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IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

**[2019] EWHC 924 (Admin)**



No. CO/824/2019

Royal Courts of Justice

Wednesday, 20 March 2019

Before:

MS KARON MONAGHAN QC  
(sitting as Deputy Judge of the High Court)

B E T W E E N :

GENERAL OPTICAL COUNCIL

Applicant

- and -

BARRY CHURCH

Respondent

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MS A. LING (Instructed by the General Optical Council) appeared on behalf of the Applicant.

THE RESPONDENT did not appear and was not represented.

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**J U D G M E N T**

THE DEPUTY JUDGE:

1. This is an application for an extension of an interim order for a further period of 12 months. The application is made pursuant to s.13(11)(6) of the Opticians Act 1989. The applicant seeks an extension of the interim order initially imposed on the respondent by the applicant's Fitness to Practise Committee on 23 June 2017.
2. The interim order was originally imposed for a period of nine months but this was extended by the High Court on 21 March 2018 for a period of 12 months. This application is for an extension for a further period of 12 months, that is to 22 March 2020, on the grounds that it is necessary for the protection of the public and is otherwise in the public interest and the respondent's own interest. The respondent does not appear, but he has been notified of this application and he has been served with the relevant papers, including the witness statement of Ms Nwakaeze, dated 28 February 2019.
3. The background facts can be shortly stated. The respondent is registered with the applicant as a dispensing optician and has been since 10 February 1984. On 6 January 2017, the respondent was sentenced to 26 weeks in prison suspended for 24 months, and was required to pay compensation, a victim surcharge and prosecution costs. This followed a conviction for theft from his employer to the value of £3311. The nature of the sentence is such that it can be assumed that the court regarded it as a serious offence.
4. Additionally, there are concerns relating to the health of the respondent. On 21 June 2017, the applicant received information from the respondent himself that indicated that the respondent was suffering from a health condition at the time of the criminal activity.
5. In light of these matters, an interim order of suspension was made on 23 June 2017. This was made pursuant to s.13L of the Act, for a period of 9 months. A first review was carried out on 28 July 2017, when the Fitness to Practise Committee determined that the interim order remained necessary. A second review was carried out on the 22 January 2018 and the applicant's Fitness to Practise Committee determined that the interim order of suspension remained necessary for the reasons already given and the order was extended. On 21 March 2018, the High Court extended the interim order for a period of 12 months and the current order is therefore due to expire on the 22 March 2019.
6. The interim order was last reviewed by the Fitness to Practise Committee on the 6 December 2018, with the Fitness to Practise Committee concluding that there had been no material change in circumstances and that the order should be continued.
7. The Committee noted, in particular, that whilst the health issue remained under investigation, as indeed it did, the absence of further information itself indicated a risk and so there was a need for the interim order to continue. As I have already said, the allegations in the case initially related to the criminal conviction but, in light of the information provided by the respondent concerning his health, a second matter was opened against the respondent concerning his health with a view to assessing whether his fitness to practise was impaired by reason of an adverse health condition.
8. The applicant has written to the respondent more than once seeking his consent to obtaining a medical report in relation to that alleged adverse health condition. The respondent has not engaged with the applicant in relation to this request. On 10 April 2018, the respondent emailed the applicant indicating that he had no intention of returning to

practice, was employed in an unrelated industry, and asking that communications cease.

9. On 26 July 2018, the applicant wrote to the respondent informing him that the investigation committee had considered the matter and had directed that the respondent undergo an assessment of his health. The respondent has not done so. The applicant, therefore, is currently in the process of referring the concerns relating to the respondent's health and it intends to apply to join these allegations with the initial allegation concerning the criminal conviction, given the nexus between these matters. There is a further extant allegation, namely a failure to cooperate which must be pursued in accordance with the statutory provisions governing notice etc.
10. Section 13(11)(5) provides that the applicant may apply to the court for an interim order to be extended and may apply again for further extensions. Upon such an application the court may extend the interim order for up to 12 months. My attention has been drawn to the principles set out in the case of *General Medical Council v Hiew* [2007] EWCA Civ 369. I have had regard to those principles in coming to my conclusion in relation to the applicant's application. The applicant contends that the order should be extended because it remains necessary for the protection of the public, is otherwise in the public interest and in the respondent's own interests.
11. The first key allegation, concerning the conviction for theft, is a serious one. As the applicant points out, it goes to the honesty and integrity of the respondent. Further, the self-reported health issues and the respondent's failure to engage with the applicant in relation to those issues and more generally, would create a risk to the public and to the public interest if there were not an interim order restricting the respondent's practise in place.
12. As the applicant properly acknowledges, there has been delay in progressing this case. However, I accept that this has been attributable to the emerging evidence concerning the respondent's health and, thereafter, the lack of engagement and cooperation by the respondent. I accept that given the statutory scheme there has to be both a sufficient and indeed significant period of extension to permit compliance with the statutory requirements relating to notice etc. I have explored with counsel the reasons for the delay and I have expressed concern about the length of the extension sought given the history of this matter. However, I accept that given the lack of cooperation by the respondent, the applicant has acted with reasonable expedition and the delays are justifiable and explicable.
13. In those circumstances, I grant the order in the terms sought.

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**CERTIFICATE**

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This transcript has been approved by the Judge.