

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

MARK JOHN GLOVER

A(11)07

AND

GENERAL OPTICAL COUNCIL

DECISION: 20 JANUARY 2012

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 nineteen 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 eighteen 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).

Chairman of the Committee: Peter North

Signed _____ Date 20 January 2012

Appellant: Mark John Glover

Signed _____ Date 20 January 2012

FURTHER INFORMATION
Transcript
A full transcript of this hearing will be made available via the GOC website in due course.
Appeal
Where the decision by the Registrar been upheld by the Registration Appeals Committee, the appellant may appeal against that decision through the Courts. The relevant court is shown at section 23G(4)(b)-(c) of the Opticians Act 1989 (as amended).
Council for Healthcare Regulatory Excellence
This decision will be reported to the Council for Healthcare Regulatory Excellence.
Contact
If you require any further information, please contact the Council's Hearings Manager at 41 Harley Street, London, W1G 8DJ or, by telephone, on 020 7580 3898.