

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

**GENERAL OPTICAL COUNCIL**

**F(09)11**

**AND**

**AHTHESAMUL ISLAM CHOWDHURY (SO-2766)**

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**DETERMINATION OF THE INQUIRY: 20 JANUARY AND 26 MARCH 2010**

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On 20 January 2010, the Fitness to Practise Committee of the General Optical Council met to consider an allegation against Ahthesamul Islam Chowdhury.

**APPLICATION**

An application to amend the allegation was made by Mr Albuery, on behalf of the Council which was unopposed by Mr Singh, on behalf of the registrant. The Committee accepted the amendments as proposed by the Council.

**ALLEGATION**

The Council alleges that in relation to you, Ahthesamul Islam Chowdhury, a student optometrist:

1. On 4 September 1999 you received a Police caution for shoplifting contrary to the Theft Act 1968 Section 1;
2. (i) On 15 May 2004 you stole clothing belonging to Selfridges valued at £559; and  
(ii) On 8 July 2004 you received a conditional discharge of 2 years.
3. You failed to declare that you had received a caution and a conviction for which you received a conditional discharge on the following applications made to the Registration Department of the General Optical Council:
  - i. Application for student retention dated 20 October 2005;
  - ii. Application for student registration dated 21 September 2006;
  - iii. Application for retention 2007-8 (student) dated 9 July 2007;
  - iv. Application for retention 2008-9 (student) dated 15 July 2008
4. Your actions at paragraph 3 above were:

- i. Dishonest;
- ii. Not of the standard expected of a student optometrist.

And by virtue of the matters set out above your fitness to undertake training is impaired by reason of your:

- (a) Caution;
- (b) Misconduct.

### **FURTHER APPLICATION**

The Committee considered an application by Mr Singh to retract some of his admissions. In the interests of justice, the Committee considered it right to allow these partial retractions. These were entirely based on the words used in the printed forms provided by the GOC. The Committee has therefore had to consider them with care.

### **DETERMINATION**

#### **Findings in relation to the facts**

In respect of each of the allegations, the Committee has considered all of the evidence contained in the Council's bundle and has accepted the legal advice provided.

In respect of paragraphs 1, 2(i) and 2(ii) the Committee having considered the records in the Council's bundle find the facts proved.

In respect of paragraph 3(i) the Committee finds these allegations to be proved. The words in the form are clear and unambiguous and the registrant has admitted them. The Committee notes that the registrant appeared before the Horseferry Road Magistrate Court in respect of the conditional discharge some 18 months before he filled in this form.

In respect of paragraph 3(ii) the Committee finds the facts alleged in relation to the caution proved. The facts relating to the conviction are not proved.

In relation to paragraph 3(iii) the Committee finds the facts relating to the caution proved. The facts relating to the conviction are not proved.

So far as paragraph 3(iv) is concerned the Committee has read the words which appear on page 17 of the bundle "You must declare any conditional caution, and any condition which led to the imposition of a conditional or absolute discharge." The words "Condition which led to the imposition of a conditional discharge" are clearly inapt and inelegant. The word "Condition" was almost certainly inserted in error for conviction. The problem the Committee faces are the actual words used. The registrant faces an allegation that he should have declared a conviction not the offence giving rise to the conviction. The Committee is not satisfied in these circumstances that this allegation is proved.

The Committee turns now to the allegations in paragraph 4(i). The Committee finds it impossible to believe that the registrant had forgotten that he had been cautioned as a 14 year old or that he was the subject of a conditional discharge when he filled in his application on 20 October 2005. This registrant is an educated and intelligent man. The wording on page 6 of the bundle is clear. The decision to tick the no box was a deliberate act. He

himself admits that his action was dishonest. The Committee finds in these circumstances that his actions in 2005 were dishonest.

So far as the separate failures to disclose his caution in 2006, 2007 and 2008 the Committee finds that his actions were not honest. The registrant has admitted that his actions were dishonest. The Committee finds them so to be.

The Committee has no hesitation in finding that student optometrists are required to be honest and trustworthy. This registrant was dishonest. The Committee finds that the matters proved in respect of paragraph 3 were not of the standard expected of a student optometrist and it therefore finds the allegation at paragraph 4(ii) proved.

### **Findings in relation to misconduct**

Having regard to the facts that the Committee has found proved, the Committee finds that the registrant's behaviour does amount to misconduct.

### **Findings regarding impairment**

In considering the question of impairment the Committee has heard submissions on behalf of the Council and the registrant. It has accepted the advice given to it by the legal adviser.

The Committee is not satisfied that the registrant's fitness to undertake training as an optometrist is impaired by virtue of his caution in 1999. He was then only 14 years old. Much has changed in his life since then. The Committee is not in these circumstances satisfied that the registrant's behaviour in 1999 is such as to impair his fitness to undertake training in March 2010.

The Committee has, however, had particular regard to the failures by the registrant to declare accurately, honestly and fully, the matters which he was required to declare to the GOC. He did so on five occasions. Most significantly he wrote the letter on 21 January 2009 which appears at page 23 of bundle C1. That is not and cannot possibly be regarded as an honest explanation for his behaviour; it is undoubtedly evasive. Regulators have a heavy burden placed on them. They cannot discharge the responsibilities placed on them by society if registrants make partial, untruthful or evasive answers to questions designed to help protect the public.

Having considered everything said on his behalf and by the registrant in evidence, the Committee is satisfied that the behaviour of the registrant in relation to his declarations to the GOC is such as to render his fitness to undertake training as an optometrist today to be impaired.

### **Sanction**

In considering sanction, the Committee has had regard to the submissions made to it on behalf of the registrant and has accepted the advice given to it by the legal adviser.

The Committee is satisfied that it would not be appropriate to dispose of this case without sanction.

The Committee notes that the registrant's conduct enabled him to gain access to the register without being properly checked. The GOC as a regulator must have truthful answers given to it so that it can do the duty imposed on it by society.

The Committee regards honesty and trustworthiness as central to what it is to be a professional. The public's confidence in the profession would in the Committee's view be shaken if this matter was dealt with simply by way of fine.

The Committee regards the failure to disclose as serious. It was not honest behaviour and it was persisted in by the registrant. Taking all the facts and mitigating circumstances into account which have been urged on it, the Committee regards this as a case in which suspension is the appropriate and inevitable sanction. The order will be that the registrant be suspended from the register of student optometrists for a period of 6 months.

The Committee does not consider that any useful purpose would be served by ordering that a review hearing take place before the period of suspension comes to an end.

The Committee is not in all the circumstances minded to order that this suspension takes immediate effect but it will hear any submissions that the parties may wish to make about this.

On the registrant's application, the Committee is satisfied that it is in the registrant's best interests (as to which see section 131(i) Opticians Act 1989) for the order that the registration of the registrant be suspended forthwith. It therefore so orders.

**Chairman of the Committee: Corinna Kershaw**

Signed \_\_\_\_\_ Date 26 March 2010

**Registrant: Ahthesamul Islam Chowdhury**

Signed \_\_\_\_\_ Date 26 March 2010