

F(10)21

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

GENERAL OPTICAL COUNCIL

AND

SYED MOHAMMED YASEEN SHAH (SD-808)

Friday, 15 January 2011

SUBSTANTIVE HEARING

SUBSTANTIVE HEARING: SYED MOHAMMED YASEEN SHAH (SD-808)

Friday, 15 July 2011

FTP Committee: Ms Mercy Jeyasingham (Lay) (Chair)
Lady Margaret Wall (Lay)
Mr Alan Baldwin (Lay)
Mr Richard Hensley (Dispensing Optician)
Mr Duncan Counter (Dispensing Optician)

Legal Adviser: Mr Nick Levisieur

Hearings Manager: Mr David Henley BEM

For the GOC: Ms Margaret Bromley

For the Registrant: Ms Priya Patel

[Hearing commenced at 11.02]

Ms Jeyasingham: Good morning. I am a lay member of the Hearings Panel and I have been elected by the Committee to chair today's Hearing. The Committee today is made up of two dispensing opticians and three lay members. I will ask the members of the Committee 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 of Procedure so as to arrive at a result which is fair and just. The Legal Adviser may accompany the Committee should it sit in private to deliberate.

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

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

It is the Council's policy for the determination of the Committee and the transcript of proceedings to be displayed on the Council's website for public viewing, but where matters of health are being discussed the determination and transcript will be redacted accordingly.

Are there any applications to be made? [*No applications*] In which case, Mr Shah, can you stand while the allegations are read out?

Mr Henley:

ALLEGATION

The Council alleges that in relation to you, Syed Mohammed Yaseen Shah, a student dispensing optician:

1. Between about 6 September 2008 and about 4 December 2009 you undertook work as a fully qualified dispensing optician when you:
 - (a) Had not obtained the appropriate qualifications.
 - (b) Were not appropriately registered with the GOC.
2. Between about 6 September 2008 and about 4 December 2009 you undertook work as a trainee contact lens optician when you:
 - (a) Had not obtained the appropriate qualifications.
 - (b) Were not appropriately registered with the GOC.
3. From about 6 September 2008 you accepted a pay rise from your employer on the basis that you were a qualified dispensing optician when you were not.
4. Between an unknown date in August 2008 and about 4 December 2009 you made statements and representations to Mr Stuart Ingleby which you knew to be false including:
 - (a) You had successfully completed a re-sit of your outstanding ABDO exam.
 - (b) You had passed 5 out of 6 ABDO contacts lens examinations.
 - (c) The fact that you were on an incorrect register at the GOC was due to an error of the GOC.
 - (d) You produced to Stuart Ingleby an ABDO certificate which you had forged.

- (e) The discrepancy between the registration number on the ABDO certificate and the registration number in correspondence from the ABDO was due to an error on the part of ABDO.
 - (f) There was no problem with your registration status.
5. On an unknown date prior to 22 November 2009 you forged an ABDO certificate.
 6. You forged the signature of Mark Chandler on an application dated 19 November 2009 to the GOC for registration as a fully qualified dispensing optician.
 7. Your conduct in relation to allegations 1 to 6 above was dishonest.

By virtue of the matters set out above your fitness to undertake training is impaired by reason of misconduct.

Ms Jeyasingham: You can sit down, Mr Shah. Ms Patel, are any of the facts set out in the allegation admitted?

Ms Patel: Points 1 to 7 are admitted, the fitness to impairment is going to be tested. Can I take this opportunity to apologise to the Committee this morning? I have come from Hampton which has had extreme travel difficulties and have been travelling since 07:30 and I can only apologise; there has been signalling problems at Waterloo and I have been stuck on a train broken down. Please accept my apologies for keeping the Committee waiting.

Ms Jeyasingham: Thank you for your apology.

Ms Bromley: You have heard that the allegations set out on 1 – 7 on the sheet are admitted. That includes an allegation of dishonesty. The allegations admitted by Mr Shah arise from the fact that he failed some of his examinations in 2008, but instead of telling his employers the truth he told them that he had passed. That initial lie led to further lies and deceptions by Mr Shah as he attempted to conceal the truth. The witness statements which you have in the bundles at Tab B –

Ms Jeyasingham: This is bundle C1?

Ms Bromley: Yes. I am not going to take you through all these, as everything is admitted and I know you have read the papers, but the first statement at Tab C, which starts at page 7 is the statement of Mr Stuart Ingleby and he was the Director of Specsavers in Blackburn, where Mr Shah worked and it was to him that many of the lies were told. If I could just take you to some paragraphs of his statement?

First of all paragraph 8, which is after Mr Shah has informed Mr Ingleby that he has passed his exams and the consequences of that is as set out in paragraph 8, the fact that he began work as a contact lens fitting optician, started seeing patients. He initially began training by observing Mr Turton and he then progressed to seeing one to two patients in his own room and that then increased until he was seeing clients up to four days per week. That obviously is something he should not have been doing because he had not passed the relevant examinations.

Paragraph 10 of this statement sets out the fact that it was on 19 November 2009 that he undertook a governance audit and began checking the GOC register and this revealed that Mr Shah was registered as a student, which obviously shouldn't have been the case if he had passed his exams.

Turning over to paragraph 13 of this statement on page nine, Mr Shah is first asked for an explanation by Mr Ingleby as to why he is not on the correct GOC register and this is the second lie:

“He told me there had been an administrative error and he was definitely qualified.”

Instead of telling the truth, facing up to what he had done, he tells a further lie. It is then, in terms of a chronology, it is following this conversation that on 20th November, Mr Shah submits the forged application form to the GOC, in which he forges Mr Chandler's signature.

Then at paragraph 14, Mr Shah is asked to produce a certificate and it is at this stage that he then produces a forged certificate which he presents to Mr Ingleby as a genuine certificate. Then further lies follow when he says that the incorrect registration number is again a result of an error by ABDO, not in fact as a result of the certificate being forged. Then a further lie that he had been given a new registration number; that is paragraph 15.

Then continuing with the chronology it is a few weeks later on 4 December 2009 where Mr Shah has another opportunity to tell the truth when he is asked again about his registration status, as the GOC website showed him as a student. That is dealt with in paragraph 16 and 17 in Mr Ingleby's statement. Mr Shah again fails to take this opportunity and he lies again, saying, as set out in paragraph 17, that there is no problem with his registration status, and produces a registration card.

Then Mr Ingleby is beginning to become very concerned at this stage and makes further enquiries of the GOC, is told very clearly that Mr Shah is a student and again asks Mr Shah if there are any problems; this is paragraph 19 and yet again Mr Shah lies and says that there aren't any problems.

Finally when it becomes apparent that everything is going to be revealed and that he can't continue his deception, Mr Shah eventually, as set out in paragraph 23, admits that he had not qualified and he admits his deception.

This has gone on for a period in excess of a year and in the course of this deception not only has Mr Shah lied to Mr Ingleby repeatedly he has produced two forged documents.

If I can next take you to page 35 of the bundle, which is the bottom email on page 35, which is from Mr Shah to Mr Chandler at ABDO, which was then forwarded on to the GOC? The date here is 2 December 2009, so it is before Mr Shah tells Mr Ingleby the truth, but things are beginning to unravel. He says there:

“I would like to apologise for the confusion caused by the GOC registration forms. The reason is there are some errors in my paperwork and as a result I have completed the form and sent them off in a panic. It is only when I sat down and sorted through that I realised the true nature of the situation.”

He then goes on two paragraphs down, the reason for this email is that the exams he has booked to take in January has been cancelled and he is begging for the opportunity to take these exams and he says:

“As my future now depends on it.

I am again very sorry for my actions and the errors caused by ignorance.”

A number of things arise from this email: it shows that in my submission Mr Shah is still hoping that if only he could pass these exams everything would sort itself out and he won't have to face up to his deception and the documents he has forged and the lies he has told. The explanation he gives is the errors are, “caused by my ignorance”. That shows a breath-taking lack of insight. He has gone ahead and forged two separate documents on two separate occasions; those are not errors that are caused by “ignorance”.

The forged application form, if I can just take you to that briefly, is at tab C, pages 74 to 77 and the section that is forged is on page 77 and in Section 8, which states very clearly that it is a: “Certificate to be completed by your examining body”, and in my submission this is not something you do on the spur of the moment, it takes a bit of planning. As you will have seen from the other statements, he has practised the signature of Mark Chandler in an attempt to make it a convincing forgery.

Then further on in this section we have the statement from Mr Shah that was put in in May 2010, which was when this was going to be investigated by the

Committee and that starts at page 89 of this section. Again, on page 90, paragraph 12 of his statement he says:

“In summer 2009 I made an application with ABDO to resit exams that I failed previously. I simply thought that if I could pass these exams then I would register with the General Optical Council and matters would be straight.”

Again he is not facing up to the reality, he is simply hoping that if he can only pass these exams everything will sort itself out, he won't have to admit to his dishonesty and he is not facing up to what he has done, but he is continuing to deceive his employers.

Over on page 91 of his statement at paragraph 17 he says there:

“On the spur of the moment I decided to forge Mark Chandler's signature on the GOC documents. I felt I was locked into a situation I did not know how to get out of. I also firmly believed I would soon pass my examinations and be able to resolve the situation.”

I make the same point there being reiterated. Again in my submission this isn't a spur of the moment thing in that forging the document took a bit of time and a bit of care, including practising the signature.

On paragraph 21 he deals with the forging of the certificate and that is the document that we have never seen, but it is accepted that it is forged and Mr Ingleby gives evidence about it. Again he is setting out there the steps he had to take to produce this forged document. Again it takes time and planning, he has to get it from a colleague, he has to scan it in, he has to put his own name in. These are all things that take a certain amount of time and Mr Shah is pursuing the deception rather than facing up to what he has done and admitting the truth.

On paragraph 26 of this statement, which is over on page 92 is where he finally says:

“I returned to see Mr Ingleby later that morning and decided the only way forward now was to tell him the whole truth.”

Very much only when he is going to be found out does he accept that what he has to do is tell the truth.

Over on page 93, right at the top of that page, there is an explanation as to why he acted in this way and he says:

“It was the peer pressure and the situation I found myself in which caused me to panic and make rash decisions which were clearly wrong.”

In my submission this was a situation of his own creating. He chose this route and he pursued it for in excess of a year.

Down at the bottom of this page, in about the middle of paragraph 35 he says, talking about his time at Specsavers:

“I have always worked honestly alongside the leadership team.”

That of course is not true. There is a period of in excess of a year he was working under a deception in that he had held himself out as having passed his exams and he had not done so and was not therefore working honestly for that period.

That is all I intend to take you to in terms of facts. I don't intend to address you in terms of the dishonestly test as it is admitted, unless you want me to. I was proposing to go straight on to deal with misconduct and make my submissions on that.

Mr Levisaur: Ms Bromley is there evidence in here as to the extent of the financial gain. In other words, the matters which are spoken about in paragraph 33, that is to say the increased salary? I have looked and I am not sure I can find it, but I just wondered if there was any evidence at all.

Ms Bromley: I'm not sure it is in this bundle.

Mr Levisaur: Very well.

Ms Bromley: No. I don't think we have the figures as to what the increase in salary was.

Moving onto misconduct. Misconduct, as you have heard admitted by Mr Shah, that is of course a matter for your judgement. In my submission there can be no doubt that Mr Shah's actions including, as they do, dishonestly, constitute misconduct. Such conduct damages the reputation of the profession and the public confidence in it and it is essential that all those who join the profession are beyond reproach and can be trusted and are trustworthy and that is not the situation with Mr Shah.

Further, Mr Shah has put the patients at risk by carrying out work for which he was not qualified. That is reflected very much in the testimonial from Mr Ingleby, at Tab D, page 95, where he says in the first paragraph:

“Yaseen did in fact deceive me and placed not only himself, but put myself and my business at risk.”

He talks there about it being strange to write a reference. I have taken you to the relevant parts of Mr Ingleby's statement where he sets out the work that

Mr Shah did for this period and clearly that is something for which he is unqualified and yet he carried out that work. He was prepared to tell a catalogue of lies and forged documents in order to avoid the embarrassment of being a failure and clearly those are actions that constitute misconduct.

Madam, those are my submissions as I understand it. Fitness to undergo training is disputed and perhaps it is appropriate to pause there while you make decisions and of course my friend to make any submissions she wants to make at this stage.

Ms Jeyasingham: Thank you; Ms Patel.

Ms Patel: Of course misconduct and dishonesty are admitted by this defendant and indeed it is reflected in his witness statement. I would like to say this in relation to the course of events and some of the submissions raised by friend in her opening, the position is this: at the very forefront this defendant feels extremely remorseful for his behaviour. I do ask you to bear in mind his age and the factors that he raised by himself early on to Mr Ingleby as to the reasons why he found himself in the situation he did. I ask you to take into account some emphasis has been put on the fact of the time and the planning and the forgeries, but I ask you to consider this, that the forgery was not from the outset. That forgery was not done at the outset in order to report that he had the qualifications. It was done as a sequence of events as a result of a panic. That is an important factor for the Committee to consider.

If an individual wants to come out to forge a certificate and then present it and purport to be somebody he is not for gainful employment that is a very different situation to being employed, being asked whether he has passed an exam and in panic about various pressures on which I will address you for the mitigation. Then he goes on to carry on the deceit because of the panic and I just ask you to take into those factors which are fairly important as to the sequence of events that occurred in this particular case.

It is right to say that he didn't make admissions at the outset, but I do ask you to take into account he does make admissions without the threat of any criminal action or any other action, regulatory action to Mr Ingleby; he does come forward at some point and tell the truth before there is a legal threat of any kind of action being taken against him. Those are the factors I mentioned. Of course there is full mitigation to be done on the submissions at the relevant stage.

Ms Jeyasingham: Thank you Ms Patel. Can I turn now to our Legal Adviser?

Mr Levisaur: One matter I want to get clear in my own mind and that is submissions on impairment. I take it you are interested only at this stage in the determination on the questions of the facts and misconduct; you do not seek, or rather you do not say at a certain stage there should be submissions on impairment? Is that correct?

Ms Bromley: My understanding is we will each make submissions on impairment based on the Committee's decision on this stage.

Ms Patel: Yes.

Mr Levisaur: Thank you. My advice to the Committee is as follows: it is for you and you alone to determine the facts in this case. That may sound a bizarre proposition in a case where the presentation has been as short as it is and where every fact is admitted, but nevertheless it is for you to determine the facts and you will do so, please, by reference to the evidence which is before you in the bundle now marked C1. Of course you will bear in mind the admissions. It would be very strange if you were not to find proved those facts which have been admitted, but as I remind you again, it is for you and you alone to decide them.

When you have decided them please do not speculate. I know that this Committee is an experienced one and by now are very familiar with that instruction, but nevertheless do not speculate, please do not go beyond that which is contained in C1, which you will have heard in the admissions, which you will have heard made.

The question of misconduct may again seem a strange matter to receive direction on in a case where misconduct has been admitted, but perhaps much more importantly, dishonesty of an extensive nature has also been admitted. Nevertheless it is for you and you alone to find misconduct if you find it to be proved in this case. I remind you that the question of misconduct, whilst it is a matter pre-eminently for you, nevertheless you must consider the question does the conduct you have found proved, whatever you find it to be, represent conduct which falls substantially below that which ought to be expected of a member of this profession practising as a student dispensing optician, which is what the registrant was, at all material times? If the conduct does not fall below that standard, it falls substantially below that standard, it is not misconduct, despite an admission which has been made to that effect. As I say, this is a matter pre-eminently for you. You will of course give due weight to the admissions which have been made and the fact that they have been made through the mouth of an experienced advocate.

That is the only advice which I give you, save to remind you, of course, for the record and the record only, that in finding facts you must be satisfied on the balance of probabilities; that is to say 50 per cent plus a scintilla that they have been proved.

Ms Jeyasingham: Thank you. In which case, can we clear the room?

[Hearing adjourned at 11.28]

[Hearing reconvened at 11.57]

Ms Jeyasingham: I am going to read out our findings in relation to the allegations and misconduct:

The Committee has heard submissions on behalf of the Council and the Registrant. It has accepted the advice given to it by the Legal Adviser.

The Registrant admitted the following facts of the allegation: 1(a), 1(b), 2(a), 2(b), 3, 4(a)-(f), 5, 6 and 7. The Committee having considered the evidence provided to it at C1 finds each of these facts proved.

The facts reveal a catalogue of deceit culminating in the forgery of an Association of British Dispensing Opticians (ABDO) certificate and the separate forgery of the signature of the Head of Examination and Registration at the ABDO, Mr Chandler.

The facts as found disclose that the Registrant practised as a fully qualified dispensing optician and as a trainee contact lens optician when he was not entitled to do so. The risk to the public is clear and obvious.

Honesty lies at the heart of what it is to be a member of a profession. These were repeated and serious acts of dishonesty which resulted in the Registrant practising when he was not entitled, because not qualified, to do so. This was conduct falling so far below that to be expected of a student dispensing optician as to amount to misconduct.

The Committee found Syed Shah guilty of misconduct.

We move on now to impairment.

Ms Bromley: The question that is in dispute is whether or not the conduct which is now proved amounts to impairment to Mr Shah's fitness to undergo training. As you found Mr Shah to be dishonest and to be prepared to put patients at risk by carrying out work for which he was not qualified; he was prepared to tell a catalogue of lies and forged documents in order to avoid the embarrassment of being a failure, such actions raise a huge question mark firstly over how Mr Shah will respond to and cope with the pressures of being in practice and of his suitability to undergo training. Such conduct undermines public confidence in the profession and puts the public at risk, as you have found.

I want to refer you to a judgement in some law society cases, which are *Jidefo vs The Law Society* [2007] EW Misc 3 (EWLS), *Evans vs The Solicitors Regulation Authority* [No 1 of 2007] and *Begum vs The Solicitors Regulation Authority* [No 11 of 2007].

Ms Jeyasingham: We will mark this as C2.

Ms Bromley: These cases concerned solicitors who were applying for admission to the Solicitors' Roll and what the appropriate test was to apply in considering whether they were fit and proper people to be admitted to the Roll. First of all, starting at page 3 of the judgement, under heading "Test", he refers there to the leading authority in the case of *Bolton vs The Law Society* [1994] 1 WLR 512, which was another solicitor's case, I should imagine one which you are very familiar with, probably have referred to a lot. This authority clearly establishes that the test that is to be applied in this set of circumstances is that which is in *Bolton*. There is a quote there, starting at the bottom of page 3, all the way over to page 5, which quotes the judgement of Sir Thomas Bingham in *Bolton* and it is a quote to which I would commend you. It explains why a committee, such as yourselves often have to impose sanctions which might otherwise appear harsh. If I could just pick up at halfway down page 4. Having made the point that particularly the cases of proven dishonesty the Tribunal will almost always strike a solicitor off the Roll. This is halfway down page 4, the judgement continues as follows:

"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 a solicitor 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 tempted to behave in the same way. Those are traditional objects of punishment. 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. 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."

Then the passage which is perhaps quoted the most often:

"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."

I would say there that you can interpose that any profession in place of solicitor, it is equally applicable to this profession as to any others.

"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... A profession's most valuable asset is its collective reputation and the confidence which that inspires."

The next section which I won't read out, but I will again commend to you, does make the point that in these sorts of cases you will often hear strong mitigation of the tragic consequences for the Registrant of his actions, but because of the nature of your jurisdiction and the important role you play in maintaining standards, that carries less weight in this jurisdiction than it would in the ordinary criminal jurisdiction. Just because the consequences for the practitioner may be devastating, it doesn't mean that a serious sanction is not the correct one.

The moving on within this judgement, over at page 7, at paragraph 11, there the Master of the Rolls effectively hails that the principles and the test set apply at the admission stage, in the same way as they do when the tribunal considering whether to strike off someone who has already been admitted to the Roll.

At page 8, at paragraph 15 and 16 and there is reference there to another Law Society Case, *Law Society vs Wilson* [2006] EWHC 1022, which was a case involving dishonesty which had led to a conviction for six offences of false accounting. The point is made there in paragraph 16 that it was accepted that in committing her offences Ms Wilson had not done so for her own financial gain. That is the point Mr Shah makes, but notwithstanding that, the important thing was still the fact that he had been convicted of dishonesty and that it was necessary in order to maintain the reputation of the profession that she should be struck off the Roll.

At the top of page 9, there is the quote, exercising yet again the need to protect the reputation of the profession by expelling dishonest persons from it and emphasising that mitigation personal to the solicitor has little relevance.

Turning then to deal with the facts of the appeals that were heard by the Master of the Rolls, first is that of Miss Begum and she had been employed in Dixons and stole telephone credits from Dixons for which she was convicted. The amount that she stole was £480.76. When she came to apply for admission she omitted when she was filling in the form to disclose the convictions - again, there is a box you have to tick every so often and as set out in paragraph 23, when she applied for admission she failed to disclose her convictions for the first time.

Subsequently the matter came to light and moving on to page 12, if I could just refer you there to the various submissions that were made on Miss Begum's behalf, which is set out at paragraph 28, include that her offences were committed at a time of exceptional stress, that her remorse was sincere,

she was ashamed of her conduct, that she had overcome considerable difficulty to qualify, but she had a lot to offer the profession; various other moving mitigations. Despite all of that the Master of the Rolls conclusions, as set out at the bottom of page 13, paragraph 31:

“Ms Begum was convicted of offences of dishonesty. Moreover she answered in the negative a question to which she must have known the answer was yes. I recognise that when she committed the offences she was under considerable stress. I also accept that she was and is ashamed of her actions, that she sincerely regrets her behaviour.”

She had worked hard, etc. He then concludes:

“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*, personal mitigation carries little weight.”

The outcome was that her appeal was dismissed; the Master of the Rolls felt the Law Society was justified in refusing her admission.

The other case considered by the court on this occasion was Miss Evans, where the facts were slightly different, because although she had criminal convictions they were not for dishonesty, but they were for offences relating to consumption of alcohol and public order offences. Again, in that case, the decision was that the Law Society was right to refuse her admission and that is at page 21. Paragraph 49 starts off:

“Conclusions

The starting point for an assessment of character and suitability in Ms Evans' case is her convictions. They are not convictions for dishonesty.”

They called into question her integrity, probity and trustworthiness and the conclusion is at 53:

“I therefore uphold the Law Society’s decision to cancel Ms Evan’s student membership”

That is the authority in which I rely, on which I feel sets out very clearly the test which you have to apply and the importance and the weight that you have to give to maintain the reputation of the profession. That is very relevant, in my submission, to impairment to fitness to practise, because Mr Shah’s actions, first of all, present a risk to the public, as you found in the findings you made in respect to misconduct, but also present a risk to the reputation of the profession and public confidence in it. Here is a man who has been

persistently dishonest and to admit such a man to the profession would seriously undermine public confidence in the profession.

Obviously, as you will be well aware, you judge impairment of fitness to undergo training today as opposed to when the offences occurred. You do have various testimonials from him which are at Tab D. Of those all except that of Mr Ingleby, which is at page 95, which appears to be written in January 2011, all the others were written in 2010 – all of them in January 2010. None of them tell you what he has been doing since then or speak as to his character in the intervening period. In my submission that is an important consideration because you have to judge things as of today. My main submission which is supportive of you finding that there was an impairment to fitness to undergo training is the effect that his conduct has and will continue to have on the reputation of the profession and public confidence in it. Those are my submissions, unless I can help you with these any further.

Ms Jeyasingham: Thank you. Ms Patel?

Ms Patel: Members of the Committee, I am going to start with dealing with the issues and the circumstances surrounding the offences. I don't wish to repeat matters already in Mr Shah's statement, but simply to highlight important factors as to why this young man found himself in the situation he did. I do ask you to bear in mind his age, circumstances, his cultural pressures, but he was around 24 years of age when these incidents happened.

He was in a team environment and of course, anything I say makes no excuse and he has accepted his guilt, but just for you to understand the reasons as to why he found himself in the situation he did and they are extremely important. He found himself in a situation in a pressured environment and, as no doubt you will know, different people take different pressures in different ways. He comes from an Asian family and the expectation within this family was to be successful and that pressure was not only there in the background, but at the forefront at work.

Having been asked – and this is an extremely important point – Mr Shah didn't voluntarily approach Mr Ingleby or anybody else in his employers and say "I have now passed these exams and here are my certificates". Of course if he was in that situation I wouldn't be making the submissions I do now. It is not an act of dishonesty where he is actively, at the outset, made a plan, forged the certificates, gone to his employer of his own accord and presented it. The line of deceit starts when he is asked to provide this certification. He doesn't voluntarily go and say "I have passed the exams" either. He is asked in a public environment with all his colleagues there, and unfortunately he made the very bad decision which in itself caused extreme remorse and embarrassment; not only to himself, but his family of saying "Yes, I passed" in a moment of panic.

Once that lie was made up he then accepts he found it difficult – it was a snowball effect effectively, because he was then asked for proof and to his detriment he didn't stop and go and speak to Mr Ingleby and tell him the truth. Can I say this and it is apparent from the facts from the particular case that exams were booked, so in effect, in his mind, "I will pass the exams and everything will be alright" is not justifiable and I fully accept that, but just to understand the mindset of Mr Shah when these matters occurred? I disagree with my friend's submissions that it was timely and it was planned and it was over a timed period; it was in a panic, it wasn't planned very well and indeed a reflection of that is in the registration numbers being different. If it was very well planned, those registration numbers would have been the same. In my submission it wasn't very well planned and that gives you an insight into the haphazard way and manner that this deceit was carried out.

In considering the chain of events, there comes a situation where he had certainly booked the exams and hoped to pass them – it doesn't justify it, but it shows the real reasons and in my submission supporting evidence to show that this wasn't done through malice, but a really bad, bad mistake. That is the basis of when I ask you to consider of his impairment today.

He has certainly been out of work for some time and indeed having looked at the reference from Stuart Ingleby and I know that the presenter noted earlier in her comments that she doesn't know why he has given a reference, I don't ask her to infer, the fact is he has. The fact is he felt, after knowing all of the facts he does, that he was able to give Mr Shah a reference. That speaks volumes in my submission as to what he thought of him as an individual and he knew him best; he worked with him, he knew his character, he was the one he said he trusted and I do ask you to make particular reference to paragraph 4, where Mr Ingleby, under Exhibit SIS 1, I believe it is the very first exhibit after the statement at Tab 5; forgive me, Mr Shah's statement –

Ms Jeyasingham: It is Tab D, page 95.

Ms Patel: Forgive me I have been given a very different bundle for some reason. He says:

"It is only my opinion, but I do feel that Yaseen is very aware of the terrible mistakes he has made and the very poor judgment. I do feel that he got himself into a terrible tangle of self-deceit and lies. This became more and more convoluted as he tried to twist his way out of it."

Importantly in the next paragraph and it is agreed, I have taken instructions from Mr Shah, at the point he said his qualifications had been gained, he was offered a pay increase. He didn't ask for it, it is accepted in the statement there is no evidence to suggest that this defendant went out to do this task with any monetary gain in mind; that is very important.

Indeed Mr Ingleby confirms that in the statement in that:

“It may seem to be a strange thing to say, but I do not think that Yaseen is evil and did what he did, he did so to gain a pecuniary advantage.”

The difference in pay – he was initially on £13,000 per annum and it is agreed that was increased to £17,000, so a £4,000 difference approximately over a 12 month period. Having put himself in the situation he did, then I make this submission in a very odd way, but it would be very peculiar to say “I don’t want a pay rise”. He was caught up in the situation which had a knock-on effect, not only with the examinations he had to take, but certainly the financial element.

I do submit that has a real impact on the dishonesty element, because if one looks at these authorities and I accept the authority to the extent that certainly the secondary test in relation to the repute of the profession, outlined by my friend at the beginning of page 3 and then going on to page 4, would be applicable in this case, as it would in any profession. I do ask you to take into account these cases – I mean no disrespect by it, all are to do with solicitors and indeed if one looks at the test at the beginning of page 3 and the paragraph at the bottom, it clearly deals with client money. Being a solicitor, knowing that a hand in client money - very stringent rules, a very large amount; a very different test and I mean no disrespect by that, but a very different test to what is being considered in these particular cases. The presenter is not able to give you any particular case law, specific to the issue of patient safety. I fully accept that equally, in its own right, has different considerations and those are submissions that I would be targeting and addressing you in relation to, rather than making a comparison to this particular case, which is a completely different profession in my opinion, clearly different considerations and issues to consider. I totally accept that patient risk, if not anything, would be a consideration which is predominantly in your minds and one which needs to be explored.

Having looked at the procedure and having spoken to Mr Shah, I understand that he was under supervision when undertaking this procedure; he was required to check with his supervisor, who was always either in the room with him when these tests were being done for contact lenses, or in the room next door. After testing every patient, he had to take those findings, get those checked and signed off.

When we look at current impairments, in my submission that could be properly addressed - he would certainly need to go through the examinations and I would just like you to consider this – if the Committee can look at paragraph 3 in Mr Shah’s statement?

Ms Bromley: Sorry to interrupt you, is that his most recent statement?

Ms Jeyasingham: Which is R1.

Ms Patel: Forgive me, I have been given the wrong bundle, but it is the reference to the exhibit I just made, the same statement – it is exhibit R1. If one looks at paragraph 3, he has currently been employed as an optical assistant after having a number of interviews, where he disclosed the current proceedings to all potential employees. He is now working in an unqualified position; he is being supervised and he is driving to residential and nursing homes to provide sight tests and spectacles, but I do emphasise under supervision. I have also been told that his current employers, who are Vision Core, are willing to assist him under strict supervision. They have indicated they are happy to assist him in further revision and preparation and even give him a mock exam.

Bearing all those factors in mind, bearing in mind the real issue of concern is of course I accept, the reputation of the profession, it is a consideration, but factors that I have outlined, the fact of his age, the fact of the situation, the fact that this did not come out as a premeditated, calculated deception, it came out of a real panic. As I said, it is not submitted by any means acceptable that bearing those factors in mind and the factors of patient risk, at this stage he has been employed by somebody who knows the full extent of these proceedings, the full extent of the deceit that he carried out and is willing to give him a second chance. In my submission, taking into account all of those factors, I would say that at this current stage he is not impaired.

I know my friend made submissions in relation to the references and the dates; I think that is of little value. These references were done much nearer the time of these incidents taking place and I think they are more valuable because they were done closer to the time. The most important reference was done January of this year and in my submission the date of these references makes little difference; it is the content that I ask you to consider that is really important. They are not extremely out-dated. A number of the references deal with just after the events, giving you a real insight into what character attributes and what issues he thought of this person. Mr Ingleby has of course given a more recent one and the issue is therefore outlined in the references and I ask you to take those matters into account. Those are my submissions unless I can assist you.

Mr Levisur: Any matters in reply? [*No further matters*]

I begin by reminding you that impairment is a matter for this Committee. You have heard submissions from both parties and you will of course pay such weight to them as you think fit. In considering impairment you are to consider the position today and prospectively; in other words, looking forward. The question is not whether the facts show that Mr Shah was impaired between August 2008 and December 2009, but whether he is impaired now. You are of course to pay particular regard to the responsibility that you have to protect patients, to protect the reputation of the profession and to uphold standards within the profession.

You will give such weight as you think fit to the testimonials that are before you, bearing in mind the submissions you have heard from both parties and of course the statements from the Registrant, one of which is in C1 and the other more recent of which is at R1.

As you have been told by Ms Bromley, the Master of the Rolls has given guidance as to the weight to be given to various factors and the approach to be adopted by tribunals, especially where personal mitigation is concerned. There are many paragraphs which might be said to be of relevance in considering this matter, but I propose to draw your attention to three paragraphs, in paragraphs 7, 9 and 18. Paragraph 7 begins by making reference to the very well-known case of *Bolton*. That decision, which has been followed on many occasions, establishes that where a solicitor has committed proven acts of dishonesty he will almost always be struck off the Roll. Where there has been serious dishonesty, such as fraud or theft, only after a number of years, during which the individual has redeemed his reputation, will he be able to seek readmission. Even then only in rare cases will such a person be readmitted. There must be exceptional circumstances justifying the restoration to the Roll. The reason for this stringent approach is that public interest and protecting the public and maintaining the reputation of the profession.

In paragraph 9, Sir Anthony Clarke MR went on to say:

“In that case the Divisional Court thus accepted that conduct which occurred prior to admission could be referred to the SDT for it to assess whether the solicitor should be subject to disciplinary sanctions, which would include an order striking the solicitor from the Roll. It so concluded by reference to the principles in *Bolton* and in particular to the public interest and the importance of maintaining the reputation of the profession.”

In drawing these threads together, before beginning to assess individual cases of Ms Begum and Ms Evans, the Master of the Rolls said:

“In the light of *Bolton* and the summary of its application in *Wilson* it is clear that, when assessing whether an individual has the requisite character and suitability to be admitted as either a student member of the Law Society or a solicitor, it will be rare for a person with convictions for dishonesty to be found to have the requisite character. Personal mitigation, while a factor for consideration, will not weigh heavily in carrying out that assessment exercise. Much depends, however, upon the nature of any dishonesty and rather different considerations seem to me to apply in the absence of dishonesty: see eg *Shuttari v The Law Society* [2007] EWHC 1484 (Admin). I should also add that *Bolton* does allow for the possibility that exceptional circumstances might exist which would justify an individual being re-

admitted to the profession following a strike-off, even after findings of dishonesty.”

You have heard from Ms Patel’s submissions that whilst, of course, she does not seek to part from the principles announced in *Bolton* this case, *Jideofa*, nonetheless there is a subtle distinction to be drawn between membership of the caring professions and membership of the Solicitors’ Roll, because in essence membership of the Solicitors’ Roll carries with it duties so far as holding client funds are concerned and no doubt duties not to mislead courts. Whether that is a matter that will trouble you is essentially a matter for you, but you must bear in mind that *Bolton* and *Jideofa* have been considered by the courts on many occasions and are applied across professions.

However, bearing in mind there may be some distinctions, give such weight to the submissions as you think appropriate. At the end of the day the question for you is whether by reason of the facts and misconduct found by you this Registrant’s fitness to undertake training today and looking forward prospectively, is impaired.

Ms Jeyasingham: Thank you we are going to clear the room for deliberations, but as it is lunch time, we will say if you will be available after 1.30. Thank you.

[Hearing adjourned at 12.31]

[Hearing reconvened at 13.32]

Ms Jeyasingham: I’m going to read out the findings regarding impairment.

Findings regarding impairment

The Committee has heard submissions as to the issue of impairment from both the Council and the Registrant. It has accepted the advice given to it by the Legal Adviser.

The facts found by the Committee are serious and disclose dishonesty and the unqualified treatment of patients over a period of some 16 months. The Registrant had on some five occasions an opportunity to admit the truth of his personal situation but chose not to do so before resorting to forgery on two occasions.

The Committee attaches little weight to the submission made by Miss Patel on behalf of the Registrant as to the effect of cultural and peer pressures on him. These may have provided the Registrant with a strong desire to succeed in his chosen profession but they do not justify or provide any explanation as to why he should repeatedly lie and resort to forgery in support of those lies.

As the Committee has said, honesty lies at the heart of what it is to be a professional. The cases to which it has been referred make it clear that personal mitigation, whilst always relevant, cannot override the need for the Committee to ensure the maintenance of public confidence in the profession and in the upholding of patient safety and of standards within the profession.

Having considered the testimonials, and in particular that of Mr Ingleby, and the statements of the Registrant at C1 and R1 the Committee is not satisfied that the Registrant has demonstrated that degree of insight into the seriousness of his conduct that it would have expected.

In all the circumstances, the Committee is satisfied viewing the matter now and prospectively that the Registrant's fitness to undertake training impaired by reason of the facts and misconduct found by it.

We are now moving onto sanction.

Ms Bromley: Thank you Madam. I don't have anything to say on sanction. It is very much a matter for you. You have the authority of *Jideofo*, which I explained to you at great length. You made your findings as to the seriousness of the misconduct and the impairment and it is a matter for you. It is a case of high end of the scale in terms of seriousness.

Ms Jeyasingham: Thank you. Ms Patel?

Ms Patel: In relation to the submission made I accept the dishonesty element and I don't go behind your findings, it is one which brings issue to the disrepute as to the profession, but I would ask you to consider this. I am not going to repeat matters which I have done already; there is simply no point doing that, but I do ask you to consider this: this is a young man who has made a mistake. He has accepted his mistake. He has not gone to the expense of having a long hearing, or contesting any matters and indeed is not giving evidence and I ask you not to hold that against him. The Legal Adviser will give you advice on that, but no inference should be drawn.

The submissions are these: you have a number of references; he now has an employer who is willing to give him that extra supervision that is necessary. They are willing to go to the extent of providing him with a mock exam and that gives you real insight into the commitment of the employer that he currently is working with. He has told his employer the whole situation; they are aware fully of the circumstances of these proceedings and to the extent that he may have in position of certain issues.

I would ask you to allow him to continue training. This will hang over his head for the rest of his life; it is not going to go away. You have to disclose it to any potential employer; it will be a stark reminder of his conduct and behaviour and because of his age, because of his commitment, because of the fact he

how has strict supervision I do ask you to allow him a conditional sanction and the condition is that he always has strict supervision until he passes all the exams and is in that position again. In that manner he can certainly prove through time that he is able to be trusted again and that he cannot behave in the way he did. There is little I can add in relation to the background of what has already occurred, I have addressed that with you earlier, but whilst I accept it is serious, the dishonesty situation, making a full strike-off would be harsh in the circumstances taking into account his age, the nature in which the circumstances arose, albeit it serious, in my submission it is not at the higher end. Of course as I said before, if it was a situation where he falsely, at the instigation of his employment, tried to gain employment of that nature, or done anything of that accord, tried and misled in that way, then that would be a very different situation. In light of the manner in which the circumstances unfolded I would ask you to allow him to have a conditional practice for the moment and allow him to be trained under strict supervision.

I can't suggest any practical condition; to suggest one wouldn't be well put, but those will be my submissions.

Ms Jeyasingham: Thank you.

Mr Levisaur: Ms Bromley, do you want to make any submissions at all as to the powers which are open to the Committee?

Ms Bromley: In my understanding they have power to order that he be removed from the part of the Register on which he is, which is the student -

Mr Levisaur: The specified student part. They have a power to erase and a power to suspend and a power to impose conditions. They don't have power, because he is not fully qualified, to impose – I am thinking of deficient professional performance and therefore conditions relating to that. Nor do they have the power to impose a financial penalty, although I would be grateful if you could –

Ms Bromley: I don't. Powers: 13F(2)(c) is if they find that students, which is where we are, is "Specified in (3) or (4) below". (3)(a) is, as you said, erasure; (3)(b) is suspension; and (3)(c) is conditions. The wording of 13F(2) – I am not sure that (4) does apply, although it isn't relevant because we haven't alleged deficient professional performance. A warning – which is (5).

Mr Levisaur: A warning is not appropriate because that is in the absence of impairment.

Ms Bromley: Yes, you are right. That is the powers. I am just finding the bit about financial penalties.

Mr Henley: Is it 13H.

Mr Levisaur: That is where I am struggling; I am not sure it is. These are the supplementary provisions.

Ms Bromley: Yes, it does seem to be 13H, doesn't it? The power to impose directions on 13F, which is what we have just looked at, they may instead impose a financial penalty order. Those appear to be the powers available.

Ms Patel: May I just stress, there was this income statement, which is here, if the Committee has one, which provides the income from his current employer of £1,140 a month and then expenditure.

Mr Levisaur: Is that net or gross?

Ms Patel: It is net, so after tax. Then disposable income net will be £185 per month. The only submission I make if the Committee are not minded in following imposing conditions, is that I would ask the Committee, in light of all the circumstances, to suspend for a period and then review rather than erase at this stage.

Mr Levisaur: It falls on me to provide some more advice. A sanction is pre-eminently a matter for the Committee. You are, of course, to bear in mind your duties being charged to maintain public confidence in the profession. You are also to maintain standards and to protect the public, but in this context a pre-eminent matter entirely in mind is you need to maintain public confidence in the profession. You are please to adopt the technique which is sometimes known as the "bottom-up" approach: start with the least serious sanction open to you and consider whether that properly disposes the case. If it would, then stop at that point, if not of course continue with your determination.

The Registrant hasn't given evidence before you, don't hold that against him. He has, as has been pointed out by Ms Patel, pleaded guilty. There are of course testimonials before you, please bring them to bear at this stage of the deliberation and give them such weight as you think fit.

For the avoidance of doubt I will read out the sanctions open to you. You may impose a financial penalty order; the maximum that you might impose in this situation is £15,000, but of course you will give such due weight as is appropriate as to the financial information which has just been provided, which is that young man has a net monthly income of £1,140. You know that he is married and you have just been told he has a net disposable income of some £185 in a month.

The other sanctions which are open to you are imposition of conditions. I would remind you that any conditions that you impose must be those that can be verified. They must of course relate to this Registrant not to some unfortunate third party over which you have no powers. They must have a clearly expressed purpose so that they can be verified. Misunderstanding is

not something which should fall part of any condition, let's be clear and unambiguous.

You have a power to suspend and you have, of course, the power to erase. It is a matter entirely for you and give due weight to your public duties and responsibilities and to everything you have heard by this Registrant and everything that appears to you to be relevant in the bundles which are before you.

Ms Patel: I have a copy of the financial statement.

Ms Jeyasingham: The Committee has it.

Mr Levisaur: We have something of this, but I am not sure we have exactly the document.

Ms Patel: I have a signed copy of the 11 July.

Ms Jeyasingham: We have some financial information in our bundles.

Ms Patel: That is simply evidence, not the outgoings, what is referenced on this financial statement on his credit card.

Ms Jeyasingham: We had better mark this as R2.

[Discussion regarding signatures]

Mr Levisaur: For the avoidance of doubt of course everything that I have said by way of advice to the Committee with reference to C1 of course extends to R2 as well. This is R2.

Ms Jeyasingham: Thank you. In which case, if there are no further matters, can I ask the Hearings Manager to clear the room for the Committee to deliberate?

[Hearing adjourned at 13.47]

[Hearing resumed at 14.46]

Ms Jeyasingham: I'm going to read out the sanction.

Sanction

The Committee has heard submissions on behalf of the Council and the Registrant as to sanction. It has accepted the advice given to it by the Legal Adviser.

As the Committee has found, this was a serious course of conduct involving repeated dishonesty and the treating of patients while

unqualified. The Committee does not regard it as appropriate to dispose of this case by way of financial penalty. Miss Patel urged the imposition of conditions but in effect only suggested that the Registrant should be supervised. As a student he would in any event have to be supervised so that this suggested condition is, in truth, no condition at all. The Committee, having considered the offences and the need to uphold public confidence in the profession, does not regard the imposition of conditions as an appropriate way to dispose of this case.

The Committee has given great weight to the statements and reference from Mr Ingleby and that from the Registrant's present employer. There is no doubt about the seriousness of these offences but having regard to the most unusual reference from the employer who was deceived by the Registrant the Committee has concluded that it would be appropriate to dispose of this case by way of an order for suspension.

In all the circumstances, the Committee has concluded that it is appropriate to impose an order of suspension for the maximum permitted period of 12 months.

This order for suspension will be reviewed approximately four weeks before the expiration of this order by a committee which will no doubt wish to see evidence from the Registrant and others of developing insight into the seriousness of the matters before the Committee today.

The order will therefore be one of suspension for a period of 12 months.

On the assumption that this Registrant is presently the subject of an interim order for suspension the Committee is minded to make an immediate order for suspension but will now hear representations from the parties.

Ms Bromley: You are right he is currently subject to an interim order of suspension, which was renewed by the High Court in February, so it continues for a further year. Indeed it has been in place a year already, so in my submission it would be appropriate for that to continue as you are minded to do, or you have indicated you are minded to do.

Ms Patel: I don't think I can raise any submissions. The interim is in place and the 12 months would carry on. I don't make any observations on that.

Ms Jeyasingham: Okay.

Mr Levisaur: It is entirely a matter for the Committee, but given that there is an interim order already in place and there is to be a suspension for a further 12 months, it would be, in the circumstances, rather peculiar for you not to

impose an interim order, particularly in the light of the submissions made by both parties.

Ms Jeyasingham: An immediate order?

Mr Levisaur: Wouldn't be appropriate if you are so minded.

Ms Jeyasingham: Thank you. In which case can we just clear the room?

[Hearing adjourned at 14.49]

[Hearing resumed at 14.53]

Ms Jeyasingham: *[Reads]*

Revocation of interim order

The Committee hereby revokes the interim order for suspension of registration that was made on 3 February 2010 and extended by the High Court to 1 February 2012.

Immediate order

The Committee has been told that the Registrant has been subject to an interim suspension order which would otherwise have expired on 1 February 2012. The Council submitted such an order should be made and the Registrant's representative made no opposing submissions. The Committee has determined that it is in the public interest that an immediate order for suspension is imposed.

Do you understand the Determination Mr Shah?

Mr Shah: I do.

Ms Jeyasingham: Could I ask you to please sign copies of that Determination with Mr Henley? Unless there are any matters from either parties I am going to declare the Hearing closed.

[Hearing concluded at 14.55]