

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

GENERAL OPTICAL COUNCIL

AND

WILLIAM JOSEPH BYRNE (SO-2100)

Tuesday, 6 October 2009

Substantive Hearing

SUBSTANTIVE HEARING: WILLIAM JOSEPH BYRNE (SO-2100)

Tuesday, 6 October 2009

Committee: Mr Peter North – Lay (Chair)
Mr Rod Varley - Lay
Dr Dozie Azubike - Lay
Ms Elizabeth O'Donoghue – Optometrist
Professor Stephen Taylor - Optometrist

Legal Adviser: Mr Anthony Coleman

Hearings Manager: Mr David Henley BEM

For the GOC: Mr Chris Alder

For Registrant: Mr Sandesh Singh

[Hearing commenced at 10.00]

Mr North: Good morning, I am Peter North, 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 shall ask the members of the Committee to introduce themselves and the capacity in which they sit. *[Introductions]* To my right is Mr Anthony Coleman, 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.

At the desk to my left is David Henley, the Hearings Manager, who will provide administrative support to the Committee. Next to Mr Henley is 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, other than in the public and press areas, are members of the respective legal teams. All parties are reminded that, where details of patients are discussed, those patients have been allocated the letters A to E in the allegation, and those patients should only be referred to by the letter which has been allocated to them. At this stage of the procedure, do I have any applications from either of the representatives?

Mr Alder: Not from the Council. I think you have an application from the Association of Optometrists.

Mr Singh: Sir, I suppose it is not so much an application as a concern that has been raised, if I may explain the background. As you are aware, Mr Byrne was a student optometrist at the time that the conduct relating to this allegation arose. He was undertaking his pre-registration year at the time and was subject to the College of Optometrists' scheme for registration. A development yesterday means that there is simply a question mark over his current status on the register; that is the only concern that we wanted to raise. May I say that Mr Byrne has wanted this to be known and out in the open from the beginning, and he will give evidence about it in due course?

Sir, you and your colleagues may know that various exams have to be taken as part of the scheme for registration. There is a limit in respect of how many times an exam may be taken. One exam has not been passed by Mr Byrne for the last time, one of the reasons being these ongoing proceedings. There was an adjournment that meant that the exam and this hearing fell very closely together. It was hoped that this hearing would have been out of the way by the time of the retake but it was not and, unfortunately, Mr Byrne has not passed that exam. As a result, yesterday he received a letter from the College stating that he is no longer on the scheme for registration, because that has now come to an end as a result of him failing that exam.

There is still some hope in that one never knows how likely it is that they will allow this. It says that, in exceptional circumstances, he may apply to resit the whole of the scheme for registration, including the pre-reg year and all of the assessments. I can say that it is his intention to make that application, because it is still the profession that he desperately wants to pursue but whether that will be successful or not, who knows? I know from various conversations that the odds are generally stacked against a student in those circumstances but that is the situation.

The concern that we raise, and raised, sir, with your Legal Adviser earlier, is what effect that has, if any, and I have to say that I do not know the answer myself, because the Act does not make it completely clear what various terms mean in relation to entitlement to be on the register. Sir, if you and your colleagues have the Handbook to hand, perhaps you would not mind turning to pages 14 and 15. May I raise this in open tribunal session because it is important that legal advice is given on it and, sir, that you and your colleagues are able to consider it to make sure that you are happy you have jurisdiction in this circumstance. Section 8A which is registers of Students states in subsection (1) that:

- “(1) The Council shall maintain a register ...
- (2) A person who is undertaking training provided by an approved training establishment or obtaining practical experience in the

work of an optometrist or a dispensing optician shall have his name in the appropriate register.”

He is not undertaking training at the moment because the scheme has come to an end, so he doesn't fall within that subsection. The really relevant part is subsection (3) where it states:

- “(3) A person shall be entitled to have his name in the appropriate register if he satisfies the Council that he is fit to undertake training as an optometrist or a dispensing optician, and either –
- (a) he is undertaking, or will be undertaking, training provided by an approved training establishment; or
 - (b) he is obtaining, or will be obtaining, practical experience in the work of –”

and it goes on to detail the kind of practical experience. The only concern we raise is whether, in the time in between the scheme coming to an end and a decision being made by the College as to whether he can restart, he is neither of those things: he is not undertaking, and it is not confirmed that he will undertake. He intends to do so but whether he will or not is another matter for the College yet to be decided.

I suppose it will turn on whether “will be undertaking” and “will be obtaining” in fact means intends to do so, or it is confirmed that he will do so. That is something on which we have sought guidance, and your learned Legal Adviser has expressed a view on it. However, it is something that is not quite clear from the wording of the Act.

The only submission I suppose I can make is that “is undertaking” and “is obtaining” are both certainties; “will be undertaking” and “will be obtaining” one would have thought are certainties as well. If they are not, then anyone can be on the register just having expressed an intention to undertake training whether they really were going to do so or not. There would be all sorts of people on the register who expressed an intention but never undertook training. Whether or not that would be a problem is a matter for the profession, for the panel and for your learned Legal Adviser to advise you on.

There is a concern on our part that, if he is neither of those things, the result is that he is not entitled to be on the register. The next question is: what jurisdiction does the panel have to discipline someone who is not entitled to be on the register? He may be on the register and he is, but the question is should he be? If he is not entitled to be, what is the panel's position? I have to say that I don't know but our gut feeling, and I suppose our submission in this case, is that the panel would have to be satisfied that they do have the jurisdiction before they proceed. That is the short point. I shall probably hand over to my learned friend and the learned Legal Adviser to take it further.

Mr North: Before we do that, Mr Alder, do you have any comments?

Mr Alder: Sir, I am grateful to my learned friend for flagging the concern this morning. I wonder whether my learned friend could go one stage further and explain to the Committee what exactly the position of the registrant is in all of this. While the matter is for interpretation and you will clearly receive legal advice on it, it would really place the Committee in a difficult position if it did not understand or was not aware of the interpretation which the Association of Optometrists puts on the point. I shall make further submissions when I have listened to further representations. The Council's view is that, because Mr Byrne is currently registered and remains registered, he is a registrant on the list of student optometrists, and that triggers this Committee's decision to consider this case.

Broadly speaking, as far as Section 8A of the Act, it is a series of provisions which enable an individual to become registered with the Council. It does not in any way preclude the registrar from registering those who are entitled to be registered. Equally, there is no provision within 8A, however, which imposes an obligation upon the registrar to remove from the register those about whom there may be concerns regarding fitness to practise or, in this case, fitness to undertake training.

In terms of 8A(3)(a), i.e. whether a student optometrist is undertaking, or will be undertaking, training, I would suggest that the Committee looks very much to the intention of this provision and indeed the Act. Mr Byrne intends to seek training as an optometrist. This Committee has a number of different hats it must wear both in terms of considering evidence, but also bearing in mind the role and responsibility of Council to consider in the public interest issues relating to the fitness to undertake training. All of those issues taken together do trigger, I would suggest, this Committee's jurisdiction to hear this case. However, while the Council clearly suggest that you should proceed with the hearing today and that this Committee does have jurisdiction, I do believe that you will need greater assistance from the Association of Optometrists as to whether the Association of Optometrists agrees with that interpretation or whether perhaps in making an application this Committee does not have jurisdiction. I just wonder whether the Association of Optometrists can assist the Committee further with that.

Mr Singh: Sir, I can. I am concerned that the Committee does not, I hope that is clear from the way I put the submission. I have to say I don't know what the answer is, whether you do or do not, but I am concerned that you do not simply for the reason that he falls in neither category of undertaking or will be undertaking. As a result, it may be that he is not entitled to be on the register and, as a result, it may be that the panel does not have jurisdiction to deal with someone who is not entitled to be on the register. That is our concern but, as I have said, I am afraid I do not know the answer.

Mr North: Thank you, Mr Singh. Mr Alder, do you have anything further?

Mr Alder: I have no further submissions.

Mr Coleman: Mr Chairman, you are not obliged to accept my advice, as you are responsible for decisions in relation both to matters of law and of fact. However, my advice to you is clear cut. My firm advice is that you have jurisdiction over this case for so long as Mr Byrne remains on the register of student optometrists. You have been referred to Rule 8A which lays down the conditions that need to be satisfied before someone can be registered on the appropriate register. Therefore, under sub-rule (3) a person who satisfies those criteria or conditions is entitled to say to the Registrar, 'register me because all the boxes can be ticked'. It is not in dispute that, until very recently – a week or two ago – Mr Byrne was entitled to have his name in the appropriate register. So he satisfied all the requirements historically.

Once he is on the appropriate register, does he cease to be on it once he is no longer entitled to be on the register? My firm advice is that it does not automatically follow that he just falls off the register if those conditions are no longer met. My reason for saying that is that there is provision within the rules, or a series of rules, governing removal of a registrant from the appropriate register. If you look at page 67 in the Handbook, these are the General Optical Council Registration Rules 2005, you will see that under Part 5 – Retention of Registration – at Rule 20(1), it states:

“The registrar may remove a registrant's name from the appropriate register if he is not satisfied that –

- (b) the registrant is entitled to be registered under section 8, 8A(3) or 9;”

and 8A(3) is the point here. Therefore, my clear advice to you is that, once Mr Byrne has been correctly placed on the register, he remains on the register until such time as the registrar removes his name in exercising his powers under Rule 20. It may be that the registrar, in considering his powers, might choose to remove Mr Byrne's name from the register in the circumstances, but he has not done so. Unless and until such time as he does make that decision, he remains on the register and you have jurisdiction. It may well be, you may feel, that the registrar would be extremely reluctant to exercise his powers anyway if, as appears to be the case, it is Mr Byrne's intention to continue with his ambition of training as an optometrist and remaking the necessary application, putting forward extenuating and exceptional circumstances that may enable him to restart his training under the scheme for registration, as has been heard during the course of submissions. Therefore, in all those circumstances, my advice is that Mr Byrne remains on the register, you have jurisdiction until such time as he is removed from the register. Mr Chairman, I do not know whether there are any further submissions arising out of my advice but I believe it is right and proper that you should ask for them if there are any.

Mr North: Mr Singh?

Mr Singh: None at all, that was helpful.

Mr North: Mr Alder?

Mr Alder: No, thank you.

Mr North: May I ask my colleagues if they are content, therefore, to proceed with the matter this morning on the basis of the advice we have received, or do they wish to go *in camera* to discuss the point?

Dr Azubike: I would like a short discussion.

Professor Taylor: I would also like a short discussion.

Mr North: If you would withdraw and we shall go *in camera*.

[Hearing adjourned at 10.19]

[Hearing resumed at 10.33]

Mr North: [reads]

“The Committee has considered the submissions of both parties regarding jurisdiction. The Committee has accepted the advice of the Legal Adviser. It is satisfied that Mr Byrne is properly entered in the register of student optometrists and that he remains on that register until such time as the registrar exercises her powers under Rule 20 of the General Optical Council Registration Rules 2005. The registrar has not yet done so and, accordingly, the Committee is satisfied that it continues to have jurisdiction in the case.”

Accordingly, I shall now ask Mr Henley to read out the allegation.

Mr Alder: Sir, I wonder whether, before Mr Henley is invited to do that, I may make an application on behalf of the Council.

Mr North: Indeed.

Mr Alder: The Council’s application is to make an amendment to the allegation which is set out on the Notice of Inquiry. The application is made pursuant to Rule 34 of the Council’s Fitness to Practise Disciplinary Rules, page 98 of the White Book, sir. I wish to outline briefly what the Committee are, I am sure, well aware of. The Committee does have power to grant an application to amend the allegation where you, the Committee, are satisfied that it is just to do so. The Council’s application is that amendment to the allegation is necessary in order to clarify a number of aspects of the allegation which the Council brings, and in order to ensure consistency as to the format of the allegation, to ensure it is consistent with future cases

and future intended allegations. To that end, sir, the case which faces Mr Byrne has not changed in any way; the principal issue being one of the submission and preparation of false records during a Quarter 3 competency assessment, and that Mr Byrne had done so dishonestly remains very much the core of the case. Therefore, no additional evidence is required; no additional aspects of the case are brought by the Council. I would recommend to you this additional allegation and if I could hand out copies to the Committee. [*Revised allegation distributed*]

As the Committee may see from comparing the Notice of Inquiry and allegation set out in that document, references are made to the same competency assessment documentation in respect of the same patients, in respect of the same false records which were provided. The additional aspect, if I may put it that way, is the clarification in respect of particulars (i) and (iii), which, as the Committee will see, refer to the preparation of false records, as distinct to (i) and (ii) which were the actual submission of the false records, as the Council would say. That is really the main distinction between this allegation and the allegation set out in the Allegation on the Notice of Inquiry. Sir, I understand that, with respect to clarification in terms of particulars (i) and (ii) on behalf of the Association of Optometrists, the amendment to the allegation is accepted. It is a matter for my learned friend to point out the clarification with respect of (i) and (ii).

The Council's case throughout, very briefly, is that during a competency assessment in respect of Quarter 3 undertaken on 28 May 2008, Mr Byrne submitted patient records for assessment in respect of Quarter 1 and Quarter 2, and that those records that were submitted were false, and there was the preparation of false records. Now all of those records were submitted for the Quarter 3 assessment, and it is that point of clarification in respect of (i) and (ii) on which my learned friend may address the Committee.

I also have for the Committee a patient identification schedule to hand up, which will tally with patients A, B, C, D and E which are set out in the allegation. I can hand that up to the Committee at this stage if that is of assistance. That is my brief application and I would suggest that it is just for this application to be made and, given the nature of the additional clarification of the allegation there is no prejudice in any way to Mr Byrne in the Committee accepting this amendment.

Mr North: What do you say, Mr Singh?

Mr Singh: Sir, I do not oppose the amendment in principle. As far as the clarification that my learned friend mentioned, it is as follows. The 1(i) patient A Quarter 1 competency assessment was submitted at the Quarter 1 competency assessment, not the Quarter 3. As far as (ii) and (iii), B and C and D and E were submitted at Quarter 3 but B and C related to Quarter 2. Therefore, the easiest way to deal with it is that I do not object to the amendment but the admission in relation to 1(ii) will be submitted false records for Patients B and C as part of the Quarter 2 competency

assessment, although these were submitted at the time of the Quarter 3 competency assessment. I believe that will satisfy both sides.

Mr North: Mr Alder, anything further?

Mr Alder: Only to suggest, and for absolute certainty, that the Council brings this case and in terms of the factual basis of the allegation will always retain the burden of proving the allegation. In no way, does the Council suggest this is an allegation which should be drafted according to any admissions which would be made by any registrant let alone Mr Byrne, which is why the allegation is drafted in the succinct form that it is, and has not sought to include additional wording in particular 1(ii), to accede to a request that would assist an admission in some form from the registrant. It is a succinct and, I would suggest, a concise allegation and forms the basis of the Council's case. In terms of clarification as to when the patient records were submitted and to whom is a matter to be clarified as I suggested to the Association of Optometrists in my opening, but certainly through the evidence it will become clear as to when and where the records were submitted. Those are my brief observations on particular 1(ii), sir.

Mr North: Legal Adviser, do you have any comment at this stage?

Mr Coleman: Mr Chairman, I am slightly perplexed. On the basis of what you have heard, it would seem there is some objection in relation to 1(ii) simply on the basis that the submission of the false records for patients B and C took place at the time of the Quarter 3 competency assessment, that appears to be the registrant's case. However, will the Council's case be any different as to when the false records were submitted?

Mr Alder: No, indeed, sir, the false records were all submitted at –

Mr Singh: Probably the easiest way to do it is that particular (i) will be admitted, particular (ii) will be admitted although these were submitted at the time of the Quarter 3 competency assessment, and particular (iii) will be admitted. That is the easiest way to deal with it.

Mr Coleman: Mr Chairman, my advice is that it is for Mr Alder to pursue the form of amended allegation that he wishes on instructions to put forward. If Mr Alder is putting forward this form of words, it may well be that, in due course, there will be an admission on a certain factual basis that will, again, be accepted by Mr Alder. However, it would be wrong for the registrant to determine the final wording of the allegation that is put before you by way of amendment. Sir, you have power to allow the amendment, you need perhaps to consider whether there would be any injustice but, in light of the fact it seems to be common ground that the registrant will be admitting (i) and (ii) on a particular factual basis that is itself accepted by the Council, I feel there would be no possible injustice arising out of allowing the amendment in this form.

Insofar as 1(iii) is concerned, the initial charge alleges submission of the false records, whereas 1(iii) is an attempt. It is the preliminary preparation of false records falling short of the actual submission and, as I understand it, there is no objection to that.

Mr Singh: That was something suggested by us to clarify the position that the evidence disclosed, that D and E were never submitted; they were simply prepared.

Mr Coleman: So, to that extent, there is common ground, or so it would seem, between the parties as to (i) and (iii). Attempting to simplify it, Chairman, it would seem there is nothing in dispute between the parties and, therefore, you may feel you should go ahead and allow the amendment in the form proposed.

Mr North: Subject to any further comment are my colleagues content to proceed on the basis of the amended allegations?

Professor Taylor: Can I just clarify that it is the amended allegation put forward by Mr Alder without any additional comment?

Mr Singh: Yes, the admission will be termed in the additional comment; that is the easiest way.

Mr North: So we can make that clear in the record. We move then to Mr Henley to read out the amended allegation?

Mr Henley: [reads]

“The Council alleges that you, William Byrne (a registered student optometrist):

1. during your pre-registration training to qualify as an optometrist, dishonestly:

(i) submitted false records for assessment with regard to Patient A as part of the Quarter 1 Competency Assessment;

(ii) submitted false records for Patients B and C as part of the Quarter 2 Competency Assessment;

(iii) prepared false records for submission with regard to Patients D and E as part of the Quarter 3 Competency Assessment;

AND by virtue of the matters set out above, your fitness to undertake training as a registered student optometrist is impaired by reason of misconduct.”

Mr North: Mr Singh, are there any admissions?

Mr Singh: Sir, there are. Dealing with each one in turn, 1(i) is admitted. 1(ii) is admitted to the extent that B and C related to the Quarter 2 competency assessment but were submitted at the time of the Quarter 3 competency assessment, and 1(iii) is admitted.

Mr North: Thank you.

Mr Singh: It is also admitted that the facts amount to misconduct. Sir, I am sure you will take this in a stage process and I don't know whether you want to pronounce that you find the facts proved first and then move on to the misconduct stage – I suppose that is the proper way to do it.

Mr Alder: Sir, if I may just pre-empt you, you will be conscious that this was a hearing adjourned from 20 July on the basis that the Council and, indeed, the Association of Optometrists acting for two registrants in a judicial review sought clarification as to the procedure to be followed by the Fitness to Practise Committee and, indeed, aspects as to misconduct and impairment. The judicial review concluded with a consent order completed by all parties, which included the Fitness to Practise Committee, and suggested or recommended strongly that the correct procedure to be followed by the Fitness to Practise Committee is a four stage process. Sir, you will be very clear but purely for the record, that four stage is breaking down to initially consideration of the factual basis of the allegation, secondly for the Committee to consider issues as to misconduct, and those issues being determined on the basis of the Committee's judgment, not based upon any element of proof on behalf of the Council. The third stage, once two has been concluded, that the Committee consider issues as to impairment, in this case impairment as to the registrant's fitness to undertake training. Once again, that stage is determined on the basis of the Committee's judgment rather than any element of proof. Fourthly, if the Committee reaches this stage, it is for the Committee to determine issues as to sanction. Sir, I would recommend that, as far as today's hearing, this Committee proceed on the basis of a four stage process.

Mr North: Having been involved in those matters, Mr Alder, I had planned to proceed accordingly.

Mr Alder: I expected that you had, sir, but I am conscious that we are in a public hearing and it is a different case from those other two.

Mr North: Mr Singh, you have completed your admissions?

Mr Singh: Yes.

Mr North: I, therefore, ask Mr Alder to open the case.

Mr Alder: Thank you, sir. I understand that a copy of the hearing bundle has been handed up to the Committee. I anticipate that the Committee have not had the opportunity to read the bundle in its entirety but, of course, there will be an opportunity for the Committee to do that. Therefore, I would ask the Committee to forgive me if I go through the bundle in some detail to ensure all the factual context is put before the Committee.

Mr North: Could I just check that it is an agreed bundle? [Agreed] That will be marked C1.

Mr Alder: Sir, the first stage is to deal with the factual issues. There is a burden at this stage on the Council to prove the factual allegations and prove those to the civil standard, so against the balance of probabilities. The Committee must determine whether the alleged events are more likely to have happened than not and, of course, you are assisted greatly by the admissions put forward by Mr Byrne.

Mr Byrne first registered with the Council as a registered student optometrist on 9 November 2005 and, as the Committee have already heard, he is registered with the Council on that register until August 2010. Mr Byrne was undertaking his pre-registration training at Specsavers, which is at 40 Northgate Street, Chester Branch. During the pre-registration year, for all trainee optometrists or pre-registration optometrists, not only is that year supervised by an individual in practice, but it is also assessed on a quarter basis by an assessor appointed by the College of Optometrists.

The assessor appointed by the College will meet with individual students to discuss their training, their progress and broadly to provide a degree of pastoral support where necessary. Ultimately, the performance assessor is available and attends on these quarterly bases to ensure that pre-registration students have completed relevant competencies. The competencies are set against an assessment framework prepared by the College, and those competencies set out a series of patients and ocular conditions, abnormalities, which a pre-registration student is expected to see, to examine, to hold consultation with during the period of the pre-registration placement.

Sir, a copy of the assessment framework is on page 28 of C1, the Council's bundle. By way of example in terms of page 28, as you will see from half-way down, it says First Quarter Competency Group 1 – Communication and Professional Conduct. There is, for example, an expectation set out at 2.1 being the competency statement, the ability of a pre-registration trainee "to manage patients in a safe, ethical and confidential fashion". Then it sets out a set of criteria as to what permissible evidence is available for the assessor to consider and quite clearly that is indexed in the top left-hand corner. The performance criteria for the assessor and ultimately the College to consider as to whether the competency has been achieved.

On the right-hand side, it sets out the patient episodes, the detail that the assessor will expect a pre-registration trainee to have seen. For example, in respect of this particular competency and I only draw you to it by way of an example, it states: "hypermetropic, myopic, astigmatic and presbyopic patients presenting with headache and/or blurred vision". Those are the types of conditions which would be expected to have been seen and examined by the pre-registration trainee in respect of that competency. Sir, that flows through with a number of the competencies to the first quarter

assessment, thereafter the second quarter assessment, third quarter assessment, leading then to the final assessment.

As the Committee will have seen from page 28, the competency framework, a number of examples of evidence are required of a pre-registration student so that the assessor can be sure that a particular type of patient or a patient with a particular condition has been seen. One such example of evidence is referred to as the patient episode record, which forms part of the evidence base which the trainee should provide to the assessor. A copy of a blank version of a patient episode record is at page 53 and the Committee will see, just by way of example that this blank form ties back to the competency framework looked at on page 28. At the top it says Patient Episode Record Quarter 1, name of pre-reg optometrist, and then the competency group which is being assessed. As far as the patient episode, there is a series of different examples such as headache or blurred vision, recent onset floaters. The trainee is expected then, within the patient reference section, to see a patient relating to each of those particular competencies. Then the dates are listed on the right-hand side. That is in respect of the patient episode record for Quarter 1.

You will see that there are a series of competencies that are expected of the individual trainee at each individual competency. In respect of Quarter 1, you have that at page 53. The Quarter 2 assessment is at page 55 in blank version, where the Committee will see a different series of competencies expected. When one turns to page 56, the pre-registration student is expected to confirm, as with each of these patient episode records, that the student has concluded all of the patient episodes used as evidence in the Quarter 2 episode table above.

To complete the picture, at page 57 the patient episode record for Quarter 3, the same process is adopted for the patient episode record for Quarter 3 as for the previous two episode quarters. Once again, a declaration is required by the student to confirm that he or she has completed all of the patient episodes. Sir, it may well be when an assessor visits a particular pre-registration student that he or she may not have been able to complete a particular competency. For example, in Quarter 1 the assessor will expect that competency to have been achieved during the next quarter assessment, so the Quarter 2 assessment. The final assessment to complete the pre-registration process is undertaken in June and it can only be reached by a pre-registration student if the previous three quarters' assessments have been completed satisfactorily. That talks to the generic pre-registration process and I am sure that many of the Committee members are aware of that process from their own experience and practice.

This case very much looks at the Quarter 1 competency assessment records, the Quarter 2 competency assessment records but they are all submitted as part of the Quarter 3 competency assessment undertaken, in terms of competence the Quarter 2 competency record, the Quarter 3 competency record, which were provided at the Quarter 3 competency assessment undertaken by Professor Steven Parrish on 28 May 2008.

Professor Parrish had available to him during that Quarter 3 competency assessment the Quarter 1 competency records, the Quarter 2 competency records but he did not have available to him the Quarter 3 competency record because, before that could happen, the assessment was suspended by Professor Parrish.

During the Quarter 3 competency assessment, the patient episodes for Quarter 1 and 2 were provided to him. Professor Parrish reviewed the patient episode records in respect of rigid gas permeable competencies, and noted an anomaly when he asked for further evidence that those competencies had been undertaken. Mr Byrne, following additional questioning by Professor Parrish, confirmed that he had made those records up in respect of patients B and C. Professor Parrish at that stage stopped the assessment, he called the College of Optometrists and sought guidance, and he was informed that he should suspend the assessment at that stage.

The College took over the investigation into the, what were at that stage, allegations, and the lead assessor for the pre-registration scheme, Ruth Brough, undertook an investigation. Ms Brough has completed a witness statement which is included in the bundle for the Committee. I propose to read the statement and I do so not because I expect the Committee not to have read it, but because I am conscious that, while it is an admitted case, we are in a public hearing and, therefore, there is some context which may be necessary as far as the public record to understand the basis of Ms Brough's investigation, and the conclusions which she reached.

If you turn to page 1 of the witness statement of Ruth Brough, on the bottom of each page she has confirmed that the statement is true to the best of her knowledge and belief. She says:

- “1. I have reviewed the representations made by Mr William Joseph Byrne in this matter, together with the College of Optometrists original allegation notified to the General Optical Council in July 2008.
2. I make this witness statement in support of the original allegation of the College of Optometrists and to comment on the issues raised in the representations.
3. 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 to work as an Assessor during the pilot of the new Scheme for Registration. From 2006, I accepted a permanent part-time contracts with the College as Lead Assessor for the Scheme. However, I continue to practise and I am also a visiting lecturer at Aston University.

4. One of my roles at the College of Optometrists is to investigate matters relating to the work-based elements of pre-registration training.

5. During the pre-registration period, the student is employed, for example, in a practice or hospital, where he is supervised.

6. Every quarter an Assessor from the College meets with the student and supervisor to discuss progress and assess whether the student has completed all his competencies adequately. The Final Assessment is designed to finally sample, under examination type conditions, a selection of the competencies tested in the workplace, and is held on a quarterly basis throughout the year. The summer sitting takes place over a period of 3 weeks from the end of June each year. However, in order to reach this summer sitting of the Final Assessment, students need to ensure their competencies are signed off by their Assessor by about the middle of May.

7. On pages 9 and 10 Exhibit RB/1 is an extract from the College's (Scheme for Registration Handbook 2007), which refers to the type of experience a student is required to undertake. This states in paragraph 39, "You must see the range of patient episodes listed in the Assessment Framework in Annex F of this handbook. You should decide with your Supervisor how you will achieve this. It may mean planning sessions in other practices that specialise in particular types of work. Assessing and dispensing patients with low vision, assessing patients with binocular vision anomalies, fitting and aftercare of patients wearing rigid gas permeable lenses and examining young children are all examples of areas for which you might need to seek experience outside your practice ..." The Assessment Framework mentioned above is attached as Exhibit RB/2."

Sir, that is the reference to page 28 to which I took the Committee in my previous opening. [*Continues to read statement*]

"On pages 28 to 36 inclusive of Exhibit RB/2 is the Assessment Framework which lists the competencies which are considered in the first quarter. These are also listed in pages 53 and 54 of Exhibit RB/3 and referred to in the handbook (page 9 of Exhibit RB/1), which states in paragraph 31: "Look at the evidence you will need to provide and the patients you will be required to see ..."

Sir, that is the patient episode record to which I have referred the Committee.

8. Exhibited to this statement marked RB/4 are copies of various documents relating to the investigation, including correspondence and a transcript of my meeting with Mr Byrne on 26 June 2008."

Sir, if I could briefly take the Committee to page 59, this is the letter sent from Professor Parrish to the College of Optometrists. Professor Steven Parrish was the assessor and he says:

“I have today carried out a third assessment on the above trainee. There were a total of fourteen outstanding competencies from the two previous quarterly assessments to be addressed before starting those for quarter three. He appeared, and admitted to being nervous, so I allowed him to select the order in which we should proceed. He elected to carry out the rigid gas permeable assessment first.

He presented me with three patient records as evidence of rigid gas permeable fitting. I asked to see evidence that the contact lenses had actually been ordered and supplied. There was evidence that this was the case for the patient named ... but there were no documents for patients B and C. I was told that all documentation was lost or destroyed. It should be noted that all three patients were members of the practice staff.

Mr Byrne then admitted that two of the three records were false and that neither of the patients had been fitted or supplied with rigid gas permeable contact lenses. On the patient episode sheet supplied for this visit these two patients are also listed as providing the evidence for the rigid gas permeable aftercares and it follows that as they were never fitted with lenses these records must also be assumed to be false.”

He then goes on to talk about his correspondence with the College, and the letter is signed “Yours sincerely, Professor Parrish”. As far as identifying the patient records which were submitted, perhaps I could ask you to turn to page 66 of the bundle. These are very much the notes from the investigation completed by Ms Brough. Under the section entitled “Inspection of Log Book”, it states, to whatever extent the Committee give any weight and it is a matter for the Committee, about half-way down in the paragraph beginning, “A few episodes could not be found”, and in the final sentence of that paragraph it states:

“The overall consensus of the investigators was that, as the trainee had previously admitted, there were 5 falsified records either used, or which he had intended to use, in the assessment process, namely records:

- Q1 patient A
- Q2 patients B and C
- Q3 patients D and E”

Sir, as the Committee will be clear from the allegation in respect of patients D and E, those records were prepared but not submitted because, prior to their submission, the assessment had been suspended.

If I could ask the Committee to turn with me to page 67, it refers to the paperwork reviewed and states there: "The actual patient episode sheets provided to the Assessor during the assessment are at" patient episode sheet Q1 – and I will identify those with the Committee – patient episode sheet for Q2 and patient episode sheet for Q3, all provided to the assessor. Under Conclusions it states:

"As a result of sampling today, the investigators are of the opinion that the trainee's logbook is accurate in terms of patient numbers. The evidence presented to the Assessor was accurate apart from the 5 records in question, which the trainee had admitted were false."

Sir, as far as the patient records for Quarters 1, 2 and 3 that are referred to, if I just briefly read to you from Ruth Brough's statement [*continues to read statement of Ruth Brough*]:

"9. Exhibited to this statement marketed RB/5 are copies of the patient episode sheets Q1, Q2 and Q3. The falsified records of evidence of Rigid Gas Permeable fitting given to the Assessor at the Quarter 3 Assessment are listed on the Q2 Patient Episode (later additions) Sheet (found on page 77)."

If I could ask you, first, to turn to page 72, this is the patient episode record for Q1, name Mr Byrne, and in the bottom right-hand corner under the Group 5 competency contact lenses, 3x soft contact lens fittings, the final name given there which is identified as patient A was the false record submitted. That is patient A, date seen as recorded by Mr Byrne which we know to be false, 21 November. On page 73 a confirmation statement is given by Mr Byrne that he completed all of the patient episodes used in evidence in the Q1 episodes table above.

Sir, if you then turn to page 75 of the bundle, the patient episode record for Quarter 2, the original version if the Committee turn to page 76, you will see a number of blank spaces in terms of Group 5 contact lenses, at least 3x RGP fittings and contact lens aftercares, that section is blank. If the Committee turn to page 77, you will see the document submitted to Professor Parrish and the final two names on that patient episode record of patients B and C as being suggested evidence by Mr Byrne that he had seen at least three RGP contact lens aftercares. Once again, the confirmation is given at the bottom: "I confirm that I have completed all the patient episodes used as evidence in the Q2 episode table above".

Sir, for completeness on pages 78 and 79, we see the patient episode record for Q3. You see on page 78 reference to which patient episode record it refers to and on page 79 the Group 5 competency contact lenses, and on the right-hand side the fourth and fifth names down are references to patients D and E. First, the reference is to patient D being at least one contact lens patient with an astigmatism greater than 1.5 dioptre and beneath that in respect of patient E at least one patient requiring contact lenses for one of the following. It is indicated by Mr Byrne that patient E

was seen in respect of presbyopia. Again, for completeness, and I appreciate that it is the same pattern throughout, it states: "I confirm that I have completed all the patient episodes used as evidence in the Q3 episode table above". For absolute clarity, this is the document that was not submitted because, while it was prepared for submission to Professor Parrish, it was not passed to him because, before that could happen, the assessment had been suspended.

That is the crucial evidence to which the Council refers as far as the submission of the records. To return to Ruth Brough's statement at paragraph 10:

"10. The assessment of Mr Byrne's third quarter competencies was carried out by Professor Steven Parrish, an Assessor for the College, on 28 May 2008. It was during this assessment that Professor Parrish noticed discrepancies and contacted me at the College of Optometrists. I advised him to suspend the assessment.

11. I had a subsequent conversation on 28 May 2008 with Professor Parish once he had left the practice. He informed me that he was in the process of assessing a student and suspected that the student had submitted false records. The allegations were that the student had admitted that two of the three records presented as evidence of rigid gas permeable fitting were false and that neither of the patients had been fitted or supplied with rigid gas permeable contact lenses. As a result, I advised Professor Parrish to terminate the assessment. The student concerned was Mr William Byrne who was a registered student optometrist. The assessments related to his pre-registration training to qualify as an optometrist.

12. On 3 June 2008 Josephine Mullin, Director of Education, wrote to Mr Byrne asking him to provide a written response to the allegations (page 60 of Exhibit RB/4).

13. In response to Josephine Mullin's letter of 3 June 2008, Mr Byrne responded in a letter dated 18 June 2008 (page 80 of Exhibit RB/6) the following:

"As I admitted on May 28th to Professor Parrish, his allegations were correct concerning two RGP records I submitted in relation to competencies 7.5 and 7.6. No lenses were ordered, supplied or fitted to the two patients in question. These two patients were practice staff, [patient B and patient C]. This action I regretfully took was for assessment purposes only.

Firstly, I want to express my sincere regret and apology for my lack of judgment and dishonesty. In no way is this a true indication of my character and professional behaviour. I would like to take the opportunity on June 26th to explain my

actions fully and to outline problems I encountered throughout my pre-reg period, while also complying fully with the College in its investigation.”

14. I met with Mr Byrne together with Mr Harold Atkinson, Senior Assessor, on 26 June 2008, at Blossoms Hotel in Chester (as Mr Byrne was no longer an employee of Specsavers Opticians in Chester). The investigation of the records was carried out at Specsavers Opticians in Chester where Mr Byrne had been working during his pre-registration training period.

15. On pages 63 to 68 inclusive of Exhibit RB/4 are copies of the typed notes of this meeting made by me. The notes are an accurate record of what was discussed.

16. At the meeting, Mr Byrne provided a copy of his completed logbook, as requested beforehand.

17. At the beginning of the meeting, I informed Mr Byrne that his assessor claimed that the records he provided as evidence of RGP fitting at the Quarter 3 assessment visit were false. I asked Mr Byrne if there were any other issues that he wanted to tell us now and Mr Byrne answered:

“Yes, there are 3 other records which are all related to CL issues; they are patient A from Q1 and patients D and E from Q3.”

18. I asked Mr Byrne if these falsified records were totally made up (i.e. false patients with false records) or were they false records of real patients. Mr Byrne replied:

“Patient A is a real patient that I observed the CL optician fitting, although the record I submitted of this ‘fitting’ is not real. I used it as a tool for the assessment, feeling that it could be used as a basis for role-play. I had issues within the practice in that my supervisor wasn’t at all involved with CL issues ...”

19. During the subsequent investigation carried out in the practice, Mr Atkinson and I inspected the patient episodes for Q1 and Q2 provided by the Assessor (Exhibit RB/5) in conjunction with the patient records on the practice computer system and the handwritten notes the Assessor completed during the assessment visits. We also inspected the logbook against the records on the computer to verify the accuracy.

20. At the end of the meeting, Mr Atkinson and I were of the opinion that Mr Byrne’s logbook was accurate in terms of patient numbers. The evidence presented to the Assessor was accurate, apart from

the 5 records in question, which Mr Byrne had admitted were false. We were of the opinion that Mr Byrne did own up to a degree of falsification when given an opportunity at the outset of the investigation and did cooperate with the investigators in the process. We were also of the opinion that Mr Byrne's attitude was one of concern and the realisation of what he had actually done was obvious throughout the process. We felt that the breakdown in certain relationships within the practice and his concern over losing his pre-reg position had contributed to his reluctance to ask for help when he found that gaining the relevant experience was difficult.

21. I understand that Mr Byrne has provided a written response to the Council's Investigation Committee which includes the following:

"In respect of the contact lenses it was never made clear to me that the contact lens optician, Mr Norriss, was responsible for the contact lenses part of my training.

... In practice, my contact lens sessions were listed for Thursday morning. During the courser of those sessions, I was told I should shadow Mr Norriss and simply sit in on some of his patients. However, there were many occasions when I was instructed to either dispense spectacles or perform sight tests. Contact lens patients were never booked for me.

... On 27 February second assessment with Professor Parrish took place and it was apparent then that my contact lenses experiences was at best limited and at worst non-existent. I raised this matter with both Ms Heyes and Mr Norriss. Finally, I managed to persuade a member of staff Ms Bright to allow me to fit her with RGP lenses. I was having extreme difficulty obtaining another two patients and I reluctantly created two false records (one week prior to the 3rd assessment) using details of two other staff members ... I had sight tested patients D and E but decided to use that information for a falsified soft toric lens fit and a soft monovision lens fit.

... As I said previously, I am extremely sorry for my actions but I found myself in a position where it seemed to me that I could not turn to anyone to resolve my difficulties. I also felt that, if I pushed to resolve them, I was going to be in a situation where I would lose my job and my training. I can only reflect o my actions with regret and hope that the Committee will allow me to put this matter behind me and try and continue with my career. I can reassure the Committee that this has been a salutary lesson to me and never again will I create or amend any document with false information."

22. I then referred my findings and recommendations to a meeting of 3 representatives of the Education (previously Academic)

Committee in line with College procedures and the case was referred to the Council.

23. Mr Byrne has, since 10th September 2008, continued his pre-registration training with a new supervisor in a different part of the country. He has also been allocated a new Assessor who is in the process of assessing the outstanding competencies before he is allowed to progress to the Final Assessment.”

That is dated 28 October 2008 and signed by Ruth Brough. Thank you for your patience in listening to the whole of the statement but I thought it would be fair in terms of balance to provide the full context of the matter. Sir, in essence, the false records are set out for you. There is a distinction, as you will be very clear of in the allegation, as to records for patients A, B and C being submitted as part of the assessment process, and the preparation of false records in respect of patients D and E as part of the Quarter 3 competency assessment. I would suggest that, given Ruth Brough’s evidence, the evidence referred to by Professor Parrish and the clear patient episode records, there is more than sufficient evidence for you to find the factual element of the allegation proven. Of course, I am sure you will be greatly assisted by the admissions made by Mr Byrne, as indeed he has throughout the College’s investigation and the Council’s investigation.

While the case draws allegations in respect of the falsification of records, the Council also clearly puts its case on the basis that Mr Byrne acted dishonestly. I am conscious you will receive clear advice as to what the two stage test is that you must apply when considering whether dishonesty has been proven. However, I would suggest that the falsification of records, and those records being devised with the intention to deceive the assessment process and the assessor, Professor Steven Parrish, does amount very clearly to an act of dishonesty being undertaken by Mr Byrne. Of course, you have available to you the admission by Mr Byrne that he accepts he acted in a dishonest fashion in respect of each of the five false records. Sir, unless I can assist you any further, that concludes not only the Council’s opening but also the evidence.

Mr North: Thank you. Do any of my colleagues have questions concerning the evidence at this point?

Professor Taylor: May I just ask for one clarification? You said the allegation was in June 2008 but the copy we have printed says July.

Mr Alder: I beg your pardon, July 2008.

Mr North: Any further questions? [*none*]

Mr Singh: Sir, may I make one point of clarification. It may not take matters very far but Mr Alder said that patient A was submitted at the time of Quarter 3 but it was submitted at the time of Quarter 1. For your reference, at page

72 of the bundle you can see patient A at the bottom of target 5 which was submitted at the time of Quarter 1 and not at Quarter 3 - that is just for clarification.

Mr Coleman: May we further clarify matters? Is the chronology this: that at the end of Quarter 1 was there an assessment with Mr Parrish?

Mr Singh: There was.

Mr Coleman: And, at that stage, this episode record Q1 that we have at page 72 was available and submitted to Professor Parrish at that time?

Mr Singh: A Q1, yes. Then at Quarter 2 if you move on, you see at pages 75 and 76, you see the RGP contact lens fittings section is blank, because that was deferred until later at Quarter 3. Then at Quarter 3, if we turn the page again to 77, B and C were submitted then and D and E on page 79 were prepared but not in fact submitted during the course of the assessment. B and C and D and E were to be submitted at the Quarter 3 assessment.

Mr Coleman: There had been a meeting for the purpose of assessment at the end of Quarter 2 with Professor Parrish?

Mr Singh: Yes.

Mr Coleman: And although there was no submission of any document to him at that time?

Mr Singh: Absolutely.

Mr North: Do we have any further questions? [*no questions*] Therefore, may I ask Mr Singh to make your opening statement?

Mr Singh: In respect of misconduct, or in respect of –

Mr North: We are dealing at the moment with the evidence, aren't we?

Mr Singh: In respect of the evidence, sir, I don't have anything else to add apart from the comment I just made. You have heard the submissions and they may be persuasive as to whether you find the facts proved in this case.

Mr North: Mr Alder, do you have any further comment?

Mr Alder: No, thank you, sir.

Mr North: Do either party wish to make any closing submissions?

Mr Alder: Sir, I wrapped them all up together in the sense that the Council convey the evidence to you and suggest that the allegations are proven on the factual evidence.

Mr North: We shall now go *in camera* to reach our decision on the facts.

Mr Coleman: Sir, may I perhaps clarify one or two matters? First, it is necessary, as I understand it, for the assessment of the facts to be separated from the question of misconduct. Therefore, at this stage, it is simply a matter of making a decision as to the facts. Insofar as the rules provide for legal advice, I simply confirm that, given the admissions that have been made, and given Mr Alder's clear and unequivocal confirmation that it is for the Council to bring the case, and to prove the case on the balance of probabilities, there are no further matters that I wish to draw to your attention by way of legal advice. He has referred to a two stage test for dishonesty but it is unnecessary for me to expand on that at this stage, or at all, bearing in mind the fact there is a clear admission of dishonesty on the part of Mr Byrne.

Mr North: Thank you.

[Hearing adjourned at 11.28]

[Hearing resumed at 11.54]

Mr North: Thank you.

Determination

Findings in relation to the particulars of the allegation.

The Committee has carefully considered the evidence of Professor Brough and Professor Parrish, and it has noted the admissions made by Mr Singh, acting on behalf of Mr Byrne. On the evidence the Committee finds the following facts proven:

- i. That Mr Byrne submitted false records for assessment with regard to Patient A as part of, and at the time of, the Quarter 1 Competency Assessment.
- ii. That at the time of the Quarter 3 Competency Assessment, Mr Byrne submitted false records for Patients B and C as part of the Quarter 2 Competency Assessment.
- iii. That Mr Byrne prepared false records for submission with regard to Patients D and E as part of the Quarter 3 Competency Assessment.

We now move to misconduct. Aware as I am of the recent consent order, do either party have any submissions to make in respect of misconduct?

Mr Singh: There is an admission on the part of Mr Byrne that the facts do amount to misconduct.

Mr North: Thank you, Mr Singh. Mr Alder?

Mr Alder: Sir, just very briefly, if I may. The issue as to misconduct is a matter for you, the Committee; it is a matter for your judgment. You must apply the standard of a reasonable student optometrist in deliberating as to whether misconduct has been made out on the facts in the allegation. It must be a serious departure from the standard expected. I would remind this Committee that, while there is an admission made by Mr Byrne, it is still a decision for this Committee to take as to whether misconduct is made out. The central focus of this case, I would suggest, is the issue of honesty and the extent to which a student optometrist is in some way acting appropriately if he is seeking to deceive his performance assessor. Clearly, the Council say it must be right for a student optometrist to have been found guilty of more than one act of dishonesty given the nature of the allegation, and that is a serious departure from the acceptable standards of conduct. Therefore, this Committee would be well able, and indeed justified, to conclude that misconduct had been made out. Sir, you will be aware of your duties to consider the public interest as part of your deliberations and to consider the code of conduct as part of your overall assessment as to what the standard expected of a registered student optometrist should be. Sir, they are brief submissions, you have heard the admission from Mr Byrne and, therefore, that completes my submissions unless I can assist you and the Committee any further?

Mr North: That is very helpful, thank you, Mr Alder. Legal Adviser, do you have any comments?

Mr Coleman: No further advice.

Mr North: And do any of my colleagues have any questions or comments at this point? [None] Would my colleagues be content to take a decision without retiring *in camera* in this area? [Agreed] Would they be content with a decision that misconduct has been found? [Agreed] Thank you. We can, therefore, proceed now to the next stage of the process which is the issue of impairment of fitness to practise.

Mr Alder: Sir, ordinarily, the Council would make its submissions first in respect of the issue of fitness to undertake training. As I set out earlier, it is a matter for the judgment of this Committee as to whether the factual basis of the allegation leading to your finding of misconduct amounts to impaired fitness to undertake training. It is a matter for you. I understand that it is proposed that Mr Byrne give evidence, and there is a question over the admissibility of additional evidence to be placed by the registrant before you. I wonder whether it is worth, therefore, slightly circumventing the route by having Mr Byrne give his evidence first and thereafter the issue as to the relevance of the additional evidence aired prior to concluding submissions on impairment?

Mr Singh: I can see the sense in Mr Byrne giving his evidence before you and your colleagues make a decision on whether the additional evidence is admissible or not. The additional evidence relates to what would be expert

evidence in relation to two areas concerning the difficulties faced by pre-reg students in large optometric practices and matters in relation to the supervision that he received during his pre-reg year. What would probably be the best thing, in my submission, would be to hear his evidence so that you know the ambit of the evidence within which you are working, and then you can decide whether the further evidence would be relevant to your consideration of impairment after that. However, I don't know whether Mr Alder is saying that he should suspend his submissions pending Mr Byrne giving evidence? My understanding is that the normal course would be for the Council to make submissions and, if he wishes to make closing submissions, as I understand it he is able to do that as well. If he wants to set out his position as to impairment, then we know what it is and we can attempt to meet it.

Mr North: Legal Adviser, do you have any comment?

Mr Coleman: Mr Alder, I think you should set out your case for the avoidance of doubt on the issue of impairment so that Mr Singh knows the case against him.

Mr North: Are my colleagues content with that approach? [*Agreed*] We shall proceed accordingly then.

Mr Alder: Sir, you have heard from me at length in respect of the evidence in this case. You have made a finding that there is a serious falling short of the standards expected of a registered student optometrist, and that is your trigger for finding misconduct made out. You have no definition available to you as to what is fitness to undertake training. Indeed, you have no broader definition of what fitness may be said to mean, as it is not defined in the Act or in any of the conduct rules or rules of procedure. It is a matter for your judgment and, therefore, it is a matter for your judgment what is the definition you apply, as well as whether the allegations which you have found proven do amount to an impairment of fitness in terms of this case.

Other regulatory authorities, insofar as they assist you by analogy, is for the Committee to ask yourself is this individual someone who is suitable to be registered without restriction. It is that broader issue of suitability which is the analogy as to whether fitness to undertake training, in this case, is impaired or not. Of course, fitness covers a number of concepts. It can cover terms of capability or competence. That is not the situation in this case and the Council never presented the case that way. Also the concept of fitness is one which takes in the common English word in the round, so looking at someone's suitability to act as a professional, someone who is a representative or even an ambassador, in quite grand terms, for the profession; someone who is suitable as a member of the profession in its broadest terms while they are undergoing training to be an optometrist.

In those terms, the Council make very strong submissions about conduct over a period of time. You heard very clearly that in respect of the submission of the false record at the Quarter 1 assessment, as was clarified

for you by my learned friend, thereafter, following submissions of false records in May 2008, were false acts, they were dishonest acts over a period of time. Now they are limited in number, and the Council do not suggest that this is the majority in any way of Mr Byrne's action or the majority of the records that he presented. What they talk to very clearly and fundamentally is this issue of honesty. In many cases, before the Fitness to Practise Committee, both of the General Optical Council but also before other committees, honesty, integrity, professionalism – all of those concepts – go hand in hand. Members of the public, members of the profession, those who rely upon this Council to regulate and uphold the standards of the profession use words like "honesty" as a watch-word: it is used very much as a fundamental tenet of what it is to be a professional. As far as your lawyers, accountants, teachers, nurses, doctors, you should expect as a baseline of professionalism that professional will be honest.

Therefore, there are a number of acts set out in this allegation and in this case, Mr Byrne has set out to deceive his assessor. He didn't do it once, he did it a number of times and, had the assessor on 28 May 2008 not had him suspended, he would have sought to do it on another two occasions: he would have done it in respect of patients D and E. From the evidence you currently have, and you will hear from Mr Byrne, this is not information that was initially offered to the performance assessor, to Professor Parrish. The information was only volunteered to him once Professor Parrish had identified concerns. He was not aware, as the clarification was put to you, that there had been the submission of a false record at the Quarter 1 assessment, for example.

Those issues of honesty play a fundamental role as to one's fitness to be a professional, either in terms of further qualification as an optometrist, further qualification as a dispensing optician even. It sits equally comfortably with the idea that a registered student optometrist must apply those issues and those concerns of honesty to his or her individual practice. For that reason, and my submissions can be relatively brief, it is that issue of honesty which is very much the central part of your decision at this stage.

While you consider the issue of impairment of fitness to undertake training, both in terms of the acts which have been proven, and you have found proven in the submission of the records, and the preparation of the records, you will, of course, be invited to consider the current context of Mr Byrne's practice in so far as he can act as a student optometrist. That is appropriate that you have to look backwards as well as forwards to determine whether there is any risk of such actions happening again.

As well as taking those issues into account, the question in your mind may well be how sure can we be, if Mr Byrne is going through a period of pressure in the future, whether his first port of call will be, again, as it was in the evidenced case, to behave dishonestly, that he will seek to deceive those around him. That is a question for this Committee to ask very clearly and I suspect that only one person may assist you in terms of evidential

quality and that will be Mr Byrne, who will be available for you in due course.

As well as answering that question in your minds, you will also, I suspect, consider the wider reputation of the profession, what decision you believe would be appropriate and proportionate as to whether in the message you send to the profession and the public, do we feel it appropriate that a student optometrist, who has acted dishonestly during his assessment process, is one who is fit to undertake training. I would suggest very strongly on behalf of the Council that the answer to that question must clearly be no. Sir, that concludes my quite brief submissions but the issue, I suspect, is fairly simple and straightforward in your minds as to what the central issue is that you are looking at at this stage. Unless I can assist the Committee any further, those are my submissions.

Mr North: Thank you, Mr Alder that has been very helpful. Mr Singh, how do you plan to proceed?

Mr Singh: Just to say a couple of sentences by way of introduction and then to proceed straight into Mr Byrne's evidence, as that will form the basis of –

Mr North: How long do you anticipate that Mr Byrne will be speaking to us?

Mr Singh: I note the time behind the learned Legal Adviser's head is 12.10 pm, so I hope to be finished with him in about half an hour or quarter to one, and I hope that we can probably deal with his evidence in its entirety before lunch.

Mr North: Fine, thank you, we are content to proceed.

Mr Singh: As far as I can promise! I shall keep my opening remarks very short and they are these. Mr Byrne has always accepted that what he did was a grave, grave error of judgment, and he has paid the price for that in a number of ways. One thing that you will note, which was touched upon by Mr Alder in his submissions, is that these five records are not representative of the majority of his work, and that was a finding made by the College when they investigated. You will also note that all of the records relating to contact lenses relate to a specific area of expertise in which he needed to get experience. As you will hear from his evidence, it is an area where he had extreme difficulty in getting that experience. It seems that pressures built up from all sorts of areas, there was a real concern that he would lose his pre-registration place and that he would have difficulty going elsewhere and, as a result of an agreement that he signed at the beginning, he would have to repay the fees to Specsavers if he left before the end of the pre-registration period. All of those matters, and others, came together in his taking what he accepts to be very stupid actions but you will hear from his evidence that he has learned his lesson, and that he has remedied the difficulty and it is not an error of judgment that would ever be repeated.

My submission is that I accept this is a serious incidence of misconduct to falsify records in relation to an assessment, and he accepts that as well, but the circumstances in which the whole episode occurred are clearly relevant to your consideration as to whether he is now impaired by reason of what happened then. The two matters I shall draw on are how serious was it in the light of all the circumstances and, secondly, what has he done to try to address this particular issue. You will hear that, on going to a new practice, he had no difficulty obtaining the experience and submitted perfectly adequate records in relation to these competencies when he was allowed to obtain them. Sir that is all I say by way of opening. I may have brief submissions in closing as well but can I call Mr Byrne to give evidence please?

**WILLIAM JOSEPH BYRNE sworn
Examined by MR SINGH**

- Q.** Mr Byrne, can you state your full name please?
A. William Joseph Byrne.
- Q.** I am told that I can lead you through some areas of background in respect of where you went to university and things like that. Is it right that you went to the University of Bradford and graduated in July 2007?
A. That is correct.
- Q.** That you went on to secure a pre-registration post at Specsavers in Liverpool?
A. Yes.
- Q.** And that was on 1 August 2007?
A. That is correct.
- Q.** In very brief terms, that first pre-registration post that you started, did you stay there or not?
A. The position was secured early in the summer and it was to begin on 1 August but two weeks before that, I had a phone call to say that they no longer required a pre-reg student and I was pretty much left to look for another placement.
- Q.** So that was very soon before your pre-reg was due to start?
A. Yes, that would have been in middle of July.
- Q.** You managed to locate another Specsavers practice in Chester, is that right?
A. Yes.
- Q.** And they agreed, I think, to take you on as a pre-reg student?
A. Yes.
- Q.** Do you know anything about the background – were they looking for a pre-reg student at the time?

- A.** Yes, I spoke with Nicky Rippon who was the person at Specsavers doing recruitment for pre-regs, and she informed me that there was a list of practices looking for pre-reg students. They had come onto the list quite late in the summer so I had not seen it before that but I was looking to find a placement in the Northwest of England, and I had a phone call from their manager in early August.
- Q.** Accepting you as a pre-reg student?
- A.** They asked me to come over for an interview.
- Q.** I can take this relatively briefly. You were interviewed and you were offered the position, is that right?
- A.** That is correct.
- Q.** First of all, I would like to get an idea of who was at Specsavers during the time that you were there. You were obviously allocated a supervisor, is that right?
- A.** Yes, I had been to a few interviews before that and the common situation you have are supervisors and possibly some of the managing directors there so that you can have a chat with them. I was promised this but it didn't happen. Neither of my two supervisors nor the managing directors were there on the day.
- Q.** On the interview?
- A.** On the interview day, yes.
- Q.** When you went to start your pre-reg placement, were you allocated a supervisor at that stage when you first went?
- A.** Yes. From the interview I was given the identities of my supervisors as such. I was informed that Ms Susan Heyes would be my primary supervisor and Mr Hew Moffatt would be my second supervisor, who is also the managing director.
- Q.** So you had Susan Heyes who was to be your principal supervisor?
- A.** That is correct.
- Q.** And a man called Hew Moffatt, is that right?
- A.** That is correct.
- Q.** He was to be your secondary supervisor. Now you said that Mr Moffatt was also a director of the Specsavers branch?
- A.** Yes.
- Q.** What about Susan Heyes, did she have any other position?
- A.** Not to my knowledge but she was probably one of the most senior optometrists at the practice.
- Q.** Mr Moffatt was one director, were there other directors there?
- A.** Yes. Ms Julie Griffiths was the person in charge as such, she dealt with staffing issues and the day-to-day running of the opticians.

- Q.** Right. So you have Susan Heyes –
A. I might add that she does not have any optometric qualifications.
- Q.** Sorry, Julie Griffiths?
A. Yes.
- Q.** So you have the directors Julie Griffiths and Hew Moffatt. Did Hew Moffatt have any optometric qualification?
A. Yes, he did.
- Q.** So Griffiths not qualified, Moffatt qualified and Susan Heyes one of the more senior optometrists at the practice?
A. Yes.
- Q.** We know this so I shall lead on it, you were also registered with the College of Optometrists, and you were allocated an assessor Steven Parrish, is that right?
A. Yes.
- Q.** Is it right that you started at Specsavers in Chester on 28 August 2007?
A. Yes.
- Q.** So that we get some idea of the date.
A. Can I just add something? Steven Parrish was chosen as my assessor because my supervisor knew him in the past as a friend.
- Q.** Was that Susan Heyes who knew him?
A. Yes.
- Q.** Fine. Can you tell us, first of all, when you went there on your first day to the Chester practice, was there any paperwork that you had to sign?
A. Yes, I had been posted a contract a couple of days beforehand which I had had a chance to read. Then I was given a Sponsorship Agreement on the day which I didn't know anything about.
- Q.** May I just stop you there? It was headed Sponsorship Agreement, can you just explain what in broad terms this entailed?
A. Yes. It was basically that I would have to pay back the Specsavers company all the costs of having a pre-reg student, which included membership of the College, pre-registration fees and the cost of experience, 10 days off work for study leave, general expenses.
- Q.** You would have to pay it back in what circumstances?
A. If I left the practice before 12 months after qualifying. So I would effectively have to work for them for two years.
- Q.** If you left the practice within a year of qualifying, so 12 months after your pre-reg year?
A. Yes.

- Q.** Did you sign it?
- A.** I did. I wasn't really given much chance to take it away and discuss it with anybody. Something you need to understand is that this was quite late starting pre-reg to begin with, so I was in no position to complain. This happens in some practices where they like you to sign the agreement.
- Q.** Fine. When you were in the practice, obviously your primary contact was supposed to be with Ms Heyes as your supervisor. Can you explain how the relationship with her panned out, did you see her a lot to start off with?
- A.** Initially, I was told that she preferred not to sit in on eye examinations and to only come to her in extreme circumstances, so in an emergency or if I really needed a second opinion. I had the impression that she really did not want to be bothered as such by me. She did say that the only meetings we would have would be perhaps a week or 10 days prior to any assessments with the assessor.
- Q.** Can I stop you there? Did you get the impression that she was busy?
- A.** Yes, so much so that I didn't really get the chance to speak with her on a daily basis.
- Q.** When you say busy, what sort of things was she doing?
- A.** At the practice in Chester, we had what is known as a rolling clinic, so patients weren't booked in every day for specific optometrists. So quite often she fitted in quite a lot of patients, so she was constantly busy. We had different lunch hours and so on.
- Q.** Did you have any dialogue with her as to what your relationship with her would be like from what she says your relationship should be?
- A.** She said to me from the start that she was there under circumstances where I really needed her help and to look over the records, and that was pretty much it. When she said the records, I presumed it was everything including contact lenses and dispensing; that was my presumption.
- Q.** What was your understanding as a result of what was said as to what role she would play in respect of your position as a pre-reg student?
- A.** Could you repeat that please?
- Q.** Sorry, it is probably my bad question. What was your understanding as to what role she would play as your supervisor, what did you think she would be responsible for?
- A.** I expected her to be there to guide me along, to fulfil more the role of a mentor I suppose.
- Q.** What about Hew Moffatt, was he around in the practice a lot or not?
- A.** For the first four or five months I worked there, he wasn't there often actually.
- Q.** Did he work every day?

- A.** No. At the start, I don't think he was there at all. About six weeks into my pre-reg, he had to come back because Ms Heyes broke her foot and she was off on sick leave, so I needed someone to come in as supervisor.
- Q.** May I just go back, did Ms Heyes work in the Chester store all of the time or not?
- A.** Yes, she worked four days a week.
- Q.** She worked four days.
- A.** She worked quite a full week.
- Q.** And how many days did Mr Moffatt work per week?
- A.** Approximately three.
- Q.** You said that Miss Heyes broke her foot and was off for a period of time as well. Were there days when neither of your supervisors was in the practice?
- A.** Yes.
- Q.** And what happened on those days, what was the position you were left in?
- A.** I understood that Mss Griffiths, who was in control of the situation, was finding it difficult to find an optometrist to cover Ms Heyes's absence, so I didn't complain or voice my opinion I suppose at the time but I felt that the optometrists who were there to look over me felt themselves that they were not sufficiently qualified to do so.
- Q.** These are the ones who were left when those two, weren't there?
- A.** Yes.
- Q.** When Susan Heyes and Mr Moffatt weren't there, who else was left in the practice?
- A.** It was Ms Jodi Conroy and Ms Jill Irwin, and Jill Irwin would have been qualified approximately two or three weeks.
- Q.** And the other one?
- A.** I think it was less than two years she was qualified.
- Q.** Fine. Now did you ever raise that difficulty with anyone else within the practice?
- A.** I had a discussion with Ms Conroy who wasn't sure whether she was legally in a position to cover me. I suppose we got on with it because Ms Griffiths was a difficult character to come to with problems. I was only there for less than two months, so I didn't want to rock the boat as such.
- Q.** Did you and Ms Griffiths get on as people?
- A.** At the start, I felt we did but gradually when I felt I needed to tell her the problems, I felt she saw me as a nuisance and the relationship began to deteriorate from the whole supervision aspect.

- Q.** I shall come on to that in the chronology a bit later but we shall certainly deal with that. Can you also describe, by way of background, the kind of work that you were doing then around this time when you started, what sort of work, what level of work and what volume?
- A.** I was pretty much testing straightaway, I was testing between four and eight patients in the first quarter, and that gradually increased as time went on. I also managed to dispense spectacles and the occasional contact lens work as well.
- Q.** Was there any focus, if I can put it that way, of the kind of work you were expected to do?
- A.** Yes, I was there to sight test.
- Q.** Why was there that focus?
- A.** Because they were under pressure with the lack of one of their senior optometrists, and I certainly felt that pressure within the six weeks that she wasn't there.
- Q.** You say you were under pressure to do that, how did that pressure manifest itself? Did anyone say to you that you were meant to be doing that kind of work?
- A.** No, there was absolutely no dialogue with regard that aspect.
- Q.** The panel will have noted, as I said earlier, that all of the records which were submitted that weren't correct were in respect of contact lenses.
- A.** Mm
- Q.** Did you get any contact lens experience? Can I divide it up into the first quarter which I am looking at now, how much contact lens experience were you getting in that first quarter?
- A.** Initially, I was given Thursday mornings for contact lenses and Thursday afternoons were given towards if I needed a hospital visit, but that didn't always happen. In the first three or four weeks, I was asked to shadow Mr Norris who was a contact lens optician.
- Q.** Let me stop you there. It is probably best to expand this a little bit. Did you speak to anyone in respect of your contact lens experience; did you ask anyone how you would get it?
- A.** The only people I could ask were the reception staff who allocated the contact lens fits. I approached the reception manager and asked her if it was possible for me to take some of Mr Norris's patients which she was okay to do, and which I did manage to do. I did some after cares and some contact lens fitting.
- Q.** Going back, did you ever raise it with your supervisor, with either Ms Heyes or Mr Moffatt?
- A.** I didn't have a chance with Ms Heyes as she wasn't there. There was absolutely no dialogue between myself and Mr Moffatt at any stage.
- Q.** Why was that?

- A.** I am not quite sure, to be honest. It felt as if they didn't want to have a pre-reg student - that I was just there to sight test and that was it.
- Q.** You talked about Mr Norris, who was he?
- A.** Mr Norris was the contact lens optician.
- Q.** And how often was he in the practice?
- A.** Five days a week.
- Q.** Was it five days a week every week?
- A.** Every week, yes.
- Q.** And what sort of time would he come in and what sort of time would he leave?
- A.** Nine o'clock until five o'clock.
- Q.** What about your relationship with him, did you try to get on and work with him?
- A.** I had a very good relationship with Mr Norris. He seemed probably the busiest person in the practice in terms of his patient numbers. It seemed to be an issue that they were trying to expand their contact lens sales, and he was under more pressure.
- Q.** Did you realise at any point that you were lacking in contact lens experience in your first quarter?
- A.** Yes, I was happy with the work I had done shadowing Mr Norris, I felt I was getting to grips with things in the practice like where the lenses are, the machinery and so on. In the remaining six weeks of the first quarter, the fact that I had to sight test more often, that time was taken up with sight testing rather than contact lens work mainly. I also had to do contact lens teaching experience as well.
- Q.** Can you explain what that would entail?
- A.** It would entail teaching a patient how to use contact lenses, the hygiene aspects around insertion and removal of contact lenses.
- Q.** You touched on this earlier, how did you go about securing more work for yourself in the contact lens field?
- A.** Through the reception staff.
- Q.** What about asking Mr Norris, did you do that?
- A.** I asked Mr Norris and, as far as I can remember, I am pretty sure he allocated some of my aftercares.
- Q.** How many would he be able to allocate to you?
- A.** I think in total I had about six or seven aftercares in the first quarter and perhaps four or five were allocated by him. The fits were generally from the reception staff.

- Q.** Why was it difficult for you to get fits, because patient A was a contact lens fit, is that right?
- A.** That is correct.
- Q.** Was it difficult or easy to get experience of fits during your first quarter?
- A.** It was difficult. Ms Heyes did come back to the practice a week before the assessment, she happened to be in Chester that day and we discussed records. At this stage, I had two contact lens soft fits and three aftercares, and we discussed the general competencies of the first quarter, the fact that soft contact lens fits and aftercare competencies is quite a long competency and we didn't want it to drag on into the second quarter. So she asked me to put pressure on Mr Norris to get the third contact lens fit. It was also at this stage she informed me that she didn't want to have anything to do with the contact lens aspect of my training. Perhaps she might have been able to tell me earlier if she hadn't been off sick, but this was the first time that I had heard it. I presumed that all my records would go through her approval first.
- Q.** When she said that she would have nothing to do with the contact lens aspects, that was in terms of obtaining work and also records as well?
- A.** Yes.
- Q.** So she advised you to put more pressure on Mr Norris?
- A.** Yes.
- Q.** And what did you do?
- A.** As it happened, I only had one day's work between that day we had the meeting and the assessment. I came into work on that day and Mr Norris happened to be there, and I was down to do paperwork, my logbook and so on that I had to send off to Mr Parrish five or six days before the assessment. He had a patient who came in and was a new contact lens fit. I observed the fit and it was at his suggestion that I would use that patient as experience that I had witnessed a fit.
- Q.** Explain how that came about? His suggestion that it could be used as experience that you did the fit, how did that conversation come about between him and you?
- A.** Previous to this patient coming in, I informed him that I needed another patient and he asked me to sit in with him, and he said that I could say that I had viewed the fit.
- Q.** How did you take that?
- A.** I think I took it the wrong way. Also I didn't have that person there to go and ask about the paperwork aspects as regards contact lenses. In hindsight, I know I should have filled out the witness statement page and said that I had actually seen the fit but I didn't and I regrettably said I did the fit myself.
- Q.** When you say you took it the wrong way, can you explain what you mean by that?

- A.** I interpreted Mr Norris's suggestion that I would use that fit as my third patient.
- Q.** Looking back on it now, do you think that he meant that or not?
- A.** I am not quite sure; I don't think that he did.
- Q.** How do you feel about the fact, looking back on it now, that you did what you did in respect of patient A? How do you feel about the fact that you submitted a record in respect of that patient that wasn't correct?
- A.** I am utterly disappointed in myself and can't believe I did it really.
- Q.** Whose fault do you say that is? You have explained the conversation with Mr Norris, whose fault do you say that it is?
- A.** It is completely my fault; it was I who did it.
- Q.** You have explained in broad terms why it happened and in terms of the difficulty in getting experience. Was there any reason in your head why that first competency in respect of contact lens shouldn't be deferred? You have touched on it already.
- A.** Because the soft contact lens fit and the aftercare involves myself booking in a patient for Mr Parrish to assess me going through the fit and the aftercare. I felt that I could show him how competent I was in those areas by having watched me do the fit and the aftercare.
- Q.** You have a bundle in front of you there. In the transcript of the interview, if you turn to page 63, at the bottom of the first section of dialogue between yourself and Ms Brough, so that we have it, do you accept that this transcript is an accurate representation of what was said between the two of you?
- A.** Yes.
- Q.** In the last two entries, Ms Brough says: "If the records are falsified, are they totally made up or false records of real patients?" You say: "Patient A is a real patient that I observed the CL optician fitting" and that was Mr Norris.
- A.** Yes.
- Q.** [*continues to read from transcript*] – "although the record I submitted of this fitting was not real, I used it as a tool for the assessment, feeling that it could be used as a basis for role-play. I had issues within the practice in that my supervisor wasn't at all involved with CL issues." Just focusing on the tool for the assessment, can you explain your thought process as to what you thought you could do?
- A.** I probably didn't explain it too well there but what I was saying there was that part of the assessment of this competency is that once the fit is done and you watch it, he is going to ask you questions on the records. I felt that if I didn't have three records, he would not be able to fulfil that task; I wouldn't be able to have that role-play as such. He asked questions on the theory aspects of fitting someone's soft contact lenses.

- Q.** So accepting that the record wasn't the correct one that you did yourself, you felt that it might be able to demonstrate your competence in terms of your knowledge in that field?
- A.** Yes.
- Q.** At the time of the first quarter assessment, the rest of the records that you submitted, were they real records or not?
- A.** Absolutely real.
- Q.** The first quarter was due at the end of 2007, and the second quarter was due on 28 February 2008 is that right?
- A.** That is correct.
- Q.** For the second quarter, you had to get three RGP contact lens fittings and aftercare patients?
- A.** Yes.
- Q.** After your first assessment how did the kind of work you were doing continue: was it similar to before or not?
- A.** It was similar. I felt the workload was a little larger in that I needed to find more patients with ocular disease. In terms of contact lenses, I continued to get more soft contact lens fittings and some more soft lens aftercares. I had a conversation with Mr Parrish about the situation with the rigid gas permeable competencies, and I told him that it was quite difficult to find those patients in the Chester practice. He suggested that, if I wanted to do so, I could leave it to the third quarter assessment to give myself more time to find those patients.
- Q.** Was that said between yourself and Professor Parrish at the time of your first quarter assessment?
- A.** Yes.
- Q.** So moving on from your first quarter assessment and moving up to the second quarter, did you make any effort yourself to try to achieve that experience in contact lenses?
- A.** Yes, there was a course at University of Bradford in mid-December where I would have gained all the six patients, the three fits and the aftercares. However, I was advised against it because of cost really, so it was put to me that I would eventually get those patients in practice.
- Q.** With whom did you raise that?
- A.** I raised that with Susan Heyes.
- Q.** And she was still your main supervisor?
- A.** Yes. She had come back from sick leave.
- Q.** During that time, what else did you do to try to get the RGP experience, because you had been dissuaded from going to the University of Bradford, what else did you try to do?

- A.** I had approached Mr Norris and told him that I was going to do those competencies in May and that I would have four or five months to find these patients and would he help me along with that. He suggested, as did the previous pre-reg student, that I use staff members, and that was confirmed to be okay with Mr Parrish that I could indeed do that. I found that to be quite difficult, because some of the staff members, first of all, didn't have the time. The staff members on the shop floor were quite slack and many of them just didn't want to be fitted with hard contact lenses as well. I kind of put it to the back of my mind and I focused on other areas in the second quarter.
- Q.** Apart from the second quarter assessment sheet, you have submitted a number of other records but did not submit the contact lens records?
- A.** That is correct.
- Q.** Were all the other records you submitted correct and truthful?
- A.** Absolutely.
- Q.** And you passed that second quarter assessment save for the deferment of the contact lens –
- A.** Exactly.
- Q.** You said you were trying to get staff to act as your tools for assessment?
- A.** Yes.
- Q.** How did that go with the staff, did you manage to get anyone at all?
- A.** I managed to get one individual who also agreed to sit as a subject for the fit on the day of the assessment.
- Q.** The name has been mentioned already – Bright – and that appears on the second quarter assessment. She was happy for you to fit her?
- A.** Yes.
- Q.** And to do the aftercare. So the record of Bright was correct?
- A.** Yes.
- Q.** Was it possible to get any more people?
- A.** At the time, it proved to be difficult and I had planned to go into the third assessment with just the one patient but the situation had changed in the practice.
- Q.** Focusing on that, after the second quarter assessment, leading up to the third quarter, did anything change as to the way in which the practice was being run?
- A.** Yes, there were a couple of changes. The manager who had interviewed me for pre-registrant start had left and that position was left vacant for about two months, and we were given a new practice manager, Mr Lee was his name. He seemed to be under pressure as well to maintain profits and so on, and I felt that from January onwards there was a little more emphasis on increasing production rates rather than general care of the patients.

- Q.** Were you included in targets at that point?
- A.** Yes. The only feedback I ever had from that practice was my commercial rates.
- Q.** His outlook in respect of your position as a pre-reg, what were his priorities? You can't really answer that.
- A.** It is hard to say. It appeared that my role wasn't a priority for them.
- Q.** Did you raise the difficulty about getting contact lens patients with anyone at around this time?
- A.** I mentioned it to Mr Norris; I also mentioned it to Professor Parrish in the first quarter. I was reluctant to ask for help from Ms Griffiths for obvious reasons, our professional relationship had deteriorated.
- Q.** In what way? You may have to give some detail about it, how did it deteriorate?
- A.** Firstly, there was the question of supervision. I suppose I let things slide a little in the first quarter, I didn't voice my opinion about whether it was okay to test sight under those circumstances. In January, there was no real excuse, both optometrists were back and there were certain days I still had to test when the optometrist who supervised me didn't feel that she could do so.
- Q.** Were those days when both of your supervisors weren't in the practice?
- A.** Yes, exactly. On one such day, I stopped testing, I was recommended for it and I was then told it was okay to test, and I just felt that she handled the situation in a way that kind of ruined things between the three of us.
- Q.** Did you feel able to go to her to raise any staff issues that arose?
- A.** Absolutely not and the only time that I went to her was for getting days off and so on. I may have mentioned it to her earlier on before January and, again, the only advice she gave me was to put more pressure on Mr Norris.
- Q.** Now did you have any dialogue with Mr Lee about the attitude of Ms Griffiths – this may be complicated – towards you?
- A.** Yes.
- Mr Alder:** You are really starting to step into dangerous territory I suspect in terms of hearsay. I have tried not to object to a number of questions but you are starting to go way too far there.
- Mr Singh:** I understand Mr Alder's point. I am just trying to think of a way to deal with this. It is quite an important point as to Mr Byrne's state of mind at the time, and it is directly relevant to the reason for the decision being taken to falsify records in respect of the third quarter competency assessment. If I can put it this way, it is the straw that broke the camel's back, the final nail in the coffin, or however you want to put it, but it is directly relevant to that.

Mr Coleman: Mr Singh, you need to take stock of the situation. Obviously, the starting point is you can't ask this witness to give evidence on what other people have said as, in a sense, wanting to put that forward as evidence of the truth of what has been said. What question are you going to put to this witness now? I don't want him to answer it but I want you to put the question again, so that we can analyse it.

Mr Singh: Let me think about how best I can put it that will bring as little objectionable evidence as possible. The question would have to be did you hear, through anyone else, what Ms Griffiths's view about your position in the practice was? Now that is obviously second-hand evidence, because he has heard it through Mr Lee, he has not heard it directly from Ms Griffiths, but it goes to the effect that had on Mr Byrne's mind and what he did as a result of that. It doesn't go to whether that was true or not, it was said to him and he acted having that in mind, so it goes directly to his state of mind. In one way, it could be said that I am not relying on the truth of its content; I am relying on the fact of it being said. That being so, the panel would have the power to hear any evidence that it considered fair and just, even if it would not be admissible in criminal proceedings. The reason why this may fall within that rule is, as happens in criminal proceedings, to allow the witness to explain the change in the story. A number of decisions in the criminal context have said that to allow the witness to tell the story about how information came to him is something that could be admitted as admissible hearsay in any event.

Mr Coleman: Mr Alder, it seems the first question is this. If there is a question as to what this witness's belief was, that would be a legitimate question: it is what Mr Byrne believed the position to be as to how he was regarded. The source of that belief would be the subject of a legitimate question, so if it came from a certain individual, that individual can be named. Beyond that, when it comes to 'oh yes, and what happened, what were the details of the conversations?', it seems to me that is going too far. The first two questions are within acceptable parameters.

Mr Alder: I would agree with that logic. I am also concerned because we are now naming individuals within a process who are not here to give evidence before you. It is a separate issue, I appreciate; they are not called before this Committee. They are having suggestions made about how they behaved some of which – and it is obviously a question for me to Mr Byrne – that are quite serious allegations. I suspect that great caution should be shown by this Committee in considering that evidence in terms of the first two questions.

Mr Coleman: Caution must be taken in the asking of the questions.

Mr Alder: Absolutely.

Mr Coleman: Mr Singh, my advice to the Committee is that you can proceed with the first question that I referred to but beyond that you have to be careful.

Mr Singh: May I just say that this matter about which I am about to ask is all evidenced in the letter that Mr Byrne wrote to the GOC in response to the allegations, so the Council have known about –

Mr Coleman: This isn't in the bundle.

Mr Singh: I thought it would have been but I shall seek to adduce it in any event as part of the registrant's case, because it is an exhibit, a letter that was sent by him in response to the allegation. However, the evidence that is being given is in accordance with that letter.

Mr Coleman: I think we have to deal with that document first of all before we go any further. You are aware of the letter, Mr Alder?

Mr Alder: It is the letter written to the Investigation Committee on 22 September 2008.

Mr Coleman: If Mr Singh wishes to put it in before the Committee, what is your position on that?

Mr Alder: My position is that I am sure an application could be made that it would be fair and relevant evidence for this Committee to consider. It is a matter for the Committee to determine whether it is appropriate to consider the letter or not but I would ask the Committee to show great caution as it refers to a number of individuals who are not being called to give evidence and give no evidence to the allegations which are before this Committee. Much of the evidence of Mr Byrne goes to mitigation in terms of the wider context of what was going on, in his evidence, at the practice at the time. Largely that is mitigating what happened and leading to what the Council allege is the dishonest act. Therefore, any weight which may be applied to this document is a matter for the Committee, but it is not a matter which the Council will, I anticipate, take a long time objecting to, because it is a conversation by Mr Byrne to the earlier Committee.

Mr Coleman: But would it be your intention to refer to it in the course of cross-examination of Mr Byrne, if the need arose?

Mr Alder: It had been to the extent of evidence which Mr Byrne gave in respect of a conversation he had with Mr Norris regarding inexperience in the contact lens record. On entering the room, I had very limited intention of asking questions of Mr Byrne because of the part of the hearing which we have now reached. It is largely Mr Byrne's opportunity to explain the wider context and my role in cross-examination will be very limited as to what I can ask him at this stage. However, a number of matters are coming out of Mr Byrne's evidence which are not referred to in this letter and which will be the subject of cross-examination.

Mr Coleman: In those circumstances, my advice to the Committee is this. If Mr Singh wishes to put that letter in, there is no basis available to you, Mr Alder, for resisting that letter going on. If the Committee are minded to

receive that in evidence, then the sooner that it is received in evidence, they can have the opportunity to read it if only because it may inform them better and it may be possible to foreshorten some of Mr Byrne's evidence, because they will have had the opportunity to read what is in that letter. Mr Singh?

Mr Singh: Sir, I can see the sense in that but Mr Byrne must be allowed to explain and expand on the letter as he needs to.

Mr Coleman: Yes.

Mr Singh: Sir, if you want to read the letter now, the best thing might be for you and your colleagues to read the letter once I have finished examination-in-chief, which will not be very long, it will probably be in a few minutes.

Mr Coleman: If it is only going to be another few minutes, it would certainly be inappropriate to stop you in your tracks now. You might as well conclude the evidence-in-chief and then deal with the letter. Mr Alder, do you have that?

Mr Alder: Yes, Sir.

Mr North: I am content with that. Are my colleagues content? [*Agreed*] So you will conclude the evidence-in-chief and the document will be introduced.

Mr Singh: Thank you. [*Continues evidence-in-chief*] In the build-up to your third quarter assessment, what was your belief as to – how can I put this – Ms Griffiths's position on your position in Specsavers? What did you believe her position was?

A. I felt a threat had been made about me not being able to continue on and sit my final examinations. Therefore, I was quite panicked and worried that she would have the power to do so. It was put to me that if my attitude didn't change, if our relationship didn't improve, she would indeed have the power to do so.

Q. That was your belief at around the time of your first quarter?

A. It would have been eight or nine days prior to the third assessment.

Q. How did that affect your mind, how did you feel about it?

A. It had a huge impact because I decided pretty much there and then when I went home that I would leave the practice; I didn't feel I could stay there any longer. I very stupidly took the decision that, first of all, I needed to go elsewhere. It would have been a lot easier for me to find another practice if I had my work-based assessments finished, and I knew that I would not be able to fulfil the RGP competency, so that is why I came to the decision to falsify the four records.

Q. In terms of leaving the practice, you told us about the Sponsorship Agreement, did that have any part to play in why you didn't leave?

A. It did. I was quite worried about that. I felt I needed to leave –

Q. Your thinking was that you wanted to finish –

Mr Coleman: There is a limit to the amount you can lead.

Mr Singh: What was your thinking as to why you wished – why did you want to complete things quickly?

A. I was under no real time constraint to get into the September exams - the deadline was the middle of July. It was purely because I felt that if I wanted to go elsewhere and get another practice, it would have been easier for me – it is very difficult for a practice to take on a pre-reg student half-way through the pre-reg process, in fact I only had about seven or eight weeks left. I just felt that I had more chance of securing another place if I had my work-based assessments finished. When you are given names like that by somebody, to me it felt like a threat, that is unfortunately how I responded.

Q. So you took the decision to submit false records at that stage?

A. Yes.

Q. Looking back on it now, how do you feel about that decision?

A. Quite ashamed about it actually and very sorry for what I did.

Q. Now at the time of your third quarter assessment, we know that you submitted patients B and C but you had not got round to submitting D and E?

A. That is correct.

Q. There was a question raised by Professor Parrish and you admitted at that stage that there were falsified records. Why did you do that?

A. I felt at the time I wanted to get it off my shoulders and explain to him what was going on, because he had no idea of the situation that I had with my employers, so I felt it was the right thing to do at the time.

Q. When you were then investigated by Specsavers, I think you were then dismissed were you?

A. I was, yes.

Q. And the investigation came up in respect of the College?

A. Yes.

Q. We have heard that you made an admission at the beginning of an incident in respect of patients A, D and E. At the time, did they know anything about those patients?

A. No.

Q. Why did you take the decision that you did to own up as to them?

A. I wanted to be completely open and honest about everything.

Q. When did you come to that decision?

A. More or less after my assessment of the first part.

- Q.** At that stage, when you were being interviewed and when you made that admission, what was your attitude to what you did then? You have told us how you feel now but, at that stage, how did you feel about it?
- A.** Pretty much the same as now, I totally regretted my actions and was sorry for what I did.
- Q.** It may sound like an obvious question but why was what you did wrong, would you say?
- A.** It was wrong because I was being dishonest; I was leading Professor Parrish into believing that I had experience when I didn't have experience.
- Q.** It was referred on to the Council and proceedings were brought but did you then leave Specsavers? You were obviously dismissed but you left Chester?
- A.** Yes.
- Q.** Where did you go?
- A.** I returned back to Ireland.
- Q.** Did you go to another practice?
- A.** I was unemployed for most of that summer and it was quite difficult to find a practice in the UK. The other difficulty was the portfolio of patients I had built up in the Chester practice over the nine months I was there. I had heard from the College that I could indeed use those records if they were signed by my supervisor. They weren't released until mid to late August, so that hindered me as well. I did eventually find a practice in West Yorkshire, Auckland Opticians and I began the eight weeks that I had left with them in September.
- Q.** In terms of the records that were falsified in respect of contact lenses, you obviously were not allowed to rely on those as part of your assessment data?
- A.** Absolutely.
- Q.** What happened as to those competencies, did you submit proper records?
- A.** Yes, I had to be re-assessed in all the competencies involved, sorry in the RGP competencies. I found the difference between my second pre-reg placement was quite remarkable, there seemed to be no issue, no difficulty in finding contact lens patients.
- Q.** What was the result when you submitted those competencies, how did you fare?
- A.** I passed the remaining competencies.
- Q.** Just for completeness, can you explain briefly the position as to your exams at the moment so we have an evidential basis for it?
- A.** I sat the final assessment in January and I failed one of my exams four times so, as of now, I am not qualified and I have pretty much failed the student registration.

- Q.** What is your intention as to what you are going to do in the future?
- A.** I have only had about 24 hours to think about this. I still want to continue but it is really up to the decision of the College of Optometrists as to whether or not they will accept my exceptional circumstances.
- Q.** If they do accept it, what would you have to do?
- A.** I would have to retake my entire pre-reg year which is now a new course, not entirely a new course but it has changed since I did it. It has to be on work-based assessments again and my final assessment.
- Q.** I shall just deal with this because it has been raised. In the letter that you wrote to the Council which the panel will see, if you remember you did not mention what you said about Mr Norris and his suggestion in respect of patient A. What was the reason for not putting it in that original letter?
- A.** I didn't want to get him involved, I didn't think it was appropriate – I felt it was my mistake that I had interpreted his suggestion the wrong way perhaps and I didn't want to discredit him in any way.
- Q.** Now that we are here, is there any difference as to the situation at the moment?
- A.** With regard to Mr Norris?
- Q.** Obviously, you have mentioned it today, so why has it been mentioned today?
- A.** I suppose I want to be completely honest about what happened and just to explain more fully what happened.
- Q.** Mr Byrne, will you wait there please. I have no further questions thank you.

Mr North: I believe this would be an appropriate time to distribute the document and to allow the parties and ourselves to take our lunch break, and we can commence cross-examination by Mr Alder after that break. Would everyone be content with that as an approach? *[Agreed]* It is now coming up for quarter past one. Would all the parties be content if we commence again at two o'clock?

[Hearing adjourned at 13.11 – document R1 distributed during adjournment]

[Hearing resumed at 14.00]

Mr North: This is R1.

Mr Alder: Sir, while we are on domestic arrangements, administrative matters, in terms of the patient identification schedule, could that be referred to as C2?

Mr North: Thank you. Mr Alder?

Cross-examined by MR ALDER

Q. Mr Byrne, do you have a copy of your letter of 22 September 2008 in front of you?

A. Yes.

Q. Have you had an opportunity to read it either during lunch or –

A. I have not, may I read it now?

Q. Of course. [*Pause while witness reads letter*] I have very few questions for you, Mr Byrne. Mr Singh asked you a question about an issue I would have done. Let me take you to what is the fourth page, the final substantive page I suppose. My apologies, it is the third page.

A. Yes.

Q. In the penultimate paragraph you say:

“I accept that my above explanation and history of my pre-registration year with Specsavers does not excuse my falsification of five records.”

Does that remain your position, Mr Byrne, that your explanation does not excuse you?

A. Yes. I still believe that what I did was wrong and I should have sought help elsewhere at the time. I suppose it is easy to look at it with hindsight but, at the time, I felt that time was against me.

Q. But even at the time, you could have sought additional support. You say “I should have approached Professor Parrish”, and you could have done so, couldn’t you?

A. The reason why was that he was friends with Ms Heyes. The assessor is someone else who has the power to sign me off, so I don’t know why but at the time I felt that I didn’t want to involve him or make him think that I was complaining unnecessarily or whatever.

Q. These were fundamental issues relating to your career, your assessment during the pre-registration process; that was an important issue for you at that time. Do you agree that it was well within your power to speak to Professor Parrish or indeed get support elsewhere?

A. I felt that what I said might get back to my employer.

Q. Did you not trust Professor Parrish, your assessor?

A. I did trust him but I just didn’t want Ms Griffiths to know that I was complaining, I suppose, as obviously he would speak to my supervisor about it.

Q. But if you had concerns about your assessor as well, you could have spoken with the College and asked for another assessor to be assigned to you, couldn’t you?

A. It was not very clear-cut really, because I literally didn’t know whom to contact at the College.

- Q.** It was worth a phone call, the College could have pointed you in the right direction?
- A.** Perhaps. It is easy for me now to say that but, at the time, I was clouded by the unknown and fear I suppose. I thought I could rectify the situation myself.
- Q.** Your thought process in terms of rectifying the situation was to falsify records of your assessment?
- A.** In order to perhaps find a placement elsewhere.
- Q.** I just want to discuss with you the evidence to make sure I have it correctly. In examination-in-chief, you were talking about there being a time pressure, a time imperative, and you wanted to complete your work-based assessment, if I have understood you, as that would assist you in getting a position elsewhere?
- A.** Yes.
- Q.** Is that a fair understanding?
- A.** The other reason was because I had a portfolio of patients and records. At that time, I did not think that I could take the records, copy the records to another practice. The first time I heard that I could do that was during the investigation. I just presumed that the record could not be taken to another practice.
- Q.** What about the patient episode records, the documents we have looked at for Q1, Q2 and Q3 patient episode lists. Do you believe you could take those with you?
- A.** Yes, but they just had the surnames of all the patients; it does not give the full identities of the patients.
- Q.** But you were going to use that then in terms of your future placement as evidence of your working experience and your competencies experience. Was that your mindset at that time?
- A.** At the time, I didn't think that I could even do that. That is why I wanted the work-based assessments to finish, because I presumed I could not take any records with me, so I would have to build up another portfolio to finish those 33 competencies.
- Q.** Just help me with this, when were you thinking of moving between practices: after the conclusion of your final assessment in June or before then?
- A.** No, it was the meeting with Mr Lee; I had approximately nine days before the assessment.
- Q.** What was it that you thought you wanted to complete before moving to another practice?
- A.** These competencies because I needed the patient records, genuine records to pass.

- Q.** Your intention at that point, after you falsified the records, would then be to take with you work-based assessments to another practice which contained false information?
- A.** I would not be taking any records with me. I would be finishing up my time leading up to my final assessment.
- Q.** During the Quarter 3 assessments, Professor Parrish was concerned about two records, and he suspended on the advice of the College the assessment?
- A.** Yes.
- Q.** At that point, you accepted to Professor Parrish that you had falsified the records and you had two additional records that you had prepared and you were going to submit to him as part of that assessment. Had Professor Parrish not had a concern at that stage, when would you have disclosed the false information on these records?
- A.** I was planning on disclosing it to the College.
- Q.** When?
- A.** At the investigation on 26 June.
- Q.** But that investigation would not have happened unless Professor Parrish had a concern about false entries?
- A.** I am not quite sure what you mean.
- Q.** Professor Parrish was looking through the records that you submitted to him –
- A.** Yes.
- Q.** - and he stopped the assessment because he was concerned about what appeared to be, at that stage, anomalies and which he concluded, and you admitted, were false records. He suspended the assessment then. Had Professor Parrish not suspended the assessment at that point, when would you have disclosed these false records that you took?
- A.** If I had been given a chance to disclose them. Professor Parrish did not ask me about any other records and he left the practice within five to 10 minutes of making the phone call to the College.
- Q.** It may be my question, so I shall try to clarify it with my next question. Had the assessment concluded on 28 May 2008 and Professor Parrish had been content with the competencies, it would have contained potentially four false records for B, C, D and E. Professor Parrish would merrily have gone on his way, content with the competencies that you were achieving. Would you have disclosed after that day that there were false records of competencies in your patient episode records?
- A.** I can only say I probably wouldn't have but I was planning on finding more RGP experience in the weeks leading up to the final assessment, because both the soft and the RGP competencies are assessed again in the final assessment. Therefore, I would have needed to gain further experience in those areas.

Q. But presumably at that point, given the pressures you talk about in terms of the practice, you would just have been keen to get through that assessment as well as the third assessment?

A. You are talking of the final assessment?

Q. You are saying that there would have been further assessment of those competencies at the final assessment?

A. Yes.

Q. Presumably, given the context and explanation you have given in your letter and your evidence today about the pressures on you in the run-up to the third assessment, those pressures would have been the same if not greater on the run-up to the final assessment, wouldn't they?

A. If I had stayed in the practice, yes, they would have been I suppose.

Q. So the motivation to disclose false records, which had been going on since the first competency, then the second competency and the third competency, would have been more difficult to do as it showed a much wider pattern of falsification?

A. It would have been but I had planned to leave the practice.

Q. The only other area I want to touch on with you is in respect of evidence you have given and which you refer to in your letter, that there was at some point a concern that you were testing the sight of patients without there being an appropriate supervisor on the premises. Do you accept from me that is a serious matter that you were testing the sight of patients without adequate supervision on the premises?

Mr Singh: Sir, perhaps I can put two words in now. I am not sure that this goes directly to the issue that you and your colleagues have to consider. I don't know if this is being challenged. If it is not being challenged, it simply goes to the background of the difficulties that Mr Byrne faced. Whether it requires any further explanation of what Mr Byrne thought of it would not, in my submission, bear on the misconduct we are talking about, which is dishonesty in relation to falsifying records.

Mr Coleman: Mr Singh, isn't credibility central to all of this?

Mr Singh: Sir, as I understood it, it is not being challenged as such, because the Council cannot challenge it.

Mr Coleman: It is something that arises out of a document that you have asked to put in. In so far as it may have relevance to an issue such as credibility, why shouldn't Mr Alder be entitled to cross-examine on it?

Mr Singh: Maybe I have the wrong impression; I did not understand it was going to credibility. I thought it was going to something else.

Mr Coleman: Mr Alder, can you just summarise what is your point?

Mr Alder: My point is that, first, it is a serious situation for a pre-registration trainee to be in but, equally, I was going to ask questions in terms of whether there was any proposal for Mr Byrne to deal with that by way of reporting it to the College, raising concerns with the Council, because in the general context of an issue of supervision I wanted to establish whether Mr Byrne appreciated the significance of that situation that he gave evidence he was placed in.

Mr Coleman: Mr Singh that is the point of the cross-examination.

Mr Singh: Again, that does not seem to go to credibility unless it is being suggested that, because he didn't report it, it isn't true. I don't know what the suggestion is necessarily.

Mr Alder: The suggestion is that Mr Byrne contends that he was going through a pressured situation at the time. I have asked questions as to whether he felt it was appropriate to seek support in terms of the assessment process. I am trying to determine whether he is able to understand the seriousness of a suggestion that he is testing sight while unregistered, or whether there was support available, and that goes very much to his credibility and the consistency of his evidence across the piece.

Mr Coleman: Mr Chairman, my advice is that this cross-examination should be allowed to proceed.

Mr North: Make it so.

Mr Alder: [*Continues cross-examination*] Mr Byrne, you have probably heard more of the context of the questions. You maintained that, to an extent, you were testing the sight of patients at the practice without there being an appropriate supervisor on the premises. Is that right?

A. I wasn't fully aware of the regulations as such. The reason why I brought that to the attention of the Investigation Committee was just to explain how the relationship between myself and Ms Griffiths was. She may have been correct in that situation and it might have been legally okay to supervise me but it was just the way in which she dealt with it, do you know what I mean?

Q. I suppose that my next question will probably clarify that. Did you feel that there was support available to you, either from the College or potentially the Council or from Professor Parrish; someone to whom you could report those concerns that you weren't being supervised during those eye examinations?

A. I was told that they were okay to supervise me, so I took them at their word. I was just trying to show how situations were dealt with on a daily basis.

Q. Do you appreciate now the potential seriousness of that situation?

A. Of course I do, and that is why I was concerned at the time.

Q. But you didn't do anything about it?

- A.** I was told that they were okay to supervise me.
- Q.** If you were that concerned at the time, what did you do about it?
- A.** I stopped testing and there was no manager on at the time. When Ms Griffiths came back to the practice, she reprimanded me for it. I think she just didn't see how I might have been concerned. Also the optometrist who was supervising me at the time felt she did not have enough experience in that she had not had a pre-reg student before and she felt she had not been advised that she would be taking on that role.
- Q.** Did you not feel that was something of such concern that you could have sought external support from the College or the Council?
- A.** I agree that I should have sought advice elsewhere on a couple of occasions.
- Q.** In terms of those times when you were, from your evidence, testing sight while unregistered, what sort of numbers are we talking about, is this a weekly occurrence during your pre-registration training?
- A.** The supervision issue?
- Q.** Yes.
- A.** A couple of days in January – it wasn't that many days but, at the same time, it felt that I did not have a consistent mentor.
- Q.** Given that at that point, you had not completed your final assessment, so you were not assessed to be – I do not suggest that you were not competent to test sight but, at that point in time, you were part way through your pre-registration year, in January and then some other times, so did you feel that you were capable of undertaking an adequate full sight test of an individual patient, or did you feel there was any risk to patients?
- A.** From the feedback from Professor Parrish from the first and second quarter sessions, my confidence was beginning to grow because I had done well in both assessments. I am not qualified to say that I am competent but he was and I was going by what he said.
- Q.** Did you feel at the time that you were competent to test sight, or did you see any risk to patients in your undertaking those sight tests without there being an appropriate supervisor on the premises?
- A.** Not until I'm fully qualified, I would see that as being safe.
- Q.** Thank you, Mr Byrne, those are my questions for you.

Mr North: Thank you, Mr Alder; any re-examination?

Re-examined by MR SINGH

- Q.** I have just one point very briefly arising out of the last matters. You can probably deal with this in a couple of sentences, but what were the reasons behind not seeking help in respect either of supervision or in relation to sight-testing? Why did you not do that?

- A.** I suppose I didn't know at the time - perhaps I should have rung the College but it is very difficult to bring myself back to that time to tell you exactly what was going through my head – I can't remember.
- Q.** In terms of your relationship with people within the practice, did that have any bearing on it or not?
- A.** It would have done to a certain degree.
- Q.** In what way?
- A.** In the fact that I was scared of losing my job, I would have had difficulty progressing through my pre-reg.
- Q.** Looking back on it now, again just briefly, what do you think you should have done differently?
- A.** I definitely accept that I made mistakes; I should have had more dialogue perhaps with other members of staff and should have sought help elsewhere.
- Q.** What about in the future if you are put in a difficult position, what would you do?
- A.** It has definitely taught me a lesson in terms of always seeking help and dealing with that level of stress in a different way. I think the worst thing anyone can do, speaking for myself, is to rush into a decision, to make hasty decisions.
- Q.** What do you feel about the decision you made back in 2007/8?
- A.** I was completely in the wrong; I shouldn't have done what I did.
- Q.** Thank you very much. Sir, I have no further questions. I don't know whether you or your colleagues have any matters to raise.

Mr North: That may be the case. Do I have any questions from this side?

Dr Azubike: Yes. I have a few points of clarification. How long were you at the University of Bradford; how long were you a student?

- A.** I was there for four years over a five-year period. I started when I was 17.
- Q.** In that time at the University of Bradford, did you have any lessons in ethics?
- A.** Yes, I had a single module in my third year, my final year to do with ethics and legal studies.
- Q.** Can you explain to the Committee what ethics covered?
- A.** It covered what the GOC outline as their code of ethics, certainly dishonesty was one of them, or honesty, how to maintain integrity and professionalism at all times.
- Q.** Okay so do you accept that before 2008, you knew that it was wrong to falsify records?
- A.** Yes.

Q. At the start of Mr Singh's submissions, I think he referred to you accepting that it was a grave error of judgment. I just want to put to you would you accept that it is not a single occasion, it is in the plural if you see what I mean.

A. It is two occasions.

Q. Just on a small point, with respect to Mr Norris, was he an optician?

A. He was a contact lens optician.

Q. Okay, he wasn't an Optom?

A. He wasn't an Optom.

Q. Thank you, that is fine.

Professor Taylor: Had you heard of the Opticians Act before you went to your pre-reg year?

A. Yes.

Q. Did you read through the Opticians Act?

A. I had studied the Opticians Act through my module in legal studies.

Q. But you were still unaware of the supervision concerning eye testing?

A. I wasn't aware actually but I am aware now.

Q. So you went through the Opticians Act but you weren't aware that there was a fundamental requirement to be registered to test sight?

A. I suppose if I was to take on a supervision role, I would probably look at it further.

Q. But at the time you undertook your pre-reg year under what you would call a supervisor, you were not aware that you had to be registered to test sight?

A. I wasn't fully aware. I knew about the two year scenario, you have to be qualified for two years.

Q. I am not talking about supervision; I am talking about who can test sight.

A. Yes.

Q. So you were aware that unless you were registered, you cannot test sight?

A. Yes.

Q. The only other function then is if you are under supervision.

A. Yes.

Q. Okay. You raised the issue with the practice manager, I do not understand the roles, but she was practice manager?

A. She was the store director along with Mr Moffatt but she dealt with staffing issues and the general day-to-day running of the opticians. She was the

person to whom staff members would go to try to solve problems or day-to-day issues.

Q. And Ms Heyes was your supervisor?

A. Yes.

Q. Was she in quite frequently? I know you said you only had three meetings with her but was she in quite frequently?

A. She did a four-day week; I did a five-day week. Sometimes my day off was not in sync with her day off, and sometimes we were testing sight three days a week. Usually it was three or four days a week.

Q. But you didn't think to ask her whether you would be practising without a supervisor – even in passing?

A. Are you talking about the six weeks when she wasn't at the practice?

Q. At any point when you felt you were uncomfortable doing it, because I don't know quite when it happened. You said it happened in January.

A. I honestly cannot remember having a conversation with her.

Q. But you had it with Ms Griffiths?

A. Yes, and more so with the opticians who were there to supervise me. I was told that they were okay to test –

Q. That was by Ms Griffiths?

A. By Ms Griffiths but the reason why I brought this to your attention was because it was just another example of how difficult it was to make a complaint.

Q. I appreciate that, I understand where you are coming from. Presumably, you had information from the College when you started your pre-registration year?

A. Yes, we had a handbook.

Q. You had a pack of some sort?

A. Yes.

Q. With details of contacts at the College?

A. Yes, there was.

Q. Presumably with some indication of the consequences of falsifying records within that pack?

A. It was listed.

Q. But you didn't think to go back to your pack to find a contact at the College?

A. As regards the records?

Q. Discussing any issues that are raised here, because I think in the pack it says if you have any particular issues?

- A.** There is a list of people to contact but, at the time, I didn't feel that any of them fitted that role to ask I suppose.
- Q.** You had a meeting with Mr Lee where things seem to have flared up. What was the meeting for; was it you calling it or Mr Lee calling it?
- A.** He began work in January and he wanted to have a one-to-one meeting with everybody in the store as there were approximately 30 people who worked there. He didn't get around to me until perhaps April/May time but Ms Griffiths had asked him to bring it forward which happened to be close to my third assessment. She was concerned about my attitude because I suppose I was no longer nagging her, as she might have put it, mainly because of the conversation we had in February – it seemed to deteriorate from then I suppose.
- Q.** Did you explain all of this to Mr Lee at that meeting, or was it not that sort of meeting?
- A.** Yes, I felt it was appropriate for me to make a formal complaint at that stage, which I did but nothing was ever done about it.
- Q.** So you made a formal complaint to Mr Lee?
- A.** In the meeting, I discussed what was said.
- Q.** About the lack of contact lens training?
- A.** It was put to me that my attitude towards Ms Griffiths had changed and she wasn't happy with that, she wanted it to change. I felt that I needed to explain why she might have perceived that was the case, because he was not aware of the difficulties I was having with her.
- Q.** The formal complaint was about the attitude of Ms Griffiths to you, it was not about your pre-reg situation?
- A.** It became the main focus of the conversation we had and I just didn't have the time to go into further details about it.
- Q.** Was Mr Lee aware that you were not getting any contact lens practice?
- A.** I honestly cannot remember; he may have been.
- Q.** Would that not have been a meeting coming up to it that would have been first and foremost on your mind?
- A.** I am sure that in an informal setting I had mentioned that I was having difficulty with certain areas. It was not just contact lenses; it was certain ocular disease patients I had to seek in hospital which I had to find for myself as well.
- Q.** But you didn't use the opportunity to go through with that?
- A.** I didn't because I was stunned by what was said to me about, you know –
- Q.** I have a couple of other queries. One is still to do with supervision. Who signed off your sight testing?
- A.** When you say signed off, do you mean each test?

- Q.** Mm
A. As far as I am aware, nobody ever did.
- Q.** So when you submitted a GOS sight test form, who signed it?
A. That would have been my supervisor.
- Q.** And when she wasn't there?
A. It would have been my second supervisor I suppose.
- Q.** And if he wasn't there? Do you know who signed the forms?
A. I know it was either one of the two who signed it.
- Q.** So they would sign them retrospectively without asking you about the patients?
A. Yes.
- Q.** Just a final query really. You mentioned a course at Bradford and said you didn't go on it because Specsavers would not pay for you to go?
A. It was a conversation I had with my supervisor at the time and she felt it was unnecessary and that I could get the patients internally - as a pre-reg student the year before I had managed to do so.
- Q.** You didn't think to sort out the course for yourself, because there are quite a few courses that go on?
A. They are quite expensive and I did not have the money myself to do that.
- Q.** Okay, thank you.

Mr Varley: I have no questions.

Ms O'Donoghue: I have a few queries. I want to confirm that Ms Griffiths is not an optometrist nor a dispensing optician, is that right?

- A.** That is correct.
- Q.** And you were aware of that fact?
A. Yes, I was.
- Q.** So when she reprimanded you for stopping testing, what steps did you take to ascertain that she was aware of her professional obligations to be supervised when you were testing?
A. What steps did I take?
- Q.** Yes.
A. When you are dealing with someone with a very abrupt manner, it is very difficult to continue with the dialogue as such. Perhaps naively I thought it was obvious.
- Q.** So you accepted that you were allowed to test without being supervised, you accepted her word for that?

- A.** I accepted that the supervision I was getting at the time was okay and she okayed it.
- Q.** But to go back, had the College of Optometrists not made you aware of the fact that you had to have a supervisor with you on the premises at all times?
- A.** Oh yes. There always was an optometrist on the premises when I was testing.
- Q.** But you did say that you had a lack of supervision and sometimes none at all?
- A.** There were occasions towards the end of the day. I tended to work a little bit later than the rest of the optometrists and, if, for instance, I took in a patient at half-past four and I did not get out of the testing until ten past five, there were occasions when the opticians had left.
- Q.** Thank you very much.
- Mr North:** Mr Byrne, my colleagues have asked some very helpful questions and I don't think that I need detain you for very long. There are a couple of points that I would like to raise. If you look at the letter on page 59 of the bundle C1, the first paragraph mentions that at the third assessment, "There were a total of fourteen outstanding competencies from the two previous quarterly assessments to be addressed before starting those for quarter three". Were those competencies solely confined to the area of contact lens work, or did they extend across the whole range of the practice?
- A.** No, only two of those competencies would have been for contact lenses.
- Q.** So there were 12 others outstanding?
- A.** There were 12 outstanding, and I was told by Mr Parrish that it was not unusual to have that many. I was progressing okay. The third assessment has the least amount of competencies to cover.
- Q.** Yes, but these are outstanding competencies from quarters 1 and 2 as I read that, is that correct?
- A.** Yes.
- Q.** That is correct, thank you; that has been very helpful. In your reply to one of my colleagues, you said you made a formal complaint to Mr Lee in February?
- A.** No, it was nine days previous to my third assessment.
- Q.** So what date would that have been?
- A.** It would have been somewhere around 19/20 May.
- Q.** In May, okay. What happened to that formal complaint?
- A.** The easy answer is nothing. I wasn't in the practice long afterwards.
- Q.** So you are saying that was overtaken by events?

A. Yes.

Q. Okay, thank you. The last question concerns the handbook that the College of Optometrists issued to you, that was issued to you at the start of your pre-registration year?

A. Yes.

Q. Did you read it?

A. I read the instructions and the guidelines, yes.

Q. You read it from cover to cover?

A. Yes, as far as I can remember I did. I needed to do that to know what I was going to do for the following year.

Q. Thank you. Is there any re-examination on the points raised by the Committee?

Mr Singh: Sir, no.

Mr Alder: No, thank you.

Mr North: Any points, Legal Adviser?

Mr Coleman: I don't know whether Mr Singh has finished putting his case?

Mr Singh: Sir, I haven't yet. There is one other matter to be addressed.

Mr Alder: Do you want to release Mr Byrne? [*Witness stands down*]

Mr Singh: There is one other matter to be addressed. That is the other evidence that we intend to call on behalf of Mr Byrne.

Mr Alder: I understand that Ms Sparrow is in the hearing at the moment and it may be that she wants to excuse herself while the Committee deliberates on this point. There is no problem with that at all. [*Ms Sparrow leaves the room*]

Mr Singh: Sir, the issue is, as I understand it, that the Council still take issue on the basis that the evidence of Ms Sparrow is not relevant to this stage of the proceedings, i.e. the impairment stage. It is our position that it is relevant and it is probably a good idea, sir, if you and your colleagues know in broad terms what the evidence is before you decide on whether it is relevant. It is going to be rather difficult for you to make a decision on it without knowing what it covers.

Mr Alder has said he is happy for me to give an outline. What it covers is two areas. First of all, what is the position in a multiple sector practice in relation to the kind of goals and targets that are set, what fuels those goals and targets and how does that, in general, affect the role of supervisor and the position of a pre-reg optometrist? All of those matters are relevant, we

submit, to I suppose one matter that your Legal Adviser has already raised. He said that credibility is a matter in issue; it is an important matter in this. You will have to decide as part of the impairment stage whether you accept what Mr Byrne has said in relation to how he says his supervision panned out during that pre-registration year.

Ms Sparrow in her experience, for example, was responsible for national pre-registration optometrist recruitment, training, support and placement for Vision Express for some time, she has a large amount of experience in the multiple sector of around 17 years and she is currently an Education Adviser including responsibilities for student and pre-registration optometrist support. She has a lot of experience of the kind of environment that a pre-registration optometrist would experience in a large practice such as Specsavers and the kind of difficulties that they would encounter.

The first part of it is relevant to whether it is more likely that what Mr Byrne says happened, happened, and her opinion is that, regrettably, in some large practices the lack of support he has spoken of is not uncommon. It can be found and she can give some explanation of the reasons for that. You may feel that is relevant to the impairment as to whether to accept his evidence or not.

I should say, as an aside, and I may be wrong, that the lay members of the panel will probably not have any in-depth experience of what it is like to be a pre-reg student in a large optometric practice, or what the everyday structure of such a practice is. The optometrist members of the panel may well have experience of that but they may disagree with Mr Byrne's account of it or they may agree, I simply do not know.

The importance of this evidence is to put in an evidential basis, in an open way before the panel, what the opinion of Ms Sparrow, a suitably qualified person, is. If there are any views to be expressed by anyone who has any experience or any view of this kind of practice, they may put it to her and it can be dealt with in an open way. If it is not dealt with in that way, anyone on the panel who does have a view - perhaps the optometrist members - would simply not be able to air that. That may influence the panel's decision behind the scenes, because they may express a view that we did not have an opportunity to deal with it in the course of evidence. That is the first relevance of her evidence.

The second part of it is this. She also gives evidence of her opinion of whether the supervision that was provided – if Mr Byrne's account is correct – was in accordance with College guidelines or not, or whether in some circumstances more could have been expected or not. That, in our submission, is relevant to the inference you can properly draw at the impairment stage from Mr Byrne's evidence. The reason for that is that you may decide what he says is correct and that, in certain circumstances, the supervision he was given was not up to the standard that it should have been and, as a result, that is relevant to the question of impairment, and in

relation to culpability on his part. He does not seek to shift the blame but it is potentially contributing factors to what happened.

Again, the question of whether the supervision he received did or did not fall short is not evidence that would be in the knowledge, sir, you and your colleagues may feel, of a panel such as this. The optometrist members may have a view but, again, it is difficult for us to address them if evidence is not given on the subject. Therefore, in relation to both matters, it is evidence which is properly outside the remit of the panel and which should properly be given and is relevant to the issue of impairment for those two reasons.

As I understand it, no objection has been raised as to the correctness of what is in the report. The Council have not thought it right to get their own report to counter that; they simply say it is not relevant. Therefore, the question to you is one of relevance.

Mr North: Mr Alder?

Mr Alder: Sir, yes, the Council do object to this statement, report or whatever you call it being placed before the Committee. It is not relevant, I suggest, at the impairment stage. It deals, first, with the pressures in Ms Sparrow's opinion of working in a multiple and it deals with the issues which are quite clearly set out in a number of documents set out by the College as to the requirements of supervisors. While that particular view may be interesting, it is not relevant to the determinations that you are being asked to make at this stage, which is whether, on the facts which have been found proven and the issue of misconduct, those particular matters amount to an impairment of Mr Byrne's fitness to undertake training.

I can understand and would potentially support an argument that this particular type of information may be of use to the Committee were you not a panel including professionals and optometrists, that gives you in effect a due regard aspect, a heightened degree of knowledge as to practices and how they operate, the supervision processes, pressures on individuals and on pre-registration trainees. It is very much part of your function, and has been since the creation of the Fitness to Practise regime three or four years ago. It may be of some assistance to you but only if Mr Byrne were not available to you to give evidence.

What you need, I suggest, to be able to come to a conclusion as to the context of Mr Byrne's fitness to undertake training is factual evidence, witness evidence, which has been provided to you by Mr Byrne. He has talked about the pressures on him, he has talked about the supervision process and he has given evidence to you regarding his conclusions as to whether or not he felt supported. That is the only information which will be relevant to you in trying to conclude what the context of that fitness to undertake training is or, in terms of the allegations, was and what happened.

An opinion put forward on behalf of an expert does not assist you in that deliberation. It may be that the report is relevant as mitigation, perhaps as part of any sanction deliberation by the Committee if impairment is made out, should you reach the stage of sanction. It may be that issues regarding supervision and assessing whether Mr Byrne was supported from a supervision point of view are relevant, but it is not relevant in terms of the impairment process. Ms Sparrow was not a witness to the events; she was not available and has not worked at Specsavers, so she is too far removed from the factual context which is central to your deliberations at this stage. It is a matter entirely for you as to whether it is relevant to the mitigation stage, but that would be, I suggest, the only point in the proceedings when it would be relevant.

Mr Singh has touched on the issue of credibility for you to determine. I would respectfully suggest that the issue for you as to credibility is the decision that you take having heard from and having questioned Mr Byrne. It cannot be appropriate for an expert to try to lend some weight to Mr Byrne's credibility even by way of the back door. She does not talk to the practice at Specsavers, she does not talk to Specsavers or the individuals who were involved in the supervision of Mr Byrne, so how she can in some way assist this Committee in forming some view that you can use to understand his credibility and the credibility of what he has been saying to you, it just too far removed, sir, in my submission.

Ultimately, I would ask the Committee to look at the allegation. The factual basis of the allegation relates principally, as I said in my earlier submission, to the issue of dishonesty based upon the falsification of records. Those issues are accepted, they have been found proven, misconduct has been found proven, there is no issue as to supervision, there is no wider suggestion that supervision was lacking in some way that would give a degree of relevance to the expert report. I mean no disrespect to Ms Sparrow when she returns but her expert opinion is not relevant at this stage and, indeed, it would have only limited weight at the mitigation stage. Those are my brief submissions, I hope they are of assistance to the Committee, but the Council's submission is very strong that this report is of no relevance at this stage.

Mr Singh: Sir, I am afraid that I shall have to go into a little more detail in response just to meet those points. In my original submissions, I tried to take matters broadly but I shall have to go into the detail of what it is, sir, that you and your colleagues will have to consider now. You have an admission of misconduct which you have found proved. It is accepted that Mr Byrne's conduct was dishonest, it is accepted that he falsified records. While dishonesty is a serious matter, misconduct does not automatically lead to a finding of impairment and much case law has expressed that view. It has to be viewed in the circumstances in which it took place. It was dishonest, it was falsification and you have those admissions.

The question is now, in the circumstances in which it arose, does it amount to an impairment of fitness to practise today? There are a number of

aspects of that but within it, we would submit, and, sir, I am sure you will agree, that we have to consider the circumstances in which the misconduct took place. To consider it in isolation would simply be to say that every offence of falsification of documents will lead to a finding of impairment. There has to be consideration of the circumstances, so what were the circumstances?

You have heard Mr Byrne's evidence about the difficulties he was in. Whether that amounts to a contributing factor to the extent you may consider he isn't impaired is a matter entirely for you, but it is one that you will consider at the decision-making stage. As your learned Legal Adviser has said, one of the things you have to consider is credibility and whether these things took place in your opinion. That, as I understand it, must have been the basis of Mr Alder's cross-examination or it would not have been permitted.

If credibility is an issue, one has to consider is what Mr Byrne said likely or is it not likely? Is it something that happens quite a lot in the profession or is it not? Is it something that is so unbelievable as to be rejected outright by you and your colleagues? As I say, some of you may know more about the profession as a whole but many of you will not, and it would not be right, we would submit, to be influenced from the inside as to what does and does not happen in the profession. The reason why we have brought this evidence along is to try to have some evidential grounding for the suggestion, as we put it, that this is rather more widespread than we would like to think, and from someone who has suitable qualification for that.

That goes directly to the issue of whether it happened or not. If it happens quite a lot, then what Mr Byrne said may not be so incredible at all. It may be that some of the things he said in evidence have been experienced by Ms Sparrow in other practices, so that all goes to credibility. Therefore, to say that credibility can simply be decided on the basis of Mr Byrne's evidence may be simplifying it slightly, given that he is speaking to matters which may well be outside the knowledge of some members of the panel. That is the first point.

Even if credibility was not an issue, even if the Council accepted exactly what was said, the question is what inferences would you draw from this? Again, the question of whether supervision fell below what might be expected would obviously be relevant to the circumstances in which the misconduct occurred. If that is right, again the panel may need some assistance as far as what were the requirements of a supervisor. In his account, what shortfalls have they been, what effect might that have, is that a common shortfall, is that something that is capable of being believed, is it something which may have had an effect? Ms Sparrow can say all of that because she has experience of that area of training and supervision.

As I have said, the Council could, and this is no criticism of them at all, if they disputed what is in this report have obtained their own report to say this never happens, and what Mr Byrne has said is wholly implausible

because no practice operates in the way that he has said, if they can find someone to say it. This has been served now for some considerable months, certainly before the last hearing, I think since May, and no objection has been taken to it save that it is irrelevant. So really the question is only of relevance and, if this can help you, and we would submit that it could at this stage, it should be admitted. Unless I can assist any further, those are my submissions.

Mr Alder: It would be to repeat my previous submissions, sir.

Mr North: Thank you, Mr Alder. Legal Adviser.

Mr Coleman: Mr Chairman, the starting point is for you to consider what Mr Byrne's case is as it has emerged during the course of his evidence. Since I seek to summarise it, what he is saying is that he was, indeed he remains, a registered student optometrist. However, in early 2008 he was a student and he was subject to supervision. He says that there were deficiencies in that supervision, and it is alleged that these are serious deficiencies, and it said that those deficiencies have a bearing, shed some light, on his dishonesty, his misconduct and that those deficiencies have a bearing on the view that you should take of dishonesty and set the scene to the circumstances in which he came to be dishonest. Thus far, you have heard a great deal of evidence from Mr Byrne at this stage in support of that case, as I have summarised it.

What is now applied for is permission to adduce further evidence from an expert that would go, so it is said, to support such a case. My advice to you is that, if the matters that have been put forward by Mr Byrne and on his behalf at this stage are relevant, the starting point for any evidence that might go to support such a case also has relevance. You must always bear in mind that the amount of weight to be attached to such evidence will always be a matter for you when you come to concluding your decision in the case.

There will obviously be limits to the extent to which you can derive any assistance from the expert evidence, the outline of which has been described to you. She is no more than expert; she was not present at the scene. She cannot pass judgment or express an opinion in a way that is admissible as to whether or not Mr Byrne is telling the truth that is a matter for you. At most, all that she can say is that, in her expert view, there are substandard levels of supervision in optometric practices in this country. There are members of your Committee who may hold that view, who may be aware of that in their own practices and members of other practices will have their own views as to that. However, there are lay members on the Committee who may be informed by such expert evidence. We cannot assume that they will already know about those matters.

Bearing in mind the fact that there will be limits to the extent to which Ms Sparrow will be able to help, nevertheless I have difficulty in seeing how it can be said, at this stage, that this evidence has no relevance whatsoever

so that it not be admitted at this stage. It seems to me that, had the point been adjudicated earlier so that this line of evidence had been eliminated and it was all relegated to, let us say, the sanctions stage if we come to that stage, it would be a happier position that Mr Alder would be able to take up. However, since you have heard so much evidence about sub-standard systems of supervision, my advice on balance is that you consider admitting this evidence.

Mr North: Thank you. The Committee would like to discuss this briefly *in camera* if my colleagues agree.

Mr Coleman: Is there anything that either of you wishes to add?

Mr Alder: Just to thank you for the caveat, sir.

Mr Singh: I completely accept the caveat to be added to it.

[Hearing adjourned at 15.02]

[Hearing resumed at 15.13]

Mr North: Mr Singh, the Committee is minded to accept the document in evidence as relevant, but emphasises that the weight it will ascribe to the document is very much a matter for the Committee. I assume there are copies of the document which can be made available for the Committee to read?

Mr Singh: Sir, there are.

Mr North: Accordingly, it might be helpful if you direct the questioning in respect of the report and the witness's evidence in the direction of matters that we discussed earlier in evidence.

Mr Singh: Yes, of course.

Mr Coleman: Mr Singh, would it be an idea if copies were circulated among members of the Committee with a short adjournment so that they may read the report and then comment on it?

Mr Singh: What I would ask Ms Sparrow to do would be to adopt her report and just expand on a few areas. I don't know whether there will be a challenge to any areas.

Mr Coleman: I would have thought it is more a matter of whether there are any matters arising out of the evidence that Ms Sparrow has heard thus far today. There shouldn't be scope for any further clarification when there is a written report already.

Mr Singh: Thank you.

Mr North: Thank you for that very helpful suggestion, Legal Adviser. Can we have the report distributed please, which will be R2 I believe, and we shall take a short adjournment which will enable representatives to have a discussion. [*Copies of exhibit R2 distributed to Committee members*]

Mr Singh: Sir, speaking to Mr Alder now, it may be of assistance that while you are rising now, simply to read these at the same time, which are the last three references in the bundle relating to Mr Byrne's current employer, Auckland Opticians, which you heard about in his evidence. Those three references it has been agreed are relevant to the impairment stage in terms of remedial aspects, and Mr Alder and I have spoken about it.

Mr North: You have agreed that, Mr Alder?

Mr Alder: I am quite happy with that, sir.

[*Hearing adjourned at 15.16*]

[*Hearing resumed at 15.29*]

Mr North: Thank you. I can confirm that the Committee has read the report.

Mr Singh: Can I call Ms Sparrow please?

**MS KAREN SPARROW sworn
Examined by MR SINGH**

Q. Ms Sparrow, can we have your full name please?

A. My full name is Karen Nicola Sparrow.

Q. Obviously, the panel have read your report, so I shall focus my questions really to two major areas. Before I do that, could you give the panel some idea of your qualifications, first of all, and your experience in relation specifically to the environment that a pre-registration optometrist would experience in a large multiple centre practice?

A. I worked for Vision Express for 13 years and supervised a pre-reg in practice, and then went on to be Professional Services Manager responsible for anything up to 55 pre-reg's a year over nine years that I was Professional Services Manager there. I was responsible for their interviewing and recruitment from university through to their placement in practices and through their training period, organising their training courses, through qualification into their placement in a practice once they were qualified within Vision Express.

Q. Was that nationally for Vision Express?

A. Yes.

Q. With how many pre-registration students would you say you have been involved over your time at Vision Express?

- A.** Over that period, approximately 400.
- Q.** It says in your report at paragraph 1.1 “training and support”. Can you give us some idea about what you did in terms of training and support?
- A.** As well as organising the courses for the Vision Express pre-regs, I also did practice visits, did tutorials in practices, liaised between supervisors, managers and pre-regs if there was an issue that arose, and I did a lot of coaching and mentoring of the students. I gave them the option right from day one of their induction course that if there was a problem they could not resolve with their practice manager or supervisor, they should give me a call, so I did a fair amount of mentoring and coaching.
- Q.** You were available on the end of the phone, for example, if there was a problem?
- A.** And in person in the practice if I needed to visit.
- Q.** Thank you. I want to deal with two aspects. The first is in relation to pre-registration students and the account that Mr Byrne has given of his experience at Specsavers in Chester. Is the account of his experience alien to your experience of the life of a pre-registration student?
- A.** No. In my experience at Vision Express, it is not uncommon for pre-regs to have variable or limited support in practice.
- Q.** I shall come on to specific aspects in a moment but, in your experience, have pre-reg students found it easy, for example, either to raise issues about their supervision or to complain about their supervision to other people?
- A.** It is difficult for them to raise an issue if they do not feel what they consider to be a supportive supervisor, a supportive manager or someone they can confide in and get advice from. My experience is that they often do not seek out that advice any further; it does not seem to be apparent to them what routes they should take.
- Q.** What are the kind of factors that would lead to them not seeking help when perhaps they should do?
- A.** Dealing with people in positions of authority, dealing with the people who are responsible for their employment and their job and in future employment, once they do qualify, things tend to be referred back to their line manager so if they go higher up in the company, say to their regional manager, it tends to get referred back down to their line manager, which is generally the practice manager or the practice director. If they have issues or problems communicating with that person, that just takes them on the same course.
- Q.** You mentioned about future career and progression of career. What kind of factors are relevant in that regard?
- A.** Once they qualify, if they are seeking a placement, particularly if they are in a big company and need to remain in that company for a further 12 months or period which is variable from company to company, their ability to get a placement that is suitable to them, in an area that is suitable to them will be

based on the reference and feedback that comes from their practice manager.

Q. So there is potentially a reluctance to complain?

A. Yes.

Q. Specifically, in relation to the account that Mr Byrne gave, you have seen his letter that he wrote on 15 September last year to the Council, which you list as a document that you saw in preparing your report. You have also heard his evidence today. I want to ask your opinion on, first, if his account is correct, which is a matter for the panel in due course, where you feel the supervision that he was provided with fell down, if it did?

A. It did not seem to be clear when the supervision moved from main supervisor to other people that it was clarified and that those people fully accepted those roles. Under the College guidelines, the terms and conditions for supervisors, the responsibility for supervision lies with the main supervisor, and it is their responsibility to make sure that any delegation that is happening occurs correctly.

Q. Can we term that clarification of who has a responsibility on a particular day or instance? If I can summarise the point that he made and you can comment on it, another point that Mr Byrne made was in relation to consistency of supervision. What would you say about that: was it adequate or not?

A. There were unfortunate circumstances which meant that his main supervisor was not on the premises for a period of time. However, it certainly does not seem to be clear that the secondary supervisor then took on the role in terms of support, supervision, viewing cases and preparation for the assessments.

Q. If the first supervisor is away, what role should the second one take on?

A. The same responsibilities as the main supervisor. The supervision needs to be maintained at the same standard.

Q. In particular, one of the problems for Mr Byrne was finding contact lens experience within the practice. Is that something that you have come across before?

A. Particularly with RGP patients, the nature of the business has changed such that RGP patients probably make up less than 5% of the contact lens patients whom we see day to day so, therefore, they are few and far between. It does become a case of spotting those patients and, if those patients are not directed towards your pre-reg, they may have missed the only RGP patient who might walk in that week.

Q. There was a suggestion in Mr Byrne's evidence that he was not booked in for contact lens patients but was pushed in the direction of testing sight and dispensing. Is that something that you have noticed is common practice?

A. I have certainly noticed that before, particularly when you have a specific contact lens optician in your practice. The contact lens work tends to be directed to them and the eye examinations tend to be directed to the

optometrists and pre-regs in order to get the volume through to meet the targets that the practice is trying to meet that day and that week.

- Q.** Why would it directed specifically to the contact lens optician?
- A.** The contact lens optician cannot do eye examinations, so it is a way of splitting the work up in the most effective manner for productivity, not necessarily for the benefit of the pre-reg.
- Q.** What would you expect to have happened in that situation? Mr Byrne says that he raised with various people the fact that he was not getting the experience, how would you expect that to have been dealt with within the practice?
- A.** In my experience, it is not uncommon to have a gap in a pre-reg's experience on RGP lenses and, generally, in the past I have arranged experience for them in another practice. However, that only really happens if you have the support of the practice in which the pre-reg is based but it is certainly possible and something that I did several times.
- Q.** Is that something you would expect to be offered by the practice itself?
- A.** I would expect the supervisor to have looked at all the options of getting that RGP experience and, if that meant going outside the practice, particularly in an organisation where a student could go to another practice within the organisation, so they would not have to go to a competitor, I would certainly think that it could have been explored.
- Q.** You have your report in front of you and it is the last page and paragraph 3.7 where you alluded to that issue in that paragraph. I don't know whether it was explicitly suggested that Mr Byrne should have gone out and arranged it himself but certainly that paragraph is in Ms Brough's statement. In general, do you stand by the comments you made at paragraph 3.7 in respect of that?
- A.** Yes, it would be very difficult for any pre-reg to go and work in a competitor's practice without the support of the practice you are employed by.
- Q.** The next issue I would like to deal with briefly arises out of a question asked by one of the members of the panel. At the time of the third quarter competency assessment, the letter that was written by Professor Parrish to Specsavers or to the College was that Mr Byrne still had 14 competencies outstanding at the beginning of that quarter. Is that something that would be unusual at that stage in terms of training?
- A.** No. I don't know the exact figure but many pre-regs will need to have a fourth assessment, or even a fifth assessment, in order to mop up the final competencies that they have not managed to provide adequate evidence of during the year. Pre-regs tend to take longer than a year to get through all those assessments.
- Q.** So is there any real significance to be attached to that in terms of his progress?
- A.** No.

- Q.** Thank you. Finally, you have outlined things in your report but, overall, what is your opinion in respect of the standard of supervision that Mr Byrne received at Specsavers? Would you say that, in respect of the areas we have talked about, it was adequate or not?
- A.** In respect of his experience from the evidence I have seen, I would say it was inadequate and that steps were not taken to rectify the particular issues.
- Q.** Thank you. Sir, I do not have any further questions.

Mr North: Mr Alder?

Cross-examined by MR ALDER

- Q.** In terms of the final conclusion you have come to and the opinion in respect of adequacy, your conclusion is based purely upon the evidence of Mr Byrne is that right?
- A.** And comparing it with the number of supervisors in practices I have seen over the years.
- Q.** But it is not as if you have spoken with any of the supervisors to whom Mr Byrne has referred or been involved in a Specsavers practice?
- A.** No.
- Q.** Purely in terms of evidential background, you have never been employed by Specsavers?
- A.** I have done two or three locum days with an individual Specsavers practice in Eastbourne probably about a year or eighteen months ago.
- Q.** In any supervisory role?
- A.** No.
- Q.** Thank you. You were asked a question as to whether Mr Byrne's recollection of his supervision process was alien in some way to the experience you have perhaps at Vision Express. I hope I have phrased the question correctly certainly in broad terms, and you gave your answer that it was not uncommon for other multiples to have supervising issues or problems. To expand on that theme, in those practices where it is not uncommon, how common would it be for students thereafter to feel the need to falsify their records as part of the assessment process?
- A.** I have no idea as to how many students falsify their records. I have over the years seen a lot of students in very stressful circumstances who feel that they cannot turn to anybody and, therefore, their behaviour changes and they do extreme things which they probably would not do in other circumstances.
- Q.** So, to that extent, with the pressure on Mr Byrne and the not uncommon nature of the supervisory arrangements, in your opinion, would it be appropriate for a student to act dishonestly as a result of those pressures?

- A.** No.
- Q.** Why?
- A.** It is not appropriate to falsify records but I have seen students pushed into such circumstances and extreme behaviour that they do things that are out of character.
- Q.** Some questions were asked of Mr Byrne in respect of the concerns he had regarding a few occasions when he had to test sight without there being proper supervision on the premises. You will have heard the questions put by the Committee to Mr Byrne. At the start of a pre-registration placement, would a pre-registration student, in your opinion, be aware of the responsibilities under the Opticians Act to ensure that sight testing is only undertaken by a registered optometrist or trainees under supervision?
- A.** I am sure they are aware of those things but when a person in authority tells you that the supervision is okay, again in my experience pre-regs have a tendency to accept what that person in authority says and do not necessarily question it.
- Q.** In that scenario, you would support a pre-registration trainee who says I understand the obligation under the Act, under the sight testing regulations, but that is fine because I have been told by a person in authority that it is okay for me to test sight without supervision?
- A.** No, obviously I would not support anybody testing unsupervised, but I can understand and have seen pre-regs take a piece of advice from somebody in authority and act on that advice, because it comes from that person in authority who is their line manager, or if it is different pieces of advice, perhaps their supervisor.
- Q.** Would it be appropriate or reasonable for a pre-registration student to seek to clarify that direction or advice from a senior member of staff?
- A.** Absolutely but, if they seek to clarify with their supervisor or their line manager and they get information back which they act upon, it is often difficult for them to work out whom else to go to.
- Q.** In your opinion, does that, therefore, absolve in some way the student from his professional responsibilities?
- A.** No, and they shouldn't be testing unsupervised but I can understand that puts them in a difficult situation out of which they might not know the route.
- Q.** A question was put to Mr Byrne in respect of the information pack made available to pre-registration students which have lists of contacts at the College of Optometrists. There is a pre-registration assessor appointed by the College who can be asked questions, and a question can be put to the Council. There are avenues of support aren't there?
- A.** Yes, but the assessors are advised, as part of their training by the College I understand, that they are an assessor, they may provide action plans but they are not a mentor and a coach. When the assessor arrives at a practice to do the initial visit with the pre-reg and goes through how the year will be structured, the quarterly assessments and so on and lays down what

is going to happen, it puts the pre-reg in the mindset that this is the person who stands between me and the qualification so I must tick the boxes and pass my competencies. Therefore, they do not necessarily see them as a confidant.

- Q.** Could there be a scenario whereby, if a pre-registration were so concerned about the level of supervision, the assessor would be informed by the pre-registration student? They could perhaps say, 'I don't have the competencies completed here because of these reasons', would that be appropriate?
- A.** That would be appropriate but some pre-reg's feel that might affect their ability to ultimately qualify; it might somehow impact on their ability to pass their competencies.
- Q.** I am grateful, thank you very much.

Mr North: Thank you. Any points arising, Mr Singh?

Mr Singh: Sir, the only question that I would have asked has been dealt with in chief and I can address you on it in due course, thank you.

Mr North: Do my colleagues have any questions?

Dr Azubike: I have two questions. I believe in answer to Mr Singh's question you said you had been involved with 400 pre-reg students. Out of those 400 pre-reg students, do you have any experience of what number had falsified records?

A. Not falsifying records but out of 50 something students per year, there would be one or two students who would be in an extremely stressful situation and end up with health problems or a breakdown in communication in their practice and serious problems that impacted their exams, or it means that they put off their assessments or whatever.

Q. Have you had experience of any of those 400 students falsifying their records?

A. Not to my knowledge.

Q. Thank you. Secondly, concerning point 3.7 of your report, which is on the last page of your report, Mr Singh asked you a question and in answer you said it was not fair for Mr Byrne to go to a competitor to get practice?

A. I didn't say it wasn't fair. However, his employers may have had issues with an employee of theirs working at a competitor practice and, therefore, they may be unwilling to release him to do that. It is common to have a clause in a contract that says they cannot work for a competitor.

Q. Would you consider the University of Bradford to be a competitor, because I understood he was going to do a course?

A. That was for the course but the other alternative is to get contact lens experience in another opticians or optometrist practice.

- Q.** So do you feel that the conclusion you came to in 3.7 does not cover the possibilities that existed because there are two possibilities. One is that he could have gone to the University of Bradford, or the second possibility is that he could have gone to a competitor practice. So the conclusion of 3.7 does not quite cover the situation?
- A.** It covers the situation for going to a competitor practice. In the multiples, generally, both Specsavers and Vision Express use the same training provider, and the understanding is that the training provided covers all the competencies and, therefore, that is all that the company will pay for. Some students go and get extra experience at other courses but that is dependent upon finance available and being released from your practice in order to go on a course as well.
- Q.** Perhaps I should rephrase the question. Isn't there a possibility that he could have contacted the practice on his days off to get this experience?
- A.** You mean to come back to the practice he is in?
- Q.** Yes, for Mr Byrne to come back on his days off to get extra experience to cover the contact lens experience that he may have missed?
- A.** It is possible, although the same circumstances would still have existed in terms of his communication and Mr Norris allowing him to see patients and do new fits.
- Q.** Thank you.

Professor Taylor: I have one question really. You said that you had the role of Professional Manager looking after pre-reg students and you would expect people to come to you in that role. Is there a similar role in Specsavers?

- A.** I think Nicky Rippon is the person whom students would approach and she is in the HR department at Specsavers but I am not aware, though I may be mistaken, that there is somebody doing the role that I did, which is making practice visits and acting as mentor and coach to the pre-regs.
- Q.** As a follow-up then, would you have expected somebody to contact Nicky Rippon at Specsavers if they had an issue, as you presumably expected them to come to you?
- A.** Yes, but from my experience, on day one of the induction year after year, I would say to the students that I am not psychic and if they don't tell me there is a problem, I cannot come and act on it, but students are still reluctant to ring head office and inform on somebody in their practice, because they think it will cause a change in their day-to-day working environment and the way in which other people interact with them in their practice.
- Q.** Thank you.

Mr North: Mr Varley? [*No questions*] Ms O'Donoghue? [*No questions*] I have no questions, so Ms Sparrow thank you very much for your help this afternoon. [*Witness stands down*]

Mr Singh: Sir that closes the case on behalf of Mr Byrne. Sir, you have read the references?

Mr North: The last three references.

Mr Singh: Yes, those form part of the case and I probably do not need to read them into the record. They are part of the evidence on which we rely.

Mr North: Fine, thank you. Can we now move to submissions regarding impairment; if you would like to begin, Mr Alder?

Submissions on Impairment

Mr Alder: Sir, I shall begin but you and your colleagues will be conscious of the submissions I made before Mr Byrne was called to give evidence and I repeat those submissions to the Committee. The issue as to fitness to undertake training is a matter entirely for your judgment, and you should consider that issue of fitness in the round. You will be conscious of your duties in respect of the public interest that you have a responsibility to maintain the reputation of the profession, you have a duty to uphold the standards of the profession and to have an eye to maintaining the confidence of the public and the profession itself in the standards of the profession. That is as much part of your decision as to the fitness to undertake training as it is in terms of the very personal aspects which attach to Mr Byrne's conduct.

I shall not repeat in terms the submissions I made other than just to reiterate the Council's submission that the fundamental issue at stake when considering the issue of fitness to undertake training is that of honesty and integrity. This case does major on the issue of dishonesty in a number of respects. On at least five occasions, as set out in the allegations, it is alleged, and you have found proven, that Mr Byrne acted dishonestly. He acted in a premeditated fashion; he sought to deceive his performance assessor. You have heard his evidence under questioning and from me that he would not have disclosed the nature of those false records had Professor Parrish not had his concerns. You will also have heard Mr Byrne's answers to my questions in respect of his intention and hope to move to another practice using those work records.

Sir, to reiterate the final sentence of my previous submission, a question for you is as to whether a student whom you have found guilty of acting dishonestly in the manner of the allegations set out is a student who has exhibited the fitness to undertake training with all that entails in terms of professionalism, in terms of the reputation of the individual professional and the profession itself. I would ask you to conclude, and I suggest it is clear from the evidence you have seen in terms of the credibility of the version of events which Mr Byrne has given to you, that the answer to that question is very much no, he is not fit to undertake training.

Sir, these are brief submissions because I am conscious I have had a good bite of the cherry perhaps and my learned friend must, of course, conclude the submissions for you.

Mr Singh: Sir, thank you. I hope not to be too much longer than Mr Alder but I shall be slightly longer. There are two general points and three specific headings under which I would ask you to consider the evidence that you have heard. The blanket submission is that I can well understand that this may be a case in which there needs to be some mark as to the seriousness of the conduct, but in my submission this could be done by you finding that Mr Byrne is not impaired, but issue a warning in his case.

The general points are these. First of all, as I am sure you are all very familiar now, it is impairment in the present tense, looking forward rather than backward. Of course, I accept as is contained in all the authorities that past misconduct can be so grave that it impairs a person's fitness to practise today, except that the consideration is nevertheless in relation to current impairment of fitness to practise and not at the time that any misconduct that has been admitted occurred.

The second general point is that, in this case, the misconduct is obviously the falsification of records. As Mr Alder said, the case has never been brought on the lack of competence in terms of his ability. There is the recent difficulty about the exams, which I shall address in a moment, but I would ask you to put that to one side when considering whether he is impaired by reason of the misconduct which is alleged. That is the focus of the allegation. As I said, the allegation does not relate to that and it should not encroach on your decision. Of course, it isn't wholly irrelevant to the practical reality of the situation I suppose that what you are really deciding on is whether Mr Byrne should be given a chance to apply to start his whole registration scheme as well. Whether he will or will not be able to is a matter for another Committee to decide but that is what he wishes to do, and his dedication to the profession is such that he wants to start again if he possibly can. Those are the general points.

The specific headings that I would ask you to consider are the following: the nature of the misconduct and the circumstances in which it occurred; how Mr Byrne conducted himself at the time and throughout the proceedings in terms of his admissions and his openness; whether this is a one-off, whether it is remediable, whether it has been remedied and whether it is likely to be repeated.

In my submission, tying all three of those headings together and the matters that I shall bring to your attention just briefly, you can safely conclude that his fitness to undertake training is not impaired, and I shall address you on an alternative disclosure in due course. The first heading of misconduct in the circumstances: we can all be fairly safe to assume that nobody knows now better than Mr Byrne that the kind of misconduct he has admitted is serious. It seems to have been obvious to him as soon as he was questioned by Professor Parrish when he admitted what he had done, and

admitted it very soon afterwards to the College that falsifying records was an incredibly stupid thing to do by someone in his position. He has explained the circumstances in which it has arisen and I hope not seeking to blame others for a decision that he made, that is his own decision and a decision with which he will now have to live. It may be the decision that, in a roundabout way, has completely finished his career, because he may not be allowed to retake those exams again.

I shall not repeat the evidence you heard only a moment ago and which you will have very firmly in mind. However, I would just make the following four points. The complaint about the circumstances of his supervision are, I would submit contributing factors. They are not the sole cause because it was his decision but they are factors in which it all occurred and they are factors which may be relevant, you may think, to impairment. However, the lack of consistency of supervision, the lack of direct supervision on occasions, the fact that priorities seemed to be commercial rather than training-based a lot of the time, and the breakdown in the relationship with one of the directors, which led to his feeling very pressured and incredibly uneasy about his situation, all of those four things, in my submission, contributed to his stupid decision to falsify records.

If I could refer you to pages in the Council's evidence, it seems that was a view shared by Ruth Brough when she did the investigation for the College. By way of page numbers, it is page 67 of the Council's bundle in the last paragraph beginning, "The trainee did own up", and I rely on that. On the next page where it says "We felt" at the beginning of the last paragraph on that page:

"We felt that the breakdown in certain relationships within the practice and his concern over losing his pre-reg position had contributed" – I echo that word - "to his reluctance to ask for help when he found that gaining the relevant experience was difficult."

It is following on from that that he took the decision that he did. It goes on to say:

"Today, we would say that the trainee was helpful and honest in his conduct during the investigation process, but during the assessment, he has admitted that he was knowingly cheating. In the light of this, regrettably, we would recommend to the Education Committee that the matter should be referred to the GOC for consideration."

I rely on that paragraph as well. You may be able to express a similar view as to why this is one of the reasons this has all come about.

Of course, he does not hide behind this. Unfortunately, it may be that, if supervision had been better, this would not have come about, but he takes ultimate responsibility for it and that is what he must do. Therefore, the submission in respect of heading one is simply that I would ask you to bear in mind all of those factors, and I hope you can accept that this decision to

falsify was one fuelled by panic, isolation from assistance and fear of losing his position and what might happen in the long run.

There is a distinction to be drawn, in my submission, between Patient A on the one hand and patients B, C, D and E on the other hand. Patient A was done, as you have heard, following a suggestion that was taken completely out of the context in which it should have been taken. For that he accepts responsibility. While it is falsification of a record, which he accepts that it is, there is a slight difference, I would submit, in culpability in terms of him at the time thinking that he could use it as a basis for a role play, obviously at the same time knowing that he should not have done it. That is the misconduct that he has admitted. B, C, D and E are in a different circumstance because they are completely falsified records but, as I have said, those were brought about the breakdown of the relationship and what he felt to be an ultimatum about his attitude. You have had all of that evidence and I would ask you to weigh it all up.

The second heading is his conduct at the time and since. I hope you will be able to conclude that he has demonstrated real remorse at the time and now. The fact that he admitted things without prompting when he came into the College assessment should, in my submission, be a measure of his usual level of honesty and his usual practice. These matters were, in my submission, out of character for him, and he has reverted back to his usual honest and open self as soon matters were found out.

The reference for that, so that you can see it later on, is the first page of the interview which is page 63. You will see the way the interview progressed. At the time the question was asked, "Are there any other issues you want to tell us about now?" It is not suggested by anyone that they knew that there were other falsified records about, so that admission was volunteered by Mr Byrne without them having the knowledge. It is obvious from that when he went into the interview that he had already made the decision that he was going to tell them, which, in the circumstances he was in, in my submission, should be to his credit.

His evidence, I hope, was telling in most importantly why now he understands that falsification of records is wrong. You have had his answer on that, and it goes to honesty and that it is completely wrong to be dishonest and to put in false documents in his profession, he understands that better than anyone. Therefore, sir, his conduct really consists of admissions – open, honest, right from the beginning - and I hope that you can put that into the mix when considering impairment today, whether he has progressed, whether he has displayed insight and whether he has acted in the spirit of the profession after misconduct.

Sir, heading three very briefly: looking to the future. I use the words 'is it remediable, has it been remedied and is it likely to be repeated', because that is taken straight from an authority. There are a number of different authorities, as I am sure you will be aware, that all centre around the same idea but they are simply, in terms of looking forward, has it been possible

for Mr Byrne to remedy the deficiency that was there at the time of this misconduct?

The points I have made in relation to the first two headings apply here but you may think he has learned a lesson in the hardest way possible by having to come before this panel. You may feel that he has taken all of that on board and progressed. I rely, in this regard, on the three references from Auckland Opticians and I rely on the fact that he has re-submitted all contact lens competency assessments, they have been successful, they were all on the basis of proper records and that was because he was able to get the experience at a different practice. You may feel that is evidence of conduct being remediable and remedied. The shortcoming within himself was one that was easily addressed by him, an error of judgment and now he knows full well what he can and cannot do.

As you know, unfortunately the effect of his mistakes will live on potentially for much longer, because it may be that he cannot retake these exams. It is in the context of an adjourned hearing, and the hearing this time falling very close to his exams, that he has unfortunately been unable to progress in that way. Sir, looking forward and not back, you may be able to conclude that he has learned a salutary lesson, this kind of action will never be repeated and that he has taken all the steps that he can to remedy the problem and move on. Those are my submissions under the third heading. Taking all of that into account, I would submit that this occurred in difficult circumstances, he has made early admissions, demonstrated insight, remedied the issues and continued as best he can at Auckland Opticians. You may feel you can conclude that he is not impaired but you may wish to mark the seriousness of what has happened with a warning. If you feel that is appropriate, I would commend that course of conduct to you.

Sir, unless I can assist you and your colleagues any further, those are my submissions.

Mr North: Thank you, Mr Singh that has been very helpful. Before we retire, I shall ask the Legal Adviser to assist us.

Mr Coleman: Mr Chairman, my task as your Legal Adviser is to advise you rather than to direct you as to the law. You and your fellow Committee members remain the sole judges of both the law and fact. Under section 13D of the Opticians Act 1989, one of the specified grounds upon which the fitness of a registered student optometrist to undertake training can be said to be impaired is misconduct. Mr Byrne has this morning admitted, and you have found proved, that at the time of his Quarter 1 competency assessment, Mr Byrne submitted false records for assessment with regard to patient A, that he submitted false records for patients B and C as part of the Quarter 2 competency assessment, those records having been submitted at the time of the Quarter 3 competency assessment and, finally, that he had prepared false records for submission with regard to patients D and E as part of that third quarter competency assessment.

This misconduct having been admitted and found by you, it is your task to determine whether, in all the circumstances of the case, and in the exercise of your independent judgment, Mr Byrne's fitness to undertake training as an optometrist is impaired. There is no formal definition of impairment. You may be assisted in your task by reminding yourselves of the code of conduct for individual registrants to be found on page 5 of the White Book, which provides under Introduction that,

“Patients (including customers) must be able to trust optometrists and dispensing opticians with their well being. To justify that trust, professionals have a duty to maintain a good standard of practice and care and to show respect for all aspects of human life.”

Under the code it is said that an optometrist “must be honest and trustworthy”. Those are guidelines for setting out the standards of good conduct, probity and honesty that are properly to be expected by yourselves, by the public and by the patients of registered optometrists. However, just as those are standards to be expected of registered optometrists, so those are also standards that can be reasonably and properly expected of students who aspire to qualify and to practise in due course as optometrists for future practice purposes.

Another way of approaching the same issue is to ask yourselves whether you are satisfied on the evidence that some restriction needs to be imposed on Mr Byrne's registration taking into account a number of factors: the nature and seriousness of his misconduct; the need to protect prospective patients and customers; the need to maintain public confidence in the optometrist profession; the need to declare and uphold proper standards of conduct within the profession and, finally, taking into account all the other facts and circumstances of this case.

In relation to that last matter, I would refer you to the guidance published by the Council, in particular revised in November 2008, and on page 13 there is a useful list, or it is a list that you may find useful, of factors that may have a relevance to the view you form of all the evidence in this case. It is under a heading relating to giving of warnings and whether that would be appropriate where there is a finding that there has not been impairment of fitness to practise, or, as it would be in this case, fitness to continue with training. The bullet points are perhaps of relevance and you may be assisted by at least having regard to them as you consider this issue of impairment.

You will see the factors many of which have been touched on by counsel in the course of closing submissions. This commences with evidence that the behaviour of the registrant would not have caused patient harm, early admission of facts alleged and/or insight into failings, isolated incident which was not deliberate, the genuine expression of regret/apology, acting under duress, previous good history, no repetition of behaviour since the incident, appropriate rehabilitative, corrective steps have been taken and, finally, relevant and appropriate references and testimonials. It is by

looking at all of the evidence in the case and applying this requirement, definition and explanation of what is meant by impairment that you should reach your decision.

Finally, I should stress that the time for assessing Mr Byrne's impairment, which is whether or not his fitness to undertake training can be said to be impaired, is now in October 2009, notwithstanding that the conduct he has admitted took place in the early part of 2008. You have, therefore, to consider all the evidence which includes evidence as to what has happened to Mr Byrne in the period of time since the misconduct that he has admitted. Finally, Mr Chairman, I would remind you of the need to give full reasons for the decision that you make on this issue. Unless there are any further matters that arise from Counsel that concludes my advice.

Mr North: No further matters from counsel in any respect? [None] Thank you. With my colleagues' consent, we now move *in camera* to consider the matter.

[Hearing adjourned at 16.19]

[Hearing resumed at 17.36]

Mr North:

Findings regarding impairment

The Committee has carefully considered the evidence of Mr Byrne and Ms Karen Sparrow and it has noted the submissions of Counsel on the issue of impairment.

Mr Byrne has today admitted that on two separate occasions in November 2007 and May 2008 he dishonestly falsified records for five patients with the intention of satisfying the requirements of his Competency Assessment.

As is made clear in the Code of Conduct, it is a fundamental requirement that optometrists and dispensing opticians must be honest and trustworthy and the Committee is in no doubt that this equally extends to students who are undergoing training to join this profession.

The Committee is satisfied that cheating for the purpose of making progress in one's student training is an extremely serious matter that fully justifies a finding that the person's fitness to undertake training is impaired.

The Committee has carefully considered the evidence of Mr Byrne, supported as it was to a limited extent by Ms Sparrow, regarding deficiencies that he says existed in the standards of supervision he was receiving at the material time.

The Committee has noted that, although Ms Sparrow had personal experience of supervising and mentoring some 400 pre-registration students under varying degrees of pressure, she was unable to recall another incident of falsification of records of competencies in the training process.

The Committee has concluded that, even if Mr Byrne's allegations were to be accepted, the matters complained of by him would in no way justify his decision on more than one occasion to resort to dishonest conduct in order to improve his position.

In the circumstances, the Committee is in no doubt that the fitness of Mr Byrne to undertake training as an optometrist was, and continues to be, impaired.

We would move to stage four, that of sanction, but, given the lateness of the hour and the fact that members of the Committee have travel commitments, I propose to end today's proceedings at this point and to reconvene on another day to hear submissions on sanction. That concludes the proceedings for today. We shall now leave Mr Henley to organise additional dates for the next stage of these proceedings.

[Discussion of dates follows]

[Hearing adjourned at 17.38]