



F(10)14

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

GENERAL OPTICAL COUNCIL

AND

MS TRISHNA JAYESH PATEL (SO-5964)

SUBSTANTIVE HEARING: Tuesday, 22 February 2011

**SUBSTANTIVE HEARING: TRISHNA JAYESH PATEL (SO-5964)
Tuesday, 22 February 2011**

Committee Members: Lady Margaret Wall (Lay) (Chair)
Dr Dozie Azubike (Lay)
Mr Rod Varley (Lay)
Ms Alison Hudson (Optometrist)
Professor Stephen Taylor (Optometrist)

Legal Adviser: Mr Mark Lucraft QC

Hearings Manager: Mr David Henley

For the GOC: Mr Peter Steele

The Registrant was neither present nor represented

[Hearing commenced at 09:28]

Lady Wall: Good morning. I am Margaret Wall, 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 optometrists and three lay members, and I will ask the members of the Committee to introduce themselves and the capacity in which they sit. *[Introductions made]*

To my right is Mr Mark Lucraft QC, 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 Charles Nisbet, 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.

You should be aware that it is the Council's policy for the determination of the Committee and a transcript of the proceedings to be displayed on the Council's website for public viewing, but where matters of health have been discussed the determination and transcript will be redacted accordingly. Do we have any applications?

Mr Steele: Madam, no. As you will be aware, Miss Patel is not here and is not represented. You should have in front of you, I trust, a service bundle. I have some further papers to hand out at this point, which may assist you on the question of whether or not you should exercise your discretion to proceed in Miss Patel's absence, and perhaps now is the time for them to be distributed. [*Papers distributed*]

Madam, to deal first with the Service of the Notice of Inquiry, you will see that the notice was dated 16 December 2010. That is page 2 and 3 of the service bundle.

Mr Lucraft: I think we have that as page 5 of the bundle.

Mr Steele: I do apologise. It is page 5 and as you can see it was sent by special delivery, and indeed, to Miss Trishna Patel's email address. You will see on page 7 the email version of the notice and then page 8 the electronic proof of delivery form from the post office showing that the special delivery letter was signed for on 17 December 2010 at 11.56am. In the circumstances, I suggest that you have evidence in front of you to demonstrate that notice was indeed served in accordance with the Rules and received at Miss Patel's registered address.

The second part of the exercise, which you must now undertake, is to decide whether to exercise your discretion to proceed in Miss Patel's absence. Turning to the further bundle of pages I have put in front of you, you will see page 1 is my letter to Miss Patel, dated 9 February, enquiring amongst other things whether she intended to be present today and be represented. Page 2 is a chaser email sent on 18 February 2011, and then most importantly page 3 is an email received from Miss Patel on 18 February at 6.37 in the evening. She writes

"Dear Mr Steele, firstly, I would like to apologise for the very delayed response to your email. Unfortunately, I do not have enough funds to come to London for the hearing so I will not be able to attend. Also, I will not be represented at the hearing. All I have to say is that I have moved on since then and have since been employed by two opticians. I am currently working at Optical Express in Manchester and know what I did was wrong and deeply regret what I did. I really want the opportunity to prove that I am not a bad person and it was a big mistake and want to apologise to all those who I let down and disappointed. I have let myself down but want to pursue Optometry as a career. I want to be given this chance. Once again, I am sorry for the delayed reply. Yours sincerely, Trishna Patel"

Page 5 is my response to Miss Patel, asking her to indicate whether there is anything else she wishes you, the Committee, to see today. I have not had a reply to that email since then, and it is my understanding that neither has the GOC. Madam, I suggest that in the circumstances it must be clear that Miss Patel is aware the proceeding is taking place today and has indicated that

despite that, she does not plan to be here. She gives us the reason that she does not have enough funds, but that is probably a matter which is irrelevant to your considerations on whether or not to proceed today. She is aware of the hearing but has chosen, which is her right, not to attend. In the circumstances I submit that you could, if you feel it is right to do so, proceed today in her absence.

The Committee will of course be aware of the case law concerning proceeding in the absence of defendants, in particular, the well-known cases of *R v Jones* [3003] UKHL 5 and *R v Hayward* [2001] EWCA Crim 168 and the criteria set out there. I will not trouble the Committee with those cases, suffice to say that recent case law in the area of healthcare regulation makes it clear that Committees are not to pay mere lip service to the *Jones* and *Hayward* criteria and must consider a case in detail and decide whether it is one of those rare and exceptional cases where proceedings can go ahead in the respondent's absence. I suggest, in this case, this is one of those cases; a rare and exceptional case where you could proceed. Miss Trishna Patel is aware of today's proceedings and has simply decided not to attend, but ultimately it is a matter for you and your colleagues.

Lady Wall: Thank you. Could I ask the Committee whether they have any questions at this stage?

Professor Taylor: Has anyone attempted to telephone Miss Patel at all or has it all been done through email?

Mr Steele: Sir, I do not have the telephone number. I personally have not attempted to telephone. It may be that the GOC has further information but I understand not, sir.

Mr Varley: Presumably 72 Abbots Road, Mitcham, Surrey, is the up-to-date address on the GOC register, because it is obvious she must have moved.

Mr Steele: I understand it is, sir. Indeed page 1 of the service bundle would seem to confirm that, the print-out from the GOC's database.

Mr Varley: I know there is the backup of the email as well.

Mr Lucraft: Perhaps I can just give you a little legal advice. The Rules allow the Committee to continue in the absence of the Registrant. Perhaps I can just read the relevant rule, Rule 21:

“Where the Registrant is neither present nor represented at the hearing, the Fitness to Practise Committee may nevertheless proceed, if –

- (a) they are satisfied all reasonable efforts have been made to notify the Registrant of the hearing; and

(b) having regard to any reasons of absence which have been provided by the Registrant, they are satisfied that it is in the public interest to proceed”.

That, on the evidence of what you have heard, clearly indicates that the Registrant is aware of these proceedings. Although she has not written that, the email which you have been shown of 18 February makes it clear she is aware of these proceedings, where they are taking place and when, as she gives the reason that she cannot be here because she does not have the funds to come. That tends to indicate she is aware of it. Then she goes on to set out what she is currently doing.

In terms of the case of *Jones*, which I am sure the Committee are familiar with, that is a Crown Court case where a defendant absconded during his trial and the question which arose for the Court to consider is whether it would have been appropriate for the Judge to have continued the trial in the absence of the defendant. A number of the things which the House of Lords indicated should be taken into account include whether an adjournment would resolve the matter and the likely length of such an adjournment and whether the defendant in that case, though absent, wished to be represented or had waived his right to representation. One of the other things was the extent of the disadvantage to the defendant, here Registrant, in not being able to present his account of events.

Madam, those are all clearly factors you will want to take into account but, on the other side of the coin, you will have to bear in mind that the Council has no way of compelling attendance. It is up to an individual registrant first of all whether they do attend, and secondly if they attend or not, they choose to be represented. It is not, therefore, a case strictly on all fours with *Jones* where you have the power to simply adjourn the proceedings to have someone arrested or compelled to be brought before you. As the Rule makes it clear, the first hurdle is that you have to be satisfied that all reasonable efforts have been made. Again the word ‘reasonable’ is used rather than simply all efforts have been made. It is whether the efforts are reasonable to notify the Registrant of the hearing, and it may be you will have no difficulty on that hurdle. The second one then is whether you are satisfied that it is in the public’s interest for you to proceed in the absence of the Registrant, knowing as you do what it is that she says in her email about her ability and what it is that she wants to say. Madam, I think that is all the guidance I can give you.

Lady Wall: Thank you. Can I ask you all to withdraw then whilst the Committee considers this matter?

[Hearing adjourned at 09:43]

[Hearing resumed at 09:54]

Lady Wall: Mr Steele, we have considered the matter and we have decided to go ahead in the absence of the Registrant. You will be given full reasons but we

think it is appropriate you go ahead now and then the reasons can be given to you as part of the determination at the end.

Mr Steele: I am very grateful, Madam. Do you and your colleagues have a copy of the bundle for the substantive hearing, Madam?

Lady Wall: Yes, C1.

Mr Steele: C1, but you will also see under a tab marked C2, that there is a document which is not actually part of the Council's case, but in the interests of fairness I have placed it in the bundle because it says something to the credit of Miss Patel. However, without wanting to jump ahead of myself, perhaps I should address you now on the facts of the case.

Lady Wall: Yes, please.

Mr Steele: I hope that the Committee will agree that overall this is quite a simple matter. The facts of the case are that Miss Patel, who was born on 6 September 1983 and is therefore 27 years old, made an application for student registration for the first time for the year 2009-2010. That application form is on pages 1-4 of C1 under tab 1. The significant page, so far as you are concerned, is page 2 where you will see under the declaration section at the top of the page Miss Patel declared that on 16 September 2009 she had been cautioned for fraud and she adds "- financial difficulties". In the usual way the relevant documents were obtained from the Metropolitan Police and they included, at page 5 under tab 2 of the bundle, a record of the caution which was for

"fraud by false representation, the details being that between 30 June 2009 and 24 July 2009 At London borough of Lewisham committed fraud in that you dishonestly made a false representation, namely used victim's bank card to withdraw money from her account, intending to make a gain, namely £1,400, for yourself contrary to sections 1 and 2 of the Fraud Act 2006".

The Committee will note that the record of caution form provided is not signed, but I submit that the surrounding circumstances and indeed the emails which you have seen already today make it manifestly clear that the caution was given and accepted by Miss Patel.

Lady Wall: Can I just ask you – we did notice that the caution was not signed. It has been suggested that this is not actually a copy of the complete caution, that it is a computer copy and that there is one with a signature in existence, which we do not have. Is that possible?

Mr Steele: That may indeed be. I understand from the letter which appears at C2 that the Metropolitan Police provided that record of caution form in response to the GOC's request for all the pertinent documents and as I suggest, Madam, it must be the case, in particular looking at Ms Patel's letter at page

16 under tab 4, that she accepts the underlying behaviour and indeed that she was cautioned.

Lady Wall: That is clear. It is just a matter of dotting i's and crossing t's. We should have a signed copy of the caution in front of us but we do accept that she has accepted that she was cautioned and has accepted her guilt and we can proceed from there.

Mr Steele: I am grateful, Madam. The police provided a copy of the statement of the victim in this matter, a Miss G, which appears at pages 6 and 7 under tab 3. Without troubling to read the entirety of that statement out, it appears that Miss G worked with Trishna Patel for five years at Vision Express in Lewisham. It appeared to Miss G towards the end of July 2009 that a number of withdrawals had been made from her bank account which she could not account for. She was able, via her boyfriend, to establish that Miss Patel had in fact used her bank card to withdraw these sums of money from a cashpoint outside Barclays Bank within Lewisham shopping centre. She confronted Miss Patel who immediately admitted that she had taken the money. Miss Patel, to her credit, this is page 7, paid the money back and offered as an explanation for having taken it that she was using it to help her parents pay their bills off. She admitted the offence to the Manager of Vision Express and was suspended from her employment. The Committee will also see that there were six instances of money being withdrawn over a period of about a month from 30 June to 24 July, and the total sum involved was £1,400.

The police crime report appears in the bundle under tab 4, pages 8-15. I would draw the Committee's attention to page 14, and about halfway down is the record of the interview conducted by the police officer with Miss Patel. It is written

"The suspect fully admitted the offence. She said she is in financial difficulty and that is why she took the money. She was extremely remorseful and upset and said she would never do such a thing again. She said she has paid the money back to the victim".

Lastly, and we have already referred to this document, there is Miss Patel's account which is at page 16 of the bundle under tab 5. She wrote to the GOC as follows:

"In response to your letter of 2 October 2009, I have included a copy of the caution documentation. I withdrew £1,400 in total from my colleague's bank account without her consent. I was under financial difficulties and really did not think about the consequences of my action. I paid her back the £1,400 before I got the caution and lost my job because of it. I know it was silly of me and I apologised to her and my ex employer. I have never been in trouble with the police before and never want to be again. I understand what this may mean for me but want to make a fresh start. I believe this is all the information you require".

Now taking the papers as a whole and in the light of Miss Patel's quite frank admission to the offence, I would invite you to find the allegation as set out in the notice of hearing approved and just to recap, that allegation is that

“on 16 September 2009 at Lewisham Police Station you were cautioned for the offence of fraud by false representation in that you used a colleague's bank card to withdraw money from her account totalling £1,400”.

Madam, unless I can assist you further, those are my submissions on the question of the facts today.

Lady Wall: Thank you.

Mr Lucraft: Madam, I think the legal advice I can give you is very straightforward in a case which involves either a conviction or, in this case, a caution. Obviously it is for the Council to bear the burden of proving that case, on the balance of probabilities, that this caution was administered. You have seen from the documentation that in later correspondence the Registrant accepts, although the caution is not signed, that she was cautioned and indeed, it is heard, declares the caution on her student form. It would be odd that she was declaring something which she had not actually accepted at the time. So Madam, I think the burden is on the Council, its standard being on the balance of probabilities, which you may think here is accepted by the Registrant by what she did, that in fact she was the subject of this caution. Madam, I do not think there is any further guidance I can give you.

Lady Wall: Thank you. Could everybody withdraw please while we consider this matter?

[Hearing adjourned at 10:05]

[Hearing resumed at 10:14]

Lady Wall: The Committee has considered the matter of the facts and accepted legal advice and we are quite satisfied that the facts are as they are. They have been laid out to us and supported by the documentation but, as before, we will put our specific reasons in the final determination.

Mr Steele: I am very grateful, Madam. It now falls to you and your colleagues to consider the question of impairment under the rules. In doing so, you will of course be assisted by the guidance for Fitness to Practise Committees published by the Council, and dated 31 December 2010.

Lady Wall: Yes. We need the guidance which was applicable at the time, do we not?

Mr Steele: That may be right, Madam. In which case, you may have to consider an earlier version which I do not have in front of me. I will not address you on the guidance in any event.

Mr Azubike: Sorry Madam, I wonder why the date of the guidance is the 31st. It is not at the date of the guidance?

Mr Steele: That would be right in fact. It must be the guidance applicable at the time because it is the guidance for you today in making your decision on impairment. It would be different with the Code of Conduct. You would have to have the Code of Conduct in force at the time and on that note, the Code of Conduct in force at the time was – I hope I have this right, I will be corrected I am sure if I don't – the 30 June 2005 version, relevant items on which in my submission are item 10, that a registered optometrist for the dispensing optician – and I am sure in these circumstances we must also take into account student optometrists – be honest and trustworthy.

That is a convenient starting point for my address on the question of impairment. Clearly, any conviction for dishonesty must be a serious matter, likewise any caution, and in these circumstances I would suggest that it would be open to the Committee to find impairment on that basis. You are required, as the Committee I am sure is aware, to look at current impairment, the Registrant's current situation and may with due caution take into account any evidence you have about the Registrant's behaviour and any remediation since the date of the caution. For reasons which will of course be obvious to the Committee, the amount of information available to you is rather limited. However, you have seen Miss Patel's letter at page 16 of C1 in which she mentions financial difficulties, the fact that she paid back the £1400, and her previous good record by saying "I have never been in trouble with the police before", as well as her indication that she wants to make a fresh start.

The Committee may also wish to take into account C2 which is also in the bundle before you, in which PC Green, the Investigating Officer, writes in her penultimate paragraph

"I was the Officer who dealt with Miss Patel. Miss Patel showed remorse for her actions and admitted her faults. She immediately offered to pay the victim back the money she had stolen, even prior to police involvement. She was extremely worried that her career would be over as a result of her actions. In my personal opinion, I would not hesitate to recommend her to continue training as a student optometrist".

Clearly that is a judgement for you and your colleagues today, Madam. However, it is something which you may wish to take into account as I have suggested.

I brought to your attention earlier on the email from Miss Patel dated 18 February. That is on page 3 of the further bundle I handed out, and what Miss Patel wishes you to know is as follows:

"I have to say that I have moved on since then and have since been employed by two opticians. I am currently working in Optical Express

in Manchester and know what I did was wrong and deeply regret what I did. I really want an opportunity to prove that I am not a bad person and it was a big mistake and want to apologise to all those I let down and disappointed. I let myself down but want to pursue Optometry as a career. I want to be given this chance”.

So you have some mitigation on behalf of Miss Patel. You have also the fact that this is a single caution. There is no evidence of any previous history here. You also have the fact that Miss Patel made good the loss to Miss G. She paid her back the money.

However, on the other side of the account, as I have said, it is important to know this is an offence of dishonesty. Miss Patel, at the time of committing the offence with a caution, was 25 going on 26 so was not in a state of youthful immaturity if I can put it that way. Lastly, it is a matter that involved some financial loss to the victim albeit that was made good as you have seen.

Taking these matters as a whole I suggest you could, if you see fit, find impairment on the basis of the caution. How you dispose of the case, thereafter, is of course a matter for you as a Committee using your judgement. The powers of disposal available to the Committee are set out in Section 13 of the Act as you are aware, and you must consider the appropriate disposal starting with the least serious first of all, and the least serious in this case, assuming you find impairment will be to take no further action, if you thought that was appropriate; then looking to a financial penalty, and if not a financial penalty, conditions, thereafter suspension and so on, bearing in mind that the principles of proportionality mean that you are required to do the minimum necessary to achieve the regulatory aim.

Madam, finally, you and your colleagues will of course be aware of the relevant case law at this stage, including the well-known case of *Bolton v The Law Society* [1993] WLR 512, which makes it very clear that dishonesty is amongst the most serious offences a professional can commit because of its effect on the standing of the profession as a whole. Madam, unless I can assist you any further those are my submissions on impairment and indeed sanction.

Lady Wall: Thank you. Mr Lucraft?

Mr Lucraft: Yes. Madam, the guidance I can give you at this stage is this; that impairment is a matter for this Committee to exercise its judgement. It is not a matter involving the burden or standard of proof. The question on whether this student Registrant’s fitness to undertake training as an optometrist or a dispensing optician is or may be impaired is one of judgement. There are clearly a number of matters to which you will want to have regard and should have regard. You should of course consider the performance of the student Registrant which gives the background to this matter, the facts which have been admitted by virtue of the caution on offences of fraud. You will also want to have regard to what you know as to the way in which the Registrant has performed work in the past and since the events in 2009 when the facts were

those that gave rise to the caution. You will base that on the materials which have been placed before you, which will inform the judgement you must make. Obviously the weight to be attached to the various matters which have been placed before you is something to which you also have to apply your collective judgement.

Your task is to consider whether by reason of the facts which you have already found and what you know of this student Registrant, whether her fitness, in the words of the Act, “to undertake training as an optometrist for a dispensing optician is or may be impaired”. In relation to sanction, clearly if you find her fitness to undertake training is or may be impaired then of course you have to go on to consider the question of whether you should impose a sanction. It is a discretionary power again and something to which you apply your collective judgement.

The powers of the Committee I am sure are well-known to it. They are set out in Sections 13F to Sections 13L of the Act and you move effectively from the lowest sanction to the highest one. Clearly the purpose of a sanction is not to punish the student Registrant but to protect patients and to have consideration for the wider public interest. As Mr Steele very properly said, you move in ascending order of seriousness, and you should only move in ascending order if you are satisfied that the direction which you are considering is insufficient in all of the circumstances of this particular case. If you decided that a sanction should be imposed then it obviously should be one which is proportionate. That means it must be one which is appropriate, bearing in mind the interests of the public and the interests of the student Registrant, taking into account the seriousness of the matters which have led to the particular finding which you have made. Madam, I think that is the guidance I should give you at this stage.

Lady Wall: Right, thank you very much. In that case could you all withdraw and the Committee will consider the matter.

[Hearing adjourned at 10:27]

[Hearing resumed at 12:53]

Lady Wall: Right, this is the determination.

On 22 February 2011, the Fitness to Practise Committee of the General Optical Council met to consider allegations against Trishna Patel.

Service

The Committee accepted the advice of its Legal Adviser.

The Committee is satisfied that all reasonable efforts have been made to notify the Registrant of the hearing. In addition to the main bundle of documents, the Committee was shown a letter dated 16 December 2010, a letter of 9 February 2011 from the Council or its representatives, and an email

dated 18 February 2011 from the student Registrant. It is clear from those documents that the papers had been served on the student Registrant. In particular the email dated 18 February 2011 to the Council representative from Trishna Patel demonstrated that she is aware of the proceedings today and also the nature of the proceedings and has chosen not to attend or to be represented. She is a registered student now aged 27. The Committee regrets that she has chosen not to engage fully with this process. The Committee was of the view that it would be in the public interest for the hearing to proceed in the Registrant's absence and there is a clear public interest in resolving the issues in these proceedings.

ALLEGATION

The Council alleges that in relation to you, Trishna Patel, a registered Student Optometrist –

1. On 16 September 2009 at Lewisham Police Station, you were cautioned for the offence of fraud by false representation, in that you used a colleague's bank card to withdraw money from her account totalling £1,400;

And by virtue of the matters set out above your fitness to undertake training is impaired by reason of your –

- (a) Caution

DETERMINATION

Findings in relation to the particulars of the allegation

The Committee accepted the advice of its Legal Adviser.

The Committee found that this registered student was the subject of a caution at Lewisham Police Station in September 2009. Although the copy of caution is not signed the Committee was satisfied that she was cautioned at the time. She declares the caution on her student application form, and refers to it in subsequent correspondence.

Findings in relation to the caution

The Committee found on the basis of the information presented that the caution relating to Trishna Patel had been proved, and that the caution relates to matters of fraud.

Findings regarding impairment

The Committee found that the fitness of Trishna Patel to undertake training as a student optometrist is impaired. The facts that led to the giving of the caution were serious. A total of £1,400 was stolen from the bank account of a work colleague of the student Registrant over the period from 30 June to 24

July 2009 on six separate occasions. The victim's bank card was taken from a purse from her handbag on each occasion whilst both she and the student Registrant were working at the same branch of Vision Express. They had been friends over a period of time. The offences came to light by the victim noticing that her bank account had money missing. Subsequent enquiry showed it was the student Registrant who had taken the money by using the victim's bank card. According to the witness statement of the victim, she believed the student Registrant had seen her use her card and had taken a note of her PIN. When confronted, the student Registrant fully admitted the offences and offered to repay it straight away. Repayment was made. The Committee noted that repayment was made over a relatively short period of time, and yet the Committee had not received a full explanation of the reasons for the money being taken in the first place. From the police report it would appear that she returned the bank card used to make the debits between each occasion on which she used the card. Dishonesty strikes at the heart of the Code of Conduct of the profession. Paragraph 10 of the code requires all members to be honest and trustworthy. The Committee, in exercising its collective judgement, was of the view that there is no clear understanding of the student Registrant as to the serious nature of this offence. This offence involved a degree of planning as to its commission, and was one which had an impact on the victim. The Committee has also considered the wider public concerns and has had regard to the judgement in the case of *Bolton*.

Sanction

The Committee has considered the appropriate sanction taking into account the public interest and that the purpose of the sanction is not to punish the student Registrant. The Committee took into account that this student Registrant has nothing else recorded against her. The Committee started by considering no order, a financial penalty order or a conditional registration. This case is one that is too serious that no order is made. A financial penalty would not be appropriate as the student Registrant refers to financial difficulties, and there are no realistic conditions which could be imposed on her registration. The Committee considered that the appropriate and proportionate sanction in the circumstances and facts of this case, and taking into account what it knew of the position of the student Registrant, was one of suspension. In terms of the period of that suspension, the Committee decided that the appropriate length was one of six months.

A review hearing will be held before the expiration of this order; the hearing will be held on 6 September 2011. The review Committee will need to be satisfied that the Registrant has fully appreciated the gravity of the offence, has not re-offended and has maintained her skills and knowledge.

Thank you. That is the end of the hearing.

[Hearing concluded at 12:59]