



F(09)03

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

GENERAL OPTICAL COUNCIL

AND

GURPREET KAUR CHAGGAR (SO-1112)

**Wednesday, 14 April 2010 – Friday, 16 April 2010
[Reconvened from 3 December 2009]**

SUBSTANTIVE HEARING

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

Wednesday, 14 April 2010 – Friday, 16 April 2010

Fitness to Practise Committee: Sir Alistair Graham (lay) (Chair)
Mr Alan Baldwin (Lay)
Mrs Geraldine Huka (Lay)
Ms Catherine Viner (Optometrist)
Miss Janice McCrudden (Optometrist)

Legal Adviser: Mr Nicholas Levisieur

Hearings Manager: Mr David Henley BEM

For the GOC: Mr John Hepworth

For the Registrant: Mr Jamas Hodivala

DAY ONE

[Hearing commenced at 10.30 am]

Sir Alistair Graham: Good morning. I am 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 of two optometrists, three lay members and I will ask the members of the Committee to introduce themselves and the capacity in which they sit. *[Introductions made]*.

To my right is Mr Levisieur, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee and ensure that the proceedings are conducted in accordance with the Rules of Procedure, so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate. In the event that any matter arises during the course of the Committee's deliberations upon which the Committee seeks advice, the parties will be invited to return to hear the matter which the Committee have raised and the advice to the Committee. Where advice on any issue has not been accepted by the Committee this will be indicated in the course of its decision on that issue.

To your right is Mr 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 being said today in the sections of the Hearing in which the parties are present. The remaining persons sitting in the hearing room rather than the public and press areas are members of the respective legal teams.

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

At the adjourned hearing on 3 December 2009 the registrant was asked whether she admitted the facts of the allegation. The fact of the caution being administered in March 2008 was admitted, but the underlying facts said to be represented by the caution were not admitted. In short, Miss Chaggar said that she did not commit an underlying criminal offence, even though she admitted that she had done.

Also in the previous hearing the Committee decided the most sensible way of dealing with the impairment stage, given that there is a dispute as to the underlying facts in this case, is to divide impairment into a two stage process. The first stage of impairment will involve all parties calling in their evidence in relation to the underlying facts represented by the caution. The Committee will then make a decision as to what facts they find proven based on the evidence that is heard.

The parties will then be invited to make submissions in the traditional sense of whether or not the facts found amount to impairment then to go back to the traditional sense of impairment, being a matter for the Committee's judgement. If I have misunderstood how we have previously agreed to proceed, then please speak out before we go any further.

Mr Hodivala: No, that's correct. The only addition is that we have been discussing the arguments submitted before today, about a preliminary step with regards to the admissibility of various aspects of the evidence. In many respects you are absolutely right, it will be a two stage process, but as far as that first stage is concerned that itself will be divided into two stages as well.

Sir Alistair Graham: Do you agree with that Mr Hepworth?

Mr Hepworth: Yes, sir.

Mr Levisaur: Regrettably so do I.

[Private session]

Public session

Sir Alistair Graham: I am sorry we have taken such a long time but we are in slightly new territory, I think, as far as the Committee is concerned. Also I am very conscious that some matters I read out should be in private, should not be on the website or should be in private session, so I am going to alert you a part of the determination on this particular aspect is in private session.

Findings in relation to facts of the allegation.

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

Application to exclude evidence from the fact finding stage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Committee first considered the confessions given in the interview conducted by Mr Walls on Thursday 21 November 2007 at 2.29 p.m.

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

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

The registrant replied, 'No thank you.'

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

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

She took the opportunity after her first interview with Mr Walls to speak to the director of this branch of Specsavers, Mr Boyett. Her evidence was that she continued to be distressed; she explained that the director had advised her to seek a further interview with Mr Walls and that she should tell him everything she knew about the involvement of the two other named employees.

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

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

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

“Yes before we do so I must warn you that you do not have to say anything, but it may harm your defence if you do not

mention when questioned something that you later rely on in court. Anything you do say may be used in evidence. Do you understand what that means? Okay?"

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

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

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

[Redacted]

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

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

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

The Committee went on to consider the admissions contained in the document C1 pages 1 and 3 which set out the terms of the conditional caution. The caution process took place on 26 March 2008 at Uxbridge Police Station. It was conducted by Sergeant Key. DC Back was in attendance.

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

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

[Redacted]

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

The relevant passage in this guidance to which the Committee paid particular regard was:

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

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

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

That brings us to the end of our decision on this particular aspect. I am conscious that it is 25 past five and we are not going to get anything further done today, and I am also conscious we are beginning to have some problems of travel because of volcanoes in Iceland. I do not know quite whether the respective legal teams have any problems and witnesses and the rest of it.

[Discussion regarding travel arrangements follows]

Mr Hodivala: We have been discussing timetable, as you may imagine, and the next stage is Mr Walls to give his evidence.

Mr Levisaur: Can I just enquire, just to help me. He is going to give what extra evidence?

Mr Hodivala: He is going to give evidence about the offence itself, primarily –

Mr Levisaur: Of course he is. Forgive me, of course he is. That evidence is not before the Committee.

Mr Hodivala: But actually his evidence can be dealt with in-chief relatively swiftly and likewise cross-examination. I do not have many questions for him. We anticipate that his evidence might take around half an hour to complete. It is then a question of juggling various witnesses and possibly with a little flexibility from the Committee, and I am grateful to Mr Hepworth as well, we may be able to take certain witnesses out of turn, but Miss Chaggar's evidence I anticipate may take a little time, although there are issues that overlap in relation to the factual stage, the evidence that you have heard already. There are further material matters that need to be gone into.

Sir Alistair Graham: We have the facts stage to complete, then we have the impairment.

Mr Hodivala: Regardless of what happens, we still have impairment and sanction to deal with, because whatever views you take about the facts in due course, the fact of the matter remains that Miss Chaggar has a caution accorded against her and so it certainly seems from my perspective that there will need to be consideration given to impairment and sanction, regardless of views that you take about the underlying facts. That is our view.

Sir Alistair Graham: Given all that information, would we finish by tomorrow, tomorrow being a normal day?

Mr Hodivala: It would be very tight.

Mr Hepworth: I think it unlikely. Of course, it depends whether or not there is a sanction stage at all, and that is something we cannot predict. I think it unlikely.

Sir Alistair Graham: There is a question of whether my colleagues should have the opportunity to stand down.

Mr Levisaur: I am sorry, that came straight to my mind and it was the very thing I was going to say. However, there are some difficulties in this case because – and Mr Hepworth is reaching for the book – some of the evidence which has undoubtedly been heard at the preliminary stage is necessarily likely to be carried forward, if only because of your wish to avoid duplication of evidence. Secondly, impression, because the registrant has already given evidence and you know as a result of what was said in private session what impression the Committee members have already reached – a partial impression that they have reached – as to this lady – I am careful in what I say because of the private session requirement – it might not be in your client's interests to have a member stand down in those circumstances.

Mr Hodivala: Certainly in previous hearings in my experience a quorum is three.

Mr Levisaur: Absolutely, with consent. No question; one professional member as a minimum.

Mr Hodivala: Certainly the ability to reduce, not replace, but I am slightly in the dark here with regards to –

Sir Alistair Graham: Do you want time to think about this?

Mr Levisaur: I am anxious that you are not placed in a potential difficulty in a desire, in Dr Blandford's immortal phrase, to be helpful in circumstances where a very hard-headed approach would be to say, 'It is in my client's interests that the full Committee continues to sit'.

Mr Hodivala: Do you mind if I enquire whether the proposal is that we still have the full Committee for the day tomorrow?

Sir Alistair Graham: I certainly could be available if we have a nine o'clock start until 12.30 or something like that. Clearly my colleague is very –

Miss McCrudden: The last time I checked it was Tuesday before I could get out of London. But I need to check and see if there is any other way of getting through Holyhead or whatever.

Mr Hodivala: So is it with a view to leaving early tomorrow or is it with a view to leaving tonight possibly?

Miss McCrudden: I do not know. It sounds as though I cannot get out tonight. It is either tomorrow morning or Saturday morning.

Sir Alistair Graham: It might be very early tomorrow morning before we start.

Miss McCrudden: I just know there are problems.

Mr Levisaur: Chairman, can I also raise this fact. I am not under any circumstances available from Saturday onwards to sit here or anywhere for at least a week.

Mr Henley: It would not be next week. I have a full week [of hearings].

Mr Hodivala: Can I enquire when we might be looking at reconvening?

Sir Alistair Graham: When have you any free days?

Mr Hodivala: When is the earliest slot?

Mr Henley: The earliest slot is October in the calendar but obviously we would have to fix it out of the calendar time.

Sir Alistair Graham: It would have to be the same –

Mr Levisaur: It would undoubtedly have to be the same Committee.

Mr Hodivala: Again, would it be possible for us to reconvene perhaps extraordinarily so that we could sit sooner than October?

Mr Henley: We will have to take it out of calendar.

Mr Hodivala: Again realistically, when would be the soonest that we could sit out of calendar time. When does the current calendar finish?

Mr Henley: At the end of 2011.

Mr Levisaur: I think I am right in saying there is a hearing, an extraordinary one, at 25 April. Was that a date that I heard yesterday in connection with another matter?

Miss McCrudden: 25 May.

Mr Levisaur: I am sorry, amnesia has crept in. 25 May.

Mr Hodivala: I do not know whether we could do it by looking at everybody's diary.

Sir Alistair Graham: And finding an exceptional day.

Mr Hepworth: I think, sir, there would need to be further days.

Mr Levisaur: I agree entirely. If we were to stop sitting now, you could not guarantee dealing with this matter in one single day. I agree entirely.

Sir Alistair Graham: I am always very reluctant, because we are very conscious of the registrant's position. She would want to see this whole business finalised from her point of view, but we are in a slightly exceptional situation which nobody could foresee.

Mr Levisaur: Chairman, might I make a suggestion? Might I step outside with the two lawyers and just have three minutes of frank discussion about this matter?

Sir Alistair Graham: Yes, of course.

Mr Levisaur: There are a couple of matters I want to put and I do not think I should do it while the Committee members are listening, for obvious reasons. Can I suggest that?

Sir Alistair Graham: Let us have a ten minute adjournment.

Mr Levisaur: I do not think it needs to be ten minutes; I think this can be two minutes, but I would be grateful if I could talk to the lawyers, and that includes all the lawyers, and indeed Miss Chaggar if she would like to hear.

Ms McCrudden: It is not that I do not have arrangements to get home; it is the fact that I have not been able to make other appointments because I do not know what –

Mr Hodivala: I suppose at the moment you do not know whether tomorrow morning is an option, later tomorrow.

Mr Levisaur: We know flights are not going tomorrow morning.

Sir Alistair Graham: It really does look as if I need to get the train I am booked on because they will not let you on –

Miss McCrudden: They are not taking any new bookings on the trains at the minute.

Mr Levisaur: Can I just have three minutes?

Sir Alistair Graham: Yes.

[Proceedings adjourned at 5.35 pm]

DAY THREE

[Hearing commenced at 09.18 am]

[Miss Janice McCrudden (Optometrist) was not present]

Sir Alistair Graham: If we are all gathered now we can get underway. We have completed the stage of the first factual stage of this tribunal which was about the admissibility. We completed that yesterday, so I take it we go onto the second stage of the fact determining stage of the tribunal. Is it over to you, Mr Hepworth?

Mr Hodivala: Sir, can I just raise one matter? We are minus one member of the Committee this morning; presumably we are continuing in her absence today, are we?

Sir Alistair Graham: Yes, let me check with our Legal Adviser, but I presume now that she has dropped out that is it, that member of the Committee would not participate in any further stage.

Mr Hodivala: I have to confess we are all working on the basis that we would still be in the full five members this morning, but we obviously are not now.

Mr Levisaur: May I make reference to the General Optical Council Committee Constitution Rules 2005?

Mr Hodivala: I am aware of what the Rules say, yes.

Mr Levisaur: Yes, what do they mean, never mind what they say. Rule 22 is mandatory when considering any matter relating to the Fitness to Practise – I'm sorry, Chairman, page 107; at least it is in my booklet.

Mr Hepworth: Before your Legal Adviser reads it out, can I say that those rules have been amended and I don't know if your Legal Adviser has the amended version, but I do. If there is any distance between the two I can bring that to the Panel's attention.

Mr Levisaur: Thank you. [Reads]

"When considering any matter relating to the fitness to practise of a registered optometrist or a registered student training as an optometrist, the Fitness to Practise Committee shall -"

this is mandatory of course.

"consist of –

- (a) two registered optometrists; and
- (b) three lay persons,

who are each to be selected in accordance with Rule 29"

which need not trouble us:

“when considering any matter relating to a registered dispensing optician.”

I need not trouble anyone with that. If you go down to 25:

“The quorum of the Fitness to Practise Committee shall be –
(a) one registered optometrist or registered dispensing optician;
and
(c) two lay persons.”

The amendments – I don’t have them in front of me, but amendments exist, don’t touch 22.

Mr Hepworth: I think they do, but only related to the position where there is a dispensing optician and an optometrist.

Mr Levisaur: And so far as 25?

Mr Hepworth: Not affected.

Mr Levisaur: The question now is the extent to which the mandatory rule is overwritten by the quorum provision. I am well aware what a practice is; just because people do things doesn’t mean they have any power to do it. The history of tribunals throughout the ages have been behaving in a way that everyone thought was all right until somebody pointed out that it was not all right. I have raised this matter because I am not, in fact, aware of any authority which conclusively establishes what the position is. The practice has been in many cases to continue so long as there are more lay members than optometrists to preserve the statutory balance, but I would be grateful if anybody knows of any specific authority in this case.

Mr Hepworth: Sir, I don’t, but as a matter of logic, Rule 25 would be entirely superfluous if, at all times, the Fitness to Practise Committee have two optometrists and three people. It must, in my submission, cater for the situation where after having begun to hear a case, one member has to drop out, on that basis, in my submission you would be quorate today as long as there are three of you: one registered optometrist and two lay people. Sir, I don’t know if there is going to be an application that you don’t continue to hear the case –

Mr Hodivala: There is not.

Mr Hepworth: Sir, in that case it is the Council’s submission that you should continue to hear the case today. If you want to hear a full argument about it then I can set that out.

Sir Alistair Graham: These are fairly exceptional circumstances in terms of the optometrist has only dropped out because she may have been trapped in London a length of time that was unreasonable really. She texted me to say that she had just managed to get the last train.

Mr Hodivala: Can I indicate from Ms Chaggar's perspective that to a degree, and this is no disrespect to the Committee obviously, she almost feels that she is over a barrel in that she is desperate to resolve these proceedings as quickly as possible and so on that basis wishes the Committee to proceed today. The observations about Rule 22 and 25, I agree with your learned Legal Adviser in as much as there is a general practice that is adopted; whether that practice is right or wrong is perhaps a moot point. If we are not making an application to adjourn the proceedings at this point, the only additional thing I could do is to point out that Rule 63 on page 103 deals with voting rules and amounts to effectively where there is an equally split decision, the benefits of that decision then goes to the registrant. With that in mind, we can proceed.

Sir Alistair Graham: If having accepted the tribunal should proceed, then I invite you, Mr Hepworth, to outline your case as far as the facts are concerned.

Mr Hepworth: Sir, thank you. Can I just confirm that we are in public at the moment?

Sir Alistair Graham: Yes, we are.

Mr Hepworth: The factual issue for you to decide is whether or not Ms Chaggar committed the theft for which she accepted the caution. Although we are within the impairment stage at which ordinarily you would exercise judgement, the Council accepts that this is a fact upon which you need to make a decision. Of course it is the Council's case that the registrant did commit the theft for which she was cautioned. It is the Council that wishes to rely on that fact. I accept that it is the Council that bears the burden of proving that fact. The standard, of course, would be the civil standard: is it more likely than not that she committed the theft?

As far as theft is concerned there are several elements to the offence. The first is that the Council needs to prove dishonestly; I'll come back to that in a second. Secondly that there was an appropriation and, Sir you will have read in Ben Walls' interview with the registrant that she is seen on the CCTV to take a note and put it in her pocket. Appropriation means assuming the right of the owner over that property. In the Council's submission that is made out. The next element of the offence is that the appropriation must be of property; clearly cash is property; that is not an issue.

The next element is that that property must belong to another; again I don't think there is any dispute that –

Mr Hodivala: No, there is, in respect of Specsavers.

Mr Hepworth: Certainly the Council has to prove that the money belonged to another, other than Ms Chaggar. Lastly there needs to be an attempt to permanently deprive the owner of that property. It is accepted that the money was not returned before the Specsavers' interview began. In the Council's submission the circumstances of the case showed clearly that there was intent to permanently deprive.

Sir, in my submission, the real issue at the heart of this case is whether or not Ms Chaggar acted dishonestly. Was she, in effect, just someone caught up in another's offence or was she jointly engaged in the theft, did she play a full part in the theft? Sir, as far as the facts are concerned, Ben Walls, from whom you will hear in a few moments, analysed the refunds at the Uxbridge store. Those refunds caused him some suspicion so he installed some covert CCTV cameras at the store – obviously covert, unknown to the staff.

This particular incident was caught on a CCTV and you have heard the contents of the CCTV recounted in Mr Walls' first interview with the registrant. That CCTV footage is no longer available; it has been disposed of, but Ben Walls has seen the CCTV as has the registrant and the Council intends to ask Mr Walls to confirm the contents of the CCTV which he has seen. That would be admissible in criminal proceedings and, in my submission, is admissible before you today.

Mr Levisaur: Is that accepted or is there to be a dispute about that?

Mr Hodivala: There is not.

Mr Hepworth: What the CCTV shows us is the registrant and Linay were cashing up at the end of the day's training. Linay performs a refund on the till for £85, in the Council's submission, that is a false refund and when doing that he uses someone else's till code. The registrant, during this process, makes a no-sale using Phil Boyett's till code and also when cashing up uses Phil Boyett's till code. The Council says the reason she did that was because she was trying to hide the fact that she was using the till at the time. That is evidence upon which you can rely to show that she was being dishonest.

It is the registrant that removes the £85 from the till. Linay gives her a bag, she puts in the money into the bag. She then conceals the bag under other items. Thereafter Linay takes the bag and puts it into his pocket and then the registrant is continuing to cash up, but Linay comes into the room in which she then is and puts some money on the desk. The registrant then takes the money and puts it into her pocket. It is the Council's case that that was her cut; that was what she got as her part of the theft.

During the various interviews, which are in the bundle before you, the registrant gave different accounts about how she said she came by the money. One of those accounts she later accepted was a lie. In her first interview with Mr Walls she said that she thought the money was repayment of a debt by her cousin, but when she was interviewed by the police she admitted that had been a lie.

Because of the varying account and because of the admitted lie, in the Council's submission, at the very best you can't accept what the registrant says about how she came by that money; simply her account would not be credible. What you can do, of course, is use your common sense to draw inferences from the evidence which you have before you.

As far as the amount stolen is concerned you have seen within the evidence there is reference to different amounts of cash: there is reference to £20, a further £10 and overall the £85 and it may be that although she was cautioned for a theft of £20, that you decide that she did steal money but a different amount. In my submission the correct approach would be that you could still safely find that she committed her theft, but in a different sum of money. In this case it is the theft itself that is a mischief rather than the amount stolen.

Similarly, in my submission, if you find that she committed a theft jointly with Linay then, although it is not specifically a joint theft for which she was cautioned, again you could safely find that she did commit a theft jointly with another.

To summarise the evidence upon which the Council relies there is the confession which you found to be a reliable confession at the point of caution where the registrant admits the offence. There is the CCTV footage, the content of which will be recounted by Mr Walls and there is the circumstances surrounding the incident itself, particularly the use of someone else's till code when carrying out the various procedures. If you draw common sense conclusions from those facts, as indeed you can and must, the only realistic common sense conclusion, in the Council's submission, is that she was involved in the theft. Even if you find that there is another possible explanation certainly it is more likely than not, in my submission, that the common sense conclusion is that she was involved in the theft.

Sir, I don't intend to say anything else in opening but I will, if I may, call Ben Walls to give evidence.

MR BEN WALLS, re-called

Sir Alistair Graham: Just for the record Mr Walls, you have stood by the oath you gave two days ago?

Mr Walls: Yes.

Examined in chief by MR HEPWORTH

Q. The first question I would like to ask, there is reference in the papers to TDR; just for the benefit of the Committee could you explain to them what the TDR is?

A. It is what Specsavers call a 'test of dispense record'. Any dispense that has taken place for spectacles or anything like that will be recorded on a piece of

paper which is called a TDR and it has the customer's reference, the patient's dispense details on there, the date of dispense, the date of any transactions.

- Q.** What interrelation, if any, is there between the TDR and a refund?
- A.** The TDR number would be unique to that dispense and that TDR number would need to be used if you were refunding that dispense on the till.
- Q.** Can a valid refund be made without a TDR number?
- A.** It can be and it would take place if someone comes to buy some sunglasses that didn't require any prescription details to be recorded.
- Q.** Can I ask you, please, to turn to your first interview with the registrant on the pages before you? It is page 10 of the bundle. Clearly from almost the very top of page 10 through to halfway down page 11 you give an account of what is on the video is that right?
- A.** Yes.
- Q.** Presumably you made that account when you were watching the video?
- A.** Yes.
- Q.** Looking through it, as you have had the opportunity to do are you happy that is an accurate record of what you saw on the CCTV?
- A.** Yes.
- Q.** I am not going to ask you to go through it line by line, but you have confirmed that is accurate. Was there anything on the CCTV which isn't summarised in that section that I have just taken you to?
- A.** I don't think so. Do you want me to read it?
- Q.** No. Not unless you needed to refresh your memory.
- A.** No.
- Q.** Just so that the Committee is clear where does the action covered in the CCTV take place?
- A.** What do you mean by that?
- Q.** Whereabouts in the store does the footage of the CCTV come from?
- A.** It comes from a camera that was installed in one of the light fittings covering till one. Till two was also covered as well and there was a computer hub in the administration office where one of the cameras was located.
- Q.** It looks like, reading through the account, the first part of the footage that you summarised takes place in the public area of the store, then the footage moves to the private area of the store, is that right?
- A.** It goes from till one to the administration office.
- Q.** The administration office is in a private area of the store, is that right?
- A.** Yes.

Q. Can I ask whether or not you are familiar with the till workings in the Uxbridge store?

A. It will be the same till used in all Specsavers, so yes.

Q. Can a member of staff refund using their own till ID?

A. It depends if their access levels have been set to a certain level on the back office computer to allow them to have access and to allow them to do refunds.

Q. Is the default position that they are allowed or not allowed?

A. I can't remember.

Q. Are you able to say whether or not Miss Chaggar at the time of this incident was able to process a no-sale on the till using her own ID?

A. I can't remember what her till code was set at, at the time.

Q. Are you able to say whether or not a member of staff's default is to allow those sales or not allow those sales?

A. I can't remember.

Q. Likewise are you able to say whether or not she could cash up using her own till ID?

A. I can't remember what the till code was set at.

Q. If a member of staff is either cashing up or processing a no-sale, can you imagine circumstances in which the till would have asked for a director's ID code?

A. Sorry, can you say that again?

Q. If a member of staff is cashing up or processing a no-sale can you tell the Committee whether or not you are aware of circumstances in which the till would say, 'I need you now the enter the director's pin code'?

A. Yes, absolutely. If for instance I was set at a restricted level when I went to do a transaction that I didn't have authorisation for, the till would send a prompt up to the till screen and say 'you do not have sufficient level to perform this function. You must enter the director's or a system administrator's code.'

Sir Alistair Graham: Can just make one point, Mr Hepworth; I don't want to interrupt you? Will you at some point just be explaining the hierarchy in the shop of the different characters? I would find that helpful if at some stage you could do that.

Mr Hepworth: I'll do it now. Could you explain the hierarchy in that particular shop?

A. In the Uxbridge store you would have two directors. One would be a retail director looking after the shop floor side of it and one would be an optom director looking after the ophthalmic side. You would then have a store manager, who would again look after the running of the store. I can't remember if they had any supervisors or not in that particular store at that particular time. Then they would have general employees.

Q. If you could try and put names to job titles: Phil Boyett, what does he do?

- A. He is the retail director of the store.
- Q. Linay, about whom he referred, what was his role?
- A. I can't remember.
- Q. And Suzy?
- A. She was the manager.
- Q. And Miss Chaggar?
- A. Just a general employee.
- Q. As part of your investigation into this particular refund, the £85 refund that we are investigating today, did you analyse till one's records?
- A. Yes, I had an electronic journal which is a print out of everything that has taken place on that till during that day by time.
- Q. If the till had the made the request for a director's pin code to be entered during the transaction would that have appeared on the records that you saw?
- A. No.
- Q. It wouldn't?
- A. No.
- Q. Can I ask again - were you familiar with the cashing up procedures at that particular store?
- A. After speaking to the directors, yes.
- Q. What did you learn – are you able to say whether or not Miss Chaggar would have had to have pressed 'no-sale' in order to cash up?
- A. No.
- Q. - or during a refund procedure, would she have had to press "no-sale"?
- A. No.
- Q. Again, so the Committee is clear, under what circumstances would "no-sale" have to be pressed?
- A. If you have forgotten to give the customer change and you have closed the till drawer, you then need to open it again.
- Q. It is clear from your account that Miss Chaggar used some else's till code during this incident, I think on two occasions; if CCTV had not been installed would it have been possible to have found out who had used the till on that occasion?
- A. No. I won't be able to go from a till code and associate it to that employee whose code had been used.
- Q. Can I take you to page 11, please and direct you to line 290 and I want to ask you a question about this specific bit of the footage? You say to Miss Khambhaita that:

“Khambhaita then returns. He can be seen to be holding several cash notes in his left and right hand. He throws the cash notes found in his right hand down on the admin desk. The notes in the left hand are then passed to his right hand and placed in the right hand jacket pocket. Khambhaita then leaves the admin office.”

- A. Have you found that part of the footage, your summary?
A. Yes.
- Q. From line 290 to 294. Concentrating on that part of the footage, if you can and remembering what you saw in the footage, was there any evidence that Miss Chaggar and Linay had a conversation about what -?
A. The way the footage is I can't hear what they are saying. He could have been standing there with his mouth shut, I don't know.
- Q. Was the footage of sufficient detail to be able to ascertain whether or not his jaw was moving as if he was talking or kept it shut?
A. I can't remember.
- Q. Likewise do you know for how long he was present in the room on that occasion before he then left?
A. I couldn't give a specific time, but it wasn't a long time. I would be guessing and it would be totally wrong for me to guess.
- Q. The last question from me, if I may, what is Specsavers' policy about the mean by which a refund is made?
A. If someone pays by cash then they would be refunded by cash; if they pay by credit card then they should be refunded by credit card.
- Q. Can you just give me a moment? *[pause]*

Mr Levisaur: Mr Hepworth, it occurs to me that on this occasion it might be appropriate to go through the same procedure that you went through on the last occasion, that is to say verifying for the purposes of this part of the hearing that the statement was taken by whoever took it and that the signature which appears where it does and make that observation, because we are clearly considering a rather serious allegation. At the *voir dire* stage the Committee were not in the least concerned with the truth or otherwise of the contents, namely the way in which the contents came into being. It would be perhaps be appropriate for you to do that. I apologise for the fact that I didn't jog your memory and raise this at the start.

Mr Hepworth: When you refer to a statement I presume you mean the two records of interview?

Mr Levisaur: I mean the first record of interview. The second record has, in effect, been ruled inadmissible, at least as to all substantive parts. It could have no probative value, save for the fact that an interview took place, which even this Committee could not put out of its mind. The first interview, therefore, is important.

Mr Hepworth: Can I ask you then, please, to turn to page 5 of the bundle? That is a document clearly between page 5 and page 13 of the bundle. Is that a contemporaneous record of the interview which you held with Miss Chaggar on 21 November 2007 in the morning?

A. Yes, it is.

Q. Did it come to be typed in this way that you would type out a question and then ask it?

A. Yes.

Q. Then Miss Chaggar would give you an answer which you would contemporaneously type and at some point you may ask her to pause whilst you caught up with the typing?

A. Yes.

Q. As far as you are concerned, the typed record that we see between those pages, is that an accurate record of what happened during that interview?

A. Yes.

Q. You can see at the bottom of each page that there is a signature by Miss Chaggar. After the interview finished did you give Miss Chaggar an opportunity to read through the record?

A. Yes.

Q. And to sign it if she accepted it was correct?

A. Yes.

Q. Did she indicate that she disagreed with the record in any particular?

A. Not that she has recorded on here, no.

Q. If she had mentioned it and had not reported it would you have?

A. I would have recorded it.

Q. Just so we are clear about those present: you were present, Miss Chaggar was present and Lew Samuels was present as well; it was just the three of you?

A. Yes.

Mr Levisieur: Mr Hepworth could I ask you to confirm, please, the signatures on page 13 – well I say signatures – the scrawlings of a doctor in a hurry on page 13?

Mr Hepworth: Can I ask you to go to page 13? You can see there are three signatures on three lines; could you just identify whose signatures those are?

A. The first one would be Miss Chaggar, the second one would be mine and the third would be Lew's – Mr Samuels'.

Q. Unless the Legal Adviser has any other issues which I need to raise –

Mr Levisaur: Not at all, thank you.

Mr Hepworth: I have no more questions for you; if you wait there will be some questions from my left hand side.

Cross-examined by MR HODIVALA

Q. Would you agree with me, Mr Walls, that it wasn't uncommon in stores for staff to be aware of other employee's till numbers?

A. I agree.

Q. Nor was it uncommon for them to use those other staff numbers in order to perform a transaction?

A. Not necessarily.

Q. I am just looking at page 20 of the witness statement you have produced. The Committee won't have this because it is not a document that is given to the Committee, but I am just looking at paragraph 20 of your witness statement.

A. I don't know where I am looking.

Q. Sorry, you don't have a copy of your witness statement?

A. I don't know where I am looking.

Q. Let me read this out:

"It is pertinent to point out that in respect of the refund key report which I produced of the previous 12 months refund transactions, although each employee is set up on the till with their own unique staff ID it is not uncommon in the stores for staff to be aware of other employee's numbers and indeed to use them in order to perform a transaction."

Do you remember providing a witness statement?

A. Yes, I do.

Q. Do you want to have a look at this witness statement or do you accept that I am reading out what you have written?

A. I can't see why you can't.

Q. All right. You made a statement dated 8 June 2008. We have already covered that there is no sound on the CCTV; I just want to be clear so that this Committee has a clear idea in its own mind of the views that each of the three cameras had. We have heard that over till one, hidden in a light, was one CCTV camera. That was looking directly down, is that right?

A. No; if you can imagine a light fitting being up here and somewhere near Mr Hepworth being the till, so it is coming down at an angle.

Q. In fact people if people were in front of the till they would have had their backs to the camera?

- A.** No, it was a side: this is the till point, right till being here, and this is coming down at a side view.
- Q.** I see; as regards to till two was it the same thing but from the other side?
- A.** It was again the same angle.
- Q.** Two cameras next to each others?
- A.** No, sorry. Till one being over one side of the store, till two being over the other side of the store so there were two different cameras but with the same central view coming down from the light fitting to the till point at a side view so you can see the till opening.
- Q.** As far as the administrative office is concerned, the camera was in a computer hub?
- A.** Yes, which is like a box with all the wires in.
- Q.** As I understand it that computer hub was above head height, so again it was looking down into the room.
- A.** At an angle, yes.
- Q.** At an angle; there is a doorway that I am told one could see in the CCTV?
- A.** Yes.
- Q.** One could also see a desk along one side of the wall, but you have mentioned the office itself is quite a small room, is it?
- A.** It is smaller than this room.
- Q.** The image that was caught on that CCTV was from above head height, as I say and you weren't able to tell whether jaws were moving, people were talking, from what you could say?
- A.** Jaws were moving.
- Q.** You didn't interview Linay, did you?
- A.** No; he wasn't an employee.
- Q.** He wasn't an employee because he resigned from his position before you had a chance to speak to him about this?
- A.** Yes.
- Q.** Linay was the retail manager.
- A.** Was he?
- Q.** That doesn't ring a bell with you?
- A.** I don't remember him being a manager.
- Q.** Okay. You say that Miss Chaggar was an employee; I agree with you to an extent, but in fact she was contracted to work Saturdays. She was working eight hours on Saturday and a few hours on a Friday afternoon or evening. She wasn't a full time employee, was she?
- A.** If you say so.

- Q.** You didn't make any inquiries about that?
A. About whether she was part time or full time, no.
- Q.** Okay. Were you at any stage aware of the police's involvement with Linay?
A. In terms of?
- Q.** Did the police ask you, for instance, to make a statement about what you had viewed Linay doing?
A. No, it was just on the one statement.
- Q.** You were never made aware of, for example, what Linay had told the police about any inquiries they had of him?
A. I don't really understand.
- Q.** Were you ever told by the police or by anybody what Linay had told the police?
A. Not that I recall, no.
- Q.** The actual cash that we see Miss Chaggar putting in her pocket, yes, that was done in the administrative office?
A. Yes.
- Q.** We know, don't we, from your page 11 of the interview that – in fact forgive me, I think it is page 10, line 246 to 247 - we know that the money that you saw in the till area in Miss Chaggar's hand was put into a TDR bag and we know that that TDR bag was sealed, yes?
A. It is a plastic bag. When I say sealed it is – not tagged.
- Q.** No, it is not like an envelope which is stuck down –
A. No, you can open it again.
- Q.** Exactly it is like a press stud. We know that Miss Chaggar sealed the TDR bag at that point.
A. Appeared to.
- Q.** Yes. We know that this is about half past five, just after half past five on 3 November, yes?
A. Okay.
- Q.** We know looking down over the page to page 11, at line 280 we see that Linay has a good look around and checks that no employees are present and before he places the £85 in his right hand jacket pocket - the £85 is still in the TDR bag at this point, isn't it?
A. Yes.
- Q.** We then know, looking at line 286, that at 17.50 hours Linay collects all the paperwork together and walks away from the till point with Miss Chaggar, yes?
A. Yes.

- Q.** We don't know, do we, where Linay or Miss Chaggar go between ten to six and three minutes past six?
- A.** No.
- Q.** They may have gone separate ways, they may have been together; we just don't know, do we?
- A.** No.
- Q.** We do know that at 18.03 on the cameras in the admin office that Miss Chaggar and Mr Khambhaita enter the administrative office; we know that Miss Chaggar continues to perform the end of day cashing up process; Linay leaves, yes?
- A.** Yes.
- Q.** Then Mr Khambhaita then turns into the room.
- A.** Yes.
- Q.** We can see that when he turns into the room he already has cash in his hands, yes?
- A.** Yes.
- Q.** It is not a question of, for instance, you being able to see from the administrative office camera Linay taking out the TDR bag from his jacket pocket, opening it up and removing cash from that bag and putting it down on a table?
- A.** I would agree.
- Q.** You would agree to that?
- A.** Yes.
- Q.** Prior to half past five in the evening of 3 November, would you agree with me that there is no way of us knowing how much cash, if any, Linay had on his person at all?
- A.** I would agree.
- Q.** The cash that we see Linay walking into the office with at three minutes past six or thereabouts, may have been cash from the till, it may have been his own cash; we just don't know, do we?
- A.** We don't know.
- Q.** You certainly can't sit there and say that you are sure, can you, that it is cash from the till? You would agree with that?
- A.** I have never said that.
- Q.** I don't want to put words in your mouth, but you would agree with my suggestion, you can't say you are sure? You can't even say on the balance of probabilities can you?
- A.** I don't know.

Q. Pure guesswork. Forgive me, one moment. Thank you very much, that is all I needed to ask you.

Mr Hepworth: There is nothing in re-examination, sir. Do you or your colleagues have any questions for this witness?

Questioned by the Committee

Sir Alistair Graham: Yes. I would just like to clarify - obviously the key part of Mr Hepworth's argument is that a dishonest act took place and it took place in conjunction with other members of staff, is that right?

Mr Hepworth: I am not sure this witness will know what –

Sir Alistair Graham: No, sorry, Mr Hepworth. Do you think that Miss Chaggar was working with other members of staff like Linay or Suzy to steal money?

A. It appeared that way on the camera, which is why we interviewed her.

Q. What is the killer shot on the camera that convinces you that money was stolen?

A. The fact that she takes out £85 from a refund that I didn't believe to be legitimate, puts it in a TDR bag and passes it to Linay.

Q. Yes. Then, as we have just heard, Linay and Miss Chaggar go out of the room and we don't know where they go to.

A. No.

Q. What is your presumption? Is this money that was part of that £85?

A. No. What I am saying is that Miss Chaggar was seen at the till point taking £85 out, passing it to Linay at the till point.

Q. Then putting it in this bag and handing it over to –

A. Absolutely. He was then seen to perform the refund, which I didn't believe to be legitimate. They were then seen to go away together. At that point I felt that she had assisted in taking £85 out and giving it to Linay for a transaction which I didn't believe to be legitimate.

Q. Is there any evidence that this was all pre-planned or was part of the general conspiracy to defraud?

A. I don't know.

Q. You have no idea about that at all, really?

A. Only from the conversations that had taken place between – that is what we have mentioned in the second interview – I don't know.

Q. Is there any policy as far as Specsavers are concerned that you shouldn't have your own private money in the shop area while you are there?

A. You should have no cash on you while you are on the shop floor.

Q. That is a rule, is it?

- A.** I don't know if it is written down anywhere.
- Q.** What would you do if you came in and you obviously had some money to buy lunch or other things, what do you do?
- A.** Some stores have lockers.
- Q.** The expectation is that nobody should have any of their private money while they are working in the shop; is that right?
- A.** Absolutely.
- Q.** Is that written down?
- A.** I don't know.
- Q.** It is an expectation, is it?
- A.** It may be written down; I wouldn't know where to find it for you, but I can make a phone call if you wished.
- Q.** Therefore if money was being handed over at some stage, as clearly was happening in this particular case, handed to Miss Chaggar following a refund being taken out, you can make a presumption, can you, that it was Specsavers' money rather than a persons' own individual money?
- A.** I can't presume that because it was done at a back office area in the staff areas.
- Q.** It's quite important that, isn't it, in terms of coming to a conclusion.

Mr Levisaur: Mr Hepworth, I am rather concerned about the way in which this is proceeding. The theft was not a theft which takes place, is it in on the handing over of a £20 in an administrative office; that is not your case, or is it?

Mr Hepworth: It is the Council's case that the incident taken globally amounts to theft. I am aware that the caution was for theft of £20 but, as I made clear -

Mr Levisaur: Unless it includes -

Mr Hodivala: This is important.

Mr Levisaur: There is no doubt that the evidence which is before this Committee indicates a chain of, we will simply call it, potentially putatively dishonest behaviour; that is to say behaviour which might be viewed as dishonest, it is a matter for a jury or a tribunal to reach a decision about that, but the act is not the act –

Mr Hodivala: Sorry to interrupt, but if there are any more questions for this witness, perhaps now might be the time to have the questions and then to have any discussion.

Mr Levisaur: No, because the answer to this question and the answer to these questions is central to what this witness is saying. Ordinarily at this stage the

jury would be sent out and there would be discussion in the absence of the jury and there is no procedure for doing that in this forum.

Mr Hepworth: I take my learned friend's point that even if the questioning of this witness is not yet finished, would it be sensible for him to be sent out at least temporarily?

Mr Levisaur: I am perfectly content with that as long as the tribunal are content with it. It is entirely a matter for the tribunal, but there is a real difficulty when it comes to matters of law such as this in that it is impossible to send the jury out; it would be quite improper to send the jury out in a case like this, but perhaps this witness ought to go temporarily whilst this matter is dealt with.

Sir Alistair Graham: Mr Walls, you have heard what is taking place, there clearly needs to be a discussion about certain legal aspects of this. You would stay under oath, but can I ask if you could leave the room.

[Ben Walls leaves the room]

Mr Levisaur: The allegation in this case is not that a £20 note, number ABC12345 was stolen at 6.03 in Y. There is a general averment that £20 was stolen. Quite clearly there is a significant difference; I understand perfectly well the shaking of the head of Mr Hodivala. I understand that perfectly well, but that is not the averment on the indictment in this case. The allegation and the facts which have thus far put and without dispute clearly do not simply relate to the 6 o'clock episode, but the entirety of the episode from, let us say, 5 o'clock; I appreciate that is not the exact time. The allegation about which you make complaint, as I understand it, is the removal of sums from the till and the appropriation of at least some of that. Is the appropriation, the taking of the note by Miss Chaggar at six minutes past three or is it a different averment?

Mr Hepworth: The Council sees the theft as the whole incident. I accept the points of the Legal Adviser and clearly, given that the Council is saying that the whole incident is the theft when taken together, then it must follow that. I don't want to get into the position where I am talking about specific incidents, what I am saying it is a one global incident, but clearly the appropriation at least starts when the money is taken from the till. Then part of the appropriation as well on the Council's case is when the money is placed into Miss Chaggar's own pocket in the private room. The Council's case is that was part of the same bundle of money, but the appropriation certainly started when it was removed from the till.

Mr Levisaur: Very well, thank you very much. Clearly there will need to be careful direction give.

Mr Hodivala: You haven't heard from me yet.

Mr Levisaur: And submissions made.

Mr Hodivala: The allegation isn't a general allegation of misconduct; it is an allegation that she received a caution for £20 for stealing £20 belonging to Specsavers. That particular allegation comes from page 39 of the police interview when she is talking about the £20 that Linay gave her which she assumed was for her birthday. There is no other way of interpreting it in our submission. The caution is for that transaction that is said to have taken place in the administrative office, it is not a caution for being involved as a secondary party for theft of £85, it is a caution for theft of the £20.

Mr Levisaur: At best and being most charitable it is a charge of handling, it is not theft.

Mr Hodivala: In that case the legal advice is that the caution that was administered was legally incorrect in which case I am not quite sure where this leaves this.

Mr Levisaur: Not at all, the legal advice will be quite carefully given when I have heard your submissions. One must be very careful about this analysis. I quite understand the submission that I have no doubt you wish to make, I perfectly understand the basis on which you would make it, what concerns me is that it is critically important that it is clear to me and to the Committee the basis, not on which you put your defence, that is not the basis on which a submission is made, but the basis upon which the prosecution put its case. That is the case that you have to answer, not the case that you would wish to answer. Because of that I am extremely concerned that focussed questioning of this witness may go to what I will call, as the defence you would wish to put, rather than the case which is put against you. This is a matter for legal submission and I make it clear I have not made my mind up. What I have done is identified, at least in my own mind, the two tracks down which both of you are proceeding.

If I may say so, I understand why you are on the left hand track, Mr Hepworth is on a different track; it is extremely important that I have that in mind because it may not have been the case that I understood that. I don't criticise either of you, you must both put your own cases. So far as this witness is concerned, it is extremely important that questions put to him focus not just on a defence that you might put, but on the whole of the case that Mr Hepworth is putting. I don't propose restricting questions now that I know where you both are and where I will have to be. The advice I give to the Committee will clearly depend on the number of answers to questions that are now given and will partly depend on what Mr Hepworth may or may not say by way of re-examination.

Mr Hodivala: I understand. Whereas you say now is not the time for submissions, it is a time for questions and answers. On that basis there is nothing else that I want to ask this witness, I have asked him everything that I want to.

Mr Levisaur: The Chairman may rest easy; the Chairman will know that I intervened because of a question he was asking and, of course, as the Chairman knows perfectly well, having heard that interplay between us, of course the Chairman's question was focussed, perfectly understandably, on

what I may describe as submissions that you will no doubt make in due course about where your defence might be.

Mr Hodivala: The defence in relation to what we say.

Mr Levisaur: Absolutely, quite so. As the Chairman appreciates, that is not necessarily where Mr Hepworth's case either is or is coming from.

Mr Hodivala: No.

Mr Levisaur: Very well. Thank you both, that is very helpful for me. I will be able to make a note which will inform my research in thinking for your submissions.

Sir Alistair Graham: Can we now invite Mr Walls back in?

[Ben Walls returns]

Sir Alistair Graham: Thank you, Mr Walls. You appreciate of course that you are still under oath. We are at the stage where the Committee are asking you questions as a witness in this particular case.

I was asking questions about the general policy at Specsavers as far as not having any personal money. You thought there was a general rule, but you couldn't point to a formal document.

A. No.

Q. You wouldn't know if somebody was found to have their own private money in the shop whether that would be a disciplinary offence?

A. No, I wouldn't know.

Q. You wouldn't know that. My reason for asking that was just to clarify whether we could be sure that was Specsavers' money that Miss Chaggar was accepting, even though I think you have explained it was part of the whole dishonest transaction. You have no further information about how involved Miss Chaggar was with Suzy and Linay in terms of carrying out dishonest –

A. Sorry, I don't understand the question.

Q. There is no further evidence that you can point us to in terms of were they all colluding together to steal money?

A. There is no other video footage with Miss Chaggar on it.

Q. There is not any further information. Thank you very much, that is all the questions I want to ask.

Ms Viner: Sir, I have a couple, please. You talked earlier about what the TDR was, the test and dispense record, and you gave an example where a refund could be made without a TDR being used and the example you used was sunspecs. Can I just ask what the procedure would be if somebody had purchased their prescription spectacles from another branch, but were coming to the branch, for example, the one here in Uxbridge and wanting a refund? Perhaps the

other branch where they purchased their spectacles was a long way away so they couldn't realistically go there?

A. I would generally contact that store. If for instance they couldn't get hold of that store it is store protocol to refund that patient in good faith. To do that they register on the till system, on the computer system as a patient so they get the unique customer ID for that store.

Q. They can still have a TDR number?

A. Yes. Can I just add, when you call up a TDR it has all the patient's details on the till. If, for instance, it has been purchased at another store and you called up that TDR it wouldn't pick it up from another store so you would have to use the refund key, but use the TDR that that other store has given you to process it through the till. You would have a unique customer number as well that you register on the till to associate it to that patient.

Q. Okay, thank you. You have talked about, I think it was with Mr Hodivala and he was saying in the witness statement that you made that other members of staff did sometimes have knowledge of their colleagues' pin numbers to access the till?

A. Yes.

Q. Would this be knowledge that one person would just tell the other person: "by the way, my number is this"?

A. It may be. Some people might look over someone's shoulder and decide, 'okay, I've seen their code I might use it next time'; I don't know.

Q. Would normal store policy be that one shouldn't divulge one's personal pin number to somebody else?

A. It has been given to them to perform transactions on the till to a certain level and they shouldn't be giving it to other employees to perform other transactions on their behalf.

Q. If an employee gives their number to somebody else then the employee who has given that number is in error, would you say?

A. I would say so, yes. It is like giving your pin number.

Q. If somebody has looked over your shoulder while you are performing that number are they trying to conceal putting that number in as one might be when you are putting your pin number in paying for some product in a shop?

A. They don't particularly tell employees to cover up every time you go and use the till.

Q. Thank you. I just want to ask as well when were the CCTV cameras installed. How much time was there before this incident took place?

A. I would have to refer to my statement.

Mr Hodivala: They are installed on Sunday, 14 October 2007.

A. That sounds right.

Mr Hepworth: The hard drives were swapped over at some point, but they were there continually from 14 October.

Ms Viner: Thank you. Is that as a result of the discrepancies that you believe were happening or was that as a result of the retail director of the store deciding something wasn't right?

A. I get group reports by exception, so we will get a refund report for the whole of Specsavers Group and we would look through that report to see anything that looked out of the ordinary. For example, when this store came to light it was because that there was refund transactions being performed with no customer numbers, no TDR numbers, for nice round amounts like £50 and things like that, under till operator IDs.

Q. That is a decision that you made to investigate further rather than the director of the store was wanting to investigate.

A. We contacted one of the store directors and told him all the information. At that point one of the other store directors' numbers was being used to perform some of the refunds; he wasn't involved in the investigation, he wasn't told about the cameras going in.

Q. This wasn't Boyett?

A. Mr Boyett wasn't told the cameras were going in.

Q. He wasn't because his number was being used, but the other director was?

A. Yes.

Q. That's fine, thank you very much.

Sir Alistair Graham: Could I just ask a point following some of the questions we have? Were there any changes made to the system as a result of this experience?

A. I don't know.

Q. You don't know.

A. I didn't do an audit afterwards. I didn't go back to the store afterwards.

Q. No recommendations or anything?

A. No.

Q. Fine, thank you very much.

Ms Huka: Can I just ask you about this statement about it not being uncommon for other people's numbers to be used. What does that mean?

A. I have seen quite a number of videos on the past where somebody is using somebody else's code to pass accountability away from themselves and hide their actions.

Q. Apart from you have other people such as the managers and the directors been aware that this was going on in the store?

A. They weren't aware of the refunds, if that is what you mean.

Q. No, but were they aware that it was a common practice for people to use other people's numbers?

A. I don't know, but Mr Wong, when we went to him to give the evidence, he didn't suggest that everyone was aware of Mr Boyett's number and therefore there was not a problem.

Q. Thank you.

Sir Alistair Graham: Thank you very much. That is all the questions and the Legal Adviser has no further questions. Mr Hepworth?

Mr Hepworth: Sir, I have no further questions of this witness. I don't know if my learned friend has any further questions arising, but if he doesn't I would ask for this witness please to be released.

Sir Alistair Graham: No further questions?

Mr Hodivala: No.

Sir Alistair Graham: Thank you very much, Mr Walls, for your help and your time.

[The witness is released]

Mr Hepworth: Sir, clearly you have heard evidence from Mr Walls and you have before you the various documents in the bundle. Sir, that is the Council's case as far as this stage of the proceedings is concerned.

Sir Alistair Graham: Thank you very much.

Mr Hodivala: I notice the time. Can I call Paminder Bains, please, before I call Miss Chaggar?

Mr Levisaur: Will there also be an application to admit hearsay evidence from a witness who cannot be here, but was here on another occasion?

Mr Hodivala: What I am going to do is I am going to see how far we get with our evidence today. If we get to the point where that witness would have been called, then obviously I will make the hearsay application, but if we don't get to that point then I won't.

Mr Levisaur: My assumption is you don't want the registrant part heard in the middle of her evidence.

Mr Hodivala: No.

MS PAMINDER BAINS, called and affirmed

Mr Levisaur: For the record I should indicate that Miss Chaggar left shortly before this witness was sworn. She wasn't asked to do so by the Committee and

she certainly wasn't asked to do so by Mr Hepworth, but I saw something happening and anticipate she left probably as a result of something said by her counsel. It is important that for the record it is clear that the registrant is not in the room while this witness is giving her evidence.

Mr Hodivala: I was simply advising the registrant that it is probably not appropriate, giving that we are taking Miss Bain's evidence out of order, that she was in the room so that should could be accused of telling her evidence to fit the evidence given by Miss Bains.

Examined in chief by MR HODIVALA

- Q.** Miss Bains can you give your full name, please?
A. Paminder Kaur Bains.
- Q.** How long have you known Gurpreet Chaggar?
A. I have known her since the beginning of secondary school, so for just over 10 years now.
- Q.** Have you had regular or frequent contact with Miss Chaggar since then in the last ten years or so?
A. Yes. I am also a close family friend.
- Q.** Am I right in saying that you are currently a law graduate and doing your legal practice course at the BPP law school in Holborn?
A. Yes, I commenced there in September 2009.
- Q.** Did you go to the same university?
A. No, we went to different universities, but we still kept regular contact.
- Q.** You understand why you are here today?
A. Yes, I do.
- Q.** When did you first become aware of the difficulties that Miss Chaggar found herself in?
A. I was aware after she had been arrested and she was at home. I received a telephone call and she informed me that she had been arrested.
- Q.** How did Miss Chaggar seem in the course of that telephone call?
A. She just sounded confused, she was in shock, she was nervous, I had to tell her to slow her pace because I didn't really understand what she was saying. She just seemed really confused; I just had to calm her down a little bit and just ask her what had happened.
- Q.** What did she say to you?
A. She told me there had been some investigation or something had happened at Specsavers with an employer and she had been suspected of theft, however, she informed me that she hadn't participated in a theft; however, they thought that she had done.

- Q.** Do you know Miss Chaggar's parents? Have you met Miss Chaggar's parents?
- A.** Yes, I am very close to her parents.
- Q.** What kind of relationship does Miss Chaggar have with her parents?
- A.** She is very close to her parents, however, with the community that we are from a situation like this is not something she can disclose to her parents, even talk to her parents, because it is a sensitive issue and although she may be close to her parents it is quite a scary issue for her to even talk about it to anyone. She wouldn't know how they would handle the situation. It has been a whole pressure for her.
- Q.** Was this something that she told you or was this something that you just know from your friendship with Miss Chaggar?
- A.** I have been in a similar situation with my parents, but I just know the character she is; she is not very confident when it comes to speaking about these things that I know she won't be able to approach her parents and she will be there constantly, so she wouldn't talk about it.
- Q.** You had the phone call from Miss Chaggar after she had been arrested.
- A.** Yes.
- Q.** When did you next speak to Miss Chaggar about this matter?
- A.** That happened at the end of 2007, it was definitely before the new year, she contacted me a couple of months later, this is after the caution.
- Q.** Was there a conversation between the two of you?
- A.** Yes, she phoned me and she told me, 'they gave me a caution. I went to the police station and they gave me a caution.'
- Q.** In terms of Miss Chaggar's character and, for the sake of the Legal Adviser it is agreed and you Sir, and your colleagues, we have agreed between yourselves, that ordinarily character wouldn't be admissible at this stage because this is an allegation involving the facts and the character is entirely relevant at this stage. You have known Gurpreet Chaggar for a substantial period of time, what kind of character do you view her as being?
- A.** As a friend she is really trustworthy, loyal, honest. Within our friendship group I wouldn't ever imagine her to ever be involved in a situation like this. I was personally very shocked; it is just not something I can relate to her character. She has always been reliable; I trust her with my life. Also in certain situations she had never been exposed to something of such stress and she gets really nervous and she panics, but she is just quite a simple girl, really.
- Q.** You briefly mentioned honesty. What about her honesty? Have you, over the ten years or so, had cause to question her honesty?
- A.** Never, I have never questioned her honesty. She is one of the most honest people I know and one of my most trustworthy friends.
- Q.** How does Miss Chaggar cope with negativity, stress, bad situations in your own opinion?

- A.** She absolutely dislikes to be surrounded by that. Even within friends I know that she is always trying to solve the situation and make it positive. She does not like to be surrounded by negativity. She can't control herself in those sorts of situations because she has never been exposed to such negative situations; she will always try to look on the positive side and try to always make the right decision or do what is best.
- Q.** Finally is Miss Chaggar the life and soul, the extrovert, the introvert character or is she somewhere in-between? How would you view her character in that respect?
- A.** She is a simple girl. She has never faced a situation where she would have to make decisions that would affect her; she gets nervous, she gets panicky, but she will try to look out for other people and always try to make the best decision.
- Q.** Thank you. Those are all the questions I wish to ask. If you wait there please.

Cross-examined by MR HEPWORTH

- Q.** I have two questions. First of all can I just be clear about the dates that Miss Chaggar contacted you for the first time about this incident? You said it was after she had been arrested and released from the police station in May 2007?
- A.** Yes, it was end of 2007.
- Q.** Just so we are clear about that event, was that the first time that she had been to the police station in relation to this matter, as far as you are aware?
- A.** As far as I am aware it was the first time, yes.
- Q.** The second question is clearly you are a close friend with Miss Chaggar?
- A.** Yes.
- Q.** You have come here today to support her?
- A.** Yes.
- Q.** You wouldn't want to see her get into trouble.
- A.** I am here to give my evidence on her character.
- Q.** I have no more questions.

Questioned by the Committee

- Sir Alistair Graham:** The Committee might now wish to ask you some questions. Can I kick off by saying Miss Chaggar produced evidence for this herself, was very fearful of having to explain to her parents, which for most people living at home would be their first port of call, to seek help, wouldn't it?
- A.** It is quite different. Although she may be close to her family, it is the cultural background – it is something that may be viewed upon in a negative way. Although they might be supportive, it is not something that she can confidently

come to them for advice or any help. The situation she would face within the society that we come from is not something that she can do positively.

Q. She did tell us that at some stage she did tell her father. Do you know what prompted that?

A. I don't know what prompted that, but I know that she hasn't informed her mother, or her father knows, but I don't know to what extent he knows the full details; I am not sure whether he knows that.

Q. Did you give Miss Chaggar any advice when she explained to you that she had been accused of theft and she was denying that she had been involved in the theft? Did you give her any advice, considering you are a law graduate?

A. Not general advice, I asked her what happened and I asked her to explain to me how the situation came about. She obviously just explained to me that things were happening at Specsavers and that she had been accused and that she wasn't a part of it. She also told me that when she was at the police station she didn't have a solicitor and I said "are you aware that you have a right to see a solicitor" and she said: 'I didn't know that'. I stressed that and I said, 'perhaps I should inform my friends of their legal rights in future'.

Q. You didn't give her any advice to seek legal advice?

A. No.

Q. Wouldn't you have thought that appropriate given her situation?

A. I was aware that she had been to the police station and she hadn't seen a solicitor, but also that she would be under further investigation and she would seek legal advice herself, but I didn't think I was in any position to gear her in any way.

Q. Did she ever talk to you about the question of accepting a conditional caution?

A. No. She never told me that she accepted a caution. When we had the conversation a couple of months after, it was early 2008 – a couple of months later she told me, 'they gave me a caution.' That is all I was told from her.

Q. Given what you have told us about her personality, did you feel she needed some help and guidance and talking through each stage of this complex process that she was being sucked into?

A. I didn't know how complex the situation was itself. I was aware that she had been arrested. I wouldn't know how far the proceedings would get and all I was really doing was being a friend and listening to her. I didn't know how far it would get because I was in a state of shock myself, the fact that she was involved in anything like this. I can't really associate with anything like this of this nature towards her.

Q. Have you seen the detail of the allegation? Have you seen any of the paperwork relating to the allegation of theft?

A. No.

Q. You haven't had a detailed explanation of what exactly took place, have you?

A. I haven't seen her paperwork.

- Q.** Have you talked through with her in detail?
- A.** I have talked to her about the theft.
- Q.** About exactly what happened and what were the events that led to the accusation?
- A.** Only on what she has told me, on her account. That is all I am aware of.
- Q.** You haven't been able to make a judgement about how well she behaved or did she behave in character?
- A.** From what she has told me and the situation she was in and how she faced the situation, I have been able to make my judgement from what she has told me, but any of the surrounding factors I may not be aware of them.
- Q.** That's okay, thank you very much. Do any of my colleagues have any questions?

Mr Baldwin: You have known Miss Chaggar for a long time, just over 10 years, I think you said, and you said you have never had reason to question her honesty or words to that effect. Have there ever been situations where her honesty has been positively proven? Anything that has happened where temptation has come her way or where friends at school were cheating or anything that she wasn't involved in – is there anything positive that you can point to or is it just a general assessment of the way she appeared to you?

A. I have been in situations myself where I have needed her or I have needed to rely on her honesty and she has been there. Even within our friendship group most people would turn to her first. We are all comfortable talking to each other, but she is probably the first person we approach and, from personal experience, I have trusted her with certain situations that I have been through myself.

Q. Thank you.

Ms Viner: Can I just confirm a couple of details around the contact that you had with Miss Chaggar? We have confirmed that she spoke to you after her arrest and I think your words were, 'she definitely contacted me before the new year.'

A. It was late 2007.

Q. You have also told us that she then told you, 'they gave me a caution.'

That, presumably, was after that event, so we are talking approximately two had a half to three months later.

A. It was in the new year. I can't really remember what day or what month, but I remember it was in the new year.

Q. Did you have any contact with her between her initial phone call to you that said 'I have been arrested.'

And the phone call that you have told us about when she said, 'they gave me a caution.'

- A.** I spoke to her during the new year, but nothing in relation to this matter.
- Q.** Can you remember approximately how many times you might have spoken to each other in that two/two and a half months?
- A.** I hardly heard from her through that time. I spoke to her during the new year, obviously to wish her a happy new year, but very rarely after that, I didn't hear from her.
- Q.** She didn't contact you, bearing in mind that you have said that you are close friends and that you found that this was a situation that you were shocked that she had found herself in, as a close friend, would you have wanted to have contacted her to have found out how things were going for her, could you offer any support?
- A.** I leave it down to her; she knows she can contact me whenever. Although we are really close, sometimes we will go a couple of months without contacting each other, especially during university we hardly saw each other because we went to different universities. At that time I know that she can contact me any time she wants and she knows that herself. I don't want to pressure her in any way or ask her what is happening, 'tell me what is going on'; I leave it down to her because I know she can talk to me or any time she wants to call me she can, without having to be prompted to call me.
- Q.** Would you therefore say that in your friendship, albeit a close one, with somebody in difficulty you would feel that it is not up to you then to initiate a phone call to find out how -?
- A.** It could work both ways; I could contact or she could contact. I am not saying it works one way.
- Q.** She didn't contact you and you didn't contact her in that intervening time?
- A.** No, she made the first contact with me.
- Q.** To say, 'they gave me a caution'; after that initial caution to say, 'I have been arrested'?
- A.** Yes.
- Q.** Thank you very much.

Ms Huka: No questions.

Mr Hodivala: No re-examination.

[The witness is released]

Mr Hodivala: We are going to revert back to the traditional method of dealing with things and call Miss Chaggar back into the room.

Sir Alistair Graham: Can I suggest we have a ten minute break and that means you can deal with –

Mr Hodivala: I am hoping we can deal with Miss Chaggar, together with one more witness possibly, but as your Legal Adviser says, I don't want to go part heard with Miss Chaggar's evidence.

Sir Alistair Graham: I don't think we would find that helpful either.

[Hearing is adjourned at 10.44 am]

[Hearing reconvened at 10.57 am]

[Redacted]

Sir Alistair Graham: We will need to finalise exactly how we are going to deal with Dr Blandford before we conclude the case.

**HERPREET KAUR RAYET, called and affirmed
Examined in chief by MR HODIVALA**

Q. Can you give your full name, please?

A. Yes, my full name is Herpreet Kaur Rayet.

Q. You are a senior architect at a practice called ADP in their Birmingham office?

A. That is correct, yes.

Q. You are also Gurpreet Chaggar's first cousin?

A. Yes.

Q. Can I ask, you understand why you are here, giving evidence to this Committee and you are aware that it relates to a caution that was recorded against Gurpreet. When were you first aware of events that led to Gurpreet accepting a caution?

A. With the events that occurred it was after she had accepted the caution. I recall it was in March. Gurpreet has quite a bubbly personality and I was there over a weekend and I knew something was wrong. It took quite a while for her to tell me the circumstances surrounding this case.

Q. Do you consider yourself to be close to Miss Chaggar?

A. I am, we are a very close family. When we do get together it is a large family group, so a one-on-one is very rare, or a quick talk or conversation. Gurpreet can be an inverted person and for her to tell you something you really need to pester her to do it.

Q. Did she ever explain to you what the allegation involved?

A. She explained it in very simple terms: she had been given some money by a colleague, who she thought was a friend, for her birthday. She wasn't aware at the time that this other individual, her colleague, was involved in taking money from where she worked. Through this she was implemented.

- Q.** You have said already that the first time that you spoke about this matter was after she had received her caution.
- A.** After she had accepted. She had already accepted the caution. I couldn't advise her because she had already accepted.
- Q.** When you first spoke about this matter had she told her parents?
- A.** No, she hadn't. I had spoken to her about this and obviously she was very scared. Her parents are elderly with depreciating health, especially my uncle, but I did talk her into telling her father, which she eventually did a couple of months later.
- Q.** Did Miss Chaggar explain to you why she had accepted the caution?
- A.** She said that she had two options: one was to accept the caution or go to court and she wanted to limit the impact it would have on her family. She wanted it over and done with and she was scared. She just wanted it over; she doesn't cope with stress very well. She has never been in a stressful situation such as this in her entire life. She is very isolated, and very protected within the family group as well.
- Q.** As far as Gurpreet's character is concerned, are you able to form a view about her character?
- A.** She is a very bubbly, enthusiastic person; she gets on with everybody, all age groups, backgrounds; there is 11 years difference between me and Gurpreet, but we are very close in that sense. She can be very naïve, very trusting and that is because she is quite protected within the family, being the youngest. I know that myself I am very protective of her because I am the oldest in our family with regards to cousins. She can and she is very trusting of people.
- Q.** As far as you are concerned do you have any doubts about her honesty or integrity?
- A.** No. I don't have any doubts at all; she is very trustworthy, she is very honest – sometimes too honest when I ask her something, but she is a trustworthy person.
- Q.** Thank you very much indeed; those are all the questions I want to ask, but if you wait there, there may be some more.

Cross-examined by MR HEPWORTH

- Q.** You are clearly very close to Miss Chaggar and you are here to support her.
- A.** Yes, of course.
- Q.** Can I just ask you about the conversation that you had with Miss Chaggar about the incident after she had been cautioned?
- A.** Yes.
- Q.** You said that she told you that she had been given money by a colleague.
- A.** By a colleague, yes.

- Q.** Did she say who that colleague was?
A. It was a male colleague – I am not very good with names.
- Q.** You are sure about that, that she said it was from a male colleague?
A. It was from a male colleague, yes.
- Q.** Did she say why she got it?
A. It was her birthday; her birthday is October 14 and, from what I recall, it was a couple of weeks after her birthday, he had given her £20 and said:
“Here is £20 for your birthday, go and get yourself something nice.”
- Q.** Sorry, can I just make a note of that? She told you that he said to her:
“Here is £20 for your birthday, go and get something nice.”
- A.** Yes.
- Q.** You are sure that is what she told you that he had said?
A. Yes, as far as I recollect.
- Q.** No more questions.

Questioned by the Committee

- Sir Alistair Graham:** The Committee wish to ask you some questions. What was your response when you had heard that she had accepted a conditional caution? Did she explain anything about this conditional caution?
- A.** No, she just said it was a caution. To be honest I was extremely shocked because out of everybody I know I couldn't believe that Gurpreet was involved in a situation like this. I was extremely shocked, very worried. She was extremely upset when she was telling me because she was very scared what my response would be, but obviously I would be supportive to her.
- Q.** What do you think the consequences were about having her accepted the caution?
A. At the time it was professionally; I am a professional myself so when I looked at it, it was the implications it would have professionally.
- Q.** Did you talk that through with her?
A. Not in great detail because at the time she was very upset, it was consoling her and trying to understand – all she wanted to do was to talk and I was there to listen and not to pass judgement because I do not know the full ins and outs of the case, apart from what I am have been told by Gurpreet.
- Q.** Don't you think it strange that somebody in this pretty tough, very stressful situation lives at home with the parents and doesn't seem to go to anybody to get any help and advice?
A. No, it is not unusual within our family background for someone of Gurpreet's age to still be living at home. She has good relationships, especially with her

father, who is a little bit more relaxed than my aunt. It is the consequence of - it is not just the family, it is the community. We live in quite a large Asian community and if something like this was to get out, it is gossip, etcetera, and it can be quite difficult. We have been given a lot of opportunities which our parents never had. We have been encouraged to go and educate ourselves, do well and with a situation like this it seems quite disrespectful. We have been brought up to respect our elders. Because of her father's depreciation of health as well she didn't want to cause any stress and by keeping it to herself she thought that was the best way she could limit people knowing without causing people any hurt, then she will do so. I would do exactly the same now.

Q. Was her relationship, except with her father, she could clearly have confidential discussions with you?

A. Which she did.

Q. Fairly long after what had happened.

A. She thought she was trying to contain the situation that she wouldn't need to tell anybody, especially her parents. As I have said, my aunt still doesn't know and to limit the hurt and the worry it would cause. My uncle is extremely worried – within the past two years he has had a stroke, he is diabetic, he has had a burst blood vessel in his arm in December and he is extremely worried about the situation. He doesn't totally understand the legalities, which to be honest I don't totally understand the legalities, but he is supportive of her.

Q. Once you had learnt about the acceptance of the caution and you told me that you were worried about its implications professionally, did you get involved any further then? Did you have lots more conversations about it?

A. Not really. I was just there as a sounding board if she wanted to call me up and tell me about conversations that she has had with the legal team. I am there to listen, I am not there to pass judgement or to give legal advice; I am not with the legal profession.

Q. Thank you; any questions?

Mr Baldwin: Yes. I can understand that an event of this kind you might remember two years on, but the exact words that was said, are you conveying the gist of what she told you?

A. It's the gist really; I can't remember whether or not, but it is a summary of what was said – that is what was said.

Q. Thank you.

Ms Huka: Can I just ask, please, because you knew you were coming here today did you have a refresher discussion with your cousin about it?

A. No, I tried not to. It is to keep her mind occupied because if she thinks about it she stresses, she gets extremely upset. I know yesterday afternoon she was extremely upset. I am here to support her and to try and keep her mind occupied and think positively. She is very early on in her career and she is

thinking this is going to be the end. She is very passionate about doing it and she wants to carry on.

Q. Thank you.

Sir Alistair Graham: That is all the questions that we would like to ask.

Re-examination by MR HODIVALA

Q. I have one question in re-examination which arises from something that you answered a moment ago. You talked about living in a large Asian community, the fact that this sort of conduct could be seen as disrespectful, that you have been brought up to respect your elders and you have expressed concern about your uncle's health and that overall if it gets out, it is gossip.

A. It is gossip and gossip escalates.

Q. In terms of the closeness between yourself and your aunt and uncle, are you able to tell the Committee what kind of standing your aunt and uncle had in the local community?

A. Yes, I can. My uncle and aunt are very involved in the community, in the temple. My aunt is the eldest in my family, although Gurpreet is younger than me – this is going to sound really silly – the Italians have a head of a family, my aunt is the head of our family and when collective decisions are made within the family, we go to my aunt and uncle. That is built through the community; they have a very strong standing in the community. It is quite funny, there are people coming and going constantly, so they are very highly regarded.

Q. Are your uncle and your aunt involved in the temple or is it just your aunt, did you say?

A. It is mostly my aunt, but my uncle is a local businessman – he has lived there most of his life. Within that Hayes community there is a large Asian community; most people know one another through somebody else, etcetera and, obviously, due to his business as well.

Q. Thank you very much. Thank you very much for your questions, I ask for this witness to be released.

[The witness is released]

Mr Hodivala: We'll call Miss Chaggar.

GURPREET KAUR CHAGGAR, re-called Further examination by MR HODIVALA

Q. Ms Chaggar, you have already given evidence in relation to interviews that you have had with Mr Walls, the interview that you had with the police and the caution that was admitted. Can I just ask you, please, to recap on one or two matters and we will explore in a moment, briefly, the caution given by the

police? To recap, prior to 26 March 2008 had anybody given you a definition of theft?

A. No, not that I remember.

Q. Had the police on 26 March given you a definition of theft?

A. No.

Q. Had you appreciated on 26 March that you needed to accept that you had acted dishonestly on 3 November 2007? Do you understand the question?

A. No, say it again.

Q. On 26 March when you had the caution did you understand that you had to accept that you had acted dishonestly on 3 November 2007?

A. No.

Q. You understood, because of the questions that have been asked you by Mr Walls and indeed the police officer that it was being suggested that you had assisted Linay, yes?

A. Yes.

Q. Did anybody explain to you that you had to accept that you dishonestly assisted Linay?

A. No.

Q. As far as the caution on 26 March is concerned, were you aware prior to half past five on 3 November, whether or not Linay had any cash on him?

A. I had no idea.

Q. We have heard about and you have heard about Mr Walls seeing cash being given to you by Linay at some point after six o'clock on 3 November, did you know where that money had come from?

A. No.

Q. Did you know that it had come from the till?

A. No.

Q. Can I ask you in that case why it was overall that you signed a caution admitting theft on 26 March?

A. Because by that point, number one, I thought I had done something wrong, but I don't think at the time I understood properly what I had done wrong. When they rang me earlier during the day I was told 'you can accept a caution, but you have to admit to what you have done'. That was all, they didn't say, 'this is going to be what is written', they just said 'you have to accept it, otherwise it will go through courts.' I just went 'I am not going to court; I will accept whatever it is that you want me to accept.'

Q. But why? Why were you prepared to accept whatever it was that they wanted you to accept?

A. Because I just didn't want it to go any further; I didn't want to tell my mum and dad, I was scared of them, I didn't want to interrupt my studies, I had a fear of

going to court in general and I saw it as an easy option to take just to not think about it, just to put it in the back of my head and think, 'okay, perhaps if I just sign it then they won't call me again, I won't be bothered by anybody.'

Q. The Committee at this stage are going to have to make a determination about whether in fact you admitted all the evidence of theft on 26 March, yes? When you signed that caution on 26 March did you accept that you had acted dishonestly on 3 November 2007?

A. No.

Q. Do you now accept that you acted dishonestly on 3 November 2007?

A. No.

Q. On 26 March 2008 when you signed that caution did you accept that you knew the money had come from the till as opposed to anywhere else?

A. No.

Q. Do you now accept that you knew the money came from the tills as opposed to anywhere else?

A. No, because I still don't know.

Q. One of the conditions of your caution was that you had to write a letter of apology, yes?

A. Yes.

Q. We have copies of the two letters. In fact can we make the letter from Phil Boyett on 4 December 2007 R2 and the letter from Miss Chaggar, R3?

[R2 and R3 are distributed]

Let me deal very briefly with R2 because it is not a letter written by you, is it? It is a letter written to you.

A. Yes.

Q. Do you have a copy of that? Have you labelled it R2 and R3?

A. Yes.

Q. R2 is a letter written by Mr Boyett to you; do you remember receiving this letter?

A. Yes, just about.

Q. The last few comments were about R2; I want to ask you, please about R3.

Mr Levisaur: Is R3 admissible; an exculpatory statement?

Mr Hodivala: One of the conditions to her caution was –

Mr Levisaur: You are not answering the question.

Mr Hodivala: I am just giving my response.

Mr Levisaur: It is clear you are putting in an exculpatory statement; you do not put this in as a confession.

Mr Hodivala: It is not a confession.

Mr Levisaur: Absolutely so; forgive me, I am using that term and you know why. It is an exculpatory statement.

Mr Hodivala: It is an exculpatory statement, but a bit like a mixed interview.

Mr Levisaur: It is not a mixed interview, is it? That is the problem.

Mr Hodivala: I have to confess I haven't thought about it. In that case I would say it is admissible under Rule 38(2) that the catch all provision allows you to consider if evidence is admissible which assists you, which may not otherwise be admissible in the court of law. I am not conceding for a moment this isn't admissible, I just want to think through. This is a written document that goes to explain Miss Chaggar's state of mind on 28 March 2008.

Mr Levisaur: No, it isn't. It is fact an exculpatory statement precisely because it is not contemporaneous and it is a matter written – I am going to use the word "neutrally" after the event, clearly, in legal terms, long after the event.

Mr Hodivala: It is written on 28 March 2008.

Mr Levisaur: Yes, relating to events which happened in, for these purposes, November, the beginning of November.

Mr Hodivala: No, it relates to events on 26 March 2008 when the confession that the GOC rely upon was admitted. That is 26 March 2008. We may not need to get too bogged down, if I were to put it this way, I don't think it is something Miss Chaggar as a witness needs to –

Mr Levisaur: No, it's not. Chairman, so you are aware, there is a potential difficulty in criminal cases documents or things which are called exculpatory statements, in other words, things which are produced by the defendant which tend to row them out, to use the vernacular, are not normally admissible. I didn't know that this document was going to be produced and clearly I didn't know what was in the document, but having very quickly read it, it has clearly been produced not to show that this lady was admitting to the constituent parts of the offence, but is no doubt to be admitted to show that she was unaware of the constituent parts of the offence. What is being said is that there is, in any event, even if this is not admissible, there is a discretion to admit it, or might be a discretion to admit it, given your general duty under Rule 38(2), which you have already looked at, to admit that it would appear to be fair to do so.

Sir Alistair Graham: I am anxious not to get bogged down in this in terms of I am anxious to complete this interview before we have to adjourn at 12 o'clock.

Mr Levisaur: So am I, but I don't want this witness answering questions about a matter she can't answer questions about in relation to a document she shouldn't have. If Mr Hepworth says he doesn't oppose to this going in, I will obviously be able to give you rather short advice.

Mr Hepworth: Sir, I take the view it isn't a criminal court and in my view it would be perfectly appropriate for you to admit this letter under your residual discretion under Rule 38(2) so you will give it whatever weight you will consider appropriate at the appropriate time.

Sir Alistair Graham: I am sure the Committee would wish for it to be admitted under Rule 38(2) so it is part of the background information.

Mr Hodivala: May I say that it wouldn't be admissible, I was just looking at it, but in any event it is going to go through the Committee. Miss Chaggar, this is a letter dated 28 March 2008, did you write this letter yourself?

A. Yes.

Q. It is addressed to Phil and is that Nicholas?

A. Michael.

Q. I beg your pardon; is that Michael Wong?

A. Yes.

Q. Phil being Phil Boyett, is that right?

A. Yes.

Q. *[Reads]*

"I am writing to apologise for my recent actions whilst my employment at Specsavers. I should have been more responsible and aware of what was going on around me.

I am sad for the way things have ended between the Specsavers team and me. I enjoyed my time working with everyone and I hope everyone is well. I apologise once again."

Although this is in accordance with the conditional caution that you were given, because you were asked to write a letter of apology, you don't apologise for the theft or a theft.

A. No.

Q. Why is that?

A. Because I didn't take any money.

Q. As far as the people concerned in this case are involved, what role was Linay?

A. A retail manager.

- Q.** Suzy?
A. Operations manager.
- Q.** What were your hours that you were working in November 2007?
A. At that time it was only a Saturday, nine until half five; just normal times – or six o'clock, whatever time it closed at the time.
- Q.** How frequently were you working? Were you working every week?
A. Yes, I was there near enough every Saturday.
- Q.** We have heard that you were still at university as well.
A. Yes.
- Q.** You weren't a practising optometrist, presumably?
A. No.
- Q.** Was this a means of getting a job to get some experience working in a optician's practice?
A. Yes. I wanted to get the experience and I asked if I could do my pre-reg there and they agreed.
- Q.** When we look, please, at page 10 of the bundle; I am not going to read out every line of the CCTV, but can you just explain to the Committee why it was you were involved in taking money out of the till in the first place?
A. Because that was what I was told to do.
- Q.** Who told you to do that?
A. My retail manager, Linay.
- Q.** Did you think that was dishonest at that stage?
A. No.
- Q.** Why was it that you did what Linay had asked you to do?
A. Because he was my manager.
- Q.** We have heard that you used Phil Boyett's number.
A. Yes.
- Q.** Why did you use Phil Boyett's number?
A. I can't remember the exact stages where I used it. I remember at one point I couldn't go through to the next part of the screen of whatever we were doing because the computer was asking for the manager's code. I asked the manager 'what do you want me to put in?'
- Q.** Sorry, when you say the manager -?
A. Linay, sorry, at the time, because he was next to me. He told me to put in Phil's code. I don't know if his one worked or not; I can't tell you that. That is what I put in.

Q. What did you think you were doing taking money out of the till; what was that money for?

A. He said it was for a refund, so I just thought it was for a refund; I really didn't think anything of it at the time. I just went 'okay, fair enough.' He was like, 'the patient is going to come back, they will always need to check if there is enough money in the till.'

For some patients you have to wait until the end of the day to see if there is enough money if you are going to give someone money back in cash.

Q. Having taken money out of the till, what did you do with it? We see you put it into a TDR bag.

A. Yes, he just said 'put it in a bag.' I was going to give it to him and he said 'leave it on the side.' put it under the cashing up book. Afterwards he asked for it and I gave it to him; that is it.

Q. As far as putting refund money into a TDR bag, did you think there was anything suspicious about that?

A. Not at the time; he told me to do it so I did it, but at the time I just didn't think anything of it.

Q. Then we see from the CCTV that your next scene with Linay is in the administrative office, 15 or 20 minutes later. We see on the CCTV account that you are said to carry on cashing up; do you see it, page 11, line 289, you continue to perform the end of day cashing up process, yes? Were you entrusted with doing the cashing up process at the practice?

A. Yes.

Q. Was it the first time you had done the cashing up process?

A. No, if I had been working there for a year I had started cashing up probably about two months after I started. I had been cashing up – every Saturday it was me and somebody; usually it was me and Phil, but if Phil wasn't there due to whatever reason, it would be Suzy, Linay or anyone off the shop floor would stand next to me, so there are two people there.

Q. Right. On 3 November did you know that Linay had been stealing money from the practice before?

A. No, not with 100 per cent proof, no.

Q. You then to go the administrative office, to come back to line 289, we see that you continue to perform the end of day cashing up process. It is at that point that we know that Linay puts some money down on the table; I think it is, on a desk, yes?

A. Yes.

Q. What did you understand that money was for?

A. We were just standing there talking and he just left it and said 'get yourself something.' Because it was my birthday beforehand and that is just what I assumed it to be. It stayed there for a couple of minutes whilst we were discussing it, then he left the room. Sorry, can I just make a point, I know it is

written here, but I don't remember walking with him upstairs to the administration office and walking in together. I am 99 per cent sure I went in by myself and even when we left the desk, after I gave him the money, he walked off and I was still at the desk to finish what I was doing and then I left.

Q. All right. Can I ask you, please, about page 12?

A. Yes.

Q. In fact if you look at the bottom of page 11, the question is put:

"Why should I think that you had not stolen the money? If you were sitting in my position what would you think?"

You say:

"I would think that I had stolen the money."

At the top of page 12:

"Did you?"

The answer is:

"No."

Is that true?

A. Yes.

Q. You then give an account to Mr Walls about the money being from your cousin.

A. Yes, sorry, his cousin.

Q. His cousin and, in fact, his cousin only. You accept in your second interview with Mr Walls that that wasn't true.

A. No, it wasn't true.

Q. Why was it that you told Mr Walls that the money was from his cousin?

A. Because I didn't want to use Linay' and Suzy's names. I felt that I didn't want to get them into trouble so I just avoided using their names full stop.

Q. Why did you want to avoid getting Linay into trouble?

A. Because I felt bad. Not only because I felt bad, because I knew Linay wanted to speak to Phil.

Q. Sorry, who wanted to speak to Phil?

A. Linay wanted to speak to Phil. He had said 'I want to speak to Phil and I want you to get him to talk to me.' I felt like that was what I had to do, that I had to speak to Phil to tell him, to say 'Linay wants a chance to explain himself, can he explain himself to you.'

Q. When was it that Linay had spoken to you about speaking to Phil or wanting to speak to Phil?

A. A few days before.

Q. A few days before when?

A. This interview.

Q. On 3 November 2007 you have already said that you didn't know that Linay was stealing money from the practice. Had Linay had any conversations with you prior to 3 November 2007 about not wanting you to tell others, for instance, about the fact that he was taking out refunds in cash?

A. Before this date?

Q. Before 3 November, before the incident itself?

A. I didn't know before 3 November.

Q. We have already covered how you were feeling in the first and second interviews with Mr Walls. I have covered already in the original evidence that you gave how you were feeling in your police interview. Before I move onto the police interview, can I ask you this? By the end of your first interview with Mr Walls how were you feeling about the allegation itself?

A. I couldn't understand it. I was just confused, couldn't understand it, I was a bit scared. I didn't know who to go to. At the same time I just kept thinking, 'okay, I have to speak to Phil, I have to tell him that Linay wants to speak to him' because apparently he wasn't answering his phone call.

Q. You say you were getting confused or you were confused, look at page 12 line 328, Mr Walls put to you the allegation that you knowingly used the director's number without his authorisation to remove money from the till and you did this to remove accountability away from yourself. You were using Phil Boyett's code to cover the fact that it was you using the till at that particular point in time; would this be a fair statement? You say:

"No."

Why wasn't it a fair statement?

A. Because I didn't do it. That is not what happened, so I was like, "no".

Q. Then Mr Walls asked you the question "Why" and you say:

"I don't know, I don't remember."

A. I was getting confused at that point.

Q. What were you getting confused about?

A. Just about what was being asked and how it was being asked and I was just sitting there because of what Linay had told me I was thinking, 'Okay, I have to go and tell Phil', so that was on my head. At the same time I am trying to listen to what they are trying to ask me and then you are just sitting there trying to think, 'okay, shall I tell them what Linay has told me, shouldn't I?'

How am I going to speak to Phil? I am going to have to ring university.' When you are sitting there debating trying to think, 'what shall I do?' you just get confused. You don't know what to do.

Q. We don't have line 350, a long paragraph from Mr Walls, and I paraphrase it, I hope fairly, by saying 'Is it reasonable to think that you have stolen the money, that it is suspicious?' Then you say:

"Yes, I think it would be reasonable to conclude that."

How were you feeling about the allegation at that stage?

A. I just felt like I had done something bad, but not realised what, so I was just agreeing to it because they were saying.

Q. Thank you very much, that is all the questions I wanted to ask.

Sir Alistair Graham: I am just getting slightly worried about whether we can finish this by 12 o'clock. I know you have a fair number of questions to ask.

Mr Hepworth: Sir, that is right. As much as can estimate these things I am going to be longer than 15 minutes.

Mr Levisaur: You are clearly going to be longer than 15 minutes. If you had said 15 minutes my eyebrows would have hit the ceiling. You, in truth, must adopt the position that you would be were you prosecuting this lady in a crown court, that is to say you must put to her the allegations contained within each of the interviews. In other words, you must deconstruct the first interview and then the police interview, at least the allegations put there. You will then have to ask her questions properly – I say properly, you have to ask her questions about the caution at the police station. I don't criticise Mr Hodivala, he is perfectly entitled and it is absolutely appropriate to deal with it in the way that he has done but you, of course, can't do that.

Sir Alistair Graham: I can't believe that the Committee won't have some questions to ask as well.

Mr Hepworth: If it helps you, sir, I have four pages on notes. Obviously they will have to be expanded into questions.

Sir Alistair Graham: I have to say I am tempted at this stage – we didn't want to get into this situation, but of course we will have a transcript to go over but rather than now move to Mr Hepworth and be in the middle of no doubt some sharp questioning that he is going to put, I think it is better to adjourn at this point and to bring Miss Chaggar back; I didn't want to be in this situation, but I think where we are at this point and the time we have left.

Mr Hodivala: We still have 15 minutes, I am not suggesting we embark upon a determination for Miss Chaggar at this point, but there is another witness downstairs and one that, if Miss Chaggar were to interpose her evidence –

interpose with this other witness, Mr Boyett, whether we could deal with his evidence.

Mr Levisaur: I don't know what he is going to say, but I would image Mr Hepworth would have to put certain matters to him.

Mr Hepworth: I anticipate so and I have to admit I understand why the request is being made for reason of convenience; I am concerned that in the middle of one witness's evidence, we are interposing another witness. Sir, I am concerned about that for propriety's sake if it is consistency sake and I am not sure we will deal with Mr Boyett's evidence in 15 minutes.

Sir Alistair Graham: I am uneasy about that as well because I think it is a bit of a logical following up – completely hearing what Miss Chaggar has to say is bound to prompt some questions that you might want to put to Mr Boyett.

Mr Hodivala: Mr Boyett could come back; it is obviously inconvenient.

Sir Alistair Graham: No, I can understand and it is really because of the length of time we have to take on the admissibility issue that has got us to the situation where we are at. My preference would be, subject to what anybody else has to say, that we should adjourn this hearing at this point. I am sorry to you, Miss Chaggar that we are doing this, because I know you would like to conclude these matters as quickly as possible. We are faced with a situation that is not of anybody's planning. I am going to adjourn the hearing and before I do that it is important the Legal Adviser tells Miss Chaggar what her position is vis-à-vis her stand.

Mr Levisaur: Miss Chaggar, you are giving evidence. The fact that the Committee has to break in fact for many weeks, possibly, does not mean that you are not still giving evidence. You must not talk about your evidence to anyone, particularly and this is crucially important, to anyone who has already given evidence and that must include your cousin and your friend. You may not talk to them about your evidence or their evidence and you are not to talk, even to your legal advisers about the evidence that you are, have been giving and may give.

Sir Alistair Graham: Do you understand that?

A. Yes.

Mr Hodivala: Can I just say that for the purpose of an open hearing and open justice as it were, of course we will need to speak to Miss Chaggar, but we are completely aware of professional obligations that we can't discuss the evidence.

Mr Levisaur: There is no question, you are perfectly entitled to speak to her – of course you must speak to her.

Mr Hodivala: Yes.

Sir Alistair Graham: No doubt you will meet your normally high professional standards in this part. Can I adjourn this hearing the date to be determined?

Mr Henley: Can we propose those dates?

Sir Alistair Graham: Ideally the dates in April.

Mr Henley: The 29 and 30 of April and 7 and 8 July are the dates that the Committee are all here.

Mr Hepworth: Sir, those dates were kindly given to me this morning. I cannot be here on 29 or 30 April. I haven't yet to see if my colleagues could be here, but given the current position of the case it would be entirely inappropriate, in my view, for another advocate to take over, seeing as I am just about to launch into cross-examination.

Mr Levisaur: Wholly inappropriate.

Mr Hepworth: If it helps I am available on 7 and 8 July but not available for the late July dates as I will be abroad on holiday.

Sir Alistair Graham: It begins to look like 7 and 8 July. The Committee is available.

Mr Henley: What about the Legal Adviser; are you available?

Mr Levisaur: I know I have trials in July.

Mr Henley: We could run with a different legal adviser.

Mr Levisaur: Yes, as a matter of law you could certainly run with a different legal adviser.

Mr Hodivala: I'm afraid I don't know my availability for July.

Sir Alistair Graham: Obviously it would be helpful as soon as possible. Clearly we are anxious that Miss Chaggar should know the outcome of this case as quickly as possible.

Mr Hodivala: Can I just inquire, are they the ordinary sitting days or are they the earliest convenient days that we could all reconvene?

Sir Alistair Graham: Those are the only days that we can do, excluding normal days, is that right?

Mr Henley: They are outside of the hearings calendar.

Sir Alistair Graham: All right. If everybody could clarify as quickly as possible. Thank you all very much and we shall reconvene hopefully on 7 and 8 July if people can make that time available. Thank you very much.

[Miss Chaggar is released]

[Hearing adjourned at 11.51 am]