

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

**GENERAL OPTICAL COUNCIL**

**F(11)12**

**AND**

**HELEN MARGARET NORRIS (D-10513)**

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**DETERMINATION OF THE INQUIRY: 26-27 JANUARY 2012**

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**ALLEGATION**

The Council alleges that in relation to you, Helen Norris (a registered dispensing optician):

1. You used card no 6053 6576 9928 3587, at one of the ASDA Southport self-service tills, for your own personal use when you were not entitled to do so on the following days:-
  - a. 25 August 2009;
  - b. 26 August 2009;
  - c. 27 August 2009.
2. Your actions at 1 above were dishonest.

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

- (a) Misconduct

**DETERMINATION**

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

The Registrant was employed at Asda's Southport Branch. The allegation is that she used a store card at the service tills at that Branch dishonestly on three occasions on successive days in August 2009. The Registrant admits that the transactions took place, and therefore admits paragraphs 1a-c of the allegation but denies that her actions were dishonest. The Registrant was interviewed by her employer within a

week of the relevant events and admitted using the card but said that she used it in error rather than her own gift card.

The Committee has heard evidence, reviewed a bundle of documents at C1 and viewed CCTV.

Mr Karri gave evidence to explain the procedures of the store. The card used was a gift card which had credit allocated to it which should, according to the Registrant's explanation, have been specific to the customer for whom the card had been credited by the store's product protection insurance scheme in order to allow the store to refund to him the cost of replacing defective glasses which he had returned. One problem with the Registrant's explanation he stated was that the card should never have been used for this purpose at all if, as the Registrant maintained at interview, the customer had brought back 2 pairs of glasses with defective prescriptions. That ought to have been dealt with simply by organising replacements for the customer the cost of which would be put down to store wastage.

As for the card itself such gift cards are available in the store. Initially they do not hold any credit but can be "loaded" with credit and then used to purchase goods within the store. The Gift card relating to the charge was produced. The images on the card vary but this card had an image of a Nintendo cartoon character. It was, Mr Karri explained, completely different in appearance to the staff discount card, which is usually black with a Wal Mart logo or picture. The discount card is issued to all employees with more than 12 weeks service and entitles them to 10% discount. A staff card can be used in conjunction with a gift card to get the discount.

In addition to Mr Karri's evidence and the written evidence within the bundle including the investigation interview, the Committee viewed CCTV footage for two of the occasions on paragraph 1 of the allegation. Each sequence showed the Registrant at a self service till at the times when the allegedly dishonest transactions occurred. In the two episodes which were viewed the Registrant appeared to be shopping normally at the tills and there was no evidence that she was distracted in any way.

The prosecution point to a number of features as being indicative of dishonesty. The use of the wrong policy for dealing with the customer's glasses was surprising. The explanation for the sum loaded on to the card was unusual. The fact that the card was not as it should have been filed in the customer's tray was also unusual. The fact that it was in the Registrant's possession while on the shop floor two days later was a breach of a well established policy (which the Registrant admitted that she was aware of) that employees should not bring their handbags or wallets on to the shop floor of the store. In addition to these features the fact that the card was used on three consecutive days without the Registrant realising or recollecting that she was using a customer's own card was evidence of dishonest intention. It was noted that the transaction record for 25 August 2009 demonstrated that she had two cards with her and that she only used this customer card when the first card had

been presented but had insufficient credit on it to pay for the goods. Despite the obvious and clear importance of finding and producing the genuine gift card which she says she possessed and meant to use, she failed to produce it to the employer's investigation team and failed to identify for them any transactions in the days or weeks' preceding these events at which this genuine card had been used. Such assistance would have enabled the store to track and substantiate the existence of that other card and the fact that it was genuine.

Furthermore, the failure to use her own discount card on three occasions was, the prosecution contended, surprising and was consistent with a deliberate attempt to ensure that the use of the customer's card could not be attributed to her. The fact that she now says that her husband possessed it is, the Council says, inherently unlikely and has only just been put forward.

The Registrant gave evidence. Essentially this was to the effect that she was distracted at the time by personal matters and did not realise that the card that she was using was not her own. She could not recollect how the customer's card had come into her possession. She believes that her own staff discount card was in her husband's possession at the time. When challenged as to why these positive aspects of her evidence were not mentioned in her employment disciplinary interview she said that she had not been asked.

The Committee approached the disputed issue of dishonesty applying both the objective and subjective elements of the tests outlined by the Legal Adviser. It has taken particular note of the fact that the Registrant is not represented and that the events occurred some two years ago. It has given full allowance for these factors and for her good character.

The Committee found that all of the points relied on by the Prosecution were persuasive and cogent. On the other hand the Registrant's own evidence to meet these points was unsatisfactory and unconvincing both in demeanour and substance. The explanation for why the customer's card came into her possession was weak. The explanation as to why it had £90 credit placed on it was not substantiated other than by her own account. It is particularly significant that the customer has, as Mr Karri testified, never returned to the store for the second pair of glasses. It suggests that the explanation given is fabricated. It was only two days later that the Registrant used the customer's card. When she used it she did not as might be expected also use her staff discount card. This occurred not once but on 3 successive occasions. The Committee does not believe that this continuing pattern is consistent with distraction. Rather, it is indicative of deliberate, premeditated dishonesty.

The Registrant was an experienced employee and manager. For the card to have travelled from the customer's own tray where it should have been to her own handbag or wallet and then for her to have had it on her person when she was shopping in the store was contrary to the policy that she was well aware of. It does

not seem credible that when on 25 August 2009 her initial card payment failed to cover the cost of her purchases that she resorted to the use of the customer's card without any thought or awareness that she had it in her possession.

The Committee therefore concluded that the facts alleged in the notice of allegation at both paragraphs 1 and 2 are proved.

### **Findings in relation to misconduct**

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

The Committee has considered and taken into account the further points made by the Registrant as to the reasons why she believes she was distracted at the times of these events (in particular she related that redacted the previous written warning received from her employer were all distracting factors in her mind at that time). However, the Committee remains satisfied that the findings made in its determination on the facts reflect a serious departure from professional standards and a breach of the obligation in the GOC's Code of Conduct for Registrants to be honest and trustworthy. These were thefts in breach of trust.

The Committee found Helen Norris guilty of misconduct.

### **Findings regarding impairment**

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

The Committee has considered the issue of impairment in the light of its preceding findings and determinations in this case. It has taken all the evidence given in those preceding stages into account and has also considered the additional evidence given and submitted by the Registrant at this stage. She says, and the Committee accept, that she has harboured embarrassment at what happened. But while that may indicate some low level of insight she has not really faced up to her conduct or expressed full regret. Indeed dishonesty was denied in this hearing. The Committee is unable to be satisfied that she has fully acknowledged the seriousness of her behaviour.

The thefts were a serious breach of trust even though the sums involved were small. Even when confronted by her employer she did not admit fully what she had done. Despite offering to repay the money at the time she did not do so of her own volition and seems to have relied on the fact that her employers did not specifically chase her to do so.

The Committee has been given only very limited information about her circumstances since. No signed testimonials have been placed before the Committee relating to the episode itself or the period since August 2009. The only such material submitted was in the form of brief internal notes of appreciation for her work in the preceding years. On direct questioning she explained that she has

continued sporadically to work as a locum dispensing optician. She admitted that she has not told every employer of this episode.

Dishonesty of this kind strikes at the heart of the principles and standards of honesty and trustworthiness on which employers, patients and the public are entitled to rely and which protects the degree of trust which the profession must maintain. In these circumstances there is a need to make a finding of impairment both to uphold those standards and to maintain public confidence in the profession.

The Committee found that the fitness of Helen Norris to practise as a dispensing optician is impaired.

### **Sanction**

The Committee has heard submissions on behalf of the Council. The Registrant was offered the opportunity, but declined to add to the submissions and evidence previously submitted. It has accepted the advice given to it by the Legal Adviser.

The Committee considered the sanctions available to it from the least necessary to the most severe (no sanction, financial penalty, conditional registration, suspension, erasure).

The findings expressed in the preceding determination stages of this hearing are repeated and adopted.

The Committee considered that the nature of the misconduct, involving as it did successive thefts in breach of trust, was both serious and calculated, and that a sanction was necessary. Neither a financial penalty nor conditions were appropriate or feasible. No evidence of the registrant's means have been adduced. Conditions to address a finding of dishonesty are inherently difficult to devise. In any event this matter is viewed too seriously for either penalty to be appropriate.

As already observed at the preceding determination stage the Registrant has continued she says to work sporadically as a locum obtaining her work mainly through informal contacts rather than through any agency but had no plans to obtain full time employment. The Committee was concerned that she has not been full and frank in telling employers since 2009 of her employment history at Asda. Some employers were aware she said of what had happened but it was clear that she did not otherwise volunteer any information. Although she expressed embarrassment to this Committee her maintained denial of the allegation and her reticence in engaging with the proceedings at every stage of this hearing has increased the Committee's concern that she has not demonstrated insight or contrition to any significant degree. An illustration of this is the fact that the money was never repaid even though she has always been fully aware since the time of the internal investigation that the money on the card was not hers to spend and indeed admitted that fact in interview.

The General Optical Council's Indicative Sanctions Guidance indicates that cases of dishonesty are particularly serious because they undermine trust in the profession.

The Public must be able to place complete reliance on the integrity of practitioners. Where dishonesty is serious the sanction of erasure will in the Committee's judgment be appropriate and necessary unless there are strong factors to warrant taking another course.

The Committee gave careful consideration to whether a period of suspension was appropriate and proportionate in this case. It hardly needs repeating that theft by a manager from an employer in breach of trust is fundamentally incompatible with continued registration. The Committee has had no persuasive or relevant evidence placed before it from which its concerns about the Registrant's attitude towards her conduct can be allayed.

The Committee is not satisfied that the Registrant has a significant level of insight and therefore cannot be satisfied that there is no risk of repetition. Despite the fact that the overall sums stolen were not great the Committee determined that this was such a serious instance of misconduct that, in the absence of any persuasive evidence that she had recognised, acknowledged and addressed her dishonesty, a lesser sanction than erasure was not sufficient.

The Committee therefore determined that Helen Norris be erased from the register of dispensing opticians.

**Immediate order**

An order of immediate suspension will be made for the duration of any appeal period, and until the order for erasure comes into effect. In the light of the Committee's findings, and having had no contrary representations made to it, the Committee has determined that an immediate order is both in the public interest and is one which will protect the public from any risk of repetition.

**Chairman of the Committee: Lady Margaret Wall**

Signed \_\_\_\_\_ Date 27 January 2012

**Registrant: Helen Norris**

Signed \_\_\_\_\_ Date 27 January 2012

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