



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

GENERAL OPTICAL COUNCIL

A(11)01

AND

PAUL NIYONKURU

Tuesday, 22 March 2011

REGISTRATION APPEAL HEARING

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PAUL NIYONKURU**

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Registration Appeals Committee: Mr Peter North (Lay) (Chair)
Mrs Geraldine Huka (Lay)
Dr Vicki Harris (Lay)
Mr Mark Lomas (Optometrist)
Mr Gordon Ilett (Optometrist)

Legal Adviser: Mr Gerard Pounder

Hearings Manager: Mr David Henley BEM

For the GOC: Ms Sarah Knight

For the Registrant: Mr Sandesh Singh

[Hearing commenced at 09.42]

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 optometrists and three lay members. I will ask the members to introduce themselves and the capacity in which they sit. *[Introductions]*

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

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

On the desk in front of the Committee, nearest to you, is Mr David Henley, the Hearings Manager, who will provide administrative support to the Committee. Next to Mr Henley is the transcriber who will be keeping an official record of all that is said today during the sessions of the hearing at which the parties are present. The remaining persons sitting in the Hearing Room rather than the public and press areas are members of the respective legal teams.

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

I understand at previous hearings of the Registration Appeals Committee the order of proceedings had been changed and it has found to be the most fair and appropriate way of conducting business. You will see in the Registration Appeal Rules, from Rule 33, that there is set out an order of proceedings. The Rules anticipate that we would first hear from the Appellant and then the Council's presenting officer on behalf of the respondent, the Council. The Council will address the Committee in relation to evidence and thereafter, under Rule 37, we would hear first from Mr Niyonkuru in relation to submissions and then from the Council. We will not change the order of submissions.

However, in relation to the first stage, evidence, it is suggested if you agree it the Council address the Committee first, both in relation to the framework of our decision-making and the evidence available which caused the registration application to be refused, so that Mr Niyonkuru, who will then address the Committee, will know exactly the evidence upon which the Council relies and the framework within which it is set that it is established before he addresses us on the evidence.

It appears that our colleagues on previous occasions have found this change of procedures most helpful. It is, however, a matter for the Council and Mr Niyonkuru whether you are prepared to proceed on this basis. Could I ask is that acceptable to both parties? [Agreed]

Thank you. Accordingly I will invite you, Ms Knight, to make the Council's opening statement.

Ms Knight: Thank you, sir. As you are aware under the Opticians Act 1989 the Council's main objective is defined in Section 2A in exercising its functions regarding the health and safety of members of the public, is to protect, promote and maintain their health and safety and that is the overriding issue for you to bear in mind today when you hear further evidence.

Part 2 of the Act relates to applications and qualifications in relation to registration and I will direct you to Section 8A(3)(a) where it states on pages 14 and 15 of your Handbook:

“A person shall be entitled to have his name in the appropriate register
_”

In this case the Register of Student Optometrists –

“if he satisfies the Council that he is fit to undertake training as an optometrist”

In relation to fitness, I would submit to you that the same criteria are applied as to whether you are looking at somebody applying to be restored to the role.

Sir, the applicant, Mr Niyonkuru, made an application to the Council which is at pages 6-9 of your bundle.

Mr North: Yes, could we mark that bundle C1, please? Mr Niyonkuru's bundle will be A1.

Ms Knight: Thank you, sir. As you know that application was considered by the Council's Registrar and this is a hearing of his application, but will be dealt with as a fresh application as opposed to a re-hearing of the matters before the Registrar. However, it is important for you to know that the Registrar refused the application and he informed Mr Niyonkuru of that fact in a letter to him dated 1 December 2010, which is at page 18 of the bundle, C1.

You will note that the Registrar stated in that letter that he had considered the application very carefully and that his refusal was on the grounds of Mr Niyonkuru's failure to comply with the law on three separate occasions within a very short timeframe. He said further that the repetitive pattern of the failure to comply with the law suggests a lack of understanding of the severity of the offences.

In terms of fitness to practise, the Act relates to this in Part 2 at Section 13D in which it states:

"The only ground upon which the fitness to practise of a registered optometrist or registered dispensing optician, or the fitness to undertake training of a student registrant, is 'impaired' for the purposes of this Act -"

Then it goes on to stipulate the different considerations for the Council and at 13D(2)(c):

"a conviction or caution in the British Islands for a criminal offence"

- is deemed to be one of the matters to be taken into consideration in relation to impairment.

Sir, the Council's position hasn't changed in relation to this matter before you today. That is to say that, despite that further evidence has been produced in relation to Mr Niyonkuru's application, the medical evidence that he has placed before you will be submitted on the basis of mitigation. I will address you later in submissions in relation to his hardship and the matters that are in his medical evidence, but the fundamental issue here is one of whether or not this gentleman is fit to be enrolled on the Register, whether he is deemed to be a person who can uphold the reputation of the profession and whether the circumstances which he will describe to you, I have no doubt, will be sufficiently exceptional for you to consider that the three almost back-to-back

convictions don't warrant him being excluded. I don't know if there is any other information that I can help you with.

Mr North: Thank you. Do you plan to call any evidence?

Ms Knight: I have no live evidence, sir. I will be referring to evidence in the bundle that you have before you.

Mr North: Mr Singh, what do you say?

Mr Singh: Sir, can I just say it is a larger room than I am used to, I'll make sure my microphone is on. Can I just say a word or two as an opening statement and I will ask Mr Niyonkuru to give evidence before you to explain the circumstances which gave rise to these offences? We would also seek to call one other witness. She is a lady who has known Mr Niyonkuru for some time and her reference is within the bundle; I think you called it A1.

Mr North: We did.

Mr Singh: There are two live witnesses and I will rely on what is in this document as well.

Before I make the brief opening remarks can I just raise one matter in relation to whether certain parts of this hearing should be in public or in private? You will all have had a chance to read the medical report, which is in A1, and noted its contents. Some of those matters relate obviously to medical issues. Parts of it relate to what can only be described as deeply personal issues in Mr Niyonkuru's past. In my application it is not opposed by the Council having spoken about it this morning, but, of course the matter for you, is whether – I will limit it as much as I can, but certainly parts that refer specifically to what is in that medical report and the account given to the practitioner about what happened to Mr Niyonkuru in Burundi and in Rwanda if those parts can be held in private as opposed to in public.

The power for you and your colleagues to do that will be well known to you, so I probably don't have to take you through it in any detail, but for those who want to, it is on page 140 of your Handbook. The power is simply this, that you may, it is a discretion, determine the public shall be excluded if it is appropriate having regard to the interest of the maker of the allegation, the interest of any patient or witnesses, the interest of the registrant and all the circumstances including public interest where, under subsection (4) of Rule 23 where they are considering the mental or physical health of the registrant.

It may be that some of the matters in the medical report fall under subsection (3) as opposed to subsection (2). If they do, then the presumption is in favour of the hearing being in private for those matters.

The account that has been given to the medical practitioner possibly wouldn't fall within subsection (3) because it is not directly related to health, but they are deeply personal matters and in our submission it would be in the interest

of the Registrant for those matters to be heard in private as well. In my submission there is no strong public interest in those matters being made public.

Mr North: Ms Knight, what do you say?

Ms Knight: Sir, we have no objections for the matter to be dealt with in private.

Mr North: My colleagues?

Ms Knight: We just need to clarify the appropriate rule, however. I do apologise – I am taking instruction. I am instructed that my colleague referred to the Fitness to Practise Rules.

Mr Singh: Sir, I did and that is my mistake. There is an identical rule in the Registration Appeal Rules as I understand it, which is at page 113 in your Handbook.

Mr Pounder: It is Rule 17 about hearings in public. In essence it is the same as the usual requirements. It is a matter of discretion for the Council, for the Tribunal in terms of whether or not those particular sections are made out. Inevitably, having looked at the material, there are issues of his health. It is a matter for the Tribunal.

Mr North: As in effect this application is agreed by the Council and my colleagues on the Committee are content, shall we proceed accordingly, Mr Singh? If you would like to indicate where you would like matters to go into private you should at the appropriate moment make sure that the record is redacted accordingly. Do please proceed.

Mr Singh: Sir, I will; thank you very much. Just two points by way of opening. The matters that are in the bundle A1 in particular, the reports and the immigration documents are put before you. My friend said “mitigation”, to an extent they are mitigation, but they are also context; they are context in a case where one is considering misconduct, whether it is in the form of a conviction or in the form of any other kind of misconduct. These are all important. The authority relating to fitness to practise and the impairment of fitness to practise is very clear in that the context of any misconduct must be examined very keenly and very carefully to gauge how serious it is in its overall state. That is what I would ask you and your colleagues to do in this case, consider the context of what happened, consider what Mr Niyonkuru’s state of mind was. None of that excuses his conduct and he won’t seek to do that, but it does explain it. What I hope to put before you today is an explanation for why Mr Niyonkuru acted as he did in that one year of his life when he committed these offences four and a half years ago.

The second point I raise by way of introduction is this: my friend said are the circumstances exceptional enough to justify registration, or something along those lines? She certainly used the word “exceptional”. This isn’t an “exceptional”, if I can put it in inverted commas, case. It is not a case in which

there is a dishonesty conviction. You will know well the case of *Bolton v Law Society* [1993] EWCA Civ 32, and the other authorities as a result of that. Those say that only in exceptional circumstances will someone be allowed registration if there is dishonesty. That is not the nature of these matters, but it is not an exceptional case, if I can put it that way. It is a matter for your judgement.

Obviously I accept that proving suitability is on the Appellant, it is on Mr Niyonkuru, because no-one has a right to be registered as an optometrist, but we submit that the evidence which is put before you today will satisfy you to that standard on the balance of probabilities that he is suitable. I just wanted to flag that up. This isn't a case where you need to find exceptional circumstances; you just need to be satisfied on the balance of probabilities that he is fit to undertake training.

With those two points in mind, could I call Mr Niyonkuru, please?

**PAUL NIYONKURU is called and affirmed
Examined-in-chief by MR SINGH**

Q. Mr Niyonkuru, I will be asking you some questions first. You have two bundles in front of you there; one which is the Council's bundle, which we are looking at now and the other one is the Appellant's bundle, or your bundle of documents. I may refer to either one of those during my questions to you. You obviously have a microphone in front of you. It is quite a big room; you don't need to shout, but make sure you keep your voice up so we call all here.

Can we have your full name to start off with?

A. My full name is Paul Niyonkuru.

Q. How old are you now?

A. I am 30 years old.

Q. Where were you born?

A. I was born in Burundi.

Q. What did your family do? What did your parents do?

A. My Dad was a university lecturer.

Q. Your mother?

A. My mother stayed at home.

Q. Did you have other siblings?

A. I had two brothers.

Q. Were they younger or older than you?

A. I was the second.

Q. You were the middle.

A. Yes.

Q. One older and one younger?

A. Yes.

Q. Were you educated in Burundi? Did you go to school there?

A. I went to secondary school and I just started university; I just did two years at university.

Q. What was the university that you attended?

A. I attended the National University of Burundi.

Q. You were studying?

A. I was studying Economic Sciences.

Q. Can you remember the year that you started at university in Burundi?

A. I started in 1997.

Q. 1997? You don't necessarily have to look at me. I know I am asking the questions, but of course it is the ladies and gentlemen that are sitting on your left hand side that will be considering the evidence. You can look at either one of us, but really it is them that you must look to answer to.

You started university in 1997, University in Burundi, studying Economic Sciences, is that right?

A. Yes.

Q. Can you tell us a little bit about the political situation in Burundi? Is it right that there were two main tribes within Burundi?

A. Yes, that's right. There were two main tribes in Burundi, the majority which is called Hutu, and the minority which is called Tutsi, which was in power at that time.

Q. Can I ask which one of those you were a member of?

A. I was a member of Hutu tribe.

Q. The tribe in the majority, but not in power?

A. Yes.

Q. Was there any civil unrest during the time you were at university?

A. During the time I was at university what happened there was a rebellion in the country and this rebellion was a rebellion against the Tutsi government which was in power and they were fighting the government soldiers, so when anybody comes to fight with them the government soldiers would come and persecute all the Hutus, accusing them of giving them shelter.

Q. In the country you said the Tutsi were in the minority, but did they have any affiliation with the military?

A. Yes, the military were the ones who were in power. The majority of the military were all Tutsis, so eventually, if any problem happens all the Hutus would die.

- Q.** How did the Tutsis gain power, just so we have that background, in 1993/4?
A. How they got power, there was an election in 1993 and the Hutu president that was elected, he was assassinated after a few days and a military coup – they stayed in power up until the time when these things happened.
- Q.** In summary, for someone who was a Hutu in Burundi at that time, in the late 1990s, was it a safe place to be?
A. It wasn't a safe place to be.
- Q.** Can I, sir, ask you and your colleagues to go into private session at this stage, while I deal with the events in 1999?

Mr North: That would be acceptable. Ms Knight, you have no objections?

Ms Knight: No, sir.

Mr North: Make that so.

[Hearing continues in camera]

[Hearing continues in public]

Mr Singh: We do have a member of the public; we have to wait for her to get back in.

[Pause]

- Q.** Mr Niyonkuru, you came to England in 2003, is that right?
A. Yes.
- Q.** How is it that you came to England?
A. A friend of my Dad who helped me to escape from prison was the one who arranged for an agent who at the time we pay money and they make sure they bring you to Europe. That is how it happened, that he brought me to England.
- Q.** Did you know where you were going?
A. I didn't know where I was going; he was just taking me somewhere safe.
- Q.** Did you arrive in England by aeroplane?
A. Yes.
- Q.** I assume you knew where you were going when you were on the plane? Did you know where you were going when you were on the plane?
A. I knew I was going to Europe; I didn't know exactly which country, because they didn't tell you –
- Q.** You arrived, is this right, in London at the beginning of 2003?
A. Yes.

- Q.** What were your hopes when you came to England?
- A.** Obviously as someone who had been through all this, managing to get here I felt like I was in a safe country, that I was away from what had happened to me. Obviously I was still traumatised by that. I felt positive of what my future may bring.
- Q.** You had started on university education in Burundi, but hadn't managed to finish it because of what happened. What were your intentions in terms of education and a career?
- A.** I was still thinking of doing something. Obviously I had some problems, but I thought if I just get on with it, just go to college and start education; do something.
- Q.** Did you start a college course when you got to England?
- A.** Yes, the same year I started college, which was 2003; September 2003.
- Q.** Whereabouts was that college course?
- A.** That was Greenwich College?
- Q.** What sort of course was it?
- A.** I studied a course which was called Access to Higher Education, which would allow me to have more choices of whichever course I wanted to do and I needed to do Access to Science, which would open to a lot of subjects.
- Q.** Why did you decide to undertake that course?
- A.** At the time I was very interested in doing something medical so I decided to do Access to Science, which would open doors for me to enter any area and that is why I chose Access to Science.
- Q.** You said you were in Liverpool; did you start off in London? When you came to England did you start off in London?
- A.** I started in London.
- Q.** Sorry, that is my fault. Did you stay in London for any period of time?
- A.** Yes, I stayed in London for a month and then I was moved to Liverpool after.
- Q.** Who moved you to Liverpool?
- A.** The Home Office.
- Q.** Between 2003 and 2010 did you have a lot of involvement with the Home Office?
- A.** Yes. My application was still on-going until about end of 2004, that is when my application failed and then I had to go through trying to get a new country.
- Q.** Can I just deal with your applications for asylum please? Did you make your first application for asylum in March 2003?
- A.** Yes.
- Q.** Where were you living at that time when you made it?

- A.** I was living in a hostel in London.
- Q.** Subsequently you were sent to Liverpool?
- A.** Yes.
- Q.** Was that application granted or refused?
- A.** I had to wait until December 2003 and it was refused.
- Q.** Why was it refused? Can you recall?
- A.** First of all because most of what had happened to me they thought that it had happened to me while I was in Rwanda, which they accepted and according to the law my asylum case – if all that had had happened to me while I was in Burundi, that would make sense, so I thought what had happened to me in Burundi wasn't much too late for me to be granted British status.
- Q.** Did you appeal against that decision?
- A.** Yes.
- Q.** Was that an appeal to a court?
- A.** Yes.
- Q.** Can you remember when that appeal took place?
- A.** I appealed just after, just the beginning of 2004.
- Q.** Was that appeal granted or refused?
- A.** Just towards April it was refused by the judge in court.
- Q.** Can you remember what the reason for that was?
- A.** The reason was the judge he agreed with whatever I had to say and he admitted that if I go back to my country I will still face persecution, if I go back to where I come from, but he said that however, I could go back and relocate and move to a different area and I would be safe. That is the reason.
- Q.** Just to complete the saga, the appeals, did you appeal further then to the High Court?
- A.** Yes. After that I appealed to the High Court, which was towards the end of May. After a month or so the High Court didn't allow my appeal. After the High Court, basically you don't have any further, you can't do any more applications.
- Q.** How did you feel after the High Court had refused your appeal?
- A.** Obviously once your last application has gone all you have to do is say either apply for return or wait for them to deport you out.
- Q.** How did you feel about that?
- A.** Considering what I had been through and all that was still in my mind, so if I went back to Africa it was like a nightmare to be honest; it was like going back to the same state I was in.
- Q.** What was your concern about going back?

A. My concern, as someone who had been tortured, that image was still in my mind and also of what happened to my family back in Burundi, all that was still in my mind and thinking of going back at the time that made me like lose my mind.

Q. You said something about trying to get out of the country, is that what you tried to do?

A. Yes.

Q. Were you successful?

A. No.

Q. Is this right, you were arrested and placed in a detention centre for a month?

A. Yes.

Q. Where was this? What sort of time in 2004 was this?

A. This was towards September 2004.

Q. Did you stay in the detention centre or were you released?

A. I stayed there for a month or so and then at the time the immigration officer told me that people from my country, whoever it is, would not be supported, according to the UN laws, because the country was still considered as being safe to be deported back. They allowed me to go out of detention, because they did not deport me, but they didn't give me any status or paper for me to survive.

Q. That is what I was what I was going to come onto. This is the last question I have about this period, just dealing with your status when you were released from that detention centre in 2004; can I ask you to turn to a document which might help? In Bundle A1 can I ask you to turn to page 19, please? Do you have that page?

A. Yes.

Q. Can you see there that that is a letter under the Immigration Act and it is entitled?

“Notification of Temporary Admission to a Person who is liable to be detained”

It gives your name, it gives an address. If you go down to the left-hand corner it says “8 August 2008”, can you see that?

A. Yes.

Q. If you go up again to just under where your name is and the address it says:

“Liability to Detention

You are a person who is liable be detained”

Then it says: “Temporary admission restrictions” and says:

"I hereby authorise your (further) temporary admission to the United Kingdom, subject to the following restrictions"

- Can you see that?
- A.** Yes.
- Q.** Was this the first one of these that you received in 2008 or did you have temporary admission before that?
- A.** I had temporary admission before that.
- Q.** The status that is in this document, was that more or less than what you had before?
- A.** It is exactly the same.
- Q.** Exactly the same? From 2004 when you were released from the detention centre?
- A.** Yes. The only difference was that the one I had before was - this one was like every month.
- Q.** Can I just deal with that? If you go under the temporary admission restrictions it says, "You must reside at the address at X above", then "You must report to a police officer/ an immigration officer/an immigration official". It says, "On 12 September 2008" and then "every second Friday of each month between 10am and 4pm". Initially was it that level of reporting or was it more or less frequent?
- A.** Say it again?
- Q.** When you started off in 2004 did you report the same amount of times?
- A.** No, when it started in 2004 when they released me from the detention centre the instruction was to report once a week, every Friday.
- Q.** Just under that it says that you are not allowed to work or engage in any business unless granted permission. Were you ever granted permission to work between that and obtaining indefinite leave?
- A.** No.
- Q.** Just underneath there it says:
- "Although you have been temporarily admitted, you remain liable to be detained".
- What did that mean in real terms?
- A.** This reporting was basically, whenever you go to report, it was a waiting time to see whether, especially whether they arrest you again and deport you. So it was to make sure you were still around if the time comes that they want to deport you.
- Q.** Living with that potential that you might be deported, how did that affect you emotionally and mentally?

- A.** Imagine living on nothing, no help, no support, no work, not allowed to do anything and also bearing in mind that at any time you will be arrested and deported. It was like an on-going torture in my mind, especially considering what happened in Africa. That affected me in various ways.
- Q.** What sort of ways did it affect you? What were the ways that it affected you mentally?
- A.** My attitude to life was different at the time. Life didn't mean much to me at the time.
- Q.** What do you mean by that?
- A.** What I mean by that is I was expecting any time to be sent back to Africa and having that in mind, being sent back to Africa, meant to me either going back and executing me, being killed, or going back in prison and going back to Burundi, torture.
- Q.** What about the decisions that you made in the next few years? Do you think that has affected how you acted, what kind of person you were?
- A.** Obviously at this time the way I acted, because having all this in my mind and considering the life I was living at the time, my choices – where I had choices - and the way I make decisions I wasn't thinking normally, 100 per cent.
- Q.** Looking back on it now do you think you made the right choices and I am talking specifically about these offences that you committed? Do you think you made the right choices?
- A.** I made the wrong choices. That is why I say it; even if I look back now I was not acting in a normal way.
- Q.** Do you say that all of that provides an excuse for you acting in that way?
- A.** No, this is not an excuse. Unfortunately I deeply regret what I did and I am not trying to excuse myself; I was in a bad state of mind, so I understand fully that I made the wrong decisions and I fully accept that bad decisions had been made in the past.
- Q.** Can I just deal with the offences themselves, please? The first offence – sir, I know that the papers are fairly disparate in terms of where the various information is about these offences; can I just give you as I am going through the dates of the convictions?

Mr North: That will be helpful, Mr Singh.

Mr Singh: The first offence is this. An offence of no insurance committed on 7 November 2005. Mr Niyonkuru pleaded guilty and was therefore convicted of it on 2 May 2006. It was at Liverpool Magistrates' Court, the sentence was a fine of £75 and a disqualification of six months.

You will note as well the disqualification would have ended on 2 November 2006, which will become relevant in a moment. Mr Niyonkuru, that particular day, 7 November 2005 you were stopped – sorry, have I made a mistake in that, I may have done?

Mr Pounder: No, I have already done it. Page 16 is the explanation of the evidence.

Mr Singh: Perhaps if you can turn to page 16, it might assist you? This was an email that you sent to the GOC on 24 November, is that right?

A. Yes.

Q. Just to deal with then 7 November 2005, what were the circumstances of you driving a car on that date?

A. What happened friend of mine went to work, I was staying with him and he locked his car keys in his car and he called me in the morning when he finished his work so that I could see whether I could find his keys in the house, his spare keys and then bring them to him. I tried to look for the keys, but couldn't find them and decided to drive and pick him up.

Q. Were you stopped on the way back?

A. Yes.

Q. By the police?

A. Yes.

Q. Were you aware that the car you were driving was not one that you were insured on?

A. I was aware that I was not insured to drive that car.

Q. Did you know it was a requirement to be insured?

A. I did know. I knew I was meant to be insured.

Q. Why did you do it? Why did you decide to drive on that day?

A. In my mind at the time, I thought I ought to help my friend and it was the wrong decision to make but that is what I thought at the time.

Q. Can you think of why you decided to take the risk?

A. Why I decided to take the risk at the time, I wouldn't have done it now, because the way I thought at the time I thought just to help my friend because he would have waited there for a while and I was helping him. It wasn't very far – I thought I would just help him.

Q. You said it wasn't very far, thinking about it now what else could you have done?

A. Now?

Q. Yes.

A. Thinking about it now, no matter what circumstances come in my way there is no way I think that, take a risk or break the law, try and excuse myself.

Q. You said try to excuse yourself, what do you mean by that?

A. I mean excuse myself by thinking that by helping my friend and it made me think that I am okay to drive a car without insurance, not taking into account

consideration what the consequences would have been if anything had happened.

Q. Is that the way you would think today?

A. No, like I said at the time, the way I was thinking was pretty much no way - my choices I made were wrong and I deeply regret why I did this.

Q. Can I just deal with this as well, how serious at the time in 2005, how seriously did you view driving offences; driving, for example, without insurance?

A. Obviously as someone who comes from a different country which had a different legal system I was not fully aware of what the legal system in this country is like, so that played a big role in what I think. I wasn't fully aware of what the legal system is in this country.

Q. You went to court – I'll deal with this briefly – you pleaded guilty, is that right?

A. Yes.

Q. You were fined £75 and you were disqualified for six months, is that right?

A. Yes.

Q. At that stage, when you went to court, did you appreciate then that it was a serious matter or not?

A. Yes.

Q. Did you then decide to drive or not to drive?

A. I decided not to drive. Obviously that happened after, the way I reacted to this situation, the circumstances, was very much like it wasn't in the normal way, I was always trying to excuse myself and I don't exactly know what the consequences might be, but I didn't make the right choices.

Q. Can we deal with the second offence, then? You probably have the details of it, but for completeness it is the offence on 2 June 2006, no insurance, driving whilst disqualified. The conviction was on 28 November 2006, Liverpool Magistrates' Court, a 12 month community order of 120 hours of unpaid work and six months disqualification. You said that you had taken the decision not to drive. Why did you end up driving; this is only a month afterwards; why did you end up driving then?

A. What happened was my brother came to visit and the time he was about to go back he was about to miss his flight. In that situation I thought I would help my brother, there was no other way he would get the money for another flight and I thought I would take this risk; obviously it was wrong, but at the time I thought I am going to take this risk. Even though I may be cannot drive again, but this was the circumstance at that time.

Q. Do you think that was the right thing to do?

A. That was wrong. No matter what the circumstances, I wouldn't think in the same way I thought at the time.

- Q.** Looking at the date of the third offence, that is 14 October 2006 and that is before you pleaded guilty and were sentenced in respect of the second offence, is that right?
- A.** Yes.
- Q.** The third offence was on 14 October 2006: no insurance again, driving whilst disqualified. Can I just ask this: because you were disqualified you knew you couldn't get any insurance, obviously?
- A.** Yes.
- Q.** You knew on each occasion you were disqualified?
- A.** Yes.
- Q.** What were the reasons that you drive on 14 October 2006?
- A.** At this time I was going through a very, very difficult situation. I didn't have any money, I didn't have anything to eat, I didn't have anything, so a friend of mine was giving me a place to stay, but then I had to look after myself for food. A friend who was living in Birmingham he offered to help me, some food and clothes and stuff. I had no other means of getting to him, so I borrowed a friend's car and just drove.
- Q.** Just so we know how did you support yourself? How did you get food during this period, for example? How did you get food?
- A.** I used to go to the charity organisations that help asylum seekers in Liverpool. There was a Catholic church that used to give out clothes and food and we used to get food every week. After some time there were just so many people they didn't have enough to help all the people that were going there for help, so there was a time that I spent literally two days without any eating. It was very difficult for me because it was a long time of getting help from friends. Sometimes you feel if someone helps you for a long time it becomes a nuisance.
- Q.** A nuisance?
- A.** Yes. I was feeling like paying.
- Q.** You drove to Birmingham to get food and clothes and were you stopped on the way there?
- A.** Yes, I was stopped on the way down.
- Q.** We have seen the circumstances of it; there was a number plate recognition check, is that right?
- A.** Yes.
- Q.** There is a mention here in the email on page 16 about miscalculating the disqualification period. Can you just tell us about that?
- A.** Yes. What happened was I got refused at that time and I knew I still had a choice, I wasn't too sure exactly whether I had a disqualification for this or not and also considering what I was going through, my mind wasn't really at ease. There was confusion in my mind and that was one the reasons I made these choices.

- Q.** Just so we are clear, even though you miscalculated the disqualification period, do you say that excuses you from driving without insurance?
- A.** No, it wasn't an excuse. That was the last option I had, I thought it was for a week or so - nothing, I thought in my mind just to take this last risk.
- Q.** You then pleaded guilty to that, but that wasn't until 2007, so can I now come onto sentencing for the second offence of 28 November 2006? You were given a community order with 120 hours unpaid work and you were disqualified for another six months, is that right?
- A.** Yes.
- Q.** Then very soon after you got a suspended prison sentence for that, four months, suspended for 12 months, is that right?
- A.** Yes.
- Q.** Did you have to engage with the probation service in that time?
- A.** Yes.
- Q.** Can you tell us about your contact with probation, did that help you at all?
- A.** My contact with probation helped me a lot because I had to speak to my supervisor, he would explain to me exactly how serious these offences were and how I could measure how this could lead me a very serious situation and having had enough time to spend in probation that helped me to understand exactly how the legal system in this country works and how serious these offences were. I got to understand. It was no excuse in any circumstances to break the law.
- Q.** Did you do all of the unpaid work hours that you were given?
- A.** Yes, I did all that work.
- Q.** You haven't committed another driving offence, or any offence, since 14 October 2006, why is that?
- A.** Like I say, this time I am on probation helped me. I made the decision this time that no matter what circumstances will come, I will never drive again; even if I am going to die in the street I will still hold on to the decision I made.
- Q.** From 2007 through to 2010 can I just deal with these three things, did you give up on your asylum application or not?
- A.** 2007 'til 2010, no, I didn't give up. There was a new rule that was introduced by the Home Office which was called "Legacy" and you had to make what they called a fresh claim - you had to give new evidence. When I saw that I said give us a chance. Even though my old application had finished, it would give me a chance and I made this application as a fresh claim.
- Q.** Was that granted or refused?
- A.** After one year, which was towards the end of 2008, they refused it because considering the time that had passed since I left my country they thought that the problems there – there were government changes, the government had

changed and everything, so the risk of being persecuted again if I go back wasn't still high.

Q. Did you pursue it any further?

A. I didn't do it exactly right after that because when they were watching me they told me I didn't have any more appeal rights, but just towards the end of 2009 they introduced a new law which was called "First Submission" and this had nothing to do with asylum, it was like people who had come to this country before 2007, they were allowed to apply for what they call first submission – it was looking to the time you entered this country, they were looking to your case and see whether they can allow you to stay or refuse you.

Q. Can I just ask you to turn please, to the last document that I need you to turn to; it is page 17 of A1. Is this right, on 12 March of last year you were granted indefinite leave to remain in the UK?

A. Yes.

Q. It says there:

"Your case has been reviewed, having considered the information you have provided and because of the individual circumstances of the case it has been decided to grant you indefinite leave to remain in the UK. This leave has been granted exceptionally outside the Immigration Rules. This is due to your strength of connections in the UK and compassionate circumstances.

This means you are free to stay in this country permanently."

Briefly how did you feel when you got that?

A. You can imagine after all these years, after all these attempts, or applications that I made and after everything that had happened and something like this happening it was like a dream – it didn't feel like it was real.

Q. It says underneath that you are permitted to work, that you had to apply for a National Insurance number and that you could travel outside the UK. It also meant that you were free to study. Is that right?

A. Yes.

Q. Can I just take you to page 18? Where it says "Caution" there it says underneath "Caution",

"You should understand, however, that you may not be allowed to remain in the United Kingdom if, during your stay, you take part in any criminal activities."

Then it goes on to talk about terrorist organisations and other matters. It also then says:

“You may also not be allowed to remain in the United Kingdom if it is decided for some other reason that your presence here is not conducive to the public good.”

Did you read that when you got the letter?

A. Yes.

Q. What does that mean to you - that caution there?

A. I understand that is because after what I did and the Home Office knows what I did and giving this to me, this is like if I think about it I would never ever do any criminal activity, because I know how much I suffered to get the document so I would never endanger that by continuing with another offence.

Mr North: Mr Singh, I think Mr Niyonkuru has been giving evidence for about an hour. English is not his first language; am I right in that assumption?

Mr Singh: It is French.

Mr North: It would be helpful to break for say, just 10 minutes.

Mr Singh: I only have a couple of minutes to tie things together.

Mr North: If you could do that and then Ms Knight, would you mind beginning your discussion with Mr Niyonkuru after a 10 minute break?

Ms Knight: That's fine.

Mr Singh: Thank you. Mr Niyonkuru, just to tie things up then, you provided this information, it is all in the bundle, the reasons you provide the various information at various times; I am not going to go through that and I understand that there is no dishonesty alleged in relation to that. That was a point taken by the Registrar. Can I just deal with this? What interests you in optometry? Why do you want to study it?

A. As someone who has been affected – I have had poor vision health for a long time, I also know how especially in Africa people who don't have any drugs or optometrists or vision specialists who can help, there are a lot of people suffering especially because it is hot. I thought this is something I should do in case I can go back and help people. I know how hard it was for me to get help. I would not get help with someone outside Africa and that was really bad for me and I felt really bad and I have a motivation of doing this.

Q. Looking back on your actions now, that one year of your life when you committed these offences, first of all how do you feel about what you did then?

A. Like I said before I deeply regret what I did and these were the wrong choices that I made. What I have explained I wasn't trying to make you understand I was right what I did, I still feel bad about these three offences that I did and I deeply regret what I did and I have made a decision to never do it again.

- Q.** What does studying optometry mean to you, or potentially meaning to be an optometrist, what does it mean in terms of your duties to the public, to the profession?
- A.** Being an optometrist is a profession and someone who is professional is someone who the public can trust and someone who abides by rules and regulations of the country, so that to me means a lot. If I was someone who was willing to commit these offences again I wouldn't have entered optometry as a profession.
- Q.** Why it is it important for professionals to be trusted, for example, an optometrist; why should they be trusted?
- A.** They should be trusted because if I am an optometrist I represent the profession and I am someone who the public can trust, so if I start breaking the rules and regulations I am going against what the profession is all about as an optometrist.
- Q.** Can I just ask you about this? It may be suggested, I don't know, that because you drove without insurance you may practise optometry without insurance – it is illegal, but there we are, that may be what is suggested. What is your understanding of insurance for optometrists?
- A.** If I am an optometrist and started working I have to make sure that I am insured and it keeps away the consequences not only to myself, but also to the public and also to the profession that I represent.
- Q.** Do you think you get a choice about having insurance as an optometrist?
- A.** You don't have a choice. You have to follow the rules and regulations. It is not something you say "Oh no. It is not something I am going to have to do", it is "I have to follow what it is".
- Q.** Do you feel that you are a different person now from in 2005?
- A.** Yes, I definitely feel that I am a different person. Like I said my situation back then was different, but now having a status in this country my situation has changed so I feel that all this put together I am a different person.
- Q.** I have no further questions for you, thank you very much.

Mr North: Thank you, Mr Singh; that has been helpful. We will break now for 10 minutes.

Mr Singh: Sir, obviously I can't speak to Mr Niyonkuru, but he is obviously under oath.

Mr North: Yes, Mr Singh. Mr Niyonkuru, whilst you are giving evidence, I am afraid you can't talk to anyone else about the case; anything to do with the case. You can talk about how Manchester United did, but you mustn't talk about the case as you are giving evidence; or more appropriately Liverpool! Thank you.

[Hearing adjourned at 11.01]

[Hearing resumed at 11.13]

Mr North: Thank you very much for returning promptly. Ms Knight.

MR NIYONKURU
cross-examined by MS KNIGHT

Q. Thank you. I just have a couple of questions for you to clarify a few issues that have been raised. You said when Mr Singh was questioning you earlier about the offences generally, in particular in relation to the first offence, which took place in November 2005, you were asked about your attitude generally to the law. Do you remember that question?

A. Yes.

Q. Am I right in saying that you responded by suggesting that your attitude at that time to the law in this country was different because it was different in Burundi, where you had come from?

A. Yes. I was not aware exactly how it works.

Q. When you drove to collect your friend who had lost his keys, you said earlier that you were helping him out.

A. Yes.

Q. You also said that he wasn't very far away.

A. He was about 10 miles.

Q. When you explained your position to the Council about that later on when you were questioned about it, if you turn to page 17 of the bundle, in fact, if you go to 16, this was your explanation that you made in November. You said that you thought it was an emergency. I am trying to clarify with you whether or not you genuinely thought it was an emergency, as you said before, that you didn't consider the laws in relation to driving without insurance at that time in the same way that you would now.

A. I don't really understand the question.

Q. No. Was it an emergency?

A. At the time I thought it was.

Q. Why did you think it was an emergency?

A. Why I thought it was an emergency - it was very early in the morning and he was like going, "Help me out" and I thought I would just do it.

Q. You felt under pressure?

A. Yes.

Q. Thank you. When you were stopped by the police officer a month after your first disqualification, he told you that you needed to have a valid driving licence. Is that correct?

Mr North: Are you referring to a document?

Ms Knight: I am just about to refer to – if you were to refer to page 31 of the bundle. Do you have that, Mr Niyonkuru?

A. Yes.

Q. The police officer asked you how long you had owned the car and you said “a few months”. He asked you if you had a full, current driving licence, is that right?

A. Yes.

Q. You knew at that stage, didn’t you, that you were already disqualified?

A. Yes.

Q. You had points on your licence?

A. Yes.

Q. But you showed him your Burundi licence. Is that the same licence that had points on it or did you have a different licence for driving in the UK?

A. It was the same.

Q. The same licence. Thank you. How did you come to purchase a car?

A. I was given it by a friend so I could have some kind of income.

Q. You were given a car by a friend?

A. Yes.

Q. How were you going to afford to pay for insurance on the motor vehicle?

A. It wasn’t for driving, it was basically he was going away and he gave it to me so I could sell it and get some kind of income because he knew what I was going through.

Q. Just to clarify, your friend gave you the car so that you could sell it?

A. Yes.

Q. How long had you had the car when you spoke to the police officer on 2 June?

A. On 2 June I had it for – I can’t remember exactly how long it was, but it was a few months since I had it from my friend.

Q. Was that the same car that you were driving on 7 November, about seven months before that?

A. Yes.

Q. You had had the car for seven months, not a few months?

A. Yes.

Q. Is it fair to say that on all of the occasions when you drove without appropriate insurance and when you were disqualified that you took a calculated risk on those occasions?

A. Yes, I did. As I said before I made those wrong choices at the time. At the time I thought I was just taking a risk.

Q. Would it be fair to say that you were quite cavalier – do you understand what I mean when I say cavalier in your approach to the UK laws in relation to driving and insurance?

A. What does it mean?

Q. Rather reckless?

A. I understand that; that is why I am saying these are wrong choices because I didn't fully understand, that is why I said before, having come from a different background, a different legal system, so I was making these wrong decisions, just trying to excuse myself or whatever.

Q. Mr Niyonkuru, we have heard that you, understandably, have been in fair dire straits financially. When you went to Liverpool Magistrates' Court in relation to the first offence, if you turn to page 36, do you have that?

A. Yes.

Q. Can you see that there is a handwritten note?

A. Yes, I see it.

Q. It says: "Defendant unable to argue exceptional hardship". I know that is slightly scribbled and it is difficult to read. Can you explain that at all?

A. I can explain – if you go to page 35, the initial fine was £150. I explained to them that I was unable to afford that and they put the fine down to £75. I explained to them I would not be able to pay that money straightaway as I didn't have any means so they allowed me to pay £2.50 every week, which was, pretty much I managed to pay £2.50 every week and I managed to do that payment at the time. I explained to them my situation, that is why they put that.

Q. Thank you for that clarification. In your medical report that we looked at a little bit earlier, which is in bundle A - I don't think we need to review the document, but it was suggested at that point that you had some counselling; did you have any counselling?

A. I did yes.

Mr Singh: Excuse me, sir, can I interject? If we are going to go into this kind of area I wonder whether Rule 17 can be imposed.

Mr North: Ms Knight, would you have any objections?

Ms Knight: I wouldn't have any objections, but I wasn't going to go into any particularly private matters I just wanted to establish whether or not, in terms of rehabilitation -

Mr North: Let's err on the safe side shall we?

[Hearing continues in camera]

[Hearing resumes in public]

Questions from the Panel

Mrs Huka: Mr Niyonkuru, could you tell us whether there was a way of identifying who was Tutsi and who was Hutu?

A. Yes.

Q. How?

A. The Tutsis were identified physically as people who are tall, slim with a small nose. The Hutus, the nose - basically that was the main difference.

Q. There were obvious physical differences were there?

A. Yes.

Q. Would you describe yourself as coming from a political family?

A. No, I wouldn't describe myself as political, no.

Q. Just one final question, please, was there a particular reason why when you managed to leave Burundi you went to another country that had similar problems as what you are escaping from?

A. That was the only option that I had. If I had another option I would have gone to a different country, but if you are fleeing and there is someone behind you, you just run and you don't know exactly what way you are going. I was just trying to save myself.

Q. Thank you.

Mr Ilett: I have two questions. The first is, excuse my ignorance, but could you explain the support systems for people who are seeking asylum in your position where you are not allowed to work? Is there any state support financially?

A. When you have an application going on, which was my first application in 2003 towards the end of 2004, September 2004 – I was still being supported by – it was called National Assistance, something like that; the government assistance so there are conditions and then you get £25 a week, but once your application appeal has finished it is automatically stopped, so you have to find a way of supporting yourself.

Q. You don't get any state hand-out?

A. No.

Q. Thank you. The second question, in your evidence you mention a number of different friends and you also touch on the fact that you were, to some extent, beholden, you were dependent on them, they have given you a certain amount of help and assistance, did you feel that you had to give them something in return?

A. Of course. You don't expect someone to just give something for free. If they need any help, I would always be there to help them because I needed to give something back. That is why as I said before it was a hard situation to be in because you are always relying on people. There were some places in

Liverpool you could go and get some food, but not money; it was just food. The time I was doing the probation hours, one of the guys was running a charity and he managed to get me some support, the time I was there, which was food, just various kinds of food and some money.

Q. Looking at this first offence where you had to go and help this friend of yours who locked his keys in the car, what was the relationship there?

A. He was the one who was helping me out. I was staying at his house, because I wouldn't have said no, otherwise he would say "I am helping you out and I now I am asking you to help and then you won't". It was hard for me to just say no to him.

Q. Thank you. No further questions.

Mr North: Thank you Mr Ilett. Dr Harris?

Dr Harris: Good morning, Mr Niyonkuru. Just some small clarification, if I may? You explained to us that you acquired the car in which the initial conviction took place in November 2005, because a friend had given it to you. Had you just got it or when was the gift?

A. Yes. I would say it was a month before that.

Q. We are talking about October, or so, 2005? A month before the incident.

A. Yes.

Q. You say in your explanation "I had to use my car, which I had just gotten, before I had it insured". Were you aware then that it had to be insured?

A. Yes.

Q. When did you apply to get it insured?

A. I never got it insured because in the first place it wasn't for driving myself – basically I was meant to sell it and get some money.

Q. That is what I would like to have some clarification on so I understand. You get the car in October and you say it was before you had it insured. Am I to understand that you intended to get it insured?

A. If I had means of insuring it I would have insured it.

Q. Could I be clear as to what your thinking was at the time, rather than now? Were you intending then to get it insured?

A. I had two thoughts in my mind. If I get money to insure it, I would have insured it, so that it could be driven to a place away and sold.

Q. This is all hypothetical. Did you try to get it insured at all?

A. No. I was unable to get the money.

Q. How many times did you drive it in the period before you were stopped a second time?

A. I never drove it again after I was stopped the first time.

- Q.** Let's see, you were stopped the first time in November 2005 and you were not insured then, were you?
- A.** No.
- Q.** Now you are saying to us that you never drove it after that.
- A.** I never drove it.
- Q.** Are you sure?
- A.** Obviously I drove it to try to help my brother out.
- Q.** That was on the second occasion.
- A.** Yes.
- Q.** You are saying to us then that the situation was that you acquired the car in October sometime or thereabouts, you drove it once in November, but you hadn't bought insurance, although you knew you had to, because you didn't have money for it, because you were intending to sell it.
- A.** Yes.
- Q.** What attempts did you make to sell it at that time?
- A.** I had put a "For sale" sign on it.
- Q.** Right. Where was it garaged? Was it off the street or on the street?
- A.** I parked it on the street.
- Q.** Off the street?
- A.** Yes.
- Q.** Off or on?
- A.** On the street, because it was taxed.
- Q.** It was taxed.
- A.** Yes.
- Q.** Right, so you had taxed it, but you hadn't insured it?
- A.** Yes, I was given it and it was taxed.
- Q.** The only two occasions then on which you say to us you drove it was on 7 November and then on 2 June?
- A.** Yes.
- Q.** If you were today to wind yourself back to that day on 7 November, what would you do differently if it was today? If you are in the same circumstances, your friend asked you to help him out, how would you do it differently today?
- A.** Now, after spending enough time in this country, after I had enough explanation and understanding how our system works and how dangerous these offences and how bad these offences are, especially when I repeated them, I would never, ever try to excuse myself of doing the same thing that I did.

Q. What would you do today if your friend rang you up in those circumstances?
A. I would explain to him that these are the consequences; driving a car without insurance has consequences, not only to myself, but also to the public, so I would explain to him there is no way I would ever, ever go in a car which is not insured and drive it.

Q. What would you do instead then?
A. I would tell him to try to find another help, if possible.

Q. I see. Thank you very much.

Mr Lomas: Am I right in thinking that you got accepted onto the course at Bradford then?

A. Yes.

Q. That was to start six months or so ago in September?

A. Yes.

Q. What is happening now then? Have you had to give up the course?

A. Yes, I had to be withdrawn from the course because it is illegal to continue studying if I am not registered, so as soon as I got the letter the university told me I had to stop that day attending the course. I am basically waiting for the outcome and then I will see whether I can go back.

Q. Thank you.

Mr North: Mr Niyonkuru, when you arrived in England did you have any proficiency in English?

A. In what, sorry?

Q. In English, the language?

A. No, I wasn't speaking English.

Q. How did you learn English?

A. I went to college – before that I was doing language school; I was always attending language schools because in my mind I wanted to do something, so English was my first priority. That was basically how I learnt English.

Q. Do you think your attitude to the law has changed since you came to England?

A. It has changed. I explained before, having come from a different legal system at the time I felt that I would excuse myself, but now I fully understand what consequences these offences can bring and considering also that my situation has changed I am just looking forward to have persistent good character.

Q. Thank you, that has been very helpful. Do any of my colleagues have further questions at this point?

[There were no more questions]

Do either of the parties have any comment at this point?

Mr Singh: No, no re-examination for me, thank you.

Mr North: Thank you. Mr Niyonkuru, thank you for your evidence. Would you like to return to your seat?

[The witness stood down]

Mr Singh: Sir, can I call one more, brief character witness, it is Benita Sangwa, from page 1 of the bundle A1?

**BENITA SANGWA, called and affirmed
Examined-in-chief by MR SINGH**

Mr North: Good morning, Ms Sangwa. Your representative will ask you some questions, but just to put you at your ease, as it were, the Panel today, there are a couple of optometrists and three lay people. Thank you.

Mr Singh: Ms Sangwa, can we have your full name, please?

A. Benita Sangwa.

Q. I just need to ask a couple of questions about Paul Niyonkuru. Is it right you have known him about eight years?

A. Yes.

Q. Is he a friend of yours?

A. He is a friend, yes.

Q. You may have to keep your voice just slightly louder – you are very softly spoken. I know it is an odd situation, but if you get a bit closer to the microphone it amplifies it as well. What do you do at the moment?

A. I am a student.

Q. What are you studying?

A. Accountancy – book keeping and accounts and computer accounts.

Q. Okay. Whereabouts are you studying that?

A. Lambeth College.

Q. Okay. When are you due to qualify?

A. In July, so quite a long time.

Q. Can I just ask you about Paul Niyonkuru? Did you know him during the period of, say 2004 through to 2006?

A. Yes.

Q. How often were you in contact with him during that time?

A. We talked quite often on the phone, once a month and sometimes I saw him.

- Q.** Once a month on the telephone and how often would you see him in a year do you think?
- A.** Once or twice.
- Q.** Can you give us an idea of the kind of life he was leading during that period?
- A.** It was tough for him because he didn't have any help or any income, so it was really hard for him.
- Q.** You said he didn't have any hope.
- A.** That as well, because he was struggling really and he looked a bit fed up with the situation.
- Q.** Can you see any change in him now, looking at him today? Is there a change in his attitude/change in his character, the way he approaches things?
- A.** Definitely, yes. He looks more focussed, more serious about what he wants to do and more relaxed about his life as well.
- Q.** What sort of person is he?
- A.** He is a very nice guy and he is a good friend of mine as well – he has helped me as well and he is understanding and when you need him he is there, he helps you as well. I really hope that he gets a chance to do this course, because he really wants to do it.
- Q.** Does he ever talk to you about optometry?
- A.** He does, yes.
- Q.** What is your impression about how he approaches the course and the subject? Is he interested in it?
- A.** He has always liked working in that kind of environment, he likes it and he talks about it positively.
- Q.** When did you first know about the convictions that he had?
- A.** I knew he had a few problems then, but I wasn't too sure if it was a conviction; I wasn't too sure.
- Q.** Do you now know about them?
- A.** Yes. Just a bit; I don't know what happened exactly, but yes, because he is here.
- Q.** Does it surprise you or how do you feel about the fact that he has convictions; do you think that is the kind of person he is or not?
- A.** Not at all. I was really surprised.
- Q.** His present situation now, comparing it to how it was in 2005, what do you think is different about his attitude, can you tell us?
- A.** He is more focussed, he knows what he wants to do and he has grown up, and his situation has improved and he is serious about what he wants.

Q. Those were all my questions. If you just wait there, there may be some more for you.

Mr North: Ms Knight?

Ms Knight: I have no questions for you.

Mr North: Can I ask my colleagues on the Panel if they have any questions?

Questions from the Panel

Dr Harris: Good morning, Ms Sangwa. Can you tell us a bit about what your friend Paul has told you about optometry?

A. He has told me that it is the course that he wants to do because he has always wanted to work with patients. He is interested in meeting people and resolving their problems.

Q. You gave us a few minutes ago – he has talked extensively about it to you, is that right?

A. He always tells me that he really wants to do that course.

Q. How long has he been saying this for?

A. Since he was allowed to stay here; a year/two years ago.

Q. Did he say what his ambitions were once he qualified?

A. He said he might work for some company or he can open his as well if he could find patients.

Q. We have a statement here that you signed on 15 March – did you draft this yourself?

A. Yes.

Q. It is entirely your drafting; no-one has assisted you with this?

A. No. A friend of mine was copied.

Q. You crafted this, all of this language, choice of words are your words, are they?

A. Yes; I had help.

Q. You did get assistance with drafting this?

A. Yes.

Q. Who helped you?

A. I had help from a friend – I gave them a copy and sent a copy to Paul, but he didn't change much.

Q. What help did you get from your friend.

A. Just for the autograph – for the words.

Q. Did your friend draft this or did you draft this?

- A. I wrote it and he changed bits of it.
- Q. He changed it, did he?
- A. Not the whole thing, just like a few words.
- Q. Can you tell me what sort of words? Do you have a copy of the bundle? Perhaps you would like to tell me what particular things were changed so that I understand how much is yours and how much comes from somebody else. Just take it slowly and just tell me.
- A. Maybe “he is a reliable person” – I would have said someone that “I trusted” to make it more real or something. Like the word here, “Committed” out of his character “he has committed these offences” – I would have said he did those offences.
- Q. Can we assume that quite a lot of this is not your own choice of words, but somebody else’s?
- A. It is; that is what I meant.
- Q. I am just trying to distinguish between what you meant and how it is expressed and what you said, because I am trying to understand the difference between the testimony you have given us to help the testimony today and how it is expressed here.
- A. It is not really different, it is just a few words – the person helped me to make them more formal. That is what was here.
- Q. I see. You say here, if we can take you to the last sentence of the big paragraph at the end:
- “I strongly believe that Paul fulfils whatever that is required to train as an Optometrist”
- Do you know what is required to train as an optometrist?
- A. What I meant here is that he is clever enough and is able to do what is required to do the course.
- Q. Do you know what is required?
- A. Not really, but I know that -
- Q. Not really.
- A. Not exactly.
- Q. But you said here –

Mr Singh: I’m sorry, could the witness just answer the question, please?

Dr Harris: I am trying to understand how far this witness really drafted this statement herself and that is really what I am trying to do.

Mr Singh: It is important and I agree, but make sure she has an opportunity to answer.

Dr Harris: Thank you. I am sorry if I interrupted you; I apologise.

A. What I meant is that he is clever enough now to be on the course and study and be successful.

Q. Is this part of the sentence that someone changed for you?

A. Yes, it is. I had written that he is able, is capable to do go on the course.

Q. Is it that what you are trying to tell us is that he is a different person today than he was earlier when you knew him and that he is now more secure? Is that what you are trying to express?

A. Yes, and do the course and be successful in doing it.

Q. It is the change you are trying to explain to us.

A. Yes.

Q. Okay, that's fine, thank you very much.

Mr North: Excuse me asking, but is English your first language?

A. No, it is not.

Q. What is your first language?

A. Burundi.

Q. What I would like to ask is based on your knowledge of Mr Niyonkuru, being a professional person, the public have to have confidence and trust in professions, do you think that people could be trusting and confident with Mr Niyonkuru?

A. From what I know about him, being his friend, he can be trusted yes. I have trusted him.

Q. Could you just expand on that a little, why you feel he can be trusted?

A. Because I have had my own problems and I have known him for long and he has always been there for me. I talk to him because he didn't have much to help me with, but he was there, he listened to me and he helped me to find things, so you can trust him; I trust him anyway.

Q. Is there anything else you would like to say to us?

A. I hope that you give him a chance to work and to get his qualifications.

Q. Thank you. That has been very helpful. Do any of my colleagues have any further questions? Would either of the parties like to make any comments? Either representative?

Mr Singh: Sir, short of going through every sentence piece by piece and asking you what was different about it I am not going to do that. You and your colleagues have a flavour of her evidence and really, I don't think it is important.

Mr Pounder: It is a matter for Mr Singh; he is making his point.

Mr Singh: Absolutely. I don't think I need to rake over this any longer.

Ms Knight: No, thank you, sir.

Mr North: Ms Sangwa, thank you very much for your help.

[The witness stood down]

Mr Singh: Sir, can I take it you and your colleagues had a chance to read A1 in its entirety?

Mr North: I believe that is the case.

Mr Singh: I rely on everything in there.

Mr North: At that point, with our revised order we now move to submissions. Mr Singh, I believe you begin.

Mr Singh: I understand that the Appellant has the last word, as it were in normal circumstances.

Mr Pounder: Rule 37, sir.

Mr North: Can we check that please? Yes, I'd like clarification on that because, looking at my aide memoire relating to Rule 37 –

Mr Pounder: If we look at page 120 it is the same. It says:

- “(1) Following the presentation of the evidence, including any evidence in rebuttal, the appellant or applicant -” – which means you – “- shall be entitled to address the Registration Appeals Committee.
- (2) Following any address made by the applicant, the respondent” – which means the Council – “shall be entitled to address the Registration Appeals Committee”

Mr Singh: I have to say it is pretty clear what the order of proceedings is. It has been done in different ways on other occasions, but I think it makes little difference really. I will say the same whether I go first or second. Sir, I am happy to do my prepared submissions now.

Mr North: Thank you.

Mr Singh: That is if I can find my notes.

Mr North: Would you like five minutes?

Mr Singh: No, sir, they were under another document. By way of introduction can I make two brief points? The first is this that it is important, in my respectful

submission, not to lose sight of the bigger picture in any case, but certainly in a case like this. It is very easy when dealing with registration appeals involving convictions to get very bogged down in detail such as this is the length of time between x and y; this is the maximum sentence for the offence; this is what the appellant got. To consider all the individual parts is to lose sight of what they mean or what they come to as a whole. Really you and your colleagues have to address the question of why there is any reason Paul Niyonkuru is not a suitable person to undertake training as an optometrist. That requires some judgement and some of the issues you will have to consider are what is the concern, if any, what is the danger that he might pose to the public or to patients if you allow him to train? Would his registration and being able to undertake training damage the reputation of his profession to such an extent that you should refuse the appeal? Putting it in another way, would the public be outraged if they knew that Paul Niyonkuru was allowed to study as an optometrist? Those are the kind of issues you will have to consider. Please focus on the big picture here. I will draw together all of the individual strands, but it is those ultimate questions that you have to decide.

The second general point is this: if you allow this appeal you would allow Mr Niyonkuru to study, to undertake his training. Whether he is to be a good optometrist in the long-term, whether he passes the course, obviously we know he will, but that is to be determined obviously on the course – he will undertake his exams in the pre-reg year, matters of that sort. His ability in the end will be a matter for his training and assessment, but you are really considering whether at this stage he should be given the chance to study or whether, in fact, the convictions that he has from four and a half years ago are so bad as to mean he shouldn't have that chance.

That is the second point; you are deciding should this man be given a chance to study as an optometrist in this country, or do his convictions mean that he should not be able to do so, that they should hold him back? We accept that establishing his character of suitability is on the Appellant, is on Mr Niyonkuru in this case. You have to be satisfied on the balance of probabilities that he is a suitable person to be registered. However we would submit firstly that that burden is satisfied by the evidence that you and your colleagues have heard today and that secondly, in reality when you consider it, there are no objections that could be raised realistically to his registration.

In my respectful submission the evidence demonstrates these two important things: firstly that Mr Niyonkuru has been through things that we can only imagine with horror. We don't raise that for sympathy, but to provide context for this offending. The overwhelming thrust of the evidence you may feel that between 2004 and early 2010, but in particular at the time that we are talking about for these offences, 2005/06, was an extremely dark time for him and it is not hard to see why. He was displaced from his home country, he lost his parents, he was imprisoned; the matters you have seen in the reports. He came to the UK hoping for refuge, as many do, but that was refused and no doubt for proper reasons by the courts, but the point is that in 2004, 2005 to 2006 he had no status, he was essentially destitute and his life was fairly

hopeless. That is the reality and during that time he made what can only be described as very bad choices.

He did act recklessly in relation to the rules of insurance, in relation to court orders; that is all accepted. No doubt, these are not insignificant convictions. I say not insignificant because they are not the most significant convictions either and I will come back to that, but they are not insignificant. We would ask you to consider the context of the offending and the mitigation surrounding that as it were.

As I said, the authorities – and I don't need to take you to them, you'll be aware of them, but they say the context is all important – it may provide a reason why someone acted in a certain way at one stage and perhaps would not act in that way now.

This moves me onto my second point that Mr Niyonkuru is in a completely different position as he stands or sits before you today. His immigration status has been finalised and mentally, I hope you can see, he is in a completely different place. His change in attitude and change in the circumstances is supported by his evidence; it is backed up by the evidence of his probation officer, which you have seen in the bundle that we have handed out – I won't take you to it. It is also supported by his friends, those who know him, in particular Ms Sangwa, who came along today, who gives evidence of that change in him. Most importantly you may feel the change is supported by the fact that no further offences whatsoever have been committed since 2006. Obviously the conviction date was 2007, but the offence was the end of 2006. That is just under four and a half years ago, four and a half years before today.

He hasn't done it again because he has learnt his lesson. I hope and he hopes that he has proved that to you by not offending again, by not breaking the rules. He now realises, as you can see, it is wrong to drive without insurance, or whilst disqualified and now he is not in a position where his judgement is clouded in any way. Those are matters which you can take into account when considering the question of has this person been rehabilitated?

What does all this mean, coming back to the big picture? What does it mean? First of all does he pose a risk to the public? That is one question you may want to consider. I will accept his attitude to court orders and/or insurance in 2005 or 2006 may have raised concern about his understanding of compliance with rules and regulations. That is the highest that it can go in my submission; that is the highest that it can be put on these convictions.

The evidence of the position now is entirely the opposite you may feel. He does understand the seriousness. If there is any concern that a lack of car insurance in 2005/6 may equate to a lack of indemnity insurance in the future, that seems to be the only parallel that we draw between optometry and driving without insurance, I hope that the evidence which has been given today shows very clearly that Mr Niyonkuru understands the obligations on him as an optometrist.

Obviously you are re-hearing today. You are considering it all afresh, but can I just turn to the reasons that were given by the Registrar for refusing his application? It is on page 18 of the bundle C1. Can I just draw your attention to the second paragraph?

“I have considered your application with care and your application is refused. The refusal is on the grounds of your failure to comply with the law on three separate occasions within a short timeframe”

My friend said “very short”, the word is “short” timeframe; and

“The repetitive pattern suggests a lack of understanding of the severity of the offences.”

Dealing with the first limb of this, there was failure to comply with the law on three separate occasions. What does that mean? It means during that time Mr Niyonkuru didn't appreciate the seriousness of what he was doing and acted stupidly. He now will not do that. In my submission the evidence before you meets that criticism or that concern; it more than does. The second part is the repetitive pattern suggests a lack of understanding of the severity of the offences. Again, in my respectful submission, the evidence before you deals with that concern as well. There clearly is an understanding of the severity of the offences through his probation involvement through his own choices.

Is there any risk that this scenario could pose a risk to the public? In my submission there is not, certainly none that should stop him being permitted to study as an optometrist.

The second part of your consideration was would his admission to the Register damage the reputation of the profession? Some offences no doubt and some conduct will be so bad that the profession is brought into disrepute simply by it occurring; is this one of them? Your starting point is this that they are offences of dishonesty – you will know from the authorities and my friend will no doubt confirm this that the authorities, for example, *Bolton v The Law Society* said very clearly that it is only in exceptional circumstances that someone who has committed offences or acts of dishonesty might be allowed registration. That is not one of these cases; we don't need an exceptional circumstance to register Mr Niyonkuru.

One must look at the nature of these convictions: they are driving related offences; they are Magistrates' Court only summary offences, if I can put them in that way; they are themselves at the lower end of the offending scale. The aggravating factor is that there are three of them. That again is the highest that it can be put. Is that enough to say that these offences are so bad that the reputation of the profession is damaged such that he should not be registered? When you have considered all of the evidence, and by that I mean Mr Niyonkuru's personal circumstances, the clear evidence of rehabilitation, the fact that they are four and a half years old and that there

has been no repetition of offending, all of those matters, in my submission, lead to the conclusion that these offences, in themselves, are not so bad, so serious that the reputation of the profession would be brought into disrepute.

It is hard – this is a closing remark on this point – to see how a member of the public would be outraged if he or she knew that this man was allowed registration. He has come through real adversity; he has made mistakes, but he has learnt from them. His circumstances have changed for the better, again he has given, in my submission, cogent evidence to assure you that he has the appropriate character and temperament to do this job. Those who know him agree. One would hope and I would submit a right thinking member of the public would forgive him those mistakes. They are not the worst of their kind; they were committed in very difficult circumstances. A member of the public might think that the right thing to do for the benefit of the profession is to give him a chance at least to study to prove his worth. That is what he asks through me that you do today and I invite you to allow this appeal and register him as a student optometrist. What he makes of that is obviously a matter for him; he assures you he will not let you down, but I ask you to give him that chance. Sir, unless I can assist you further.

Mr North: Thank you, Mr Singh. Ms Knight.

Ms Knight: Sir, the first thing I would like to raise with you is the issue of the medical evidence. I don't propose to go into any detail about that medical evidence, only to say to you that it is clear that the medical report was prepared, as mentioned before, some two years before the commission of the first offence and it was prepared for the purposes of the Home Office proceedings, if I can call them that, therefore there is nothing in that medical evidence that refers to Mr Niyonkuru's state of mind, his attitude towards the law, anything that can assist you in relation to this matter, this application before you today, except, as my friend has stated, it helps you to paint the picture and give you the context in which the later offences were committed.

You also heard it was suggested in that medical report that he submitted to counselling, which he says that he did, but the counselling assistance that he had throughout that time didn't assist him in his state of mind in relation to the commission of those offences, i.e. when he needed to make a sound judgement, he failed to do so. By his own submissions today he said that he took a risk.

I will refer to the authorities in a moment, sir, but I would like to say that in terms of the reputation of the profession, you do have a difficult task here; this is an unusual and, I would say, probably exceptional matter. My friend has mentioned other cases relating to convictions and circumstances giving rise to these convictions you may consider are exceptional and I will refer to the matter of *Bolton v The Law Society*, as already has been mentioned by my friend. I don't know whether you already have copies of that authority or whether you would like to look at the copies? I have some here for you.

Mr Pounder: It would probably be helpful if we have copies; if you brought them we might as well utilise them.

Ms Knight: There is also a copy of the case of *Jideofe v The Law Society* [2007] EW Misc 3 (EWLS), which relates to student applications and really reinforces the issues in relation to *Bolton* and how they apply in applications for registration.

Mr Pounder: Do you have any more?

Ms Knight: I don't, I'm afraid. I hope you don't mind sharing. If I may refer you to in particular in relation to the protection of the reputation of a professional person and in particular in relation to sanction and the duties of a tribunal as opposed to a court, refer you to paragraph 15 of *Bolton*, which I believe is accepted as being applicable here, as it would be say, at an SDT, a Solicitor's Disciplinary Tribunal. You will note that the judgement states that:

"It is important that there should be full understanding of the reasons why the Tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on the solicitor" – in this case we are doing a different application, but the same issues apply – "who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor attempting to behave in the same way. Those are traditional objects of punishment"

The important issue here is it goes on to say:

"But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the Tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence."

That is not so useful to you here today:

"This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off."

That would be where an allegation of dishonesty is put to you.

"The second purpose"

Which is the purpose that I submit is of most importance to you here today:

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

Sir, I submit to you that although these are driving offences it is important for us to remember that, despite the fact that they clearly were committed at a time where it is not in dispute that the applicant was in particularly dire straits, to a certain extent you need to put that from your mind and consider whether or not by allowing Mr Niyonkuru to continue or to begin his studies in a profession where other people may consider his admission to be unacceptable, when the reputation of that profession is held in high regard and is possessively protected.

In *Bolton* the solicitor in question adduced a wealth of glowing tributes and also spoke of the hardship that he would suffer if he was to be struck off. The Tribunal at that stage said that none of the issues that he had raised touched the essential issue, which was the maintenance among members of the public of a well-founded confidence in the person they instruct having unquestionable integrity, probity and trustworthiness.

Sir, what you really need to be considering today is whether or not you are satisfied from what you have heard that Mr Niyonkuru is now in a position where he can make sound judgements when he is under pressure.

You haven't heard or had the opportunity to look at any medical evidence about his present state of mind, which is unfortunate and it is how we, as professionals, conduct ourselves when we are under extreme pressure that sets us apart from other people. It is a privilege to be a member of a profession and that is why professions are so heavily regulated.

Sir, I don't think I can say very much more to you about that matter. As I have already mentioned the main issue for you to consider is whether you have been satisfied by what Mr Niyonkuru has said to you today, that his mind-set has changed sufficiently that you can trust him and that there can be permanent trust in him to make sound judgements when he is under pressure, either emotionally or under pressure financially.

Sir, I don't think there is any other issue that I can help you with today.

Mr North: That has been very helpful, Ms Knight, thank you. Do any of my colleagues have any questions, or issues they may wish to raise with the representatives?

Dr Harris asked were you going to make any reference to the *Jideofo* case?

Ms Knight: Yes, I beg your pardon. The only reason that I have submitted that judgement as well as the *Bolton* matter is that it assists you in relation to the

application of *Bolton* in the context of student applications for membership. In that particular case - in fact there were three cases there that were dealt with at the same time because they all gave rise to the same issues - all of the appellants were students who wished to commence their studies, or had started studying to become solicitors, and *Bolton* was applied in the context of harshness in terms of the sanction that was given in *Bolton*. That is to say that the same issues that were considered in *Bolton*, even though the SDT at that time were considering somebody who was already on the roll as a solicitor in the other matters, those considerations were applied in the same manner in relation to a student application.

Mr Singh: Sir, can I just say just for ease to cut through this, I am not taking any points that there is any different test to be applied as to whether someone is asking for re-admission to the roll of solicitors, or to the Register, as to whether a student optometrist or solicitor should be allowed registration. It is the same test to be applied; that is essentially what *Jideofo* deals with. It also applies – I don't have a copy, I haven't been provided with a copy, but I know it well, it simply applies *Bolton* and applies the test set out there. I don't know if it would help you to go through the authorities, I think the principles are probably quite clear. The Legal Adviser will no doubt summarise.

Mr Pounder: It does show the Committee has to approach it in the same way, but also there was the appeal of *Evans v The Solicitors Regulation Authority* [2007] EW Misc 3 EWLS. She was a lady who had a drink problem; it wasn't a question of dishonesty and they make a distinction – there is a paragraph about it in fact.

Mr Singh: Yes, that is the point I was seeking to make earlier about dishonesty. Can I just raise one matter, having heard my friend's submissions? I think the submission was made to you that you should put out of your mind the fact that these offences, as is now accepted occurred, occurred at a time when this man was in dire straits and that is not currently the position. As I understood it, it was submitted that you should put that out of your mind and consider the reputation of the profession. I absolutely disagree with that. Nowhere in *Bolton* or *Jideofo* does it say that all of the facts relating to the offences that were committed should be ignored, that the context should be ignored. What it does say is glowing tributes and evidence of hardship do not address the issues of reputation to the profession. It doesn't say the context of the offences is irrelevant. I make a completely different point in this case; I am not saying that Mr Niyonkuru would be greatly disadvantaged if you were to disallow registration; no doubt he would be. I am not saying that he is normally a very nice person, I am saying that at the time all of this happened, he was in a very different position to now and you can be satisfied it will never happen again, and in those circumstances the reputation of the profession would not be damaged, notwithstanding the fact that he has these convictions.

I hope that my submission is clear, but I disagree with that interpretation of *Bolton* that has been put forward.

Mr North: You have made that clear, Mr Singh.

Ms Knight: I apologise if I have made a submission about the authority that isn't quite correct; that wasn't my intention. My friend has corrected this issue admirably, thank you.

Mr North: Do you have anything further?

Ms Knight: I have nothing further to say unless you want to deal with it.

Mr North: I think my colleagues are content. Can I turn to the Legal Adviser before we retire *in camera*?

Mr Pounder: Can I just deal with one point I am going to dismiss. During cross-examination of Mr Niyonkuru about exceptional hardship, that is a term of art which applies to disqualification in driving cases, it has no bearing on this particular period that we deal with.

As Mr Singh said, this is an application to the Registration Appeals Committee by Mr Niyonkuru. The onus is on him to prove his case. It is on the balance of probability, meaning it is more likely than not and you have to consider whether he has, on the balance of probability, satisfied you that he is a suitable person to be registered.

You have heard that these matters came to light when he sought to register and he then disclosed the fact that he has some motoring convictions, which comprise, in the main, three sets of offences which were committed within a 12 month period, from November 2005 to October 2006. They were dealt with by various sentences and those reflect the escalating degree of seriousness; they are serious offences. They were taken by the Court to be serious, there is a pattern of offending and also when someone is disqualified they are told on no account should they drive a motor vehicle and there is obviously an escalating degree of seriousness which ended with him receiving a sentence of imprisonment, albeit one that was suspended.

The aggravating feature was that he was disqualified from driving on 2 May and then a month later, on the 2 June he is driving whilst disqualified, so you have to take that into consideration.

You also have to take into consideration the fact that there has been a substantial gap from, in essence, February 2007, when he was last dealt with in the court – he negotiated his period of suspension and imprisonment successfully and he obviously complied and carried out 270 hours of unpaid work. There is now a gap of four years and the point has been made that due to the effluxion of time with no repetition, he has learnt his lesson and that, forgive me using clichés, a lot of water has passed under the bridge and that the intervention of probation services in December 2006 has helped him get his life back on track and therefore he has learnt his lesson. You have to look at that point.

The facts around the circumstances of why he committed these matters are relevant because it explains it; it doesn't excuse it, but it explains it and you have to take that into consideration that he submits to you he is in a totally different place to where he was back in 2005/6.

Ms Knight says that you have to be careful because he is not a person who can, when under pressure, make sound judgements and she relies on the fact that he obviously flouted the law on these three occasions. You have to then look at the circumstances of your responsibility to the profession. That obviously falls within a public interest domain – you have to look at protection of the patient. It doesn't seem to fit the bill in this particular situation, but the maintenance of public confidence in the profession is something which is of supreme importance and also, in addition, the need to declare and uphold proper standards of conduct and behaviour – these apply to Mr Niyonkuru's situation.

You have been addressed on matters of law and, indeed, you have been taken to *Bolton*: paragraph 16 is important because it underlies there is a difference of proportionality and I read from it; it says:

“none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.”

The last sentence of that paragraph:

“The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.”

Those are the words of the late Sir Thomas Bingham.

You also refer to the other case submitted and you may want to look at paragraph 52, which deals with the case of Ms Evans, who had a drink problem, to put it mildly. The court said:

“The starting point for an assessment of character and suitability in Ms Evans' case” – this is page 21, paragraph 52 – “is her convictions. They are not convictions for dishonesty. Her offences arose out of her consumption of alcohol. They are convictions for offences which do however call into question her integrity, probity and trustworthiness. On their own her offences do not fall into the same category as those offences of dishonesty that *Bolton* shows would call for a solicitor to be struck off. Applied to this case, they fall into a category of conduct which would not necessarily lead to an individual being refused admission or having their student membership cancelled.”

Another distinction which is important, paragraph 53, Ms Evans, unlike Mr Niyonkuru, did not draw these offences to the attention of the Law Society

when she applied for student membership. You have to look at the circumstances. Mr Niyonkuru, although they are serious offences, they are not offences of dishonesty, nor are they offences which involve any sexual misconduct, or anything involving children, which are two very important themes. Those are the points I make.

Mr North: Thank you.

[There were no further points from counsel]

We will now rise and obviously consider the matter. Looking at the clock could everyone be available again at 2 o'clock? Thank you very much.

[Hearing adjourned at 12.35]

[Hearing resumed at 14.59]

Mr North: Could you stand, please, Mr Niyonkuru?

Decision

On 22 March 2011, the Registration Appeals Committee met to consider an appeal against the decision of the Council not to register Paul Niyonkuru in the Register of Student Optometrists.

On 27 September 2010, the Appellant applied to be registered as a student optometrist of the General Optical Council. In Section 4 of the application, he disclosed two convictions for driving a motor vehicle whilst disqualified and the consequent sentences.

On 11 November 2010 the registration team wrote back to the Appellant asking for further details. On 18 and 24 November 2010 the Appellant gave those details including information about an initial, further, offence of driving without insurance which caused him to be disqualified in the first place.

On 1 December 2010, the Chief Executive and Registrar refused the application. This was on the basis of his "failure to comply with the law on three separate occasions within a short time frame. The repetitive pattern suggests a lack of understanding of the severity of the offences."

By a Notice of Appeal dated 15 December 2010, the Appellant applied to this Committee to overturn that decision.

At this point, we should know that the Chief Executive and Registrar was not privy to the information placed before the Committee today in the Appellant's bundle.

The Committee is required to approach the matter afresh. The onus rests on the Appellant to satisfy it on the balance of probabilities that he is a suitable person to be registered.

The Appellant has three sets of previous convictions.

On 7 November 2005 he drove a motor vehicle on the road whilst uninsured. He pleaded guilty at Liverpool Magistrates' on 2 May 2006 and was fined and disqualified from driving for a period of six months.

On 2 June 2006, exactly a month after he was banned from driving, he drove a motor vehicle on the road whilst so disqualified and whilst uninsured. He pleaded guilty before Liverpool Magistrates' Court on 28 November 2006 and was made the subject of a 12 month community order with 120 hours of unpaid work. He was further disqualified for six months.

On 14 October 2006 he drove on the M6 in Sheffield whilst disqualified and uninsured. On 2 February 2007 he pleaded guilty before South Cheshire Magistrates' Court and was sentenced to a period of four months imprisonment, suspended for a period of 12 months. He was ordered to undertake 150 hours of unpaid work and disqualified for a further 12 months.

These are serious offences and the Committee treats them as such. Driving whilst disqualified involves a deliberate flouting of an order of the Court. Driving whilst uninsured is irresponsible and reckless.

During this hearing, the Committee became aware of this Appellant's sad history in Burundi and in Rwanda. Much of this evidence was aired in private and thus the Committee will not go into details here, other than to acknowledge the same and to take them into consideration in arriving at its decision.

Suffice to say that the period of 2005 to 2006 was a difficult period for this Appellant. He was rather left adrift in Liverpool, awaiting possible deportation. This does not condone his offending, but it does offer the Committee a contextual explanation for his offences.

It seems to the Committee that once the Probation Service became involved with the Appellant they succeeded in putting his life back on track. The Committee was particularly impressed by the contents of the statement of Darren Rogers of the National Probation Service at page 5 of the Appellant's bundle. This statement underlines the extent of the Appellant's problematic history and the positive steps he has taken since to turn his life around.

The last four years have passed without any repetition of the Appellant's offending. Whilst the Committee fully understands the decision of the Chief Executive and Registrar, it has arrived at a different conclusion. The Committee has had the benefit of reading all the material in this case and also hearing from the Appellant. The Committee feel that he has learnt his lesson and now should be encouraged and supported in his future plans.

Although serious offences, these matters did not involve dishonesty. Further, the Appellant did declare his convictions to the Chief Executive and Registrar

and did not try to conceal them. The Committee has to balance the competing arguments. Whilst bearing in the mind the decision of *Bolton v The Law Society* [1993] EWCA Civ 32, the Committee did not feel that public confidence in the profession would be damaged if the Appellant was allowed to be admitted to the Register. On the balance of probability the Committee has decided that the public interest rests in favour of the Appellant's registration rather than against it.

The Committee thus determined that the Chief Executive and Registrar's decision be overturned.

Thank you. That concludes the case today.

[Hearing concluded at 15.05]