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

GENERAL OPTICAL COUNCIL

AND

**SAMIR PATEL
(01-22267)**

**SUBSTANTIVE HEARING
Friday, 23 March 2007**

**FITNESS TO PRACTISE COMMITTEE SUBSTANTIVE HEARING:
SAMIR PATEL (01-22267)
Friday, 23 March 2007**

Fitness to Practise Committee: Ms F Jones (Lay)
Ms M Hallendorff (Lay)
Mrs C Kershaw (Lay)
Ms J McCrudden (Optometrist)
Mr P Reeves (Optometrist)

Legal Adviser : Mr D Swinstead

Hearings Manager: Mr D Henley BEM

For the GOC: Mr J Foster
Mrs C Withall

For the Registrant: Mrs S Kapila

[Proceedings commenced at 9.55 am]

Ms Jones: Good morning. I am Fran Jones, the 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. I will ask the Committee members to introduce themselves and the capacity in which they sit, commencing on my left *[introductions made]*. To my right is Mr Swinstead, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee and will 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 on 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, Fiona Shipley, who will be keeping an official record of all that is said today during the sessions of the hearing at which the parties are present. Next to the transcriber is Mr Henley, the Hearings Manager, who will provide administrative 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 any patients are to be discussed, those patients should only be referred to by their initials.

I note that we are starting today's procedures at five minutes to ten, when we were due to start at 9.30 am. Can I invite all parties in future to resolve as many items as possible before the proper start time? Thank you.

Can I therefore invite the registrant, or their representative, to present the application today?

Mr Foster: Madam, there is a very brief application from the Council, and it is in respect of the allegation. This is an application that I have spoken to my learned friend about and, indeed, your learned legal assessor about, and it is regarding the wording of the allegation. There are a number of very minor changes. I hope that they do not affect the sense of the allegation in any way, but they certainly make it a more elegant allegation for you to consider. So may I take you through them? [Yes]. You will see under Particular 2 of the allegation, it starts:

“Between 16 August”

That must be 16 August 2005, as indeed it is in Particular 1. That is the time period, and unfortunately that was missed out. I apologise for that.

If you look at (ii) of Particular 2, where it says:

“signed and provided your GOC Registration”

Again, I must apologise, that is a typo, it ought to be: “signed and provided his GOC Registration”.

If I could direct you to (iii), in the last sentence, where it says:

“at a time when he was not registered”

I would be grateful if that could be changed to “Mr Patel was not registered” to avoid any possibility of confusion that this might relate to the patient.

The last change that I would ask that you make is, where it says:

“AND in the light of the above Mr Patel’s fitness to practise is impaired.”

If you could strike through that, because of course the allegation begins “the fitness to practise is impaired by the following”, so it is, indeed, otiose.

If you are happy with those changes, Madam that would be my application.

Ms Jones: Can I just check, Mrs Kapila that has been agreed?

Mrs Kapila: I have no problems with those amendments.

Mr Swinstead: Madam, I should perhaps just advise you that you may, under Rule 34, grant such an application where you are satisfied that it is just so to do. But I think you have heard that both parties agree, so I don’t think there is any difficulty.

Ms Jones: Okay. I accept those, thank you.

Mr Foster: I am grateful, Madam.

I understand that there are no further applications at this stage, Madam. You may wish the new Charge to be laid out in the transcript. I am sure Mr Henley would be happy to do that.

Mr Henley: “1. Between 16 August 2005 and 20 February 2006 Mr Patel tested the sight of persons at a time when he was neither registered as an optometrist nor appropriately supervised;

2. Between 16 August 2005 and 20 February 2006 Mr Patel held himself out to Wolverhampton City PCT as a registered optometrist in order to obtain payments to which he was not entitled, in that he;
 - (i) countersigned GOS 1 Forms detailing sight tests performed by another member of staff at Ideal Eyes, Wolverhampton, and submitted them to Wolverhampton City Primary Care Trust for payment at a time when he was not registered as an optometrist;
 - (ii) signed and provided his GOC Registration number in Part 1 of GOS 3 Forms at a time when he was not registered as an optometrist;
 - (iii) signed GOS 4 Forms indicating that the person to whom the form related was entitled to receive a replacement pair of spectacles or contact lenses at a time when Mr Patel was not registered as an optometrist.
3. For the reasons set out above, Mr Patel is guilty of misconduct.”

Mr Foster: Madam that Charge is subject to the preamble:

“That the fitness to practise of Samir Patel (a registered optometrist) is impaired by reason of the following:”

Ms Jones: Can I invite, then, the registrant to indicate whether the particulars set out are admitted?

Mrs Kapila: Chairman, some of the particulars are admitted. It is not admitted that the fitness to practise of Samir Patel is impaired, but it is admitted that between 16 August 2005 and 20 February 2006 he tested the sight of persons at a time when he was not registered as an optometrist.

In respect of No. 2, it is admitted that between 16 August 2005 and 20 February 2006 he :

- (i) countersigned GOS 1 Forms detailing sight tests performed by another member of staff at Ideal Eyes, Wolverhampton, and submitted them to Wolverhampton City Primary Care Trust for payment at a time when he was not registered as an optometrist;
- (ii) signed and provided his GOC Registration number in Part 1 of GOS 3 Forms at a time when he was not registered as an optometrist;
- (iii) signed GOS 4 Forms indicating that the person to whom the form related was entitled to receive a replacement pair of spectacles or contact lenses at a time when he was not registered as an optometrist.

Mr Patel does admit that he is guilty of misconduct on the basis of those admissions.

Mr Foster: Could I just clarify that that is between 16 August 2005 and 20 February 2006 as charged?

Mrs Kapila: Yes, of course.

Mr Foster: Could I start, Madam, by apologising for the lateness of our start on behalf of the Council. I can tell you that the Council has been trying for a couple of weeks to reach agreement on these matters and had always understood that Mr Patel intended to admit these matters. Unfortunately, it was difficult to understand on what basis, and I hope that my opening will clear that up.

Mrs Kapila: Chairman, in that context, I am so sorry to interrupt. I also ought to explain the delay on our part. It is not a delay for any other reason except we were trying to agree evidence that we were putting together in a short period of time and which we now understand probably will not be necessary.

Mr Foster: Madam, you have heard the allegation. You have heard that a lot of it is admitted, and generally you would hear from me that the burden of proving the facts lies on the Council. You don't have to concern yourself with that today, but those facts are essentially proven. However, the one issue that will be of concern in relation to those facts is whether or not those facts in any way amount to dishonesty or intention to practise whilst off the register. I will tell you what I have told my friend over the last couple of weeks, which is that at no time does the Council say that Mr Patel was off the register and received payment, or tested sight, dishonestly, or indeed that Mr Patel intended in any way to be off the register and continue to test sight.

This case is put on the sole basis that there is a responsibility on a registrant to ensure that he himself is registered before he tests sight and before he applies for payment. As you will hear in the opening, and as you will hear as I take you briefly through the evidence, there are reasons in Mr Patel's own history why he ought to have been more alert to his registration status for his own personal reasons.

The point is clearly this, Madam, that it will be a matter for you to decide first of all in your own professional judgement whether not being registered and carrying on practising in the circumstances that Mr Patel did, is misconduct, although that is admitted, that is still a matter for you, the Committee, to satisfy yourselves of, and whether it is a matter that impairs his fitness to practise, and you will hear submissions regarding that at the appropriate stage. I want to clarify from the very outset that there has never been any part of this charge that involves a charge of dishonesty or that involves a charge intention.

I had hoped to be able to read all of the statements to you because of the admissions that are made. In fact, I was not able to do that because that final agreement was not made until this morning, so there is one witness of fact who will be here and I intend to call him to give evidence to you only on the basis that we could read out his statement, but having got him this far the Committee may have questions for him. He certainly won't go beyond the ambit of his statement.

Madam, it falls to me in this situation to very briefly summarise the facts in order to contextualise the decisions you are going to have to make at later stages. There are two particulars of this allegation before you and the reason that there are two particulars is that they are to distinguish between two separate mischiefs. The Council say on the one hand an optometrist ought to not test the sight of people when they are not on the register, and clearly the concern there, is a misrepresentation to the patient of the practitioner's registration status. Clearly, as I have said already, we are not claiming this is a fraudulent misrepresentation, but mischief is a misrepresentation nonetheless.

The second allegation is to deal with the fact that a practitioner ought not to seek payment in relation to the services that they provide from the PCT unless they are on the register, and again the mischief there is the misrepresentation to the PCT. Again not fraudulent, but again distinguishable from misrepresentation in the first allegation. I would ask that you, as I am sure you will be advised by your Legal Adviser, when you come to consider those two particulars separately, that is the reason why they both appear on this allegation at all.

You will hear that between 16 August 2005 and 20 February 2006 Mr Patel was not registered. You will hear that his name was removed from the register due to a failure to provide the Council with evidence that he had a requisite policy of insurance in place which, of course, is a requirement of practising as an optometrist. This is admitted.

You will also hear that since first registering as an optometrist in September 1995, Mr Patel's name has been removed from the register seven times, mostly for non-payment of fees, and in that 11 or so years, he has been off the register for approximately 26 months. It is very important to stress at this stage that he is not charged with practising whilst unregistered prior to 16 August 2005. The Council does not introduce this evidence in order to suggest there is any reason to suspect before that time that he was doing anything wrong by being off the register. The only reason for introducing this evidence to you is to highlight the fact that with a history of having ones' name removed from the register and seeking to re-apply in order to have it back on as often as Mr Patel has, he ought to be more alert and more aware of the possibility that his name could be removed from the register, and therefore potentially take slightly more care than he might otherwise expect, to ensure that he is registered.

The Council is not suggesting that Mr Patel has to take any more care to ensure his registration than any other reasonably competent optometrist, simply that we would not wish the impression to be made on this Committee, that this were a one-off event that was quite understandable as some sort of one-off administrative failure. So that evidence is introduced entirely on that basis.

You will hear evidence that Mr Patel continued to test sight during the period. It is admitted and you don't need to find on the facts that he did that because that has already been proven, but it will still be for you to satisfy yourself that that was a misconduct, and so you will hear how it is that we come to know that he was testing sight.

You will also hear that he countersigned GOS forms detailing sight tests performed by other staff members, that he signed and provided registration numbers on GOS forms relating to his own practice during the period and that he received payments to which he was not entitled. Again, we would stress this is not dishonesty. However, we would ask you to consider the impact on the provision of health care of people who essentially undergo these sort of administrative difficulties.

There is going to be one live witness. I have told you why he is here rather than his statement being read. He is called Tim Sadler. He is the Chief Internal Auditor and Local Counter-Fraud specialist from Wolverhampton PCT. I hope he will be of assistance in explaining the GOS procedure in brief to you. He will give evidence of admissions made to him when he interviewed Mr Patel on this subject, and you will hear that Mr Patel fully admitted all the facts that he is charged with on 20 March 2006.

In addition, I will read into the transcript, if that is acceptable to you, Madam, the statement of Peter Coe which will establish the registration history of this registrant. In addition to that, I have given my friend this schedule, which I have created, taken from the statement of Mr Coe and I am going to hand it up to the Committee simply for a visual aid for you in being able to see what dates we are talking about should these come up during the course of the hearing. I would be grateful if these could be handed up.

[Document handed to committee]

Mrs Kapila: This has been handed to me this morning. I haven't had the opportunity to check it against Mr Coe's statement, so if the Committee could bear that in mind. When I wish to go through it I will be looking at the statement itself. Thank you.

Mr Foster: Madam, we are at a slightly unusual stage of proceedings in that you will hear evidence of fact before you retire or make your decision on facts. Although you know that the decision on facts is that they are admitted and proven, this evidence that you are about to hear is simply to enable you as a professional Committee to form a professional judgement. When you come to consider the later stages, you will receive advice and submission at those stages, clearly the Council's position is that this is misconduct, and indeed misconduct is admitted, that a registrants' fitness to practise is impaired by an inability to comply with the rules even though that inability falls short of dishonesty.

Madam, apart from that I have no further comments to make in opening. If the Committee is ready, I could call Mr Tim Sadler to give his evidence.

Ms Jones: Are you happy to proceed? Please do.

Mr Foster: I am grateful.

MR TIM SADLER called and affirmed
Examined by **MR FOSTER**

Mr Foster: Could you give your full name?

Mr Sadler: Timothy Sadler.

Q. Can you help us with what your occupation is?

A. Yes, I work for the NHS. I work for the West Midlands Ambulance Trust as a Chief Internal Auditor and Local Counter-Fraud Specialist, and I fulfill those roles for the Ambulance Trust and also for Wolverhampton City Primary Care Trust.

Q. Let me take you through that, because I am vaguely aware of the ambit of your responsibility, but I would like to be clear on it. You are Chief Internal Auditor and Local Counter-Fraud Specialist for the Trust?

A. For the Primary Care Trust, yes, I am indeed.

Q. What does your role involve?

A. Right, the first role is to manage the internal audit service for the Primary Care Trust, reporting to the Audit Committee, and therefore delivering specific audits against an internal audit plan. The second role, as Local Counter-Fraud Specialist, is defined by Secretary of State directions. Each NHS body is required to have a Local Counter-Fraud Specialist. It has always been accredited by the Counter Fraud Service and it

mainly involves giving presentations to raise awareness amongst people about fraud and fraud detection and prevention, and investigating any frauds that are brought to my attention or which I find myself.

- Q.** Is that solely in an optometric setting, or is that across the entire –
- A.** That is across the entire activities of the Primary Care Trust. So that is its relationship with all four primary care professions, its own employees, its suppliers.
- Q.** That must make you quite a busy man.
- A.** Indeed, yes.
- Q.** You are aware, aren't you, that you are here before the General Optical Council in relation to a particular aspect of your role?
- A.** That's right.
- Q.** Can you help us with the aspect of your role as it touches optometric practise?
- A.** One of the procedures I set up was a pre-payment check of the GOS vouchers and claims submitted to the Primary Care Trust each month for two reasons. One - to check that they comply with the regulations and secondly I am doing some statistical analysis to develop some statistics on performance - identifying the outliers. This is mainly because the PCT can't afford the resources to do post-payment verification checks on a cyclical basis, so we have agreed that in time we will use these statistics to decide whether there are any particular opticians that we wish to ask questions about why there are outliers.
- Q.** So let me examine very, very briefly that answer you have given. Does that mean that is part of your role as the Chief Internal Auditor?
- A.** No, that is part of my role as Local Counter-Fraud Specialist.
- Q.** That role as you have explained it involves auditing across the board, all GOS forms that were being submitted?
- A.** I audit about one, two or three practices a month, depending on their size. Obviously, if Boots is selected, I tend to concentrate just on them because of just the sheer scale of activity, but if it is the smaller practices I might do three a month.
- Q.** How long has this audit been taking place?
- A.** We started last April to do the statistical analysis, but I have actually been reviewing claims on a monthly basis for about three years now, I think.
- Q.** About three years, and you say you pick up to three practices a month?
- A.** Yes.
- Q.** On what basis do you pick those practices?
- A.** In order from the list of contractors just to try and cover everybody over the period of time.
- Q.** Is this at random, or is this picking specific practices that you are concerned about?
- A.** This is purely at random. The idea of statistical analysis is to see if there are any concerns emerging, but we haven't got that far yet, we haven't done a full twelve months.
- Q.** I am grateful. Were you conducting this audit in January 2006?
- A.** I was.
- Q.** Did you pick practices to audit during that time?

- A.** I did, yes.
- Q.** Can you tell me the practices that you picked; any of them that may be relevant to this Hearing?
- A.** Yes, the practice of Ideal Eyes, Mr Patel, was one of the ones that I was looking at. Claims submitted in December that we would be paying in January.
- Q.** I am grateful. So in January 2006 Mr Patel's practice, Ideal Eyes, was one of those picked?
- A.** Yes.
- Q.** Was that picked at random, or was that picked for a particular reason?
- A.** No, picked totally at random.
- Q.** I am grateful, and did you conduct an audit of the GOS forms submitted by Mr Patel during that period.
- A.** I did, yes. I carried out all the usual checks that are carried out on the forms to make sure that they had been completed correctly, and that included checking that the person carrying out the eye test was registered with the Optical Council.
- Q.** What was the result of your audit?
- A.** I had no concerns, other than the fact that when I checked on the Optical Council's Website the forms clearly show that the sight tests had been carried out by somebody who wasn't currently registered with the Optical Council.
- Q.** Who was that person?
- A.** The sight tests had been carried out by Mr Patel and another person whose name eludes me. Some of the tests had been carried out by Mr Patel himself.
- Q.** Who was the person who was unregistered?
- A.** Mr Patel.
- Q.** In addition to sight tests that he had carried out, during the course of your audit did you see any other reference to Mr Patel's registration status?
- A.** Yes, there were forms submitted for the dispensing of glasses and repair and replacement of glasses. On the former, the prescriptions, some of them were signed by Mr Patel to show that he had carried out the sight test.
- Q.** Can you help me very briefly? Can you tell me the names of the forms that you say were signed by Mr Patel when he oughtn't to have signed them?
- A.** Yes, there are GOS 1 Forms, which are sight test forms, there are GOS 3 Forms, which is the dispensing of glasses, for people who are entitled to free glasses under the NHS as well, and that contains the prescription signed by the optician who carried out the sight test, and the GOS 4 Forms which are repair and replacement, which means somebody has broken or lost their glasses and is entitled to a replacement on the NHS.
- Q.** In front of you, Sir, you have a bundle and you will see in that bundle, I am sure the Committee will see, there are a large number of GOS forms exhibited by you. They should be there between Pages 21 and 246. Obviously I am not going to take you through each one of these individually, but are these the GOS forms that you considered during the course of your audit?
- A.** They are, yes.

- Q.** Can I help you, or can you help me? I am going to do this rather at random myself. Could you have a quick look at Pages 54 and 55? Could you tell me, for example, what this form is?
- A.** Yes, this is a GOS 1 which the patient completes to say that they are entitled to a free NHS sight test. Then the patient signs a declaration to say that they are entitled to that sight test, having given the reason why the NHS pays for their sight test above.
- Q.** I understand these forms are on two pages in this bundle. Would they be on two pages, or would this be –
- A.** No, this is the front and back.
- Q.** Of the same form?
- A.** Yes. So this actually represents what the form would look like in reality. It is the front and the back of one document.
- Q.** I am grateful, and if you look at the back of Page 55, then, is that the back of Page 54, would you say?
- A.** Yes.
- Q.** Now, I am going to ask you to look down to the declaration at the bottom of Page 55. Who fills out this part?
- A.** That is signed by the practitioner to say that they have carried out the sight test.
- Q.** On this particular form, who do you –
- A.** I'm sorry they are entitled to payment for the sight test.
- Q.** I am grateful. On this particular form, who do you say that was?
- A.** That is Mr Patel.
- Q.** Can you help us with what registration status Mr Patel would have to have in order to sign this form?
- A.** There are two signatures on this form. The signature in the middle would be signed by somebody registered with the Optical Council, or should be registered with the Optical Council, and who has carried out the actual sight test. The signature at the bottom is the contractor who was contracted with Wolverhampton City Primary Care Trust and who will be paid for the sight test.
- Q.** Right, and would the person signing on behalf of Ideal Eyes be entitled to that money if the person who carried out the sight test was not registered with the General Optical Council?
- A.** No, and furthermore, because of the deregistration we decontracted, if I could use that expression, we cease to contract with the business at all, so no NHS activity should have been taking place in the practice even by a registered optician because we didn't have a contract with anybody.
- Q.** We have reached the point of your audit where you have identified that this happened. Were you able to identify at that stage how much money had been paid out as a result of this?
- A.** Yes, what we did was I alerted my colleagues to the fact that Mr Patel didn't appear to be registered as at January when I was checking his registration. That revealed that we had in fact been informed in September by the Optical Council that he had been deregistered in August and we wrote to him to tell him that he couldn't possibly be on the contractor list and that meant we shouldn't have paid the forms that he submitted in September, October and November.

- Q.** When you say that you wrote to him, when did you write to him?
- A.** The Primary Care Trust wrote to him on 20 September to tell him that because he was no longer registered with the Optical Council he couldn't have a contract with the Primary Care Trust.
- Q.** I am grateful. Can I just ask you, then, to look briefly to Page 248 of your bundle? This is a letter from you in January 2006. Can you confirm that you sent this to Mr Patel in January 2006 informing him of the situation?
- A.** I did.
- Q.** Is that the amount of money that you say was outstanding that is contained within this letter?
- A.** That represented all the activity after the date on which Mr Patel was removed from the Optical Council Registration that we had paid for. It didn't include the forms I have just checked, because of course that was a pre-payment check, so we hadn't paid those.
- Q.** Are you saying then, that the amount of money that was paid out was that, but that more money had been claimed but not paid out, because by then the system had caught up with –
- A.** Yes, I identified that the December claim shouldn't be paid further. Between £2,000 and £3,000 I think it was.
- Q.** I am grateful. Could I have one minute? I appear to have mislaid a document in this large bundle. If I could ask you finally in regard to this, to turn to Page 305. Is this the letter of 20 September that you referred to that had been sent to Mr Patel?
- A.** It is. Yes.
- Q.** Were you aware at the time that this letter had been sent to Mr Patel?
- A.** No, I only became aware of this in the January. We have now ensured that I receive a copy of such letters so that I am aware of such matters before there are problems.
- Q.** I am grateful. So you have established, then, that this was a potential problem, and that the potential problem was in the amount of around £9,500. At this stage, were you aware of whether this was a deception or wasn't a deception, or were you able in any way to know what was happening at that stage?
- A.** No, I did two actions. One was I reported it to our Director of Primary Care because I thought it was more for her to report to the Optical Council on the issue, and I arranged to meet with Mr Patel to discuss how this had happened and the fact that we had made payments to which he was not entitled.
- Q.** I am going to take you on to that meeting very briefly in a moment, but prior to the meeting with your counter-fraud hat on, what was the purpose of the meeting as far as you were concerned at that stage?
- A.** Right. It was to establish the facts as to why claims had started to be submitted again when we had no contract with the practice, and to agree how Mr Patel was going to repay us the monies that we had incorrectly paid him.
- Q.** When did this proposed meeting take place, or when was it proposed to have taken place?
- A.** It was on 20 March 2006.
- Q.** Did Mr Patel attend that meeting?

A. He did, yes.

Q. Did you put to him the fact that these GOS forms had been submitted?

A. Yes.

Q. Were there any admissions made at that meeting to you?

A. Mr Patel acknowledged that he now realised that he should not have started submitting GOS forms to the PCT until we had confirmed with him that we had put him back on our contractor list.

Q. Were there any admissions made in respect of practising during that period?

A. Mr Patel acknowledged that he had continued to practise during the period September, October, November, December and that some of the forms submitted by the business related to activity he had carried out himself, yes.

Q. So by 20 March of this year, Mr Patel had admitted to you that he had been practising, testing sight during that period, and that he had been sending in these forms and that he was not entitled to?

A. Yes.

Q. Effectively, everything he is now charged with before this Committee. I am grateful. I have no further questions for you at this stage. I am not sure whether or not my friend does have any questions for you.

MR SADLER cross-examined by MRS KAPILA

Mrs Kapila: Mr Sadler, the first letter that went out to Mr Patel, was that sent out by you personally?

Mr Foster: I am sorry, I don't mean to intervene, but the reason I prefaced this with the comment that I made is, of course, the only questions my friend could possibly have for this witness would be in relation to things that were not admitted, so if there is any question over whether any of the evidence that Mr Sadler has given is in fact true, then of course it would be right and proper for my friend to cross-examine him. However, if it is not my friend's instructions that Mr Sadler has said anything that is false, then all of these documents should be accepted. He has given evidence as a witness whose, effectively, evidence is accepted in advance. I of course do not want to interfere with my friend's ability to put any question she wishes to this witness, but only on the basis of relevance.

Mrs Kapila: In my submission, this is interference with the questions I wish to put to the witness. These questions are directly relevant to the position in respect of the charges. That is why Mr Sadler is here. I am seeking points of clarification which I am quite entitled to do from this witness, and I do not feel that I should be restricted in trying to do so. Matters have been introduced by Mr Sadler in evidence in terms of the charges that, yes, have been admitted, but it must be explained to you, you must have the whole picture of the basis on which these charges are admitted. You are being given a very full picture of how and why these claims have been made, and how many have been made and all the rest of it. Equally, I feel, it must be put to you the context in which this misconduct occurred, and I believe it is wrong for Mr Foster to try and limit my cross-examination to a manner in which he thinks it should be fitted into the facts.

Mr Foster: Madam, I am sure you will take some advice, but before you do, I would just like to say that in the instance of my friend of course I do not seek to limit any

questions she wishes to put to this witness. Those questions can only properly be cross-examination if she does not agree with the evidence he has given. If my friend seeks to in some way obfuscate this matter by asking questions about documents that her client accepts are perfectly legitimate and that there is nothing that Mr Sadler has said that is wrong, then that is the only basis on which I would ask her to limit her questioning. Of course, she must ask whatever questions she wishes within the normal rules of the Inquiry.

Mrs Kapila: I do not seek to obfuscate. I seek to clarify.

Ms Jones: If I did take legal advice, is there anything you wish to bring to this?

Mr Swinstead: No, Madam, let's just hear what Mrs Kapila says, and if it appears that she is outside what would appear to be acceptable boundaries, then perhaps I could intervene, or no doubt Mr Foster will. But there is no reason why Mrs Kapila cannot put into context, as it may be relevant to matters she will later put in front of you by way of mitigation, and if that is what she proposes to do, there can be no reason why she cannot do it, so I would just advise that we hear what Mrs Kapila says and see where we go.

Mrs Kapila: Mr Sadler, very briefly, with regard to the first letter that was sent out, the 20 September 2006 letter, informing Mr Patel that he was not registered.

Mr Sadler: 20 September, yes, the letter sent by my colleague.

Q. Sent by your colleague. You would not know if that letter was received or not, would you?

A. No.

Q. With respect to the meeting that you had with Mr Patel, do you agree that you found Mr Patel's attitude open when he spoke to you?

A. Yes.

Q. That he admitted the fact that he ought to have had his administration in order?

A. Yes.

Q. Would you also accept that you were not treating this matter, this is just for the record again, as deliberate or dishonest in any way?

A. I wasn't, no.

Q. Just bear with me, I do not think that I have anything else to ask you, but I am just checking. No I have no further questions.

Ms Jones: Thank you.

Mr Foster: Madam, I have no re-examination and, unless the committee have any questions for Mr Sadler, I would ask that he is released. Of course you may well have some.

Ms Jones: I will just ask the Committee. Do you as Legal Adviser have any questions?

Mr Swinstead: No, I have no questions.

Ms McCrudden: I have just one question. Do these letters go from the Primary Care Trust as registered letters or just using regular mail?

A. I don't know the answer to that one. Do you mean the letter of 20 September? I don't know. My letters went by ordinary mail.

Ms Jones: Thank you, then, very much, Mr Sadler, no further questions.

[The witness stood down]

Mr Foster: Madam, I am grateful. You have heard from the only live witness in this matter. I am going to ask that the statements of Peter Coe be passed up to the Committee. I am not sure, Madam, if you have them in your bundle or not.

Ms Jones: Can you give us the date of them and we will clarify.

Mr Foster: It is 3 October 2006. They certainly were in the index; the history of this means that we have been rather trying to agree on them. If you have them I obviously won't send them up to you. I would, however, propose to read the statement out merely so that it can be read into the transcript.

Statement of Peter Coe

"1. I am the Registrar of the General Optical Council of 41 Harley Street, London W1G 8DJ ("the GOC") and am responsible for the maintenance of the registers which must be maintained under Part II of the Opticians Act 1989 ("the Act").

Maintenance of the registers

2. Under section 7 of the Act the GOC is responsible for maintaining the following registers:

- 2.1 the register of optometrists;
- 2.2 the register of dispensing opticians.

3. Under section 9 of the Act, the GOC is responsible for maintaining the register of bodies corporate carrying on businesses as optometrists and dispensing opticians.

4. The GOC maintains the registers referred to above on a computer database which lists each current registrant in the registers and those who have been registered at any time during the period from 1997 onwards. The database also contains information regarding changes to registration status.

5. The database records the name of each registrant together with registration number, (indicating the relevant register), the date of most recent registration, any qualifications where relevant, permanent contact address and practice addresses.

6. Further information regarding changes in registration status prior to 1997 is contained in :

- 6.1 scanned computer records;
- 6.2 lists published annually by the GOC setting out details of all registrants who have allowed their registration to lapse at the end of the registration year (31 March); and;

- 6.3 registers published annually by the GOC setting out details of all current registrants together with their dates of registration.
7. Where enquiries have been made previously by a National Health Service body about an individual, a full registration history has been transferred from the registers and lists to the database.

Search of the registers

8. On 19 September I caused a search to be made of the database of registrants, the scanned computer records, and the published lists and registers, referred to above and, in relation to Mr Samir Patel confirm the following information:

- 8.1 Mr Samir Patel was first registered with the GOC in the register of ophthalmic opticians on 22 September 1995 under the number 01-15764.”

Madam, my apologies, that does not appear on the schedule because the schedule that I have provided you with is in fact the removal from the register, so I will carry on if I may:

- “8.2 His entry was removed from the register on 31 May 1997 for non-payment of fees.
- 8.3 Mr Patel was restored to the register of ophthalmic opticians on 3 June 1997 under the new number 01-16407.
- 8.4 His entry was removed from the register on 31 May 1998 for non-payment of fees.
- 8.5 Mr Patel was restored to the register of ophthalmic opticians on 14 July 1998 under the new number 01-16923.
- 8.6 His entry was removed from the register on 31 May 1999 for non-payment of fees.
- 8.7 Mr Patel was restored to the register of ophthalmic opticians on 9 June 1999 under the new number 01-17407.
- 8.8 His entry was removed from the register on 31 May 2000 for non-payment of fees.
- 8.9 Mr Patel was restored to the register of ophthalmic opticians on 3 July 2000 under the new number 01-18067.
- 8.10 His entry was removed from the register on 2 May 2002 for non-payment of fees.
- 8.11 Mr Patel was restored to the register of ophthalmic opticians on 16 May 2002 under the new number 01-19335.
- 8.12 His entry was removed from the register on 30 April 2004 for non-payment of fees.
- 8.13 Mr Patel was restored to the register of ophthalmic opticians on 3 June 2004 under the new number 01-20847.
- 8.14 His entry was removed from the register on 16 August 2005 for lack of insurance.
- 8.15 Mr Patel was restored to the register of optometrists on 20 February 2006 under the new number 01-22267.
- 8.16 Mr Patel is currently registered until 31 March 2007.

9. Copies of the relevant register entries are attached.”

Madam, I imagine in your bundle you will have from Pages 5 – 14 the copies of those entries of the register.

Madam, that is the factual basis of the Council's case in this matter, and I understand that my friend may well call Mr Patel to give evidence, so I will make no further comment until invited to at a later stage.

Mr Swinstead: Mr Foster, I have checked your schedule that you have put in, and it would appear to me to be correct, save that in the last two entries, I think it appears as 2 February 2006, when of course it should be 20 February 2006. I think with that correction, it would appear to be correct. I don't know whether you are prepared to accept it on that basis, Mrs Kapila, with that amendment?

Mrs Kapila: I certainly have not had the time to go through it and –

Mr Swinstead: With respect, whilst the statement was being read and I actually had already done it quickly, but I have now done it again, and it would appear that other than with that amendment, it would appear to be correct.

Mrs Kapila: I am quite happy, because it makes no difference. As I said, if you have found it correct, I have no reason to question that.

Ms Jones: Can I then move on to Mrs Kapila, and invite you to make your opening statement?

Mrs Kapila: Chairman, I think before I do anything else I will go to the Statement of Peter Coe and just highlight a number of facts that have in fact been agreed with Mr Foster this morning, because we were intending to offer some evidence in respect of these matters, but we have been told that what we are saying is not disputed and that therefore I can simply just point out one or two matters.

Mr Foster: Madam, I understood, and the basis of our conversation was, that my friend would call Mr Patel to explain certain matters to you. Certainly those matters are not contested, but I don't think it would be appropriate to effectively cross-examine the Statement of Peter Coe. This Statement is accepted in full. I think you may wish to hear from Mr Patel about certain matters of mitigation he wishes to put forward in respect of these dates which will not be contested by the Council. But there is no evidence contained within these statements of the matters which Mr Patel wishes to put forward. I have said in my opening he is not charged with doing anything wrong before the period he is charged. He is not charged with practising whilst unregistered. Mr Coe does not say, 'Before 16 August he was practising whilst unregistered', so I think the proper way of dealing with this evidence would be for my friend to ask Mr Patel to tell it to you. The Council will not cross-examine him on the particular facts that we have mentioned, although there may be questions we would want to put to him in regard to his overall mitigation.

Mrs Kapila: I am not seeking to cross-examine Mr Coe in any way because we accept that Mr Patel was not on the register as stated in this Statement. What I am seeking to do, and maybe perhaps my understanding is different from Mr Foster's, is just explain at this stage before I call Mr Patel at a later stage when he can explain it again, the reasons for his absence from the register. I think that is extremely important, and that is all I sought to do.

Mr Foster: I am very happy, Madam, if Mr Patel is to be called to give you that evidence, then that is the correct source. My mistake and I apologise to my friend if it was a

mistake that I thought she intended to give evidence herself based on the Statement of Mr Coe.

Mrs Kapila: Well, I was actually going to give reasons, but if the Committee feels they would like to hear them from Mr Patel himself, then I will abide by the advice given by the Legal Adviser.

Mr Swinstead: Mr Foster, rather than jumping in, if what Mrs Kapila is going to do is make an opening statement in which she is going to give broad outline of some matters which in due course Mr Patel is going to give in evidence, it seems to me that that is not a matter for criticism. If that is what she proposes to do, I don't think anybody can take issue with that. Is that what you propose to do, Mrs Kapila?

Mrs Kapila: Exactly.

Mr Foster: It may assist to know that I take no issue with that, and I apologise for jumping in if you felt that was inadvertent. My only concern was that her remarks were prefaced by the idea that we had agreed this evidence, and therefore it could come from her alone. She has now informed us that she does intend to call Mr Patel, which is the only concern that I had.

Mr Swinstead: I understand.

Ms Jones: Mrs Kapila, may I invite you, please, to proceed?

Mrs Kapila: Chairman, bearing in mind that I will be calling Mr Patel, if we look at Mr Coe's Statement, at Page 3 of his Statement and the number 8.1 which is setting out the history of this matter, you will see that Mr Patel was registered on 22 September 1995 and he stayed on that register without any falling off or any problem for two years roughly until 31 May 1997, which is the first time he fell off the register, but he was then put back on the register on 3 June, so we are only talking a few days. This was for non-payment of fees, and he is then put back very quickly.

If we look at 8.4 and 8.5, we see that he was removed from the register on 31 May 1998 to 14 July 1998 and then he was restored under a new number on 14 July 1998. In fact, during this period Mr Patel was not working.

Again, we look at 8.6 his entry was removed from the register on 31 May 1999 for non-payment of fees. Mr Patel was restored to the register of ophthalmic opticians on 9 June. That is a non-payment of fees matter, and, again, the period is short. This is purely non-payment of fees.

In the next period of time, which is 8.8 and 8.9, he is removed from the register on 31 May 2000 and restored on 3 July 2000 and for the vast majority of that time he was in the United States.

In 8.10 his entry was, 'Removed from the register on 2 May for non-payment of fees. He was restored again on 16 May'. That is purely a non-payment of fees matter, and he is restored again fairly shortly after 16 May.

Again, 8.12 and 8.13, the period 30 April 2004 – 3 June 2004, again he was in the United States.

We then come to the final entry where he is removed from the register on 16 August 2005 for lack of insurance, and Mr Patel will be giving evidence on why he was

removed for this lack of insurance and he will in due course explain that to you. I will not comment on that, because that is something I have not discussed with Mr Foster. Again you see that he is restored to the register on 20 February 2006 and is currently registered until 31 March.

That is by way of explanation, and the explanations, apart from 16 August for which I have not yet offered any explanation, all the other explanations are not contested and therefore no evidence is being put before you, because the Council has accepted Mr Patel's reasons for not being on the register for those lengths of time. I ask you, please, to bear in mind the admissions made by Mr Patel on the basis that, although that provides you with a history, it is a history which just on the face of it is incomplete and needs to be looked at in context.

Mr Patel is not denying misconduct because, he will tell you when we go further in these proceedings, in respect of the entries that I have spoken of, and indeed even the allegation here, he will tell you of the reasons that he fell off the register and the administrative situation at the time. But in no way does he seek to tell you that it was correct for him to be off the register, certainly when there was non-payment of fees and so forth, and he will also tell you that whatever reason he gives you for why he fell off the register between 16 August and 20 February, it was still his responsibility to have kept an eye on his insurance, etc.

Based on that, this is just to give you a picture, because you have been presented with a statement, a historical statement, which is not all of it directly concerning the allegation but which is background, and therefore I feel it is important that you see the other side of the situation.

The other point that I would like to make is that although some of these allegations have been admitted, there were two reservations that I had, and one of them related to that part of Allegation 1 which refers to him not being registered as an optometrist nor appropriately supervised. In my submission, the pertinent point is he wasn't registered as an optometrist; he didn't need to be supervised in the sense that he was a qualified optometrist.

Further, and this was our reading of the matter, and it was a couple of days ago that I was informed that dishonesty and any deliberate intent was not being alleged, but when I read this allegation, until that time, to me, where it states,

“you held yourself out to Wolverhampton City PCT as a registered optometrist in order to obtain payments to which you were not entitled”

To me, that does suggest dishonesty or intent, but now it has been accepted was not present, and therefore I do not believe that that part of the allegation should stay, and in my submission all that should be in, in terms of the allegation, if that is indeed what the Council - and they have told us that this is what they say - that indeed there is no deliberate intent or dishonesty alleged, then that should go out and we should simply be left with the fact that between 16 August 2005 and 20 February 2006, 'he countersigned and so forth (i), (ii) and (iii)'. That takes away any indication at all of any deliberate behaviour in this.

We are in the slightly difficult position, because Mr Patel has no desire to say that what he did was not misconduct.

Mr Foster: Madam, I am sorry, I hesitate to intervene, because I have already been pulled up for it before, but I look to your learned Legal Adviser, Madam, you may

wish to take advice on whether to deal with this submission. My understanding is the allegation has been read out, the facts admitted to. I understand my friend now has submissions on the allegation. You may want to deal with those submissions before you move on.

Mrs Kapila: I just wish to clarify one matter.

Ms Jones: Clarify it, and then I will take some advice on it.

Mrs Kapila: Certainly. We have had situations, Madam, where we might admit misconduct and then the Committee, because they do not yet have the full picture, or have not been given the full picture, will then occasionally make a comment about something relating to the practitioner which he has had no opportunity to address. It is that that I seek to limit, and only that, and therefore if it is only to be a case of the Committee making a finding purely on the issue of misconduct based on the admissions that we have made, and subject of course to what I said about my reservations on the rest of these allegations, then of course I have no problem and nothing further to state, and I will call Mr Patel at a suitable time. But that is why I just wished to highlight a few of the sort of matters that you will be addressed on later, so that the Committee has at least some idea that although the misconduct is accepted, reasons will be given and those should be taken into account. I do not in any way suggest that the Committee will say anything before Mr Patel, but that was just to limit that problem.

Mr Swinstead: Mrs Kapila, are you planning to call Mr Patel now or at a later stage in these proceedings?

Mrs Kapila: I was actually going to ask the Committee what they wished me to do. I know that technically it should be later.

Mr Swinstead: What it seems to me that we are getting ourselves into a muddle about, is that if you are not proposing to call any evidence at this stage, then it would seem appropriate if Mr Foster wanted to, to make any final submissions on the issue of misconduct and for you then to make any submissions you wanted to on the issue of misconduct, and for then the Committee to go *in camera* to deal with the issue of misconduct having heard a very short piece of advice from me. If that is how you are proposing to deal with it, you have made the points clear. I think procedurally, if the issue now is really misconduct and you are not calling on any evidence as far as that is concerned, you have made that position clear.

Can I just deal with the issue that you raise on '2' first? It seems to me that the wording in '2' if the allegation is not one of dishonesty, because if Mr Patel was in fact not registered but was seeing patients and indeed carrying out work as a registered optometrist, he was *de facto* holding himself out to be a registered optometrist because he is seeing patients. It has been made quite clear that there is no suggestion here that that is dishonest, but the reality is that that is actually what he is doing, he is seeing patients, he is effectively saying, 'hello, come in, I will now do an eye test'. The patient would think, 'well, this gentleman who is about to test my eyes must be registered'. Now that, in a completely neutral way is a holding out that, 'I am a registered optometrist', and it seems to me that if the words are given their natural meaning, then that is what is stated there. No more, no less.

As has been made clear, there is no suggestion of dishonesty, but simply by the very fact, do I make myself clear, the very fact of offering to conduct eye tests, and indeed conducting eye tests, you are holding yourself out to be registered if you are doing it

in a National Health context, because you have to be registered with the Trust for them to pay you, as I understand the factual basis of the case. Now that is completely neutral, that is in fact what he is doing.

Mrs Kapila: The words are qualified by, “in order to obtain payments” later on in that Statement, and to me the reading of it does suggest a deliberate holding out in order to obtain.

Mr Swinstead: But if there is no dishonesty, I can’t see that there is a great deal of difficulty about that is there?

Mrs Kapila: I just seek to make the position clear. Obviously, I will abide by the advice you may wish to give the Committee, but it seems to me somewhat unnecessary to put it like that if in fact it is those facts that follow below that are the matters in issue and which are admitted. So if in fact there is no deliberate intent suggested, then it seems to me slightly superfluous to have ‘2’.

Mr Swinstead: Yes, I see what you mean about that, the words “in order to”.

Mr Foster: Sir, can I raise one issue at this point, and it is a very, very brief one. My objection to Mrs Kapila’s submission is on a totally procedural basis, and it is this. This allegation was read out and admissions were made to this. If Mrs Kapila now seeks to resile from that, then we are not in a position where it is admitted, but it was this allegation that was admitted to. If she wishes to go back to the beginning of this procedure, as it were, and start making legal arguments about the wording of this charge, then of course her client cannot benefit from having admitted to this charge and we are back at the stage that we were at the beginning which I highlighted, which is that this may be an issue of facts.

This allegation was put as it is and was admitted to. If it is not admitted to because either Mrs Kapila or Mr Patel have a problem with the charge, then they must not admit to a charge they have a problem with. I think we need to deal with the very first procedural issue. Is this charge admitted to as it is stated? If it is not, then there may be a problem in terms of procedure.

Mrs Kapila: Madam, I am afraid this is inaccurate, and I will say the words inaccurate. It is an inaccurate representation of what I admitted to at the beginning of these proceedings. I never admitted to the fact of the element in the first charge which related to “nor appropriately supervised”, and I never admitted to that part of the charge that related to August where “he held himself out in order to”. I specifically omitted those words, and admitted only that which I have indicated again, and which is up to the point of the first charge of optometrist and (i), (ii), (iii), plus 16 February, 20 February in the second charge, so I did not, in fact, admit that at all and I am somewhat dismayed that it has been suggested that I did. The transcript will give you a clearer picture, anyway.

Mr Swinstead: Can I just intervene? Can we just deal with “1”? Mr Foster, is there any great issue about whether or not appropriate supervision is actually relevant in this case? Can we deal with that?

Mr Foster: Sir, I am not unsympathetic to what Mrs Kapila is now saying. I would have no problem with it. My problem is merely procedural, but it appeared that admissions were made; it appears that they have now been gone back on.

Mr Swinstead: Can we just try and cut through it?

Mr Foster: Of course.

Mr Swinstead: As far as you are concerned, and I don't know whether you want to consider it, it would appear that the basis of the admission, and I am sorry I noticed at the time and didn't raise it, as far as "1" is concerned, it says, "nor appropriately supervised", is there actually an issue on that?

Mr Foster: No, the only reason, Sir, that that was in the allegation at all was to avoid the other possibility of the registrant saying, 'Well, although I wasn't on the register, I was entitled to test sight supervised, and there were other people in the practice'. So it was a catch-all, it's not relevant.

Mr Swinstead: It's not relevant, so you do not invite the panel to make any sort of finding on "nor appropriately supervised".

Mr Foster: No, I certainly do not.

Mr Swinstead: Okay, that's dealt with "1". Now as far as "2" is concerned, and this may have been rather more a misunderstanding, and I have to say, Mrs Kapila, because it is actually rather more detailed perhaps it is unfortunate you didn't make that point absolutely clear at the time, because I think I misunderstood you on that one, whereas I understood number 1, I am not sure I understood. I don't know about the Committee on "2". Can we deal with "2", Mr Foster?

Mr Foster: Indeed.

Mr Swinstead: Do you want time to consider about whether or not the bald facts where the stem of number "2" which says,

"Between 16 August 2005 and 20 February 2006 Mr Patel (i) countersigned GOS Forms"

Is it necessary in order to prove your case that the remainder of the stem, which is,

"held himself out to Wolverhampton City PCT as a registered optometrist in order to obtain payments to which he was not entitled, in that he;"

Is that necessary as far as you are concerned to prove the allegation?

Mr Foster: Sir, it is not necessary in terms of particular (i), but it is in terms of (ii) and (iii), only that it has been drafted in that way, and I can say, Sir, that your understanding of the drafting of it is exactly on par with the case we seek to make. He held himself out in a completely neutral way in that he told effectively Wolverhampton City PCT that he was a registered optometrist when he was not. The purpose of doing that was to obtain payments and he was not entitled to those payments because he was not registered. There is absolutely no charge of dishonesty as I hope I have made very clear, but of course I could have drafted it differently by putting that in (ii) and (iii), rather than having a preamble. It just would have meant clumsier drafting, but I hope there is no difficulty with the basis on which the case is put.

Mr Swinstead: I understand what you say about that. Now, Mrs Kapila, what do you say to what Mr Foster just said?

Mrs Kapila: Chairman, I will leave it to the Committee and to yourself to advise when appropriate, but it would be my submission it is still a superfluous charge, whether it relates to (ii), (iii) or (i), because there is in my submission, whether or not it is intended, on the basic wording of that, in my submission there is some hint of a deliberate, and I take what you said about holding oneself out, but there is also the qualification “in order”. But I will, of course, abide by what the Committee decide.

Mr Swinstead: Well, it is quite an important point. Mrs Kapila, do you want the Committee, when they are making their decision on misconduct, to also consider whether or not those words should remain in the stem of allegation 2? Do you wish them to make a decision on that?

Mrs Kapila: Yes, I would, because I do not believe there is any need for those words.

Mr Foster: So in that case then, I presume that Mr Patel doesn't admit to allegation 2 any more. That in fact in terms of allegation 2, we are back to square one.

Mr Swinstead: No, he admits it, but what he is saying is he is not formally “holding himself out to be”, and it is in fact, I mean with great respect we are dancing a bit on the head of a pin here, that the answer is that you wish the Committee to make a decision whether or not Mr Patel, using the words of the stem, “held himself out to the Wolverhampton City PCT as a registered optometrist in order to obtain payments to which he was not entitled, in that he”, then the Committee can do so. It seems to me it makes absolutely no difference to the issue that you have invited them to decide on which is actually misconduct.

Mr Foster: I agree, Sir, and I think it would be entirely wrong for the Committee to have to make this decision, either Mr Patel accepts he was representing himself or holding himself -

Ms Jones: Can I draw this to a close? Can I invite you to clear the room for fifteen minutes? We will come back to you with our decision on this matter. We will reconvene at 11.25 a.m. Thanks.

[The Hearing adjourned at 11.10 am]

[The Hearing reconvened at 11.25 am]

Decision

Ms Jones: The Committee has considered the point of the words in allegation 2 and the Committee propose to give them their ordinary meaning. In order for Mr Patel to obtain payments, he has to have held himself as an optometrist. We are moving forward to hear submissions from both parties on his conduct and the Committee will then decide the issue.

Mrs Kapila: Madam, in view of your finding in respect of that allegation, may I just speak to Mr Patel for two minutes in respect of the pleading.

[Request granted and there was a pause in the proceedings]

Chairman, just clarifying a matter with Mr Patel which he seeks to put forward in mitigation, so there is nothing further for me to do.

Ms Jones: Thank you.

Mr Foster: Madam, before we make our submissions, and this is incredibly brief, could we just clarify now that having had your finding this is actually admitted on the facts as charged?

Mrs Kapila: The reason I hesitated, Madam, is because there is, and I don't say this in any way to, but you have said that he held himself out in order to obtain, and I understand why you say that, because you feel that he must have done. The point that I seek to make is that we have two dates and the admissions are made in respect of those two dates, but we will, and I say this just to clarify matters because of the odd nature in the way that this matter is panning out, that there will arise the issue in respect of the period when Mr Patel was aware of the non-registration and the actual time he went back onto the register. That we have now decided to rest in mitigation. So, yes, the charges are being admitted and misconduct is being admitted.

Ms Jones: We will move forward.

Mr Swinstead: Madam, I think that if that is the point you have reached and you are not calling any evidence at this stage, then the Committee should hear submissions from both of you if you wish to make any on the issue of misconduct. I think that is what the Chairman has just invited.

Mr Foster: Would you like to hear mine first?

Ms Jones: Yes, please.

Mr Foster: Madam, as you are aware as a professional Committee, the matter of misconduct is a matter entirely for your professional judgement. There is no standard proof to be applied to it. You will decide whether the facts admitted amount to a misconduct. There are a number of ways in which facts could amount to a misconduct, but essentially it always comes down to the same thing, were the facts admitted behaviour expected of a reasonably competent optician? Did he live up to the standard of behaviour expected, or did he fall below that standard of behaviour?

Now, of course, under different circumstances, one could fall below the standard of behaviour by, for example, dishonesty. As we have made very clear, that is not charged. However, it is also not necessary, I would submit to you, for you to find someone to be dishonest in order to find that their behaviour falls short. There are many fallings short, one of those could be that the way in which you conduct yourself in your professional life is insufficiently well organised to pay due respect and regard to the people on whom your behaviour is impacting. So, for example, when a patient comes to you to have his eyes tested that person ought to be able to imagine that the person they are seeing is a registered optometrist. If you fail, for any reason, to ensure your own registration status, your behaviour in that failure falls below the standard one would expect of a registered optometrist almost as a matter of pure common sense, Madam.

Also, if you send in a bill to a PCT saying you are a registered optometrist when you haven't taken enough care to ensure that that is, in fact, the case, the Council would submit that is another falling short of the standard that you could reasonably expect a professional member of this profession to live up to.

It is clear in coming to this judgement that you also are entitled to consider the impact on these different people of such a misrepresentation. You are entitled to consider

the public protection issue involved in an optometrist holding themselves out, however inadvertently, to be registered when they aren't. You are entitled to consider how that impacts on the Council in performing their task as regulator, and you are entitled to consider the impact on the PCT, because of course as you know Mr Sadler has taken a day off from his very busy schedule as a fraud investigator to come here today and to tell you that he had to go through the process of isolating the £9,500 that were wrongly paid and seeking to receive them back again. That has a financial implication on the PCT. It takes him away from the time he could otherwise have spent investigating, as it were, 'proper' frauds.

So again, in coming to decide whether this behaviour amounts to misconduct, you are entitled to consider that. I make no further submissions on misconduct, Madam. I am sure you will hear from my friend, and I am sure you will receive advice on this.

Mrs Kapila: Chairman, Mr Patel in no way seeks to excuse the fact that it was his responsibility to ensure that he had proper insurance during that period of time and that he was on the register and didn't submit forms. He does not deny that that was his responsibility, and mitigating circumstances being a different thing, he in no way seeks to suggest that not being on top of such matters is anything other than misconduct.

All I would state is that he is mindful of all the issues that make him decide that this is misconduct and that is the public protection issue, and the issue of not wasting anyone's time in having to resolve this. He has, of course, paid all the money back and of course he has no problem in terms of his fitness to practise as an optometrist in terms of clinical matters, so that being said, there is no doubt, and I say this again, in his mind, that he did not act correctly and that therefore not keeping himself on top of these administrative matters and ensuring these things were done, he was properly registered, insured and documents were not submitted whilst he was not so insured or registered, is a matter for him and is his responsibility. Therefore there really is no issue that this was misconduct on his part.

Ms Jones: Are there further matters? [No] Can I invite us, then, to clear the room? My apologies, can I firstly take legal advice, and then we will clear the room.

Mr Swinstead: It is very short. Your task under Rule 50 at this stage is to consider whether on the basis of the particulars of the allegation which have been admitted, you find that Mr Patel was guilty of misconduct. It is a matter of judgement for you to consider whether he is guilty of misconduct and it is based upon the matters that you have admitted. I think that we should just make absolutely sure that everybody is clear. Mr Foster in Particular 1 does not seek to rely on the words "nor appropriately supervised", so you do not need to consider that part of the allegation.

As far as Particular 2 is concerned, you have given the words, "held himself out to Wolverhampton City PCT as a registered optometrist in order to obtain payments to which he is not entitled, in that he..." their ordinary meaning, and those have, I think, effectively been admitted, but with the strong emphasis that there is no allegation of dishonesty in this case, they simply factually set out the background to the specific allegations in (i), (ii) and (iii). Madam, it is against that background, and indeed perhaps importantly, that Mr Patel is not arguing that he is not guilty of misconduct, and effectively has conceded that. Those are the matters which you should take into account when deciding whether in your judgement you find that he is guilty of misconduct. Madam that is my advice; would either party like to say anything further or to correct anything I have said? [No] Thank you very much; Madam that is my advice.

Ms Jones: Thank you very much.

[The Hearing adjourned at 11.36 am]

[The Hearing reconvened at 12.00 noon]

Ms Jones: Finding in relation to the particulars of the allegation, the Committee found Particulars 1, 2 (i), 2 (ii) and 2 (iii) of the allegation admitted and proven. In regard to Particular 1, Mr Foster, on behalf of the Council did not seek to rely on the words, “nor appropriately supervised” and the Committee has disregarded them.

The Committee has already given its determination in regard to Particular 2.

The Committee announce its decision as follows:

We have heard submissions on the issue of misconduct from Mr Foster on behalf of the Council and Mrs Kapila on behalf of Mr Patel. We have also accepted the advice of the Legal Adviser and have borne in mind that as to the issue of misconduct, this is a question of our judgement. We noted that Mr Patel has not contested that he is guilty of misconduct. The onus is on a reasonably competent optometrist to be registered and insured prior to testing the sight of the public and claiming fees, and accordingly we find Mr Patel guilty of misconduct.

I would like now to move forward and take evidence regarding impairment. Mr Foster.

Mr Foster: I am grateful, Madam, I have no further evidence in regard to impairment.

Mrs Kapila: I don't know how this will proceed, because all I am obviously now going to do is respond to what Mr Foster may wish to say in terms of whether or not and how Mr Patel's fitness to practise is impaired, so I would have expected to hear something from Mr Foster at this stage, a submission on the fitness to practise issue.

Mr Foster: I am happy to make the submissions, Madam. I was merely giving Mrs Kapila the opportunity to call any evidence that she wished to rely on prior to that, but if she has no evidence.

Mrs Kapila: No, I do have evidence, as you are aware, but I thought it would follow on your submission. Because the evidence is not on the issue of facts of misconduct so much as on the fitness, obviously not on misconduct, on the fitness to practise issue and the normal procedure as far as I know it, is for the Council to say why fitness to practise is impaired.

Ms Jones: Can we have your advice?

Mr Swinstead: As I understand the procedure, and I will be corrected if I am wrong, and I am reading here from the fitness to practise guidance, that the presenting officer presents any further relevant evidence, the registrant then presents any further relevant evidence, and this is the issue, impairment, and then if there is no evidence in rebuttal, submissions are then made by the presenting officer and then made on behalf of the registrant. So it appears that evidence is dealt with and then submissions. That appears, according to the pro forma to be the procedure.

Ms Kapila: I am quite happy, then to proceed with the evidence.

Ms Jones: I will call Mr Patel to give evidence on the issues that the Committee is looking at.

MR SAMIR PATEL called and affirmed
Examined by **MRS KAPILA**

Mrs Kapila: Mr Patel, I am going to guide you through the evidence you wish to bring in respect to your fitness to practise impairment issue, and I think it is taken that you have admitted the misconduct and the fact. Could you please explain to this Committee, and I think it is best if you address them, could you explain to the Committee why you fell off the register for lack of insurance at the time that you admitted you did?

Mr Patel: Being a member of the AOP, I presumed that my AOP membership guaranteed my insurance. When I actually found out that I had been removed, because I didn't know I had been removed until January, I rang the AOP up and was told that my membership had lapsed in about June that year. I went and enrolled that year in the GOC in May, and the very first I knew that I was removed was when I came back from Australia, and there was the January letter. That is what happened. I never received the PCT letter that was apparently sent to me. If I had, I would have just become reinstated again, because there was no reason why I couldn't become reinstated.

Q. Why did you assume that you were still a member of the AOP?

A. Generally the direct debit just goes out, and I get the AOP's letters and 'Optometry Today'. I have always got that.

Q. Can you tell us, you said that you did not receive the letter of 20 September that Mr Sadler is referring to. Did you receive the second letter in January?

A. I did.

Q. What did you do when you received that letter?

A. First I rang Pat Munger at the PCT, and she told me that I had been erased and then I rang the AOP and asked about the insurance and that is when they told me that it was in some time that year my direct debit had not gone through, and then I rang the GOC and made steps to get re-enrolled.

Q. When you found out that this lack of registration had taken place, what did you do?

A. Say it again, sorry.

Q. What did you do in terms of practise when you found out –

A. I stopped. All three of my practices we have employed opticians, so there is no real – I go because people have been seeing me for a very long time, but there is no need for me to test, so I just stopped until I was re-enrolled. When I was re-enrolled I went back to testing on Saturdays.

Q. Did you meet with Mr Sadler?

A. Yes.

Q. Did you explain the situation to Mr Sadler?

A. Yes.

Q. Have you paid back monies to Mr Sadler?

A. Yes.

Q. Do you accept that it was always your responsibility to ensure that you were insured and on the register?

A. Yes.

Q. Do you understand the importance of that?

A. Yes I do.

Q. Can you explain what steps you have now undertaken in respect of such registration and insurance?

A. Yes. There are various reminders in place. My practices have computer systems where we have scheduled appointments where I book patients in, so in the two weeks at the beginning of March, each of my practices has an appointment for me with the GOC as if it was a patient, so it reminds me. Then on my laptop I have the same, and on my mobile I have the same, as well as Julie Sherwood will remind me at the beginning of March that I have to make sure that everything relevant to the GOC is done.

Q. Who is Julie Sherwood? Perhaps you could explain.

A. She is my in-house accountant/book-keeper.

Q. So does she also check that you are registered?

A. Yes, she does all the company work. She is the company secretary.

Q. So if I understand you correctly, you are saying you have systems in place yourself, and she has systems?

A. Yes. She has cross-checks for me.

Q. What about your position with insurance? With the AOP?

A. Again, that is done now through the company. There is a direct debit mandate and it will keep going until I actually physically go and stop the direct debit.

Q. Can you tell us what effect this matter and the fact that you know that you have done wrong has had on you on the last period of time?

A. Obviously there has been a lot of stress that is one thing. In terms of my reputation, I have been practising now for about eleven years. I have a fairly good reputation, both as an optician and as a member of my community. It has been in my local press and the article read in such a way as though I was never actually qualified. So we have had the repercussions of all the patients ringing us up asking us what is going on. It has been in the optical press, so my professional integrity has been questioned, and obviously financially, for almost two years now we have not been able to claim any monies from the PCTs which is rightfully so because it was my fault. There has been that as well, which has been well over £60,000, and all of these things have made me very, very aware that this just cannot happen again. It is important and will have to be done. It will be done always.

Q. I have no further questions for Mr Patel.

MR PATEL cross-examined by **MR FOSTER**

Mr Foster: I have a few questions for Mr Patel. Mr Patel, you have helpfully told us about the systems that you have put in place to ensure that you don't drop off the register. Why was it important to you to put those systems in place?

Mr Patel: Because obviously I had either received a letter or not received a letter, and it shouldn't be up to me receiving letters, it should be up to me to proactively make sure that I am enrolled. These are just reminders that will remind me to do so.

Q. I am grateful for that, and you have accepted, haven't you, that you fell off the register since 1997 seven times?

A. I did.

Q. Did you not think to put any systems in place before?

A. Again, generally, although as you say I have been off the register seven times, I think there have been six times when I have enrolled exactly when I should. What generally happens, which is why I have brought all the evidence, the passports and stuff, is that I generally tend to go away for about three or four months of the year. Two months of it is to Australia to my older sister, and two months of it is in the winter with my younger sister in Australia. It happens to be about my birthday, which is in May, May and June. So there have been periods when there is no reason, I have not been at home, you have sent me the registration documents, I can't physically fill the documents in because I am not here. Yes, I am not great with my admin. Anyway, I totally admit that, but this whole experience has really homed into me that I need to be much better.

Q. Because isn't the only thing that has really changed this last time that you were removed from the register that you were charged with something in relation to it? Isn't that the reason why you have now decided that this matter is, in fact, serious?

A. No, because I have always thought it serious. Because if you look at the times when I have come off the register, as soon as I have been written to and told, 'You have been removed from the register', I have taken steps to go back on. This time I did not get that communication, so that is why it has been a long period, and that is why this whole case has happened.

Q. But you accept, don't you, that it is not the GOC's responsibility to determine whether you are on the register?

A. No, it is entirely mine.

Q. I presume you would accept, although please tell me if I am wrong, that a man who has been off the register as many times as you ought to have their eye on the ball when it comes up to registration.

A. Yes.

Q. Now, you have told us that you have these systems in place. Can I ask you, have you paid this current instalment to the GOC?

A. Yes I have.

Q. Do you know if they received this current instalment?

A. Well, I physically went into the building and saw, I think it was an Australian girl, filled my forms in to make sure that happened.

Q. Do you have a receipt for that that you can show us?

A. I didn't bring it with me, but if you want –

Q. No, no, I am merely asking because of perhaps an administrative oversight on your part, but you have given that evidence, so that is very interesting. In terms of paying

back the PCT, you have said that you have paid them back in full. Can you just tell me –

A. I have now.

Q. You have now?

A. Yes.

Q. Because it was your evidence before you paid them back.

A. I have.

Q. What was the basis upon which you agreed to pay them back? Do you remember?

A. Yes. On the exact meeting with Tim Sadler, he suggested a way of me paying him back, and the way he said was that he would deduct the amount, because normally we get about £3,500 a month, he would deduct the amount, the £10,000 from my claims. I said, 'well no, we will just pay you in four instalments'.

Q. In four instalments, and do you remember when the last instalment was supposed to have been paid by?

A. I think it was June.

Q. When was it actually paid?

A. It was paid in January of this year, just before the Hearing.

Mrs Kapila: I am sorry I just need to make one point before we go any further. What is being asked of the witness should be relevant to the allegations and the specific issue of fitness to practise. It should not be a forum to throw in everything and anything. The questions that are put to him should be directed to that fitness to practise issue. The witness has stated in evidence that he has paid the monies in full. Of what relevance is it to the issue of his fitness to practise being impaired how and if and what has occurred in respect of those payments if they have been paid in full, other than to introduce evidence to muddy waters?

Mr Foster: Would you like to hear from me on that, Madam? I am very happy to give the Council's view if you would wish to hear it.

Ms Jones: Mr Foster.

Mr Foster: I am grateful. Madam, this was something introduced by my friend. It was introduced as a piece of evidence to show that Mr Patel has insight into the problem that he is suffering from. It is for you as a Committee of Inquiry to determine whether the misconduct that you have found amounts to a current impairment of his fitness to practise. My friend's argument is, 'no it doesn't', because currently of course he now has insight. One of the ways of showing that is that he has paid this back in full. The Council merely wanted to clarify that in order to show that that insight may not extend to fulfilling promises made to the PCT in the way they were made. I certainly agree with my learned friend that he is not charged with that and I certainly would not wish you to consider that as an issue when it comes to impairment. I merely wish to qualify a false impression that could have been made by my friend that somehow Mr Patel has turned over a new leaf and is now someone who pays his debts on time as he says he is going to.

Mrs Kapila: It is not an issue about Mr Patel's debts.

Ms Jones: No. Do you have any remaining questions, Mr Foster?

Mr Foster: I don't think so, Madam, no.

Ms Jones: Mrs Kapila, do you have anything else you wish to say?

Mrs Kapila: No, I just have one question. Mr Patel, it was put to you that it was as a result of these proceedings that you have set up the systems that you say that you have set up to ensure that you don't fall off the register again or lack insurance. Have you anything further to say on that?

Mr Patel: No, in part the proceedings have homed it into me that whether or not I am in the country I should make sure that I am always enrolled. The previous times, as I have said, those three occasions when I wasn't in the country for three months, there was no need for me to do it. This is now regardless whether I am going to be here, whether I am going to be practising, it is my responsibility, it is for the public's interest that I re-enroll regardless of whether I am going to be testing or not. Obviously the proceedings have driven that into me. It has not been a particularly great experience, so I am really aware. That's it.

Ms Jones: Thank you. Mr Swinstead, do you have any questions?

Mr Swinstead: No, Madam.

Ms Jones: Can I invite the Panel if they have any questions for Mr Patel?

MR PATEL questioned by the COMMITTEE

Ms McCrudden: Yes. Can I ask you? When do you expect your registration documents, the reminders for the renewals to come through to yourself?

A. In March, normally. It is February/March.

Q. Which professional journals do you read?

A. 'Optometry Today'.

Q. Do you read articles in that about registration renewals, etc?

A. Sometimes I see them, yes. I generally tend to skim through the professional magazines.

Q. Have you always received these magazines?

A. Yes.

Ms Hallendorff: I would like to ask you, on the latest issue of being off the register on your non-payment of your insurance premium you say that you are insured with the AOP. Does membership of the AOP automatically include insurance?

A. Yes, Madam.

Q. But it is not obligatory to be a member of the AOP?

Mrs Kapila: No, it is not obligatory to be insured through the AOP.

Ms Hallendorff: So your registration is not dependent on your registration with the AOP.

Mrs Kapila: If you are a member of the AOP, you are automatically insured.

Ms Hallendorff: You are automatically insured. Thank you.

Mr Reeves: Do you think it is common for named optometrists to fail to register on as many occasions as you seem to have done?

A. No, Sir.

Q. It's quite an uncommon occurrence, would you agree?

A. Yes, Sir.

Ms Jones: We have no further questions. Thank you very much, Mr Patel.

[*The witness stood down*]

Mrs Kapila: Madam, I think this might be an appropriate time for me to just raise the issue of references which I have raised with Mr Foster. I know that Mr Foster has made it clear, and the Committee have made it clear, too, that the allegations against Mr Patel are not based on any suggestion of dishonesty or deliberate intent. However, it is my reading of the situation that there is some suggestion in the type of cross-examination Mr Patel has just been subjected to by Mr Foster which does suggest that it is important that his credibility be before you and I would seek to put in just a few references, but particularly one from the Chief Rabbi, Sir Jonathan Sacks, and it is purely a character reference. There are one or two others, just to show that what he tells you should be seen in the light of his general reputation as an honest person of integrity. I would seek to introduce those at this stage.

Mr Foster: Madam, loathe as I am at this stage of the proceedings, I am forced to object to references being introduced at this stage. Of course you ought to have them at the appropriate stage which is the mitigation stage. There is no issue whatsoever extant about this registrant's honesty or, indeed, credibility. We have passed the point of facts and the point of misconduct. If my friend, and I have said this to her prior to this Hearing, has any references that could be *en pointe* in regard to this, ie, someone saying, 'Yes, he does keep his registration up to date', or, 'Yes, we are aware of his changed attitude towards registration', then of course it should be a matter for you. But at this stage, Madam, I would rely on the case of *Campbell*. Your adviser will advise you. I couldn't imagine that it would make a difference whether it was the Chief Rabbi or the Pope. At this stage it is not relevant to these proceedings.

Mrs Kapila: Madam, a case has been raised yet again, *Campbell*. A serious professional misconduct case, it is not a fitness to practise case, and I will remind the Committee, and I will take the Committee if necessary, to an appropriate section in the Shipman Report that actually addresses this issue in terms of the fitness to practise, and that is that all mitigation, because it is now fitness to practise, is relevant. Now if Mr Foster's cross-examination had not been of the kind that was suggesting that perhaps Mr Patel has not fully understood or put into place what he tells you he has put into place, then perhaps it would not be so important a matter. But if there is even a hint or a suggestion that it is not accepted that he has honestly taken on board what he says he has and put into place certain procedures, then it is important for him to be able to put before you evidence of his honesty and integrity. This goes directly to his fitness to practise.

Ms Jones: Mr Swinstead, could you advise us on this?

Mr Swinstead: With great respect, we have been on this issue before, and I wasn't asked for my advice on whether or not Mr Foster's questions were appropriate, in particular asking about the payments of the sums, but it seems to me that the

Committee would have been assisted because one of the issues they would have to consider was whether or not Mr Patel had insight into the difficulties that he had got himself into and it seems perfectly reasonable that Mr Foster should test by cross-examination Mr Patel's insight, and, if you like, his determination that things won't get into the same situation again.

With respect, that is a long way from challenging Mr Patel's credibility. I don't think Mr Foster was technically challenging his credibility. What he was doing was testing Mr Patel's assertion that he really has turned over a new leaf, which seems to me that Mr Foster is perfectly entitled to do without putting into question Mr Patel's character, because one of the issues that the Committee will have to decide on the issue of impairment is whether Mr Patel has insight into his problems and the steps that he has taken to remedy the situation.

With great respect, and I am aware of the passage that you referred to with Dame Janet, and I am not sure that I would advise the Panel that it has exactly the same interpretation that you give it, because I am aware that you read it out in another case and I have the same book as you and I am aware of what was said. I would have to say this, that unless you can put before this Committee testimonials or references which go specifically to the issue that they have to decide, which is one of impairment and that would specifically, therefore, go to the sort of issues, if you like, the muddle that Mr Patel has got himself into, about making sure that direct debits are paid and making sure that he is up to date with the AOP and he is up to date with the GOC and that the proper sums have been paid at the right time, then they would be relevant. I would have to advise the Committee that no other references would be relevant at this stage. That is my advice.

Mrs Kapila: We do have one reference which does talk about the fact that it is the belief of the referee that the lack of insurance was a genuine mistake, and I don't know how to-

Mr Foster: Before any evidence is given, you may wish to –

Ms Jones: Can we just pause for a moment. I think that the Committee is minded to hear anything that directly relates to impairment about administration. If you have a document, or you wish to read from a document, that is directly addressing these matters, please do give us that information. We will hear that.

Mrs Kapila: Chairman, I take your point. I don't wish to keep labouring the same point. If you are saying to me that you don't want to see references as to his credibility because it is not an issue, then fair enough, if it is not an issue then I will hope that you will believe Mr Patel when he tells you that he has understood the significance of what has taken place and has put his house in order. That is all that I am seeking to do by producing these references at the stage where I thought they were relevant because of the questioning. I will come to that line of questioning, because it was stopped before the issues were debated fully. So I will not labour the point of this. Your legal advice is that regardless of my submission I would say that they can be relevant at this stage, but I will not labour that point. I will accept the advice of your Legal Adviser and move on.

Mr Swinstead: Could I just emphasise something, Mrs Kapila, because I don't want you to misunderstand it. Your client is a professional man. Nobody has suggested that he has been dishonest; he is entitled to come before this Committee and explain his position. That doesn't throw his character, if I can put it that way, into issue. It is for the Committee to decide, forgive me, Madam, a different point, which is whether

what he says they consider demonstrates that he really understands. That is not an issue of credibility, that's an issue for their judgement, with respect. That is why, with respect, I am against you, and I want to make that point absolutely clear. I hope you understand.

Mrs Kapila: Yes, I do understand that point completely. It was just that there was a moment in time when I felt that perhaps that it was being suggested that what Mr Patel was saying in terms of honesty might be in question. If that is not in question, there is nothing further to say.

Ms Jones: Okay, then we will move forward. Can I then invite Mr Foster to give us the final submissions regarding impairment before we adjourn?

Mr Foster: Thank you, Madam. I will be extremely brief in regard to impairment. It is, of course, entirely a matter for you and a matter for your judgement. I would very briefly highlight those things that in my submission you would be entitled to consider when you come to decide on impairment. I only say this in relation to one particular issue. This comes out of a case called *Bolton v. The Law Society* which dealt with the issue of dishonesty, although of course that is not an issue you will have to deal with.

The point that comes out of that case is this. These proceedings are not designed to punish Mr Patel. They are designed from a protective standpoint, either to protect the public, or indeed, as you are entitled, to protect the dignity of the profession. You are entitled, therefore, to consider on the evidence that you have heard and seen today whether Mr Patel has a sufficiently good relationship with his regulator, as it were, as shown through this evidence to be a proper person within this profession, or whether his fitness to practise is impaired, not because of any lack of skill or any lack of honesty, but simply because he does not take his professional duties, and indeed, his professional regulator, sufficiently seriously through the evidence that you have seen. That would be my only point on fitness to practise, Madam, and I am sure my friend will have submissions to make to you.

Mrs Kapila: I do have submissions to make. I know the case that my friend is quoting. He has not, of course, indicated that we would be quoting that particular point, but I don't take issue with it. I think this is an issue of not punishing a practitioner, but looking to public protection and the dignity of the profession. The difference in our submissions is that I submit that that part of it has already been served, so to speak.

The profession is aware that Mr Patel has not only pleaded guilty to misconduct on these issues, but that he has been found guilty, too, in the judgement of this Committee. No doubt about that.

As far as public protection is concerned, it has been accepted by him that public protection is a serious issue. That is why he has admitted that he is guilty of misconduct, but of course I would also put to you, or remind you, that in fact he was not at any stage in any sense of his practise, there is no evidence of it, a danger to the public in any fact. That is not being put to you to negate the importance of being on the register and being insured, but just as a point to be taken into account when you look at the whole picture.

What you are being asked to do in my submission by Mr Foster is to repeatedly look at facts on which it is accepted Mr Patel is wrong. He has come here and told you that, but we have to move on from that. He has accepted that that was misconduct. He is not denying it. Of course it was his responsibility to make sure that he was insured and on that register. We are looking now at a current matter, which is, is his

fitness to practise impaired? Is it impaired right now, today? That is quite a different matter. Now that is where you must be aware that this is not a question of punishing him. In fact in my submission, he has indicated to you that he has already been punished for what he has done wrong and he has said to you that he has quite rightly been punished. He has had to go through this procedure, lose his reputation, patients, money, the works. This is not a question of someone getting away with anything.

That purpose is not what you are seeking to do today, you are seeking to establish whether or not he has demonstrated to you that what he has done in relation to these allegations, and I will come to the other statement in a minute, is wrong and that he must sort his house out, so to speak. He has not made any attempt from the very beginning of this matter, since the receipt of the letter he tells you he did receive, the second letter, he tells you he did not practise between the time of the receipt of that letter and getting back again onto the register. He tells you that he did not receive the first letter. He does not tell you that it takes away his responsibility to be on the register, but he did not receive that first letter. There is no proof of that. We know it wasn't even a registered post letter.

I ask you just to put that in context, but he still sits before you and tells you that he was wrong and that it was his responsibility. He now tells you that he has certain procedures in place, including employment of a book-keeper who is charged with the task of making sure that his registration is renewed, so that he has this done through his practice. He has it on his own personal computer system and diarised as he has told you in evidence. That is not signs of a person who is showing no insight into his problem. When someone admits to you that he is guilty of misconduct and it is his responsibility to be on the register, that person is not showing signs of not having insight into his problem.

Then he has also told you about the AOP direct debit which he has now set up and which in fact continues until it is specifically stopped, so in respect of his insurance it is now on-going on a direct debit basis and will only be stopped if he physically stops it so that issue has been addressed as well.

The question of when the payments were made and whether or not there was a delay in payments does not go to insight into this particular problem. If a payment is delayed because a practitioner has to gather together money to pay the next instalment, in my submission that is throwing in a rather extraneous matter, because that is no part of any charge, that is no part of any evidence. He has paid the money back is a point he has made in terms of showing you that he appreciates that he has to pay the money back and he is not holding it back.

If there had been a delay because he had to gather together the money or whatever, that is a totally different issue. That is no part of insight into whether or not you should be registered or testing sight whilst uninsured. So, in my submission, he has told you that he has understood. He has made it absolutely clear, and it is accepted that he is an honest man. He has made it absolutely clear that he knows what he has done.

I take you to the statement that has been put in from Peter Coe, and that statement sets out periods of time when Mr Patel fell off the register. Some of those periods of time, and again Mr Patel has made no excuse for this, do relate to very short periods when clearly the practitioner fell off, and I am sure that he is not the only practitioner who might have fallen off for those very brief periods of time in terms of renewal. That is why I know that the Council has a system of reminders.

Now, the other matters on which he has given evidence as to why he fell off the register in terms of being out of the country and therefore not practising, in terms of not working in a particular period, in terms of his company not trading at that time, all of this has been accepted. It is not being contested. Those are valid reasons. Those do not suggest any wrong-doing, but he has shown enough insight over and above what is required in my submission, to tell you that he is going to stay on this register whether or not he is in the country, working or not, because he thinks it is important that he is just covered all the time.

So my submission, even where he strictly doesn't need to, he has shown that he will do it. Mr Sadler has told us that he found no deliberate dishonesty; he wasn't treating it as that matter. He told you that Mr Patel was open with him; he admitted these things right from the start and you have repeatedly been told by the Council as well that there is no issue of anything deliberate or dishonest.

Therefore my submission when it comes to assessing his current fitness to practise being impaired, it is not impaired because he has understood the problem well beyond the problem. He is now telling you that he has systems in place to make sure that he does not fall off this register again. His AOP insurance will continue until he physically stops it, because it is being paid by direct debit, and he has put into place procedures to make sure that he is in charge of renewing his GOC registration himself and he has a back-up system with his book-keeper, and because in my submission, there is no issue as to his honesty, why should you not believe this gentleman when he tells you this? When he tells you that, yes, this experience has taught him a lesson, he now knows the score. Why should that be a negative? That is a positive he has learnt.

There is no need in my submission now to find his fitness to practise to be impaired. The profession's interests, the dignity of the profession, has been served by your finding of misconduct, by the very fact that he has come here before you today to answer these charges, and to explain himself, and to explain how he is going to put his house in order. There is no public protection issue for the same reasons, that he has understood the problem, has dealt with it, and this issue he has told you as an honest man will never arise again. Therefore his current fitness to practise, and I repeat again, the test is current, is not impaired.

Ms Jones: Can I invite the Legal Adviser? Do you have any comments you wish to make?

Mr Swinstead: Madam, very shortly. Your task at this stage of the proceedings is to consider whether the allegation that Mr Patel's fitness to practise is impaired is made out by reason of your findings at the first stage that he is guilty of misconduct. This decision involves the exercise by you of your judgement. It is a matter for you based upon what has been admitted and all the matters that you have heard and to decide whether in your judgement Mr Patel's fitness to practise is impaired. Madam, I don't think I can give you any further advice. Would either party wish me to say anything further, or do you wish to correct anything I have said? [No]

Ms Jones: Can I then invite Mr Henley to clear the room? In view of the time, may I suggest that we reconvene at 1.30 pm? Thank you.

[The Hearing adjourned at 12.45pm]

[The Hearing reconvened at 1.35pm]

Ms Jones: Mrs Kapila, will you be joined by your colleague who was here earlier?

Mrs Kapila: No, Madam.

Decision

Ms Jones: We have heard submissions on the issue of impairment from Mr Foster on behalf of the Council and Mrs Kapila on behalf of Mr Patel, and we heard evidence from Mr Patel. We have also accepted advice from a Legal Adviser and have borne in mind that as to the issue of impairment, this is a question of our judgement.

Mr Patel was removed from the register of optometrists on 16 August 2005 for not providing evidence of insurance. On 20 September 2005, a letter was sent to Mr Patel from Wolverhampton City PCT informing him that the PCT had been notified that his name had been removed from the GOC's register and therefore his name had also been removed from the PCT's contractor ophthalmic list.

Mr Patel in his evidence said that he did not receive the PCT's letter. In January 2006, Mr Patel was written to by Mr Timothy Sadler of the PCT to inform him that despite not being on the list he had received a total of £9,698 in fees to which he was not entitled. In the intervening months, Mr Patel had authorised GOS Forms 1, 3 and 4 when he was not registered as an optometrist to receive payment from the Trust.

Registration and continuation of membership of the profession is a fundamental requirement. Mr Patel has demonstrated a basic disregard of this important requirement. The public interest and safety is not protected by such disregard. We consider that he has demonstrated a level of irresponsibility towards patients and towards his professional responsibilities which are inconsistent with the practises of a reasonably competent optometrist. Consequently, we find Mr Patel's fitness to practise as an optometrist impaired.

Can I invite Mr Foster to present any further relevant evidence regarding sanction?

Mr Foster: I am grateful, Madam. I have nothing to say on the subject of sanction. That is entirely a matter for you, Madam.

Mrs Kapila: The only thing I would say is at this stage I have the references which I will pass to my friend and also to the Committee. But what I wish to say is this. That you have found Mr Patel's fitness to practise impaired, but I would ask you to bear in mind his honesty in accepting that he did wrong, his evidence to you that he has understood where he went wrong, and his evidence to you that he has set in motion a process for ensuring that it does not happen again. In my submission, the finding against him today, both findings, are sufficient for the issue of public protection and the reputation of the profession, as well as Mr Patel's own realisation of where his errors lie, to be addressed. Therefore in my submission the very finding of the impairment of fitness to practise should be sufficient, and in view of the situation that he has personally been in as described to you in my submission there should be no need for any further sanction against him.

Ms Jones: There are a number of sanctions open to the Committee and that includes financial. Have you prepared a statement of means?

Mrs Kapila: No, I will speak to Mr Patel about that, if he wants to provide any evidence to the Committee and I will speak to Mr Henley about the form that he is required to fill. We could do that very quickly for you, Madam.

Ms Jones: I would appreciate that being undertaken, then, thank you. Can I invite you, then, to clear the room again?

[Hearing adjourned at 1.40 pm]

[Hearing reconvened at 1.45 pm]

Ms Jones: Thank you, we have had time to read the references, and thank you for the information submitted. Can I invite our Legal Adviser to then advise us finally.

Mr Swinstead: Yes, Madam. At this stage of the proceedings you should deliberate and decide whether to make any direction or order under Sections 13(f) to 13(i) of the Opticians Act 1989 and you should announce your decision under the provisions of Rules 54(1) and (2) of your Rules. You should move from one direction to the next in ascending order of seriousness and you should only move if you are satisfied that the direction which you are considering is insufficient in all the circumstances. You should give full reasons explaining why you have reached the decision that you have. I remind you that you have the power under Section 13(H) when you have the power to impose a direction under Section 13(F) that you have the power to impose either in addition to, or instead of the direction, a financial penalty order. You may impose a financial penalty order up to, but not exceeding, the maximum penalty of £50,000.

When you are deliberating as to whether the particular direction that you are considering is the appropriate direction, you should have in mind the following matters :

- The protection of the public, and in particular patients.
- The maintenance of public confidence in the profession.
- The declaring and upholding of proper standards of conduct in the profession.

In deciding the appropriate direction, you should consider proportionality, weighing the interests of the public against those of Mr Patel. In coming to your decision you should take account of the seriousness of the case in the matters put before you on behalf of both the Council and Mr Patel, and ensure that the determination that you come to is a proportionate response to the facts proved and all the matters that have been put before you. Further, that it is the lowest direction in the hierarchy of directions that in all the circumstances meets the justice of the case. That is my advice. Would either party wish to say anything further, or would you wish to correct anything that I have said?

Mr Foster and Mrs Kapila: No, thank you.

Mr Swinstead: That, then, is my advice.

[The Hearing adjourned at 1.47 pm]

[The Hearing reconvened at 2.30 pm]

Ms Jones: Mr Patel, can I invite you to stand, please? Thank you.

Decision

The Committee announce its decision as follows.

The Committee have heard the submissions of Mrs Kapila as to the sanction and has read the testimonials put before them on Mr Patel's behalf. The Committee has accepted the legal advice provided by the Legal Adviser. The Committee reminded itself that neither dishonesty nor intent to deceive are alleged by the Council in this case.

Mr Patel, the Committee has found you guilty of misconduct and has found that your fitness to practise is impaired. You have let down the public, yourself and your profession by your irresponsible actions, and your conduct in this case cannot and will not be tolerated. The public confidence in the profession, and in turn, their safety, is paramount.

This Committee is not going to make a direction regarding your registration with the GOC but in the circumstances is imposing a financial penalty of £2,500 to be paid within three months of the date of this Hearing. We trust that these matters will not occur again and expect that you and indeed all practitioners will be assiduous in assuring that registration is maintained at all times whilst in practise.

Thank you, please sit down.

That concludes matters. Thank you very much to all the parties.

[The Hearing concluded at 2.32 pm]

