

F(07)14

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

**GENERAL OPTICAL COUNCIL
AND
LEO MARTIN THRELFALL (D-9091)**

SUBSTANTIVE HEARING: Monday, 17 September 2007

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Fitness to Practise Committee: Ms M Jeyasingham (Lay Member) (Chair)
Dr D Azubike (Lay Member)
Mr R Hensley (Dispensing Optician)
Mr N Roberts (Dispensing Optician)
Mr R Varley (Lay Member)

Legal Adviser: Mr D Etherington QC

Hearings Manager: Mr D Henley BEM

For the GOC: Mr B Albuery

For the Registrant: Miss B Hewson

[Proceedings commenced at 13.37]

Ms Jeyasingham: Good afternoon. I am Mercy Jeyasingham, a lay member of the Hearings Panel and I have been elected by the Committee to chair today's hearing. The Committee today is made up of two dispensing opticians and three lay members, and I will ask the members of the Committee to introduce themselves and the capacity in which they sit. *[Introductions]* To my right is Mr Etherington QC, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee and ensure that the proceedings are conducted in accordance with the Rules of Procedure so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate. In the event that any matter arises during the course of the Committee's deliberations upon which the Committee seeks advice, the parties will be invited to return to hear the matter which the Committee has raised and the advice given to the Committee. Where advice on any issue is not accepted by the Committee, this will be indicated in the course of its decisions on that issue.

At the desk in front of the Committee, to my left, is the transcriber who will be keeping an official record of all that is said today during the sessions of the hearing at which 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.

I note that this hearing has been listed as a procedural hearing but I understand that both parties have previously agreed that under Rule 31 of the Fitness to Practise Rules 2005 the matter can progress directly to a substantive hearing. Is that the case?

Mr Albuery: Yes, Madam.

Miss Hewson: Yes.

Ms Jeyasingham: I ask Mr Albuery to make an application.

Mr Albuery: The application is that this hearing be held in private. Dealing with this, I invite you to hear the application in private.

Miss Hewson: I would support that.

Mr Etherington: Madam, you have a discussion whether to hear either the application or the hearing in private. It might seem sensible, in my advice to you, to suggest that you do at least hear the application in private since, if it were heard in public, it would be redundant.

Ms Jeyasingham: Thank you. Mr Henley, can I ask you to clear the room, please?

[Hearing continues in camera]

[The public were readmitted at 14.21]

Ms Jeyasingham: I will read out the decision of the application. Having heard the submissions by the Presenting Officer, which were unopposed in this case, that the public should be excluded from the substantive hearing of the allegation, and having considered the Council's Rules and the general law, we have concluded that balancing the interests set out in Rule 23(2), including the public interest, the hearing must be held in private.

We have considered carefully whether it might be possible to hear part of the matter in private and part in public, but we were satisfied that it would be difficult to separate the issues in this way such as to enable us to hear the matter properly and fairly without revealing directly or indirectly the matters that we consider should be heard privately.

[The public leave the proceedings]

[Hearing resumed in public at 16.20]

Ms Jeyasingham: The allegation is the Council alleges that the fitness to practise of Leo Martin Threlfall (a registered dispensing optician) is impaired in that:

1. On 24 November 2006 at Liverpool Crown Court Mr Threlfall was convicted upon indictment of two counts of sexual assault on a female by penetration, one count of attempted assault by penetration and one count of assault occasioning actual bodily harm, for which offences he was, on 20 December 2006, sentenced to a period of imprisonment of six years and six months.
AND by reason of the facts set out above, Mr Threlfall is guilty of misconduct.

DETERMINATION

Findings in relation to the particulars of the allegation

The Committee found the particulars of the allegation admitted and proven.

We were told additionally that the Registrant had been ordered to have his name placed on the Sex Offenders' Register for life. These crimes in any circumstances are very grave offences. A conviction for so serious a series of offences damages public confidence in his reputation, in the profession itself and the maintenance of proper professional standards, and because of this we found Mr Threlfall guilty of misconduct.

Findings regarding impairment

The Committee found that the fitness of Mr Threlfall to practise as a dispensing optician is impaired because of the grave effect on his reputation and that of the profession caused by the fact of the convictions of indictment, the full circumstances of those convictions and the lengthy sentence of imprisonment imposed by the court.

Further order

The Committee gave full and careful consideration to the mitigation advanced most thoroughly and carefully by Miss Hewson, including the particular circumstances of the offences, and on Mr Threlfall himself, including his background and his behaviour since the offences, including his pleas of guilty. Nevertheless, in view of the seriousness of the criminal offences and the damage they must do to public confidence in the profession, the Committee considered erasure the least possible direction that could be made in all the circumstances. Accordingly, the Committee has decided that Mr Threlfall's name must be erased from the register with immediate effect in the public interest.

Mr Albuery: Madam, may I raise one matter? I only say it because others will read your judgment. In the giving of your reasons you did say that you had found Mr Threlfall guilty of misconduct. As I mentioned in my opening, he is not charged with misconduct, and the conviction is the trigger for the finding of impairment. I just felt I ought to make that clear, lest there be any doubt about it later. That is my understanding of the law and Section 13(D)(2), and those are my instructions, that when you are dealing with a conviction case you should not go on to consider whether that conviction amounts to misconduct. It would be wrong of me not to mention that concern and just to leave this place having heard it. I raise it only for that reason.

Mr Etherington: Of course, in the allegation the expression "guilty of misconduct" is used, I think I am right in saying, am I not?

Ms Jeyasingham: Yes, it is.

Mr Etherington: But in any event, the Committee, as you heard, in their deliberations were satisfied that his fitness to practise was impaired. The Committee was simply following the form in which the allegation appeared, and it was a matter that troubled me a little. It may be something that needs consideration when charges on convictions are drafted in the future.

Mr Albuery: It clearly does, and I am grateful. Thank you.

[Hearing concluded at 16.24]