

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

**F(11)12**

**GENERAL OPTICAL COUNCIL**

**AND**

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

**Thursday, 26 and Friday, 27 January 2012**

**SUBSTANTIVE HEARING**

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**SUBSTANTIVE HEARING: HELEN MARGARET NORRIS (D-10513)**

**DAY ONE**

**Thursday, 26 January 2012**

**Committee Members:** Lady Margaret Wall (Lay)(Chair)  
Mrs C Eva (Dispensing Optician)  
Mr R Hensley (Dispensing Optician)  
Mr R Varley (Lay)  
Mrs G Huka (Lay)

**Legal Adviser:** Mr J Watson QC

**Hearings Manager:** Mr D Henley BEM

**For the GOC:** Ms G Gillet

The Registrant was not represented

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*[The Hearing commenced at 09.55am]*

**Lady Wall:** Good morning. I am Margaret Wall, a lay member of the Hearings Panel and I have been elected by the Committee to chair today's Hearing. The Committee today is made up of two dispensing opticians and three lay members and I will ask the members to introduce themselves and the capacity in which they sit. *[Introductions]*

To my right is James Watson QC, the Committee's Legal Adviser, who will provide legal advice and assistance to the Committee and ensure that the proceedings are conducted in accordance with the Rules of Procedure so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate.

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

To your right is David Henley, the Hearings Manager, who will provide administrative support to the Committee. Next to Mr Henley is the transcriber, who will be keeping an official record of all that is said today during the sessions of the Hearing at which the parties are present.

The remaining persons sitting in the hearing room rather than in the public and press areas are members of the respective legal teams.

It is the Council's policy for the Determination of the Committee and the transcript of 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.

Mrs Norris, I note that you are not represented today, and of course the rules do allow for that, but I thought it may assist you if I explain how the Hearing today will take its course. Firstly, the Council's presenting officer 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 against you. You will then have an 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 myself, the presenting officer, the Legal Adviser and the Committee.

Throughout the Hearing, the burden of proving the factual basis of the allegations rests with the Council, not you. The Legal Adviser is an objective observer of the legality of the proceedings, and not here to advise you, but will answer any questions that you may have about the course of the proceedings today, and try and resolve any confusion or ambiguity that there may be in your mind about what is going to happen today. Do you have any questions at this stage?

**A.** No.

**Q.** You do understand the procedure?

**A.** Yes.

**Q.** And you do understand that if at any point you are confused about the procedure, you can ask for a brief adjournment and then you will have time to gather your thoughts?

**A.** Yes.

**Q.** Right. Now, are there any applications to be made? [No] There is one matter that the Committee wish to raise, and that is, this case obviously involves, we think, about three cards.

**Ms Gillet:** Yes, Madam.

**Lady Wall:** We would like, ideally, the original cards, so that we can see for ourselves exactly what they look like and what information is on them.

**Ms Gillet:** I was alerted to that, kindly, by the Legal Adviser, and I have made very quick enquiries. It was a matter that was investigated by the General Optical Council, not Kingsley Napley, and I checked with the General Optical Council and they were never in receipt of the original cards. We do have one witness here to assist today. He is one of the store managers at Asda, and he may be able to give generic advice on the design and colour of these cards, and may well be able to assist with particular cards that he saw, but I don't think, Madam, that it's going to be possible for the original cards to be before you. I apologise for that.

**Lady Wall:** The Committee accept reluctantly, of course, that tracking down an original card at this stage is not easy. However, we think it would be quite possible for Asda to supply generic examples in terms of colour copies of these various cards, and we would like you to arrange that. We understand that might mean five minutes at this point for you to put that in train.

**Ms Gillet:** Yes, I will go and make some enquiries. As I say, I am assisted by the fact that I have a manager of Asda here, so he might be able to answer very quickly whether or not it's possible. Can I just clarify: is it coloured copies of the original cards which the Panel would be assisted by, or as a Plan B, would colour copies of the examples of cards assist?

**Lady Wall:** Of course we would, as always, prefer the original cards, but even if we can't get the original cards, we would be able to deduce quite a lot from the information, the way that the cards were titled, the dates, and where there's a space for a name, and all the rest of it. There appear to be three cards: a Woods gift card, a Mario card and a staff discount card.

**Ms Gillet:** The only card which is material to the allegation is the Woods gift card, the card which was in the name of Raymond Woods. The Mario gift card, from my reading, is an aside issue which I wasn't going to rely on at all, it's not something which is alleged.

**Lady Wall:** But it is referred to in the evidence.

**Ms Gillet:** It is referred to in the internal investigation, yes.

**Lady Wall:** Then there is the staff discount card, and it would assist the Committee to have copies of all three cards – if they are going to provide two, they might as well provide three, and it could save quite a lot of time at a later stage. So if we give you two minutes now, it's not necessary to clear the room, if you are only going to just ask him to do it.

**Ms Gillet:** Thank you.

*[Hearing adjourned at 10.02am]*

[Hearing resumed at 10.10am]

**Ms Gillet:** Thank you for that time, Madam. It may delay matters slightly, my witness has now left the building in order to go back to the hotel. There is a possibility the card may be there; he is going to make enquiries if it's not. He hasn't seen it there but he has brought the file with him. So I have given him permission, I hope that is okay, to return to the hotel. He thinks it's about ten minutes' walk, and he'll give us a quiet knock when he returns to update me.

**Lady Wall:** Thank you. Now, I should ask Mrs Norris whether you have any views on these requests for the cards. Or are able to help in any way? You may have copies yourself.

**Mrs Norris:** Not of the cards, no.

**Lady Wall:** Or staff discount card?

**Mrs Norris:** The staff discount card I returned to Asda when I left.

**Lady Wall:** Right.

**Ms Gillet:** Just one further point of clarification, it's something that I hadn't understood at all: the Mario card and the Woods card are the same card, the Woods card had a picture of Super Mario on it, and so is referred to in both ways. I hadn't appreciated that. There is only one card that we are looking for, apart from the issue about the staff discount card.

**Lady Wall:** Well, that is a helpful starting point.

**Ms Gillet:** It is, thank you, Madam.

**Lady Wall:** Thank you. Now, Mrs Norris, I am going to ask the Hearings Manager to read out the allegation against you.

**Mr Henley:**

### **Allegation**

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

1. You used card number 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.

**Lady Wall:** Mrs Norris, I'm going to ask you whether any of the facts set out in the allegation are admitted.

**Mrs Norris:** It's admitted that I did use the card.

**Lady Wall:** On all three occasions?

**Mrs Norris:** On all three occasions.

**Lady Wall:** Right.

**Mr Watson:** If I can intervene to assist you, you are looking at a page in the bundle, you are looking at page 3, are you, of the bundle?

**Mrs Norris:** Yes.

**Mr Watson:** And you are pointing your finger at paragraph 1?

**Mrs Norris:** Yes.

**Mr Watson:** The Panel are aware, because they have pre read, that there is a letter at page 4 of the bundle setting out a position on your behalf as at 2 August 2011, that's the date of the letter.

**Mrs Norris:** Yes.

**Mr Watson:** It might assist you and the Panel to know whether that statement of your position in response to the charge remains the same today, or whether you wish to alter it.

**Mrs Norris:** No, that's still the same.

**Lady Wall:** So you are denying that your actions were dishonest?

**Mr Norris:** Yes.

**Lady Wall:** Right, thank you.

**Ms Gillet:** Madam, Mrs Helen Norris is a dispensing optician registered with the General Optical Council. During the relevant period, Mrs Norris was employed by Asda in their Southport branch. On 28 August 2009 Asif Motala, who also

worked in the optical department, noticed an anomaly on a claim form for glasses in the name of Raymond Woods, which was for significantly more than the legitimate cost of the order. He mentioned this to one of his managers, who asked him to investigate.

He contacted Asda's protection department of the Asda store, and was told that they had uploaded – if that's the right terminology - £90 onto a gift card in the name of Woods, although I understand the card itself doesn't have the name on it, the policy number across it referred them to the name of Woods - in order to cover the cost of the new glasses, and that when they were looking at the computerised details of that card they could see that £25 had been used for the value of one lens, which appeared to be the legitimate claim, although there is some issue about whether that was the right way to do it, but more importantly, the card had been used on other occasions as well.

As a result of that information, Mr Motala was able to request the CCTV for the tills, because the card not only gave information about the money that had been spent, but also gave information about which till that money had been spent at, and the CCTV was viewed of the tills at the relevant times, and Mr Motala recognised Mrs Norris on each occasion at the self-checkout.

On 29 August 2009 Mrs Norris was suspended, pending investigation; on 2 September 2009 Mrs Norris was interviewed as part of the investigation, and at that point, and I understand the position remains the same, she admitted using the card to shop with on 25 August 2009, 26 August 2009 and 27 August 2009, but explained that she must have used the card in error, as she also has a gift card.

A disciplinary hearing took place on 11 September 2009 and once those matters were concluded the General Optical Council was informed in order to investigate the matter themselves and take any appropriate steps.

Madam, there is a bundle of documents which the Panel have seen. Mrs Norris has been given a copy of that bundle today, she is not clear whether it is a bundle which she has had sight of prior to today. There are three witness statements within that bundle. The live witness which the Council have asked to attend to assist is the third witness, Mr Murali Karri, whose witness statement is page 33 to page 54. The Council does rely on the evidence of the other two witnesses, and the exhibits that they refer to. However, given the indication from Mrs Norris that there was no dispute on the factual contentions, if I can put it in that way, as opposed to the dishonesty allegation, it was felt that it would be not appropriate to call the three. Given the indication from Mrs Norris that she is not sure whether she has seen the documents, I would suggest – and it's a matter entirely for the Panel – that I read those witness statements, they are short, then they are a matter of record and we will know that Mrs Norris has had an opportunity to consider

the contents of them. At that stage, I would hope that we will have Mr Murali Karri back from his errand and we can proceed.

**Lady Wall:** The Committee agree that that's a wise course of conduct in this particular case.

**Ms Gillet:** Thank you, Madam. The first witness statement, then, is at page 5 of your bundle, the statement of Mr Asif Motala, and it begins:

"1. I am a dispensing optician and work as a locum at Asda. I have been registered with the General Optical Council since October 2002.

2. On 28 August 2009 I was working at Asda at Southport. I was checking the glasses which had been sent to the store by the laboratory which makes glasses. I saw a pair of glasses which I now know to be for the patient Raymond Woods. I noted these glasses because the printed order form stated the cost of the order was £25 but that the claim value for the glasses was £90. I also saw that the cost of the glasses had been covered by the Asda Glasses Protection policy and this order did not seem to be right, so I spoke to Ian Marshall (optician), and he told me to investigate the claim and find out what had happened.

3. Glasses Protection is an insurance policy which a patient can use if they break their glasses. The patient will bring the broken glasses into Asda and can claim for the complete pair of glasses. The only cost to the patient is the insurance policy. Glasses Protection Policy would be used to replace part of the glasses e.g. arm or lens, or to replace glasses that were made up to an incorrect prescription.

4. I rang Asda head office to speak to someone in Glasses Protection Policy Unit. The person I spoke to had actually processed the claim. That person said the claim had been for £90 and this value had been loaded onto an Asda gift card ('Woods gift card'). I then was told that I needed to speak to someone else about whether the Woods gift card had been used. I spoke to another person who told me that the Woods gift card had been used to the value of £25 in relation to one lens but had also been used a few more times. That person gave me the details of the different amounts of money charged to the Woods gift card and which tills had been used. As part of my investigation of this issue I viewed the CCTV footage in relation to the relevant tills; and I recognised Helen Norris on the CCTV footage and can say that she was using the self-service tills.

5. In this particular case I came to the conclusion that the patient Raymond Woods had come into Asda for a re-check. The problem with the glasses was a potential fault with one lens because of an issue with

his initial prescription. I knew this because it was clear from the order form and from seeing the patient records (when I was doing the quality control check when the glasses were received at the opticians). The prescription had to be changed in the left eye. This should have been processed as wastage, not under the Glasses Protection Policy. Asda has standard operating procedures in relation to how to make claims under Glasses Protection Policy and this is notified to all staff.

6. Once it became clear to me that Helen Norris had not used the total value loaded onto the gift card to pay for the patient's glasses to be replaced, I advised Steve Bone. I had no further involvement in the investigation of this case. I did however prepare a witness statement for the internal investigation which I attach to this statement as Exhibit AM/1.

7. I am willing to attend a Fitness to Practise Hearing if necessary".

That is signed and dated 10 February 2011, to say that the statement consisting of two pages is true, to the best of my knowledge and belief.

Behind that document, Madam, we see the handwritten witness statement which he referred to, which was prepared for the internal investigation and then at page 10 of the bundle you can see the second statement, of Steve Bone. Steve Bone begins:

"1. At the time of my involvement in the investigation of Helen Norris I was a Home & Leisure Manager at Asda in Southport. My responsibilities included the speciality sections of the opticians and the pharmacy. I was Helen's line manager in all operational matters but not in relation to professional duties.

2. I became involved in the investigation when Asif Motala, a regular locum dispensing optician, approached me about a discrepancy he had discovered. Asif said that he had seen an item for dispensing (to a member of the public) which had been processed under the product protection policy. It had attached to it a claim form. The claim value (the amount the item should have cost) and the amount claimed on the policy did not tally. I asked Asif to investigate this further. As a result of Asif's investigation it appeared that the money loaded onto the gift card had not been used for its original purpose. By that I mean that £90 had been loaded onto the gift card by means of a request under the store's product insurance policy and this money had been used not only to cover the cost of the patient's glasses but on other transactions at the store's service tills. Only one transaction should have been recorded against this card if it had been used for its actual purpose.

3. I took a statement from Asif which outlined everything he had discovered. I then spoke to Murali Karri and requested copies of the CCTV footage used as the self-service tills and obtained copies of the till receipts.

4. On viewing the CCTV footage I was able to identify Helen Norris. She was using the self-service tills and the gift card in question at times which corresponded with the time on the CCTV footage. It was noted that Helen did not use the Asda store discount staff which is given to all employees after twelve weeks in post. This raised suspicions with me and I decided that it was a case that needed to be investigated.

5. I led the first investigative interview and Murali Karri took the notes. I attach to this statement as Exhibit SB/1 a copy of the investigation interview. Following the investigation I decided this matter needed to be sent to a disciplinary hearing. I made this decision because I concluded that the three transactions had been made by Helen Norris through the self-scan tills using the gift card in question and that there was CCTV to support this; Helen Norris was actually still in possession of the gift card in question; and when questioned Helen Norris recalled the card being loaded with money but admitted that the amount claimed was for two pairs of glasses and not one. Helen could not give an explanation as to why the correct procedure was not followed. Helen also made reference to a Mario gift card which she owns but couldn't provide any evidence as to the whereabouts of the card and any details regarding when and where money was uploaded onto it. The card at the centre of this investigation was also a Mario gift card. I concluded that evidence clearly supported that the alleged matter had taken place and decided that the matter should be passed forward to a disciplinary hearing.

6. I can confirm that Helen did not admit the theft in the investigatory interview.

7. I have been asked to explain the purpose of the product protection policy. This is a policy which allows a customer to take out an insurance policy to cover breakages. The leaflet which accompanies the policy clearly states that if the prescription is incorrect then the affected lenses will be replaced by the store and the store will bear the cost. In this particular case the claim raised was for a new pair of glasses (complete) when actually the issue was an incorrect prescription. It was Asda's responsibility to get a new lens for the patient.

8. When a member of staff is processing an insurance claim they will contact the claim department and outline what had happened and request the amount of money required to be up loaded onto the gift

card, one would also make a note of the claim number on the original BOSS order sheet which is kept with the faulty glasses or frame. In this particular claim form, I can confirm that the handwriting on the form is that of Helen Norris.

9. Once the claim had been processed by the insurance part of Asda, the colleague raising the claim would be asked to take any gift card (the same type used at the store for customers to purchase and upload money onto) and to provide the 'long number' on the card, which is the card identification number. The system allows the insurance operator to centrally upload monies to the gift card. When a patient returns to the store to collect their new glasses payment will be made for those new glasses by the Asda operative by swiping the card on the EPOS till.

10. I also attach to this statement the contents of the investigation file provided to the GOC by Asda as Exhibit SB/2. The individual who conducted the rest of the interviews has now left Asda.

11. I am willing to attend a fitness to practise hearing if required".

Again, Madam, that document is signed and dated 8 February 2011 to say that this statement consisting of three pages signed by me is true to the best of my knowledge and belief.

Behind that document, Madam, we have the formal disciplinary investigation notes, which conclude at page 22, the letter informing Mrs Norris of the investigation and the date on which that would take place, a letter from Mrs Norris at page 25, dated 11 September 2009 in which she hands in her notice to resign with immediate effect, page 26 in addition to the formal disciplinary investigation notes informing Mrs Norris of her suspension –

**Mr Watson:** That precedes, clearly, the resignation letter on the previous page.

**Ms Gillet:** I think in terms of chronology it should probably come at the front of the exhibits. The disciplinary hearing notes, Madam, conclude at page 32. The next page of the bundle is 33, and is a statement of Mr Karri –

**Mr Watson:** The Panel have read it, but for the record, it was in that meeting on page 31 that resignation was discussed, so that's that.

**Ms Gillet:** Indeed. That leads me then to the statement of Mr Murali Karri, who is the gentleman I have sent on an errand. I appreciate, Madam, that I have only been addressing you for some half an hour, but I wonder if now may be a convenient time for the Panel to break for a cup of tea, and I will see where Mr Karri has reached in his investigations.

**Lady Wall:** Thank you. Mrs Norris, have you been able to look at the CCTV?

**Mrs Norris:** I was sent a copy of the disc.

**Lady Wall:** Were you able to make it work? Were you able to display it on your television and watch it?

**Mrs Norris:** Well, I haven't, I haven't seen it.

**Lady Wall:** It would obviously be helpful if you were to see it, and we think it could be done on a laptop and it could be done during this break, so that you're not disadvantaged in terms of viewing the evidence in advance. So we'll break for probably ten minutes.

*[Hearing adjourned at 10.30am]*

*[Hearing reconvened at 10.50am]*

**Ms Gillet:** Madam, thank you very much for that time, it has been usefully utilised, and with the Panel's permission I would now call Mr Karri.

**MR MURALI KARRI, called and affirmed  
Examined-in-Chief by MS GILLET**

**Ms Gillet:** Mr Karri, thank you very much for being here today. You have a bundle of documents in front of you. Could I ask you to turn to the 33<sup>rd</sup> page in that bundle, numbered on the bottom right hand corner? Is that a document that you recognise?

**A.** It is, yes.

**Q.** Is that your witness statement?

**A.** It is my witness statement, yes.

**Q.** I understand that there is an error contained within one of the paragraphs which you'd like to bring to the Panel's attention?

**A.** Yes, on paragraph 2, on the third line, where the date states 'September 2009', that should read 'August 2009'.

**Q.** Mr Karri, it has been agreed that it would be useful in these circumstances if you read your witness statement to the Panel. I may then have some questions for you and then Mrs Norris will have an opportunity to ask you questions, and after that the Panel may have some questions also, but if you start by kindly reading your witness statement.

**A.**

“1. I am one of the administrative managers at Asda Southport. My role focuses on profit improvement issues. The security team also falls within my remit.

2. I became involved in Asda’s investigation into Helen Norris when I was asked to locate the store’s CCTV footage taken on 25, 26 and 27 August 2009 at the self-service tills. I was told that an Asda gift card (for store use only) had been used by an individual and the CCTV footage was needed to see who had used the card. I asked my security team to find and save the specific footage so it could be viewed as part of the investigation into a potential theft. I can now say that the person in this footage is Helen Norris.

3. I exhibit to this statement the CCTV footage as ‘MK/1’ and the audit trail in relation to transactions on gift card ID 6053 6576 9928 3587 (‘the Gift Card’) as Exhibit ‘MK/2’.

4. It was clear from viewing the CCTV footage that Helen Norris was the person using the gift card at the times identified on the audit trail documents.

5. On 2 September 2009 I took notes at Helen Norris’ investigation interview. I exhibit to this statement the notes as Exhibit ‘MK/3’. Helen Norris admitted using the gift card but she said she thought she was using her own gift card not the one loaded to cover the cost of claiming the value of replacement glasses on the product protection policy. I recall that each time new evidence was put to Helen she asked for an adjournment. Her answers were vague throughout the interview. In particular Helen tried to say that she frequently put money on her gift card and used it often. When she was asked about this in more detail she could not give any details of her spending and couldn’t tell us the dates on which she had put money on her gift card. If she had provided this information we could have cross-checked the information with the company records.

6. Following this interview a decision was made to recommend a formal disciplinary hearing. I had no further involvement in this investigation or the disciplinary process.

7. I am willing to attend a fitness to practise hearing if required”.

**Q.** Thank you Mr Karri. Just a couple of questions before I ask you to look at the exhibits: paragraph two of your witness statement you say, “I was told that the Asda gift card” and in brackets, ‘For store use only’, “had been used by an individual” – what do you mean by, ‘For store use only’?

**A.** The particular gift card that we’re talking about now, it was loaded specifically for the customer who brought his glasses back because his prescription had

been made out wrongly, to pay for his glasses, and that was the sole purpose of that gift card, it wasn't to be used for anything else.

**Q.** What other purpose are the gift cards put to?

**A.** Gift cards within the store are freely available to all customers, with no monies loaded on them. Say for instance if you wanted to give a gift card to someone for a birthday or a Christmas present, what you would do, you would present a blank card at the checkout, they are freely available around the store, and then monies could be loaded onto a particular gift card depending on how much you wanted to put on.

**Q.** Just to ask you look at this item: that's an item which I think you collected for us –

**A.** It is.

**Q.** What is that?

**A.** This is the gift card that was loaded by Helen Norris, and which she had on her person when we carried out the disciplinary investigation. It was the gift card that the number matches against the product protection that the customer brought back in for his glasses, this is the gift card that was loaded through our head office.

**Mr Watson:** For clarification, are you saying that that is the gift card that the Committee will see being used in the CCTV – that very card?

**A.** That's the card.

**Q.** Has Mrs Norris seen this card?

**Ms Gillet:** I showed it to her very briefly before we came into the room.

**Mr Watson:** Thank you.

**Ms Gillet:** You were talking about what purposes those gift cards might be used for, and we see quite a distinct image on the front of that card – what is that image?

**A.** The character on this particular gift card is Super Mario, a character from a Nintendo game. The images on these cards do vary, depending on which department they're picked up on etc, but they are all used for the same purpose, they are all blank gift cards that can be loaded with money.

**Q.** So when we see contained within the bundle 'Mario card' referred to, what does that mean?

**A.** We're referring to this specific card, just because it has that image on it, it's just an easy way to refer to this particular card whilst we were doing the investigation.

- Q.** How many versions of the imagery on the front of the card would your store have at any one time?
- A.** Could be ten, fifteen different images on the gift cards. If, for instance, you were to pick one up in the clothing department, they might have one that says 'George clothing', which is our brand on there, but again, it could be loaded with money and used in any department within the store or within any store.
- Q.** In your witness statement you mention at paragraph 5 that Mrs Norris told you that she had a gift card that she used herself - were you able to make any enquiries about that card?
- A.** We weren't able to establish that Mrs Norris had this card, because all we were told was that she had a card that matched the same description as this one, but there were no numbers or any dates where money was actually loaded onto that card.
- Q.** If you had been provided with any dates, for example, that money had been uploaded, or any dates on which the card had been used, what would you have been able to do with that information?
- A.** For instance, if I had been given a date and a till that Mrs Norris went through, we could have produced a journal for that till of the amounts that actually went through there, and then we could have looked at an audit trail to find out when the card was loaded and how much was loaded onto it. And there probably could have been CCTV footage as well, to substantiate that.
- Q.** We have also heard mention of a staff discount card – what does that card look like?
- A.** The staff discount card is usually a black card with 'Wal-Mart' written on the front and a picture of a Wal-Mart wagon, because Wal-Mart are Asda's parent company, that's the reason they have that on. Same size as this, and it's issued to all colleagues who have worked for Asda for twelve weeks and over, and it entitles them to ten per cent discount on their grocery goods.
- Q.** Would it be possible to use the black Wal-Mart card alongside a gift card?
- A.** It would, yes, if you were making a purchase at the checkouts and you were intending to pay with a gift card, you would still be entitled to ten per cent discount off your goods as an Asda colleague, yes.
- Q.** Do you have Mrs Norris's card available for the Panel to see?
- A.** Her discount card, I haven't. When we interviewed Mrs Norris during the investigation, she said she didn't have her discount card.
- Q.** And do you have your own discount card?
- A.** Unfortunately I don't have that with me, no.
- Q.** You mentioned CCTV footage in your evidence, and I'm hoping with Mr Henley's assistance we may be able to see it – it's going to be a bit difficult, because it's directly above your head.

[Watching CCTV footage - pause]

**Q.** Looking at the panel on the left hand side, does that display itself in a similar way to the versions you see?

**A.** It is, yes.

**Q.** And we see in that panel the date, 29 August 2009 - is that the date which this footage corresponds to?

**A.** Can I just check against my notes?

**Q.** Yes, please do.

**A.** It says on the top there, can you see, the date is at the top there, so this is from the 26<sup>th</sup>.

**Mr Watson:** This relates to the second of the three days?

**Ms Gillet:** Yes, it would appear to. What are we looking at here - just before Mr Henley presses 'Play', what can you see on this image?

**A.** These are our self-scan tills in store, at the time I was given, that this particular gift card with this number on was used in the store, it related to the self-scan tills here, that this card was used at that time. So we viewed the footage for the time that corresponded with that to see who was using the card.

**Q.** Is there anyone that you recognise in the image that is paused at the moment?

**A.** Yes, Helen Norris.

**Q.** Where is Miss Norris on that image?

**A.** Miss Norris is there –

**Q.** Stand up and point, if that helps.

**A.** Obviously it's been a couple of years that I haven't seen the footage, so –  
[Indicates]

**Q.** I'm grateful.

[CCTV footage 1 shown - pause]

**Q.** Just looking at the bundle of documents again, if I ask you to turn to page 43, what is it that the Panel have in front of them on that page?

**A.** That's the receipts for the purchases made through the till there – till number 46, which, I can point out to you – can you see terminal 44, that's 45, 46, 47, and 48. So if you look at the top of the receipt there, you'll see ST 4585 which is Southport, our unique store number. Next to it the operator number which is 9048, which is a generic number for the operator who was looking over all

those tills there, and then TE46, which refers to the terminal where the purchase was made, which is that particular one.

**Q.** And we see at the bottom of that document the number £31.67, is that right, am I looking at the right –

**A.** That's the amount, £31.67, of the purchase. Right at the bottom is the date, 26/08/09 and the time, 18:36.

**Q.** We will try the same process with the second image, Mr Henley, I'd be very grateful.

**Lady Wall:** Obviously the Committee needs to be really sure of the detail, and this is not very easy to read, obviously it has been photocopied. What about the actual number of the card?

**A.** The number of the card isn't shown on the receipt, but it's shown on the history that I believe has been sent through from our head office, there's a sheet that traces the history of the card, that shows the particular transactions on the card.

**Ms Gillet:** If we look at page 38 of that bundle, Mr Karri, is that a helpful document – I may be wrong.

**A.** Yes, that's the history of the card that was used. You see that there is a value for £31.67 on there.

**Q.** Is there anywhere on that document that the Panel can see which references the relevant gift card?

**A.** It doesn't actually show the number of the gift card on there, no.

**Q.** On the preceding page, page 37, there is an email - what do you understand that email to mean? Do you know who Neil Foster is?

**A.** Neil Foster is a guy who works in loss prevention at Asda House, our head office, in Leeds. I can see from this he's had some contact from the GOC, asking for the history of the card.

**Q.** So this was the document he sent to the General Optical Council.

**A.** Oh sorry – yes.

**Q.** Then again, on page 39, you see communications again from Neil Foster, and at the bottom of that page in the email, reference to the card in question, 6053 6576 9928 3587 – is that the relevant gift card?

**A.** It is, yes. Madam, I don't know if I can help you further on this issue?

**Lady Wall:** It would help if we could actually tie up page 38, which doesn't seem to me to have that number on it, with the email.

**Ms Gillet:** It doesn't.

**Lady Wall:** How do we know that this detail for this card was actually the one with the number on it?

**A.** Can I just point out that the transaction for the £25 was the original transaction for the customer's lenses, so there should be no further transactions on that particular gift card?

**Ms Gillet:** The document, as I understand it, begins with the earliest date at the bottom of the document?

**A.** That's right, so £90 was loaded onto the card.

**Q.** And then we see, above the £90 being loaded onto the card –

**A.** £25, a transaction that was put through for Mr Woods' lens, and above that, a purchase that was made through the self-scan till, and above that the £31.67, which is the purchase that you've just seen on the screen, and after that there was another purchase of £12.24, again through the self-scan tills, and they are all on the same card.

**Lady Wall:** Right, so the fact that the £90 is on it and the £25 has been used, possibly not correctly in terms of systems, but correctly in terms of a sum which replaces the damage, supposed damage, the wrong prescription, that is legitimate.

**A.** Yes.

**Q.** It's the following three transactions which are according to the GOC not legitimate, but they all relate to the same card, and that is the number which we have on the email and indeed is the same number that we have in the allegation.

**A.** That's right, yes.

**Ms Gillet:** Thank you, Madam.

**Lady Wall:** While we're just on the same matter, can we just check that on the actual transaction, if the staff discount card had been used, would this show up on the transaction?

**A.** It would, yes. And on the discount card history, we can trace that as well, so it would show the dates on there - the card wasn't used.

**Q.** So you're giving evidence, and we could safely conclude that the staff discount card was not used on this occasion?

**A.** Correct.

**Q.** Thank you. Are there any other questions just on this point? We'll obviously have a lot of questions later.

**Mr Varley:** We've just seen on there, page 43, and on the account, the last four numbers after all the crosses relate to the card you mentioned.

**A.** They do.

**Q.** Those are the last four numbers aren't they? So if you look at the full number of the card, you'll see that the last four numbers correspond with those.

**Mr Watson:** The four digits after the asterisks. Just below the word 'Total' on the receipt – it's the photocopy that makes it difficult to see.

**Lady Wall:** 3587 that is the crucial number. Do you have any further questions?

**Mr Varley:** No further questions.

**Lady Wall:** We'll reserve the right, obviously, to ask further questions.

**Mrs Huka:** Can I just ask one question: Mr Karri, can you explain how the customer gets this card in the first place?

**A.** The customer is never in possession of the card.

**Q.** No, but does he know that he has the card?

**A.** Well, I would say in this case, I don't think he does, no, he doesn't know he has a card. If he's come in and claimed under product protection, when he's come in he says his prescription was wrong, it wouldn't be an insurance claim through product protection, the store would stand the cost of those lenses, so the customer would never have to make a payment or never have to be in possession of the card in the first place. All he would know is that his lenses have been replaced and that his problem has been resolved.

If it was a genuine insurance claim, i.e. because he'd damaged his lenses, or he'd damaged his glasses, for whatever reason he had brought them in, all we do, we would load the card in the store, the customer would never be in possession of the card. All we would do is use that to re-process his glasses through the checkout, because the glasses might have to be re-ordered. Process them through the till and repay for the glasses, and the whole amount that's on there would pay for the glasses that were given back to the customer, there wouldn't be any residual monies on the card.

**Q.** So it follows from what you have just said that if there were any non spectacle-related purchases, they could never have been made by the customer.

**A.** They couldn't.

**Q.** Thank you.

**Lady Wall:** Would you like to continue?

**Ms Gillet:** Thank you, Madam. Mr Henley.

[CCTV Video 2 shown - pause]

**Ms Gillet:** Can you please explain what we can see in this image?

**A.** Yes. Again, I can see Mrs Norris at the self-scan tills.

**Lady Wall:** And the date of this?

**A.** This is the 25<sup>th</sup>.

**Ms Gillet:** So this is the first time. Do you recognise the outfit that Mrs Norris is wearing?

**A.** I do, yes.

**Q.** What is it?

**A.** Sorry do you mean, black skirt –

**Q.** Is that a particular outfit that you recognise, or is it just a generic –

**A.** No, it's a generic - as a manager, at the time Helen would have worn business dress, but there isn't a specific optical uniform. *[Pause]* There's a name badge there, the name badges that colleagues wear, you can see as Helen left.

**Q.** Have a brief look please, at page 42 of the bundle of documents. What is that document?

**A.** Again, that's a till receipt for a transaction made on the 25<sup>th</sup> of August.

**Q.** Just as a point of comparison, I know I didn't ask you to do this the last time – what is the time that this –

**A.** This one was at 19:50.

**Q.** If you look, the number at the bottom left hand corner.

**A.** Yes, that one.

**Q.** 19:50, are those the corresponding times? This is the till receipt, and from your previous explanation I can see that this is till 49, is that right?

**A.** That's right, yes.

**Q.** Was that the till that you saw on the video.

**A.** It was, yes.

**Q.** And again, we see from the bottom, the first time we see the word 'Account', a number of stars and then the numbers 3587, and what does that correspond to?

**A.** That corresponds to the last numbers on the card here.

**Q.** Mr Henley, I know we have had difficulties previously, but let's have a go with our third image. *[CCTV footage 3 unable to be shown]*

Mr Karri, you were present when Mrs Norris was interviewed, is that right?

**A.** That's correct.

- Q.** And during the interview she was shown the three CCTV images, only two of which we've seen today.
- A.** She was given the opportunity to view the footage; she actually declined to watch the footage.
- Q.** During the interview, did Mrs Norris dispute that the version you had told her, that she had been seen on those three occasions - did she dispute the fact of your contention?
- A.** I can't recall one hundred per cent whether she disputed it or not. Obviously she said she had her own gift card, regardless of whether it was one that was processed for Mr Woods or one that she said she had loaded herself.
- Q.** Just bear with me one moment. *[Pause]* If we look at page 50 of the bundle, would I be right in saying that these are the handwritten notes of the investigation which you sat in on?
- A.** That's right.
- Q.** Page 50 of the bundle we see – unfortunately we're not able to say who was speaking when it's not Mrs Norris, because that has been redacted, but presumably the person asking the questions of Mrs Norris, is that right?
- A.** Yes.
- Q.** And we see them suggesting that there were transactions 3, 4 and 5 with receipts and CCTV footage, and that Mrs Norris had been seen purchasing goods, the goods on the three receipts at the self-scan checkouts, and not using a discount card. At that point there is a request for an adjournment, and then an explanation given, is that right?
- A.** That's right, yes.
- Q.** Having a quick look over in particular those parts of the documents, I know you have already exhibited them as true to the best of your knowledge and understanding, but could you confirm that the account the Panel can read there is a true and honest account of what was said during the interview?
- A.** It is, yes.
- Q.** The third video, which we have been unable to view, would be dated 27 August 2009, is that right, looking at the panel on the left hand side?
- A.** That's right, yes.
- Q.** Is that a file which you have yourself viewed?
- A.** I have, yes.
- Q.** Please say if you are not able to recall, but since we are not able to see it today, what would the Panel be able to see if they were opening that document now?

- A.** Again, it would have been similar to the other two, with the time that the card was used on the 27<sup>th</sup>, a history on that card corresponding to Mrs Norris going through the tills, I can't recall one hundred per cent the exact detail of which particular self-scan unit was used, but it would be similar to the two that we have just viewed.
- Q.** When you viewed that image previously, were you content that the person on the image was Mrs Norris?
- A.** Yes.
- Q.** Was there any doubt in your mind about that?
- A.** None whatsoever.
- Q.** Looking at page 44 of the bundle – I'm getting better at reading these receipts now - I see at the bottom the date 27 August 2009.
- A.** That's correct.
- Q.** Would that be the receipt that would correspond with the image?
- A.** It is, yes.
- Q.** We see that till 46 was used, which is the same till as the first imagery, so we know that that's a self-service till, and household items and groceries were purchased to the value of £12.24, using card number \*\*\*3587, and we can look back at page 38 and see that for the date, 27 August, the value of £12.24 - is that the corresponding document?
- A.** It is, yes.
- Q.** Thank you, Mr Karri, I don't have any further questions, but if you would like to remain there, there will be some more questions for you.

**Lady Wall:** Thank you. Now, Mrs Norris, it is your opportunity now to ask Mr Karri questions about the evidence that he has given to the Committee.

**Mrs Norris:** No questions.

**Lady Wall:** It is quite important that you do formulate some questions for him, in order to support the position you have taken at the beginning of this Hearing.

**Mr Watson:** If I may help to intervene: if there is anything in what he has said or explained about the background that factually you think is either incomplete and so he could assist the Panel by agreeing with you about some other facts that he hasn't been asked about, you can ask him. If he said something you think is factually incorrect, then now is the time to put what you think is the correct position to him, but there is no obligation on you to do so, it's simply that if you wish to give evidence at a later stage that, as it were, casts his evidence into a different light, then he needs to have an opportunity to address your perspective now.

**Mrs Norris:** [*Shakes head*]

**Mr Watson:** No?

**Lady Wall:** The Committee I'm sure do have questions for you, and I'm going to start with Mr Varley.

### Questioned by the Committee

**Mr Varley:** Thank you. Good morning. Could I refer you to page 42, which is one of these till receipts. To my untrained eye there appear to be two shopping cards tendered here, of different numbers: there is the one that we know about, 3587, and then for a very small amount, 26p, there appears to be one above it, and it's only net amount that appears on your analysis of the card, so my question is, what is this other card?

**A.** Looking at the transaction there, there have been two shopping cards used, the first one ending 8498, it looks like there is 26 pence left on that one, and the amount has been redeemed against a sale, and another £10.99, sorry, £11.25.

**Q.** Yes it's £11.25, £10.99 on one and 26p on the other. I have to try and get this right in my mind, because it is important: if it was me and I was going to cash out, and I had two cards with me, I put the first one in – does it tell me that I only have 26p left on it?

**A.** If there wasn't enough money on the card to cover the amount the bill came to, it would tender off the amount that was left on that particular card and then give you another balance of what was owed, and then you would pay for it either with cash, card or another –

**Q.** So what's happened here is, there is a card being presented initially that had just 26p left on it.

**A.** That's what it looks like, yes.

**Q.** And then, another card which is the card that we're all talking about, was then used for the balance?

**A.** Yes.

**Q.** Now, if I may, I think probably it would be a good idea if you could take us through the process of, if I was a customer of Asda and I bought some glasses and I'd sat on them and broken them, and I was insured, I came in, spoke to somebody in the opticians' department, could you take me through the process of what happens then?

**A.** Yes. What would be expected is that the DO or manager in the department would contact the help desk at Asda House, and explain that they wanted to speak to someone on product protection, get put through to the product protection line, explain customer's details, when the glasses were purchased,

etc when the claim is dated to, because there is an expiration date on the insurance. They would check all those details, they would want to know the amount that the glasses are worth, how they were damaged, etc, and then what they would ask us to do in store is to pick up a blank card in the store and they would load the amount for the glasses onto that card number, from their end, so that then we could re-purchase the glasses.

**Q.** Where do they actually do that?

**A.** They do that in Leeds, they have the facility to load money onto a card from their end, from the product protection helpline.

**Q.** Where is the terminal in the store? They are told to get a card –

**A.** These cards, when they are in the store, they have no amount loaded onto them, it's only when they are activated, so they can either be activated through a checkout, I can take a blank card to a checkout and say, could you put £40 onto this card for me, and give the cashier £40 and put £40 on here, so that basically you have £40 credit on a card there. Or it could be loaded on through Asda House, through the help desk. So they have actually put the exact amount on, that those glasses are worth, but that card wouldn't then go to the customer. What you would do is you would use that card then to process another pair of glasses through. We have a till within the optical department, that works exactly the same as the main bank tills –

**Q.** Can they upload from that till, then?

**A.** They can do, yes, but in this particular case they wouldn't. The only people that can upload the card is the product protection helpline. If we uploaded it in the store, the amount that was loaded onto there would have to have then been put into the till, otherwise the till would be short.

**Q.** Yes, I'm with you. Okay, so that's all done, is that the end of the process?

**A.** The money is loaded onto the card, we would then re-order the glasses for the customer and to pay for the glasses, to balance it, because if we have a pair of glasses coming in, we're being charged, we still have to make sure that that payment goes through our till, so the payment will come off the card then.

**Q.** Where is the card kept?

**A.** The card is kept in the department. Each customer has a specific tray for their order and the card should be kept in the tray with the customer's order.

**Q.** So the customer then comes in –

**A.** Picks the glasses up.

**Q.** And the card is used to pay –

**A.** For the glasses, so there should be no remaining balance on the card.

**Q.** What happens to the card then?

**A.** The card can then be discarded.

**Q.** So there is no check, the assumption is that there is a nil balance on it.

**A.** That's right, yes.

**Q.** Thank you.

**Mrs Eva:** Mr Karri, can I just ask you what is Asda policy about employees' personal possessions, i.e. purses, handbags, where would they be kept during work hours?

**A.** They should be kept in lockers. Anyone handling money should not have money in their possession, or indeed handbags on the shop floor, or purses.

**Q.** So you have somewhere else in store to keep them?

**A.** There are colleague areas, yes, where you keep your personal possessions.

**Q.** You would have your own personal locker with a key that you would put your stuff in and just have your key.

**A.** Yes.

**Q.** Thank you. The cards themselves, for the ones that are uploaded for the purposes of insurance claims, is there a separate image on those cards, i.e. do you have one card for those and a different card for other things?

**A.** We don't, no. This particular one, the image that is on this one, probably isn't used in store any more. They are updated quite frequently, to be honest with you, it just depends on particular promotions and themes that are going on in the store. I presume at that time, two and half years ago, maybe there was an issue of a Mario game on Nintendo, and that's why that particular image was used at that time. It probably would have been that that card predominantly would have been in music and video departments, so if you gave that card to someone as a present they would go in and buy music and video or games, but as I say, it can be redeemed against anything. They are not in any particular department so you could use any of the cards that are in the store.

**Q.** Thank you.

**Mrs Huka:** Mr Karri, the gift cards, were they something that was handed out to all Asda customers?

**A.** No, we don't hand them out, they are available for customers to pick up at pay points around the store, checkouts, music and video desks, customer services desks, the clothing desks. As I say, if they want to load money on them they can do, some people may use them just to add a couple of pounds on each week and then make up the balance as they get to Christmas, for instance, so they can be used as a savings card, I suppose, but predominantly you would expect a gift card to be loaded with money and given to someone as a gift. It's not a loyalty card, if that's what you're thinking.

**Q.** I realise that now, from your answer. If I can actually take you back to page 42, please – my colleague has already pointed out that there are two separate accounts here – 3587, who would that particular account be attributed to? You have account number 3587 – is there a name on the card?

**A.** There isn't, no. There are no names on the cards.

**Q.** So when this is phoned through to Leeds, or wherever it's phoned through, it's just an automatic –

**A.** Each card has a unique number, so it's solely on the number printed on the card, there isn't another card with the same number as this one.

**Q.** Okay, thank you.

**Mr Hensley:** On page 42 again, the first of the two cards tendered on that occasion, and the last four digits of it, is that known to be another of this type of gift card, or could that be someone's credit card, would it be different?

**A.** I would say it's a gift card, purely because it does say 'shopping card tendered'.

**Q.** Thank you. So is that clear evidence that on this one occasion two cards of an Asda gift card type, whatever their image, were consecutively tendered for this transaction, one of which only had a tiny balance of money on it?

**A.** Yes.

**Q.** That's clear?

**A.** Yes.

**Q.** Thank you. When this card is pre-loaded on behalf of the insurance company, with this £90, what kind of audit trail exists as to who in the Asda store ordered that loading?

**A.** I'll be honest with you, there isn't an audit trail. We have one dispensing optician within the department who manages the department from the optical side and the Asda procedural side as well, so the only person who would make that call would be the DO in store, who was Helen at the time, so basically the audit trail would always lead to the DO because it wouldn't be made by anyone else.

**Q.** Let me be absolutely clear, on the day in question, the DO manager in the store was Mrs Norris?

**A.** Yes.

**Q.** And she is the only person whose authority would be accepted for this £90 to be loaded by the insurance?

**A.** I'm not saying that, every now and again we'll get a locum DO in, but it's my belief that they would have to seek permission from their manager before they made that call. They could make the call, but they'd have to seek permission, the DO has another manager that she would report to in store, which at the

time would have been the Home and Leisure Manager, so if it wasn't Helen, if it was a locum dispensing optician, they would have to seek permission from their line manager before they made the call.

**Q.** This is a known and clear policy, is it?

**A.** Yes.

**Q.** So £90 would be for the replacement of a completely broken pair of glasses, not just this lens.

**A.** Not just the lens.

**Q.** So the procedure for this lens, incorrect prescription, would have been a local wastage one –

**A.** That's right.

**Q.** Thank you. I believe that is all.

**Lady Wall:** Could you give me some idea of the layout of the store, in terms of where the optical department is?

**A.** When we were viewing the CCTV there, we had a main bank of checkouts – entrance to the store, and as you come in, to your left hand side would have been where the self-scan checkouts are, and then there's a main bank of checkouts that runs right along beside them, 20 checkouts, and behind the checkouts, not the shop floor side but the checkout side, is where the optical department is located.

**Q.** This is a separate area.

**A.** It's the same entrance to the store, it's like a concession within the store, so it's an open area, it's a big open area, but it's set back off the shop floor behind the checkouts.

**Q.** And this is where Mr Woods would have gone with his faulty lens, and this is where, on that day, he would have encountered Mrs Norris.

**A.** Yes.

**Q.** Was there anybody else in the store alcove on that particular day?

**A.** I'm one hundred per cent certain whether there would have been. I wasn't present when the actual call was made for the product protection and I have not dealt with the customer directly, but there would have been other colleagues within the department at the time, yes. There probably would have been an optom in there and a couple of colleagues as well, I would have thought.

**Q.** So can you take me to the point at which Mr Woods was dealt with by Mrs Norris?

**A.** I can only presume what happened; I couldn't actually tell you what happened on the day itself. I would have thought that the customer would have come

into the optical department, explained that one of his lenses was wrong on his glasses, she would have ascertained that the prescription was made out wrong, and the decision should have been that we would replace the lens, write that lens off and re-order a new one, and we would waste that in store, and that would be accounted for. But on this occasion Mrs Norris has, for whatever reason, decided that she would make a call to the insurance department and put £90 onto the gift card, and pay for one of the lenses.

**Q.** Right, so the correct procedure would have been not to have used one of these cards, and just allow for the £25 which was necessary to replace the faulty lens.

**A.** That's right, we would have written that off in store, yes.

**Q.** Instead, she makes a phone call to Leeds –

**A.** That's right, phone the help desk, come through to the product protection helpline, obviously told them that it's a genuine claim, an insurance claim for broken glasses, £90 going onto the card, and then used £25 of it to cover one of the lenses.

**Q.** I think in response to my colleague's questions you said that there was no audit trail of that part of the transaction?

**A.** The actual phone call there wasn't, no.

**Q.** The phone calls aren't recorded?

**A.** They are not, unfortunately, no.

**Q.** The person at the other end doesn't keep a record of how it is that they put £90 on a card somewhere within Asda, so it's possible for someone to make a phone call, say please put £90 on this particular card –

**A.** With a customer's details.

**Q.** With the customer's details.

**A.** Unfortunately it is, yes. Yes, it is, it's flimsy.

**Q.** I'm trying to understand this, my point of view, that this £90 is then put on a card in some store, which is not Leeds –

**A.** Yes.

**Q.** And there's no kind of cross-referencing or corroboration as to the identity and responsibility of the person making the call and request, other than the request for the customer details.

**A.** The customer details obviously are privy only to the DOs, it's not like I could walk in there, pick up a customer's details and make a call because I wouldn't have access to them.

**Q.** Why wouldn't you have access to them?

**A.** Because they're all kept locked.

- Q.** Where are they kept locked?
- A.** They are kept locked within the optical department, and the only people who have access to them are the optical colleagues.
- Q.** So it's not possible for anybody –
- A.** No, I couldn't pick them up and think, let's find a customer who has product protection, ring the helpline and get a card loaded with money, that's not possible. The whole point of having someone who is responsible for that department is to make sure that - yes, there are processes in there that you will say are quite sensitive, and maybe yes, easy to manipulate, but the whole point of having a responsible person in there is to make sure that that doesn't happen.
- Q.** Right, so there are no external checks to make sure that these phone calls are from the DO, you have to make the assumption because of the connection, they are the only person who has access to the numbers.
- A.** Yes. Our Corporate Security has actually looked at this case and is in the process of reviewing the process of loading these cards, because it's not one hundred per cent watertight.
- Q.** I'll just check whether there are any other questions I wanted to ask. Can you make any comment on Mrs Norris' contribution in the disciplinary meetings that in fact it was for two pairs?
- A.** If an insurance claim was made for two pairs of spectacles, you would expect two insurance claims to be made, and two amounts to be put onto a card. For me, obviously it wasn't an insurance claim in the first place. If it was a faulty lens it should have been written off in the store, so the claim never should have gone through. As for being for two pairs of glasses, I would have expected in the last two and a half years for Mr Woods to have returned for his other pair of spectacles, to have been repaired under product protection, and to be able to take them away, but that's never happened, so obviously the customer wasn't aware that two pairs of spectacles were being repaired. He took away his one pair, one lens repaired. Mrs Norris has indicated that she put the amount of £90 through even though it was for one pair of glasses, with the intention of paying for another pair for the customer when he was happy with the pair that he had taken away, but the customer has never returned to the store to pick up his other pair of glasses that he was waiting to have repaired.
- Q.** Presumably there would have been a record of what was wrong with a second pair if a second pair had ever been involved?
- A.** Yes.
- Q.** If it was another customer, presumably Mrs Norris would have had to have given the second customer's details, for it to have gone on the same card?

- A.** It wouldn't have gone on the same card, though – once that one card is loaded, you would only expect one transaction for that one pair of glasses that's being claimed for.
- Q.** It's not possible to put two pairs on the same card?
- A.** I see what you mean. If it was the same customer with two pairs of glasses, yes, the chances are they would have put it onto the same card, but it would have come to more than £90. Mrs Norris has stated that she only claimed the £90 because that's how much the one pair of glasses came to. But her intention was to do two repairs with it.
- Q.** Right, and if it was another customer, it would have had to have been another card.
- A.** It would have, yes. I see what you mean, yes.
- Q.** Thank you very much, that's all the questions for the moment. Now, it's possible there are further questions arising from that.
- Mrs Eva:** Would Leeds keep a record of the card number that they uploaded the money to?
- A.** We contacted Asda House to see if they kept records, and they don't, no.
- Q.** Do Asda House Leeds take the optician's word for how much to load onto the card, so if I was the DO in question, could I ring up and say, this customer needs £90 loaded to their card, and they would take my word for that?
- A.** When the details are given, when the customer fills in the insurance details etc, amounts that they've paid for the glasses are on there, so they would pick up if an additional amount was asked for. Let's say you said, I want £500 for this customer's glasses, they could look on the records when they bring the details up and say, actually, this customer's glasses only cost £x, and this is what they're insured for, so you couldn't give your own figure, and that's why, the £90 was for one pair of glasses that the customer purchased.
- Q.** So Leeds would check up that it was a legitimate amount of money that you were asking for, and would they also check how many pairs of glasses the customer had originally ordered at that time? Or could they?
- A.** They could, but the chance of a customer breaking two pairs of glasses at the same time I would say are quite remote. If it was a prescription and it's two lenses on two separate glasses, it wouldn't go through as insurance, because, the chances that you're going in with two pairs of glasses purchased at the same time, damaged for the same reason, probably wouldn't come up very often.
- Q.** Thank you.

**Lady Wall:** Any further questions.

**Mrs Huka:** Yes, I do: when Mrs Norris called Leeds, would Leeds not want to know the details of how these glasses were damaged?

**A.** It's up to the store to ascertain how the glasses were broken. I presume they would want to know yes, it is apparent that the customer has damaged the glasses themselves, i.e. they've snapped them or whatever, but it's up to the store to make that decision on whether we think it's a genuine claim or not. It's up to the optical department, to make sure that the glasses haven't suffered any abuse that the customer thinks, I think I'll just get myself another pair of glasses.

**Q.** In this case, if, say, any optician had called Leeds and said, I want to claim for this customer for a scratched lens, what would Leeds have said?

**A.** If it was for a scratched lens, obviously if it was an accident they would say fine, because they would expect us to make that decision to say yes, it's a genuine issue and they would load the money, yes.

**Q.** They would?

**A.** They would, yes.

**Q.** Thank you.

**Mr Hensley:** Excuse me if I'm being slow about this, but on behalf of the insurer the authority is given on the phone, they will say, we will load that card with £90. In order to physically get that money on the card, does a person within the Asda opticians have to put that card in a reader which puts that money on?

**A.** No.

**Q.** So there would be no way of knowing who had done that from that point of view.

**A.** No.

**Q.** Money is just crafted to a number.

**A.** It is, the number is given over the phone, and the card is loaded.

**Q.** And then the next time the card is swiped it will load that it is there.

**A.** That's right.

**Q.** Right. The loading of money onto these cards can take place by cash, cheque book and card perhaps in the past, or by someone's credit card, I suppose?

**A.** That's right, yes.

**Q.** Is there any way of going back on a card number, for instance this other number that we see on the receipt on page 42 where we have two shopping card numbers – the first one of them is not the one that's on our list today, it's the other one which was clearly used. The money that was put on that card, 8498, is there any way of knowing how credits to that card were made, by cash or by someone's named credit card, in the history of the gift card?

- A.** All the history would tell you is when the card was loaded. If you look at the history of the other card, this one here on page 38, it would give you the same detail as that. Obviously we don't electronically keep customers' credit card details, we're not allowed to do that, so all it would give you are times and terminal numbers when they were loaded, and then you would hope that you could correspond that with some CCTV footage, but I would also need the rest of the numbers off the card to find out when it was done.
- Q.** And they're not available?
- A.** Obviously I don't have the card, do I? If that particular card was available, I could ask Asda House to trace a history of it.
- Q.** Yes. Whilst clearly for security reasons we're all used to these things being a load of asterisks on the slips that we collect every day, I was wondering if in Asda systems this card is possible to be identified and something like page 38 produced for it, so that you know a history of the card which is named as the top of the two on page 42 – is that available to us in any way?
- A.** I would doubt it. Again, just as with a credit card, the reason these numbers are blanked out is because if anyone had access to those numbers, they could put those numbers into a till, if the magnetic strip wasn't working on this till. For instance, let's say a customer came to process this against some goods, and the card didn't swipe, we could use those numbers and physically hand-key them in, and deduct the amount from a card, so the reason those numbers aren't printed anywhere is because someone could go along and pick a number up and put it into a till, and if they wanted to they could fraudulently take money off someone else's card.
- Q.** So the history of the card as on page 38 can only be printed out like this if someone physically has the card?
- A.** Or has the number, yes, and obviously we had the number in the optical department, because it was in the tray for that customer.
- Q.** You can never get back the full number of the top card on page 42, to your knowledge?
- A.** To my knowledge, we can't, no.
- Q.** Thank you.
- Lady Wall:** Just going back to the physical travelling of this card, the £90 is put on it, and this is all in the alcove –
- A.** In the optical department, yes. On the phone.
- Q.** What should have happened to the card then?
- A.** The card should then be used – in this particular case, if £90 was put on it against a pair of glasses that the customer has brought back, obviously those glasses are no good. You would put another pair of glasses through the till in the optical department, for the value of £90, a receipt is made, a copy is given

to the customer, and we wait for the order to come in. A copy of the receipt is attached to the order, when the glasses turn up we know that they've been paid for with the card, and there's no money left on the card.

**Q.** So what happens to the card?

**A.** As I say, the card can then be thrown away.

**Q.** So is there any legitimate way in which a card which is being used in this alcove could possibly find its way to an ordinary till?

**A.** No, there isn't, because there's no reason why a card should be picked up from that department, unless someone's picked it up and put it in their pocket and used it through the grocery department. I can't see any other way it could have made its way there.

**Q.** Yes, because we've established that handbags should all be locked up.

**A.** That's right, yes.

**Q.** Is there any supervision to make sure that handbags are locked up?

**A.** We do spot checks in stores to make sure colleagues aren't taking bags onto the shop floor, we have security on the shop floor, we have managers within departments who stop colleagues from taking possessions onto the shop, so there are a number of ways. Colleagues, when they sign the handbook, are told that they can't take personal possessions and monies within their departments, so there are a number of ways.

**Q.** So that's the store's requirement?

**A.** It is a requirement, yes, part of our rules.

**Q.** So you're giving evidence that there is no legitimate way that a customer's card loaded with this amount of money could have been put into a handbag, because the handbag shouldn't have been there. Therefore there must have been some other kind of concealment, before we see it again on the CCTV.

**A.** Yes.

**Q.** And it is the same card, because of the numbers tallying.

**A.** That's right, yes.

**Q.** Thank you. Any other questions?

**Mrs Huka:** Just for the sake of completeness, does that mean that even the customer could not have used that card for anything but spectacles?

**A.** That's right.

**Q.** And is it right that staff would also have been aware that those cards were for spectacles and for no other purchase?

**A.** That particular card would have been with that customer's order. When the customer came in, you can see that £25 was processed on that card. In

theory, if it was a genuine product protection claim, the whole £90 would have been processed there and then, there would have been nothing on the card at all – the customer came and it would have been sorted out, the card would have had a zero balance, and the glasses would have been paid for.

**Q.** Thank you.

**Lady Wall:** Does that complete the questions from the Panel? [*Confirmed*] Now, Mrs Norris, would you like to ask any questions following our questions, of the witness?

#### **Cross-examined by MRS NORRIS**

**Mrs Norris:** Mr Karri, you said that the DO was the only person who made the call to Asda House to load the money on the card. It was my understanding that it was any member of the optical team who could actually make that call. Would you agree with that?

**A.** With a manager's permission, yes. So if it was a locum DO, or if an optical colleague, let's assume that there was no DO in there, for whatever reason, and an optical colleague wanted to make that call, they would have to go through a line manager before that call was made.

**Q.** Just to confirm that you said that the card was kept in the tray with the patient's records.

**A.** The card should have been kept in the tray with the patient's records, yes.

#### **Re-examined by MS GILLET**

**Ms Gillet:** Mr Karri, I am so sorry - I have two very brief questions for you, touching on that point: you gave the descriptions of two other people who may be making calls such as this, and I think you said that there may have been a locum DO on at the time. If you look at page 5 of the bundle you see a statement from Asif Motala. I don't know if you are able to recall without the assistance of a statement, but would I be right in saying that he was the locum dispensing optician at Asda at the time?

**A.** He was, yes.

**Q.** And the other person you said may make the phone call or be asked by someone else for authority to make the phone call would be Mrs Norris's line manager, the Home and Leisure Manager.

**A.** Yes.

**Q.** Would I be right in thinking if we turn to page 10 of that bundle that that individual would be Steve Bone?

**A.** Yes, that's correct.

**Q.** Who has given a witness statement in relation to this. And if we look at page 16 of the bundle, again the interview notes made at which you were present, we see six lines down, the question, 'How did you process Mr Woods' new lenses?', and then we see the response from Mrs Norris, 'Because he had Glasses Protection I made a claim on Glasses Protection'. Is it your understanding that that was Mrs Norris accepting that she had made the phone call in order to then put the £90 onto the relevant card?

**A.** That's right, yes.

**Q.** I have no further questions.

**Lady Wall:** Thank you, do you have any further questions, Mrs Norris? [No] Well, I think this is a point at which we can take a break, ten minutes. Thank you.

*[The witness stood down]*

*[Hearing adjourned at 12.10pm]*

*[Hearing resumed at 12.20pm]*

**Ms Gillet:** Madam, there are documents within this bundle which I haven't referred you to directly. However, the Council do rely on the contents of it in its entirety, as we do the CCTV and the new exhibit which is the actual store card which I think we should probably give a formal title to, and I suggest we call it exhibit MK/4.

**Lady Wall:** Exhibit MK/4 for this actual card -

**Mr Watson:** Bearing in mind it has been produced within the Hearing, it might be convenient to call it C2. I assume Mr Henley kindly has what looks like photocopies of it, so we can simply label it C2.

**Lady Wall:** I stand corrected, it's C2.

**Mr Watson:** Otherwise we'll be marking the original exhibit. Before the Registrant decides whether to give evidence, and the evidence, may I just invite you to say whether or not there are any key facts that haven't been covered in the witness statements and the example receipts, that you would be proposing to advance out of this bundle in your closing submissions, simply so that she could have those in mind?

**Ms Gillet:** I think I took the witness to the relevant points in the formal disciplinary investigation notes, but I would be inviting the Panel to look carefully at the responses within it, and depending of course on the evidence that Mrs Norris gives or chooses not to give, to draw comparisons as necessary.

**Mr Watson:** That's helpful, so quite rightly, although you have at the moment only drawn attention to some of the broad propositions emerging from the disciplinary investigation notes, you may wish to rely on the detail for advice.

**Ms Gillet:** It may be that Mrs Norris would like to consider the contents of that.

**Mr Watson:** Thank you.

**Lady Wall:** So do I take it that is the end of your case?

**Ms Gillet:** That is the close of the case we are advancing, Madam, thank you.

**Lady Wall:** Now, Mrs Norris, it's up to you to give evidence if you choose to. You don't have to give evidence, but it would obviously assist the Committee if you did. You are rather puzzled, I think our Legal Adviser –

**Mr Watson:** I'll intervene. I note that the Registrant is looking puzzled. If you would wish to have a short break and I can give you some generic points to bear in mind to assist you in guiding your own decision as to whether or not you wish to elect to give evidence to the Panel, then I would be very happy to do so. You will recall at the outset that I indicated to you that there would come a time after the Council had introduced the case and then called the evidence of the facts, which they are relying on, in this case in the bundle, the exhibits and the oral evidence we have heard, that you would have an opportunity to give your own evidence from the stand to the Panel, about the issues that are in dispute.

To remind you, the issue in dispute that the Panel has to decide at this stage, will focus on the allegation which is the non-admitted allegation, which is that your actions as set out in the charge, were dishonest. So the Committee has that core question to decide, and at this stage they are inviting you to say whether or not you wish to give evidence about that issue. As I repeat, if it assists you, I am not here as your personal adviser, but I am happy to give you some further points to bear in mind generically if you wish, in a short break.

**Mrs Norris:** Yes, please.

**Lady Wall:** We are very anxious to ensure that you are not disadvantaged by your absence of representation. So we will have another ten minute break.

*[Hearing adjourned at 12.25pm]*

*[Hearing reconvened at 13.30]*

**Lady Wall:** Mrs Norris, I understand that you would like to give evidence to the Committee.

**Mrs Norris:** Yes.

**Lady Wall:** Please come and take a seat then.

**MS HELEN NORRIS, called and affirmed  
Questioned by the Committee**

**Lady Wall:** Mrs Norris, this is your opportunity to tell us what you think we should know and what happened. You know what is alleged against you, and you have heard what has been said this morning. You have had the Council's bundle, so you are familiar with all of that, and you have seen the CCTV. Now it is your opportunity to tell us what you think you would like us to know.

**Mrs Norris:** As far as what actually happened on the day with regards to the events, Mr Woods came into the department. He had a problem with his glasses – I am sorry – it is a little while now since obviously the events took place, so sometimes I am a little hazy on the exact details. I said that we would sort out the problem for him. I would change his lens, and when I looked at the original order, I saw that he had purchased the Glasses Protection.

Now, what tended to happen in cases when people came in with a problem with their glasses – breakage or damage or whatever to their glasses – when you look back at the original order, when you saw that the Glasses Protection had been purchased, straightaway you would just say to the patient “That’s fine. That’s no problem. We will sort out a replacement pair or repair the damage. That is no problem”. It diffused a great deal of the tensions that you have sometimes from the customers who come in when perhaps the side has fallen off their glasses. So you tended to get into the habit of seeing that the Glasses Protection was there, and just automatically thinking that is fine, I will make a claim on that. That is obviously what I have done.

Now, Mr Woods did have a problem with two pairs of glasses, and I did agree with him that we would sort out the first pair for him and when he collected the first pair, we would then sort out the second pair for him. I know that Mr Karri mentioned earlier that Mr Woods had not returned to sort out the second pair of glasses, but obviously that is something that I was not aware of because I have not been there since then.

Going back to this order, the reason why I loaded £90 on – if I was doing it under the Glasses Protection, yes, I should actually have made two separate claims. I actually thought that because I was doing the two pairs of glasses – one repair was for £25 and the other repair was for £65. The total came to £90. That is why I loaded it up for £90 or had £90 loaded onto the gift card in the first place. Obviously with hindsight now I realise now that it was not the right thing to do, to actually claim it onto the Glasses Protection warranty, that I should have done it under the store wastage policy but, as I say, there are

times when you just see something and you tend to become blinkered and only see one line of action.

The gift card would have gone into Mr Woods' tray, and as far as I am aware that is where it would have been kept. I do have gift cards for other stores as well. Currently I have a couple for Tesco's, Sainsbury's, Debenhams, and Pizza Express. There is not just one gift card that I have. [Pause]

- Q.** We were at the point where you told us that you have several gift cards.
- A.** Yes, for other stores. I currently even have two for Tesco's. So I do use them. Sometimes they are given to me, but also I could buy a gift card for somebody perhaps as a birthday present or a Christmas present if I am stuck as to what else to buy for them. [Pause] I do not recall at all how I came to end up with that particular gift card in my possession. That, I just don't know. [Pause] At the time I did have a few external factors, which I found were a little stressful, and I was obviously distracted in my work, although at the time you don't always realise it, but there were other things that were distracting me outside of work. I can't think of anything else at the moment.
- Q.** Right. Thank you very much. On that basis you will be asked some questions by Ms Gillet and almost certainly by the Panel, so if there is anything else you would like to say as a statement, now is the time to do it.

**Mr Watson:** Perhaps I should just intervene and say you have given the Panel the context in which you came into possession of the card, but I am not sure whether in your evidence you have given the Panel an account of your recollection of what was happening when you were on the CCTV footage on the days that you used it.

The allegation that the Panel have to decide, in terms of its focus, involves whether or not your actions on the days and on the occasions we have viewed on the CCTV footage – on those three days – whether your actions were carried out dishonestly. Do you want to say anything on that topic to the Panel?

- A.** [Pause] Obviously the individual incidents I do not recall specifically. As far as I was aware at the time that was just part of my routine, part of my life, and it is not something that I could specifically recall at the time.

**Lady Wall:** We have given you the opportunity to say everything about what you do remember, and now it falls to Ms Gillet to ask you some questions.

#### **Cross-examined by MS GILLET**

- Q.** Mrs Norris, you accept, don't you, that on behalf of Mr Woods you contacted the insurance agents in order to load up the gift card with £90?
- A.** Yes.

- Q.** And you also accept that it was that gift card which came into your possession, and you used it on 25 August 2009, 26 August 2009 and 27 August 2009?
- A.** Yes.
- Q.** You said when you started giving your evidence you were giving an explanation as to what happened when Mr Woods came to the store. You said that he had a problem with his glasses and he needed to change his lens. Is that right?
- A.** Yes.
- Q.** At no point in any of the papers that I have seen or during your evidence have you suggested what may or may not have been wrong with this second pair of glasses.
- A.** The problem with the second pair of glasses was the same as what was wrong with the first pair.
- Q.** I am going to suggest that if that was for a moment true, then the cost of the replacement for the second pair would be the same amount.
- A.** No, because for the second pair it was a different type of lens. The second pair was for a photochromic lens. As far as I remember, the second pair was either for a photochromic lens or a varifocal lens. I really cannot remember now, but it was a more expensive lens.
- Q.** And at no point during the investigation did you say look, here is the documentation in relation to that second pair of glasses?
- A.** At that stage I wouldn't have had access to that because I would have only been able to access that through the computer system.
- Q.** At no point did you say to any of the people who were investigating will you please just look on the computer system and you will see that Mr Woods had a second pair of glasses, varifocal lenses, and they were going to be replaced as well?
- A.** Nobody asked.
- Q.** I am going to suggest to you that the reason you didn't put forward that explanation is because those documents do not exist because the second pair is completely made up?
- A.** No, they do exist and it is on the computer system at the store.
- Q.** You heard in evidence this morning from questions asked by Mrs Eva that there is a strict store policy in relation to handbags and wallets, personal belongings being on the store floor for good reason. Were you aware of that policy?
- A.** Yes.
- Q.** And did you follow that policy?

- A. I kept my handbag in my locker which was in one of the colleague areas.
- Q. [Pause] You said during your formal investigation at Asda – and I think you mentioned it earlier – that you have many other gift cards, and I think you were saying you had at the time an Asda gift card. Is that right?
- A. Yes.
- Q. You were asked during that interview whether you could produce that gift card.
- A. Yes.
- Q. Have you made any effort to locate that gift card since you were asked for it?
- A. I have made efforts to locate it, but I have not managed to find it.
- Q. You realise that this gift card could potentially have saved your job and save your career?
- A. Yes, I do realise that.
- Q. Did you look at your bank statements to try and ascertain when you had put money on to this gift card?
- A. I am not sure that looking at the bank statement would actually tell me that information, but no, I have not done that.
- Q. You heard evidence from one of the store managers – and I think they ask you about it in your interview – that if you had been able to provide them with any information about the money being put on, they may have been able to trace the card for you, and you have not made the efforts to try and ascertain that information.
- A. I have made the effort to try to find the card. As you have heard earlier, they would only be able to trace the details on that card if I could give them the number, but because I have not managed to find the card I cannot give them the number.
- Q. It was also suggested that if you had been able to give them details or times of any transactions or any monies being put on or monies being taken off they would also have made the efforts to try and locate the information on their system. Your job is on the line, your career is on the line – what efforts did you go to to ascertain this information for them?
- A. I have looked everywhere I can conceivably think that this card would be.
- Q. I am going to suggest to you that if it was true that there was a second Mario card and it was an honest mistake, that you would have made every conceivable effort to try and help Asda in their enquiries.
- A. I have tried.
- Q. During the course of the incident that we know about from the CCTV and the evidence, it would appear that you used your store card on a very regular

basis. Is that fair? We see for example that you have used the store card on three consecutive days.

A. Yes.

Q. And yet when you were asked in interview when you last used your actual store card you didn't seem to be able to help them.

A. Because I obviously didn't know where the card was, so I could not give them the information.

Q. I suggest to you that you could not give them the information because you were not using your own store card, you were using other store cards?

A. No.

Q. I think it was from questions by Mr Varley that we were asked to look in more detail at the first of the receipts, so the receipt dated 25 August, at page 42 of the bundle. It might help you, Mrs Norris, if you turn to page 42 of the bundle. Do you have that page in front of you?

A. Yes.

Q. Looking at that receipt I think we now understand that we see two gift cards being used for the same purchase. The first one it would appear has run out of money, so the second one has then been pulled out and used in the alternative. Was it your gift card, 8498, that had suddenly run out of money on 25 August 2009?

A. Yes.

Q. In your evidence before the Panel and in the evidence you gave at the disciplinary hearing, you make it very clear that you had one gift card for Asda, a Mario card.

A. There are several gift card designs, and I have had other designs other than just the Mario.

Q. If you look back at your interview – and please tell me if I am wrong – in the evidence that you have given, at no point did you mention the fact that you have multiple gift cards.

A. I wasn't asked.

Q. Mrs Norris, this was your opportunity to clear your name and keep your job. Why would you not have said "I have multiple gift cards; I have a Mario card. I have a George card. I have a florist card. I don't know what images would be on them, and I simply don't know which one is which. I don't keep track of them"? Why would you not have said that if that was case? Why would you have only mentioned the fact that you had a Mario card?

A. [Pause] I don't know. I cannot remember.

Q. I would suggest to you that the reason that you said that was because it was simply not true, and you knew full well that the card you were using was not a

card you were entitled to use. You had a store discount card at the time. Is that right?

A. I had.

Q. And that entitled you to a 10 per cent discount on your groceries. Is that right?

A. Yes.

Q. Presumably that is quite a useful discount to be given on your everyday shopping?

A. Yes.

Q. Why didn't you use it on 25 August 2009?

A. Because I didn't have the card with me.

Q. Why didn't you, when you arrived home on 25 August 2009, think I am going to be using my gift card again tomorrow to purchase my groceries, wouldn't it be sensible to put it back in my bag?

A. The thing about the Asda store discount card was that it was for use by an employee and there was a nominated user as well, and the nominated user on the card was my husband, and at that time it was my husband who had the card.

Q. That is the first time you have mentioned the fact that your husband had the card. Is that a fair assessment? You didn't say at any point during your interview or at any point previously that your husband had the card during this time period?

A. I said I didn't have the card on me. I was never asked where the card was.

Q. Mrs Norris, you knew that this was your opportunity during the interview and now to explain your position, not wait to be asked.

A. Sorry.

Q. When you went home on 25 August, if you knew you were going to be in Asda for work the next day and you knew you were going to be making purchases, why didn't you ask your husband if you could have the card back?

A. I possibly did at the time and he simply forgot to give me the card. I don't know. I cannot remember.

Q. Again, on the evening of the 26<sup>th</sup> when you knew you were going to be at work on the 27<sup>th</sup> and making purchases when you had finished work, would it not have made more sense for you to have had the card than your husband?

A. Again, I cannot remember, but on the 28<sup>th</sup>, which was the Friday, and that was my day off, I did have the card.

Q. And what did you use to purchase your groceries on that occasion?

A. That was pay day, and I probably used my bank debit card.

- Q.** Why did you not use your debit card on 25, 26 and 27 August?
- A.** Because it was just before pay day.
- Q.** Why did it make sense to store money on an Asda card rather than keep it on your debit card to use as you felt appropriate?
- A.** Because that is sometimes what I did with a gift card. I would sometimes put money on to the gift card perhaps at the beginning of the month, just after pay day, to spend on groceries later on in the month, just before pay day, if I felt I was going to be a bit short.
- Q.** Mrs Norris, I am going to suggest to you in the circumstances that you have just explained to the Panel you would be highly unlikely to simply forget about an additional 10 per cent discount which you can avail yourself of by use of a discount card. It is going to make quite a big difference, isn't it, three days in a row purchasing items between £10 to £15, £30, £12?
- A.** It is, but I didn't have the card on me.
- Q.** I am going to suggest to you, Mrs Norris that the reason that you didn't use your card on these occasions was because you felt that would mean that your purchases could be traced to you.
- A.** No.
- Q.** Mrs Norris, just so you are clear I am going to suggest to you what my case is, and it is for you to say whether you agree with it or whether you disagree with it. I am going to suggest that as the Dispensing Opticians Manager you knew full well that this area of Asda's policy in relation to returning of glasses was particularly lax and open to exploitation and, as a result of that, you saw a situation where you had an opportunity to put a relatively large sum of money on to your card, which you thought would never be checked into.
- A.** That is not true.
- Q.** And thinking that there was no way of tracing the card back to you, you used it on three occasions to purchase groceries and you didn't use your store discount card in order to distance yourself from that?
- A.** I understand how it looks, but that is not the case.
- Q.** And you knew full well when you were making those purchases that you were not entitled to do so.
- A.** No.
- Q.** That is why you asked for time to think and adjournments during the shop investigation.
- A.** No.
- Q.** That is why you haven't been able to find any of the documentation which may have assisted Asda in dealing with the matter in a different way.

- A. No.
- Q. And that is why you resigned from your position on 11 September 2009 part way through the investigation.
- A. That is not the reason why I resigned.
- Q. I do not have any further questions, Madam.

#### Further questioned by the Committee

**Mr Hensley:** Could you help us a little, please, on the matter of the till receipt on page 42 where you used the two cards in succession? Was it typical at the time that you had more than one Asda gift card yourself for your own use?

- A. Yes, it could be, yes.
- Q. But why would you have more than one card?
- A. Because when I decided if I wanted to load some money on to a card, if I didn't have a current card with me at the time then I could just pick one up at a checkout and I could just ask for some money to be loaded onto it.
- Q. Was this a thing you did on a regular basis?
- A. It is something that I did do.
- Q. And what sort of frequency would you load money on to a card?
- A. [Pause] It might be something that I did one month say two or three times in a month and then I might not do for a couple of months, and then I might do four or five times in another month, so it is difficult to say.
- Q. You would accept that on the occasion of this receipt you obviously tendered two cards in succession?
- A. Yes.
- Q. And you are saying that they were the same looking sort of cards?
- A. I had them in a card case, and I just would take one out and present it either to the cashier or put it through the till.
- Q. Are you able to help us as to how that second card came into your possession when you are putting it in the tray relating to Mr Woods' glasses?
- A. I don't know.
- Q. You have no recollection at all?
- A. No.

**Ms Huka:** Mrs Norris, how many gift cards were you carrying around with you in August?

- A. At that time?

- Q.** Yes.
- A.** I obviously had the two there.
- Q.** On page 42 it was apparent quite quickly that you couldn't use that particular card because it only had 26 pence on it?
- A.** Yes.
- Q.** Therefore, why did you not wonder how you managed to load – and if you turn to page 38 – on 22 and 23 August you actually used the card on behalf of Mr Woods and then just two days later you were able to use the same card to buy your own groceries. How do you reconcile having the same card for a client and also for your personal use?
- A.** Sorry, you are asking me how the card came into my possession.
- Q.** I am asking how on the face of it you used the one card to buy spectacles for Mr Woods on two occasions – one costing £90 and the other £25 – and then you were able to use the same card a day later to buy your groceries. Was that not what happened here? If you look at page 38 please, on 22 and 23 August – perhaps I should take it one step at a time. On 22 August what was the purchase for £90?
- A.** The £90 was when I had rung Asda house for them to load the money on to the gift card to cover the cost of the two pairs of glasses.
- Q.** And then on the 23<sup>rd</sup> what was the £25?
- A.** That was the cost of replacing one of the lenses for the first pair of glasses.
- Q.** And then I am saying just a day after that you spent £10.99 using that same card. Is that not the case?
- A.** Well, it is two days later.
- Q.** Two days later you spent £10.99 using the same card.
- A.** Yes.
- Q.** Therefore, you would have been aware – as you have not given any indication that you purchased a new gift card – that you were using the same card? You were using the card that you had used on the 23<sup>rd</sup> on the 25<sup>th</sup>, weren't you?
- A.** Yes, but I do not recall how it came into my possession.
- Q.** So on the 25<sup>th</sup> when you used it to purchase the spectacles, how did you use it then on the 23<sup>rd</sup>? How did it come into your possession on the 23<sup>rd</sup>?
- A.** On the 23<sup>rd</sup> it was in the record card in the tray for Mr Woods and his glasses.
- Q.** What happened to the card after that then?
- A.** I thought I had put the gift card back into the tray with the record card waiting for the glasses to come back. It was to remain there in the record card until Mr Woods brought the second pair of glasses in.

- Q.** If your gift card that had 26 pence on it had expired, what did you do then? You used this same card, didn't you? If we turn to page 42, please; you tendered a card. At that stage you were aware that that card had 26 pence on it and would not actually suffice for your further purchases, and you had not actually purchased a new gift card, had you?
- A.** On that day?
- Q.** Yes.
- A.** No.
- Q.** Therefore, how do you think then that you were able to use another card if you hadn't purchased any gift cards to buy your shopping?
- A.** Because you don't have to purchase the gift card on that day. You can have the gift card and you can have it for several months before you actually use it.
- Q.** Okay, thank you.
- Mrs Eva:** Good afternoon. Could you just clarify for me to begin with what your position at that time?
- A.** Dispensing optician.
- Q.** And were you a manager?
- A.** Yes, I suppose I was managing the department, but technically I wasn't the manager. The manager at the time was my line manager, Steve Bone.
- Q.** What was the problem with the two pairs of glasses? Why did the lens need to be changed?
- A.** The lens needed to be changed but, to be honest, now, I really cannot remember why. I think there was a problem with the prescription, but I cannot remember what the problem was.
- Q.** If a customer is presenting a problem with two pairs of glasses – so you obtained authorisation and loaded the gift card with the money for two pairs, and the customer subsequently collected one pair for £25 – would you not have expected that customer to have come back for his second pair by now?
- A.** I would have done, but I was not aware until earlier on that he hadn't been back, but perhaps the people who were there afterwards were not aware of the fact that we were going to change his second pair of glasses. I really don't know.
- Q.** Yes. I am thinking the customer himself would come back saying here is my second pair?
- A.** Yes.
- Q.** Why is there a difference between the price of the lenses; one at £25 and one? –

**A.** It was a different type of lens, but I really cannot remember what type of lenses they were, but it was a different lens, either reactolite or a varifocal or something like that. I don't know.

**Q.** You did actually have a staff locker at the time?

**A.** Yes.

**Q.** Would you normally use the staff locker?

**A.** Yes.

**Q.** Just one more question. You said to one of my colleagues that you would put more money on your card during the month? You would load your Asda gift card, so on the particular day in question, why would you use more than one card? Would you surely not load the same card the whole time?

**A.** Yes, if I had that card with me, but I might not have had that particular card with me at the time if I had left that at home, so I would then pick up another card at the checkout. When you are loading the money up, you might decide only to put £2 or £3 on and just do it in instalments, if the intention is that you were going to use it for Christmas, for example. That was how I initially intended to use the card, to put perhaps £2 or £3 on each time I went through the checkout, and then use it towards, say, Christmas shopping or Christmas presents or whatever, but that isn't actually how it worked out in the end. However, that was my intention.

**Mr Varley:** Was that your usual method then of loading up your own gift card when you went through the checkout? You bought some goods and rather like a cashback you had your –

**A.** Yes.

**Q.** So you would have used your debit card to pay for your goods and then to have the increased amount going on the top?

**A.** Yes.

**Q.** So you actually would have been able to, and still could, check on these amounts on the bank statement? When this happened – I know two years has gone by now – but you would have known what shopping you would have done, say, within the last few weeks and an approximate cost and then the balance has to be the amount that you put on your card and, therefore, you would have been able to prove that you actually had a card.

**A.** Yes, but the amount that would show up on my bank statement would be total transaction.

**Q.** Sure, I agree that.

**A.** And not for the amount that was actually loaded on to the gift card.

- Q.** Yes, but you would have some idea what your shopping bill was, and the £10, £20 or £30 extra, you would know what that actual payment was when you topped up your card.
- A.** Not necessarily, because I didn't necessarily top it up on a regular basis, as I have already said. I might do it two or three times in one month and then not do it for three or four months.

**Lady Wall:** Mrs Norris, why did you offer to resign?

- A.** At the time of the investigation and the disciplinary I had actually sprained my ankle and I was in a great deal of pain and, at the time, the pain and what was going on was just too much for me to deal with. The painkillers I was receiving from my GP were actually making me more ill, so I had to stop taking those. I also had a few personal issues in that my aunt was dying with cancer and a very close friend was also dying with cancer, and that upset me greatly. The other issue, which to me was the main issue, was a couple of months earlier in June of that year I had been suspended by Asda pending an investigation. I was actually reinstated at the end of that. However, I was put on a final warning, which lasted 12 months.

**Q.** For one event?

- A.** For one event, yes. I had been put on a final warning, which lasted for 12 months. So if I was to put my foot wrong on anything then I could be dismissed. I knew I probably would be dismissed, so that was perhaps the deciding factor in resigning.

**Q.** My last question is why did you offer to pay the money back?

**A.** Why?

**Q.** Why. Your case is that you haven't been dishonest.

- A.** But when it had been pointed out to me that that was not my card, I realised that obviously I had spent money that I haven't been entitled to, so I did offer to pay it back.

**Q.** Don't you think that spending money that you weren't entitled to is being dishonest?

**A.** It is, yes, but I hadn't realised that that wasn't my card.

**Q.** I am not sure that I understand that. At the point at which you offered to pay the money back, you didn't realise that it wasn't your card?

- A.** No. At the time when I offered to pay it back I knew then it was not my card, but at the time when I spent the money I didn't realise that it was not my card. Because I thought that that was my card at the time when I was spending the money. I then realised obviously that I had spent it and I hadn't been entitled to, so that is why I offered to pay it back if that makes sense.

**Ms Huka:** Is it right that you would not have had your bag on you when you were working because it would be in your locker?

- A. Yes.
- Q. Therefore, would have been carrying Mr Woods' card around with you? If you didn't have your bag, where was Mr Woods' card?
- A. I thought that Mr Woods' card was in his record. Obviously I didn't put it in the tray with the record card or it was later separated from the record card.
- Q. Are you saying that somebody else could have separated it from the record card?
- A. Anybody who worked on the department could have separated it from the record card – anybody who had access to the records.
- Q. But even if they had separated it, how would you have come in possession of it?
- A. The only thing I can think of is that it had been separated from the record card and been left on the workbench where we did the repairs and frame adjustments.

**Lady Wall:** But following on from that, the first date on page 38 was on the 22<sup>nd</sup>. That is when you put the £90 on the card and then the following day the £25 was taken off for the replacement of the lens, even though it was not the proper thing to do, and at this point it must have been in the customer's tray.

- A. Yes.
- Q. But you used it in the shop two days later, and you are not allowed to carry handbags or wallets around with you, so you can see that in those trays that card had to have been picked up by you and put somewhere and then taken out again two days later in order to purchase the goods on the 25<sup>th</sup>.
- A. On the shop floor we were not allowed to have handbags or wallets or purses with us. However, we did have a card carrying case usually. Most of the colleagues have a card carrying case. Before they start work on the shop floor they have a swipe card, so just before they go into work on the shop floor they have a swiping-in machine where they swipe their card at the start of their shift, and at the end of their shift they swipe out again. They usually swipe in and out when they are taking a lunch break. If they just go for a 15-minute afternoon tea break they don't need to swipe out for that because that is a paid break, but if it is a meal break then they have to swipe in and out because that is unpaid. So they have that card with them.

They also had another card which was called a Smart card. That card gave entry to the store by way of a unique pin number to that card, and that card was used in the canteen, in the vending machines and to pay for any food that you wanted to order from the canteen there. You just loaded money on to those. So we had those two cards with us and usually they were the cards that we carried in our cardholders. Some other colleagues did have other cards. They may sometimes take a bank card on to the shop floor with them, but it isn't company policy to do that. I did have the card-carrying case and I

had those two cards, and I would put little notes in there as well, information on voucher values for NHS patients and aide-memoires to help me with the job basically. I did occasionally carry a store gift card in there although technically I know it wasn't store policy.

**Q.** And so what happened to Mr Woods' gift card?

**A.** I do remember putting it in the tray, but what happened to it afterwards I cannot remember.

**Q.** I just wanted to check that nobody else had any further questions. [No] We will have short break then. Thank you.

*[Hearing adjourned at 14.30]*

*[Hearing reconvened at 14.47]*

**Lady Wall:** I am going to ask our Legal Adviser to place his advice on the current situation on the record.

**Mr Watson:** I should explain for the benefit of the transcripts - and so that any reason for this unexpected adjournment that I asked for is clear on the face of the record - that it came to my notice during the questioning of Mrs Norris that the Panel had available to them this morning a small extra bundle which has not been referred to in evidence. The simple reason is that it was on their tables described as a Service of Notice of Inquiry bundle and was clearly placed there simply in case those documents became relevant to the question of service had there arisen the circumstance in which the Registrant was not able to attend today.

Within that bundle there is a reference to the fact that the Registrant had come off the Register more than 10 years ago for one or two years, and my concern arose from the fact that that reference might be interpreted as meaning that there had been some previous culpable event or finding against this Registrant, which clearly would amount to prejudicial information to place before the Panel at this fact finding stage. Several members of the Panel – indeed, as I now understand, the majority – had assiduously read the material because it was placed before them as, indeed, they are encouraged to read all pre-reading material, and had noted this reference, and it seemed to me that now it had been brought to my attention that the background should be explained and discussed.

I have had an opportunity in the adjournment both to inform Mrs Norris of the problem and to ask Ms Gillet to take instructions, and I will allow her to indicate what the innocuous explanation for that reference in fact is.

**Ms Gillet:** Thank you very much for your time, Madam, and it is perfectly right that the break be taken and this matter investigated properly. May I say I hadn't

seen that document at all until it was brought to my attention by your learned Legal Adviser. Having made enquiries, on the computer system it is very clear when you look at the page behind that the reason for the erasure, and that is that in 1999 no subscription fee was received, and it would appear that Mrs Norris ceased to practise for a number of years, and then began her payments again when she began practising again. So there is nothing untoward at all.

May I apologise for the perhaps salacious use of the word “erasure”. Perhaps “removal” would be more appropriate in those circumstances, and then there would have been no concern. I understand where the concern comes from. It is quite right that it was brought to our attention, and I apologise for any inconvenience that is caused, in particular to Mrs Norris. There is nothing in that document or behind that document to suggest there have been any previous concerns with Mrs Norris. I can assure the Panel of that.

**Mr Watson:** Thank you. So if I may close the loop, as it were. I advise the Committee that this bundle – which is not relevant to these proceedings today because the Registrant has attended – and all its contents should be put out of your mind because it is not part of the evidence that has been adduced, and I am not aware that there is any other prejudicial information within it. Nevertheless, it is not relevant and not evidence in the case, and you must disregard it all.

In relation to the specific reference, it is quite clear on explanation that there is no culpable, prejudicial event that lies behind it. Therefore, you should approach this case, it appears – and I will be advising you – in the light of what has been said on the basis that the Registrant is of previous good character, and I will give the appropriate direction in due course.

**Lady Wall:** Thank you. Mrs Norris, that is the end of your evidence unless there is anything else you want to add. The Panel have finished their questions, and the Council representative has also finished, but you are still there, so now is the final opportunity to say anything that you want to. It is just we have had this unfortunate break, and otherwise I would have closed your evidence earlier. Nothing else?

**A.** No.

*[The witness stood down]*

**Ms Gillet:** Madam, if I may address you briefly in relation to the facts; just looking at page 3 of your bundle – that is the Notice of Allegation – you will see that Allegation 1(a), (b) and (c) contain what I refer to for ease is called the factual particulars, so the background, the story to this event. The Panel can be assured having heard the evidence from Mrs Norris and her admissions at the outset that there is no dispute about the facts. Mrs Norris accepts that she used the card at the self-service tills on the dates as alleged when she was

not entitled to do so. The only issue which remains for the Panel to consider is whether or not those actions were dishonest, and I will leave it to your learned Legal Adviser to give you the relevant guidance in the case of *Ghosh v General Medical Council* [2001] 1WLR 1915.

Dishonesty is explicitly alleged by the General Optical Council and, therefore, it is for the General Optical Council to prove on the balance of probabilities that those actions were dishonest and, Madam, that can be a rather difficult task as one would never be able to point to actual evidence of another party's state of mind. There is no video evidence, for example, available for what one is thinking at any given moment, but what the Panel can do – and I would invite the Panel to do – is to look at the circumstances surrounding the actions and to, by reference of those surrounding circumstances, come to a conclusion about whether or not it is more likely than not Mrs Norris knew that her actions were dishonest, and I am going to suggest to you that you should be left in no doubt that that is the case.

I am just going to headline what I say are those relevant surrounding circumstances if I may. The first is that the wrong policy was used in order to process what may well have been originally a legitimate claim from a customer. It is clear that there were two policies; one under general wastage and the other used if there had been damage. It is clear in these circumstances that there was no damage, and in my submission the Panel may draw some inference from the use of the wrong policy in those circumstances. The second point is that there was far more money placed upon that card than there should have been. Now, you have heard an explanation from Mrs Norris as to why that was. I would suggest to the Panel that that is inherently unlikely, and that there is nothing in the documentation which supports her position.

The statement of Mr Asif Motala is very clear on what he saw in the order tray in relation to the documentation and that there was only ever one set of glasses which Asda were aware of, and that, certainly, Mr Woods has never arrived at a latter date with a second pair expecting them to be fixed.

The third point, which was helpfully raised by Mrs Eva, was that there, of course, should be no bags or wallets on the store floor. That is accepted by Mrs Norris, and she accepts that she would not have brought her handbag or wallet on to the floor. There is some explanation about whether a cardholder was being used but, in my submission, there is no legitimate expectation or reasonable explanation that has been put forward to explain how honestly a card could have accidentally found its way into Mrs Norris' possession. The third issue is the fact that the card was in Mrs Norris' possession and was used not once, not twice, but three times on three consecutive days.

My fifth point, Madam, arises from Mr Varley's questions and the receipt we can see at page 42 of the bundle, and that is the use of the two cards on the

first occasion. There is ample opportunity, and there has been full explanation given in the interview, about the muddle for her Mario card, as we know it. It is now clear that she had two cards with her, in fact, on the day of the first purchase, and until that was pointed out to her, there has been no explanation as to how that could have legitimately come about. I am going to suggest that if it is true that she had multiple cards on her person on a regular basis that those cards would have been presented from the outset to the investigation at Asda in order to say “Look, here are my cards. I don’t know, is the Mario card in there? This is how often I use them. Please check them. You will see that I use these regularly”. None of that was forthcoming at all until Mr Varley quite correctly pointed out the position, and then and only then, does Mrs Norris react, and I will say that it was a reaction to that question, not volunteering an honest account, if I may put it in that way.

The sixth issue I would like the Panel to take into consideration is the fact that Mrs Norris did not use her store discount card, and if Mrs Norris’ position is correct, that funds were tight to the extent that she would need to allocate money for groceries at the beginning of each month and put it aside on to various store cards, then it is inherently unlikely that she would have gone without the 10 per cent discount on three consecutive occasions. There has been an explanation of sorts put forward today, that it was in her husband’s possession as the nominated other user but, again, this is the first time that it has been put forward, and even if that had been put true at an earlier point, I would suggest it is inherently unlikely and that the Panel can draw inference from that that the reason Mrs Norris did not use her store card was because she did not want those purchases to be traced to her.

The seventh point is what the Panel may feel is an evasive attitude to difficult questions during the interview and, potentially, her resignation part way through that although, again, an explanation of sorts has been put forward.

Madam, as I have already mentioned, one cannot open a box and look in it and say there is the dishonesty, but looking at the circumstances of the use of the card, in my submission, there can be no other logical conclusion and the Panel can feel satisfied that it is more likely than not that Mrs Norris used the card with a dishonest intention.

Unless I can assist the Panel further.

**Lady Wall:** Thank you very much. Is there anything you would like to say to the Panel finally?

**Mrs Norris:** I cannot think of anything else that has not already been said.

**Mr Watson:** I only emphasise that this is your opportunity to look at, as it were, all the evidence in your mind in the round that you know the Committee are aware of and to advance to them any comments or arguments or explanations

in addition to the evidence you have given about the facts, but any argument that you would like them to look at, any reason why you think they should view the facts differently from the way in which the Council have invited them to view the facts. So it is an opportunity that you have to respond to the comments. It was not an illegitimate submission at all, but it is your opportunity to respond to the comments that the prosecution have made. Again, it is a matter for you.

**Mrs Norris:** *[Pause]*

**Mr Watson:** Do you want any time to consider or are you content that the Committee should hear the next stage, which is for me to address them in terms of the legal guidance framework in which they must take their decision, and then they will ask you to retire and deliberate on this question. Are you content that we go ahead with that process or would you like a few moments to collect your thoughts and decide whether or not you wish to make any comments in reply? *[Pause]* That is a question from me. I am asking whether or not you are content for the proceedings to go on now or whether you want to have the opportunity to reply.

**Mrs Norris:** *[Pause]*

**Lady Wall:** Do we take it that you do not want to say anything? We are giving you the opportunity to say something in order to counterbalance what Ms Gillet has said, in fairness, because what we have to do is basically a weighing-up job. You are not represented and, if you like, you can have some time outside to think about what you want to say or write it down and read it to us, if that would make you more comfortable, but this is your opportunity to do it. If you don't want to say anything then we go on to the next stage, which is the Legal Adviser gives the Committee legal advice, and the case proceeds according to the Rules. If you do not have anything to say, then you do not need to feel under any pressure to say it.

**Mrs Norris:** I don't think I have anything to say.

**Lady Wall:** Right. Thank you. As long as you have had the opportunity, that is what is important. That whole procedure was explained to you right at the beginning so it should not come as a complete shock, but anyway you have been given the opportunity and if you don't want to take advantage of it that is your right. The Legal Adviser will now advise the Committee.

**Mr Watson:** Thank you. My advice to the Committee is only that. It is advice as to how to approach matters. Ultimately, the Committee must determine its own approach explaining, however, the reasons why its approach departs from the advice that I offer if it chooses to do so. The task before it at this first stage of the proceedings is to determine the facts which are alleged in the Notice of Charge, conveniently set out at page 3 of the main bundle and, of course, the

facts that are not in dispute are paragraph 1. The facts that are in dispute are those at paragraph 2. That is an important distinction to bear in mind because as it has been rightly outlined at the commencement of these proceedings, the burden of proof lies on the Council and the standard of proof is the civil standard, that is to say, the balance of probabilities. The standard of proof need only be applied to disputed facts, and so although, ultimately, you have to be satisfied that all elements of the charge brought, the Notice of Allegation, are proven.

In relation to paragraph 1, unless you are not satisfied in all the circumstances, you do not need to apply the burden of proof or the standard of proof in the sense that you can, if you choose, accept the fact that those are not disputed allegations.

Paragraph 2, however, is an allegation that all those actions in paragraph 1 were dishonest. Dishonesty is a serious charge and must merit careful consideration. The way in which you should approach that element of the charge must be, as I advise you, a carefully structured set of questions, and the reason for that is that although the test arises from, as has been indicated, the case of *Ghosh*, it has been emphasised that in the regulatory sphere – that is to say, the sphere in which this Committee is making its decision – the Committee must be guided by considerations which are slightly different from elsewhere, *Ghosh* being a criminal case.

What I emphasise to you is that the test for dishonesty and regulatory proceedings involves a two-stage test, and the Council must satisfy you to that civil standard of probability that both elements of the test are made out. The test, as I have identified, is the civil standard. It is an unvarying standard, and does not alter simply because the charge is one that involves dishonesty and a matter of seriousness. As a matter of commonsense, you will wish to look with particular care at the quality of the evidence before - and if - you find that allegation proven. You will wish to bear in mind the competing factors that may bear on whether or not the prosecution have proved its case on the facts, having proper regard to the fact that the Registrant is unrepresented and has, therefore, tendered her evidence to you without, as it were, the guidance of a representative here to assist her.

With that in mind, the questions you must ask yourself is, first, whether or not the prosecution have proved the objective element, that is to say, did the Registrant act dishonestly on one or all of those three occasions, considering them separately, and considering dishonesty by the standard and the ordinary standard of reasonable and honest people?

If you decide that, objectively, looking at the matter from the outside, the Registrant's actions were dishonest by the ordinary standards of reasonable and honest registrants, then you must go on still to consider the second subjective element. It is only when that second subjective element has been

proven that dishonesty is made out, and that subjective question is the following: was the Registrant aware that by those standards – namely, the standards of ordinary and honest and reasonable registrants – she was acting dishonestly? That is subjective because, in other words, it asks you to be satisfied that from her own perspective her actions were dishonest.

The important additional element in this case that you must have full regard to and give proper weight to is the Registrant's previous good character. You have heard that despite the matter that concerned us a few minutes ago, which has been put to one side and resolved, that in fact the Registrant is a person who in this context, that is to say the decision you have to take, is a person of good character. Good character has two effects. Good character means that although it does not in itself provide a defence to an allegation of dishonesty, it is a matter which can be properly relied upon by the Registrant and should be taken into account, first, because it may support the credibility of her own evidence, which I suggest, in effect, was that she was not acting dishonestly on these occasions, particularly because of the background factors which may have distracted her, and did distract her, she believes, on these occasions and, secondly, good character is relevant because it may lend credence to the unlikelihood that this person did, in fact, behave dishonestly. She is entitled to say that, having established a good character over a considerable period of time as an employee, there is a certain unlikelihood that she would throw that away by acting dishonestly on these occasions. So those are two aspects which you must pay full regard to, and put in the balance, when you come to conclude on the evidence whether or not on the balance of probability the prosecution have proved the allegation of dishonesty.

The final matter that I must deal with in this case is because we are looking at questions regarding the motives and state of mind with which the Registrant acted more than two years ago, you must bear in mind that lapse of time. You must bear in mind that delay can affect the memory adversely and you must make allowance for that. You must make that allowance not only in the case of the Registrant herself in all fairness, but you are entitled to make that allowance on the other side in relation to the evidence that you heard called on behalf of the Council. It is a factor which you must simply bear in mind engaging the evidence. You must not speculate on evidence which due to the passage of time is not brought before you. You must make your decision only on the evidence available to you. It is engaging the quality of that evidence that you take into account delay.

Other than that, and other than the reminder that you must give reasons for the decision that you come to, and that your decision at this stage is limited to paragraphs 1 and 2 of the charge and does not concern yet whether or not those give rise to the misconduct alleged, let alone impairment – because those questions would only arise in the event that paragraph 1 and 2 were

proven – other than those riders, that is the guidance I offer unless there are matters that either the Registrant or Ms Gillet would wish to canvas.

**Ms Gillet:** No, sir.

**Lady Wall:** Thank you. Would you then withdraw whilst we consider everything that we have heard?

*[Hearing adjourned at 15.15]*

*[Hearing reconvened at 17.00]*

**Lady Wall:** Our Legal Adviser would like to supplement the advice he gave before we retired to consider this case.

**Mr Watson:** I wish to place on the record that whilst the Committee was deliberating on this stage, I supplemented the advice that I offered the Committee before it retired as, on reflection, I should have incorporated guidance relating to character when I gave my initial advice. In specific terms, during her evidence the Registrant made reference to a problem that had arisen between herself and her employers some time prior to these events, and gave evidence of that, chiefly by way of an explanation for her decision to resign in September 2009.

I advised the Committee that the problems that had arisen between her and her employers were of no relevance whatever to the decision that they had to take, and that they should put completely to one side that event in any way which might be detrimental to the Registrant, and should remain treating her as of good character regardless of any issue that may have arisen, which may have been of no relevance whatever to these proceedings and her fitness to practise. Thank you.

**Lady Wall:** These are our findings in relation to the particulars and the facts of the allegation.

## **DETERMINATION**

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

The Registrant was employed at Asda 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, 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 staff 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, if at all, as the Registrant maintained at interview the customer had brought back two 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 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 three 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.

It is 5.10pm, and the Committee has to think about the continuing process of this case, and I am going to ask the Legal Adviser to give an indication of what we might be doing tomorrow.

**Mr Watson:** As the Committee are aware – and I repeat it on the record so that it is clear, particularly for the benefit of the Registrant – that having found the facts proved in the charge, the Committee now have to proceed at least to one, if not further stages, tomorrow, the first of which is to decide whether on the basis of the facts found proved that it is satisfied that misconduct has also been proven. If misconduct is proven in the Committee's judgment, the Committee then have to embark on a further important stage, which is to decide whether this act of dishonesty and then, if you so find, misconduct arising from it, gives rise to impairment.

The advice that I will be tendering to you tomorrow conventionally is the Committee must view the question of impairment in the light of circumstances as they are today, bearing in mind both the acts proved in the past and also any evidence which the Registrant wishes to bring forward at that stage, which indicates wider aspects of her background and her current fitness to practise. In a case of this kind, whilst that is not a stage where true evidence as to mitigation can be advanced, evidence, which in a colloquial sense might be described as mitigation of what has happened since August 2009, is evidence which the Registrant is entitled to ask the Committee to bear in mind subject to its relevance.

That is the pathway for tomorrow. The first stage as to whether or not misconduct is found proven is a stage at which the Registrant is entitled to adduce evidence, but it is perhaps a matter for submissions rather than evidence. However, the next stage, if we proceed to it, in terms of impairment is a stage at which if the Registrant wishes to do so she should be aware that she should come able to adduce any evidence that she wishes the Panel to bear in mind at that point.

Lastly, if impairment were to be established after those two stages have gone through, then the third stage which one would proceed to would be the stage of sanction and, certainly, before the Committee were to decide on any question of sanction, evidence of mitigation is evidence that they would ordinarily take into account if placed before it, and so that may assist the Registrant to understand the material that she might wish to bear in mind for tomorrow. Is that sufficiently clear? [*Pause*]

**Lady Wall:** Mrs Norris, you do not look as though you have understood perhaps everything that our Legal Adviser has said, but what he has stressed is that it is very important that if we go on to other stages tomorrow, that any information you have, especially if it is documented, about what you have been doing for the last two years and any other personal factors which you think we ought to know about, we are giving you notice now so that overnight you can consider that and, if necessary, provide the information tomorrow morning and afternoon so that we have as much information as possible. Do you understand that?

**Mrs Norris:** I think so.

**Lady Wall:** Good. Well, it is a quarter past five now. I think we start again tomorrow at half past nine, and we will expect to conclude the case tomorrow. So that is all for today, but please bear in mind our advice as you are unrepresented for tomorrow's stages. Thank you.

*[Hearing adjourned at 17.15]*

**DAY TWO**  
**Friday, 27 January 2012**

*[The Hearing commenced at 09.40]*

**Lady Wall:** Good morning. This is the second day of our hearing into the case of Mrs Norris and we concluded yesterday by finding the facts proven and giving our reasons. Today we are onto the next stage, and I am going to ask the Legal Adviser to make it absolutely clear what the next stage is.

**Mr Watson:** Just for clarity, the next stage the Committee have to consider is whether or not, on the basis of the facts found proven, the actions that have been proven in their findings amount to misconduct. That is a relatively limited matter in terms of scope and will be for their judgment. Nevertheless it is a separate stage and the parties are entitled to adduce submissions and, exceptionally, in my judgment but nevertheless I will wait to hear, to adduce additional evidence. It would be normal for the finding or otherwise of misconduct for that decision to be made simply on the basis of the facts that have been found in Stage 1. That is as I see it.

**Lady Wall:** Thank you.

**Ms Gillet:** Madam, I agree and thank you for the time allowed this morning. I am very grateful for that. The Panel have found dishonesty. It's not a matter for the Council to prove now, it's a matter for the Panel's professional judgment as to whether or not that amounts to misconduct. However, in cases such as dishonesty, where an individual has been put in a position of trust by their regulator, by members of the public and by their employer, and has wilfully breached that position of trust, the Panel may feel that they have little difficulty in finding that those actions, especially when not a singular act but a series of actions, would amount to misconduct in its ordinary meaning. Unless I can assist the Panel any further?

**Lady Wall:** Thank you. Now Mrs Norris, it is your opportunity to make any submissions to us about the question of whether the facts as we have found them, whether we are going to conclude that they do represent misconduct which is a different test to the actual facts that we concluded yesterday. You have an opportunity now to tell us why you think that we should not conclude that misconduct follows from the facts that we have found.

*[Pause] [Confers]*

The Legal Adviser has suggested that, although the normal way in which we do this is to hear from the Council and then from the Registrant, or the Registrant's solicitors if represented, and then the Legal Adviser gives us advice and then we make our decision, as you are looking rather puzzled

about this matter it might be better if the Legal Adviser gives his advice to the Committee first, and then we give you an opportunity to say anything you want to say which you might have been prompted to think about as a result of his advice.

**Mr Watson:** I advise the members of the Committee that having passed the first stage of the proceedings, the question of misconduct as to whether or not the facts amount to misconduct or do not amount to misconduct is entirely a matter of judgment for the Committee; it is not subject to matters of burden of proof or standards of proof. As to the question that you are asked to consider, I remind you that misconduct is one of the grounds on which a Committee may, if it finds misconduct, go on to consider whether or not that misconduct is of sufficient gravity and of a nature so that it may provide a basis upon which a further decision may, or might be, taken as to whether or not the practitioner's fitness to practise is now impaired.

I identify that question as a future and only potential question simply in order to separate it out from the more limited decision which you have to take at this stage, which is simply whether or not the facts found proven amount to misconduct which *may*, and I emphasise the word 'may' because you're not yet considering this, but may be of a sufficient nature to be capable of basing a finding of impairment upon in the future once you have heard more evidence about that later question.

"Misconduct" has been defined as a word of general effect; it involves some act or omission which falls short of what is proper in the circumstances. The standard of propriety to be expected of a professional is that which is ordinarily required of that kind of professional in the context of that profession. It follows that the GOC's own Code of Conduct is a useful starting point, and I remind you that the Code of Conduct enjoins practitioners, and those who are on the Register, to be honest and trustworthy. It has to be emphasised that misconduct does not mean, therefore, any minor act or omission which falls short, but something which is sufficiently serious or sufficiently grave as a departure from ordinary professional standards that it may, subject to wider considerations that will then later have to be fed into the equation, be capable of forming a ground of impairment. So it is that limited question that I invite you to consider.

**Lady Wall:** Now, having heard all of that Mrs Norris is there anything that you would like to say to us?

**Mrs Norris:** [*Pause*] I think so.

**Lady Wall:** I'm sorry?

**Mrs Norris:** Yes.

**Lady Wall:** There is something that you would like to say to us? We're asking you if there is anything that you would like to say to us about the question of whether the facts can be understood as misconduct; we are asking you for your comments, submissions. Is there anything that you want to say about that?

**Mr Watson:** Again, I remind the Registrant that there's no obligation on you to address the Committee; it is simply a stage that the Rules require the Committee to go through by way of a sequential step. So they give you the opportunity to address them.

**Mrs Norris:** *[Pause]*

**Ms Gillet:** Madam, I wonder if it might be appropriate if I assist just on matters that Mrs Norris has already brought to the Panel's attention. She did express that there were personal difficulties in her life at the time, although this was a series of incidents that perhaps it could be looked at in context of those personal difficulties, and that it was an issue which could be seen as partly affected by that distraction and not the most serious of dishonest actions. That would be one interpretation of it and maybe the interpretation that Mrs Norris would urge upon the Panel.

**Lady Wall:** It is for Mrs Norris to make a submission to us. It is very helpful that you have reminded us of that. Of course, we were aware of it because that's what you said yesterday.

**Ms Gillet:** I wondered if that might trigger with Mrs Norris a point that she wishes to raise with the Panel?

**Lady Wall:** Yes. Does it trigger anything you would like to raise with the Panel?

**Mrs Norris:** *[Pause]*

**Mr Watson:** Perhaps I can just assist? So that the Registrant is aware, the Panel, in making its determination on this issue, of course take into account the body of evidence that it has heard yesterday whether or not that body of evidence has been reflected in the specific findings in Stage 1. The specific findings and determination made yesterday were directed only to whether or not the facts have been proven. What evidence was given yesterday will in its entirety be taken into account by the Panel.

*[Pause]*

**Lady Wall:** Would it help if you had five minutes to think about it outside the room Mrs Norris?

**Mrs Norris:** I think it probably will be.

**Lady Wall:** We will adjourn for five minutes then for you perhaps to think about what you have heard, and even perhaps to make some notes, and then come back and say what you would like to say to us. So in five minutes; it's five to ten now so you can come back at ten o'clock.

*[Hearing adjourned at 09.55]*

*[Hearing reconvened at 10.15]*

**Lady Wall:** Right, Mrs Norris, we understand that you are going to be able to say something to us?

**Mrs Norris:** Yesterday, I had mentioned that there were a few personal issues in my life which had affected me and I think basically that they did distract me at the time. In two cases, well, actually in four cases, there were four people that I was fairly close to who had recently **redacted**, in early 2010. Another incident that I did mention was that a few months earlier I had been suspended from Asda. That actually was an incident where I realised at the time that I had made a mistake in the job. At the time, when I realised the mistake I had made, I actually realised the full implication of it, but with that in mind I still alerted Asda to what had actually happened. I alerted the Duty Manager who at the time on the day in question was Murali Karri, and I did try to explain to him the full implication of what had actually happened but, not being from an optical background, he didn't fully understand it. Then I did advise Asda House at the earliest opportunity which was on the Monday morning. It was a couple of days later, when I think everybody around me realised the full nature of the situation, that I was suspended but as I did say, pending investigation, I was reinstated when they realised that I hadn't wilfully done it, it had been a mistake and I was due for retraining on the issue. But that was still at the back of my mind because that had only happened a couple of months earlier and I was due to go for the retraining in September.

**Lady Wall:** Could I just clarify, did you say you were reinstated?

**Mrs Norris:** I was reinstated, yes. But I had been placed on a final written warning which said that if I put any step out of line, then I was told that there would be no question that my contract would be terminated. I think that's it for now.

**Lady Wall:** Thank you very much. Is there anything that you want to add to your own advice?

**Mr Watson:** No. In exercising your judgment, you will take into account not only yesterday's evidence but the submissions and matters that have been raised insofar as they are relevant to this question.

**Lady Wall:** Thank you. Would everybody then please withdraw while we make our decision?

*[Hearing adjourned at 10.20]*

*[Hearing reconvened at 10.30]*

**Lady Wall:** These are the Committee's findings in relation to misconduct.

### **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.

However, the Committee is satisfied that the findings made in its determination on the facts reflect a serious departure from professional standards and 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.

Ms Gillet?

**Ms Gillet:** Madam, the next stage which the Panel needs to consider is whether or not in light of your findings, Mrs Norris' fitness to practise is currently impaired. Again, it is a matter for you, exercising your professional judgment, and not a matter in relation to which you need to hear evidence from the Council. However, if I may just point to what I say are some relevant factors in the case that you have heard so far, clearly this was a serious breach and a breach over a period of three days, if you only take into account the actual purchases, and perhaps a few more days if you take into account potentially the taking of the card.

In circumstances such as that, and where there has been no insight or recognition from the Registrant as to the either the facts of the incident itself or the impact that that would have on the profession and the confidence which the public would have in the profession as a whole, it is difficult to see what evidence the Panel may be able to find to assist them in feeling that the situation has changed now from when the incident was committed in 2009.

Of course, there are two issues sometimes determined as the public and the private factors. The private factor is of course something for Mrs Norris to

address when I have already made some points about dishonesty in general and what steps can be taken to remedy those issues. But of course the public component is an important issue and that is whether or not, even if those remedial steps had been taken, members of the public would feel confident that their faith in the regulatory process and the professional body of dispensing opticians is continuing to be undermined as a result of those actions in 2009. Unless I can assist the Panel any further?

**Lady Wall:** [*Confers*] Mrs Norris, I am going to depart from our normal procedure in the sense that we are going to now ask the Legal Adviser to give the kind of advice he would give to the Panel, and then hear from you, and that will give you some idea of what it is that has been said against you and what you can say to us in response.

**Mr Watson:** The guidance that I offer to the Panel which is going to form a framework upon which the Panel will consider the question of impairment, unless giving reasons they decide to depart from the framework that I offer, is as follows. Whether a registrant's fitness to practise should be regarded as impaired must take account of the need to protect the individual patient, the collective need to maintain confidence in the profession as well as declaring and upholding proper standards of competence and performance. There is no precise definition of impairment in the context of fitness to practise, nor is that concept one which is susceptible to either burdens or standards of proof.

In short, whether or not the Registrant's fitness to practise is impaired is a question for the judgment of the Committee, but it will arrive at that judgment, as it were balancing the evidence that it has about the misconduct, any other evidence which goes to the relevant questions that I will outline in a moment, and then ask itself whether or not in the light of those matters the fitness to practise, and the fitness to remain on the Register of the General Optical Council without restriction, is impaired or is not impaired. Anyone's fitness to remain on the Register is a question which must balance, as it were, their qualities, their capabilities and their fitness in the general sense against the public interest factors that I have already outlined.

The question of impairment must take into account the fact that the purpose of this regulatory body is not to punish for errors or for failings, but to protect the public from those who are not fit to practise and to maintain the standards that have to be adhered to if the public itself is to maintain confidence in the standards of those who are on the Register of this profession.

This is the important part for the Registrant to take into account. The question of impairment which the Panel have to consider asks whether the Registrant today, and looking forward, is impaired in her fitness to practise. In other words, the question of impairment, as it has been said, looks forward from today rather than looking back. In order to form a view as to the Registrant's fitness to practise today and looking forward, it is necessary, and it is

appropriate, to have regard to what you know both about the facts that you have found and in relation to what you know about the Registrant more generally. The Registrant's current fitness to practise must be gauged partly by reference to her past conduct and also by reference to what has happened, if it is relevant, in the period of times since August 2009 to today, and indeed must be gauged against any other relevant material that she wishes to place before the Panel which bears on the question of her fitness to practise and to remain on the Register in an unqualified way today.

In some cases, misconduct in the past will be a sufficient basis to conclude that the Registrant's fitness to practise is impaired today, even though that misconduct occurred some time ago, and even though the Registrant may adduce evidence as to the ways in which he or she has either addressed their past misconduct, or remedied, or put those acts of past misconduct in a sense behind them.

The reason why past misconduct may form a sufficient basis for a finding of impairment today is that the nature and gravity of past misconduct may, in the Committee's judgment, be such that it violates the rules and standards of the profession in a way which must lead to a conclusion that the Registrant is still impaired today, and must lead to that conclusion if proper standards of conduct and public confidence in the maintenance of those standards is to be upheld. But, in deciding whether that is an applicable approach to a particular case, the Committee may also weigh in the balance and conclude that an acknowledgement of fault, any evidence as to remedial steps, any evidence, reassures the Committee that past misconduct will not be repeated and that there is a fundamental degree, a high degree, of insight into the past misconduct. Those are matters which may, in appropriate cases, be put into the balance and may have a bearing on whether or not it is appropriate or necessary to make a finding of impairment today in the particular circumstances of the case.

So it follows from the advice that I have offered that the Committee will approach this question, taking into account, first, the nature of the conduct that you have found; secondly, the context in which it occurred; thirdly, the Registrant's perspective on why it occurred, and what she has done since. Next, the Registrant's own evidence, or material if she places it before you, which go to the question of insight or go to the question of the degree into which that past misconduct has been addressed, or insofar as misconduct of this kind can be remedied or addressed, remedied.

I close only by reminding you that it is the risk of repetition in the future that those questions of insight and remedy must go to.

I close only by reminding you of the useful encapsulation of the question that you have to address, set out in the relatively recent case of *CHRE v Paula*

*Grant* [2011] EWHC 927 (Admin), where the judge said this, encapsulating all that I have said so far:

“In determining whether a practitioner’s fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.”

That is an adaptation to this case of what is set out in paragraph 74 of the judgment in the *Grant* case.

The Committee will, having considered any material which the Registrant seeks to place before it at this stage, consider that question of impairment and of course will be mindful of the need to give reasons for its finding of impairment, if that is its finding, or indeed give its reasons for its finding that there is no impairment if that is what it concludes, either way.

With that guidance in mind, may I perhaps close by inviting the Registrant to consider whether or not there is any further material she wishes to place before the Committee, such material bearing on the questions that I have outlined? Such material can be presented either by giving evidence on any further matters from the witness stand, which is the normal and appropriate way to introduce any new, factual evidence which you wish to do so, but it is also right to say that if there are relevant documentary items of evidence which bear on the Registrant’s circumstances, and anything that she would wish the Panel to know about, either before, at the time, or since these matters occurred, then documentary evidence may also, in the Committee’s discretion, be admitted.

That documentary evidence in some cases takes the form of what one describes as testimonials as to character, conduct or activities and in other cases takes the form of the Registrant addressing the Committee and introducing any further evidence that she wishes the Panel to know about. So that is the guidance that I offer.

**Lady Wall:** Thank you for that. I hope that makes matters clearer, Mrs Norris. Is there anything that you would like to say to the Committee bearing in mind what the Legal Adviser has said, whether you want to do it by giving us documents or whether you want to tell us more about what has happened since these events on oath.

**Mrs Norris:** These [documents] are just from Asda, but they seem to be happy with the job that I was doing for them at the time.

**Lady Wall:** We are particularly interested in documents that show, as the Legal Adviser has said, what has happened since these events.

**Mr Watson:** Of course, evidence at the time may be relevant.

**Lady Wall:** Yes, of course, but it will be more helpful to your case if there is anything subsequent along the lines of remediation and signs that you have recognised the seriousness of the events.

**Mr Watson:** May I intervene to say that the Chair is not seeking to discourage you from putting forward the material that you have identified, but that she is simply attempting to help you and assist you by knowing that there are other areas that could also assist and might be of relevant focus. It might be of assistance if you are content, if the Registrant is content, that you show that material to Ms Gillet so that she can at least have notice of what material you are seeking to place before the Committee and that would operate as a filter.  
*[Documents passed to the Committee]*

**Mr Henley:** Shall I make copies of these now?

**Mr Watson:** It might be helpful, and it's only a suggestion subject to the Chair and the Committee, if we had a short break so that the photocopies can be made and then after the break, and it is entirely a matter for the Registrant, but she may wish to take the witness stand again so that she can simply explain each document, one by one, as the Committee see them and then they can absorb the new evidence as you produce it.

**Lady Wall:** We will have a short break now probably for ten minutes.

*[Hearing adjourned at 10.50]*

*[Hearing reconvened at 11.00]*

**Lady Wall:** Mrs Norris, thank you for giving us those documents. We have had them copied, they are now R1 and we have all been able to look at them. Now we would invite you to give evidence. You do not have to but it would be helpful to you and to the Committee. You will? Thank you very much.

**MRS HELEN NORRIS, recalled and reaffirmed**

**Lady Wall:** Mrs Norris, what would you like to say to us now that we are considering the question of whether you are currently impaired? That is the next decision we have to make.

**A.** When I was working for Asda I did enjoy my job although sometimes you feel like you have lost your way a little, but I did enjoy my job. I have to say that I did realise the seriousness of the events which took place and that was what led me to consider my resignation. My husband is retired but when he was

working he was in the food industry; he was in distribution logistics and working with manufacturers and since his retirement he has continued to do this type of work, on a consultancy type of basis. When I resigned from Asda, although I wasn't really depressed, I did lose my enthusiasm for the job and I have been helping my husband in his work doing sort of office work, really, for him. He also does some sports photography; basically taking team photographs of local junior football and cricket teams and he relies on me to do the computer work on that for him.

In relation to these documents, these are different 'thank you's' from work within Asda that we had done, and it was just that I felt that I was doing my job and it was something that I had enjoyed doing at the time. [*Refers to documents*] It was on a couple of occasions on this one here, it was helping out at Optrafair one year when Asda had a stand. I had really enjoyed doing that; meeting other people and talking about working for Asda. I was really enjoying it at the time and it was just a nice day. I really enjoyed it.

The next one was working in a professional development group; that was just the research. It was doing something that I wouldn't normally have done within my every day job. I did put in extra work at home on that and it was just something that I really, really enjoyed doing at the time. The final one, the small one, was just this was within the store. Most months they used to have, on pay day - each store was different but the store manager we had at the time liked to celebrate success within the store to improve colleague morale and I think it was just nice to be recognised. This one was really just for doing your job but it's nice at the end of the day when you feel like you've got a pat on your back. Maybe your boss, your manager, has just said to you, "You've done well today." You just go home feeling great, really. That's what I wanted to say about those.

- Q.** Is there anything else that you'd like to say to us about any personal matters and events or even health considerations? I should advise you that, firstly, you don't have to answer and secondly, if you do, it will not be in the transcript if it is matters that are exceptionally personal or health-related. But we give you the opportunity to say to us anything along those lines.
- A.** Another thing I just wanted to say; it may or may not be relevant anyway. Just a couple of years ago, two years ago, my mother quite by accident found herself in the position of raising money for charity for Help for Heroes. It wasn't something that she'd planned on doing, it was just something that just came about so she decided that with the money she was raising that she would send it to charity. She then decided, last year, that she was going to do the same again. I was impressed by her efforts from the previous year. In the space of a month, she had raised about £150 which is not maybe a great sum of money but, as I say, it was something unexpected that she had not planned on doing. I was impressed by her efforts so last year I decided that I would help her with raising money because she decided that she would do it again. Together we raised around about £400. This year we have decided that we

are going to do the same again and we've already started production, as it were, and the aim is to raise about £1000 and again, just for Help for Heroes. I just help with the making and then leave everything else to her. But I just feel as if it's my way of contributing to others. I think sometimes you feel that you want to help other people who maybe are less fortunate than yourselves and that's my way of helping, if I can help.

Healthwise, at the moment, there's nothing too out of the ordinary I would say.

**Q.** Well thank you very much for that. What we are considering is whether you are impaired in terms of your profession, so can you just tell us whether you have, in fact, worked as a dispensing optician since you left Asda?

**A.** I have done some work as a dispensing optician in a locum capacity and I have not had any incidents or anything -

**Q.** Could you give some idea of whether you are still working as a locum or whether you are likely to be a locum next week or some pattern of locum work?

**A.** Locum work can be quite sporadic. I would have hoped that next week I would be able to work as a locum. What I have been doing is, as far as any payment for spectacles or anything, when it comes to any processes through the till, for example, I actually don't handle the money. I hand that transaction over to somebody else. In that respect I can then deal with another customer or patient.

**Q.** So when was the last time you worked as a locum?

**A.** It was this week; I have worked this week on Tuesday.

**Q.** Have you been on any kind of courses or anything to help you keep up-to-date?

**A.** Up-to-date with?

**Q.** Professionally.

**A.** Not any sort of day courses or anything like that, but as far as CET has been I have kept up-to-date with the CET through the dispensing optics magazine and *Optician*.

**Q.** How do you get your locum work?

**A.** I do have a few contacts within the industry, and people maybe I have known for a few years, they may ring me and ask if I have any availability or not. But at the moment there's not a lot of locum work around.

**Q.** Do you go through an agency?

**A.** Currently? No.

**Q.** And have you told the people for whom you are working as a locum of the incidents at Asda?

**A.** One or two of the people I have told but I haven't told all of them. Because I do feel embarrassed about it.

**Q.** Thank you. Those are all the questions from me at the moment. I am now going to ask my colleagues, starting with Mr Hensley, whether he has any questions for you. I would point out that you don't have to answer but this is your opportunity to give us information which you have already done.

**Mr Hensley:** Mrs Norris, have you applied for, or are you currently applying for, any full-time jobs as a registered dispensing optician?

**A.** No.

**Q.** Do you have any intention to do so?

**A.** Do you know, I really don't know. I have been offered a couple of jobs, and it's just not what I want at the moment. Whether or not that will change in the future, I don't know. I'm sorry I can't be more precise.

**Mrs Huka:** Mrs Norris, in the bundle, and I can't remember whether it was in your evidence as well, you mentioned something about offering to repay the money to Asda.

**A.** Yes.

**Q.** Did you repay it?

**A.** No. I offered. What happened was that I offered to repay it; obviously they wrote it down at the time and they didn't ask me for the money. I had like a colleague representative in the meeting in the investigation process with me, and obviously I was a bit maybe shocked or upset at the time. I can recall when I had handed in my resignation letter and then afterwards, I went out into the car park and the colleague representative walked out into the car park with me to my car. Or was it another time? I can't remember. I had in my car, I think, my staff discount card, the Colleague Smart card and my swipe card to start work. So I had those and I gave them to her, and then I remember saying to her by the car, "They didn't ask me for the money. I offered to repay the money and they didn't ask; I haven't paid the money." And her reply was, "I wouldn't worry about it." Nobody has ever come back to me and asked me for the money.

**Q.** Thank you.

**Mrs Eva:** Just one question. You tell us that when you're doing locum work that you don't handle money?

**A.** Yes.

**Q.** Do you not find this difficult? How do you get around not handling money?

**A.** I don't really find it that difficult because if it's a busy practice and on the reception desk they usually have somebody who is like a desk manager, and so they are stood there by the till. I just hand the record card and just say,

“This is how much the patient has to pay for the glasses,” or “This is how much they have to pay,” and I just explain to the patient that, “I’m just going to hand you over to my colleague,” whoever it is, “and they will perform the transaction for you and they will sort out your receipt.” If it is a busy practice and there’s a queue of people waiting, a queue of patients waiting to pay at the till and each individual dispenser is waiting as well, it just makes it too much of a congestion area. So it just cuts down on that.

**Mr Watson:** No questions.

**Lady Wall:** So is there anything else that you would like to say to us, Mrs Norris, before we make this decision?

**A.** Not that I can think of at the moment.

*[The Registrant stood down]*

**Mr Watson:** I think that the Registrant can return to her seat. We will be reflecting for a moment but I think if the material that you now have can be taken into account within the framework of the advice that I have already tendered, I don't think that there is any further advice that I propose to give you in the light of what has been said.

**Lady Wall:** Thank you very much. The Committee will now proceed to the next stage which is that we are going to consider everything in terms of impairment; it is now half past eleven and I anticipate that that is going to take us a little while. So if you could withdraw and we'll give you some indication as to the progress we're making, probably in about half an hour. Thank you very much.

*[Hearing adjourned at 11.25]*

*[Hearing reconvened at 12.25]*

**Lady Wall:** These are the Committee’s findings regarding impairment.

### **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 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 only been given 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 upon which employers, patients and the public are entitled to rely and which protects the degree of trust which the professional 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.

Following this I would like to point out that we have actually added something to our findings in relation to misconduct. We have added:

“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 time of these events (in particular she related **redacted** that the previous written warning received from her employer were all distracting factors in her mind at the time.)”

That sentence will actually be redacted on what is placed on the website.

Now, we are at twenty-five to one, and the next stage, Mrs Norris, is for us to decide on sanctions following our finding of impairment. I'm going to ask Ms Gillet, who is going to make submissions relating to sanction, whether she can estimate how long she is likely to be?

**Ms Gillet:** Three minutes, four minutes. Around that time period, Madam, very short.

**Lady Wall:** In that case I think we'll go straight on to submissions regarding the sanction and then break for lunch.

**Ms Gillet:** Madam, the Council does not urge any particular sanction on the Panel; it is entirely a matter for your professional judgment. You will, of course, take into account that this sanction should not be punitive and approach the potential sanctions from the least grave first and then just applying each until you reach the one that you feel is most appropriate. If I may just turn the Panel's attention to page 25 of the bundle of documents you have in front of you entitled, 'The Fitness to Practise Panels Hearings Guidance and Indicative Sanctions'. Under the sub-heading of 'Erasure' which should only be considered if other matters are not deemed to be appropriate and on that page the third body of writing on the far left begins:

"This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional and involves **any** of the following (this list is not exhaustive)".

Madam, I would suggest that the Panel's findings have already indicated a fundamental incompatibility with being a registered professional and, just moving down those bullet points, I draw the Panel's attention to the first, the third and then the last two on that list. So the serious departure from the relevant professional standards; the abuse of the position of trust whether it accepts that there is no issue involving vulnerable patients or violation of the rights of patients but seems to have been an abuse of the position in relation to the employer/employee relationship; and dishonesty and persistent lack of insight.

Madam, unless I can assist the Panel any further, I leave it in your capable hands.

**Lady Wall:** Thank you very much. Mrs Norris, you have an opportunity to address us again on the consequences of being found to have been impaired. You have heard what the Council has said in terms of the various sanctions available to the Committee and you now have an opportunity to say anything. You don't have to, but we are giving you the opportunity.

**Mrs Norris:** No.

**Lady Wall:** You don't wish to say anything?

**Mrs Norris:** [*Pause*] No. Not at this time.

**Lady Wall:** Right. Thank you very much. In that case we will now break for lunch and the Committee will make its decision regarding sanctions after lunch.  
[Confers]

**Mr Watson:** So that the Committee can commence deliberations I will offer my advice to them on this stage as to sanctions. This is an experienced Committee and will be mindful of the contents of the Indicative Sanctions Guidance of this Council and will be mindful firstly as to the purpose of sanctions, which is not to punish but to address and take into account the public interest and the facets of the public interest, namely the need to protect members of the public and the wider public interest, and considerations involved in maintaining the confidence of the public in this profession and in the standards of this profession.

In determining the appropriate sanction, the Committee will balance those public interest factors, as set out in the Indicative Sanctions Guidance at page 5, in particular at the top, against the principles of proportionality and principles of proportionality which must balance for the individual circumstances of the Registrant and must balance both the aggravating and seriousness factors involved in the misconduct and impairment which you have found against those ameliorating or balancing and mitigating factors.

The approach to the appropriate sanction ordinarily is one which you are encouraged to take by way of considering, at the first instance, whether any sanction is required and is necessary and appropriate, and then if you so find that a sanction is appropriate and necessary, you then consider each of the sanctions in ascending order of impact or seriousness.

Your attention has been drawn to the sanction, the potential considerations which bear on the sanction of erasure, but of course before you reach that consideration at that stage you will consider other appropriate sanctions including financial penalty orders, conditional registration and suspension. If you find that a particular sanction is appropriate and proportionate and necessary, you must also give reasons as to not only why that is the case, but you should give consideration to identifying your reasons for not adopting alternative sanctions.

The purpose, as I repeat, is not to punish but to maintain and uphold those public interest factors which I recall are the regulatory duty and purpose of this tribunal.

In addition to the aspects which were identified at the bottom of page 25, and the bullet points, you should also bear in mind the particular guidance in relation to dishonesty which, in the newest addition, I have at page 27. I know not how the addition has been printed out in different formats, but I think it is on the same page. The Council's Code of Conduct in the Indicative Sanctions Guidance is called back to mind which states that:

“The Registrant must be honest and trustworthy. Dishonesty is particularly serious as it may undermine trust in the profession. Examples of dishonesty are:

- defrauding an employer, colleague or insurance company;”

and you will bear that in mind.

You will bear in mind the words of the Privy Council as reflected in the text underneath those bullet points that:

“Health authorities,” and one would say the public, “must be able to place complete reliance upon the integrity of practitioners.”

That said, at this stage when you are considering sanctions, I would advise you that you are entitled to bring back into mind, and pay full regard to and review, all that you have heard on behalf of the Registrant, both in Stage 1 as to the facts and when she addressed you and called additional evidence before you this morning on the issues of misconduct and in relation to impairment. You will bring those matters into mind when you consider the personal mitigation that there may be and particularly put those factors into the balancing pot in relation to proportionality. Those are all the matters which I think I need to address unless I’m reminded of any further points that should be borne in mind in this case, and that is an invitation expressed both to the Council and to the Registrant if she feels that that guidance needs to be balanced in any way by any further remarks now that she heard it.

**Ms Gillet:** While Mrs Norris is considering that, I realise from the comments made by your learned Legal Adviser that the page numbers I was referring to are from the old Indicative Sanctions policy. I hope that the Panel were still able to follow my points. It’s the bullet points that now appear at the bottom of page 25 and over onto page 26 that I was referring to.

**Lady Wall:** Yes, thank you. Now, Mrs Norris, this is your final opportunity. Is there anything else that you would like to say to the Panel before we make our decision?

**Mrs Norris:** *[Pause]* No.

**Lady Wall:** Thank you very much. We will now break for lunch.

*[Hearing adjourned at 12.47]*

*[Hearing reconvened at 14.00]*

**Lady Wall:** These are the Committee’s findings with regard to sanction:

## 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 as 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 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.

Would you like to address us on the immediacy question?

**Ms Gillet:** I'm grateful, Madam. The submission made on behalf of the Council is in light of the findings made by the Panel, it is in the public interest that this order take immediate effect. There is a clear indication that a continued ability to practise would damage the public trust and faith in the regulatory process and the profession of dispensing opticians as a whole and therefore I would submit that the order should take immediate effect and the interim situation would be to allow Mrs Norris a period of time, the Act dictates, in order to lodge an appeal.

**Lady Wall:** Now, as before, Mrs Norris, you do have an opportunity to comment on whether this order should be immediate or delayed for 28 days in which to appeal.

**Mr Watson:** Shall I offer the advice? The Committee has determined that the sanction of erasure should take effect. It will take effect after the period of 28 days unless, and subject to, the exercise of any right of appeal from that sanction. The question that you have to determine now is whether, during the period before an appeal process is dealt with, described as "The appeal period," to order a period of immediate suspension during that period however long it turns out to be.

The power is a discretionary power and to exercise it under Section 13L of the Act. The three grounds upon which you may decide in your discretion that such an immediate imposition is appropriate, are either whether you are satisfied that it is either necessary for the protection of members of the public;

secondly, it is otherwise in the public interest; or thirdly, it is in the best interests of the individual or the body corporate. I don't think that I can draw attention to any fact which makes the third element applicable in this case. However, the Council put its submission that you should exercise at your discretion on what I understand to be a blend, or indeed on both of the previous two grounds, namely that it is in the public interest and that it is in particular in the public interest because of the need to protect the public in the sense that has been outlined. It is a matter for your discretion and that is all I say by way of advice.

As I ended my previous advice, having heard the framework of my advice, the Chair invites me, and I offer an invitation to the Registrant, to address the Committee if she wishes to do so as to what particular factors she would wish them to have in mind when deciding whether or not to make the order immediate in the sense that I have outlined.

I end by saying that the difference between the two is that if an order is made the Registrant will be removed from the Register as of now, and not entitled to practise in any capacity which requires registration during the period from now until the end of 28 days when the overall sanction of erasure will in any event come into effect, unless a right of appeal is exercised.

[Pause]

**Lady Wall:** Do you wish to make any submissions to the Committee before they move to decide whether or not this order should be immediate or not? You have this right but you don't have to comment if you don't want to.

[Pause]

**Ms Gillet:** Madam, I think it might be useful if the Legal Adviser could explain what has just happened and the process which I have just asked to take place; I'm not sure that Mrs Norris has understood.

**Mr Watson:** I will retrace the advice that I have given. The Committee has made a determination that the sanction of erasure should be imposed. The effect of that is that after 28 days from today, the Registrant will be removed from the Register and, as I had stated, from that time on will be unable to practise in any capacity which requires registration for as long as the sanction of erasure lasts. The sanction of erasure is one that must last for two years at the minimum before any entitlement arises to make any application for restoration.

The immediate question for the Committee is not to revisit in any way that process but to decide whether or not in the period between now and the ordinary time at which the sanction of erasure takes effect, that is to say at the end of 28 days unless an appeal is launched, the Committee have to decide

whether or not to exercise their separate power to make an order that there should be an immediate suspension from the Register during the period, both the 28 days and indeed until any appeal is resolved, if one takes place.

So in nuts and bolts terms, if the Committee decide not to exercise this power, then the Registrant will continue to practise for the next 28 days, and may indeed, if the Registrant does then appeal, may be allowed to practise for as long as the appeal process takes place, although of course if the appeal is unsuccessful then the commencement of the period of erasure will itself start at a later date.

The other side of the coin is that if the Committee does decide to exercise its power and order immediate suspension, then during the period before the underlying sanction comes into effect, the Registrant will be suspended from the Register on one of the two applicable grounds or both; that is to say on the grounds if the Committee is so minded, that it is necessary for protection of the members of the public, or secondly, is otherwise in the public interest.

That is, I hope, not a confusing repetition of the previous advice. At this stage the Council have submitted that this is an appropriate case for an immediate suspension order to be made and the Committee will make its determination both on the basis of that submission and indeed on the whole of the case and the findings that have been made. But you have a right and an entitlement, before they make a decision on that point, to draw to their attention any matters which you would wish them to bear in mind.

**Mrs Norris:** *[Pause]* No.

**Lady Wall:** Perhaps you could all withdraw while we consider the question of immediacy.

*[Hearing adjourned at 14.15]*

*[Hearing reconvened at 14.25]*

**Lady Wall:** This is our final determination and it relates to the immediacy of the order of erasure.

**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 contra 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.

That concludes this hearing.

*[Hearing concluded at 14.26]*