



A(11)03

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

GENERAL OPTICAL COUNCIL

AND

FIAZ BI (SD-3036)

Monday, 16 May 2011

REGISTRATION APPEAL HEARING

REGISTRATION APPEAL HEARING – FIAZ BI (SD-3036)

Monday, 16 May 2011

Committee Members: Ms Mercy Jeyasingham MBE (Lay) (Chair)
Lady Margaret Wall (Lay)
Dr Dozie Azubike (Lay)
Mr Andrew Cripps (Dispensing Optician)
Mr Timothy Bowden (Dispensing Optician)

Legal Adviser: Mr David Marshall

For the GOC: Mr Christopher Whalley

Hearings Manager: Mr D Henley BEM

The Appellant appeared in person and was not legally represented

[Proceedings commenced at 10:13]

Ms Jeyasingham: Good morning. I am Mercy Jeyasingham, a lay member of the Appeals Committee and I have been elected by the Committee to chair today's Registration Appeal 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 David Marshall, the Committee's Legal Adviser who will provide legal advice and assistance to the Committee and ensure that the proceedings are conducted in accordance with the Rules of Procedure so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate.

In the event that any matter arises during the course of the Committee's deliberations upon which the Committee seeks advice, the parties will be invited to return to hear the matter which the Committee has raised and the advice to the Committee. Where advice on any issue is not accepted by the Committee, this will be indicated in the course of its decision on that issue.

To your right is David Henley, the Hearings Manager, who will provide administrative support to the Committee. Next to Mr Henley is the transcriber 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.

It is the Council's policy for the Determination of the Committee and a transcript of proceedings to be displayed on the Council's website for public viewing. Ms Bi, I know that you are not legally represented today and of course the Rules do allow for that. The Legal Adviser is an objective observer

for the legality of the proceedings and not here to legally represent you, but will answer any questions that you may have about the course of the proceedings today and to try and resolve any confusion or ambiguity that there may be in your mind about what is going to happen today.

Do you have any questions at this stage?

Ms Bi: No.

Ms Jeyasingham: I understand that at previous hearings for the Registration Appeals Committee the order of proceedings has been changed and it has been found to be the most fair and appropriate way of conducting business.

You will see in the Registration Appeal Rules under Rule 33 that there is set out an Order of Proceedings. The Rules anticipate that we would hear first from the appellant and then the Council's Presenting Officer on behalf of the respondent, which is the Council.

The Council would address the Committee in relation to evidence and thereafter under Rule 37 we would hear first from you, Ms Bi, in relation to submissions and then from the Council. We will not change the order of the submissions.

However, in relation to the first stage, evidence, it is suggested, if you agree to it, that the Council address the Committee first, both in relation to the framework of my decision-making and the evidence available which caused the Registration Application to be refused so that Ms Bi, who would then address the Committee, will know exactly the evidence upon which the Council relies and the framework within which it is said so that is established before he addresses us on the evidence. It appears that our colleagues on previous occasions have found this change in procedures most helpful. It is, however, a matter for the Council and Ms Bi whether you are prepared to proceed on that basis. Mr Whalley?

Mr Whalley: Indeed I am, Madam, yes.

Ms Jeyasingham: Ms Bi, if that's okay.

Ms Bi: That's fine.

Ms Jeyasingham: In which case can I invite the Council's opening statement in evidence?

Mr Whalley: Certainly, Madam.

It may well be that my case in terms of evidence and submissions are made in one because obviously it is not a case where there is any evidence to be called so I will be relying on the documentary evidence before you. The bundle which I understand you now have has been agreed by Ms Bi and myself.

This is an appeal against a refusal of retention of Ms Bi on the Student Register. The application for retention was made, and you will find the decision of the refusal of that is found on Page 2.

If I can ask you first just to have a look at the Statutes and the Rules bundle, please, as this sets out the sections of the Act which go in your powers today, firstly at Page 12.

This is Section 8A which essentially sets out the powers of the Registrar to register student opticians. We can see at 8A paragraph (3) :

“A person shall be entitled to have his name in the appropriate Register if he satisfies the Council that he is fit to undertake training as an optometrist or a dispensing optician”.

That essentially was the Rule that was considered by the Registrar in refusing Ms Bi’s application to be retained, and that of course is the result of this appeal today.

Turning then further on in the Act, please, to Schedule 1A which is at Page 83-86. Schedule 1A sets out the procedures to follow in these regions that permit an appeal of a decision of the Registrar and one of the decisions as you can see sets out at 2(1)(a) Schedule 1A:

“An appealable registration decision is a decision made by the Council on application made under Section 8”,

which of course Ms Bi’s initial application was, not to register the applicant in the appropriate register. So 83-86 are essentially the registration appeal provisions that cover today’s Hearing and of course at Section (4)(5) of that, which can be found starting at page 85, what that section of Schedule 1A sets out are your powers for today and what your powers at your disposal are and you can see it at paragraphs (a) through to (d). That sets out exactly what you can do today when making your decision.

That is the Statute, Madam, and if I can then please turn to the bundle you have before you and perhaps highlight the pertinent sections of that.

Firstly at Page 1, this is a letter which Ms Bi submitted to the Council on 12 January appealing against the decision of the Registrar. The Registrar’s decision is set out at Page 2 and in that letter of 17 December 2010 the Registrar states that he has:

“Now considered the information provided in relation to the declaration you have made and decided not to grant you a retention on to the Register.”

That of course was a decision he made based on the conviction disclosed by Ms Bi in her retention application and you can see he sets out in the third paragraph there, it is a fraud, and he says:

“It is a fraud against the public purse, a serious offence, and as such damages public confidence in the profession.”

So it is an appeal against that decision and the appeal letter is set out at page 1.

Turning to the documents that were submitted as part of the retention application, they start at page 3. The relevant sections of this form are at page 4, and you will see that Ms Bi has stated that she has a criminal conviction, ticked the relevant box there and has attached the documents giving details of that. She has obviously signed that form at the bottom, and that is dated 6 August of 2010.

Page 7 is the letter which was attached setting out the details of that conviction and of course you can see there what Miss Bi has indicated, that on 1 April of 2010, “I pleaded guilty to benefit fraud”; a 12-week suspended sentence was imposed with 60 hours of unpaid work. She sets out in her submissions exactly what the details of that conviction are.

Mr Marshall: It was actually 3 March.

Mr Whalley: I think the Sentencing Hearing was 1 April, that’s right. If I can turn to the relevant documents that set out the date of conviction and sentence they are at page 18, which is the Certificate of Conviction, and as the Legal Adviser has correctly pointed out, it was 3 March when Ms Bi indicated her guilty plea at the Crown Court to those three charges and the sentence of 1 April is set out further down page 18. For each of those charges it was a concurrent sentence of 12 weeks imprisonment, suspended for 24 months; an unpaid work requirement of 60 hours, and a contribution towards the costs of the prosecution case as well.

The two transcripts of the Sentencing Hearing, the initial Hearing when the guilty plea was entered is set out starting at page 23. The more relevant of those two transcripts is the 1 April transcript set out at page 27.

If you read the full transcript there was some debate between the learned judge and the prosecution counsel about exactly what had happened and the effects on the public purse.

To pick out a couple of observations, if I may, at page 29 at the bottom of that page, Judge Parker sets out what he believes to be the conclusion of what happened.

“So what is happening here is that falsehood prevents the local authority from exercising judgment about whether it is a commercial rent or not.”

Essentially what Ms Bi had done is on three applications for Housing Benefit she had not declared that in fact the property she was living in and was indeed renting was her brother's. I suppose in a nutshell what the criminal case was, was three days were set out from the dates of the applications for Housing Benefit.

The loss to the public purse is £19,795. Of course you will note that Ms Bi indicated that that in its entirety has been repaid on the basis of a loan that she obtained, and it is of course that is a factor which was of course considered in the criminal case when sentence was passed.

Page 47 is where the learned judge sets out his final remarks when passing sentence, and what he says in relation to the offence is,

“It is precious public money and what you did was to prevent the local authority from exercising their own critical judgment about whether this was really a commercial rent or not by ticking the box that you were not related to the landlord, whereas in fact you were.”

Further down in the next paragraph, he says:

“It is a serious matter and it's so serious that it warrants a prison sentence, albeit a short one and one that will be suspended. The sentence will be one of 12 weeks' imprisonment suspended for a period of two years.”

And further down,

“Unpaid work as punishment of 60 hours.”

Finally, Madam, in the bundle you have the Optical Council's protocol on handling a criminal conviction as disclosed by a registrant. That is at page 50, and paragraph 3(a) through to (l) sets out criminal convictions where the presumption will be against registration. Now of course this offence does not fall into that category. This, however, is a criminal conviction which will be judged on its facts, so one would assume that the presumption would be initially in favour of registration because it is then taken each case on its own facts.

What I would say in support of the Registrar's decision, and of course the Council stand by that decision and oppose Ms Bi's appeal against that decision today, this document is a very important one because it sets out matters which you can consider when dealing with this criminal conviction and the serious nature of it.

Firstly, it is a conviction and offence that occurred over a long period of time. It's not a one-off. There were three applications for Housing Benefit and they were on 26 March 2003, 14 November of 2006 and 26 October 2007, so the fraud which obviously resulted in the conviction as you can see spanned a

four and a half year period and of course the sum, the loss to the public purse was significant at just shy of £20,000.

Of course this is a dishonesty offence and the consideration for the Registrar has to be whether a person is fit and proper to be admitted to the Register and indeed retained on the Register, and with this being a dishonesty offence that is a factor on which he clearly considered Ms Bi was not fit to be retained on that Register.

You should also take into account the fact that although it was a suspended sentence, that sentence is still suspended as of today; it was suspended for two years. Of course it is not a prison sentence that was imposed but it is suspended for a reason, and if you will have a look at the protocol on page 51, under number 5(iii) from the timeframe of offending, you will see one of the considerations there is 'whether any period of a suspended sentence is still outstanding'. This is such a case where a suspended sentence is indeed still outstanding.

So in short, Madam, the Council's case is that it stands by the decision of the Registrar and opposes Ms Bi's appeal against that decision.

Madam, that is all I wish to say in terms of the evidence that is presented and indeed also submissions, unless you have any questions for me.

Ms Jeyasingham: Thank you, Mr Whalley. Before the Panel asks questions, Ms Bi are there any questions you wanted to ask Mr Whalley?

Ms Bi: No.

Ms Jeyasingham: In which case, can I ask the Panel if they have any questions?

Lady Wall: Yes, Mr Whalley, unless I have missed it I am wondering if you are able to explain how this offence actually came to light, given that the last full statement was 2007?

Mr Whalley: Madam, I am not aware of the benefit fraud and indeed the police investigation. The first the Council were aware of it was Ms Bi declared on her Retention Form. The circumstances of the arrest and the then subsequent conviction are not and have not been provided to the Council. All I can say is what happened once the plea was entered and then after. Ms Bi, I am sure can help you with that.

Lady Wall: Thank you.

Dr Azubike: Just a small point that has been referred to about the period of suspension being outstanding. Are you saying that that is irrespective of when the actual offence was committed because obviously she was sentenced much later? If she had been sentenced nearer the time that she committed the offences, obviously it would have been over by now. Do you make any distinction between those two possibilities?

Mr Whalley: Sir, I can only put forward the case on the basis of when the offence was brought before the criminal courts. Indeed, you are quite right, had the offence been prosecuted and convicted in 2007, that sentence would have been completed but of course without being aware of how the investigation and then subsequent conviction came to light, I can't really deal with that point.

All I can say is that the conviction is a relevant date for the purposes of this application for retention and indeed the Appeal. You have to, in my submission, work on the basis of the date of conviction and sentence thereafter.

Ms Jeyasingham: I'm sorry, Mr Marshall, I didn't ask if you had any questions.

Mr Marshall: I have no questions, thank you.

Ms Jeyasingham: Ms Bi, you can now address the Panel.

Ms Bi: Where to start? What has happened, you are all aware of what has happened, it has all been written and you have all read it and it is open to read. I am not saying that I didn't do what they convicted me of. I did. In hindsight I wish I didn't plead that guilty plea at that time and had stopped my course and continued fighting that out, carried that out rather than having to sit in Appeal today with yourselves, but I didn't because all I wanted to do was to continue my course, finish it, because that for me was in the past.

It was something that I would never want to repeat in any sort of way, shape or form and all I wanted to do really now is concentrate on what I was doing for myself and my daughter. But if I had known in hindsight that this was going to affect what I am going to do for the rest of my future, I would have stopped and I would have not pleaded guilty at that time.

I can't argue with yourselves why because I suppose that is something I should have done with the Council at that time. Like the gentleman says, if you look through the documents, it says at certain points that even the judge was unsure. He said that if I had been claiming not in the house that I was living in, but in the one that I was living next door to it and had it been belonging to somebody else, I would have been eligible for the benefit that I claimed.

So the circumstances in which I was being given the money, they were all true. I lived in that house with my daughter.

The thing that was not true was the fact that it was my brother's house, so had I been, like I said, next door in the same block in a property with those circumstances the chances are I would have got the benefit, only I agree that they could not make that decision because I did not disclose that and I wish I had to be honest with you.

As far as the Appeals on the end of the Protocols, yes, my sentence is still outstanding; I would say just under 12 months now. The unpaid work I have done, I have completed. The money has been paid back to the council as well; all of it, although I am still committed to paying that money back from where I borrowed it so I am still committed for another two and a half years doing that.

As far as my character, this is a big blemish on my character. I have never done anything like this before and I have brought with me some references from people who know me very well who can support that fact as well.

I understand the reasoning why I wasn't put back on to the Register, or I can't be, but I do my job well, I love doing my job and I really do hope I can continue doing it.

Ms Jeyasingham: Thank you. I just want to ask Mr Marshall, the letters that Ms Bi has, you are bringing it forward as evidence, are you?

Ms Bi: Yes.

Ms Jeyasingham: I am just wondering, are we going to circulate it to the Panel or do you want to read it into the record? What is the best way of going about it?

Mr Marshall: Can we ask what you have?

Ms Bi: I have two letters. One is from an employer and the other is from a family friend. Both are highly regarded in our community.

Mr Marshall: Has Mr Whalley seen these?

Ms Bi: No.

Mr Whalley: I have not, but if they are testimonials, I have no problem at all with them being copied and put before you, Madam.

Mr Marshall: Well, clearly these are important things for the Committee. I see that they are quite short letters so perhaps they could be copied and circulated to the Committee and you can decide whether you would like to read them out now or whether you are happy for the Committee just to read them to themselves later while they are making their decision.

Ms Bi: Whichever way.

Mr Marshall: I don't know, I haven't seen the letters but it may not be obvious from the letters who these people are, for example. You might want to explain that.

Ms Bi: Okay. The one gentleman is my employer. He is also my second supervisor on the dispensing course as well. He is Mr Inderpal Bansal. I have worked with him for quite some time now. Shall I read it out to you?

Mr Marshall: Yes, it's quite short.

Ms Jeyasingham: Yes.

Ms Bi: Okay -

"Fiaz has been an employee with us for over ten years. She has shown great strength during difficult times during separation from her partner bringing up her daughter and maintaining her employment with us. In addition to this she has been studying the Dispensing Optics Diploma Course with good results in the first two years. She is now coming up to completing this course with final examinations in June.

It is completely out of character regarding the Housing Benefit case which occurred in March, 2003. We suspect more a naivety and ill-advice at the time and the consequences that resulted.

We have found Fiaz to be honest, reliable and with great integrity. Fiaz is one of the key-holders at the practice and opens and closes the practice. She is also responsible for cashing up on occasions. Fiaz has been on her own at our practices on several occasions and gave us no cause for concerns and we have had no cause of concern to the question of her integrity in these and her dealings in the practice.

Her continuing to successful completion of the course and then registration with the GOC will be very important for her employment and career.

We will be happy to provide any information as is necessary."

That is from Mr Bansal and the other one is a family friend. He is a lecturer at a college as well, and he is Mr Iqbal. He says:

"I have known Ms Fiaz Bi for 20 years as a close family friend. She is a genuinely kind, helpful and trustworthy person. I have had the opportunity to work alongside Ms Bi as she has assisted me on a number of occasions in the community interest company I run which aims to raise educational standards in an inner city area.

Prior to setting up this company I worked as a lecturer and currently also sit on a number of boards.

Over the years that I have known her I have seen how dedicated she is to her family, and particularly to her daughter. This she has proved by not only being a full time mother, but also going back into further education in order to enhance her career prospects and to be a positive role model for her daughter and other ladies in the community.

After separating from her husband she became isolated, depressed and vulnerable. This was made worse by the social stigma of living

alone in predominantly a Pakistani community. The support that was offered by her immediate family was what helped her get through this dark period. Living in close proximity gave her and her daughter a sense of security and protection.

I am aware of the charges that have been brought against Ms Bi, but I can say with complete confidence and honesty that it was in exceptional circumstances and she did not set out to deceive purely for financial gain. This is not true of Ms Bi's character.

I hope this small summary has given you an idea of Ms Bi's character, and if you require any further information please do not hesitate to get in contact."

Can I also mention something else to you? The reason why I stayed in the house that I was staying in was because like Mr Iqbal mentions in his letter, I do live in a Pakistani community and at the time when I separated from my husband it was really quite difficult to move away and live on your own. It really wasn't the sort of thing that a single mum did, so to us it wasn't an option. I couldn't move in back with my parents because there wasn't any room and I wasn't able to move away from them for quite a few reasons.

There weren't any other properties available that I knew of close by and only for that reason did I stay where I was staying.

Ms Jeyasingham: Okay, I think we have a number of questions. First of all, I will check with Mr Whalley if he has any questions.

Mr Whalley: No thank you, Madam.

Ms Jeyasingham: Maybe we will start on this side.

Lady Wall: Yes, what is the current arrangement? You are still separated?

Ms Bi: Yes. I have been separated for over 11 years now. There is just myself and my daughter.

Q. And how old is your daughter?

A. She is 15 in a couple of weeks' time.

Ms Jeyasingham: It has just been pointed out to me that you are actually not under oath in the witness box and I was just wondering if that might be more appropriate, really, on giving evidence. It is completely up to you.

Mr Marshall: Would you like me to explain?

Ms Jeyasingham: But she is representing herself and I think it is quite important perhaps for her to have –

Mr Marshall: Would you like me to explain that?

Ms Jeyasingham: Yes, I think that might be good. Thank you, Mr Marshall.

Mr Marshall: You are presenting your case, but you are also the witness that supports your case and any Hearing like this when a witness gives evidence, normally they sit over there and they take an oath or affirm and they give their evidence in that way.

The advantage of that is that it may carry more weight. The possible disadvantage is that you could be cross-examined about the evidence you give but you have the opportunity if you want to, to give some evidence as though you are a witness and then be asked questions about it.

Ms Jeyasingham: So would you like to do that?

Ms Bi: Yes.

MS FIAZ BI, called and affirmed

Ms Jeyasingham: I take it, Mr Whalley, you still –

Mr Whalley: No.

Ms Jeyasingham: Could you start again, then, please?

Mr Marshall: I am sorry to interrupt Lady Wall, but since you are now being a witness we obviously know who you are; I think we take that as read. Do you want to adopt the things you just told the Committee as part of your evidence?

They are not going to expect you to say it all again, but what you just said before?

Ms Bi: Yes.

Mr Marshall: Okay, and now you will be asked the questions.

Lady Wall: Just following on from that, where are you living now?

A. I am living with my Mum and Dad.

Q. At number?

A. 40.

Q. And this is the house that became available after you had had to leave the house that you had been paying for that was owned by your brother?

A. 42 was owned by my brother.

Q. And that is where you were living?

A. That is where I was living. 40 has always been the parental home. My brother previously lived with my Dad, but, as soon as his wife was with him and the family expanded and they had a couple of children they wanted to live

in their own property. Before that he was renting his property as well, so it wasn't just to myself. Before that he did have other tenants there, too, but when they wanted to move back into their property I then had the opportunity to move in with my father.

He also purchased a house for me, my Dad did, outright, which was 38 so when he did that I had no reason to be claiming any benefits or living in that house either. Financially my father made it so that I was secure, but I do live with him at 40.

- Q.** So you are living with him at 40, and who is living in No 38?
A. Nobody. I cannot afford to live there at the moment. As I said before, I am still committed in paying the money back.
- Q.** Quite.
A. So at the moment I can't afford to be living there. The house is now liveable, but I can't afford to live in it.
- Q.** And there is no-one else living in it?
A. Not at the moment, no.
- Q.** I see, thank you.

Can I just ask? The letter from your first employer, I don't have it in front of me but I think he said that you committed this offence in 2003, but my understanding of the transcript was that there were three separate occasions when you had to fill in the form for Housing Benefit, the latest being 2007.

- A.** Yes.
- Q.** Does the employer –?
A. He knows that.
- Q.** He knows that there were three separate occasions, even though he has only mentioned one?
A. Yes, he is fully aware of all of it. He has the records, everything, what went on in court as well; he has a copy of everything.
- Q.** Right. Thank you – that is very encouraging.

Can I also ask you the question which I also asked Mr Whalley, which was how did these matters come to light?

- A.** I am not sure. All I know is that I was sent a letter to say that it was being investigated. That is when I was first away of it.
- Q.** When were you sent the letter? When was that date?
A. I am not sure of the date off-hand. It was the September/October, just before it all went on, so if that is 2010, it is 2009.
- Q.** So you got a letter from an investigating authority, presumably the local authority in September 2009?

- A. Yes.
- Q. Right. And how did you react to that?
- A. At that time I was really quite upset.
- Q. So what did you do?
- A. I got in contact with them. They asked me to come for an interview, which I went down for as well, so I attended that.
- Q. Did you take anybody with you?
- A. No.
- Q. Right. And what happened at the interview?
- A. They asked me the questions that they wanted to and they said it was going to be taken further, which it was.
- Q. And did you seek any advice at that stage?
- A. I did seek some advice. I did go to see a criminal lawyer to see if I could get some support as well, which I did and then I was told about a barrister which I had to get as well. Yes, I did get support in that sort of sense.
- Q. Right, and then there was a hearing in the Magistrates' Court.
- A. Yes, and then the Crown Court.
- Q. Did you get legal aid?
- A. Yes, I did.
- Q. Right. Have you had to pay that back as part of the costs?
- A. I have had to pay the legal proceedings. It is mentioned I think in the –
- Q. Yes, it just wasn't clear whether it included legal aid, so the actual costs. What did you do for your unpaid work?
- A. I worked in the charity shop that is quite close to home. I worked there ironing and sorting out the clothes for them.
- Q. Right, thank you. I don't think I have any further questions.
- Mr Bowden:** Just for clarification, the house that you were renting, it is from your brother I understand who owned the house; had he previously already owned the house before you –
- A. He outright owned it. He didn't have a mortgage outstanding on it, so it wasn't for financial gain. They were not quite sure whether it was for financial gain or not, and I think they assumed it was. It wasn't. The house was fully owned outright.
- Q. Alright, so your brother already owned it and if I understand correctly as well from what you are saying, there had previously been tenants in that house.
- A. Yes.
- Q. So when they moved out, you moved in.

- A.** I moved in.
- Q.** So did you seek any advice when you filled in the Housing Benefit forms as to how to fill them in?
- A.** I assumed that the forms would be okay; that I would be able to fill them in. I did get some advice but not professional advice, just from I guess friends. That was the only advice I got.
- Q.** So the idea was that, from the transcript from what I understand, if you would have actually said that it was owned by your brother the possibility is that you wouldn't have had benefits.
- A.** Yes.
- Q.** Okay. Were you the only occupants at the house at the time, you and your daughter?
- A.** Yes.
- Q.** And what are you actually doing now? Are you still working in optics?
- A.** I have been in the optics field. I have been working for the same people. The previous owners to the practice, these brothers, the Bansals, they took over about 11 years ago or so and I have worked among them and worked with them just a year or two into their ownership of it. I worked with the previous owners as well, so I have been in optics for over 15 years.
- Q.** Thank you very much.

Ms Jeyasingham: Dozie, do you have any questions?

Dr Azubike: It's not a question for Ms Bi. It is actually a question for Mr Whalley.

Mr Marshall: Well, perhaps it would be best for the witness to complete her evidence and then go back, then perhaps any final questions from Mr Whalley and then the parties can make their submissions, although I believe Mr Whalley has already done that.

Ms Jeyasingham: Okay, in which case, you can step down.

Mr Whalley: Madam, if I may, Ms Bi, you said in your evidence that the entry on the form, or when you didn't tick the box it wasn't for financial gain. So why was it on three occasions that you didn't tick that box when you have clearly said that a member of your family own the property you were renting? Why was it that on three occasions you didn't tick that box?

A. Because as I mentioned before, because of the community that we lived in I wasn't able to move away from my family. It wasn't possible for me to live with them in the same house; there were too many people already in that house, so it wasn't possible for us to move in with them, but I wasn't able to move away very far either.

The stigma that comes with being a single Mum and Pakistani at that time – now it is quite common – but at that time it was not something that many

people actually did. Not many women did divorce or separate from their husbands, just you weren't able to, and if you did then you weren't really able to move away from your family.

Q. But of course if you had ticked that box, it may well have been that you would be entitled to the same benefits, but you took that decision away from the local authority.

A. That is what I did do. That is what I did do; that is also what they say, which is true, I did but I was so scared that I wouldn't be able to live there; that I would not have any opportunity. The chances of me not being able to live there were too great. I needed to stay with them.

Q. Thank you, Madam.

Ms Jeyasingham: Please step down.

[The witness stood down]

Ms Jeyasingham: So Mr Whalley, you have made your submissions but you might want to add to it and I think there is a question.

Dr Azubike: Yes, it is in respect of Page 9 of the Bundle. I wasn't quite sure why that was there, because if you read the first paragraph it says she is apologising for not declaring the condition earlier. It is not quite clear to me what that is doing there. Is that important, because there is no part of the allegation that refers to the fact that the conviction was not declared early to the Council, so I don't know what was the purpose of that?

Mr Whalley: That is a letter in response to the letter on the previous page at Page 8 where a member of the Registration Office wrote to Ms Bi asking for further information about the conviction. That is the only purpose of that document being there. It is the response to your correspondence regarding the conviction having been submitted in the bundle. It is of no particular significance.

Dr Azubike: Okay. The reason why I am asking the question, and I am sorry I am going back to it again. I just want to be clear in my mind that you are not inviting us to make any inferences from the fact that she is saying that she didn't tell the Council on time about the conviction.

Mr Whalley: That is something you can take into consideration. Her conviction was March of 2010, but the next time that Ms Bi had to submit her Retention Application was in August so the Council's view would be as soon as a conviction is known of, they should be informed of it, so as the conviction was in March she should have informed the Council.

However, I don't take too great a point with that because she did then make the Council aware on the first Retention Form after the conviction. The proper circumstances should have been that the conviction should have been

informed earlier, but I don't take any point on that because of course it was disclosed in the first Retention Form.

Dr Azubike: Right, okay. Just so I am clear as well, there was a change in the Code in 2010 and the 2010 Code became effective on 1 April 2010.

Mr Whalley: Yes, sir.

Dr Azubike: You are aware of that.

Mr Whalley: Yes, sir.

Dr Azubike: Which code do you want us to apply with respect to Ms Bi?

Mr Whalley: Whilst the Codes are relevant, obviously in this case I think the significant part is Section 8 of the Act which sets out whether the person is a fit person to be registered. I don't have the book to hand, but I have made reference to them. There is one code which is that every registrant must have integrity and uphold standards in the profession. Of course, that is one which has to be relevant in this case, given it is a dishonesty application, but for the purposes of registration appeals in my submission, Section 8 is the relevant part which states, as I said earlier, "if he has satisfied the Council that he is fit to undertake training". That is interpreted, is he or she fit, and the Council say that in this case Ms Bi is not fit, given the nature of the circumstances of her conviction.

Dr Azubike: Okay, thank you.

Ms Jeyasingham: So, if you have finished your submissions?

Mr Whalley: I have.

Ms Jeyasingham: Ms Bi, at this stage you have a submission which is you sum up the final thing that you really want to tell the Panel before we ask for advice from our Legal Adviser and then we make our decision.

Mr Marshall: This is your last opportunity to persuade them to allow your appeal.

Ms Bi: Like I have already said, I have been in optics for a very, very long time now – nearly half my life. Ever since I started working at an opticians and as soon as my daughter was settled in secondary school I started this course in order to improve what I am doing in order to provide for her and for myself.

I have worked really, really hard at that and I am ashamed that what has happened has happened, but I can't take that back. I have done whatever I can to rectify it. I have given the money back, still am doing, I have done 60 hours unpaid. I have done all of that and I just really would like to be able to continue doing what I know how to do very well and love doing in order to make a better life for my daughter and for me.

I just wish that the decision you make takes into account that this affects my life completely and I really don't want what I did in the past to still continue affecting me for the future. I don't know anything more than optics really, because it is all that I have done and I know.

Ms Jeyasingham: Okay, thank you. Mr Marshall, can you give the Committee your advice?

Mr Marshall: Certainly. Before making a decision on a Registration Appeal you have the power to make such enquiries as you consider appropriate. If you do not wish to exercise that power in this case, the question for the Committee now is how to dispose of this Appeal.

There are a number of options open to a Registration Appeal Committee. However, in this case the essential question is whether you allow the Appeal, in which case the Appellant can be registered, or refuse the Appeal in which case she will remain off the Register.

In deciding this question, you should consider the facts afresh and decide for yourselves whether the Appellant should be registered. You are not limited to reviewing the decision made by the Registrar.

As to the test to be applied, the Act says that a person is entitled to be registered as a student if "he satisfies the Council that he is fit to undertake training" – that is Section 8 (a) to which you have been referred.

That is the question you must decide, and the issue has some similarity to the issue of impairment in a Fitness to Practice hearing. Serious misconduct in the past could mean that a person is unfit to be registered today, even though he may be competent to undertake training.

On the other hand, it is not the function of this Committee any more than it is of a Fitness to Practice Committee to punish someone for previous wrongdoing. You must judge whether taking into account past conduct this Appellant is currently fit to be registered.

It is for the Appellant to satisfy you that she should be registered. If she relies on facts that are disputed, there is a burden of proof on her to establish those facts. The standard of proof is the balance of probabilities. It means that you find a fact proved if you consider that on the evidence the occurrence of the event was more likely than not.

Unless there is any other matter I can assist you with, that is my advice.

Ms Jeyasingham: Thank you, Mr Marshall. In which case, can we clear the room while the Committee makes its decision?

[Hearing adjourned at 11:02]

[Hearing resumed at 12:46]

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

Decision

On 16 May 2011, the Registration Appeals Committee met to consider an appeal against the decision of the Council not to retain Fiaz Bi in the register of student dispensing opticians.

The Committee determined that the Registrar's decision be upheld.

The Committee heard that on 3 March 2010 the appellant pleaded guilty to a benefit fraud that had taken place several years earlier. She was sentenced on 1 April 2010 to 12 weeks imprisonment, suspended for two years. She was also ordered to perform unpaid work. She did not disclose this conviction to the GOC immediately, but she did so on the retention form she submitted on 6 August 2010. The Registrar decided not to grant her application for retention because fraud against the public purse was a serious offence that damaged public confidence in the profession.

The Committee has considered a bundle of documents, including the transcripts of the Crown Court hearings. It has heard oral evidence from the appellant and heard two written references that she produced. It has carefully considered her submissions and those of Mr Whalley for the GOC.

The circumstances of the offence were that the appellant had separated from her husband. She had a child. There was no room for her to live with her parents but as a member of a close Pakistani community she did not feel able to move away. Her brother owned a house nearby. She moved into that house and claimed benefit to pay the rent. The application form asked if she was related to the landlord. She deliberately answered no to this question. She said that she did this because she did not want to take the risk that she would not be able to live in this house near her family. This dishonest application was renewed on two further occasions. The total amount paid as a result of these fraudulent claims was just under £20,000.

What the appellant did was fraudulent, as she readily admitted. However, the Committee considers that there are substantial mitigating factors in her case. Although the sum involved was quite large, it has not been suggested that the rent paid was excessive or wrong in principle. The judge approached the fraud on the basis that it deprived the authorities of the opportunity of investigating the facts, and in particular investigating whether this was a genuinely commercial transaction. The appellant pleaded guilty and has not sought to minimise her responsibility. She has repaid the benefit that was wrongly claimed. The sentence imposed appears to the Committee (two of whom are magistrates) to be a very light one for an offence of

this type. The judge seems to have treated it as being at the lower end of the scale. The offence took place several years ago. There are no other convictions or findings against her.

The appellant's circumstances have changed significantly since this offence. She is working in optics, undergoing training and apparently doing well. She has produced a reference from her employer who is fully aware of all the facts and has seen the Court documents. He says that she is an honest and trustworthy person and that she holds the keys to the practice premises. The Committee does not consider that she presents a risk to the public or that there is a risk of her re-offending.

On the other hand, the Committee is concerned that the appellant is still subject to a suspended sentence of imprisonment. She is only half way through the term and has not yet 'paid her debt to society', although she has completed the order for unpaid work. The Committee considers that it would be damaging to public confidence in the profession to permit a student to be retained on the register while she is still under a suspended sentence for a relatively serious fraud.

The Committee is aware of the guidance provided for Fitness to Practice hearings which refers to the case of *Fleischmann v GDC* [2005] EWHC 87. It indicates that a person who is convicted of a serious criminal offence should not normally be permitted to resume practice until he has satisfactorily completed his sentence. The Committee recognises that this is not a Fitness to Practice hearing and that the offence in *Fleischmann* was more serious. Nevertheless, it considers this guidance reinforces its conclusion that a person who is currently under a suspended sentence of this kind is not currently fit to undertake training.

The Committee therefore upholds the Registrar's decision.

The Committee does not wish to discourage the appellant from renewing her application for registration when she has satisfactorily completed her sentence.'

Thank you. That is the end of the hearing.

[Hearing concluded at 12:50]