



**BEFORE THE REGISTRATION APPEALS COMMITTEE  
OF THE GENERAL OPTICAL COUNCIL**

**R(11)01**

**GENERAL OPTICAL COUNCIL**

**AND**

**DARREN REECE BEDFORD**

**Wednesday, 20 April 2011**

**SECOND APPLICATION FOR RESTORATION**

## SECOND APPLICATION FOR RESTORATION: DARREN REECE BEDFORD

Wednesday, 20 April 2011

Committee Members: Ms F Jones – Chair (Lay)  
Mr A Baldwin (Lay)  
Mr A Cripps (Dispensing Optician)  
Mr R Hensley (Dispensing Optician)  
Mr R Varley (Lay)

Legal Adviser: Mr J Watson QC

Hearings Manager: Mr D Henley BEM

For the GOC: Mr G Hudson  
Ms K Punchihewa

The Applicant appeared in person and was not represented

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[The hearing commenced at 09.35]

**Ms Jones:** Good morning. I am Fran Jones, a lay member of the Hearings Panel, and I have been elected by the Committee to chair today's Restoration Application hearing. The Committee today is made up of two dispensing opticians and three lay members. I will ask the members to introduce themselves and the capacity in which they sit. [Introductions]

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

It is the Council's policy for the determination of the Committee and a transcript of the proceedings to be displayed on the Council's website for public viewing.

I understand that at previous hearings of the Registration Appeals Committee the order of proceedings has been changed, and it has been found to be a

most fair and appropriate way of conducting business. You will see in the Registration Appeals Rules from Rule 33 that there is set out an order of proceedings. The Rules anticipate that we would hear first from the applicant, that is Rule 33(1), and then the Council's Presenting Officer on behalf of the respondent – the Council – Rule 34(1). The applicant may then give evidence in rebuttal of any matter raised by the Council (Rule 35). Submissions would then be made under Rule 37, first from Mr Bedford in relation to submissions and then from the Council. We will not change the order of submissions.

However, it is suggested and if you agree to it that the Council address the Committee first, both in relation to the framework of our decision-making and the evidence, so that Mr Bedford who would then address the Committee would know exactly the evidence on which the Council relies, and the framework within which it is said that this is established before he addresses us on that evidence.

It appears that our colleagues on previous occasions have found this change in procedure most helpful. It is, however, a matter for the Council and Mr Bedford whether you are prepared to proceed on that basis? [*Agreed*] Right, thanks.

Mr Bedford, under Section 13K(8) of the Act, where a second application is unsuccessful the Committee may direct that the individual's right to make any further such applications shall be suspended indefinitely, I understand that this is your second application, so I must make you aware of this provision should your application today be unsuccessful.

**Mr Bedford:** Yes, I am aware.

**Ms Jones:** Thank you. Mr Bedford, I note that you are not represented today, and of course the Rules do allow for that, but I thought it may assist you if I explain how the hearing today will take its course. In part this is a repeat of the change of order of Rules.

Firstly, the Council's Presenting Officer will present the case alleged against you. This will include an explanation and background to the case, and primary evidence that will be used to support the allegations made against you. I am conscious that we do not have allegations?

**Mr Henley:** Yes, that is right; that is probably being taken from the substantive case.

**Mr Watson:** The original allegations, then?

**Ms Jones:** Yes, the original allegations – my apologies, I just wanted to clarify that. There are no allegations today. You will have the opportunity then today to present your case in the same way from your point of view. You may call any witnesses including yourself in support of you, and those witnesses can be questioned by yourself, the Presenting Officer, the Legal Adviser, and the Committee. Throughout today's application – again I am uncomfortable with

this sentence in regard to this; it refers to the burden of proving the factual basis of allegations?

**Mr Henley:** That can be skipped.

**Mr Watson:** To assist, I will in due course advise the Committee that there is no strict burden of proof to be applied in a Restoration Hearing. It is a matter of judgment. Insofar as there is a burden of persuasion it lies upon the applicant to persuade the Committee so that it is satisfied. If there are discrete facts, and only if there are discrete facts, which are sought to be established for the purposes of the restoration application, then those facts would normally – subject to individual consideration – be facts which the applicant has the burden of proving up to the usual standard of probability.

**Ms Jones:** Thank you, that is very helpful. Mr Bedford, the Legal Adviser is an objective observer of the legality of the proceedings here today and is not here to advise you, but will answer any questions you may have about the course of the proceedings today and of any confusion or ambiguity that may be in your mind about what is happening here. Can I ask, do you have any questions at this stage?

**Mr Bedford:** Not so far, no.

**Ms Jones:** Thank you; and my apologies that we had some text incorrect for this hearing.

**Mr Watson:** Perhaps I should intervene since the applicant is unrepresented, and say that if there are procedural issues that cause you difficulty then, as the Legal Adviser, I can make myself available to discuss such issues with you. Normally, and almost invariably, I would wish to do so with Mr Hudson present, but I would be able to clarify matters if you wish to discuss them outside the hearing.

**Mr Bedford:** Thank you.

**Ms Jones:** Thank you; I will also say at this point that the Committee has received Bundle C1 by e-mail in advance, so I thank the parties for that, and the Committee has read this information. So can I hand over to Mr Hudson to commence?

**Mr Hudson:** Thank you Madam. I do not know whether Mr Bedford wishes to introduce the person sitting to his left?

**Mr Bedford:** Mr Marsh, my Store Director.

**Mr Watson:** Certainly we have no objection to Mr Marsh accompanying Mr Bedford; and for clarity, so that the Committee know the way ahead, is it Mr Bedford's intention to ask Mr Marsh to address the Committee or to give evidence to the Committee during his application?

**Mr Bedford:** There is no new evidence as such, it will purely be as a character reference.

**Mr Watson:** Provided Mr Hudson is content with that position, I have no advice or objection to offer to the Committee. They simply need to know whether somebody is here in a passive capacity entirely or not. Thank you.

**Mr Hudson:** Madam, I have prepared some written submissions which I hope will be of assistance to the Committee. I have sent them to Mr Bedford by e-mail and he also has a hard copy, so with your leave I would like to hand those up to you? [*Documents handed*] For the record perhaps we can call these C2.

Madam, they are relatively lengthy, but I hope you can take some comfort from the fact that they comprise the majority of what I propose to say, and I simply thought it would be helpful to have it in writing.

Madam, this is Mr Bedford's second application for restoration. The direction that his name be removed from the Register was made on 11 October 2006. His first application for restoration was heard on 22 June 2009. The relevant statutory provisions with which the Committee will be familiar are to be found firstly at Section 13K of the Opticians Act 1989 as amended, which provides in the important passages as follows:

- “(1) A person whose name has been erased from a Register under section 13F above ... may apply to the registrar for his name ... to be restored to the appropriate register.
- (2) No application for the restoration of a name ... to the appropriate register .. shall be considered by the Registration Appeals Committee –
  - (a) before the expiration of two years from the date of erasure ...; or
  - (b) during any period of twelve months after any previous such application.
- (7) Before determining whether to give a direction under this section, the Registration Appeals Committee shall require an applicant for restoration to provide such evidence as they consider appropriate as to his fitness to practise ... the business of an optometrist or a dispensing optician or both; and they must not give such a direction if that evidence does not satisfy them.
- (8) If”

and Madam this is a point that you mentioned,

“during the same period of erasure, a second or subsequent application for the restoration to the appropriate register of a name ... made by or on behalf of the individual ... whose name

has been erased ... is unsuccessful, the Registration Appeals Committee may direct that the individual's ... right to make any further such applications shall be suspended indefinitely."

Rule 25 of the General Optical Council Continuing Education and Training Rules 2005 provides as follows:

"In the case of an application for restoration following removal by the Registrar an applicant must have obtained 12 general CET points in the 12 months prior to the month in which the application is received."

Mr Bedford's current application was received on 12 January 2011, and will be seen at pages 1-5 of the Hearing bundle. This was more than 12 months after his previous application, therefore is compliant with 13K(ii)(b) above which I have just mentioned. The application states at Section 5, and that is page 3 of the bundle, that Mr Bedford had achieved 15 general CET points in the preceding 12 months, and evidence of those can be seen right at the end of the bundle at pages 46-47, from which it is apparent that 15 such points were obtained between 25 February 2010 and 7 January 2011 inclusive. He has therefore complied with Rule 25 of the CET Rules.

Dealing first with the substantive inquiry in October 2006, the allegations faced by Mr Bedford fell into two parts, and they are repeated at pages 9 and 10 of the bundle. In summary, they were that between 28 April 2003 and 24 February 2005, a period of just under 22 months, at a time when he was neither registered as a dispensing optician nor appropriately supervised, he dispensed spectacles to persons under the age of 16; he dispensed and fitted contact lenses; and he supervised a trainee dispensing optician dispensing spectacles to persons under the age of 16.

Additionally on 16 May 2005 he received a formal adult caution for theft, and it was further alleged that in the light of those matters his fitness to practise was impaired.

He admitted the allegations, and did not challenge the Council's evidence, which was helpfully summarised by the Council's advocate at pages 10-12 of the bundle. For these purposes it might be helpful to look at the salient admitted facts, which were as follows: Mr Bedford was first registered on 8 October 1996. On 1 December 2001 he was appointed Manager at Ronald Brown Opticians. Members of staff had a contractual obligation to keep their registration up to date. However, Mr Bedford allowed his registration to lapse, and on 28 April 2003 his name was removed from the Register for failure to pay the required retention fee.

Between September 2002 and August 2003 Mr Bedford supervised a Ms Judith Bolton, who was at that time in the course of completing a three-year part-time course in order to register as a dispensing optician. It was a requirement of her training that she be supervised by a dispensing optician with at least two years' registration with the GOC. Although Mr Bedford had the requisite number of years' registration, between 28 April 2003 and 31

August 2003 he was unregistered. During that period Ms Bolton dispensed pairs of spectacles to people under the age of 16; permitting her to do so when she was not in fact supervised by an appropriate person constituted an inherent danger to the public, and also jeopardy to Ms Bolton's career. In fact, so far as Ms Bolton was concerned she did go on to qualify in August 2003.

Following Mr Bedford's removal from the Register on 28 April 2003 he continued to dispense spectacles to persons under the age of 16 and also to fit contact lenses, and evidence of that was produced to the original inquiry. Mr Bedford explained to that inquiry that the fact of his non-registration came to light when his employer's Human Resources Department tried to set up online CET, for which purposes they needed Mr Bedford's GOC registration number. When he gave them then his number they could not find it. When they explained that to Mr Bedford he said he discovered for the first time that he was no longer registered, and he therefore took immediate steps to put himself back on the Register. One can see that at page 15 of the bundle.

The background facts to the caution were as follows: in February 2005 concerns were raised regarding a cheque that had come into Ronald Brown's Edmonton branch. There was a post-it note attached to the cheque referring to the supply of other contact lenses for a patient. Suspicions were aroused when it was discovered that Ronald Brown's records showed no record of any payments having been received from the patient, or indeed of any contact lenses having been ordered for the patient.

When confronted about this Mr Bedford explained how the person in question had wanted contact lenses, but having insufficient money he had agreed to sell them to him for £60, which was considerably cheaper than cost price. He went on to admit that he had several e-Bay accounts via which he had sold items of stock belonging to Ronald Brown for his own personal gain. They had included sunglasses and contact lenses. The amount paid by Mr Bedford to Ronald Brown by way of compensation was £3,097.92. Mr Bedford was subsequently interviewed by the police on 16 May 2005, during which he admitted having stolen from his employers, and as we have seen accepted a formal adult caution.

With regard to those matters, in the course of the original inquiry Mr Bedford denied that he had sold contact lenses on e-Bay but did accept that he had sold other items of stock belonging to Ronald Brown. He clarified that while he accepted that he had dispensed contact lenses while unregistered he had not been the designated contact lens fitter, and therefore was only involved in dispensing contact lenses occasionally.

He explained in terms of the reasons for allowing his registration to lapse, that at the time he had been going through a very difficult divorce, as a result of which he had been moving from accommodation to accommodation without having any fixed address. Through that period he said a lot of his post was not being passed on to him by his former wife; and thirdly, he explained that he had set up a direct debit arrangement for payment of his ABDO

membership and assumed that he had made similar arrangements for the GOC. We can see all that at pages 14 and 15.

He said that he had never been in trouble before. He said he had made some stupid mistakes at a very difficult time for him and his young family, for which he was very sorry.

The Committee found, and their findings are at pages 21 and 22 of the bundle, that the activities undertaken by Mr Bedford while unregistered were “serious misconduct for which there is no effective mitigation”. They found that supervising a trainee dispensing optician dispensing spectacles to persons under the age of 16 while unregistered, may have jeopardised may have jeopardised her training. They found that while the public may not have been harmed by Mr Bedford’s lack of registration, and while there was no complaint of professional deficiency, the public are entitled to expect a professional in Mr Bedford’s position to comply with and adhere to the rules and regulations of that profession. They found that as a result of those matters Mr Bedford’s fitness to practise was impaired. They said that to have stolen stock from his employer over a period of time was:

“- a very serious impairment under the terms of the Act”, and indeed “so serious that it is inconsistent with continued registration”.

In relation to all the allegations the Committee directed that Mr Bedford’s name should be erased from the Register.

So Madam, that was the initial inquiry. As the Committee will have heard the first application for restoration was on 22 June 2009, and that was 32 months after the direction for erasure. In that application the Committee will have seen Mr Bedford had the following to say: he did not propose to bring further evidence. He said he stood by what had been said at the original hearing, namely that he admitted full guilt and did not want to make any excuses. As he had explained at the original hearing he said the only mitigation he could offer was the fact that he had been going through a very difficult and painful divorce at the time, but he accepted that was no excuse. He said he had failed to keep up his registration with the GOC despite remaining registered with the ABDO. He said he had tried not to be deceitful, nor had he hidden the fact that he was not registered with the GOC. He said it had been a stupid oversight on his part for which he accepted full blame and guilt.

He said he had continued to work hard, choosing to live with the embarrassment and the shame rather than walking away from the profession in which he had worked all his working life, and which he loved. He said he had continued to work within the profession but in a changed role. He said he had kept his head down, hoping one day to be reinstated, and had continued to undertake CET. He explained his role in the store now included contact lens supervisor, which was a business rather than a professional role. He said he would love to be reinstated as he felt he had more to offer.

Mr Bedford was questioned regarding his application by members of the Committee, and in response to those questions he provided the following additional clarification. He said that when he discovered that he was no longer registered he had not spoken to anyone at ABDO regarding the implications. He said he was currently working as a dispensing assistant and a branch trainer. He said that his present employer was aware of the circumstances of that day's restoration hearing, and knew that Mr Bedford had been erased from the Register and that he had been cautioned for theft. In fact I understand that Mr Marsh was present at the hearing, so he was clearly fully aware of what was going on.

Mr Bedford said that within the 12 months preceding the date of submission of his application for restoration, which had been in February 2009, he had earned 12 CET points. He clarified though that the CET actually undertaken in the relevant period had exceeded that amount. The discrepancy had arisen as a result of Mr Bedford having registered a number of qualifying CET events under his original no-longer-effective GOC registration number.

He said if he were to be successful in his application his desire would be to continue to work as a dispensing optician. He would also want to further himself by doing further courses. He said he was involved with training and developing colleagues in the branch, and that he wanted to get back to what he had been doing for the last 20 years. He admitted that he had made some mistakes and that what he had done was wrong. He wanted however to be given a second chance. He said he fully understood why he had been removed from the Register. He said the Committee could be satisfied that the misconduct in question would not happen again for the following reasons: he said that he would never want to go through all that again. He said that it had affected his personal life, his friends and his family. He said it had been a very difficult two to two-and-a-half years. He said he had been lucky to have the support from his employer, and also to have some good friends in the industry. He said he just wanted to get on and do the job he had tried to do well for the last 20 years, apart from making what he described as;

“- glaring mistakes and errors of judgment a few years back.”

That can be seen on page 33.

At the original hearing he had explained how he had been doing some training to become a contact lens optician. He said at the restoration application that he was due to re-take his final practical examination, and that that was still pending, and that he intended still to continue with it.

He explained that although he had been presented by his employers with a figure of approximately £3,000 by way of stock sold on e-Bay and said he could have argued about the precise figure, he had decided at the time not to do so on the basis that he was admitting guilt, and also that his parents had decided to lend him the money to pay back to his employers, and as a result he had accordingly paid back to his employers the full amount of the sums they said were due.

He said he had been employed by Specsavers since 7 March 2005. He had gone for an interview with them about two weeks prior to leaving Ronald Brown Opticians. He said he had told them about the caution as and when it had happened, and that he had been honest about it from Day One when he had gone for his interview.

He said he felt very bad about Ms Bolton. She had had the worry about whether her registration would be affected. If he had wrecked her chance of becoming qualified he would have been "mortified" he said. He explained that he had supervised two other trainees before taking on Ms Bolton, and had taken great time and trouble with everyone he supervised. He said it was a role he enjoyed, and that he would never knowingly have allowed his registration to elapse and affect someone in the way it affected Ms Bolton.

He hoped that although he had been going through a difficult time this had not affected the quality of the training he had given Ms Bolton. He said he had been genuinely upset for her, that she had had to go through the worry of possibly not qualifying. He had not tried to make excuses for not being on the Register. He said he could have stated that there were other people in the practice who could have in theory been supervising him while he was dispensing, but he had held up his hand and said that he was totally unaware about his registration lapsing.

In addition to doing CET he had undergone a number of courses and training with Specsavers. Those courses had not really enforced his technical ability and his role as a dispensing optician; however he had always been someone who wanted to learn and gain greater knowledge of the subject. He said that if he were to be reinstated he would ensure that his training was directed towards ensuring that as a dispensing optician he would gain further qualifications. He explained that being off the Register he had been unable to do so.

He said with regard to his dishonesty that it had been, and I quote, "a lapse of judgment due to the situation I was in". He said he hoped it would not reflect on his working with vulnerable people. He said he was now happily remarried. He currently had a family of four children, two of his own and two of his wife's, ranging from 7-18. His family life was very stable now. Things had totally changed he said from how matters had previously been when he had been living from house-to-house and in friends' houses and on people's floors. He felt very much more stable now.

He did not feel that there was any temptation now. His dishonesty had been a part of his life that he was very embarrassed and ashamed about. It was not the way he had been brought up to behave, and he had embarrassed not only himself but also his family and friends. He said he now had a lot of supportive family around him.

As we have heard Mr Bedford's employer, Mr Marsh, gave evidence on Mr Bedford's behalf, and that in summary was to the following effect: he

confirmed that Mr Bedford had attended an interview with him on 28 February in 2005. He said that Mr Bedford had made him totally aware of the situation with Ronald Brown. Mr Marsh said that he had been very impressed by Mr Bedford's depth of knowledge and also his candid attitude. He confirmed that Mr Bedford had started working with Specsavers on 7 March 2005, since when he said he had established himself as a reliable and professional member of a highly-qualified team. He said it was a regret that Mr Bedford had been removed from the Register in October 2006. He also said that Mr Bedford had shown genuine remorse.

He said that with Mr Bedford's thirst for knowledge with regard to all aspects of optics it was a pleasure to work with him. He said Specsavers had supported Mr Bedford, who had taken a drop of salary to that of an optical assistant when he had joined them. He explained that since then Mr Bedford had had a number of pay rises, and in Mr Marsh's view he had a great future.

He said Mr Bedford had used his time off the Register extremely wisely doing CET and absorbing knowledge about new products. He said he had blossomed in the role of a store trainer, and had the respect of all staff whether qualified or not. Finally, he said that he thought that Mr Bedford had learned the error of his ways, and confirmed that he supported Mr Bedford's application for restoration.

That, in summary, were the matters and the submissions and evidence heard by the Committee on that occasion. The Committee's decision on that occasion was, however, to refuse the application. It did so for the following reasons, which can be found on page 44: the Committee explained that on the one hand it had taken into account the testimonial of Mr Bedford's employer; the documents setting out Mr Bedford's CET and in-house courses; Mr Bedford's full admission both at the time of the police investigations and also his employer's internal investigations; his remorse; the fact that he had paid back £3,097.92 to his employers; the fact that since erasure Mr Bedford had worked consistently well and had undertaken a number of courses. They took into account his employer's evidence that he was a value employee who had been candid throughout a long pre-employment interview, which had pre-dated the police caution; they took into account his sustained work and continuing commitment to the profession, and also appropriate training since erasure; and also the fact that Mr Bedford had told the Committee that his private life was now stable.

On the other hand the Committee had very much in mind its role as a regulatory body. The Committee said that it had to have the public interest at the forefront of its mind. That public interest included the maintenance of the good name and public confidence in the high standards of the profession. The Committee indicated that when someone has been erased for serious misconduct it would have to be an exceptional case for an applicant to be restored at almost the first opportunity allowed by the Opticians Act. Public confidence in the high standing of the profession, they felt, would not be upheld if after such a relatively short period Mr Bedford were to be restored. Finally they explained that the circumstances of his misconduct had involved

serious breaches of trust, and also repeated dishonesty over a period of time in relation to his employer.

Madam, that brings us to today, Mr Bedford's second application for restoration. The Council as before adopts a neutral stance in respect of this application. The burden is on Mr Bedford, as the Committee will have heard, to be assessed by the Committee that he is fit to practise, and whether he is fit to practise is a matter for the Committee's judgment.

In its exercise of that judgment the Committee can be assisted in a number of ways: so far as the caution is concerned, reference can be made to the Council's document, the *Protocol on the Handling of Criminal Convictions Disclosed by Registrants*. Madam, I have copies of the *Protocol* if that would assist. [Documents distributed]

**Ms Jones:** Thank you; for the record perhaps we could call this document C3.

**Mr Hudson:** I am grateful. Although of course it should be borne in mind that Mr Bedford received a formal caution and not a conviction in respect of the admitted dishonesty, it is nevertheless appropriate for the Committee to consider we say the following matters identified in the *Protocol*.

The first, and this is over the page to (i) "Nature and seriousness of the offence". The Committee will see the matters to be taken into account:

"The Registrar may take account of evidence and information about:

- the legal definition of the offence, the relevant criminal behaviour, the 'guilty mind' component such as dishonesty ...;
- the maximum sentence the Court could have imposed ...;
- the facts of the offence, mitigation offered prior to sentence ...'
- any victim impact statement presented to the court;
- harm or loss suffered by any victim of the crime."

So far as the caution is concerned, clearly Mr Bedford committed an act of dishonesty which is at the high end of the scale in terms of conduct that is unacceptable in a professional; and indeed the Committee in making its original determination, as I have indicated, found that Mr Bedford's dishonesty was so serious that it was inconsistent in the Committee's view with continued registration on the Register. The Committee had also noted that the dishonesty of which Mr Bedford was guilty had involved a breach of trust of his employer, which was also a serious matter.

By way of balance and in his favour, Mr Bedford made early admissions, and has continued to express remorse for what he did, and also as we have seen he repaid the sums that he dishonestly misappropriated.

The second item, "The extent and nature of any risk to patients or the public", there was no risk in this case.

The third item, “The time frame of offending”, there is no information on that. The only indication the Committee has is the amount involved, just in excess of £3,000, and also that the dishonesty was perpetrated via a number of e-Bay accounts.

“Relevance of the offence to professional standards and conduct”: of course the Code of Conduct provides that a registered optometrist must be honest and trustworthy, and the public expects that all professionals must be people of impeccable integrity in all their actions.

“The applicant’s character and conduct since the offence”: I have reminded the Committee of what Mr Bedford has had to say regarding this at his two previous appearances, and clearly he will have the opportunity of bringing the Committee up-to-date.

“The impact of such an offence being committed by a registrant upon public confidence in the professions”: that is really the same point as in (iv), the relevance of the offence to professional standards and conduct and the public expectations.

So far as the misconduct arising from his non-registration is concerned, clearly the Council says that registration is something that all professionals should take seriously if public confidence is to be maintained. Members of the public are entitled when they attend a practitioner for treatment, which can only lawfully be provided by someone who is registered with his professional body, to expect that registration is properly in place.

The Committee also want to be satisfied that Mr Bedford has insight into the matters that led to his removal, and also that there are no prospects of a recurrence. The Committee will also want to satisfy itself that public confidence and maintenance of the standards of the profession will not be adversely affected by his restoration. One of the relevant factors will be the length of time since the misconduct and the caution, and in that regard this Committee will have noted the observations of the Committee that heard the previous application, that it would have to be an exceptional case for an applicant who had committed serious misconduct to be restored at what was effectively shortly after the first opportunity allowed under the Act. This of course is not the first opportunity, it is the second opportunity.

Finally, in exercising its judgment the Committee can be assisted by case law. I have copies of the case of *Bolton v The Law Society* [1993] WLR 512 which will be very familiar to everyone. There is just one passage that I would like to read out, but I think it is fair that the Committee should have the full decision.

**Ms Jones:** We will call this document C4.

**Mr Hudson:** I am grateful. As I indicated in the summary the passage that I think would be helpful for these purposes starts effectively on page 10 of the authority at letter D. This was of course a case that concerned a solicitor, but the then-Master of the Rolls made some important observations regarding the

focus of Committees such as this when deciding matters concerning registration, including therefore restoration.

He said, picking up at D on page 10:

“It is important that there should be full understanding of the reasons why the Tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the Tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors; profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled by denied re-admission.”

He then goes on to make some solicitor-specific comments, but then continues:

“A profession’s most valuable asset is its collective reputation and the confidence which that inspires.

Because orders made by the Tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the Tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor

whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely to be so, the consequences for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right.”

We then come to what is often quoted:

“The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price.”

Madam, I thought that was helpful because it does indicate the focus of this Committee’s decision-making in deciding whether the time is right for Mr Bedford to return to the Register.

Madam, unless I can help you any more, that is all I propose to say.

**Ms Jones:** Thank you. [*No questions from the Committee.*] Mr Bedford, would you like to address the Committee?

**Mr Bedford:** Madam, as has been said I do not have any new evidence to bring. I stand by everything that has been said at the previous two Hearings. I would just like to reinforce a few things.

I have always been honest and frank about what happened, and never tried to make any excuses. It was part of my life that was totally out of character for me, and I am still deeply ashamed about what happened. I would like to have the opportunity of being able to move on with my life and take on a larger role in optics. I feel I still have a lot to offer and would love to continue fully in the role of a dispensing optician if restored to this Register. Throughout the time that I have been removed from the Register I have continued to pay my full ABDO fees from Day One to show my commitment to being restored, and my commitment to the role of a dispensing optician.

Just to elaborate slightly on my roles now within Specsavers at Hemel Hempstead, it has developed a lot over the last six years to include now in-store training, as said previously, but I have now also taken over the role of floor manager. I have also been helping to mentor and develop the skills of the qualified and non-qualified dispensers within the store, and have helped dispensing students with their studies, and currently am helping a qualified member with their low vision course.

I dearly love the profession, and would love to be able to continue within the role if I was restored to the Register. I had a lot of support from family and friends. I have lost a lot of friends due to what has happened, but certainly with the support of Mr Marsh and my family around me I would like to show

that I would be able to show myself as a very good, capable, dispensing optician in the future if I was restored to the Register.

I really do not have anything further to add, other than as I said from Day One I have tried to be as honest and frank as possible, and really just tried to hold my hand up and to admit to all the mistakes I have made.

**Ms Jones:** Thank you. The Committee may have some questions.

**Mr Bedford:** Sure. Thank you.

**Ms Jones:** Before the Committee asks questions, can I just check whether you have anything you wish to add?

**Mr Watson:** Yes Madam, thank you. [*Confers*] Should I ask Mr Bedford direct?

**Ms Jones:** That is easier; we are sitting in a room altogether, so let's do this in the most constructive way.

**MR BEDFORD**  
**Questioned by the Legal Adviser**

**Q.** Mr Bedford, you mentioned mentoring.

**A.** Yes.

**Q.** I think that the Council would be interested if you could explain a bit more the capacity in which you have been mentoring, and also what that mentoring has involved.

**A.** I have been there as a resource for help with training, developing people within the store, helping them develop themselves as non-qualified dispensers and qualified dispensers with my 20 years of experience and knowledge. I have been there to help them if they have been finding certain subjects difficult, helping them to be able to research things that they are stuck with – basically being there to allow them to use the 20 years experience that I have had within the profession.

**Q.** Have they been aware of your status?

**A.** Yes.

**Q.** I just have two additional areas to cover: the first is that you said last time that the conduct had arisen through errors of judgment.

**A.** Yes.

**Q.** Now, clearly the conduct fell into two parts. One was the dishonest behaviour, and the second was the non-registration. Could you first of all just explain what you now understand was your error of judgment with regard to the dishonesty?

**A.** It is just something that I should never even have – it was a very bad and difficult time for me. My judgment in my personal life was affected by the situation I found myself in. It is something that I had never been involved with

before or since, and I am totally ashamed about the way I reacted at that time. It was totally out of character for me, and I cannot make excuses for it.

- Q.** Could you just clarify the period of time over which the dishonesty occurred?
- A.** I would say probably round about sort of 18 months. It is difficult. It was really over the period of time that I was going through a lot of the difficulties with my divorce and separation from my wife, and I think it went hand-in-hand with each other at that period of time.
- Q.** Also we heard that you made sales via e-Bay and also that the amount slightly questioned by you was said to be £3,000. Do you know how many occasions you would have put your employer's stock for sale on e-Bay?
- A.** Not off the top of my head, no. The reason why I query it is because in the original letter I got from them, certainly what was taken, it was based on a number of things that I had had absolutely nothing to do with, but because I accepted I was in the wrong and guilty I decided not to question it. I just decided with the help of my parents just to go ahead and pay it and accept guilt.
- Q.** But it was a number of transactions that you undertook?
- A.** It was a number, yes.
- Q.** And you accept that in respect of each of those transactions there was an error of judgment?
- A.** Yes. Yes.
- Q.** So far as your non-registration is concerned, do you regard that as an error of judgment?
- A.** Yes. I mean, in hindsight it should not have been something that I just assumed was taken care of by a direct debit. I was moving from home to home, people's floors, I was staying in numerous places with help from friends and family. I had for some reason assumed and got it into my head that as with my ABDO registration I had been paying my GOC registration – and actually, to be perfectly honest, at some times within that period it would not have been the first thing in my mind at that time. In hindsight yes, it is my responsibility to check that I am registered and not just to assume.
- Q.** Thank you very much; and the other aspect I would like to ask about, you have heard what was said on the last time about your application being too early?
- A.** Yes.
- Q.** What do you say to the Committee, bearing in mind the distance in time since the offending, whether it is appropriate now for them to allow you to be restored?
- A.** My life has changed considerably since those days. I certainly take what was said at the last hearing – my life has totally changed around. It is back to how my life was prior to my divorce and prior to the incidents that happened at Ronald Brown. I would like to think that I am back to my real self.

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

**Ms Jones:** Thank you. The Committee will ask you some questions; perhaps I can start on my far right?

### Questions from the Committee

**Mr Hensley:** I believe you have mentioned on one or two occasions wanting to undertake further training, particularly relating to contact lenses?

**A.** Contact lenses, the low-vision course. I was even looking at furthering my current ABDO exam, topping it up to a degree. I thirst for knowledge to some extent. It might sound slightly corny, but I found it frustrating – which is fair enough, I should have been in a position to find things hard and difficult from what I have done. I have colleagues around me that are taking courses, I have a colleague who is actually doing the low vision course. I would dearly love to be able to do that, and I am enjoying helping and supporting, giving the benefit of my knowledge. It is the same with the training. At work I enjoy the training. That is an area that I would like to develop. It is passing on my knowledge and experience, which is something I really enjoy, and I do want to expand my role.

**Q.** Had you already started the contact lens course?

**A.** I had actually got to the point where I was re-taking it. I had failed one section in the practical, and I was just going to re-take that final section. Basically I passed all the practical exams and had passed all the sections up to the final – I had to re-take one of the last sections. I had to re-take that, but because of the fact that at the time because of my divorce I had not actually followed it up, and because of what had happened, I was going to re-take the whole practical section, but I had actually fully passed the theoretical side of it.

**Q.** So you had taken all three theory papers and passed them?

**A.** Yes, and passed them.

**Q.** And the practical bar just a small amount?

**A.** Yes, it was one section.

**Q.** Have you had advice from ABDO on whether any of those passes have now expired and will need to be re-done?

**A.** At the end of the day if it is possible for me to re-take the whole thing I would be more than happy to re-take the whole thing. Depending on the decision taken today I did not want to look that far ahead.

**Q.** So you have not asked them yet?

**A.** I have not asked them yet. I did not want to tempt fate. If I am restored that would be one of the first things I would be doing over the next couple of days.

**Q.** If such were to happen, have you anything to say about supervision of student contact lens opticians and your knowledge of that? What are the requirements?

**A.** In relation to me as a supervisor?

- Q.** As a supervisee, a student contact lens optician.  
**A.** I am not quite sure – sorry?
- Q.** Sorry, let me put it another way; if your registration were successful today and you started to try and finish off your contact lens training, can you say your knowledge of how you should be supervised and what you should comply with in practice if you started fitting contact lenses?  
**A.** If I started fitting contact lenses I am aware of the restrictions that I would have on me.
- Q.** And what are they?  
**A.** That I would need to be supervised by a member of staff who is actually there all the time, not to be allowed to fit, check or be involved in contact lenses in any way without having somebody on the premises at all times.
- Q.** Your dedicated supervisor; are you aware of what they must be?  
**A.** Yes, qualified for at least three years. One of my colleagues is an ABDO contact lens supervisor, but there are a number of people on the premises that could actually be in that role.
- Q.** I do not expect you to read them out to me, but are you also fully up-to-date with your knowledge of the rules on contact lens supply and sale?  
**A.** Pretty much. Because of working in front-of-house with people coming in and querying about buying and being supplied with contact lenses, it is something that everybody at the store and front-of-house is aware of; but I have people on the shop floor, contact lens opticians or optoms who are there for any further advice.
- Q.** Thank you.
- Ms Jones:** One of the responsibilities of the Panel in its thinking today is about ensuring that any repeat of the incidents could not occur. What have you put in place? If your life is in stress or difficulty what is different so this does not happen again?  
**A.** To look for help as soon as I feel that things are reaching a point like that again. It was a part of my life of which I had no experience. I had never been in situations like that before. I suppose within 24 hours my life pretty much turned upside down, from having a happy home life to sleeping on somebody's sofa. To be honest at first I tried to I suppose front it out, in that I did not want anybody to know necessarily, apart from close family, what had happened. It is all an admittance of failure. Initially I tried to keep it to myself, and only initially a few close friends and family knew the situation. In hindsight now I would look for help straightaway. People are there to help. They have been there to help me, once I let them know the situation, and I have a good support network around me now.
- Q.** In terms of the GOC are your payments on direct debit?  
**A.** No.

**Q.** Okay; thank you, those are my questions.

**Mr Cripps:** Mr Bedford, we have heard that you have now managerial responsibilities for the company you are working for, and also you have been mentoring trainee dispensing opticians and dispensing assistants. You say you would like the opportunity to have a larger role, so how do you see that larger role developing?

**A.** The larger role personally would be to develop myself more within the role of a dispensing optician. One of the things I have always found is the need to push myself rather than sitting back and resting on my laurels. One of the things I found most frustrating sometimes working with some dispensers over the last few years is that some people qualify and that is it, they see it as a piece of paper and that is it, they can go out and do a job and be called a dispensing optician. I find it so frustrating that they do not use their knowledge in their work. It really frustrates me, and it does make me angry sometimes, that people have gone to the trouble of taking three years to train and at the end of that most of that knowledge seems to disappear.

I enjoy the process of developing other people; I enjoy people who have a thirst for knowledge. One of the things which was part of the problem at the time was being a supervisor for dispensing opticians. I really enjoyed that role. I work with a member of staff who works for ABDO as an examiner. I am not saying that because of what has happened that I would ever be given an opportunity to do that, but I would love to be able to do something along those lines. It is frustrating, and I totally understand what has happened has happened, but I sit there some days and it really is difficult for me to sit there and say 'Well, this is the extent of my role now'. I want to push myself further. I have a thirst for knowledge, and it is frustrating – even to the extent now that I have been looking in to doing external courses or degrees in other subjects as well, time permitting with my family. I really feel that within the role of a dispenser I could really develop myself a lot further.

**Q.** Thank you; we have heard that there is evidence that you have sufficient CET points under Rule 25. Can you just give us some idea of what else you have put in place since you last appeared before us to persuade us about restoration?

**A.** I have worked hard. It is difficult. I have done lots of courses. With family commitments, I have a reasonably large family but also commitments as a carer as well because my father-in-law has Alzheimer's so we are carers as well. The time to go off and do lots of external courses is very difficult for me. Yes, I would love to do things like that. I think it is also the fact that using the CET I do not see it just as a means to an end just to get points on a list. To me it is there as a way of developing my knowledge of a subject, so as the CET points come in or the CET documents come in I do not see that as 'Okay, that is all right, all I have to do is read through this and gain the points from the questions down the side'. It is an area that I will look further into, and expand my knowledge in that area beyond what the CET points were.

Most days as new products come out, new studies come out, I am one of the first people there reading up on it, and in the evening I think my family find it

quite frustrating that they cannot get near a computer in my house because I am sitting there Googling something that has come up during the day.

**Q.** Thank you.

**Mr Varley:** I have no questions.

**Ms Jones:** I would like to go back to the issue of repeating the behaviours, because that is the risk issue. You were saying that you have a large family. My experience is that children can be quite challenging, or life brings up challenges, and you have talked about your father-in-law. You will have strain and stress in your life. What are your coping mechanisms?

**A.** My coping mechanisms now really are to ask for help and not try to bottle things up. Up until the point this happened I have had stresses and problems in my life, and have never reacted in the way that I had. It was totally out of character for me. I cannot say why I did what I did; I would love to be able to put a pin down and say 'That is why I reacted that way'.

Because of what happened, now I can see that if I am ever getting into a situation where things are getting to a point where I might react in a certain way, I am now looking for help, talking about it. I have not been one for bottling up things and not talking about it; just for this particular time I reacted in a way, regardless of what I did wrong, just me as a person reacting the way I did was something that I look back on now and I do not even recognise it.

**Q.** Thank you; I made the observation that you are accompanied by Mr Marsh. Are you going to call any witnesses?

**A.** No, I am not. Mr Marsh was here purely as last time, just as a character reference.

**Q.** I just wanted to check that out before we moved on. If there are no further questions; [None] I take it you have no questions, Mr Watson? [No] Can we move on to submissions then, if there is anything anybody wishes to say?

**A.** As far as making any kind of character reference, would that be something that Mr Marsh would do now?

**Mr Watson:** Yes, so that there is no misunderstanding the proceedings have now gone through a process of the Council's explanation, and you presenting as it were your evidence – the evidence that you wish to make. If you wish to put forward any evidence apart from what you yourself have said to the Committee, then now is your opportunity to do so, so if you wish Mr Marsh to speak for you or even as a character reference, now is the time to do so. After this stage you will respectively be asked to sum up your case on the application, and then the Committee will decide. So now is your opportunity, if you wish Mr Marsh, to say anything on your behalf.

**Ms Jones:** So do you wish to call Mr Marsh?

**Mr Bedford:** Yes, I do.

**MR MERVYN MARSH, called and affirmed  
Examined-in-chief by MR BEDFORD**

**A.** First things first, my name is Mervyn Marsh. I am a qualified and registered DO. I am an examiner for the Spectacle Makers' Company.

**Ms Jones:** Excuse me, could you speak up because of the recording, but also not all of the Panel are members of the profession, so could you explain any initials to us in full? We do understand GOC and ABDO, but some of the others pass us by! Thank you.

**A.** I am a qualified and registered dispensing optician. I am an examiner for the Spectacle Makers' Company. I am fiercely proud of my qualification, my profession and my practice. I have a large practice with 27 full-time employees, five part-time employees, and 17 of those full-time employees are qualified. We invest a lot of money in our qualified staff, and as a member of the GOC I completely agree with the original decision of the Council to remove Darren from the Register.

In hindsight, I think it was a very sensible move not to put him back on the Register, but what I have to say in his defence is that over the last six years or so I have watched this lad mature. He is nowhere near the person he was when he first came to me from Ronald Brown Group. His knowledge – and forgive me saying this, I imagine it is nothing compared with yours, Mr Cripps – he is a very intelligent and articulate man when it comes to lens design and imparting that information to unqualified and qualified people alike.

During the period since the last appearance for restoration, Darren has taken it upon himself to be a mentor. He has grown immensely in his position with the company and the respect that people have for him. The reason that Darren can cope now when he could not cope before is because we have an extremely pastoral situation at that branch. Our door is always open. Darren has not mentioned it now, and forgive me for saying it, but he has had stress issues over the last three to six months with his ex-wife who is threatening to take his children to Australia, so we have dealt with that for him. We have come to his assistance, and he has managed to keep a level head through it.

I completely trust Darren, and I believe that if he is restored to the Register he will become an ambassador for the profession.

With CET, we have a bit of a CET competition within our store, in the sense that we have a prize at the end the semester if we end up being the one with the most points. Whether you retain the knowledge is a different kettle of fish, but just to let you know in the last semester I had over 200 points, and this period I have already got 80; so we strongly believe in balancing the profession, and I think that Darren has served his time and it is time to restore him to the Register.

**Ms Jones:** If you can sit there, we may have some further questions. As you have in effect called Mr Marsh as a witness do you want to ask him anything?

**Mr Bedford:** Not really; there is nothing that comes to mind, thank you.

**Ms Jones:** The Committee may have some questions for you.

### Questions from the Committee

**Mr Varley:** Good morning; I am a lay member, as you probably realise. If Mr Bedford was restored to the Register, how would you see his future within our operation?

**A.** I do not really want to say too much in front of him! But he is a sizeable king-pin within my establishment with respect to the contact lens course. If Darren's previous passes are wiped out with ABDO then we will just sponsor him through the course again. He is there for the long haul. I have known him for eight years, and I do not know what happens after that.

**Q.** He has worked for you now for six years?

**A.** Six years.

**Q.** And you do not regret making that decision?

**A.** Not at all.

**Q.** Thank you.

**Ms Jones:** [*No further questions*] Thank you very much.

[*The witness stepped down*]

After hearing the evidence from the two sides now we move to the summary positions before the Committee will withdraw and consider matters. Mr Hudson?

**Mr Hudson:** Madam, I have not really very much to add to what I have said already. I explained the Council's view of how the Committee should approach their judgment-making process, and I in effect repeat what I said in opening.

**Ms Jones:** Thank you very much. Is there anything you would like to say in summary, Mr Bedford?

**Mr Bedford:** I would like just really to recap on the fact that as I have said I totally understand what has happened and why it has happened. I would dearly love to be able to be restored to the Register. I do not make any excuses or want to bring any evidence further to change what has already been said in the past, but as I have said I am deeply sorry and ashamed for what happened.

**Ms Jones:** Thank you. Can I invite the Legal Adviser to advise us?

**Mr Watson:** Thank you; it is my task now to offer advice to the Committee as to the way in which they should approach their consideration of this application. I

emphasise firstly that what I offer is advice, and secondly that it is the decision of the Committee.

The factors to which the Committee will have regard in terms of the substance of the application, and indeed some of the structure of the approach, is very, very helpfully set out in a written opening which you have before you, and with only one or two qualifications and additions I advise you that you can properly have regard to that document. The only qualifications that I will be mentioning in my advice to you is under paragraph (2), that as you will hear in a moment you should bear in mind sub –section 6 of 13K –

**Ms Jones:** Can we just say that this is document C2, for the record.

**Mr Watson:** Thank you, I had not numbered it; so sub-section (2) of 13K contains what I will describe as the discretionary element. When you come to bear in mind the background to the application, for example when you have regard to the reasons given by the previous Committees, both at the time of original erasure and at the time of the first application for restoration, in particular those summarised for example at paragraph 17, I simply advise you that you may certainly have regard to the reasoning of previous Committees by way of the background, but the situation that you have to decide is the situation today. You are entitled to come to an independent judgment, independent of any reasoning offered by previous Committees on this application.

Moving forward within this document I will pay some regard in my advice to you to paragraph 27, the applicability of the *Protocol on the Handling of Criminal Convictions Disclosed by Registrants*, that is a relevant document – although as you will hear there is certainly a feature to which you should have regard in that document, namely the prominence given to offences which do not concern you today. I will make that clear in a moment.

Turning to page 9 of the written submissions in C2, I have taken it that under (ii) where the Council accept that there was no risk in this case, that this is a reflection of the concession or point made on behalf of the Council at the previous hearing, transcript page 44, that “there was no harm caused to any patients in this case”, so neither risk nor harm.

The reference to the Code of Conduct at (iv) on page 9 is of course to paragraph 10 of the Code of Conduct. What I do urge by way of caution is that the second sentence under (iv) that “indicate what the public expects” is not itself a quotation from the Code of Conduct. It is an interpretation by the Council. It will be for you to judge what public expectations are of the profession, having regard to the Code of Conduct. I would advise you in that respect that this statement as printed is a little too wide in that it refers to all professions, whereas of course you are in a sense the guardians of the regulatory standards for this particular profession rather than to others.

The public expectations, I will digress and say, should be measured not by unreasonable or prejudiced members of the public or ill-informed members of

the public, but reasonable and informed members of the public who know the facts of the case. It is that perspective which you bring to bear.

Lastly, reference has been made, again helpfully and together with a transcript of the judgment, to the case of *Bolton*. I advise you that this does indeed give important guidance for all regulatory Committees dealing with applications of this kind for restoration, but that guidance should be looked at with two provisos: one, that the particular context of the guidance offered by the Master of the Rolls in *Bolton* was of course directed to the solicitors' profession, and therefore whilst the general principles may be taken into account the judgment in that case depends very much on the context of that particular profession.

Secondly, I advise you that that authority has been applied, and indeed more recently by the Court of Appeal and the - as it were - successor Master of the Rolls, most recently perhaps in 2007. The citation of the case involved does not concern you, although for reference I will indicate it is the case of *Jidefo v The Law Society*. I simply say for completeness so that the Committee are not puzzled in their own consideration that whilst *Bolton* concerned the principles to be applied at the stage of striking off, that it is well-established and indeed confirmed by the more recent case of *Jidefo* that the same principles apply, both when considering the position of a new entrant to a profession and indeed to an application for restoration such as this. There may be subtly different factors and considerations to take into account, but the standard that must be applied in terms of the profession's fitness to practise and the requirements for being on the Register, and indeed matters to do with public interest and public confidence, remain the same and should be applied in all three cases.

Turning from that long introduction, long simply because if those amount to the provisos, subject to which I advise you that the Council's written opening does contain the right kind of approach that you can take into account, I would advise you in this way: firstly, it was indicated by me at the outset, and I do not repeat it in extensive terms, that the burden of persuasion lies on the applicant for restoration, but there is no strict burden of proof. It is a matter of judgment for you to make.

The decision that you have to make under Section 13K of the Act is essentially one decision, but does involve two elements to it. The first element is that which is indeed contained in the extract you have in C2 at (vii). The first element perhaps is the consideration that you must give as to whether or not all that you have heard, and the evidence that has been placed before you, has satisfied you that the applicant is fit to practise and has as it were met that threshold.

The second element is contained in sub-section (vi). It does not warrant quotation, and I can understand why it has been left out, but the words in (vi) indicate that the Committee may make a direction if you think fit. Those are important words, because the first element being whether or not you are satisfied that the applicant is fit to practise is one element; the second element

is the discretionary element. You have a discretion as to whether or not to exercise your judgment in allowing an application, and that introduces that second factor.

In approaching both elements you may have regard both to the facts underlying the original decision for erasure, the nature of the original misconduct, the passage of time that has passed, all that has been said about what the applicant Mr Bedford has done in that interval, and the evidence that he has given you, both as to his own perspective on the original events and indeed his evidence about his position today.

The judgment that you make as to whether or not he is fit to practise is made, as I have stated, applying exactly the same principles as you would in the case of either a registrant who was found now guilty of misconduct or a new entrant to the profession. The standard of fitness to practise is the same. You bear in the forefront of your mind the same considerations that are set out in your indicative sanctions guidance as to your regulatory function and the public interest, both the need to maintain and declare and uphold proper standards in the profession, and to maintain public confidence in those standards, as well as the need to protect patients. That secondary element, the need to protect patients, is one perhaps you may feel – and it is a matter for your judgment – is not necessarily relevant in this case, the original misconduct not having concerned any risk or harm to patients. However, it is of course a factor which you continue to bear in mind in deciding whether the applicant is now, and in the future, fit to practise.

The question as to public confidence and public perspective I have already advised you in relation to. I turn now to the guidance in *Bolton*, but as a stepping-stone to that I ask you to look at your own protocol, the Council's protocol in C3. I draw to your attention that the protocol in paragraph 2 is a protocol which of course, whilst applying to the Registrar's functions, is one which applies both in the context of restoration or retention on the Register.

It is right in fairness to the applicant that I draw to your attention that there are particular categories of criminal offence which are listed in paragraph 3, and in respect of which paragraph 2 indicates that a conviction under those headings, and for these purposes you may treat a caution as tantamount and equivalent to a conviction, in those categories the Registrar will presume against registration restoration or retention. That approach is repeated in essence in paragraph 4.

It is right that I advise you that an offence of dishonesty, or however it is categorised, is not within that particular category. It is therefore within the more general category to which paragraph 5 and onwards apply, and the nature of the factors which the Registrar would take into account have in fact been summarised, and fairly summarised I would advise you, already in the Council's written opening. The headings are reflected in the factors which were covered in C2.

Turning from that finally to *Bolton*, as I have indicated it assists you in setting out matters of general principle; firstly, that trustworthiness and probity do lie at the heart of what it is to be a member of a profession; secondly, a profession's most valuable asset is its collective reputation and the confidence that it inspires; thirdly, that set against those factors, both individual personal mitigation whilst relevant matters which you must take into account, are usually of little or no weight in cases concerning dishonesty or lack of probity, because the reputation of the profession is more important than the fortunes of individual members.

However, those three principles just enunciated must be balanced against a proviso: firstly, that the principles set out in *Bolton* do not preclude re-admission to a profession even after a conviction of dishonesty, either in exceptional circumstances or where sufficient factors, including the passage of time, permit a judgment to be made, not only that the applicant is fit to practise but that the reputation of the profession, including public confidence in that profession and its standards, would not be harmed by restoration.

Those conclude the matters which I would seek to call to your attention. The Council's opening and points that they wished to draw to your attention as I have repetitively said have been well and helpfully summarised in C2. They include many of the facts which the applicant would wish you to take into account. You will of course in addition have full regard to the matters put before you by the applicant and by Mr Marsh, who has given evidence before you, but no purpose is served by summarising those matters fresh in your mind after a short hearing.

Thank you.

**Ms Jones:** Do either of the parties have any comments or questions following that?  
[No questions] Mr Henley, if you would please clear the room then the Committee will consider its decision.

[Hearing adjourned at 11.00]

[Hearing reconvened at 13.25]

**Ms Jones:**

### **Determination**

1. The Committee has reached its determination on this application having accepted the advice of the Legal Adviser, and having taken into account the submissions of both parties and the evidence put forward by the applicant.
2. In particular the Committee has borne in mind that it has a discretion whether to allow the application but that this discretion should only be exercised if it is satisfied that the applicant is fit to practise.

Furthermore the discretion should only be exercised if restoration to the Register is compatible with the public interest.

3. The decision in this case involves a fine balance of judgment. The applicant was erased on grounds which included not only serious misconduct but also a caution for theft. The theft involved was on the face of things a serious and prolonged breach of trust, and concerned a substantial sum of about £3,000.
4. Such conduct was a clear and profound breach of the Code of Conduct and incompatible with the standards of honesty and probity expected of members of this profession, standards which must be upheld if public confidence is to be maintained.
5. A number of factors have been advanced on the applicant's behalf, some of which are noted in the Council's helpful written submissions at C3. This Committee has had regard to that document and those factors. It has been told that the dishonesty arose out of a period of extreme stress in the applicant's life connected with a divorce, that he has never behaved in that way either before or since, that he views his conduct with shame, and that he has learnt how to seek help and advice if similar circumstances were to recur.
6. It notes that the theft occurred prior to May 2005 when the caution was accepted. It notes that the employer whose stock had been deceitfully sold by the applicant without his knowledge had been repaid prior to the caution. It notes also that at the time of his erasure in October 2006 the applicant had already taken up employment elsewhere, and that his new employer had full knowledge of the applicant's past conduct and the GOC proceedings. Mr Marsh, who has been the applicant's employer now for six years, has given evidence before the Committee today, and it is clear from his evidence that the applicant has been a valued member of his staff and that he is now trusted with management and training responsibilities within the practice. Mr Marsh gave evidence that the applicant was now a changed person.
7. There are two aspects to the applicant's previous conduct. The first arises out of his failure to maintain his registration and the associated supervision of a trainee whilst not registered. Also by not being registered he supplied services when he was not in fact permitted to do so. The Committee has been told that no patients were harmed and that the supervisee whose training qualification was jeopardized did in fact qualify. The Committee has heard and accept that the lapse of registration was an oversight, and it notes that no question of the applicant's clinical competence has arisen at any time since. If these aspects of misconduct were to stand alone the Committee would therefore have concluded without hesitation that this application for restoration, being his second such application, should now be allowed.

8. What causes difficulty is the aspect of dishonesty. In reaching its decision the Committee has had regard to the broad principles outlined by the case of *Bolton v The Law Society*. In particular the Committee wish to make clear that its decision acknowledges that the collective reputation of the profession is more important than the fortunes of a single member. It has also considered how the public confidence in that reputation would be affected by permitting an applicant with a history of dishonesty to be restored.
9. The balancing factors in this case arise because serious dishonesty is not a matter which would justify an expectation that a member of this profession should be restored to the Register, or that if restoration were to be permitted it should happen before a very long and constructive period of rehabilitation has elapsed. That said, the Committee considers that the individual facts of each case must be viewed and considered, and that no blanket approach should be applied. Indeed, dishonesty is not within the category of offences listed in the Council's own *Protocol on the Handling of Criminal Convictions Disclosed by Registrants* as offences which create an automatic presumption against registration. It is therefore necessary to weigh and balance the individual circumstances, and to consider whether in this particular case restoration should be permitted, and if so whether now is the right time.
10. Considering all the factors in this case the Committee re-states that it finds the decision to be a finely balanced one. There is a clear argument for saying that the matters are so serious that, although restoration might be appropriate at some time, it is too early to reach that conclusion. There are also powerful factors in favour of saying that the applicant has now maintained his skills and his commitment to the profession for a period of six years since the caution without further misdemeanour. He has also been erased from the Register for over four-and-a-half years. There are also unusual features in this case. Not only did he repay his employer in full but was able, successfully, to persuade Mr Marsh to place trust in him, and he appears to have honoured that trust.
11. In the end the Committee has decided to exercise its discretion in favour of the application. It does so wishing to make it clear that the evidence of the applicant and the applicant's employer has satisfied us that not only was this dishonest episode out of character, but it was committed in circumstances which the applicant will now deal with differently. The risk of repetition in future seems to us to be slight.
12. The Committee therefore determined that Darren Bedford should be restored to the Register of Dispensing Opticians.

Thank you.

[Hearing concluded at 13.10]