

National Health Service (Scotland) Act 1978

STATEMENT

by

**THE TRIBUNAL, Constituted under Section 29 of the National Health Service
(Scotland) Act 1978 in the Representations at the Instance**

of

SHETLAND HEALTH BOARD

COMPLAINERS

against

MR BRIAN KELLY, (B & C KELLY OPTICIANS),

RESPONDENT

Members of Tribunal:

**J Michael D Graham, LLB Chairman
Richard HR Broughton FCOptom DipCLP
John D. M. Robertson, C.B.E., BL**

Fraser Geddes, Clerk to the Tribunal

CONTENTS:	PAGE
1. Introduction	3
2. Procedural History	5
3. Statement of Facts	8
4. Draft Conditions Submitted by Complainers with response by the Respondent	11
5. Findings of Fact	17
6. Evidence	19
7. Submissions - the Complainers	59
8. Submissions – the Respondent	66
9. Discussion	78
10. Conclusion	102
11. Decision	110
12. Appendix I	111
13. Appendix II	114

SHETLAND HEALTH BOARD V KELLY

1. INTRODUCTION

- 1.1 The Respondent is a qualified optometrist who from 1985 provided services as an optometrist in Lerwick, Shetland to National Health Service Patients. In June 2005, the Complainers made Representations to the Tribunal which averred *inter alia* between April 1995 and December 1999 that the Respondent had made a substantial number of false and inaccurate claims in forms submitted to the Complainers in respect of the provision of spectacles to patients and that by his actions he had risked causing detriment to the National Health Scheme operated by the Complainers by securing or trying to secure a financial benefit for himself or others and to which he knew he and they were not entitled.
- 1.2 Our decision of 5th January 2007, after a Hearing at which the Respondent was legally represented, upheld certain representations made to us by the Complainers concerning the Respondent's conduct and following upon which we disqualified the Respondent from inclusion in (1) the Complainer's List of Medical Practitioners and Ophthalmic Optician undertaking to provide and of persons approved to assist in providing general ophthalmic services and (2) all lists within sub-paragraph (d) of sub-section (8) of Section 29 of the National Health Service (Scotland) Act 1978 ("the 1978 Act").
- 1.3 On 16th January 2008 an Extra Division of the Inner House previously quashed our decision dated 5th January 2007 insofar as it disqualified the Respondent from inclusion in the Complainer's List of Medical Practitioners and Ophthalmic Opticians and remitted the case to us to consider and review the question of disposal of the matter.
- 1.4 By Judgment issued by the Extra Division of the Inner House for the Court of Session and following upon an Appeal by the Respondent [2009] CSIH 3 2009, we were directed to apply our mind again to the question of appropriate disposal in this case and to set out clearly our reasons in support of our conclusions.

- 1.5 During the course of the Judgment of 15th January 2009, Lord Clarke stated that "the Tribunal's function is... one of balancing both the interests of the public in relation to the proper operation of the Health System and the interests of persons such as (the Respondent) in pursuing his professional career... It is quite clear that the statutory scheme involved does not exclude the possibility of a conditional discharge being an appropriate disposal of a case even in fraud cases and where there has been a serious breach of trust..."
- 1.6 Lord Clarke later in the Judgment states "...we are not satisfied that the Decision provides adequate and intelligible reasoning as to why conditional disqualification was ruled out in this case.. We are not saying that there could not be appropriate reasons in this case for reaching such a conclusion... (We) are saying that the reasons given by the Tribunal insofar as we have been able to identify them are not free from doubt and in our view are not adequate or sufficiently intelligible."
- 1.7 We accept Lord Clarke's observation that our function is one of balancing both the interests of the public in relation to the proper operation of the Health System and the interests of persons, such as the Respondent, in pursuing a professional career and our decision has been arrived at with that balance very much in mind.

2. PROCEDURAL HISTORY

- 2.1 Following their Lordships Judgment of 15th January 2009, the Tribunal reconvened and heard submissions of Counsel for both parties on 1st April 2009. The Lay Member of the Tribunal which originally heard evidence on the Complainer's representations, John Robertson, CBE was indisposed and unable to attend on 1st April 2009. His place was taken by Mr Allan Watson. At the hearing neither Mr Lindsay for the Respondent nor Mr Khurana for the Complainers took issue with Mr Watson's involvement. During the course of the hearing, on 1st April 2009 Mr Lindsay invited the Tribunal to recuse and remit the matter to a differently constituted Tribunal with no prior involvement in this case. Having considered the Submissions of Counsel and the direction which we derived from the Opinions of the Court, we were satisfied that it was in the interest of justice that we continue to adjudicate in the matter of disposal. Our reasoning was fully explained in our Order of 19th June 2009.
- 2.2 We were assisted in coming to our view by the agreement of both parties that further evidence would be required on the question of disposal. It was acknowledged by both parties that there was an evidential insufficiency on this point at first instance, and that the *ex parte* submissions made following upon the first appeal were inadequate for the purpose of allowing a proper reconsideration of the issue. It seemed to us that the evidence to be led in this connection could not be divorced from the evidence which we had already heard at first instance, and a consideration of both would be necessary in order to reach a fair and balanced judgment as to disposal.
- 2.3 A further Procedural Hearing was held on 5th August 2009. Mr Robertson, the Lay Member, had by then recovered. Given that our earlier decision had been quashed, we held that the onus remained with the Complainers to satisfy the Tribunal that one of the conditions for disqualification had been met in terms of Section 29B(1) and (2) of The National Health Service (Scotland) Act 1978 ("The 1978 Act"). The Complainers were ordered to lead such further evidence as to disposal as they considered appropriate, if so advised. Thereafter the Tribunal held that the onus would shift to the Respondent to show that it would be unjust to disqualify either at all or conditionally. The matter was set down for proof on 10th – 13th

November 2009 inclusive. The Respondents were ordered to intimate what conditions they might consider appropriate if the Tribunal was to be invited to consider conditional disqualification, whether as a principal submission or as a fallback position. We received no such formal intimation from the Respondent although he indicated in his evidence that he would be prepared to work in both Greater Glasgow and Lothian Health Board areas "under supervision" but with no indication as to the meaning or extent of that supervision.

2.4 In a letter dated 26th October 2009 received by the Clerk to this Tribunal, the Respondent's solicitor sought a postponement of the Enquiry on the grounds that Mr Lindsay, Advocate was unavailable and that two of the Respondent's witnesses were no longer available. On 5th November 2009, the Tribunal granted the Respondent's motion and adjourned the enquiry to a date to be assigned. The Tribunal subsequently *ex proprio motu* assigned 9th – 12th February 2010 inclusive as dates for an evidential hearing.

2.5 On 9th February 2010, Mr Drew McKenzie, Advocate appeared on behalf of the Respondent who was personally present along with his solicitor Mr J McGovern. Mr Khurana, Advocate and Mr Campbell appeared for the Complainers.

2.6 The Tribunal, having noted that the Respondent formally accepted that the statutory ground of disqualification specified in the Section 29(7) of the 1978 Act had been made out, in view of this ordained the Respondent to prepare a Statement of Facts and the Complainers to answer the same. Said Statement of Facts and Answers by both the Respondent and the Complainers were prepared in order to give context to the evidence to be led on disposal, and are reproduced in the following section. The Respondent was then ordained to lead at proof in respect that the proceedings following would be akin to a proof in mitigation upon which the onus would lie on the Respondent.

2.7 Evidence was heard on 10th, 11th and 12th February 2010 and the Enquiry adjourned to 6th – 8th September 2010.

2.8 From September 2010, owing to the indisposition of Mr Khurana, Mr Philip Stuart, Advocate

appeared on behalf of the Complainers until the end of the Enquiry.

- 2.9 Discussions took place between the parties with a view to settlement on 6th and 7th September, and the Tribunal was advised that parties had reached agreement in principle concerning final settlement. Whilst further discussions were ongoing in an endeavour to reach agreement on the minutiae, both parties were confident that resolution could be reached and a joint motion was made to discharge the proof. That motion was granted. However, On 8th September 2010, parties advised the Clerk that settlement discussions had broken down.
- 2.10 The fact that these discussions had broken down and a fresh diet requiring to be assigned was regarded by the Tribunal as most unsatisfactory. The Tribunal indicated in a following note that Tribunals of this sort are a significant burden on the tax payer as well as being an administrative challenge to organise. It was not clear to the Tribunal whether any settlement discussions took place prior to the week commencing 6th September but for a three day diet to be lost to fruitless discussion was regarded by the Tribunal as disappointing and frustrating, especially when, presumably, any such discussion could and should have taken place well in advance.
- 2.11 The Tribunal then assigned 17th to 21st January 2011 as a further diet, and commented that no further time would be afforded for any "discussions". If there were to be any further discussions regarding settlement then parties were encouraged to do so without delay.
- 2.12 The Hearing on Evidence took place on the following further dates: 17th, 18th and 19th January 2011.
- 2.13 During the course of the evidence, the Complainers produced draft conditions which, they considered, may be appropriate were the Tribunal minded to disqualify the Respondent conditionally. These draft conditions were submitted without prejudice to their position that unconditional disqualification was appropriate, and are contained in Section 4 of this Statement.

3. STATEMENTS OF FACTS

Statement of Facts for the Respondent

- 3.1 The Statement of Facts for the Respondent contained, inter alia, the following averments:-
- 3.1.1 That the Respondent is 53 years of age. He qualified as an optometrist in 1985. In so far as one of the conditions for disqualification has been met, the conduct giving rise to that finding occurred between April 1995 and December 1999. Since that date the Respondent has provided ophthalmic services to both NHS patients and non NHS patients in an entirely satisfactory manner.
- 3.1.2 That since the conduct complained of the Respondent had lost his business, been sequestrated and his marriage had broken down. Furthermore, in or about December 2006, as a consequence of the events which were the subject matter of an earlier Tribunal hearing, together with the events just referred to, the Respondent suffered a nervous breakdown.
- 3.1.3 That since January 2005 the Respondent has worked as a locum optometrist throughout Scotland. That since December 1999 it has never been suggested by any NHS Board that the Respondent has submitted any false claim or perpetrated or attempted to perpetrate any fraud. *Separatim* a substantial proportion of the sums inappropriately obtained have been repaid and furthermore the Tribunal has accepted that the amount appropriated "was not on a grand scale".
- 3.1.4 That the Respondent will lead evidence from other members of the profession that he has worked with and been engaged by. They will testify that he is an effective and responsible optometrist, well respected by colleagues and patients alike. Insofar as this Tribunal previously concluded at paragraph 10 of their decision of 27th March 2008 that "We were concerned as to what the incentive to him might be were Mr Kelly to be restricted in terms of a conditional disqualification and we were satisfied that a locum working in a particular area would be more valued if more services were

provided as the income to the business flows from the voucher scheme. There were difficulties in policing it" – evidence will be led from the Respondents witnesses that following on an eye sight test the rate of dispensing is approximately 80% *et separatim* that in working as a locum there would be no question of the Respondent having any responsibility for the submission of any vouchers.

Statement of Facts for the Complainer

- 3.2 The Complainer does not accept the assertion that the Respondent has practised as a locum, since about 2005, in an entirely satisfactory manner, under reference to the following matters:
- 3.2.1 That on a number of occasions since 2005 the Respondent has practised as an optometrist in a Health Board area whilst knowing that he was not entitled to do so as he was not on the Ophthalmic List of that Health Board.
- 3.2.2 That the Respondent has knowingly submitted inaccurate information when applying for inclusion on the Ophthalmic List of at least one Health Board.
- 3.2.3 That the Respondent has delayed and in some cases failed to respond to the reasonable information requested by at least one Health Board.
- 3.2.4 That the Respondent has failed to comply with the legislative provisions in relation to General Ophthalmic Services introduced in April 2006.
- 3.2.5 That the Respondent has indicated to optometrists' practice managers or owners that he is eligible to work in their practice as a locum when he has known or ought to have known that he is not so eligible.
- 3.2.6 That the Respondent has sought payment for locum services provided by him, by way of a cheque made payable to "A Kelly".

3.3 Further, in the Statement of Facts for the Respondent, it is stated that evidence would be led on the rate of dispensing. The Respondent signalled an intention to lead evidence to support the contention that locum practitioners can be paid extra for achieving higher dispensing rates.

4. DRAFT CONDITIONS SUBMITTED BY COMPLAINERS WITH RESPONSE BY THE RESPONDENT

4.1 The following conditions are to apply for a period of 2 years from the date of this order of the NHS Tribunal imposing conditional disqualification, (save for paragraph 4.10.4 which is to apply for a further period of 3 years after the initial period of 2 years).

4.2 The Respondent is only to practise as an optometrist (whether as an individual or through a body corporate) in the areas of Greater Glasgow Health Board or Lothian Health Board. He is for the avoidance of doubt to comply with all statutory requirements relating to his practice within the areas of those Health Boards. The Respondent is with immediate effect disqualified from inclusion in the ophthalmic list of any other Health Board, including Shetland Health Board. He shall however be entitled to apply for inclusion on any such list, subject to the conditions below.

4.3 If the Respondent intends to practice as an optometrist in the area of any Health Board other than Greater Glasgow Health Board or Lothian Health Board then he shall (in addition to any other statutory requirements which he is required to fulfil):

4.3.1 inform that other Health Board, no later than his application for inclusion on the ophthalmic list of that Board, of his conditional disqualification by the NHS Tribunal and provide to that Board, along with his application, a copy of these conditions;

4.3.2 give written notice to the following addresses of his proposed application to another Health Board, to be received by the following addressees no later than 2 working days before the Respondent submits his application for inclusion on the ophthalmic list of the other Board:

- (i) the Chief Executives of Greater Glasgow Health Board and Lothian Health Board respectively, (or such other addressee as may be

intimated to the Respondent in writing on behalf of either of those Health Boards for this purpose); and

- (ii) The Optometric Monitoring Co-ordinator, National Services Scotland Practitioner Services Division, 1 Gyle Square, 1 South Gyle Crescent, Edinburgh, EH12 9EB (or such other addressee as may be intimated in writing to the Respondent by NSS Practitioner Services for this purpose);

4.3.3 in the event that the Respondent's name is included on the ophthalmic list of a Health Board other than Greater Glasgow Health Board or Lothian Health Board, then his practice as an optometrist within the area of that Board shall be subject to these conditions.

4.4 The Respondent is only to practice as an optometrist under the supervision of a practicing optometrist who is at the time of supervising the Respondent included on the first part of the Ophthalmic List as defined in Regulation 6 of The National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006 ("the 2006 Regulations") of the Health Board in the area in which the Respondent is practising at the time.

4.5 The Respondent shall (in addition to all other statutory requirements in connection with his practice as an optometrist) maintain a paper diary, in which he shall record for each day upon which he practices as an optometrist:

4.5.1 the name of the practice at which he has so practised;

4.5.2 the address of the practice premises at which he has practised;

4.5.3 the NHS payment location code of those premises;

4.5.4 the date upon which he practised at the practice premises;

4.5.5 the name and ophthalmic list number of the optometrist who supervised him on that date pursuant to paragraph 4.4 above;

4.5.6 the first name, last name and date of birth of each person who has undergone an examination or test conducted by the Respondent at the practice premises in question on the day in question;

4.5.7 the nature of examination or test conducted on each person referred to in paragraph 4.5.6 (for example, primary eye examination, supplementary eye examination or sight test); and

4.5.8 the fees claimed in respect of the Respondent's attendance on each such person on that date.

4.6 The record in the diary of a day's practice shall be signed by the Respondent and by the optometrist who supervised the Respondent on that day, no later than 24 hours after the end of the day in question. The date of each signature shall be written by the signatory adjacent to their signature.

4.6.1 The Respondent shall by signing the record of a day's practice certify that the information specified at paragraphs 4.5.1 to 4.5.8 above which has been recorded in the diary for the day in question is accurate.

4.6.2 The supervising optometrist signing the record of a day's practice shall certify that the information specified at paragraphs 4.5.1 to 4.5.8 above which has been recorded in the diary for the day in question is, so far as he or she is reasonably aware, accurate.

4.7 The Respondent shall before he begins work as an optometrist at any practice premises:

4.7.1 inform the optometrist to sign the Respondent's diary in accordance with paragraph 4.6 above; and

4.7.2 provide the optometrist who is to supervise him with a copy of these conditions.

4.8 At all times while the Respondent is practising as an optometrist, he shall during his working day keep the above diary at the practice premises where he is so practising.

4.9 For each calendar month during which he practises as an optometrist, the Respondent shall submit to:

4.9.1 the Chief Executive of each Health Board in whose area he has practised as an optometrist during that month, (or such other addressee as may be intimated to the Respondent in writing on behalf of that Health Board for this purpose); and

4.9.2 The Optometrist Monitoring Co-ordinator, National Services Scotland Practitioner Services Division, 1 Gyle Square, 1 South Gyle Crescent, Edinburgh, EH12 9EB (or such other addressee as may be intimated in writing to the Respondent by NSS Practitioner Services for this purpose)

a legible photocopy of the entries in the diary for that month. He shall do so no later than 14 days after the end of the month.

4.10 The Respondent shall make the above diary available for inspection:

4.10.1 by any representative of either:

(i) Greater Glasgow Health Board, Lothian Health Board or any other Health Board in whose areas he has practised during the period of 2

years referred to in paragraph 4.1; or

- (ii) National Services Scotland Practitioner Services Division;

4.10.2 either:

- (i) upon request during the working day, whether with or without prior notice, at any practice premises where the Respondent is currently practising as an optometrist, or
- (ii) upon request on not less than 7 days' written notice, at any place of business of the organisation referred to in paragraph (4.1) which is requesting access to the diary as is specified in that notice and upon such date and during such hours on that date as are specified in that notice, or
- (iii) at any other place or time as may be agreed in writing between the Respondent and a representative of the organisation referred to in paragraph (4.10.1) which is requesting access to the diary.

4.10.3 A request to inspect the diary under paragraph 4.10.2 (i) may be made during the period of 2 years referred to in paragraph 4.1 hereof;

4.10.4 A request to inspect the diary under paragraph 4.10.2 (ii) or 4.10.2 (iii) may be made during the initial period of 2 years referred to in paragraph 4.1 hereof and during the period of 3 years thereafter.

4.11 The Respondent shall:

4.11.1 within 7 days of the date of this order of the NHS Tribunal imposing conditional disqualification inform the addressees specified (in paragraphs

4.9.1 and 4.9.2 above) in writing of his current contact details (including a postal address to which notices or other correspondence intended for the Respondent may be sent; an email address and a telephone number);

4.11.2 advise those addressees in writing of any change in any of those contact details no later than 48 hours after it occurs.

4.12 In these conditions the terms "optometrist", "practice premises", "eye examination", "primary eye examination", "supplementary eye examination" and "sight test" are to have the meanings respectively ascribed to them by regulation 2(1) of the 2006 Regulations.

The Respondents in answer stated:

4.13 That there should be no disqualification.

4.14 That if there is to be a disqualification it should be conditional based upon the draft proposed conditions above but under deletion of the requirement to have a Part 1 optometrist sign the daily diary and that any such signing may be effected by a practice manager or owner who need not be a qualified optometrist.

5. FINDINGS OF FACT

5.1 The Respondent is 53 years of age. He qualified as an optometrist in 1985. He resides at 38 Laighpark Road, Paisley.

5.2 The Tribunal found that one of the conditions for disqualification had been met and the conduct giving rise to that finding having occurred between April 1995 and December 1999 since which date the Respondent has provided ophthalmic services to both NHS patients and non NHS patients.

5.3 There was no cogent evidence that the Respondent had not carried out the clinical aspect of his work satisfactorily.

5.4 Since the conduct complained of the Respondent has lost his business in Shetland, has been sequestered and his marriage has broken down.

5.5 Since January 2005, the Respondent has worked as a locum optometrist throughout Scotland. There is no evidence to suggest that since December 1999, the Respondent has submitted any false claim or perpetrated any fraud on the NHS.

5.6 The Respondent has not been providing private ophthalmic services from any of the practices referred to in evidence.

5.7 The Respondent was aware of the requirements of the 2006 Regulations insofar as they related to the requirement for him to be registered for work in a practice in a Health Board area.

5.8 The Respondent was abusive and intimidating towards Jacqueline Miller.

5.9 Of the sum of £29,398.70 defrauded by the Respondent £12,460 was repaid following upon a criminal prosecution against him. The prosecution was deserted pro loco on an undertaking

by the Respondent that he would repay the balance of £16,938. He has failed to do so.

- 5.10 The Respondent has not conducted his practice as a locum optometrist since 2005 in a satisfactory or honest manner.
- 5.11 On a number of occasions since 2005, the Respondent has practiced as an optometrist in a Health Board area whilst knowing that he was not entitled to do so as he was not on the Ophthalmic List of that Health Board.
- 5.12 The Respondent has knowingly submitted inaccurate and misleading information when applying for inclusion on the Ophthalmic List of at least two Health Boards.
- 5.13 The Respondent has delayed and in some cases failed to respond to reasonable information requested by at least one Health Board.
- 5.14 The Respondent failed to comply with the legislative provisions in relation to General Ophthalmic Services introduced in April 2006, including failure to update Health Boards with changes in addresses at which he worked and resided.
- 5.15 The Respondent has indicated to optometrists, practice managers or owners that he was eligible to work in their practice as a locum when he knew or ought to have known that he was not so eligible.
- 5.16 The Respondent sought payment for locum services provided by him by way of a cheque made payable to his son "A Kelly".
- 5.17 The Respondent endeavoured to mislead Lothian Health Board in his responses to enquiries made of him by them.

6. EVIDENCE

James Adams

- 6.1 Mr James Adams gave evidence for the Complainers. Mr Adams is an optical technician who owns a business known as Gregory Pecks in Broughty Ferry. He employs locum optometrists in that business. He advertised for a locum and Mr Kelly responded to that advertisement. Mr Adams employed the Respondent for a period of 4 or 5 days between December 2006 and January 2007. Mr Adams did not carry out any checks as to whether the Respondent was qualified to sign the relevant claim forms, but simply took him at his word and took the Respondent on trust. The Respondent was paid a daily rate of £250.
- 6.2 During his employment at Gregory Pecks, the Respondent was required to carry out eye tests and sign forms which were subsequently provided to the Health Board. Approximately 3 months after the Respondent's forms were submitted to the Health Board, they were returned without explanation. Mr Adams enquired as to why the forms had been returned and was told that the Respondent was not registered with Tayside Health Board and, accordingly, they would not pay out in respect of any forms signed by him. Mr Adams stated that he did know that a locum required to be registered to work. He stated that he had not had any other forms rejected prior to the Respondent's. He now carries out checks with the Health Board. Mr Adams stated that he was out of pocket by an amount of between £1,500 and £2,500 as a result of the Respondent's forms being rejected.
- 6.3 Mr Adams stated that he discussed the matter with Jane Haskett of Tayside Health Board. He also discussed the matter with Respondent, who advised that he thought he was registered. Mr Adams stated that he thought the Respondent would simply have to register with the Health Board to resolve the problem. He stated that he spoke to the Respondent on a further occasion and requested, for a second time, that he contact the Health Board to have the matter cleared up.
- 6.4 Mr Adams wrote to the Health Board and was advised that the Respondent was not registered with Tayside. Mr Kelly had advised him he was registered with Lothian Health Board.

Takoni Harry

- 6.5 Ms Takoni Harry gave evidence for the Complainers. She is an optometrist who works at Optimeyes, Broxburn. Ms Harry's father and husband are directors of the business. She has been running the business since 2005. She had little need for locums because she employed another full-time optometrist and her father was also an optometrist and worked some days.
- 6.6 She required a locum in December 2006 because she was going on holiday and her full-time optometrist had injured herself. The Respondent was recommended to her by a friend. Ms Harry contacted the Respondent to discuss the days he would work and his rate. He was paid £150 for a Saturday and more (possibly £200) for weekdays.
- 6.7 Ms Harry stated that she had asked the Respondent whether he was registered with the Health Board. She knew that the Regulations had changed and, from her experience as a locum, knew that some people were required to complete an additional addresses form. She stated that she had offered such a form to the Respondent. She knew that the form required to be submitted before work was carried out because the Health Board do not have to accept any claim if the form has not been previously submitted. She stated that the form was not complicated and that Louise Hockaday of Lothian Health Board dealt with such forms expeditiously. She stated that she now asks locums to submit the form to her so that she can see it and then send it to Louise Hockaday herself to ensure it has been done. Ms Harry stated that the Respondent said he did not need to submit the form as he was registered with the Health Board.
- 6.8 Ms Harry stated that the Respondent completed his own General Optical Services ("GOS") claim forms. She then submitted the GOS forms to the Health Board but they were all returned under explanation that the list number for Mr Kelly was not registered. She stated that she then spoke to the Respondent who found this to be surprising. She sent him an additional addresses form but did not receive a response so she sent a second form. She stated that she spoke to the Respondent who advised that he had submitted the form to the Health Board so Ms Harry re-submitted her GOS payment forms, however they were rejected.

Ms Harry discussed the matter with the Respondent again who advised that he had submitted the forms, he was registered and he thought the Health Board were "after him or something".

6.9 Ms Harry corresponded further with the Health Board in the hope that they would be flexible and allow to her to apply for payment retrospectively, but Ms Harry stated that she knew that they were not obligated to pay. The Health Board advised Ms Harry that investigations were ongoing.

6.10 Ms Harry stated that she was told of a practice in Biggar, at which the Respondent had been involved and sight tests had not been paid. She could not say when that was and noted that the practice had since been sold and the owner had moved to Australia.

6.11 Ms Harry stated that even if a locum is required at very short notice, you still need to check that they are registered before they start, otherwise you employ them at your own risk. She stated that, in certain circumstances, there might be some flexibility, but strictly speaking locums do require to be registered.

Miss Margaret Shaw

6.12 Miss Margaret Shaw is a Primary Care Manager for the General Ophthalmic Services and Medical Services in South Ayrshire. Her evidence was that she was made aware of a series of telephone calls from people at Vision Express in Ayr in relation to the Respondent but was not directly involved in the matter, that being dealt principally by her colleague Limara McCloy.

Limara McCloy

6.13 Limara McCloy is an Assistant Primary Care Manager in Ayrshire and Arran Health Board. At the relevant time, she was a Primary Care Contract Support Officer for Medical and Ophthalmics.

6.14 Ms McCloy confirmed that she was the author of the file note dated 26 February 2008 in relation to a conversation with "Jacqui Kelly" of Vision Express and that the file note was accurate. Ms McCloy accepted that it was possible that she had confused "Jacqui Miller" and

"Brian Kelly". Ms McCloy advised that, at the time of the initial phone call she did not know who the optometrist was as no names were mentioned. She confirmed that the file note was typed within a day or two of the conversation, at most. She accepted that she vaguely recalled the conversation but would not have recalled it in its entirety without the file note.

6.15 Ms McCloy stated that Ms Miller had advised she was having problems with an optometrist who had worked in 2 branches and was avoiding providing a note of his list number. Ms McCloy stated that she advised that the best way to check that an optometrist was on the list was to contact the ophthalmic helpdesk at Practitioner Services.

6.16 Ms McCloy stated that the optometrist in question, Mr Kelly, had advised that he had been told by a member of staff that it would be acceptable for another optometrist to sign forms on his behalf. Ms McCloy's evidence was that she told Ms Miller that no-one else should be signing forms on behalf of an optometrist. Ms McCloy stated that Ms Miller then clarified that the practitioner had backtracked and said that he actually meant that the other optometrist could "pp forms on his behalf".

6.17 Ms McCloy also spoke to a second conversation of 27 February 2008 with "Andy" of Vision Express, Ayr. She accepted that she recalled the conversation only vaguely and would have to refer to the file note to remember the full conversation. Ms McCloy's evidence was that Andy had called her and asked if the Respondent was on the list for Ayrshire and Arran. She stated that she then checked the list (and records) and then telephoned Andy to tell him that the Respondent was not on the list and therefore could not provide Ophthalmic Services in the area. She stated that he should not have been providing such services previously either. She stated that Andy had advised that he presumed the optometrist had been on the list and she recommended that Andy should have checked the position with her before allowing the optometrist to work. Ms McCloy recalled being told of problems with signing of forms, and that Andy was not going to pay the optometrist because he would not be receiving payment. Ms McCloy also recalled that Andy said he would not have let the Respondent try to get a resident to sign off paperwork on his behalf as that would be fraud.

- 6.18 Ms McCloy's evidence was that she took notes of the conversation and, when her colleague, Margaret Shaw, returned to the office, she was asked to prepare a file note.
- 6.19 Ms McCloy did not recall which dates the Respondent had worked. She thought that the dates of the telephone calls of 26th and 27th February were correct and could always check the properties of the document for errors. In cross examination, Ms McCloy accepted that there was an absence as to when the events took place and said that this was because the people who had contacted her had not provided any indication. It was put to Ms McCloy that the testing took place in July 2007 and Ms McCloy advised she could not comment on that.
- 6.20 Given there were 2 phone calls, it was put to Ms McCloy that Vision Express had not taken her initial advice. Ms McCloy advised she could not comment on that as she was not sure if Andy had discussed the issue with Jacqui Miller.

Andrew McCullough

- 6.21 Mr Andrew McCullough gave evidence for the Complainers. He is a joint venture partner and store director for Vision Express in Ayr and has been in that position since May 2007. He is a qualified dispensing optician and, accordingly, not qualified to sight test.
- 6.22 Mr McCullough employs locums on a regular basis. He pays a daily rate of £250, occasionally less. He employed the Respondent in that capacity for 2 or 3 days between May and July 2007. Mr McCullough's evidence was that he had become aware of the Respondent after seeing him in the store the week before he became store director. He understood that the Respondent had been employed by the previous proprietor, Michael Hussein. The Respondent was also included in a store handbook containing a list of locums.
- 6.23 Mr McCullough stated that the Respondent was pleasant and worked very quickly, although he had received a number of "recalls" from people who had been seen by the Respondent (a "recall" being when a customer had asked to be re-tested as their prescription was not acceptable). The Respondent had worked on days as the only optometrist in store. He had also worked a busy Saturday, around June or July 2007, at short notice and after an initial mix

up as to which store he was supposed to be working in.

6.24 Mr McCullough's evidence was that the Respondent told him that he would not sign GOS forms as he was not registered. Mr McCullough stated that he was not aware of this before the Respondent worked for him and had discovered this at the end of the Respondent's second day of working.

6.25 Mr McCullough stated that he had thought he would be able to phone the Health Board and have the Respondent registered quickly, or retrospectively. He had not checked whether the Respondent was on the list with the Health Board or the GOC. He now carries out checks on locums.

6.26 In cross-examination, Mr McCullough accepted that he knew the Respondent would not sign forms after the first occasion he had worked for him. He also accepted that he was willing to "take a hit" on the sight tests carried out by him subsequently and in order to get paid for dispensing the glasses. In re-examination, Mr McCullough stated that there was no conversation whereby this was agreed. He stated that he would not have known that the Respondent could not have signed forms and did not accept that he had known this from the outset.

6.27 Mr McCullough's evidence was that he had continued to employ the Respondent because he was not aware as to why the Respondent could not sign and he had hoped it could be resolved at a later date. He advised that he had badly needed a locum and had hoped the Respondent could sign, but understood that he might not be able to.

6.28 The witness stated that Mr Kelly had suggested to Mr McCullough to have Kimberly Dunsmore sign the forms as Kimberly was a registered optometrist in the store and that Mr Kelly had said "I'll not say anything". Mr McCullough stated that he thought that might have been fraud and had told Mr Kelly that he could not do that.

6.29 He stated that he had paid an invoice the Respondent had submitted to the previous

proprietor. He also paid an invoice from the Respondent in relation to work carried out subsequently when he was store director. His evidence was that the invoices had requested payment to "A. Kelly", Mr Kelly's son. Mr McCullough stated that he received a second invoice from the Respondent, however he did not pay it because he realised that he was not going to receive payment from the NHS.

6.30 He further stated that he had received a phone call from the Respondent chasing payment of the second invoice and had told him he had simply lost the invoice. The Respondent issued a new invoice, but with a different amount in writing raising it from £250 to £300. Mr McCullough stated that he had a further call with the Respondent, during which he stated that he would not pay the invoice. He stated that he had received threatening phone calls and, in cross-examination, accepted that he was concerned that he would be sued and would have to pay the Respondent.

6.31 Mr McCullough stated that he had discussed the issue with "Alistair" and "Mark" from Vision Express's Falkirk store, who told him of a similar problem with the Respondent. They had decided not to pay the Respondent and Mr McCullough then decided to do the same. This would have been in or around February 2008. Mr McCullough stated that he had also spoken to Jacqui Miller about his problem.

6.32 Mr McCullough stated that he spoke with the Health Board (possibly Margaret Ann Shaw) after his last telephone call with the Respondent. He accepted that this could have been in February 2008 and was referred to the file note prepared by Limara McCloy. Ms McCloy advised Mr McCullough to check the list before using someone new and that they would not pay for work carried out by the Respondent. Mr McCullough accepted, however, that he would have already known that by February 2008.

6.33 In cross-examination, Mr McCullough accepted that he had spoken to Ms Dunsmore in the last two months to discuss the case, but stated that the conversation had not been to check the suggestion that he would have her sign the Respondent's invoices. Mr McCullough stated that he wanted to withdraw a statement he had provided because he had given personal opinions

that he did not want aired and did not think were necessary.

Jacqueline Miller

- 6.34 Mrs Miller is a Dispensing Optician and Regional Manager for Scotland for Vision Express. She is also on the Board of Directors. She is responsible for managing 21 Scottish stores. This involves establishing that they carry out best practice, adhere to company policy and the General Optical Council guidelines, as well as ensuring customer service and profitability is maximised.
- 6.35 Vision Express stores are run either as joint ventures or franchises. Their stores in Ayr and Falkirk are joint ventures. Mrs Miller is Andrew McCullough's line manager. Mrs Miller stated that Mr McCullough made her aware of an issue with a particular locum, namely the Respondent, in relation to obtaining payment for sight tests carried out by him. The claim forms could not be submitted because the registration number of the optometrist carrying out the test had not been completed. Mrs Miller initially expected Mr McCullough to deal with the issue at store level. She thought this was at the end of 2007. She stated that she was also made aware of a problem with forms that should have been submitted by their Falkirk store also in relation to the Respondent.
- 6.36 She contacted the Health Board about the Ayr practice, but not about the Falkirk practice. The Respondent had not explained why he was working in Ayr at the time. She asked the Health Board if there was a list of optometrists that were registered and the Health Board advised they would send her a list. She discovered that the Respondent was not on that list. Mrs Miller raised her concerns with the Health Board and instructed her head office to withhold payment. She was not sure of the date of the conversation with the Health Board but accepted that the file note presented to her was correct.
- 6.37 Mrs Miller confirmed that the Respondent was paid £250 per day, by reference to an invoice dated 21 April 2007. She could not confirm the dates that the Respondent was employed. Upon discovering there had been an issue at the Falkirk branch, she instructed the store to get in touch with the locum to request a NHS number and advise that if they received payment, they would have no problem in paying and settling any outstanding invoices they owed to the Respondent.

6.38 Mrs Miller's evidence was that she contacted the Respondent several times and explained that she would not authorise payment until these issues were addressed. She recalled that, initially, the Respondent had said he would provide a registration number (the list number) and that she was aware that he had said the same thing to Mr McCullough. A number was not provided and the Respondent submitted his invoice. Mrs Miller advised that she would not authorise payment and that the Respondent told her he would sue. She commented that he was "abusive" on the phone and had sent her a text saying that he would not drop the matter. She stated she had been made aware that the Respondent had asked the store whether someone else could sign the forms and "pp" them, but she stated that they had explained that was something they would not and could not do. Mrs Miller's evidence was that they were approximately £2,000 out of pocket in relation to Ayr and approximately £1,500 out of pocket in relation to Falkirk.

6.39 In cross examination, Mrs Miller stated that she would not expect someone in Vision Express to take on a locum if they knew the locum was not on the list. Her evidence was that she was not aware in advance of Mr McCullough having done so. Mrs Miller confirmed she had refused to provide a precognition to the Respondent's solicitors.

6.40 In response to questioning by the Tribunal, Mrs Miller accepted that if a Vision Express store had a full list and their optometrist had not shown up, it might be feasible they might take on a locum they knew was not on the list and not claim for payment from the Health Board. She also stated, however, that they used very few locums and that what they would normally do is to ask someone from another store to cover. She advised that this was the first time she had encountered a problem with someone not being registered.

Jane Haskett

6.41 Miss Haskett gave evidence for the Complainers. Miss Haskett is a Practitioner Services Manager with Tayside Health Board. She stated that Mr J Adams of Gregory Pecks had contacted her in relation to having employed the Respondent in good faith and without realising that the Respondent was not included in the ophthalmic list of NHS Tayside. She stated that Mr Adams had contacted her after claims signed by the Respondent were rejected and enquired as to whether payment would be allowed.

- 6.42 Miss Haskett contacted Senga Robertson at the Scottish Government Health Department. She stated that the Ophthalmic Regulations had just been issued in 2006 and, because they were very new, they were still feeling their way. She wanted to check that her decision to refuse payment was correct. In cross examination, she stated that she had only one conversation with Senga Robertson. She stated that they decided it was within the letter of the regulations to reject any payment to Mr Adams as the optometrist carrying out the work was not included on the Ophthalmic list. She thought Mr Adams should have checked that the Respondent was included on the list because the obligation is on both the employer and the employee. She stated that the onus on the employee under the regulations was to make sure that he was included in the Ophthalmic list before providing GOS ("General Ophthalmic Services"). She accepted, in cross examination, that the employer would have to bear the brunt of the Regulations.
- 6.43 Miss Haskett wrote to Mr Adams by letter dated 24 July 2007. She apologised for the delay in replying, which she stated was due to staffing issues although in cross examination she might have accepted it was due to taking advice from Senga Robertson from the Primary Care Department in the Scottish Government. The letter of 24 July 2007 erroneously referred to the National Health Service (General Ophthalmic Services) (Scotland) Regulations of 1996, however she accepted that it should have referred to the 2006 Regulations.
- 6.44 In cross examination, she accepted that she had a responsibility to understand the regulations and advise thereon. She stated that she had not spoken to Mr Adams, but thought he had spoken to one of her colleagues.

Duncan Miller

- 6.45 Mr Miller gave evidence for the Complainer. He is a General Manager for the Primary Care Contracts NHS Lothian, which deals with doctors, dentists, pharmacists and optometrists. He is responsible for maintaining the various lists for these contractors and approving payments.
- 6.46 He was referred to a letter of 29 March 2006 which he stated was sent to all optometrists' premises enclosing a memorandum to the Regulations and advising contractors to submit certain information by 30 June 2006. He confirmed that the hope was that locums would be

advised of this by owners of premises. He stated that the Regulations were sent out to all optometrists on 30 March 2006.

6.47 Mr Miller was referred to the Respondent's application for inclusion on the Lothian Health Board list, dated 17 June 2005 in respect of a locum position at Browns Opticians in Bonnyrigg. Mr Miller was referred to a Notification to Practitioner Services Division noting the Respondent's Date of Appointment as being 20 June 2005. He was referred to a letter of 28 June 2005 from Louise Hockaday requesting a mandate and reminding the Respondent of his obligation to provide 3 months notice should he cease to practice at Brown's Opticians. He was also referred to a letter to the Respondent of 25 July 2005 and a letter to Brown's on 24 August 2005 chasing a Registration Certificate from him.

6.48 Mr Miller stated that the Respondent was required to provide a declaration regarding criminal offences, which the Respondent had failed to do. He was referred to correspondence of 15 February and 12 March 2007 bringing this to the Respondent's attention.

6.49 Mr Miller was referred to a form "GOS(S)6 Part 2" that had been completed by the Respondent and was dated 7 March 2007. As at March 2007, Mr Miller stated that the Respondent had automatically been transferred to Part 1 of the list but had been required to submit certain information by 30 June 2006.

6.50 Mr Miller stated that Mr Kelly had requested that he be transferred to Part 2 of the list which deals with locums. This request had been received on 14th March 2007. Mr Miller stated that a letter had been sent from Louise Hockaday of Lothian Health Board in response to that letter reminding Mr Kelly that it was not possible for an optometrist to be included on both parts 1 and 2 and that he would require to withdraw from Part 1 in respect of the address at Browns Opticians in Bonnyrigg. Mr Kelly was also asked in the same letter whether he intended to regard Lothian as his main area of work. Mr Miller then stated that it was subsequently realised that Mr Kelly was not working at Browns opticians but was working in other premises including "For Eyes" and "Optimeyes".

6.51 Mr Miller was referred to a letter of 16 May 2007 from Dr Mike Winter, the Associate Medical Director of Lothian Health Board, in relation to the Respondent's application for inclusion in the list. The letter raised a number of issues in relation to the Respondent's application. He noted

that the Respondent had stated (in his application of 17th June 2005) that he was not included on any other list but he was in fact included on the NHS Shetland list; that no notice had been issued in relation the Respondent ceasing to practise at Brown's Opticians; that the Respondent had failed to provide the necessary paperwork in relation to the 2006 Regulations; and that the Respondent had stated that he has not been (nor had ever been where the outcome was adverse) investigated by NHS National Services Scotland in relation to fraud, which was factually inaccurate. The Respondent was asked to provide a written explanation of the factual inaccuracies and confirm whether he had received (and was aware of) the 2006 Regulations. The letter also stated that the application for additional addresses had not been processed and that the Respondent's name only appeared on Part 1 by virtue of the transitional provisions.

- 6.52 Mr Miller was referred the Respondent's reply of 24 July 2007 confirming that he had been included on the list for Shetland, addressing various points in relation to information provided, and advising that he was appealing this Tribunal's decision of January 2007 and therefore believed his statement that he was not being nor had been investigated for fraud was factually accurate.
- 6.53 Mr Miller stated that the Respondent had not advised the Board that he was practising anywhere other than Brown's Opticians. Mr Kelly had been made aware that if he was intending to practice in any other Health Board area that he would require to submit a fresh application. Mr Miller's evidence was that an audit was then carried out that showed the Respondent was practising from other premises at Niddrie Mains Road, Edinburgh (For-eyes).
- 6.54 Mr Miller was referred to a letter to the Respondent of 6 September 2007 by Dr Winter requesting information and noting that he was included in Part 1 and could not be transferred to Part 2 whilst Tribunal proceedings are outstanding. Mr Miller accepted that what was contained in Mr Kelly's response comprised a good portion of what the Respondent required to comply with in terms of Schedule 2 Part C (the transitional provisions) but that they still required a signed declaration regarding criminal offences for Part 1 of the list. Mr Miller was asked why that was not stated in Dr Winter's letter of 16 May and Mr Miller stated that he assumed Dr Winter expected the Respondent to know what was required in terms of

compliance with the declaration for Part 1. He could not explain why Dr Winter did not previously explain that an application could not be processed while the Tribunal case was outstanding.

6.55 Mr Miller was referred to the forms submitted by Mr Kelly in connection with his application for inclusion on the second part of the Ophthalmic list and dated 7th March 2007 in which he had noted that the Respondent had declared that he had not been disqualified, conditionally disqualified, removed or suspended from an Ophthalmic list anywhere in the UK, and that in response to the question: Are you being, or have you been where the outcome was adverse, investigated by NHS National Services Scotland in relation to fraud? –He replied "no". Further the Respondent had declared that he had not been subject to any investigation into his professional conduct where the outcome was adverse nor was he currently subject to any such investigation.

6.56 With reference to the suggestion in the event of a conditional disqualification that the Respondent be supervised, Mr Miller stated that this could work, but he would be concerned as to the additional burden that would be created, funding, and the lack of confidence in the Respondent's ability to comply.

Nic Zappia

6.57 Mr Zappia gave evidence for the Complainer. He is the Head of Primary Care and Support and Senior NHS Manager for NHS Greater Glasgow & Clyde. He has held that position since April 2006 and has been with the NHS since September 1989. His role involves overseeing optometrists.

6.58 He was referred to a letter from Janine Glen who was then Contractor Services Manager at Glasgow Health Board dated 23 June 2005. The letter returned the Respondent's application for inclusion on the ophthalmic list on the basis that details of the premises where the Respondent intended to work were missing. Mr Zappia confirmed that the Respondent had answered "no" as to whether or not he was on the ophthalmic list for any other primary care practice. Mr Zappia was referred to a further letter from Janine Glen dated 28 July 2005,

which stated that the Health Board would not pay vouchers until the Respondent was registered. Mr Zappia was referred to a letter dated 30 August 2005 from a Catherine Richardson a member of Ms Glen's team confirming that they had some information and were awaiting corroboration in order to admit him to the list.

6.59 Mr Zappia stated that the Respondent's date of appointment to Part 1 of the Glasgow list was 7 June 2005, as set out in a letter of 6 September 2005. Mr Zappia stated that the date of appointment related to the date of the Respondent's application.

6.60 He stated that it was standard procedure for practitioners to be given the Terms of Service of the NHS. He stated that he would expect practitioners to read, understand them and comply with the terms. If they did not understand the terms, he would expect practitioners to contact someone. Mr Zappia stated that he has a duty to take action against practitioners if they do not comply.

6.61 He was referred to a letter from Ms Richardson to the Respondent dated 16 November 2005, which sought clarification as to whether the Respondent was practising and, if he was practising as a locum, an address. Mr Zappia stated that they wanted to check that the list was up to date in advance of the 2006 Regulations coming into force and understood that the Respondent was no longer providing services at his registered premises. Mr Zappia stated that the Respondent was obliged to update them. It was important to know where services were being provided in order to enforce the rules.

6.62 Mr Zappia gave evidence as to how the NHS tried to make practitioners aware of the 2006 Regulations. He stated that this was done as part of the process to get practitioners on to the new list. He stated that the Regulations were controversial as they required practitioners to be of a certain standard before they were accepted on to the new list.

6.63 Mr Zappia referred to the 2006 Regulations wherein he stated that there was an obligation on any person whose name is included in the Ophthalmic List of any Board shall no later than 30th June 2006, submit an Enhanced Criminal Certificate and various other declarations regarding investigatory proceedings on bankruptcy as well as consents from employers or

former employers and with which Mr Kelly did not comply. Mr Zappia checked with other Health Board areas and they had confirmed that of those to whom he had applied, he had not submitted the appropriate declarations.

6.64 Mr Zappia referred to his letter to Mr Kelly dated 7th February 2007 referring to previous letters of November and December 2006 and expressing disappointment that the Respondent had not submitted outstanding documentation.

6.65 Mr Zappia was referred to a letter of 21 December 2005 advising the Respondent that he was being removed from the list for Glasgow, which precluded him from submitting any forms or vouchers but would not preclude inclusion in the list at a later date.

6.66 Mr Zappia was referred to an application for inclusion in the list for Argyll & Clyde dated 29 November 2005 and a notification to practitioner Services Division dated 23 December 2005 stating that the Respondent was to be on the Argyll & Clyde list from 29 November 2005. Argyll & Clyde became part of Glasgow Health Board on 1 April 2006 so that the Respondent was a listed practitioner under NHS Greater Glasgow & Clyde from 1 April 2006. Argyll & Clyde provided another set of the Regulations to the Respondent. In cross-examination, Mr Zappia confirmed that if a practitioner was on either or both the Glasgow and Argyll & Clyde lists at 31 March 2006, they would automatically transfer onto the new list. The process to get practitioners onto the new list in 2006 was not commenced until 1 April 2006.

6.67 Mr Zappia stated that there was a transfer process whereby practitioners could be accommodated on the new list under the new regulations. An application required to be made by 30 June 2006. He stated that, in terms of the one-off disclosure exercise, the declaration about proceedings and bankruptcy had not been completed by the Respondent for Glasgow. Mr Zappia was referred to a letter of 1 December 2006 from Ms Richardson to the Respondent, which referred to a phone call between her colleague and the Respondent in which the Respondent had advised that he thought he had submitted a competency certificate to another Board. Ms Richardson, however, contacted other Boards and found this was not the case. The letter stated that the Respondent had missed the deadline of 30 June 2006 to

provide the relevant documentation but would be granted an extension to 15 December 2006, failing which a referral would be made to the NHS Tribunal to seek his removal from the list.

6.68 Mr Zappia was referred to a letter to the Respondent of 7 February 2007 stating that since the relevant documentation had not been provided by the deadline of 15 December 2006, the Board had no alternative but to refer the matter to the NHS Tribunal to have the Respondent's name removed from the list. Mr Zappia was referred to a letter of 14 March from the Scottish Executive in connection with the disqualification of the Respondent. He was also referred to a letter from Mrs McGloan of Family Health Services Officers (Medical) intimating the position in relation to Argyll & Clyde to Greater Glasgow and reminding the Respondent to notify any changes within 14 days and to keep NHS Greater Glasgow & Clyde informed. The letter also informed the Respondent that Practitioner Services Division ("PSD") will not process any information unless he is registered. Mr Zappia's evidence was that his Board came to the view that they had gone as far as they could in relation to the Respondent and would seek his removal from the list, albeit they refrained from doing so.

6.69 He was then referred to a letter from the Respondent of 2 April 2007 informing the Board that he was working in Gourock Eyecare and to various other items of correspondence from the Respondent to Mrs McGloan. Mr Zappia agreed that the Respondent had kept the Board up to date with his perception of necessary changes in additions and deletions from the list between April 2007 and August 2007.

6.70 In the event of a conditional disqualification being imposed on the Respondent and in response to the Respondent's desire to remain on the list under supervision, Mr Zappia recalled that the rest of 2007 and 2008 "wasn't too bad" in terms of the Respondent keeping them updated on changes, albeit he stated that they have had to chase him since. He stated that the Respondent's name constantly comes up and is constantly problematic. He stated that the Respondent either forgets or otherwise fails to let the Board know that he has made changes and that they require to constantly remind him. Optometrists are required to provide contact details within the regulatory framework and if concern is expressed internally then they require to investigate, become involved and send out officers and deal with PSD. Mr Zappia

felt that it should not be the job or the expense of the Health Board to ensure that contractors comply with what should be considered to be day to day requirements. He considered it was not his job to supervise optometrists and that his Board should not be put to such expense. He also stated that he did not have a great deal of confidence that the Respondent would comply with any agreement made. He felt that if the Respondent was asking the Board to trust him and that he had not demonstrated, to date, that trust was there or deserved.

6.71 In cross-examination, he stated that he was not 100% sure but thought that the same list number applies to the practitioner wherever he or she goes.

6.72 Mr Zappia was referred to a letter from Ms Glen stating that since she had not received a response, she had informed PSD to remove the Respondent's registration from the Greater Glasgow's list. He stated that they had no such power and, in order to remove someone, they would have to seek a Tribunal order. He stated that the letter should have referred to an intention to seek to remove the Respondent's name, which was clarified in his letter of 7 December. His evidence was that whilst there may have been a perception that the Respondent was removed from the list, in fact he was not.

6.73 Mr Zappia stated that he was not aware of any complaint as to the Respondent's clinical performance, however he was aware of contractors not wishing to have the Respondent work for them, albeit no formal complaint was made.

John Cameron

6.74 Mr Cameron gave evidence for the Complainer in connection with monitoring any conditions that may be imposed on the Respondent. He is the Senior Clinical Adviser in Practitioner Services and Payment Verification Manager for Dental and Ophthalmic. He is not an optometrist. He deals with clinical governance issues particularly verification of dental and optometric payment claims.

6.75 There are a number of checks carried out in relation to such claims. They receive about 2.3 million claims from optometrists, which are handled manually. He stated that the system

operates on trust as it is not possible to check each claim form, although some claims are checked randomly (particularly if there is a concern about an individual practitioner). He stated that it was difficult to monitor an individual over a long period of time due to staffing constraints. They can, however, review the position from time to time.

6.76 Mr Cameron also stated that they could monitor a practitioner's patients. This is a labour intensive task and he considered it would be beneficial to have the practitioner's daily diary in order to allow further checks to be carried out. He also considered that it would be helpful for any supervisor appointed to monitor maintenance of the diary.

6.77 He stated that there was a difference between a supervisor who was a qualified optometrist and one who was not as Health Boards can only sanction optometrists. He also stated that it was of practical importance given the role of a supervisor. He stated that Practitioner Services would contact practitioners from time to time if further information was required. It is therefore a requirement that a practitioner provides up to date contact details. Mr Cameron stated that the post of Optometric Monitoring Co-ordinator was held by an individual working under his guidance.

6.78 Mr Cameron was referred to the set of draft conditions detailed in Section 4 hereof suggesting a requirement that the Respondent practice only under the supervision of a practicing optometrist who was on Part 1 of the list. He was also referred to a condition requiring the Respondent to maintain a paper diary. Mr Cameron stated that the diary would allow practitioner services to carry out some monitoring, but they still might require to obtain patients' records and issue questionnaires. The conditions stated that the diary required to be kept at the premises where the Respondent was working and that a photocopy required to be submitted within 14 days of the end of the month. He considered it was practical and useful to require the Respondent to make the diary available for inspection as this would allow him to ensure that money was being appropriately paid.

6.79 In cross examination, Mr Cameron stated that he considered it was unacceptable for a supervising optometrist to refuse to monitor on the basis that they were busy and to trust the

practitioner subject to the conditions in question. He stated that if an optometrist had refused to supervise, the Respondent would have to find a different supervisor who was prepared to do it.

Louise Hockaday

- 6.80 Ms Hockaday gave evidence for the Complainer. She has worked in the Primary Care Contracts Division of NHS Lothian (formerly Lothian Health Board) since 1976. Her team deals with dentists, optometrists GPs and pharmacists.
- 6.81 Ms Hockaday was familiar with the 1986 and 2006 Regulations. She was referred to her letter to the Respondent of 28 June 2005 confirming he had been added to the Board's Ophthalmic list on 20 June 2005 in connection with his full time employment at Brown's opticians, Bonnyrigg and reminding him to give 3 months notice should he cease to practice at the listed address. She was referred to the 1986 Regulations which referred to a 3 month notice period for withdrawal from the list and a 14 day notice period for a change of premises. Ms Hockaday explained that as the Respondent was only listed for one premises, she considered that the 3 month period applied.
- 6.82 Ms Hockaday confirmed that there were 2 parts to the list pursuant to the 2006 regulations and that a person on Part 2 would be regarded as a peripatetic locum. To be included on Part 2, she stated that a person would have to provide certain information. Her evidence was that if someone was on the Lothian Health Board list on 31 March 2006, he or she would automatically be transferred on to Part 1 of the Lothian Health Board list on 1 April 2006 – at least until the end of the 3 month grace period to 30 June 2006. Her evidence was that a person could, in the interim, still practice as a locum so long as the practitioner notified the Health Board of where they were working and otherwise satisfied the application requirements.
- 6.83 Ms Hockaday stated that someone would not be added to the list if it was known that they were the subject of an NHS Tribunal enquiry in relation to a question of fraud.

- 6.84 Ms Hockaday was referred to her letter of 12 March 2007 to the Respondent acknowledging receipt of his application for inclusion on Part 2 of the list. She confirmed that someone on Part 1 of the list with a number of premises was obliged to supply information relating to their premises such as addresses, details of optometrists who are regularly engaged and the days and hours they are open for business.
- 6.85 Ms Hockaday confirmed that post April 2006 if the Respondent wanted to work in more than one area, all he had to do was mark his form accordingly and submit the relevant information (including original documentation) to Lothian Health Board, who would then pass it on to the other Boards.
- 6.86 Ms Hockaday's evidence was that some form of identification was missing from the Respondent's application. She accepted that her correspondence did not mention the Respondent's failure to sign a declaration in the "one-off" paperwork exercise but she did not accept that the Respondent would have been entitled to assume that he had provided the necessary paperwork.
- 6.87 In cross-examination, Ms Hockaday was referred to her letter of 15 February 2007 which she considered made "pretty clear" to the Respondent that his Part 1 paperwork was not complete. That letter was copied to a separate address of the Respondent's on 12 March 2007. Ms Hockaday considered that it would have been clear that she was still chasing the Part 1 paperwork.
- 6.88 She was referred to a letter of 16 May 2007 from Dr Mike Winter to the Respondent chasing missing paperwork from a number of optometrists. She considered it would have been as clear as possible after the Respondent had received Dr Winter's letter of 16 May 2007 that his application was incomplete. If there was any doubt then his subsequent letter of 6th September would have allayed it.
- 6.89 Ms Hockaday was referred to her correspondence dated 28 June 2005 requesting the Respondent to complete and return a mandate and stated that sight test claims cannot be paid

until the mandate is received by Practitioner Services. She was referred to further correspondence chasing the Respondent's Registration Certificate with the GOC. Ms Hockaday then received a call from the Respondent advising that he had lost the certificate but that he was registered.

6.90 In re-examination, Ms Hockaday accepted that she had been unclear about whether a Part 2 form would be required where optometrists were already on Part 1 of the list. She accepted that it would take some time for lay persons to "get clarity" on the 2006 Regulations and that it took a long time for all optometrists to complete the one-off exercise.

Steven Whittaker

6.91 Mr Whittaker gave evidence for the Complainer. He is a qualified optometrist who runs a practice in Carnoustie. He was previously Optometric Adviser for the Scottish Government.

6.92 He stated that the arrangements for payment of locums vary quite a lot. Smaller firms generally pay a daily fee but some bigger practices pay a smaller fee and a bonus, which is common to all their staff. The bonus arrangement could relate to level of dispensing of a particular practitioner, or of the staff as a whole. In cross-examination, Mr Whittaker stated that whether or not a patient took up a prescription with the same optometrist who carried out the test was up to the patient.

6.93 Mr Whittaker understood that the concept of "grandfather rights" related to the position that, prior to the 2006 Regulations, an optometrist who was registered with a health board could also work anywhere else in that Health Board area and another optometrist could sign the relevant forms. He stated that this changed after the 2006 Regulations were brought in. He stated that the Regulations were a major change. He did not think it was understandable for a practitioner not to be aware of the changes that came into force on 1 April 2006. In cross-examination, Mr Whittaker stated that there was a period of grace after the Regulations came into force and that there was a fair bit of reading required, but he stated that the workings of the Regulations were fairly well organised and signposted by the Health Boards.

6.94 Mr Whittaker estimated that about 50% of practices were owned by optometrists. In the event
4418757_1

that the Respondent was conditionally disqualified he considered that it would be possible for someone to monitor the Respondent's record keeping and administration. It would be an onerous task and considered this was analogous to what is required of trainees, albeit in cross-examination he accepted that unlike a trainee a locum may operate on his own without anyone to supervise. He was referred to the set of draft conditions and considered that the arrangement required of the Respondent was practical. He considered that there would be a difficulty if a supervisor was not qualified as sanctions could not be applied to a non-qualified supervisor. An unqualified owner of a practice has no legal standing within the NHS.

6.95 In cross-examination, Mr Whittaker advised that he had known the Respondent for 25 years and believed him to be a good optometrist. He considered that it would be a loss to the profession for anyone with the Respondent's experience to be removed.

6.96 In response to questioning by Mr Broughton, Mr Whittaker agreed that the purpose of draft conditions would be to protect the NHS from inappropriate claims and would not restrict clinical ability. Mr Whittaker added that if there were no supervising optometrist there would be a potential for the submission of inappropriate claims and he accordingly felt that the supervisor would require to be a professional optometrist.

Ian Maclver

6.97 Mr Maclver gave evidence for the Respondent. He is a dispensing optician. He has his own business, which trades as Value Specs Opticians. It has 4 branches (in Parkhead, Maryhill, Springburn (in Glasgow), and Glenrothes (in Fife).

6.98 Mr Maclver has known the Respondent for some time, having trained with him at Dollond & Aitchinson in the late 70's. He was aware that the Respondent ran a successful practice in the Shetland Isles. Mr Maclver has employed the Respondent as a locum for roughly 2 years. He did accept that it would have been after 2006 and that the Respondent carried out home visits.

6.99 Home visits are effected for people who are unable to visit a shop. This is thought to be a difficult and less desirable job. In response to questioning by Mr Broughton, Mr Maclver

stated that he was not sure whether he needed to apply to the Health Board before undertaking home visits. He advised that he was not aware and did not know of any such requirement and that the issue had not been taken up with him by the Health Board.

6.100 Mr MacIver stated that the Respondent had worked mainly in the Springburn Glasgow branch, although possibly other branches too. He stated that the Respondent had, however, definitely not worked in the Glenrothes branch. Mr MacIver stated that the Respondent was interested in helping people who are vulnerable. He also stated that the Respondent is an excellent optometrist and a caring practitioner.

6.101 Mr MacIver estimated that 50% - 60% of people bought glasses or possibly contact lenses, after having been prescribed, however he stated that this figure is very variable. He stated that the Respondent carried out sight tests and then filled in and signed the relevant forms. He stated that the company practitioner would then submit a claim. Mr MacIver employs practice managers but goes round some of the practices himself.

6.102 In cross examination, he stated that dispensing opticians were at one time required to be registered on the Ophthalmic list, but he was not sure if that was still the case. He stated that he had been registered on the list since 1980, but he had not re-applied to be on it since 2006.

6.103 Mr MacIver accepted that he had declined to give the Central Legal Office (acting on behalf of the Complainers) a statement and stated that was because he thought it was better to give evidence in person.

6.104 Mr MacIver stated that he had encountered problems in relation to the Health Service. He stated that this was because 2 people who were working for him (but were employed by the Health Service) had not filled out forms correctly. He stated that the Health Service thought he should give some money back and he was very unhappy about that because he did not consider he had done anything wrong. He thought the problem was encountered at the Glenrothes branch. He stated that the Health Board had more or less blackmailed him into paying the money back.

Ian Campbell

- 6.105 Mr Campbell gave evidence for the Respondent. He was a qualified dispensing optician, operating a business known as "For Eyes", Edinburgh. He has operated from his current premises since 20 March 2007. Christopher Higgins is a co-director of the business, although Donald Higgins was the co-director in 2007. Mr Campbell requires optometrists to carry out sight tests. He employed the Respondent, whom he has known for 20 years, having met him at his practice in Shetland.
- 6.106 He knew that the Respondent was operating as a locum and contacted him in March 2007. He stated that the Respondent had said he was on the list for Lothian Health Board and that this was confirmed by either Louise Hockaday or Kathleen Bremner. He understood that the Respondent was operating as a Part 2 optometrist, but was unsure of how the system operated.
- 6.107 Mr Campbell gave evidence that a practice inspection had been carried out on 21 March 2007. Mr Campbell stated that, after the inspection, he had notified the inspector that the Respondent would be working for 2 days a week from 7 April 2007, or thereafter. In cross examination Mr Campbell stated that the Respondent began working for him on 29 March 2007. He did accept, however, that it was possible he had given the inspector the wrong start date at the inspection.
- 6.108 Mr Campbell stated that the Respondent had worked for him for over a year, partly for 1 day a week. The Respondent carried out sight tests, for which Mr Campbell said he had no difficulty in obtaining payment. He stated that the sight test form would be signed on the day of the test and submitted sometime thereafter. If a patient is in receipt of a NHS benefit, another form would require to be submitted after collection. Mr Campbell stated that he had no concerns in relation to any aspect of completing or signing any sight test forms. He thought that the forms submitted to Practitioner Services were machine processed.
- 6.109 Mr Campbell stated that the Respondent eventually stopped working for him due to the travel

required. He stated that he did not have any concerns as to the Respondent's competence and had very few recalls (less than 1%).

6.110 Mr Campbell stated that the national average for dispensing "optical hardware" is 71 / 72%. His dispensing rate is higher than the average, at around 85%. He attributed that to the locality of his premises.

6.111 In cross examination by Mr Stuart, he was referred to the letter from Dr Winter of NHS Lothian dated 16th May 2007, which stated that an additional addresses application had not been processed because the Respondent was listed on Part 1. He stated that the Respondent had not advised him of this, however he was satisfied that the Respondent was able to test in the Lothian area.

Ewan Miller

6.112 Mr Miller gave evidence on behalf of the Respondent. He works as a Optometrist's Manager at Tesco Opticians in Shettleston, Glasgow. He has worked there for 2 years. He manages a team of six, including an optometrist. Mr Miller uses locums at his practice.

6.113 He has known the Respondent for 30 years having met him at college. He previously had his own practice in Paisley, which had been operated for 40 years. He had used the Respondent as a locum in that practice for approximately 6 months in 2007 or 2008. The Respondent worked more or less full time. He described the Respondent's capabilities as an optometrist as excellent and his honesty and integrity as unimpeachable.

6.114 Mr Miller stated that he received a copy of the 2006 Regulations and, whilst he considered it was not written in plain English, he had a good look at it.

6.115 He stated that he did not operate a system of bonuses for locums but that Tesco does operate a bonus system in relation to the fitting of contact lenses.

6.116 Mr Miller stated that he would not, hypothetically, be able to supervise the Respondent's work

if required because he was not registered. He stated that someone within a practice would, however, be able to check that the Respondent had carried out sight tests and ticked the relevant boxes. He stated he was not sure what sanctions the Health Board would have against the practice if there was improper recording or checking of forms. He thought they could shut the practice down, but was not sure what would happen.

Anne Murray

6.117 Ms Murray gave evidence for the Respondent. She is employed by Grampian Health Board as a Senior Administrator with the Primary Care Contracts team. She has been responsible for processing the optometric lists since 2006, before the changes came into force.

6.118 Ms Murray stated that she had received correspondence from Fred Watt Opticians in April 2007. The practice had contacted Ms Murray in relation to receiving payment for sight tests carried out by an optometrist who was not on the list. This correspondence was in relation to the Respondent. She stated that she had advised the practice that the Respondent was not on the list in December 2006. She stated that the practice was not trying to have the optometrist put on the list retrospectively, but to recover payment. She stated that she had been told that the practice knew the Respondent had also been working in Lothian but was not registered, however she did not check the position.

6.119 At the time of the enquiry, Ms Murray stated that she had only had access to the Grampian list, but there is now a national list. The intention was to speed up the process so that if an optometrist had satisfied his home or host board, he would appear on their list and would then be accepted by other boards that were applied to. In cross examination, she explained that information about an optometrist is supplied to the host and then forwarded to other Health Boards, as required. She stated that if an application is made to a host Health Board, and that Health Board has carried out a full check, her director would be happy to put that person on the list for Grampian. She accepted that meant that her Health Board was working differently in this regard than the relevant application form suggested.

6.120 She explained that someone who was on "Part 1" of the new list would be employed on a

regular basis and that someone on "Part 2" would be a locum. She thought that if someone was on Part 1, but was asked to work at short notice at another premises (within the same area) that would be alright but she would need to check the Regulations. She stated that an amnesty was granted until 30 June 2006 to allow optometrists to provide the additional documents required to ratify their position on Part 1 of the list. She stated that there were different approaches to the amnesty deadline by the various health boards.

6.121 In cross examination, Ms Murray accepted that when the practice had made their initial enquiry to her colleague in December 2006, she had assumed that the Respondent had not yet started work, although she did not check.

6.122 In response to questioning by the Tribunal, Ms Murray stated that the system of sharing information has been operating for the last couple of years but she could not provide an exact date. She accepted that a person registered on Part 1 who stopped working in an area was required to tell the Health Board within 3 months, although she stated the list was not checked or cleansed in that regard.

The Respondent's Evidence

6.123 The Respondent has resided at 38 Lighthpark View, Paisley for 2 years. He has worked as an optometrist since 1984. He operated a business known as B&C Kelly Opticians in partnership with his wife in Shetland until January 2004. His marriage subsequently broke down and he suffered a nervous breakdown. He was prescribed anti-depressants. The Respondent stated that he moved to Glasgow in or around August 2004, after being advised that it would be difficult for him to continue to operate the business as a result of an interdict his wife had obtained.

6.124 The Respondent stated that, throughout 2005, he operated entirely as a locum in several Health Board areas including Greater Glasgow, Lothian, Argyll & Clyde, Grampian, and Dumfries & Galloway. Since the beginning of 2006, the Respondent stated that he had acted as a locum optometrist principally in Greater Glasgow and Lothian areas. He stated that he is responsible for carrying out sight tests and prescribing spectacles/contact lenses. He stated

that it is his sole responsibility to sign forms, which are then submitted to the relevant Health Board by the principal of the practice.

6.125 The Respondent stated that an order for his sequestration had been granted in January 2006. He was discharged from bankruptcy in January 2009 but that his trustee had not yet been discharged. The Respondent stated that he suffered a relapse in the latter part of 2006 and was prescribed anti-depressants for 9 months thereafter. During that time, he worked 2 to 3 days a week.

6.126 He stated that, in early 2005, he was subject to proceedings before this Tribunal regarding events in Shetland between 1995 and 1999. He accepted that his profession relies on trust and that, during that period, he abused his position of trust; he was fraudulent in the submission of forms; he obtained money from the NHS in the knowledge that he had no entitlement to it; that he was dishonest. The Respondent accepted that he owes the Health Board approximately £17,000 but stated that he had not been asked to pay it back. He stated that he would do so but not at present due to his bankruptcy.

6.127 The Respondent stated that he had been aware of the applicable NHS Regulations during his early years of practice, although he could not recall whether he read the 1986 Regulations. He did not make an effort to find out what Regulations applied when he began practicing as a locum in 2005 as he assumed they would have been the same. The Respondent stated that, in 2005, he thought he could practice in any area of Scotland by virtue of being on the list for Shetland. His basis for that understanding was that practices requested his local ophthalmic number or General Optical Council number to prove he was a registered optometrist. He thought that was how everybody operated. The Respondent stated that he had applied to different Health Board lists in 2005 because he had been asked to do so by the owner of a practice he was working in at the time (Browns Opticians). His understanding was, however, that he could have worked by virtue of being on the Shetland list.

6.128 He stated that he had seen the 2006 Regulations for the first time in relation to his proposal to set up a practice in Gourrock. The Respondent stated that he was not content to operate as a

locum without having his own copy of the 2006 Regulations, but nevertheless continues to do so. In re-examination, the Respondent stated that he has now read the Regulations, but does not understand them. The Respondent accepted that he might have become aware of the requirement for optometrists to be on either Part 1 or Part 2 of a local Health Board list at a meeting at some point in 2006 or possibly 2007. The Respondent stated that he could not remember whether he had read or comprehended the Regulations at that time because he was unwell in 2006. He did not make any effort to ask his professional body about the relevant changes.

6.129 In cross-examination, the Respondent stated that he was aware, at some point in 2006, that the practices he was working for (Gregory Pecks, Broughty Ferry and Fred Watts, Turriff) had difficulties in receiving payment from the Health Board for vouchers he had signed. In re-examination, he stated that he could have been made aware of Gregory Peck's difficulties through the current Tribunal proceedings.

6.130 The Respondent recalled working in practices in Helensburgh, Biggar and Elgin but was not aware of any of them having any difficulty in obtaining payment for vouchers he had signed. The Respondent stated he had in fact not been aware of practices incurring problems in obtaining payment, although he accepted that he may not have been so aware because he was a locum.

6.131 The Respondent was referred to a letter of 5 March 2007 from David Adams of Gregory Pecks to Jane Haskett of NHS Tayside Primary Care and Ms Haskett's response. The Respondent accepted that the letter attributed to the Respondent a thought process whereby he considered his host Board was Lothian and that gave him the ability to test in Tayside. The Respondent stated that he provided his list number to Gregory Pecks. Ms Haskett's response stated that Mr Adams should have checked that the Respondent was included on Tayside's list and that she was unable to authorise payment. The Respondent stated that he did not feel good about Gregory Pecks being £2,500 out of pocket, but had previously assumed they were paid.

- 6.132 The Respondent was confused as to whether or not applications could be back dated. He had understood, from speaking to somebody in Grampian Health Board in the summer of 2006, that his application could be backdated but Tayside Health Board had advised otherwise. The Respondent stated that he did not register with Tayside for this reason. The Respondent accepted that he worked for other practices in Tayside after 2006, but only on the understanding that he would not submit vouchers. The Respondent accepted that he was aware of the requirement to be registered for each Health Board area by 2007, but was employed purely on the basis that he would not be able to sign forms and therefore considered he did not break the rules.
- 6.133 The Respondent stated that the Manager of Vision Express (Dundee) was prepared to employ him on this basis in 2007. The Respondent considered that the practice would not have claimed for payment since he had not signed the forms. He stated that most of a practice's income comes from dispensing, from which he receives no benefit. He thought it was important that the person who performs the sight test signs the sight test form because they take on responsibility for the sight test.
- 6.134 He stated that he did not accept that optometrists ought to have been aware that they needed to be on a Health Board's list before they could work in the area. He had applied to the Grampian list on 31st March 2006 but could not recall why as he thought that he could work there anyway. His evidence was that Asda (Aberdeen) had asked him to work full-time and to go on the list, but he had not followed through because the job never materialised. The Respondent stated that he had assumed employers required him to go on the list due to their own local protocol. He understood that a practice required to have an optometrist on the premises who was registered with the Health Board so that locums can be employed under the umbrella of the principal optometrist.
- 6.135 The Respondent was referred to a letter from Alison Campbell, Practice Manager of Fred Watt Opticians. The Respondent accepted that he told Ms Campbell that his host Health Board had lost his paperwork and were in the process of re-registering him with a new number. Miss Campbell stated, in the letter, that she should not have let the Respondent work without a

number, but had been assured that it would be sorted out within days. The Respondent accepted that Ms Campbell linked the list number to working as a locum. The Respondent stated that he had provided her with his list number. He had understood that since he had worked in that area in the past, that the list number was still valid for the area. In re-examination, the Respondent accepted that the letter from Fred Watt's suggested that they had contacted Lothian Health Board who had, in his view misleadingly, informed them that he was no longer on the list.

6.136 The Respondent stated that he has cheques made out to his son (A. Kelly) because he was at university and required money. The Respondent stated that he had access to those funds – he receives cheques and cash and has a card for the account (in the name of "A. Kelly"). The Respondent explained that he had set up his affairs in this way because he was hoping to go into business with his son, an optometrist in Edinburgh. The Respondent stated this was the only business account that he operates, although he also put cheques into his joint account with his life partner, Jackie Thomson. He operates a Post Office savings account.

6.137 He advised the Tribunal that he had worked in the Ayrshire and Arran Health Board area between January 2005 and 2007. During that time, he stated he worked for Vision Express but only on the basis that he would not sign forms. He stated that arrangement was reached with the Practice Manager, Michael Hussain. The Respondent stated that he had told Mr Hussain that he was not on the list. The Respondent stated that Mr Hussain had asked him not to sign forms and he had agreed, although he had thought (at that time) that he could in fact sign the forms. The Respondent stated that he was not concerned with why he was asked not to sign forms and that he had no idea whether the forms were submitted. The Respondent stated that, generally speaking, he would sign a sight test form on the same day it was carried out. The Respondent accepted that Vision Express would not recover money for the sight test if it was not signed.

6.138 The Respondent stated that the Vision Express franchise was taken over by Andy McCullough in May or June 2007. The Respondent stated that he had told Mr McCullough that he was not registered to work in Ayr and would not sign forms, but Mr McCullough did not care as the