



**F(09)14**

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

**GENERAL OPTICAL COUNCIL**

**AND**

**ROBYN LEACH (SD-2853)**

**SUBSTANTIVE HEARING: 21 January 2010**

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Committee: Ms Mercy Jeyasingham, MBE (Lay) (Chair)  
Mr Arif Khan (Lay)  
Dr Vicki Harris (Lay)  
Ms Abi Grute (Dispensing Optician)  
Miss Ravinder Plahay (Dispensing Optician)

Legal Adviser: Mr Nicholas Levisaur

Hearings Manager: Mr David Henley BEM

For the GOC: Mr John Hepworth

The Registrant did not appear and was not represented

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*[Hearing commenced at 9.33 am]*

**Ms Jeyasingham:** Good morning. I am Mercy Jeyasingham, a lay member of the Hearings Panel and I have been elected by the Committee to chair today's hearing. The Committee today is made up of two dispensing opticians and 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 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 which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate. In the event that any matter arises during the course of the Committee's deliberations upon which the Committee seeks advice, the parties will be invited to return to hear the matter which the Committee has raised and the advice to the Committee. Where advice on any issue is not accepted by the Committee, this will be indicated in the course of its decision on that issue.

To our 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. The remaining person sitting in the Hearing Room, rather than the public and press areas, is a member of one of the teams.

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

There no applications, as I understand, but we are going to make a decision about proceedings in the absence of the registrant. Is that right, Mr Hepworth?

**Mr Hepworth:** Madam, thank you. I think you will have had now placed before you a bundle of documents headed "Service of Notice of Inquiry". The contents of that bundle are as follows, first of all a screen print of the registrant's entry in the Register, and as you can see her registered address is 36 Portchester Road in Portsmouth.

The second item at page 2 is the Directions letter sent to the registrant following the procedural hearing. Madam, I have been handed by Mr Henley that letter which was returned to the Council, indicating “We were unable to deliver this item because ...” and then the box that has been ticked is the “Not called for” box. Madam, clearly that letter will not have reached the registrant.

**Mr Levisaur:** May I ask a question? Is this the letter on page 2?

**Mr Hepworth:** Yes.

**Mr Levisaur:** Is that what page 8 applies to, or is that a separate thing on page 8?

**Mr Hepworth:** The document on page 8 relates to the letter on pages 6 and 7.

**Mr Levisaur:** So we have two of these tracked response letters?

**Mr Hepworth:** Yes.

**Mr Levisaur:** Thank you.

**Ms Jeyasingham:** Just one tracked response.

**Mr Hepworth:** That is right, Madam, just one track-and-trace response. The other one certainly was not delivered, because it is in my hand.

Madam, the next document, pages 3 and 4, the Notice of Inquiry, and page 5, the Allegation, they were all sent under cover of the letter which appears at pages 6 and 7, dated 11 December 2009. That was sent by means of registered or recorded delivery – the delivery which needs to be signed for – and had a particular serial number, and you can see from page 8 that a piece of correspondence with that serial number was not delivered. It says, “Your item”, with that reference,

“is being returned to sender.

This is either because the item wasn’t picked up by the recipient, or because we couldn’t deliver it. Sorry for any inconvenience. Please allow for at least two days before tracking the return of your item.”

Madam, I am sure you are familiar and perhaps you will excuse me if I give you some detail about the procedure. An effort is made by the relevant postman to serve a document that needs to be signed for and if he cannot get a signature it goes back to the sorting office and a card is left at the address. It is kept at the sorting office for a length of time and after that if it is not called for it is returned to sender. Madam, that is clearly what happened with that letter.

So on that basis I think the only conclusion which can be drawn from that information is that you have no evidence that the Notice of Inquiry in particular has been received by the registrant.

**Mr Levisaur:** And perhaps equally, clear evidence that the Directions were received.

**Mr Hepworth:** Yes.

**Mr Levisaur:** Can you just confirm? I have checked, at least I think I have checked, the tracking numbers. They look to me to be different, but only very subtly different. But

the first letter, I think I am right in saying, has a block in the middle which is “9759” – this is the one on page 2 – and it is tracked, I think, with a different number from the page 8 number, which has a block in the middle which looks as though it is “9767”.

**Ms Jeyasingham:** That would be different, though, would it not?

**Mr Levisieur:** It should be different, yes, it should be.

**Mr Hepworth:** Yes.

**Mr Levisieur:** But it confirms that different trackers were used, and there is no muddle, it was tracked on each occasion.

**Mr Hepworth:** Yes.

**Mr Levisieur:** Using a separate appropriate number.

**Mr Hepworth:** Yes.

**Mr Levisieur:** On the first occasion, it is back in your hand – I suppose strictly in Mr Henley’s hand, but back in your hand for these purposes – and on the other occasion, the page 8 occasion - not there, as it were.

**Mr Hepworth:** Yes, being returned.

**Mr Levisieur:** Being returned.

**Dr Harris:** Can you just remind us how long a person is given to collect the letter after the card is delivered? I am familiar with it in my neighbourhood, because it happens all too often with me, because I am out. Can you tell us in respect of this, how long there was for the person to collect the card? Can you also tell us what other attempts have been made by e-mail, since there has been no address on the Register to contact the student optician, if that is the correct term?

**Mr Hepworth:** Madam, I do not know how long it is kept at the sorting office. I dare say if you need to know the answer either a Google search or a quick 'phone call would be able to get the answer, but I am afraid I do not know it, and page 8 is silent as to how long it was kept at the sorting office.

**Dr Harris:** Are you able to tell us about any other attempts at contact?

**Mr Hepworth:** Madam, I can. [*Takes instructions*] I do not want to get confused between letters. The letter at page 2 was returned to the Council on 13 January. So it would appear that it was at the sorting office for about a month before it was returned, just working out from the date. But as for the second letter, the important letter, the one that had the Notice of Inquiry, that has not yet come back to the Council and I do not know how long that was kept at the sorting office and I do not know what the Royal Mail’s policy is.

**Dr Harris:** Can you confirm that the first letter was sent during the period of substantial upheaval in the mail service due to the intermittent strikes that were ongoing at the time?

**Mr Levisieur:** That is clearly so because of the date of the letter.

**Dr Harris:** I cannot remember what that was –

**Mr Levisaur:** It is undoubtedly the case. I have no idea whether the postboxes were locked in Portsmouth, but I know that they were intermittently locked in London and intermittently locked in this area, because they simply were not capable of dealing with post out. It is not a question of post in, it is a question of post out. So although things were being delivered, in the sense that they were being taken by the Royal Mail –

**Mr Henley:** But these are different, these are signed for from the actual postmen.

**Dr Harris:** These are Special Delivery, aren't they?

**Mr Henley:** They are not put into the post box.

**Mr Levisaur:** No, no, I understand they are signed for. The problem comes that they then take them to a lawful place of sorting in Farringdon, where precisely nothing happens to them.

**Mr Henley:** We were told that Special Delivery and Recorded Delivery is guaranteed to go out even with the strikes.

**Dr Harris:** Can we just know why we do not have a tracking for the one for which there was tracking that was returned? There is no tracking response for that.

**Mr Hepworth:** Madam, I dare say Mr Henley could do a search against that serial number, if you wish him to do so. I suppose the fact that it was not delivered is evidenced by the fact that the letter itself has been returned.

**Miss Plahay:** That is for the second letter, sorry. That is the first letter. The second letter – we only have one printout for one. We were just wondering if the other letter actually got delivered, or -.

**Mr Levisaur:** No, we know it definitely was not delivered.

**Dr Harris:** The only point for our asking these things is that it is helpful to know on what date you get the tracking response that says "returning to sender". I cannot entirely see what it says at the top, "Royal Mail ...", and I am afraid my eyes are not good, but I can see that it says 14 January. But I wonder on what date Mr Henley was made aware that the letter of 11 December, thus three days after the first one, was going to be returned to him, because it is clearly not back yet, or we would have seen it happen.

**Mr Henley:** It was only when I decided to put together this pack.

**Ms Grute:** Can we establish what other attempts were made?

**Ms Jeyasingham:** Yes, we wanted to hear about the e-mail and telephone calls.

**Mr Hepworth:** Madam, thank you, and I am sorry to take you back to the post. I will come to the other things, I promise. But can I say that I sent a letter to the registrant at her registered address on 5 November 2009, before the proceedings hearing, seeking to get her agreement in relation to some draft Directions. That was just sent by first-class post. That envelope was returned. The handwritten entry on the envelope is "No longer at this address" and the sticker from the Royal Mail indicates that "We

were unable to deliver this item, because” and the box that is ticked says, “Addressee gone away”, no doubt because of the endorsement on the envelope. That letter was returned on 1 December.

Madam, to go on then if I may, as far as contacts by 'phone are concerned, I am in the awkward position of I think unavoidably having to give some evidence. I personally have tried to 'phone that number on at least two occasions. On both occasions the number has been unobtainable. As far as the e-mail address is concerned, I have sent at least two letters to that e-mail address and have received no reply. The e-mail has not been bounced back to me as being undeliverable, but I have no indication that that e-mail address is in current use. I should say that the last contact received by the Council was from that e-mail address, but that was in November 2008. There has been no communication from the registrant as I understand it since then.

**Ms Jeyasingham:** Have we tried to contact the registrant through the employer?

**Mr Hepworth:** Madam, for reasons that I think will become clear to be the case, the registrant is no longer working for the employer for whom she was working and who is listed in her registration.

**Mr Levisieur:** But there is a subsequent employer, about whom we know, or rather about whom I know.

**Mr Hepworth:** There is an indication that after leaving her particular employment she may have gained a position elsewhere. Madam, I can ask the relevant people in the Fitness to Practise Department if you wish, but I personally have not sought to make contact with that employer.

**Mr Levisieur:** My recollection is that that was local, at least local to the address that we are talking about in Portsmouth. I cannot quite remember but my recollection is that it was certainly a south coast city.

**Mr Hepworth:** Perhaps if you would give me one moment.

**Mr Levisieur:** I am afraid I have put my papers away somewhere safely, so I cannot turn this up.

**Mr Hepworth:** I have a copy of the witness's statement.

**Mr Levisieur:** Yes.

**Mr Hepworth:** Madam, living where I live I can perhaps help the Panel with some local knowledge. The employer who is the subject of these proceedings is based in Fareham, just outside Portsmouth. The place where the registrant may have gone is in Gosport, which is very close to Fareham and in turn very close to Portsmouth.

**Ms Jeyasingham:** But as far as you know, no attempt has been made to contact the registrant through that other reported employer?

**Mr Hepworth:** Madam, I certainly have made no personal contacts. I am not aware of any other contact having been made, but if you wish for there to be a definitive answer to that question, I can make the necessary enquiries fairly shortly.

**Mr Leveiseur:** I would not ordinarily ask, but it does seem to me in the circumstances, and I do not want to prejudge any decision that this Committee might make about any step, but given the ultimate request which you are bound to make in the light of the facts of this case, it is probably better that we go the extra mile, because one is concerned that by some mishap this lady in fact is living very close and may still be employed within the profession, unbeknownst to us.

**Mr Hepworth:** Madam, can I say that if you wish for that enquiry to be made, then I can see whether or not anyone has previously tried to make contact, and also I can ring the firm involved and see whether or not they know of her current whereabouts. I am happy to make that enquiry. I don't know if you wish me to make it now before I make my formal application, I am in your hands, Madam.

**Ms Jeyasingham:** I think that might be useful to the Committee, Mr Hepworth. So perhaps we can take a short adjournment of 15 minutes for those inquiries to be made.

*[Hearing adjourned at 9.51 am]*

*[Hearing resumed at 10.17 am]*

**Ms Jeyasingham:** Mr Hepworth?

**Mr Hepworth:** Madam, thank you for that time. No contact had been made with Scrivens previously. I rang them and was able to speak to a Michael Gisborne, who is an optical adviser there and says that he worked with the registrant whilst she worked there. As I give you the content of the conversation which I had with him, I have to raise matters which will be pertinent to the Allegation. Madam, I apologise for that, but I have to in order to give you the story.

He said that she worked at Scrivens for two to three days in November 2008. Her employment there ended when the police arrived and arrested her in the shop, and that is in relation the allegations which form the basis of the proceedings. He said that after she had been arrested – obviously after a little bit of time had passed – he tried to ring her. Her mobile number that she had given belonged to someone else and her home number was unavailable, and of course, that was my experience when I rang her. He said he has only seen her once since and that was last summer in a pub garden in Portsmouth. She looked at him, he says, “clocked her”, those were his words, and then walked out.

**Dr Harris:** “Clocked”?

**Mr Hepworth:** I think “noticed” who he was.

**Dr Harris:** Oh, I see. Thank you.

**Mr Hepworth:** And then walked back out of the garden.

**Mr Khan:** What did you say, “clocked her”?

**Mr Hepworth:** “Clocked her”, noticed who she was, recognised who she was.

**Mr Khan:** Thank you. Sorry. I had not heard that expression before.

**Mr Hepworth:** He says that he is not sure how the formal employment contract between Scrivens and the registrant ended, that was all dealt with by her regional manager,

but in any event she has not come back to the shop. He said that the address which she gave whilst working was the same address as the registered address.

Madam, I have taken the opportunity of speaking with the lawyer with control of this case from the Fitness to Practise Department and I may be able to fill you in a little bit with the chronology. The employment at Vision Express following the incidents that form these proceedings, that ended formally on 30 October 2008. The police were notified by Vision Express on the same day.

**Dr Harris:** I am sorry, Madam Chairman, I have to say I am confused. You said that she worked at Scrivens for two to three days in November 2008. Were they the ones before or after Vision Express?

**Mr Hepworth:** After. The registrant worked at Vision Express. Incidents occurred which ultimately have led to these proceedings. That caused her employment at Vision Express to end on 30 October 2008. She subsequently worked for two to three days at Scrivens. Her employment there effectively ended when she was arrested for the matters which had occurred at Vision Express.

**Dr Harris:** Thank you, that is helpful.

**Mr Hepworth:** So, Madam, she worked at Scrivens for two or three days, clearly ceased work there, and you will remember that I indicated that her last contact with the Council was in November 2008. A standard letter was sent by the Fitness to Practise Department saying that a complaint had been made and asking for her current employer details. That was sent to the registered address. The reply came from the registrant via e-mail to Ms Devoy of the Council, dated 24 November 2008. The letter reads as follows:

“Georgina, I have received your letter with regards to investigation, and as requested in the document I am writing to inform you that I am not currently employed by any optical practice or working as a locum. If you need this in writing, please let me know.”

Madam, that would fit in with the chronology, because by the time she sent that letter she will no longer have been working for Scrivens.

Madam, can I say that is the last contact received from the registrant by the Council, both through the proceedings before the Investigating Committee and also through preparations for the procedural hearing and the substantive hearing, and also I have received no reply to any of my letters sent by post or the e-mails which I have also sent.

**Ms Jeyasingham:** Was that e-mail address that she replied on the same as on her registration, or is this a different address?

**Mr Hepworth:** It is the same e-mail address, and I think from the chronology it is safe to assume that that e-mail address was live and being monitored by the registrant on 24 November 2008. But of course, at that time the registered address was also a valid address, because she replied to a letter sent to that address. So either she was living at the registered address, or had facilities in place for her to receive mail sent to that address. So the last known date at which both addresses were live is, in effect, the same.

**Ms Jeyasingham:** Since then the only correspondence with her has been about telling her about the procedural hearing and then the substantive hearing and we have had evidence of those letters being delivered?

**Mr Hepworth:** Madam, I think there was correspondence before that, whilst the matter was before the Investigating Committee. I also have sent correspondence to her and of the two letters in particular that I sent by e-mail to that e-mail address, the first one said,

“I am writing further to the procedural hearing on 8 December”,

then I indicated that a Direction was made that I was to serve any unused material on her by 15 December and I just indicated that there was no unused material which fell to be disclosed. The next letter indicated that a Direction had been made that she and the Council were to agree a bundle of documents for use at today’s hearing and sent the proposed hearing bundle as an attachment and I asked her to let me know if she wished for any amendments or additions to be made. Neither of those e-mails has been returned as being sent to an unobtainable address and I have received no reply from either.

So, Madam, I think that then gives you the position as far as contact and attempted contact with the registrant is concerned. Perhaps you would allow me to remind you of what the Rules say about proceeding in the absence of a registrant and it is Rule 21.

**Ms Jeyasingham:** Sorry, Mr Hepworth, there is one more question.

**Ms Grute:** Mr Hepworth, can you clarify for me if we had made attempt to trace this registrant through her mode of study, as she is registered as a study dispensing optician?

**Mr Hepworth:** I have made no such effort. Again, if you wish for that question to be answered, Madam, I can obtain that information from outside the room. Suggesting a way forward, it may be helpful if I make my formal application and then if you wish for that information to be obtained, I can get that information while you are considering globally whether or not to proceed.

**Ms Jeyasingham:** Yes that would be fine, Mr Hepworth.

**Mr Hepworth:** Thank you, Madam. I will make a quick note so that I do not forget. [Pause] Madam, the relevant Rule is Rule 21 of the Fitness to Practise Rules, which can be found at page 96 of the handbook. It states:

“Where the registrant is neither present nor represented at a hearing, the Fitness to Practise Committee may nevertheless proceed if:

- (a) they are satisfied that all reasonable efforts have been made to notify the registrant of the hearing; and
- (b) having regard to any reasons for absence which have been provided by the registrant, they are satisfied that it is in the public interest to proceed”.

Madam, it is a two-stage test. In relation to the first stage, are you satisfied that all reasonable efforts have been made to notify her of the hearing, in the Council’s submission, all reasonable efforts have been made, and the word used is

“reasonable”, not all “possible” efforts. A registrant is under an obligation to keep the Council updated as to their current address, perhaps precisely for this reason. It is reasonable, in the Council’s submission, for the Council to expect that if a registrant changes his or her registered address, he or she will notify the Council of that. The Council has received no notification by this registrant that her registered address has changed. In the Council’s submission it is reasonable for the Council to give notice to a registrant of a hearing by means of sending the relevant documentation to the registered address. In the Council’s submission that would suffice. The Council ought not to be expected to do anything more. That would be reasonable. If the registrant has in the Council’s submission unprofessionally failed to notify the Council of a change of address, that registrant has to bear the consequences of that. He or she is after all a professional.

In this case the notice of hearing was sent by Special Delivery, whatever the term is, to the registered address. The Council has discharged its duty. Clearly, the registrant may well not have actually received the notice of hearing. But there is nothing in the Rules which requires actual service to be effected before you can proceed in absence, just that all reasonable efforts have been made.

Madam, in the Council’s submission, you have set the registrant’s lack of reply against a clear history in these proceedings of a failure to engage, and in my submission you can take that clearly into account.

Madam, if you are satisfied that all reasonable efforts have been made, you then can consider whether or not you ought to proceed in the registrant’s absence, is it in the public interest so to do. In the Council’s submission it clearly is, for these reasons. Set against that background of a failure to engage, Madam, if you adjourn today, you can have no confidence that the registrant will appear on the next occasion. In the Council’s submission, all that you would be doing would be to postpone the inevitable, which would be to proceed in due course in the registrant’s absence.

There is, of course, a strong interest in dealing with all matters as swiftly as possible within the interests of justice. There is a witness here to give evidence. She is the manager and franchise-holder of the relevant Vision Express store and her interest clearly would be in the matter proceeding today. There is no application before you on behalf of the registrant for an adjournment.

For those reasons, Madam, if you are satisfied that all reasonable efforts have been made to serve the registrant with notice of the hearing, you ought then to exercise your discretion, in the Council’s submission, in proceeding in her absence. Absolutely nothing has been heard from the registrant since November 2008, despite correspondence of various sorts having been sent to her registered address and also to her e-mail address.

Madam, those would be my submissions. Of course I will be delighted to answer any question that you have and I will find out the information requested by Ms Grute in due course. But other than that, those would be the Council’s submission.

**Ms Jeyasingham:** Thank you, Mr Hepworth.

**Dr Harris:** I have a declaration belatedly to make, which I should have made a bit earlier and that is that my husband has engaged Blake Lapthorn to advise him as his legal advisers in his responsibilities as deputy appointed by the Board of Protection in respect of his mother’s affairs. I do not regard that as causing me a conflict, but I need to declare it publicly.

**Mr Leveseur:** Mr Hepworth, in the absence of the registrant, it is probably appropriate that I give advice to the Committee on that point. The test in these cases is not whether there is actual bias. If there is actual bias, that is the end of the matter. The tribunal member must recuse themselves and must do so straightaway. The test is whether any fair-minded, reasonable observer would conclude that there might be a possibility of bias, and in those circumstances a tribunal member should recuse themselves and should not sit. The advice I have already given in respect of this matter at other hearings this week is clear. I do not believe that there is any actual conflict of interest and I do not believe that any fair-minded bystander would conclude that there was any possibility of any such bias.

Of course, if it were the case, for instance, that Mr Hepworth was in the fortunate position of being the man providing the advice to the tribunal member's husband, then I think in those circumstances the fair-minded person would say, "No, recuse yourself". But my advice thus far has been no possibility of bias and, so far as I am aware, no likelihood of bias at all. Mr Hepworth, you are not, I think, advising, because I have already asked you that question some time ago.

**Mr Hepworth:** Madam, that is right. I do not know who is advising. I work in an entirely different team and Blake Laphorn has, I think, about 600 or so employees. I have never knowingly met the person who is advising.

**Mr Hepworth:** Then in those circumstances the advice which I give specifically to the member of the tribunal is thank you for disclosing, there is no conflict, and there can be no reasonably objective thought that there would be a conflict.

**Dr Harris:** I have a question as well, Madam, if I may?

**Ms Jeyasingham:** Yes.

**Dr Harris:** Can you help the Committee by telling us how this matter came to the attention of the GOC?

**Mr Hepworth:** Madam, I can. [*Pause*] Notification came from Hampshire Constabulary because the registrant had a notifiable occupation. They reported the matter to the Council after the caution was given. The caution was given on 12 November and notification was sent on the 13<sup>th</sup>.

**Dr Harris:** Thank you. Is there any requirement on students each year to fill in a form which covers their continuation on the Register or not?

**Mr Hepworth:** To give a definitive answer I will seek instructions. [*Confers*] I think the answer to that is "yes". Whether or not the registrant has completed any subsequent application forms I do not know.

**Dr Harris:** I think we have heard from you that the last known contact was in fact in November 2008. There was a reply at any rate to an e-mail on the 24<sup>th</sup> and you are saying that there has been no subsequent contact whatsoever at the GOC from the registrant, so had a form been required, it has not been filled out. Is that correct?

**Mr Hepworth:** Madam, that is as I understand the position to be, although my contact hitherto has been with the Fitness to Practise Department. If you were to make a specific request of the Registration Department to see if they have received any information, just to perhaps dot "i"s and cross "t"s –

**Dr Harris:** And while you are doing the dotting and crossing, can you help me to understand whether if someone is required to complete a form and does not complete it, they retain their position on the Register or whether they drop off automatically?

**Mr Hepworth:** Madam, that question I can answer. In relation to this registrant, she will have been retained on the Register in the absence of renewal in any event, to allow these proceedings to be heard.

**Dr Harris:** Thank you, that is helpful.

**Mr Levisieur:** Mr Hepworth, can I ask for your assistance, please? I am just concerned about the oft-stated requirement for anyone on any register to provide up-to-date details. I think I have traced it. I think one begins on page 60, under Applications for Registration or Restoration, and I think we begin at 5, which gives name, former name and date of birth. Then I think we go to 6, which says "Thou must provide a contact address". That is to be found on page 61.

Then I think, but this is very much where I seek your help, we then have to turn to page 68 and go to Rule 22, where there is a duty on a registrant to notify of changes to information previously supplied, under these or effectively any other Rules, these or 1976 Rules. I think that is where this duty lies that everybody knows about, but nobody ever provides chapter and verse for.

I think I am right in saying this. Obviously in these circumstances it is quite important, because the Committee will no doubt want to pay particular attention to any such duty.

**Mr Hepworth:** Madam, I share your legal assessor's analysis of the Rules, particularly Rule 22 at page 68 of your handbook and the requirement on the registrant to notify the Council of any changes to information previously supplied. If the registrant has changed her registered address, then that, of course, is where the duty would lie, to tell the Council.

**Mr Levisieur:** Thank you very much indeed. That is very helpful. Madam, would you now like some legal advice, allowing for the fact that Mr Hepworth will go forth and make one or two enquiries?

**Ms Jeyasingham:** Yes, Mr Levisieur.

**Mr Levisieur:** Can I avoid repeating what I have already said about the duty to keep the Council up to date? You will have in mind those page references at pages 60 and 68. The position we are now in is that you must make a decision as to whether or not to proceed in the absence of the registrant. Rule 21 makes it clear that where the registrant is neither present nor represented you may nevertheless proceed, if you are satisfied that all reasonable efforts - and I emphasise the word "reasonable" - have been made to notify the registrant of the hearing.

You will bear in mind that in order to take reasonable steps, the Council must send letters and communications to the address or the place where they have reason to believe she, in this case, is to be found. You should, of course, also bear in mind such additional evidence that you have received by way of documentary evidence and also that which Mr Hepworth has helpfully been able to tell you about today, particularly the steps which have been taken to contact the later employee, albeit the employer for some two to three days.

If and only if you are satisfied that all reasonable efforts have been made, you proceed to the next stage of the test set out at Rule 21(b), which reads:

“Having regard to any reasons for absence which have been provided by the registrant” –

there are none, therefore we cannot take them into account – you may only proceed if you are satisfied that it is in the public interest to proceed. There is a general public interest, of course, in ensuring that all litigation or legal or other process is conducted expeditiously. There is a general public interest in ensuring that the affairs of this and other tribunals and other professional bodies are conducted expeditiously, reasonably, proportionately and fairly. There is also a public interest in protecting those who for one reason or another may be severely adversely affected by any decision of the tribunal.

So to proceed in someone's absence is not a light step that one simply takes because of the administrative convenience of for instance this tribunal or this body. There are a number of factors to be taken into account. Consider them all, give them whatever weight you think fit, but at the end of the day, the fact that a person is not engaging, without more, is not a determinative reason for proceeding in their absence. There may be a good reason why this registrant is not engaging. The fact that she is not here necessarily means that you cannot know what that is. Now clearly, in those circumstances the very fact that she does not engage cannot be determinative. You must consider all the factors, but you may well reach a view, in the light of the very considerable history that there is in this case.

Mr Hepworth, you have the right to correct, amend or suggest anything following that advice.

**Mr Hepworth:** Madam, there is nothing that I wish to add.

**Ms Jeyasingham:** In which case, can we clear the room so that the Committee can deliberate and you can follow up some of those enquiries for us, Mr Hepworth? Thank you.

**Mr Khan:** Can I add something to that inquiry, please? Is there any practice at all in the GOC where in some circumstances they employ personal servers?

**Mr Levisaur:** Mr Henley is the man who knows more about this than anybody else and it might be an idea, Madam, if we asked him that question directly.

**Ms Jeyasingham:** Yes.

**Mr Levisaur:** Have there ever been occasions when in effect a process server simply attends upon somebody and says, “Here are the documents”?

**Mr Henley:** Not that I am aware of.

**Miss Plahay:** May I ask two further questions? First of all, do we have the name of the supervisor of the student when she was supervised because all students are supervised at the practice? Secondly, Mr Hepworth, has the supervisor in effect revoked their supervision and therefore is the student, if they are practising, practising unregistered anywhere, because a supervisor should be named for all students?

**Mr Hepworth:** Madam, I would have to make that enquiry. I presume that if there is a supervisor lodged with the Council, that would be within the same paperwork as the registration paperwork, so hopefully the one enquiry could cover both matters.

**Ms Jeyasingham:** Thank you.

*[Hearing adjourned at 10.47 am]*

*[Hearing resumed at 11.05 am]*

**Ms Jeyasingham:** Mr Hepworth, you have some answers to our enquiries?

**Mr Hepworth:** I do, Madam. In relation to the application for retention form, as far as students are concerned such forms are annual and are sent out by the Council for completion and return around about September each year. The application for retention form was sent by the Council to the registrant in around September this year. It has not been received back. So the registrant has made no application for retention for the current period. So she has been kept on the Register in order to give the Council jurisdiction to deal with these proceedings.

As far as the other documentation and the other information is concerned, the last known information by the Council was contained in the registrant's 2008-2009 application for registration. She was a first-year student during that period, which of course was the period immediately proceeding the current period, and the period in which the allegations arose.

So in her initial application form she indicated that her supervisor was a J Atkin. I have confirmed with the witness, Ms Atkin is the resident optometrist at Vision Express.

**Ms Harris:** Did you say "Jane"?

**Mr Hepworth:** It is J. I think her first name is Julia.

**Ms Grute:** The resident optician?

**Mr Hepworth:** The resident optometrist at Vision Express in Fareham. Of course, that supervision will have ended at the point that employment with Vision Express will have ended.

As far as her education is concerned, the information that I have been given is that she put down her college as City Islington University, which is not a college with which I am familiar, but I do not live in London. There has been no further update in relation to either the study or the supervisor since that 2008-2009 initial application. I understand that the Council do not make further checks until a student is in his or her pre-registration year. As the registrant was merely on her first year, no further checks were made.

Madam, I hope that has answered the questions which you raise, and if I may be permitted to make one further comment, that seems to reinforce the Council's position that she has not engaged in and has not actively sought to remain on the Register.

Madam, that I hope is the information which you requested. Again, if I can be of any further help, then I will endeavour to do so.

**Ms Jeyasingham:** Thank you, Mr Hepworth. I think we need to clear the room again and we will continue our deliberations. Thank you.

*[Hearing adjourned at 11.09 am]*

*[Hearing resumed at 11.48 am]*

**Ms Jeyasingham:** I am going to read out the decision of the Committee.

### **Application – Service of Notice of Inquiry**

The Committee has heard an application from the Council to proceed in the absence of registrant. There has been no contact between the Council and the registrant, all correspondence having been returned. The Committee has considered the documents before it and the additional explanation given by Mr Hepworth, on behalf of the Council, as to the steps taken to notify the registrant of the hearing. In the light of this evidence and these explanations, and in the light of the legal advice to the Committee which it accepts, the Committee is satisfied that all reasonable efforts have been made to notify the registrant of this hearing.

No reasons for her absence today have been provided by the registrant. The Committee has considered the matters put to it by Mr Hepworth and has accepted the legal advice in respect of Rule 21(b). The Committee notes that no attempt appears to have been made by the registrant to correct or amend her contact details which the Rules provide that each registrant should do.

In all the circumstances the Committee is satisfied that it is in the public interest to proceed in the absence of the registrant with this hearing.

In which case, can I ask the hearings manager to read out the allegation?

**Mr Henley:**

“The Council alleges that in relation to you, Robyn Leach, a registered study dispensing optician

1. On 12 November 2008 at Fareham Police Station were formally cautioned for the offence of theft by employee;

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

- (a) Caution”.

**Ms Jeyasingham:** Mr Hepworth, can I call on you to make an opening statement?

**Mr Hepworth:** Thank you, Madam. Before I do that, can I ask to be handed to you a bundle of documents, please, and I will then explain the contents to you.

**Ms Jeyasingham:** Thank you and we will mark this as C1. *[Documents distributed]*

**Mr Hepworth:** Madam, at pages 1 and 2 of the bundle you will find the record of the caution given to the registrant. I will go through these documents in more detail in a moment, but just to bring to your attention the numbering of the bundle which you have before you, because these documents have been used before in other forums, you will note that there are quite a few different numbers on each page. The numbering which I will be using is the numbers at the bottom and in the middle of each page.

So far as that caution form is concerned, Madam, can I draw your attention to page 2, which contains the signature of the registrant accepting the caution and, importantly, admitting the offence, the offence listed above which you can see is referred to as “theft by employee”.

**Mr Levisaur:** Where is the signature on page 2?

**Mr Hepworth:** I think that I may have confused your Legal Assessor by my numbering. It is at the bottom of the other page 2.

**Mr Levisaur:** Thank you very much.

**Mr Hepworth:** So the numbering that I am using is in the middle of the bottom of each page. The remainder of the bundle, pages 3-25, is the contents of the investigation notes and the investigation file compiled by Geraldine Grace, who is the witness from whom you will hear today. I will go through that bundle in a little more detail as I go through the opening.

Madam, the allegation relates to a caution received by the registrant. Under section 13D(2) of the Opticians Act, a caution for a criminal offence is a gateway which takes you straight to consideration of impairment. You do not need to consider on top whether or not the conduct amounted to misconduct. Clearly no admissions have been made by the registrant in relation to the facts or caution or impairment.

The facts are as follows. The proof the caution comes at page 1 and 2 of the documents that you have before you. A caution can only be offered by the police and accepted by a particular suspect, where admissions are made in relation to the offence. In this case there were three separate admissions.

At pages 22-24 of your bundle, you will see the transcript of an interview which was conducted by the person charged by Vision Express to investigate what had been happening. At page 23 the question is asked,

“So you have refunded the £408 onto his card when there was no refund for him”,

and the answer by the registrant is “Yes”. A bit further down it says,

“[Have] a look as the next day’s banking we have a refund of £195 a sale has gone through on PDQ but noting on Acuitas and then a refund onto M Wades card again”.

The registrant initially says, “I don’t remember doing that”, but later says, “I can’t remember what I did but I did do it”. Then further on:

“CP We have another incident where a refund has been processed as an exchange ... Is this your writing saying it’s a till correction

RL Yes

CP You can see its not a till correct is an exchange and refund for £356.50

RL Yes”,

and then it talks about how the refund went back onto an M Wade’s card. Madam, that is the first admission.

The second admission is to be found at page 1, or at least the record of it is at page 1, which is the front page of the Adult Caution record. The officer who completes that form indicates: “She”, referring to the registrant, “admitted the offence during a police interview”. Then, as you can see in the cautioning officer box at the bottom of that page, the cautioning officer signs to say that there was

“a clear and reliable admission in this case which is PACE compliant and recorded as a tape recorded interview”.

PACE refers to the Police and Criminal Evidence Act 1984, which governs in part the way in which police questioning of suspects takes place.

The third admission is the signature on the caution form to which I have already drawn your attention, at page 2 of the bundle.

Turning to the evidence to be called by the Council, you have the hearing bundle of documentation and as I indicated Geraldine Grace will give evidence. She is the store manager and a franchise owner of that particular store, Vision Express in Fareham. She will be able to explain how those three transactions were processed. I would like to take her evidence relatively quickly, because the allegation is that the registrant was cautioned, and the evidence of that is in the documentation that you may find helpful if she explains to you how the offences were committed.

After that background I can now tell you what in fact happened. The registrant was employed at Vision Express and on three occasions while Mrs Grace was not at the store the registrant illegally credited sums to her boyfriend’s MasterCard account. On 26 September 2008 she transferred £356.50, the next day, 27 September, she transferred £195 and then two days subsequently, 29 September 2008, she transferred £408.20. My maths may have failed me, but if it has not, that makes a total of £959.70. Importantly in the Council’s case, it was all done while the manager, Mrs Grace, was not present and all done while the registrant was left in charge of the store. So the dishonesty from the offence itself of theft is aggravated by the fact that this was a theft in breach of trust. I think I have already indicated that the witness, Mrs Grace, will detail how each transaction took place.

The matter came to light and there was an investigation by Vision Express during which the registrant made admissions. Mrs Grace then notified the police, admissions again during the police interview and the caution. You can see from page 4 of the bundle that the registrant’s boyfriend attended the store and repaid the money. He also wrote a letter which you can find at pages 6 and 7.

**Ms Jeyasingham:** Are you going to read that?

**Mr Hepworth:** I am going to, yes. The reason why I raise it now, Madam, is that there appears to be an inconsistency which may or may not be of any importance to you. At page 4, Mr Wade indicates that the

“money was refunded onto my mastercard without my knowledge by Robyn [the registrant]”.

In his letter at pages 6 and 7 – I think I will read this letter out rather more lengthily – he says,

“I am writing this letter to explain Robyn’s actions, which under normal circumstances would never have happened.

I, Michael Wade, made her take the money, she had no option, the way I treated her for ten-eleven months was unacceptable. I made her life physically, emotionally and mentally like hell.

I am disgusted in my actions and see that due to my actions Robyn could have lost her career she loves and all of her friends who mean the world to her.

If there are to be any legal proceedings I will take the whole blame as Robyn didn’t have no other choice, and would never have done it if I hadn’t of made her.

As I think your all aware Robyn is very loyal, trustworthy, friendly and a major personality in the shop and would never have dreamt of putting all of her career at risk if it wasn’t for me.

I understand you have your procedures to follow but if there are any questions you need to ask me I am contactable on ...”

and he gives his contact details. “I am writing as advised by my solicitor” and then on the next page you see Mr Wade’s signature.

Madam, because of the manner in which I hope Mrs Grace will give her evidence and will be able to explain to you the other documents in the case that relate to how these transactions were processed, I do not mean to say anything further in opening, other than to remind you that of course you are presently at the facts stage of the hearing. The burden of proving any fact falls on the Council, not on the registrant, and the standard to which any fact needs to be proved is on the balance of probabilities. Put briefly, if you find after hearing the evidence that a particular fact is more likely than not to have occurred, then you will find that fact to be proved.

Madam, as far as the facts are concerned, the only fact in issue is whether or not the registrant was cautioned. In the Council’s submission, you have the record at pages 1 and 2 and that should be a relatively straightforward decision.

Madam, I will call if I may the Council’s first and only live witness, Geraldine Grace.

**MRS GERALDINE GRACE called and affirmed  
Examined by Mr Hepworth**

**Q.** Could I ask you, please, to give your full name to the Panel?

**A.** Mrs Geraldine Grace.

**Q.** I will be asking you some questions to start with and then the Panel members may have some questions for you. Although you will be asked questions from over here

to start with, please always direct your answers to the Panel. I think there is on the table in front of you a bundle of documents which is headed "Index to Hearing Bundle". Within that bundle there are some documents to which I will refer you in a few moments. Everyone has a copy of the same documents before them and if I need you to refer to a page, I will give you the page number and I would ask you please to bear in mind that the numbering system that I have used is at the bottom and in the middle of each page, so that is the number you will need to look for, the typed number at the bottom and in the middle of each page.

Could you tell the Panel what your job is, please?

A. Now or at the time of –

Q. If it has changed, tell us about at the time of the incident.

A. At the time I was the joint venture franchise owner of Vision Express in Fareham. So I held 25 per cent shares and Vision Express the 50 per cent shares. The position has changed because my shares have now gone back to Vision Express, so we are now a company-owned store rather than being a franchise, the way we were then.

Q. As far as the day-to-day operation of the store was concerned, were you in effect the store manager?

A. Sorry, yes, I missed that bit. Yes, I am the store manager. I was the retail partner, and then my business partner was the optician, so in my day-to-day running was in charge of the store, basically, and answerable to Vision Express, as a partner.

Q. You are familiar with Robyn Leach?

A. Yes.

Q. Could you tell the Panel in what capacity she worked at the store?

A. She was my assistant store manager. So in my absence she was in charge of the store and took full responsibility of that. Part of her development was our commitment to her in sponsoring her to do the dispensing optician's course.

Q. So if I could talk about the period, September 2008, are you able to tell the Panel how far in her course she had got by that stage?

A. She was just in the first semester. So she had HAD the first lot of notes through from the college.

Q. The incidents of theft took place on 26, 27 and 29 September. Were you present in the store on any of those occasions?

A. On the 26<sup>th</sup> I had a half-day holiday, the 27<sup>th</sup> I was on holiday and the 29<sup>th</sup> I was on holiday. So I had left the store in Robyn's hands.

Q. Could I ask you now please to have a look at the bundle of documents which you have before you and to look at page 3 to start with? [Pause] Looking at page 23 and just read if you would looking through to page 25, could you confirm to the Panel whether or not that is your investigation file which resulted after you had looked into the conduct of Ms Leach?

A. [Pause to look at documents] Yes, it is.

Q. Thank you. Could I ask you please to go to page 16 of the bundle? That appears to be a sort of notification from HSBC.

A. That is correct.

Q. You can see that there is reference there, the letter reads:

“I can confirm that there were three refunds to card number ...”,  
then the number is given,

“as detailed below:

26 Sept £356.50  
27 Sept £195.00  
29 Sept £408.20

and that there were no corresponding sales on the same card number.

Lloyds TSB have confirmed that the card is in the name of M. Wade”.

Is that notification from HSBC of transactions to that card which had been requested after issues had been raised about Ms Leach’s activities?

**A.** These came about at the same time, normal procedures with HSBC, if they get any abnormalities on cards like this through refunds going back to the same card, for Vision Express, they notify our audit team. At the same time that this came to the attention of the audit team, I had picked within store the anomalies going on as well. So I then, because of the anomalies in store, contacted the audit team and the two came together as confirmation then.

**Q.** Can you keep your finger in page 16, because I am going to ask you some more questions about those amounts in a minute? I am going to take a jump and come back, if I may. Is it right that as a result of this investigation, there was an interview with Ms Leach during which you were present?

**A.** Yes.

**Q.** Could you look, please, at pages 22 and 23 of the bundle, and indeed going on to page 24? I am going to ask you some specific questions about it later, but is that an accurate record of that interview that took place?

**A.** Yes. The interview was taken by Charlotte Pugh, who was my original manager, and I was there as a note-taker. So she actually led the interview.

**Q.** I want to ask you, please, about those individual amounts and how those amounts were put onto M Wade’s card, so ask you about how the transactions took place, and can I start with 26 September, £356.50? How was that effected?

**A.** Can I refer to the bundle?

**Q.** You can as long as you tell the Panel which page you are looking at and give time for people to get to that page. It may also be helpful if you read out the relevant parts of the page to which you are referring.

**A.** Okay. When I come back off of a weekend, I would always look at any refunds that have gone through the store. This weekend highlighted the fact that we had these anomalies going on. So I would normally expect to see a customer’s signature against a refund that has gone to a customer. So the first amount, £356.50, relates to page number 13, to start with. So that would have been where I started.

Now this is actually a refund report, which gets printed out at the end of each day, as part of our normal banking process. On here we have a customer’s name, Susan Camfield, and to all intents and purposes, it would look as though she has purchased a new frame, the SO Metal, at £89, because that is shown as a plus, and then she has had the lenses, the Gucci, the varifocal and the anti-reflective coating all refunded back to her. So effectively, as an exchange, so it could be looked at that an

associate has made a mistake. The writing that has been circled, “[Until] correction only” is actually Robyn’s writing. There was no refund report with that and no customer signature.

So the next part of my investigation would have been to have had to look on page number 11 now, so the sales reconciliation report is actually the end-of-day banking tally. So the slip on the left-hand side, the “Z total”, represents the credit card slip that is then reported at the end of the day. So on our PDQ machine – we have a credit card machine and we do an end total at the end of the day and that prints out that slip, and that is what that total represents. Ringed is the refund for £356.50.

Now the week’s bankings had already been sent to support office. So all I had were my references in store. I contacted our finance team to ask them if they had all the relevant bankings. They said they had everything with the exception of a PDQ slip for a refund of £356.50. So we had no evidence that Mrs Camfield had actually had that money back into her account. So that was the first one. It was just that one that you wanted at the moment, wasn’t it?

**Q.** Just at the moment. Was it possible to find out when Mrs Camfield had been supplied with those glasses, if indeed she had ever been supplied with glasses?

**A.** Yes. Can I just refer to my notes? Because I know I have it, and I do not think you have it in here.

**Q.** I think if you cannot answer the question from the documentation, then you say you cannot answer, and if the Panel think that is a question that they would like to have answered, then maybe that will be the moment.

**A.** Okay, sorry. Yes.

**Q.** So is that information, then, not in the bundle in your investigation file?

**A.** I do not remember seeing it. Can I just have a quick flick through again?

**Q.** Yes.

**A.** Thank you, because it is a slightly different order. *[Pause to look at notes]* Yes. Okay, so on page 21.

**Q.** Before you go on to describe the contents of that, could you just explain to the Panel what that sheet is?

**A.** This is a screen chart taken from all transactions that have gone through on [SC]’s file. So as a customer, that is all of her transactions that have gone through. The original sale date for her was an eye examination on 12 August, for £22, and then on 12 September was a normal transaction going through. So you have to start coming down, £11.42 minus is a discount, £8.68 is a discount, £26.66 discount, £20.14 discount and £2.50 discount, and then the sale gong through, so £210 for the Gucci, £25 for the coating, £280 for the varifocal and £25 for the Grand Advantage card. She then has only paid half for her glasses, leaving an outstanding balance. Then the second transaction that goes through is actually the refund, against what is left on her outstanding balance.

**Q.** The refund that went through against the outstanding balance, was that the false refund that you have just referred to carried out by Ms Leach?

**A.** That is right.

**Q.** The amounts do not match.

**A.** Sorry. That is my mistake, yes. That is both sales that have gone through for her. She has paid £229, which has then left the outstanding amount.

- Q.** Perhaps it would be easier if for me to the question in this way. The false refund of £356.50, who is the loser of that? Clearly there has been a gain to a bank account.
- A.** Yes.
- Q.** Who is the loser of it?
- A.** Me personally and Vision Express.
- Q.** So the customer has not lost out?
- A.** No. The customer as not lost out on this.
- Q.** So a customer has paid for glasses, taken glasses and as far as you are aware, is happy with glasses?
- A.** Is happy with glasses, yes.
- Q.** So the refund, then, is an entirely artificially generated one?
- A.** Yes.
- Q.** Thank you. Could I then ask you to go on to the next amount? We are now talking about 27 September and this is a refund of £195.
- A.** So this one refers to page 10. On page 10 again is another refund report, showing [MJ] and [AI-S]. Now [MJ] we had a signed receipt for and also the PDQ slip for. [AI-S]'s we also had the signed receipt for and PDQ slip. The total of refunds that went through that day which you can then – which actually shows as £195, if we go to document number 8, just before that, back to the sales reconciliation sheet. So on here it is showing that refunds have gone through of £727 on page 10, showing a discrepancy of £195 on the PDQ slips. On investigation from that one, we found that a sale had gone through the till, for a [JT], for £195 – sorry, we had a PDQ slip for £195 for a sale, but we did not have a refund slip for a £195 sale. So again, on this one, the customer had purchased something, she had bought sunglasses for £195, taken them away in all good faith, but nowhere on [JT]'s record did it indicate a sale for £195. A refund was then processed for £195, but nothing has actually gone through on the computer system. So there is no discrepancy at all on the bank reconciliation report at the end of the day, but there is compared to the refund report. So again, that was something that highlighted that I had some sort of discrepancy, because I did not have anything reconciled against £195.
- Q.** So is the store again the loser of that sum?
- A.** Yes.
- Q.** As far as that customer's store records are concerned, are they prescription sunglasses?
- A.** No. Off-the-shelf sunglasses.
- Q.** But is it right that that would still have an inaccurate sales record held by the store?
- A.** Yes. So if she was to come back to the store, we have no record of those sunglasses that she said she purchased.
- Q.** So if there was a problem with those sunglasses and she brought them back for a refund, would the store know that she had bought them?
- A.** No. The only evidence that she would have would be her PDQ slip, so her credit card slip, that would say Vision Express as a sale. That would be the only proof that she had.

- Q.** Thank you. Can we then go to the third incident, 29 September 2008, which I think is a sum of £408.20. *[Pause in proceedings]*
- A.** This one relates to documents 19 and 20. This one I looked at differently, because I have got looking at it, the sales reconciliation report, a discrepancy showing PDQ cards on the right-hand side of minus £408.20. The comment that is made was that it was a cheque, not PDQ, patient [G]. On further investigation, Mr G had paid by cheque £408, and as you can see just above the minus figure, a cheque has actually been banked for £408.20.
- Q.** That is at the top right-hand side?
- A.** That is right. Then if you have a look on document 20 – it has not come out that clearly on the photocopy – that day we have actually banked £408 as a cheque, so that shows the bank paying-in slip. I then look at it because I have a minus of £408 that is on PDQ, that has not been investigated. But I do have a refund on the left-hand side of the sales reconciliation, which again is the end-of-day tally of the PDQs that shows a minus of £408 gone on to PDQ. There was nothing accountable for that, that I highlighted to our finance team. They then looked in the end-of-day figures and there was no PDQ slip, again, for £408 as a minus.
- Q.** So as far as Ms Leach's actions are concerned, what would she have done to have made that false refund?
- A.** That must have been put through on a card that we had no record of. It showed on our end-of-day tally that there was a £408 – at this present time, I did not actually know that it was Ms Leach. I was actually hoping that it was a big mistake that had been made. But we had no proof as to where this £408 had gone. So at this point in time the whole team were up as being suspected.
- Q.** But once you had carried out the investigation and you found that it was Ms Leach that was responsible, how did she carry out that? Was there a special technique she used? How did she actually credit money?
- A.** As a supervisor within the store, so in my absence, I have three staff that are able to put a refund through on the credit card machine. You have to put in a special supervisor's PIN number and then you have the card details. As it has transpired, we now know that the card was keyed in on two occasions. To do that if you do not have a customer present, you can take their credit card number and type the number in manually, which will then give you a manual credit card slip. If you put anything through on a credit card machine, it will always give you a slip of paper. So what she has done and at different times during the day, and generally quiet times during the day, is when these three refunds have actually been processed.
- Q.** Could I ask you to turn to page 15 of the bundle? It is similar to a document which you have already shown the Panel and would appear to be a sales record for a [MW]. Could you explain the entry there to the Panel? When was Mr W last a customer of the store?
- Q.** Mr Wade was in, on page 15, on 8 October for an eye examination, which has been processed as a self re-test exam, whereas it should have been processed as a staff eye exam because family members can have an eye examination in store free of charge. But he has not needed glasses, so no other entries have gone through on his sales record.
- Q.** So he has not been a customer of the store since October '07?
- A.** Not since October '07.

- Q.** As far as the interview is concerned, to which I have already drawn your attention, could you just tell the Panel, please, whether or not Ms Leach admitted what she had done?
- A.** Ms Leach did not actually admit it to start with. On questioning she was told that – do you want me to refer to the interview?
- Q.** Yes, that would be easier.
- A.** Okay. The interview with Robyn is actually on page 22.
- Q.** Perhaps you can give the Panel an explanation of what has happened during that interview. If you need to refer to the contents of the interview record then you must do so, but perhaps you would like to tell them what happened.
- A.** The interview was called as a result of my investigations in store. The regional manager was then called in on the advice of our audit team to further investigate members of the team. Charlotte started off asking Robyn if she did actually know the correct procedures in store when a refund was needed to be done. Now I must say at this point Robyn did not actually realise that she was under investigation for the refund anomalies, she thought she was being called in because she had taken extra holiday and had returned three days late from her holiday, so was completely unaware that this investigation had come.

She was asked if she knew the procedures of the refund process, which she admitted to. She was asked if other members of the store were allowed to do refunds, which she admitted, and in my absence, that was correct information. She was then shown by Charlotte the sales reconciliation that I referred to earlier. The first one she showed her was for Mr G, which was for £408. Robyn looked at it, read it and said that she could see that there was a cross-over, which is our terminology for there being a mistake, but she did not know why it carried on and had been put through and she had not investigated it any further.

Charlotte then said that the audit team had checked with the bank and that the same amount, £408, had been credited to a card for a Mr Wade, did she know anything about this at this time. Robyn then said, yes, it was Michael. Up until this point she said that she did not know anything about any refunds that had gone through that were amiss. She asked who Michael was – I have turned over to page 23, sorry – and that is when Robyn said it was her boyfriend. The regional manager then said, “So you have refunded £408 onto Michael’s card?” to which she said, “Yes”. Charlotte then asked her, “Have you done this before?” and she said, “Not that I know of”. From the further reconciliations, the regional manager was actually working in reverse at this point, so the £408 was the last refund that had been put through for her.

From that point she then asked if she knew anything about the next day’s reconciliation, the £195 discrepancy that we had there. Robyn then said that she did not know anything about it she did not remember doing that one. Charlotte was able to then produce the refund slip for Mr Wade and said, “A £195 transaction has gone through”, to which Robyn did reply, “Yes”. She said, “I can’t remember what I remember, but I did do it”, at this point.

Then Charlotte asked her about the third refund, for £356, and Robyn said, “Yes”. It was then later on that she said that it had been processed onto Mr Wade’s card, that she was sorry, and that he had given her the card so that she could use it in emergencies, if she needed to, and that Michael knew nothing about it.

- Q.** And I think on page 24 towards the end of the interview, is it right that Ms Leach is told, "This is very serious have you anything to say" and she says, "No I am sorry"?
- A.** Yes.
- Q.** And you repeat that question.
- A.** Yes.
- Q.** Is it right that following that interview Ms Leach was suspended?
- A.** Yes. She had to wait. Charlotte had to take advice from our HR department before she did anything further, and then Robyn was suspended pending further investigations by the audit team.
- Q.** Has the store been refunded?
- A.** Yes.
- Q.** I do not know if page 4 would be helpful.
- A.** Page 4 will be very helpful. Now this was very strange. After Robyn had been suspended, about an hour after she had been suspended, Mr Wade came to the store to speak to us, because obviously Robyn had contacted him. He said that he was really sorry, he knew nothing about it, but he wanted to go and get the money to reimburse the store because it was so out of character for Robyn. So page 4 actually refers to him going down to his bank and coming back and refunding the store for the total of £959.70. Page 5, as much as the copy has not come out very well, shows the banking slip of that money then being transferred back to Vision Express.
- Q.** Could I ask you then, please, to look at page 6 and page 7? The Panel have already had that letter read out to them. Is that a handwritten letter from Mr Wade?
- A.** That is a handwritten letter from Mr Wade, yes, that he actually came into store and delivered to me a week after Robyn had been suspended, and this was the night before her appeal hearing within the store.
- Q.** The Panel have already had pointed out to them that at page 4 Mr Wade says the money was refunded onto his card without his knowledge. But then in that handwritten letter he said, "I made her take the money". Was he ever asked any questions about that apparent inconsistency?
- A.** No. Mr Wade is not employed by myself. He was Robyn's boyfriend. He was implicated because it was his card that he used. But my dealing was with Robyn. She was my employee and it was Robyn that had stolen from me. Mr Wade had not stolen from me. So he had no involvement in the case at all.
- Q.** And is it right that Ms Leach was dismissed on 30 October and on the same day you notified the police?
- A.** I did, yes. She had an appeal hearing. Again, she knew nothing about Mr Wade's letter to us. It was not actually brought up until right at the end of her hearing, to which, again, she admitted she knew nothing about it. So this is something that Mr Wade had done off his own back. The reason I notified the police was because I felt it was me that she had stolen off of, rather than just the company, because I was the franchise-owner. I was her manager, but it was actually my company. Also I was out of the country then for the next two weeks. So I did not want there to be any implications coming back to the store or there being any problems within the store. So that was why I notified the police.
- Q.** Did you later learn that the police had cautioned her as a way of disposing of the matter?
- A.** Yes.

**Q.** Thank you very much. I have no more questions to ask. If you wait there, there may be some questions from members of the Panel.

**Ms Jeyasingham:** Thank you, Mr Hepworth. Members of the Panel?

**Ms Grute:** Can you tell me at what Robyn commenced employment with you?

**A.** The official start date I cannot remember. She had been with me for two years.

**Q.** Had you had any cause for concern in the two years running up to this?

**A.** Absolutely none. No.

**Q.** Retrospectively, did you make a point of going back through the records to see if this had occurred before?

**A.** Yes.

**Q.** What did you discover?

**A.** We had two banking anomalies in June that ironically she did refer to in her interview, because we had some cash go missing within the store. From recollection I think it was about £200, just short of £200, on one of our bankings. That had been investigated and we could never prove anything, so from that we then tightened our banking system up. But she did actually refer to it when she was investigated and did say, "I didn't take the cash". We had not asked her anything about the cash, that was not the situation. So we did have two other incidents prior to that. Because it was cash there was no way of actually being able to say it was definitely Robyn; something had gone wrong in store. But it had been investigated, yes.

**Q.** How far did you go back with your overview?

**A.** We went back over a year.

**Q.** Thank you.

**Miss Plahay:** Obviously the refund procedure, you said you had a look through it and you changed it slightly. In the interview you comment that you always get a countersignature on the refund. On a night when Robyn was cashing up, was somebody with her observing it; did that get countersigned as well?

**A.** Yes. All signatures get countersigned. So in my absence, it would have been the assistant store manager and then another keyholder; we have three keyholders within the store. So on one of the occasions it was Dave McManus, who is the lab manager, and on another evening it was Sarah Wilson-Suffield.

**Q.** So the transactions that Robyn put through, did she have the specific ID number on the machine, or did she have a log-in code for herself? What I am trying to get at is was there no way it could have been an error by another member of staff, it was specifically her?

**A.** It was specific to her, yes. We all have our own PIN numbers that we put through. So each transaction that goes through, yes.

**Ms Jeyasingham:** And that is how you were able to identify it was her to interview her? Because you say you investigated and that is what –

**A.** Yes. So it was two-fold. It was the fact that HSBC had come back to our audit team and told them they have had three refunds through on this card, and at the time with me coming to the finance team saying, "I've got three anomalies going through", the IT team were able then to go in, draw down, find the PIN numbers that had been used each time, and then the bank being able to say this is a card that belongs to M

Wade, I then knew that M Wade was Robyn's boyfriend, he would not have had any dealings with any of the other staff members.

**Miss Plahay:** Can I ask one more question? Obviously this is all done via PDQ. Was there anything else? For example, did stock go missing as well? Was there anyone else or was it just specifically these three transactions?

**A.** I am very strict within store with all stockholding, with all banking procedures and things like that. So when I come in on a Monday – sorry, I come in on a day after my day off, I will always look at those. So the staff all knew that I would always be investigating it anyway, so yes.

**Q.** Thank you.

**Dr Harris:** Could you just tell me, unless I have missed it, what the date was on which this interview took place? It starts on page 22. Have I missed it somewhere?

**A.** Sorry, for Robyn Leach?

**Q.** Yes.

**A.** On 29 October, if memory serves me. Can I refer to my own – because I have it dated on there? It was 27 or 28 October, after my weekend off, and she went on a three-week holiday. So that is why there was the delay.

**Q.** It was the 27<sup>th</sup> or the 29<sup>th</sup>.

**A.** Twenty-seventh.

**Mr Hepworth:** Obviously I have the benefit of seeing Ms Grace's notes. I think it was in fact 27 October that the interview took place?

**A.** Thank you. Yes.

**Dr Harris:** Is this an extract from the full record?

**A.** This is the initial investigation that was taken in store. Then the final record is actually held by our support office, in the HR department.

**Q.** So is this the full record of that initial interview?

**A.** Yes.

**Q.** Because you said something to the effect that it is not recorded here but she referred to some cash, things you mentioned a minute or two ago.

**A.** Yes.

**Q.** That was not in this interview?

**A.** That was not in this interview, no. That was in her final interview, because I was questioned by the regional manager who did her appeal hearing about the cash.

**Q.** So this is the only interview of which we have a copy?

**A.** Yes.

**Q.** But there was a subsequent interview?

**A.** There was a subsequent interview, yes.

**Q.** At which she made some other comments. Is it helpful for us to see that? Because I will be quite plain with you, this is obviously a serious matter and clearly, if in fact she is now saying in an interview that there were other matters, it may be helpful by way of background. But we do not have that, do we?

**Mr Levisieur:** There is no allegation about this and I am extremely concerned, because this is being conducted in the absence of this registrant. In order for this information to go before the Committee various hoops would have to be gone through and it seems to me that this allegation is simply not provable – that is to say, an allegation that she stole money on other occasions in June. In those circumstances, this Committee probably ought not to hear anything more about it and certainly ought not to speculate about it. The only evidence is that she did not take the money.

**Mr Hepworth:** Can I say, Madam, I agree with your Legal Assessor. It is not an allegation before you because the caution relates only to the three refunds to Mr Wade's card.

**Dr Harris:** That is helpful; I will not pursue that. I would just like a little bit more understanding, if I may, about the curious letter that is undated, but you say was delivered the evening before the appeal. Can you be precise as to what date that was?

**A.** That would have been 29 October.

**Q.** That was delivered on 29 October?

**A.** That was delivered on the 29<sup>th</sup> to me.

**Q.** And is there any significance to the thing that says "Liz Dymott"? Do you know what that is?

**A.** That was the HR person that I had to fax the letter through to, so that they had a copy of it. Sorry, that is my handwriting.

**Q.** Thank you. You had not had any prior contact with Mr Wade until he suddenly turned up, except you said that he appeared on 27 October, is that correct?

**A.** Yes. On 27 October he came into store after Robyn had been suspended; she had not been dismissed at that point.

**Q.** So page 4, the date of that is 27 October as well?

**A.** Yes.

**Q.** Did he type this out or you type this out or what?

**A.** No, Charlotte Pugh typed this out, who is the regional manager. That was typed out on our headed paper, so that she had a receipt for the money and we had a receipt for the money.

**Q.** Can you just help me to try and understand, because as you have observed, there is a discrepancy between what he said on page 4 and what he then said two days later on page 6. It was typed out by Charlotte Pugh, but on what basis?

**A.** Because he had given us the money, in cash, he had gone down to –

**Mr Levisieur:** Was the registrant present?

**A.** No.

**Mr Levisieur:** Thank you very much. That is the end of this questioning.

**Dr Harris:** Okay. Thank you.

**Ms Jeyasingham:** Mr Khan?

**Mr Levisieur:** Forgive me for taking so long. I should have thought about it; I did not. That is the end of this questioning.

**Ms Jeyasingham:** Dr Harris, did you have any further questions on any other topic?

**Dr Harris:** I just want to reflect on it.

**Mr Khan:** Mrs Grace, I am slightly shy in asking this question. I have not had much experience in store rules. Is this quite a common way of stealing, a refund? It is the first time I have heard it, I thought it was quite clever. Is it common?

**A.** I would like to say no, but unfortunately it is something that does happen, yes. I was recently on a loss prevention course at our support office and they relayed numerous ways that people can get round the credit card system, to be able to refund money back onto their cards. What Robyn has tried to do is to cover her tracks and three different ways of being able to refund the money back onto her card. So it looks as though they are quite legitimate transactions that have gone through. So as I say, I would like to say, no, it is very uncommon, but nowadays it is quite common.

**Q.** You say she had been with you for two years?

**A.** Yes.

**Q.** Were you surprised at this point?

**A.** Extremely disappointed. She had her whole future mapped out. We were sponsoring her to do her dispensing optician's course, so she was not going to have to pay for that herself. She was assistant store manager; she had a position of trust. So, yes, I was very disappointed.

**Q.** Thank you.

**Ms Jeyasingham:** Are there any other questions?

**Miss Plahay:** Was it quite common to have quite a lot of refunds in your store?

**A.** No.

**Q.** It was just a sudden onset in that September?

**A.** For a whole weekend to – yes.

**Q.** Thank you.

**Ms Grute:** Sorry, I think I missed the first part of your explanation. I understand the second inaccuracy, £195, was the result of somebody coming into store, buying some sunglasses, no physical record kept on the computer system, and then £195 being swiped off onto Mr Wade's card.

**A.** That is right.

**Q.** The third example for the £408.20, as I understand it, there was some discrepancy about saying it was a PDQ, then actually it was a cheque and then I refunded back onto the card, to try and make it all look right. What was the example for the £356.60?

**A.** This customer had come in; she had paid partly for her glasses, leaving an outstanding balance on the system. Now when a customer would come in and collect their glasses, they would then pay that amount of money. Now what has happened is that transaction has been put through as if that customer has paid, and then it has been refunded back again, and the money has then go onto the card. So it still looks as though that customer still owed that amount of money, when in actual fact the money has been taken to one side.

**Q.** So if we were to look at this patient's record card, it would appear she had been in store and paid, when in fact she may never have been in?

**A.** Yes.

**Q.** Thank you.

**Miss Plahay:** I am sorry, one more question. If this patient had been in and paid – I work in practices myself – if it has on your records that the patient has had a refund, would that patient at a later date be treated any differently, as in to say, “Oh, be cautious, that patient has had a refund”?

**A.** Absolutely not.

**Q.** You would not be hesitant?

**A.** No. On that particular one I did pick it up, because it was over a month old, trying to 'phone the customer to find out why – it looked as though she had changed her mind – and we got an answerphone. So I just left a message and said could she give a call at store. This was the very first one I had picked up on.

**Q.** Thank you.

**Ms Jeyasingham:** If the Committee has finished, Mr Levisieur, do you have any questions for the witness? *[No]*

**Mr Hepworth:** Madam, there are no matters arising on behalf of the Council. Unless anyone has any further questions for this witness, I would ask for her to be released.

**Ms Jeyasingham:** That is fine. You may step down, Mrs Grace, thank you very much.

**A.** Thank you very much.

*[The witness stood down]*

**Mr Hepworth:** Madam, I see the time. My closing submission will be no longer than a minute.

**Mr Levisieur:** Do you have a right to make a closing submission? Forgive me, you understand why I am asking the question?

**Mr Hepworth:** Yes.

**Mr Levisieur:** It is in very peculiar circumstances. I know you ordinarily do. Can we just check this, please?

**Mr Hepworth:** Yes. I think it is Rule 49(1) at page 101.

**Mr Levisieur:** Yes, I have it open.

**Mr Hepworth:** It says,

“Following the presentation of evidence including any evidence in rebuttal the presenting officer shall be entitled to address the Committee”.

**Mr Levisieur:** Then we have (2), which is clearly predicated on the presence of the registrant. I am thinking of the usual position in the criminal courts, as you were.

**Mr Hepworth:** Yes.

**Mr Levisour:** Where in these circumstances, in the peculiar circumstances, having opened, you would not be permitted to make a final speech to the jury, if I may call it that.

**Mr Hepworth:** Yes. Rule 49(1) is not a conditional right; it does not say as long as the registrant is present. As far as Rule 49(2) is concerned, the registrant still is entitled to address the Committee.

**Mr Levisour:** In her absence!

**Mr Hepworth:** Madam, although it appears that the right to make a closing speech is mandatory, in that the wording is that I “shall be entitled to address” you, I am happy to leave it to your discretion. I will be no longer than a minute. But Madam, if you decide that you do not need to hear from me, then I shall be quiet and I will not push the point.

**Ms Jeyasingham:** Mr Levisour, do you have any advice for the Committee at this point?

**Mr Levisour:** It is always nice to hear Mr Hepworth, but I think in the circumstances I am rather anxious to protect the position of the registrant, because the registrant is not here. The ordinary position in the criminal courts would be in these circumstances that Mr Hepworth would say nothing, he having opened, and opened the matter very properly both as to fact and law.

However, although I can read what Rule 49 says and have it open myself, I think in the circumstances my advice would be that it would be better if Mr Hepworth did not address you on the facts. There could be no possible objection to him addressing you on the law, because of course, it is my function to correct anything he says and you do not take the law from him. Naturally you take such advice as there is to be given from me. But as to fact, my advice is that it might be better if there were no submissions to you from Mr Hepworth.

**Ms Jeyasingham:** In which case we will proceed on the law, then, Mr Hepworth.

**Mr Hepworth:** Madam, I have nothing to say on the law. Hopefully I covered it in my opening, and as your Legal Adviser quite correctly says, of course he can provide you with that advice, far more eloquently than I can.

**Mr Levisour:** So far as the facts are concerned, we are at the fact-finding stage. You must now find the facts, such as they are, in respect of each matter that is set out in the Allegation sheet. You must be satisfied – that is to say, on the balance of probabilities – that something is more likely than not to have occurred before you may find it as a fact. That is sometimes expressed as being on the balance of probabilities and it is sometimes expressed as being 50 per cent plus a scintilla or a feather. But it is the civil standard, more likely than not.

The burden throughout lies on the Council. They bring the case and it is only fair that they prove it. They do that by calling evidence. The evidence which you have heard is in two forms. There is that which is written and appears in the bundle, C1. That has all been put before you and you are entitled and indeed bound to take it all into account. You must also, of course, take into account and pay equal attention to the oral evidence given by the witness.

I do not think I need give you a warning about the stresses and strains of giving evidence. That lady was not subject to profound cross-examination. But

nevertheless, bear in mind that it is no easy matter to give evidence, and she has given it you may think clearly and sensibly.

Quite rightly, it was pointed out to you that under the Act, at section 13D(2) of the Opticians Act, you will find that

“The only grounds upon which the fitness to practice of a registered optometrist or a registered dispensing optician, or the fitness to undertake training of a student registrant is ‘impaired’ for the purposes of the Act are –

- (a) misconduct
- (b) ... deficient professional performance; and then
- (c) a conviction or caution in the British Islands for a criminal offence.”

You must therefore satisfy yourself that this student registrant was cautioned in the British Isles for a criminal offence. The paperwork is in the bundle and you may have absolutely no difficulty at all, although it is a matter entirely for you, by reference to pages 1 and 2, that this registrant was cautioned by a police force for a criminal offence, and the criminal offence, of course, was theft.

The caution form proves itself. What does not prove itself is the so-called continuity evidence – in other words, you have to be satisfied that it is the registrant, a human being called Robyn Leach, who was the person subject to this caution. You may or may not be satisfied by the other documents which appear here, and you may or may not be satisfied by the careful evidence adduced by Mr Hepworth via the lady whom we have just heard, who you may well think provides the continuity evidence which allows you to find that it is the Robyn Leach who is the registrant and who is before you and was, indeed, the woman cautioned for this offence.

But that strictly speaking is a matter for you, and it is strictly speaking not something that you are just to take on the nod. This lady is not present, and you must go through each of the hoops and do it properly, so that justice is not only done, but it is also seen to be done.

There will need to be further submissions about the consequences of any facts that you find. Please restrain yourself in these circumstances and deal only with the fact-finding stage. I need to repeat something that I said during the course of questioning the witness. You are not to consider, and you are certainly not to speculate, and you must not draw any adverse inferences about the matter which may or may not have taken place in June and which for these purposes are nothing whatever to do with this registrant.

I should also explain why it was I stopped some questioning in relation to apparent discrepancies between what appears on page 4 and on pages 6 and 7 – that is to say, the two apparently separate or different explanations given by a Mr Wade. That is because in fairness to Ms Leach, she was not present when whatever Mr Wade did or did not say. In those circumstances it is not fair as it were to tar her with discrepancies, because she had no opportunity to turn round and say, “What are you talking about? I don’t accept that”. That is why I put a stop to that. I repeat it simply so that you do not go off speculating about things that would be very unfair to speculate about.

Thank you very much indeed.

**Ms Jeyasingham:** Thank you. I invite the Hearings Manager to clear the Room and we will adjourn until two o'clock.

[Hearing adjourned at 1.07 pm]

[Hearing resumed at 1.52 pm]

**Ms Jeyasingham:** I will read out the findings in relation to the facts of the Allegation and caution:

## “DETERMINATION

### Findings in relation to the facts of the allegation and caution

Having all the evidence before the Committee in bundle C1, and having heard all evidence from the employer today and in the light of the legal advice it has received and accepted, the Committee is satisfied that Ms Leach, a registered student dispensing optician, was on 12 November 2008 at Fareham Police Station cautioned for an offence of theft from her employer.

The Committee in the light of the documents appearing at pages 1 and 2 of C1 is satisfied that the allegation is proved.”

So we move on to impairment.

**Mr Hepworth:** Of course, as indicated previously, Madam, the gateway is the caution. As far as impairment is concerned, you are released from the shackles of burdens and standards of proof; you will exercise your professional judgment in determining whether or not the registrant's fitness to practice is impaired, and the tense of that verb is important. Of course, you will judge that in the present tense, rather than in the past tense.

Madam, I am not sure that there is much else I can say. The offence speaks for itself. It is clearly an offence of dishonesty, three separate incidents. The dishonesty is aggravated by the fact that this was theft from an employer, so theft in breach of trust. I think I can do no more than point out to you and remind you of the content of Part 10 of the Code of Conduct for individual registrants, which says fairly starkly,

“A registered optometrist or dispensing optician must be honest and trustworthy”.

Unless I can help any further, Madam, there is nothing else I think that I can add to that.

**Ms Jeyasingham:** Thank you, Mr Hepworth. I turn to our Legal Adviser.

**Mr Levisseur:** Again, because of the absence of the registrant, I propose saying a little more than I would otherwise say. Had the registrant been here I would simply have said, “You have heard what Mr Hepworth has said and it is right”. However, in the circumstances I develop those submissions and give you the following advice.

It is a matter for you. The fact *simpliciter* of a caution does not necessarily render a registrant impaired. The question is not whether a registrant's fitness to practise or fitness to undertake training was impaired – that is to say, was impaired at the date

they were cautioned. The question is whether or not by reason of that caution they are now impaired.

You would, of course, bear in mind the general requirement placed on any member of a profession, but certainly on this profession. They must be honest and trustworthy. You will bear in mind that the offence for which this registrant accepted a caution was one of dishonesty. The sum involved was substantial, over £900, and the breach of trust was serious. This was a woman in a position of responsibility who stole from her employer and who did so on three separate occasions, admittedly over a weekend. You bring your proper standards to bear – that is to say, in the case of two of you your standards as a member of this profession. The lay members bring a sense of what is right and proper to the question of impairment.

But as I repeat, you must be satisfied that this registrant's fitness to practise is impaired now, today.

That concludes my advice.

**Ms Jeyasingham:** Mr Hepworth, do you have any points?

**Mr Hepworth:** Madam, no points, thank you.

**Ms Jeyasingham:** In which case can we clear the room while the Committee deliberates. Thank you.

*[Hearing adjourned at 1.57 pm]*

*[Hearing resumed at 2.35 pm]*

**Ms Jeyasingham:**

**“Findings regarding impairment**

The Committee, in considering the question of impairment, has been concerned to discern so far as is possible the submissions which might have been made on the registrant's behalf. The Committee must not speculate. It reminded itself that this was a serious breach of trust involving the manipulation of records and misuse of the employer's financial system by a person who was in sole charge on the days when the offences occurred. The profession rightly demands honesty and trustworthiness in its registrants. This registrant was neither.

The Committee is, in all the circumstances, satisfied that the registrant's fitness to undertake training now is impaired by reason of the caution given on 12 November 2008.”

Can we move on to sanction, then, Mr Hepworth?

**Mr Hepworth:** Madam, thank you. As for the particular sanction that you and your colleagues decide, I make no submissions on that. It must, of course, be a matter for you, bearing in mind that in relation to this case, you will perhaps have closest to the front of your mind the fact that you act partly to maintain public confidence in the profession and to declare and uphold proper standards.

Madam, I do not think that I can add anything to your findings in relation to the nature of the offence, in the reasons that you have just given. Can I say that the registrant has no previous fitness to practise history as far as the Council is concerned, and of course, you have not heard from her about any rehabilitative steps that she may have taken to stop this occurring in future.

Other than that, Madam, I am not sure that there is anything else that I can usefully add.

**Mr Levisaur:** The advice which I give to the Committee so far as this aspect of the case is concerned is necessarily coloured to some extent by the difficulty that the registrant herself is not present. You have, however, seen and should take into account the handwritten letter apparently written following legal advice by the registrant's boyfriend, who for these purposes I will simply describe as Mr W.

As Mr Hepworth has said, you have a duty to consider public confidence in this profession and you have a duty also to consider the question of upholding of professional standards by registrants, whether they be students or otherwise.

You should adopt a reverse sliding scale, if I may put the matter like that. You must begin by considering the least serious sanction which is open to you, and once you decide that that sanction is not appropriate, then if necessary move up the scale. It goes without saying that the most significant sanction that you can employ is an order for erasure from the record. The effect of any such erasure would, of course, be to prevent the registrant from reapplying. Such reapplication could not be heard, for a period of two years after erasure takes effect.

Beyond that there is nothing more that I would wish to say.

**Ms Jeyasingham:** Thank you. In which case can we clear the room so that the Committee can deliberate?

*[Hearing adjourned at 2.39 pm]*

*[Hearing adjourned at 3.25 pm]*

**Ms Jeyasingham:** I will read out the decision on sanction:

**“Sanction**

The Committee is bound to regard this matter seriously and is bound to give serious regard to the need to uphold public confidence in the profession and the need to uphold professional standards. This registrant is now only 24 and was 22 at the time of the thefts and had no previous convictions or disciplinary matters recorded against her. She has expressed remorse and the money has been returned to the employer. The Committee has considered with particular care the effect of the letter at pages 6-7 of the bundle C1. It has also considered why the Police regarded this serious matter as being suitable for disposition by way of caution.

However, having considered all these matters in the light of the way in which these offences were committed and the legal advice which the Committee has received and accepted, the Committee concludes that the only appropriate sanction is an order for erasure.

Given that the registrant has not engaged with the procedure thus far, the Committee sees no reason why any order should take immediate effect.”

Thank you, and that is the conclusion.

*[Hearing ended at 3.27 pm]*