

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

**F(11)08**

**GENERAL OPTICAL COUNCIL  
AND  
GRAHAM MOORE (D-11603)**

**SUBSTANTIVE HEARING  
Wednesday, 14 September 2011**

**SUBSTANTIVE HEARING: GRAHAM MOORE (D-11603)**  
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Committee: Mr Peter North (Chairman) (Lay)  
Dr Dozie Azubike (Lay)  
Dr Vicki Harris (Lay)  
Ms Caroline Eva (Dispensing Optician)  
Ms Abi Grute (Dispensing Optician)

Legal Adviser: Mr Iain Ross

For the GOC: Ms Johanna Davies

Hearings Manager: Mr David Henley BEM

The Registrant appeared in person but was not legally represented.

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*[Hearing commenced at 10.18]*

**Mr North:** Good morning, I am a Lay member of the Hearings Panel and I have been elected to chair today's hearing. Before I begin my introduction, Mr Moore, are you sufficiently refreshed after your journey and content to proceed?

**Mr Moore:** Yes.

**Mr North:** Thank you.

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 Iain Ross, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee and ensure 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 Mr Charles

Nisbet, 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 the public and press areas are members of the respective legal teams.

You should be aware that it is the Council's policy for the determination of the Committee and a transcript for the proceedings to be displayed on the Council's website for public viewing, but where matters of health are being discussed, the determination and transcript will be redacted accordingly.

Mr Moore, I note that you are not represented today and, of course, the Rules do allow for that but I thought that it may assist you if I explain how the hearing today will take its course.

First, the Council's presenting officer – in this case Ms Davies – will present the case alleged against you, this will include an explanation of the background to the case and the primary evidence that will be used to support the allegations made against you. You will then have the opportunity to present your case in the same way, but from your point of view. You may call any witnesses, including yourself, in support of you, and those witnesses can be questioned by yourself, the presenting officer, the Legal Adviser and members of the Committee.

Now, throughout the hearing, the burden of proving the factual basis of the allegation rests with the Council, not with you. The Legal Adviser is an objective observer of the legality of the proceedings and is not hear to advise you, but will answer any questions that you might have about the course of the proceedings today and to try to 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?

**Mr Moore:** No.

**Mr North:** Now, before moving forward in the case, a matter has been drawn to my attention, and Ms Grute, would you like to put that matter before the Committee?

**Ms Grute:** Yes, I have realised since seeing the Registrant that he was known to me as a former student, probably between the years of 2002 and 2005.

**Mr North:** Is that the case, Mr Moore?

**Mr Moore:** Yes.

**Mr North:** Could you offer us some legal advice, please, Mr Ross?

**Mr Ross:** The first question is whether either of the parties has any objection to the Committee remaining as it is currently constituted. That is the first question. If there are no objections, then given that the knowledge of the Registrant was some time ago and in the capacity of him being a student, then the Committee may feel that no injustice would be caused if it continues. The first stage, though, is to see if there are any objections.

**Mr Moore:** I have no objections.

**Mr North:** You have no objections. Ms Davies?

**Ms Davies:** I think that is something that I am going to have to take instructions on. Hopefully, it will not take long if I can seek to take instructions.

**Mr North:** We will adjourn briefly, then.

**Ms Davies:** Thank you very much.

*[Hearing adjourned at 10.23]*

*[Hearing recommenced at 10.26]*

**Mr North:** Ms Davies?

**Ms Davies:** I have taken instructions and my clients are quite happy for the hearing to proceed.

**Mr North:** Right, we shall proceed, then, accordingly.

Just one further matter, if at any point in the hearing issues relating to your personal health are raised, the opportunity exists for the Committee to go *in camera* as it were, which means into a restricted session where there is no one other than the immediate parties and the Committee involved; that is to ensure confidentiality in relation to health matters, that option is available and I thought that I might mention that, in fairness. Thank you.

I think it is to you, then, Ms Davies, to open, is it not?

**Ms Davies:** Yes, there are two minor procedural issues, so if we could just get the housekeeping out of the way?

**Mr North:** Yes.

**Ms Davies:** The first one is that, unfortunately, there is a typographical error on the allegation, in that it is alleged that Mr Moore was convicted of theft and then the allegation, as it currently stands states:

“And by virtue of the matter set out above your fitness to undertake training is impaired by reason of your conviction.”

With the greatest of respect to Mr Moore, he is obviously qualified, it is a typographical error, and the second limb of the allegation should read:

“And by virtue of the matter set out above your fitness to practise is impaired by reason of your conviction.”

I have discussed the amendment with Mr Moore and he does not raise any objection and provided you are happy for us to amend on this basis, I have prepared some amended allegations for you to re-insert into your bundle and I do apologise for the typographical error.

**Mr North:** I think that we can make the necessary annotation on our documents, Ms Davies, but you are content with that, Mr Moore?

**Mr Moore:** Yes, that is okay.

**Mr North:** Is there anything further, Ms Davies?

**Ms Davies:** The only other issue is that technically this is a procedural hearing to begin with, which then needs to move onto the substantive, on the basis that we had, in fact, previously agreed directions.

**Mr North:** Thank you.

**Ms Davies:** So, if I can start? I have, in fact, had a discussion with Mr Moore about the facts as they stand and I understand that these are not going to be in dispute, but I just wondered if it might be worth putting the allegation to him, at this stage, to see if there are any admissions.

**Mr North:** Do you admit the allegation?

**Mr Henley:** I will read it out first.

**Mr North:** Yes, of course.

**Mr Henley:**

### ALLEGATION

The Council alleges that in relation to you, Graham Moore (a registered dispensing optician)

1. On 16 July 2010 at Margate Magistrates Court you were convicted of stealing cash to the value of £1,413.10 belonging to Specsavers, Margate, contrary to Sections 1(1) and 7 of the Theft Act 1968.

And by virtue of the matters set out above your fitness to practise is impaired by reason of your conviction.

**Mr Moore:** Yes, I do admit to the conviction, yes.

**Mr North:** You admit to the conviction. Ms Davies?

**Ms Davies:** Sir, you have heard that the facts are admitted, and for completeness, I would refer you to the papers pertaining to the conviction, which are at Tab B of the bundle which is in front of you.

More particularly, I refer to –

**Mr North:** One moment, Mr Moore, do you have a copy of the bundle?

**Mr Moore:** I have actually left it in my car.

*[A replacement copy of C1 is given to Mr Moore]*

Thank you very much.

**Ms Davies:** To repeat what I have said, the papers relating to the conviction are at Tab B of the bundle and, more particularly, the certificate of conviction is at pages 17 and 18 at Tab B.

As I understand it, while the fact has been admitted, the issue of fitness to practise remains in dispute, and I do not know at this stage whether or not you want to make a decision on the facts, or whether the facts – having been admitted – you would like me to go straight into the issue of impairment?

**Mr North:** Legal Adviser?

**Mr Ross:** Well, sir, the facts have been admitted, and therefore it could be found proved, if the Committee are content, to follow that procedure?

**Mr North:** Yes, would my colleagues be content? *[Agreed]*

Right, we will make that so, then. So, we formally, what was said was that the facts alleged against you have been found proved by virtue of the conviction. Do you agree with that?

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

**Mr North:** We will formally record, then, the facts alleged are proved and we will now move on, then, to the issue of impairment.

**Ms Davies:** Thank you, sir.

The conviction having been admitted, the matter therefore before you today is the issue of impairment. In order to address you on this issue, I propose to take you through the relevant background facts.

Mr Moore is a registered dispensing optician who was first registered with the Council in April 2004. You will see from the Certificate of Conviction at page 17 of the bundle that he appeared before the Margate Magistrates Court on 16 July 2010, where he pleaded guilty to a charge of stealing £1413.10 from his employers, Specsavers, between 1 December 2009 and 15 June 2010, contrary to Sections 1 and 7 of the Theft Act. At the time of the offence, he was the Store Manager of the Specsavers Margate branch.

The issue came to light in, or about, April 2010, when the Specsavers House Loss Prevention Officer, Mr Les Gutteridge – part of whose jobs is to run data reports for all stores to look out for suspicious transactions – noticed an increase in the number of cash refunds to customers at the Margate store. As a result of his suspicions, three covert security cameras were put in place at the store on 29 April 2010.

Now, I imagine that you have probably all read the papers that are before you and you will have seen a copy of Mr Gutteridge's statement –

**Mr North:** May I just stop you at that point, Ms Davies, could I just confirm with my colleagues that they have indeed examined the bundle in detail? [*Confirmed*] Thank you.

**Ms Davies:** As I said, we now know that you will have seen a copy of Les Gutteridge's statement which – just again for the sake of completeness, is at Tab B, pages 24 to 30 of the bundle.

Now, it is quite a long statement and it is the statement that he provided to the police on 15 June 2010 and it would probably be helpful if I could summarise from the statement how he determined that the cash had, in fact, been taken. He explains in his statement that each member of staff has a unique staff ID number which they use to perform transactions on the till. All patients are also allocated a unique six digit customer number and this number is used whenever the customer visits the store. Now, every time the customer visits the store, a record of the visit is made on what is called the test dispense record, which is known as the TDR. This shows all aspects of the patient's details, including prescription, dispensing records and details of all items purchased by the customer and the method of payment used. On each visit, the till automatically generates a new TDR number and record for each visit which is operated in sequential order. Any till operator can then enter a TDR number on the till to retrieve details of a previous transaction. In the course of practice, occasions may arise where customers can obtain a refund – either in full or part – and Specsavers' policy is that all refunds must be performed

through the till and refunded to the customer by the same method of payment. Where a cash refund is made from the till, using the appropriate procedure will ensure that the till balance is automatically decreased by the amount refunded, so that when the till balances at the end of the day, it reconciles.

There are three ways in which to process a refund. These are: a correct TDR transaction, a cancelled TDR transaction and a refund key transaction. Now the correct TDR transaction was to be used where there was a partial refund due; the cancelled TDR was used where a full refund was due and the refund key was used to refund non TDR items, such as the refund of spectacles and accessories and where the item on the TDR was in excess of 99 days old. Mr Gutteridge's suspicions were aroused when reviewing the Specsavers' data log and the number of transactions processed in the Margate store over a period of time using the refund key method and the fact that it appeared that the same operator ID number was being used to process the majority of these transactions. Mr Gutteridge has said that while staff all have their own ID numbers, it is not uncommon in stores for staff to know each others' numbers and perhaps to use other people's numbers on the transactions. He suggested to Specsavers, when he drew his suspicions to their attention, that it might be helpful for covert cameras to be put in place to ascertain who was performing these transactions and, as a result, and as I have already mentioned, three covert cameras were installed at the Margate branch at the end of April 2010.

While the cameras were in place, Mr Gutteridge identified three further suspicious refund transactions. These were on 21 and 22 May 2010 and on 10 June 2010. From the video footage that was reviewed for the relevant time, the Registrant was seen carrying out three cash refunds on the till when no customers were present. Furthermore, the customers were subsequently contacted and they confirmed that they had not received any refund. Having identified Mr Moore on the tapes, Mr Gutteridge then visited the Margate store on Tuesday 15 June 2010 to interview him about the suspicious transactions.

The interview with Mr Moore was recorded and again, in your bundle, there is a copy of the recorded interview is at pages 52 to 58 of your bundle. Could I ask you all to locate that, because there are some elements of that statement that I think it might be helpful if I could put to you? [*Document located*]

During the course of the interview, it was put to Mr Moore that he had stolen money from the store and Mr Moore in fact admitted that this was the case. The relevant reference there is paragraphs 69 to 74 at page 53, the lines at the bottom of the page.

Subsequently Mr Gutteridge asked Mr Moore to explain, in his own words, how he had been stealing from the store, to which he replies at paragraph 91R at page 54 – and I think it might be helpful if I read out that section, Mr Gutteridge says at 90:

“Can you tell me in your own words how you have been stealing from the store?”

The response:

“I generate a report from the back office computer showing me all sales from approximately 1-2 months ago. I then at random choose a patient and refund their lens option using my own till operator ID and by using correct TDR and refund key transactions. By performing a refund on the till it creates an overage on the till balance, which I subsequently remove and steal to ensure no variance is created.”

Now, the three incidents in May and June which were identified on the tape were also put to Mr Moore, and having gone through the scenario on the footage with Mr Moore on each occasion, he was asked, “Did you know that this was a fraudulent refund?” to which he answered, “Yes.” He was then asked, “Did you steal the money?” to which he answered, “Yes.”

Now the relevant bundle references for each of these incidents in relation to that on 11 June 2010 is at page 55 of your bundle at paragraphs 162 to 165.

In relation to the incident on 21 May 2010, the reference is at page 56, paragraphs 217 to 220 and finally in relation to the third incident, on 26 May 2010, the reference is at page 57, paragraphs 266 to 269.

**Mr Ross:** Sorry, what was the date of the second one?

**Ms Davies:** The three incidents were 11 June, 21 May and 26 May.

**Mr Ross:** Thank you.

**Ms Davies:** During the course of the interview, Mr Gutteridge also showed Mr Moore a print out of all the refund key transactions and there is a copy of the key refund transactions at page 39 of the bundle, but I am not sure whether or not that is the actual document that was shown to Mr Moore, but it does set out the list of items.

I refer you to this part of the statement from paragraphs 270 to 280 at page 57 and again I think it might be helpful if I read these out.

Mr Gutteridge says:

“I am now going to show you a print out of all the refund key transactions and would ask if all of the cash refunds on this report are fraudulent as they follow the same pattern as you have described in refunding lens options?”

To which Mr Moore replies, "Yes."

Then Mr Gutteridge says,

"This report totals just over £1000.00 in cash refunds, have you stolen this money?"

Mr Moore replies,

"Although I cannot remember the specific names, yes I have."

Then he is asked,

"Have you stolen by any other method apart from the refund key transactions?"

To which he replied,

"Yes I have occasionally used the correct TDR transaction put through fraudulent refunds. I have used this transaction type on about 4 occasions over the past 6 months."

Then there is the question,

"How much do you think you have stolen using the correct TDR function?"

The response was,

"It would only be about £400.00, as I would only refund about £100 at any time."

Then, a couple of paragraphs further down, at paragraph 285, Mr Gutteridge says,

"Would you accept that you knew by stealing you were doing wrong and you were breaking the law?"

To which Mr Moore says, "Yes."

Now, in fairness to Mr Moore I should also point out that the monies were, in fact, repaid to Specsavers, that is about £1400. There is a letter in your bundle at page 82 from Specsavers which confirms, in the second paragraph that Mr Moore had returned all of the monies that were taken but it then goes on to say, notwithstanding this there were obviously considerable costs in dealing with the whole incident. Clearly Specsavers are out of pocket and that reference is at page 82 of your bundle.

The Council submits that the conviction of theft – which is a conviction of dishonesty – is such that the Registrant’s fitness to practise is impaired. There are a number of abrogating features of the Registrant’s conduct which I would ask you to take into account.

First that the theft was committed during the course of Mr Moore’s professional practice against his employers, Specsavers, and he therefore breached the employer/employee trust relationship.

Secondly, this was not just a one off, isolated incident. The offences were committed over a sustained period of time, from December 2009 through to June of 2010.

When stealing the money from the till, when effecting the fraudulent cash refund, Mr Moore went to lengths to deceive his employer but effecting the cash refund through the till. By implementing the appropriate refund procedure, this ensured that the cash would not be missed because of the till automatically balancing itself as a result of which the till would balance when reconciled.

Finally, I would also mention that the offences took place when the Registrant was acting in his professional capacity and as a dispensing optician.

In the context of acting in his professional capacity, it may be helpful to have regard to the Council’s Code of Conduct, of which there were some fundamental breaches on the part of the Registrant.

Now I do not know if you have a copy of the Code before you, but I suspect that this will not be an issue but the three relevant principles that we are concerned with today are Principle 10, which sets out that the registrant should be honest and trustworthy; Principle 15 which sets out that the registrant must never abuse his or her professional position; and, Principle 19, that registrants should:

“Ensure your conduct, whether or not connected to your professional practice, does not damage public confidence in you or your profession.”

I would submit that the Registrant’s integrity, given the circumstances and his criminal conviction cannot be relied upon and that his conduct undermines the public confidence in the profession, thereby putting it into disrepute.

There is one authority to which I would like to refer you today which is the leading authority of *Bolton v Law Society* [1994] 1 WLR 512 which is, I imagine, a case with which you are all very familiar. I do have copies with me if you would like me to hand them up, if that would be helpful?

[Copies handed up to Committee]

**Mr North:** This will be C2.

**Ms Davies:** While this is a solicitor's case, the principles announced are equally applicable to this profession as any other and they concern issues relating to the reputation of the profession. The case explains in great detail why a Committee such as this Committee often have to impose sanctions which might otherwise appear to be harsh.

Looking at Sir Thomas Bingham's judgment, having made the point that, particularly in cases of proven dishonesty, the tribunal will almost always strike a solicitor off the roll and the reference to that is half way down page 9, he then goes on to state and I would like to commend this section to you and, in fact, read it to you, so at page 10, just after C he says:

"It is important that there should be full understanding of the reasons why the Tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other of both of two other purposes."

**Mr Ross:** Ms Davies, I am sorry to interrupt, but sir, I am just wondering if it is right to draw the Committee's attention to this material at this stage?

**Ms Davies:** I appreciate –

**Mr Ross:** The Committee still has to decide whether or not the fitness to practise is impaired.

**Ms Davies:** I entirely appreciate that: there is an element of crossover with sanction, I am not actually making submissions on sanction, I am leading to impairment.

**Mr Ross:** Right, that is fine.

**Ms Davies:** Because of the issues pertaining to reputation of the profession.

**Mr Ross:** Right, I understand.

**Ms Davies:** So if I could just go back, Sir Thomas Bingham says:

“In most cases the order of Tribunal will be primarily directed to one or other of both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that the experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order for striking off.”

Then perhaps more importantly, the point to which I want to come and the passage that is most often quoted in these circumstances is:

“The second purpose is the most fundamental of all: to maintain the reputation of a solicitors’ profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustained public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission.”

Then, moving on to the end of that paragraph:

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

As previously mentioned, while this is a solicitor’s case, these principles are equally applicable to this and all other professions.

This is the authority on which I rely and it sets out very clearly the considerations that you have to apply and the importance and the weight that you have to give to the circumstances that arise in order to ensure and maintain the reputation of the profession. This is a very relative issue to the issue of impairment because there is no doubt that Mr Moore’s actions present a risk to the reputation of the profession and the public confidence in it. This is a man who has been convicted of dishonesty and to allow him to remain on the Register will seriously undermine the public confidence in the profession.

Finally, as you are aware, your judgement of impairment is as of today. Mr Moore was convicted in July 2010, just over 12 months ago. It appears from his letter of 26 July 2011, which is at page 92 of your bundle, that he has not in fact worked within the optical profession since his conviction, although it is not entirely clear from his statement at page 93 of the bundle, nor indeed the testimonial, what he has been doing in the intervening period. Now this is an important consideration when you have to judge matters as of today, as such, given that Mr Moore’s behaviour was dishonest, in breach of trust, a repeated incident and undertaken while he was working in his professional capacity as

a registered dispensing optician, which resulted in several breaches of the code of conduct.

On behalf of the Council I submit that his actions have seriously damaged the reputation of the profession and undermined the public confidence in it. By committing this offence the Registrant has fallen short of the standards that could properly be expected of a member of this profession and for this reason I submit that his fitness to practise is impaired. That concludes my submissions, sir, on impairment.

**Mr North:** Thank you, Ms Davies. The Legal Adviser has one small issue.

**Mr Ross:** Ms Davies, the panel is aware from the facts that you have read out that there was a loss to Specsavers which was then repaid by Mr Moore. Is there any evidence that any members of the public suffered any financial loss as a result of his actions?

**Ms Davies:** Not so far as I am aware. The money came straight from the till so it was against his employer. Other than the fact that the customers were contacted to ascertain whether or not they had actually sought any refund, I have no evidence that they were involved in loss.

**Mr Ross:** Thank you very much.

**Mr North:** My colleagues on the panel may have some questions for you, Ms Davies and I will start with Dr Harris.

**Dr Harris:** I wonder if you could just assist us with the list of refund transactions.

**Ms Davies:** Certainly.

**Dr Harris:** I think you said these were on page 39. I am not entirely clear which specific transactions were said to have been fraudulently undertaken by Mr Moore of those listed on this page, and I would be grateful to you if you would draw our attention to these.

**Ms Davies:** Right, it would probably be fair to say is that when you total up the figure at the bottom it is £1621.40, whereas the actual conviction was for a lesser amount, it was £1413.10, I think.

**Dr Harris:** Perhaps if you can just take us through that?

**Ms Davies:** I can certainly take you through that. It is only the items pertaining to the "Refund Key Cash" items that were extracted. The first, second and third – if you cross back to the three dates – 10 June, 26 May and 21 May. Then there are two MasterCard transactions which were not included. There was a cash transaction on 9 April; then again ignore the MasterCard one; this is then

followed by another four cash transactions, for £49, £4.79 and £109. There is another cash transaction underneath the MasterCard one for £109. Then there are another four cash transactions below that for £59.50, £89.60, £109 and £109. In fact, if you total those figures up – if you will take my word for it – that figure comes to £1013.10. The additional £400 I believe comes from the “Correct TDRs” to which Mr Moore admitted in his statement which explains how that sum is achieved.

**Dr Harris:** Can you just tell me clearly, then, there are on this page three which were observed at the time and then the admission of Mr Moore at the interview said that there were four previous ones – that is at page 57 –

**Mr North:** I do not wish to cut my colleague’s questioning short, but the facts in this case are admitted and the sum involved is admitted. Are you trying to establish the number of times this took place?

**Dr Harris:** Precisely.

**Mr North:** Thank you.

**Dr Harris:** It is just that you drew our attention to page 57, paragraphs 271 and 290, these were admitted, he thought that there were four transactions if I am correct, and as our Chairman rightly said, what I am after is to try to establish how many times this was undertaken and I am not clear about it.

**Ms Davies:** There are 13 transactions identified on your refund key and, as I understand it, there were an additional four – and these items refer to him using the refund key method of refunding – an additional four items referred to in his statement relate to him using the “Correct TDR” transaction method of refund. That would be in addition to the 13 items listed on your list, there are another four.

**Dr Harris:** 17 in total, in other words?

**Ms Davies:** Yes.

**Dr Harris:** For a total amount of £1413.

**Ms Davies:** That is correct.

**Dr Harris:** Thank you; that is exactly what I was after, thank you very much.

**Mr North:** Thank you. Ms Grute?

**Ms Grute:** Thank you, I would like to just refer to the letter that Mr Moore wrote in, explaining his position, which I believe is page 72. [*Document located*] At the bottom of the second paragraph, it says,

“I initially borrowed without permission money from the business that I did later pay back with no awareness from my employers.”

Is that documented anywhere in these refunds that we are looking at, or is that prior to these?

**Ms Davies:** Not as far as I am aware.

**Ms Grute:** Thank you.

**Dr Azubike:** Just a small, technical point, you refer to the Code of Conduct, which – looking at it from the sections which you have quoted – is the 2010 Code of Conduct, is the new Code of Conduct?

**Ms Davies:** Yes.

**Dr Azubike:** We are dealing with matters which took place in 2009 and parts of 2010, as I understand it?

**Ms Davies:** Yes.

**Dr Azubike:** Is that irrelevant?

**Ms Davies:** I think that is a fair point. I did not mention the fact that, as I understand it, the new Code of Conduct came into force on April 2010 and obviously the new Code of Conduct will be relevant to those thefts between that period and June. Your panel member is right to pick me up on this. I should also have mentioned is that obviously the 2005 Code of Conduct was in play from the December 2009 to April 2010 and from my point of view the two relevant factors within the Code which did not change from the 2010 Code was that the registrant must be honest and trustworthy and that he must avoid abusing his or her position as an optometrist or a dispensing optician; it was only the last one that I read out that actually came into play.

**Mr North:** Are there any further questions?

**Dr Azubike:** No.

**Mr North:** Do any of my colleagues have any further questions? [*No further questions*]

I have no further questions. Thank you, Ms Davies.

We now turn to you Mr Moore, but before we hear what you have to say, I would like the Legal Adviser to share a few words with you.

**Mr Ross:** Mr Moore, as you are probably aware the panel has come to the stage in the proceedings whereby it has to decide whether or not your fitness to practise as an optician is impaired by reason of your criminal conviction. You have heard what the Council has said in setting out the facts, now it is your opportunity to give your version of the facts, if there is any dispute. I know that you have admitted the facts, but if there is any slant or gloss that you think should be brought to the panel's attention then it is your opportunity to do that in your evidence. Impairment of your fitness to practise – there is no definition of impairment, it is a matter for the professional judgement of the Committee and you might want to address them in due course as to whether or not you are actually impaired.

Is there anything else about which you would like clarification?

**Mr Moore:** No, that is fine.

**Mr North:** Would you like a short break to consider your representation?

**Mr Moore:** Yes, please.

**Mr North:** We will adjourn for ten minutes.

*[Hearing adjourned at 11.05]*

*[Hearing resumed at 11.16]*

**Mr North:** Mr Moore, I will now turn to you. Do you wish to give evidence as a witness?

**Mr Moore:** Yes.

**Mr North:** That being the case, would you move to the witness stand and Mr Henley will administer the necessary affirmations.

**MR GRAHAM MOORE, called and sworn**

**Mr North:** Thank you, Mr Moore, what would you like to say to us?

**A.** As previously stated in the correspondence and here today, I have admitted the allegations put towards me. Obviously from 15 June, when the allegations were brought to the attention of the loss prevention officers, I was upfront and honest with them. I was also honest with the police and cooperative with them and I was honest with you and with the Optical Council as well.

As I have explained in some of my letters to the Council which is on page 72, this outlines a lot of what I am going to say. It does explain that there were a few mitigating circumstances going on in my life.

**Dr Harris:** I am sorry, I am finding it very hard to hear you properly, I wonder if you could speak up a little more.

**Mr North:** Thank you, that is very helpful.

**A.** As referred to on page 72, which is going to be a lot of what I am going to speak about – my letter to the Council – it explains a little bit about the mitigating circumstances that were in my life at the time of the incident. Around December 2009, primarily I got myself into a bit of a financial mire, getting into debts in the region of £18,000 to £20,000, which I have worked hard to bring down in the last year and I have actually almost got myself back on an even keel. Also, obviously the last year has been very difficult, but obviously I appreciate that I have brought this on myself. I feel obviously that I have been punished by the courts as a criminal matter, and I have completed my community service and obviously that is 200 hours which is outlined in the case.

What I would also like to put the Council is that it was a gross error of judgement and not one that I feel truly reflects the character that I am. I truly regret what I have done. I have shown great remorse and I feel I have taken big strides to try to turn my life around since the incidents relating to the charges. I can offer far more to the profession being a registered optician than obviously if I am actually removed from the Register. There is more to my personal character than is shown by these charges against me. I would appeal, basically, for a second chance, to give the Council the proof that I can be an asset to the Council and be of benefit to the optical community.

I also believe that possibly at the time, my fitness to practise could have been called into question, because I was obviously not in the right place of mind, obviously because of the bereavement and the financial situation. Now, 14 months on, I have got my life back into shape; I have cleared a lot of my debts. I have been working as an energy consultant for Npower, completely out of the optical industry, I have given myself a complete break from the industry but I am keen to get back into it, as I want to continue on a lot of the visionary work that I have done previously and that is also where I feel that my strength lies.

I would say again, though I am repeating myself, that at the time my ability to practise may have been impaired, I feel that now my character is not what it was then, I do not feel that is the case.

**Mr North:** Thank you; do you have anything further to say at this point?

**A.** No.

**Mr North:** Now there may be questions from Ms Davies and then there may be questions from the Committee as well. Ms Davies?

**Cross-examined by MS DAVIES**

- Q.** I do not have that many questions, Mr Moore. First, I would say that you have admitted that you stole money from your employer?
- A.** Yes.
- Q.** During the course of your employment with Specsavers you obviously handled money; do you accept that, in doing so, you were put into a position of trust and that it was implicit within that relationship that you should be scrupulously honest?
- A.** Yes, I feel extremely bad because I had a very close relationship with my director at Specsavers and that made me feel a lot worse for doing what I did. I was not thinking in a rational capacity, but looking back, obviously I know that it was completely wrong to have done what I did.
- Q.** Do you accept that once you have suggested that one of the mitigating circumstances is to the reason for this was because you were in financial difficulties?
- A.** Yes.
- Q.** Many people who are employed are in financial difficulties and they do not go to rectify that position by stealing money from their employer.
- A.** Yes, again, as I said, although I did eventually steal money, it started out where I would allow myself to a pay day, then put the money back in the business. Then it transpired where I had found myself, I had borrowed the money and I could not put it back and that led into the stealing allegation.
- Q.** Would you accept that even by initially setting out just to 'borrow' the money that was -
- A.** Yes, that was incorrect, that was a breach of trust.
- Q.** Are you aware of the obligations that I have put previously to the Council, as a professional person, under your Code of Conduct?
- A.** Yes.
- Q.** In particular that you are required to be honest, not to abuse your profession and to ensure that nothing that you do damages the confidence that the public has in your profession?
- A.** Yes.
- Q.** Do you accept that the conduct with which we are dealing today meant that you fell well below the professional standards that were required of you?
- A.** Yes, my conduct back then was below the standards required.
- Q.** Now you mentioned in your evidence that you had been working as an energy consultant?
- A.** Yes.

**Q.** Can you perhaps explain to us a bit more – what I am interested in knowing is whether or not, in that role, you are in a position to handle any money or anything like that?

**A.** We are not in a position to handle any money, but we are in people's homes which obviously can be a bit of a trust issue as well. Sometimes there are elderly people who are living on their own and that is a big element of trust, and obviously I feel that I am capable of being put in that position now.

**Q.** I see, and were your employers aware of your conviction?

**A.** Yes, they were.

**Q.** Right. You have also just said in your evidence and also in your letter that you have made huge strides to turn your life around since this unfortunate incident. I was wondering if you could perhaps explain to the Committee in slightly more detail what exactly you have done which you think improves your position?

**A.** Yes, well basically my main issue that I had was obviously my financial dire situation. Since then I have obviously had to move back with some family members because I had obviously lost my job and until I had done my community service hours I did not look for any further employment. I had them done in about seven weeks. Then once I started work, obviously living with family members I did not have many outgoings, then with what I earned I have just paid off all my creditors – well, 95% of my creditors now are at a stage where I am almost on an even keel. Obviously getting a job with Npower as well has obviously developed my character a little bit as well, this is something that I am not used to doing. I feel I have adapted and grown into a new role. Also, being given the trust element back again, because I do obviously regret what I did, because I had a very good job there and a very good position and it is nice to be able to get that kind of trust level back and that is something that I would like to get back into in the near future.

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

**Mr North:** Thank you; my colleagues, I am sure will have some questions at this point. I will start with Dr Azubike.

### **Questioned by Committee**

**Dr Azubike:** I am just slightly concerned over whether the witness is aware that we are at the impairment stage, because it does referred to matters that might be appropriate at a later stage and I am not really sure.

**Mr North:** I will hand you to the Legal Adviser.

**Mr Ross:** Mr Moore, do you remember that I spoke to you and I advised you that this is the stage where the Committee has to decide whether your fitness to practise is currently impaired?

**A.** Yes.

**Q.** Now, you have given the Committee a fair amount of information about your attitude to the events and the steps that you have taken to rectify your own personal defects since then, but is there anything else that you want to say about whether or not you are safe to continue practising now as an optician?

**A.** I have nothing further to add at the moment, no.

**Dr Azubike:** On that basis I will not ask any questions.

**Dr Harris:** I would like clarification as to whether or not Mr Moore is going to take the stand again if we were to get to the next stage, because I have questions that might be relevant later on, so could I have some clarification?

**Mr North:** Yes, indeed, Dr Harris. Should we find that your fitness to practise is impaired would you wish to address us again?

**A.** At a later date, do you mean?

**Q.** No, later this morning or this afternoon?

**A.** No.

**Mr Ross:** Well, the procedure is that the Committee, as I said, has to make a decision as to whether or not your fitness is impaired. If you find you are impaired, then they have to consider what sanction to impose. At that stage you may wish to address the Committee and give more evidence as to what you say would be the proper sanction.

**Mr North:** It might be helpful at this stage if you were to explain what the sanctions may include.

**Mr Ross:** Yes, the sanctions vary from financial penalty going up to conditions on your practice, suspension of your practice and then erasure from the Register; those are the available sanctions, so I would strongly advise you that if we get to another stage, then you should give evidence.

**A.** Okay, thank you.

**Q.** But it is a matter for you.

**Mr North:** It is a matter for you; would you like a moment to consider that?

**A.** No, I will have the opportunity.

**Q.** Would you wish to take that opportunity up?

**A.** Yes.

**Q.** You would. Does that assist you, Dr Harris?

**Dr Harris:** Under oath or not; under oath or just submissions? We need to know.

**A.** Under oath.

**Q.** He would do it under oath. Then at this juncture, I have no questions.

**Mr North:** I have no questions either, but the Legal Adviser has one item for clarification.

**Mr Ross:** Mr Moore, you told Ms Davies that your current employers are aware of the conviction; how did they become aware of that?

**A.** At the interview stage, because obviously it comes up, 'Why have you left the industry to change completely?', so I felt that the policy was to be upfront and honest.

**Q.** So you told them?

**A.** Yes, and I am sure that in background checks things like that will come out anyway, so it is best to be upfront.

**Mr North:** That has been very helpful. Ms Davies, you can have the opportunity to ask any further questions you wish to ask?

**Ms Davies:** No, thank you.

*[The witness stepped down]*

**Mr North:** We move onto the legal advice.

**Mr Ross:** Mr Chairman and members of the Committee, the Committee at this stage has to decide whether, on the basis of the facts found proved, Mr Moore's fitness to practise as an optician is currently impaired.

Impairment of fitness to practise is not defined and is a matter entirely for the professional judgement of the Committee. The Committee will, of course, take into account whether or not any safety issues have arisen as regards members of the public, clients and the general public interest, which includes, of course, public safety and the reputation of the profession and the upholding of proper standards for professionals within this profession. Those are the matters which I would advise the Committee to consider.

The Committee has, of course, to decide whether Mr Moore's fitness to practise is currently impaired and not whether it was impaired at the time of the offences, but whether it is still, currently, impaired. That is what the Committee has to decide. There is no burden of proof in relation to this matter, it is entirely a matter for the professional judgement of the Committee.

**Mr North:** Thank you. I realise that, in fact, there is a question that I should have asked, Mr Moore, at this point, would you be prepared to answer it?

**Mr Moore:** Yes.

**Mr North:** Have you maintained your continuing education and training over the past 15 months?

**Mr Moore:** I have not at the moment, no.

**Mr North:** Thank you, that is very helpful. The Committee will now go *in camera* and we will reach our decision as soon as we can on fitness to practise impairment.

[Hearing adjourned at 11.32]

[Hearing resumed at 12.00]

**Mr North:** Thank you.

### **Findings in relation to the conviction**

The Committee has heard submissions on behalf of the Council and from the Registrant. It has accepted the advice given by the Legal Adviser. The registrant admitted the conviction of which the Committee has seen a copy of the relevant certificate. Accordingly the conviction is found proved.

### **Findings regarding impairment**

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

In reaching its decision the Committee is mindful of the relevant GOC Codes of Conduct 2005 and 2010 which set out the standards required of a registered optician. In particular, both Codes lay great stress on the requirements for honesty and integrity to assure public confidence in the profession. It is a further requirement that opticians do not abuse the position of trust in which they are placed in respect of the public and within that, their employers. The Registrant has freely accepted that his conduct fell far short of these standards.

The registrant was the store manager in a retail organisation providing optical services. On 17 proven occasions over many months he manipulated administrative systems to deceive and defraud his employer. When challenged by his employer he admitted his offences, was dismissed and following conviction has carried out 200 hours of unpaid community work. He argued that his subsequent employment and conduct in employment outside the optical profession, together with the resolution of his personal financial difficulties, were sufficient evidence that his fitness to practise was currently unimpaired.

The Committee was unable to agree. The Committee considered that the Registrant's conduct represented a fundamental breach of several of the standards required of opticians. To view his behaviour otherwise would undermine the confidence of the public in the profession.

Accordingly, the Committee found that the fitness of Graham Moore to practise as a dispensing optician is impaired.

Now, Mr Moore, we move to the next stage, which is sanction. What I propose to do is to ask the Legal Adviser to explain to you what that stage of the process involves. If you have any questions, you can put them to him. I would then like to take lunch for approximately 45 minutes and then resume after that period has elapsed.

**Mr Moore:** Okay.

**Mr North:** I will now hand you over to the Legal Adviser who will advise you on the way ahead.

**Mr Ross:** Mr Moore, the Committee will first hear from Ms Davies as to whether she has any submissions regarding sanction. As I told you before, the Committee now moves on to the stage at which it has to decide what sanction, if any, to impose on your registration. You have the choice as to whether you give evidence on oath. First, you have the choice as to whether or not you would like to give evidence. The fact that earlier on you indicated that you would give evidence is not binding on you; you still have the choice. The first choice you have to make is whether you are going to give evidence, or whether you prefer merely to address the Committee from where you sit in the formal affairs of submissions. The evidence or the submissions that you give have to be directed to the sanction stage; in other words, what you say should be the appropriate sanction which the Committee considers. I have told you what the available sanctions are, do you wish me to remind you of them?

**Mr Moore:** No, thank you.

**Mr Ross:** Could you direct your submissions or evidence in relation to those?

If you give evidence under oath, then you can be cross-examined by Ms Davies and you can be asked questions by any of the Committee members. You have to understand that.

**Mr Moore:** Okay.

**Mr Ross:** The answers that you give will be as much on oath as your evidence; the whole of your oath, in other words, is solemn evidence, given under oath, and you have to realise the implications of that.

**Mr Moore:** Okay.

**Mr Ross:** That is my advice to you.

**Mr North:** Thank you. I propose to adjourn now until 1.35pm. Obviously, in terms of the advice you have just received, if, on reflection, there is something else that you would like to ask of the Legal Adviser before we begin again this afternoon, then please indicate that at the beginning of the proceedings.

Ms Davies, are you content at the moment?

**Ms Davies:** I am, thank you.

**Mr North:** We will reconvene, then, just after half past one.

*[Hearing adjourned at 12.46]*

*[Hearing resumed at 13.32]*

**Mr North:** Before we begin, Mr Moore, is there any further advice or explanation that you would like from the Legal Adviser?

**Mr Moore:** No, thank you.

**Mr Ross:** Mr Moore, there is one thing that I forgot to mention and that is, obviously, if you give evidence under oath, then it counts in more ways than if you just made submissions.

**Mr North:** Ms Davies?

**Ms Davies:** Sir, yes, I would obviously like to make my submissions on sanction. I have already referred you to the case of *Bolton v Law Society* and, as was pointed out by the Legal Adviser earlier on, some of the submissions almost cross over in relation to issues as to sanction, so I do not intend to repeat them here.

There is, however, one point in the judgments to which I would like to draw to your attention. That was, moving on from the judgment from Lord Bingham and the references which I pointed you to at page 10 – and I do not intend to read this out – but having made those various enunciations in relation to those principles, Lord Bingham then goes on to make the point that, in cases such as these, one will often hear strong mitigation of the tragic consequences for the registrant of his actions and the fact that he has learned his lesson and invariably that he will not offend again. However, because of the nature of your jurisdiction and the important role you play in maintaining professional standards, this carries less weight in such a jurisdiction: just because the

consequences for the practitioner may be devastating, it does not mean that a serious sanction is not the correct one.

At page 12, which I will read out to you, he says:

“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 a part of the price.”

Now, given that this conviction was only just over 12 months ago, it is, in fact, still very recent. Allowing the Registrant to remain on the Register, I submit, will damage public confidence in the profession. There is still a huge question mark over the Registrant’s integrity. It is obviously a matter for you to decide on the appropriate sanctions in this case, and make an order which is proportionate, taking into account the interests of the public and those of the Registrant, but bearing in mind the seriousness of this allegation. In doing so, you need to take into account the need to ensure that the highest standards are maintained within the profession and that the public is protected. This is a case of dishonesty which is an issue which goes right to the heart of the profession. I therefore submit that this is a case which is at the higher of the scale in terms of seriousness. Those are my submissions with regard to sanction. Thank you, sir.

**Mr North:** Thank you, Miss Davies. Mr, Moore, do you have anything to say?

**Mr Moore:** I have nothing further to add to what I said previously to the Committee.

**Mr North:** There is nothing else that you would like to raise?

**Mr Moore:** I do not think that I have anything else that would help my position.

**Mr North:** Thank you. Now at this stage, it is over to the Committee to ask you some questions. Do you want to do that as sworn evidence under oath? It is your choice; I want to be certain that you are aware that it is your choice: you can either make submissions from where you are, or you can offer evidence under oath.

**MR GRAHAM MOORE, recalled  
Questioned by Committee**

**Mr North:** We will start with this end of the table, Dr Harris?

**Dr Harris:** Good afternoon, Mr Moore. I would like to try to understand a little bit more about the circumstances which you say led to the dishonesty and I would like to hear a little bit more from you about the matters which you mentioned in your letter. You mentioned the bereavement and then you mentioned financial problems; would you like to tell us a little bit more about

the background so that we understand clearly what you were facing and how old you were – if you don't mind telling us – at the time that these things happened?

**A.** Yes, certainly. I was 28 at the time. The financial situation I found myself in had accumulated over the years, since I had been working – through credit cards, things like that, loans, etc.

**Q.** You will have to speak up, because I cannot hear you, I am sorry.

**A.** The financial position had accumulated over the years, as I had been working. Generally, I thought that it was under control. In the November of 2009, I lost my maternal grandmother who I was quite close to – it put me in a bit of a bad place, emotionally. Also, at the same time, I had – the credit card people – I had missed a few payments leading up to the Christmas period – I had overstretched myself a little bit. Also, with my Vision Aid overseas trip, I had not collected the sponsorship money prior to going and therefore again, that was another big outlay at that time of the year. Stupidly, that is how it all began, really – it was a case of a short term problem that I had created into a bigger problem at the end, by borrowing and not being able to pay it back.

**Q.** Perhaps you would help me a little bit: you said that you were using credit cards, you were employed at the time?

**A.** I was, yes.

**Q.** Everyone has credit cards; did you say that you were missing payments?

**A.** I had put my head in the sand, for want of a better way of putting it, really, and I had missed a few payments and then when the demands were a bit higher, as soon as I was paid, a lot of my money was going straight out on paying these credits as well.

**Q.** Would you say that you were living beyond your means?

**A.** Yes.

**Q.** We have heard from you today already that sums of, I believe it was £18,000 to £20,000 that were mentioned – is that right?

**A.** That was correct, yes. At the beginning of this year I was £18,000 in debt.

**Q.** And who were your principal creditors?

**A.** Lloyds TSB, Virgin, MasterCard.

**Q.** All credit cards?

**A.** No, one was a loan, which I had just topped up over the years – I had initially when I was 19, had this loan for a car and then topped it up – paid off credit cards, re-spent on them. It was basically reckless youth I was paying for. I am pleased to say, as I have said, that I have it down to near enough 95% of it paid off, just from working hard this year and the support of my family.

**Q.** I see. Now, you started to say that you undertook some borrowing and repayment?

- A.** Yes.
- Q.** Now when did that take place?
- A.** Late November to early December.
- Q.** Of which year?
- A.** 2009.
- Q.** How did you manage to do that, because we have heard about how you took money and were not able to repay it, but can you tell us a little bit about the borrowing and the repaying, how did you effect that?
- A.** Basically I was a little bit short before my pay date.
- Q.** Sorry, you are going to have to speak up a bit more, you were what short?
- A.** I was a little bit short before a pay day, I had a bill coming out and I didn't really know what to do and, in retrospect, asking for help would have been the sensible option. Being, obviously, the manager of the store I performed lots of refunds every day and until then it had not crossed my mind, but basically I took out a refund for a patient who was actually ill and popped it in the safe, and then I thought, well, 'She is not coming in until next week, I could maybe borrow that', and that was how it kind of transpired.
- Q.** How often did you do that?
- A.** It was only on possibly on two or three occasions where I borrowed it and put it back. Then in January or February when I returned from Africa, and I had a lot more bills as well, I had not been earning any money, that was when it resorted to not being able to pay it back and then using that as a means to get myself out of the situation.
- Q.** You say that on two or three occasions you were able to borrow money because the person to whom the refund was due was not present?
- A.** No, they were not coming into the store immediately, so we put it to one side, and therefore I thought, 'If I am going to replace it by the time she is coming in' – stupidly I thought that would be okay, obviously I know that to be different now.
- Q.** Okay and looking, if we may, if you would like to open your bundle at page 39. These show the refund transactions between 15 August and 10 June, and we have been told that the first three were the ones where you were observed on camera and the other – I think it is ten, shown under 'Cash' – do you accept that you took those out?
- A.** With Loss Prevention we did not actually go through each individual one and say, 'Yes' or 'No', he asked me how long it had been going on and I said, 'About four or five months – around about Christmas to May', and he said, 'Do you have a rough idea of how much it was?' which I did and I said that, so we agreed that that would probably be a true reflection. So not all of them would necessarily have been fraudulent refunds.

**Q.** What you are telling us is that not all of these were, in fact, fraudulent refunds?

**A.** Not all of them, but I would say the vast majority and that was agreed with the Loss Prevention, that rather going individually through cases, it was a matter of 'would you accept that that is a very accurate description of the loss that occurred?' and I said yes and it transpired that it was about £1400, all bar £200 of that would have been accountable to me.

**Q.** Did you tell anybody that you knew, at all, that you had been stealing money from the firm? Did you confide in any of your family or anybody that you turn to for guidance?

**A.** No, and I wish that I had because they would have told me that I was an idiot and that I should stop doing it and own up, so no, I did not tell anybody until it all came out.

**Q.** I am struggling to understand properly why you did it, is there anything that you want, by way of explanation, to say why someone who has achieved so much in his career should have resorted to this series of thefts?

**A.** It was a poor lax of judgement on my part, I accept that. Also with the debt issue it was a big weight on my mind and I did not really know what to do and, as I said, in retrospect, now I can see clearly that I should have asked for help. I did not feel that I wanted to admit what kind of problems I was in, because none of my family knew that I was in that kind of debt – not even my close friends, so it was something that I had on my shoulders, on my own, and stupidly I made the wrong decision.

**Q.** I see. Finally, how did the loss of your grandmother play into all of this?

**A.** I think that it upset me more than I noticed at the time. I had obviously become more withdrawn from my friends and my family and that had made me more introverted in my decisions and that could maybe be why I did not speak to anybody about the problems. I don't know, it really hit me quite hard.

**Q.** Was it unexpected?

**A.** Yes.

**Q.** I see, so you would say that that clouded my judgement?

**A.** I wouldn't like to pin it all on that, but I believe that it had a part to play.

**Q.** And had you undertaken any borrowing or theft prior to the death of your grandmother?

**A.** No.

**Q.** Thank you very much.

**Ms Eva:** Good afternoon, Mr Moore. Just a couple more questions; you said that you had on occasions borrowed money and put it back in, by taking it out and refunding it?

- A. Yes.
- Q. How did you manage to put it back in so that it was not noticed?
- A. It would just go back into the spread, the same TDR which is the transaction record and you would just put it back through as a new order.
- Q. So you would put the order back in?
- A. Back through that customer's record name, yes.
- Q. Okay. How long were you on the VAO trip, because you said that during that time you went away?
- A. A couple of weeks.
- Q. Was that taken as unpaid leave?
- A. Yes.
- Q. During the time in which you have not been working in optics, we asked earlier whether you had gained any CET points; have you kept up with any other optics knowledge?
- A. I have not been doing it, I had started, obviously, my CET when I was still working, I had nine points, I think, in the first six months or whatever. When, obviously, I was dismissed from Specsavers, I felt that I needed to have a break from the industry and I wanted this hearing out of the way before I decided on my next step, so obviously Specsavers were also part funding part of my training for events and seminars. You usually have the discs and the magazines through and I have not really been in that environment to participate in my training. Obviously, though, I am more than capable of doing so.
- Q. Okay and one last question, what makes you want to rejoin the profession now?
- A. I feel that I have a lot of experience and ability and I was good at what I did. It is definitely the biggest regret of my life that my actions of a few months have tarnished my reputation. This has cost me my job, my house and a lot more in my private life, as well. I feel that I can give a lot more to the optical industry. Like I say, doing things like the VAO was a really great experience and it is something that I would love to do again but I know that you do not necessarily have to be a qualified optometrist to do that, or dispensing optician like that, but I feel that I have a lot of ability and I was good at what I did.
- Q. Okay, thank you.
- Ms Grute:** Good afternoon, Mr Moore. I would like to come back to the issue of the abuse of the trust and I notice from the copy of the letter of dismissal from Mr Bryant that the registered ophthalmic optician at the practice is Michael Moore?
- A. That is right, yes.

**Q.** Is he any relation to you?

**A.** No, he is not, no.

**Q.** Okay, thank you. How long had you been at this practice?

**A.** Five years.

**Q.** Five years, so were you qualified when you joined this practice?

**A.** I was, yes, I think I qualified about a year and a half beforehand.

**Q.** How long had you held the position of manager there?

**A.** Ever since I was there.

**Q.** Okay. So what I am curious about is that it appears that you had a good relationship with your Director/boss?

**A.** Yes.

**Q.** Why did you not turn to him for help?

**A.** The stupid thing is that I know that he probably would have helped me, but again it is admitting that you had a problem that you could not solve. I am quite a proud person, I did not want to ask – well, I should have asked for help but I did not feel that I could, even though now, looking back, I can see that he would have helped me. Even on the day that it came out he said, 'Look, I am just so sorry that you have had to do this.' I felt awful, because he was very good to me and I do still feel bad about it to this day. Yes, I should have gone to him for help and he said, 'Look, I would have helped you in any way I could have done.' That just made me feel even worse, to be honest. But it was a stupid decision that I did not make that proper judgment, really.

**Q.** £18,000 to £20,000 is quite a lot of money –

**A.** Yes.

**Q.** What did you spend it on?

**A.** As I said, initially, my first loan was taken out when I first started work at 19 and was £1500 and that was to put a deposit down on my car. Then I had a couple of credit cards, which I just frittered away on holidays, clothes, things like that. Basically, when you are growing up, as a youngster you spend more than you have coming in. Then, when I was about 22 or 24 years old, I went to get a loan for £5000 to pay off my cards and my previous loan and what they did at the bank was to put two loans side by side, so instead of having one loan, I had a loan of £1500 and a loan of £5000, so it was there that I spent some of the money thinking that they had cleared the other one off. Then it came back that I needed to get another loan to clear both of those, which was about £10,000. About four years ago, I decided to try to get all of my cards together and do it all in one big lump and basically it was topping up loan after loan to try to clear the cards and I was not strong enough to not use the cards, which I have now destroyed. I do not want to go there again. Yes, it was basically living beyond my means, really, and it was a bit reckless of me.

I am sure I am probably not the only one who has done it, but as I say I have got to the root of my problems now and it is not something that I am going to do again.

**Q.** Thank you.

**Mr North:** Thank you. Dr Azubike?

**Dr Azubike:** Just one question, please. Can I ask you to look at the conviction which is at page 17? You will notice that the Community Order that was made by the Magistrates expired in July?

**A.** Yes.

**Q.** My question really is that obviously you have only just completed your sentence?

**A.** No, I had completed it within seven weeks of getting the order, so I completed it last September.

**Q.** That is on the paperwork, but you had this Order for 12 months?

**A.** Yes, they said that I had a year to complete it, yes.

**Q.** So that did not run out until two months ago?

**A.** Okay.

**Q.** Would you consider that two months is not enough time to elapse since you have completed a sentence for us to be able to judge?

**A.** With the criminal aspect of it, the judge saw fit that I was to serve 200 hours of community service and re-pay my debt to society which I duly did. He said that I had a year to do it; I wanted it out of the way. That is where I felt that I drew a line under the matter. Obviously I had the hearing here, which has gone on a little bit, but I feel that I came to terms with what I had done back then and even on the day that I was confronted about the incident, I knew then that what I had done was stupid and wrong. Yes, looking back now, I am a bit ashamed, still.

**Q.** Thank you.

**Mr North:** Thank you. I just have a couple of questions for you, Mr Moore. You said that you have lost your house, where are you living now?

**A.** With family.

**Q.** With your mum?

**A.** Yes.

**Q.** Who was 'David'?

**A.** David?

- Q.** Yes, you mentioned 'David'?
- A.** He was my boss.
- Q.** He was your boss?
- A.** Yes.
- Q.** Was he your area boss?
- A.** No, he was with Specsavers, you may not know, they are franchised businesses, each store generally has two or more directors who are in the store probably two or three days a week each. He was one of the two directors in the store, the other one was Mr Michael Moore who we spoke about earlier.
- Q.** As at today, how much do you owe?
- A.** To the creditors?
- Q.** Yes.
- A.** About £2500.
- Q.** Fine, thank you.
- A.** That is a rough figure.
- Q.** And you are employed at the moment?
- A.** Yes.
- Q.** Have you received any counselling?
- A.** I did go and see Citizens Advice Bureau after it all happened –
- Q.** I was thinking specifically counselling in relation to debt?
- A.** I have not; as I said, I went to see the Citizens Advice Bureau about my debt issues and they told me what the best thing to do was to start tackling it – basically write to your creditors and explain your situation and then try to find a way of meeting and have a place where we can come to an agreement of trying to reduce it and I can make affordable monthly payments without cutting myself short.
- Q.** Did you undertake that counselling before or after you started stealing money from Specsavers?
- A.** This was after.
- Q.** This was after, fine.
- A.** Yes, in retrospect, maybe I should have done that prior.
- Q.** Fine, I have just one further question at the moment. Did you recover your sponsorship monies on the VAO?
- A.** Most of it.
- Q.** There was a personal contribution, in effect?

**A.** Yes, obviously aside from the sponsorship, there was also some contribution that I had to make myself and then I obviously had to make up the shortfall from the others, as well, that I did not collect.

**Q.** How much was that?

**A.** The personal contribution was probably about £500 and then the shortfall was probably about another £200.

**Q.** Thank you, that was helpful. I will just check if any of my colleagues have any further questions?

*[No further questions]*

I do not have any further questions either. Ms Davies?

**Ms Davies:** I do not have any further questions.

**Mr North:** Mr Moore, please would you return to your seat.

*[The witness stepped down]*

**Mr North:** There is just one further point, Mr Moore, which I will address to you, but assume that you are still under oath. You have a character reference in the bundle, from Mr Fountain. Who is Mr Fountain? *[Mr Fountain identifies himself]*

Would you like to read that into the record, Mr Fountain?

**Mr Fountain:** You would like me to read it?

**Mr North:** Yes, if you would like to go into the witness box to be sworn and then read it.

**MR FOUNTAIN, called and sworn**

**Mr Fountain:** *[Reads]*

“I’m writing to provide you with a character reference for Mr Graham Moore, someone whom I have known extremely well in both a personal and professional context for over ten years.

I am a secondary school teacher and Graham has worked tirelessly on several charity events that I have been involved in. Indeed, most recently, Graham came into my school to talk to the pupils about Vision Aid and some of the work he had been involved with on a recent trip to Africa. As a direct result of that visit, several of my sixth formers have expressed an interest to get involved in similar projects, both during

their up and coming summer holidays, and, in the case of one girl, for a protracted project during her gap year.

Graham was a consummate professional on that day, and has been on all of my many dealings with him. He is dedicated, selfless and extremely passionate about such charity work and his profession. He has helped several other of my students get interested in the optical industry and has been involved with several work experience and careers guidance sessions that I have organised for my students.

What is most striking about Graham is his willingness to always go a little further, both in terms of how he looks after his friends and family, and the time I know he has spent helping out colleagues and younger members of his profession. A mutual friend of ours who worked with Graham several years ago once told me that were it not for the support and guidance that he received from him, he would have quit the profession. This person is now about to set up his own practice in Australia.

On a personal note Graham has been my rock on many occasions, and has never once let me down as a friend. I don't exaggerate when I say that I don't think that I have ever known such an honest, reliable, truthful and sincere person who is always willing to put others' wellbeing above his own.

I hope that in this short piece I have managed to give you what I truly know to be an accurate picture of Graham as he is seen in our social and now occasionally entwining professional circles, as I also know that this is how he is also seen in the wider community. Please feel free to contact me should you need any further clarification...

I hope that this has been of some assistance in helping you to get to know Graham as the outstanding person I know him to be."

**Mr North:** Thank you, Mr Fountain, would you be content to answer some questions?

**A.** Absolutely, yes.

**Q.** I think that is open to you first, Ms Davies, is it not?

#### **Cross-examined by MS DAVIES**

**Ms Davies:** Thank you, yes, I think it is. I don't really have any questions, but I would like to ask you because the testimonial is in fact silent on the point, did Mr Moore tell you about his conviction?

**A.** Sorry, after it happened?

**Q.** Well –

- A.** I have been quite good friends with him, as I say, for many years now, and I had no clue that anything had happened, but within a week or two of the loss adjustors coming into his work was when he first told me that it had happened and I expressed my regret that he had not come to me sooner –
- Q.** So that would probably have pre-dated, well it was probably about the same time that the police were involved?
- A.** I don't know.
- Q.** But, as you say, after the Loss Adjustor was involved he came to see you as a personal friend?
- A.** Yes, as a personal friend, yes that is correct.
- Q.** Right and prior to that time, were you aware at all of his financial position?
- A.** No, I think as a personal friend I did notice a difference in him around about the proceeding Christmas – we were seeing each other a little less often, we were talking a little less often, in fact in the six months between the Christmas and the June I saw him more at work probably when he was coming in to help me with various school events rather than on a personal basis. I ascribed that at the time to the situation with his grandmother, because having known him so well, I know that he does not often find it easy to talk about those things, so I did not push the issue.
- Q.** In terms of the visit to school to which you refer in your testimonial, can you help the Committee and just put a time frame on that for us?
- A.** Yes, it was about in March, just after he came back from his trip, because I had asked several of my colleagues at work whether or not they would be interested in sponsoring him, which some of them did. Some of the students also organised various collections to help with his sponsorship and then to say thank you for that, Graham came into school and gave an assembly to show the kids some of his pictures from his experience, to talk a little bit more about the work that Vision Aid had done. So that was probably within three or four weeks of his return from Africa.
- Q.** So the context of these visits, then, would have been in 2009? Pre-conviction.
- A.** Sorry, 2010.
- Q.** I apologise, 2010 – pre-conviction, so we are not talking about the school year, 2010-2011 that has just passed?
- A.** That is correct, yes.
- Q.** Thank you; that is all of my questions.
- Mr North:** Thank you, the Committee has some questions if you are happy to answer?
- A.** Yes, certainly.

### Questioned by Committee

**Dr Azubike:** Just one question, can I just confirm, he told you that the Loss Adjustors had come in to see him, which year was that that he actually told you?

**A.** About what had happened?

**Q.** Yes.

**A.** That was 2010, I believe – once it had happened.

**Q.** That is fine, thank you.

**Mr North:** I have one question, in your own opinion, Mr Fountain, why do you think that he did it?

**A.** I think that he is a very, very proud person. He is the kind of person who finds it far more comfortable to help other people and listen to their problems, rather than to talk about his own problems. I know that he probably won't thank me for saying this, but I personally think that the grandmother played more of a part than maybe he has even said himself here today. I think that did cloud his judgment, because he was very close to her, probably closer than some other members of his family. That was quite a shock to all of the family and basically, as he said, he found himself in a position that spiralled and spiralled and for whatever reason, he made the wrong call of not talking to a friend. I certainly – I would not have been financially able to give him £20,000 but I would certainly have helped him, even if it was in an advisory capacity. I know that he now knows that there are people round there for him like that. I think that on the family side, I personally believe that the person he would most likely have spoken to when events started spiralling like that, would have been his grandmother. That is my personal opinion, though.

**Q.** From your subsequent conversations, what do you think that he has learned?

**A.** Well, he was completely gutted. He knows for a fact that what he did was wrong. Obviously the initially thing is that he has lost his job and that is a big impact for anyone, but all he was really talking about the first times I spoke to him about it is how badly he felt about letting down Dave Bryant, his Director at the time, and then how badly he felt about letting down the family and then after that, it was the kind of the response that – myself included – he had not told any friends, he had not told a girlfriend – no one knew what had gone on. I think that what the last year has given him time to do is to sit back and reflect on all of those things and realise that everything that he had he has lost, as he mentioned, his reputation as well. I know that he is keen to try not to gloss over this at all. That was an uncharacteristic error, in my opinion and I would stake my professional reputation on him not repeating it. He has truly learned that if nothing else, there are always people he can speak to and people that he can rely on, he does not always have to be the person who bottles it all up.

**Q.** Thank you, Mr Fountain, that has been very helpful, I don't know if any of my colleagues have any further questions?

[No further questions]

[The witness stepped down]]

**Mr North:** I now turn to the Legal Adviser for advice. Ms Davies, you have no points arising out of that?

**Ms Davies:** No, thank you.

**Mr Ross:** Sir and members of the Committee, the Committee has now reached the stage where it has to decide on whether or not to impose a sanction and if so, what the appropriate sanction would be.

I would advise the Committee to consider each of the sanctions in ascending order, beginning with the least serious and stopping when they have reached a sanction which they consider proportionate and reasonable in the circumstances of this case. Other than that, it is entirely a matter for the Committee, that is my advice.

**Mr North:** Thank you. The Committee will now go *in camera* to consider sanction. Thank you.

[Hearing adjourned at 14.09]

[Hearing resumed at 15.48]

**Mr North:** Before reading the determination, I confirm that we received no additional advice from the Legal Adviser.

### **Sanction**

Before commencing its deliberations the Committee reminded itself of the Indicative Sanctions Guidance issued by the GOC. The Committee considered the sanctions available in ascending order. It considered both the possibility of no further action or conditions, but decided that neither was appropriate.

The Committee then considered whether suspension would reflect the seriousness of this dishonest behaviour. The Registrant had been employed for five years and was in a position of trust and responsibility as the store manager. The Committee considered that his behaviour was not an isolated incident, but was a course of dishonest conduct over many months involving a series of planned deceptions which were carried out against his employer. The financial circumstances that led to his acts of fraud were the result of his own, admitted, reckless behaviour which he attempted to redress by unlawful activity. The

result was significant breaches of the relevant GOC Code of Conduct over an extended period.

The Committee has taken into account the Registrant's full and immediate admissions after being confronted by his employer and that he cooperated fully with the investigation throughout. Further, he has repaid all the monies fraudulently obtained. Nevertheless, the Committee considered that this dishonest behaviour was fundamentally incompatible with continued registration. Suspension was therefore not a reasonable and proportionate sanction to maintain public confidence and uphold the standards of the profession.

The Committee therefore orders that the registrant's name be erased from the Register of Dispensing Opticians.

Ms Davies, we now move into the stage relating to immediate orders, if perhaps the Legal Adviser could explain the situation now that this order has been determined and the way ahead.

**Mr Ross:** In normal circumstances, Mr Moore, the order which has been made would not come into effect until after the time for Appeal has expired and thereafter, if you did submit Appeal, thereafter until the Appeal is determined. The Committee now has to consider whether it is necessary, either in the public interest or in your own interest, to make an immediate suspension order, so that your registration would be suspended from today, so is there anything that either of you want to address the Committee about in relation to that.

**Mr North:** Ms Davies, first.

**Ms Davies:** The only submission I would make is that obviously the Registrant is not working at the moment in any event, such that interests would probably be served by an immediate order.

**Mr North:** Mr Moore, do you have any comments at this point? *[No comments]*

I would like to ask the parties to withdraw while we make a decision on this.

*[Hearing adjourned at 15.51]*

*[Hearing resumed at 15.53]*

**Mr North:**

**Immediate order**

The Committee further considered whether an immediate suspension would be appropriate in this case and after representations from both parties it has decided that an immediate suspension order is necessary in the public interest.

That concludes the business of this Committee for today. Thank you Mr Moore, thank you Ms Davies, for your help today. If you would like to collect a copy of the determination from Mr Henley as you leave. Thank you.

*[Hearing concluded at 15.54]*