins: What was your reaction to that? How did you deal with it?

Mr Hopkins: Because of the tragic events that went around it – my mother was taken to hospital and basically she was operated on and there had been a slight miscalculation, I dare say, by the medical team and they discovered that she had a condition that was basically going to kill her. She had a 90 per cent large intestine gangrenous condition and she was basically stitched back up and on morphine, and she died 24 hours later. I went down with my family the very same day, by the next morning, I had spent all night with her but unfortunately, I never had the chance to say cheerio. It affected me profoundly at the time. She was my guiding light and my best friend – after my father, of course – but as a boy. She epitomised what I think is good. We have always been a tolerable family. My father is Episcopalian; she was Methodist; she had a change over. I am married to a Northern Ireland Presbyterian myself, so we have no prejudice that way. She always taught me what the right thing to do would be. And being brought up on a farm, normally I would spend more time with her than I would with my father, who was out farming the land. So she was very much my friend and I miss her.

At that time, I did go through a bout of – dare I call it depression? – but certainly anxiety. Thinking back, it must have been an inward anger against the world that dealt me a bad deal. My doctor advised me – there was no medication or anything like that – but I went through a tough time.

Q. The Committee has heard your apology. Do you have a rational explanation for what you did at that time?

A. Yes, I do. Thinking back on it, it was not a rational action to take. It was an irrational action.

Q. When you wrote those letters and in particular, when you put Patient A's name and address on the back, what thought did you give to the consequences? - the possibility of police action and so forth?

A. When I realised what I had done I was in a state of despair, I suppose. I think I had been dragged down to the lowest I had ever been. I felt ashamed. I felt I had somehow dragged myself into a gutter and from all my background and upbringing, I had let everybody down. And I felt desperately sorry for my actions at the time. The problem was I felt myself not in a position to go and speak to anybody. I did not mention it to my family. I was extremely disappointed in my actions because I normally pride myself on being very rational.

Mr Holdsworth: Mr Collins, you did not get an answer to your question.

Mr Collins: Yes, I was asking whether, rather than afterwards, at the time when you wrote the letters and you wrote Patient A's address, did you give any thought to the consequences at that stage – the police investigation and so on, that followed?

A. I probably did not.

Q. Mr Hopkins, do you think you have learned anything from all this?

A. Yes.

Q. Tell the Committee –

A. Number one, the rule of law must always prevail. You cannot do things like this. [Pause] It is very obvious that it is not anything that I would ever contemplate or

did ever contemplate doing ever again. Because of the value I put to my work, and to the people I am the servant of – I serve the community as an optometrist – by taking this action on, I am actually putting myself in a position where, not to be big-headed, I have to say that it may not help me out, but I might be missed – and the responsibility to other people as well, is what I was putting in jeopardy by doing something like that, as well as my family. I could have lost my freedom. I could have been incarcerated for this. So all those things I have learned. And that is why it is pretty obvious that it will not be repeated.

- Q.** Those are all the questions I have got for you, Mr Hopkins, but please stay there in case anyone else has any questions for you.

MR HOPKINS cross-examined by MR ALBUERY

Mr Albuery: Good morning, Mr Hopkins. Mr Hopkins, the Committee has heard your fulsome apology today. Have you, before today – we know you knew his address – written to Patient A to offer him an apology?

Mr Hopkins: When I spoke to Officer Freeman – P C Freeman, yes – I volunteered to visit or communicate with Mr A at that particular time, and he strongly recommended me not to.

- Q.** Thank you. You mentioned to the Committee that you have been with one firm, Black and Lizards, for about thirty years.

A. Yes.

- Q.** I just want to check dates, if I may, because the Committee was told previously that the receiver of the letters had been a patient of yours but not of that company back in the eighties.

A. That is right.

- Q.** Can you help me understand how that is if you have been with that company for 33 years?

A. I will explain to you. When I graduated from Aston University in 1973, I joined a company – it was Lizards, J Lizar Limited. That was based in the centre of Edinburgh. As I remember it, in 1982 – yes, I worked in one practice till 1982 – I needed to have more experience on contact lens work, so I did a two year stint with a company called Prescotts at that particular time, which is up the Lothian Road. Prescott since has been assimilated by Black and Lizards but at that particular time it was an independent. Whilst I was working at Prescotts for that two years, I was also doing weekend, Saturday, locum work for Lizards as well, in Davidson's Mains.

In 1984, Geoffrey Ballantine from Lizards, as it was then, asked me whether I would join him or come back to the company, so since 1984, I have been back with Lizards. That is why I said 'around thirty odd years'. So I had a stint of 1973 to 1982 and 1984 till now, with Black and Lizards and in the meantime, I did a two year – because Lizards at that time in Shandwick Place were not able to give me the contact lens experience I required.

- Q.** Thank you. You told the Committee, when asked by your Counsel, that you probably did not give any thought to the possible consequences of writing Patient A's name and address on the back of a homophobic letter. Do you agree that you should have given such thought to the consequences?

A. I should have, yes, indeed.

Mr Albuery: And do you agree that it is reasonably foreseeable that by doing so, the police, to whom the matter may have been reported, would have contacted Patient A? It is obvious, is it not, that that is so? Yes?

Mr Hopkins: Yes, I would have thought so, yes.

Q. Thank you. Do you accept that, as part of the profession, it is important that you maintain the highest standards of conduct at all times?

A. I have been very aware of that, Sir, yes, all the way along.

Q. And do you accept that matters of conduct include issues concerning your probity and your integrity?

A. Certainly.

Q. Do you accept, if not otherwise then in relation to the misconduct you have admitted here, that you fell below the standard of what can properly be expected of those who are members of this profession?

A. I fell well underneath the standard I had set myself.

Q. Yes. Thank you very much. I have no further questions, thank you, Sir.

Mr Holdsworth: Thank you. Mr Collin, do you have any re-examination?

Mr Collins: No, Sir.

Mr Holdsworth: Thank you. I will ask the Committee if they have any questions now.

Ms Jones: Yes. My question is: one of the envelopes from the letters contained the address of Patient A. Was it March, April or May?

Mr Hopkins: I was told by the police, I think it was the last one.

Q. So, May? And only one letter contained that address?

A. Yes.

Q. No other address?

A. No.

Mr Holdsworth: I would like to ask you about a remark you made towards the end of your evidence. You said 'I could have lost my freedom. I could have been incarcerated' –

Mr Hopkins: Sir, I had never been charged with any form of breach of the peace before and it is perhaps my limited knowledge of what would be the consequences, at the worst scenario. That is why I mentioned that.

Q. So whoever was convicted, as it were, of sending the letter, you feel – or that was your sense at the time – you could have lost your freedom or been incarcerated for sending the letter?

A. I felt so bad about the whole thing, I was putting myself in a position where, by admitting it, which I did, because I felt at the time, I had harboured enough of this for long enough. Because when the police approached me, I was quite relieved to get it off my chest to start off with and that is why I suggested I should contact Patient A and I was advised not to. Yes, at that time, I was thinking of what could be the worst thing that could happen to me.

Q. If you had received a letter of the sort which was written, would you have contacted the police?

A. Yes.

Mr Holdsworth: And would you have expected them to find whoever had sent the letter, if that was possible?

Mr Hopkins: Most certainly.

Q. And if they did find someone who they suspected of sending the letter, what would you – reflecting on it now – expect the police to do?

A. I would expect them to deal with them exactly as I was dealt with by the Police.

Q. Did you have your fingerprints taken?

A. Yes and DNA sampling. That is the reason they came round.

Q. And did you have to wait a month or so before the results came back?

A. I have not had any results, Sir.

Q. Thank you. I do not have any other questions. Do you have any other questions, Mr Collins?

Mr Collins: Can I just clarify one very small point arising out of that? When you said that you were concerned as to what the consequences might be of a worst case scenario, you talked about being incarcerated. Are you talking about the time when you sent the letters? Or the time when you were contacted by the Police, or some later time?

Mr Hopkins: Obviously, certainly when I spoke to the Police. And it crossed my mind, obviously, that it was a kind of misdemeanour when I did it. But I certainly was not thinking clearly at the time of writing the letter – state of mind –

Q. Sir, I have nothing further.

Mr Holdsworth: Thank you. Now, Mr Albuery, do you want to make any submissions regarding impairment?

Mr Collins: I am sorry – I do have some written evidence, which I would ask you to look at.

Mr Holdsworth: I am sorry - in relation to impairment?

Mr Collins: [*Confers*] I wonder if Mr Hopkins can return to his place?

Mr Hopkins: I am quite happy to sit here, if you want?

Mr Holdsworth: I think you have probably finished for the moment as a witness, so why don't you go back and sit behind your solicitor?

[*Documents distributed*]

Mr Holdsworth: Mr Collins, we obviously have two and a half pages here, effectively, in terms of documentation – a statement of a page and a line from Mr Ballantine, a statement of a page from the practice manager and a half page statement from Mrs Hopkins.

Mr Collins: There should be one other, which I think was served earlier, which is from a Mr Mennie. It is a page and a half, dated 8 December 2006.

Mr Holdsworth: We had Mr Mennie's statement before today – would you like us to read these other statements now, whilst you wait in here?

Mr Collins: That would probably be convenient.

[Pause while documents are read]

Mr Holdsworth: We have read those.

Mr Collins: I am grateful for that. If you have finished, I would like to address you then.

Mr Holdsworth: I will just see if Mr Albuery wishes to make any further submissions. Mr Albuery, do you want to make any further submissions in the light of the evidence you have heard, or you have read?

Mr Albuery: No, thank you.

Mr Holdsworth: Right.

Mr Collins: So far as the question of impairment is concerned, it is of course right, as Mr Albuery put it to you earlier on this morning, that you will properly take into account not only clinical questions but also questions of conduct and, of course, it is accepted that Mr Hopkins has been guilty of misconduct in this case. You will want, no doubt, to look at all of the matters which have been before you this morning in the round, to look at first of all the nature of what took place, but also the way in which Mr Hopkins has responded to it, the background against which it is set, and, perhaps most importantly, looking forward to the way in which you should approach Mr Hopkins' future, and how these matters affect his practice as an optometrist going forward. You have heard his apologies – there is no need for me to repeat them. It is quite plain how ashamed he is of this incident, how entirely remorseful he is.

Having heard him this morning, the impression that I would invite the Committee to take away is one of a man who is being painfully honest with himself, with you, indeed with all of those around him. I say it is to his credit that he has not shied away from that, at any stage. From the first time when the Police questioned him, you will recall him saying that it was almost a relief to get this off his chest because it had been sitting on his conscience – had been, still is – and as he said this morning, he made at that stage an unreserved admission, an unreserved apology. You have heard he offered to speak to or to contact Patient A to convey those apologies. It is fair to say that both before then and in the years since he has lived with this hanging over him.

It has been, undoubtedly, very difficult for him. He no doubt would be the first to say that he brought it upon himself but it nevertheless is appropriate, I would say, for you to take into account the effect that all this has had on him and you will have noticed in Mr Mennie's statement him saying that Mr Hopkins really has not been himself. And I would suggest you take that away from what you have seen of him this morning as well. His evidence distress at the way in which, as he describes it, he let down himself and his family and his profession shows you two things, in my submission. First, how utterly out of character this incident was but secondly, his distress shows the seriousness with which he takes his responsibilities, both personal and professional. He told you a little about his professional history. It is a job to which he has given over thirty years of his life. And you have a range of, I would suggest, impressive testimonials from different

people across the spectrum of those with whom he has dealt. You have, as well as a patient, a colleague, you have an employer, as well of course as the views expressed from his wife.

Mr Collins: Mr Mennie said this:

“I have been a patient of his for over 20 years. I have always had complete confidence in him. He puts me at ease when I consult him. He is very professional and explains everything very clearly and always gives whatever time is needed. I trust him and have had and continue to have no hesitation in consulting him and recommending him to others”.

The practice manager also refers to

“How he is regarded as professional and helpful by many of his long standing patients who demonstrate loyalty by requesting only his assistance with their eye care”.

So you have some evidence of the regard in which he is held by the patients who come to him. You have also got evidence as to his professional skills. The practice manager again talks about how he is learned and intellectual in his field but treats all his colleagues as equals. And she talks about how in the last four years,

“He has identified a number of medical conditions requiring further investigation that have resulted in the patient receiving further treatment which has remedied an underlying condition”.

There is a note again, perhaps in relation to the question of his relationships with the patients, of the cards and flowers and so on.

Mr Ballantine, too, gives you some evidence about his professional skill. He backs up some of the evidence you heard from Mr Hopkins about his work at the Princess Alexandra Eye Pavilion in Edinburgh. Mr Ballantine talks about how Mr Hopkins is highly regarded within the profession and “has a superb knowledge of abnormal ocular conditions”.

It is also fair to say that you have some evidence about what a valued help he is to his peers and his colleagues. The practice manager refers to helping staff with their enquiries. And indeed, to new members of the profession: Mr Hopkins talked about how he has supervised a number of people over the years and you have the account that the practice manager gives you of the young person coming to the business, showing an interest, and the assistance and guidance which he offered to her.

It is a man who dearly loves his profession and has spent many years working hard to promote the public interest through the interests of the profession. And that we see through the patients, the employer, the colleagues, the aspiring members of the profession. That is the man at work and of course, it is worth bearing in mind that this incident is outside of the working sphere. It is accepted, of course, that the fact that the two individuals concerned had, at times in the past, been patients of Mr Hopkins, is something which you are entitled to treat as an aggravating factor. At least one of them, mind you, is somebody with whom Mr Hopkins had, to be fair, a passing acquaintance for a couple of years a good twenty years beforehand. But still, he accepts that the fact that these individuals

had seen him as patients makes this more significant. It is nevertheless true that these are incidents from outside of work and there has never been any suggestion from anywhere that the way in which Mr Hopkins treats and advises his patients has been compromised in any way.

Mr Collins: What I would suggest to you is that the image of Mr Hopkins that you have at work fits very much with the image of the man that you have, from his own account and from the testimonials, outside work. All the testimonials refer to his love of his family. It is plain he is a particularly devoted family man, takes great delight in his children and in his wife. But it is plain that he was also devastated by the death of his mother in March 2004, which of course immediately preceded the events that have led us to be here this morning. He told you a little of how upsetting he found it, that he had effectively been too late to see his mother before she died and of his concern for his father. He asks me not to suggest to you that this is an excuse – and I do not suggest that it is an excuse and I hope it is very clear from the approach he has taken that he is not a man who looks for excuses – but can I suggest this? That it does offer some assistance in understanding how he came to act in a way which, plainly, was very much out of character, at a time when, on his own account he was very distressed and, using the terms loosely ‘depressed’ and ‘anxious’.

Given how out of character these incidents are and given what has plainly been a very serious response and reaction to them on the part of Mr Hopkins, I would suggest to you that the chances of anything remotely similar ever occurring again, quite simply are nil. Not only because that is not Mr Hopkins’ nature, but because the last two or three years have been a very unpleasant but learning experience for Mr Hopkins. One could almost argue that the insight he had gained from this experience stands him in better stead for the future. Mr Mennie says in his testimonial that he is sure if Mr Hopkins could turn the clock back and do things differently, he would have done. It is perhaps obvious that that is the case. He cannot do that but what he can do is to look forward and he has made it clear to you, I think this morning that he has a lot to give to his profession, to the public that he serves. And of course, he has been continuing to serve them over the last couple of years, and, on the testimonials we have, to serve them well.

So when you are considering whether his fitness to practise is impaired, I ask you to recognise on the one hand his long history of service and also that this is a regrettable incident, but we say a one-off incident, for which he could not have apologised more fulsomely and for which he could not have expressed more regret. We say that there is no impairment here such as to cause you concern for the public and what is in the public interest is getting Mr Hopkins back to doing what he does best, undoubtedly, a somewhat chastened and very much wiser man than he was in 2004.

Can I say this? Mr Albuery addressed you on the possibility of giving Mr Hopkins a warning. I do not think he shies away from that for a moment and I think he accepts that is something which his conduct merits. But we invite you not to interfere with a successful and valuable practice and for those reasons we invite you to find that there is no impairment in this case.

Mr Holdsworth: Thank you, Mr Collins. I am going to invite our Legal Adviser to advise us at this stage, please.

Mr Vere-Hodge: Before I do that, can I see whether you accept, first, that there is no definition of impairment? It is a matter for the professional and lay judgment of the Committee.

Mr Collins: Yes.

Mr Vere-Hodge: And secondly, what your submissions are about the standard of proof? 13D(1)(a) reads:

“This Section applies where an allegation is made to the Council against –

(a) a registered optometrist or a registered dispensing optician that his fitness to practise is or may be impaired”.

I find it my duty to advise the Committee as to what level of certainty they should achieve. There must be some standard of certainty. And I will ask Mr Albuery to help in a moment because his submission is that it is not strict proof. I want to know whether you are saying that it is the civil standard or not the civil standard, or whether it is simply a finding.

Mr Albuery: I do not have a copy of the judgment of *Bizwas*, which was, as you and others will know, a CHRE case but in that case, believe, it was agreed or stated that standard of proof was not something which should be considered when you have got to this stage. It was a judgment to be made by a Committee using their professional expertise. The difficulty, I have always thought, with that judgment, is that in using their professional expertise, the Committee must have – otherwise they are in some vacuum – some idea or some level before deciding whether this was an impairment or not. I do not think that case assists us in that regard, but I do think it makes clear – and there maybe other cases I am unaware of since, which assist further – that it is not a question of strict proof at this stage. So ordinary references to standards of proof - including civil and criminal - are unhelpful I think, and inappropriate now that we are at this stage.

Mr Vere-Hodge: Mr Collins, what are your submissions? Do you accept that? Or do you dissent?

Mr Collins: I do not dissent in broad terms from that. My position is that this is in effect a judgment which has to be made by the Committee. It must be supported by reasoning. It is not a case where one can reach a conclusion in effect on the basis that it is more likely than not, or anything of that sort. The civil standard, I agree, is not the appropriate approach. It is simply a question of judgment, whether the Committee find that Mr Hopkins’ fitness to practise is or may be impaired.

Mr Vere-Hodge: Can you give me the date of the judgment in *Bizwas*?

Mr Albuery: I think your Chairman may be able to assist you. I think it was 2005? Or 2004? But the answer to your question must be No – I can find it, very easily.

Mr Vere-Hodge: It is simply whether the consideration of the Human Rights Act –

Mr Albuery: It was well after the enactment –

Mr Vere-Hodge: Whether that was considered, and whether the point was taken.

Mr Albuery: I normally have with me a pack, including *Bizwas*, and I do not, but I can get it faxed here if this is an issue?

Mr Vere-Hodge: No, I don't think it is, because there is broad agreement between both parties as to what the approach is. [Pause] Mr Collins, do you want to add anything?

Mr Collins: No, Sir, thank you.

Mr Vere-Hodge: This is the advice that I give to the Committee. I have read already in when asking for assistance in submissions about how the Committee should approach the test which is set out at 13D(1)(a) and that is whether the fitness to practise is or may be impaired. My advice is that it must be a reasoned judgment – in other words, a judgment for which reasons can be given if they need to be articulated – if that is the finding of the Committee contrary to the registrant. It is not right to think of it in terms of either the civil standard of proof or indeed, the criminal standard of proof. It is a professional judgment, bringing to bear the expertise of some members of the Committee and the lay members' general knowledge of the society in which we all live, and their judgment on what is said to be the public interest in terms of maintaining public confidence in the regulation of this profession or indeed any profession.

What I advise the Committee they are entitled to look at is to look at not only the facts that have been found, the admission of misconduct, but to look at it in the round, accepting the submissions made by Mr Collins as to the ambit of that. There are obviously two interlinking parts: the man, the private man, and the public, professional man. And those are all matters – the facts are not for me – which the Committee are entitled to take into account and give such weight as they think is proper in a case of this sort, so that they can apply those matters as to the finding as to whether they find Mr Hopkins is or may be impaired.

Now, Mr Albuery, do you want me to add anything to that advice? Or subtract? Or amend?

Mr Albuery: I wonder if I might just say this, in fairness to Mr Hopkins? The charge against him is not that his fitness to practise is or may be impaired, but that it *is* impaired and although, Sir, you quite rightfully referred the Committee to Section 13D(1), if you look with me at Section 13D(2) you will see reference there to “the only grounds upon which the fitness to practise is impaired” and then a list, one of which is misconduct. So if it helps in terms of clarity, the Council's position is that the Committee should be directed to consider not whether Mr Hopkins' fitness to practise may be impaired, but whether it *is*, as set out in Section 13D(2).

Mr Vere-Hodge: Thank you. The two perhaps do not sit very happily together, but thank you very much and insofar as it is necessary, I amend the advice in the light of that. It is a question of being impaired, and not *may be* impaired. And the present tense is 'is impaired' and opposed to 'was impaired' –

Mr Albuery: Yes, I accept that.

Mr Vere-Hodge: To that extent, I should add that to the advice I give. Mr Collins, the same process – do you want to amend or add anything to what I have said?

Mr Collins: Sir, no.

Mr Vere-Hodge: Thank you very much.

Mr Holdsworth: Thank you; unless my colleagues have any questions? No. In that case, I am going to ask everyone to leave the room so that we can deliberate in private on this one. It is probably a convenient time for everyone to have some lunch. Mr Albuery, Mr Collins, if we suggest that it may be that we will be in a position to announce our decision at 1.30? So make sure you are back by then. If we need longer then obviously we will take as long as we need.

Mr Albuery: That is very helpful, thank you.

Mr Collins: Thank you.

[The Hearing adjourned at 12.45 pm]

[The Hearing reconvened at 2.05 pm]

Mr Holdsworth: The Committee will now announce its decision.

Decision

The Committee was invited to look at the case in the round, considering the registrant's evidence and bearing in mind the other written evidence submitted on behalf of the registrant. The Committee considered that this evidence does bear on the question of current impairment of fitness to practise although it may also touch on mitigation.

The Committee have taken account of the submissions made by the Council and the registrant and have accepted the advice of the Legal Adviser.

We accept that the registrant has a previously unblemished record and that there has been no repetition of behaviour which might be a cause of concern to this Committee. We also bear in mind that the registrant has admitted the allegation and has admitted misconduct.

Nevertheless, the misconduct admitted is very serious in our judgement. In addition there are a number of aggravating factors. The case involves two former patients of the registrant, one of whom had made a recent complaint against the registrant. Patients should be able to make a complaint without fear of reprisal. The registrant sent three letters, approximately one month apart from each other which were, it is accepted, obscene, homophobic and spiteful. On the last of these three letters the registrant wrote Patient A's name and address as the sender. The Committee find that it was and is absolutely foreseeable that Patient A would then be investigated by the police, be interviewed and have his DNA and fingerprints taken. Equally it was foreseeable that he would have to wait for the results and feel upset, humiliation and stress during this process. We note that Patient A was a JP. This behaviour undoubtedly brings the profession into disrepute.

The public are entitled to expect that registrants behave in an honest and trustworthy manner. Mr Hopkins' behaviour fell substantially short of this standard. Any action which brings the profession into disrepute can amount to impairment of fitness to practise and despite the arguments made by Mr Collins to

the contrary we find that because of this behaviour the registrant's fitness to practise remains impaired.

Those are the reasons of the Committee.

We are, I think, now moving on to the questions of sanction. Mr Albuery, I think Rule 53 is the relevant rule at this stage? Do you wish to present any further evidence?

Mr Albuery: No, thank you.

Mr Holdsworth: Mr Collins, do you wish to present any further relevant evidence?

Mr Collins: No further evidence, Sir. The only thing I would say is that, as perhaps you have already noted, some of the evidence you have already heard bears on both issues.

Mr Holdsworth: Absolutely. Thank you. In that case, Mr Albuery, do you want to make any submissions regarding whether, and if so what, sanctions should be imposed?

Mr Albuery: Sir, having found that Mr Hopkins' fitness to practise is impaired, you may think it should follow that there should be some sanction to reflect the current impairment which you have found. I accept, however, that your finding does not require you to impose a sanction. It is only a gateway which allows you to. I know you will be reminded, of course, when you consider the sanctions available to you, that you should consider them in ascending order and impose a sanction, if at all, which is proportionate with the mischief which you have found.

In terms of the aggravating features, which the Council believes are present in this case, I have already addressed you about them. You have reflected some of them in your own reasons and I do not intend to repeat them. There is no application for costs and, as I have indicated before, Mr Hopkins is a man of previous good character and is entitled to proper credit for that. There are no other submissions unless I can assist you further?

Mr Holdsworth: [*To Panel*] Is any other assistance sought from Mr Albuery? Mr Collins, do you wish to make submissions regarding whether, and if so what, sanctions should be imposed?

Mr Collins: Sir, yes. I will do so relatively briefly, again for the reason that I have already spoken in some detail this morning about Mr Hopkins' registration and the worth which the community derives from it and the considerable investment which he makes in it, in terms of professional commitment and in terms of a personal attachment to work. You have made a finding of impairment, and of course Mr Hopkins will abide by whatever view the Committee takes as to the proper way in which to deal with it.

But I would ask the Committee to take into account the matters which I referred you to this morning. None of the submissions which I made in terms of the request which I made of this Committee to consider allowing Mr Hopkins to continue with – if I can put it this way – the minimum interference with the way in which he practises in future, none of that, in my submission, is inconsistent with the conclusion which you have reached. And of course, Mr Hopkins has always accepted that his conduct was, first, wrong and secondly was serious. But we

say, so far as the public interest is concerned, there is little to be gained by interfering in a significant way with his ability to serve the community in future.

If the Committee wishes to consider a financial penalty, Mr Hopkins was given a form this morning. He has noted down some details and we can make those available. If the Committee wishes to consider conditions, then of course, Mr Hopkins puts himself at your disposal. Above all, we ask you to consider the value on both sides: the value to the public in having Mr Hopkins serving them; the value to the profession in giving Mr Hopkins a chance to continue to contribute.

If I could just have a moment? [*Confers*] No, there is nothing further, Sir.

Mr Holdsworth: Just give me one moment. [*Confers*] I will see if my colleagues have any questions they want answered. [*No*] In that case, I will invite our Legal Adviser to advise the Committee insofar as he wishes to do so.

Mr Vere-Hodge: I think really the way I should approach this is the one which Mr Albuery invited us to do, which has not been contradicted in any way by Mr Collins. And that is to deal with it in ascending order: the financial penalty, which is available to the Committee either as a separate penalty or in addition to any other penalty. 13F(3)(c) reads:

“The registrant’s registration is to be conditional on his or its compliance, during such period not exceeding three years”.

I am just wondering whether it is said that that is in any way appropriate in this case, bearing in mind age and experience. I am not sure that it fits this particular situation. I do not know whether either of you want to make submissions about that?

Mr Albuery: I think, Sir, it would only be appropriate if the Committee could first determine what need there was to protect the public, and whether there was an enforceable condition which met that mischief. Only if those two limbs were satisfied could conditions be considered appropriate, I think. And it might fail on one or both limbs.

Mr Vere-Hodge: Yes. Mr Collins?

Mr Collins: It must necessarily depend on the Committee’s view of what an appropriate condition might be in order to deal with the difficulty which arises. I do not necessarily accept that it is right that, because the registrant is experienced and mature, that must mean that conditions are not appropriate. For example – and this is no more than an example – if a training need were to be identified, that could be something which might be identified in somebody at any age and whether that would be a matter of clinical practice or something else. I do not wish to trespass upon those, which are matters for the Committee, but it seems to me that those are options which are necessarily open to the Committee to consider.

Mr Vere-Hodge: Thank you very much, Mr Collins. It means therefore that it, in the light of those submissions I must advise is available to them as a sanction in this case. Again, in ascending order, 13F(3)(b) is suspension; 13F(3)(a) is erasure from the appropriate register. That is the ascending order. Mr Albuery, have I correctly identified those?

Mr Albuery: I believe so, yes.

Mr Vere-Hodge: Mr Collins?

Mr Collins: Sir, there remains the question of the warning which is open to the Committee.

Mr Vere-Hodge: I am not sure that is right, because if you turn to 13F(5), 'is not impaired'.

"If the Fitness to Practise Committee find

(a) ... is not impaired ...

they may nevertheless give the registrant a warning regarding his or its future conduct or performance".

I see Mr Albuery nodding his agreement to that analysis. So I think we have gone past the point of a warning. That is not very elegantly expressed, but –

Mr Collins: I agree, it is not specifically set out as a matter in 13F(3) –

Mr Vere-Hodge: I think unless you want to come back on that, I would advise the Committee that it would not be appropriate to give a warning in this case. I think my advice has to be, without equivocation, that having found Mr Hopkins is impaired, a warning is not a sanction available. Mr Collins, do you want, having read it again, perhaps to come back on it?

Mr Collins: I am just checking that I have not read it wrong. I do not think I have.

Mr Holdsworth: The point is 13F(2)(c) –

Mr Collins: (2)(c) refers to subsection –

Mr Holdsworth: Well, (a), (b) and (c):

"They may, if they think fit, give a direction specified in subsection (3) or (4) below".

13F(2)(a) is the relevant –

13F(2)(a) – that is where we are at the moment. Fitness to practise is impaired. Then in relation to (a), (b) and (c), the Committee may, if they think fit, give a direction specified in subsection (3) or (4). (3) is what we have just been advised on; (4) does not apply and then (5) is the section relating to warnings but that obviously is not covered by the introductory remarks in 13F(2).

Mr Collins: Yes.

Mr Holdsworth: Do you wish to say anything else on the legal advice that we have had that we cannot now give a warning?

Mr Collins: No, Sir.

Mr Holdsworth: Thank you very much indeed.

Mr Vere-Hodge: I would also, obviously, advise the Committee that whatever penalty sanction they impose, it has to be proportionate to the mischief or harm done to the public interest by what has happened in this case and obviously to take into account the previous good character and subsequent good character. That is the advice that I give. Do either or you want to add or subtract from that, or amend it?

Mr Albuery: I do not, no, thank you.

Mr Collins: No, Sir, thank you.

Mr Holdsworth: In that case, the Committee will now deliberate on the sanction and I am going to have to ask that the room be cleared so we can do that.

Mr Collins: What I will do, if I may, is double check for one last time with Mr Hopkins the statement of means and then hand it in through your Hearings Manager once I have done so. Is that acceptable?

Mr Holdsworth: Thank you. Just pause a minute, please [*Aside*] Mr Collins, it is a point which occurs to me. As I recollect somewhere from the documentation which we had, your client does not have insurance which covers the cost of legal representation. Therefore, as a direct consequence of these proceedings he is having to pay for his legal representation.

Mr Collins: Yes. I am told that the figure is in the region of £10,000.

Mr Holdsworth: Is that a point which you would ask us to bear in mind?

Mr Collins: It certainly is, Sir, yes.

Mr Holdsworth: Mr Albuery, do you wish to say anything about that?

Mr Albuery: No.

Mr Holdsworth: Thank you very much indeed. In that case, would people mind leaving the room whilst we consider the sanction?

[The Hearing adjourned at 2.20 pm]

[The Hearing reconvened at 3.40 pm]

Mr Holdsworth: The Committee's decision is as follows:

The Committee were invited first to consider whether to impose a sanction: we are satisfied given our findings on fact, misconduct and current impairment that a sanction is necessary. We have taken account of the indicative sanctions guidelines and the need for proportionality. The sanction should be appropriate in the interests of the public and appropriate to the seriousness of the allegation found proved. The Committee have borne in mind the submissions made by Mr Collins on sanction.

This incident happened almost three years ago. Prior to that the registrant had some thirty years unblemished record. What he did was serious for the reasons

previously given but to his credit he admitted what he had done immediately. He told us that it was a relief to get it off his chest because it had been and still is on his conscience. We accept that he feels that he has let down himself, his profession and his family. The incident falls outside his working sphere and we accept was out of character. The written witness statements in support of his character come from a patient, a colleague, his employer and his wife, all of whom are aware of the allegation. The Committee has borne in mind his considerable contribution to the profession in terms of training and mentoring fellow practitioners in a profession to which he has devoted his life. We note that this incident occurred very shortly after the untimely death of his mother to whom he was very close. As a result of her death he was very distressed. The registrant demonstrated in his evidence substantial insight and remorse: he started his evidence by making a full public apology for what he has done.

The registrant has had to face appearing in front of this Committee. The Committee are satisfied that this has been a salutary lesson and we note that the registrant has had to pay some £10,000 for his legal representation. Taking all these factors into account the Committee are satisfied that the proportionate penalty is a financial one and the appropriate sum in this case is £1,250.

As to time for payment, the Committee are minded to order that the sum be paid within three months. But if you wish to take further instructions on that?

Mr Collins: That is fine, Sir.

Mr Holdsworth: In that case, the sum of £1,250 will be paid within three months. I must ask everyone to wait until the decision has been printed so that it can be signed.

Perhaps while that is being done I can thank everyone for their attendance today and that is the end of business for this Committee as far as I am aware, today.

[The Hearing concluded at 3.45pm]