

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

GENERAL OPTICAL COUNCIL

F(11)18

AND

CLAIRE ELLEN BROOKS (D-12034)

DETERMINATION OF THE INQUIRY: 23 JANUARY 2012

Service

The Committee is satisfied that all reasonable efforts have been made to notify the registrant of the hearing. The Committee further determined that it would be in the public interest for the hearing to proceed in the registrant's absence.

ALLEGATION

The Council alleges that in relation to you, Claire Ellen Brooks, a registered dispensing optician:

1. On or about the 6th August 2008 you stole £185.00 from Specsavers Optical Group.
2. On or about the 20th August 2008 you stole £125.00 from Specsavers Optical Group.
3. On or about the 10th October 2008 you stole £206.00 from Specsavers Optical Group.
4. On or about the 24th November 2008 you stole £250.00 from Specsavers Optical Group.
5. On or about the 3rd January 2009 you stole £332.00 from Specsavers Optical Group.
6. On or about the 6th April 2009 you stole £238.00 from Specsavers Optical Group.

7. On or about the 29th April 2009 you stole £229.00 from Specsavers Optical Group.
8. On or about the 4th August 2009 you stole £264.00 from Specsavers Optical Group.
9. On or about the 7th August 2009 you stole £185.00 from Specsavers Optical Group.
10. On or about the 8th September 2009 you stole £249.00 from Specsavers Optical Group.
11. On or about the 9th of September 2009 you stole £288.00 from Specsavers Optical Group.
12. On or about the 23rd September 2009 you stole £203.00 from Specsavers Optical Group.
13. On or about the 4th November 2009 you stole £376.00 from Specsavers Optical Group.
14. The matters set out at particulars 1 – 13 above amount to misconduct.

By virtue of that misconduct your fitness to practise is impaired.

DETERMINATION

The Committee has already determined that it is in the public interest that it should proceed in the absence of the Registrant who has had due notice of this hearing, has confirmed her intention not to attend, and has advanced no reasons why it should not proceed.

The Committee has heard submissions on behalf of the Council. It has accepted the advice given to it by the Legal Adviser in relation to each of the determinations made below.

Findings in relation to the particulars and the facts of the allegation

The Committee considered whether or not the facts of the allegation have been proved. It has considered the evidence adduced by the Council contained in bundle C1 and the submissions made on behalf of the Council. The Committee has borne carefully in mind that the Registrant is not present and that the burden of proof lies on the Council to prove the facts to the requisite standard of probability. However the Registrant has at the procedural stage of these proceedings indicated on 30 August 2011 that she admits the facts.

The Committee finds all the facts proved under paragraphs 1 to 13 of the Notice of Allegation.

Findings in relation to misconduct

The proven facts are that the Registrant stole from her employer a total of over £3,000 over a period of 15 months up to November 2009. The theft took the form of fraudulent credit card refunds carried out by the Registrant on 13 occasions. The Council has submitted that the Registrant's conduct was in breach of trust and contrary to the Council's Code of Conduct for Registrants. The Committee agree. The Committee found Claire Brooks guilty of misconduct.

The Committee therefore finds paragraph 14 the Notice of Allegation proved.

Findings regarding impairment

The Committee has heard submissions on behalf of the Council. It has accepted the advice given to it by the Legal Adviser on this issue.

It has paid particular regard to the fact that it must be satisfied that the matters above give rise to impairment at the date of this hearing. It has borne in mind the findings already made as to misconduct.

The Committee notes that although the theft was carried out in a manner which was in some ways naïve it was also in other ways relatively sophisticated, planned, and deceitful. The Registrant used a single credit card for the repayments but on some occasions logged in to her employer's system using the log in details of her colleagues. The Registrant therefore took premeditated steps to cover up her dishonesty until finally confronted by her employer in December 2009.

Notice has been taken of the fact that the Registrant admitted the allegation to her employer and that she promised to repay the sums stolen, and that a family member has done so on her behalf. Nevertheless, the Committee consider that a theft in breach of trust of this kind, involving not insignificant sums, and carried out over an extended period of time, amounts to a very serious dishonest breach of the Code of Conduct for Registrants and one which is wholly contrary to the standards of this profession. Despite the admission and repayment and despite the interval of time the Committee is satisfied that the Registrant's fitness to practise is impaired and that to hold otherwise would undermine the standards which it is necessary to uphold in this profession and public confidence in those standards.

The Committee found that the fitness of Claire Brooks to practise as a dispensing optician is impaired and therefore finds paragraph 15 the Notice of Allegation proved.

.Sanction

The Committee has heard submissions on behalf of the Council. It has accepted the advice given to it by the Legal Adviser

It should be observed that the Registrant has not placed any evidence of mitigation before the Committee. Nor has she put forward any representations. In the absence of such evidence the Committee has again taken account of the fact that the evidence before it suggests that the Registrant lost her employment as a result of her admitted dishonesty and that the money which she stole has been repaid by a member of the family. These were all factors which her employer took into account

in deciding not to pursue criminal charges. But other than these points, the Committee has no evidence whatever as to the Registrant's activities since December 2009.

In its approach to the determination as to sanction the Committee considered whether no sanction, or lesser sanctions were appropriate, before proceeding to consider whether Registration should be withdrawn in this case. It concluded that neither conditions nor a financial penalty were appropriate bearing in mind the seriousness of the dishonesty.

This was a case of persistent acts of theft with aggravating features to which the Committee has already referred in its determination on misconduct and impairment. It was theft in breach of trust from an employer.

The Committee considered suspension. However it considered that the seriousness of the case made suspension an insufficient sanction. Furthermore, the Committee has no evidence of insight or as to any steps taken to address the fundamental lack of confidence in the Registrant's integrity which dishonest conduct of this kind creates. The fact that the allegation was admitted and that money was repaid is not in itself sufficient for the Committee to understand how the Registrant now views her behaviour nor does it shed light on her conduct since December 2009.

The Committee have therefore determined that erasure is the necessary and proportionate sanction for misconduct of this kind. The GOC's Guidance suggests that erasure is likely to be appropriate where the Registrant's behaviour involves an abuse of trust or dishonesty particularly when persistent or covered up. This is such a case. Whilst the Committee have borne in mind the principle of proportionality and the mitigating factors referred to it has concluded that the public interest requires not only a finding of impairment but the sanction of erasure.

Immediate order

The Committee heard submissions on immediate orders from the Council and it has accepted the advice of the Legal Adviser.

The Committee considered carefully whether to make the order for erasure immediate. The Council indicated in its submissions that the Registrant no longer works in the profession. The Committee did not therefore consider that immediate suspension was necessary for the protection of the public and on balance the public interest does not demand an immediate order. The Committee considers the sanction of erasure in itself is sufficient in this case to satisfy public confidence and the public interest. The order for erasure will therefore take effect in the ordinary way at the end of the appeal period.

Chairman of the Committee: Fran Jones

Signed _____

Date 23 January 2012

FURTHER INFORMATION
<p>Transcript</p> <p>A full transcript of the hearing will be made available via the GOC website in due course.</p>
<p>Appeal</p> <p>Any appeal against an order of the Committee must be lodged with the relevant court within 28 days of the service of this notification. If no appeal is lodged, the order will take effect at the end of that period. The relevant court is shown at section 23G(4)(a)-(c) of the Opticians Act 1989 (as amended).</p>
<p>Council for Healthcare Regulatory Excellence</p> <p>This decision will be reported to the Council for Healthcare Regulatory Excellence (CHRE) under the provisions of section 29 of the NHS Reform and Healthcare Professions Act 2002. CHRE may refer this case to the High Court of Justice in England and Wales, the Court of Session in Scotland or the High Court of Justice in Northern Ireland as appropriate if they decide that a decision has been unduly lenient and/or should not have been made, and if they consider that referral is desirable for the protection of the public. CHRE is required to make its decision within 40 days of the hearing (or 40 days from the last day on which a registrant can appeal against the decision, if applicable) and will send written confirmation of a decision to refer to registrants on the first working day following a hearing. CHRE will notify you promptly of a decision to refer. A letter will be sent by recorded delivery to your registered address (unless CHRE has been notified by the GOC of a change of address).</p> <p>Further information about the CHRE can be obtained from its website at www.chre.org.uk or by telephone on 020 7389 8030.</p>
<p>Effect of orders for suspension or erasure</p> <p>To practise or carry on business as an optometrist or dispensing optician, to take or use a description which implies registration or entitlement to undertake any activity which the law restricts to a registered person, may amount to a criminal offence once an entry in the register has been suspended or erased.</p>
<p>Contact</p> <p>If you require any further information, please contact the Council's Hearings Manager at 41 Harley Street, London, W1G 8DJ or, by telephone, on 020 7580 3898.</p>