

**F(11)18**

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

**GENERAL OPTICAL COUNCIL  
AND  
CLAIRE ELLEN BROOKS (D-12034)**

**SUBSTANTIVE HEARING: Monday, 23 January 2012**

**SUBSTANTIVE HEARING: CLAIRE ELLEN BROOKS (D-12034)**  
**Monday, 23 January 2012**

Committee Members: Ms Fran Jones (Lay, Chair)  
Dr Dozie Azubike (Lay)  
Professor Helga Drummond (Lay)  
Mrs Carolyn Eva (Dispensing Optician)  
Mr Hilary King (Dispensing Optician)

Legal Adviser: Mr James Watson QC

For the GOC: Mr Christopher Whalley

Hearings Manager: Mr David Henley BEM

The Registrant did not attend and was not represented.

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*[Hearing commenced at 09.30]*

**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 dispensing opticians and three lay members. I will ask the members of the Committee to introduce themselves and the capacity in which they sit. *[Introductions made]*

To my right is Mr 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 David Henley, the Hearings Manager, who will provide administrative support to the Committee. Next to Mr Henley is Fiona Shipley, 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, but where matters of health have been discussed the determination and the transcript will be redacted accordingly.

My understanding today is that this case has no health issues. Is that correct?

**Mr Whalley:** That is correct, Madam.

**Ms Jones:** Can I enquire whether there are any applications at this stage? I notice the Registrant is not present.

**Mr Whalley:** That is correct, Madam. On that basis, if I can perhaps firstly deal with service of documents and then I will submit application to proceed in the absence of the Registrant. You hopefully have been handed a copy of a service bundle, which runs to 12 pages. You will find at page 2 the Notice of Inquiry, which is dated 17 November 2011. That was sent to the Registrant by cover letter, which is found at page 6. You can see that is sent by special delivery, and at page 8 is a confirmation from the Royal Mail Track & Trace, which showed that the Registrant signed for the Notice of Inquiry documents on 19 November 2011 and, finally, at page 9 there is some email correspondence. Mr Henley, the Hearings Manager, has also sent the documents via email, and you will see at the centre of that page there is a response there from the Registrant which confirms she received that email with those documents.

Finally, pages 11 and 12 there is an email from the Registrant confirming that she will be unable to attend the hearing today.

In terms of the service, Madam, it is my submission that the documents have been properly served in accordance with Rule 31. Following on from that, it is my application to proceed in the absence of the Registrant today. Your powers are set out under Rule 21 of the Fitness to Practise Rules 2005, and that rule states that you may proceed in the absence of the Registrant if you are satisfied that all reasonable efforts have been made to notify the Registrant of the hearing and having regard to any reasons for absence which have been provided by the Registrant, you are satisfied it is in the public interest to proceed.

Madam, in my submission, as I have already said the documents were duly and properly served on the Registrant, and therefore all reasonable efforts have been made. The email at page 11 confirms that Ms Brooks said that she would be unable to attend the hearing today, and she has also confirmed that in other documents previously. Indeed, at the procedural hearing she did not attend, and confirmed that she would not be attending any future hearings.

In terms of a case authority, Madam, the leading case and the criminal case is from the House of Lords – *R v Jones* [2002] 2AllER 113. Essentially what that case says is if the Registrant chooses to voluntarily absent themselves from a hearing you may proceed in the absence of the Registrant, and it is clear, Madam, in my submission, that she has chosen to voluntarily absent herself from today's hearing. Given the documents have been served it is my application to proceed in her absence.

**Ms Jones:** Can I just check; do the Committee have any questions? [*No*]

**Mr Watson:** I tender advice to the Committee as to their powers and the way forward in determining whether or not you wish to proceed in the absence of the Registrant. You have rightly had your attention drawn to Rule 21 of the Fitness to Practise Rules, which provide a power for you to determine where the Registrant is neither present nor represented, and you may, nevertheless, proceed and exercise the power to proceed if you are satisfied that all reasonable efforts have been made to notify the Registrant of the hearing and, having regard to any reasons for absence which have been provided by the Registrant, you are satisfied that it is in the public interest to proceed.

There are, therefore, two limbs; firstly, you must be satisfied as to notice. Secondly, you must consider whether or not having regard to the wording of that rule, it is right for you to determine that you should proceed in the public interest. As to service of documents and notice, the origin of the powers as to notice and requirements is set out in Section 23 of the Act, but those are summarised at Rule 65 of the Rules, which provide that:

“Service of any notice or document under these Rules may be proved by”

– either service by hand, which is not relevant here or –

“a confirmation of posting issued by, or on behalf, of the Post Office, or other postal operator or delivery service.”

You have before you a bundle of documents, and you have had your attention drawn to the various parts within it which evidence the fact that the Notice of Inquiry has been served by Royal Mail, and that there is evidence – which you may or may not accept – that it has been received, but it has been confirmed by email that it has been received. You may decide that that satisfies you as to the requirements of notice.

Dealing with the broader question of whether or not you should proceed, your attention has rightly also been drawn to the guideline case which is normally referred to in these circumstances, albeit that it is a guideline case which governs whether or not a criminal court should proceed, and those guidelines

are set out in the case of *R v Jones*, which considered a previous decision of the Court of Appeal.

The circumstances which you must have regard to – I will list them since the Registrant is neither here nor represented – firstly, you must consider the nature of circumstances of her behaviour in absencing herself. In particular, you must consider whether her decision to absent herself is voluntary, so that she has waived the right to be present. Secondly, you must consider whether an adjournment would be desirable and would resolve the question of her attendance. Thirdly, you would have to consider the length of such an adjournment. You would have to consider whether the Registrant, although absent, wishes to be represented or has waived her right to representation in the sense that she has indicated by her conduct that she does not wish representation. Next, you must consider whether there are any other options then to proceed in her absence by way of representation, but that is not relevant here. You must consider the disadvantage to the Registrant in not being present, qualified of course if you find the fact, that you may have determined that it is her wish not to be present. You must carefully consider the risks of proceeding in the absence of the Registrant, and the effect of any adjournment, which, if you were to consider it, would be the other way forward.

Overarchingly, however, you must consider the general public interest in whether you are proceeding in this case because, coming back to the Rules which govern your regulatory framework, that is the hallmark factor which your Rules invite you to play regard to.

That is my advice.

**Ms Jones:** Thank you. Mr Whalley, do you have any final comments to add?

**Mr Whalley:** No, thank you, Madam.

**Ms Jones:** [*Confers*] The Committee is happy to proceed. Mr Henley, please read out the allegation.

**Mr Henley:**

### 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.

**Mr Whalley:** Thank you. If I can firstly confirm that you have the correct documents. There is one bundle of papers; if it can be marked up as C1, please. That runs to 79 pages.

**Ms Jones:** I confirm the Committee has the hard copy and has already received and read an email version prior to today, and for the record should we refer to the service of Notice of Inquiry as C2?

**Mr Henley:** Just leave it as the Service Bundle.

**Ms Jones:** Thank you. Please proceed.

**Mr Whalley:** Thank you, Madam. Madam, I don't propose to call any witnesses today, but what I will do is open the facts. It may be, given the absence of the Registrant that you would wish to retire to consider the facts of misconduct and impairment in one stage. Normally it is separated. Subject to any legal advice, it may well be practical to do it in this case given there are no witnesses and, of course, the Registrant is not in attendance.

**Mr Watson:** I will be advising the Committee that if it is convenient to the Council to present their submissions and evidence on all those questions in one sequence then it is convenient for you to hear it in one sequence provided that when you retire you do determine each of those stages separately in your deliberations, making a decision therefore on the facts before you turn to deliberate on impairment and before you deliberate on sanction. Otherwise, I see no prejudice.

**Ms Jones:** Thank you. We will proceed in that way. We will take it all together.

**Mr Whalley:** Thank you, Madam. Madam, if I can firstly remind you, of course, it is the Council who bring the case today and the burden of proof is on them to prove the case. The standard proof is the civil standard, which is the balance of probabilities. You will find the allegations set out at pages i and ii. There are 13 factual allegations, and it is alleged that those facts amount to misconduct and, finally, by reason of that misconduct, the Registrant's fitness to practise is impaired. You will see at pages iii and iv that the Registrant has admitted the allegations. There are two documents there. One is dated 30 August, which confirmed that she admitted the allegations at point 5, and there is a copy of the hearing questionnaire, which is submitted before that procedural hearing where, again, you will see that she admits the allegations. Of course that will assist you in determining the facts.

As I indicated, Madam, I don't propose to call any witnesses, but I will take you through some of the documents which are before you, in particular, I will go through the witness statement of Leslie Gutteridge, who is the key witness in this case and investigated the matters when they were raised.

The 13 particulars are that on 13 separate occasions between 6 August 2008 and 4 November 2009 the Registrant stole money from her employer at Specsavers by refunding amounts onto a credit card which she owned. The total amount stolen between that period was £3,130. The evidence of Leslie Gutteridge, whom I have already referred to, is found at pages 1-77. That is his witness statement and the exhibits. As part of his role, as a Loss Prevention Consultant at Specsavers, he runs random checks against financial data in order to detect any suspicious transactions. One way he

does this is to download the data from a company called Streamline, who process credit and debit card transactions.

It was 4 December 2009 when he downloaded data relating to all refunds from the group over a value of £30. He then searched for transactions which had the same last four digits from the card number, the same expiry date and the same merchant number. It was that information which showed that the credit card, which you will see referred to, ending in 2911 was used on 13 occasions in the Exeter store. Those details are found at page 11, which is Exhibit LG/1, and you can see there the card number ending 2911, the card expiry date and the merchant ID are all identical. Those dates essentially form the 13 allegations. One of them is thought to be a genuine transaction, a purchase, and that is why there are 14 dates, but the remainder, the 13 which are identified there, form part of the 13 allegations.

The transaction details for each of the dates referred to in the allegations are produced by Mr Gutteridge at Exhibits LG/2 through to LG/15. I won't deal with each one, but if I can just ask you to refer to one of those exhibits by way of example of the evidence.

At page 13, which is LG/2, this shows a retail transaction detail for 6 August 2008, and you will find the long card number is recorded there, beginning 4921 ending 2911 with the expiry date of 06/11. There is then a code type which is ORFD. Mr Gutteridge explained what that means. That is a refund, and then you can see the amount which has been refunded to that card is £185.

Turning forward a few pages, please, to LG/6, which is found at page 20, and this transaction – which does not form part of the allegations I referred to earlier, this is a genuine transaction, a purchase – is the only one which is genuine of the exhibits produced by Mr Gutteridge.

Moving forward to Exhibit LG/17-24; LG/17 is at page 43, and within these exhibits Mr Gutteridge has produced documents relating to allegations 6-13. Allegation 11 is not produced by way of documentation, but 6-13 are and, again, just to identify by way of an example, LG/17 on page 44, you will see a third of the way down that page there is a reference 013881, which is a transaction for £332. The minus next to that means it is a refund and, again, you can see the card number there ending 2911, which demonstrates that that money was refunded to that particular card. Over the page at page 45, this is the original transaction from 27 October 2008 and the customer's name there and the transaction amount of £332. That is the original genuine transaction. At page 46 we then have the refund which is the same detail, the same customer information; 3 January 2009, this is when the amount of £332 was refunded back onto the card, evidenced by the receipt at page 44. The documents for the dates follow the same process in terms of having been

exhibited. That is just one example which demonstrates that that money had clearly been refunded onto the card ending 2911.

Mr Gutteridge concluded from his investigation that the person perpetrating the fraud was likely to be an employee. He then referred the matter to Joseph Hill, who is the second witness in this case. He is the Director of the Exeter franchise of Specsavers. He was provided with Mr Gutteridge's investigation documents in December 2009. He then checked internal records of expense claims at that store to find any details of that card number ending in 2911. In doing so, he identified that that card had been used in relation to an expense claim for Claire Brooks, who had been employed at the store for approximately eight years. So he was very quickly able to match up the credit card information with Claire Brooks.

Mr Hill met with Claire Brooks on 9 and 10 December 2009, and what he says is that on both those dates the matters were put to Claire Brooks. She immediately broke down and admitted the credit card fraud. She agreed to pay the full amount back and, indeed, that was paid back by her father and as such the store decided not to pursue any criminal charges. Madam, that is all I wish to say in relation to the factual particulars.

In my submission it is a fairly straightforward matter admitted by Ms Brooks. There is clear evidence that on those 13 occasions her credit card was used to refund amounts totalling £3,130.

Once you have made a determination on the facts you then, of course, must consider whether those facts amount to misconduct and whether by reason of any misconduct found Ms Brooks' fitness to practise is presently impaired. Both matters of misconduct and impairment are matters for your professional judgment, and are not matters upon which the Council must discharge any burden of proof. In my submission, Ms Brooks' conduct was clearly dishonest, as, of course, to steal, one must be dishonest. The theft occurred over a 15-month period and amounted to a considerable sum; over £3,000. There was also, in my submission, an element of sophistication to the thefts. Different customer transactions were used and different staff member logging details were used to avoid detection, so it wasn't just simply the case of taking money from the till. It was much more sophisticated than that. In my submission the allegations are very clear examples of theft from an employer and involved a serious breach of trust and, therefore, can properly be considered to be misconduct.

You may also wish to refer to the Council's Code of Conduct. That was updated in 2010. Therefore, you should be referring to the 2005 code, which I do have a copy of. I am not sure if you have copies in front of you.

**Mr Whalley:** I probably have the more recent one photocopied here.

**Ms Jones:** The Committee does have a copy.

**Mr Whalley:** I am grateful, Madam. The two codes I would ask you to refer to are Codes 10 and 15.

Finally, Madam, you will then consider the question of impairment; of course a present day test. In relation to impairment, it is right to say that Ms Brooks has shown some insight into her actions as of course she admits all the allegations, and admitted them at the time when she was first asked about them and has repaid the money. However, in my submission her fitness to practise is impaired by reason of misconduct. As I said, she was dishonest over a protracted period of time, and there is, therefore, in my submission a further likelihood, an increased risk that she may be dishonest in the future. Of course the Registrant's integrity and the need to maintain proper standards of conduct are fundamental to registration with the Council, and you must also consider the public policy issues, the need to maintain confidence in the profession and, indeed, in this process.

In my submission, Ms Brooks' actions are incompatible with registration and a finding of impairment can properly be made in this case.

Madam, that is all I want to say by way of opening the case and presenting the case unless I can assist you any further.

**Ms Jones:** Thank you. Do you have any questions?

**Dr Azubike:** Just something to clarify with respect to paragraph 4 of the first witness statement. It is on page 2. The very last sentence refers to the fact that the entry should read £185 as opposed to £385. Is that still correct?

**Mr Whalley:** That is correct, yes.

**Dr Azubike:** Is there any explanation as to why the entry was wrong in the first instance?

**Mr Whalley:** It was simply a manual error – inputting information incorrectly.

**Ms Jones:** If there are no further questions, can I invite the Legal Adviser to advise us, please.

**Mr Watson:** Thank you. I advise the Committee at the outset that it would be appropriate, if you decide to do so, firstly, to hear the submissions made on behalf of the Council and their evidence on the three initial stages – either two or three, depending upon how you approach it in each case. That is to say, the facts – misconduct as is alleged; whether it is proven, and thirdly, impairment; whether you are satisfied that impairment exists. I advise you that those three questions could be considered or heard in terms of the evidence and the submissions in one phase provided that when you retire you

do consider each of those questions separately and sequentially. As to the facts, the burden of proof is on the Council, and the standard of proof is the civil standard, the balance of probability. The civil standard is unvarying. It is a standard which does not depend or vary in itself depending upon the nature of the charge, although it has been said the seriousness of the charge may affect the quality or the cogency of evidence which you look for when deciding whether or not particular facts are proven in a particular context.

In this case, however, although the burden of proof does remain on the Council and the standard of proof is, as I have indicated – and I emphasise both those points – generally only applicable where there are contested facts, in this case it is not, as I understand it, the case that the Registrant has appeared to challenge those facts but, nevertheless, her absence without comment is a situation which you must subject those facts to sensible scrutiny yourselves. However, if you accept the evidence and the bundle that is before you as portraying the sequence of events which the Council has outlined then you may have little difficulty in finding that the facts presented are proved.

The facts are limited to the taking of the money by way of a credit card transaction on the 13 occasions, and you are entitled to take into account the evidence which you have heard of an admission made to the employer.

The second question you have to decide is whether those facts amount to misconduct. Misconduct is a question for you as the Panel. It is, however, the case that an allegation of dishonesty, if you find it proven, on a sequence of occasions is, again, a matter that you may have little difficulty in concluding amounts to misconduct.

Turning from those initial two stages of decision to the question of impairment; impairment is not a matter of burdens of proof or findings of fact. It is a question of judgment for the Committee. Having said that, before reaching a finding or determination of impairment, the Committee must be satisfied on the evidence adduced before you in Stage 1, the facts, and having regard to the nature of the misconduct, that the Registrant's fitness to practise is impaired, and the emphasis is on the current tense. Fitness to practise may be impaired by one of a number of grounds. On this occasion it is misconduct that is relied upon. Misconduct in this context does not mean ordinary misconduct of any kind, but misconduct, which, by its nature and seriousness, indicates that the Registrant's fitness to practise and her fitness to remain in an unqualified, unconditional manner on the Register of this profession is in itself impaired.

In asking yourself whether her fitness to practise is impaired, you must have regard, firstly, to the past and to any evidence that is before you as to how those past acts, in this case alleged of misconduct, have been either remedied or addressed or how your perspective of those past acts of misconduct may have changed by reference to the passage of time and events since those acts took place.

I must remind you, however, firstly, that impairment must be judged by reference to the broad description outlined in your Fitness to Practise guidance, although the guidance is specifically focused on the question of sanction, which you are not concerned with at this stage, it does helpfully at pages 4 and 5 set out the aspects of fitness to practise and what it means and, secondly, the notions of public interest which you must have regard to, and it sets those out in a broad and helpful way at pages 4 and 5. Ultimately, however, although the guidance is there for you to have regard to, it is your judgment which counts. Your judgment will be exercised by reference, firstly, to the broad notion that members of this profession, as I quote from the guidance:

“must demonstrate safe and competent practice ... must maintain proper and effective relationships with patients and colleagues alike. Their position in society as a respected professional gives them access to patients from all walks of life, including those who may be vulnerable, and therefore trust from both parties is paramount but should that trust be called into question through the Registrant’s conduct, it may be considered that they should not continue to work in unrestricted practice.”

In terms of the public interest, the public interest includes both the protection of patients but, more relevantly perhaps, in a case of alleged dishonesty, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour in that profession. It is in that context that you have been asked to bear in mind on behalf of the Council the provisions of the code which makes specific reference to both the need for honesty and trustworthiness and also specific reference to the need to avoid abusing your position as a professional either in the capacity of optometrist or dispensing optician.

The question of impairment is, therefore, ultimately a matter for you that must be weighed against those broad benchmarks. You must take into account everything that has been placed before you, and you must pay particular regard in terms of your deliberations to the fact that the Registrant has not made specific submissions to you. That must engender both a sense of caution on your part in reaching findings, but also it must be a sense of caution which is tempered by the determination that you have made in the knowledge that the Registrant knows of the proceedings today and has chosen not to attend.

Thank you.

**Ms Jones:** Thank you. Mr Whalley, do you have any final comments?

**Mr Whalley:** No, thank you, Madam.

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

*[Hearing adjourned at 10.05]*

*[Hearing reconvened at 11.10]*

**Ms Jones:** *[Reads]*

## **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.

Mr Whalley, if you would like to continue.

**Mr Whalley:** Thank you, Madam. I can address you very briefly in relation to the next stage, which of course is the sanction stage. I commend to you the Indicative Sanctions Guidance, which I can see you have a copies of. It is a very helpful guidance document which sets out the sanctions available. They are also set out in the Opticians Act, Sections 13F(3)(a)-(c) and 13H of the Act. In ascending order, the sanctions are financial penalty order, conditional registration of up to three years, suspension up to 12 months and erasure.

The purpose of sanction is, of course, to protect the public. It is not a punitive one, but you should also take into account as well as the need to protect public, wider public interest matters, which have already been referred to at

the impairment stage, but are certainly relevant at this stage also. Those are the need to maintain confidence in the profession and this regulatory process, and also the deterrent effect to other health professionals. In terms of any aggravating factors, they have already been identified in your decision, and also I have addressed them in my submissions earlier, but I say there are five aggravating factors to these allegations. First is the breach of trust, which has already been referred to. Secondly, it is the length of time the thefts were carried out. It was a 15-month period, and the number of occasions; 13 occasions amounting to a significant sum of over £3,000 and, finally, the elements of premeditation, which again has been referred to. You may think taking into account all those matters, the registration of Claire Brooks is fundamentally not in keeping with her actions in this case, and you may, therefore, find that erasure is a real consideration when considering this case. It is not my place to suggest sanctions to you but, certainly, in my submission this is as serious as a case can be in terms of the actions of Claire Brooks. Madam, unless I can assist you any further, those are my submissions.

**Ms Jones:** Does the Committee have any questions? [No] In that case, can I invite Mr Watson to advise us?

**Mr Watson:** Yes, thank you. The advice that I tender I remind you is advice rather than anything otherwise. It is for you to consider how you approach matters ultimately. However, I do again ask you to bear in mind the factors indicated in your Indicative Sanctions Guidance. Helpfully, the guidance draws attention to the aspects of the public interest, which you should have regard to on page 5, and also draws attention to the matters which you should consider when constructing your reasons for the determination that you make as to sanction, and I draw your attention to page 9. Although it is in some respects a matter of repetition, it is necessary for me to remind you that the underlying purpose and function of these proceedings is not to punish registrants for errors or wrongdoings, but to maintain the standards and reputation of the profession and, in particular, to protect the public from those who are not fit to practise or whose retention on the Register without qualification should not be permitted and, certainly, should not be permitted without an appropriate sanction. The appropriate sanction must pay regard to those public interest factors, but must also pay regard to the principle of proportionality. The determination as to which is the appropriate sanction for this matter must, firstly, have regard to the findings which you have already made as to the facts and misconduct and impairment, must have regard to the seriousness of the matter, but must weigh in the balance the issue of proportionality.

As to personal mitigation, I draw your attention at page 11 of the guidance to the fact that this is a case where there is an absence of representations or mitigation advanced on behalf of the Registrant. You should not draw any inference from the absence of mitigation that has been advanced. Nevertheless, the fact that it is not present in a positive form does not allow you to take into account any other matters than those that have been helpfully placed before you in the evidence which has been adduced thus far.

You will no doubt take full account of the fact that the Registrant admitted, as you have found, the charge when the allegation was put to her by her employer. You will take account of the fact that the money was promised to repaid and has been repaid, but you will also take into account the final part of the evidence in your bundle at page 79, that although she was dismissed from her job, having regard to her longstanding service with Specsavers, having regard to the fact that she had paid the money back, the store decided not to press criminal charges. This, of course, is a separate jurisdiction. Whether or not criminal charges had been pressed and what the outcome of that was or would have been is not a matter for you. You are concerned with the regulatory framework which governs this profession, the public interest factors which guide that framework.

I draw your attention, therefore, in terms of the sanctions available to you to the pages that follow page 17. The available sanctions are set out from page 19 onwards. You may find it a helpful approach to consider the least sanctions first and then if you think that those are not appropriate to go on to consider what sanction above that level might be appropriate. However, if you find yourself in territory where members of the public or you yourself might think that it was appropriate to test one sanction and the appropriateness and the proportionality of it against another, you may find it helpful to bear in mind that the guidance does encourage committees to set out reasons why it has rejected alternative sanctions as well as reasons which set out the appropriateness of the sanction which it has decided to adopt.

In the case before you this is an allegation of dishonesty and it is right that I should draw your attention to page 25 of the Indicative Sanctions Guidance and, indeed, page 23. The first page deals with the various factors that you must consider if you find it appropriate and proportionate to consider a sanction above conditions or no sanction at all, of course, being the starting point, or a financial penalty. If you do decide to consider the question of suspension, you should consider carefully the factors at page 23 of the guidance and you should also consider very carefully the factors outlined under the section dealing with the appropriateness or cases in which erasure might be appropriate, and those include, on page 25, factors which include abuse of position or trust and matters involving dishonesty, especially where persistent and covered up. You should take into account whether or not you consider there is any evidence before you that deals with the question of insight or actions which address the misconduct or impairment which you have found, and you must bear in mind the overarching words of Lord Bingham in *Bolton v The Law Society* [1993] EWCA Civ 32, quoted helpfully at the top of page 25, that:

“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.”

That is a quote which is to be balanced against the issues of proportionality and the fact that the purpose of sanctions is not to punish, although an appropriate sanction may have a punitive effect. The purpose of sanctions, as I have already outlined, are the public interest factors and the maintenance of standards and reputation, to which I have already referred.

When giving your determination I advise you that you should give reasons under those headings; the reason why the sanction you have chosen is appropriate and proportionate and the reasons why, if you have considered other sanctions, you have rejected them as not being appropriate or proportionate in the circumstances of this case.

Unless my attention is drawn on behalf of the Council to any other matters, I should remind the Committee that that is my advice.

**Ms Jones:** Thank you. Mr Whalley, do you have any further comments?

**Mr Whalley:** No, thank you, Madam.

*[Hearing adjourned at 11:25]*

*[Hearing reconvened at 12:10]*

**Ms Jones:**

### **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.

Mr Whalley, do you wish to address the Committee on the issue of applying an immediate order of erasure or otherwise?

**Mr Whalley:** Madam, I would ask that the order is an immediate order. There has been correspondence from the Registrant previously to indicate that she no longer works in the profession. Of course she is not here today. I would say it is very unlikely that she would appeal. However, if there is no immediate order then there is that possibility. I would, therefore, ask for an immediate order given the serious nature of these allegations, as you found in your decision on both misconduct and on sanctions. I would ask that the order is immediate, Madam.

**Ms Jones:** Do you have any questions? [No] Do you have any legal advice for us in considering this?

**Mr Watson:** No. The matter of immediate suspension is set out in the guidance. It is a power which you can apply depending upon your own discretion. There

are three matters to bear in mind if I can find the relevant page. It used to be found beside Interim Orders and has moved. Can anybody remind me?

**Ms Jones:** Page 22.

**Mr Watson:** Thank you very much. The three reasons are four lines up from the bottom of the page. You should first consider whether there are grounds.

“Before doing so the Committee must be satisfied that to do so is necessary for the protection of members of the public, otherwise in the public interest or in the best interests of the Registrant.”

I would suggest that you have no evidence of the latter aspect and, therefore, it is the first, and probably, most relevantly, the second aspect that should guide your determination. It has been said by the higher courts in relation to the General Medical Council’s framework that this is a power which ordinarily should be guided by the notion of the need to protect the public, but the discretion is a wide one.

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

*[Hearing adjourned at 12:15]*

*[Hearing reconvened at 12:32]*

**Ms Jones:**

#### **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.

Thank you. That concludes the Hearing.

*[Hearing concluded at 12:35]*