

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

**GENERAL OPTICAL COUNCIL**

**F(09)03**

**AND**

**GURPREET KAUR CHAGGAR (SO-1112)**

---

**DETERMINATION OF THE INQUIRY:  
3 DECEMBER 2009, 14-16 APRIL & 7 JULY 2010**

---

On 3 December 2009, 14-16 April and 7 July 2010, the Fitness to Practise Committee of the General Optical Council met to consider the following allegation against Gurpreet Chaggar:

**ALLEGATION**

The Council alleges that the fitness to undertake training as an optometrist of you, Gurpreet Kaur Chaggar, is impaired in that:

1. On 26 March 2008, you received a caution for the following offence:

That on 3 November 2007 at Specsavers store, the Pavillions shopping centre, Uxbridge, you stole £20 belonging to Specsavers.

And by virtue of the facts set out above, your fitness to undertake training as an optometrist is impaired by reason of your caution.

**Redacted**

**DETERMINATION**

**Findings in relation to the facts of the allegation**

The Registrant admitted the fact that she signed a Police caution but did not admit that she committed the underlying offence relating to the caution.

**Application to exclude evidence at the fact finding stage**

The Committee has before it an application that evidence be excluded pursuant to section 76 and 78 Police and Criminal Evidence Act 1984 (PACE) and an application that the Committee exercises its discretion to admit any excluded evidence under Rule 38(2) Fitness to Practise Rules 2005.

The Committee agreed a departure from normal procedure in order to allow it to rule on the admissibility of evidence which the Council seeks to put before the Committee at the fact finding stage. The task facing the Committee is to determine whether certain admissions made by the registrant would be admitted in criminal proceedings; and if they would not be, whether the Committee should nevertheless exercise its discretion to admit them in evidence before it. The Committee has accepted the legal advice given to it.

The Committee considered the confessions which are to be found at bundle C1 page 14, lines 31-36 and on page 15 at lines 63-70. There also admissions set out in pages 1-3 which set out the terms of the conditional caution administered to the registrant on 26 March 2008. The Committee heard evidence from the registrant, DC Back from Uxbridge Police, Mr Walls, Loss Prevention Consultant for Specsavers and Dr Jennifer Blandford.

On behalf of the registrant it was submitted that the evidence before the Committee established that on each of the occasions on which confessions were made, the Committee could not be satisfied that the confessions were reliable. That the Council could not satisfy the Committee beyond reasonable doubt; that the confessions had been obtained in the circumstances existing at the time; that the confessions were reliable under section 76(2) PACE 1984; that the confessions would be excluded in criminal proceedings as inadmissible evidence that under the wider discretion the evidence ought to be excluded under section 78 PACE; that the guidelines issued by the Director of Public Prosecutions (DPP) to the Crown Prosecution Service (CPS) had been breached such that it would be unfair to admit the confessions whether under section 76, 78 or Rule 38(2).

On behalf of the Council it was submitted that the evidence was such as to satisfy the Committee that a criminal court would admit these confessions in evidence if, however, the Committee reached a contrary conclusion it was urged on the Committee that the Committee should admit these confessions in evidence pursuant to Rule 38 bearing in mind its duty to make "due inquiry into the cases before them".

The Committee was directed in approaching its task under sections 76 and 78 PACE that the burden was on the Council to demonstrate that the admissions would have been admitted in criminal proceedings and that the standard of proof required is the criminal standard "beyond reasonable doubt". For completeness sake, the Committee sets out in full the provisions of sections 76(2) of PACE.

"If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained –

(a) By oppression of the person who made it; or

(b) In consequence of anything said or done which was likely, in the circumstances existing at the time to render unreliable any confession which might be made by him in consequence thereof,

the Court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.”

The Committee also sets out section 78(1) of PACE:

“In any proceedings the court may refuse to allow evidence on which the prosecution proposes to allow to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.”

In relation to the Committee’s task under rule 38 of the Rules, it was advised that the appropriate standard of proof is the civil standard: namely the balance of probabilities.

The terms of rule 38(2) are as follows:

“Where evidence would not be admissible in criminal proceedings in England and Wales, the Committee shall not admit such evidence unless, on the advice of the legal adviser, they are satisfied that their duty of making due inquiry into the case before them makes its admission desirable.”

The Committee first considered the confessions given in the interview conducted by Mr Walls on Thursday 21<sup>st</sup> November 2007 at 2.29 pm.

The Committee considered the circumstances leading up to this interview. The Committee read the first interview with the registrant which is set out at pages 4-13 of bundle C1 which was described as Mr Walls as an investigative interview. This was an interview which took place on Specsavers’ premises. The registrant was not represented nor accompanied by a friend or work colleague; nor was she cautioned. However, as shown on page 5 Mr Walls said:

“As this is an investigative interview, I am more than happy to get a fellow colleague in here to witness the interview and to act as your companion. If you do not require a companion at this time and are happy to proceed without, but feel at any point during the interview that you would in fact now like to have a colleague sat with you then tell me and we will adjourn the interview immediately in order to provide you with that request. Would you like somebody else with you as a companion?”

The registrant replied “No thank you”.

It was common ground between the parties that there were no admissions during the course of this interview.

The registrant explained in her evidence that she had not been allowed to leave the premises, and that she was extremely upset at the situation she faced. She was extremely concerned about the clinical commitment that she had as part of her university studies and whether she would be able to fulfil this commitment.

She took the opportunity after her first interview with Mr Walls to speak to the director of this branch of Specsavers, Mr Boyett. Her evidence was that she continued to be distressed; she explained that the director had advised her to seek a

further interview with Mr Walls and that she should tell him everything she knew about the involvement of the two other named employees.

Against this background the Committee considered the circumstances of the further interview between Mr Walls and the registrant.

Both interviews were transcribed by Mr Walls, typing the questions and answers as he conducted the interview. The registrant found this process disconcerting: in the end she told the Committee that she had “rather given up”.

The second interview, which took place at the registrant’s request, began with her volunteering information. Mr Walls very properly halted the interview and administered the caution in the following terms:

“Yes before we do so I must warn you that you do not have to say anything, but it may harm your defence if you do not mention when questioned something that you later rely on in court. Anything you do say may be used in evidence. Do you understand what that means? OK.”

However, Mr Walls did not repeat the offer he made in the first interview that the registrant could be accompanied by a friend or work colleague. The second interview was very short and rather more focussed in that he was more direct in the questions he put to the registrant. It was during this interview that the registrant made the admissions which are the subject of this application.

In evaluating all the facts and circumstances of this interview the Committee has had the evidence of Dr Jennifer Blandford. Dr Blandford also had the opportunity of reading the record of all of the interviews of the registrant with Mr Walls and with the police and she was present at this hearing when the tape of the interview between the registrant and DC Back and DC Anwar was played.

Dr Blandford’s report was available to the Committee in bundle C1 pages 70-89.

*Redacted*

The Committee has therefore concluded for the reasons set out above that the second interview with Mr Walls would not be admitted in evidence in criminal proceedings.

The Committee went on to consider whether to exercise its discretion under Rule 38(2) of the Rules. The Committee has reminded itself of its wider duties under this rule which include fairness to the registrant; to the GOC as prosecutor and to the general public. It has a duty to preserve public confidence in the profession and its regulation.

Having considered all these factors, against the background of all the circumstances in this case and in the light of the advice given to it by the legal adviser, the Committee has concluded that it would not be appropriate to exercise its discretion to admit these confessions in evidence.

The Committee went on to consider the admissions contained in the document C1 pages 1 and 3 which set out the terms of the conditional caution. The cautioning

process took place on 26 March 2008 at Uxbridge Police station. It was conducted by Sergeant Key. DC Back was in attendance.

Prior to this process the registrant had been required to attend Uxbridge Police station for an interview under caution. At that interview she was represented by her solicitor, Mr Ian Milson who she had the opportunity to consult in private.

The Committee heard evidence from DC Back. It is satisfied that the cautioning process was carried out fairly and properly.

*Redacted*

In reaching its conclusion the Committee has regard to the submissions made about document R1 which contains the DPP's guidance to the CPS about the administration of conditional cautions.

The relevant passage in this guidance to which the Committee paid particular regard was "This will be the evidence on the basis of which the suspect would otherwise fall to be charged, which must include an admission made under caution in interview and any witness statements. In order to avoid any suggestion that an admission has been obtained by offering an inducement, the prospect of a Conditional Caution should on no account be mentioned until the suspect has made a clear and reliable admission under a cautioned interview to all the elements of the offence."

In these circumstances the Committee is satisfied that the section 76(2) test as to whether the confessions made in the conditional caution can be relied upon, has been met.

The Committee went on to consider whether a court would have excluded the admission of these confessions under section 78. Having reconsidered all the facts and matters in the light of the wider discretion afforded to a criminal court by section 78 it has concluded that it is satisfied the Council has discharged the burden on it beyond reasonable doubt. It follows that the evidence would, in the Committee's judgement, be admissible in criminal proceedings.

The Committee, by agreement, went on to consider the factual issue as to whether the GOC had proved on the balance of probabilities that the registrant had stolen £20 from Specsavers on 3 November 2007. This was the basis upon which the registrant subsequently accepted a conditional caution dated 26 March 2008.

The Committee has considered the totality of the evidence on this issue and has accepted the advice of the legal adviser as to the relevant law.

Whilst the Committee accepts that the registrant may have had some suspicions that there was possible wrong-doing involving managers at her branch, the Committee is not satisfied on the balance of probabilities that the registrant was a dishonest and knowing participant in a joint enterprise to steal money from Specsavers. The Committee is not satisfied that the GOC has proved to the requisite standard that the registrant stole £20 from Specsavers on 3 November 2007.

The Committee has formed the view, based upon its own assessment of the registrant together with lay and expert evidence, that the registrant is unusually suggestible. The Committee has concluded that the registrant agreed to accept the

conditional caution as a result of being given wrong advice by a person in authority together with her own desire to conceal matters from her family.

The Committee has noted that the registrant made no unequivocal admissions of theft during the course of her police interview.

The Committee then heard a submission on behalf of the GOC. It was submitted that the very fact of the registrant having accepted and signed the conditional caution of itself amounted to misconduct and that this fell within the existing allegation. It was submitted that this could be a basis for a finding of impairment.

The Committee heard counsel for the registrant in reply and received advice from the legal adviser.

The Committee accepts the advice given and finds that for the GOC to pursue such an allegation would require an amendment of the existing allegation and would not fall within the terms of section 13D(2)(c).

**Findings in relation to impairment**

In the light of the acceptance by the GOC that the effect of the findings of fact by the Committee was to render the caution an 'empty shell', the Committee finds that the fitness of Miss Chaggar to undertake training as an optometrist is not impaired and declares that she is fit to undertake training as an optometrist.

The Committee does not consider it appropriate to issue a warning to the registrant.

**Chairman of the Committee: Sir Alistair Graham**

Signed \_\_\_\_\_ Date 7 July 2009

**Registrant: Gurpreet Chaggar**

Signed \_\_\_\_\_ Date 7 July 2009