



F(09)16

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

**GENERAL OPTICAL COUNCIL
AND
GHUFRAN ABUBAKAR (SO-4566)**

**SUBSTANTIVE HEARING
Thursday 25 March 2010**

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SUBSTANTIVE HEARING: GHUFRAN ABUBAKAR (SO-4566)
Thursday, 25 January 2010

Committee: Ms Mercy Jeyasingham MBE (Lay) (Chair)
Dr Dozie Azubike (Lay)
Mr Alan Baldwin (Lay)
Mrs Helen Tilley (Optometrist)
Ms Catherine Viner (Optometrist)

Legal Adviser: Mr Nicholas Levisieur

Hearings Manager: Mr David Henley BEM

For the GOC: Mr Bradley Albuery

For the Registrant: Mr Sandesh Singh
Ms Fiona Mitchell

[Proceedings commenced at 9.31 am]

Ms Jeyasingham: Good morning. I am Mercy Jeyasingham, a lay member of the hearings panel and I have been elected by the Committee to chair today's hearing. The Committee today is made up of two optometrists and three lay members and I will ask the members to introduce themselves, the capacity in which they sit, and to declare any interests. *[Introductions]*

Ms Viner: I wish to declare for the record that I undertake assessment work for the College of Optometrists, but I have no prior knowledge of this case.

Ms Jeyasingham: To my right is Mr Nick Levisieur, the Committee's Legal Adviser, who 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 which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate. In the event that any matter arises during the course of the Committee's deliberations upon which the Committee seeks advice, the parties will be invited to return to hear the matter which the Committee has raised and the advice to the Committee. Where advice on any issue is not accepted by the Committee, this will be indicated in the course of its decision on that issue.

To your right is David Henley, the Hearings Manager, who will provide administrative support to the Committee. Next to Mr Henley is Charles Nisbet, the transcriber, who will be keeping an official record of all that is said today during the sessions of the hearing at which the parties are present.

The remaining persons sitting in the Hearing room, rather than the public and press areas, are members of the respective legal teams.

You should be aware that it is the Council's policy for the determination of the Committee and the transcript of proceedings to be displayed on the Council's website for public viewing.

Are there any applications to be made at this stage?

Mr Albuery: Madam, there is an application on behalf of the Council to amend part of the allegation. May I read that application to you?

Ms Jeyasingham: Yes, please do, Mr Albuery.

Mr Albuery: Madam, do you and your colleagues each have a copy of the allegation in front of you? [Yes] Thank you. You will see that the first part of the narrative alleges that

“At the material time [Mr Abubakar] was enrolled in the Scheme for Registration operated by the College of Optometrists.”

That is true, he was, and that is the context in which what then occurred did occur. I have been asked to make clear by those who represent him that that fact cannot be misconduct or a fact on which I rely to prove impairment. It is part of the narrative, it is a way of drafting allegations, which you may see more of in this place following a change in the way in which allegations are drafted.

To do this, I make this suggested amendment that, when you look at the bottom of the allegation where it relates to fitness to undertake training, we insert after the word 'out', these words:

“And by virtue of the matters set out at particulars 2, 3 and 4 above your fitness to undertake training is impaired by reason of your:
(a) Misconduct.”

Madam, the power for you to amend allegations is found in Rule 34, at page 98 – your Legal Adviser will deal with that of course – but I can tell you that this application is made on notice and by invitation by my learned friend and is not opposed as he will tell you.

Mr Singh: Madam, it is not opposed. It may seem like nit-picking, but it is probably the right way to proceed with things.

Ms Jeyasingham: Any questions from the Committee? [No] I will ask my Legal Adviser if he has anything to add.

Mr Levisaur: You have a power to amend allegations or permit the amendment of allegations when it appears to you to be a proper thing to do in order to avoid misunderstanding or mistake, and in the interests of fairness and of natural justice. This is pre-eminently such a case, and this is not a matter for me to expound on at enormous length about the way in which indictments in this

and other places are drafted. Everybody knows there are some problems about narrative indictments of this sort and the amendment is obviously a very sensible one. It is not opposed and it is a matter entirely for you.

Ms Jeyasingham: Thank you. We have agreed to the amendment.

Mr Albuery: Thank you, Madam.

Ms Jeyasingham: In which case, can I ask the Registrant to stand and the Hearings Manager to read out the amended allegation?

Mr Henley:

The Council alleges that in relation to you Ghufran Abubakar (SO-4566) (a registered optometrist)

1. At the material time you were enrolled in the Scheme for Registration operated by the College of Optometrists.
2. In preparation for a work based assessment due to take place on 30 December 2008 you:
 - (a) Created; and
 - (b) Submitted to your assessor10 false records as evidence of a relevant patient episode to demonstrate your competence.
3. The false records related to the following patients:
 - (a) TR;
 - (b) AM;
 - (c) TH;
 - (d) RW;
 - (e) GK;
 - (f) SM;
 - (g) KF;
 - (h) IW;
 - (i) BN; and
 - (j) DB.
4. Your actions as referred to above were
 - (a) Dishonest;
 - (b) Not of the standard of a reasonably competent student optometrist.

And by virtue of the matters set out at particulars 2, 3 and 4 above your fitness to undertake training is impaired by reason of your:

- (a) Misconduct.

Ms Jeyasingham: Thank you. Can I ask whether there are any facts set out in the allegation that are admitted?

Mr Singh: Madam, there are, but all of the facts, including paragraphs 1, 2, 3 and 4, are part of the factual allegation.

Mr Levisaur: Madam, for the avoidance of doubt, can I just read into the record that therefore includes paragraphs 2(a) and 2(b), and in paragraph 3 (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j). So far as paragraph 4 is concerned, your client is admitting (a) and (b). That is a question, not a statement.

Mr Singh: That's right.

Mr Levisaur: Thank you very much. The rest – although I appreciate you are about to say that is the next stage -.

Mr Singh: Of course, if you want to know how we are proceeding with the rest of it -

Mr Levisaur: I'm not going to ask what you are going to say.

Mr Singh: It is accepted that the facts amount to misconduct, but impairment is still a live issue.

Mr Levisaur: Quite so.

Ms Jeyasingham: Let me check, at this stage, we are looking at facts and misconduct. Mr Albuery, do you have anything to add to that, given the facts are admitted.

Mr Albuery: Madam, yes, to tell you something about the facts, so that you can then make your own judgement in relation to misconduct.

Madam, may I first ask whether you and your colleagues have had an opportunity to read a bundle of evidence, comprising 331 pages?

Mr Levisaur: I think it is better if I interpose at this stage, it would be appropriate to make no such assumptions, because there have been some difficulties in sending matters by email, but much more importantly, I was instructed very late in place of Mr Coleman who has a detached retina, and whilst I can properly say I have looked at every piece of paper, I am not sure that I can properly say I have given every bit of paper the care I should have given.

Mr Albuery: Madam, that's helpful, thank you. I am glad I asked the question because I know that efforts were made for Committee members at least to be sent the papers well in advance of today's hearing as is now the practice.

Madam, I raise that because I can tell you that the witness evidence that would have been given by John Corby, the assessor, is agreed, and therefore Mr Corby is not here, and that the evidence of Ruth Brough who investigated the matter as lead assessor is also agreed, but so that you have a witness, she is here. Madam, having heard what I have just heard about not assuming

knowledge, I will not now take, as I might have intended to, statements as read, bearing in mind what you said, and also the fact this is a public hearing.

I think the best way to proceed when we get to that point is that I will call Ms Brough, but in fact, I will ask her, since the evidence is agreed, to read her statement into the record, and take her to any particular exhibits which I think are relevant for you see, and my learned friend will obviously have the usual opportunity to ask her questions as you will.

Madam, I will call her in a moment first, and then I will read John Corby's statement into the record. I think that is the appropriate way to deal with it.

Madam, what I should do first of all is say something in opening before you hear the case. I can keep this short because I think the facts are relatively straightforward.

Mr Abubakar is a student optometrist, and at the relevant time – relevant to these allegations – was a pre-registration student enrolled on the College of Optometrists' scheme for registration. As you will know, that scheme requires that before he can be finally assessed and be enrolled in the Register of Optometrists, he must establish that he has competencies in a number of areas, 82 in total, and work-based assessments undertaken to ensure that pre-registration students can obtain evidence of those core competencies.

A visit is made by the assessor each quarter to see how that student has got on, what competencies they can evidence as having been satisfactorily completed and which must be transferred to the next quarterly session. A note is kept of the competencies passed and those not evidenced, and a plan of action is agreed with the student so that hopefully, by the time the next quarter comes around, those actions have been completed. Each student has a supervisor working with him or her in practice.

Although there were concerns about Mr Abubakar's organisational concerns, from the first assessment being carried out in January 2008, there were no concerns up until December of that year concerning his integrity. During a planned visit on 30 December 2008, on which day Mr Abubakar presented himself but his supervisor did not, Mr Corby began to look at the records submitted by Mr Abubakar as evidence of having completed certain core competencies, and began to have concerns about them, partly because they were copy records rather than originals, and had not been signed by his supervisor.

There was then a conversation between Mr Corby, the assessor, and Mr Abubakar after some initial searching for paperwork, in which in a conversation, to Mr Abubakar's credit, he admitted that he had falsified certain records and that there were more that he would have submitted, or had submitted, that were false in addition which had, by that time, been seen by Mr Corby.

As a result of that, he could not obviously be assessed fully in relation to the competencies he would have otherwise been assessed upon. A report was written by Mr Corby for the consideration of the College and was passed to Ruth Brough, from whom you will hear, and an investigation then took place in January 2009. When she gives her evidence, I will take you to the notes of that investigation and what it revealed.

The decision of the Education Committee of the College was that this matter should be referred to the General Optical Council, and that is why we are here today. To complete the story, I believe it to be the case that Mr Abubakar has now completed all 82 of the core competencies, and so in other respects, is eligible for registration, but that is dependent of course on the outcome of your deliberations today.

Madam, if you think that summary, coupled with your knowledge of the facts to the extent that you have read it, is sufficient, I proceed now to call Ruth Brough.

Madam, her statement may be found by you at page 110 in the bundle.

**MRS RUTH BROUGH, called and affirmed
Examination in chief by MR ALBUERY**

Q. Mrs Brough, thank you for attending today. I am going to ask you some questions after you have read your statement. Could you keep your voice up, please, and first of all confirm your full name and your business address?

A. Ruth Beatrice Brough, 42 Craven Street, London WC2N 5NG.

Q. Thank you. In that bundle you have in front of you, could you turn please to page 100? The numbers are in the bottom righthand corner. Is this a statement made by you on 10 September 2009?

A. It is.

Q. And is that your signature at the bottom of page 110.

A. It is.

Q. Thank you. I am going to ask you now please to read your statement slowly to the Committee. At times, I may ask you to pause and may ask you to clarify matters as you go through it.

A. [Reads]

1. I became a registered optometrist in 1979. I have practised continuously as an optometrist since registration. I have also been involved with professional development throughout my career. In 2005 I contracted with the College of Optometrists ("the College") to work as an assessor during the pilot of the new Scheme for Registration. From 2006, I accepted a permanent part-time contract with the College as the Lead Assessor for the Scheme. However, I continue to practise and I am also a visiting lecturer at Aston University.

2. One of my roles at the College of Optometrists is to investigate matters relating to the work-based elements of pre-registration training.
3. Mr Abubakar was working at a practice in Specsavers, 26 High Street, Swadlincote, South Derbyshire, and was supervised by Pratish Bhundia. The stage 1 assessor allocated to Mr Abubakar was John Corby. Mr Abubakar enrolled with the College to take part in the Scheme for Registration on 1st November 2007.”

Q. Just pause there. You referred to a stage 1 assessor. How many stages are there?

A. There are now two stages in the work-based assessment.

Q. How many were there at the time?

A. Mr Abubakar just had one assessor. He would have had one unless there had been any need to change the assessor if he had moved practices or if there had been a concern raised at any point.

Q. Thank you. Could you carry on reading from paragraph 4 please?

A. “4. The Scheme for Registration is the scheme for assessing pre-registration trainees to decide whether they have demonstrated the competencies which a person must be able to demonstrate in order to be eligible for registration as an optometrist with the General Optical Council. During the pre-registration period, the trainees are assessed in the workplace on the GOC’s competencies. I attached as exhibit “RB/1” extracts from the Scheme for Registration Handbook 2007 which was the version issued to Ghufraan Abubakar at the time he enrolled on the Scheme for Registration.”

Q. Just pause please. Could you turn to page 119? Is that the extract to which you have just referred?

A. No, I’m sorry.

Q. Page 119?

A. This is a section from the pre-registration Handbook. It continues over the following pages.

Q. On page 206. Does it begin there?

A. Yes, it does.

Q. Thank you. Carry on then back to your statement.

Mr Levisaur: You are going to take us to each bundle, are you?

Mr Albuery: No, indeed. Page 100, Mrs Brough, then please.

A. “The relative competencies can be found at page 52 (Annex F) in a document called “Competency Frame with preferred evidence overlain”.

Q. I am going to take you to that, beginning at page 170 in the bundle. Are these the competencies?

A. Yes.

Q. And just so that it is in the record, can you read please the top and what the acronyms mean in terms of how those competencies can be evidenced?

A. “Key

DO Direct observation by Assessor of patient episode

PR Examples of patient records

Log Logbook or Witness Testimony signed by Supervisor, ophthalmologist or hospital optometrist

CS Case scenarios provided by Assessor

RP Role play

Q Questioning by Assessor

Q. Are all of those acceptable examples of evidence or achieving core competencies?

A. They are.

Q. Thank you. Turning back please to your statement, reading from paragraph 5 at the top of page 111.

A.

“5. After the first visit (see below), the assessments take place quarterly, with the Quarter 1 assessment usually around 3 months after the enrolment date. Trainees normally require 3 or 4 assessment visits to achieve success in the work-based elements of the assessment process. But, if necessary, they may have further assessments (for which there is a fee). Once the Assessor has judged the trainee to be competent in all 82 competencies, the trainee will then enter the final assessment. At the time that Mr Abubakar enrolled with the College, there were four opportunities a year to sit the final assessment examination; these were in June/July, September, January and April.

6. Annex F sets out the assessment framework (page 52, exhibit “RB/1”). As set out in the handbook, this framework suggests a schedule for assessing the competencies by allocating them to the Quarter 1, Quarter 2 and Quarter 3 visits. It also sets out the evidence a trainee can use to demonstrate competence as well as the performance criteria by which the trainee will be judged.

7. As stated in the handbook, a trainee will be required to complete the Scheme for Registration within two years of the first quarter assessment or have up to four attempts at the Final Assessment, whichever occurs first (paragraph 63).

8. Within two to four weeks of enrolment, the Assessor will visit the trainee at his practice. This first visit usually lasts for up to one hour.

9. The Assessor is asked to explain to the trainee his/her role in relation to that of the trainee supervisor and will explain what will happen at the quarter assessment visits and how the trainee should prepare for them. The trainee is reminded to familiarise him/herself with the content of the

Scheme for Registration Handbook including the core competencies and the assessment framework. The Assessor will ensure that the trainee understands that he/she is responsible for providing the evidence for assessments and that the records the trainee provides are entirely their own work.

10. The Scheme for Registration Handbook advises that when gathering evidence it must be sufficient, current, valid and authentic. The definitions of each of these terms can be found at paragraph 77 of the handbook.

Q. Just stop there, please. Could you turn with me to page 142 in the bundle? Is this the section of the Handbook you are referring to from paragraph 77?

A. It is.

Q. Thank you. Turn back please.

A.

“Where a trainee is required to demonstrate an ability to undertake a skill or procedure, he/she will be required to demonstrate this through working with patients. Assessors will usually look for a minimum of two different forms of evidence for each competency statement.

11. Some of the evidence presented to the assessor will come from patient records as well as witness testimonies. The trainee is told in the handbook that they should ensure that their supervisor has reviewed any such evidence provided to the assessor. At paragraph 80 of the handbook, it is stated that ‘you must provide the **original** patient records ... Copy records will be accepted by the assessor as evidence only when each copy is individually signed by the supervising optometrist to indicate that it is an exact copy of the original record’.

12. The handbook also includes a section entitled ‘How to Prepare’. This provides advice to the trainees on planning, booking appointments, completing paperwork and sending information to the Assessor. Further details of this can be found at paragraph 86 of the handbook. Trainees are required to send their quarterly training summary, their most recent monthly training review, relevant patient episode sheets, and any witness testimonies to the Assessor before each of the quarterly assessment visits and within the timescales agreed. If this information is not received by the Assessor, he/she may cancel the visit as he/she will be unable to prepare adequately for the assessment.

13. It is quite common not to succeed in all the competencies scheduled for each visit, particularly early on in the assessment process. The trainee is encouraged to discuss any concerns they have with their assessor. Following the assessment the assessor will send the trainee and supervisor a report on each assessment visit, including the action plan that all parties have agreed upon in order to assist the trainee in weaker areas. The trainee is advised to discuss how to implement the action plan with his supervisor.

14. At paragraph 99 of the handbook one can find information on how the College categorises cheating and misconduct. The trainee is clearly told that they must not falsify the evidence provided to the Assessor.

15. Further information can be found within the Scheme for Registration Regulations at annex N, page 77 of exhibit "RB/1". I set out the relevant extracts of the Regulations below."

Q. Just before you do that, Madam, page 77 is the number of the document, but in fact in the bundles, you will find it later at page 198, if you wanted to make a note of that. Could you carry on reading, please, Mrs Brough?

A.

"Cheating and Misconduct in Work-based Assessment

22. *For the purposes of these Regulations, 'cheating' includes:*

- a. *Falsifying evidence for the work-based assessment.*
- b. *Copying, stealing, appropriation or use of the work of another as evidence of the work-based assessment.*
- c. *Permitting or assisting to use or use one's own work as evidence for their assessment.*
- d. *Using, attempting to use, assisting another to use, or attempting to assist another to use any other unfair, improper or dishonest method to gain advantage in any part of the assessment process."*

Q. Could you just pause there a minute? [Confers] Madam, I am just asking my learned friend whether he wants me to ask whether he wants us to read the rest of that page. It is just the regulations to deal with how internally they deal with it. It seems to have no relevance how they dealt with it.

Mr Singh: No.

Mr Albuery: Madam, can we then please move straight to paragraph 16, Mrs Brough on page 115.

A.

"16. In an e-mail dated 30 December 2008, I received confirmation from John Corby that Mr Abubakar had submitted falsified patient records as part of the work-based assessment. I attach as exhibit "RB/2" a copy of this e-mail."

Q. Just pause please. Madam, I won't take you to it now, but if you want to look at it later, it is at page 2007. Please carry on, Mrs Brough.

A.

"17. I notified Josephine Mullin, Director of Education at the College of Optometrists, on 5 January 2009 and arranged for the investigation of this incident to take place on either Thursday 22 January or Monday 26 January 2009. The date of the investigation was confirmed as 26 January to fit with the supervisor's availability. The investigation takes place at the practice and I request access to practice records, to the trainee and the supervisor.

16. I attach as exhibit "RB/3" the documentation created during the investigation of Mr Abubakar. This includes a document entitled 'Format for investigation' and 'Notes from investigation into allegations of cheating

made against Ghufran Abubakar. At page 9 of exhibit "RB/3" I attach the handwritten notes taken during the meeting on 26 January 2009."

Q. Would you turn with me please to page 208, where I hope you will find the notes of that investigation meeting? Do these begin with the notes of the meeting at page 2008 and then on to 2009?

A. They do.

Q. Before you conducted this investigation, what experience, if any, did you have of carrying out such investigations of students?

A. I carried out a number at this point. I can't remember exactly how many but probably at least three before this.

Q. Thank you. Do the notes of that meeting begin at page 208, and then on to 209?

A. They do.

Q. Thank you. Before you conducted this investigation, what experience, if any, did you have of carrying out such investigations with students?

A. I had carried out a number at this point. I can't remember exactly how many but probably at least three before this.

Q. And you confirm that looking at page 209, Mr Abubakar's supervisor was present throughout the investigation?

A. Yes.

Q. Thank you. In relation to page 210, there is a schedule at the top. You will see that the third section is 'Condition', could you explain the relevance of that third section please headed condition?

A. Basically, the trainees are required to see various patient episodes. These are patients with particular conditions or patients of particular ages, those are examples of some of these. What we are looking for is that the trainee can manage, for example, testing a patient who is over two years old, or that they can recognise age-related macular degeneration. The headings there relate to the specific conditions or the ages of the patients.

Q. Will that be as evidence of achieving certain core competencies?

A. Yes.

Q. Thank you. I think you had a concern and asked Mr Abubakar as to whether or not the records that had been falsified were part of or had become part of the patient's actual records?

A. Yes.

Q. Let's deal with that, then, by getting you to look at page 210. Could you read from the summary of the interview you had with him?

A.

"RB Can I confirm that none of these falsified records were used in the assessment process (prior to them being identified as being falsified records by the assessor)?

- GA Yes.
RB And that none of these records were kept as part of any patient's main file in the practice, but were totally separate.
GA That's right. These records are not part of the patient's main file."

Q. Could you just carry on reading for the explanation, please?

A.

"RB But we can see from the photocopies that you've raised a 'TR number' for each of them on the practice computer system, doesn't that become part of the patient's file?

The supervisor then explained that the TR number is a method of allocating a bar-code to the patient to track any retail transactions for a particular visit cycle. It is destroyed once that cycle is over and is not part of the patient file. It has no clinical value at all.

Q. Thank you. Turning over to page 212, we find another schedule relating to five of the patients who were part of this case, the house number and then the response. Is that the response given to you by Mr Abubakar concerning that particular patient, or alleged patient episode?

A. What I have written down there is what I deduced as a result of his response. It essentially was the outcome of the investigation for each of those cases.

Q. Did you give him an opportunity to comment on what you deduced? Did he agree or disagree with what you were saying to him?

A. I can't remember.

Q. Okay. Where you have, for example, Patient KF and you have written –

A. Excuse me, can I just go back, because I have just read this again. I did ask him specific questions related to this and so the responses were what he had given me. I have just noticed in the paragraph 'GA', so that was his response.

Q. Thank you. In relation to Patient KF, where you have recorded the response 'Not done at all – falsified', which you also record for DB, what does that mean? Can you remember now?

A. It would have been the fact that he couldn't find any evidence at all that that patient existed, and so it was a totally falsified record.

Q. In relation to some of the other records, were they only then partially false?

A. Yes, because, for example, there is one here where he did dispense the patient with spectacles, but he modified the prescription in the record that he presented to the assessors so that it fitted a particular category that we were looking for.

Q. How did he conduct himself to you during the course of your investigation of him?

A. From my reckoning on the day, I thought he was straightforward. I didn't feel he was trying to cover anything up. I think he was anxious about the whole

process, and there were times when he was forgetting things because of that, but overall, I had the impression that he was trying to cooperate with us.

Q. Thank you. Could you turn back to your statement at page 115, and read from paragraph 18?

A.

“18. John Corby had advised me that his concerns about the assessment which took place in December 2008 were in connection with the submission of falsified practice records. He provided me with a typed statement of events called ‘Assessment of Ghufran Abubakar by John Corby’ which I attach as exhibit ‘RB/4’.

19. John had not used the falsified records as part of the assessment process. I knew that Mr Abubakar had admitted to John that a number of the records he was attempting to present for assessment were false. During my investigation, Mr Abubakar admitted that he had submitted 10 falsified records for assessment. He said that he had asked that those records not to be assessed. The falsified records relate to patients TR, AM, TH, RW, GK, SM, KF, IW, BN, DB. John had taken photocopies of the relevant records and provided them to me prior to my investigation. These records are attached as exhibit ‘RB/5’.

20. On questioning, Mr Abubakar confirmed that the content of his log book and the patient episode sheets used in the previous assessments were genuine records, all his own work and not falsified in any way. He also confirmed when asked that none of the falsified records were used in the assessment process prior to them being identified as being falsified records by the assessor. Mr Abubakar was asked whether any of the records were kept as part of the patient’s main file in the practice. He stated that the records were not part of the patient’s main file.

21. Mr Bhundia said that some of the 10 records that Mr Abubakar had falsified were actually records where he had supervised the dispense. Mr Abubakar said that he had tested the patient and then advised them on what they needed, but after they had chosen their frame, someone else completed the handwritten order. For the purposes of the assessment, he re-wrote the order in his own handwriting. I understand that when John checked the scanned order on the computer he noted that the original order was in someone else’s handwriting. Mr Abubakar could not provide any witness testimonies to support the fact that he had supervised the dispense. This applied to patients SM, KF, IW, BN and DB.

22. Following the investigation I concluded that no cheating had taken place during the assessments prior to the one on 30 December 2008. I concluded that it was only in relation to the assessment on 30 December 2008 that Mr Abubakar had presented false evidence to the assessor for assessment. I noted that the trainee did own up to the degree of falsification when given an opportunity at the outset of the investigation and did co-operate with the investigators in the process.

In view of our findings, we felt that all the competencies still outstanding as 'not achieved' (at that time) would need to be reassessed by a new assessor. At the time of the investigation Mr Abubakar had achieved 60 out of 82 competencies. 10 of the outstanding competencies related to the competencies where he had provided falsified recordings [these are competencies 1.10, 2.05, 3.08, 4.05, 4.07, 6.11, 6.18, 8.02, 8.05, and 8.06]. In the final paragraph of my report I concluded that the trainee was helpful and honest in his conduct during the investigation process but during the assessment he had admitted that he was cheating by knowingly trying to present falsified records to this assessor. It was only on his Assessor's insistence to see the original records that his falsification was uncovered. In light of this we regrettably recommended to the Education Committee that the matter should be referred to the General Optical Council for consideration.

23. I attach as exhibit 'RB/6' copies of correspondence sent to Mr Abubakar by the College. At page 4 of exhibit 'RB/6' is an undated letter from Mr Abubakar to Jo Mullins and the lead assessor in which he admitted the allegation made by John Corby."

Q. Just pause there, please. Madam, while I don't take you and your colleagues to them now, the copy correspondence can be found at page 234, and the letter from Mr Abubakar at page 237. Could you read paragraph 24, please.

A. "24. I attach as exhibit 'RB/7' copies of the quarterly reports produced by John Corby in connection with Mr Abubakar (both handwritten and typed). There are 5 reports for quarters 1 through to 5. The assessment visits took place on 23 January 2008, 22 May 2008, 24 July 2008, 9 October 2008, and 30 December 2008. These reports are originally handwritten by the Assessor and then the Assessor transfers the handwritten comments to line reporting tool. I also attach other documentation that John provided to me prior to my investigation.

25. A new assessor was allocated to Mr Abubakar on 29 January 2009 and following the investigation, the assessments resumed on 13 May 2009. He has now completed the work based assessment elements of the Scheme for Registration."

Q. Thank you very much. I don't think you need to read paragraph 26. I have no more questions. Could you just wait there for a moment please?

Cross-examined by MR SINGH

Q. Mrs Brough, just a very few questions, please. You said, I suppose quite understandably, that Mr Abubakar was anxious in the investigation that he had with you. Is that right?

A. Yes.

Q. And that really what you were trying to do was go through the records and see which ones were completely false and which ones were partially false. Is that right?

A. Yes.

Q. That table that Mr Albuery has taken you to page 212, can I just clarify. In the second paragraph down at the top of the page, it says there,

“Show me which one of these records (i.e. the photocopied ‘false’ ones) this applies to.”

Did you have the photocopied records, or did you just have the table that you have prepared? Can you recall?

A. I had all the copied records because John had provided them to me before the assessment.

Q. Right, I just wanted to clarify that, because it seems from that sentence that the records were there, I just wanted to clarify it. Then, those were the answers he gave in that table.

A. Yes.

Q. About BN, you said he was quite anxious and he was forgetting various things at various points. Was that when he was trying to explain which records were of a certain type and going through this kind of thing?

A. He was anxious throughout the investigation. In the beginning, I had the impression with the dispensing records which all of these fall into, that essentially what he was saying to me was ‘actually, I supervised the dispense of these patients but then when we started looking into it in a little bit more detail, it was obvious that there was more to it than whether he had supervised the dispense or not’, because for some of the patients that particular record didn’t exist or it had been modified so that it fitted the category that we were looking for.

Q. The paragraph in your statement where you said ‘there is this list of five where he supervised the dispense’, that is superseded by this table, isn’t it, because when you went through them, you were both trying to get to the bottom of what happened with this record and what happened with that one.

A. Yes.

Q. Right. But your overall impression – you said it in your statement and in the interview – that he was trying to cooperate, he was being honest with you and he was trying to help in getting to the bottom of what was going on.

A. I think he was trying to cooperate. Yes, I think he was trying to cooperate, but I don’t think he was clear himself in some of the elements in terms of, he said, well actually I supervised these dispenses, but I think there were times when he was confused in terms of what he had and had not done.

Q. That’s helpful, thank you. After you went through all of that, there was an independent review, was there, of the other items in his log book, sort of dip testing.

- A. Yes.
- Q. It was found, wasn't it, that there were no concerns in respect of all the other things in his log book and the other records he submitted.
- A. That's right.
- Q. So it was only the ten that he had owned up to that there were concerns about.
- A. That's right.
- Q. It is right, isn't it, that he was then assigned a new supervisor –
- A. A new assessor.
- Q. A new assessor. Sorry, the same supervisor, a new assessor. Subsequently to all of this under the new assessor, he passed all of the competencies and passed his final assessment, is that right?
- A. Yes.
- Q. Obviously, given the history, I'm sure his assessor would be fairly wise to having to look for whether these records are genuine or not, given what had happened before?
- A. I would assume, but I wasn't the assessor.
- Q. No, of course. But it meant that in order to pass, he had to submit his really evidence, proper patient episodes, covering all of the competencies and doing that adequately.
- A. Yes.
- Q. Thank you very much, I have no other questions.

Questioned by the Committee

- Dr Azubike:** Please could you go to paragraph 21 of your statement. The very first sentence, I was not quite clear where you said he had 'supervised the dispense'. Is he referring to his supervisor or to Mr Abubakar?
- A. No, Mr Abubakar.
- Q. You also said that he had a new assessor after John Corby. Do you know who the new assessor was?
- A. Yes, Louise Munns.
- Q. If you go to page 11, please, of the bundle, it says at 3, is that the name you are referring to?
- A. Yes. What happens on the online reporting tool is that we try to move the process on as quickly as we can for trainees. Once we have carried out the investigation and the information is then passed on to the Education Committee, then the assessment process continues. At that point, the next assessor is allocated, and they become the acting assessor on the online reporting tool. Unfortunately, their name then feeds through on all of the assessment reports. If, after the date, we want to print out any reports, it is

the current assessor's name that appears on the report rather than the assessor who is the person at the time. It is just how the tool is constructed.

Q. You can see why I was uncertain, because the date says 2008. It is slightly different from when she started. Thank you for clarifying that.

Ms Viner: Can I just ask, in your statement at page 118, paragraph 25, you said that Mr Abubakar had completed "the work based assessment elements of the Scheme for Registration". Can I just confirm from Mr Singh's questioning that Mr Abubakar has now passed his final assessment?

A. Yes.

Q. Are you aware of the date that he passed his final assessment?

A. Not off the top of my head.

Ms Tilley: Can I just clarify that, it means that he has no further assessment at all?

A. No.

Ms Jeyasingham: Are there any further questions?

Mr Singh: I have no further questions arising out of that.

Mr Levisaur: Do you want to tell us when the assessments were?

Mr Singh: I can do. We think it is September 2009, the assessment where the false records were submitted was December 2008, and then he went for the September 2009 assessments, the final assessments.

Mr Albuery: Thank you. Madam, may this witness then be released?

Ms Jeyasingham: Yes.

[The witness stood down]

Mr Albuery: Madam, the only other evidence upon which I rely is given by John Corby, whose statement appears at page 1 of your bundle. I am not sure if we have formally exhibited it. If we haven't, may we use C1?

Madam, I think we have agreed that I should read this uncontested statement into the record.

Statement of JOHN CORBY

This is the statement of John Corby, of the College of Optometrists, 42 Craven Street, London WC2n 5NG, signed by him and dated 16 October 2009.

1. I became a registered optometrist in September 1009. I have practised as an optometrist since then with the exception of a gap year and four years fulfilling a professional development/managerial role with a major optical

multiple. I have served as a Council Member for the College of Optometrists between 2005 and 2007 and became an assessor with the College in November 2005.

2. I continue to assess for the College, having become a Senior Assessor in March 2007. With approximately 30 trainees each year to assess, I have one of the highest assessment work loads of any of the assessors.
3. Assessments take approximately 50% of my working time, and the rest is filled with locum work for various practices in the Leicestershire area.
4. I had been Mr Abubakar's assessor in connection with the work-based assessments since I was assigned this role shortly after his pre-registration start date of 11 November 2007. I attach to this statement copies of the quarterly reports I produced in connection with Mr Abubakar as exhibit 'JC/1'."

They begin at page 6 of your bundle, Madam, and I don't take you to them.

"In total I assessed Mr Abubakar in his practice setting on 5 occasions on the following dates: 23 January 2008, 22 May 2008, 24 July 2008, 9 October 2008 and 30 December 2008.

5. In addition to these assessments, I also met Mr Abubakar and his supervisor, Mr Pratish Jitendra (I think that is also Mr Bhundia, those are his four names) in practice for a one and a quarter hour introductory visit on 21 November 2007. During this visit we discussed the roles of the assessor, supervisor and trainee within the assessment process, assessment preparation, evidence requirements and the paperwork that Mr Abubakar would need to provide prior to each assessment.
6. Despite this Mr Abubakar showed a repeated lack of organisation in his assessment preparation.
 - He failed to send any paperwork to me prior to his first assessment, and though he had it present on the day this resulted in time being wasted looking at this and also meant that a lack of experience which might have been best addressed by delaying this assessment was not picked up until it was too late;
 - He failed to send any paper ahead of his second assessment, and appears to have not passed on the date of this visit to his supervisor. He also did not have all the evidence that he wanted to present out and ready on the day;
 - He again failed to provide paperwork before his third assessment and did not have it available on the day, though he did provide the required paperwork by post after the assessment. In addition, despite having 40 competencies outstanding, Mr Abubakar had only prepared evidence to assess 19 competencies on the day;
 - Again Mr Abubakar failed to provide the required paperwork ahead of his fourth assessment, having to provide it by post after the visit.

Again, time was spent during the visit trying to sort this issue out and some competencies could not be assessed as Mr Abubakar's lack of preparation meant that he did not have the relevant evidence available.

- Before each assessment Mr Abubakar was sent an email detailing the paperwork needed and the preparation suggested. In each assessment report 'Action Plan' this information has been reiterated in order to improve performance and compliance for the next visit.
7. As it noted in the 'Action Plan' section of each assessment report Ghufan consistently failed to provide the paperwork required before the assessment and also struggled to have the evidence that he needed available on the day. After the first assessment, this lack of available evidence did not seem to be due to a lack of experience, but simply due to Mr Abubakar failing to have the evidence available on the day."

Madam, I am just going to depart for the sake of the transcript from the statement at this point, to take you by way of an example of one of these reports to page 6 in your bundle so that what I have just read to you means more than it might otherwise do.

This is the first Quarter 1 report, and you will see that in the first section it lists the competency, whether it is achieved or not under 'Status', the date that it was assessed – and all these are the date of 28 January, being the first one carried out by Mr Corby, I believe – how it was assessed, and you have already had those acronyms explained to you, and then an Action Plan.

If you turn with me to the end of that report, at page 10, you will see there the Action Plan. I do not rely on anything in it, but I just wanted you to be familiar with it. That is the same shape of each of the reports that follow thereafter on the subsequent days.

Turning then back to the transcript and reading from paragraph 8:

"8. On 30 December 2008 I arrived at the store at approximately 1.40 pm for a 1.45 pm assessment start. Unfortunately, due to a misunderstanding of the time of the assessment, Ghufan's supervisor was not available in the store that day. The assessment began by looking at the logbook evidence presented by Ghufan. Logbook pages for October and November were presented. No evidence for December was available. Ghufan explained that this was due to time pressure. The rest of Ghufan's logbook was not available for inspection as had been specifically requested at the last assessment and in the assessment report. No quarter 3 patient episode sheet was available either. Ghufan then presented the records he wished to use as evidence.

9. Some of these were photocopies of records and were not signed by the supervisor as genuine copies. I explained that these were not acceptable and asked why the originals weren't available. All

photocopies of records need to be signed by the supervisor as being a genuine copy of the original record to prevent trainees photocopying a record and then amending it to their advantage before copying it again and presenting this as evidence. Ghufuran explained that he had photocopied as he did the tests so that the records could be used elsewhere in the store. I suggested that we get the staff to find the original records and that we could assess from these. To do this we took each record and checked the details on the computer system to see if sufficient evidence was available on the system.

10. With any record which is photocopied and not signed I will always seek other evidence to show me that the record is genuine. With the Specsavers computer system any visit that the patient makes to the practice is recorded and hence it should be possible to match any record up to the computer log of this visit. If this visit can be done it does mean that the record has not been completely made up. Even if a match is found with the computer, I continue to see the original paper record to ensure that it hasn't been amended during the photocopying process.
11. After 3 records it became apparent that the photocopied records often did not tally at all with anything on the computer. Hence raising suspicions that the records were completely made up.
12. At this stage I told Ghufuran that I was suspicious that these records were not genuine and asked if this was the case. Ghufuran admitted that not all of the records were completely genuine. I asked if any of the other records that he wanted to present that day might also not be genuine and Ghufuran replied 'yes'. We then sorted through the photocopies separating out records which were genuine from those which were genuinely falsified and those which Ghufuran was not sure about. A list was made of those records of which Ghufuran was not sure and the staff asked to find the relevant paper records.
13. I do not recall any more detail of this conversation. I made no further notes during the conversation but did write up all my findings before leaving the practice, read them through with Ghufuran and asked if he was happy to sign the notes as being a genuine representation of what had happened.
14. Whilst the staff were searching for the records, I continued to assess Ghufuran using the available evidence which was definitely acceptable.
15. I came to the conclusion that in all Ghufuran had presented records for 10 patients that were either completely or partially falsified and the patient records involved were as follows: DB, BN, IW, KF, SM, TH, AM, TR, GK and RW. I attach copies of the relevant records as exhibit 'JC/2' (at page 92 of the bundle).

16. I told Ghufran that the information would be passed on to the lead assessor at the College and that an investigation would be likely to follow. At the close of the assessment I prepared a handwritten note and told Ghufran that a typed copy would be sent to him and his supervisor as soon as possible. The notes were then read out to Ghufran at the end of the assessment and were signed by both Ghufran and myself. I attach as exhibit 'JC/3' a copy of the handwritten signed document and the typed notes."

Madam, that begins at page 104 in your bundle if you want to look at it later. That statement is signed above the declaration which says

"This statement, consisting of 6 pages signed by me, is true to the best of knowledge and belief".

Madam, that is all the evidence upon which we rely at this stage. Before you retire to consider whether the admitted facts are found, and perhaps, more importantly, whether in your judgement those admitted facts amount to misconduct, I seek to address you very briefly on that issue, and then my learned friend may also want to address you.

Madam, in relation to the facts, you can find those facts proven on the basis of the admissions. In addition to those admissions, you have heard all the evidence and that is clearly more than enough you might think easily to conclude that the facts, each of them set out in the amended notice of allegation, are proved.

The burden, I should remind you despite all that, is on me to prove the facts and the standard of that burden is on the balance of probabilities.

Madam, I now move to the next issue for you to consider – and the only issue at this stage – which is whether or not those admitted facts amount to misconduct. Mr Abubakar certainly thinks they do, because he has admitted it, but I accept that it is a matter, not for proof of course, but for your judgement.

Mr Abubakar was a student and should have as a student upheld the high standards expected of the profession including those who are student members of it. He should in particular have regard to and uphold the Code of Conduct for registrants. When you retire, the Code can be found in your Handbook at page 5. Particular 10 of the Code require that all registrants be "honest and trustworthy". Mr Abubakar on this day in relation to these facts was neither. This is a clear breach of the proper standards you can expect of any member of the profession and amounts in my submission to misconduct. I say no more about it.

Mr Singh: I have nothing to add, thank you.

Ms Jeyasingham: Can I ask Mr Albuery for closing submissions.

Mr Albuery: You have just had them on that! I am sorry if they were not acceptable! Madam, obviously if you found misconduct, then I would seek to address you on the issue of impairment, but we are not there yet, and we may not get there.

Ms Jeyasingham: Legal Advisor?

Mr Levisaur: I don't have very much to add to what Mr Albuery has already said. The burden lies throughout upon the Council and the Council must satisfy you on the balance of probabilities, that is to say 50 per cent plus a scintilla, more likely than not that those allegations which are set out are made out. The Registrant does not have to prove anything. However, the admissions that he has made, the evidence that you have heard, and the evidence that has been read to you and has been accepted and admitted, together with the documents in the bundle, clearly constitute evidence which you could accept, and if you were to accept it, would undoubtedly establish these allegations have been made out. But that is a matter for you, you bring your ordinary standards to bear, and your experience of life in assessing whether these facts are properly made out.

As to whether this amounts to misconduct again is a matter for your professional judgement. That is not a matter susceptible of proof in the sense that you have heard. Pay attention of course to the matter set out in the Code on page 5. The fact that the registrant has admitted misconduct does not mean you are bound to find misconduct proved; frankly, in the circumstances it would be odd if you did not, but that is a matter again for you, you must make your minds up. Do not consider the question of impairment. You are not to go beyond the fact-finding stage to include misconduct that you have been addressed on.

Ms Jeyasingham: In which case, can I ask the Hearings Manager to clear the room?

[Hearing adjourned at 10.38]

[Hearing reconvened at 11.12]

Ms Jeyasingham: I am going to read out our decision.

Findings in relation to the particulars of the allegation

The registrant admitted particulars 1, 2(a)-2(b), 3(a)-3(j), 4(a)-(b) of the allegation and the Committee therefore found the allegation proved.

The Committee has considered all of the evidence before it in C1 and has heard evidence from Mrs Brough, and heard the statement of the assessor, Mr Corby. It has accepted the advice of the Legal Advisor.

Findings in relation to the facts

The Committee finds as follows:

- Paragraph 1 – admitted and proved.
- Paragraph 2 – admitted and proved
- Paragraph 3(a)-3(j) – admitted and proved.
- Paragraph 4(a) – admitted and proved.
- Paragraph 4(b) – admitted and proved.

Findings in relation to misconduct

The Committee has heard submissions as to misconduct and notes that the registrant has admitted that his behaviour amounts to misconduct. Honesty and trustworthiness lies at the heart of what it is to be a professional. The registrant's behaviour in falsifying records which he need to pass competency assessments was clearly misconduct and the Committee so finds.

We will now move to impairment.

Mr Albuery: Madam, at the impairment stage, I have no evidence, only submissions, but I know that my learned friend has evidence, so you should perhaps – subject to your Legal Advisor – hear from him first, and then I will make submissions at the end.

Ms Jeyasingham: Thank you, Mr Albuery.

Mr Singh: Could I please call Mr Abubakar to give evidence.

MR GHUFRAN ABUBAKAR, called and affirmed Examined-in-chief by MR SINGH

- Q.** Mr Abubakar, can we have your full name, please?
A. It is Ghufran Abubakar.
- Q.** Mr Abubakar, I am going to ask you some questions. I have been told that I can lead you on various matters of background. Is it right that you were at Aston University between 2003 and 2006?
A. Yes.
- Q.** You graduated in 2006, and then you went to work at a branch of Specsavers in Birmingham, is that right?
A. That is correct.
- Q.** You didn't have a pre-registration place arranged before you finished your university degree, is that right?
A. That's right, yes.
- Q.** When was that arranged?

- A.** After about 12 months, between 10 and 12 months working at the Birmingham New Street practice, which was when I found a pre-registration position.
- Q.** Just briefly, what was the hold-up in finding a pre-registration position?
- A.** Pre-registration positions can be quite difficult to get nowadays. It is just a case of an employer being willing to take you on. Those pre-registration positions had already been taken up, so that was the hold up.
- Q.** How did you come by the pre-registration place that you actually joined, which was at another branch of Specsavers?
- A.** It was just by contacting other Specsavers branch, and just by chance coming across this particular branch which I am at now, which is the Swadlincote branch. The pre-registration student there was just finishing, and they were looking for another student.
- Q.** You started that pre-registration place in October 2007, is that right?
- A.** That's right, yes.
- Q.** Your assessor as we have heard was a gentleman called Mr Corby.
- A.** That's right, yes.
- Q.** You had a supervisor at Specsavers which was a man called Pratish Bhundia.
- A.** That's right.
- Q.** Are you still working at that branch?
- A.** Yes, I am still working at that branch currently, yes.
- Q.** Under his supervision.
- A.** Of course, yes.
- Q.** Just so we have all the information about the current position, when did you pass all your final assessments?
- A.** All my final assessments, my final exams, I started in September 2009, and I passed all the competencies then. I qualified then.
- Q.** Is it right that you have not been allowed on to the full Register, you remain on the student register?
- A.** That's right, yes.
- Q.** So you are working under supervision essentially, under the same supervisor?
- A.** Yes.
- Q.** Can I turn now to the pre-registration position that you had at Specsavers in general, just some general information please. Give us some idea of the practice? Was it a busy practice?
- A.** It is a small practice, there are two test rooms, but the appointments are always fully booked, so it can get very busy. My role as a pre-registration student was I was on the shop floor dispensing and clinically sight-testing as well.

- Q.** Explain to us just briefly about the clinics, were there set clinic times?
- A.** Yes. The two clinics were very separate, one for my supervisor and one for myself. It was the sort of clinic that was always fully booked with patients, and I obviously had a set number of patients and was booked to see them as you would in a normal clinic.
- Q.** When you weren't working, testing, in clinics, what were you doing otherwise?
- A.** Normally, I wasn't testing if a patient had cancelled or the clinic wasn't full. I would normally be on the shop floor handing out dispensing and routine collection, things like that.
- Q.** The evidence that we have heard read out in relation to Mr Corby is that in a nutshell, you didn't organise yourself very well at all throughout the pre-registration year and even more so right at the beginning. Do you agree with that, or not?
- A.** I do agree with that, yes, definitely.
- Q.** Can I just deal with it by quarter please? I will Quarter 1, Quarters 2 & 3, and Quarter 4 and then the assessment at the end. When you first started at the Specsavers branch where you did your pre-registration year, can you explain what was going on in your personal life? Were you still living where you were living before, or did you have to move?
- A.** When I started the pre-registration position in Swadlincote where I am currently at, I wasn't driving at the time, so the easiest option was to relocate. I was renting out accommodation in Burton, that was from the beginning of the pre-registration period. I guess as well, at the beginning, a lot of it was settling down, a lot of disorganisation was due more to notes being left at home in Leicester, and notes being left in the Swadlincote branch.
- Q.** You mentioned Leicester, was that where you living before?
- A.** Yes, that's my parents address as well.
- Q.** You relocated, and the first quarter assessment was in January 2008, is that right?
- A.** That's right, yes.
- Q.** When did you relocate?
- A.** At the start of my pre-registration period.
- Q.** So October 2007.
- A.** That's right, yes.
- Q.** Was it an easy transition, moving into Burton?
- A.** No, definitely not. I had lived away before, but Burton was very different, no contacts there, I didn't know anybody there. A lot of it was also because I wasn't driving at the time, and the difficulty was moving a lot of stuff from home in Leicester to my new address in Burton. Also, simple things like transport to work, the bus routes I had to take, things like that. At the beginning it was definitely very difficult.

- Q.** So really the complaints made by Mr Corby in relation to Quarter 1, first of all that you didn't have papers ready in time or evidence prepared, do you accept that that was the case?
- A.** Definitely yes.
- Q.** Whose fault would you say that was?
- A.** That was my fault.
- Q.** Looking back at it now, can you explain why that came about in the first quarter?
- A.** To be honest, ultimately, it was definitely the disorganisation on my part, but I guess, the disorganisation was a result of the move to Burton. As well, I guess it was not fully understanding what was expected of me as a pre-registration student in my first quarter, which I think is detailed in the College Handbook.
- Q.** Did you have a copy of the Handbook?
- A.** No, I didn't have a copy of the College Handbook at the start of my pre-reg period.
- Q.** Can I just ask you, whose responsibility was it, do you think, to get the College Handbook?
- A.** That was ultimately my responsibility again, to get the College Handbook.
- Q.** Did you eventually get a College Handbook?
- A.** Eventually, it was probably by the third quarter, I received one then. But before that, it was just referring to the website.
- Q.** So, disorganisation in the first quarter, not having the Handbook, and in terms of finding out what your responsibilities were, whose job was it? Was it for you to chase or was it for the College to tell you?
- A.** No, definitely it was for me to chase up.
- Q.** Just moving on slightly, the second criticism is that in the first quarter, you didn't have some of the experience at the time of the first quarter assessment in January. Do you accept that that was the case?
- A.** Could you repeat the question, sorry.
- Q.** By the time of the first quarter assessment, there were two criticisms. The first one was that you didn't have all the paperwork ready, and secondly, you didn't have some of the experience necessary by the early stage. Do you accept that you didn't have some of the experience by that stage?
- A.** From the first stage, yes, I definitely didn't have all the experience.
- Q.** Can you explain why that was?
- A.** The reason I didn't have all the experience is that I guess the College, the way the competencies are set out, they do not expect you to have all the experience anyway, that is the big thing. But in my case I guess when I first started, some of the experience relies a lot on your clinical abilities and things

like that. In my first quarter, my first period I was employed, a lot of it was more the dispensing aspects of the College framework or the assessments. Yes, I did lack the clinical ability then, because I just did not have as much clinical time as I should have had at the beginning.

Q. That meant that the first quarter assessment, the number of competencies were not achieved and so they had to be carried over into the second quarter.

A. Yes, that's right.

Q. It seems that latterly – and this is John Corby's statement – do you have the bundles in front of you. It may help, Madam, if you and your colleagues can turn to page 3 of the main bundle. We can all see paragraph 7 at the top. It says that,

“As is noted in the 'Action Plan' section of each assessment report Ghufran consistently failed to provide the paperwork required before the assessment and also struggled to have the evidence that he needed available on the day. After the first assessment, this lack of available evidence did not seem to be due to a lack of experience, but simply due to Mr Abubakar failing to have the evidence available on the day.”

Now, do you agree with that as a general statement of how things went through Quarter 2 and Quarter 3?

A. Definitely, for sure. Obviously by the time of Quarter 2 and Quarter 3, I was definitely seeing the patients I was supposed to be seeing, or prove you have done the competencies set up by the College. I had definitely seen the patients. As John said as well, it wasn't the lack of experience, it was just definitely lack of organisation rather than not being able to pull out the patients to prove that I had seen them.

Q. When you say 'not being able to pull out the patients', can you describe what the difficulty is because now you have had some time to think about it.

A. Basically, the way the assessment process works is when we see a patient, we have a log book to record that we have seen a particular patient. In that log book, you can include obviously the patient and what was wrong with the patient, so that you can refer back to it later on. My difficulty I guess was the pressure of my clinic, having booked patients in, struggling with out-clinic work and struggling to adequately note down patients and what was wrong with them into the log. When an assessment happened, so when John Corby came to the store, although I had seen patients, it was very difficult to look down the log book and see which patients I needed to show for a particular competency.

Q. So, say for a particular competency, you needed a patient that demonstrated, for example, a high refractive index to dispense, for example. Did your notes easily allow you to determine that this patient helps with this one, this patient helps with this one?

A. No, my notes didn't clearly show what was wrong, if you can say that, with the patient.

- Q.** Did this continue through Quarter 2 and Quarter 3, this kind of disorganisation?
- A.** Definitely, yes.
- Q.** Can you explain why that disorganisation was happening?
- A.** Again, by Quarter 2 and Quarter 3, it was having had Quarter 1 and obviously not passing a competency, so I was carrying forward a lot of outstanding competencies from Quarter 1 into Quarter 2 and 3. That along with my lack of organisation, so struggling to record patients properly into the log book was a struggle. One of the big reasons why I was struggling with admin, if that is what you want to call it, was the pressures of the clinic, I had to see patients, and secondly, again, admin work was piling up basically, so then transferring that to the log book was definitely a difficulty. I guess the last point is definitely it is almost like after you sat the first assessment and carried so many over, it gets quite demoralising, so you already have to bear in mind your competencies and how they are carried out. For Quarter 2 that was a big thing as well, for sure. I guess those were my main reasons.
- Q.** In terms of being able to strike the balance between your clinics, doing your admin and making sure that your admin was up to standard, again, whose responsibility was making sure all that was correct?
- A.** That was ultimately my responsibility.
- Q.** What about your supervisor? Were you the kind of pre-reg student who was going up and explaining these difficulties or not?
- A.** Not particularly, no, not with the pre-reg side of things, I guess, which I guess is a mistake looking back at it, because that ultimately was a problem, not really talking about it, not really doing something proactive about it. I guess everything else I talked about with my supervisor, if I had a problem with a patient, or there was an issue, obviously I would refer back to my supervisor, no problem there whatsoever. I guess it was the aspect of the pre-reg supervision, it wasn't entirely there.
- Q.** Obviously through Quarter 2 and Quarter 3 the competencies are now building up.
- A.** That's right, yes.
- Q.** If you can think back to it as best you can, and being realistic about it as well, through Quarter 2 and Quarter 3, was there any urgency about what you were doing, or did you think there's time left?
- A.** Definitely not during Quarter 2 and Quarter 3. I guess it was more just going with the flow, type of thing, the assessment's coming, let's go and do this. Most certainly for Quarter 2 and 3 that's what was happening.
- Q.** Looking back at it now, do you think that was the right approach to be taking, given things were building up?
- A.** No, definitely not, because as realisation comes on to you how much is outstanding, it hits you hard just how much is left outstanding.

- Q.** Can I move on to Quarter 4? At page 26, Madam, in your bundles, in the bottom righthand corner, but 21 on the internal number, this is the Quarter 4 assessment. Madam, I am sure you and your colleagues will have read the assessment blurb at the bottom, but what that really says is that there is an improvement in your performance, but there is still a difficulty with presenting evidence on time and fully. I just wanted to concentrate firstly on the improvement in the performance. Why was there an improvement in what you were doing by Quarter 4?
- A.** For Quarter 4 in particular, I had a sack full of evidence ready to present for the competencies I needed to pass. As well, by that point, definitely there was an improvement in my approach to how I should be getting prepared for this. Fair enough, I guess my attitude to how I was pulling out patients, how I had everything ready, and my knowledge was there as well. That was a better assessment easily.
- Q.** Looking back at it now, was Quarter 4 about the right time to start making those changes to your attitude or too late?
- A.** You could say better late than never, but definitely it was too late.
- Q.** Finishing Quarter 4, you had achieved some but not others. Had you made the decision to falsify the records at the time you finished the Quarter 4 assessment?
- A.** No, definitely not, no.
- Q.** What was your intention going into the Quarter 5?
- A.** Quarter 5, again, like I said, I knew I had core competencies outstanding, and it was just a case of 'right, got the competencies outstanding, let's see what I've got for evidence to prove those competencies, and let's just get on with it', type of thing.
- Q.** Coming on to Quarter 5, it was at the actual Quarter 5 assessment in December 2008 that you submitted those 10 records that have been outlined. Do you accept that all of those were not true records, they were false records?
- A.** That's right, yes.
- Q.** When did you prepare those records?
- A.** My Quarter 5 assessment was set in the afternoon at 1.45 with John Corby. The decision to falsify them was literally that morning, and that's when I gathered evidence and that's when I falsified the records, in the morning prior to that assessment in the afternoon.
- Q.** Had you pre-planned it before that morning?
- A.** No, definitely not. I had already pulled out all my evidence that I was going to use anyway for Quarter 5 assessments, that was already set out, laid out, ready for the assessment.
- Q.** Why did you take the decision in that way on the morning to do it?
- A.** I guess by that point, going back to Quarter 2 and 3 when I was talking about outstanding competencies piling up, and definitely by Quarter 5, it hit me hard

that there were so many outstanding and I had no idea what was going on. It was almost as if the pressure and obviously due to the lack of organisation of everything building up, and I had so much outstanding, I really had to start showing that I could do these competencies. That was the main bulk of it, that it was almost like a realisation of the situation.

Q. When you did it, what was your mindset, if you know what I mean? What were you thinking?

A. Very panicked, definitely, very rushed. Those are the ones that come to mind, really panicky, just rushing to get the thing done obviously ready for the afternoon.

Q. Can I just ask you this? You had obviously set out at the beginning of the fifth quarter after the fourth quarter assessment to try and get the evidence together, why did that not come about then by the fifth quarter?

A. I guess by that point, some competencies are just so difficult to get, obviously certain things went, I wasn't fully prepared. It was more preparation and organisation that in hindsight, obviously if I was a lot more organised, a lot more prepared, I would have realised that certain patients I hadn't seen and had to go and sort it out for the Quarter 5 assessment. It was like an on-going theme, lack of organisation, lack of time-keeping, record keeping, things like that.

Q. Looking back at what you did, before I turn to the records themselves, looking back at the fact that you falsified records and submitted them, how do you feel about the fact that you did that?

A. I definitely regret that for sure. At the end of the day, it's almost like the competencies are there to show, yes, I can do a particular thing, and it is almost like showing that I am not competent in particular areas, so there are gaps in my knowledge. That is another thing on my list. I definitely regret my actions. The biggest thing was professionally, yes, it is not sensible in terms of honesty and in terms of me trying to become registered. Where potentially there are gaps in my knowledge, that would be a danger, definitely.

Q. You did obviously have your time again, because you had a chance to take the assessment and submit evidence later on.

A. That's right, yes.

Q. I'll come on to that in a moment. Looking back on what you actually did, do you feel that it was an acceptable thing to do for a student optometrist?

A. No, definitely not. It is totally unacceptable for any professional.

Q. Can I move on to deal quickly with the 10 records and just deal with the reasons for submitting them? We have heard from Mrs Brough that some of them fell into the category that you thought originally, having supervised the dispense, having done the sight test and then handed it over for the dispensing. Can I just run through them now with you? Madam, before I do, can I ask you to take them out of your file and reorder them? You will see why in a moment, but it helps group them together in the way Mr Abubakar will explain them.

They start page 92 in the bundle and they go on to 103. If you take all of those out, and if you could reorder them in this order: 98 RW followed by 99 GK, 93 TR, 94 AN – sorry to dance around, but it will make it easier in the long run. No. 5 is TH which is page 97.

Ms Viner: Sorry, can I just ask? There are two Amsler charts, who do they belong to?

Mr Singh: They belong to AN; 95 and 96 belong to 94. I think we were up to TH which is 97, after TH, RW which is 103, SM is 100, KF 101 and VN is 102, and finally DB is at 92. Looking at the bottom righthand corner it should go 98, 99; 95 and 96 go after AN which is 94. You should have bottom righthand corner 98, 99, 93, 94, then the two Amsler charts at 95 and 96. Then TH at 97, after that 103, 100, 101, 102 and 92. Thank you.

Mr Abubakar, do you have those in that order as well?

A. Yes.

Q. Good. Can I ask you please to look as one group at pages 98 and 99, that is GK and RW? These were false records, records that you created on the day of your assessment?

A. That's right, yes.

Q. What category – if I can put it this way – do these two patient records fall into? What was the reason for creating these?

A. These two patients, the first one is RW, a child under two years old, and GK is a patient with intellectual impairment or learning difficulties. These two particular patient episodes are those that are very difficult in practice to come across, in our particular practice they were very difficult to come across. It is almost as if in panic, not having seen them, obviously falsifying the records.

Q. These were two kinds of patients who you hadn't had the opportunity to see.

A. That's right.

Q. At the practice, was it possible to see a lot of children under two, for example?

A. Not at our practice, no. It is very difficult because generally children under two are seen by their GP routinely, rather than a child under two coming into the practice, or our particular practice anyway.

Q. Two questions are supplementary to that. Whose responsibility was it, do you believe, to make sure that you did see these people, because obviously they were part of the competency? Whose responsibility was it to try and ensure that?

A. That was my responsibility ultimately.

Q. Did you ensure that you saw those or not?

A. No, not in this case, no.

- Q.** Alright. So that's RW and GK. The next group please is TR, AN and TH which is 93, 94 and 97. Again, are these falsified records that you have created on the morning or afternoon of the assessment?
- A.** Yes, these are falsified records, yes.
- Q.** Alright. Is there anything in common – if I can put it this way – with these records? Do they fall into any category?
- A.** These particular patients are quite routinely seen in practice. Some of them may be more than others, but these are patient episodes rather than patients I had seen before and submitted in previous assessments. For various reasons, they had been rejected for may be an incomplete record card or not fully recording all the tests to pass a particular competency.
- Q.** Can I just ask you, you hadn't submitted these particular ones?
- A.** Not these particular ones, other patients relating to the particular competency that they were selected for.
- Q.** And those weren't acceptable?
- A.** No, they were rejected for various reasons, for incomplete record cards or tests not fully being done on them. Subsequently it obviously came to a point that it was becoming increasingly difficult to find patients again to cover those competencies, so again, these are falsified records based on previous records that I have seen.
- Q.** As I say, tests that you actually did in the past, but the record wasn't complete?
- A.** That's right, yes.
- Q.** Those are the three, TR, AN and TH. Can I now deal with IW, SM, KF and BN, please, as one group, and leave DB aside for the moment. These last five were the five that were in the spreadsheet that were in Ruth Brough's interview plan, if I can put it that way. I want to leave that aside just for the moment and deal with your evidence on these now please. Those four, IW, SM, KF and BN, do they have anything in common in terms of the patient episodes?
- A.** Yes. These patients, IW in particular, I had physically done the dispensing for the patient, but obviously the bit was when I did the extra bit to give her a pair of reading glasses. The other three –
- Q.** Can I just stop you there just to explain IW, you did the specs for IW?
- A.** That's right, yes.
- Q.** Did you dispense in fact what you have written on this record or something else?
- A.** The top part of the record was what was dispensed, and then the bottom part of the record which is basically a pair of reading glasses, that was the part that was not dispensed, so that was definitely a falsification.
- Q.** What about the others, SM, KF and BN?

- A.** These three patients – I had seen all three patients for a sight test, so I had physically done the complete sight test on all three of these patients. I had made the obvious recommendations as to what they were needing in terms of glasses or in terms of dispense, but subsequently the dispense was obviously carried out by a colleague of mine or somebody else in the store. These particular records obviously are falsifications in that it's a copy of somebody else's record and not my own.
- Q.** A common theme running through those last four was you had something to do for the patient either in the sight test or the dispense stage, but there is falsification of the records as to what you actually did.
- A.** That's right, yes.
- Q.** The last one is DB, please. DB is one when you were interviewed by Ruth Brough; you believed was one that you had some involvement with.
- A.** That's right, yes.
- Q.** Looking back at it now, and having thought about it in the meantime, did you have any involvement with this one?
- A.** No, not with this patient.
- Q.** What was this patient's record submitted for?
- A.** This patient was submitted for a particular competency relating to a high prescription that I dispensed to a patient. Again, I did not have any involvement with the patient.
- Q.** Okay. You submitted that for the high prescription, DB, and what about IW?
- A.** Again, IW was put into the category where I had –
- Q.** Sorry, let me stop you there, my mistake. What competency was IW submitted for?
- A.** A high dispense also.
- Q.** They were both submitted for the same.
- A.** They were both submitted for the same patient episodes, the same competency, yes.
- Q.** Can you think of any reason why you submitted two patient records essentially displaying the same thing?
- A.** Essentially there was no reason for me to have submitted this at all, the patient DB. Again, in terms of falsification in my panic of rushing around doing it in the morning, obviously I thought this was a patient and I would falsify this as well, when in fact there was no need to. I guess that was definitely due to panic or rushing.
- Q.** Can we turn to Ruth Brough's notes of the interview, page 209? Specifically could you turn to page 212? I just want to clarify because there is a change in what is said about them. We went through those five in the table, SM, KF, IW, BN and DB. SM and KF – those were patient you didn't do the dispense yourself.

- A.** That's right, yes.
- Q.** That was what was being said there in the interview.
- A.** That's right, yes.
- Q.** IW – you said you did dispense them but you gave them essentially an extra pair of glasses.
- A.** That's right, yes.
- Q.** DB – you said you didn't have any involvement that and now you say you didn't dispense it at all?
- A.** That's right, yes.
- Q.** BN – you said at the time of the interview that you thought you had supervised the dispense. Is that right or not?
- A.** At the time, yes, that's what I said, but in hindsight, looking back again, I don't think I had any involvement or done any supervision of that dispense.
- Q.** Alright, fine, so BN was one that you just did the test, but didn't supervise the dispense.
- A.** That's right, yes.
- Q.** Why do you think you said that you thought you had supervised the dispense back in the interview?
- A.** I didn't recall the records properly, there is more confusion now, more anxiety during the interview that definitely I said something that wasn't right.
- Q.** Deal with this please. When you were confronted by your assessor about his suspicions, you admitted it.
- A.** That's right, yes.
- Q.** Why did you do that?
- A.** Ultimately, I knew straightaway I had done what was wrong, obviously it wasn't right. Once I was confronted about it, my thoughts were right, you have to do everything you can to put this right, type of thing. So right from the onset, I was given the chance, and I just fully cooperated or being honest with what had happened or what was done.
- Q.** It went off to an investigation. At the investigation, you made further admissions. I am not going to take you through that, we have gone through that interview briefly. Since then, you have had time to reflect on all of this. Can you give us some idea now, after the investigation, after the decision had been taken to refer it to the GOC, what was your plan going forward, what were trying to do?
- A.** Obviously after all the investigation, I guess I was a lot more focused, I knew exactly what was left to achieve for me to proceed further to the final exams. Definitely, ultimately it led to a lot more organisation. I physically made a list of everything that needed to be done, there was a lot more communication between me and my supervisor also.

- Q.** What were you communicating with him about?
- A.** Basically about patient episodes that were outstanding. I definitely had see him before my final exams. Obviously if he saw a particular patient, he would pass it through to me. Also it was a case of once I had seen a patient, obviously I would run through with the supervisor why the patient was there, make sure the record card was complete and that all the tests had been done and fully completed. It was more organisation, and to have the list physically in front of me, more communication between me and my supervisor, and ultimately just being more prepared, I guess.
- Q.** When you went through to do the competency assessments, what happened at that set of assessments? I suppose you could call that Quarter 6.
- A.** Yes, Quarter 6. I was fully prepared for that, I went through the Quarter 6 assessment, much better prepared. I don't think I passed on every competency on that particular occasion, and that was more due to my assessor felt that I didn't have sufficient knowledge, or my knowledge could be a lot better in particular areas. She felt that it would be definitely worth not to pass on particular competencies due to that, rather than was in the previous cases, lack of preparation, lack of evidence, things like that.
- Q.** In the end, did it take another assessment?
- A.** It did, it took another assessment just to clear up the areas that my assessor felt needed a bit more work done on. That assessment was quite quick, just to make sure she was happy with everything I had done, then obviously she signed me off so I could do my final examinations.
- Q.** When did you do that?
- A.** I sat those in September 2009.
- Q.** Did you pass that assessment on the first occasion?
- A.** Yes. After the whole incident, that whole thing I had during my pre-registration period, as I say, I was a lot more focused and intended to do really well, so obviously I sat my September exams, and I passed those fully on my first attempt. I had the results in October and passed all those exams first time.
- Q.** Can you just tell us something about what you have learnt from all of this? Have you learnt any lessons from what has happened?
- A.** Yes, definitely. After the whole incident, my whole attitude to time-keeping essentially, to organisation, to record keeping, that has definitely been a big change. I have changed myself. I do things straightaway, things like that. Also, the realisation that the problem lay with myself, and understanding that what I had done was wrong. It is not acceptable for a professional, but moving forward, myself things like time-keeping organisation and definitely record-keeping, keeping on top of everything.
- Q.** As I said, you are now working currently under Mr Bhundia. Is that right?
- A.** That's right, yes.

- Q.** Looking forward, if you are faced with a panic situation like you were then, would you deal with it differently to how you did a few years ago?
- A.** Could you repeat that?
- Q.** If you are faced with a panic situation in the future, would you deal with it differently?
- A.** Of course, definitely, for sure. I guess the panic situation, it is almost as if the situation is rising, and it is not taking any steps to do anything about it, which was the case and what happened over here. But going forward, if the situation arose again, the earlier you deal with it, the sooner it gets sorted.
- Q.** Mr Abubakar, thank you very much. I have no other questions for you at the moment.

Cross-examined by MR ALBUERY

- Q.** Mr Abubakar, may I ask you some questions, please, on behalf of the Council? In the moment of what you called panic, you decided to embark on a route of dishonesty, didn't you?
- A.** That's right, yes.
- Q.** What other options were available to you on the morning of that assessment?
- A.** Other options were obviously to carry on as they were, don't do anything. The patient episodes I had already pulled out, just carry on with the assessment from there.
- Q.** Why didn't you do that?
- A.** I guess by that point, I was overwhelmed about the amount of work that was being left outstanding, and obviously in a rash decision, I looked at what episodes potentially may have had some involvement before, and best get that signed off or try to attempt to get that signed off. That is what was really going through my mind.
- Q.** Do you agree that the College has a right to expect that information submitted to it is accurate?
- A.** Definitely yes.
- Q.** Why do you think that students have their competencies tested?
- A.** To prove that you can deal with things. In our profession we are dealing with people from the public, people who put their care into our hands type of thing.
- Q.** Do you agree therefore that had Mr Corby not discovered your dishonesty, the College could not have properly assessed your competencies?
- A.** For sure, yes.
- Q.** And that the public might have been in danger as a result of that?
- A.** Potentially, yes.
- Q.** I want to ask you if I may about the relationship with your supervisor at the time because he remains your supervisor.

- A.** That's right, yes.
- Q.** Are you aware of the responsibilities placed upon supervisors of pre-registration trainees and students?
- A.** Not fully.
- Q.** Will you turn with me in the bundle to page 124, where you will find an extract of the responsibilities on you and on your supervisor? Once you have found it, I am going to ask you whether some of these things were done. In relation to page 124, one of the things at paragraph 'l.' that your supervisor should have done is review your progress using monthly meetings and review forms and checking your log book. Did you have monthly meetings with your supervisor?
- A.** I can't say for sure they were monthly meetings, but we definitely did sit down – I can't say whether it was Quarter 2 or Quarter 3 – and reviewed what was happening, 'you haven't passed all your competencies, what happened there?' We definitely reviewed the situation.
- Q.** Did he check your log book?
- A.** My log book, no.
- Q.** He didn't.
- A.** I can't recall him checking my log book.
- Q.** May we infer from that that he didn't?
- A.** Yes. You could say that he didn't. He did obviously ask me if I had seen the patient, had I seen enough dispenses, for example. He did ask about it.
- Q.** But he didn't check it?
- A.** He didn't check it, no.
- Q.** At 'p', he is required to help you 'put into practice action plans agreed with your Assessor'. At the end of each of your quarterly assessments, an action plan was given to you, wasn't it?
- A.** That's right, yes.
- Q.** We see an accumulation of problems which you say contributed in Quarter 5 to your decision to be dishonest. Did he help you put into practice those action plans?
- A.** Not fully, not as much as would have been expected.
- Q.** Did you discuss them with him?
- A.** Not as much as I should have done.
- Q.** Did you discuss with your assessor the difficulties you might have had with your supervisor?
- A.** I discussed with my assessor, John, not difficulties with my supervisor, but I explained to John the difficulties I was having in my record keeping as in my records on my log book, and struggling to pull out patients.

- Q.** The first reason for the difficulties in getting behind is said by you, is it, to be moving to a new area and having transport difficulties?
- A.** That's right, yes.
- Q.** I see. You moved to that new area in October 2007, and the date of the first assessment was in January 2008.
- A.** That's right, yes.
- Q.** How old are you?
- A.** Twenty-six now.
- Q.** And you have been through university, presumably?
- A.** Yes.
- Q.** Are you really saying to the Committee that your inability to sort your professional life out in January 2008 was due to moving in October 2007?
- A.** I wouldn't agree it is as simple as that. The area I was moving to was completely new and my accommodation wasn't permanent as such.
- Q.** I see. Just pause there. What is the relevance of the fact that it is a very new area and the temporary nature of your accommodation? What is the relevance of any of that to your ability to keep your paperwork up to date and submit things which you are professionally required to do?
- A.** I guess a lot of my time and effort was being spent on making sure things at home were organised, that rent was being paid on time, council tax was being paid on time, and making sure that things I needed to do my work properly – that was obviously in Leicester – were relocated to Burton. That was it, really.
- Q.** Thank you. Let's go now to the morning of 30 December 2008 when you made the decision you did to falsify the records. Can you tell the Committee the method of the dishonesty? How did these false patient records come to exist?
- A.** In almost all the patient episodes I had either some sort of direct or indirect meeting with the patient. Obviously I knew the patients existed within the store who met certain criteria for the competencies. I guess it was on the morning I made the decision to physically locate those particular patients which I already knew about, and particularly the one I could think of was GK, for example. He was quite a good example because he came into the store and I physically booked him into the store so I knew he existed. Things like that with various other patients. That is how they were falsified as in I knew they existed. Some tests I may have done for that particular patient, other tests may have been done by other opticians or dispensed by other people, but essentially I knew they existed, so obviously I printed off copies and filled those out in my own way.
- Q.** Thank you. If we use by way of example, on pages 98 and 99, patients RW for 98, and GK for 99. If the answer to your question differs between patients then you must say, but some of it is printed already, isn't it? At the top, the name and address.
- A.** That's right, yes.

- Q.** Was that on the computer when you printed the form?
A. That's right, yes.
- Q.** What about the appointment time, 9.02, did you just make that up?
A. No, that is automatically generated by the computer, whatever is set on that. It is not something that I can input on to the computer.
- Q.** But was this person actually seen by somebody on this day?
A. Not on this particular day. The patient was seen by an optician, I can't recall what date, but the fact that everything was already in the system.
- Q.** I want to know what you have added to this, what is false and what is not. For example, when it says 'appointment time', was that the date that this person was last seen or did you add that in? How can a computer generate an appointment?
A. I can't say for this particular record for sure, but generally to print off a form for a sight test, you physically have to slot in a patient on to the system to say that patient is here. I guess that is where the time has been generated from the computer. I have physically said to the computer 'this patient came at this time'.
- Q.** All the handwriting is yours, is it?
A. All the handwriting is mine, yes.
- Q.** And it is all made up?
A. Yes.
- Q.** And that is the same with GK, it is all made up.
A. That's right, yes. These two particular patients were seen by other optometrists and the tests were done, but all of this is made up by myself.
- Q.** Let's go forward to your meeting with Mr Corby. You didn't immediately admit, did you, that you had falsified the records?
A. No.
- Q.** Because when he first asked you about why they were copies, you said, didn't you, according to him and I'm reading from paragraph 9 of his statement at the top of page 4:

"Ghufran explained that he had photocopied as he did the tests so that the records could be used elsewhere in the store".
- A.** That was a lie, wasn't it?
A. That was a lie, yes.
- Q.** In fact, it's true, isn't it, that you only admitted what you had done once records had been obtained, they had been compared to the computer record and three of the records at that point were shown not to be accurate.
A. That's correct, yes.

- Q.** Is it fair to say in relation to those records – I know you admitted that there would be others – but you only admitted it when confronted with the evidence of your dishonesty?
- A.** That's right, yes.
- Q.** Thank you. I have no more questions, thank you very much.

Questioned by the Committee

Ms Jeyasingham: The Committee has some questions. Can I ask you, at that point, had you then had the College Handbook?

A. At that point, yes.

Q. You were aware of the evidence that you needed to prove your competency?

A. Yes.

Q. So you had read it and understood it.

A. That's right, yes.

Dr Azubike: I just have one question. I think Mr Albuery asked you about other options that you would have had to carry on. You gave some explanation but I wasn't quite sure whether you had explored all the options that you had in a way you could meet the competencies. Were there other options?

A. Yes. At that point for sure, definitely, I had other options. The decision I made was very spontaneous, very on the spot. I was thinking what should I do in this situation, and it was 'go and do it', type of thing.

Q. Could you, for example, have done these competencies by going, say, to a hospital?

A. For sure, yes.

Q. That was a possibility.

A. That definitely was a possibility or an option, yes.

Q. Thank you.

Ms Viner: I have some questions as well, please. You talked about the fact that you left your address on your graduation, and that you hadn't been able to attain your pre-registration at that point in time so you had work with Specsavers at Birmingham New Street. Can you tell me very briefly what the nature of the work was that you did?

A. When I was appointed at the Birmingham New Street branch, it was more like an optical advisor role. They had to take a pre-reg on as such at that point, but there was a possibility that potentially I might have been able to get that pre-reg there as well. Obviously having had the pre-registration confirmed, I thought it was possibly a good way to start, but the director was away, and I took the pre-registration decision while I was there.

- Q.** Can I ask whether you did any pre-screening work, for example, non-contact tonometry, visual field testing?
- A.** Not in that sector, I was not employed for that.
- Q.** Did you do any dispensing?
- A.** I was more on the contact lens department, dealing with collections and things like that.
- Q.** Did you teach patients how put the lenses in and take them out?
- A.** Yes.
- Q.** If I remember correctly, about 10 or 12 months later you then went to the practice where you are currently working.
- A.** That's right, yes.
- Q.** How would you say your clinical skills were when you first went into that practice?
- A.** My clinical skills were definitely not as good as they probably were when I left university, for sure. That was definitely a problem. My supervisor was aware of that problem as well. I think John mentioned in one of his assessments as well that my clinical skills weren't up to scratch. Definitely that was one of the first things that I sorted out, making sure that that was okay.
- Q.** Although you did mention you didn't have much clinical time during your first quarter.
- A.** That's right. My first quarter was spent just on the dispensing side of things and things like that, just to get potentially most of my dispensing competencies completed. I wasn't really testing.
- Q.** So the clinical side of things had not been picked up in the 10-12 months that you were working in Birmingham New Street, and they were not picked up either for a further three months.
- A.** No. Again, when I encountered the difficulties, say, for example, seeing a patient or I wasn't sure about something, my supervisor was always there. In my first few months of testing, I was constantly going to him or he was coming to me just to double check everything again and make sure everything was okay.
- Q.** That's fine, thank you. As we have gone through the evidence this morning, there has been talk about the forms being filled in, your log book, etc. You talked about the fact that you didn't have your Handbook for quite some time during that period. How did you get hold of the patient episode sheets? You said that your supervisor didn't sit with you every month and go through it, but how did you get hold of those?
- A.** When John originally came, I did say I didn't have the Handbook just yet, so he had a few loose papers and I just made photocopies of them. I kept the photocopies in my log book, so that is what my log book was, it was just photocopies of papers that I had kept aside.

- Q.** Right, okay. I want to ask about the College assessor, and the process that would occur for this in terms of who pays, perhaps you could just highlight that please?
- A.** I discussed that with my supervisor to say this was the situation we were in. We agreed that I would cover the costs of the extra visits.
- Q.** Could you tell the Committee please how much that would be?
- A.** I honestly can't remember now. I think it was £250 off the top of my head.
- Q.** That is about right.
- A.** Yes, I was just thinking roughly.
- Q.** So you were responsible for paying that fee for the visit where these regularities happened?
- A.** That's right, yes.
- Q.** Thank you. I wanted to ask, the difficulties you had obtaining particular patient episodes, I know my colleague has asked about whether any other options were available to you. I want to ask how much contact you had with students who had studied the same time as you, perhaps friends from the course, discussing the pre-reg period and the difficulties they had had. Did you discuss any of your difficulties with your friends?
- A.** I definitely did discuss episodes, like specific episodes, what do I need for this, things like that.
- Q.** Was there any help given by your friends in terms of where you might go to obtain these patient episodes and they managed it?
- A.** Yes, for sure. I was given the choice of seeing other students, friends or family or the hospital, things like that. I was given advice on potentially what I should be doing.
- Q.** Right, thank you very much.

Mr Baldwin: I have no questions, thank you.

Ms Tilley: I have no questions.

Ms Jeyasingham: Mr Singh?

Re-examined by MR SINGH

- Mr Singh:** Madam, just one brief topic please in re-examination. You were asked about your relationship with your supervisor, Mr Bhundia. Just one question about that, please. Were you in the habit of going to him and asking him regularly about things relating to the assessment process or not?
- A.** No, not the assessment process, no.
- Q.** In terms of you initiating contact with him, what would your initiation of contact with him normally be about - clinical or assessment-based?

A. More clinical-based. We were in regular contact for sure, but specifically about the assessment process as such, not particularly no. It was more for clinical things.

Q. Who do you think needed to take the initiative, looking back on it?

A. The responsibility lay with me.

Q. I have no further questions. I don't know if anyone else has?

Ms Jeyasingham: No. I will ask the Legal Assessor if he has any questions.

Mr Levisaur: No.

Ms Jeyasingham: Mr Abubakar, please step down.

[The witness stood down]

Mr Singh: Madam, there may be another witness. I need a few minutes if I may just to speak to him before we start. I don't know what you would rather do, perhaps a five or ten minute break.

Mr Levisaur: Are there any counter-witness statements you want us to read?

Mr Singh: There are, yes.

Mr Levisaur: Why not kill that bird with that stone?

Mr Singh: Very wise words, if I may say. I think they are right -

Mr Levisaur: They are right at the back, but I am not sure who it is who is coming, so I don't know which one you want us to ignore for these purposes.

Mr Singh: For the purposes of the impairment stage, Mr Albuery and I discussed this before the hearing, and it is agreed that the references at 328, 329, 331 can all be admitted at the impairment stage. I would have to say that 330 doesn't really go to this stage. If you could consider all of those, and if I could have five or ten minutes, then I will determine the next evidence to go forward, but hopefully all the evidence should be finished by lunch time.

Ms Jeyasingham: We will adjourn for ten minutes.

[Hearing adjourned at 12.26]

[Hearing resumed at 12.46]

Mr Singh: Madam, thank you very much for the time. I am sorry that has taken slightly longer than anticipated. You have had the opportunity to read the testimonials that are in the bundle. That is all the evidence we rely upon at this stage.

Ms Jeyasingham: So you are not calling another witness.

Mr Singh: No, we are not calling anyone else.

Ms Jeyasingham: In which case, we will take submissions before lunch.

Mr Albuery: Madam, on the issue of impairment, you have found misconduct and you now have to consider whether in your judgement, Mr Abubakar's fitness to undertake training is impaired.

The first thing I should deal with is any concern you might have about the fact that there is an odd wording due to the fact that he has completed his training. It is of course the only route by which the Council can deal with students because there is no ability to bring allegations framed in relation to their fitness to practise. I ask you to say that the fact that he has actually completed his training is not relevant to the issue you have to determine which is now impairment. Madam, of course you will be used to that because we have been here before on a number of situations and students.

The first thing you do is look back at the historical acts and omissions, even though of course impairment must be determined by you as of today. It is accepted that you can only do that if you first look at the issues which were found proven which cause you concern.

I want, therefore, to say something more about the misconduct which you have found. Mr Abubakar had a number of options open to him on the morning of 30 December 2008. He chose to be dishonest. Whatever the reason for that was, that was by his own admission a very clear breach of the standards that can properly be expected of him.

This wasn't just one moment of madness, but it was followed through by him, because he then sat down and recreated and falsified ten patient records, some all, some partial falsifications. That would have taken him time, and at no time during any of that did he reflect on his decision to take that path. The only disadvantage it seems to me of him taking another obvious option which was to admit to his assessor, Mr Corby, that he did not have evidence for as many competencies as he had hoped, the effect of him doing that would have only been that he would have had to be assessed again, and he would have had to pay another fee it seems.

He did not admit these matters to Mr Corby immediately; he gave an erroneous answer or a lie – in fact, he admits he lied to Mr Corby when first asked about these matters, and why there were copies of patient records. He says it is because the records had been required elsewhere in the practice. He knew that to be a lie. Although he will be given, and should be given, at the appropriate stage some credit for the admissions he made, they came only when he was confronted with the evidence by Mr Corby certainly in relation to three patient records, and what was shown on the computer did not accord with that with which he was shown as evidence of a competency.

Madam, it seems to me that you can properly take into account the legitimate expectation of the College that documents submitted to them are accurate, and the reasons for that and the potential danger to the public if competencies are assessed as being established and evidence if indeed they are not. Those are matters which Mr Abubakar also admits.

What then of today, bearing in mind the emphasis in relation to impairment is on today? In clinical cases, very often, the time which has passed between act or omission and now is used to retrain, to reflect and to improve upon areas of concern. It is more difficult in my submission for the passage of time to assist a dishonest registrant. Matters that you are normally encouraged by case law to take into account, such as the possibility of matters being remedied and actual remedial action and reflection, are less relevant – I won't say irrelevant – less relevant, I submit, in a matter relating to misconduct than it might be if this were a matter relating to competence and clinical concerns.

My authority for that is the well-known case of *Yeong v The General Medical Council* [2009] EWHC 1923 (Admin) which you will be familiar with as a Committee, and I know my learned friend is obviously very familiar with it. It is a GMC case determined in July 2009, and it was a case relating to alleged sexual misconduct. The Council had to consider in that case the relevance of matters which were said to be relevant at impairment stage that are normally advanced in clinical cases, the sort of matters I have already mentioned to you.

I am going to read from the judgment, paragraphs 50 and 51. If you wanted a copy when you retire, that obviously could be arranged. These are the comments of the judge.

“In my judgment, the overarching function of the GMC ... informs the meaning of impairment of fitness to practise by reason of misconduct.”

Madam, it seems to me therefore that it is right that I remind you what the overarching function of the GOC is because that may help you inform the correct approach to impairment of fitness, in this case, to undertake training.

Reading from page 10 of the Handbook in Section 1 of the Opticians Act, it says at Section 1(2),

“The Council shall have the general function of promoting high standards of professional education, conduct and performance”,

so, amongst other things, the overarching function of the Council is to promote high standards of professional conduct.

Secondly, at Section 1(2A) it says,

“The main objective of the Council in exercising such of the Council's functions as affect the health and safety of members of the public is to protect, promote and maintain their health and safety”.

We have already heard evidence from Mr Abubakar about the potential damage that can be caused as a result of the sort of dishonesty which he displayed.

Going back now to the judgment in the case of *Yeong*, it says,

“The GMC –“

so therefore you also,

“is entitled to have regard to the public interest in the form of maintaining public confidence in the medical profession generally and in the individual medical practitioner when determining whether particular misconduct on the part of that practitioner qualifies as misconduct which currently impairs the fitness to practise of the practitioner. Where a medical practitioner violates such a fundamental rule governing the doctor/patient relationship as the rule prohibiting a doctor from engaging in a sexual relationship with a patient, his fitness to practise may be impaired if the public is left with the impression that no steps have been taken by the GMC to bring forcibly to his attention the profound unacceptability of his behaviour and the importance of the rule he has violated. The public may then, as a result of his misconduct and the absence of any regulatory action taken in respect of it, not have the confidence in engaging with him which is the necessary foundation of the doctor/patient relationship. The public’s confidence in engaging with him and with other medical practitioners may be undermined if there is a sense that such misconduct may be engaged in with impunity.”

Madam, of course I appreciate that this is not about sexual immorality and inappropriate relationships and cross boundaries, but honesty is at the core as is integrity of what is expected of this profession. So I say that it is relevant for you to take into account that part of the judgment.

Secondly, paragraph 51,

“Where a FTPP considers that fitness to practise is impaired for such reasons, and that a firm declaration of professional standards so as to promote the public confidence in that medical practitioner and the profession generally is required, the efforts made by the practitioner to address his problems and to reduce the risk of recurrence of such misconduct in the future may be of far less significance than in other cases, such as those involved in clinical errors or incompetence. In the former type of case, the fact that the medical practitioner in question has taken remedial action in relation to his own attitudes and behaviour will not meet the basis of justification on which the FTPP considers that a finding of impairment of fitness to practise should be made.”

Madam, I don’t say therefore that the references which you have read, and what Mr Abubakar has said about his own reflection and his position now is

irrelevant. I simply say that in determining the relevance to current impairment, it may be less in a case such as this where there has been such a deliberate, flagrant breach of standards and of the Code of Conduct. That action by him in December 2008 requires you, bearing in mind your function as a Council, to find that he is currently impaired.

Those are my submissions.

Ms Jeyasingham: Thank you, Mr Albuery.

Mr Singh: Madam, there is no doubt that this young man has made what can only be described as a desperate error of judgement, and probably worst of all for him, you can be sure from the evidence that he has given that he understands that much of his misfortune in this case is down to his own making.

It is all down to the way that he organised himself at the beginning of his pre-registration year, which was on any view inadequate. He accepts that. It seems to be a case that when he did try to screw his head on and to remedy what was going on, it was Quarter 4 and it was probably too little too late.

You are of course considering his current fitness to practise and current impairment, and I am sure you will all agree with me that he has come an extremely long way since then, since 15 months or so ago, when the Quarter 5 assessment took place in December 2008. My submission is that although this relates to a dishonesty matter and it is undoubtedly serious – we accept that completely – Mr Abubakar's current fitness to practise is not impaired. Having gone through the reflective period, he has now addressed the underlying issues and is acutely aware of his responsibilities, is organised and is clinically able.

Mr Albuery makes a valid point on the authority of *Yeong*, and I will come to that at the end if I may, but simply to say this before I make my submissions, *Yeong* doesn't say that remedial steps in this kind of case are irrelevant. Mr Albuery doesn't venture to say as much. It is a matter for you really in the circumstances of each case what weight to give remedial steps, depending on the specific facts of the case and what has caused the misconduct. I will come back to that in a bit more detail at the end of this, but in my submission those factors are relevant to today's case, simply because the change has been so marked in Mr Abubakar as a result of these proceedings.

There are four headings that I would like to make submissions on as matters which are relevant to your finding on impairment. Can I just outline those now, slot in the facts that are relevant to them, and then draw all the strands together?

The first is his admissions to the fact that his conduct was wrong. Mr Albuery has made the point that he did not admit it immediately. Well, he admitted it very, very early on, there can be no doubt about that. His admissions went beyond simply that the records that had been identified as potentially a problem being false, his immediate reaction was to admit that all ten that he

had submitted were false, and that has subsequently been borne out to be absolutely correct. As you remember, Mrs Brough did a dip test, and she was satisfied by the end of that that it was only those records. When he did admit what he had done, he admitted the totality of it, and that was at an early stage.

This has become a current theme, the admissions he has made then, in the assessment process and to you, the Panel, today. He has always accepted responsibility and that in my submission is important when you are considering impairment. It is the first tangible and real indicator of remorse, realisation and understanding of what he has done. That in turn is the first indicator of insight into what has happened, and that in my submission in a misconduct case is crucially important.

The second point is that the demonstration of insight is not simply to be gleaned from the admissions that he has made, but it goes much further. That can be seen from his evidence, so the second point is that the insight is quite profound. He has had some time to reflect on what has happened and you may think that immediately after that first confrontation of the assessment in December 2008, he sat down and started to think what had gone wrong, why it had gone wrong, what, most importantly, was to be done about it. What can be seen is that he has developed a far greater skill in keeping his records, far greater organisation, far greater communication with his supervisor. You heard that he would now routinely go to his supervisor and say 'what about this record, is this correct? What about this one?' That is what he should have been doing before.

It is those steps in my submission that demonstrate the insight which has been gained by him. It is all proved, in my submission, by the fact that he passed all of his assessments. He could not have passed those assessments, as Mrs Brough said, without having submitted real adequate evidence and testimonials. That was all done by him and of course he went on to qualify. There is no doubt, and you may think this is a perfectly good inference to draw, that his new assessor would have been inspecting the records incredibly closely to make sure there were no issues with them, so you can be confident that the evidence he submitted very shortly after the assessment in December 2008 were proper records.

You can also be sure, in my submission, and this is Point 3, that this was an organisation issue as opposed to a performance or ability issue. There is ample evidence in the papers and in the evidence you have heard that all of this really wasn't down to lack of ability. That was certainly the view of his assessor. You will remember at page 3, paragraph 7 of the bundle – I don't necessarily ask you to turn it up unless you wish to – Mr Corby was clear that after the first assessment, the lack of available evidence did not seem to be due to a lack of experience, but simply due to Mr Abubakar failing to have the evidence available. It is not an excuse, but it is a rather better situation than someone who is incompetent. That is not the suggestion here, and indeed it can't be the suggestion because of course when his attitudes changed, he

passed all of the final assessments, effectively the first time of asking, and the competencies after two further assessments.

Of course, that is relevant in my submission simply for this reason, because you are dealing with someone who is otherwise a perfectly competent optometrist, so we are dealing with the issue of probity here as we are today, probity in the past.

The fourth point is that the general theme of the evidence, the character evidence and otherwise is that this is quite clearly behaviour that is out of character for Mr Abubakar. The misconduct, the dishonesty, was isolated in that it was a decision taken in respect of ten records on the morning of the assessment. Having looked at all of the other records, everyone is satisfied there has been no other false records submitted whatsoever, so isolated in that sense.

I hope you can conclude that this all came about simply because of panic on the morning of the assessment, not premeditated over a number of weeks or months. It was a snap decision, and as he says, it was one taken very shortly before the assessment process. There is some evidence of that as well, you may think. It was the records that he highlighted, if you remember, IW and DB. They are basically records which deal with a high refractive index greater than 10 which is what one of the competencies required. There was absolutely no reason to submit two records dealing with that same competency in reality, but he did, and in my submission you can infer from that that he wasn't really thinking straight about what he was submitting. It was all done in a rush, it was all done in a panic, and that is direct evidence of it in my submission.

Also, the references that you have all read make it clear that this kind of conduct is really alien to him in his professional and personal life. I would ask you to find this on the specific circumstances in which his judgement was clouded, and in that way it is out of character and isolated.

Drawing those strands together, what you have is a competent optometrist who demonstrates his competence by qualifying, who has taken real steps forward in trying to address what went wrong back then, what caused him to act in the way that he did and as in his earlier admissions, he has expressed remorse and demonstrated insight. Those are all powerful factors in my submission. I would ask you to give them appropriate weight here.

The next question I suppose is what weight should you give them and what is the relevance of *Yeong* and the other authorities. Just to balance out what Mr Albuery has said about *Yeong*, that comes after two other authorities which summarise the position in terms of current impairment quite well in these two paragraphs. They are the case of *Cohen v The General Medical Council* [2008] EWHC 581, and the *Zygmunt v The General Medical Council* [2008] EWHC 2643. I am sure you are all familiar with both of those, but there are two short paragraphs. In relation to *Cohen*, it is paragraph 64. The learned judge expressed it in this way:

“There must always be situations in which a panel can properly conclude that the acts of misconduct”,

and I underline ‘misconduct’ because it seems with misconduct cases in general, it was an isolated error on the part of a medical practitioner, and that the chance of it being repeated in future is so remote that his or her fitness to practise has not been impaired.

In *Zygmunt*, paragraph 31-32,

“In a misconduct case, the task of the panel is to determine whether the fitness to practise of a registrant is impaired by reason of misconduct”.

Then skipping on,

“It may well be, especially in circumstances in which the practitioner does acknowledge his deficiencies and takes prompt and sufficient steps to remedy them, there will be cases in which a practitioner is no longer any less fit to practise than colleagues with an unblemished record”.

That is the general principle. It is of course diluted slightly by *Yeong*, and I accept that, which simply says that in some cases, for example, a sexual relationship between the registrant and patient, remedial steps may be of less importance. It does not say they will be of no importance. Really your task is to weigh it all up in the round and decide that this is the strength of the evidence on the *Cohen* and *Zygmunt* side, this is the strength of the evidence of rehabilitation, of remedial steps, of the likelihood of recurrence in the future. On the other side is the nature of misconduct, and how they balance together. In some cases, you may find that the evidence of remedial steps is so strong that it outweighs the misconduct; in others, you may find not.

My submission is simply this. Considering current impairment, the remedial steps taken are so strong here that you should find in my submission that he is not currently impaired, but this may well be a case in which you would issue a warning to mark the seriousness of the conduct that has taken place. This would be an appropriate case in my submission for that.

Madam, those are my submissions, unless you and your colleagues have any further questions.

[No further questions]

Ms Jeyasingham: I would like to ask the Legal Adviser for his advice to the Committee.

Mr Levisaur: Given the shortness of the submissions that have just been made to you, and the clear way in which they have set out the law, I propose keeping my advice to you relatively short.

The question which you must now decide is whether in your judgement – and I emphasise *your* judgement – this Registrant’s fitness to train is now impaired. There is no question in this case but that the misconduct which you

have found is serious in the sense that on a particular occasion on 30 December 2008, as has been pointed out, this Registrant took a deliberate decision to tell a number of untruths and backed that decision up by the creation of ten records. It was in essence dishonesty carried into effect. Having produced the false records, he then lied to the person who was due to assess his competency.

You should of course look at the passage of time which has passed, and you should do so in connection with what is often described as the remediability of behaviour. Sometimes people talk about this as a period of reflection, and sometimes people refer to this as insight – it is all to do with the same issue: has somebody addressed his wrongful behaviour and has he or has he not reached a new stage in his life where he knows that that behaviour is unacceptable.

You must of course take into account the need of the Council to protect public confidence in this profession, and you will bear in mind that *Yeong* was a sexual misconduct case which you may think is a very far cry from this particular case. Nevertheless, dishonesty is a serious issue for this profession as it is for any profession.

These events took place as I said in late December 2008 some 15 months ago. Has this registrant gone through the reflective period, has he acknowledged his fault, has he reordered the way in which he behaves? Has he demonstrated to you that he truly appreciates that the dishonesty was wrong and is wrong, and that he will not behave like this again? Take into account his evidence, assess it, bring into bear your own experience of people and, of course, of the world. Take the three references you have been given into account, give them what weight you think fit. Mr Singh has mitigated within five minutes of this advice, those submissions are fresh in your memory, give them such weight as you think appropriate and you will no doubt wish to consider his final submission to you which was that you may conclude that this is not a case of impairment, but nevertheless give this Registrant a warning as to his future conduct.

Having said all of that, this is a matter entirely to be decided by you. Bring to bear your own knowledge both of this profession and of your duties which were very properly pointed out to you, and which of course include in the words of Section 1 of the Act,

“the Council shall have the general function of promoting high standards of professional education, conduct and performance among registrants, and the additional functions assigned to the Council by or under this Act”.

Those are my submissions.

Ms Jeyasingham: May we clear the room while the Committee deliberate, and please be available after 2.15.

[Hearing adjourned at 13.16]

[Hearing resumed at 14.13]

Ms Jeyasingham: I am going to read out the findings regarding impairment.

Findings regarding impairment

The Committee has considered the submissions made by the parties and has accepted the advice given to it by the Legal Adviser.

The conduct of this registrant was dishonest. Honesty and trustworthiness lie at the heart of what it is to be a profession. The Committee bears in mind that it has a duty to uphold standards in the profession and public confidence both in it and in the process by which registrants satisfy examiners and assessors that they are of the appropriate standard to be admitted to the profession.

This was a deliberate act which involved the falsification of 10 records and the presentation of them in person to the assessor.

The Committee is satisfied in all the circumstances of this case that the registrant's fitness to undertake training as an optometrist is now impaired by reason of his misconduct in December 2008.

We now move to sanction.

Mr Albuery: Madam, there are no matters recorded to the Registrant's detriment, and you should and therefore, I know, will treat him as a man of good character. Others will remind you of what your options at sanction stage are, and I have no particular submissions to make about that.

Ms Jeyasingham: Thank you, Mr Albuery. Mr Singh?

Mr Singh: Madam, can I ask that you also take account at this juncture of the references at page 330 of the bundle. That was obviously not relied on at the impairment stage, but becomes relevant now. I will not read it out, but it gives you a general idea of Mr Abubakar's character.

Madam, I don't want to repeat the submissions I have already made, because of course, many of the matters that are relevant to impairment are relevant again to sanction. They are in short to encompass the admissions he has made, the fact that it was out of character, isolated conduct, the fact that there are positive references and the fact that he has taken remedial steps to show an insight into what happened. Those are all relevant, and I won't go through the evidence or the submissions again.

When it comes to deciding sanction, obviously you will take a bottom-up approach, consider the least serious and move up the chain. Hopefully I can rule out two from the start. First of all, conditional registration is not really appropriate and is not a sanction that would easily fit into this case, and I would concede that at the outset. I would also submit because Mr Abubakar has come so far, he is not a danger to patients, is not a danger to the public

and has demonstrated such insight that erasure in this case would be wholly disproportionate. I hope you will be able to agree with that relatively easily.

The question is where in the sanctions spectrum it falls. It is unlikely, of course, that the Committee having considered the various impairments and having considered not to issue a warning with no finding of impairment, that no sanction would be appropriate; that is always unlikely but please consider it. It may be that you are able to mark the seriousness of the conduct, given the time that has passed, with a financial penalty. In my submission that would be an appropriate sanction in this case. There is a financial means statement as well which has been completed and signed, and I will hand that up.

If you do not feel it is appropriate to impose that sanction, I hope you will consider the other possibilities. The next one up that would be appropriate I suppose is a period of suspension. If that is what you believe, I would ask that that period is kept as short as possible because of all the reasons that I set out, most importantly, the insight that he has displayed and the length of time since the incident where he has obviously been practising as a student despite having passed all his exams and despite having qualified. That is something I would ask you to take into account as well. All those factors that I have outlined before may enable you to impose a lower sanction, that of a financial penalty rather than suspension in this case.

Unless I can assist you further, those are my submissions. [*The financial means statement was handed to the Committee*]

Ms Jeyasingham: Thank you, Mr Singh. Can I then ask our Legal Adviser to advise the Committee?

Mr Levisaur: Can I just read the statement first to make sure nothing comes out of here that I will need to advise you on? [*Pause*]

The task before you now is to consider the question of sanction. As you have already been reminded, it is your duty to start from the bottom up. I emphasise that because you must begin by considering whether each of the various options which are open to you allows you to dispose of this case adequately and appropriately. Bear in mind that this is a man of good character, take into account, please, all those factors which were put before you rapidly by Mr Singh just moments ago. You will no doubt wish to take into account such questions as the degree of insight which has been shown by this Registrant together with the other matters which he has put before you.

There is as you have heard a short financial statement. A maximum 'fine', if I may so describe it, that you could impose is £50,000, but I tell you now that I would be astonished were you to impose a fine of that magnitude. I think Mr Albuery would almost choke if that were to happen!

Please bear in mind your duty which is to preserve public confidence in this profession and to maintain standards. There is nothing else that I want to say about the facts. They are in short compass and they are well before you.

You must, of course, consider both the needs of the profession and the needs of the general public, as well as this young man, when it comes to the imposition of sanction. What you must do must as is commonly said be proportionate both to the offence, the needs of the public, and the particular circumstances of this registrant.

That is all that I would wish to say.

Ms Jeyasingham: Thank you.

[The hearing adjourned at 14.21]

[The hearing resumed at 15.06]

Ms Jeyasingham: Can I ask the Registrant to stand while I read out the sanction?

Sanction

In considering sanction, the Committee has borne in mind the submissions made by Mr Singh for the Registrant, and has accepted the advice given to it by the Legal Adviser.

The Committee does not consider that public confidence in the profession would be upheld in this case by the imposition of no sanction. The Committee accepts that this was an offence of dishonesty which was committed on one day and that since then there has been no challenge to the honesty of the Registrant. It bears in mind that he is otherwise of good character. The Committee is satisfied that the Registrant has learned a lesson such that he is unlikely to countenance, let alone indulge in dishonest professional behaviour.

In all the circumstances, the Committee is satisfied that the appropriate sanction is to impose a financial penalty. Bearing in mind that the Registrant has not been able to register for some five months because of these proceedings, the Committee considers that the appropriate order is that the Registrant be ordered to pay the sum of £1800 by 24 December 2010.

Do you understand this determination? *[The Registrant affirmed]* Could I ask you to sign the determination please? *[Signed]*

Are there any other issues? *[No]* In that case, I close the hearing. Thank you very much.

[The hearing concluded at 15.08]