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

GENERAL OPTICAL COUNCIL

AND

SIMON MORELLI (01-20020)

SUBSTANTIVE HEARING: 20 FEBRUARY 2007

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20 February 2007**

Fitness to Practise Committee: Sir Alistair Graham (Chair)
Professor Helga Drummond (Lay)
Mrs Geraldine Huka (Lay)
Mr Mark Lomas (Optometrist)
Mr Stephen Reily (Optometrist)

Legal Adviser: Mr Michael Vere-Hodge QC

Hearings Manager: Mr David Henley DEM

For the GOC: Mr Bradley Albuery
Mrs Caroline Withall

For the Registrant: Mrs Sandhya Kapila

[Hearing commenced at 11.17am]

Sir Alistair Graham: Good morning. I would now like to get this hearing formally underway. I am Alistair Graham, a lay member of the Hearings Panel, and I have been elected by the Committee to chair today's hearing. The Committee is made up of two optometrists and three lay members and I will now ask them to introduce themselves and the capacity in which they sit. *[Introductions made]*

To my right is Mr Vere-Hodge QC, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee and ensure that 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 keep an official record of all that is said today during the sessions of the hearing at which the parties are present. Next to the transcriber is Mr Henley, the hearings manager, who will provide administrative assistance to the Committee. The remaining persons sitting in the hearing room, rather than in the public and press areas, are members of the respective legal teams.

All parties are reminded that where details of a patient are to be discussed, the patient should be referred to by their initials only.

Mrs Kapila, could I invite you, if you wish to make any application to us, that you should do so now.

Mrs Kapila: Thank you. Chairman, as you have already heard from Mr Albuery, I am about to make an application that a member of your Committee should not sit on the current

hearing, because it is essential that the Panel be seen to be free of bias and it would be inappropriate for this member of the Committee to hear the case today. The member of the Committee previously sat on a Disciplinary Committee hearing relating to the same member in 2002, followed afterwards by her sitting on a reinstatement [*restoration*] hearing in January 2003.

The Committee member concerned has detailed knowledge of the background of the registrant and of the matters that were placed before both the Disciplinary Committee and the Committee that restored the member to the register. She is therefore in a unique position in respect of knowledge of this case and of the respondent and indeed any conceptions or conclusions that might have been reached in discussion at committee level during the course of those hearings, and of any views expressed by anyone on the Committee in respect of those hearings. We are talking here of the perception that what is being afforded to Mr Morelli today is a fair and impartial hearing. It is my submission that the member of your Committee comes before you already in possession of facts not only purely in terms of what occurred and what did not occur, but also in relation to discussions and any conceptions that existed at that time. There is definitely the perception that she would bring to this Committee those facts and perceptions.

Sir Alistair Graham: Are you going to mention which member of the Committee?

Mrs Kapila: Yes, I am coming to that, although I know that I have come to this from a different route. The member of your Committee in question is Mrs Huka, who sat in on the Disciplinary Committee in 2002, and on the Restoration Committee hearing in 2003. The registrant has raised with me today his concerns regarding this matter. You will see, as evidence is given on his behalf, why this concern might have taken until today to be raised. However, it is important that I point out to the Committee that it is not the duty of the respondent to ensure that the Panel that hears his matter is free of any prior or current bias, or indeed the perception. We are not necessarily talking here of actual bias but of the perception that there should be no bias. It is not his duty to ensure that. He may, of course, highlight any concerns that he has, but the duty is one that rests squarely on the Council. They have to provide a panel which comes to this matter free of any prior conceptions.

It is undisputed that Mr Morelli has the right to an independent and impartial tribunal. Lord Hope in *Porter v Magill* [2002] 1 All ER 465 considered that there was a close relationship between the concepts of independence and impartiality. In both cases, the concepts required that the tribunal must not only be truly independent and free from *actual* bias, but that it must not appear, in the objective sense, to lack these essential qualities. So it is important, then, that it must not appear to lack these essential qualities.

It is important for the tribunal to hear this matter in an impartial manner. In the case of *Tehrani v United Kingdom Central Council for Nursing, Midwifery and Health Visiting* [2001] 1 RLR 208, Lord Mackay was of the view that, had it been necessary to decide whether the proceedings viewed on their own without the right of appeal would constitute an independent and impartial tribunal for the purposes of Article 6(1) of the Human Rights Act, he would have answered the question in the negative. He reserved his strongest criticism for the fact that the same individual sat on both the preliminary and conduct committees.

In my submission therefore there is absolutely no question that the tribunal has to be impartial, but it does not stop there. The onus is greater and the tribunal has to be *seen* to be impartial.

Mrs Huka sat on both the earlier committees to which I have referred. They may not have been concerned with exactly the facts that you will hear before you today but, nevertheless, there was a disciplinary hearing leading to serious consequences, the full nature and facts of which were well known by her. In addition, she stated at the end of the restoration proceedings something that might be considered a standard statement but which nevertheless causes concern to the registrant, that she would not expect to see him before the Committee again. It is therefore arguable that, from an objective point of view, there could be some indication there that perhaps this member of the Committee could have a closed mind in respect of the issues before you today, bearing in mind that it is not the first time that the respondent finds himself before a committee. The perception must remain that perhaps Mr Morelli will not have the independent hearing to which he is entitled.

I would also add that we are now in a situation where it is perfectly possible for this matter to be heard without this particular member of the Committee. There are enough people under the rules properly to hear this matter and so, arguably, there is no reason to run any risk or chance that there should be a perception that the matter before you today is not fully impartially heard. Therefore, it is not a question of whether in the future this will be regarded as a Committee - should the matter ever get that far - that was properly and impartially constituted, but it is a matter that can be nipped in the bud, so to speak, without any prejudice to anyone. We are talking here about perceptions of fairness and not necessarily any actual bias, but perceptions of bias, and there would be no consequence in terms of the ability to hear this matter, for this member to stand down. However, there will be consequences if it is perceived that, because of a detailed knowledge of previous matters, this member should not properly be on this Committee.

Sir Alistair Graham: Thank you very much. Mr Albuery, would you like to respond?

Mr Albuery: Yes, please, if I may. The Council's position is that the application is misconceived and lacks merit and the repetition of a bad point does not improve its persuasive effect, we hope.

The law as I understand it, and I hope this assists you, was set out clearly in the case of *Porter v Magill*. This was the well-known council house scandal case, where Shirley Porter had action taken against her and she then took action thereafter. In that case, the court had to consider the issue that arises here, which is the perception of bias. In that case, Lord Hope said this, as to the question you must ask yourself:

“The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility”

and that is the test,

“that the tribunal was biased.”

- that a fair-minded and informed observer, considering the facts, would conclude that there was a real possibility, not some fanciful one, that the tribunal was biased. Unsurprisingly, bearing in mind the nature of lawyers' work, there was some case law as to what constituted a fair-minded and informed observer. That has been said to be as follows:

“The test lays proper emphasis on the objective observer being both fair-minded and well-informed. To the basic requirement of fair-mindedness is added the need to be properly informed.”

May I help to inform you in this way? The application appears to be that, because five years ago, one of your number sat on a Disciplinary Committee hearing, either she will come with a closed mind, or there is the perception that she will come with a closed mind. Even if Mrs Huka can remember anything about the circumstances of this case, the fact is that she has no real knowledge that you do not have, because it is essential for the proper understanding of this case – and you have already read about it – that you put into context the fact that Dr Blakeney was conducting peer reviews for the very reason that Mr Morelli had been erased from the register. You therefore already have that knowledge.

In any event, Mrs Huka was the Chair of the committee which restored Mr Morelli to the Register at the very first available opportunity, and so some suggestion that there is bias on her part, or the perception of bias, when she was one of the committee members who restored him, seems to me to be a curious argument to advance.

I also rely on the fact that you have been told that the facts are admitted, and that misconduct and deficient professional performance is admitted, and that Mr Morelli accepts that his fitness to practise is impaired.

Mrs Kapila: I am sorry – I am not disputing this, but I think we are going towards the substantive hearing now, but we have not yet reached the situation where the context of any of the admissions or any matters have been discussed. Before that position is reached, you are being given a breakdown of this matter with regard to a preliminary application. I am afraid that I cannot see how that can be fairly done.

Sir Alistair Graham: It is only fair that what we heard about possible admission was in an informal part, before the formal hearing had taken place. We have to presume in a formal sense that we do not know that information.

Mr Albuery: No, I do not accept that, Sir, for this reason. You have to consider the application in the light of the decisions that you will be asked to make. If actually the only decision you will have to make is on sanction, then that is a matter that you can properly take into account in determining whether or not bias, real or perceived, is made out. If Mrs Kapila is saying that I am wrong when I tell you that that is the way in which the trial will proceed, then she can tell you know, but that is my understanding of it. It is entirely right that you be aware of the decisions that you will have to make, and that is why I make the point. I do not take that back, because I think it is a fair point for me to have made.

Of course, the Council accepts that Article 6 of the Convention is engaged, but there is nothing about this hearing which, we say, is in breach of Article 6. The only conclusion to which a fair and balanced and reasonable observer can come is that there is no bias.

There are two matters, lastly, that I would like to raise. The first is that Mrs Kapila says that we can deal with the matter fairly easily because Mrs Huka can be stood down and you can just carry on. I ask you to reject that argument, however, because that is a matter of practicalities and pragmatism, and it is not something that should affect your decision. You should only ask Mrs Huka to stand down if you come to the view that it is proper that she does so in the context of the law that I have explained to you.

The second matter is that Mrs Kapila mentioned what has been called by a number of cases, and particularly the court martial jurisprudence, objective guarantees about the whole constitution of committees and regulatory bodies. I assume that that is not a point upon which she is actually asking you to adjudicate but, if she is, then we need to explore that further. I have restricted my arguments therefore only to the issue as to whether or not Mrs Huka should be stood down, and not the separation of powers between investigatory and hearing functions – which is a whole other area that I do not think she wants to go into. I only raise that because it was mentioned in relation to one of the cases she relied upon. That is the Council's position.

Sir Alistair Graham: Thank you very much. Would you like to respond to the argument that has been put?

Mrs Kapila: I would, very briefly, Chairman. The fact that Mrs Huka sat both on the Disciplinary and the Restoration Committee does not take away her prior knowledge of this matter. She certainly sat as chairman of the Disciplinary Committee and the Reinstatement Committee, but I would ask you to remember that she has also stated that she did not expect to see Mr Morelli before her again. You may decide that that in itself is an equivocal statement and does not mean anything but the fact that she was on the committee that restored Mr Morelli certainly does not take away, in my submission, the perception of bias that might still exist. Remember, there is more than one person on a committee and therefore we do not know in whose mind, predominantly, the decision to restore existed. We do not know, and we are talking here about a perception.

As I said earlier, we are talking about an individual who has had detailed insider knowledge of previous disciplinary and restoration matters and, indeed, of what was discussed within the committee, when the committee reached its decision. In my submission, the application that I make before you is based on sound and important grounds. It is not a fanciful application and it is made to you on the basis that Mr Morelli has a right to an independent and impartial hearing. I submit that there is more than just a possible suggestion that he may not be provided with the objectivity that is required and, even if there is a perception of that, since there is nothing to be lost, then the point I make is that, whether it is practical or procedural, it would be in the interests of the registrant that Mrs Huka stand down. It will then be clear to those who will view this matter that Mr Morelli was afforded an impartial and independent hearing, before an impartial and independent tribunal who came to the facts fresh and with no previous knowledge or indeed any previous bias, perceived or otherwise.

Sir Alistair Graham: Thank you very much. There is now an opportunity for Committee members to ask any questions. I would just like to clarify one point. The composition of these committees would require, if we were to accept this application, that more than one person would have to stand down. Am I correct in that?

Mr Henley: That is correct, Sir.

Mr Albuery: There has to be a lay majority, as I understand it, Sir. Therefore, if Mrs Huka stood down, then one of the optometrist members of the Panel – I believe – would also have to stand down, to preserve the lay majority.

Sir Alistair Graham: I thought it was important that we should be clear about that. This is an issue of more than one person standing down, though I understand the arguments relating to the person. Do any of my colleagues have any questions they wish to put?

Mrs Huka: Chairman, I do not have a question, save to say that I do not recall this case at all. That is all I have to say.

Sir Alistair Graham: Thank you.

Mr Vere-Hodge: I need to give some legal advice, and the advice that I give to the Panel is as follows – and I will invite correction afterwards by any party. I assume as a starting point that this is a matter of record, and that the record will show, as is stated, that Mrs Huka sat on the Disciplinary Committee in 2002 as well as the reinstatement hearing in 2003. That must be the starting point.

Article 6 of the Human Rights legislation requires a tribunal which is independent of the parties, the executive and the legislature. In determining whether this requirement has been met,

“regard must be had *inter alia* to the manner of the appointment of the tribunal members, their term of office, the existence of guarantees against outside pressures, and the question whether the body presents an appearance of independence, as the case of *Findlay v The United Kingdom*.”

I have taken this from Archbold at paragraph 16-73(a).

An authority which has not been cited in argument, in the middle of that paragraph, is *Millar v Dixon, Payne v Heywood; Stewart v Same; Tracey v Same* [2002] 1WLR. It was held that:

“ the right to trial by an independent and impartial tribunal is one which cannot be eroded or compromised. It is not appropriate to take into account that there has been no unfairness or injustice as a result, nor to weigh the infringement of the rights of the defendant against the general public interest.”

The other authority that was cited in argument, which seems to set out at least the test which should be applied today, is the *Porter v Magill* case, or at least the test, *In Re Medicaments and Related Classes of Goods Act* [2001] 1WLR 700.

“The court should first ascertain all the relevant circumstances and then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the tribunal was biased.”

That is the test which should be applied. It is my advice that, in this case, as the issues are perceived for the Panel, it is sanctioned only. Plainly, I advise that there would be a different consideration if the question of impairment was in dispute, so that there is a subtle sub-test here which has been outlined. My advice to the Panel is that Mr Albuery’s comment about what is in issue before this Panel is relevant to the test that I have set out in *Porter v Magill*, and that is that in practical terms this is a sanctions only hearing. That is the advice that I give to the Panel. Mr Albuery, do you want to add or amend?

Mr Albuery: No, thank you.

Mr Vere-Hodge: Mrs Kapila?

Mrs Kapila: I only have one comment. Even if Mr Albuery’s comments are taken at this point, in terms of a sanctions only hearing, that does not take away – in my

submission – Mr Morelli’s right to an impartial and independent tribunal in respect of any sanctions.

Mr Albuery: Sir, the Council accepts that. Clearly, every aspect of the trial, which includes your decision to impose a sanction, must be compliant with Article 6.

Mr Vere-Hodge: That is my advice but one has to have regard to what the issues are before the Committee. That is not definitive, but one has to have regard to that. That is my advice. Mrs Kapila, do you want to come back on that?

Mrs Kapila: No, only to say that, if it is accepted that Article 6(1) applies, and that the independence, impartiality and perception of it is applicable to the whole hearing, including sanctions, I am quite happy to leave it at that.

Mr Vere-Hodge: That is certainly my advice – that the Article 6 point applies to the whole of the hearing before any tribunal, and that includes this one.

Sir Alistair Graham: Thank you very much for that. I would be grateful if we could now deliberate in private to come to a conclusion on this application.

[Hearing adjourned at 11.46 am and resumed at 12.10 p.m.]

Sir Alistair Graham: I am now in a position to announce the Committee’s decision, which is as follows.

APPLICATION DECISION

The Committee has carefully considered the application for Mrs G Huka to stand down as a member of this Hearings Panel, due to a perception of possible bias because it is said that she acted as chair of two previous Disciplinary Hearings under the old rules, which took decisions affecting the professional position of Mr Morelli in 2002 and 2003. The Committee has accepted the legal advice that there is no reason in law why Mrs Huka should stand down to meet Article 6 of the Human Rights Act. However, the Committee is anxious that there should not be any lingering perception of bias and therefore decided to accept this application. Therefore, the Committee will proceed without Mrs Huka and, to ensure that we have a Committee with a majority of lay members, Mr S Reily has also agreed to stand down as one of the two optometrist members of the Committee.

We are disappointed that this issue was not raised at an earlier stage, so that unnecessary time was not wasted at the early stages of the hearing in having to clarify such matters. We would like to take this opportunity to stress that it is incumbent on the parties to alert the Council of any possibility of any bias arising from the membership of any Committee.

That is the decision. I suggest that we take a very short break of five minutes, to allow colleagues to leave. We shall then proceed with the rest of the hearing.

[Mr Reily and Ms Huka leave the Hearing]

[Hearing adjourned at 12.12 pm and resumed at 12.17 pm]

Sir Alistair Graham: The next stage of the process is to invite Mrs Kapila to say whether any of the particulars set out in the allegation are admitted.

Mrs Kapila: Chairman, before I do so, I think Mr Albuery would like to indicate the changes and amendments in the allegations that have been agreed between us.

Mr Albuery: Sir, there is an application by the Council to amend two of the allegations and to offer no evidence in relation to another. If I can deal with that last matter first, the Council does not intend to offer any evidence in relation to allegations 6(a), (b) or (c) and so you should formally at some stage find those matters not proven.

In relation to the third allegation which, for the sake of clarity, is the one which begins between 1 April 2004 and 30 June 2004, the Council would invite you to add the word 'incorrectly' at 3(b), between the words 'you' and 'recorded', so that 3(b) would now read:

"In relation to 44 of these patients, you incorrectly recorded a cup disc ratio"

The only other amendment to that allegation is that we invite you to remove in its entirety paragraph (c), so that the allegation in allegation 3 ends with '0.2'.

The other allegation which we ask you to amend is No. 5 and we ask you in the second line of No. 5 to delete the word 'detect' and replace it with the word 'record', so that it reads:

"he failed to record a left convergent squint."

Sir, these amendments are made on notice to the Association of Optometrists, from whom I understand there will be no objection to them, and indeed at their invitation, otherwise matters would have been contested. Sir, I can tell you, to the extent that it assists you, that your power to amend particulars of allegation is found in Rule 34(1) of the 2005 Rules at page 98, and that rule states:

"The presenting officer may apply to the Fitness to Practise Committee for the particulars of the allegation contained in the notification to be amended."

and Sir, at 34(2), that you may grant such an application, where you are satisfied that it is just so to do.

Sir Alistair Graham: Mrs Kapila, could you confirm that you are happy with these amendments to the allegations?

Mrs Kapila: Yes, they are exactly as discussed with Mr Albuery.

Sir Alistair Graham: Do we need any legal advice on that matter?

Mr Vere-Hodge: Only insofar as what Mr Albuery has said is of course entirely right, that under Rule 34(1) and (2) – and probably (3) does not apply in this case – the Committee may grant an application to amend the particulars where the Panel are satisfied that it is just to do so. That is the advice that I give. I do not know whether Mrs Kapila wishes to comment on that advice.

Mrs Kapila: I have nothing to add.

Sir Alistair Graham: Professor Drummond?

Professor Drummond: I am content.

Sir Alistair Graham: The Committee can confirm that it is content to accept these amendments to the allegation under the power granted in paragraph 34(2).

Can we then move to the issue of admissions.

Mrs Kapila: Chairman, now that we have had the amendments outlined by Mr Albuery, I can state that the registrant, Mr Morelli, admits all the amended particulars that are set out against him in the Notice of Inquiry.

Sir Alistair Graham: Thank you very much. Mr Albuery, would you like to comment in any way?

Mr Albuery: No, but I wonder if we could also clarify at this stage, if it is the right stage to do it because it will affect how I present the case, that not only does Mr Morelli admit the particulars, but that he admits that those particulars set out at 1 and 2 amount to misconduct, and that the other four amount to deficient professional performance and that, taken all together, those six remaining allegations also result in an impairment of fitness to practise.

Mrs Kapila: Yes, as I have said, all the particulars are admitted – including those.

Mr Albuery: I only ask for clarification because the particulars are the facts.

Sir Alistair Graham: Yes, I understand that. Would you like to proceed?

Mr Albuery: Yes. If I may, I will explain the background of this case to you. I do so in the knowledge that you have been provided with a comprehensive set of documents, including statements. For the record, Sir, can I ask whether you and your colleagues have had an opportunity to consider those documents?

Sir Alistair Graham: We have certainly all had them in advance and I think we have all had the opportunity to consider those documents, yes.

Mr Albuery: Sir, thank you very much. I do not intend to put any other documents before you. I have been asked to point out, and I am very happy to do so, that in your bundle, you will have seen reference to matters which are not before you today. I know that you will put those out of your mind and consider the issues before you, only in relation to the matters I rely upon, which I hope to make clear in my opening, and other matters which you have read, and which you determine to be relevant, even if I omit to mention them.

Mr Morelli was first registered with the Council in the Register of Optometrists on 13 January 1995. He was removed from that register on 22 March 2002 following erasure, having been found guilty of serious professional misconduct, which was then the test at the Disciplinary Committee. That misconduct related to Mr Morelli's conviction for fraud on the National Health Service. He had appeared at Canterbury Crown Court on 25 September 2001 and, in relation to 16 specimen counts for false accounting, he received on each a concurrent suspended 18-month prison sentence, the period of suspension being for two years. I mention those matters not because you are here to reinvestigate them but because they will help you understand why Dr Blakeney, whose reports you have read, later became involved.

Mr Morelli was restored to the Register of Optometrists following an early successful application for restoration on 22 January 2003. He remains registered until the end of March this year.

As you have heard, Mr Morelli has admitted six allegations and those allegations amount to both misconduct and deficient professional performance. Had this matter been contested, you would have heard from a number of witnesses, including witnesses of fact whose statements you have read, and also from the Council's expert witness, Susan Blakeney. Although you have read those statements and the papers upon which those people rely, this is a public hearing and it is important, you might think, in terms of the transparency of the process, and the confidence that members of the public and the profession must have in these proceedings, if in this public forum I outline at least a summary of those matters to you. Where appropriate, if I may I will quote directly from those statements.

Dealing with the six allegations, and starting with the first and second allegations, which I will take together because the facts are linked, the first allegation is, as you have heard, that between 7 and 10 June 2005, Mr Morelli examined patients and recorded that he had carried out three types of tests on them which in fact had not been undertaken at all. The second allegation is that on the second of those dates, 10 June, he stated that he had carried out field tests on patients which, again, he had in fact not undertaken at all.

A statement has been taken from Witness A [*name withheld*] who, in June 2005, worked at Bateman's opticians in Ashford, as a pre-registration optometrist. She states that, on 7 June 2004, she was working as a contact lens optician and Mr Morelli was working in the same practice as a locum optometrist. There was also a qualified dispensing optician at the practice. She noticed, in relation to a patient whom Mr Morelli had referred to her, that he had written on her patient record, 'slit lamp clear, R and L'. When she examined that patient, she noticed that the patient had superficial staining on both corneas and a blocked gland in both eyes. She said that these were visible, using the slit lamp. As you will or may know, a slit lamp is used to examine the front of the eye and can also be used to examine the back of a patient's eye.

Witness A was concerned to read what she had on that patient's record card because she knew that there was only one slit lamp on the premises and that this was in her consultation room. It occurred to her therefore that Mr Morelli could not have undertaken the test which he said he had. As I have already explained to you, she was concerned with what he had recorded in any event because it was inconsistent with what she found. When the patient left, Witness A asked Mr Morelli if he would like to move the slit lamp from her room into his consultation room, but he replied

"No, thank you. I don't use it, I just write it down on the card."

For the whole of 7 June 2005, the slit lamp was in Witness A's room and Mr Morelli could not have used it without her knowledge. The Ashford branch of Bateman's has two consultation rooms located next door to each other: they are very small, and she would have known, had the test been undertaken – bearing in mind that it was in her room. In any event, and perhaps more importantly than any of this, you have heard that Mr Morelli accepts that he did not undertake the tests in relation to these patients that he said he had.

Witness A was also working at the practice on 10 June, and this relates to the second allegation, which was the next and final day that Mr Morelli worked there after his attendance on 7 June. On that day, Witness A noticed that Mr Morelli had written down the results of a colour vision test on all of the patients he had examined in the morning and that he had noted that he had performed a Lang stereotest. Witness A

knew that the practice did not have a Lang stereotest and that therefore the test could not have been performed. You have read in the statements of the nature of the tests which the practice actually had available to it.

Witness A was concerned not only because she knew that the practice did not have a Lang stereotest but she was also surprised to discover that Mr Morelli was testing every patient's colour vision. She understood that this was not a routine test to perform on every patient. Although that may seem to be a benefit, if patients are having tests that they do not need, obviously optometrists are meant to apply clinical judgments as to the tests they undertake. Furthermore, Witness A states that the practice only had one test for colour vision, which is the Ishihara test and that this test, and the titmuss stereotest, were put by her on 10 June into her room at 10.00 a.m., and at no time did Mr Morelli ask to use it.

Witness A also noticed, when she went into Mr Morelli's room that he appeared to be using a crib sheet, which was a template of what should be written on a patient record card. He had all the numerical values for near point of convergence, for example, filled in. She also noticed that he recorded 'fields full, R and L' on every patient.

In relation to visual fields, Witness A states that the visual field testing equipment was in Mr Morelli's consulting room, but she was able to tell, because of the proximity of the two rooms, that it had not been used at all, notwithstanding his recording of visual fields for all the patients he had seen. I will not go into further detail about that because the fact is that he has admitted that as a fact to you.

As a result of her concerns, Witness A spoke to the qualified dispensing optician who was at the practice and also voiced her concerns in terms of patient safety to both her pre-registration supervisor and her area manager. The name of that area manager is Mr Michael Whiteley, who is a registered dispensing optician and who, as a result of the concerns that had been mentioned to him, visited the Ashford branch at 3.30pm on 10 June. He looked at a number of patient records for that day and spoke to Witness A. Having satisfied himself of the nature of the concerns, he then spoke to Mr Morelli later that day.

He asked Mr Morelli why he had written the results of examinations which he could not have done and indeed did not undertake. Mr Morelli replied – and these were his words:

“I have been using my Ophthalmoscope and some strong plus lenses to do the examination.”

When asked why he had actually written 'slit lamp' on the record card he said, according to Mr Whiteley,

“I have still done the examination.”

Mr Whiteley states that although an ophthalmoscope is an alternative to a slit lamp, it is not as good. More importantly, of course, the point is that Mr Morelli wrote on the patient record card that he had carried out a particular type of examination, in a particular method, when he had not done so.

In relation to the colour test, Mr Whitely asked Mr Morelli if he had his own test with him, knowing that he had not asked to use the one in Witness A's room. Mr Morelli replied,

“I usually have one in my bag, but I do not seem to have it with me today.”

accepting again that he had recorded tests which he had not in fact undertaken.

Mr Whiteley explained to Mr Morelli the seriousness of writing results for things that he had not undertaken and he and that company parted ways. I can tell you that he had seen 15 patients on 7 June and eight patients on 10 June, so that 23 patients were affected in that way.

The third allegation relates to dates between 1 April 2004 and 30 June 2004. The allegation is that, in relation to 44 of 49 patients whose records were examined, Mr Morelli incorrectly recorded a cup disc ratio for each eye of 0.2. Dr Blakeney first became involved in this matter as a result of conditions being placed by the PCT on Mr Morelli's entry to the ophthalmic list, as a result of his previous erasure. One of the conditions was that he was made subject to performance review, which Dr Blakeney had agreed to undertake on behalf of the PCT.

At that time, he was working at two practices in Kent, both part-time. One was David Grimes in Canterbury and the other was Vision Express in Tunbridge Wells. As part of her performance review, Dr Blakeney examined, as I have mentioned, 49 patient records from those practices between April and June 2004. Five of them were from Vision Express and 44 were from David Grimes. You have a full set of these patient record cards in your bundle. Dr Blakeney discovered that Mr Morelli recorded the cup disc ratio of 44 of them as 0.2. She conducted an audit of 1,265 of her own patient record cards and noted that only 20 per cent of them showed a cup/disc ratio of 0.2 where as Mr Morelli's figure, she estimates, was 90 per cent. Her audit was published in a peer reviewed journal and no point is taken by the AOP in relation to the veracity of the conclusions she reaches about it.

Dr Blakeney's concern was that Mr Morelli may not have been looking at the patients' fundi or, if he was, that he was not interpreting correctly what he saw. All the Council can say is that, whatever he saw or interpreted, he did not properly record that which he saw because he accepts that he did not see all of them having a cup/disc ratio of 0.2. I will come to the importance of all of this in the Council's opinion, if I may, which may help you to determine sanction, after I have dealt with the facts.

Dr Blakeney prepared a report for the Shepway PCT decision making group, which decided that Mr Morelli should be asked to undertake some additional training, concentrating on ophthalmoscopy techniques and record keeping. She recommended that Mr Morelli continued to be placed on performance review, which he was. It was as a result of the ongoing performance review that the allegations set out at 4, 5 and 7 came to light.

The fourth allegation is that between 1 and 4 December 2004, Mr Morelli examined three patients and his referral of those patients was inadequate in that they lacked sufficient detail to enable informed decision to be made about the management of those patients by other practitioners – primarily, the GP and the ophthalmologist. Mr Morelli accepts this.

In relation to patient RD, Dr Blakeney found that the patient had been referred for reduction in visual acuity. However, the referral letter did not contain sufficient detail to enable an ophthalmologist to prioritise treatment. In particular, Dr Blakeney was concerned that there were no previous visual acuities recorded; neither was the

duration of symptoms or the Amsler chart results. Although the patient was already under the care of the hospital, this was not mentioned.

In relation to patient MS, Dr Blakeney found that although it was good that this patient had been referred, the referral letter was inadequate in that it had no GP name or address, no patient address, no postcode or telephone number, and no name of the optometrist. She stated that, in the field box's results, Mr Morelli had put 'NAD' which, as you know, stands for 'nothing abnormal detected' while, in her expert opinion, this is not a recommended abbreviation and, more importantly, no plot was enclosed with the referral letter, despite this being straightforward to do, and good practice. She states that, rather than relying on the GP to complete these, it is important to include patient information details so that the hospital could contact the patient and make proper decisions about referral priority and so on.

In relation to patient MC, the third and last patient referred to in that allegation, Dr Blakeney states that Mr Morelli referred the patient for diplopia and lenticular changes, despite patient visual acuity being 6/5 and 6/6. Dr Blakeney states that it would be very difficult for an ophthalmologist to prioritise that patient without knowing more about her symptoms.

In relation to the fifth allegation, this is that Mr Morelli – and he accepts this – did not record the fact that this patient had a left convergent squint. In her report to the PCT about this matter, Dr Blakeney stated that Mr Morelli missed, as she saw it, the fact that this patient had a long-standing left convergent squint with associated amblyopia, which should have alerted him to that squint. She said, in the report which you have read, that the detection of such a squint would rarely be more obvious. I accept and concede, of course, that the allegation has now been amended to a failure to record it, but the Council does not know what Mr Morelli saw or did not see. All it can be persuaded of is that he did not record it. I think Mrs Kapila will deal with matters relating to his failure to record these matters more fully later, and they are set out in part in an expert report upon which she relies.

The last allegation follows very similarly a pattern of behaviour in relation to recording tests which Mr Morelli had in fact simply not undertaken. In relation to the 38 patients mentioned in the seventh allegation, Mr Morelli accepts that he recorded for each patient a slit lamp examination result of 'clear, right and left', and that he recorded for each patient a colour vision or Ishihara test, as being 'full, right and left'. You have read the report of Dr Blakeney about these matters and you know the conclusions to which she came, in terms of the unlikelihood of that being so. When you retire, if you wish to reconsider that report, I can tell you that you will find it in your bundle at page 421. It is a very short report. In view of Mr Morelli's admissions and acceptance that these matters amount to deficient professional performance, I will not address you further about that.

Bearing in mind all the admissions, the only matter that you have to consider – and you will be advised once you have heard from Mrs Kapila about these matters more fully by your Legal Adviser - is firstly whether you should impose a disciplinary order, i.e. a sanction, at all and, if you do, what that sanction should be. The Council says that this is a very serious case because it raises a number of issues in relation to patient safety and patient care.

In relation to the matters of misconduct, the first and second allegations, Mr Morelli accepts that he recorded results of tests which he had not in fact undertaken. All patients, and all other members of the profession, have a right to expect that what is recorded on a patient's record card is that which was found as a result of the test

having been undertaken. You will appreciate the importance of these baseline tests. Future optometrists need to be able to look at a patient record card, understand what the results of tests were at that point, and be able to consider the effect of any changes since the last examination. Only then can they properly assess what treatment a particular patient may need. Mr Morelli knew full well that he had not undertaken those tests and even Dr Laker, in the psychiatric report of December last year, makes the point that Mr Morelli would have known when he wrote those results down that they were not results which, in fact, he himself had obtained. The Council says that there cannot be many allegations which appear before you which are as serious as that one.

In relation to the other matters, the Council says that they are also serious because they reflect a deficiency in Mr Morelli's professional performance over a number of months, or in fact years or a year, in relation to a number of patients and in relation to a number of failures. When you take all of those concerns together, there is a real issue as to his ability properly to manage patients, so that you cannot have any confidence in his ability, such that he should be allowed to continue to practice.

When you consider the issue of sanction, you know that you must look at this as it were, bottom up. You must look at every sanction, starting with the least serious first, and consider whether the mischief you have found, and the concerns that you have, can be met by the imposition of that sanction. Only if the answer to that is no, can you go up tariff and look at the next available sanction to you. Any sanction you impose must be proportionate and you impose sanctions, of course, not for any punitive effect, though that may be the result of the imposition of it, but to uphold the high standards of the profession and to ensure public safety and confidence in the profession.

There is only one matter recorded to his detriment against Mr Morelli, and that is the matter to which I have already referred, which resulted in his erasure in 2002. You should, and I know you will, give him credit for the admissions which he has made.

Unless I can assist you further, that is all I propose to say.

Sir Alistair Graham: Thank you very much. Mrs Kapila?

Mrs Kapila: I do not have a great deal to say, other than to explain – as Mr Albuery knows – Mr Morelli's position. He has freely –

Mr Vere-Hodge: Can I just stop you there. Technically, we need to consider whether impairment has been proved before we move to sanctions. I know that Mr Albuery has dealt first of all with the question of facts and then moved to the question of sanctions. However, technically – and it may not be a technical matter – I need to advise the Panel that we must take the next step which is, notwithstanding the admissions, for the Panel to consider the evidence, consider the admissions, and to ask themselves whether they find that impairment has been proved.

Sir Alistair Graham: I therefore suggest that we hear the legal advice and then I suggest that we adjourn at that point and take the opportunity to have some lunch. After that we will reconvene at about 1.15 p.m., when you can make any further representations regarding the issue of sanctions. Would that be appropriate?

Mr Vere-Hodge: Yes. Mrs Kapila, do you accept that that is the next procedural step for the Panel - to decide whether impairment - ?

Mrs Kapila: Yes, I do.

Mr Vere-Hodge: The advice I give is that, notwithstanding the admissions made, each of the allegations 1-5, and 7, have to be considered by the Panel, as to whether they are proved. They can of course take into account the admissions made, but they then have to decide whether, individually and collectively, the behaviour complained of amounts to impairment within the terms of section 30(d)(2). That is the only consideration at this stage.

Mr Albuery: I wonder whether it would be helpful to remind the Committee that, at this stage, you are not looking at strict proof, following the decision in the *CHRE v Biswas* case. It is not a question of burden or standard of proof now, but it is an exercise of your professional judgment as to whether or not the matters which have been admitted do amount to misconduct or deficient professional performance and, thereafter, impairment. It is not a question of proof, as it would have been at the fact-finding stage.

Sir Alistair Graham: Thank you. Mrs Kapila, would you like to comment on that?

Mrs Kapila: No, I have nothing to add.

Mr Vere-Hodge: I would advise that Mr Albuery's analysis of the standard of proof is entirely right.

Sir Alistair Graham: I suggest that we adjourn now until 1.15 p.m. We will take the opportunity to have some lunch and also come to the conclusion on the issues currently before us at this stage. We will deal with the issue of sanctions, if it arises, at 1.15 p.m.

[Hearing adjourned at 12.50 pm and resumed at 1.30 pm.]

Sir Alistair Graham: I am sorry that we took rather longer than anticipated to finalise the formal decision. I can now announce the findings of the Committee in relation to the particulars of the allegation and the findings regarding impairment.

DETERMINATION

The determination of the Committee is that the Committee found particulars 1 (a), (b) and (c); 2; 3(a) and (b); 4 (a) and (b); 5, and 7 (a) and (b) of the allegation admitted and proven. The Committee found particular 6 (a), (b) and (c) of the allegation not proven.

The Committee announced its decision as follows:

Findings in relation to the particulars of the allegation

"The Committee finds Mr Morelli guilty of deficient professional performance in regard to allegations 1(a), (b) and (c); 2, 3(a) and (b), 4 (a) and (b), and 7 (a) and (b), which amount to impairment. With regard to allegation 5 we find Mr Morelli guilty of deficient professional performance only.

Findings regarding impairment

On findings regarding impairment, the Committee found that the fitness of Mr Morelli to practise as an optometrist is impaired.

The Committee announced its decision as follows:

The Committee feel that the honesty and professional integrity were found to be seriously lacking in that Mr Morelli claimed that he had carried out clinical tests that were not actually performed. This cast grave doubt on the accuracy of other information on his record cards, including cup/disc ratios, which represented a threat to patient safety. Mr Morelli also failed to provide sufficient detail for three patients as identified in schedule C in the referral letters to a consultant ophthalmologist, which may have compromised the patients' treatment."

Following that decision, this brings us on to the matter of sanction. We would like to take evidence regarding that. Would you like to start on that?

Mr Albuery: May I just ask for clarification upon your determination. I may have misheard it or written it down wrongly, but we both think that you may have said, in relation to the first allegation and possibly even the second that you found Mr Morelli guilty of deficient professional performance. In fact, those allegations are said by the Council to amount to misconduct and not deficient professional performance.

Sir Alistair Graham: I see – we clearly should have drawn a distinction between –

Mr Albuery: It is quite an important distinction.

Sir Alistair Graham: Yes.

Mr Albuery: In relation to the first and second allegations, he is guilty, and admits to being guilty, of misconduct, but that is quite different from deficient professional performance, which is – as I mentioned in my opening – the basis for the impairment in relation to the other four.

Sir Alistair Graham: We were not intending to make any distinction – I think that is a mistake in us writing it.

Mr Albuery: I hope you do not mind my mentioning it.

Sir Alistair Graham: Not at all. I am glad you have. Would you be happy for us to get that written up before the Panel ends its work?

Mr Albuery: Yes, of course.

Sir Alistair Graham: We will make sure that that is correctly written up, to draw that distinction between professional misconduct and deficient professional performance.

Mr Albuery: Thank you. So far as your invitation to address you further is concerned in relation to sanction, I have said all that I can properly say on behalf of the Council in relation to sanctions, unless you think there is something I should have said but which I have not.

Sir Alistair Graham: No, not at all. Mrs Kapila?

Mr Kapila: I should point out that, for reasons that will become obvious, Mr Morelli has indicated that he cannot attend this hearing to say anything on his behalf in person,

because he is fearful of the impact it would have on his condition, to which I shall refer in due course.

He has freely admitted the allegations that we have indicated against him. He appreciates that his fitness to practise, in particular, is impaired because of his actions, and that there are of course public protection issues. However, he would like the Committee to be aware that what comes before the Committee, in terms of these admissions, is not based on any bad intent or dishonesty on his part, but for reasons that I will now elucidate.

You have before you confidential reports from a consultant forensic psychiatrist, Dr K Laker. *[Mr Henley distributes copies]* I will go through this report as briefly as I can because, obviously, it is before you and known to you. You have seen from the reports before you that Mr Morelli is not in a fit condition in certain respects, and I will now go to the second report dated 20 December 2006. At page 2, where the substance of the report begins – or prior to that, perhaps I should refer to 1.2 on page 1, which says:

- 1.2 “I have been instructed to address the issue of the impact which Mr Morelli’s mental health problems may have had on his practice as an optometrist, and to consider the question of any treatment required by Mr Morelli and the long-term prognosis of his condition.”

Mr Morelli wishes this evidence to be put before the Committee. On page 2, under ‘Commentary’, Dr Laker refers to counts 1 and 2, the failure to undertake optometric tests which were recorded as having been undertaken; slit lamp, Lang stereo and Ishihara and visual field tests. He states:

- “2.1 The records seem meticulously completed and very detailed. In every case, they have almost identical formats. All I think one can say about this is that such a style of recording would be entirely consistent with Mr Morelli’s obsessive nature. If Mr Morelli did not carry out some or all of the examinations he has recorded (as the Council alleges) then I think it quite likely, given Mr Morelli’s mental condition, that his perfectionistic compulsion to demonstrate that he had carried out every test (not missing anything) would very likely have overridden any sense he might otherwise be expected to have had that not every test needs to be done in every patient, nor that anything was wrong in writing on the record card “not done”, or “not completed”. Additionally, the compulsion might well override any sense he might have of malpractice in so doing.

Count 3 (records of cup/disc ratio in 44 patients improperly performed or not performed)

- 2.2 I advise that the recording of these 44 patients, as having identical cup/disc ratios of 0.2 rated as extremely unlikely by Dr Susan Blakeney is also consistent with his obsessive compulsive disorder. The explanation I favour is that he again felt compelled to complete every test in every patient and to make the record, without an omission, indicating that he had done this. This, for him, seems to have become the central exercise, overriding the need to record his findings more carefully and accurately. It is likely that Mr Morelli was extremely anxious to simply get through the clinical work and complete the consultation with the patient (the accuracy of his findings becoming a secondary consideration and of lesser importance). I assume that he chose the figure of 0.2 because, according to Dr Blakeney’s audit of C/D ratios in 1,265 patients, a ratio of 0.2 appears to be the modal figure. If Mr Morelli felt

that he did not have the time or the competence to measure the ratio accurately (or was under too much anxiety to concentrate on it at the time of the examination) then 0.2 would be a “guess” that might be correct more often than not.

- 2.3** The corrections of the figure 2 (in 0.2) to 4 (0.4) in the records of [*names withheld*] suggests to me that Mr Morelli felt initially compelled to enter 0.2 but then, noting the history of glaucoma, changed it to a higher figure (0.4). Another reason for this behaviour (consistent with his obsessive compulsive disorder) is that Mr Morelli had by this time lost all self-confidence in his ability to make a reliable estimation of the cup/disc ratio, perhaps because he appreciated that he was so much under the control of his obsessional approach to clinical practice. He was unable to resist the compulsion (or, at least, if he attempted to do so would experience even greater anxiety and wished to avoid this) because he would then have to make an authoritative and professional assessment for which he would be accountable. Rigidly adhering to his ritualistic way of doing things and blindly guessing the reading helped him feel safer than if he attempted to overcome the compulsion and exercise real judgement.

Count 4 (making inadequate referrals)

- 2.4** Mr Morelli’s obsessive compulsive disorder would not, in itself, make it difficult for him to communicate with other professionals. However, I imagine that Mr Morelli had so little confidence in his clinical abilities (placing little faith in his own findings or ability to formulate the presenting problem from the results of his assessment) that he did not bother to include such information with the referral. It seems clear to me that, as a result of his mental disorder, he was severely underperforming and probably quite unable to master the necessary clarity of thought required to formulate a case and make an adequate referral. Because of his perfectionistic and over-inclusive approach, he was probably quite at a loss to know what to put in the referral letter and what to leave out (in terms of what assessment and findings he had managed to gain of the patient in question).

Count 5 (failure to detect a squint in patient JV)

- 2.5** I am somewhat hampered here by not having received in my bundle the comments of Dr Susan Blakeney on the examination of patient JV. I see that there is a note which appears to be written by Dr Blakeney. This suggests that the presence of a squint in the patient was “obvious”. The deficient performance is likely to be in direct relation to his mental disorder, in that Mr Morelli was blinded to what should have been clinically obvious by his slavish compulsion to the stereotyped clinical approach he adopted in every case – such that he was unable to see the wood for the trees.”

Could I ask you to ignore his comments with regard to Count 6, because that charge has been withdrawn.

Count 7 (failure to properly undertake Slit Lamp and Ishihara tests and/or to assess their results)

- 2.7** The alleged failures here (which are gone into in great detail in Susan Blakeney’s report of 29 July 2005, pages 335 and 336, tab 86, divider F) square entirely with Mr Morelli’s obsessive compulsive illness. Her report well

illustrates how his disorder drove him to perform his assessment in an automatic, unthinking fashion, so that (to use her words) his overriding aim was “to produce a good record card” and not an accurate representation of the consultation. Her report demonstrates his over-inclusive approach, such that he often performed tests which were inappropriate, added no clinical value and were irrelevant to the individualities of the particular case. It was in this way that some of the nonsensical results of his recordings were arrived at by Mr Morelli.

3.0 Conclusions

- 3.1 In conclusion I consider that Mr Morelli’s obsessive-compulsive mental disorder is highly relevant to all the allegations. What his level of professional competence was when not so afflicted (or not to the same degree) is a matter upon which I cannot comment. Undoubtedly, to my mind, his obsessive-compulsive disorder was a key factor in his allegedly deficient professional performance.
- 3.2 In relation to the two allegations of professional misconduct, while the presence of his mental disorder would not excuse his dishonesty in making a record of a test that he had not performed (in that he would have been aware that what he was doing was professionally deceitful), nonetheless, such alleged behaviour was, in my opinion, inextricably linked to his fear of not completing the full ophthalmic examination in every patient he saw, which had become a compulsion for him.”

So there, he is perhaps explaining the point regarding the dishonesty of the recording.

“His overriding fear would seem to have become one of being “discovered” that he was not a careful and competent optician and, therefore, in danger of being subject to further disciplinary proceedings. It would seem that he soldiered on in order to give the appearance of being a thorough and painstaking clinician who could never be criticised for “forgetting to do a test” whilst, at the same time, totally losing the plot in relation to an individual patient’s symptoms and their assessment.

- 3.3 I have been asked to address in this report what treatment might help Mr Morelli and the long-term prognosis of his disorder. The standard treatment for obsessive-compulsive disorder comprises regular prescribed medication (antidepressants in higher doses than are normally used for the treatment of depression), often combined with psychological therapies. The psychological therapies that are most effective are cognitive-behavioural in approach. They are usually administered by a psychologist, appropriately trained in such techniques, and conducted in individual sessions with the patient. The treatment often requires homework for the patient to perform in between sessions. The technique most commonly adopted is that of “exposure/response prevention” in which the patient receives education about their disorder and is taught methods of opposing or challenging their obsessional thoughts/fears and of actively resisting the compulsive and ritualistic behaviours arising from them. Thus the therapy is conducted at both cognitive and behavioural levels.
- 3.4 Obsessive-compulsive disorder, in adults, tends to be a chronic condition with a remitting and relapsing course. In moderate to severe cases, the condition seldom remits entirely. The outcome from treatment is variable. With highly

motivated patients, some degree of improved control over the obsessions and rituals can normally be achieved.

- 3.5 In the case of Mr Morelli, he was prescribed antidepressants at the time of my interview and may still be taking them. He is also on the waiting list for psychotherapy.”

We have just heard that he will be starting psychotherapy on 28 February.

“I have no knowledge of what form such psychotherapy will take and whether it will be appropriate to his disorder and helpful to it. I am under the impression that it might be psychodynamic in nature which would, in my opinion, be less helpful to his disorder.

- 3.6 The problem with Mr Morelli is that his obsessional compulsive disorder, while initially at its most prominent in the domestic environment (as regards his cleaning and checking household rituals) now seems to have generalised to the occupational sphere. I would surmise that it would be very unlikely that he could progress in improving his occupational performance, unless he can demonstrate, first, better control of his symptoms in the domestic environment. Moreover, effective treatment of an obsessional disorder within an occupational setting would require a great deal of mentoring, supervision and support and involve a large element, effectively, of retraining. There is a particular problem, it occurs to me, as regards the independent practitioner status of optometry which would not be as relevant, say, to a clinician who was working in a team and under regular supervision/appraisal by more senior staff.

- 3.7 For the information of the Council I append to this report the entry for obsessive compulsive disorder (category F42) in the International Classification of Mental and Behavioural Disorders – 10th Revision (World Health Organisation):

“The essential feature is recurrent obsessional thoughts or compulsive acts. Obsessional thoughts are ideas, images or impulses that enter the patient’s mind again and again in a stereotyped form. They are almost invariably distressing and the patient often tries, unsuccessfully, to resist them. They are, however, recognised as his or her own thoughts, even though they are involuntary and often repugnant. Compulsive acts or rituals are stereotyped behaviours that are repeated again and again. They are not inherently enjoyable, nor do they result in the completion of inherently useful tasks. Their function is to prevent some objectively unlikely event, often involving harm to or caused by the patient, which he or she fears might otherwise occur. Usually, this behaviour is recognised by the patient as pointless or ineffectual and repeated attempts are made to resist. Anxiety is almost invariably present. If compulsive acts are resisted the anxiety gets worse.

DCR-10

- A. Either obsessions or compulsions (or both) are present on most days for a period of at least two weeks.
- B. Obsessions (thoughts, ideas or images) and compulsions (acts) share the following features, all of which must be present:

- (1) They are acknowledged as originating in the mind of the patient, and not imposed by outside persons or influences;
 - (2) They are repetitive and unpleasant, and at least one obsession or compulsion that is acknowledged is excessive or unreasonable must be present;
 - (3) The patient tries to resist them (but resistance to very long-standing obsessions or compulsions may be minimal). At least one obsession or compulsion that is unsuccessfully resisted must be present;
 - (4) Experiencing the obsessive thought or carrying out the compulsive act is not in itself pleasurable. (This should be distinguished from the temporary relief of tension or anxiety).
- C. The obsessions or compulsions cause distress or interfere with the patient's social or individual functioning, usually by wasting time.
- D. *Most commonly used exclusion clause.* The obsessions or compulsions are not the result of other mental disorders, such as schizophrenia and related disorders or mood (affective) disorders.”

This is put before you as mitigation on behalf of Mr Morelli, so that the Committee has an idea of his mental condition in relation to the allegations. In that context, for instance, the dishonesty point is put against the medical background, so that it is not in fact dishonesty as we would normally see it.

Obviously, as has been indicated to Mr Albuery, not every part of the bundle of documents before you has been accepted. However, it is not necessary for us to go into that since we know that Mr Morelli has admitted the allegations to the Committee. I would only state further that, in terms of fact, Mr Morelli is not currently working. In relation to any sanction that the Committee wishes to impose on Mr Morelli, I would remind the Committee that he has freely admitted the allegations in relation to deficient professional performance and fitness to practice and everything else that you have heard earlier. He is not trying to make any attempt, even with his medical background, to justify anything he has done, but merely to explain to you today the reasons behind the admissions he is making. I would submit that any sanction that the Committee wishes to impose against him should, as Mr Albuery has pointed out, be a matter of patient protection, which he fully recognises, rather than punitive in nature.

Sir Alistair Graham: Thank you. Did you want to say anything further in response to that?

Mr Albuery: No, thank you.

Mr Vere-Hodge: I should probably just announce the advice that I give to the Panel at this stage in the hearing. I will advise the Panel to give credit to Mr Morelli for his admissions in this particular case, not only of the factual allegations but also of his impairment. The Panel should take into account the contents of the psychiatric report from Dr Laker dated 20 December 2006, to decide firstly whether any sanction is necessary at all and then to work from the least sanction upwards. They are set out in reverse order in Section 13(f)(3), running from C, to B to A, at page 27, in severity. There is also the power to impose a financial penalty under 13(h). It is a matter for

the Panel as to whether find that appropriate in the light of what is said, but Mr Morelli is not working. That is the advice that I give.

Mr Albuery, would you like to add anything?

Mr Albuery: No, thank you.

Mr Vere-Hodge: Mrs Kapila?

Mrs Kapila: No, thank you.

Sir Alistair Graham: Before we break to consider the issue of sanctions, just so that we have the record absolutely straight on the earlier point that Mr Albuery raised, can I read out a revised first part of the determination relating to the allegations.

REVISED DETERMINATION

The Committee found particular 1(a), (b) and (c); 2; 3(a) and (b); 4(a) and (b), 5 and 7(a) and (b) of the allegation admitted and proven. The Committee found particular 6(a), (b) and (c) of the allegation not proven.

The Committee announced its decision as follows:

“The Committee finds Mr Morelli guilty of misconduct in regards to allegations 1(a), (b) and (c) and 2, and Mr Morelli guilty of deficient professional performance in regard to allegations 3 (a) and (b); 4 (a) and (b) and 7 (a) and (b), and which amount to impairment. With regard to allegation 5, we find Mr Morelli guilty of deficient professional performance only.”

The remainder of the decision that I announced earlier stands, but this is a modification to fully reflect the original allegation, just so that the record is clear about that.

Thank you very much. If we could clear the hearing room, we will come to a view on the question of sanctions.

[Hearing adjourned at 1.55 pm and resumed at 2.27 p.m.]

Sir Alistair Graham: Thank you. The first thing we have to do is for the Legal Adviser to explain what legal advice he gave us during our deliberations.

Mr Vere-Hodge: The first matter that came up was the status of the interim suspension order which had been imposed earlier on Mr Morelli and I have advised the Panel that, before coming to the sanction that they have, that interim order has to be revoked. Then, I have advised the Panel of its power under 13I(1), which allows the Panel, if it thinks right, or the Fitness to Practise Committee, as it is better known, if satisfied under 13I(1), the powers of ordering immediate erasure. I have given that advice to the Panel.

Is there anything Mr Albuery that you want to say about either of those two matters?

Mr Albuery: No, thank you.

Sir Alistair Graham: Mrs Kapila?

Mrs Kapila: No, thank you.

Sir Alistair Graham: Can I announce the decision of the Committee.

FURTHER ORDER

The further order is that the Committee as a first step revoke the current interim suspension order. The Committee announces its decisions as follows.

“In coming to a decision, the Committee has taken into account Mr Morelli’s admissions and the medical report from Dr M K Laker of 20 December 2006. We have considered whether any sanction is necessary and we have decided that the only sanction appropriate is that of erasure from the Register of Optometrists. The decision has been taken because of our over-riding concern in the interest of patient safety. The erasure order, as provided under 13l(1) shall take effect immediately. We are satisfied that to do so is necessary for the protection of the members of the public and is otherwise in the public interest.”

Thank you all for attending.

[The hearing concluded at 2.28 p.m.]