



**BEFORE THE REGISTRATION APPEALS COMMITTEE
OF THE GENERAL OPTICAL COUNCIL**

DONALD A MACKENZIE

A(09)03

AND

GENERAL OPTICAL COUNCIL

REGISTRATION APPEAL HEARING: 22 JANUARY 2010

On 21 January 2010 the Registration Appeals Committee met to consider an appeal against the decision of the Council not to register Donald Mackenzie in the register of student dispensing opticians.

That refusal was expressed as follows "To allow registration would damage public confidence in the profession". The Committee has considered with considerable care the matters before it in the bundle (C1) and the documents A1 and A2. The Committee has also considered the submissions made by Mr Mackenzie on his own behalf. The Committee has accepted the careful advice given by the legal adviser.

The effect of that legal advice is that the burden of proof lies on the appellant to satisfy the Committee on the balance of probabilities that public confidence in the profession would be maintained were he permitted to register as a student dispensing optician. It reminded itself that the Committee hears the appeal today and that it is to consider the question of public confidence now and not as at the date of the offences or the conviction.

The papers before the Committee show offences of startling dishonesty involving sums which are barely credible over a period of some four and a half years. They also show unusual features which were very clearly set out in mitigation, in the judge's sentencing remarks and in his report to the appellate court. The appellant has been a model prisoner who has been assessed as very unlikely to re-offend. Moreover, he has been supported in his aspiration by a member of this profession. The documents in support of his application at pages 79-98 in C1 are undoubtedly impressive.

The Committee is required to balance the interests of the profession, the interests of the public and the interests of this appellant.

Mr Mackenzie has made it clear that he would like to begin training in September 2010. He has told the Committee that his licence expires on 5 February 2013. It follows that Mr Mackenzie has not yet served the sentence imposed on him. He continues to be subject to conditions and to the possibility of recall to prison.

Taking all of these matters into account the Committee is struck by the fact that Mr Mackenzie was only released on licence in October 2009 and that since his initial admission to custody in June 2006 some three and a half years have elapsed; a period which is less than the period over which these offences were committed. Trustworthiness and honesty lie at the heart of what it is to be a professional, whether in this or any profession. The Committee is deeply troubled by what it thinks is the inevitable reaction of any honest member of the public confronted by these facts and indeed by the reaction of any honest patient. Whilst they and the Committee would, and do, applaud the attempts of Mr Mackenzie to turn round his life and to respond to imprisonment as he has done, they would be affronted by the notion that a man still on licence for such serious offences could embark on student membership of a profession.

The Committee is not in these circumstances satisfied that public confidence in the profession would be maintained if this appeal was allowed. The Committee, whilst not encouraging any further application, acknowledges that the position might be different were such an application be made after 5 February 2013 when Mr Mackenzie is no longer subject to the terms of his parole licence.

For all these reasons the appeal is dismissed.

Mr Mackenzie: you have a right under section 23G(1)(c) of the Opticians Act 1989 to appeal against this decision within 28 days of today to the Court of Session in Scotland.

Chairman of the Committee: Lady Margaret Wall

Signed _____ Date 22 January 2010

Appellant: Donald A Mackenzie

Signed _____ Date 22 January 2010

FURTHER INFORMATION
Transcript
A full transcript of this hearing will be made available via the GOC website in due course.
Appeal
Where the decision by the Registrar been upheld by the Registration Appeals Committee, the appellant may appeal against that decision through the Courts. The relevant court is shown at section 23G(4)(b)-(c) of the Opticians Act 1989 (as amended).
Council for Healthcare Regulatory Excellence
This decision will be reported to the Council for Healthcare Regulatory Excellence.
Contact
If you require any further information, please contact the Council's Hearings Manager at 41 Harley Street, London, W1G 8DJ or, by telephone, on 020 7580 3898.