



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

R(10)03

**GENERAL OPTICAL COUNCIL
AND
PAUL RICHARD SPRATT**

**RESTORATION HEARING
Monday, 14 FEBRUARY 2011**

**RESTORATION HEARING: PAUL RICHARD SPRATT
14 February 2011**

Committee: Ms M Jeyasingham MBE (Lay)(Chair)
Sir Alistair Graham (Lay)
Professor H Drummond (Lay)
Mr G Ilett (Optometrist)
Mr P Charlesworth (Optometrist)

Legal Adviser: Mr N Levisieur

For the GOC: Ms M Bromley

For the Applicant: Mr S Singh
Ms F Mitchell

Hearings Manager: Mr D Henley BEM

[Hearing commenced at 09.36am]

Ms Jeyasingham: Good morning. I am Mercy Jeyasingham, a lay member of the Hearings Panel, and I've been elected by the Committee to chair today's restoration application 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 Nick Levisieur, the Committee's Legal Adviser who will provide legal advice and assistance to the Committee and ensure that the proceedings are conducted in accordance with the rules and procedure so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate.

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

To your right is David Henley, the Hearings Manager who will provide administrative support to the Committee. Next to Mr Henley is Charles Nesbit, 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 member 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 that at previous hearings of the Registration Appeals Committee the order of proceedings has been changed and it is found to be the most fair and appropriate way of conducting business. You will see in the Registration Appeals rules from Rule 33 that there is set out an order of proceedings. The rules anticipate that we would hear first from the applicant and then the Council's presenting officer on behalf of the respondent, the Council. The Council would address the Committee in relation to evidence and thereafter under Rule 37 we would hear first from Mr Spratt in relation to submissions and then from the Council.

However, it is suggested, if you agree to it, that the Council address the Committee first, both in relation to the framework of our decision-making and the evidence, so that Mr Spratt, who would then address the Committee, would know exactly the evidence upon which the Council relies and the framework within which it is said, that is established before he addresses us on the evidence. It appears that our colleagues on previous occasions have found this change in procedures most helpful. It is, however, a matter for the Council and Mr Spratt whether you are prepared to proceed on that basis.

Mr Singh: Madam, if it would assist you, certainly from our side I would be happy to adopt that course.

Ms Jeyasingham: Ms Bromley?

Ms Bromley: We had had a brief discussion beforehand and –

Mr Singh: We discussed it and thought originally we would do it the way set out in the rules, but Madam, as I say, if it would help you to do it that way, then I'm more than happy to do it that way.

Ms Bromley: My only observation is you referred there to the Council setting out the evidence on which they rely, and of course it's for the applicant to set out evidence on which he relies to say that he is fit to come back onto the register. I will making submission on the basis of the transcript and other documents, but as I say, it's for him to adduce his evidence as to why he says, having been erased from the register, he is now fit, and what has changed in the three years since he was erased from the register.

Ms Jeyasingham: But the order of proceedings of you setting out your evidence first is acceptable?

Ms Bromley: Yes, if that's what the Committee would prefer, obviously it's a matter for you.

Ms Jeyasingham: I think that probably would be helpful. It's a point on fairness.

Ms Bromley: Yes, okay.

Ms Jeyasingham: Okay. So, if you start.

Ms Bromley: If I start by outlining the relevant statutory provisions, I'm sure you are familiar with them, the rules, we now have this handbook in a lever arch file, I hope I have the right page numbers, it's Section 13K(6) which is at tab 1 page 44. Section 13K is headed 'Restoration of names to a register', and then subsection (6),

"Subject to subsections (2) and (5) above, the Registration Appeals Committee may, if they think fit, on an application made under this section, direct the Registrar to restore a person's name to the appropriate register".

And then (7),

"Before determining whether to give a direction under this section the Committee shall require an applicant for registration to provide such evidence as they consider appropriate as to his fitness to practise."

And if they are not satisfied,

"they must not give such a direction if that evidence does not satisfy them".

So those are the relevant statutory provisions. You have a discretion as to whether to allow his name to be restored and of course you must only exercise that if you are satisfied as to his fitness to practise. There is also, I understand, a protocol – I don't know if you have that it's not actually in this bundle, but –

Ms Jeyasingham: We've labelled it '4', the protocol on the *Handling of Criminal Convictions as Disclosed by Registrants*?

Ms Bromley: Yes. This applies to this scenario where someone is seeking restoration, and it sets out a number of things the Registrar should take into account – the offences of which Mr Spratt was convicted don't fall within Schedule 4 of the Criminal Justice Act, so paragraph number 3 doesn't apply, but the other paragraphs obviously are very relevant, and I would respectfully suggest are the sort of things that I'm sure you yourselves will be taking into account when you are considering this matter. That includes 5c) the nature and seriousness of the offence - and these of course are serious offences of dishonesty; the extent and nature of any risk to patients or the public – there isn't risk in the sense that patients haven't been physically put at harm, but in my submission there is a risk to the public purse in that his dishonest conduct was a fraud on the Primary Care Trust and therefore affected the public purse. The timeframe of offending, I was trying to find that in the transcript and I couldn't come up with the exact timeframe, but it was certainly several months, so it wasn't just an isolated incident. Do you have the transcripts?

Ms Jeyasingham: We have a submission which we've called 'Main bundle 1', and the transcript is first.

Ms Bromley: Right, okay.

Mr Singh: Can I assist in relation to timeframe, it may help? At the front in divider 1 page 9, there is a summary of the dates between which the offences were committed. If you and your colleagues see, there is the bold heading 'Findings in relation to particulars of the allegation', relating to matters which occurred on separate dates between 23 September 2002 and 28 October 2003.

Ms Jeyasingham: Thank you, Mr Singh.

Ms Bromley: Thank you, that's very helpful. So, slightly over a year. Then the other matters there are in 5, and particularly the impact of such an offence being committed by a registrant upon the public confidence in the profession, and of course that's very much something on which I have placed great emphasis.

Turning next, perhaps, to deal first of all with the transcript and the nature of the offending, you'll see at page 5 of the transcript, the actual details of the convictions are set out. It's about halfway down the page,

"On 24 November 2006 Mr Spratt appeared at Teeside Magistrates' Court and was convicted of ten counts of obtaining a money transfer by deception, contrary to ... the Theft Act",

and he was sentenced to 150 hours of community punishment order. So that's the convictions. Conviction for dishonesty, ten separate counts, they're not just isolated incidents, but ten counts. At the bottom of that page and over to page 6, Mr Alder, who was representing the Council, gives some brief information about the nature of the offences which broadly fell into two categories: one relating to falsely representing that he had supplied two pairs of glasses to patients, contrary to the Act; and a second category related to falsely representing that he had tested the sight of various patients. The dates could not have been maintained because the patients were actually dead at the time of the suggested examination.

So as I've said, the counts fell into those two broad categories and there were a total of ten of them. The conviction, as you have seen, was in November 2006, so only just over four years ago, not that long. I don't ask you to read the whole transcript, because it is a fairly lengthy document.

There are one or two points I do want to refer you to: first of all at page 45, this is when Mr Spratt was giving evidence to the Committee, and it's the section at the bottom, and he says there,

"This is the interpretation that I put in the court in the first place, that I did not sign them",

And that refers to the GOS 1 and GOS 3 forms that he had to sign, and he then goes on to say,

"I admit by not checking forms accurately before submitting them and not confirming that all the information on there was correct, that is in itself a dishonest act, because I couldn't categorically state I knew everything on that form was 100 per cent correct. However, I did it in good faith; I didn't do it with any intention to claim for something that I didn't think had already happened".

Now, that is effectively him denying that he was dishonest, and the Committee were given legal advice about that, and that is at page 50, at the bottom of the page with the Legal Adviser, Mr Grant where he refers to the evidence that Mr Spratt gave, to which I've just referred you. Then on page 51, in the second paragraph,

"It is common ground all round that the appropriate advice I should deliver to the Committee is that they must disregard the last two parts of that evidence, namely the words 'But I did it in good faith and I didn't do it with intention'",

and then he goes on to explain why, which basically means he is attempting to deny dishonesty. Now why I refer you to that is just to show that even at that stage there was a lack of insight on Mr Spratt's part as to his dishonesty.

The findings on impairment that the Committee made are set out on page 52, I would refer you to those. Not surprisingly, they found that he was impaired, and they also made a couple of specific findings about how he signed the forms, because he had sought to suggest he hadn't himself signed the forms. The Committee specifically found that his explanation was inconceivable, and of course they make observations about the impact on the reputation of the profession, and how he'd acted in a dishonest manner.

Then sanction of course was then dealt with, and the Committee make their findings on sanction on page 56, the bottom of the page:

"We have taken the views that dishonesty, as demonstrated by this Registrant, brings the profession into disrepute and undermines public confidence in the profession. We are satisfied that the Registrant's behaviour is fundamentally incompatible with being a registered professional and, therefore, we must impose a sanction of erasure".

That decision was on 10 January 2008, so only just over three years since that decision was made, since the finding was made that Mr Spratt's behaviour was fundamentally incompatible with being a registered professional.

Mr Spratt's application for restoration, I have it in tab 3 of the bundle, and it starts with a covering letter dated 1 October 2010 in which he encloses the application form and a reference from a colleague he says,

“with whom I spent a few days understanding their administration systems in order to avoid the previous errors that led to my erasure from the register”.

And again, I think in the body of the application form, he talks about –

Mr Levisaur: Could you give me that page reference - I'm sorry, is this the separate document?

Ms Bromley: This is 'Application for registration', there's a covering letter and there is then the actual application.

Mr Levisaur: Thank you very much.

Ms Bromley: And it's three pages into the application, in Section 6, which is headed, 'Removal from the register', and again, my copy is not brilliantly clear, but he talks then about his conviction. But again, he says at the end, 'Due to poor administrative procedures'. Again, I highlight that because Mr Spratt is very much saying that his conviction was all down to poor administration, and administrative failings. My submission is that that is not what the court found, the court found a deliberate course of dishonest conduct, he was signing forms to make claims for things to which he simply was not entitled, and that was not down to poor administration. The fact that even today Mr Spratt is blaming it all on poor administration, in my submission, still shows a lack of insight on his part as to his failings.

The next set of documents that I have are the various testimonials that Mr Spratt has put in. From some of them it's obviously very clear that the person writing the testimonial is aware that Mr Spratt has a conviction for dishonesty; I do query, though, whether all of the people are actually aware of his conviction and the reason why he was erased from the register. To give just an example, the one from Sarah Runnacles, which is the handwritten one, which I have at page 8, she talks at the bottom of that, "we were extremely satisfied with Paul's performance as an optician before his break" – I'm not sure that most people would describe an erasure from the register as a 'break' from practice.

Mr Singh: Would you just refer them to the last part of that sentence as well?

Ms Bromley: Yes, "and in that event that his licence to practise is restored" – she's clearly aware he's applying for restoration, what I'm saying is, she may not be aware as to why it's necessary for him to apply for restoration, in particular that he has a conviction for dishonesty. I have been handed two further references this morning, which I don't know if you've yet been provided with –

Ms Jeyasingham: Yes, we have.

Ms Bromley: From the son and from Mrs Spratt.

Ms Jeyasingham: Yes we have – the one from Mrs Spratt is labelled ‘Document 2’, and the other one, from Evolution POS is labelled ‘Document 3’.

Ms Bromley: Mrs Spratt goes into some detail of the impact that Mr Spratt’s conviction and erasure has had on the family. Not surprisingly it’s had quite a devastating impact, and one perhaps would expect that, and I will be referring you to certain authorities, and particularly *Bolton v the Law Society* [1994] 1WLR 512, which very much deal with that, and set out the way that Committees such as yours should approach that.

Mrs Spratt concludes by saying, the very final sentence, “I nevertheless feel his clinical ability is without question”. Of course to be an optometrist requires very much more than just a clinical ability – simply because his clinical ability may be without question does not mean that his fitness to practise is such that he should be restored to the register.

Mr Levisaur: Mrs Bromley, let me just interrupt and say that, were it not for the last paragraph, I would simply have said that this document is inadmissible on this hearing, because it goes to no issue except the fitness to restoration. But the last paragraph saves this document. Whether it saves all the paragraphs that precede it, I really don’t know.

Ms Bromley: Well certainly, *Bolton* makes it very clear that you disregard all those sorts of things.

Mr Levisaur: But the last paragraph is a matter that this Committee may properly weigh in the balance, because she is an optometrist, and she speaks to a lesser or greater extent about his abilities *qua* optometrist.

Ms Bromley: Although of course she doesn’t work with him.

Mr Levisaur: Of course not.

Mr Singh: I’m sorry to interrupt, just while we’re on the document, your learned Legal Adviser has the point that I would rely on so that Mrs Bromley can also address it, so you have the position out before you. I accept that on the basis of the authorities, personal mitigation is not a matter that should weigh heavily on your minds at all. However, the effects of the proceedings, both criminal and fitness to practise may have an impact – it’s a matter for you whether it does – in relation to determining first of all, the effects they have had on the individual, and second of all as a result, whether there’s a risk that it will happen again or not. That’s what it’s relevant to, but it’s not relevant simply as personal mitigation and I accept that – you shouldn’t restore him simply because you feel sorry for him, that’s the point.

Ms Bromley: Finally, just while we’re with the testimonials, there are about four which give details of work which Mr Spratt has done - they start on page 13 - in terms of sitting in on clinics. There’s one at page 13 which talks about him attending a practice on 1 December 2010, and it doesn’t say how long he was there, whether it was for the whole day or for an hour or something in

between. There's also another session at Boots, which is page 12, that was on 30 December, again, he attended a clinic, again, not clear whether that's a whole day, an hour, something in between; and he had two days in Belfast which is pages 10 and 11, with a friend of his, observing practice.

So you have some information as to fairly limited practice, bearing in mind he's not been on the register for three years, he appears to have done at most four days in a clinic, maybe slightly less than that. You have very little information as to what he's actually been doing in terms of earning his living and working and things like that, in the three years since he's not been on the register. I think there's a reference in his son's letter to him running a cash-based business, but you have extremely limited information, virtually no information, as to what he has actually been doing in the three years since he's not been on the register.

I was going to turn next to dealing with the authorities, and I think there are copies available for the Committee. I'm going not going to just dump you with some authorities and say, read those, but I think it would be helpful if you had them in front of you.

Mr Levisaur: Mrs Bromley, why not? Make our Monday morning!

Ms Bromley: Well, I'd quite like a break for an hour, while you go off and read, yes! Although the Master of the Rolls expresses himself much more eloquently than I can do, so I'll –

Mr Levisaur: In truth, particularly in *Bolton* there are in reality two paragraphs which are critically important.

Ms Bromley: Yes.

Ms Jeyasingham: Which one are you going to –

Ms Bromley: I'm going to look at *Bolton* first, *Bolton v the Law Society*.

Ms Jeyasingham: So for the record, can that be document 6 and the next one document 7.

Ms Bromley: *Bolton v the Law Society*, quite an old case now, 1993, but still absolutely central to these sorts of cases and to fitness to practise and conduct cases generally. As is very apparent, this is a solicitor's case, and it concerned Mr Bolton, who had misused a building society advance which had been paid to him to be held by him to fund a purchase, and the purchase was never in fact completed. Mr Bolton was not found to be dishonest, but he had, as I say, misused this money, and the Master of the Rolls set out the principles which should govern these sorts of case. He starts at paragraph 12, where he just says, "I think it may be worth saying something in more general terms".

Mr Levisaur: How does the paragraph start?

Ms Bromley: “Before returning to the facts of this case, I think it may be worth saying something in more general” – about the third page.

Sir Alistair Graham: Page 8 second paragraph down, “Before we turn to the facts of this –

Ms Bromley: That’s it, so he’s just saying he’s going to set out some underlying principles. Paragraph 13 is obviously a requirement of lawyers, “that they should discharge their professional duties with integrity, probity and complete trustworthiness”. I suggest that applies as much to opticians and any other profession as it does to solicitors. And then, the key paragraphs are the three that follow:

“Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness, must expect severe sanctions”,

and then, just skipping a sentence,

“The most serious cases involve proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases, the Tribunal has almost invariably ... struck off the solicitor”.

And then the next sentence, again,

“Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty has been established, even after a passage of years, and even when the solicitor has made every effort to re-establish himself and redeem his reputation”.

I say that applies as much to opticians as it does to solicitors or any other professional. Paragraph 15, the next paragraph, which starts

“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”.

But then, moving on to the next sentence,

“But often the order is not punitive in intention. Particularly this is so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society ... and it would be unjust to punish him again”,

And he goes on to talk about the first purpose - which is achieved for a limited period by suspension and a longer period by striking off - which is to prevent it happening again, but then the sentence that begins,

“The second purpose 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”.

Then the final sentence,

“A profession’s most valuable asset is its collective reputation, and the confidence which that inspires”.

And the next paragraph:

“Because orders made by the Tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the Tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off” –

which of course is where we are today,

“ - all these points may be made and the former solicitor may be able to point to real efforts to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But 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. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is passed. If that proves, or appears likely to be, so the consequences to the individual and his family may be deeply unfortunate and unintended. But it does not make suspension a wrong order if it is otherwise right. 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 part of the price”.

Those are in very eloquent terms, very much the grounds on which I rely in saying that this application for restoration should not be granted, for all the reasons set out by the Master of the Rolls, and particularly the importance of maintaining the reputation of the profession.

If I can turn next to the next authority, which tends to be referred to as *Jidefo v the Law Society*, but actually is a judgment covering three cases, *Jidefo v*

the Law Society [No. 06 of 2006], *Susan Mair Evans v the Solicitors Regulation Authority* [No. 01 of 2007], and *Mana Begum v the Solicitors Regulation Authority* [No. 11 of 2007]. Although *Jideofo* is the first one named he actually withdrew his appeal, so rather less is said about him than about the others. These were cases not where someone had been struck off the Roll and was applying for restoration, but in all cases where they were either seeking to be admitted as students or as solicitors for the first time. The two appeals that were heard - *Evans* and *Begum* - both had convictions, and they were refused admission and it went to an appeal before the Master of the Rolls who, again, set out some principles to be applied.

Page 2, paragraph 6, he simply notes there that there is no direct authority setting out the principles to be applied. When an individual applies for student membership or admission to the Roll, the Law Society's argument basically was that effectively the same test should be applied as is applied when someone is seeking restoration to the Roll, and effectively that is what the Master of the Rolls decided. You don't need to be bothered with the relevant statutory provisions, which applied specifically to solicitors. He concludes at paragraph 11, his finding that,

"These considerations in my opinion point strongly to the conclusion that the same underlying principles apply to conduct both pre-admission and post-admission".

At paragraph 12 he notes that the same approach is adopted in the case of dentists and refers to the decision of *Fleischmann* [2005] EWHC 87 (Admin), so clearly this is an approach that he has adopted across all of the professions.

Then dealing with some of the specific cases – as I say, the case of Ms Evans was that she had convictions, and he notes at paragraph 14,

"I accept the submission that the facts of individual cases are critical. Much depends upon the nature of the wrongdoing, dishonesty or untoward conduct and upon the particular part played in it by the person concerned."

He again refers to *Bolton*, to which I've already taken you, of course, and then the details of Ms Begum's convictions was that - paragraph 21 – in the course of employment as a part-time sales assistant at Dixons, she had stolen telephone credits and she was convicted on seven counts of theft. Also, an aggravating feature was that she failed to disclose her conviction on the form that she completed for re-enrolment.

Then his conclusions are set out at paragraph 31 onwards:

"Ms Begum was convicted for offences of dishonesty. Moreover she answered in the negative a question to which she must have known the answer was 'yes'".

He recognises that she was under considerable stress, she is ashamed of her actions, regrets them, has worked hard in the meantime, has conducted herself appropriately, but he concludes at paragraph 33,

“In these circumstances I must dismiss Ms Begum’s appeal”.

I can perhaps also draw your attention to paragraph 32, because he expresses considerable sympathy for Ms Begum – not unusual in these cases to feel considerable sympathy - but the key point is of course that you are here to maintain the reputation of the profession, and that is what must carry weight with you.

Then Ms Evans, which is the other one, also had convictions, but slightly different convictions, they weren’t for dishonesty, but they were for other public order-type offences, and they are set out in paragraph 37. She appeared to have a real problem with alcohol, and when she was drunk she didn’t behave as one would hope a person would behave, so she had lots of convictions for disorderly conduct when drunk, and again, the conclusions that the Master of the Rolls reached are at paragraphs 49 and 50 where he says:

“The starting point for an assessment of character and suitability in Ms Evans’ case is her convictions. They are not convictions for dishonesty. Her offences arose out of her consumption of alcohol.”

He makes the point they are not in the same category as offences for dishonesty, but they are still such as was sufficient to deny her being admitted to the Roll. She also had given misleading answers on her application form.

So that’s the facts of those cases, and very much, as I say, establishes that it’s the same test that applies whether you are looking at someone who is already on the Roll and you are considering their fitness to practise and whether they should be erased or not, and someone who is applying to come back onto the Roll - the same test is applied.

In the case of Mr Spratt and of optometrists, Mr Spratt’s convictions arose out of the work he was doing in terms of domiciliary visits to nursing homes. Clearly, the system of domiciliary visits by optometrists depends to a very great extent on the PCT being able to trust optometrists to make claims honestly and truthfully for work that they have actually done. It’s obviously quite impossible for the PCT to check every single GOS1, GOS3 that they receive, they have to be able to rely on the optometrist’s declaration that he has undertaken the work for which he is seeking payment and his declaration that the form is correct and complete.

Mr Spratt has serious convictions for dishonesty against him, and these convictions arose directly from his practice as an optometrist, and they represent a very serious betrayal of trust on his part. As was said by the conduct Committee when they made their decision to erase him from the register, his conduct was fundamentally incompatible with being a registered professional.

It is only just over four years since Mr Spratt's conviction, and in my submission, to restore him to the register would damage the reputation of the profession, because of the seriousness of his convictions for dishonesty. The burden, as I've said, is on him to demonstrate his fitness to practise to you, and in my submission, certainly on what is in the documents, he has fallen far short of discharging that burden.

Those are my submissions at this stage, unless I can help you or your colleagues any further.

Ms Jeyasingham: Thank you, Ms Bromley. Any questions? [No] In which case, Mr Singh.

Mr Singh: Can I just deal with the documents first of all: some of you may have noticed when reading through the application for restoration that there's a mention of attached sheets. I certainly looked at that this morning and realised we didn't have the attached sheets and neither did Mrs Bromley as far as we thought initially. She has now made some enquiries. I have the attached sheets, but they have been very badly photocopied. There seems to have been a label on them which has cut out half of it. Mrs Bromley has managed to obtain through the GOC, I think, full copies of those. They were obtained just before we came in, so it may be, if we have a couple of minutes, we can get copies, and you and your colleagues can read them. It will take you about two or three minutes to read them.

Ms Jeyasingham: Okay, so if we just call a short recess to get it photocopied.

Ms Bromley: Thank you.

[Hearing adjourned at 10.19]

[Hearing resumed at 10.49]

Ms Jeyasingham: For the record, those extra pages you gave us, Section A1 we've now labelled as 8 and Section A2 is now 9, and they should be inserted under tab 3 in the main bundle, so that's for future reference. Also, I realise that in my numbering I have missed out 5, so there is nothing under 5.

Mr Singh: Thank you for that. I'm sorry there was a slight delay in us coming back in. Can I just explain why that was: we were just discussing, within Mr Spratt's legal team, between myself and Mrs Bromley and also between us and your learned Legal Adviser, that one of our number obviously, Sir Alistair Graham, sat on the original Committee that considered Mr Spratt's fitness to practise in 2008. We've discussed it, I don't make any application in respect of Sir Alistair's position on this Committee, but there will obviously have to be – and your learned Legal Adviser will direct you – some discussion as to the evidence to be considered at this hearing. Obviously what is in the bundle and what's in the transcript, and any other conversations that occurred on that date of course are not for this Committee. So of course I'm sure you'll all be

very alive to that – there’s nothing in the rules which prevents someone who sat on the original Committee sitting again on a restoration. It would just be whether there would be any application on our part in respect of apparent bias. We don’t make any application on that basis. Thank you very much.

Mr Levisour: For the avoidance of doubt, I will in due course give full advice of course. But the formal advice that I will give will be to this effect, that the evidence which is before the Committee is that which is in the bundles and of course any oral evidence that might be called. It is not that which might be lurking around in the back of anyone’s mind, and I know that Sir Alistair will have that well in mind, so that the evidence will be the evidence before the Committee today and the legal advice will of course be the legal advice given today.

Mr Singh: Absolutely, I’m very grateful for that indeed. Madam, then, turning to Mr Spratt’s case: I am not intending to call any live evidence before you, but to deal with this application on the paper evidence that you’ve received, and on the basis of the submissions that I’ll make. Our submission is that Mr Spratt is fit to be restored today despite his conviction for offences of dishonesty.

Just in headline form, just so you can see where I’m going, we would rely on a number of matters: first of all, the length of time since when these matters occurred initially, the actual offences, the date that they were dealt with by the courts and the date that they were dealt with by the Fitness to Practise Committee; the steps that Mr Spratt has taken since 2008, which is apparent from the evidence behind tab 3 which I’ll go to in some detail; the weight of the character evidence placed before you and the fact that looking forward, we would submit, the risk of any such conduct being repeated is minimal, and also the fact that there is no risk to patient safety, of course, and that is accepted – this wasn’t a case where Mr Spratt was negligent criminally.

It’s a judgment for you and your colleagues of course on the evidence as it stands today, and we’ve already made that point; it’s a judgment also, looking forward – of course, events in the past are relevant to your consideration, but it’s a consideration of whether, looking forward just as you would be at a time of considering fitness to practise, Mr Spratt is fit to be restored. All of the principles relevant to decisions on impairment, are relevant to your considerations today.

Can I just make two general points before I deal with the evidence, please, and they are these: the first, you’ll have seen in the transcripts and also in some of the documents that have just been handed up, that there is some dispute as to what the conviction means, some dispute as to the basis of the conviction. If I can summarise it in this way: is it dishonest submissions of forms for tests not done, or is it dishonesty in relation to the date on which the test was carried out? I’m not seeking today to pursue any points, to suggest that the conviction means anything other than the Fitness to Practise Committee found it to mean on the last occasion, and that the GOC have put forward as the meaning for it. I hope that’s clear – there may be all sorts of legal difficulties in doing so, aside from many other points – but we don’t

pursue any other interpretation of those convictions, so for the purposes of today you can take that as being the case.

The point that we make is that, whatever the basis for this dishonesty, Mr Spratt is fit to be restored today, whether it's dishonesty on the dates or dishonesty *ab initio* from the beginning. Either way, the position today is a different one.

The second matter is this: I'll refer to the Council's guidance, and there's the protocol on the management of previous convictions that have been disclosed. You may think it's a useful document into assessing what kind of matters to take into account, but it says no more, I suppose, than real common sense factors that you would be considering anyway, this being a very experienced Committee. I'll also refer in brief to the authorities, but Mrs Bromley referred to the two authorities and I of course accept the established principles that are set out in them. They don't put you in a straitjacket, of course, each decision is fact-sensitive, and that was made very clear in the decision of *Jideofo*. The facts of each case are paramount for your consideration. I will flag up principles at a later stage, and there's also one part of *Jideofo* that I wanted to refer to, but apart from that I won't refer in detail to those judgments.

Now I move on to submissions – could I ask you to take the protocol documents, please. Madam, what I was going to do, if it would assist you, is to really run through this and use this as the headings for my submissions, because then it may assist you when you come to look at the factors I'm relying on, you can then slot it in, essentially, to what's in this document. Can I just check you've all had a chance to read it? Yes, thank you. Taking that document, the starting point, as Mrs Bromley has said, paragraph 2 and paragraph 3, Schedule 4 offences, where registration or restoration or retention will be presumed against on that basis, we're not in Schedule 4, so the guidance in that respect doesn't kick in.

Moving down the page, then, I don't need to trouble you with 5, we accept that of course. On 5(b), the burden is on Mr Spratt in this case to satisfy you of his suitability. On 5(c), there are six matters set out there: nature and seriousness of the offence, the extent and nature of any risks to patients or the public entailed in the offending behaviour, the time frame of the offending behaviour, the relevance of the offence to professional standards and conduct, the applicant's character and conduct since the offence, and the impact of such an offence being committed by a registrant on public confidence in the profession. What I intended to do was deal with each of those in turn, save to say, if I can deal with number 4 and number 6 - that's the relevance of the offence to professional standards and conduct, and the impact of such an offence being committed by a registrant upon public confidence in the professions. They really go hand in hand, they are different sides of the same coin, so I'd like, if I may, just to deal with 4 and 6 together as one block at the end of those six matters.

So Madam, turning to the nature and seriousness of the offence, it's a matter of dishonesty, we accept that of course. Under this heading I simply draw your attention to two factors: those are first of all, the way in which the matter was dealt with in the Magistrates' Court. Of course, it's not a binding factor on you at all, but it gives you some insight as to where the offence falls in the criminal calendar, if I can put it that way. It was dealt with in the Magistrates' Court, and the sentence passed was a community order with unpaid work of 150 hours. The maximum sentence which the Court could have imposed, I understand, was ten years' imprisonment for obtaining a money transfer by deception, so it's –

Mr Levisaur: Not in a Magistrates' Court.

Mr Singh: No, that's for the offence in general, six months' imprisonment in the Magistrates' Court, put on each offence, twelve months if they were dealing with consecutive sentences, so obviously not ten years in this case, but that's the maximum sentence for the offence. The reason I say that is you can see where it falls in relation to the kind of offending that that provision covers.

Also, I simply draw your attention to the amount that's involved: it's around £500, that was the amount over ten claims, so again, a relatively small amount. I don't say any of that to minimise the seriousness of the offence, given its context, but it's just so you can see, as I say, where it falls in the criminal calendar and to give it some context - that will be relevant to a submission I make on *Jideofo* in a moment. That's the nature and seriousness of the offence.

Pattern of offending: if you go underneath to sub-paragraph (ii),

“the Registrar will consider whether: the offence was a ‘one-off’ incident or involved a series of identical or related offences”.

It's obvious this one is a series of related offences. It is not, and I can't urge on you that it is, a one-off offence, because obviously it's a number of different matters. What I would ask you to do, though, is view this series of offences in the context of Mr Spratt's general character, and his career. You'll know in any event that he was before this conviction a person of good character, he had no previous convictions, no previous disciplinary matters recorded against him whatsoever, there was nothing before this, and there's been nothing since this. He's been in practice for many, many years. Although it is not a one-off offence, it is a one-off course of conduct in what has otherwise been an unblemished career as an optometrist, and a successful one. Also, I suppose, an unblemished life, if I can put it that way, being a person of good character. The overwhelming evidence that you have before you is, you may feel having read the references, that this kind of behaviour, any kind of dishonest behaviour, is totally out of character when you consider Paul Spratt.

Can I just direct your attention, please, just very briefly, to a couple of passages in those references – in fact it's tab 4, not tab 3, I apologise. Just for this purpose now, I don't intend to take you through them in detail, but if you

see at page 1, just as an example, there's a reference from John Benson & Company, Mr Benson is the Principal at a firm of chartered accountants that has dealt with Mr Spratt for over fifteen years. Can I just say, just to interpose it, Mr Benson dealt with Mr Spratt whilst he was an optometrist and also in relation to his new business, that is mentioned in one of the other references. He has since his erasure, set up a chain of barber shops, they are around the north of England and one in London, called Sports Cuts, there are now four branches across the country - so that's the context in which he's provided accountancy services to him, as well following Mr Spratt's erasure. Paragraph 2,

“During the period of our relationship, Mr Spratt has always acted in a professional manner and has always submitted appropriate Returns to H.M. Revenue and Customs on time. We have not encountered any instances in our dealings with Mr Spratt to doubt his honesty and integrity.”

Over the page, on page 2, this is a reference from a Mr Baker - he's known Mr Spratt around 27 and a half years both as a professional colleague and friend, since they trained together at Aston University. You can see from paragraph 2 and the second to bottom paragraph the kind of general character Mr Spratt has. It says there,

“I have always considered him to be decent and honest as a person and thoroughly professional in his approach to patient care and in the application of his clinical knowledge. This has been clear to me in our frequent discussions and meetings over the years”.

And just going down to the second to last paragraph,

“I can confirm that I am aware Mr Spratt is seeking restoration to the GOC register. I find it extremely difficult, if not impossible, to believe that the matter which has brought him before the GOC has anything to do with wilful dishonesty as I feel it would be so completely out of character, considering how well I know him. I have the utmost faith in his integrity and am pleased to have the opportunity to speak up for his good character. I am very happy for the Fitness to Practise Panel to rely on this reference in its deliberations.”

Although it's a reference to the Fitness to Practise Panel it was obviously prepared in anticipation of this hearing – you'll see the date there, 24 January of this year.

Madam, there are other references here, I don't intend to read them out to you, but can I just highlight page 1, page 2, page 3, page 6 and page 7 – I don't ask you to turn them up now, but if you want to make a note of those. You will see there that the overwhelming picture of this person is that to his professional colleagues, his close friends, his patients, his relatives, an honest and trustworthy person normally, and any dishonesty is completely out of character. Why is that relevant? It is relevant, as I say, to pattern of offending,

it is a series of offences, but it is a one-off series of offences in an otherwise law-abiding life.

Can I turn to number 3, please? The pattern of offending: this is rather important, because reference has been made quite properly to the date of erasure and the date of conviction, but one has to look also at the date of the offence that we are talking about. Just for your note, the GOC hearing where Mr Spratt was erased was on 10 January 2008, that was three years and one month ago. The criminal conviction was on 24 November 2006, that is four years and two and a half months ago. Crucially, if you look at the dates of the offences – and I took you to page 9 of the transcript, I don't need to take you to that again – the offences are between September 2002 and October 2003. So the offences themselves, the dates when they were committed, were seven years and three months ago.

There is not suggestion of any kind of repetition of this conduct since then, and of course, you will know from the transcript that from 2003 through to 2006 Mr Spratt was working as an optometrist, and from 2006 through to 2008 Mr Spratt was still working as an optometrist until he was erased, and then he has gone on to run the other business, so no repetition of this behaviour since the dates of these offences, which is now seven years and three months ago. I observe in passing, that is a long time, a very long time indeed.

Just so it's also clear – it may be obvious to you – the community order which was imposed back in 2006 has obviously expired now, he isn't enduring the currency of that order, and that's obviously a relevant factor for you. If someone was still serving their sentence, then it's often the conclusion that they should not be restored to the register, but I accept, of course, that the rehabilitation of offenders does not apply, whether it's spent or not doesn't really matter to this profession.

Next down that page, 'Relevance to professional registration'. Can I deal with that together with the last one on that list, the impact of the offence on public confidence in the profession? Can I just go on to number (v), that's 'Character and conduct since the offence'. Just at the bottom of that page, you'll see reference to it, "In considering the application, the Registrar *will*:" – just underline the word 'will'. It's worded slightly differently to other sections in this: if you go up to number (i), you'll see 'Nature and seriousness of the offence The Registrar may take into account', at the bottom, in relation to character and conduct, "In considering the application, the Registrar will" – it's a matter for you, but it seems there's a slight difference in emphasis there, in terms of how relevant this information is, and whether it should or might be considered. I would submit that it should be considered, in accordance with that guidance.

Just going over the page, there are four headings, I suppose, under which you would consider it – can I deal with each one of them? "Assess whether the offence is indicative of attitudes or personal characteristics incompatible with registration" – obviously, you've seen the decision of the Fitness to Practise Committee on the last occasion, they felt that dishonesty was incompatible at

that stage, and imposed a sanction of erasure. However, in line with that, you'll note that this guidance, and also the authorities you've been referred to, envisage circumstances where, even though someone has been erased for dishonesty, there may be circumstances in which they are able to return to the register. The fact that the Fitness to Practise Committee felt three years ago that these standards were incompatible does not preclude you today saying that he is now fit to be registered. That is just as a general principle - it's a starting point, but one has to then go on to consider the evidence in the case, where are we?

So, what do I submit? I would submit that the evidence before you indicates that Mr Spratt has used the time since his erasure very positively, very usefully and very constructively, and I'd invite you to conclude on the basis of that evidence that the risk of repetition of any kind of dishonest behaviour, whatever he accepts, is minimal. The reason I say this is because if you look at 3, 4 and 5 at the top of that page, the guidance asks you to consider this: consider the risk of re-offending and the seriousness of the consequences of re-offending, should that occur, in relation to patient safety and security of patients' and public funds, not assume that the passage of time will cancel out the offence or that the Rehabilitation of Offenders Act, which can lead to convictions being spent, does not apply – I think that might be a typo, I assume you will assume that it doesn't apply. But this is the important bit:

“However, the passage of time may be relevant if it indicates the risk of re-offending is low or diminishing, particularly if that time has been used constructively”.

Also, “Give due consideration to appropriate positive behaviour”. So it's under those factors that I'm submitting now that this does amount to constructive use of time, low risk of re-offending, and positive behaviour in the meantime.

So what's the position? Can I just deal with, under this heading, the document that has been provided by Mrs Spratt today: I won't rake over what's in there, we are in public session, you no doubt have it in mind and you've had a chance to read it. I can summarise it in this way: the last few years, as a result of the conviction and Mr Spratt's erasure, have been nothing short of devastating – disgrace and shame, the pressure of prolonged proceedings, and financial strain. Now, I don't – and I make it clear - say that that is relevant for the purposes of sympathy, it isn't. What it is relevant for is this: to show the effects of what has happened, and the effects of Mr Spratt's actions, on him, on his wife, on his family. In those circumstances you can conclude that, because all of that has happened, whatever the basis for his dishonesty, the chances of anything like that being repeated is absolutely minimal. The consequences are very, very clear, as are the requirements for a professional person – one thing you can be fairly sure about is that the words of the Fitness to Practise Committee on the last occasion, as they would in anyone's ears, ring in his ears. That's its relevance, and that only.

Against that background, I'd ask you to assess the steps forward he has taken in the meantime. Despite these difficulties that are outlined in this letter, Mr

Spratt went on, as I've said, to set up a chain of barber shops in the north of England – Middlesbrough, Leeds, Sunderland - and one in London. He employs five people at various different premises, he's worked hard to try and make it work. The point I make first of all is that he's been honest in all of his business dealings involving that company – he has had to deal with cash, he has had to deal with payments, he's retained accountants and you have the letter from them. There has been no repetition of similar conduct although obviously there has been opportunity, the accountant speaks to that.

This goes to demonstrate, in my submission, that in the time that he has been out of practice, he has taken steps to re-establish his reputation. His reputation as what? As an honest, professional person, an honest businessman. The other thing which is clear, that these matters related to paperwork – whatever the disputes about how that was filled in, the issue was submission of paperwork and accuracy of paperwork. The other evidence you have before you shows that he now takes paperwork extremely seriously, and you have a reference as well from TR Spratt – which is actually Mr Spratt's son – who has designed essentially an accounting package, which has been very useful in ensuring that there is a cradle-to-grave audit trail in terms of his paperwork at his business. Why is that relevant? Because it shows a real effect of proceedings and a change in attitude towards paperwork, making it a priority, rather than doing it in the way that it was before. So I refer you to that document – I won't read it into the record, but that's its relevance. It all goes to these questions of re-establishing his reputation and taking steps in the meantime.

So, based on all of that, I'd ask you to consider, as I say, risk is low of repetition, the time has been used constructively. There's a further point on constructive use of time, because of note are the efforts that Mr Spratt has made to try and keep up with optometry. I just make this comment: the optometrist members will know very well, and probably some of the lay members as well, to do any kind of clinical work when you're not registered is nigh on impossible, there is only a limited amount of work that someone could do, not registered, having been erased, just to keep their hand in and to try and demonstrate their commitment to the profession. One of those is to go and shadow people, unpaid – Mr Spratt has done that.

The other thing one could do is to keep right up-to-date with continuing education and training – Mr Spratt has also done that. Can I just deal with them in reverse order: continuing education and training – it's all behind tab 5 of bundle one. Can I say, we have received an up-to-date document this morning, it's available if you want to see it. It simply adds another six or seven CET points to what's on this document here. I didn't want to copy it, to overburden you with more documentation, you can simply take that from me, but it's available for inspection if you wish to.

If you wouldn't mind just turning to the back of that document, you'll see there that CET starts on this document in 2007, goes forward, if you go to the second to last page, 10 July 2007, there's a hiatus then, after that – that follows on from when Mr Spratt was erased, and then obviously set up his

other business. He started to think about the profession that he loves very much, and started to want to keep a) abreast of things and b) to try and keep his knowledge up to date, so that if he did apply for restoration, he would be able to demonstrate to you a) how committed he is, and b) that his knowledge is up-to-date. I hope that this document does go some way to demonstrating that. You'll see there from December 2009, all the way through 2010, fairly regular CET points being obtained in a wide variety of areas. That's all I draw your attention to.

The second thing I should draw your attention to in relation to this is, the references that have already been referred to, they are behind tab 4, and they start at page 10. Can I just turn my back and take some brief instructions on that? [Confers]

Madam, just for you and your colleagues briefly: starting at page 10, Mr Spratt, again unpaid, off his own back as it were, went to an optometrist friend of his to look at paperwork and to focus on paperwork, again prioritising the issue that was a problem in the past, and you can see there, learnt a lot about GOS paperwork. He also gives at page 11 his general opinion of Mr Spratt, which we rely on as well, but again, that's relevant trailing, if I can put it that way. Under that heading, it's right that you should know that Mr Spratt, as is said in the application – the extra documents that you've received - wishes really to undertake locum work, so that's one way that he would not be involved in any submission of GOS forms. He feels much more confident about forms and all of those matters, but that's certainly his intention, to be a performer rather than a contractor, if I can put it that way.

So Madam, that's page 10 and 11. Page 12 and 13 – I should interpose this as well – we accept you can't put conditions on someone's restoration, so I'm not asking you to consider a locuming condition, it's not something that you can properly do. Page 12 and 13, again, that simply shows his dedication to the job - to answer my friend's questions, he spent either a morning or afternoon session in the clinic, so it's a half day, that's what those relate to. Each one of those, page 12 and 13, are different branches.

What you can take from these, page 12, for example,

“Paul demonstrated a genuine desire to return to optics, which came across very positively when we were able to discuss various points of interest during the clinic, and I firmly believe he would relish the opportunity to enter the profession again”.

That's of course from a fellow optometrist, that you may think speaks volumes about Mr Spratt's dedication to the profession and to the job. So, there we are: the evidence behind tab 4, in my submission, provides very significant evidence, very cogent evidence, and in a number of ways, quite exceptional evidence, to suggest low risk, to suggest ongoing commitment to the job, and to suggest competence in general. I haven't taken you to all the references from patients who speak to his general clinical ability, I know that's not in question, but that's something that you might want to consider as well, would

patients be at risk, if he were to be restored? The answer must be no, they have never been put at risk in the past, and they wouldn't in the future.

So that's the evidential position, and now I come onto the last matter, the last two matters together, which are public confidence in the profession and how the behaviour that you have evidence of departs from the standards to be expected of an optometrist, because that really is the nub of this case, isn't it? The Council quite properly and clearly have pinned their colours to the mast. The submission made by my friend is that to restore Mr Spratt's name to the register would bring the profession into disrepute, that really is what it comes down to. The submission is essentially this, as I understand it: it's an offence of dishonesty, dishonesty undermines confidence in the profession, brings the profession into disrepute, it's not conduct fitting of an optometrist, and therefore he should not be restored.

Well, that of course, as I say, is a starting point, and that is exactly the same position taken by the Council three years ago. It doesn't necessarily take into account what's happened since then, and what my submission to you is that, please look at everything in the round, the position today, not the position three years ago, and not the position seven years ago. Would the profession be brought into disrepute if Mr Spratt was now allowed to practise again?

Think of a member of the public looking on, taking into account everything that we know now – the conduct complained of was seven years ago, it's affected his life greatly, the risk of it happening again is minimal, he has tried hard to move on, it's a blot on an otherwise unblemished long career, patient care has always been excellent, highly dedicated, and he has paid already the ultimate price for his actions. I simply say this, that an onlooker may feel, looking at the situation and looking at all the evidence, that there must come a time when a practitioner is entitled to say, I have paid my dues for what I did, please let me return to the profession because I have tried my best, over seven years now, to move on, I'm not a risk to the public, I'm not a risk to patients, and I'm no longer a risk to the public purse. There must come a time when a practitioner can ask that question and have it taken seriously. I would submit, seven years after the offence and three years after erasure, that time has come in respect to Mr Spratt.

Now, obviously, a large amount of emphasis has been placed on *Bolton v the Law Society* and the case of *Jidefo* – I accept the principles that are set out in there. One thing that might assist you is how the Master of the Rolls in *Jidefo* applied those principles, because on one hand there are the principles, on the other hand there is the realistic application of them, and it's very, very easy to get bogged down in the specific words that the principle lays out. What I would ask you to do is take a realistic view of this, and take a realistic view of what the real risk seven years on after a conviction are to the reputation of the profession, and to the public.

Can I ask you to turn, please, to the case of *Jidefo*? I'd like to refer you to the case of Ms Begum, which starts – you have paragraph numbers, I think, in this one – paragraph 19. Just to walk you through this, she was 29 years of

age at the time of the appeal – she was obviously younger than Mr Spratt – paragraph 21: the issue in Ms Begum’s application was outside her work as a solicitor and I accept that, that’s a slight difference. She stole approximately £500, made up of seven thefts, from an employer, so there’s an element of breach of trust there as well, that’s obviously an aggravating factor in her case. The aggravating factor here is it was in the context of Mr Spratt’s employment as an optometrist. She was sentenced to a community order in order to repay the amount stolen, which she did; again, Mr Spratt was sentenced to a community order. She made an application very soon for re-enrolment – if you go over the page to page 10 but paragraph 22, it says there, Ms Begum reapplied for re-enrolment on 30 December 2004, three months after her convictions. She then failed to disclose those convictions on the form, so again we have another issue here, another aggravating feature of dishonesty. On 17 August 2006 – this is the top of paragraph 23 - she applied for admission as solicitor. Going down, that just summarises the position – she admitted the offence fully, went on, and if you turn to page 11 you’ll see just above paragraph 27, the last paragraph – this was the decision of the adjudicator – it says here,

“I have no doubt Ms Begum sincerely regrets her behaviour. I must, however, refuse the application in light of the nature of the offence and the fact it was committed just over two years ago - being too short a period for Ms Begum to establish that she has adequately rehabilitated herself”.

That was the essence of the decision. If you flick forward again – you’ll have a chance to read all of this carefully, I don’t want to take up too much time on matters of submissions, for example, because it’s clear from the decision that’s reached what submissions were accepted and which weren’t. Can I just take you to conclusions, which is what you were referred to by my friend, paragraph 31 on page 13:

“Ms Begum was convicted for offences of dishonesty. Moreover, she answered in the negative a question to which she must have known that the answer was ‘yes’. I recognise that when she committed the offences she was under considerable stress. I also accept she is ashamed of her actions and she sincerely regrets her behaviour, that she has worked hard whilst a trainee solicitor and that she has conducted herself appropriately during her employment since her conviction. It is also of note that the magistrates imposed a community sentence in her case and I have little doubt she will be able to provide very worthwhile services to the community, especially the Asian community in the future.”

Just stepping back, again, with Mr Spratt, from the references, I haven’t referred you to them, but the references from patients show that he would be able to provide very worthwhile services to the public, to patients in the future, he is very well respected by his patients.

Paragraph 32:

“All in all, I have considerable sympathy for Ms Begum. However, this is a case of dishonesty. It is not the worst case of dishonesty but it is a case in which, as Jack J put it in *Wilson (The Law Society v Claire Wilson [2006] EWHC 1022 (Admin))*, personal mitigation carries little weight. It does so because the issue in her case is whether in the light of the gravity of her offences her entry into the profession is both in the public interest and in the interest of the profession. In my judgment the Law Society was entitled to reach the conclusions that it did in the light of the principles to which I have referred. Applying the principles set out by the Master of the Rolls in *Bolton* in the light of her previous convictions for dishonesty I must uphold the Law Society’s decision to refuse her admission and to cancel her student membership.”

Of course the test being applied in the decision made is, was the first tier Tribunal entitled to reach the decision. I simply highlight that – it wasn’t highlighted earlier. It says this, and this is important:

“In these circumstances I must dismiss Ms Begum’s appeal. It does not follow that Ms Begum will never be able to become a solicitor”

Step back a moment: if one looks at the guidance and what’s been put forward by my friend quite properly, that might seem a rather inconsistent statement, because the way it’s been put is that essentially this is a case of dishonesty, there’s only really one conclusion that you could make, but that was a case of dishonesty, a conviction, for which a community order was provided, there was a failure to disclose, but what was said here was this, it doesn’t follow that she will never be able to become a solicitor. Of course it’s a matter for the Law Society, but while this is a case of dishonesty, there have been many worse cases over the years.

Again, I highlight that in this case: there are no doubt many, many worse cases, and that’s why I referred you to the calendar of criminal offences, to put it in context and to see how it’s been approached in this case. It seems to me that there is likely to come a time in the not too distant future in which it’s possible to say that both Ms Begum is not a risk to the public, and that the time has come when the reputation of the profession will be better served by the admission of Ms Begum with all that she has to offer both the profession and its clients than by her continued exclusion. In that case, he said the Law Society was however entitled to conclude that time had not yet come.

Let’s just have a think about the timescales: the timescales in that were that the original application for re-enrolment was three months after the convictions, and the application to the Court of Appeal was two years after the convictions. Well, that’s the convictions – we’re talking here of seven years and three months after the offences, and over four years after the convictions. The timescales are far, far greater in this case. That paragraph, paragraph 33, perhaps gives you some insight into the practical application of the guidance that’s given in these cases. It’s firm guidance, but you have to approach it in a common sense light, and in my submission, the time has come where the

reputation of the profession will be better served by Mr Spratt being able to practise, a competent optometrist and provide a good service to patients, a long time has passed and he has tried to address issues that have arisen, as you've seen on the evidence.

So Madam, that's my submission, I would submit that the evidence that you have before you is exceptional, the length of time that's passed is exceptional, and the fact that Mr Spratt has not re-engaged in any kind of dishonest behaviour, whatever is admitted, for such a long period of time again adds to the exceptional nature of the case. So Madam, I'd ask that you and your colleagues do restore Mr Spratt today. Unless I can assist you any further –

Ms Jeyasingham: Thank you, Mr Singh. Obviously you did evidence and then submission, I'm just wondering if there are any questions on the evidence.

Sir Alistair Graham: Could I just ask about the community order that was imposed on Mr Spratt - it was 150 hours, was that right?

Mr Singh: 150 hours' unpaid work.

Sir Alistair Graham: And how long did that take to –

Mr Spratt: It was within three months. I worked for Age Concern for three months.

Mr Singh: For 150 hours? I think the order would have been either twelve or eighteen months, I'll have to check that.

Mr Spratt: Oh yes, sorry, it was eighteen months but I actually did it in three.

Sir Alistair Graham: What did the community service involve – there's a reference to Age Concern in the papers somewhere.

Mr Singh: I can take some instructions, can I turn my back quickly? [*Confers*] Mr Spratt was working in an Age Concern shop, he was involved in operating the till, cashing up, matters like that, for 150 hours.

Sir Alistair Graham: But there was no reference in the bundle from this period of activity?

Mr Singh: No reference in the bundle? Sorry, that we've submitted? Obviously it was in 2006, quite some time ago, it's not something that we sought – and also, the shop has closed down, I'm instructed, so there was no-one that we could go to, but the references that are in here have concentrated on the period since erasure, being the last three years. Going back, say, to 2006 perhaps wouldn't show the current position, I think that was the thinking.

Sir Alistair Graham: Thank you.

Ms Jeyasingham: Any other questions? [*No*]

Mr Singh: Thank you.

Ms Jeyasingham: I turn now to our Legal Adviser. There were no matters arising, were there?

Ms Bromley: No, other than the two additional documents we have in section A1 and section A2, went in at the back of his application form, a couple of things I did want to flag up there, particularly A2 -

Mr Levisaur: The reference, that's on page 9, sorry, document 9.

Ms Bromley: Yes. First of all, the final paragraph, he talks about only wanting to be a locum and as has been accepted you can't impose conditions, so he's either back on or he's not back on, and once he's back on he's obviously free to practise however he wants to practise. The paragraph above that is a comment about what was said at his sentencing, but again, in my submission it shows again, lack of insight, there's this constant reference to the negligent paperwork, rather than accepting that he was fraudulently making claims where he was signing the paperwork himself, and that also rather comes through in section A1, where he talks about his difficulties with the paperwork. So in my submission again, that rather reinforces his lack of insight. Thank you.

Ms Jeyasingham: Thank you.

Mr Singh: I should just point out that of course you and your colleagues will be acutely aware of this: if Mr Spratt were to be allowed back on the register, and then applied to a Primary Care Trust, obviously all of the convictions would have to be disclosed, they would fall to be disclosed as they were as part of this restoration application.

Ms Jeyasingham: Thank you.

Mr Levisaur: The burden lies on the applicant to show that he is a fit person to go onto the register, and it's very important that I begin my advice by reminding you precisely of that. It goes without saying, but nevertheless I say it, that you are to decide this application on the basis of the evidence before you – I have already made reference to Sir Alistair's previous position, and I make no apology for again making this point quite clear: you decide the case today on the basis of the evidence before you today. That, of course, includes the transcript of the substantive inquiry. Don't speculate, and don't bring into account matters which are not in evidence today. You are, of course, perfectly entitled to draw inferences, but you are only to draw inferences about matters which are in evidence before you today, don't speculate.

It's also extremely important to remember that the legal advice you get today is the only legal advice that you are to consider, and apply. I pay tribute to Mr David Grant, as he then was, who sat as Legal Adviser on the last occasion. What he had to say is for these purposes entirely irrelevant. The legal advice

that you get now is the legal advice that you are to consider, and the only advice you are to consider and apply.

The offences for which Mr Spratt was convicted were offences of dishonesty – it is important for me to say that and to make that absolutely clear. There is to be no gilding of the lily or considering this matter in any other way, these offences are offences of dishonesty, and an essential component of the offences was dishonesty. If Mr Spratt had not been dishonest, he could not and would not have been convicted.

In considering whether Mr Spratt has satisfied you that he is fit to be on the register – and again I emphasise that it is for Mr Spratt to establish that he is fit to go on the register – you are of course entitled, indeed some would say bound, to consider whether Mr Spratt accepts that he was convicted of dishonest behaviour, and whether he now accepts that that behaviour was in fact dishonest.

The principles which are to be applied at a Restoration Hearing are the same as those to be applied at a Substantive Hearing. I could take you in minute detail into the passages in *Bolton* and the case of *Fleischmann* which establish this. I'm not going to – I simply tell you for these purposes what the law is. As I say, the principles to be applied at restoration are the same as those which are to be applied at a substantive hearing. You have of course been referred to the very well-known cases of *Bolton* and perhaps the little less well-known, but nevertheless the lawyers' well-known case, of *Jidefo*.

It might be of some assistance if I simply asked you now to have a quick look at some of the paragraphs that appear to me to be of significance in the case of *Bolton*, and for these purposes, because we don't have paragraph numbers but have the old form of law report, could I ask you to go, please, to page 9 and to the line marking which is the letter 'A' on page 9. The Master of the Rolls said,

“It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness. That requirement applies as much to barristers as it does to solicitors. If I make no further reference to barristers it is because this appeal concerns a solicitor, and where a client's moneys have been misappropriated the complaint is inevitably made against a solicitor, since solicitors receive and handle clients' moneys and barristers do not.”

Of course, these words do not directly apply to an optometrist or another professional person, but as you will know in this case, it was an application being made by Mr Spratt for payment from a public body in his professional capacity which caused this matter to be brought before the courts and eventually before his professional society.

Could I also ask you to carry on down, and you will see between letters C and G an analysis of what the position must be, at least in the case of a solicitor, but a professional man.

“A solicitor who has been shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed on him by the Disciplinary Tribunal. Lapses from the required high standard may of course take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the Tribunal has almost inevitably, no matter how strong the mitigation, ordered he be struck off. Only infrequently, particularly in recent years, has it been willing to order restoration to the Roll of a solicitor against whom serious dishonesty has been established, even after a passage of years and even where the solicitor has made every effort to re-establish himself and redeem his reputation.”

I purposely do not read on, because this is not a case where it could possibly be said that Mr Spratt had not acted dishonestly. Turning on to page 11, at letter D, the Master of the Rolls said this:

“He –“

that is to say, a client,

“is ordinarily entitled to expect the solicitor will be a person of trustworthiness, whose trustworthiness is not and never has been seriously in question, otherwise the whole profession and the public as a whole is injured. A profession’s most valuable asset is its collective reputation, and the confidence which that inspires.”

And whilst it is perfectly true the Master of the Rolls was talking in this instance about the legal profession, there is no doubt that the courts have thereafter considered this to be a passage of the utmost general application and of considerable importance.

At page 11E to 12D, the Master of the Rolls considers what the effect of suspension is to be, and he points out that none of the personal matters touches the essential issue which is the need to maintain public confidence in the trustworthiness of members of the profession. Right at the end, line D on page 12, he says,

“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.”

On turning now to the second case, where we do indeed have paragraph numbers, could I ask you please to begin at paragraph 18, where the Master of the Rolls, Sir Antony Clark, says,

“In the light of *Bolton* and a summary of its application in *Wilson* it is clear that when assessing whether an individual has the requisite character and suitability to be admitted as either a student member of the Law Society or a solicitor, it would be rare for a person with convictions of dishonesty to be found to have the requisite character. Personal mitigation, while a factor for consideration, will not weigh heavily in carrying out that assessment exercise. Much depends, however, upon the nature of any dishonesty ... I should add that *Bolton* does allow for the possibility that exceptional circumstances might exist which would justify an individual being readmitted to the profession following a strike-off, even after findings of dishonesty.”

And continuing into the case of *Begum*, to which reference is being made, at paragraph 32 and 33, whilst he had considerable sympathy for Ms *Begum* he went on to say,

“This is a case of dishonesty. It is not the worst case of dishonesty, but is a case in which, as Jack J put it in *Wilson*, personal mitigation carries little weight. It does so because the issue in her case is whether in the light of the gravity of her offences her entry into the profession is both in the public interest and in the interest of the profession. In my judgment the Law Society was entitled to reach the conclusions that it did in the light of the principles to which I have referred.”

And going on, I point this out because it is important that it is recognised that simply because there has been a conviction does not mean that thereafter one may never re-apply. He goes on to say,

“It is of course a matter for the Law Society but, while this is a case of dishonesty, there have been many worse cases over the years. It seems to me that there is likely to come a time in the not too distant future when it will be possible to say, both that Mrs *Begum* is not a risk to the public and the time has come when the reputation of the profession will be better served by the admission of Ms *Begum* with all that she has to offer the profession and its clients than by her continued exclusion.”

It follows, therefore, that you are being urged to consider both the public and the reputation of the profession, and you will no doubt do so when assessing what it is, if anything, that Mr *Spratt* brings both to the reputation of the profession and to the good of the public.

You have also been specifically referred to the case of *Evans*, that is to say, the third of the appeals considered in *Jidefo's* case. Can I ask you to turn on please, to paragraph 49, where the Master of the Rolls continued his analysis? I remind you that that was not a case of dishonesty, it was undoubtedly a case of a woman who having consumed large quantities of alcohol appeared to lose control and had an extremely unpleasant side to her character. He points out at paragraph 49 that these are convictions for

“offences which do however call into question her integrity, probity and trustworthiness. On their own her offences don’t fall into the same category as offences of dishonesty ... Ms Evans did not, however, draw the offences to the attention of the Law Society when she applied for her student membership ... it is right to say she did inform the Law Society of the non-disclosure at an early opportunity a couple of months later. [She] made heartfelt submissions ... on her own behalf.”

And he went on to say,

“I accept that she is taking steps to ensure that behaviour such as that which has given rise to her convictions will not happen again. I also have regard to her references ... the Law Society was in my judgment entitled to cancel Ms Evans’ enrolment as a student member. While her consumption of alcohol would not in and of itself necessarily call into question her character and suitability ... her offences committed after the consumption of alcohol do so. Equally, and more seriously, her non-disclosure of her offending to the professional regulator calls into question her character and suitability. Taken together these two factors justify the Law Society’s decision to cancel her student enrolment.”

One thing that I should make entirely clear, leaving these cases to one side, is that of course, there may come a time when no matter how heinous an offence a man may be permitted to be restored to the register. However, the burden lies on the applicant to show that that is the case, both in this case and in any other case. Whether or not a man is fit to be restored to the register is a matter for your judgment, bearing in mind these many factors. You will need to maintain public confidence in the profession, and particularly in the trustworthiness of those who are on the register, and it will have been said to you on many previous occasions, but I say it to you now again, that trustworthiness and probity lies at the heart of what it means to be a professional man.

You must, and of course will, bear in mind the points that were made partly to you by Mr Singh as to the chronology in this case. It may be of assistance if I simply remind you that erasure took place three years and one month ago in January 2008; that followed convictions four years and two months ago, in November 2006; and the offences upon which that conviction was based took place between September 2002 and October 2003, which by my calculation means they took place between eight years and four months ago and seven years and three months ago. You are entitled to take into account that the community service order of 150 hours’ unpaid service has been discharged, it is not a case where a man is, as it were, still on licence, still subject to some form of sentence. He has paid his debt to society so far as the criminal courts are concerned.

You are entitled to take into account Mrs Spratt’s reference – that matter, of course, does speak to a limited extent about his present abilities and present position. You are of course also to take into account the point made on Mr

Spratt's behalf by Mr Singh which is that the disgrace and the effect of the removal from the register have been so serious that there can be absolutely no doubt whatsoever that he will never put himself into such a position so that there is no risk of re-offending. To that extent, you may of course give weight to that reference. As to the rest of the references, give them such weight as you think fit, consider each of them separately, they do not come as a job lot – these are individuals who have each known this man in different ways for different periods of time and in different contexts. Give them such weight as seems to you to be appropriate.

I remind you that the application form and the covering letter were, of course, written by Mr Spratt himself. You haven't heard from Mr Spratt today, and you are not to hold that against him, but you do have his application form – read it and pay careful attention to what he says about it. Give such weight as you think fit to the submissions which were made to you at the very end, by way of reply, by Mrs Bromley. It may help you to focus on the essentials of this case: three years ago, Mr Spratt was erased, following a trial in November 2006 at which he was found guilty of offences of dishonesty between seven and eight years ago, in which he falsely claimed some £500 from the public purse. The burden lies on Mr Spratt to show you that he is now fit to be restored to the register, and you will give such weight to all the facts and all the evidence that you have heard today.

Ms Jeyasingham: Thank you. Any comments from either party? [*No*] In which case, can I clear the room, please?

[*Hearing adjourned at 11.57*]

[*Hearing resumed at 14.06*]

Ms Jeyasingham: I'm going to read the determination of the Committee [*Reads*]:

On 14 February 2011, the Registration Appeals Committee of the General Optical Council met to consider an application by Paul Richard Spratt for restoration to the register of Optometrists.

DETERMINATION

The Committee has heard submissions from Mr Singh on behalf of the applicant and Ms Bromley on behalf of the Council. It has accepted the advice of the Legal Adviser.

This is an application by Mr Spratt for restoration to the register of optometrists. The applicant was erased from the register following a substantive hearing on 10 January 2008. Mr Spratt was convicted of 10 counts of dishonesty by a magistrates' court in November 2006. That arose from a course of conduct between September 2002 and October 2003 in which he falsely claimed some £500 from the public purse in respect of professional service he had not supplied. He was sentenced to 150 hours' unpaid public work.

On any application for restoration to the register, the burden lies on the applicant to satisfy the Committee that he is fit to be restored to the register. The Committee has before it the application, a number of references and a transcript of the proceedings of the Committee which sat on 10 January 2008. No oral evidence has been called today.

The Committee was referred to the case of *Bolton v the Law Society* and *Jideofu v the Law Society*. It reminds itself that trustworthiness and probity lies at the heart of what it is to be a member of a profession. As the Master of Rolls said in *Bolton and the Law Society* (at 11D): “A profession’s most valuable asset is its collective reputation and the confidence which that inspires”.

The Committee has considered the matters which are helpfully contained in the Protocol on the Handling of Criminal Convictions disclosed by registrants (document 4) to which it was referred.

The Committee accepts that the offences of dishonesty took place in 2002 to 2003, and that the sums involved were relatively modest. It also accepts that the effect of the order of erasure has been as severe as Mrs Spratt has explained them to be in her reference to the Committee. These were however offences against the public purse carried out over some 13 months which arose directly out of the performance of the applicant’s professional duties.

The Committee is concerned that the application for restoration to the register and the letter which accompanied it demonstrate a considerable lack of insight on the part of the applicant. For example, in the letter dated 1 October 2010, Mr Spratt said, “I have also enclosed a reference from a colleague with whom I spent a few days understanding their administration systems in order to avoid the previous errors that led to my erasure from the register”. What led to Mr Spratt’s erasure from the register were not administrative errors but his dishonesty.

Having considered all the references the Committee sees little signs of insight nor of behaviour or service which demonstrate that the applicant is fit to be restored to the register. Public confidence in the profession would not be maintained in our view were this application to be allowed.

The Committee therefore determined that Paul Richard Spratt should not be restored to the register of Optometrists.

I’m closing the hearing.

[Hearing concluded at 14.10]