

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

**MARK JOHN GLOVER**

**A(11)07**

**AND**

**GENERAL OPTICAL COUNCIL**

**Friday, 20 January 2012**

**REGISTRATION APPEAL HEARING**

**REGISTRATION APPEAL HEARING: MARK JOHN GLOVER**

**Friday, 20 January 2012**

Registration Appeals Committee: Mr Peter North (Lay) (Chair)  
Mr Alan Baldwin (Lay)  
Mr Rod Varley (Lay)  
Ms Abi Grute (Dispensing Optician)  
Mr Nigel Roberts (Dispensing Optician)

Legal Adviser: Mr David Swinstead

Hearings Manager: Mr David Henley BEM

For the GOC: Mr John Hepworth

For the Appellant: Mr Howard Bernstein

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*[Hearing commenced at 09.58]*

**Mr North:** Good morning. I am Peter North, a lay member of the Appeals Committee and I have been elected by the Committee to chair today's Registration Appeal Hearing.

The Committee today is made up of two dispensing opticians and three lay members. I will ask the members to introduce themselves and the capacity in which they sit, starting on my right. *[Introductions]*

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

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

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

It is the Council's policy for the determination of the Committee and a transcript of proceedings to be displayed on the Council's website for public viewing.

I understand that in previous hearings of the Registration Appeals Committee the order of proceedings has been changed and it has been found to be the most fair and appropriate way of conducting business. You have seen the Registration Appeal Rules from Rule 33 that there is set out an order of proceedings. The Rules anticipate that we would hear first from the Appellant and then the Council's presenting officer on behalf of the respondents, the Council, Rule 34(1). The Appellant may then give evidence in rebuttal of any matter raised by the Council through Rule 35. Submissions would then be made under Rule 37, first from Mr Glover in relation to submissions and then from the Council. We will not change the order of submissions. However, it is suggested, if you agree to it, that the Council addresses the Committee first, both in relation to the framework of our decision-making and the evidence so that Mr Glover, or Mr Glover's representative, would then address the Committee, will know exactly the evidence upon which the Council relies and the framework within which it is said that it is established before he addresses us on the evidence. It appears that our colleagues on previous occasions have found this change in procedures most helpful. It is, however, a matter for the Council and Mr Glover whether you are prepared to proceed on that basis.

**Mr Swinstead:** Sir, can I just interpose? I had already discussed with you, sir, and with the parties that my recollection - perhaps it is wrong – is that in fact the order of submissions was also transposed so that in fact the Appellant would have the last word, so in a sense Mr Hepworth would go first and Mr Bernstein would go second. It seems to me that would, in fairness, probably be the appropriate course. That was my recollection in one of your previous appeals, but it is obviously a matter for you and for the parties.

**Mr North:** Yes. What we are proposing here is we first hear from Mr Hepworth, he would give his opening statement in evidence; we will then hear Mr Bernstein's opening statements and evidence and indeed if he wishes to call Mr Glover as a witness. Then we move to submissions and in that instance you, Mr Hepworth, will begin and Mr Bernstein, you would finish. I would rather spell that out so that it is clear to the members of the Committee. Are the members of the Committee content that is the way ahead? *[Agreed]*

We move on then and Mr Hepworth, what do you say?

**Mr Hepworth:** Sir, thank you. Can I start, please, by setting out the law and then I will deal with the evidence which is in the hearing bundle which you have before you? The starting point has to be Section 8A(3) of the Opticians Act 1989; it is in your Handbook at page 12, if I could ask you, please to turn

there? Section 8A of the Act deals with the registers of students and 8A(3) states:

“A person shall be entitled to have his name in the appropriate register if he satisfies the Council that he is fit to undertake training as an optometrist or a dispensing optician and, either –

- (a) he is undertaking, or will be undertaking, training provided by an approved training establishment; or
- (b) he is obtaining, or will be obtaining, practical experience in the work of - ”

Then to summarise, an optometrist or a dispensing optician.

Sir, the two relevant phrases within that subsection within the Registrar’s submission, first of all that it is for the applicant to satisfy the Council that he is fit to undertake training; the burden falls on him, not on the Registrar to establish the opposite.

The second point is he has to establish that he is fit to undertake training. One of the considerations within that word, “fit” is that the applicant has to establish that he is of the requisite character to be registered. That, if I may suggest, is the issue at the heart of this case.

Within this hearing bundle there are two reports of cases, which you may find of assistance, not particularly because of the facts of the cases, because as the case law makes clear each case has to be decided on its own facts, but in order to establish the principles which can be used when you make your decision.

I’ll start, if I may, with the case of *Jideofo v The Law Society* [No 6 of 2006]. It starts at page 51 in the hearing bundle again, if I could ask you, please to turn to that? The passage which I would like to read to you, if I may, comes from the judgment of the Master of the Rolls and it comes at page 57 in the hearing bundle at paragraph 16.

Before I start reading from the judgement you will see reference there to the case of *Begum v The Solicitors Regulation Authority* [No 11 of 2007] and *Evans v The Solicitors Regulation Authority* [No 1 of 2007] and they were joint cases with the *Jideofo* case. The judgment then reads at paragraph 16:

“In his written submissions on behalf of the Law Society in both the *Begum* and *Evans* cases Mr Mark Pardoe submits:

- i) that the test of character and suitability is a necessarily high test;

- ii) that the character and suitability test is not concerned with 'punishment', 'reward' or 'redemption', but with whether there is a risk to the public or a risk that there may be damage to the reputation of the profession; and
- iii) that no one has the right to be admitted as a solicitor and it is for the applicant to discharge the burden of satisfying the test of character and suitability."

Clearly this was a case involving an aspirant solicitor. Wherever there is reference to solicitors I would ask you to transpose in your mind the words "dispensing optician". It is perhaps unfortunate for members of my own profession that a lot of these cases related to solicitors and aspirant solicitors, but it is the Registrar's submission that there is no less a standard of honesty which is expected from an aspirant dispensing optician than that which is expected of an aspirant solicitor.

Reading on, paragraph 17:

"Neither Ms Evans on her own behalf nor Mr Colbey on behalf of Ms Begum submitted that those propositions were not correct. They were, in my opinion correct to accept them. The points made on behalf of both appellants were rather that each case must be considered on its own facts and that, on the facts of a particular case, different considerations may apply to a solicitor on the one hand and a young and inexperienced student on the other. I accept the submission that the facts of individual cases are critical. Much depends upon the nature of the wrongdoing, dishonesty or other untoward conduct and upon the particular part played in it by the person concerned. This is I think especially so in considering whether the reputation of the profession would be damaged by admission or re-admission. Thus offences of dishonesty have been correctly regarded as of the greatest importance. The reputation of the profession relies upon the honesty and good faith of its members. As Sir Thomas Bingham MR put it in *Bolton v The Law Society* [1993] EWCA Civ 32 -"

A case no doubt members of the Committee are very familiar:

"- in cases of proven dishonesty the solicitor will almost always be struck off, however strong the personal mitigation. Moreover, it was in this context that he used the striking phrase that the purpose of the strict approach in *Bolton* is to maintain the reputation of the profession as one in which every member of it, of whatever standing, may be trusted to the ends of the earth. Thus, a solicitor who is struck off for dishonesty may well not be re-admitted however much he can show that he is no longer a risk to the public.

The importance attached to dishonesty has recently been emphasised by the decision of the High Court *The Law Society v Claire Wilson* [2006] EWHC 1022 (Admin) (*Wilson*). This was an appeal to the Administrative Court from a decision of the SDT -”

The Solicitors Disciplinary Tribunal:

“- which, while it found Ms Wilson guilty of conduct unbecoming a solicitor in that she had been convicted of six offences of false accounting by East Dorset Magistrates’ Court and sentenced to 80 hours community service, decided to suspend her from practice for 12 months. The Law Society appealed the decision and submitted that rather than a mere suspension her conduct warranted an order striking Ms Wilson from the roll. The Administrative Court allowed the appeal and ordered Ms Wilson to be struck off the roll.”

I will summarise, if I may, the next paragraph. It was accepted by the Law Society that Ms Wilson had not committed the offences for her own financial gain. She had been placed under pressure from her practice principal and what she had done was to make false accounting returns in respect of travel expenses for attendance at conferences and hearings that she had not attended in order that her principal would not find out that she had, in fact, not attended them.

The judgment of Mr Justice Jack is summarised in paragraph 20 and I will read that, if I may:

“Jack J summarised a number of decisions where dishonesty had been dealt with by the SDT. He said at [9], in my view correctly that

“they emphasise the need to protect the reputation of the profession by expelling dishonest persons from it and emphasising that mitigation personal to the solicitor has little relevance.”

Then finally, paragraph 21:

“In the light of *Bolton* and the summary of its application in *Wilson* it is clear that, when assessing whether an individual has the requisite character and suitability to be admitted as either a student member of the Law Society or a solicitor, it will be rare for a person with convictions for dishonesty to be found to have the requisite character. Personal mitigation, while a factor for consideration, will not weigh heavily in carrying out that assessment exercise. Much depends, however, upon the nature of any dishonesty and rather different considerations seem to me to apply in the absence of dishonesty.”

He then goes on to say:

“I should also add that *Bolton* does allow for the possibility that exceptional circumstances might exist which would justify an individual being re-admitted to the profession following a strike-off, even after findings of dishonesty.”

Of course that is not the case before you today, but it gives you an idea of the rare or exceptional nature of the case if an applicant with a conviction of dishonesty, may be applicable to a profession.

If I may take you to the other case which is within the hearing bundle - that is the case of *Mulla v Solicitors Regulation Authority* [2010] EWHC 3077 (Admin). Again I am not going to take you to the particular facts of that case, but I will, if I may, take you to paragraph 11 of the judgment, which is at page 46 within the bundle. At that stage Mr Justice Parker was setting out other decisions which you may find of help. He says:

“In *Masrur v Solicitors Regulation Authority* [2009] EWCA Civ 944, the Master of the Rolls confirmed the approach in *Jideofo* that where an applicant has convictions for offences involving dishonesty it will be rare for an applicant to meet the character and suitability requirements for admission. Further it confirmed that the burden of proof is on the Appellant to prove that his is a rare case.”

Then he quotes from the judgement in *Masrur*:

“As Mr Masrur properly accepts, the starting point for assessment is the simple fact that he had four convictions for offences of dishonesty. The principles established in *Bolton* and *Jideofo* make it clear that his offending falls into that category of offence where, as was held in *Ndjoli v the Law Society* [2008] EWCA Civ 585 at 21:

‘It would be rare for the SRA to find that [the applicant] was of suitable character to be a solicitor.’

That is the starting point. It is for Mr Masrur to demonstrate that his is a rare case.”

Again quoting from that judgement:

“The difficulty for him is that it is difficult to see how it can be truly said that Mr Masrur’s case is a rare one.”

He goes on to describe the particular circumstances of that case.

Back now, if I may, to the judgment in *Mulla*, paragraph 12:

“The approach to dishonesty was also considered by the Administrative Court in *Butt v Solicitors Regulation Authority* [2010 EWHC 1381 (Admin)] where Lord Justice Elias stated, after citing *Bolton*:

‘What that passage makes clear is that it would be a rare case where somebody will be considered suitable for admission when they have committed acts of dishonesty. There will of course be exceptional circumstances, and all these cases are fact sensitive. But a stringent approach is adopted in the public interest to ensure that only persons with the utmost integrity are permitted to practise as solicitors and, in the usual run of things, that will exclude somebody who has committed offences of dishonesty. The judgment also confirms the relatively limited weight that can be given to matters of mitigation in cases of this kind, particularly where dishonesty is in issue’.

Sir if I may be so bold; it appears that the principles that can be drawn from the authorities are as follows and I make seven. The first is that it would be a rare case that someone be deemed of a suitable character to be admitted to a profession if that person has previously committed offences of dishonesty. There is reference also to it having to be an exception case; I’m not sure other than semantics there is much difference between those two terms. The second point is that the burden of proof falls on the applicant to prove his is, in fact, a rare case. The third point is that limited weight is given to matters of personal mitigation. The fourth point being that the test of character and suitability is a necessarily high one. The fifth principle that the test of character and suitability is not concerned with punishment, reward or redemption, but whether there is a risk to the public or a risk of damage to the profession and the reputation thereof. The sixth principle is that no-one has a right to be admitted to a profession and that last principle from the authorities is the facts of each individual case are critical.

That then brings me on to the facts of this particular case. I will take you through the hearing bundle, if I may. The applicant applied for registration on the Register of Student Dispensing Opticians. The application was received on 23 June 2011; you can see that fairly broadly at the top, right hand corner of page 1 of the bundle. Within that application the applicant declared his previous conviction; could I ask you to turn to page 3 within the bundle, to Section A? The applicant was told to provide full details of any convictions or cautions and he entered:

“November 2009, convicted fraud. See sheet. 9 month prison sentence.”

That sheet is at page 5 within the hearing bundle. Again, if I could ask you to turn to that. The applicant made a declaration:

“In 2006 in my final year at the University of Leeds I became involved with a group of students who were using the eBay website to sell counterfeit clothing. The group was led by the father of one of the students, who was one of my school friends and who recruited students from universities around the country. I was not aware of the seriousness of my actions at the time and was ultimately prosecuted and received a criminal conviction for fraud. Because of my proximity to the leader of the group I was given a nine month prison sentence of which I served three months in a young offenders unit.”

That application was considered by the Registrar and you can see at page seven within the hearing bundle – again I ask you to turn to that page, please – the application was refused. In case anyone can't read the handwriting on that page I will read out the contents. In the reasons for decision section it is written:

“Refuse. I note that the applicant was convicted of conspiracy to sell counterfeit goods and conspiracy to transfer criminal property, for which he was sentenced to nine months imprisonment in November 2009. I also note that the applicant has provided a brief explanation as to the circumstances of the offences and subsequent conviction.

Honesty and trustworthiness are fundamental aspects of being a professional and lie at the heart of the relationship between patient and practitioner. Indeed, they are mentioned separately and specifically in the GOC Code of Conduct.

This was a serious offence, which took place not quite two years ago. In order to maintain public confidence in the Register, the application for registration should be refused at this time.”

You can see that David Howell, former Head of Legal at the Council, endorses that decision. He writes:

“Agreed. These were offences of substantive dishonesty committed a relatively short time ago”.

There was a factual error within the Registrar's decision. The offences themselves were not committed less than two years previous. The conviction was less than two years previous. The applicant's involvement in the offending ceased in 2006. I will come onto that as I read from the judge's sentencing remarks.

Coming back to the chronology, the application has been rejected and at page 19 and 20 within the hearing bundle you can see the letter that was sent to the applicant notifying him that the application has been unsuccessful. He was and it is perfectly proper, given details of his power to appeal to this Committee. At page 24 within the hearing bundle the applicant indicates that

he would like to appeal the decision made by the Registrar, which brings us up to today's hearing.

There are other documents within that section of the bundle which, in the Registrar's submission, are not directly relevant to the issues you have to decide today. They are included there for the sake of completeness, but the important documents are those that I have highlighted in the last few minutes. That takes me to explaining the basis of the conviction, because it is a conviction upon which the decision to refuse the application for registration was based.

Can I start, please, by taking you to page 32 within the hearing bundle? This is the Basis of Plea. For those on the Committee who may not be familiar with criminal procedures, the applicant was charged with two offences and agreed to plead guilty on a specific basis. That basis was not challenged by the prosecution and was accepted by the court, so this was the basis upon which the applicant was convicted and the basis upon which he was sentenced. That Basis of Plea reads as follows:

"The Defendant pleads guilty to both counts of the indictment on the following basis:

- 1 The Defendant accepts the Crown's case against him, but would contend that initially he agreed to become involved following a period of persuasion by Anthony Kaufman and others already involved in the sale of items on behalf of Kaufman.
- 2 At the outset although he had concerns about the enterprise he did not know that the goods were counterfeit.
- 3 He accepts that within a matter of weeks it became obvious to him and that he chose to continue.
- 4 His involvement concluded in December 2006, following his eBay account being suspended. He was asked by Anthony Kaufman to appeal that decision, he did not do so and thereafter withdrew from the conspiracy.
- 5 Throughout the conspiracy he simply posted items for sale onto the eBay site on behalf of Anthony Kaufman and thereafter monitored the sale. Kaufman would provide the listing details and photographs and dealt with the provision of the goods concerned.
- 6 The Defendant accepts the figures attributed by the Crown witness Rhodes at page 79. The Defendant would be responsible for the fees paid to PayPal -"

If you are not familiar, that is the usual method of payment by things bought on eBay;

“- and would thereafter transfer proceeds of sale to Kaufman minus his share of each sale, approximately 20%.”

I have taken things slightly out of order for that; I apologise. I haven't yet told you what the appellant was convicted of. Could you turn, please, to page 18 within the hearing bundle? This is a document of Police Certificate which shows that the applicant was convicted of two counts on the indictment of conspiracy: one, a conspiracy to sell goods bearing a false trademark between 1 April 2004 and 5 September 2007. The next he was convicted of a count that he conspired to conceal/disguise/convert/transfer/remove criminal property between 1 April 2004 and 27 February 2008. You can see he was convicted at Minshull Street Crown Court in Manchester and that he received a total sentence of imprisonment for nine months.

I make the point, just so that it is clear, that though the book ends of the offending are April 2004 and 2007, or 2008, the applicant's part in that conspiracy ended in 2006. With that correction I have read out the Basis of Plea and you also have, beginning at page 33 in the hearing bundle, the transcript of the judge's sentencing remarks. I will read certain sections from the remarks, if I may? I will start with the general comments that the judge makes, His Honour Judge Geake, and I will deal with the comments made about Mr Glover specifically.

I'll start at page 34 within the hearing bundle and again I ask you to turn to that page. His Honour, Judge Geake, said:

“The four of you defendants, who remain in the dock this afternoon, fall to be sentenced for your respective parts, greater or lesser, in a conspiracy to sell and profit from trading in counterfeit clothing, all illegal illegitimate business, which involved a very substantial volume, as we have heard from Mr Moran, the prosecutor, of fake designer goods, illegal because there are, as we have heard, legitimate obviously commercial businesses, brand holders, owners of registered trademarks and the like, who invest substantial sums of money to develop high quality products and, who are, it has to be said, genuine significant employers in both manufacturing and retail outlets and all of these genuine legitimate businesses are entitled to the protection of the law and the courts, just as are their ultimate customers, the public; the public, who buy the goods and wish to have that sort of quality being conveyed to them. Of course, as we have heard, there are people who are perfectly happy to accept what is sometimes regarded as a perfectly good copy, particularly if it is cheap. The fact of the matter is that dealing in counterfeit goods is in effect, as it has been said many times before, stealing from genuine owners.”

Coming down to page 34, paragraph G I read out two further sentences if I may from the middle of that paragraph:

“This was not just a modest amateurish piece of criminal activity it was quite a wide ranging and quite sophisticated operation. Those are the general remarks I make about it.”

Then he goes on to deal with each individual defendant. When he deals with Mr Glover that starts right at the top of page 37 within the hearing bundle. Again I ask you please to turn to that page.

His Honour said:

“Glover, you are 24, equally of good character and I have read all the testimonials about you and here is your father sitting in court giving evidence on your behalf and one can only feel the greatest sympathy for him, having to stand in the witness box of a crown court and give evidence for his son. It is every father’s nightmare, I dare say. You pleaded guilty more or less at trial, no earlier, on a particular basis, which I need not again refer to (it has been referred to).

The fact of the matter is, as you have acknowledged, you too very soon realised, from the outset of your involvement, that you were dealing in dishonest goods and yet you remained responsible for processing goods worth about £45,000.00. Your share was about one fifth (£13,500), over a period of about 18 months. It was not an insignificant involvement by you and, I repeat, I imagine you and your friends in Leeds amusing yourselves with your involvement for the time that it lasted. Clearly, to your credit, you withdrew from the operation in December 2006 and you too have put this period behind you and you now lead a decent, industrious life and I have no doubt that you bitterly regret those days in Leeds when you got yourself involved in this fraud. I give you credit for your guilty plea, insofar as I can, as it was not at the first instance.

If you had persisted in that not guilty plea and carried on being tried by the jury, as other defendants were and been found guilty, a prison sentence immediate would have been inevitable, it would, in my judgment, have been twelve months in your case. Giving you as much credit as I can, the sentence therefore is one of nine months’ imprisonment, which you must start now.”

The last section of those remarks, to which I draw your attention, starts at the bottom of page 37. Mr Smith, counsel for Mr Glover, wanted to clarify how much money the applicant had received from his part in the criminal activity. I won’t read directly from that passage, but I draw your attention to it. The

summary is that the applicant made £13,500. He had to pay expenses out of that, particularly the fees that one has to pay to eBay to list things, so he made a total in his pocket profit of between £8-£9,000, but His Honour Judge Geake wasn't particularly interested in that. He was interested in the £13,500 figure and then said, on page 38, at paragraph B:

"The fact of the matter is that £45,000 worth of goods, as you agreed was what he traded in total."

That had been accepted by Mr Glover and you may consider that His Honour was entirely right to look at that as the relevant figure.

You can see reference within the papers, I won't take you to them, but you see reference of the possibility of there being an appeal. I look to my friend to give you definitive information about this. I think the position is an appeal took place and was unsuccessful, but in any event, the final sentence that you have before you in the judge's sentencing remarks is the sentence which the applicant had imposed upon him.

As far as the facts are concerned there is nothing else I wish to say. I will make submissions in due course.

**Mr North:** Thank you Mr Hepworth, that has been helpful. Mr Bernstein?

**Mr Bernstein:** Thank you. I start my address to members of the Committee by agreeing with both the explanation of law by Mr Hepworth as to what you must consider, what the cases tell us, the cases that are in the bundle and I also agree what the central issue of this case is. It is essentially the question as to whether the applicant, Mr Glover, is of the requisite character, and both the applicant and the respondent would agree that the issues of this case are narrow.

There isn't much dispute within the facts, so I won't repeat them at length. The conviction is accepted; the date of the conviction is accepted. The subject matter of the conviction is accepted, the sentence that he received is accepted. It is fair to say the respondent would say that it is that conviction alone that, from the Council's perspective, would lead you to suspect that the applicant is not of requisite character. Helpfully Mr Hepworth, and I agree, has said that there are seven aspects of Mr Glover's character you have to look at, or there are seven tests that you have to apply and I would agree with him.

I agree, number one, it is a rare case where somebody who has been previously dishonest that you would find that they should be admitted to the Register, and I would agree with that. I agree that circumstances have to be exceptional and that the burden falls upon the applicant. Limited weight is given to mitigation and the test is a high one, but it is not necessarily, the applicant would say, an unachievable one. One can see that from the cases

that are in the bundle, certainly in relation to one case, which is the case of *Mulla*, that is £2000 worth of stolen telephone credits, a case listed on page 46. In relation to that matter and I won't refer you to the exact wording, I will paraphrase it. This was the case where again I echo my friend's comments about solicitors seeming to be the subject matter of a lot of these cases and this is somewhat a regret to both of us.

**Mr North:** Excuse me. It is very helpful if you refer us to a page in the course of your presentation.

**Mr Bernstein:** *Mulla* is on page 46 of the bundle. It starts on page 42 and continues on beyond 46 and goes to page 50. In relation to this case, it was stated that Mr Mulla did accept straightaway when he had the SRA (Solicitors Regulatory Authority) hearing that he was dishonest and that he committed acts of dishonesty. Notwithstanding that, he won his appeal. A point I would make on Mr Glover's case is not only has he accepted that he was dishonest and that he committed the offence, but he also disclosed this straightaway when applying for registration and also disclosed it to his academic institution when attending a course that would allow him to, with successful completion of the course, practise as a dispensing optician.

It is often the case that people in his situation do not disclose the facts of their conviction straightaway and Mr Hepworth very helpfully referred to the case of *Jideofo*, which is on page 51. In relation to that case it describes the situation in relation to *Begum* and *Evans* which is contained in that case. Both of those applicants did not disclose when they were applying to the Law Society to become a student member either the contents or even the facts of their conviction. It is to Mr Glover's credit that he has done so.

In conclusion, taking this a little out of scheme, I would agree that the test is a high one, but it is not necessarily an insurmountable one. There are cases of course where people can be rehabilitated to such an extent that it can be said they possess the requisite character. They didn't possess the requisite character when they committed their offences, but they do possess the requisite character now. The most important factor in any decision in this kind is that the facts of each individual case are critical and the facts of every case are different. A perusal of the bundle shows just how different people's circumstances are that find themselves in this situation – the different offences, the different kind of offences that they have committed, but also the different route through life after the conviction of those offences.

I seek to argue that the case of Mr Glover is exceptional and would allow you to exceptionally say that because of his own, personal circumstances, he is somebody of the requisite character to be able to practise as a dispensing optician and be admitted on the Register.

The circumstances of offence, of course, are serious. It was his first and only conviction for two offences –

**Mr Swinstead:** Excuse me, Mr Bernstein, can I interrupt? You appear to be making submissions not calling evidence and we are at the evidence stage. What I thought you were doing was opening your case and I didn't know whether you were going to call Mr Glover, but I might encourage you to save your main submissions to later. If you are dealing with, as I thought you were, issues concerning the agreement as to the law and the principles that the Committee should apply, that is a perfectly reasonable and sensible approach to take. I felt that you were beginning to trespass into submissions and perhaps that ought to be delayed until your later submissions. Is there anything you want to say on the principles the Committee should apply or the outline, that is fine, but then you should go on with that?

**Mr Bernstein:** It will be ultimately my submission that Mr Glover is of the requisite character. As a result of his personal circumstances and at this stage it may be convenient for me to now call my one witness and I ask that Mr Glover be called to give evidence.

**Mr North:** Would you like to call evidence at this point?

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

**MARK JOHN GLOVER, called and affirmed  
Examined-in-Chief by MR BERNSTEIN**

- Q.** Mr Glover, can you confirm your full name, date of birth and address to the Committee, please?
- A.** Mark John Glover. 18 April 1985 and the address is 77 Maitland Avenue, Charlton.
- Q.** Mr Glover, I think it is right that you were brought up and have always resided in the Greater Manchester area. Whereabouts did you spend your childhood?
- A.** Marple, which is a small town in Stockport.
- Q.** Residing with you mother and father?
- A.** Yes, with my Mum and my Dad.
- Q.** What school did you go to?
- A.** Secondary school was William Hulme Grammar School.
- Q.** Your secondary school was William Hulme?
- A.** Yes.
- Q.** In what years did you attend William Hulme secondary school? When did you finish school?

- A.** I attended from 1996 and I also did my A Levels there as well. That is seven years.
- Q.** After A Levels you went to university?
- A.** Yes.
- Q.** What year did you start university?
- A.** 2003.
- Q.** Did you go to university with people that you went to school with?
- A.** Yes.
- Q.** When you got your first house at university were the occupants of that house also people you went to school with?
- A.** Yes. In the first year I also was in halls with someone from school as well.
- Q.** With people from school?
- A.** Yes.
- Q.** It is correct to say that whilst you were at university this offence was predominantly committed?
- A.** Yes.
- Q.** Could you explain to the Committee how, whilst you were at university, you found yourself in the situation that you committed this offence? How did it come about?
- A.** There was one friend who was living in the house with me and his father came over to our house.
- Q.** Who is that friend?
- A.** He is called Ben Kaufman. His father is called Anthony Kaufman.
- Q.** How long had you known them?
- A.** Since perhaps the second or the third year of high school.
- Q.** You were still with them?
- A.** Yes.
- Q.** You were at university with them?
- A.** Yes.
- Q.** What happened?
- A.** He came over to our house and he is not the stereotypical father figure, he has quite a youngish character and he used to go out with Ben drinking and all that stuff. We thought he was a cool dad. He came over to ours and he said to us that he had some clothes and he said that he wanted to sell them on the internet, but he didn't have a clue how to use computers. He said to us

if we can use the computer and go on eBay and sell the items for him, then he would pay us to do it.

**Q.** When you say “us”, who is us?

**A.** Everyone in the house.

**Q.** How many people were in the house?

**A.** In the house there were seven people.

**Q.** There were seven people in the house. He made an offer for the seven people in the house to sell clothing on computers. Did you personally take him up on that offer?

**A.** Not straightaway.

**Q.** Did anyone else take him up on the offer?

**A.** Yes. It was pretty much everyone except me.

**Q.** Ultimately you obviously did take him up on the offer. When was that?

**A.** After everyone had been doing it for quite a number of months – five months, six months, something like that.

**Q.** Explain to the Committee what was your role? What did your role mean, what did you do? What were the mechanics?

**A.** What I did was I received some photos of clothes that he had taken and then I would put the photos on the computer and list the items one by one on eBay. Then the sale price was set by him and he would tell me what to put them on at. Then they would sell, or didn't sell and he would tell me, after however long, that he wanted this amount of money and then I would keep what was left. He never mentioned that you would have to pay fees out of your bit. I had to pay fees out of my bit.

**Q.** It might help at this stage if I refer the Committee –

**Mr Swinstead:** Is it possible for Mr Glover to have a copy of the bundle as well?  
*[Hearing bundle passed to Registrant]*

**Mr Bernstein:** If I could ask the Committee to turn to the sentencing remarks of Judge Geake on page 33, but more particularly page 38, which is the last page, in fact page 37, which was the submission by Mr Smith, saying that the global figure was approximately £45,000 had gone through your particular account and you would have received £8,000 or £9,000 and there was some discussion about the fees. Are those figures correct? Would about £45,000 in total have gone through your computer in this way? After giving Mr Kaufman the amount of money and also the fees, £8-£9,000 would have been what you would have received?

**A.** I think so.

- Q.** It is fair to say that this was over quite a significant period of time; a period of 18 months.
- A.** Yes.
- Q.** This would have been as an undergraduate, a large part of your time as a student. You accept that you were dishonest. Were you aware that the clothing was not legitimate clothing, it was counterfeit clothing?
- A.** Anthony Kaufman never really said. It was quite obvious after a while, but it was one of the things where he never mentioned it and the friends we were living with didn't really mention it. We didn't talk about that side of it.
- Q.** What made you decide to involve yourself in something like this whilst you were at university?
- A.** Everyone was doing it so there was an element of peer pressure. Then obviously they were doing it and nothing bad had happened to them so they were convinced that what they were doing was fine. They were just "I'll do it; it only takes five minutes".
- Q.** How do you feel about your involvement now?
- A.** It is probably the worst decision I made in my life to be involved in that.
- Q.** Had you ever done anything like that before?
- A.** No.
- Q.** You left the enterprise in December 2006. Why did you stop doing it? What made you leave voluntarily?
- A.** By that time I already felt that it had been going on long enough. I had finished university and by that time I had moved out of my parents' house and I was living with my girlfriend and I didn't want to do it any more.
- Q.** Did your girlfriend know that you were doing it?
- A.** Yes. She knew that I was doing it and from stage one she was always, "You shouldn't be doing this", but I didn't listen to her because I was stupid.
- Q.** How long had you known her?
- A.** I had known her since the second year. We were in the same class.
- Q.** Was she at university in Leeds with you?
- A.** Yes.
- Q.** It is now right that you are married to her and she has been your partner all the way through.
- A.** Yes.
- Q.** When you left university just explain to the Committee a little bit about what you did after that?

- A.** I finished in 2006 and studied human geography and didn't really know what I wanted to do. The only professions that I could find to do with the course, because I did enjoy the course, but the only thing which seemed to come back was teaching and I didn't particularly want to teach geography. I have always had a big passion for music so I went and studied music technology for a year and when I had done that I had to move back in with my Mum and Dad because in that profession the jobs are extremely rare – you have to sell your soul to get jobs. You have to work unpaid, so I was working unpaid. Eventually when I had done my portfolio up a bit, I started getting work, paid work. I was working as a music technician in a number of places and also because it was never a steady, full time job I was also working in a bar in Charlton.
- Q.** You were at university until 2006?  
**A.** That is correct.
- Q.** Your Diploma in Music was 2007 to 2008. When were you aware that there were going to be proceedings in relation to what you had done while you were at university? Do you recall?  
**A.** It was probably in 2008.
- Q.** How did that come about? You were interviewed, weren't you?  
**A.** Yes. What happened was I randomly received a phone call from a chap in Trading Standards and what he said was, "I know what you did at university". I didn't really know what was going on. He said, "You had better come for a meeting". I went for a meeting with him, with Trading Standards and I took along a lawyer with me as well. He basically said, "Tell me what you did". I told him everything.
- Q.** In an interview in 2008?  
**A.** Yes. It was much before the court case.
- Q.** The case was concluded in November 2009?  
**A.** Yes.
- Q.** What did you do with yourself in terms of employment during that period?  
**A.** I just continued to work.
- Q.** Doing what?  
**A.** I was working as a sound engineer and working in a bar until November 2009.
- Q.** In November 2009 you received a nine month custodial sentence?  
**A.** Yes.
- Q.** How long were you in custody for?  
**A.** It was about three months inside.
- Q.** Presumably that was a very difficult experience?

**A.** Yes. Very difficult.

**Q.** You were released after three months?

**A.** Yes.

**Q.** When you were released what did you do in terms of your employment? How did you find obtaining employment? Describe your experiences between then and you finding yourself here.

**A.** I was self-employed. With the music technology, there weren't any work contracts or anything; that just finished there and luckily I was working at a bar and I had been working there for quite a long time. I told them what was happening and they were kind enough to keep my job open for me so as soon as I was released, because I was living with my girlfriend at the time and we couldn't afford for me to not work straightaway. I continued working in the bar and then, because of all what happened I thought I needed to start getting my life back on track, so I decided to leave the working in the bar to try and forge myself a career. Music technology was never really stable enough to support myself solely and also the hours were never regular, and I wanted to try and form a stable, regular life.

I quit the bar and at that point I didn't realise how much of an impact having a record would be on finding work. I thought that it would be hard, but I thought that I would have found something. I worked in a number of jobs. I worked in telesales, something which I never wanted to do, but the job was open – they were willing to take me on, so I gave it a try. I also worked as a handyman for a student housing company. Then I started working in September for a catering company.

**Mr Swinstead:** What year was that?

**A.** At the end of September 2010.

**Mr Bernstein:** I am going to move on to your present situation. Did you apply for lots of jobs that you didn't get?

**A.** I went to so many job interviews. It was impossible to try and get a job which was above menial tasks, such as I was working in catering so I was just making sandwiches and coffees for people, but anything above the minimum wage thing, even getting a job in an office – I worked in telesales, but it was just a small office where you called a lot of people up. I worked there for a bit, then I applied for something a little bit better. I went to some recruitment agencies and they said most of the jobs if you have telesales experience would be working in banks or anything in financial, but none of them were willing to take me on, even though I had sat all the online tests you have to do before you do banking, even though I passed all those.

**Q.** Because of the conviction?

**A.** Yes, because of the conviction and no-one was prepared to take me on.

- Q.** You now work for your father's company, Selby & Glover?  
**A.** Yes.
- Q.** Jonathan Glover of Selby & Glover is your father?  
**A.** Yes.
- Q.** The Committee have a letter in support. How did that come about?  
**A.** I was working as a handyman at that point. I said to my father that I was disappointed – optometry has been in my family for a long time; my father is the fourth generation and I will hopefully be the fifth.
- Q.** Just explain that: the fourth generation of optometrists in the same company.  
**A.** Yes, Selby & Glover company is –
- Q.** Selby & Glover has passed for four generations. Is Selby a member of the family?  
**A.** Yes. He was my great uncle.
- Q.** Selby & Glover are a family run firm, four generations. Explain the conversation with your father.  
**A.** Obviously I had been to his work before. On one of the walls he has all of the certificates of everyone's degrees and things like that and I said to him I was disappointed that at that stage I had never decided to become an optician because when I was 18 I didn't have a clue what to do. I didn't have a scientific background, my A Levels were all in arts based subjects and for a degree I didn't know what to do. I didn't consider optometry because I didn't have the A Levels for it. I just did geography because that was what I enjoyed. I said to my father I was disappointed, because I have one sibling and she is not going to be doing optometry. I said that I was disappointed. He took that on board and unknown to me he did some research and he found this dispensing course at ABDO College and he sent it to me in the post with a note saying, "Why don't you have a look at this?" I saw it, because I thought I would have to go back and do my A Levels again and do two years studying science even before I would even start studying optics. When I saw this I was really excited because it was distance learning, which meant that I could work and support my wife and I wouldn't just have to be a student. I thought that was something that I would definitely like to do.
- Q.** How do you think your Dad felt about it?  
**A.** He was probably more pleased than I was. Secretly he has always wanted me or my sister to carry on the family business, but he has never been pushy about it. He has always been, "Do what you feel that you want to do". He was really thrilled that I would like to do that.
- Q.** What was the next process?  
**A.** At this point I was working for a catering company. My hours were seven in the morning to three in the afternoon. Before I put in an official application for the course, I went in and did some work experience with him.

- Q.** Just stopping you briefly here. Your Dad's company – he is the sole owner; he has no partners.
- A.** Yes.
- Q.** How many optician centres are there?
- A.** There are three practices. He is the main optometrist and then there are three locums which work for him as well.
- Q.** In three different practices?
- A.** Yes.
- Q.** Carry on – you started working at one; what was your work experience?
- A.** I started work experience, so I sat in and watched what people did, fitting glasses, testing and then they started just giving me basic jobs such as filing work, patient records and things like that. From what I saw I thought this would be a really good profession. Personally I felt I would be quite good at it because there is a lot of dealing with the patients and I have been working in bars and working with people, so I thought I would be good at that. It is quite a lot of practical skills: adjusting and fixing glasses and repairing glasses and stuff like that. I had been working as a handyman prior to that, so I did have a bit of experience in that and I just felt that anything I had done beforehand – doing music technology, there is physics involved – waves and things like that, which is similar to basic theories of light. I felt like everything I had done before bore a lot into this career, and it just seemed the right thing to do.
- Q.** Obviously you had to undergo training, so you enrolled on the course in Canterbury. Of course you had to register as well, because you can't carry out the occupation and when you applied to Canterbury did you tell them about -?
- A.** Yes, completely open about everything. I told both the College and Canterbury University and I told the GOC.
- Q.** You told the GOC about it. What did the ABDO College in Canterbury say?
- A.** They said that they were happy for me to study and the University of Canterbury Christchurch, they sat at a Board and discussed my case and decided that they would be happy for me to study and get a degree from them in dispensing optometry. When I found out that my application to be a member of the GOC was declined then I went and spoke to the Head of Distance Learning at ABDO College and told her that I had appealed and had a hearing today. She said that she would let me be part of the course, because she said if I didn't then I would have to wait until the next course enrolment. I have been studying since September at ABDO under that proviso. If things go positive for me I will be going on that ABDO College for the next two years.

**Q.** You started on 24 October and you have a letter of reference from your course tutor. How do you feel that you are doing?

**Mr North:** Would that be R2?

**Mr Bernstein:** Sorry, R2, the reference from his tutor.

**Mr North:** Okay, thank you, Mr Bernstein.

**Mr Bernstein:** Sorry, they both seem to be R2.

**Ms Grute:** The R2 is the unsigned one from the course tutor.

**Mr North:** R1 is from his father.

**Mr Bernstein:** Why is this reference unsigned from your course tutor?

**A.** Because it is distance learning so I asked my tutor for a reference and she wrote it out on the computer and just emailed it to me. She didn't sign it.

**Q.** You have the copy email, but those are the details of your course, is that correct?

**A.** Yes.

**Q.** How do you think you are doing on the course? How are you finding it?

**A.** Good. I think I am doing quite well. I am getting good results. I do a weekly assignment which you complete at work and post it off to a tutor who marks it and then posts it back. I have been doing well on them; an average of 85 per cent. Then you do a couple of essays – I did well on. Then you have to go every year – there are four weeks of lecturing. I have already been on one block release and I learnt a lot then. I very much enjoyed learning. I haven't done anything academic – I did music technology, but that was more of an art rather than a science. I have enjoyed getting back to some academia.

**Q.** If I can ask a general question now, you have been to prison as a result of what you did. How do you think that affected you as a person, your character?

**A.** When it first happened it was so much of a shock that I couldn't really compute it. In essence, it completely devastated me. I didn't have a good time. It was really bad. Then when I came out it was hard for me to assess – it happened to me gradually, but when I came out my girlfriend and my parents said that I had changed quite a bit and it took me a bit of time to get used to being back in society. I was really happy to be back with everyone. It has had such an impact on me personally. It has probably affected my parents more than it has affected me. My wife has stood by me, which I was very grateful for. It seems to just affect me all the time; I can't believe I did it. We were married last April and we couldn't get wedding insurance or insurance of the engagement ring, contents insurance – anything which seems like a basic thing is very hard to get once you have a record.

- Q.** How do you feel about this opportunity that your father has afforded you to the profession? How important is it to you?
- A.** Very important. If I can get to keep this occupation I hopefully will become a dispensing optician and then I am hoping to study a further year in Birmingham to become an optometrist. The idea is my Dad is pushing on a bit now and he is starting to make plans for retirement and it coincides that once I have finished and done my pre-reg year, that is when he wants to start winding his involvement down - especially in testing and stuff. He wants me to take over the Selby & Glover business. In terms of my occupation it is very important and for my future life as well, because I have a wife and my first child is due in April, so they both have financial security.
- Q.** You are aware that the reputation of any profession is important. How do you think you fit in with the reputation of the profession? How would you feel that you would be able to contribute to that?
- A.** Even though I have done something fairly major in my younger days when I was 19, I feel as though I know what is important and I know the difference between what is right and wrong. I feel as though if I was to be allowed to become a member of the GOC - I don't know – I am running out of steam.
- Q.** Your offence was one of dishonesty and the Committee will have to look at issues of honesty and integrity. You say you have learnt from your lesson. How do you feel that your character in terms of honesty – are you an honest person?
- A.** Yes. I would never be led astray by anything to do with that now. I am 26 now; I have a bit more life experience. I would never let anything lead me astray, I am working for my father and, in essence, it is going to result in being my business, so I wouldn't want to do anything to harm that.
- Q.** How committed are you to the practice?
- A.** Very committed, definitely.
- Q.** Chairman and members of the Committee, I don't have any further questions. My friend, Mr Hepworth may and of course the Committee may.

**Mr Hepworth:** Sir, I need to ask I'm afraid for 10 minutes at this stage. There is an enquiry I need to make and I need to make it before I start my cross-examination. I don't know if it would be convenient time for the Committee in any event to take a short break? I don't anticipate it will take longer than 10 minutes.

**Mr North:** Is that a lawyer's 10 minutes, or 10 minutes?

**Mr Hepworth:** Sir, with the level of dishonesty within my own profession, I shouldn't say any more. I would hope that it would be everyone's 10 minutes, although it depends on something else.

**Mr North:** Make that so. Thank you, we will adjourn for 10 minutes. Can I just remind you Mr Glover you are under oath so you can't discuss the case?

[Hearing adjourned at 11.25]

[Hearing resumed at 11.37]

**MARK JOHN GLOVER**  
**Cross-examined by MR HEPWORTH**

**Q.** Mr Glover, I don't think I need to remind you that you are still under oath. I have questions to ask you in relation to three areas. The first is in relation to the conviction. I don't want to talk too much about that much at all because the Committee have the sentencing remarks. The reason why you committed the offence was because you saw some easy money to be made, wasn't it?

**A.** It was not the whole reason, but I was a student and it was a case of people telling me, "Just sit on the computer for a little bit and you can make a bit of" –

**Mr North:** Could you speak up?

**A.** Sorry. I could see people were just going on the computers for a little bit and it wasn't the case of raking it in, but it made a little bit of money. I was persuaded to do it.

**Mr Hepworth:** The money that you made, you didn't give it to charity, did you?

**A.** No, I didn't give it away to charity.

**Q.** It was a way of making easy money, wasn't it? That is the truth of the matter.

**A.** Yes.

**Q.** Can I ask you then please about the two references that have been forward? Do you have copies of them in front of you?

**A.** No. [*References passed to the Appellant*]

**Q.** It may be that members of the Committee may have some further questions, but there is a matter that I need to address with you. At R1 this is a letter from your father. It refers to you being employed as a trainee dispensing optician. Are you sure about that? Is that what you are employed as?

**A.** From the start of the course that was what my official title was, but before that that was a phrase that was used for me doing work experience. The proviso was that he knew my background and knew there could be a chance that I might not get on the course. He said "If you get on the course then we can start this seriously". That was my job title. He has just used it as a general title for what I was doing beforehand.

**Q.** You were employed as a trainee dispensing optician but not registered as a student dispensing optician?

**A.** No. I was only registered when the course started.

- Q.** You are not registered, are you, as a student dispensing optician with the Council?
- A.** With the General Optical Council? No, I am registered as an ABDO member and I am registered as an official student at Canterbury Christchurch University, but obviously not with the GOC.
- Q.** The last set of questions I want to ask relate to R2. Is it your evidence that Gillian Elstub produced this reference?
- A.** Yes.
- Q.** At whose request did she produce it?
- A.** Mine.
- Q.** For what purpose did you ask her to produce this reference?
- A.** She was a lecturer – she teaches me more than anyone else. I told her that I had been having an issue with my GOC registration, so I asked her to provide me a reference of my character on block release.
- Q.** Did she know that you were going to appear today before the Registration Appeals Committee as part of your appeal against a refusal to register?
- A.** She did know that I was appealing my thing, but I don't think I indicated to her that it would be on this precise date.
- Q.** Did you tell her that this reference was going to be used as part of the appeal which you were lodging against the refusal to register you?
- A.** I just said, "Would you be able to give me a reference because it might help my case for an appeal?" I didn't say I would submit it necessarily, but I said, "Can I have a reference, which would help". I presume that she would have inferred that I would be submitting it to you.
- Q.** She doesn't know that it is being used today?
- A.** She knows that it is being used for my appeal, but I don't know if she knows the dates.
- Q.** Thank you. There are no more questions.

### **Questions from the Committee**

**Mr North:** Some of the members of the Panel may have some questions for you. I will start the questioning on my right.

**Mr Baldwin:** I have none.

**Mr Roberts:** No.

**Mr Varley:** Just the one question. Do you still have any contact with the people who were found guilty, particularly with the Kaufmans?

**A.** No. Definitely not with the Kaufmans. I completely disassociated myself with them, including both the father who was ringleader and his son, but I am still in contact with a guy called Greg Baines, who was also given a custodial sentence. He has been my best friend for a long time, so it was me and him that went through the whole ordeal together and we helped each other for a bit, so we are still close now.

**Q.** I wasn't going to bring it up, but Mr Bernstein mentioned it again – this net figure, this £13,500 – perhaps I ought to explain, as an accountant I am very interested in figures. The difference appears to be that it is down to eBay fees. I have just done a calculation and it is 11 per cent of £45,000. I have used eBay and I know what the fees are and they are not 11 per cent. Is that figure right? It was used in the court; it has been used again today.

**A.** I don't know the exact figures and it has been a long time since I have used it. You have to pay fees and you pay fees on sold items, so obviously not everything I put on was sold, so I was still paying for things.

**Q.** Yes, but their normal fees are usually less than one per cent.

**A.** I know; PayPal take a cut as well.

**Q.** Okay.

**Ms Grute:** I have some questions that pertain to the very heart of what we are talking about: character. You say that it was pretty obvious the goods were counterfeit. Were the buyers of the goods aware they were counterfeit?

**A.** I obviously didn't write on the things, "This is fake".

**Q.** Members of the public in good faith bought these goods believing on what you posted that they were okay, they were the real deal.

**A.** I also never said that they were real. Presumably if you are getting a coat that is worth however much money and you are getting it at such a discount in price it is inferring that it might not be real. The same as, if you go abroad to Turkey or whatever, you get those handbags which are a similar thing.

**Q.** I am curious because when I read about the other people that were involved, one in particular made his plea that he was guilty immediately, but you didn't. Why was that?

**A.** Because I just don't think we knew where things were going. That what I was advised on doing.

**Q.** You knew it was wrong?

**A.** At that point I knew it was wrong, yes.

**Q.** But you didn't plead guilty?

**A.** Pretty soon after we put in guilty.

**Q.** Okay.

**Mr Bernstein:** Perhaps it might assist if I asked both of those questions in a way that might elicit an answer to both those questions, if it will assist the Committee. Is it correct that the prosecution put the case in relation to the counterfeit clothing that the victims were the companies that had their good name sullied or diluted by counterfeit goods and that it was accepted by the prosecution that both those that were selling the goods and those that bought the goods knew what was happening? The victim was Prada and the companies whose brand was diluted. Is that how the case was presented by the prosecution?

**A.** Yes, that was one of the main things.

**Q.** Secondly, is it correct that your leading counsel sought negotiations with the prosecution in this case that could not be resolved until the prosecution were aware of what your co-defendants were doing, that the case may have resolved differently had all your co-defendants pleaded guilty. This was advice given to you by leading counsel that you do not enter your plea until the outcome of that?

**A.** Yes.

**Q.** The judge would take on board the fact that you admitted these offences at the police station, but this delay in your guilty plea was counsel-led rather than led by you. You did what you were informed was in your best interests by counsel.

**A.** Yes, I never –

**Q.** It is a slightly leading question.

**Mr North:** We need to hear from the Legal Adviser.

**Mr Swinstead:** Can I just help and perhaps it is a slightly unusual way, but it may answer your question a little bit? May I ask some questions on fact? I know Mr Glover is giving evidence, but Mr Bernstein may be able to help. Mr Bernstein, how many defendants were there in this conspiracy altogether?

**Mr Bernstein:** They started off with 19, in my recollection. I can say to the Committee that I was, as is probably seen on the papers, with my firm represented – I didn't prepare the notes, but my company acted for Mr Glover.

**Mr Swinstead:** There were 19. Did some fall by the wayside? When the matter was listed for trial how many defendants? Had some pleaded by then or were the main tranche of people who appeared for trial and were there then pleas, or were there some who still pleaded not guilty and were convicted? How did it work?

**Mr Bernstein:** Some were dropped along the wayside. There was a trial in relation to at least 10 co-defendants. By this stage Mr Glover had pleaded guilty so he was out of the equation, but some of the cases were discharged at half time by an application of no case to answer. In relation to others a number of the co-defendants' defences were they did all this, but they didn't know that it was counterfeit. A lot of the defences were, "I was involved" in the same way that Mr Glover was involved and there were about seven or eight student houses around the country with one relative of Mr Kaufman and seven or eight other students. This was a cottage industry around the country of students. Some were acquitted. Three others, the jury were not able to reach verdicts on and the Trading Standards prosecution decided not to renew the prosecution. Nobody was convicted after the trial, but those that had pleaded guilty – I refer to the judge's comments on page 37. It starts at page 33.

**Mr Swinstead:** How many in the end were sentenced?

**Mr Bernstein:** Four. If one goes to page 33 in the bundle, Mark Glover, Greg Baines, Anthony Kaufman and Paul Miller were the only ones who pleaded guilty. Everybody else was either acquitted or dispensed with at half time or the jury couldn't reach a verdict and they were not proceeded with. These were the only four that were sentenced and they were all sentenced together on the 29 November.

**Mr Swinstead:** Mr Hepworth, is it appropriate for me to say, as a barrister with some experience of criminal law, that where you have a large conspiracy where the prosecution are considering the pleas of many meant the possible pleas of many people, that whatever your actual position is, you may not tender your plea until matters have been, to a certain extent, resolved as between counsel? Do you accept that as a principle? It is going back to the question that was asked. It is quite important.

**Mr Hepworth:** I accept that some defendants upon advice choose to plead tactically, yes. Whether or not that is appropriate is a matter that I am not going to address.

**Mr Swinstead:** The point I make with this is whatever a defendant's instructions are, the moment that a plea is tendered in a large conspiracy may well depend, because each representative is wishing for his position to be considered by the prosecution and the prosecution quite fairly say, "We can't consider your position until we know what the other people in the conspiracy are doing", or a number of those people. That very often occurs in a large conspiracy. Quite reasonably, as it were, both sides are trying to get the picture, particularly the prosecution, of who has pleaded guilty, who has not pleaded guilty and on what basis they are pleading guilty.

**Mr Hepworth:** I accept it often happens. I don't accept that it is always reasonable for it to happen, but I accept that it does frequently happen. Whether or not it

is reasonably probably gets us into an issue that doesn't need to be dealt with before this Committee.

**Mr Swinstead:** I don't know if that makes it clearer?

**Ms Grute:** It does, yes.

**Mr Swinstead:** I could go further and ask Mr Hepworth, as someone who has prosecuted and defended in large cases, but I don't think I can probably give evidence.

**Ms Grute:** Thank you, that is clear for me. It is very helpful. You also refer to the – we are not sure about the sum, but £9,000. You say “It is not exactly raking it in; it is just a little bit of money”. What did you do with the money?

**A.** It just went on the usual student things, like beer and food, going out. It is not like a lump sum, so it was not like “I'm going to buy a massive telly”, it trickled in, so it was just a bit of extra spending money over the time that it took.

**Q.** That was 18 months, more or less? There is just one other point I would like to back to about you informing the Distance Learning Institute about your conviction, which you clearly did and it has been signed by Miss Derbyshire. I know that you are aware, of course, that the ABDO College is a separate entity to the Distance Learning Institute. Who did you inform in the College of your conviction?

**A.** I informed Michelle Derbyshire and there was an officer manager there at the ABDO College and she dealt with stuff for me as well, called Joan Griffin.

**Q.** Miss Griffin and Miss Derbyshire both reside in the Distance Learning Institute. My question is who did you inform at ABDO College?

**A.** I didn't realise that they were separate.

**Q.** Specifically you didn't, is that right?

**A.** I thought I had done. I thought she was the Head of Distance Learning, which meant that she was the head of my department, so that is who I went to and discussed it with her at length. I presumed that she has probably told ABDO College, because it would be ABDO College who would give me the qualification.

**Q.** How did Ms Elstub know of your conviction?

**A.** She didn't. She didn't ask; I just asked for a reference.

**Q.** She might not have known; would that be fair?

**A.** Not know of my conviction? She might not. I spoke to Michelle Derbyshire, because I didn't know whether it was appropriate for me to ask for a reference, so I asked Michelle Derbyshire and she said, “Ask. She might not do it, but you can always ask”. I just asked and I basically said my application for the GOC membership was declined and I had to go to an appeal thing and

I said, "If you could write me a reference that would really help me in my case."

**Q.** Okay. I might have missed something, so forgive me if you have already told me, but did you specifically tell Ms Elstub what your conviction was for when you asked her to write a reference?

**A.** No. I didn't tell her what my conviction was for.

**Q.** Okay. Thank you.

**Mr Roberts:** Can I just ask something?

**Mr North:** Yes, please do.

**Mr Roberts:** Can I ask you why she then didn't ask you why you needed a reference and why, indeed, your registration had been rejected by the GOC?

**A.** I don't know why she didn't.

**Q.** What reason did you provide for her to give you this?

**A.** I just told her that my GOC application was being put to an appeal and that a reference might help and if she would write a reference of what she thought my character was like when she was tutoring me at ABDO College and she said, "Yes, that's fine".

**Q.** Nobody asked you in the Distance Learning Institution the reason for the GOC failing to register you?

**A.** Ms Elstub didn't ask, but obviously Michelle Derbyshire asked. Whether she already knew, because I had written it on my -

**Q.** Was it your assumption that information would be passed on to this person, Gillian Elstub?

**A.** I didn't really think about it. When I asked Gill for a reference she went and spoke to her boss and I can't remember who she is, her Head of Department or something.

**Q.** She went to ask her boss if she could give you a reference, for something that she didn't know she was giving a reference for.

**A.** I don't know exactly what she said. She just said, "I just need to ask someone" – her boss. Then she got back to me and said, "Yes, that's fine, I'll write you a reference." I don't know whether she ever found out my conviction or not.

**Q.** Okay. Moving back to matters that preceded that, you said you left your "enterprise", as you put it, in 2006 and you said that "Things had been going on for long enough", you had finished university and you were now living with your girlfriend. What was the true reason for you stopping the enterprise? Was it that you had decided that you had had enough of it?

**A.** By that time I didn't really want to be in it. Nothing ever really happened to me, but I know Gregg Baines at one point said to Anthony Kaufman that he wanted to go, he wanted leave and Anthony Kaufman threatened him with violence and went round to his house and stuff. That was always in the back of my mind. By that time I was trying to scale it down without just immediately telling him that I wanted to leave. My account was closed by eBay and then Anthony Kaufman was, "Just open up another one" and I was like, "No, I don't want to do this anymore". He tried to persuade me to keep doing it.

**Q.** Had your eBay account not been closed would you have carried on?

**A.** No, I wouldn't have wanted to carry on, definitely not. At the time when it happened I was glad that it was closed, because it meant that it was an excuse for me to stop. I wouldn't have said to Anthony that I just wanted to give up, which meant he might have done something – the same thing that he did to Gregg, which I didn't really want.

**Q.** Okay. Last question. Whilst you were at university you had the advantage of your family, your parents, your father having three practices, being an optometrist. Did you at any point go to him and let him know the difficulties that you faced being wrapped up in criminal activities?

**A.** Yes.

**Q.** You did approach your father and explain to him what was going on.

**A.** And my mother as well.

**Q.** How did they suggest you got out of it?

**A.** They just said, "All you can do is be honest". I was completely honest and when I went down to Trading Standards I literally told them everything and they wanted all the minute details of things, like selling things and stuff like that.

**Q.** Was it the telephone call from Trading Standards that prompted you to discuss it with your parents?

**A.** They already knew what I was doing and they weren't happy about it. Then when I had that phone call I told them straightaway that I was in trouble.

**Mr North:** Could we be sure that any questions we put to Mr Glover are related to the evidence and our task today? I am concerned that we may drift into going behind matters that have already been resolved in court and if we could focus our questions clearly on the issues before us.

**Mr Roberts:** My apologies to you. I was merely trying to get an indication of character. That concludes my questions. Thank you.

**Mr North:** Thank you. Do I have any further questions? What were you doing between July 2006 and September 2007, where I believe you began your

music technology course? My understanding was you began your music technology course in September '07.

- A.** The course ran from April to April, so it finished in April '08.
- Q.** What were you doing between, effectively, when you finished your degree in '06 – so you were free from July until the following April. What did you do then?
- A.** I went around Europe a bit with my girlfriend. I was travelling. Then I was trying to find out what I wanted to do with my life. I was trying to find a bit of work experience.
- Q.** What you are saying is you were travelling and sorting your head out?
- A.** Yes.
- Q.** Thank you. What is different about that person at that time and you today? Think carefully about your response to this question, because the burden is on you to convince us as a Committee.
- A.** At that time we have just discussed, or at that time I was at university? Which do you mean?
- Q.** I am talking about you have left university, it is 2006, okay? We are now six years later. Tell me what is different about you as a person and particularly your character between that point and now?
- A.** I feel as though at that point, even though I was legally an adult, I don't think I really was an adult, I don't think I thought like an adult. Now I have a much firmer grasp on the world; I know how the world works. I feel as though I know where I want my life to go. At that time my head was fairly in the clouds, but I feel now I am a lot more sensible and a lot more driven and I feel as though I know what is important. The important thing is my future family.
- Q.** I have no further questions, thank you. Are there any comments from either of the representatives arising out of the Panel questions?

**Mr Hepworth:** Not from the Council, thank you.

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

**Mr North:** Mr Glover, please return to your seat.

*[The witness stood down]*

**Mr Hepworth:** Sir, thank you. I will now make further submissions on behalf of the Registrar. A lot of the points I am going to make are obvious ones and I apologise if you think I am labouring the points.

The public and other healthcare colleagues have the right to expect the highest standards of integrity and honesty from any dispensing optician or student dispensing optician with whom they may come into contact.

The applicant was convicted of serious offences. The offending behaviour took place over a long period of time; 18 months. The truth of the matter is that offending behaviour resulted in a sizeable personal gain for the applicant: £13,500 minus the expenses which were incurred in committing the offence. The offending behaviour was so serious that it resulted in a period of imprisonment being imposed, bearing in mind that this was the applicant's first offence that gives you an idea about how seriously it was taken by the court.

The conviction was relatively recent: November 2009, just over two years ago. The offences themselves three years further back, but the conviction only two years ago. At the forefront of your mind, of course, will be those two considerations: what would be the effect on the reputation of the profession if the applicant is admitted to the Register and what risk may there be to the public?

When you are looking, as I am going to invite you to, in this section of my submission at the reputation of the profession, clearly you are looking at the reputation of the profession as a whole and the reputation of every other student dispensing optician and by extension every other dispensing optician can expect to have, merely because they are part of that profession.

I invite you to take a wider focus than the fate of this particular applicant himself. I hope that you don't consider this to be an over-emotional phrase, but it is perhaps helped by setting into stark detail the consideration which, on the Registrar's submission, you have before you today – you hold the reputation of the profession in your hands, that is why you are sitting as a Registration Appeals Committee. The mere fact of such a serious conviction, in the Registrar's submission, should result in this application being denied, irrespective of any decision you come to about whether or not this particular applicant poses any future risk of dishonest conduct if he is allowed to register. It happens, and I draw a parallel with registrants who are before the Fitness to Practise Committee after having been found to have committed dishonest things whilst registered, quite often reference is made to remedial steps that could have been taken and you know the authorities which say that such remedial steps are of limited importance when you are looking at such a fundamental part of being a registrant – the question of honesty or dishonesty. In the Registrar's submission that holds true when you are considering whether or not to admit an applicant to the Register in the first place.

You also have to consider the risk to the public and it is right, and the Registrar accepts, that there is no evidence that this applicant has caused any physical harm to anybody. Arguably he has caused financial harm to various people, but the nature of dishonesty is that it means that this applicant just cannot be trusted and that is the pernicious nature of dishonesty and that is, in the Registrar's submission, unavoidable – he does pose an on-going risk of further dishonest behaviour.

Ultimately it is the applicant that has to discharge the burden that he is of suitable character to be fit to undertake training and in the Registrar's submission he hasn't established that his is a rare case, such as to merit overturning the presumption that his application should be unsuccessful. Sir, those are the submissions I make on behalf of the Registrar, unless you have any specific issues with which I can help.

**Mr North:** Thank you. That has been helpful, Mr Hepworth. There may be an issue I will return to at some point, but otherwise I would like to hear Mr Bernstein.

**Mr Bernstein:** Thank you. Thank you members of the Committee. I started my opening submission by agreeing that the tests laid out by Mr Hepworth are the tests that you must apply and the test is a high one. It is a high one, but it is not, in every case, an insurmountable one. Somebody who has shown dishonesty in the past isn't necessarily prevented at all times from being registered in the way that Mr Glover seeks.

You will have, I hope, gained an insight into the character of Mr Glover by the way that he gave his answers and the story that he tells of his life, both before, during and after the commission of this very serious offence – one conviction, two offences that resulted in a custodial sentence. I don't agree that he cannot be trusted. He is somebody who can be trusted, whose experiences and whose conduct from December 2006, which is over five years ago, the dates on which it is accepted by the court, the judge and the prosecution he, of his own volition, extracted himself from this serious offence and ceased to participate in it. That was five years ago. He is now 26. He would have been 21 at the time. He may well have been 19 or 20 when he was in his second year at university. I ask this Committee to consider that his conduct and what has happened to him since then renders that he can be trusted.

It is, in my submission, a significant period of time. During that period of time he has faced lengthy court proceedings. He has, of course, been in custody. He is now married, he is about to become a father. He has also known what it is like to not be given a second chance, an opportunity. He has lived within the community as somebody with a conviction, something he has never shied away from. I hope this Committee will consider that he has always been up front about his conviction, both in terms of registering, or attempting to register with the Council, but also in relation to trying to obtain employment. He made a number of job applications, for not necessarily jobs of great stature, but he was turned away at all times from offers of employment that didn't involve making sandwiches or working in a bar, or very menial, "bottom of the ladder" is the word used by him. Notwithstanding that, he has stuck with it and his conduct since coming out of custody, in my submission, demonstrates that he is somebody who has shown character, honesty and that he can be trusted.

I refer the Committee to page 37 in the bundle, which is some sentencing comments of His Honour Judge Geake who sentenced him. Halfway down the second paragraph, the word starting, "Clearly". It says:

"Clearly, to your credit, you withdrew from the operational in December, 2006 and you too have put this period behind you and you now lead a decent industrious life and I have no doubt that you bitterly regret those days in Leeds when you got yourself involved in this fraud."

Even at sentence, before the punitive element of custodial sentence, it was acknowledged in court that he put that part of his life behind him and that he was now leading a decent and industrious life and this application is part of that. Prison serves as a punishment, but it also serves as a deterrent and it is not just the custodial sentence, but also the difficulties that he has personally faced that, in my submission, demonstrates that he can be trusted.

I would ask you to see him as somebody who has reformed totally from the person that committed this offence and also committed to the profession, committed to his development and committed, of course, to his wife, who has stood by him throughout the tragedy of the early part of his life and also committed to his family, the fact of his child which is due in April of this year.

He is somebody who, of course, started out with some privileges. He was able to go to a good school, he had a good education, he went to a good university and he was bright and academic. He threw that away when he involved himself in this. Perhaps, exceptionally, he has this opportunity because of his father's business, but also his father's interest in him has given him an ability to demonstrate that he is reformed, rehabilitated and is able to carry out his functions with distinction.

I ask that it be considered that his position where he is at the moment at Selby & Glover is an aspect of his exceptional circumstances. I would ask that it is considered that he is not a risk to the public and he has demonstrated that by the way that he has conducted himself since December 2006, that he was somebody who was dishonest, in the sense that he committed a dishonest offence, but he has long since ceased to be dishonest. He has long since ceased to be somebody who is a risk to the public or a risk to the public's perception of the profession or to the integrity of the profession and he has demonstrated somebody with strong, good and honest character. In those circumstances, I ask you to consider that he can be registered to be able to carry out his, in my submission, no doubt law abiding, diligent and honest rest of his life.

He has clearly paid a very dear price over the last five years for his involvement in something that was very serious and clearly demonstrated dishonesty. That high price that he has already paid, in my submission, has forged a person that is before the Committee today who, as a result, perhaps,

of his experiences that are over and above the experiences that other people of 26 have been through, has forged somebody who is utterly serious, utterly committed, utterly honest, utterly trustworthy and utterly able to carry out these obligations, if he were entitled to do so.

I am reminded, of course, that the test is not to do with punishment or redemption and mitigation is not something that carries high weight, but of course I remind this Committee of the devastating effects that refusal to be registered will have on him. The Committee has heard the difficulties that he has obtaining employment in any meaningful sense and, of course, that will continue. I can say to this Committee, that the Rehabilitation of Offenders Act means that this is a conviction that is disclosed for 10 years and we have seen what has happened over the last five years. That will, of course, continue until his early middle age. This is his opportunity to live a life that he is clearly able, academically and intellectually, to fulfil. I say that because in terms of whether he can be trusted or not, the Committee may have regard to what would happen to his life if he were ever to even remotely reverse the incredible steps that he has made in his life. Of course they would be utterly disastrous and that is a further motivating factor that, in my submission, will allow the Committee to say that he is completely reformed and not a risk and can be trusted. He has an awful lot to lose and he will know, if he is successful in his appeal, how his life could have turned the other way if he were not. That in itself, in my submission, will give him the resolve to continue acting in the way that he has acted since December 2006.

He clearly made a very grave and dishonest error in involving himself with people that he had known for many years, people he grew up with at school. The orchestrator of this conspiracy was the father of an old school friend, which is perhaps an exceptional and unusual starting point for this offending. He clearly knows how wrong that decision was and I would ask that although it is for him to establish that he should win this appeal, his life since then has demonstrated to him how important issues of honesty, integrity and trustworthiness are and he has had plenty of time to reflect on that.

The initial Registrar's decision was on the basis that it was two years from the commission of this offence to the application to be registered. Of course it is a lot longer than two years, it is from December 2006 – it is five years. I would ask that five years in a very young man's life is a considerable period of time. It is not a short period of time, it is a considerable period of time for that person to show that he is totally reformed and committed. I ask the Committee to judge that he is and that he should be able to continue with his traineeship as a dispensing optician and be allowed to be registered in the way that he applied.

I make the distinction in two ways from other cases that involve dishonesty in the sense that the case is, in relation to Mr Glover, he has always revealed at the earliest opportunity to the Committee and he has given evidence as to the situation with his academic establishment, but I would ask the Committee to

judge that he has never attempted to veil his conviction and he has always accepted right from the outset that his actions were dishonest. That is, in itself, evidence that he can now be trusted. That is all I have to say.

**Mr North:** Do we have any questions from the Committee? *[No questions]*

Just one point, you made a comment, Mr Bernstein, concerning the Registrar making a decision on the basis that the events had taken place only two years previously. Could you just take me to that evidence?

**Mr Bernstein:** I apologise.

**Mr Swinstead:** It is on page 7; Mr Hepworth took the Committee to it.

**Mr North:** I am sorry. I do, in fact, have a note. Excuse me.

**Mr Swinstead:** Mr Hepworth took you to that.

**Mr North:** My apologies Mr Bernstein, Mr Hepworth did in fact take us to that and I have noted it. Do my colleagues have any questions? I'll just check again. Let me turn now to the Legal Adviser for advice.

**Mr Swinstead:** Before I give the Committee advice there is a matter that occurs to me, and I am just pondering how best to do it. Might I ask that there is a short adjournment which may require me to speak to the representatives of both sides? It is a matter that I would wish to think about because it is a matter that has not formally been put to you, but it seems to me in a way that it possibly could be in the light of everything that has been said this morning. I would like the opportunity. I may be told to get back in my box and if I am, then I will do so. Might I just explore this because it seems to me to be a matter that if it should be put before you, then it perhaps should be?

**Mr North:** Yes, Mr Swinstead, I am sure that we can rely on your professional view of these matters and if a conversation with both representatives at this point will be helpful, then by all means. My colleagues share that view. We will now adjourn formally.

**Mr Swinstead:** Sir, my conversation will be very short and then I have a short advice, but I don't know whether you would like to have lunch?

**Mr North:** We would like to have matters completed before lunch. We will adjourn now formally for discussions between the representatives and Mr Swinstead.

*[Hearing adjourned at 12.38]*

*[Hearing reconvened at 12.50]*

**Mr North:** Good, I hope that pause was helpful. Mr Hepworth, are you leading on this?

**Mr Hepworth:** Sir, I don't think it is me.

**Mr Bernstein:** I am probably leading on this, Mr Chairman. It is a point that came about during the question that was asked regarding his guilty plea and the fact that his guilty plea was late and there was some discussion about that. A point that I hope I am entitled to make and if I make that now, with the Committee's leave, after my address is one in relation to how the proceedings in the criminal matters evolved. Of course he pleaded guilty on the date of his trial, but we know that in April 2008 he was never formally arrested for these allegations, in fact ironically for so serious a set of allegations he had never met a police officer; he was never prosecuted by the police or the Crown Prosecution Service – it was led by the Trading Standard officials who took him to an office and interviewed him.

In April 2008 he was represented by a solicitor from a different firm to my own, but I can state that during that interview he made full and frank admissions a) that he was involved; b) to the level that he was involved at: and c), most importantly that he knew as things were going along that these were counterfeit goods. It was never formally discussed, but he knew full well that they were counterfeit and that the counterfeit goods were not being sold legitimately.

I make that point because there were 19 people that were originally charged in relation to this offence, of which all but four of the prosecutions either fell by the wayside, or were discharged by the judge at half time on submissions, or were acquitted and that all of them had the defence which was, "I didn't know the goods were counterfeit". They were all part of this cottage industry of lots of students in lots of different houses. The point that I make was had Mark been dishonest and said, "I was involved; you can check my computer, I had no idea these were counterfeit goods, I thought they were all originals. I didn't know they were counterfeit", then he would have almost totally certainly not be in this position because he wouldn't have been convicted, the case would have been discharged at half time, or he would have been acquitted and he wouldn't be appearing before you today. I ask the Committee to consider that it is his own honesty, as well as his own dishonesty – of course had he not committed the offences, that is the best way to not have to appear before a committee, but had he not been so honest in circumstances where it would have been open for him not to have been, then he wouldn't be before the Committee today and I ask the Committee to take that into account.

One other matter that Mr Hepworth has allowed me to raise finally, and I had considered that this particular letter was in the bundle, but it wasn't, my client's MP, John Leech, wrote to the General Optical Council recommending his appeal stating in conclusion he has served his punishment and should now have the opportunity for rehabilitation. It is obviously not a Member of

Parliament's decision, it is yours, but I hand that in in support of his application. I apologise – this copy has been presented to me by Mr Hepworth, which is why there is only one copy.

**Mr North:** That will be R3. [*R3 handed over*]

**Mr Bernstein:** I have no other submissions or applications.

**Mr Swinstead:** Mr Hepworth, the point in short that Mr Bernstein is making is that, in a sense, whether there was any other evidence, but there was the Trading Standards prosecution had the evidence of what Mr Glover said to them, effectively confessing to his involvement. Would it be fair to make this point – obviously if the Committee accepts that that was the position – that by being honest, if I can put it that way, in April 2008, he would inevitably have to be guilty or be convicted, because there is the evidence, as it were, from his own mouth? It would appear from what Mr Bernstein says, that quite a large number of the other people either were acquitted or the cases did not even get beyond the prosecution stage. Would this be a fair comment to make, that by reason of his honesty in 2008 in accepting his part in his offences, he finds himself where he is today? If he had been dishonest in 2008 and basically said, “I did it, but I didn't realise they were counterfeit”, which apparently a number of his co-defendants stated, that he may have been acquitted or not proceeded against, or the case completed at half time, in which case he would be seeking now to be on the Register with no word against him. Is that a point that can properly be taken account of by the Committee in considering this?

**Mr Hepworth:** It is undoubtedly the case that the fact that he made admissions in interview goes to his credit; the fact that he pleaded goes to his credit – how much to his credit is a matter for the Committee. In response I would say just one thing, the fact that he admitted the offence doesn't detract in any way from the seriousness of the offence itself.

**Mr Swinstead:** Of course not. The point I am making is a slightly strange one which is the perversity of the position that, by being honest with Trading Standards, which inevitably would almost have bound to led, if he hadn't pleaded guilty, to his conviction, but he basically he admitted it out of his own mouth. If he had been dishonest he could be on the Register with no word against him because he would not have been convicted. I am not saying that is certain, but that is something that can properly be said or inference from the facts that the Committee have heard that can be drawn.

**Mr Hepworth:** That is right, that it is an inference that may be drawn.

**Mr Swinstead:** Thank you. My advice is short and my duty is to tender advice to you as to the law, rather than to direct you as to the law. The position is that you are the judges of both law and fact. You have now reached a stage

where you must decide what determination you should make under the provisions of paragraph 4(7) of Schedule 1A of the Opticians Act 1989. Your powers under that paragraph are:

- “(a) dismiss the appeal;
- (b) allow the appeal and quash the decision appealed against;
- (c) substitute for the decision appealed against any other decisions which could have been made by the person making the decision; or
- (d) remit the case to the person making the decision to dispose of in accordance with the directions of the Registration Appeals Committee.”

The burden of proof with regard to any issue in dispute rests upon the Appellant and the standard of proof is that he must satisfy you on the balance of probabilities with regard to such an issue.

I remind you also that under Rule 41 of the Registration Appeal Rules you have the power to summarily assess the costs of any party and to order any party to pay part of those costs or expenses. Under Rule 42 if you were considering making an order against a party you must consider that party's ability to pay and you may, under the provision of Rule 43, specify the period within which any costs or expenses are to be paid.

Sir, finally and in particular, issues have been raised or questions have been asked about the reference from Mr Elstob and I would advise the Committee to give the contents of that letter the weight that you consider appropriate based upon the evidence that you have heard. That is my advice, unless either party would wish me to say anything further, or more importantly to correct what I have said.

**Mr Hepworth:** Sir, I have nothing to say on behalf of the Registrar to correct the advice you have been given. The issue of cost has been raised. Can I make it clear that if the appeal is unsuccessful the Registrar intends to make no application for costs against the applicant? Sir, if the applicant's appeal is successful and if there is an application for costs against the Registrar I would seek to address you about that, but perhaps that is a matter that doesn't need to be reached until you come to your decision.

**Mr North:** Quite so, Mr Hepworth. Mr Bernstein?

**Mr Bernstein:** No observations or representations, thank you.

**Mr North:** Nothing further? Looking at the hour could you make yourselves available again from two o'clock?

*[Hearing adjourned at 13.00]*

*[Hearing reconvened at 14.09]*

**Mr North:** I understand there are matters that the representatives wish to bring to the attention of the Committee.

**Mr Hepworth:** Sir, that is right. It is me that has the information. Can I ask you and your colleagues to turn to R2, please? You can see that this is the letter from Gillian Elstub. Sir, I have made enquiries and have now been able to speak with Ms Elstub. She was lecturing up until a relatively short time ago and then we were able to speak. I am in an unfortunate position of having to give evidence about this telephone conversation, but because it is information that I think will help you in your deliberations. Of course I am obliged to let you know the information and it is unavoidable that I am the one that gives the evidence.

Ms Elstub confirmed to me that she had prepared this reference and the reason why it is unsigned is because she sent it by email to Mr Glover and she didn't think about signing it. She created the reference following a request by Mr Glover. She said that he told her that he was appealing against a decision to refuse him registration and he asked her to provide a reference in relation to the appeal which he was lodging. She said that she didn't know at the time the grounds for the refusal of the application and she didn't have a conversation with Mr Glover about the reason why the application was refused.

Sir, if my memory of Mr Glover's evidence is correct and I stand to be corrected if it is fallible, Ms Elstub confirms how this reference came to be created and it is the same account that Mr Glover gave when he gave evidence. Sir, that may or may not be helpful as you deliberate, but both parties thought it was information that you ought to hear.

**Mr North:** Thank you; that has been very helpful.

*[Hearing adjourned at 14.11]*

*[Hearing reconvened at 15.56]*

**Mr North:** During the course of our considerations we received no further legal advice from the Legal Adviser. I shall now read the determination of the Registration Appeals Committee.

### **Decision**

On 20 January 2012, the Registration Appeals Committee met to consider an appeal against the decision of the Council not to register Mark John Glover in the Register of Student Dispensing Opticians.

The Committee took account of the submissions made by Mr Hepworth, for the Council and those of Mr Bernstein, for the Appellant. It also took account of all the evidence presented by both parties. The Committee accepted the advice of the Legal Adviser.

The Committee noted that the reason for the refusal of the Appellant's application for registration was because he disclosed in his application that, in November 2009, he had been convicted of two offences and was sentenced to nine months imprisonment. The offences involved a large scale sale of counterfeit goods over the internet. The Committee was informed that there had originally been 19 defendants involved in these offences, but that the majority had either been acquitted at trial, their cases stopped by the judge at the conclusion of the prosecution case on the basis that there was no case to answer or cases were not proceeded with. The Committee noted that six of the defendants were sentenced for their part in these offences.

The Appellant's basis of plea before the court and the judge's sentencing remarks showed that the Appellant had been involved in these offences for a period of approximately 18 months until December 2006. He had been persuaded to join the enterprise by the father of a school friend with whom he was then at Leeds University and he was one of a number of students encouraged to take part.

Following his release from prison, the Appellant said that he found it very difficult to find employment other than in low paid and low status jobs which would normally be well below those of someone with his academic background. He indicated that he had decided to join the family optical business where he hoped to become the fifth generation of his family to operate the business. He said that he had started on the ABDO Distance Learning Ophthalmic Dispensing Degree.

The Committee noted that the reason for the refusal given by the Registrar, dated 12 August 2011, was that he had been sentenced for a serious offence in 2009. It further noted that, in the reasons, it was incorrectly suggested that the offences had been committed "not quite two years ago".

The Committee further noted that in the Declaration Summary for Registrar section, the recommendation was that the Appellant be granted registration as a student dispensing optician with a strong warning. In the section Decisions taken in similar cases, two cases are referred to where applicants with apparently more serious convictions were admitted to the relevant registers.

In reaching its decision, the Committee paid particular attention to the precedents placed before it and noted the principles it should apply in this case which were agreed by the parties. In particular, the

Committee was mindful of the high test of suitability it should apply and that it would only be in rare cases that applicants convicted of dishonesty would be admitted to the Register. It noted that an applicant has no right to be admitted and that the facts in each case are critical.

The Committee accepted that, whilst a student aged 19-20 years and in his second year at university, the Appellant was persuaded to involve himself in what turned out to be a large scale sale of counterfeit goods which a judge considered so serious that it merited a custodial sentence. Five years have passed since this offending; he pleaded guilty to these offences and disclosed this matter in his declaration to the Council.

The Committee had regard to the fact that when first questioned by Trading Standards officers in 2008, the Appellant made full admissions with regard to his part in the offences. It considered that it was proper, based on the information before it, to draw the inference that, had he not made that confession, there is a high possibility that he would not have been convicted of these offences as was the position with regard to the majority of his co-defendants. It, therefore, felt it proper to note the perverse consequences of his honesty which is to find himself in his current circumstances, whereas, if he had not been honest with the Trading Standards officials from the outset, he may have been included on the Register with no difficulty and therefore benefited from his further dishonesty.

The Committee considered that this fact placed this case in an exceptional category. Further, it considered that the original information presented for consideration to the Registrar also put this case in an unusual category.

These matters, together with the view that the Committee formed as to the positive changes in the Appellant's demeanour and insight since the time of these offences, persuaded the Committee that this case would pass the test of the rare case and would permit it to allow this appeal.

The Committee thus determined that the appeal be allowed and the case be remitted to the Registrar with the direction that the name of Mark John Glover be entered on to the Register of Student Dispensing Opticians (under paragraph 4(7)(d) of Schedule 1a of the Opticians Act 1989, as amended).

That closes the proceedings for today.

*[Hearing concluded at 16.03]*