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

**GENERAL OPTICAL COUNCIL
AND
CHARANJEEV SINGH VIRDEE (01-17157)**

Monday, 18 January 2010

Substantive Hearing

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**GENERAL OPTICAL COUNCIL
AND
CHARANJEEV SINGH VIRDEE (01-17157)**

Monday, 18 January 2010

Committee: Ms Fran Jones – Lay (Chair)
Mrs Geraldine Huka - Lay
Dr Vicki Harris – Lay
Mr Mark Lomas - Optometrist
Ms Yvonne Norgett – Optometrist

Legal Adviser: Mr Nicholas Levisueur

Hearings Manager: Mr David Henley BEM

For the GOC: Mr John Hepworth

For Registrant: Mr Sandesh Singh

[Hearing commenced at 10.44]

Ms Jones: Good morning, I am a lay member of the Hearings Panel, and I have been elected by the Committee to chair today's hearing. The Committee today is made up of two optometrists and three lay members, and I shall ask the members of the Committee to introduce themselves and the capacity in which they sit, commencing from my left. *[introductions]* To my right is Mr Levisueur, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee and ensure that the proceedings are conducted in accordance with the Rules of Procedure so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate. In the event that any matter arises during the course of the Committee's deliberations upon which the Committee seeks advice, the parties will be invited to return to hear the matter which the Committee has raised and the advice to the Committee. Where advice on any issue is not accepted by the Committee, this will be indicated in the course of its decision on that issue.

To your right is David Henley, the Hearings Manager, who will provide administrative support to the Committee. Next to Mr Henley is the transcriber, Mr Nisbet, who will be keeping an official record of all that is said today during the sessions of the hearing at which the parties are present. The remaining persons sitting in the room, rather than in the public and press areas, are members of the respective legal teams.

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

Before I go further and check whether there is an application being made, may I apologise to the parties for the delay in our start today and thank you for bearing with us. We have one matter to bring to your attention which is a conflict of interest raised by Dr Harris. May I ask you to outline that?

Dr Harris: I just want to put in front of everybody the fact that my husband, who has a position as a Deputy at the Court of Protection, is advised on legal matters by Blake Lapthorn, which is the firm that represents the GOC today. So far as I am aware, the two departments – the one that advises him on Court of Protection and the department that Mr Hepworth represents – are not the same. However, I thought I ought to declare it.

Ms Jones: Mr Levisieur, do you have any guidance?

Mr Levisieur: The advice that I have informally given and which I repeat now is that I do not believe there is any conflict, I do not believe there is any potential conflict and I do not believe that any fair-minded of the public could possibly conclude that, in those circumstances, there is any conflict of interest such as would cause an injustice to either party. However, I am quite prepared for either of the parties to tell me I am wrong.

Mr Singh: May I say I have no issues to raise with that at all.

Mr Hepworth: Madam, I agree with everything that your Legal Assessor has said.

Ms Jones: Thank you, we shall proceed then. May I check whether a new application has been made?

Mr Singh: Not by us.

Mr Hepworth: Nor by the Council.

Ms Jones: Mr Hepworth, may I ask you to proceed please?

Mr Henley: [*Reads allegation*]

Charanjeev Singh Virdee (a registered optometrist), the Council alleges that:

1. On 1 July 2008 at the West London Courthouse, you were convicted of the following:

- (i) An offence contrary to Section 117(1) of the Road Traffic Regulation Act 1984 in that, on 21 January 2008, you displayed, in a car you were using, a disabled person's badge to which you were not entitled; and
- (ii) An offence contrary to Section 6 of the Fraud Act 2006 in that on 21 January 2008, you had in your possession or under your control a disabled person's badge for use by you in the course of or in connection with a fraud.

2. You completed and provided to Kensington and Chelsea PCT an application form for a contract to provide ophthalmic services dated 18 July 2008.
3. You declared at page 4 of Section B “Road Traffic → Fine” when asked to provide details of any investigations or proceedings brought against you;
4. You did not declare the full nature of your conviction to the PCT, in particular you did not declare that you had been convicted of an offence under
 - (i) The Fraud Act 2006; and
 - (ii) The Road Traffic Regulation Act 1984
5. Your actions referred to at paragraphs 3 and 4 above were
 - (a) Dishonest;
 - (b) Inaccurate.

AND by virtue of the facts set out above, your fitness to practise is impaired by reason of your:

- (1) Conviction;
- (2) Misconduct.

Ms Jones: Thank you. May I check with Mr Singh whether the facts of the allegation are admitted?

Mr Singh: I can indicate that paragraph 1(i) and (ii) are admitted –

Mr Levisaur: I am sorry, may I just get the right piece of paper so that I may mark on it. These are formal admissions.

Mr Singh: May I just say paragraph 1 in its entirety.

Mr Levisaur: So (i) and (ii) admitted?

Mr Singh: That is right. Paragraph 2 is admitted. Paragraph 3 is admitted. Paragraph 4 is admitted, and paragraph 5 –

Mr Levisaur: (i) and (ii) of paragraph 4?

Mr Singh: That is right. In paragraph 5, particular (b) is admitted; particular (a) is not admitted. If I can explain, in relation to 3 and 4 in combination with 5(b), it is accepted that the actual declaration that was made was as a matter of fact, it was not accurate because it did not contain the information that is there. The issue is whether, in doing that, it was a dishonest act or not.

Mr Levisaur: And, for the avoidance of doubt, although strictly this is not a matter for you, it is always a matter for the Committee, the registrant maintains that,

although he has admitted that his actions were inaccurate, he does not admit that by virtue of those facts – either of misconduct or the conviction – his fitness to practise is impaired?

Mr Singh: Yes, absolutely, and it will be a matter for the Committee as to whether the facts found proven amount to misconduct in due course in relation to the non-declaration.

Mr Levisaur: Yes, thank you very much, that is very clear, helpfully put.

Ms Jones: Mr Hepworth?

Mr Hepworth: Madam, thank you. Dealing with the facts in the case, one factual allegation is denied and, in brief, the issue for you to decide as far as the facts are concerned, may I suggest, is as follows. When the registrant completed the application form to Kensington & Chelsea PCT, and wrote the words “Road Traffic → Fine”, was he being dishonest? Was he, as the Council suggest, deliberately underplaying the seriousness of the offences for which he had been convicted? Or is this a case of carelessness? Before I go any further in my opening, I believe that you and your colleagues have been provided with hard copies of the hearing bundle and I shall assume, unless you tell me otherwise, that you have had the opportunity to read the electronic copies of the bundle that were sent round previously?

Ms Jones: We have.

Mr Hepworth: You can see that the application form to which I referred starts at page 8 in your bundle.

Ms Jones: We should record this as C1.

Mr Hepworth: The form starts at page 8 with section A, and the section that is particularly relevant starts at page 15 section B, and at page 17 you can see there is a question: “Have you any criminal convictions in the United Kingdom?” The registrant completed this form and circled ‘Yes’. If one then goes to page 18 of the bundle, you can see at the top of that page is the text:

“If you have answered Yes to any of the questions in the declaration, please provide details, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome with an explanation as to why and details of the Primary Care Trust or equivalent body concerned.”

You can see at the bottom of page 18, the registrant has entered those words “Road Traffic → Fine”.

Madam, you have heard the registrant accepts that those words amounted to an inaccurate declaration on the basis that it was incomplete and, in the Council’s submission, a matter of fraud is not a matter of road traffic.

However, the issue for you to decide is what was going through the registrant's mind as he wrote those words.

It is the Council's case that the registrant was dishonest in that declaration. He certainly had a motive for being dishonest, in the Council's submission. He would have wanted that application to succeed. It was in his interests to downplay the seriousness of the convictions, especially the word "fraud" and the dishonesty that would have accompanied such a declaration. That may, you may think, have affected his chances of his application succeeding. Also, in the Council's submission, you can place reliance on the fact that twice previously during these incidents, the registrant was dishonest.

One of the convictions that he received was for an offence under the Fraud Act, possession of this disabled person's badge for use in fraud. Dishonesty, of course, is an integral part of the offence of fraud, and there is no doubt that the offending behaviour – using a disabled badge that did not belong to him – was dishonest.

The second occasion on which the registrant was dishonest comes from a conversation that he had with Mr Zablocki, whose evidence has been agreed and I shall read it out in due course. You will have noted that Mr Zablocki prepared a two-page log, a summary of visual evidence, and perhaps I could ask you and your colleagues, Madam, to turn to page 24 of the bundle, which is the first page of that log. At the bottom of page 24 in the entry timed 12.12, you can see there details of a conversation between the registrant and Mr Zablocki. The registrant told Mr Zablocki that he had collected a woman called Ms Raithatha from home that morning and dropped her off to do some shopping on Portobello Road. He said she had now been collected by someone else in the family. When Mr Zablocki asked the registrant where this woman lived, the registrant said that he did not know her address; he said that she was his aunt but he also did not know her name, he always called her "Chuti" because her name was hard to pronounce.

Madam, that was a lie and it is not disputed but, if you need confirmation, please look at page 3 of the bundle in front of you, this is a letter sent by the registrant to the Council. In the third paragraph of that letter, the second sentence reads:

"At the time I panicked and stated that I was dropping off my Aunt locally and it was her badge. In fact I had found the badge at a practice I had recently acquired and I did not know the beneficiary. I, therefore, did not know that they were deceased."

Therefore, on two occasions during these incidents, the registrant was dishonest. In the Council's submission, he has shown that he is prepared to be dishonest, prepared to lie when he found it convenient to do so, and you can use that as evidence, in my submission, to conclude that he was dishonest a third time when making the application to the PCT.

Madam, there is no live evidence on behalf of the Council. The evidence in the bundle is agreed and I shall read out the two statements from the witnesses in due course.

The Council accepts that whether or not the registrant was dishonest when completing that form is a matter of fact for you to decide and, as a matter of fact, the burden of proving that fact falls on the Council. The standard of proof is on the balance of probabilities, which means that you will find that fact proved if you decide after hearing the evidence that it is more likely than not to have occurred.

I may be able to offer you a little assistance in relation to the definition of “dishonesty”. Adapting the definition used in the Criminal Law from the case of *R v Ghosh* [1982] All ER 689, there is a two-stage test as far as dishonesty is concerned. The first is – and you will no doubt excuse me for paraphrasing it – would the act be considered dishonest by the standards of ordinary, decent and honest people, so an objective test. In this case, you may find that question relatively easy to answer. In the Council’s submission, the answer is, yes, it could be depending on what was going through the mind of the person who carried out that act who wrote those words on the application form. If you find that test passed, you then go on to consider the second limb, which is must, in this case, the registrant have realised that what he did was dishonest.

In essence, the test boils down to this: what was going through the registrant’s mind at the time he completed that form? Was he being careless, or was he deliberately, as I said before, downplaying the seriousness of the conviction in order to increase the chances of his application being successful?

That is the end of my opening but, to present the evidence on behalf of the Council, perhaps first of all, Madam, I should start with the statement of Mr Zablocki that is found at pages 22 and 23 of the bundle.

Mr Levisaur: It might be convenient if I simply remind the Committee at this stage as to the status of statements of this sort. What you are about to have read to you is the statement of a witness. There is no dispute between the parties as to the truth of what this witness says and you are, in those circumstances, to accept this evidence and you are to consider it in due course. You are not to be troubled with this man not coming here to give his evidence, there would simply be no point in that happening, but his evidence is to be regarded as evidence just as if he came here on oath, gave you his evidence orally and was cross-examined. Since his evidence is accepted, that is an utterly pointless thing to do but this is to be regarded as if this were a live man giving live evidence to you now.

Mr Hepworth: Madam, this is the statement of Martin Zablocki:

“1. I am employed by The Royal Borough of Kensington and Chelsea as a disabled badge investigation officer, based at Kensington Town

Hall, Hornton Street, Kensington, London. I work within the corporate investigation group.

2. My role involves dealing with the misuse of abuse of the Disabled Badge Parking Scheme. This particular scheme provides a national arrangement of parking concessions for people with mobility problems who travel either as drivers or passengers. It allows blue badge holders to park closer to their destination and amenities, for example, shops, restaurants, public buildings and their home.

3. Because of the serious parking problems in Central London, the Secretary of State for Transport decided when the national disabled parking scheme was introduced that the normal disabled parking concessions would not apply in:

- The Royal Borough of Kensington and Chelsea;
- The City of Westminster;
- The City of London, and
- Part of the London Borough of Camden, south of Euston Road.

These boroughs have set up special disabled badge schemes for residents. Kensington and Chelsea's residential disabled badge is the purple badge scheme.

4. Special blue badge parking bays are provided around the Royal Borough of Kensington and Chelsea for visiting blue badge holders, near to amenities and places of interest. Generally, parking is free in these bays for up to four hours from Monday to Friday between 8.30 am and 6.30 pm, and for as long as you want to park outside of these hours. Blue badge holders are also allowed one hour of free parking after the expiry of paid for time in a Pay & Display bay.

5. Badges are only for the use of the disabled people to whom they are issued, not to enable nominated drivers to benefit from parking concessions. They must not be used when the disabled person is not travelling in the vehicle. Abuse and misuse of the scheme deprives those who are genuinely in need of assistance.

6. On 21 January 2008 I was working with my colleague investigation officer Joanne Nicholson when at 10.25 hrs I saw a black coloured Smart car, registration number KP51XDV parked in disabled bay 57 of Kensington Sports Centre car park. The vehicle was displaying a blue coloured disabled badge issued by The London Borough of Ealing, Greenford Office, the serial number of which appeared to be G08702, although it seemed to have been altered. This badge also appeared to have an altered expiry date. A white sticker with the expiry date of 30 April 2009 had been placed over the genuine expiry date of 2004.

7. Displaying the blue disabled badge in this way would avoid the user paying for parking. In the Kensington Sports Centre car park, the

disabled bays have no time limit and a vehicle may park using a disabled badge for an unlimited period of time.

8. I will not for the purposes of the proceedings before the General Optical Council Fitness to Practise Committee reiterate the remainder of my evidence concerning this within this particular statement, as I understand that to do so would not be particularly necessary. However, suffice it to say that, when I later compiled a criminal prosecution file, I completed a “summary of visual evidence” log dated 24/3/2008 which I now produce as exhibit MZ/1. It will be noted that, at the start of the log, the date shown of the event is 18 January 2008. This I am able to say is a typographical error as the event actually took place on 21 January 2008.

9. Furthermore, I have been shown by Blake Laphorn Solicitors acting on behalf of the GOC a memorandum of conviction from West London Court House, relating to the appearance of Charanjeev Singh Virdee on 1/7/2008. The motor vehicle registration number KP51-XDX shown in offence number 1 (unlawful use of a disabled person’s badge in relation to the use of the vehicle) I am able to say is wrong. The correct number of the vehicle being KP51-XDV, which is as shown in the “summary of visual evidence log” exhibit MZ/1.

This statement of 2 pages is true to the best of my knowledge and belief, and I confirm I am willing to attend a hearing if necessary.”

He has signed that. As far as the “summary of visual evidence log” is concerned, I do not intend to take you through that word for word. I have already drawn your attention to the entry timed 12.12.

Madam, you know that the registrant was convicted at the West London Court House in relation to two offences. Because of the content of part of Mr Zablocki’s statement, my learned friend has asked me to point out to you the basis of that plea. I do not seek to go behind this basis at all. First, the registrant accepts that he is guilty of the offence of unlawfully using a disabled badge. He says he has also been charged with a further offence on the same day contrary to Section 6 of the Fraud Act 2006:

“I accept that I am guilty of an offence under Section 6 in that I was in possession of an article, namely a disabled badge, for use of or in connection with any fraud. I would like to make clear, however, that I was not at this time 21 January 2008 or any time before aware that the card in question had been unlawfully altered.”

and that was signed and dated and accepted by the court as the basis of the plea. Of course, it goes to what Mr Zablocki said in his statement. I do not seek to go behind that basis at all.

The next statement to read is to be found at pages 5 and 6 of the bundle, that of Salvator Camilleri. His statement reads as follows:

“1. I am employed by NHS Westminster as Optometry Adviser for Ophthalmic Services, based at Ferguson House, 15 Marylebone Road, London NW1 5JD.

2. In my role, I also similarly carry out work for NHS Kensington and Chelsea of Courtfield House, St Charles Hospital, Exmoor Street, London W10 6DZ.

3. During the course of my duties for the two organisations, I provide advice on matters relating to optometric practice, including matters relating to the conduct and performance of optometrists and ophthalmic medical practitioners, complaints and other quality issues.

4. I oversee all applications submitted by contractors to provide General Ophthalmic Services in the area where a particular contractor’s practice is based. I also oversee all applications from optometrists and ophthalmic medical practitioners who would like to be included in the Ophthalmic Performers’ List.

5. On 18 July 2008, Mr Charanjeev Singh Virdee, Director/Optomestrist of Eye Level Opticians, 61A Lancaster Road, Notting Hill, London, made application to NHS Kensington and Chelsea for a Contract to Provide Ophthalmic Services.

6. This particular application, which I processed the next day, 19 July 2008, I produce a copy of as Exhibit SC/1.

7. It will be seen that on page 3, section B at question (a) states, “Have you any criminal convictions in the United Kingdom?”

8. Mr Virdee has circled the reply “Yes”.

9. However, page 4 of the same document reads, “If you have answered yes to any of the questions in the declaration, please provide details, including appropriate dates, of where any investigation or proceedings were or are to be brought, the nature of those investigational proceedings, and any outcome, with an explanation as to why and details of the Primary Care Trust or equivalent body concerned”.

10. Mr Virdee has simply stated in reply later on page 4 the following, “Road Traffic → Fine”.

11. On 1 August 2008, I was reading a newspaper which was local to the Kensington and Chelsea area when I saw an article which contained headline words to the effect, “Local Optician found guilty of fraud”. This article I saw related to Charanjeev Singh Virdee’s appearance before West London Magistrate Court for:

- (i) unlawful use of a disabled person's badge in relation to the use of a vehicle; and
- (ii) possession/control of the same article for use in fraud.

12. I was surprised to read of Mr Virdee's conduct and I, therefore, reported the matter to Mr Edward Ward, Head of Primary Care Commissioning at NHS Kensington and Chelsea.

13. When referring again to page 4 of Mr Virdee's application for a Contract to Provide Ophthalmic Services (Exhibit SC/1), I am of the professional opinion that he has failed to properly disclose details of his conviction before West London Magistrates Court on this application.

14. I am able to say that this particular form is one issued by Primary Care Contracting, Department of Health, to be used by all PCTs throughout England. The form does not have any accompanying notes of advice regarding its completion by the contractor.

15. As a result of Mr Virdee failing to properly disclose his conviction before West London Magistrates Court, NHS Kensington and Chelsea suspended his contract to provide ophthalmic services as a contractor but he still remains on the Ophthalmic Performers List of NHS Kensington and Chelsea, which enables him to still carry out NHS eye examinations for another contractor and/or private eye examination work.

This statement of 2 pages is true to the best of my knowledge and belief, and I confirm I am willing to attend a hearing if necessary."

He signs that and you can see the following pages are that application form to which I have previously drawn your attention.

The only other documents in the bundle I hope to be able to deal with briefly. At pages 1 and 2 there is the Memorandum of Conviction for the two offences, and it shows that the registrant was fined for both offences, ordered to pay costs and ordered to pay the victim surcharge which attaches itself to any conviction. Then pages 3 and 4 are the registrant's letter to the Council.

Madam, as far as the factual stage is concerned, that is the Council's case.

Ms Jones: Thank you, Mr Hepworth. Mr Singh?

Mr Singh: Madam, thank you very much. There was some discussion before we came into the hearing room as to how we were to proceed in terms of the registrant's evidence, and it was agreed between myself and my learned friend and your learned Legal Adviser that, if it meets with your approval as well, Mr Virdee should give his evidence in its entirety rather than just be confined to the non-declaration. Your factual decision at the moment only relates to the non-declaration but, of course, you will be considering the

conviction and impairment in any event, regardless of your decision on the facts of the non-declaration. Because it all flows as one series of events and no doubt he will be asked questions about the first incident as being relevant, the Council would say, to the second, it would make sense, we would submit, for him to give all the evidence from the beginning all in one go.

Mr Levisaur: Eloquently put, I have nothing further to add.

Ms Jones: Thank you. [*consults Committee*] Are we happy to proceed in that way? [*agreed*] Thank you, Mr Singh, we shall proceed in that way.

Mr Singh: May I please call Mr Virdee?

Ms Jones: Excuse me, Mr Henley, before we hear the evidence, may I just check with the Legal Adviser as to whether there are other people in the room to give evidence?

Mr Levisaur: Are there?

Mr Singh: There are not.

Ms Jones: Thank you, please proceed.

**MR CHARANJEEV SINGH VIRDEE called and affirmed
Examined in Chief by MR SINGH**

Q. Mr Virdee, I shall ask you some questions now. You are slightly further away from me than you would have otherwise been last year, the table used to be over here. It also means that you are slightly further away from members of the panel, so keep your voice nice and loud please so that everyone can hear your evidence. Is it right that you have been a registered optometrist and have been practising since September 1998?

A. That is correct.

Q. Whereabouts did you study optometry?

A. My undergraduate course was at the University of Aston, Birmingham, and then I had my professional exams in Caledonian University, Glasgow, '98.

Q. At the time we are dealing with, which is January to July 2008, is it right that you were practising at Eye Level Opticians in West London, Notting Hill?

A. That is correct.

Q. Prior to starting work there, which you did in December 2006, is that right?

A. Yes, I did.

Q. Prior to working there, can you give us a brief outline of the work that you did between 1998 and 2006?

A. From qualifying, I got quite a wide and varied experience of optometry. I worked all over the country, I worked in independent practice, in multiples, I

have done corporate eye care for Duncan & Todd, I have tested on site for companies, I have worked in big multiples like Specsavers, Vision Express and small independent companies as well. So I have a good experience of different practice and throughout the whole country, not only in London but across the North, across the South.

Q. What positions were you holding at these various places?

A. I was a locum. In many places, I had regular days but I was a locum self-employed optometrist.

Q. Now in December 2006, you moved to Eye Level Opticians?

A. That is correct. I purchased this business as a going concern in December 2006. It is a very small practice, about half the size of this room and the gentleman from whom I took the practice over was a dispensing optician. The business was a failing business when I took it over. I purchased the business and I was the only person working there for 10 months until my wife joined as well. I was the optometrist, the receptionist, the dispenser and while I was examining, I made a little sign which I used to put on the window that I am consulting at the moment, so I am busy. So if somebody came to the shop during that period, the shop was closed if I was consulting.

Q. Can I stop you there? From December 2006 until about what sort of time were you working alone?

A. October 2007.

Q. Until October '07?

A. Yes. I was working on my own for four days a week, and then Fridays, Saturdays and Sundays where there were busier days, my wife came and worked those days.

Q. I was just about to ask the question and you have come onto it yourself: what was your wife's role when she was working at the practice?

A. She was administrative, dispensing, looking after the shop floor while I was examining: all the clinical, all the technical stuff I had to handle. She is a quick learner so she did learn things really quickly but I was the professional face to the practice.

Q. You said that, when you took over the practice, it was a failing business. Did it stay failing or did it turn round?

A. No. I initially looked at the practice in around October 2006 and my wife and I saw some potential in it. The figures were not that good but, because of the location, we thought we could make it work. I locumed at the practice for three or four days during November and I saw the potential in the practice. We turned over some good figures on the days I had worked in the practice and then virtually from the moment we took over, I was an optometrist on the premises every day, and the practice grew and we were busier than we thought we would have been. Fortunately, we were busy and the word had spread that the work I did was good, so everybody we saw they recommended to friends and family, and the business grew much quicker than we expected.

- Q.** Mr Virdee, thank you. The reason why I was asking about that was just to get an idea, by the period of November 2007 through to January 2007, of how busy was the practice?
- A.** My wife was working four days a week at her previous occupation and I could not cope by myself any more, so she had to leave her occupation to join the business full time. She could not really work two jobs either for that period of time, it was a stressful period for all of us. From when she joined, with two people on board it was good for the business, I did not have to close the shop when I was examining and obviously that would increase the workload. So the business was good.
- Q.** Just remind us, your wife joined in October 2007?
- A.** Yes.
- Q.** Right. The practice is in West London, Notting Hill. Whereabouts did you and your wife live at the time?
- A.** In Harrow.
- Q.** What sort of journey into work is that – is there public transport?
- A.** There is public transport. We used to get two Tube lines into the practice, and that is how I did commute so for the four days I was working at the practice, I used to get the train in the morning and, after my wife finished work, she would get to the practice at about 6.30, she would do a bit of administration work and we would leave by 7.00/7.30 every day.
- Q.** Were there any difficulties with public transport?
- A.** Yes, because of the two trains I had to get, one of which was the Hammersmith & City line, weekly I found there were delays on the train, so sometimes from Hammersmith station I would have to get a bus in because the line was suspended due to lack of trains or lack of drivers. It was just one of those issues with public transport.
- Q.** You said that it was only you working there and, say, you were delayed by a significant amount in the morning, did that have any effect on your practice and your business?
- A.** If I had a patient booked in first thing in the morning, it would have affected that, the patient does not really want to be waiting when they have an appointment.
- Q.** Did it come to a stage when you were driving in more than going by train?
- A.** Not while I was working at the practice by myself, because for me to drive in and then to pay congestion charge was not economical. As I said, my wife used to come in after the congestion charge finished at 6.30, she used to work near Harrow and she used to drive in and then we used to go home together. When she joined initially –
- Q.** Can I just stop you there – this is October 2007?
- A.** October 2007 – we again used to get the train most days. She was doing a part-time degree, so two evenings a week she had to go to her university for

lessons and, in those days, we would bring the car – not every time. Sometimes she would leave work a little early, go home and then go to her lessons but on those two days we might bring the car in.

- Q.** When you say, “we might bring the car in”, who would drive in it?
- A.** Generally me if it was my wife and myself in the car, I would drive.
- Q.** Where would you then park the car?
- A.** Anywhere where we could get parking. There are a lot of parking restrictions around that area where we have our shop.
- Q.** As anyone who has tried to park in Kensington and Chelsea will probably know, it can be very difficult. Can you just describe the kind of restrictions that are around where you were working?
- A.** The time limits on parking bays vary from one hour to four hours. You cannot top up a bay so, if you need to park for the whole day, you would need to move your car to another bay. So with the time period on the parking bays and the fact you can't top up, what used to happen is that if I got busy or my wife got busy, we would end up getting parking tickets. I must have had about 15 parking tickets within the first couple of months my wife joined.
- Q.** If you had to go out and move the car, what effect did that have on the business?
- A.** Again, because she was still quite new to the business, if there was any technical or professional questioning, any patient would have to wait until I was back in the shop. That affects the perception of our business as a professional outfit. People were generally quite understanding. I am the main person who runs a business and do not really want to go out during the day to move the car and then come back in, but that is what I had to do.
- Q.** Were there any other alternatives, for example parking permits or things like that for local businesses: did you look into anything like that?
- A.** We did. As I mentioned, my wife joined at the start of October 2007, and at the end of October 2007 because of our parking issues, we enquired with Kensington and Chelsea Council about the availability of parking permits for businesses. We were not really given much information about any other options, they just said there is no provision. Once she started working there, we started to drive more because it was quicker than getting the trains in and it was more reliable than getting the trains in. If we got the two trains, it would take us at least an hour, maybe an hour and a half if delayed; in a car it takes 30 minutes.
- Q.** That was the situation in October/November 2007?
- A.** Yes. Another thing that was going on with the available pay-and-display bays at that time was there were a lot of waterworks going on around the Lancaster Gate area, around that part of Notting Hill, so many of the parking bays for pay-and-display use were suspended, so it reduced the amount of pay-and-display bays available.

- Q.** Can I come on to this disabled parking badge please? How did that come into your possession?
- A.** When I purchased the practice, I found it in some dispensing material in the practice on the reception desk.
- Q.** When you found it, was it in the state that it was in when it was seized?
- A.** It was as it was, yes.
- Q.** Did you alter that at all?
- A.** Not at all.
- Q.** Did you use that badge at all between the time you took over the practice and the time when you were driving in more in October/November 2008 [sic]?
- A.** I had not needed to. I had seen this in the practice and it is quite an embarrassing thing to use or to do, and we used to train it in, you know, we could park, I parked and I paid – I paid the congestion charge, I paid and displayed.
- Q.** When was the first time you used that badge to assist in parking?
- A.** It must have been around November 2007 and it was after a period of quite a few parking tickets just within a few weeks.
- Q.** You have explained to us about having to move the car, not being able to top up the meter and matters like that. Can you explain why you used that badge for the first time in November 2008 – 7, sorry?
- A.** As I mentioned before, at that time a lot of the parking bays had been suspended from use and one of the days I could not find a parking bay near the shop, and I used it just as a temporary measure until a bay became available.
- Q.** When you say as a temporary measure, can you explain?
- A.** Because of the time allocation of parking bays, any car that is parked would have to be moved depending on one hour, two hours or four hours. If I popped my head out of the front door and just had a look around, took a walk around and spotted a bay I could move the car into, I moved the car. It was out of frustration that I used it. It was the wrong thing to do.
- Q.** Looking back on it now and thinking about the problem that you had, do you feel that it was an acceptable thing for you to do?
- A.** Not really, no, because everybody else is in the same situation round there. Some business owners around there are residents, so they have resident parking permits, and some of the business owners know the parking attendants quite well, so if they park outside their shop, they would be able to have a friendly word with the parking attendants and they wouldn't get a ticket, but the nature of my business is that I could be with a client for a couple of hours and I didn't have that luxury. I was wrong to use it, I am very sorry for using it, I had no right to use it.
- Q.** How do you feel now looking at what you did and your actions back then, how does that make you feel looking at it now?

- A.** I am honestly really, really sorry, I do apologise for using it, I shouldn't have used it, it was just an error of judgement and a mistake I made.
- Q.** You say you shouldn't have used it: why shouldn't you have used it when you look back at it now?
- A.** Because it wasn't my disabled parking permit, I am not disabled and it just wasn't mine, so I had no right to use it.
- Q.** Was your decision to use it financially motivated or not?
- A.** Not at all. Even on the day in question, 21 January, it was a very cold winter's day, it was raining and on that particular morning, I didn't have any change first thing in the morning to park the car, so parked the car in that bay and came back about an hour and a half afterwards to move the car to a pay-and-display bay. So it wasn't financial, it wasn't habit, I didn't really gain financial benefit from it. I just used it as a temporary measure to park until I could move the car.
- Q.** Just dealing with the 21st, the evidence we have heard is that some officers went to look at the car when you returned later on after it had been clamped. What were you returning to the car for?
- A.** To move the car, to move the car, because on that day where the car was parked was about 10 minutes from the practice and I walked in the cold, in the rain, to move it. There was no other reason why I would return to the car.
- Q.** Can you also then tell us, between the first use in, say, October or November 2007 and the incident at the end of January 2008, can you tell us around how many times you used the badge and in what circumstances?
- A.** It was a few times. The two reasons I used the badge was if there were no pay-and-display bays available because of the suspension of parking bays, or if I didn't have any change at that moment, it was a handful of times, about five or 10 times.
- Q.** On that day in January, there was a conversation between yourself and another gentleman which the panel have heard about. Do you accept that what you said to him was not true about whose the badge was?
- A.** I do. I really panicked when Mr Zablocki and his partner knocked on the window. I was sitting in the car waiting for it to be unclamped because the car had been clamped and I paid for the clamp to be removed. Mr Zablocki and his partner knocked on the window, introduced themselves to me, explained who they are and said they had some questions about the parking permit. I did really panic, I told them a story which didn't make sense; it was anything that came into my head. So I accept that is what I told him and it was just in a state of panic that I told him that.
- Q.** The same question again: how do you feel about having lied to Mr Zablocki and his colleague by the car?
- A.** It was the wrong thing to do and I am sorry. The first time I had to talk to Mr Zablocki again, which was a few days afterwards, I apologised to him straight away, and I admitted the fact that I had panicked and the story that I told him was not true.

- Q.** Did you voluntarily attend an interview after that?
A. I did.
- Q.** Briefly, what did you say and what happened in that interview?
A. It was at the Kensington Town Hall where Mr Zablocki is based on 3 or 4 February, I took a solicitor with me, Mr Daniels, from a local company. We sat down in an interview room with Mr Zablocki, his partner, the solicitor and myself. They introduced themselves and said the reasons why that interview was taking place.
- Q.** We can probably make this a little shorter. Did you made admissions about it?
A. Straight away, yes, so as soon as I sat down, I just told them, 'I need to tell you exactly what happened', and I just told them everything.
- Q.** Why did you make those admissions in the interview?
A. Because it was the right thing to do. I live by principles of – I am an orthodox Sikh, and the principles I try to live my life by are by meditating, by earning a truthful living, by being honest and by being charitable. I let myself down when I panicked when I spoke to Mr Zablocki initially and I had to tell him the truth.
- Q.** Just to make it clear, you made admissions about the lie that you told to Mr Zablocki but also about using the disabled badge and one really followed from the other?
A. Yes.
- Q.** Just a few days after this had all happened, how did you feel about what you had done?
A. Quite devastated really. I was still in shock, I didn't realise the full nature of it, I didn't understand the criminal element of it. I have let myself down, I let my family down, I have let my profession down. I wasn't in a good state.
- Q.** Now, I can probably take this relatively shortly. There was no immediate response after that interview was there?
A. That was early February '07 and in the middle of June – after that interview, I was told that I could be cautioned by the Council or they might prosecute, and that is how the interview finished. I didn't hear anything until June.
- Q.** That is when you received a summons to attend the Magistrates Court at the West London Court House?
A. That is right.
- Q.** Did you attend on that day?
A. I did, it was 1 July.
- Q.** Did you plead guilty on that day to both offences that you faced?
A. I did plead guilty, because that was the right thing to do. I had committed this offence, I had used this disabled parking permit when I wasn't entitled to use

it, and I didn't really want to waste any court time and argue about the fact that I had committed those offences, which was the truth and the right thing to do. That is what I did.

Q. And you received the sentences; there was a financial penalty for each offence, and a quantity of costs as well?

A. There was.

Q. Can I just deal with this because it may be suggested that, because you committed some acts of dishonesty which you accept and later on the Council say you misdeclared something and you did that dishonestly as well, I want to ask you about how you felt at the end of the criminal proceedings, and what your mindset was?

A. On leaving the actual court room and after I paid my fine, I felt relieved because I thought, okay, I have been through it, I went to court, I pleaded guilty, I have paid my fine and, you know, I thought that was the end of the story then.

Q. Did you learn any lessons about acts of dishonesty?

A. Absolutely. It is something that I never wanted to do again or to be in any similar situation. I have always been an honest person, I have lived my life honestly, I am a hard worker, I am a dedicated professional, I pay my taxes, I give honest opinions and I don't lie. I felt that I had really let myself down and more than myself my family. I had not been able to tell my parents about the court case. Nobody knew apart from my wife, myself and one of my patients who has been a mentor to me as well. He provided a character reference on that day. It is just something that I do not really want to do again or be in that situation.

Q. You went back to work, is that right?

A. Yes.

Q. At the same practice?

A. Yes.

Q. And how was your business developing, was it continuing to flourish?

A. Absolutely.

Q. Can you tell us about what kind of hours you were working in that time after the court case, we are talking about July 2008?

A. Our closing time is six o'clock but we never get out of the practice – at that time – before eight, sometimes we will be there until 10 or 11 at night just processing orders, putting new stock out, administration. The workload was a lot for two people.

Q. What about appointments for patients, was the practice busy in that way?

A. It was. For such a small practice, the truth is that we were a lot busier than we thought we would ever be. We probably did need another member of staff but with overheads, it was a new business, we were still paying back the

loans, we really couldn't afford – we decided not to – we tried to manage ourselves.

Q. It is right, is it not, that you had to join what I call the contractors list for Kensington and Chelsea Primary Care Trust?

A. That is correct.

Q. Had that been dealt with up to that point in July, had you done any application?

A. No, I had not.

Q. Why was that?

A. Because the main thing on my mind was the court case, which was on 1 July and after that we went away on holiday for a week. We came back and were very busy and it was in my list of paperwork to do. I had forgotten about it, it was on my list but I had not got to doing it. So the deadline approached and the PCT had not received my application.

Q. Did you receive any kind of reminder about that?

A. I did. I had a call from Miss Mona Hyatt from the Kensington and Chelsea PCT who needed my application in on the day, which was Friday, 18 July.

Q. Do you have the form there in front of you? Madam, for you and your colleagues, it starts at page 8 of C1, the Council's bundle. Starting at page 8, is that the form that was filled out?

A. Yes.

Q. When was that form filled out?

A. It was on this particular day, it was a Friday and I had a full clinic, so I was filling in between patients. My wife filled in as much as she could but the other bits I was doing.

Q. When you say between patients, how many patients did you have booked in for the day?

A. I had a full clinic and I had walk-ins as well. There are many days in the practice where we don't really get to take lunch because we don't have a lunch hour and we might eat at the end of the day at four or five o'clock, six o'clock sometimes. So it was one of those hectic days when we had patients and walk-ins so we did not really get time to do it.

Q. Can you confirm at what sort of time of day you received the telephone call?

A. I think it was late morning or early afternoon and Mona Hyatt had not received it, so she said we need it in today.

Q. So you had to fill in this form in between patients on a busy day?

A. Yes.

Q. You said that your wife filled in some of it?

A. If you notice, the writing changes between sections of the form.

- Q.** Can you just talk us through? From page 8, whose writing is that?
A. That is mine.
- Q.** That is your writing. The second page is blank.
A. That's mine.
- Q.** The third page?
A. That is my wife.
- Q.** Writing under 'name' and 'position'?
A. Yes.
- Q.** Did she write your registration number?
A. She did, that is her writing.
- Q.** Then that is her name underneath?
A. Yes.
- Q.** Over the page, under Performers, whose writing is it under Name and DOB?
A. That is my wife and she actually got my date of birth wrong there, it is 11 August '78 but I didn't realise that when looking at the form, because I was just scanning the form as much as I could, so she got my date of birth wrong on that form and I didn't realise that, I didn't change it. The qualifications and registration number I wrote.
- Q.** When you were looking through the form, did you have a lot of time to look through it?
A. No, I was just scanning it and picking up the important words and from there giving what information I could.
- Q.** Going on to page 11 and page 12, that is your writing I think?
A. Yes.
- Q.** Page 13?
A. My wife's.
- Q.** Page 14?
A. Both of us.
- Q.** Page 15?
A. That's me.
- Q.** And page 16?
A. That's me.
- Q.** Now we come to page 17. Under the declaration (a) you have circled 'yes'?
A. Yes, I have.
- Q.** Why did you circle 'yes'?

- A.** Because I was convicted on 1 July, I had a criminal conviction, and that was the truth so I circled 'yes', and that was the honest thing to do.
- Q.** When you were filling out this form, did you have the full details with you of the matters that took place at West London Magistrates Court?
- A.** No, I did not. I knew from memory that it was early July, at that time I could have deduced it was 1 July, and I remembered the rough amount of the fine, and I remember, of course, that I was prosecuted but I did not have any information there. When I circled 'yes' and the form asked about any details, I did not register. If I look at the form now, it says include approximate dates, when and where any investigation or proceedings were – I could have filled these things in but I did not read it carefully or in detail.
- Q.** Just so it is clear, why didn't you read it carefully?
- A.** Because I was rushing the form in between patients.
- Q.** You wrote "Road Traffic → Fine", why is it that you wrote that on there?
- A.** Because I was convicted of an issue and on that day my thought process was, because I had used a disabled parking permit, it was a road traffic issue, I had been fined so that is what I wrote.
- Q.** Were you trying to hide anything from the PCT?
- A.** Not at all, I could not hide anything. I knew that, if you do a criminal record check, there is no way that you can hide any information like this that is in the public domain. That is not what I was doing. I just did not read the form in detail.
- Q.** What was your feeling about whether there would be any more contact about information with the PCT, for example?
- A.** I thought that, if there were any questions, they would revert back to me. I faxed over the form on that day, it arrived at four o'clock I think because they needed it in. I am sure that during my conversation with Mona I said, 'if there is anything else you need to know, just let me know'. The fax went off on that Friday late afternoon, and that was the last I heard.
- Q.** Was there anything dishonest in what you did that day?
- A.** No. When the form asked me if I had a criminal conviction, I had to be honest, I knew I had to tell the truth, and the answer was, yes, I do have a criminal conviction. When I turned over the page, I just saw something about asking me details of it and those are the details I put down. I did not have any more information on me on that day to detail out the charges. If I had read it and paid attention to it, I could have thought about these things and wrote them down but I did not pay attention, because I was in a rush and had to get it into her.
- Q.** Looking back on it now, again with the benefit of hindsight, what is your view as to the amount of information you gave? Should you have given more or less?
- A.** I agree with the GOC's opinion that the form was inaccurate because I have not filled it in with the details that are required, so the form does need more

information. Again, I just didn't read it, I didn't see the part where they ask for the full details, that did not register with me. It is my mistake.

Q. Madam, may I say that I spoke to my learned friend about this and what has happened after all of this, I can say quite openly, will not be strictly relevant to your consideration of the facts, but it may be relevant later on if matters progress further. Certainly, we shall get to impairment in any event on the basis of the conviction. Therefore, to make things neater, it may be more helpful if I ask Mr Virdee now what has happened since then, which will take two or three minutes, rather than recalling him later to do that.

Ms Jones: Mr Hepworth, are you in agreement with this?

Mr Hepworth: Madam, I am sure you will be advised by all parties in relation to which parts of the evidence are relevant when. I certainly have no objection to this witness carrying on with the evidence to complete the story.

Ms Jones: *[to Legal Adviser]* Do you wish to add anything?

Mr Levisaur: No. Clearly, some care needs to be exercised but I am content that this makes sense to do it now.

Ms Jones: Please continue, Mr Singh.

Mr Singh: Thank you very much. *[to witness]* After this form was submitted on 18 July, was there any other correspondence from the PCT to you?

A. Yes, I cannot remember exactly when but I think sometime in August I had a letter from them informing me about the withdrawal of this PCT contract because of the information regarding the conviction.

Q. And you were informed that you would not be able to get a contract with the PCT?

A. That is right.

Q. Did you remain on their performers list?

A. I did, so I can perform eye examinations for any business that has an NHS contract but as a business owner, I could not claim any NHS fees.

Q. So can you outline what the effect has been of that happening on the work that you have been doing at the practice?

A. We still continued providing services to patients who are eligible for NHS help, so if someone is entitled to an NHS sight test, we do not charge them, we do not charge the NHS, we do not charge the PCT. If they are entitled to help, we give them the voucher value of the glasses. In many cases where I have known the client from before and if they are financially troubled, I have given them free glasses – I have done that many times. So we have been operating without an NHS contract but we are still providing the full NHS service to the patients who are entitled to it.

- Q.** That is all I intended to ask about what has happened since. Could I just finish with this please, Mr Virdee? Can you explain to the panel what you have learned from all of this?
- A.** In hindsight, it is a situation where I was under some stress and something fell into my lap which I used but I was not entitled to use it, I should not have used it and it was just the wrong thing to do. It is not in my nature to do anything like that and I am not going to do anything like this in the future, because that is not how I live my life, that is not the way I have lived my life, it just isn't me. It isn't me, it was a mistake that I committed.
- Q.** Mr Virdee, thank you very much. I have no further questions for the moment.

Ms Jones: Mr Hepworth?

Cross-examined by MR HEPWORTH

- Q.** May I ask a few preliminary questions first? You moved into Eye Level Practice in December 2006, is that right?
- A.** Yes.
- Q.** And you discovered this disabled parking badge when you moved in?
- A.** That is correct.
- Q.** You first used the badge in November 2007?
- A.** Roughly, yes.
- Q.** Where was the badge in the meantime?
- A.** We've got a reception desk and there is like a little shelf here, there is some dispensing material and it was just within that dispensing material.
- Q.** Why did you keep a disabled badge for 11 months?
- A.** I really don't know. When I took over the practice, the first day I had the keys I opened the door, moved in and the previous gentleman had left a lot of his things, so it took me a lot of time, whilst working, whilst doing everything I had to do with the day-to-day running of the business, to really clear any of his stuff, or clear out anything I did not need there. The only time that started happening was when my wife joined full-time in October.
- Q.** So are you saying then that for 10 of those 11 months you hadn't sorted out the paperwork that was there when you arrived?
- A.** You are quite correct because we had a lot of backlog of paperwork, administration. When I first came in, I used to open it and put it in like a "to do" folder, and my wife was trying to go through that as she could.
- Q.** So you say then that this paperwork was left unattended for 10 whole months?
- A.** We would do as much as we could and get through the relevant bits, the important bits.

- Q.** The second preliminary question is when you made the decision to use that badge in around November 2007, how did you know that it was still there?
- A.** Because every time I needed some dispensing material, it was there, I saw it.
- Q.** Why did you never return it to the Council?
- A.** Because I just didn't know, I didn't think about it really. It was there. There were a lot of possessions from the previous chap that I hadn't cleared out or looked at in detail or paid attention to.
- Q.** But I think you said that every time you went to that pile of paperwork that you described, you would have seen it?
- A.** I would have seen it, yes.
- Q.** Is it perhaps the case that you kept it thinking that it perhaps could come in useful one day?
- A.** I don't know. I used to train it in, I used to Tube it, my wife used to pick me up in the car after work, and it just wasn't one of the things I was thinking about. I didn't really pay too much attention to it at all.
- Q.** Sorry, still on the preliminary point if I may, you were asked what you thought about using the disabled badge when it didn't belong to you, and you said it wasn't really acceptable, you talked about everyone being in the same position. Are you talking about owners of local businesses who perhaps couldn't park?
- A.** Yes.
- Q.** But the real problem with using that badge was that you were depriving somebody who was genuinely disabled from parking weren't you?
- A.** That is correct.
- Q.** On the day when the offence took place, 18 January 2008, I think you described it as a cold winter's day?
- A.** It was raining, it was pouring.
- Q.** And it was raining. So on that day, you deprived potentially a disabled person from parking in cold, rainy conditions, do you accept that?
- A.** I do accept that.
- Q.** And the only reason why you parked on that day was because you didn't have any change on you?
- A.** That morning I didn't have any change but those waterworks that I mentioned were still ongoing, so that was something that went on for about six months around that area.
- Q.** You will accept, won't you, that when you used that badge knowing that it didn't belong to you, you were being dishonest?
- A.** I do.
- Q.** And that when you first spoke with Mr Zablocki when you gave that untrue explanation, you were again being dishonest?

- A.** I really panicked and I didn't know what to say to him and what I said to him wasn't the truth.
- Q.** And do you accept when you had that conversation with him that you were dishonest?
- A.** Yes, I was, because it obviously wasn't the truth, I did not speak the truth to him.
- Q.** If Mr Zablocki had believed what you said about your aunt, there was a good chance, wasn't there, that he would have let you off?
- A.** I'm not sure because I think the way the card is supposed to be used, if the person who is disabled is not there it is still an offence to use it.
- Q.** But you didn't know that at the time did you?
- A.** No, I know that now.
- Q.** At the time when you said those words to Mr Zablocki, you said them, didn't you, because you thought that might get you off?
- A.** I panicked and that's the only reason I said those things. He questioned me and those are the answers that just came to my head.
- Q.** Was that the first thing that you thought of?
- A.** It was in a state of confusion, in a state of panic and I have never done anything like this before, I was caught using this. Yes, I was shocked and I just really didn't know what to say to him.
- Q.** So was that story the first thing that came to your mind?
- A.** Yes.
- Q.** So when you were in a tight spot, the first thing that came to your mind was to lie?
- A.** I knew it was wrong to use the badge and when he questioned me, when he introduced himself, I knew I had done something wrong. I panicked and it was just my emotions that caused me to do that.
- Q.** If you knew that you had done something wrong, why did you not admit it?
- A.** I did admit –
- Q.** At the time, why did you not admit it?
- A.** Because I did panic.
- Q.** So then do you agree with me that when you found yourself in a tight spot, your first reaction was to lie?
- A.** I think it was just my initial reflex reaction to somehow defend myself which was wrong.
- Q.** What I am going to suggest, Mr Virdee, is that, on those two occasions when you used the badge and when you spoke to Mr Zablocki, you were dishonest when it was convenient for you to be dishonest – would you accept that?

- A.** It wasn't convenient for me to be dishonest. I did not want to – when the badge was there for so long, I didn't use it and it was only my frustrations that led me to use it. When I used it I felt embarrassed and when Mr Zablocki questioned me, I panicked because I don't do anything like this, I have never been dishonest. I've always been a hardworking, honest, law-abiding person. I work hard, I am charitable. I have never been caught doing anything, I didn't know how to respond.
- Q.** I shall come back to this issue in a second but may I just pick up on something you have just said? When you have given evidence a few minutes ago about the frequency with which you used that card –

Mr Levisaur: Five to 10 times.

Mr Hepworth: - you said you used it five to 10 times, and each time you were dishonest weren't you?

- A.** Yes, I wasn't entitled to use it.
- Q.** I suggested that you were dishonest in these instances when it was convenient for you to be dishonest and you have not accepted that. Is it not right that you used that card, because otherwise it would have been difficult for you to park?
- A.** I used that card on a few occasions where I had nowhere else to park or had no option of parking.
- Q.** You could have parked somewhere else if you had driven far enough, could you not?
- A.** On some days, I was driving round for 10 minutes and I could not find a bay.
- Q.** I don't mean to take this to a ridiculous extent but, if you had kept driving, you could have found a place to park eventually couldn't you?
- A.** I would have, you are absolutely right.
- Q.** So it was more convenient for you to use that badge than carry on driving to find somewhere to park?
- A.** Yes, not unless I wanted to walk for half an hour or something like that.
- Q.** So I suggest again, Mr Virdee, that you on two occasions were dishonest when it was convenient for you to be dishonest, do you now accept that?
- A.** I accept that my actions – with Mr Zablocki I just panicked and it was wrong for me to use the badge, so that was a dishonest thing to do.
- Q.** Because I suggest that you were then dishonest again when you completed the application form to the PCT, do you accept that?
- A.** I don't.
- Q.** That, again, it was convenient for you to be dishonest, so you were dishonest, do you accept that?
- A.** I don't.

- Q.** When you filled in that form, you knew, didn't you, that "road traffic" sounded less serious than using the word "fraud"?
- A.** It does sound less serious than the word "fraud".
- Q.** When you completed that form 17 days after you had been to court, you knew, didn't you, that you had been convicted of a fraud offence?
- A.** I did.
- Q.** So when you used the words "road traffic" instead of "fraud", that was a deliberate decision by you wasn't it?
- A.** It was a – it was the term I thought would describe the nature of the offence.
- Q.** But you knew, didn't you, that you had been convicted of a fraud offence?
- A.** I had been convicted of two offences and fraud was one of them.
- Q.** I am suggesting that you wrote "road traffic" instead of fraud quite deliberately. Do you accept that?
- A.** I put down "road traffic" because I was trying to describe what had happened and what the nature of the offence was, and to describe it that is just what came into my head.
- Q.** So then why did you not write "fraud"?
- A.** Because the offence, to me, I was just in a rush and when I thought about I needed to declare it, that is what came into my head and that is what I wrote down.
- Q.** Because the reality is, Mr Virdee, is it not, that you knew that you were less likely to be successful in your application if you had put down that you had been convicted of fraud?
- A.** Not really. Well, I knew that I could not lie or be dishonest on this application, because my conviction was in the public domain, I could not hide that and I had no intention of hiding it.
- Q.** And I suggest that is precisely what you did: you hid it, do you accept that?
- A.** No, I didn't.
- Q.** And you almost got away with it, didn't you?
- A.** I didn't – I couldn't have got away with it.
- Q.** Because it was only when Mr Zablocki saw a report of your conviction in the paper that he realised that you had not been accurate on the form?
- A.** I accept that it was not accurate.
- Q.** Because the truth of the matter is that you deliberately underplayed the seriousness of your conviction didn't you, because you hoped that would mean your application would be successful?
- A.** When I saw the form and it asked me about my criminal conviction, I knew I had to circle 'Yes' and, when it asked me to describe it, on that day that was the best I could do to describe it and it is not the full detail.

Q. Thank you. Madam, I have no further questions.

Ms Jones: Mr Singh?

Re-examined by MR SINGH

Q. I have just one matter in re-examination. It has been suggested that your initial - which you accepted quite rightly - dishonest conduct in relation to the badge and what you said to Mr Zablocki is being dishonest when it is convenient, and it is just an extension of that which happened on the form. Can I just ask you about this? You used the disabled badge when you were not entitled to do so, you accept that?

A. Yes.

Q. Did that work in the end?

A. Did that work?

Q. Were you successful in doing it or were you detected?

A. I was detected.

Q. When Mr Zablocki asked you some questions, you said something which was not true. Did that work or were you detected?

A. I was detected.

Q. And then you went to the Magistrates Court, pleaded guilty and were sentenced, that was the first time you had ever been in that kind of trouble?

A. Absolutely. It was a horrendous day, and the truth is that I had committed those offences and I was guilty, and I did not really want to waste any court time so I pleaded guilty because that was what I had done.

Q. The question I ask is this: did those three things, being dishonest, being detected, being dishonest a second time and being detected, going to court and pleading guilty, have any effect on you as to whether you were going to be dishonest in the future?

A. Absolutely totally, because when I was being questioned about this form, there is no way I would not have declared my conviction, I could not hide this conviction and had to honestly declare it, and that is what I attempted to do on the day.

Q. Mr Virdee, thank you, I have no further questions. Madam, do you or your colleagues have any?

Ms Jones: Mr Hepworth, do you have any questions?

Mr Hepworth: Madam, I am not sure that it is my turn but I have no questions in any event.

Dr Harris: Mr Virdee, I wonder if I could take you – if you have the bundle in front of you – to the bottom of page 3 and ask you to explain to me the last two

sentences, because I don't think that I properly understand what you are saying here.

"This offence could have been dealt with under the Road Traffic Act 1991 provisions alone and my solicitor advised me to plead not guilty to the fraud element."

It is that sentence that I do not quite understand and I wonder whether you could explain to me the circumstances that led up to the plea that you eventually decided to make. When this discussion took place with the solicitor, could you fill me in on a bit of background on that?

- A.** I think it was on 13 June that I received the court summons and in the court summons it had the two charges that I was going to be prosecuted under. I went back to the firm of solicitors that represented me in the initial meeting with Mr Zablocki and his partner at the Town Hall, and instructed them to come to court with me. I met the principal of the firm, we went through the case again and I told him that I was going to plead guilty to the charge. He said that on the day, one of his solicitors called Martin Fisher would be attending, so I met Martin Fisher in the morning and he looked at the case. The fraud charge was obviously the more serious element legally of the charge, he went through it and, in his opinion, he felt that the road traffic charge was the same thing as the fraud charge. He asked if I wanted to plead not guilty to it, and the fact was that I had used it, I was guilty of using it so I went against what he said. He advised me to plead not guilty but I wanted to plead guilty, because I felt that was the right thing to do.
- Q.** I am a bit confused I am afraid. There appear to be two offences. One was an offence under the Road Traffic Act and the other was an offence under the Fraud Act.
- A.** That is right.
- Q.** Which one did he advise you to plead not guilty to?
- A.** To the fraud one.
- Q.** So he advised you to plead not guilty?
- A.** Yes.
- Q.** So you were aware that you were pleading guilty to two, one offence under the Road Traffic Act and one under the Fraud Act?
- A.** Yes.
- Q.** And that was on 1 July?
- A.** Yes.
- Q.** I see. Did he make it clear to you, did you understand what the distinction was between the two, that one was a fraud offence and one was the consequence of having used the thing – he made that clear to you in his advice?
- A.** He did, yes.

- Q.** Notwithstanding his advice, you pleaded guilty?
- A.** I did plead guilty because I did not want to spend more time in court than I had to. This went to a second day, I did not really want to go back to court, I just wanted to get it over and done with. It wasn't a happy place for me to be in, so I just wanted to get out of there as quickly as I could.
- Q.** Did he explain to you why, in light of what you had told him about the circumstances leading up to this, he was advising you to plead not guilty to the more serious charge?
- A.** He did talk to me but I just went against his advice. I had decided that I would plead guilty.
- Q.** But you did understand the distinction he made?
- A.** I did understand the distinction.
- Q.** I see. Thank you, that is helpful. May I ask you to turn to page 17 or 18 – it is page 14, I am sorry, I beg your pardon. You filled the form in, you tell us, on a Friday afternoon in a great hurry?
- A.** Yes.
- Q.** You faxed the form, so you had retained a copy of the form. Did you go back and look at the form subsequently at any stage?
- A.** Only when I got the letter back from the PCT.
- Q.** You did not look at the form afterwards to check that – you did it in a hurry but you did not look it through to check it. At any point in time, did you check what was written on the form?
- A.** I didn't.
- Q.** So how did you know that the form contained accurate disclosures?
- A.** I filled the form in as accurately as I could, and I thought I filled it in accurately.
- Q.** As a professional, do you normally check your work?
- A.** As a professional, when I do my work I check it as I am doing it.
- Q.** But you didn't on this occasion check the form at all. Did you check the bits your wife had written?
- A.** I obviously didn't because my date of birth was wrong, and I only realised this last week when I was preparing for this. I looked through the form, my date of birth was wrong on page –
- Q.** It says the 11th rather than the correct date which is obviously a different date. You signed a solemn undertaking. Did you read the undertaking that you signed?
- A.** Again, I looked at where it said sign and I signed it. Because on the day I felt I had filled the form in accurately, that is why I signed it, that's why I declared that I had signed it as accurately as I could.
- Q.** Looking at it now, do you accept that you did not fill it in accurately?
- A.** I do accept that it is inaccurate.

- Q.** Why is that now that you accept that?
- A.** Because I didn't look at the – I didn't under – I didn't read the questions fully. I scanned it and I picked up some important words.
- Q.** What did you misread about the questions?
- A.** The main issue was by declaring the conviction in full. If I had thought about it, the approximate date I could have given straight away. The amount of the fine –
- Q.** The date was a few days really before you filled this form in?
- A.** It was about two weeks.
- Q.** Just under two weeks, so that wasn't –
- A.** I could have written that easily if I had read that.
- Q.** Right, so what did you read about what you had to fill in – it just says 'yes' – you must have read something that told you that you had to fill something in, where was that?
- A.** I think the thing that I read was in the declaration please provide details, that must have been the only thing which stuck in my mind.
- Q.** Right and you thought that "Road Traffic → Fine" was details, did you?
- A.** I did on that day.
- Q.** And you said to us in your evidence earlier that you did not have to hand the details, so you did not have any further details. Did you remember that it had been just a few weeks earlier?
- A.** I did.
- Q.** Did you remember the distinction you have just talked to me at some length about?
- A.** At that time, I did not think of the distinction, I didn't think of anything. All I thought about was I went to court, I was convicted, I was guilty and I was fined.
- Q.** You had a long conversation with Martin Fisher on that morning about the distinction between fraud and the Road Traffic Act, hadn't you?
- A.** We had a conversation.
- Q.** And you had listened to his advice but had disregarded it, had taken a conscious decision to disregard some advice from your legal adviser?
- A.** I think, to be honest, I probably didn't listen to him, because I had already made my decision, so he was maybe trying to convince me and I didn't want to listen to what he had to say in terms of listening to his advice to plead not guilty.
- Q.** So are you suggesting just now to me that – and it is important for me to understand – you don't say that in your letter, you just say that you wanted to get it over with. You paid no attention to the advice he gave you?

- A.** I wouldn't say I paid no attention to it but I don't think there was anything he could have said to me that would change my mind.
- Q.** He didn't tell you there was a difference then?
- A.** He did tell me there was a difference but there was nothing he could have said to me to change my mind to plead not guilty.
- Q.** Right, but you did remember at the time that there had been that conversation?
- A.** I didn't think about the conversation.
- Q.** You didn't think about it, notwithstanding you were asked for details of the offence?
- A.** No.
- Q.** I see. You didn't think afterwards whether perhaps, in the haste with which you had completed the form, there might be additional information that you might need to disclose in line with your undertaking on page 14 – you signed an undertaking.
- A.** I did.
- Q.** Did you not think that there might have been material changes?
- A.** What I did think is that, if they needed any further information, they will ask me for it.
- Q.** Did you see that you undertook to notify them, rather than wait for them to -?
- A.** No.
- Q.** So you didn't read this declaration in detail?
- A.** No, I didn't.
- Q.** Thank you. Thank you very much.

Mr Lomas: I have no questions.

Ms Jones: Any questions, Geraldine?

Mrs Huka: I have some questions. Mr Virdee, if the solicitor had not advised you to plead not guilty to a second charge of fraud, would you have pleaded guilty?

A. I did plead guilty – I am sorry, I don't understand.

Q. You pleaded guilty to the road traffic –

A. And the fraud.

Q. - and the fraud case. Knowing that you pleaded guilty to two charges, why on the declaration to the PCT, on the form to the PCT, did you only mention one charge?

A. I think in my consciousness I must have thought it was one item. I went to court because I used this permit which I was not entitled to use, and in the

rush of the day, that is really what stuck in my mind that is what I had done, that is what I declared on the form and it wasn't in sufficient detail.

Q. Could you take me back to 18 January? When you got to your shop, office, first thing, what did you find when you needed to park, what did you do?

A. On that morning, I did not have any change to park and the Saturday before, I had paid-and-displayed and I had pay-and-display tickets. The sports centre has pay-and-display parking and disabled bay parking. The Saturday before, the sports centre is a little bit further out so I realised we could pay-and-display and park in that car-park. On Monday morning, I parked the car in the disabled bay and I went into the practice. I came back to move the car to a pay-and-display and when I came back to move the car, it had been clamped. I phoned the parking control to pay the fine for clamping.

Q. Could you please pause, Mr Virdee? Did you ask them why they had clamped your car when you were displaying a disabled badge?

A. When I phoned them?

Q. Yes. Did you not wonder why they had clamped you if you were displaying a disabled badge?

A. I did ask them why I had been clamped but they said they didn't know.

Q. Okay. May I ask you, Mr Virdee, why that badge was in your car?

A. That badge was used just when I needed to – when I didn't have anywhere to park.

Q. So it was kept in your car and whenever you had any inconvenience with parking, you used it?

A. It wasn't kept in my car, it was kept in the practice.

Q. Just pause please, Mr Virdee, I don't want to interrupt you but that was why I asked you what you did when you came in on the 18th. You said you went to the sports centre and displayed the badge.

A. I think some time in December when I had used it a few times – November/December – it was in the car.

Q. So it was in the car?

A. It was in the car.

Q. Thank you. May I ask you whether or not you know whether the PCT had difficulty in finding optometrists to provide services, do you know whether or not there was a shortage of optometrists?

A. I don't think so.

Q. There wasn't. Why then do you think that somebody from the PCT took the trouble to call you to ask you to fill in your form?

A. Because I think she was doing her job well. They had a list of all the optical practices in the area and the PCT contract was changing so they probably wanted to make sure they had all the correct paperwork in from all the practices.

- Q.** When you used the badge, you used it in a car-park did you not?
A. Yes, I did.
- Q.** Surely, especially as you are a lay person to the law, you would not have described that as a road traffic situation would you?
A. After I was caught and I went to the Town Hall, where I sought advice from a company called Peter Kandler & Co and one of the solicitors there, once I explained the situation to him, that is when he told me it could be an issue that this could be a road traffic offence.
- Q.** Are you saying the solicitor did not appreciate the difference between fraud and a road traffic offence?
A. At that time, that is what I was told. At that time, the fraud element did not come into it.
- Q.** Sorry?
A. The fraud element was not mentioned. The first time the fraud element was mentioned was when I had the summons to go to court in mid-June.
- Q.** Yes, but at the time that the PCT asked you to fill in the form, you already knew about the fraud?
A. I did.
- Q.** Yes, and I am asking you why if you were not on the road when you actually used the –
- Mr Levisaur:** Madam, I need to interrupt. As a matter of law, there is no doubt these are road traffic offences, absolutely no doubt at all, and no lawyer would describe them in any other way.
- Mrs Huka:** Let me put the question in a different way. When you used the badge in the car-park, at that stage you were not on the road were you? You were not driving, you were stationary?
A. I was stationary.
- Q.** Okay, so why did you not make the distinction between the two offences, one being when you were driving along the road?
A. Because in my conscious again the parking issue is linked with the road traffic, that is really how I thought about it.
- Q.** Thank you.
- Ms Jones:** I have a few questions. Can you tell me roughly what a disabled badge says on it?
A. Honestly, I didn't pay too much attention to it. It's a blue badge, I think it says 'disabled parking permit' on it, it has a serial number and a date, and it does say misuse can lead to a criminal record, I don't know, something along those lines.

- Q.** So before you used this, you were aware that it is a criminal offence to do so?
A. I did see that on the form, on the badge.
- Q.** So you chose then to use it though you were aware that it was breaking the law?
A. I chose to use it when I was very annoyed about the parking situation that I felt I was under. I had a lot of tickets very quickly, I couldn't get parking bays, I was driving around trying to get a parking bay and I got frustrated. I felt that I had something that was there that I could use as a temporary aid.
- Q.** Moving on to the PCT form, can you tell me when you received that application to register – roughly, two months before, one month before?
A. I honestly don't know. The post comes in and generally my wife will open up the post and she will put a pile for me to go through and I really don't know when I saw it. I just put it to one side as something that I had to do but I didn't get round to doing it.
- Q.** Okay. Would you say it was before the court case or after?
A. Again, honestly I don't know because the court case was the main thing on my mind and I really can't remember when it came in.
- Q.** Okay. I am a lay member so can you help me understand: the deadline date has come up a lot as 18 July. What would have happened if it had gone in on the 22nd which was the Monday?
A. What would have happened, from what I understand, is that if you provide NHS services, you need to claim for them, you need to put a claim into the PCT for the work you have done. If I did not have a contract for those days, I would not have been paid for the work that I did.
- Q.** So if it had gone in on the 22nd, you would not have had a contract from 1 August?
A. Yes.
- Q.** So it would have been delayed by that amount of time, or does it mean you are delayed for a year?
A. I am not sure what the cut-off point is. I don't know if anybody else here knows.
- Q.** Okay. When you sent in the form, did you send in other enclosures with it, or fax other enclosures?
A. They requested some information about liability insurance. They requested information about my professional qualifications.
- Q.** Did they request an up-to-date CV as well?
A. No, my AOP membership had evidence of that.
- Q.** So you did not send in a CV?
A. No.

- Q.** This is a new process to me. It seems there are a lot of other papers, so that would have taken some time to compile.
- A.** Those things were in the practice – my AOP membership is at the practice, my business insurance details are in the practice, they were there. So while I was testing, I think my wife probably got those two things together.
- Q.** Okay, thank you very much. Any further questions from the panel? [*none*]
Mr Levisieur, do you have any questions?

Mr Levisieur: No.

Ms Jones: I am conscious that it is one o'clock, Mr Hepworth. May I suggest that we take a break and come back for the next stage, or do you believe we could go through that in the next 15 minutes?

Mr Levisieur: May I just enquire whether there are other matters arising out of panel questions from either of you? [*no questions*] Very well, this witness's evidence is concluded, which at least means that he is able to speak to you over any adjournment, which is one thing that we can do usefully.

Ms Jones: Right, may I just check with both parties in terms of closing submissions.

Mr Singh: Madam, there are three very short witnesses relating to general character, which it has been agreed are relevant at this stage in terms of Mr Virdee's professional conduct and honesty. It will probably need about five minutes for each witness, so it will not take very long at all, possibly even less than that. Madam, I am in the panel's hands as to when they give evidence. There is one witness who has flown in from abroad and there is a family bereavement as well which he needs to be at. I would ask, therefore, if it is not too inconvenient – it is five to one now - if I could call him before lunch and we could break off at about one o'clock. I could then call the other two after lunch.

Ms Jones: That would be great, thank you, Mr Singh, please do call him. [*to Mr Virdee*] Please stand down.

[*The witness stood down*]

Mr Levisieur: As a convenience to me, could you remind me of the name of the witness?

Mr Singh: His name is Saeed Firoozkoohi, and it is page 3 of the bundle with character references.

Mr Levisieur: Might I suggest that, if the panel is to be best assisted, it would probably be better if his evidence is taken clean. It might then be sensible to have the bundle when he is through giving his evidence, bearing in mind that Mr Hepworth, of course, can cross-examine on it.

Mr Singh: Yes, of course.

Ms Jones: Please proceed.

**MR SAEED FIROOZKOOHI called & affirmed
Examined in chief by MR SINGH**

Mr Levisaur: You can lead as to name and address.

Mr Singh: Is your name Saeed Firoozkoohi?

A. Correct.

Q. Have I pronounced that correctly?

A. Absolutely right.

Q. Is it right that you are the Managing Director of the company called Misiyu Ltd?

A. That is correct.

Q. Is that a company that is in the optometric profession?

A. Yes, it is wholesaling eyewear products.

Mr Levisaur: Could you tell me your professional address please?

A. No. 2, Redbourne Avenue, London N3 2BS

Mr Singh: Just to get a very brief idea of your background, have you worked as a dispensing optician since 1992?

A. Yes.

Q. And you have had a number of relatively senior roles in companies, can you just describe those for us?

A. Working as a dispensing optician in the early 1990s, then moving on to becoming UK Sales Manager for Alain Mikli. Going to Russia on a two-year project working for Grand Vision, followed by establishing my own business Misiyu, and at the same time working with Face a Face Eyewear for Middle East and Asia international sales.

Q. You have known Mr Virdee for some time. Could you explain how you met him please?

A. I used to work at Eye Level before Bob took over – I call Mr Virdee “Bob” by the way – so I am very familiar with this store, with the area. When Bob took over the shop, he became a very good customer of mine.

Q. Do you know him on a personal and a professional level?

A. Yes. I think that over the last three years, the relationship has developed both professionally and as a friend. I find him a very decent, very easygoing chap. We have never had any issues professionally. He has always paid me on time and it is nice to get your money on time from people. On the professional side of things, myself and my family all go to him for our eye tests, we refuse to go anywhere else because he is just superb.

- Q.** Just focusing on his professional conduct, integrity and honesty, can you speak to that at all?
- A.** On his professional conduct, I have seen him practise and I have seen him deal with people, various patients coming through the door whilst I have been there, and I have also experienced having eye tests done by Bob. So professionally I think there is absolutely no question. As a person, of his integrity I have never had any doubts. He is a decent man, a good friend, I am sure he is going to be a very wonderful father. It is for the panel to decide but I think it is really an error of judgment what he has done.
- Q.** Can I just stop you there, sorry, there is one other question that I would like to ask. On a professional basis, do you trust him or not?
- A.** Fully, hundred percent.
- Q.** And what about on a personal basis?
- A.** Hundred percent, yes.
- Q.** And why is that?
- A.** I deal with an awful lot of people and I would like to think I can, after many years, judge a character. In the last three years, there has been no indication that he is nothing but a decent human being.
- Q.** Thank you very much. Those are all the questions that I have, there will be some more questions I expect.

Cross-examined by MR HEPWORTH

- Q.** I have two questions if I may. Are you currently on the dispensing opticians register?
- A.** No, I am not.
- Q.** Have you previously been on the register?
- A.** No, I worked as a dispensing optician, never registered.
- Q.** Mr Virdee is a good friend of yours?
- A.** Yes.
- Q.** And you would not want him to get into trouble with his professional body would you?
- A.** Absolutely not, yes.
- Q.** Thank you, I have no more questions.

Re-examined by MR SINGH

- Q.** May I just ask one in re-examination? Has your evidence been coloured in any way by that, or is it an honest account of him?
- A.** No, it is absolutely an honest account. I have had to tell the truth in the letter that I sent and while I am here, it is really just the plain, simple truth.

Q. Thank you very much. Madam, do you and your colleagues have any questions?

Dr Harris: Mr Koohi, I am not clear whether you know what the basis of the allegations is this morning?

A. I am aware of it, yes, yes.

Q. I am just a little bit curious as to how you have been able to make these statements about Bob in the knowledge that he was convicted of fraud?

A. If I may say so, I think it is really a simple error of judgment. We all make mistakes, we all make mistakes, and it may well have been that he was under pressure that day, he had a full clinic, he had to rush off. I would put it down to maybe youth and inexperience. He will grow better and bigger out of it.

Q. How old is he?

A. Thirty-four.

Q. I see. Can I just be clear?

A. Sure.

Q. You do understand what he was convicted of?

A. Yes.

Q. What is your understanding?

A. I believe it is the use of the disability badge on the car.

Q. You regard that as not a serious matter?

A. Well, it is a serious matter, one hundred percent but knowing Bob and knowing his character, and knowing what he stands for, the way he conducts himself, and the way he lives his life, for me it is really an error of judgment and he has repented. I know, I was talking to him.

Q. So if he had done it on more than one occasion, would you say that was just an error of judgment?

A. On more than one occasion, I would say no.

Q. So that if he had admitted that he had done it five to 10 times, would you say that was honest?

A. No.

Q. Thank you.

Ms Jones: Thank you very much. Mr Henley, as it is after one, may I suggest that we clear the room now and reconvene at two o'clock.

Mr Henley: Is the witness still under oath?

Mr Levisaur: You are not under oath, you are released, thank you very much for coming.

[Hearing adjourned at 13.06]

[Hearing resumed at 14.02]

Ms Jones: Mr Singh, would you like to call your next witness?

Mr Singh: Yes, could I call Mr Sidhu please.

**MR PARAMDEEP SINGH SIDHU called & affirmed
Examined in chief by MR SINGH**

Q. Mr Sidhu, I am some distance away from you but I shall be asking you questions first. Can we have your full name please?

A. Paramdeep Singh Sidhu.

Q. Do you have a professional address?

A. A professional address?

Q. Yes.

A. My office address?

Q. Yes, please.

A. Kildare House, 3 Dorset Rise, London EC4Y 8EN.

Q. Could you tell us please what your profession is now?

A. I am a solicitor.

Q. And how long have you been in practice?

A. About nine years.

Q. Have you known Mr Virdee for some time?

A. Yes, quite a long time, probably over 15 years.

Q. Is that in a personal or professional capacity?

A. Personal to begin with but I have always relied on Bob to give me professional advice as well.

Q. Can you just give us some information about the nature of your personal relationship?

A. Sure. Basically, our families are friends. Bob's mum went to university with my aunt, and Bob's dad has worked with my dad for quite a while before Bob's dad retired, so our families have always been quite close, which means that Bob and his brother have become quite close to me and my family as well. Bob's brother is godfather to my eldest daughter.

Q. Over the time you have known him in those 15 years, have you been able to get a sense of Mr Virdee's character? I am particularly interested in his honesty or otherwise, his trustworthiness or otherwise and his integrity?

A. Yes, definitely. Obviously, when we were younger, everything was very much personal, so we were friends and socialised, our families have socialised. When you are younger, obviously your personalities are different but, over

time, I have had a chance to rely on Bob for advice – personal advice. I have always found his advice to be solid, not always the advice that I wanted to hear, which is why I realised that the advice he had given was honest, and professional now as well. I have been to see Bob at his shop, he has given me some advice, glasses etc. I have found his advice thorough, very solid and very trustworthy and honest, because there was a time when I went to see him, I told him how much I could get my contact lenses for at another shop and very honestly he turned round to me and said, “Ricki” – that is my nickname – “I think you should go and get your contact lenses from the shop that has given you that price, I can’t do it for that price and there is no-one I know here that can, so I’ll give you a hand with your frames but, honestly, I think you should go and get your lenses from someone else”.

Q. Have you been made aware of the nature of the allegations that he is here for today?

A. I understand the allegation.

Q. And that also relates to criminal proceedings that took place some 18 months ago?

A. I understand.

Q. Those actions that you know about, are they in keeping with his character in terms of honesty and integrity or not?

A. The character that I know, the personality that I know, no, I don’t think it is in keeping.

Q. Aside from those matters, have you ever heard of any other areas where Mr Virdee has been dishonest or untrustworthy?

A. Me, personally, I have not heard of anything of the kind. These allegations are the first I have heard in that arena, that type, it sounds to me, personally, isolated.

Q. Just to pre-empt a question that you might be asked, are you aware that the allegation in relation to the use of a disabled parking badge was that the badge was used on more than one occasion?

A. I am aware of that.

Q. Does that change your view of whether it is keeping in with his character this kind of action, or whether it is out of character?

A. It does not change my perception of that whatsoever.

Q. Thank you very much. I have no further questions.

Mr Hepworth: Madam, I have no questions in cross-examination.

Dr Harris: I just want to clarify something. The convictions were for fraud, the single conviction, let me get it right, was for fraudulent use of a disabled sticker, disabled badge. You say that is not in keeping with what you know of Bob, if I may call him that: why do you say that?

- A.** Because my perception of Bob, of his personality, is that I find him honest, I find him trustworthy and I have always been quite close to Bob, close to his family, and I would not be close to someone whom someone may argue is dishonest or untrustworthy. The reason I feel that the conviction is not in keeping with his personality is because through that conviction, a court has decided that he was fraudulent, but I don't think his personality is one that is capable of fraud.
- Q.** Do you think that using someone else's badge is fraudulent?
A. Do I think someone's or Bob's use of it, because they are two different things?
- Q.** Do you think his use of somebody else's badge was fraudulent?
A. No, I think he made a mistake, it was a mistake of judgment, I mean that is what I personally think.
- Q.** You think it was an isolated mistake?
A. I think it was a bad mistake.
- Q.** If he had done it on several occasions, would it have been isolated?
A. By several – five or six?
- Q.** Five or 10.
A. Five or 10? I think if we are talking about him using it every day over the course of six months, it is quite obvious what he is trying to do. Five or 10, I still stick with my assertion that it is a mistake and not as fraudulent perhaps as using it every day for six months.
- Q.** Can you help me to understand the distinction you make between using it every day and using it on more than one occasion, say, five or six or 10? What is it that distinguishes using it a few times from using it every day: what is the difference in terms of honesty?
A. If someone drops their travel card at the Tube station, you pick it up and you use it for the rest of the day, I think that is a mistake, you look back at it and think, 'I probably should not have done that'. If you pick up someone's annual pass and use that every day for a year, I think it is quite obvious what you are trying to do, how you are trying to defraud the system. I think it is relative, it is a question of numbers.
- Q.** So you can do it once or twice and it is okay is it?
A. That is my understanding of it; that is my personal thought.
- Q.** So you don't think it is dishonest, personally, to use something once or twice that is not yours, not intended for you?
A. I think, if you look at it in isolation, take a step back, and I did not know anything about Bob, his personality or characteristics, which is why I have been asked to come today, I think it would be possible for one to argue that act, in its isolation, not looking at anything else whatsoever, is dishonest. However, I am at, some people may argue, a disadvantage in already knowing about Bob's personality and how I don't think he is dishonest any way, so it is almost as if my assertion is going to be tainted to an extent,

because that is how I believe Bob is as a friend. It is quite hard for me to take a step back. Having known him for so long and knowing that he is not a dishonest person, he is not untrustworthy, it is almost as if my evidence is going to be slightly tainted and I don't think it was a dishonest act, no.

Q. You are a solicitor and you are very well-placed to know what are dishonest acts and what the public might regard as a dishonest act, and it is helpful to have your confirmation that a member of the public who did not know Bob would regard it as a dishonest act.

A. One could argue.

Q. Are there any circumstances in which you would say that using something even once or half a dozen times was not dishonest?

A. Was not dishonest? This is my argument –

Q. This is your argument, you are saying that –

A. My argument is that it was not thoroughly dishonest, cold-heartedly dishonest because it was a mistake; that is my understanding.

Q. A mistake on several occasions?

A. Yes.

Q. And that is not dishonest?

A. That is my understanding and that is how I feel.

Ms Jones: Mr Singh?

Mr Singh: I am sorry to interrupt but the reason why I want to say something is that this evidence is not really adduced to justify or otherwise the conduct in relation to the disability badge and that is certainly not what he is being called for. It is just to give an idea of Mr Virdee's general conduct in terms of honesty as it might be relevant to a decision on dishonesty on the failure to declare. It is not to legitimise any other conduct.

Mr Levisaur: That is a fair point and I shall, in due course, have to give advice to the Committee but I see general nodding.

Dr Harris: Fair enough. I have clarified Mr Sidhu's position that he is able to make this judgment about the incident in light of his view that he is giving us that Bob is in fact an honest person. That is helpful thank you.

A. A pleasure.

Ms Jones: Are there any further questions? [*no questions*] Thank you very much, Mr Sidhu. [*witness leaves witness stand*]

Mr Singh: Can I just say that dishonesty in relation to the use of the disabled badge is admitted by Mr Virdee in evidence. There is no issue at all about whether it is dishonest or whether a member of the public would view it as dishonest. That is completely accepted. The evidence of these people simply, as I said, goes to the second issue and not the first. Very briefly, may I call Parin Patel?

**MR PARIN PATEL called & affirmed
Examined in chief by MR SINGH**

- Q.** Mr Patel, I shall be asking you some questions. Can we have your full name please?
A. Mr Parin Patel.
- Q.** And do you have a professional address that you could confirm for us?
A. Yes, it is 51A Alcester Road South, King's Heath, Birmingham B14 7JQ.
- Q.** Thank you very much. What is your profession, Mr Patel?
A. I am a dispensing optician.
- Q.** How long have you been doing that?
A. Since 2002.
- Q.** How long have you known Mr Virdee for?
A. Just coming up to six or seven years.
- Q.** And in what capacity did you first meet him?
A. As a work colleague.
- Q.** Was that at a practice based in Peterborough?
A. That is correct.
- Q.** What was your position there?
A. At the time, I was a locum dispensing optician.
- Q.** And what was his position?
A. It was as locum optometrist at the time.
- Q.** How long did you work together at that practice?
A. For about two to three years until August 2005.
- Q.** Have you kept in touch with him since then?
A. Yes.
- Q.** Do you know him only on a professional level?
A. First I met him on a professional level and, over the years, we have grown to become friends after we both left.
- Q.** Could you please just help the panel about your experience of him, and whether he is, in your experience, an honest and trustworthy person or not?
A. I totally agree that he is an honest and trustworthy person. When I first started working with him, at the time I was in charge of submitting all the invoices for the locum payments, I used to do Mr Virdee's on a monthly basis. One hundred percent all the time, the claims were accurate. The days when he was slightly late or we finished early, the claims were approved and the

work he claimed for, so there was no misjudgement there. From this, we built up a sort of working relationship over the years and from this I knew he was of an honest and trustworthy character.

- Q.** What about in terms of his personal dealings, do you have anything to say about that?
- A.** In his personal dealings, he is reliable. I have asked for some help on certain books and certain information, and he has got me that information, he has gone out of his way to help me in dealings like that.
- Q.** Mr Patel, thank you very much. I have no further questions for you at the moment. If you wait there, there may be some more.

Cross-examined by MR HEPWORTH

- Q.** You know, don't you, what Mr Virdee's conviction is in relation to?
- A.** Yes, I do.
- Q.** That his conviction relates to a dishonest act?
- A.** In certain aspects, yes.
- Q.** What other aspects are there?
- A.** I mean, from when he told me what happened, I mean I would say that he was inaccurate on the form when he applied for the GOC but I guess dishonest would come into that.
- Q.** I want to be clear, I don't want you to be misled, do you know that Mr Virdee was convicted of an offence of having a disabled parking badge for use in a fraud?
- A.** Yes.
- Q.** And he was convicted for putting it in the window when he had no right to have that, that is dishonest isn't it?
- A.** Yes.
- Q.** Thank you, no more questions.

Ms Jones: [*confers with panel*] We have no further questions, thank you very much.

[*Witness stands down*]

Mr Hepworth, would you like to commence the closing submissions?

Mr Hepworth: Madam, I only want to make two points and I shall restrict my submissions at the moment to the facts, assuming, Madam, that you will make a decision on facts and then announce that decision when you receive further submissions on misconduct. Madam, if you intend to do it in a different way, then, of course, I can address you differently?

Ms Jones: That is very helpful, thank you.

Mr Hepworth: Madam, you will have heard my opening, I shall not repeat anything in that opening. I would like to make two additional points if I may. When the registrant was being asked questions by Mrs Huka and she was asking him questions about why he had only written on the form “Road Traffic → Fine”, and why he had not included the fraud conviction, my note of what he said was, “I only declared one, I must have thought there was only one item”.

In the Council’s submission, that is simply not credible, and I would ask you to put yourself in Mr Virdee’s position at the time he wrote those comments on that application form. Seventeen days previously, he had been to court and you will remember his evidence about what an effect that had on him. He pleaded guilty to an offence of fraud under the Fraud Act and think of the effect that word would have had on him. It is a powerful word “fraud”. You will remember the questions of Dr Harris. The registrant accepted that he knew, after his discussions with his solicitor, that there was a distinction between fraud and the road traffic matter, and you will remember the questions that I put under cross-examination, and he accepted at the time that he filled in the form that he was aware that he had been convicted of the fraud offence.

So putting yourself in Mr Virdee’s position, at that time, knowing what you know he knew, why would you have thought that, for the period during which you completed the form, there had only been one conviction, only one offence? Madam, why would you have forgotten about that fraud? In the Council’s submission, that just would not have happened, and it didn’t happen with Mr Virdee. When he filled in that information, he was well aware that he had been convicted of fraud.

The second point I would like to make is in relation to the character evidence which you have heard. Of course, you can take that into account when you come to consider whether or not on that occasion when he was filling in the form, the registrant was dishonest. When the witnesses used the words “honest” and other words to describe the registrant, of course you may find it useful to understand what that person understands to be honest and dishonest conduct. You may find, in that regard, that Dr Harris’s questions, in particular, will help you to ascertain the witnesses’ standards of honesty by which they judge the registrant to be honest generally.

Other than that, Madam, there is nothing else that I wish to add unless I can be of specific help to the panel?

Ms Jones: Thank you. Mr Singh?

Mr Singh: Madam, may I take my submissions relatively briefly. It is a matter for you and your colleagues on the facts obviously, the issue being whether the Council have proved on the balance of probabilities that Mr Virdee was dishonest in the way that they have described. His position is that, while he accepts with the benefit of hindsight, today and before, the declaration was

inaccurate because it does not contain the full details that it should have done, it was not dishonest. In fact, it was an honest mistake in the circumstances of that day. It may be stating the obvious but it is very easy for us sitting here with time for reflection, and time to analyse the form, to come to views about its accuracy or otherwise, what was required on it and otherwise. What is important in my submission is what he thought at the time and what he believed at the time, and that is where your focus should be.

In deciding the point, I would ask you and your colleagues to have regard to two banner headlines really. The first is the circumstances on the day and, secondly, his evidence about his state of mind, and the character evidence which I shall come on to in a moment. Those are the two main factual headings.

As to the circumstances, may I say this? The form, the evidence shows, was filled out at a time of considerable stress both at work and due to the proceedings which had concluded earlier in that month. The form was filled out, second point, as a matter of urgency, given the deadline and in circumstances when the practice was very busy.

The third point I make in respect of this is that the form itself, I my submission, confirms that account: filled in by both himself and his wife in various parts. He did not notice errors in it and the whole nature it was filled out in, in my submission, confirms that it was done in a rush and under pressure. So you can take that from the physical evidence of the form.

The circumstances are relevant to the second heading, which is his state of mind. The factors that I have just outlined make it, you may think, more likely that an honest mistake was made under pressure, rather than if it was made with a large amount of time for consideration and a deliberate misleading was put in it. Mr Virdee's case was the opposite: it was a mistake in those circumstances. His evidence as to his thinking was clear, he felt it was impossible to hide the conviction as it was in the public domain, he believed that by circling 'Yes' on the convictions page, and the text he put in that, covered the nature of the sentence and, if they wanted more information, they would revert to him. The question is not whether, looking back, you feel that was an appropriate thing to do, or whether you would have done so yourselves. In reality, we are on the second limb of the dishonesty test, which is whether the Council have proved that is essentially not what he honestly believed, that he was being dishonest and deliberately misleading.

Can I just make these brief points please? The declaration is not only page 18 of the form, which is where "Road Traffic → Fine" is written; it is also page 17. He circled Yes on page 17 and not hidden that he has a criminal conviction which, in my submission, is hugely important in gauging the honesty or otherwise. That indicates that he has been convicted by a court of an offence. If that is then combined with "Road Traffic → Fine", one can draw these conclusions. It is not a minor road traffic offence, because it is not a fixed penalty – it is a conviction – and that comes from circling the conviction. It is not something for which he had a conditional discharge, and that is

something that may not have to be disclosed in certain circumstances, because he has put the sentence – a fine.

It is clear, in my submission, from what has been put on there that it was a conviction, that it was a fine and, in my submission, on one view of the charges, road traffic is a description of their nature. It may not be a view shared by all but the question is, is that the view that Mr Virdee had on the day honestly. On that day, in those circumstances, and under that pressure, that was the view he had and that was what was written. You may be able to conclude that it has not been proved it was not anything other than honest.

The Council rely on the two previous dishonest acts and may I just say this about them? I would ask you to be, as I am sure you will be, very careful about using the other two dishonest acts, by which I mean the use of the badge itself and the lie told at the scene to the investigating officer. Be very careful when deciding that dishonesty on the third occasion must follow as a result; it is not the inevitable consequence. It is no substitute, in my submission, for considering his evidence in detail about his state of mind. I would ask you not to decide the point substantially on the basis that, well, he was dishonest in the past and he admits it, therefore this must have been dishonest; it merits separate consideration.

Three points please about the dishonest acts. The first one is this, that those two dishonest acts on any view were part of a single course of conduct, which ended with the interview where he admitted it a few days later. That was the end of that series of linked dishonest acts. In between that and what we are talking about, the non-declaration allegation in July, he has been to court, accepted it, pleaded guilty at an early stage. The third point, most importantly, is that, as a result of being found out at the early stage in respect of both things – the use of the badge and the lie, and having gone to court and pleaded guilty – Mr Virdee's evidence very clearly was that it had a profound effect on him, as you would expect. A man in his thirties, a professional in trouble for the first time, it had a significant impact on him. His mindset was, as a result of those things, that he would not be dishonest or mislead anyone subsequently.

Now the two dishonest, you may think, can cut both ways. They could be evidence to support the Council's case, on one view, but on another view, they could be evidence to support his case that when July came along, he was very, very unwilling to be dishonest in any way or to mislead in any way.

Madam, those are my submissions on the factual evidence that you have heard. May I just say a word about character evidence? The simple point that I make in respect of those three witnesses from whom you have heard is you have heard evidence from people who have known him for a long time in both personal and professional capacities, who say that dishonesty is out of his normal character. That, in my submission, is relevant, and I accept to a limited extent, to your decision on whether he was dishonest on this occasion that is denied. He has already admitted some dishonest acts but those, we

say, were one course of conduct that finished and that, otherwise, he is not a dishonest man.

Those three witnesses who have been called I rely on and there are four character references. To save time, I would like to hand up the bundle, give you the name and highlight the specific passages that I rely on, and, Madam, you and your colleagues can consider them while you are deliberating.

Ms Jones: [*confers*] I should say for the record that I am querying whether this goes to a later stage.

Mr Levisaur: I am looking at Mr Hepworth, because he knows what I am thinking, and I think I know what he is thinking. The difficulty that I face is that –

Ms Jones: Can we know what you are thinking?

Mr Levisaur: I am not sure you can, no.

Mr Hepworth: Madam, the Council's position is, I think, that the Council does not object to you seeing these references with two provisos. First of all, it could only at this stage be relevant to the issue of honesty or dishonesty, and none of these witnesses is here, none of them is able to be cross-examined –

Mr Levisaur: Do you accept the truth of the contents of their statements in all respects?

Mr Hepworth: No.

Mr Levisaur: Then they don't go in, and that is the end of that discussion at this stage only. There is no doubt you have an undoubted right at a later stage in respect of different matters to put them in regardless of the view of the Council but only at this stage and only on the fact-finding issue.

Mr Singh: I can see the point especially as a result of the questions that have been asked as well.

Mr Levisaur: Exactly so.

Mr Singh: I shall not pursue that.

Ms Jones: Thank you very much.

Mr Singh: So, Madam, it is just those three, the live evidence that I rely on.

Mr Levisaur: And for the avoidance of any doubt, the reason why I am not prepared to share my thought issues is that I did not want to get into the crucial issue which was the one identified by Mr Hepworth, because I did not want to ask him the question, "and what is it about these statements that you may or may not agree at this stage?". They are not admissible at this stage.

Ms Jones: If there are no further matters, may I invite you to advise us before we adjourn?

Mr Levisaur: Gentlemen – *Ghosh*. That is to say, is there anything between the two of you? Mr Hepworth, do you maintain the position that you opened the case in, in so far as *Gosh* is concerned, two stage test and as you set it out?

Mr Hepworth: There is nothing that I wish to change, pending hearing what you may say but nothing at this stage.

Mr Levisaur: Very well.

Mr Singh: I have nothing to add.

Mr Levisaur: Thank you very much. At this stage and for these purposes, that is to say for the purposes of a fact-finding decision process, I restrict myself to the following advice. It is for you to decide the facts. The admissions, of course, help to focus the issues. Nevertheless, the fact that admissions have been made does not absolve you from the duty of finding facts in respect of each of the allegations. It would, frankly, be a perverse decision to find matters not proved which have been admitted but formally you must do that. The critical matter about which you have to make decisions clearly revolves around the state of mind of Mr Virdee in filling in the form for the PCT and especially the statement which is to be found at page 18 but read, of course, in conjunction with the circled box on the previous page. The Council brings the case and the Council must prove each and every allegation. Prove means that you must be satisfied on the balance of probabilities that each fact is found. Something is proved on the balance of probabilities when it is more likely than not to have occurred. Put another way, that means 50 percent plus a scintilla.

You decide the case on the evidence, that is to say all of the evidence and that includes the evidence read to you and you will bear in mind how I directed you at an earlier stage. Of course, it includes that which you have heard. Please bear in mind that giving evidence is stressful and that the registrant, in particular, is today at the end of a very long and stressful period which culminates in a hearing before his professional body. He is not a professional witness and, in those circumstances, a little charity in the way that you assess him would be no bad thing. It is for you to assess the evidence of each of the witnesses.

The evidence of the last three witnesses goes to the question of the likelihood or otherwise of the registrant being dishonest when he filled in the form in the way that he did. You may think that a generally honest man, who is spoken of by three professional people, is perhaps less likely to be dishonest than an habitually dishonest man. You will also bear in mind the fact that somebody has no previous convictions for offences of honesty or dishonesty does not of itself mean that they are not capable of dishonesty. Were it otherwise, nobody could ever be convicted of an offence of dishonesty.

Honesty and dishonesty are ordinary terms, you know perfectly well what they mean, and you are to bring your own knowledge of the world, your own professional life and your own personal life to bear in judging that question. You have heard cryptic reference to the case of *Gosh*, which you may or may not be familiar with. I am required to remind you, and/or direct you, and/or advise you about that case. It was opened, and opened well, by Mr Hepworth, who pointed out that there was, in effect, a two-stage test. First of all, you must consider the matter objectively. That is to say you must look at what is being said and ask whether the man on the Clapham omnibus – the reasonable ordinary man – would regard this as a credible explanation - that is to say within the bounds of ordinary morality. This is sometimes spoken about as the “Robin Hood defence”: Robin Hood believed it was perfectly proper and right, and that he was not committing theft, because he used to take money away from rich people and give it to poor people. That was not a defence of which the law thought much. Thus it is, if you like, the first stage of the *Gosh* test, the objective test.

However, that is not the end of the matter. If you find that the ordinary, reasonable person would regard this as perfectly honest behaviour, that is the end of your examination of the matter. If, on the other hand, the answer is no, that is not so, you then consider critically what was going through, as best you can, the registrant’s mind. How did he, that is to say he the human being, he the subjective person, regard what he was doing?

The defence, as you have heard and I do not trespass on the facts, is that this was done in a hurry, done against the background of two offences, both of which related to the use of a badge. In those circumstances, he says, ‘I didn’t intend to mislead anyone, I wasn’t dishonest’. It is for you to judge that against all the facts and matters that you have heard about, and you are entitled, if you think it appropriate, to bear in mind the two previous occasions to which Mr Hepworth has drawn your attention when he says there was “dishonest behaviour”. Ultimately, however, this is a matter for you. You are to judge that question using your knowledge of the world and your knowledge of what is right and wrong. That is my advice.

Mr Singh: I have nothing to raise as a result of that.

Mr Hepworth: Nor for the Council, thank you, Sir.

Ms Jones: Mr Henley, could you clear the room please.

[Hearing adjourned at 14.43]

[Hearing resumed at 16.12]

Ms Jones: Can I invite the Legal Adviser to indicate the legal advice we had during the discussions?

Mr Levisaur: I gave you one or possibly two pieces of legal advice and they were as follows. In assessing evidence, I reminded the Committee that it should bear in mind that, if a prosecutor does not cross-examine a witness about

some specific defined aspect of his evidence, that evidence is not in dispute. The second matter that I gave you advice on was that, having heard the arguments and listened to one another, I reminded you not to allow any desire that you might have to reach a consensus to change any strongly-held views.

Ms Jones: *[reads]*

“Findings in relation to the facts.

The Committee has considered all the evidence put before it and the submissions made by both the Council and Mr Singh on behalf of the registrant. It has accepted the legal advice given by the Legal Adviser. The registrant admitted particulars 1(i), 1(ii), 2, 3, 4(i), 4(ii) and 5(b) of the allegation and the Committee, therefore, found those admitted particulars proven. Having considered all the evidence, the Committee, however, was not satisfied that the actions referred to in paragraphs 3 and 4 of the allegation were dishonest. It follows that the Committee found particular 5(a) of the allegation not proven.”

Mr Hepworth, when we are ready, if we can move on to the conviction and misconduct stages.

Mr Hepworth: Madam, thank you. May I ask for some guidance before I address you? Are you planning to deal with both impairment and misconduct together, although they are separate considerations within that stage?

Mr Levisaur: Unless either party has particular views, it would appear to me to be appropriate in this case to do that, bearing in mind the Committee must, of course, deal with each stage separately. Mr Singh?

Mr Singh: May I just take some brief instructions?

Mr Levisaur: Yes, of course.

Mr Singh: I can see the time, I don't want to waste words so I shall make my submission brief. My submission on impairment would be different depending on whether you find misconduct or not. I would have to make different submissions if you found misconduct, which makes it a little difficult to pre-empt what you might –

Mr Levisaur: In the light of the convictions, you are bound to address that issue in any event, are you not?

Mr Singh: I am, absolutely.

Mr Levisaur: Would it really be so difficult to make those submissions in the alternative?

Mr Singh: I am sure I could do.

Mr Levisaur: If it would assist you for five minutes to gather your thoughts, then I am sure the Committee will give you those five minutes. For myself, you are bound to make submissions given the nature of the convictions.

Mr Singh: Yes, on impairment, absolutely. I do not believe that I need five minutes but could I just have about 30 seconds, there is no need to rise or anything, to look through my notes and to arrange things in my mind?

Mr Levisaur: Of course. Mr Hepworth, I imagine that you will want to address the Committee first in any event on this issue? [*confers with Chair*] Mr Hepworth, I am being prompted: I ought formally to ask you whether you would have any difficulties at all in dealing with both those matters together? I have already answered for you, I anticipate that the answer is, no, none whatsoever, but it is as well for you to say it yourself.

Mr Hepworth: I would have no difficulty.

Ms Jones: Thank you very much, Mr Hepworth.

Mr Levisaur: Mr Singh, have you had enough time to think, or would you like another minute or two?

Mr Singh: I think I am happy to carry on.

Ms Jones: Okay, thank you.

Mr Singh: Madam, addressing –

Ms Jones: I think it is Mr Hepworth.

Mr Hepworth: Madam, the first decision for you to make is whether or not the inaccurate completion of the PCT application form amounts to misconduct. As a matter of principle, it is capable of so doing but it is a matter for you as to whether or not, in these circumstances, it did amount to misconduct. It is a matter of judgment for you rather than a matter of proof, and it is to be judged in the past tense: judged at the time when the form was completed. I am not sure that I can guide you any further in your decision as far as that is concerned.

The next question for you and your colleagues to decide is does the conviction and the form, but only if you find that amounts to misconduct, certainly the conviction in any event, amount to impairment of the registrant's fitness to practise? Again, that is a matter for your professional judgment.

Mr Levisaur: Mr Hepworth, may I interrupt? You would maintain that conviction simpliciter is misconduct?

Mr Hepworth: I believe conviction is one of the gateways to impairment.

Mr Levisaur: Correct, very well.

Mr Hepworth: Again, Madam, it is a matter for your judgment, and that is in the present tense. Notwithstanding your decision on the facts, nevertheless so far as the conviction is concerned, you may think that the main issue so far as that offence is concerned is the matter of honesty: the registrant was dishonest when he committed those offences. It perhaps goes without saying that honesty is a fundamental necessary personal attribute of an optometrist. Therefore, Madam, although you will judge impairment in the present tense, you may receive some guidance from the case of the *Yeong v General Medical Council* [2009] EWHC 1923 (Admin), and I shall briefly summarise that case. That was a case of a doctor who had an inappropriate relationship with a patient but the principle from that case is as follows. Where a medical professional, or in this case an optometrist, violated such a fundamental rule, his fitness to practise may be impaired if the public is left with the impression that no steps had been taken, in that case by the GMC, to bring forcefully to his attention the profound unacceptability of his behaviour and the importance of the rules that he had violated.

Where a panel considered that the registrant's fitness to practise was impaired for such reasons, and a firm declaration of professional standard so as to promote public confidence in that practitioner and the profession generally was required, efforts made by the practitioner to address problems and to reduce the risk of recurrence of such misconduct in future might be far less significant than in other cases, such as those involving clinical errors or incompetence.

Madam, in my submission, what that means in a nutshell is that in cases where the conduct strikes at the heart of a profession, what a registrant has done since may be of less importance than in other cases such as ones involving clinical errors or incompetence.

Madam, my final submission is that, of course, you act in the public interest, particularly in this case, to maintain public confidence in the profession and to declare and uphold proper standards. Unless I may take you any further, those would be my submissions.

Ms Jones: Thank you. Mr Singh?

Mr Singh: Madam, thank you. In relation to misconduct, first, and I am sorry to steal Mr Hepworth's thunder earlier, my submissions are relatively brief. My submission is that your finding on misconduct will be largely informed by your finding as to the facts and your finding on dishonesty. Misconduct must relate to a failing that is sufficiently serious and culpable to pass the threshold to go from simple carelessness or inadvertence and amount to misconduct, that being professional misconduct for a professional person.

By your findings, you have concluded that the declaration, although it was inaccurate, was not dishonestly so. I have not seen your ruling but, without wishing to put words into your mouths, it was an honest inadvertent mistake. Although that is regrettable, in these circumstances, in my submission, that

simply does not pass the threshold to make it professional misconduct because it is not sufficiently serious a shortcoming. You would also, in my submission, be entitled to, and should, take into account the surrounding circumstances which led to that mistake being made. I have said them already but in bullet point form: it is the pressure that he was under, the rush to complete the form, the fact that he did declare that there was a conviction, and that this is a single incident of a mistake. The gravamen of the conviction matter is a dishonesty matter, it is a very different thing to this. When you are looking at this careless mistake, you are looking at a single isolated incident. Those are really the mitigating features that go to it and the surrounding circumstances. Madam, I do not intend to say any more on it. In my submission, it has to be a serious failing and this, although undesirable, does not measure up to that high bar.

Moving on to impairment, my submission is that Mr Virdee's fitness to practise is not currently impaired, and I underline the word "currently", and I invite you to make such a finding. If you are with me on the impairment issue, this may well be an appropriate case for a warning to be issued, which you have the power to do, on not proceeding to find him impaired. I leave that with you and your colleagues as a possibility, and I would invite you to take that course.

Briefly, before I come on to factual submissions, could I just make this point clear, as I am sure you are well aware. It is current fitness to practise that we are dealing with, and that is looking as to whether he is, at present, a fit person to be on the register without some kind of intervention. Now I accept, as of course I must, that past conduct can impair someone's current fitness to practise if it is sufficiently serious. However, your assessment remains one geared to the present and geared to the future of practice.

Point number one, the major point that I make, is that this is not a case in which there is any suggestion that Mr Virdee is anything other than a competent optometrist. Far from it. There is no allegation of that sort made. I shall hand up character references which I would ask you to consider during your deliberation, I shall not do it now in the interests of time. From going through those, you will be able to see that he is an extremely able and dedicated practitioner, so it is not an issue of clinical competence or danger to the public.

The issue is whether he is honest and trustworthy enough to continue on the register without any restriction. It will require some consideration of his character and whether incidents like this are out of character. Madam, when you go through the character references, in fact because you will not have had the chance to pre-read them as they have not been handed up earlier, could I hand them out now and take you to a few of them please? [*copies distributed to panel*]

Ms Jones: Could I say for the record this should be R1.

Mr Singh: Thank you very much. The reason why I draw your attention to these documents is because one of your considerations is whether this kind of

behaviour is out of his character and whether it is ever likely to be repeated; whether you should have any further concerns that this kind of behaviour will reoccur. In my submission, looking at his current character, the admissions he has made and the progress that he has made, you should have little difficulty accepting that it will not ever happen again. May I just refer you to these references please?

In the bundle on page 1 is Parin Patel. You heard him give evidence and I draw your attention to the whole reference, in particular to the second to last paragraph beginning "The allegations". If I just give you the paragraphs to mark up, you can read them when you make your decision.

On the second page is Mr Sidhu, whom you again heard give evidence. Again, rely on the whole reference and, in particular, the fourth paragraph down, the fifth paragraph down.

On page three is Mr Firoozkoohi, and again you have heard him give evidence. I rely on the whole reference but, in particular, on paragraphs 3, 4 and 5. Madam, I rely on all of them but may I address you on these particular ones. Page 5 – Sonal Amin, in particular the third and fourth paragraphs. On page 6, Harpreet Sihota, in particular the fourth paragraph down. On page 7, Mr Parmjit Sandhu, in particular the third and fourth paragraphs, and pages 8 and 9, Rekha Patel, in particular the fourth, fifth and sixth paragraphs. All of these people have been made aware of the allegations and have known him for some time, and have said, despite all of that, they still believe him to be a very dedicated, a very honest and a very trustworthy person both in professional capacities and in a personal capacity. In my submission, that speaks volumes. I hope you are able to conclude that, on the basis of that evidence and on the basis of what he has said to you in evidence, this course of events is an aberration in the life of an otherwise very honest, hard-working and dependable man. That is relevant, in my submission, to your decision on whether he is currently impaired.

You would also be justified in asking yourself is this the kind of thing that would happen again. Mr Virdee explained to you with some considerable emotion today the lessons that he has learned from the conviction, going through the criminal proceedings and going through these proceedings. One can understand that he has learned a very hard lesson through that and he certainly has done. As I said, I expect you will have little difficulty in concluding that it is very unlikely to be repeated in the future. One measure of that, you may think, is what has happened since the conviction and the incident back in 2008. There has been an enormous amount of time since then, two years since the incident about which he was spoken to by the officers, and 18 months since the conviction and sentence. If there is any measure of his intentions and his ability to carry on without any adverse incidents at all, that is it, and that is hard evidence that he can be trusted to be an honest practitioner.

Madam, I am you will also want to look at the seriousness of the conviction in the first instance, so may I just move on to that please and give you some

bullet points that I would submit are relevant in determining whether the conviction is so serious as to mean that he is currently impaired. It is accepted obviously that it is a conviction for dishonesty and Mr Virdee has accepted that his conduct was dishonest. That, in itself, is serious for a professional and he accepts that. However, I would invite your attention towards the insight that he has shown in his evidence today: the insight he showed in pleading guilty at an early stage, the insight he showed by accepting matters in interview which he attended voluntarily. You have heard his evidence and it was heartfelt, he realised why it was not acceptable to do what he did. Weighed off against the dishonesty, which I accept is serious, must be his realisation of the dishonesty and his acceptance that what he did was wrong.

I would also ask you to bear in mind the guilty plea that he entered, the fact that the badge was used not throughout the period but on a number of specific occasions between five and 10 – it was not used every day for three or four months. It was used as a last resort if space was not available or on occasions when he did not have change, but it was limited times and in between that he was still paying for parking spaces when they were available and when he could do so.

Another point is that it was brought about by frustrations of not being able to park in various places through various other difficulties like the water works and not being able to get a parking permit which he tried to explore himself. However, he, of course, accepts the fault is his but those contributory factors are important.

It is slightly difficult in relation to the misconduct issue, as I do not know what your decision will be. If you do not find it to be misconduct and it is simply in relation to the conviction, all of the points that I have made stand in respect of that. If you do find that the inaccurate declaration inadvertently was misconduct, it is a different kind of concern to the dishonesty concern, and I would hope that you would be able to conclude that, too, was an isolated incident in the circumstances of a person who, having just come out of stressful proceedings, was very busy at work, was under significant pressure to fill out the form and made a mistake in those circumstances. There has been no suggestion that since then he has inadequately declared anything on forms, that he has inadequately filled out paperwork. However, one can be sure that, as a result of this incident and as a result of some of the questioning he received today, it will be ingrained on his brain that he must fill out forms, he must read declarations and that he must do what is expected of him as a professional. Again, I would invite you to conclude that, if you do find it is misconduct, it is unlikely to be repeated in the future, and that the matter has been addressed to the extent that he is not currently impaired on that basis.

Madam, unless I can assist you and your colleagues further, those are the submissions that I make.

Ms Jones: Mr Hepworth?

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

Ms Jones: Can I ask the Legal Adviser to advise us please?

Mr Levisaur: Madam, I hope that my advice to you will be a little shorter than the submissions you have heard. That is not to disparage the submissions; rather it is to pay tribute to them. In the first place, might I remind you that the task now before you is to consider what appears, in effect, at the very bottom of the page on the allegation sheet, namely the words “AND by virtue of the facts set out above, your fitness to practise is impaired by reason of your: (1) Conviction; (2) Misconduct”. Each of those matters must be considered separately.

You may wish to begin by considering whether or not the completion of the form amounted to misconduct. You have found that the completion of the form was not itself dishonest. The question you ask yourself is when that form was filled in inaccurately, as you have found and it is admitted to being, was that misconduct at the time that the form was completed? I stress at the time, not now, at the time. Misconduct ought to be a very simple concept to understand, it probably is not as simple as all that. However, in the first place, ask yourself the question: does the behaviour go beyond carelessness, mere inadvertent behaviour? Was it a serious shortcoming going beyond either carelessness or inadvertency such as to amount to misconduct?

Might I then suggest that you consider the question of the conviction? Mr Hepworth simply submitted that a conviction was normally thought to be a gateway to a finding of impairment. I can put it no better myself. It is a matter, of course, for you but it would be an extremely peculiar decision by you were you to find that the convictions which had been admitted, particularly the conviction under Section 6 of the Fraud Act, did not amount to gateway behaviour to allow you to find impairment. I remind you that the question of impairment is to be considered now, not as at the date of conviction. It is a matter in the present tense. The question is, as a result of that conviction and if you find the filling in of the form to be misconduct, do they now amount to impairment?

You have been reminded of your duty to consider public confidence in this profession, and you have also been reminded of your duty as far as the need to uphold proper professional standards in optometrists. There is no need for me to say any more about that. You have also been referred to the case of *Yeong v General Medical Council*. Mr Hepworth submitted that where conduct strikes at the heart of what it is to be a professional person, steps taken after the event, after the offence, may be of much less importance than steps which are taken in cases of, let us say, clinical failings which may be remediable. It is not for me to direct you any further than that, and it is certainly not for me to direct you as to whether you find or do not find as a present state that impairment exists. Those are the matters I would wish to bring to your attention. I should remind you that you are, of course, to read the entirety of these witness statements which have been put in at R1 and, while you will, of course, pay particular attention to those passages to which

your attention has been drawn, you are not to be restricted to those paragraphs. You are also entitled to take into account the oral evidence you have heard from the witnesses whose statements appear at pages 1, 2 and 3, which buttresses the written evidence before you.

Ms Jones: Thank you. Mr Henley, could you clear the room please.

[Hearing adjourned at 16.43]

[Hearing resumed at 18.01]

Ms Jones: *[reads]*

“Findings in relation to misconduct and impairment

The Committee has considered the evidence before it, including the whole of the character evidence contained in R1, and the submissions made on the registrant’s behalf and by the Council, and accepts the legal advice given. The Committee is not satisfied that the registrant’s behaviour in completing the application to the Kensington and Chelsea PCT went sufficiently beyond carelessness to amount to a finding of misconduct.

The Committee is, however, deeply concerned about the matters which led to the registrant’s conviction on 1 July 2008. The registrant has admitted mean-minded offences of using a disability badge to which he had no right. The heart of the offence under the Fraud Act is dishonesty. The question the Committee asks itself is whether or not the public would feel it right and proper to allow a professional man to avoid the professional consequences of such an act of mean-minded dishonesty. The convictions are not, in the Committee’s view, consistent with the requirement of an optometrist, to be honest and trustworthy as clearly laid out in the code of conduct for registrants. The Committee, therefore, finds Mr Virdee’s fitness to practise as an optometrist is impaired by reason of his convictions.”

At this point, we need to adjourn this hearing and we have identified the date of 27 May 2010 to reconvene.

Mr Singh: Could I just ask for a few minutes to confirm where I am on that date. I am hoping I am not but I may be in the middle of a trial elsewhere, which could be a difficulty.

Ms Jones: Mr Henley? I think we shall be looking as late as September if we do not go with this date. We have already had to go through six diaries here and by all means take a couple of minutes, but I think we would be looking at a very significant gap in this adjournment.

Mr Singh: In that case, let us confirm the date and if I cannot be here, and I shall make every effort to be here, a suitable cover can attend. We cannot leave this until September obviously.

Ms Jones: Thank you, Mr Singh.

[Hearing adjourned at 18.04]