



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

GENERAL OPTICAL COUNCIL

F(09)11

AND

AHTHESAMUL ISLAM CHOWDHURY (SO-2766)

**SUBSTANTIVE HEARING (reconvened)
26 March 2010**

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SUBSTANTIVE HEARING: AHTHESAMUL ISLAM CHOWDHURY (SO-2766)

Friday, 26 March 2010

Fitness to Practise Committee: Mrs C Kershaw (Lay, Chair)
Mr A Khan (Lay)
Dr V Harris (Lay)
Dr R Stevenson (Optometrist)
Mr R Kapoor (Optometrist)

Legal Adviser: Mr N Levisaur

For the GOC: Mr B Albuery

For the Registrant: Mr S Singh

Hearings Manager: Mr D Henley, BEM

[Proceedings commenced at 9.30am]

Mrs Kershaw: Good morning. I am Corinna Kershaw, a lay member of the hearings panel, and I have been elected by the Committee to chair today's hearing. The Committee today is made up of two optometrists and three lay members and I will ask the members of the Committee to re-introduce themselves and the capacity in which they sit. *[Introductions]* To my right is Mr Levisaur, 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 that is fair and just. The Legal Adviser may accompany the Committee, should it sit in private to deliberate. In the event that any matter arises during the course of the Committee's deliberations upon which the Committee seeks advice, the parties will be invited to return to hear the matter which the Committee has raised and the advice to the Committee. Where advice on any issue is not accepted by the Committee, this will be indicated in the course of its decision on that issue.

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

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

As you were all aware, we adjourned proceedings on 20 January, having found the Registrant guilty of misconduct and we recommence today at the impairment stage. I am very pleased that all five of us have been able to be here and that the gamble that we went for at the end of the last session has paid off.

Mr Albuery: Madam, both my learned friend and I are not sure, from the transcript – and if we are wrong about that, I will apologise, that you actually did make a determination about misconduct.

Mr Singh: I have to say that when I thought back to the hearing, I thought you did but then, looking at the transcript, it does not seem that you did. It seemed that it stopped at the factual stage.

Mr Henley: Looking at the directions, there are findings in relation to the facts.

Mr Albuery: There is nowhere in the transcript which suggests which you have dealt with the matter of misconduct.

Mr Levisieur: I think that is right.

Mr Khan: I seem to remember, and also from the transcript that you addressed us on that.

Mr Albuery: I did, and indeed impairment, but we then went a slightly divergent course.

Mr Khan: Yes, the forms got us.

Mr Albuery: They did. And certainly, in your determination, looking at page 31 of the transcript, I am not sure that you deal with misconduct. If in your head you dealt with it, you simply need to communicate it.

Mrs Kershaw: Yes, it does seem that we did not communicate it to you.

Mr Levisieur: Can I just check something? It may be because of the formulation of the –
[*Looking through documents*]

Mr Albuery: Madam, on page 31 you deal with all of the facts, including particular 4 which relates to dishonesty ‘and not of the standard expected’, and you stop there.

Mr Levisieur: May I just check –

Mrs Kershaw: We are just waiting for our Legal Adviser –

Mr Levisieur: Shall I just check the wording of the indictment? What I cannot remember in this case is the – [*Reads document*] The Chairman is reminding me, and I am very grateful, that you are both quite right and I think that this arose because of the form of wording which follows on from paragraph 4 but is not part of paragraph 4:

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

- (a) caution;
- (b) misconduct.”

You are both quite right to point out to us that the form not having used the words, there was no express finding as to misconduct. That, I think, arises or arose because of the formulation of that paragraph but there is no difficulty about that. Before the Committee considers the matter, which it now must do, given the conclusion that they reached in the last paragraph on page 31 of the transcript, there is only one finding that they could properly reach, though that is a matter for them entirely.

Mr Albuery: Yes. I have to say that I do not understand all that you say about the wording of the allegation, which is in the usual format. The fact is that the Committee

needs in its judgment to consider misconduct. I have made my representations on it and I assume that you do not want to hear from me again.

Mrs Kershaw: No, I don't think we need to hear from you again but that is not being disrespectful to you. We understand where we are at. Mr Singh, do you have any comments to make?

Mr Singh: No.

Mrs Kershaw: That is fine. We will ask you to leave for a few moments, while we deal with this matter.

[Hearing adjourned at 9.37 am]

[Hearing resumed at 9.45 am]

Mrs Kershaw: We have discussed the matter and have a short sentence to add to our determination thus far, which is as follows:

Findings in relation to misconduct

Having regard to the facts that the Committee has found proved, the Committee finds that the Registrant's behaviour amounts to misconduct.

Mr Albuery: Thank you.

Mr Singh: Mr Albuery has already made submissions on impairment and I do not know whether he wants to add anything.

Mr Albuery: No. Madam, may I just remind you that my submissions on impairment in the transcript start at page 15, the first main paragraph, which begins "In relation to impairment", and then carry over for the next three or so pages where I also mention the judgment of *Yeong and the General Medical Council* [2009] EWHC 1923 (Admin), a copy of which I think was given to each of you on the last occasion. Madam, I have nothing to add to those submissions.

Mrs Kershaw: Thank you. Mr Singh?

Mr Singh: Could I call some evidence and then make submissions on impairment afterwards?

Mrs Kershaw: Yes.

Mr Singh: Could I call Mr Chowdhury, please.

**MR AHTHESAMUL ISLAM CHOWDHURY, called and affirmed
Examination in Chief by MR SINGH**

Q. Mr Chowdhury, could we have your full name, please?

A. Ahtesamul Islam Chowdhury.

Q. How old are you now?

A. Twenty-five.

Q. Just for background, is it right that in terms of your career in optometry, you graduated from City University in 2007?

A. That is correct.

Q. You were there for three years preceding that?

A. Yes.

Q. You went on to do your pre-registration year at Optical Express in Regent Street from 2007 to 2009?

A. That is correct.

Q. You passed all your assessments and eventually you had your final assessment at the end of that period in January 2009, is that right?

A. That is right.

Q. At the moment, you are still working at the same practice?

A. No, I've since left them and I am working for Eyecare International.

Q. And your supervisor at the moment is Emanuel Hickson – there are some references in the bundle which you will hear later, which are agreed at the impairment stage, but your current supervisor at that practice is who?

A. It is Farah Manji.

Q. Is it right that you are still working and testing under supervision?

A. Yes, that is correct.

Q. Because you have not been allowed onto the full register, pending the outcome of this matter?

A. Yes.

Q. How long has that been going on for now?

A. Fourteen months.

Q. Since your qualification in January 2009?

A. That is correct.

Q. Is it right that you grew up in Tottenham –

Mrs Kershaw: Could I ask the witness to speak up slightly.

Mr Singh: I know this is a small room, Mr Chowdhury, but could you keep your voice nice and loud. You grew up in Tottenham, is that right?

A. I did.

Q. What was the kind of area that you grew up in? What was that like?

A. It was a fairly rough area, as in my parents at the time weren't too comfortable with me associating with too many people around. There were problems with crime and that was part of life in that area.

Q. In the area where you lived?

A. Yes.

Q. What was your parents' attitude to school? Did they take that seriously?

- A.** Yes, very much so. I was tutored after hours at school, and after hours I was tutored at home, doing extra work, and was preparing to do entrance exams to go on to study at public school.
- Q.** Did you sit entrance exams and were you accepted onto a private school in the City of London?
- A.** I was.
- Q.** At what age was that?
- A.** I was at the age of 10, so I was then going on to 11.
- Q.** And how long did you stay there?
- A.** I stayed there for a period of four years.
- Q.** Was that until just before GCSEs, or at GCSEs?
- A.** Yes, just before GCSEs.
- Q.** Where did you take your GCSEs and A levels?
- A.** I then went on to DLD Independent College. I did my GCSEs there and I then went on to study my A levels.
- Q.** Where was that college?
- A.** Notting Hill.
- Q.** Is this right, is that your GCSE results were two A*s, six A's and a B in Latin?
- A.** The B was in Latin.
- Q.** And for A levels, you got two A's and a B?
- A.** Correct.
- Q.** You gave us an idea of what life was like at home, and what the area you grew up in was like. Going to a private school in Central London, was that the same kind of atmosphere, or a different atmosphere?
- A.** It was very much a different atmosphere in terms of the people I was associating with during the day while I was at school, who would be starkly different, compared to the people I was associating with out of school, the people I knew from the local area.
- Q.** How were you coping with that? Primarily, going through it chronologically at the moment, at around the time of your caution when you were 14 years old in 1999, how were you coping with the different aspects of life and the different groups of people that you were in?
- A.** At that age, it was a bit of a struggle. There was slight confusion, obviously. On the one side, academically, I was going to the City of London School and you were pretty much working pretty hard, and you were pretty much structured to work and think in a certain way. Then, outside of that, there were friends that I associated with within the area, some of whom may have dropped out of school or gone to other schools and had a slightly different attitude. So there was a slight, almost like a struggle between the two different lifestyles.
- Q.** Because of that, did you feel that you were accepted in either environment, or did you feel that you fitted in with either environment?
- A.** I was in between, I felt. To my friends, I was someone who was going to a private school while they were all going to the local school, so they probably saw me as a bit different. At the private school, I could not relate to people, so there was that sense of feeling that I was in between the two.

- Q.** So focusing really, at 14 years old in September 1999, you were at the City of London School at the time. We have heard, and I am sure that everyone has read the facts of this, it was stealing CDs from a shop, but with other boys. Were those boys from the City of London, or were those boys from back home?
- A.** They were friends from back home.
- Q.** You said that there was some tension about being accepted. Did that have any influence on whether you became involved in this kind of activity with those boys?
- A.** Very much so. There was that sense of wanting to be part of a group, or part of being accepted into a group of friends. That influenced my behaviour at the time of the charge.
- Q.** We know from the papers that you were interviewed at that stage with your mother by the police.
- A.** That is correct.
- Q.** And you admitted that you had stolen CDs with these other boys. You were given a caution.
- A.** I was.
- Q.** And you understood that that was a caution?
- A.** I did.
- Q.** Was anything said in terms of criminal record, or anything like that?
- A.** At the time, my mother raised the question that obviously, if I wanted to go on to – if I was at another school and wanted to go on to further education, how that would potentially affect my future. I was told, the officer at the time advised that the caution would remain on the records for five years. After I had reached five years, it would then be spent.
- Q.** Let's just focus on this for a minute. Regardless of whatever was said there, you understood, did you, that you had a caution on your record from that point?
- A.** I did.
- Q.** Right. Between 1999 and 2004, there were no convictions or other matters at all. What was the reason for that? Why was there this hiatus really between the two offences?
- A.** I went through a bad patch, obviously, when I was 14, making the wrong decisions at the time. I then went on to focus myself and channel my energies into my studies, and dissociated myself from certain negative influences on my life. I just knuckled down, focusing on exams and getting into university.
- Q.** And it was during that time, obviously, that you did your GCSEs and A levels at Notting Hill.
- A.** That is right.
- Q.** In July 2004, we know about the offence that was committed at Selfridges with another person, to which you pleaded guilty later in that year. At what stage was that? Had you finished your A levels, or were you still in the middle of them?
- A.** I had finished my A levels at the time. Yes, I had completed my A levels.
- Q.** So you were not going to school at that time? Your schooling had finished?
- A.** I believe so, yes.

Q. That offence was committed, we have heard, with another boy, or another person – was he about your age or older?

A. Slightly older.

Q. How did you know him?

A. It was through a mutual friend, whom I knew from living locally.

Q. He wasn't a Notting Hill or school friend?

A. No, he wasn't.

Q. Can you tell us, how did that offence come about? How did you end up being involved in that?

A. It was friend basically advising me about our mutual friend, who was working at the department store. He advised me that, if you go along to purchase some items, he would be able to discount it and give you a certain level of discount on those items.

Q. Did you think that was a legitimate discount, or an illegitimate discount?

A. I was aware that it wasn't a fully legitimate discount.

Mr Khan: I am sorry but I didn't hear that reply.

A. I was aware that it wasn't a legitimate discount.

Q. You were aware – are you saying that?

A. Sorry, yes, I was aware that it wasn't a legitimate discount.

Q. Thank you.

Mr Singh: And why did you agree to doing this?

A. It was borne out of stupidity. Actually, I shouldn't have done it really. It was somehow addressing something that I went along with, there was a slight level of loyalty to a friend.

Q. Looking back on it, how do you now see that decision to become involved?

A. I see it as a completely stupid thing to do. I was out of character at the time and it was the wrong decision to make.

Q. How did it actually work? We have some brief details in the papers but what actually happened with that offence? Could you just talk us through it?

A. I selected a number of items which I wanted. I then took them along to the cashier, who was the mutual friend. He then applied the discount, so to speak, and he then also handed over bags which he wanted me to carry out as well, myself.

Q. When you got up to the till, what was your understanding about what would be happening? Did you know you would have the other bags?

A. I wasn't made aware of that.

Q. About the second lot of bags that were being handed over?

A. They were the items that he had selected for himself beforehand, and then handed over to myself.

Q. At that point, did you take the bags or not?

A. I did take the bags.

Q. And what did you do?

A. I then proceeded to leave the store.

- Q.** That decision to take the bags – was that a pre-planned decision, if you know what I mean?
- A.** No, it wasn't a pre-planned decision. It happened when I got there, at the till. I was then handed over a further bag which I was not aware of initially.
- Q.** Can we just have a quick look at the papers? I don't know whether you have the bundle in front of you. Madam, for you and your colleagues and for Mr Albuery, it is page 51. This is a statement by a security officer and it seems that that gentleman who was at the till was being monitored by security. He talks about the security system and then if we go on to the middle large paragraph it starts, "At approximately 13:20", about halfway down – can I read that out, please?

"At approximately 13:20 hours, the CCTV operator informed me that the member of staff was about to process a transaction for a member of the public. At this point, I inspected the RMS system" [which is the security camera system] "to check for the amount that was being put through the till. A transaction was completed for cash at £17.00 of which £20.00 was tendered and £3.00 change was given to the customer. The customer was at this point making his way to the ground floor."

Then this is the part, Mr Chowdhury, on which I wanted your comment:

"I was informed by my two-way radio that the customer had two full bags of stock that the member of staff handed over to him, which related to the transaction. As we suspected that collusion had taken place at this point it was decided to detain the member of the public."

Does that accord with your recollection of what happened?

- A.** Yes, it does.
- Q.** In terms of the bags being handed over to you, did you have all of the items which were in those bags that were handed over to you when you went to the till?
- A.** No, I didn't.
- Q.** Now, you were charged with the criminal offence of theft and there was a hearing at Horseferry Road Magistrates' Court, we know.
- A.** Yes.
- Q.** And that was on 8 July 2004: the offence was in May 2004 and the conviction was in July 2004. At Horseferry Road Magistrates' Court, was that in front of a judge or a lone magistrate?
- A.** In front of a judge.
- Q.** And that was your first time in court yourself?
- A.** Yes, it was.
- Q.** You were charged with the offence of theft and you pleaded guilty to that.
- A.** I did.
- Q.** Why did you plead guilty?
- A.** Because I was aware that I had taken part in a dishonest transaction.
- Q.** Did you think that was the right thing to do, or not?
- A.** Pleading guilty?

- Q.** Yes.
- A.** Yes, that was the right thing to do.
- Q.** You were given a two-year conditional discharge.
- A.** Yes.
- Q.** Were you aware of the time period, the two years, at the time when you were given it?
- A.** I was made aware, yes.
- Q.** Were there any comments made by the judge at the time of sentencing?
- A.** He had taken on board the fact that I had been accepted onto optometry and I was going on to a good career. He decided to go for a slightly more lenient charge, bearing in mind how it would potentially affect the career that I was going on to. He advised me that, in that two year period, if I was to commit any further offences, I would then be convicted for the initial offence and for whatever else may have happened.
- Q.** So you could be re-sentenced, basically?
- A.** Yes.
- Q.** For whatever else you had done. What was your attitude, when you heard that? What was your attitude as to whether you were going to commit any more criminal offences?
- A.** I had it set in my mind that I was not going to commit any more offences. I knew then that I was going on to do optometry. I had it in my mind that this was something that was never going to happen again.
- Q.** You mentioned going on to study optometry. Does that have any relevance, or did it have any relevance in your mind as to whether you should be committing offences, and does it now?
- A.** It certainly does. The profession is one that is based on honesty – honesty between an optometrist and his patients, and honesty between colleagues and everyone around him. I was under no doubt that obviously I did not want to commit any more offences.
- Q.** Just looking back on the person that you were who committed that offence in 2004, and the one in 1999, do you think you are a different person now or not?
- A.** I do believe I am a different person. Since then, I have gone through a lot. I went to university and my attitude has changed. I feel I have matured much more. Whereas before, I made a series of stupid decisions, I feel that that is not the case any more.
- Q.** You went to City University and I think you started in 2004, is that right?
- A.** That is correct.
- Q.** The first application for registration – student registration with the General Optical Council – came about in October 2005.
- A.** That is right.
- Q.** Just thinking about dates, this was about 14 or 15 months after the hearing at Horseferry Road.
- A.** Yes.
- Q.** Were you aware at that time that it was still within the conditional discharge period?

- A.** Yes.
- Q.** If I could turn to the form, please, it starts at page 4 of the bundle. The relevant question is at page 6. Mr Chowdhury, do you have that to hand?
- A.** Yes.
- Q.** If I just read out the question that was asked there:
- “Part 4 – Declaration: Are you the subject of a criminal investigation or proceedings, or have you been the subject of a criminal conviction, caution or other criminal matter.”
- And then there is a box to tick, yes or no. Then, under that,
- “If yes, please give details below.”
- You read that question when you saw the form?
- A.** Yes, I did.
- Q.** Did you understand it?
- A.** Yes, I did.
- Q.** You did not declare either the caution – and, Madam, I will deal with it as per your findings, and I will only deal with the conditional discharge matter on this one – but you did not declare either of things, the caution that you received, or the conditional discharge, and you ticked ‘no’. Why did you do that?
- A.** I was presented with the form and was in the second year of optometry at that point. I had a certain level of fear there, obviously, about the potential effect on my career and what the outcome would be.
- Q.** Can I stop you there and just ask you a question about that. A potential fear about what the outcome would be: what were you concerned about?
- A.** How those offences from the past would affect whether or not I would be able to study optometry or continue on the course.
- Q.** By that stage, how keen were you to study optometry?
- A.** I was very keen. I had gone through the first year and had just started the second year. I was more involved in the clinical side and I was really enjoying it.
- Q.** What were you afraid of? What was the fear that was in your mind?
- A.** Of essentially not being able to continue to study, or being asked to leave the course.
- Q.** So that was in your mind when you read the form?
- A.** Yes.
- Q.** Carry on. I am sorry, I interrupted you.
- A.** I suppose I had made up my mind – I looked back on the caution from 10 years before and thought that, because of the timescale that had gone, I thought that this was not something I would have to declare. Also, looking back to the conditional discharge and what the judge had said at the time, I felt that he had handed down a more lenient sentence taking into consideration any effect on my career. That, along with the fear, as far as I was concerned – it really was that 50:50, there was a doubt there. I built it up in my head that, on the one hand, it was just something that I had to declare and, on the other hand, I had that fear on my side. I started to think that

the caution was ex, and was 10 years ago, and the conditional discharge – at the time, he had given me a more lenient sentence. I took those factors on board, and ticked 'no'.

Q. When you were thinking about which side to fall down on, why did you decide on the 'no' side?

A. I suppose it was on the side that I was scared of being kicked out of the actual course. I essentially chose the side that I had built up in my head, the side that it suited me at that time.

Q. Do you accept – and we have heard the admissions – do you accept that what you did was dishonest?

A. I do.

Q. Thinking about it now, what should you have done? Can you give us some ideas of what you should have done at the time?

A. I should have ticked 'yes'.

Q. Why is that?

A. Because looking at it, obviously I did have the caution and the conditional discharge, and the form was asking me to be open and honest about that. I should have written those things down.

Q. Instead of ticking 'no', what were the other options open to you?

A. While I was having my doubts, looking back, I should have consulted someone if I had any doubts about the timescale, or whether or not things had to be declared. I should have consulted either the GOC directly or even the AOP, rather than making that decision myself.

Q. Do you think that was an acceptable thing to do, for a student optometrist, at the time?

A. No, it wasn't.

Q. Thinking about the kind of form it was, having to give information to the GOC, why would it have been important to give that information?

A. It is important because the GOC must be fully aware of any previous offences or anything that could potentially affect your ability to practise, or your character. It would basically give them the chance to look at that information and make a decision based on it.

Q. In fact, who was making the decision?

A. In this case, I essentially made that decision. I took it upon myself to make that decision.

Q. Do you think you have helped yourself, really, by doing that?

A. No, I haven't at all. I should have been open and transparent from the start but I have essentially made the situation worse.

Q. This is one kind of form but I am just thinking about your current attitude to forms that bear your signature, because you have signed this form at the end.

A. I did.

Q. It may be that you will have to sign other forms in your work as an optometrist in your future, or in any work as a professional. What is your attitude now to information that you put on forms that bear your signature?

- A. I understand that by signing the form, I am essentially giving an account of myself, or of my honesty and integrity. I should be fully open and answer all questions honestly, and put down any information that is relevant.
- Q. That is the original decision, back in 2005. There is some other non-declaration for 2006, 2007 and 2008 in respect of the caution.
- A. Yes.
- Q. Why didn't you declare those?
- A. After the first declaration, where I had essentially convinced myself there was potentially a side where I may not have to declare, I followed that same train of thought with the second and third forms as well. I also ticked 'no'.
- Q. We know that there was a PNC check that you did. Let me just find the page. Is it right that you did a self-check at some point?
- A. Yes, I did.
- Q. Madam, it is referred to in the letter that is at page 23 but I am not sure whether we have copies. Madam, when you retire to consider impairment, I will have copies made: we have an unmarked copy from which we can make copies. *[After a pause]* I am informed by Ms Power that we have copies: could I hand this up, and could it be called 'R1', please. *[R1 distributed]*

Madam, so that you know, the representations that Mr Chowdhury made in January 2009, which are at page 23 and to which I shall refer in a moment, this document was attached to it. Can I please read the document for Mr Khan's benefit: I am sorry that it has not been provided before so that you would have had an opportunity to consider it. It is a document which is headed 'National Identification Service Authentic Document'. It is a letter from the National Identification Service to Ahthesamul Islam Chowdhury at his address and, as far as relevant, it says this:

"Dear Sir/Madam

Section 7 of the Data Protection Act 1999 – Subject Access

In reply to your request for information that may be held about you by the Metropolitan Police on computers in the following categories"

and then underneath that, it has in bold:

"Person record: prosecution/conviction

The Data Protection Act places an obligation on the police when holding personal information on computer to provide a copy of that information (unless an exemption applies) to the individual concerned on request."

Then in bold:

"From the personal details supplied in your request, there is no information held about you in the Person Records category of the Police National Computer. If you requested any categories not shown above, the Metropolitan Police will send you a separate reply."

It is then signed “for Director of the National Identification Service”. There is then some information about exemptions which I am not sure that I have to read – but perhaps I will do. In brackets it says:

“(NB: the exemptions in relation to disclosure of information held on police computers are limited to where the data are held for (a) the prevention or detection of crime; (b) the apprehension or prosecution of offenders when disclosing such data would be likely to prejudice those purposes.)”

It seems that no exemption applied in this case because the information was provided.

Mrs Kershaw: Could I just correct something you read earlier. You said ‘1999’, when it was 1998, so that for the record we have the correct date.

Mr Singh: I am sorry.

Mr Khan: When was this obtained?

Mr Singh: This was received on 18 July 2008.

Mr Leveseur: Could you remind me when the application was made. I have seen the document somewhere but I am afraid that I have completely forgotten it. I don’t know whether it is in the bundle before the members.

Mr Singh: I am not sure that the actual application for it –

Mr Leveseur: I thought I had seen something with some documents sent to me before this hearing but it may not have been in the bundle for the Committee members. In any event, it must have been some time before 18 July.

Mr Singh: Yes, exactly. As I understand it, there wasn’t a document that showed when the request was made, but only when the response was received.

Mr Leveseur: Very well.

Mr Singh: Mr Chowdhury, this may seem an obvious question but was the request made before 18 July?

A. It was.

Q. Yes. Can you remember how long before?

A. If my memory serves me, it was approximately about four weeks or a month before.

Q. Why did you ask for the PNC check?

A. I was just discussing with a friend, obviously going back to the earlier caution and conditional discharge, and essentially the confusion that I had built up in my own head about whether or not to declare what sort of record I had. He advised me that, if I wasn’t sure, I could carry out my own personal check, which may help to find out any further information. I then followed that up and applied for the personal check to be done.

Q. It obviously came back negative, saying that there were no matters recorded on that database against you. Can I just ask you this: at the time in 2008 when you received that, because that was obviously before you wrote the letter in 2009 in response to the allegations, did that have any effect on your mindset?

- A. I suppose it just backed up my initial misconception about the caution and the conditional discharge.
- Q. So it reinforced in your own mind the decision –
- A. Essentially, yes.
- Q. - in going forward. Is there any element – you said earlier about convincing yourself of something. Can you just explain that?
- A. Face with the actual form, there was an element of fear about any potential outcomes and how the offences in the past might affect any future that I might have in optometry. I was then in a sort of battle within myself, on one side trying to convince myself – there were aspects of the caution and of the conditional discharge which maybe I didn't have to declare, but there was also a doubt as to whether I should have declared as well.
- Q. You talk about convincing yourself, so what did you convince yourself that you should do?
- A. I convinced myself essentially that it wasn't something that I had to declare. I went with the decision that suited me at that time.
- Q. So that was the PNC check. Later on, you made an application to the PCT for registration with them, and there was a CRB check conducted as a result of that, is that right?
- A. That is correct.
- Q. That came back displaying the two matters that are on your record. Madam, if you would like to look at this, the original check, as I understand it, is at page 25 of the bundle. Just so that we can clear this up, on that it says at page 25,

“The convictions recorded as theft by employee: conviction details.

Conviction 1: date of conviction, 8 July 2004, Chowdhury Jihad Islam.
The offence, theft by employee, on 15 May 2004, Theft Act 1968, section 1.
Court: Horseferry Road Magistrates' Court.
Disposal: conditional discharge for 24 months”

Then there is a serial number, and “costs: £55”

Then your caution is also recorded. Did you have any correspondence with CRB about the nature of how the conditional discharge matter was recorded?

- A. With regards to the “theft by employee”, yes, I did advise them that that was not correct.
- Q. In those documents, there are pages 28, 29 and 30 in the bundle which just show your correspondence explaining what the position was. By page 33, there is a refreshed CRB printout which reads as follows, in relation to that conviction:

“Conviction details: Conviction 8 July 2004, Chowdhury Jihad Islam.
Offence: theft” [and not “theft by employee”] “on 15 May 2004, Theft Act 1968, section 1”.

- So “by employee” was then amended at your request?
- A. Yes.

Q. Can I move on to the letter that you wrote after the allegation had been brought to light? Is it right that you then disclosed those matters on a form?

A. I did.

Q. With that form, you submitted the letter which is at page 23 of the bundle.

A. Yes.

Q. On 21 January 2009. Could I ask, would Mr Khan like me to read the letter again, to remind him of it?

Mr Khan: I have read the letter.

Q. Could I just refer to one part of it, just to have Mr Chowdhury's comments on it? In the first paragraph it says:

"I am submitting this letter in support of my application onto the Register of Optometrists, specifically regard to section 4, Criminal and Disciplinary Proceedings, in the form. It only recent [and it should say *recently*] came to light that I have a previous caution and conviction, which I was unaware of. I found this out through the CRB check done to support my application to work for Westminster PCT."

It then goes on to explain the background as it was said in that letter. Does that letter explain the true position?

A. No, it doesn't.

Q. How soon after the CRB check coming back was that letter written?

A. Almost straightaway. Looking back, the PNC check came back and I was under the false impression that there essentially wasn't anything on my record. So, even though I shouldn't have been, when the CRB came in, I was essentially surprised because of this false belief that I had. I then proceeded to contact the GOC straightaway and then submitted the letter.

Q. Looking back on submitting that letter now, was it the right thing to do?

A. No, because it wasn't factually accurate.

Q. What do you think you should have done at that point?

A. Instead of writing the letter?

Q. Well, you could have written a letter, but what should have been in it?

A. To say that I was aware of it, and instead of 'only recently came to light', I should have written that I was aware of the caution and conviction.

Q. Looking back at it now, how do you feel about the fact that you wrote that letter?

A. I suppose at that time, with the CRB coming in, I think just having the initial reaction was a false sense of surprise, and being surprised at it. It was in that period of time that I wrote the letter, and it wasn't the right letter – it wasn't correct to write that.

Q. That was about 14 or 15 months ago now. Do you feel any different now, compared to 15 months ago, in terms of your attitudes and your understanding of what you should do in these situations?

A. Certainly, looking back at the last 15 months, they have pretty much been a constant reminder of what it has come to now. I should essentially have declared and been completely honest at the first given opportunity. It is certain in my mind now that on

any forms or application forms, what I must do in the future and what I should have done at that time of filling that form in.

- Q.** What are your ambitions now? Obviously, you are still on the student register but, if you are allowed to continue to practise, what would be your ambitions? What are your plans for the future?
- A.** I would very much like to further myself within the career. I have still kept myself working in the meantime, working alongside patients. In that 15 months, my desire to continue working hasn't gone away. Given the opportunity, I would then further myself within my chosen career.
- Q.** Mr Chowdhury, thank you very much. I have no further questions for the moment. Could you wait there, please?

Cross-examined by MR ALBUERY

- Q.** Mr Chowdhury, may I ask you some questions on behalf of the Council, please?
- A.** Sure.
- Q.** You admit, don't you, that your caution for shoplifting and your conviction for theft are matters of dishonesty?
- A.** They are.
- Q.** And you admit, don't you, that your repeated failure on four occasions between 2005 and 2008 to reveal your caution, and on the first application also your conviction, were dishonest?
- A.** That is correct.
- Q.** And do you agree with me also that, even when confronted with the reality of the situation, you wrote a letter just 14 months ago to your professional regulatory, the GOC, which was also dishonest.
- A.** Yes.
- Q.** And so when you say, as you did in evidence, that looking back on your conviction about five years ago, you are a different man now – that is not really true, is it? Because, just over a year ago, you continued to be dishonest.
- A.** In the moment of writing that letter, it was dishonest and I should not have written the letter, but that is not to say that my general attitude towards being honest has not changed. I do feel that I am a different person from then. In the last 15 months, every day when I go into work, I have worked under supervision and that is an essential reminder of what I should have done in the first place. For that, I am really remorseful about the decisions I made at the time.
- Q.** Well, you may, but do you accept that, on each occasion that I have put to you, including just over a year ago, you decided to take a dishonest course of action?
- A.** I do.
- Q.** Thank you very much. I have no further questions.

Questioned by the Committee

Mrs Kershaw: Would any members of the Committee wish to ask any questions?

Dr Stevenson: I would like to ask Mr Chowdhury, if I may, the whole basis at the present time where you are employed, are you working as a pre-registrant?

A. Essentially, as a pre-reg, working under supervision.

Q. With a different supervisor than you previously had?

A. Yes, I was advised to, because I changed companies.

Q. So that means that you are more or less supervised on a constant basis with every patient you see?

A. Yes.

Q. Do the patients understand that?

A. Yes, they are aware that there is supervision involved.

Q. Thank you.

Mr Khan: Mr Chowdhury, you said when you first filled in the form in 05, you understood the question about declaring the caution and the conditional discharge.

A. Yes.

Q. But you feared about your career.

A. I did.

Q. Tell me, where does that fear come from? What were you really afraid of?

A. I was afraid of how those previous actions would reflect on me. I felt that the offences in question were out of character. I suppose I was afraid of a judgment being made on my character based on that and again, I was in a position where I should have taken that responsibility out of the GOC's hands, but I decided to take that decision. Also, there was the fear of potentially what I had been working towards with GCSEs, A levels and getting myself into a position to be at university but losing all of that. That was also going through my head as well.

Q. Had you read something about the GOC as to how it treats people with certain matters of dishonesty?

A. I can't say I had, but obviously I was aware that with the profession I was going into, an integral part of that was honesty.

Q. Did you feel ashamed that you had these matters?

A. Definitely so. In fact, in the course of this investigation, when I was then looking over the police reports about the offences in question, there was a sense of embarrassment, of shame and wondering why I had done them. Obviously, I had not seen these documents for about four or five years and so when it came to light again, there was that same sense of embarrassment still there.

Q. And is there support in university, to help you out with matters like that? You went to university from 2003 to 2006, or something like that?

A. It was 2004 to 2007.

Q. Is there any social welfare officer, or any support at all, to help you with matters of procedure, disclosure and so on? You seemed to be hiding yourself from these two matters.

A. I don't think there was a specific area of support. There are obviously channels that I could have taken, such as the GOC or the AOP, to clear up matters such as this. Unfortunately, I didn't take those options.

Q. Thank you.

Mr Kapoor: Mr Chowdhury, I just wanted to check. The first offence, as such, was in 1999. What month was that in, in 1999?

A. Both offences were in the summer period, but I am not sure of the exact months.

Mr Singh: If I can assist, the first offence was 3 September 1999.

Mr Kapoor: And the second one?

Mr Singh: The second one was on 15 May 2004.

Mr Kapoor: When did you start at City University? Was it in October?

A. City University – I started in 2004. September 2004.

Q. So it was before you started at university?

A. Yes.

Q. Was that the time when you were doing your A levels?

A. I had completed my A levels then. The time of the offence was going on from A levels, to then going on to university. I was just in between that period and I had just completed my A levels.

Q. So you were not really a student at that time of the second offence?

A. No, I was essentially waiting for my results to come through.

Q. Another point of clarification. On the second offence, you said there were some items in the bags. Were these items all for yourself?

A. No. There were items selected by me, which I had been told would be discounted. Once I arrived at the till, further bags were handed over to me, that I was not made aware of in the first place, to take with me basically. These items were not for myself.

Q. There is one other question I wanted to ask. You said with the first form that you filled in, you declared that there was no offence, because after 10 years the first offence had elapsed. You signed it in 2005 and of course the first offence took place in 1999 –

A. I am sorry, that was incorrect on my part.

Q. So really it was only six years.

A. Yes.

Q. Thank you.

Mrs Kershaw: Could I just ask a couple of questions leading on from the previous ones. In the summer of 2004, you say you were awaiting your results.

A. Yes.

Q. So you had done your A levels in 2004, not 2003?

A. Yes, my A levels would have been earlier on in that year, in about April/May time.

Q. Okay. Thank you.

Mr Singh: Could I just ask something arising out of your last question. Did you go straight on to university after your A levels?

A. I did.

Q. Straight after the summer holiday, essentially?

A. Yes.

Q. Do you remember when you got your A level results?

A. I can't remember the exact date.

Q. It is the same date every year, isn't it?

Mr Leviseur: It would be 20 August, give or take a few days.

Mr Singh: I am sure that has enlightened everybody. I have no further questions.

Mrs Kershaw: Thank you. Mr Chowdhury, you can stand down.

[The witness stood down]

Mr Singh: There are some other pieces of testimonial evidence which are relied upon for the impairment stage. I have spoken to Mr Albuery and it is agreed that these, either in full or in part, can be relied upon. Could I just take you to them, please?

In the main bundle, it is page 57 where there is a reference from Phil DeBique, Mr Chowdhury's supervisor at Optical Express on Regent Street. Sorry, he was the general manager and Mr Chowdhury was under the supervision of his resident optician. Can I just read that reference please, which reads:

"To whom it concerns

During the period July 2007 to December 2008, Mr Jihan Chowdhury undertook his pre-registrative year under supervision of my resident optician at Optical Express, Regent Street, London.

I am aware of his current situation and would like to illustrate the level of honesty, commitment and professionalism shown by Mr Chowdhury during this period.

During this time, Mr Chowdhury was an exemplary employee who was well trusted within my team and showed honesty with money handling, responsibility whilst dispensing, access to the store safe, banking and other positions of responsibilities which required a high level of competency and trust. Mr Chowdhury at times was also a store key holder and showed commitment to both his patients and the team, and showed professionalism when dealing with the public directly and his colleagues.

I am fully aware of the gravity of the situation Mr Chowdhury now faces and, although this surprises me, I hope this reference goes some way in demonstrating the professionalism and honesty Mr Chowdhury has shown throughout his career in optics and whilst working with me."

There is then a closing sentence and it is signed by him.

I don't rely on Selwyn Jones at pages 58 and 59. At page 60, there is a reference from Mr Chowdhury's older brother, whose name is Iftekharul Chowdhury. I rely on

the third paragraph down in that reference: can I read that out, please? It states as follows:

“There were, however, occasions during his teenage years where Ahthesamul was easily influenced by his peers, which was at times misguided. This was a part of his life where he was beginning to socialise with friends out of school hours, after having spent much of his early years indoors with the continuous pressure to push himself further academically. These friends were mainly those he had met through primary school, many of whom went on to local state schools, and so he found it hard to balance the more disciplined schooling he was receiving compared with many of these friends.

Since then, he has disassociated himself with the negative influences around him and, despite some of his past discrepancies, I strongly believe that he is very remorseful and ashamed of his previous actions and, in particular, the allegations that he now faces, of which I have seen a copy, which is now bringing his fitness to practice into question. This all now goes against the beliefs of the good natured and very mature young man he has become since finishing his degree and successfully qualifying as an optometrist and taking on huge responsibilities by entering the world of work and providing maintenance for the family home.”

The next part of the reference is more relevant to the next stage, if we reach it.

The third reference is at page 62. It is a reference from Tim Johnson from Eyecare International dated 18 December 2009 and it reads as follows:

“Dear Sir

re Mr Ahthesamul Chowdhury

I refer to your letter dated 8 December 2009 regarding Jihad Chowdhury. Jihad had asked prior to this letter whether we would be willing to provide character reference at the GOC hearing. Given our positive view on him, we are happy to agree.

In answer to your specific questions,

1. I have been working with the Meade Investments Group since October 2005. The group invested in and ultimately purchased the Eyecare International business in mid-2006, relaunching and re-branding it with its current name at the start of 2007. The business provides on-site eye testing at employer workplaces, using a fleet of mobile clinics, and has grown from the initial single clinic to more than 20 double clinics and boasts a corporate and public sector client base in which Sony, T Mobile, Volkswagen, ITV, Treasury Solicitors, Land Registry –”

and there is a list of more than 50 local authorities, universities and colleges around the country.

“Whilst I have other responsibilities within the group, my prime role within Eyecare International as general manager is recruitment and management of the clinic staff and client sales. I recruited Jihad.

2. Jihad commenced work with us on 30 March 2009. He made contact with us following a referral from one of his colleagues and our first interview with him was, I believe, in around early February 2009. I did not know him prior to this.
3. Jihad has shown himself to be a competent optometrist. We have received positive patient and colleague feedback. Under advice from Jihad, he has not been working alone and has been testing only with a second, on-site optometrist - the feedback from such colleagues has been very positive. Initially, there was comment on his difficulty in keeping within a 20 minute testing schedule but this has improved and the clinical and optical expertise he has shown has been recognised by our senior optometrist. Further, he has been a very flexible and amenable individual who has worked all around the country at different locations, often at very short notice. At no time have we had any doubts concerning Jihad's honesty. He is trusted with opening and securing at close of day our clinics, often alone, and taking sometimes cash payments, when he has assisted with fitting/delivery of glasses. At no time have we been in any doubt that our property has been at risk or cash not fully accounted for.
4. I have seen, and am aware of, the allegations made against Jihad. We hope that the Committee sees these previous misdemeanours as mistakes by a young man who dealt badly with the problems he was experiencing at the time, but who has learned his lessons and subsequently worked hard to turn the situation around."

The next one is at page 63, from Farah Mawji, and it reads as follows:

"To whom it may concern

I am an optometrist and have been qualified for just over two years. I am currently a resident optometrist for Eyecare International and have been since March 2009.

I have known Ahthesamul for three years since his pre-registration period at Optical Express. He has always been a conscientious and caring practitioner who puts his patients' needs first. At the start of his pre-reg year, we worked alongside each other on a full-time basis at the same branch and I saw him develop into the competent optometrist he is today. For the remainder of his pre-reg and my employment with the company, we worked together approximately once a week and I was always happy to supervise him when necessary. At the start of 2009 we both took positions with Eyecare International and have worked together ever since.

Ahthesamul is passionate about what he does and is a diligent worker, respected by his colleagues, many of whom are his firm friends. He brings commitment to everything he does and complements this with honesty and integrity. I have seen him receive many compliments from his patients for being careful and thoughtful in their management and many insist on being seen by just him. I have been aware of the allegations Ahthesamul faces from the very start and I was confident in his clinical abilities and the strength of character to take on a supervisory role at Eyecare International. If I had any doubts as to his honesty and sincerity, I would never have agreed to the role. I have seen a copy of the allegations Ahthesamul faces. I do not believe that the competent, responsible and dependable colleague he is, and has been for the years I have known him, would have intended to be mendacious in his applications for the purposes of GOC retention. His actions have had a

profound effect on his confidence and he has been remorseful throughout the whole ordeal. The years that have added experience and knowledge have also added maturity and responsibility.”

This is signed by her at the bottom.

There are three other references, which relate to Mr Chowdhury's honesty and integrity, really in a personal capacity. These are the reference of Cavelle Griffiths at page 64; Mr Sukhraj Chahil at 66, and Sayeem Ahmed at page 68. Could I just read, please, two very short extracts from those? I will not read the whole references but I would like to read the last two paragraphs of Cavelle Griffiths, from pages 64 and 65.

“I confirm that I have seen the allegations. Ahthesamul Chowdhury expressed a great deal of regret when reluctantly divulging the history which is now hindering him. He is ashamed of the circumstances which he found himself in and more than anything wants to forget about that part of his past. I was quite shocked when I found out because it is so out of character of the person I know so well. I most definitely would not associate it with the person he is today and I am more than happy to entrust him with anything which I hold dear. He is very thoughtful and always weighs up a situation before committing to anything, which shows that he has learned from past incidents and has become a better person because of this. He has consistently shown confidence throughout his optometric training, combining this with someone who has an obvious conscience. I have absolutely no doubt in his competency as an optometrist.

I would definitely put honesty and trustworthy” [that should read *trustworthiness*] “amongst his qualities, as well as being a person who will always go the extra mile to help someone. Being trustworthy is most certainly not an issue which he has at the present day. One small example of his honesty was displayed a couple of weeks ago when he was given too much change: he didn't hesitate for a moment in notifying the cashier of the error. I have so much respect for him, knowing what he has gone through in his life. I would never hold against him any of the negative things that he was so unfortunate to get mixed up in when he was younger. I am not sure that I could have turned out as good a person as he, if I had had the same experiences – not receiving the same kind of support that a lot of people have.

I sincerely hope he will not be punished for past mistakes, which he alone learned to step away from and turn his life around. I think he would actually be a credit to the optometric profession.”

Then there are just two brief passages from the references from Mr Chahil at page 67, in the third and fourth paragraphs. He introduces himself and continues:

“However, having known Jihad personally, socially and professionally, I feel that although these doubts regarding Jihad's integrity and honesty may be obvious to some readers of the allegation sheet, I feel that these charges are not a true reflection or measure of Jihad's persona. I have never once in my time of knowing and interacting with Jihad had reason to question his professional and personal integrity. I have always found him to be an honest individual whom I trust without doubt or reservation.

I recall that whilst at university, Jihad was heavily involved in the Optometry Society, Opsoc. He had a number of roles, one of which involved the handling of substantial amounts of cash: not at any point during his time representing Opsoc was there ever the slightest discrepancy in the handling of cash sums. This role required complete trust in the individual and Jihad conducted himself impeccably and immaculately.”

The reference of Sayeem Ahmed really amplifies that, and I will not read it now. Madam, that is the case for Mr Chowdhury.

Mrs Kershaw: Thank you. I will now turn to our Legal Adviser, for any advice.

Mr Singh: I do have some submissions –

Mrs Kershaw: I am sorry to have jumped the gun.

Mr Singh: I don't know whether Mr Albuery has anything else?

Mr Albuery: No, Madam. I have made my submissions on impairment.

Mr Singh: Could I make some brief submissions on impairment, just to tie the threads together. It is fairly clear from listening to Mr Chowdhury, you all may feel, that the saddest thing about this case is that he has obviously made his situation so much worse by the decision that he took when not declaring those matters on the original form. In doing that, which was so misguided, the major reason, as Mr Khan has brought out, was that it was about the fear that he would not be accepted onto the student register, that his hard work would have been for nothing and that his ambitions in the future would also be unattainable. That is really what the non-declarations are about.

You may feel that the person who gave evidence today is a far more mature young man than the one who committed the offences a number of years ago, and even the person who wrote that letter, rather inadvisedly, 15 months ago. You may also think that the references that you have heard are quite exceptional in explaining his ability, his honesty – in normal terms – and his general character. You may also think, having heard the references, that he is more than clinically competent and, more than that, that he would be an asset to the profession.

All of those are points which I would ask you to weigh in his favour. The question is really, where does this leave you? Mr Albuery has made the submission that this is a misconduct case and therefore all of those matters that I have set out really do not matter very much, because it is the standards of the profession that need to be upheld. He has relied on the case of *Yeong*. My submission, however, is that *Yeong* does not preclude you at all from weighing up all of these factors, putting them into the balance and deciding on current impairment. It still remains an exercise of impairment today and not in the past and you must be free to attach what weight you wish to, to all of those factors. You have a copy of *Yeong*, which simply says that in certain circumstances, remedial steps, insight and so on, may be of less significance. It certainly does not say that they will be of no significance, and it certainly is not taking away your judgment and your ability to weigh up all of those factors – it simply could not do that.

You may think that *Yeong*, dealing with a sexual misconduct case, is a different situation from here, but I can see the parallels so I am not saying that it is irrelevant to this. However, please weigh up the kind of misconduct and the reasons for it, and

the steps that Mr Chowdhury has taken, and do not simply discount them because of the kind of case this is.

Just briefly, what are the factors that I would ask you to take into account in deciding whether he is currently impaired or not? There are three points in relation to the previous convictions, because obviously there are two bases. One is the facts of the original caution and conviction and, secondly, there is the non-declaration, and so perhaps I could just deal with them separately.

In relation to the caution and conviction, dealing with them together, the first point is that they are now a number of years old and that point is a powerful one. It is significant that the 2004 case marked the end of his criminal offending and there are no further offences after that. That, you may think, is evidence of a sea change in his attitude towards committing criminal offences and I am sure that you are not worried that he will commit one in the future, given the evidence that he has given and the reference from his brother.

The second point is that the fact that the offence in 2004 was the last one is really a testament to him developing as a person and him maturing. The offences which you are considering really smack of, first of all, a desperation to try to fit in with people and, secondly, at the time when he didn't have the structure of school, he was falling back into the kind of behaviour that other people around him at home were indulging in. Those aren't the kind of offence that he would commit now – far from it. Now, at his age, having been through university, he is a completely different person in that sense.

Thirdly, there are some matters about the specific circumstances of those offences. You have them and they are obvious points. He made admissions at very early stages in both sets of proceedings and both were dealt with in lenient ways, the caution being probably the most lenient that could be taken, and a conditional discharge, which was almost the most lenient when a matter actually gets to court. They were treated as being at the lower end of seriousness and I would ask you to treat them in the same way in these proceedings as well.

If that was everything, then it may be a rather easier decision for you, but it is not everything. There is something that I am sure you will be viewing as more serious, which is the non-declarations, so could I deal with those please. There are four points I seek to make.

First, please consider the underlying reasons. I have touched on the question of fear, and Mr Khan touched on that. It is quite clear that he was ashamed of those convictions but, at the same time, he took the decision out of the GOC's hands as to what their relevance was. This is something he should not have done but he did it, knowing in his head really that these were things that should have gone on the form. The ironic point is that, had he disclosed them and not gone with the fear that was in his head, it may be that, if he was brought up before a Fitness to Practise panel a number of years ago, he would have had a much more favourable outcome than now. What I ask you to take from that is that he has learned a hard lesson in a very, very hard way – possibly the hardest way he could have done. The lessons that have been learned as a result of that will be even stronger because, it is by his own conduct in the interim – the non-declaration – that he has made his position worse. That is the first point.

The second point is that he has made full admissions in these proceedings. That is relevant, in my submission, to current impairment, because it is the initial indicator of insight and remorse.

The third point is that, of course, the insight and remorse he has displayed goes much, much further than that. He has demonstrated a detailed understanding of what he did and why it was wrong to do it for the profession as a whole, because the GOC must uphold the standards rather than him decide what is relevant, and also to himself. It demonstrated what I hope you will find is compelling evidence that this will not happen again. Those are important in terms of the remedial steps taken, in my submission.

The fourth point is that the references I have read out, and I will not repeat them, have demonstrated both after all of this, and even at the time, that really this is not a true measure or reflection of his character. That, again, is relevant to whether he is currently impaired. I accept that this is matters over a period of time but that is not the person he is now.

Given all of those factors, I would ask you to find that he is not currently impaired but would remind you of your power under the rules to issue a warning where you do not find impairment. That power is obviously to be used when you have decided that he is not impaired but there is still a need to mark the seriousness of the offence. In this situation that may be an appropriate course if you find that he is not impaired.

Unless I can assist you and your colleagues any further, madam, or you have any questions, those are my submissions.

Mrs Kershaw: Is everyone content?

Mr Khan: Can I just be guided by our Legal Adviser, as to whether we are now looking at impairment and sanctions together? They seem to be remarkably well mixed up.

Mrs Kershaw: I think the way it was put was, if we consider that there wasn't impairment then we might consider a warning, but they have not actually talked to us about sanction as a whole.

Mr Singh: I am sorry. It is my fault if I was not clear. The power is there to impose a warning, if no impairment is found. I would ask you to keep that in mind that, even if you don't find impairment, you may feel that a warning is appropriate. I think that would normally be dealt with at the impairment stage, rather than going on and then considering later whether a warning is appropriate.

Mrs Kershaw: I now turn to the Legal Adviser.

Mr Levisieur: It is your duty to consider the question of impairment, a matter of judgment which may or may not flow from misconduct which you have found on the part of this Registrant. Impairment is, as I have just said, a matter for your judgment and it is not a matter which has anything to do with the balance of probabilities or the standard of proof. Bring to bear your professional skills, such as they are, in deciding this question.

The facts about which you have heard necessarily took place some time ago. Impairment, however, relates not to the date on which the misconduct happened but it is a matter which relates to the present: is this Registrant's misconduct such as to render his fitness to train impaired today?

Mr Albuery has referred you to three cases, all flowing from hearings before the General Medical Council: *Azzam v General Medical Council* [2008] EWHC 2711 (Admin); *Cohen v General Medical Council* [2008] EWHC 581 (Admin), and *Yeong*. These cases provide you with guidance but they do not decide this case: each case must be decided on the particular facts of it, each case is different and each case must be considered on its own merits. *Yeong* was a sexual offences case and you may think that this is a very long way from the facts of this matter. However, what those cases establish is that you are to have regard to the need to protect public interest in maintaining confidence in the profession generally and in the registrant specifically. Where a registrant has been found to have breached a fundamental rule or requirement of the profession the public may, in the absence of any regulatory action, have little or no confidence in engaging with him or indeed with other registrants, if there is a sense that this sort of misconduct may be engaged in with impunity. In such a case, the question of insight and of remediation of behaviour may be less significant than in cases of, for instance, clinical incompetence.

You should bear in mind the Code of Conduct which governs the behaviour of this Registrant and, in particular, the requirement to be honest and trustworthy. You should also remind yourself of the duties of the Council which are set out in Section 1(2) of the Opticians Act 1989. That provides, so far as is relevant, that the Council shall have the general function of promoting high standards of professional education, conduct and performance among registrants. Your function is to decide whether this Registrant's fitness to train is impaired now. It follows that it is extremely important that you consider what *this* Registrant has told you and you are to bear in mind and attach whatever weight you think appropriate to the references with which you have just been provided.

Mr Singh has drawn your attention to a number of matters. The offences took place before Mr Chowdhury began his training. In the case of the 1999 offence, he was only 13 or 14 years old and in the 2004 case, before he had the results of his A levels. You have heard about his upbringing and of the difficult circumstances about which he spoke when he changed school and friends. You will bear in mind that the Registrant undoubtedly sought a certificate from the police and received a document which you have seen as R1.

As to the misdeclarations, Mr Singh made four points and he made them moments ago to you, and you must give them what weight you think fit. Consider particularly what this Registrant said to you in evidence. Has he turned away from dishonesty? Does he truly understand why it is so important to be honest? Do the witness statements from those who knew him at university and those who have been his employers help you in this respect?

The question at the end of the day remains this: is this Registrant's fitness to undertake training *today* impaired by reason of his caution and his misconduct? You are not to consider sanction at this stage. There is, however, a power to warn this Registrant as to his future conduct if you should decide that his fitness to undertake training today is not impaired. To that extent, and that extent only, you may consider that option.

Mrs Kershaw: Thank you. If you would all like to leave the room, we will deliberate.

[Hearing adjourned at 11.12 am]

[Hearing resumed at 12.26 pm]

Mrs Kershaw: The Committee has not received any further advice from the Legal Adviser during your absence.

Decision

Findings regarding impairment

In considering the question of impairment, the Committee has heard submissions on behalf of the Council and the Registrant. It has accepted the advice given to it by the Legal Adviser.

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

The Committee has, however, had particular regard to the failures by the Registrant to declare accurately, honestly and fully the matters which he was required to declare to the GOC. He did so on five occasions. Most significantly, he wrote the letter on 21 January 2009, which appears at page 23 of bundle C1. That is not, and cannot possibly be regarded, as an honest explanation for his behaviour: it is undoubtedly evasive.

Regulators have a heavy burden placed on them. They cannot discharge the responsibilities placed on them by society if registrants make partial, untruthful or evasive answers to questions designed to help protect members of the public. Having considered everything said on his behalf and by the Registrant in evidence, the Committee is satisfied that the behaviour of the Registrant in relation to his declarations to the GOC is such as to render his fitness to undertake training as an optometrist today to be impaired.

I would like to invite you to make submissions on sanction now. We will then take our lunch break and consider the next stage as one interruption to the proceedings.

Mr Albuery: Madam, I have no submissions on sanction but I can tell you that there are no previous adverse findings against this Registrant and so you should treat him as a man of good character until these matters arose.

Mrs Kershaw: Thank you.

Mr Singh: Madam, thank you. I will not repeat all of the factors that I have already mentioned because there will be no need to and I am sure that they are all in your mind as relevant to sanction. Could I also ask you to consider the other references that were referred to earlier? I know you will all have had the chance to consider them for this hearing, so I will not refer to them specifically. The most important ones are those that I read out at the earlier stage.

In terms of sanction, you will obviously adopt a 'bottom up' approach, deciding at each stage whether any particular sanction would dispose adequately of the case. In terms of submissions, however, it is not always the easiest way to take it by going bottom up. Could I just try to eliminate three sanctions from consideration and then concentrate on the two that you may feel are probably most likely in this case.

It is unlikely, right at the bottom, that you will do nothing, given the findings that you have made, but I do ask you to consider that as the first step. That is a matter for you, in the light of all of the other mitigation that I have put forward.

Realistically, secondly, this is not a conditions case. These kinds of cases do not usually lend themselves to conditions being imposed and so we can probably put that out of the picture.

The ultimate sanction of erasure, I would simply submit is not proportionate or necessary here and I say that for four reasons. Firstly, this is not a case involving any danger to the public or to patients – far from it. You can see from the references Mr Chowdhury's clinical ability. Secondly, Mr Chowdhury made admissions demonstrating insight into his misconduct and that is very important when considering whether a person's actions are just completely incompatible in the future with him being a registered optometrist.

No. 3, there is no evidence in my submission of deep seated attitudinal or personality problems and I take that from your indicative sanctions guidance. That really is evidenced by the way he has conducted himself in these proceedings.

Fourthly, there is the number of extremely positive references that relate to his current ability to practice. The overwhelming picture is that he is someone who would actually be a benefit to the profession in the future rather than a hindrance, because of his clinical ability and his current view now on how he should conduct himself in all aspects of his professional life. In my submission, erasure simply would not be the only appropriate sanction here at all and there are other sanctions which would be more appropriate and more proportionate in these circumstances.

That leaves us with suspension and a financial penalty – a financial penalty considered first and then suspension. When you look, as I am sure you will, at your indicative sanctions guidance, there are a number of factors that are listed in respect of suspension. It is fair to say that this case, and I am sure you will consider it later, really does fit into many of the markers for a term of suspension. Perhaps I will refer to those briefly and read them out. I do not know whether your pages will be different from mine, because I know you have them in a much smaller document, but I am looking at page 21 and this is about suspension:

“This sanction may be appropriate when some or all of the following factors are apparent. This list is not exhaustive.

- (1) a serious incident of misconduct where a lesser sanction is not appropriate or sufficient;
- (2) not fundamentally incompatible with continuing to be a registered professional;
- (3) no evidence of harmful, deep-seated personality or attitudinal problems;
- (4) no evidence of repetition of behaviour since incident;
- (5) panel is satisfied that the registrant has insight and does not pose a significant risk of repeating behaviour.”

The next is in relation to health and the last one is just about a review hearing. You can see that it does fit in to a number of those categories and I raise this simply because I know that you will probably consider that when you consider sanction. However, that is guidance only and it is necessary, in my submission, to do justice to the individual case and the individual registrant.

My submission is that there are other factors relating to this, or one in particular, which means that the justice of the case would be satisfied by a lower sanction than would otherwise be the case. The important point is that for the last 15 months Mr Chowdhury has been held on the student register, and that is since January 2009. He has continued to work, as Dr Stevenson asked him earlier, under supervision, essentially working as a trainee, and he has been doing that for the last 15 months: in total, that means two and a half years as a trainee overall. It is relevant for these reasons: firstly, that it has placed a lot of limits on his autonomy within the practice and obviously put a real cap on his career progression. Whilst all of his other contemporaries from university are progressing on, qualified, working unsupervised and doing NHS work in his own right, he is unable to do that. You have seen two references, from Miss Griffiths and Mr Chahil, and those are both those kind of people – they are people with whom he was at university and they have progressed on while he has been left behind. You have heard the talk of his ambitions when he gave evidence but that has essentially been put on hold for a very long time.

Second of all, it has affected him financially because, obviously, he is being paid as a trainee and has been now for an extremely long time. Despite that, however, he has continued on in a dedicated manner and in the way that is outlined in those references, which really is to his credit and shows his dedication to this profession in the long term.

It is not only those two things but you know that he also made an application to work for a PCT and that is where the CRB check came in. That application was suspended pending the outcome of this, because that was thought to be the best thing to do. There has also been a great deal of uncertainty generally about his career. The point I seek to make – and I have probably done it in quite a long-winded way – is that on any view of this, it is an incredibly long time for a young man like him to be living with uncertainty and with those restrictions. That really is an exceptional feature of this case. Obviously the fact that the period has been prolonged by further delays which were obviously not his fault in the hearing process has meant that he has been affected by this more than other registrants may have been with the whole process in its entirety and the length of time it has taken. For that reason, I would ask you to consider a lower sanction than that of suspension but one of a financial penalty in this case, because that would meet the justice of that particular case.

You will no doubt be asking yourself whether a financial penalty is sufficient, and does it dispose of this case? You are not looking at protecting the public: you do not need to protect the public from this person because he is not incompetent in any way – far from it. It is a question of upholding public confidence in the profession and making sure that the public understand that this kind of behaviour does not go unnoticed and un-dealt with.

In that regard, I would ask you to take into account two matters. First, if you decide to impose a financial penalty, it is not only a financial penalty that is part of your decision but it is also the finding of impairment. That finding of impairment itself is hugely significant, especially for a young optometrist because, obviously, it will stay with him, just as those matters on his record do. It will stay with him now for the rest

of his career: he will have to disclose it and on PCT applications it will be considered. Any member of the public looking in to see a financial penalty and a finding of impairment will see that he certainly has not got away unscathed from this if a financial penalty is imposed. The finding of impairment is very significant.

Secondly, you may feel that any member of the public considering this would take into account the 15 months when he has not been suspended but effectively he has been frozen where he is – which is what the effect of the last 15 months has been. They would take that into account, and take into account his admissions and insights, would consider the background of the case and think that actually a financial penalty and a finding of impairment is sufficient and would meet the justice of this individual case, whereas other cases like this may warrant a slightly higher sanction.

That is my submission. The guidance is guidance only and it has to be considered on each individual set of facts. This set of facts, in my submission, would lend itself to the financial penalty.

Mrs Kershaw: Thank you. I now turn to our Legal Adviser.

Mr Singh: I am sorry, before I forget, there is a means form here as well. [*Document handed to Chairman*]

Mr Levisaur: In considering sanction you should, as has been urged upon you, remember to consider it from the bottom upwards, as it is often put. In other words, you should consider the least serious sanction open to you and decide whether or not that is appropriate to dispose of the case and, if it is, you should go no further in your consideration.

You are to have regard to your duties to protect public confidence in the profession and you are to consider the facts and matters which are peculiar to this Registrant, including the professional references which are before you. Please remember that sanction is not a matter of punishment, although it may necessarily have that effect. Any sanction should be proportionate and it should balance the need to protect public confidence in the profession with the particular interests of the registrant. So far as any fine is concerned, you may be interested to know that the maximum that you may impose is £50,000.

Consider the matters urged on you by Mr Singh and give them such weight as seems appropriate to you. Having said all of this, sanction is a matter for you and all options are open to you, although you may think that removal from the register would be disproportionate in all the circumstances of this case.

You have necessarily heard of the Registrant's character. The direction that I give you, carefully phrased, is that this Registrant is otherwise of good character – that is to say, otherwise than the fact of misconduct which you have found proved. I make it entirely clear that, apart from the misconduct, he is otherwise of good character and that is a matter that you should appropriately take into account.

That is all I would wish to say to you so far as sanction is concerned, unless there is anything that arises from that which I have said. There is nothing on the means form which calls for any guidance.

Mrs Kershaw: Thank you. If you would like to withdraw and take your lunch break, it is now 12.45 pm. I would not imagine that we would be ready before 2.00pm and so if you wish to leave the building during that time, that is acceptable.

[Hearing adjourned at 12.45 pm]

[Hearing resumed at 14.27pm]

Mrs Kershaw:

Sanction

In considering the sanction, the Committee has had regard to the submissions made to it on behalf of the Registrant and has accepted the advice given to it by the Legal Adviser.

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

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

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

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

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

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

Mr Singh: Could I have a moment, please? [Pause] Madam, could I just pass my instructing solicitor a document?

Mrs Kershaw: While you are doing that, could I just ask the Registrant whether he understands what I have read out.

Mr Chowdhury: Yes.

Mrs Kershaw: Thank you.

Mr Singh: Madam, given the length of the period of time that is being imposed, it is relatively substantial and I would ask that you would consider an order for immediate

suspension to take place in this case. The question is whether it is in the public's interest or in the Registrant's interest really and I would submit that it is in Mr Chowdhury's interest for it to start now and for him to be able to start going along the line of the suspension so that, in addition to the 15 months that he has been on the student register, he is able to reach the stage where he is able to practise at the earliest opportunity from today – that given that he is as we know an otherwise competent optometrist, who is no danger to the public. It would not diminish the sanction that you are imposing at all in terms of its severity or its length but it would just mean that it comes to pass somewhat earlier. That is my application for your consideration.

Mrs Kershaw: So that is 28 days earlier?

Mr Singh: Yes.

Mrs Kershaw: In considering the matter prior to making the statement that we have made, we took the view that there was no need for an immediate order on the basis of protecting the public because there is no danger to the public. Normally, in considering whether it is in the registrant's interest, that has tended to be in terms of protecting the registrant in some way rather than just to speed things up. Mr Albuery, do you wish to say anything?

Mr Albuery: Because of the lapse of time already and the circumstances of this case being about standards and integrity rather than public protection, I was not going to seek to persuade you that you should impose the suspension immediately. In relation to matters relating to the Registrant's interests, I don't really have any submissions. It may be helpful if we are all reminded by the Legal Adviser, who has it in front of him, and for the sake of the record, of the statutory framework within which you have to make that decision.

Mrs Kershaw: Thank you.

Mr Levisaur: The statutory framework is set out in Section 13(I) of the Opticians Act, which you may well find at page 31 of your booklet. That provides that

“On giving –
(a) a direction for erasure or a direction of suspension under Section 13F(2) above;
the Fitness to Practise Committee, if satisfied that to do so is
(i) necessary for the protection of members of the public;
(ii) otherwise in the public interest; or
(iii) in the best interests of the individual
may order that the registration of the Registrant be suspended forthwith.”

The question therefore is whether or not, under (iii), you are satisfied that it is in the best interests of the individual to order the Registrant's registration to be suspended forthwith. The Registrant, through counsel, has asked you to do so and has, in effect, explained that by doing so, you will enable him to practise as an optometrist rather sooner than would otherwise be the case, given that he has been suspended already, in effect, or prevented from being an optometrist, over the last 15 months. Clearly, in those circumstances, this is a matter in which you have power to order an immediate suspension if you choose to do so.

Dr Harris: May I ask the Legal Adviser whether the position today of an immediate suspension, as we have been asked to do by Mr Singh, would reduce the period of suspension?

Mr Levisaur: No.

Dr Harris: So it would then be an immediate suspension followed by a suspension of six months, so it would be a total of seven months' suspension?

Mr Levisaur: No. There would be an order for suspension beginning today. It would start today. A forthwith order would begin today and it would end in six months' time. The statutory right to appeal is unaffected but it would simply be that, in the circumstances, this Registrant would have in effect a month or 28 days to mount an appeal but, by the time he had mounted an appeal, he would already have served some of his suspension. The fact is that you have suspended him for six months only and, no matter when it comes into effect, it is exactly for six months only and no longer and no shorter.

Mr Singh: Would the current situation simply be that he would be able to work unaffected for the next 28 days and then, in 28 days he would not be able to work after that because he would be suspended. The only difference would be that he would be suspended as of today rather than in a month's time?

Mr Levisaur: Yes.

Mrs Kershaw: Are there any other queries? If not, would you kindly leave the room and we will discuss the matter.

[Hearing adjourned at 2.45 pm]

[Hearing resumed at 2.49 pm]

Mrs Kershaw:

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

That concludes the case. Could I ask the Registrant to go and sign the appropriate papers? Thank you, everyone.

[Hearing concluded at 2.50 pm]