

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

GENERAL OPTICAL COUNCIL

AND

MATTHEW CLEMITSON (SD-1705)

Tuesday, 16 December 2008

APPLICATION FOR AN INTERIM ORDER

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Fitness to Practise Committee: Lady M Wall (Lay-Chair)
Mr H King (Dispensing Optician)
Mr P North (Lay)
Miss R Plahay (Dispensing Optician)
Mr R Varley (Lay)

Legal Adviser: Mr M Vere-Hodge QC

Hearings Manager: Mr D Henley BEM

For the GOC: Mr Philip Grey

The Registrant appeared in person. He was accompanied by his father.

[Hearing commenced at 09.39]

Lady Wall: Good morning, my name is Margaret Wall and I have been elected by the Committee to chair today's hearing. The Committee today is made up of two dispensing opticians and three lay members. I shall ask the members to introduce themselves. *[Introductions]*

To my right is Mr Vere-Hodge QC. He is the Committee's Legal Adviser and he will provide legal advice and assistance to the Committee and ensure that the proceedings are conducted in accordance with the rules of procedure so as to arrive at a result that is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate but, if any matter arises during that deliberation that will be made clear to everybody in the open session.

At the desk to my side is the transcriber who will keep an official record of everything that is said today. He is entirely independent. Next to the transcriber is Mr Henley, the Hearings Manager, who provides administrative support to the Committee. There are present no other people in the room to whom I have to make a reference.

It is important to notice that, in accordance with the Council's protocols, the identity of the registrant will not be revealed until such time as the Committee announces its decision. We understand that you are not legally represented?

Mr Clemitson: That is correct.

Lady Wall: In order to make this process fair and just, it is the role of Mr Vere-Hodge to give you some legal assistance in private. This does not extend to representing you but it is to ensure that you are not disadvantaged in terms of the law as it is the law that we have to apply. Is that clear?

A. Yes.

Q. I shall ask Mr Grey and both of you to retire, Mr Vere-Hodge will give you advice and then we shall reconvene when that advice has been given.

Mr Vere-Hodge: Madam, perhaps I should make it plain on the record that I am independent of the General Optical Council. I am not employed by them. I come from a panel of Legal Assessors which is entirely independent. I am a barrister in private practice, so that I have no axe to grind for either side, I am entirely independent. I believe it is right that you should know that and it should be on the record.

Lady Wall: Thank you.

[Hearing adjourned at 09.42]

Lady Wall: I am sure that has been a very useful time and that Mr Vere-Hodge has been able to give helpful advice. Mr Grey, do you have any additional application to make?

Mr Grey: Madam, no.

Lady Wall: In that case, we shall go straight to the business of today, which is your application for an interim order.

Mr Grey: It is the Council's application under Section 13L of the Opticians Act 1989 that the registrant's registration as a student dispensing optician be suspended for a period of 18 months. If I may briefly take the Committee to the section in your Handbook that sets out the terms of Section 13L that is at page 34 of the Handbook. I have provided Mr Clemitsen with a copy of the Handbook, I do not believe he has brought that in with him but I see he has been provided with a copy. It is 13L(1) which reads:

"Where the Fitness to Practise Committee are satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of a registrant, for:-

(a) his registration to be suspended or to be made subject to conditions" –

I do not need to read (b),

"the Committee may make an order specified in subsection (2) below."

The orders set out in (2) are suspension or conditional registration. The ground upon which the Council seeks the imposition of a suspension order in this case is that it is otherwise in the public interest for the registrant's registration to be suspended.

Madam, while I have said I do not have any formal application to make, the parties in the presence of Mr Vere-Hodge have discussed the possibility of parts of this hearing being conducted in private. I know that members of the Committee have all had the opportunity to read the 32-page Council bundle in advance. The view that has been taken at this stage is that, with some discretion on all sides, it is not necessary to hold the hearing in private, it can proceed in public. While I may draw your attention to certain aspects of the documentation, there are sections of the bundle that I shall not read out in full for obvious reasons on the face of the papers.

Lady Wall: We are grateful for your making that point, Mr Grey. We have agreed among ourselves to use terminology which is imprecise but adequate.

Mr Grey: Thank you. Madam, if I could then invite the Committee's attention to the Council's bundle. I certainly do not intend to read through it in full, because you have already had a chance to look at it but it is right that the registrant is aware of the issues that are highlighted by the Council.

The GOC's investigation into this matter commenced when it received a letter dated 14 October 2008, at page 2 of your bundle. That letter is from a Mr W, the former employer of the registrant. He informed the GOC's Fitness to Practise Department that:

"While my third year dispensing optician was at his ABDO residential course, it became apparent that false entries had been made into our computer system that resulted in there being cash missing not banked. On Matthew Clemitson's return, he was handed the letter on Monday, 6 October suspending him and calling him to a disciplinary meeting last Friday, 10 October. The discrepancies were attached in a list including prints of the relevant computer screens."

The letter to the GOC then sets out that there has been some email correspondence to which I shall turn in more detail shortly, and then refers to the text sent by the registrant on 14 October:

"Hey, thanx for sending reply letter as an email, I respect and understand your decision, is it poss to come into Luton and HR to col personal stuff and transfer stuff from my personal mail's folder on computer, understand someone will need to be with me and col letter from Luton?"

By this stage, the registrant had, as I understand it, been dismissed. The letter from Mr W continues:

"I agreed to meet him at 10.30 and he collected his college papers and mobile phone charger, and he handed me his employee badge. He said again he was sorry but said he had no choice. I stated that, as he gets older, he will realise there is always a choice. I got the feeling that he had still not discussed anything with his fiancée and that he was going to attempt to get another job and carry on as if nothing had happened with his studies.

He does not appear to have shown any genuine remorse or offered any voluntary compensation. I have told ABDO that I am not going to pursue Matt for the college fees that my company has already paid but they were told that we were no longer supervising him. No decision regarding Police involvement has yet been made.

I feel that he has not shown the integrity and honesty required of a member of my profession."

If I could next invite the Committee's attention to page 3 of the bundle, a letter dated 2 October 2008, so predating the letter to the GOC, from Mr W to the registrant. This is the first occasion on which Mr W, the registrant's former employer, highlighted to the registrant that he was aware of the financial irregularities:

"It has come to my notice that there appear to be entries into the computer system that reduce the amount of cash that appears should be banked at the end of the week. I have been struggling to find any reason for these entries to have been made or the purpose of them. All entries appear to have been

made by you, using your password. None of the weeks in question show an undue under or over banking figure leading me to the conclusion that the money has not been banked."

The letter goes on to set out that the registrant has been suspended on full pay pending further investigation and inviting him to a disciplinary meeting on Friday, 10 October.

From pages 4-19 there are various computer documents and screen-grabs from the records and accounting system of the practice or practices where the thefts took place. I do not propose to take the Committee through those for two reasons. First, the precise mechanics of the theft in this case are perhaps less important to your decision today than the fact that the theft took place. Secondly, in due course it is likely that the Council will seek to take a full witness statement from the complainant in this case. It is not entirely plain to me, not being familiar with this system, the exact mechanics of the theft but, as I have said, in the circumstances of today's hearing, that is of less importance than the fact that the thefts took place.

On page 20 of your bundle, you will see an email from the registrant to his former employer dated 6 October in response to the letter informing him of the pending disciplinary hearing. You will note that aspects of that email are redacted. They were redacted by the employer, the complainant, before he sent the material to the GOC. At that stage, the GOC plainly had no knowledge or understanding whatsoever of what lay behind those redactions and, in those circumstances, contacted the employer and required the employer to provide us with the full email which is set out at page 22.

However, I shall read from the redacted email at page 20. You and your colleagues will have already read the fuller email at page 22. The email from the registrant states:

"Hey, I obviously don't know how all this works but I am going to be honest with you and I know that certain private things will be hard to say in person to you so have opted to email you instead ready for the meeting on Friday morning as hopefully that will make things easier.

Back in September 2007 when it was just me and [person called L], I was doing the cashing up for the day at about 17.50 as had been a busy day and noticed that I was £100 out. I checked all the transactions (as I had entered them all) and swear that all the patients had given me the correct money so I honestly didn't know how I was £100 down. As it was getting late and I needed to get back as me and K had sorted something out I essentially minus £100 so the day's takings would be okay. I thought that I would sort it out the next day and obviously thought that someone would notice but nobody said anything so I just left it. I knew I should of spoken to [L] and tried to sort something out but I just wanted to get away. I realise that was the wrong decision to make but once made, I couldn't go back on it."

There is then reference to personal matters which I shall not read out in detail. I know that the Committee members have considered them. The final larger paragraph reads:

"I like to think of myself as a hardworking, honest person and this has been on my mind a lot. I knew there would be risks involved but blocked them out of my mind and tried not to think of the repercussions. I do love my job and

really like working for you. I know this probably wasn't what you expected but I thought it would be best to be honest with you as that is the least you deserve and I am deeply sorry about all this. I am sure you have questions which I will answer truthfully and honestly on Friday."

The next document to which I would invite your attention contains the notes of the disciplinary meeting at the registrant's former place of employment, and they are found within your bundle at pages 23-25. Again, I do not intend to go through this in detail but to highlight certain sections from it. The third paragraph on page 23 reads:

"To start Matt was asked the direct question.

In your email you admitted that you had made false entries to the computer system and that you had stolen the money concerned. Do you admit this fact today?

Answer Yes.

I asked if he had anything to say regarding that fact.

He replied that he was sorry for doing and that he did not do it lightly but that because of his personal circumstances he felt that he had no choice. It did worry him but he pushed it out of his mind and ignored it."

Three paragraphs further on:

Of the 20 items listed, Matt made a full and frank admission in 18 of them, including one that resulted in him having to admit that he had been caught and had to "find £20 that had gone missing" which was re-entered into the system. This was not the last entry made and was on 12 May 08" –

and there is reference to the particular store.

"Therefore, MFW pointed out that even getting caught did not stop him. The remaining two items at [the store] on 5th Nov 07 and 13 Feb 08 he could not remember but could offer no reasonable explanation.

The first one for £100 he stood by the fact that it was an error that he corrected and that he had not had the money as outlined in his earlier email. When looking into this it was noted that in fact on that day there was an additional sum of £16.50 that also appeared to be missing that day. He could offer no explanation for that."

Reference is then made to personal mitigation on behalf of the registrant. I would like to highlight the second paragraph on page 24:

"MFW then asked if Matt thought that it was likely that at some stage he would be found out. Matt replied that he thought he would be found out but that he put it out of his mind. He also stated that since coming back from his course at the weekend he would not have had to do it anymore."

There are then reasons set out by the registrant during the disciplinary hearing for why that would have been the case. The third last paragraph on this page reads:

“MFW stated that he was bitterly disappointed and that this was obviously a serious matter that I would need to consider. MFW also stated that because we had also had problems with the charity boxes and that MFW had made it clear at that time that this was not acceptable to steal, yet some of these entries were made after this. MFW stated that he was not accusing Matt of the charity box thefts as there would never be any proof but that also added to the feeling of loss of trust and confidence. MFW said that he would put his decision in writing within 72 hours and get it to him either in the post or by hand through the letter box.

Matt was asked if he had anything finally to say and he stated that he hoped that he had proved that he was hard working and that he really enjoyed his job and the courses I had sent him on. He felt desperate and that he had no other option as he is a private person and felt he could not go into details.”

I would highlight also the final paragraph on page 25:

“Since the meeting closed at least 2 more instances of strange computer entries have been found which were not put to Matt and the timings of the entries relating to his explanations in his email of the first £100 incident also do not tally with his. The transaction recording the £100 was timed at just after 4 with two more transactions recorded after that at 4.30 and 4.50, with the cashing up having occurred prior to the 4.50 transaction this was not put to Matt as it was deemed not necessary at this stage and immaterial to the decision process or outcome.”

The letter at page 26 is a letter to the registrant dated 12 October of this year, formally dismissing him from his former employment. At pages 27 and 28, there are further screen-grabs from the practice’s computer system to which I do not propose to take the Committee, and at page 29 is a note of the telephone conversation between a solicitor of the GOC and Mr W where she explained the reasons why the Council needed to see the unredacted version of the registrant’s email.

Pages 30, 31 and 32 are documents that have been provided by the registrant. Page 30 is simply a covering letter from the registrant. Page 31 is written representations provided by the registrant. I do not propose to go through those myself. Again, the Committee have read them and, if there is anything that the registrant will wish to highlight or make representations, he will have the opportunity to do so. However, I would stress that, if in the course of his representations, the registrant does not make detailed reference to this document, I would particularly invite the Committee to re-read it in full when you retire to make your decision on this case.

Finally, in the Council’s bundle at page 32, there is a reference to the registrant’s general practitioner. I know that the Committee have also been provided with a few further pages from the registrant. I would invite the Committee to label those documents R1. If I could simply run through what they are to ensure that all of us have exactly the same material - I have a short document headed with the Council’s reference number 6-1-2008/102 – To Whom it May Concern; then a copy of a reference from the registrant’s present employer. Then there are a further four pages of emails between the registrant and his former employer. May I just confirm that members of the Committee have all seen all of those documents? Thank you.

Lady Wall: Should they also be numbered just so that we are clear as to what we are referring to?

Mr Grey: Forgive me, I have stapled mine together which is why I only suggested one reference number. The covering letter should be R1, the reference from present employer R2, the first two-page email trail beginning with an email from Mr W sent on 26 October at 4.35 should be R3, and the email from the registrant, again a two-page document, sent on Friday, 31 October at 3.39, should be R4.

If I could please highlight some aspects of R3, so I would invite you to turn to the second page of that to begin with. This is an email from the registrant to his former employer on 24 October at 13.15. The first paragraph sets out a number of personal aspects of the registrant's situation. In the second paragraph, he states:

"I am deeply sorry for what I have done and for mis-using the trust and responsibility you placed on me. At the time I felt I couldn't talk to anyone, not even you, and acted on impulse and desperation. This isn't in my nature or personality to do this and I did it with an act of guilt and regret. I know you are gravely disappointed in me as I am in myself and I feel that I have let everyone down, my family and K included.

I see things clearer now and would like to re-offer to pay back any of the money I stole but I definitely didn't steal the hundred pounds last September but know I should of mentioned it to someone instead of just carrying on. I never even thought about being caught or the repercussions of doing this but, as I said before it all became clear on my two week block release as I knew I couldn't keep doing this and would have to come clean. Let me know the total of the money I took and I am quite willing to give you this personally or by post."

The reply on the previous page from Mr W to the registrant reads:

"The registrant,

I thank you for your email, it is the first time you try to show any remorse and the first time you have offered to pay back what you stole. Even when I was taking you to collect your personal items you were still playing the "I had no choice" card as though it was still not your responsibility.

The difficulty is I will never know what or how much you stole from me. I have spent hours now going back over the records for the last 4 years and have had to question a number of staff about entries into the computer going back over that period. Most of these appear to be innocent but now my suspicions are raised it is difficult to be objective. Luckily I have managed to get to the bottom of all but 2 of these and as those were entered by someone who left my employ some time ago I still have to decide what to do. This has been an unpleasant experience for all.

I have now found another 6 suspicious transactions that you have entered in the same way as the others going back as far as 29th Jun 07 some 3 months before you assured me it all started. In fact on the £100 you stated:

"Back in September 2007 when it was just me and [L] I was doing the cashing up for the day at about 17:50 as had been a busy day and noticed that I was £100 out. I checked all the transactions (as I had entered them all) and swear that all the patients had given me the correct money so I honestly didn't know how I was £100 down. As it was getting late and I needed to get back as me and K had sorted something out I essentially minus £100 so the day's takings

would be okay. I thought that I would sort it out the next day and obviously thought that someone would notice but nobody said anything so I just left it. I knew I should of spoken to [L] and tried to sort something out but I just wanted to get away. I realise that was the wrong decision to make but once made, I couldn't go back on it".

That is the end of the quote from the registrant's earlier email.

"On closer inspection there is another transaction that same day for another £16.20 that is also missing which detracts from the validity of your explanation. Also the transaction that you created for the £100 was entered at 01/09/2007 16:11:31. The last Eye Exam patient did not finish until 01/09/2007 16:32:03 some 20 minutes later and you dispensed to him creating the last transaction of the day at 01/09/2007 16:47:45 some 35 minutes later. This last payment occurred AFTER you had cashed up as the payment appears on the following working days sheet. So you can see your explanation still does not add up, along with the other transactions going back before then you can appreciate why I have difficult believing you now.

There are now 24 transactions including the £100 totalling £648.16 not including the two which had been reversed when found out at the time. Obviously, these are the ones that follow the same pattern as before. As there are many ways to steal from my business that do not involve entering transactions into the computer system I will never really know the true value. Indeed with the charity box incidents I personally had to make up the money that vanished and I know more has gone missing since then, and how many items have been sold without a transaction going through the system I will never know. So you will have to tell me how much you stole. This is why I need absolute trust in all my staff.

You failed to stop when the riot act was given regarding those charity boxes. You failed to stop when you were caught by [L] in May you just covered it up and kept going. You failed to stop when you had either of the two pay rises that I gave you during that period. In fact the only communication from you during your last course was about your next pay rise so forgive me if I do not believe you were about to confess on your return, especially since you could not even talk to anyone about your current predicament until forced to.

You have to remember is when you steal from my small business you are effectively stealing from me personally. You know how little profit has been made over the last few years as I have been very open with the figures, this is at the same time that I personally was investing more than a few thousand pounds each year directly in your training and development and even more indirectly."

There is a reference to employment references and he concludes:

"I hope that you do straighten yourself out and get some moral courage and integrity."

The registrant replied to that email at 3.40 on Friday, 31 October. In the second paragraph he states:

"I have never taken any money from the charity boxes and never not put through a transaction through the till. I can fully understand you being

suspicious of me and blaming me for everything that has gone missing. What I said to you when we met on the 10th October was completely the truth but I did say that as far as I could remember there wouldn't be any other occasions before the £100 episode but I wasn't sure and finding another 6 transactions could be right as I don't remember the precise dates except that day in question regarding the £100. I really didn't take it and explained to you that when I was cashing up I noticed that I was £100 down in the day's takings and looking in detail there was only one patient that paid a large amount of money for a collection of spectacles. I remember the patient counting out the notes to me and I thought it was the right amount. As to the £16.20 that you mentioned I have no idea about that.

It did not enter my head to take money in any other way, I certainly never touched any of the charity boxes, how the money went missing I have no idea."

The next paragraph makes reference to personal mitigation. The following paragraph states:

"I wasn't thinking straight and I was very shocked at everything happening at once which is why I kept saying it was the only choice I had and I couldn't express myself better but now I can see the choices I had and what I should have done. I am just so sorry.

When I spoke to you at that second meeting, I really did offer to pay the money back that I had taken but you must not have heard me and why didn't I stop taking the money? I don't know. I still felt completely alone in my situation, I felt guilty but I couldn't talk about it with anyone."

Then there is a further reference to personal mitigation. The final paragraph reads:

"I can't ask for your understanding or forgiveness but am grateful for the opportunity I had when you first took me on."

Madam - that is all the factual documentation that the Council seeks to place before the Committee. As I have already indicated, the basis for the Council's application this morning is that it is in the wider public interest for the registrant's registration to be suspended. Within the Fitness to Practise Committee's guidance document, and I do not invite you if you do not immediately have it in front of you to turn it up at this stage, because you can remind yourselves of the wording after you retire, there is the following reference to the meaning of the public interest. It is on page 4 of the Committee's guidance, and it is expressed in terms of the decision that is taken on sanction at substantive hearings but the principles, in my submission, are equally applicable to an interim order application. [*reads*]

"When determining sanctions in relation to the registration of an optometrist or a dispensing optician, the Fitness to Practise Committee should consider whether their decision would be for the protection of members of the public or in the wider public interest as they are both closely linked, i.e. the particular need to protect the patient and the collective need to maintain confidence of the public in their profession.

Public interest includes: protection of patients; maintenance of public confidence in the profession and declaring and upholding proper standards of conduct and behaviour and, therefore, a Fitness to Practise Committee should

bear those factors in mind when considering appropriate sanction regarding an optometrist's or a dispensing optician's registration."

Plainly, it is not sanction that the Committee has to decide today. It is whether it is necessary in the wider public interest, including the standing of the profession and the maintaining and promoting of high standards in the profession, for the registrant's registration to be suspended. I say suspension but that is not the only course of action open to the Committee today. The Committee has three options: it can grant the Council's application and suspend the registrant; it can make no order if it considers that no order is necessary, or the Committee could impose conditional registration as an interim order upon the registrant.

That is not the course that I invite, as I believe I made clear but, if it is the course that, in due course, finds favour with the Committee, could I highlight very briefly the following conditions for your consideration? I shall simply list the numbers as they appear within the annex to your guidance, and you consider, if you are going down the route of conditions in due course, if you think that these are the appropriate ones: A1.1, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8 with paragraphs (c) and (d) deleted, and 1.9. The deletions would be necessary if this is the decision the Committee comes to, because they relate to optometrists rather than dispensing opticians or student dispensing opticians.

Madam, when I have highlighted the issue of the public interest, which I ask you to keep in the forefront of your minds, I would ask you to do so alongside the following aspects of the registrant's conduct in this case which I would submit are highly significant. First of all, the length of time over which this conduct was persisted in. There were a significant number of occasions when the registrant chose to alter the computerised records of the practice to enable him to take money without detection. In no way can this be called an isolated mistake; quite the contrary. This was a sustained breach of trust. I would submit it is quite apparent from the paperwork that, prior to his realising what had been taking place, the registrant's former employer had placed a great deal of time, money and effort in developing the registrant's career.

The registrant had many opportunities to stop, not only the opportunity simply not to go ahead with each offence when he was about to commit it, but also those that have been highlighted in his former employer's correspondence. Also you may consider that there was a significant delay in the registrant's starting to accept responsibility or in offering to repay the money that he had taken.

I would also invite the Committee to bear in mind the principles with which many members of the Committee will already be familiar from the case of *Shiekh v General Dental Council* [2007] EWJC 2972 (Admin). I know that you will be given some advice on the principles in that case from the Legal Adviser. In general terms, the principle is this. It will be a relatively rare case in which an interim order of suspension should be granted where the only ground upon which it is asked is the wider public interest and not the protection of the public. It is the Council's submission that this is one of those relatively rare cases given the significant breach in trust, the persistent nature of this conduct and its extremely deliberate nature.

Madam, the last point I would make is that my application, whatever order you make if, indeed, you do make an order, is that the length of time is for 18 months. I do not envisage the final disposal of this case taking 18 months, or anywhere like it. However, a short order can have significant administrative difficulties connected with it. If, for any reason, you were to impose, for example, a 12-month order and the substantive hearing were not heard within the next 12 months, if, for example, there

were difficulties in obtaining witness evidence; if the Police decide, not as I understand they are likely to, simply to caution the registrant or go to take criminal proceedings in the court, we will wait until the outcome of those proceedings; if, for any reason, a listed hearing has to be adjourned at short notice for reasons that at present we cannot predict, those circumstances may result in this case not being disposed of finally within 12 months. Were that to happen and your order today were only for 12 months, the Council cannot come back to this Committee and ask for an extension. The Council would have to go to the High Court to ask for the order to be extended further. It is not that I envisage the case taking 18 months – quite the contrary, as I have said – but it is for that reason alone that I ask for the order to be imposed for a period of 18 months. The Council will be striving to ensure that the case is heard significantly sooner than that.

One last point I should have mentioned and forgive me that I perhaps should have mentioned this earlier. My understanding is that the complainant in this matter has drawn the facts to the attention of the Police and that they have investigated. My understanding from the registrant, though he can speak on this himself in a few moments' time, is that the Police have made a recommendation that he is cautioned for these offences. That recommendation has yet to be decided upon so it may or may not be that a caution will follow. Those are the matters that I would advance on behalf of the GOC and, if you or your colleagues have any questions, I shall do my best to answer them.

Lady Wall: Thank you very much, Mr Grey. [*no questions from the Committee*] [*confers with Legal Adviser*] Thank you, Mr Grey. We do not have any questions and there is no legal advice as to whether any further information should be sought at this stage. Now it is the turn of the registrant. You have the opportunity to address us. You have heard what the GOC have said and you have had all the information and the documentation to which Mr Grey has referred of which we have copies. I understand that your father is here to support you - not to act as your advocate – is that correct? [*Yes*]. What would you like to say to us?

A. I would just like to start from the beginning really when I left school and had done my A levels. I was just looking for any sort of office work to start my career wherever that would be at the time. I just happened to fall into Optics with my previous employer and started working there as a receptionist up to an optical assistant. I always like to think of myself as an honest person and hardworking, and I do believe that in the four years, or even throughout the whole time, that I did work very hard for my previous employer. I know he placed a lot of trust in me, which I certainly didn't do anything with in the first four years until a particular event came to light. It was something I wasn't really sure how to deal with at the start, and I felt I couldn't tell anyone, because I genuinely am quite a private person with my feelings.

I got so desperate that I did steal some money on a number of occasions, which I do truly regret now. Before I did it, I know I should have spoken to someone, whether that be my family or whether that be my partner. All of them are aware of what has happened and what I have done and everything. I can't believe I did that, looking back now, and I certainly know I would never do anything like that again. I am seeing a counsellor with current employer as well to work through this together. I know that in terms of my career, I definitely do want to continue doing the course. I know I love it, I know I enjoy it. I didn't mean to get into this career, it just happened to fall on me.

Certainly, when it happened and I was dismissed on gross misconduct, I did look for work straight away, because I didn't really want to keep in the Optics industry as such. I did happen to find a company, a very sympathetic employer, who I was very honest and up front with, who was aware of everything up to that point. Since then, I

have been honest with him about everything, including the police matter. I can only assume he saw something in me, which is why he actually employed me under the current circumstances.

Q. May I just ask you to keep your voice up as this is being recorded?

A. Okay. I feel that he has obviously placed all his trust on me in terms of my position in the opticians. So I can only assume from the letter he wrote, which I have forwarded to you, that he is happy with what I am doing and how I am doing things, even with everything that is going on at the moment, as obviously he knows I am under investigation. I just hope for the future that I am able to continue with my studies and become a registered dispensing optician as that is truly what I would like to do and what I want to do for the rest of my life.

I feel that I have been punished enough already in terms of going to the Police, which was a truly horrible experience for me, being the first time I have ever been in any contact with the Police at all, and in terms of my family and my partner knowing as well. As I said, I am truly sorry for everything that I have done to my previous employer. I like to think that I had the best intentions at heart for what I've done in terms of trying to sort out my relationship and no way I didn't mean to breach the trust with my previous employer. I truly feel that nothing more should be done with myself but I understand that is up to you to decide. I don't particularly want to go into any more detail, as the detail as to the specific reason why is in the papers that you have and have no doubt read. That is everything I would like to say.

Mr Vere-Hodge: May I just ask a few questions to see whether you can put a little more into what you have said, as the Committee members will have questions for you in a moment. What is your age?

A. Twenty-three.

Q. Twenty-three and what is the current position so far as the Police are concerned? You are on bail I think you told me, is that right?

A. Yes. They have sent the details across to the court, I believe, and they recommended that there be a conditional warning. They did say to me that 98 percent of their recommendations the court does go with and, at the time, they did speak to the previous employer to make sure he was happy with that, to which he did say he would consider recommending. So far as I am aware, it will be a conditional warning, and I go back on 29 December, one to make sure that it is a conditional warning and, two, to probably pay back the actual money I have admitted to in one of the emails.

Q. Have you got the money?

A. I don't have the money as such but my parents will help in that regard.

Q. You mentioned in what you were saying that you are on a current course. Could you just tell us when that started, what the course is and how long it will run for?

A. I can't remember the exact date when I started it but I am in my third year course of the ABDO Dispensing Distance Learning, which is a three-year course. As I said, I am in my last year, you tend to have two block releases every year of which I have attended one, and I am about half way in terms of my assignments. You have to send off weekly assignments to a tutor who marks them and sends them back, so essentially I am about half way through the third year. I have my summer exams in June which, if I do pass them, I will be qualified later on next year, so I am very close to completing the course that I really do want to do.

Q. Say any more if you want but those are the three topics I wanted to ask you to fill in. Mr Clemitson Senior, you agreed kindly that you would sit and listen but also if you thought your son had left something out that was of importance, you would act as the prompt and tell him. You know the background very well and you know what your son probably wanted to say, so if there is some topic now that you think he has not dealt with adequately, if you would like to tell him to deal with it as I may not be aware of it. This is your opportunity to prompt your son if you want.

Mr Clemitson Sr: There is one thing I would like to add which Matthew, I am sure, would not even mention. It is the fact that he is so pleased to still be able to be in the opticians, he leaves home in the morning before seven o'clock, he doesn't start work until nine o'clock, he has two bus journeys to get there and two bus journeys when he gets back, so he doesn't get home till eight o'clock at night, because he still wants to stay in the opticians to continue to be able to come a dispensing optician. So he is being punished for what he has done by getting up early in the morning and being away all the time, just to put it in perspective as to the type of person that I believe he is and I am very proud of him. I know what happened here but I just feel that you need to take that into account. This is a real blip on his character what he has done but I fully endorse everything he has said on that. That is the only point I would like to add.

Mr Vere-Hodge: Thank you. It was really in case you felt that he had not emphasised, on his own behalf, some particular topic or point - that was my invitation.

Mr Clemitson Sr: No, I am happy with what has been said.

Lady Wall: Do any of you have any questions? [*Consults members of the Committee*]

Mr Varley: Have you agreed with your former employer that you are going to repay him on 29 December?

A. As mentioned in the email, I did say the amount I would pay back, that is the amount that I actually stole; he hasn't got back to me in terms of that. So, as far as I am aware, it is up to the court to decide how much I actually pay back. So if I pay back now, it will be through the court and then they pay him, as far as my understanding is.

Lady Wall: I think we might need some legal clarification here.

Mr Vere-Hodge: I am not quite sure what this –

Mr Grey: Madam, if I might interject at this stage. While conditional warnings post-date my time as a criminal practitioner, my understanding is that the decision as to whether or not one will in fact be given will not be for the court. It will be for either the Police or the Crown Prosecution Service. If one is given, then the registrant will not be going anywhere near a court and it will be entirely voluntary, from my understanding, unless any condition is imposed as part of the warning that he has to pay a particular sum back. However, it will not be the court, on my understanding of things that is involved in that.

Mr Vere-Hodge: Madam that is my understanding. It was not appropriate to ask the registrant too closely about this but it would be my understanding that it would be a caution, and a caution would be administered by a Police officer and not by a court. I doubt that the caution would be conditional on the payment of any amount of money which might be seen as a civil debt in any case. However, the point is still a valid one that there has to be reparation and it has to be in an amount that presumably is

capable of being agreed. I am not sure that it can be taken any further at the moment.

Mr Varley: I do not think so. That is the point of the question: there were two different amounts mentioned in the correspondence.

Lady Wall: You believe that the lesser sum is the one which you would repay, or which your parents would repay on your behalf?

A. Yes, it could be the Crown Prosecution that give the actual detail, but they certainly did say that it would be a condition to actually pay back X amount and it would be up to them to decide. So whether or not it could be my amount or whether it could be my previous employer's amount or whether it could be an in between amount, I am not sure, but they did say it probably would be a condition of a warning.

Q. As yet, nothing has been repaid?

A. As yet, no.

Q. [to Committee] Are there any other questions?

Mr King: Yes, may I clarify your supervision? You are working for Boots Opticians presumably under a franchise?

A. That is correct.

Q. And the owner is an optician?

A. He is not.

Q. Who is supervising you in practice?

A. A lady called [Name given]. I have passed on the details of registration and everything. I did fill out a form and sent that off.

Q. And this is current?

A. Yes.

Q. And these people are sponsoring you, are they, through the remainder of the course?

A. He did say he would but, as far as my understanding, he is waiting to see what happens at the moment, to see what the outcome would be.

Q. Could you still have another block release?

A. My next block release is in February.

Q. Which has to be funded by somebody?

A. Yes, whether it be by me or by my current employer.

Q. Thank you.

Lady Wall: Do you have any questions?

Miss Plahay: No thank you.

Mr North: I have just one, Chairman. Following on from Mr Varley's question to you, how much do you feel you owe your employer?

A. As I stated in the emails, £550 is the maximum I believe I took.

Q. But you are not sure how much you took?

A. As explained in the email, I can't be totally sure, because the first thing is I didn't note down how much I did and how many tablets I bought. I tried to work out how many and that is how I came to the figure.

Q. Let me ask you the question again: how much do you feel you owe your previous employer?

A. Obviously, I feel the amount I stole of £550. I know he has put money into my training and development and, as I said in the email, I did thank him for that. As to the actual amount, I am not totally sure of the actual amount to be honest.

Q. Thank you; that has been helpful.

Lady Wall: I would like to ask you a question about your current employers. Your current employers know that you are under investigation but they don't know the details?

A. They know the details.

Q. They do know the details?

A. I was honest with my current employers to start off with at the initial interview, so they know everything.

Q. Right, so are you in a position now where you are dealing with money?

A. Yes.

Q. And is that receiving any particular supervision?

A. No, they really trust me in that respect.

Q. And how do you feel about that?

A. As I said to you, I know I definitely won't do this ever again. I do believe it is not in my character to, especially with everything that has gone on I know I definitely won't. I know I won't let him down in that regard.

Q. Thank you. Those are all my questions; any further questions from anybody?

Miss Plahay: Yes, can I just ask one. After your pre-reg, once you are qualified, what is your intention - are you wanting to stay with the same company?

A. Yes, I have only been there six weeks with the current one but, travelling aside, I am very happy working there, it is a nice place to be working, everyone seems nice to work with as well. Yes, I would intend to stay there if I do qualify.

Q. Thank you.

Lady Wall: So no further questions from anybody? Any further legal advice, Mr Vere-Hodge?

Mr Vere-Hodge: I think it is really for the registrant to make his final submissions about what he invites you and your colleagues to do. First of all, I do not want to stop him from putting it any way he wants, but it may be that if he deals with the application, the application is that your registration be suspended for 18 months. Do you want to just deal with that first of all, why you oppose that and give us the reasons for that, and what effect do you think it will have on your immediate future?

A. If the decision is made that I should be suspended for 18 months, I know I will be devastated as it is a year and a half of not carrying on with the course, in which case by then I could be qualified very happily with that career. If that were to happen, I am sure I would still stick with the current employment, as I said I am happy there and I feel my current employer is happy with myself as well. Then I would just hope to

continue the course at a later stage. I know I would have to contact ABDO to see if I would have to retake the year to begin with, or from the first year, or if I have to retake it from the third year. As for that, I am not sure but I would certainly definitely want to carry on with the course as I know it is something that I definitely want to do.

Q. What about conditions, if the Committee thought it appropriate to attach conditions: are you willing to have conditions attached to your registration?

A. Yes, I would be willing if conditions were there. It means I would still be able to, I hope, carry on with the course. I have only briefly looked at the conditions, so I am not totally sure what they all mean as I only had a quick look but, yes, I would be happy with any conditions.

Q. Do you ask the Committee to consider taking no action and simply leaving it –

A. I would ask them if they could, because, as I said in my previous statement, I feel that I have been punished already with my family and my partner knowing, the Police ordeal, and just the fact that I have been in my previous employment for five years and just like that I have had to look for another job and totally change my life in that respect. My life has changed actually now anyway due to everyone knowing, which due to the personal matters it is not something that I would want anyone to know with the exception of my partner. The fact is they do.

Q. I don't want to take over or sound as though I am dictating what you deal with, but this is your opportunity now to say anything that you want to the Committee on the question of what you are asking them to do today in terms of the application made by the Council?

A. I just hope they will consider the fact that I hadn't just been with my employers for six months; I had been there four years before, in which case I worked up from just being a receptionist. Essentially, I found a job that I really loved and wanted to progress further in. I still do at the moment and, even with everything that has gone on, I still would like to go for Optics as I really do enjoy it and I hope I can do it for the rest of my life in one way or another.

Q. Right. Do you want to say anything more?

A. No, I am happy with that.

Lady Wall: Do you feel that you have had every opportunity to say what you wanted to say yourself about the situation in which you find yourself?

A. Yes.

Q. Mr Grey, is there anything further you wish to say?

Mr Grey: No, thank you, Madam.

Mr Vere-Hodge: Madam, the legal advice that I give is advice as to the applicable law. It is not my task to sum the case up or to summarise what the issues are but your power comes from Section 13L of the Act, which states:

“Where the Fitness to Practise Committee are satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest” -

and that is the clause which is relied upon by the Council,

“or is in the interests of a registrant, for-
(a) his registration to be suspended or to be made subject to conditions” –

we do not need to deal with (b),

“the Committee may make an order specified in subsection (2) below.”

which sets out the orders which can be made. The Committee have to be satisfied that it is necessary, or is otherwise in the public interest, which is what is relied upon here by the Council in making this application.

I have to deal with the question of the law that is applicable in these particular circumstances, and it comes from the case of *R (on the application of Shiekh) v General Dental Council*, which is a case reported having been heard on 9 November 2007. This is a case that involves a dentist but sets out considerations of general application. Of course, all cases are fact-specific and turn on the facts themselves but, plainly, there are principles of guidance given by Davis J which I invite you and your colleagues to apply to the facts as you find them to be in this particular case.

I need to set out a little about the background so that you understand the framework within which Davis J gave his guidance in this case. Paragraph 3 sets out the background. Mr Shiekh is a dentist who has long practised in the Nottingham area. He had a number of dentists working with his practice on a self-employed basis, they accounting to Mr Shiekh for a percentage of their earnings and he making the practice facilities available to them. The evidence would suggest that the practice he supervised was a very large and very profitable one. However, in the course of operating that practice, as it transpired, certain associates were making false claims for expenses on travelling matters. I need not go into the details of that, suffice it to say that, ultimately, this resulted in criminal proceedings being brought against Mr Shiekh, conspiracy to defraud was alleged.

There was then a trial at the Northampton Crown Court and, after a while in the trial, Mr Shiekh pleaded guilty on a particular basis to the conspiracy to defraud, and he was sentenced by the trial judge, emphasising the basis of plea, various points in mitigation, to a suspended prison sentence. As a result of that conviction, proceedings were then started by the General Dental Council. What happened, to fill in the background, was that the General Dental Council imposed an interim suspension upon him, which was then reviewed and on review the suspension was ordered to continue. The matter was then appealed and came before Davis J who said this at paragraph 11:

“It is important to note that in this case it has at all times been accepted that Mr Shiekh poses no direct risk to the safety of the public. It has never been said that he does. There has never been any challenge at all to his own competence and diligence as a dentist. Many testimonials have been put in with regard to him. It is further to be noted that there has been no adverse complaint of any kind since either 1998 or 2000 with regard to the conduct of his practice, let alone his conduct as a dentist in terms of actually treating patients.”

A little later at paragraph 14 in the judgment:

“On behalf of Mr Shiekh, Mr Winter QC says that the decision reached by the Panel simply cannot and should not be sustained, and this court should terminate the interim suspension. It is common ground between Mr Winter and Mr Bradly, who appears on behalf of the General Dental Council, that for the purposes of section 32(4)” – that deals with the Dentists Act – “the only

relevant statutory test which applies here in this particular case is that which relates to the public interest.”

Of course, breaking into it, that is what we have here.

“It is agreed, and has always been agreed that interim suspension was neither sought nor could be justified by reference to considerations of what is necessary for the protection of the public or what was in the interests of the practitioner concerned.

15. As a matter of strict language, no grammatical interpolation of the word “necessary” falls to be applied to the phrase “or is otherwise in the public interest”. But that is not the end of the matter, because it does seem to me that if “the public interest” is to be invoked in this context, under the statute, then that, to my mind, does at least carry some implication of necessity; and certainly at least carries with it the implication of desirability.”

Then he goes on to deal with a reference to the Shipman case.

Paragraph 16:

“At all events, in the context of imposing an interim suspension order, on this particular basis, it does seem to me, adopting the words of Mr Winter, that the bar is set high, and I think that, in the ordinary case at least, necessity is an appropriate yardstick. That is so because of reasons of proportionality. It is a very serious thing indeed for a dentist or a doctor to be suspended. It is serious in many cases just because of the impact on that person’s right to earn a living. It is serious in all cases because of the detriment to him in reputational terms. Accordingly, it is, in my view, likely to be a relatively rare case where a suspension order will be made on an interim basis on the ground that it is in the public interest. I do not use the words “an exceptional case”, because such language is easily capable of being twisted and exploited in subsequent cases; but I do think, as I say, it is likely to be a relatively rare case. Ultimately, of course, all these things have to be decided on the facts of each particular case.

17. Mr Winter makes two other submissions which seem to me to have a degree of validity. First, he submits that where a Panel is making an interim suspension order that carries at least the implication that that Panel is taking it that a suspension order is very likely to be made at the final hearing. Mr Bradly agreed, pointing out that that was more or less inherent in a power to suspend on an interim basis. As Mr Bradly rightly acknowledged, however, it would be a very unfortunate matter indeed for a dentist to find himself on an interim basis the subject of a suspension order and then, when the full facts and evidence and mitigation are deployed at the substantive hearing, it is then decided that a suspension order is not in fact warranted: but, as he submitted, that risk was inherent in the nature of interim powers.

18. The second general point made by Mr Winter is that an interim suspension order does have the effect, in the ordinary case, of depriving an individual practitioner of showing that in that period he otherwise has conducted himself well and competently and so, as it were, enhanced his prospects in front of the Panel undertaking the final hearing. As to that last point, that has considerably less force than the circumstances of this particular case” –

and he goes on to deal with Mr Shiekh's personal aspect. Going to the judgment at paragraph 23 if I may, leaving out other parts which are not of particular relevance to your considerations today, Davis J says this:

"The difficulty I have in this particular case is trying to get a purchase on why it was that each Panel thought that interim suspension was needed. This was not a case of ongoing or future risk or anything like that. Many of the points that the Panel made might well have been apposite (I say nothing more than that) if one was considering at the final hearing why suspension was needed. But what is difficult to grasp, certainly from the reasons that we are given by the Panels so far as there were reasons, is their assessment that suspension was needed on an interim basis. If it is to be the case that justification was that of public perception and public confidence, then one might have thought that that could be reflected by an appropriate decision by the Panel, if so minded, at the final hearing when all the facts had been fully explored, all the mitigation fully advanced, and the position finally assessed at that stage. If it be the case, therefore, that it was proper to judge that a conviction of this kind did require suspension to reflect public concerns, then it can be said that that could appropriately be done at that final stage.

24. I raised this point several times with Mr Bradly in argument and I am bound to say it did not seem to me that any clear principled answer was given. It is not a criticism of Mr Bradly: he was simply seeking to justify the decision that these Panels had given. It is not at all clear to me, all the same, the reasons of the Panel and it is not at all clear to me, exercising my own mind on the matter, why interim - emphasised interim – suspension on public interest grounds, was called for in this particular case. True it is that this was a very serious matter in respect of which Mr Shiekh was convicted. But there were a number of other matters which told potentially against interim suspension, not least the delay, the reparation and the fact that he has conducted himself well in the interim."

In the final paragraph, Davis J allowed the appeal and lifted the suspension. The sums of money in the case, perhaps I should go back to deal with, were very substantial indeed. If you could give me a moment, I shall try to find the figures. They were very substantial and ran into the tens if not into the hundreds of thousands of pounds. If you would forgive me for a moment while I just pick up the figures. [*pause in proceedings while reads documentation*] I am sorry to say that I do not believe that the figures involved are set out in the judgment, but my understanding of the case is that it involved very large sums of money indeed.

Madam, that is the advice that I give, subject to anything that Mr Grey wishes to say and, of course, the registrant if he wants to join the legal debate.

Lady Wall: Is there anything else that you would like to say? You have the opportunity to comment on the legal advice that we have been given.

Mr Grey: Madam, yes please. Just two matters on the case of *Shiekh*. First, your attention has been drawn to the abstract of the report where the judge comments favourably on one of the submissions made on behalf of Mr Shiekh to the effect that one must bear in mind the risk of imposing a suspension at an interim stage when it would be a very unfortunate matter indeed then for the registrant to find at the substantive hearing that a sanction less serious than suspension was being imposed. I have no means of knowing what sanction, if any, will eventually be imposed by the Fitness to

Practise Committee in this case, although it is likely that we shall get to the stage of sanction in due course, given that admissions have been made. However, past history does suggest that, in cases of dishonesty and theft, the very least sanction that is imposed by the GOC Fitness to Practise Committees is that of suspension.

The second point I would make is this, and it really draws on the comment of the judge in the case of *Shiekh* having said that it would be a relatively rare case where interim suspension would be justified on the basis of the wider public interest, that all of these things have to be decided on the facts of each particular case. As you have heard, the judge in this case quashed the GDC's interim order. There are three particular factors in this case that I would wish to highlight. First of all, the criminal conduct that the General Dental Council and then the High Court were considering was, by the time of this High Court hearing, over eight years old. Secondly, Mr Shiekh had made financial reparation to the Trust that he had defrauded and, thirdly, that Trust had, subsequent to the criminal proceedings, awarded Mr Shiekh a further contract with it, thus demonstrating the Trust view of his ongoing trustworthiness. Those are particular factual matters that relate to the case of *Shiekh*. I raise them in order, I hope fairly, to demonstrate that individual characteristics of a particular case, set in the context of the principles that are set out by the court in *Shiekh*, are the matters that the Committee must give full attention to.

Lady Wall: Thank you very much, Mr Grey. Now it falls to the Committee to make up their mind, unless you want a right of reply.

Mr Vere-Hodge: No, it is not a matter of reply. It is whether the registrant wants to say anything about the legal advice that I have given to the panel.

Mr Clemitson Sr: To a certain extent, it falls within where we started the public perception, or the public interest of penalising someone who is so conscientious and has done everything in his career up to now, apart from this one thing. Everything has been right and he is being penalised for something but to do it against the public interest, I don't really see how the public is gaining if Matthew is penalised by not being able to continue his career. I just don't see that the public is gaining.

Lady Wall: Thank you. The Committee must make our decision and perhaps I could ask you to leave the room. Thank you very much.

Mr Henley: Madam, may I suggest that you take an early lunch and maybe to be available at 12.30 pm say?

Lady Wall: Twelve-thirty sounds a good idea.

[Hearing adjourned at 11.43 am]

[Hearing resumed at 13.17 pm]

Lady Wall: The Committee have reached their decision and I shall read it, and hope that it will be self-explanatory.

Decision

The Fitness to Practise Committee considered an application for an Interim Order made by the Council.

The Committee has considered and accepted the legal advice. The Committee has had regard to the guiding principles to be derived from the case of *Shiekh v GDC* to be applied when considering the imposition of an interim suspension order. However, the Committee has decided to impose such an order and the reasons are as follows:

1. The registrant has admitted the offences of theft committed over quite a protracted period of time, even though the sums were not large either individually or collectively.
2. These thefts were persistent and a clear breach of the trust placed in him by his employer.
3. The method of concealing his thefts caused one or more of the other employees to come under suspicion.
4. The registrant persisted in stealing when he knew that his previous thefts had been detected.
5. Notwithstanding his late acceptance of guilt, no part of any reparation has yet been made.
6. Having heard the registrant address us, the Committee was not satisfied that he, even now, has either full insight into the seriousness of his course of conduct or a sufficient understanding of his failure to maintain personal honesty in the professional context.

Therefore, the Committee is satisfied that the wider public interest demands the maintenance of very high standards of honesty and personal integrity. To do other than impose an interim suspension order would, in our judgment, be a failure in our clear duty to uphold those high standards.

The Committee, therefore, makes an order that the registrant's registration be suspended for 18 months from today. The order will be reviewed within six months from today unless all matters are resolved within that time, or earlier should new evidence be made available, or if the registrant, at any time after three months from today's date, requests an early review. That is the view of us all.

[Hearing ended at 13.20 pm]