Privy Council Appeal No. 28 of 1980

John Brian Lowe – – – – – – – *Appellant*

v.

General Optical Council – – – – – – *Respondent*

FROM

THE DISCIPLINARY COMMITTEE OF THE GENERAL OPTICAL COUNCIL

ORAL JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED 12TH NOVEMBER 1980

Present at the Hearing:

LORD KEITH OF KINKEL
LORD ROSKILL
LORD BRIDGE OF HARWICH

[*Delivered by* LORD KEITH OF KINKEL]

This is an appeal against a determination of the Disciplinary Committee of the General Optical Council whereby the Committee directed that the name of the appellant be erased from the Register of Ophthalmic Opticians. The circumstances under which the appeal comes before this Board are as follows. The appellant, on 14th September, 1979, was convicted on a plea of guilty of ten charges of obtaining monies by deception contrary to section 15 of the Theft Act 1968, in the Birmingham Crown Court. These ten charges were in fact specimen charges and it appeared that over a considerable period of time the appellant had been making false claims for dispensing glasses and other optical treatment and as a result he had dishonestly obtained from the Birmingham Area Health Authority sums of the order of £4,000.

Following the convictions the appellant was charged before the Disciplinary Committee under section 11 (1)(*a*) of the Opticians Act, 1958. That sub-section provides that " if any registered optician—(*a*) is convicted by any court in the United Kingdom of any criminal offence, not being an offence which, owing to its trival nature or the circumstances under which it was committed, does not render him unfit to have his name on the register, ... the Committee may, if they think fit, direct that his name shall be erased from the register. "

The terms of the charge were that the appellant was, contrary to section 11 (1)(*a*) of the Act, " convicted in the Birmingham Crown Court upon indictment on 14th September, 1979, of ten offences of dishonestly obtaining property by deception contrary to section 15 of the Theft Act 1968, being criminal offences the circumstances of which render you unfit to have your name on the Register of Ophthalmic Opticians, in that you dishonestly obtained monies from the Birmingham Area Health Authority by submitting false claims for National Health Service dispensing fees to the said Health Authority. "

The charge was heard by the Disciplinary Committee on 25th June, 1980. The appellant appeared and he was represented by Mr. Pine, the General Secretary of the Association of Optical Practitioners. At the commencement of the proceedings the charge was read to the appellant and immediately there arose the circumstance upon which the appellant presently founds in support of his appeal. Whereas Rule 6 (1) of the General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1969 provides that "if the respondent has appeared at the inquiry the Chairman shall ask if all or any of the convictions or other facts alleged in the charge or charges are admitted" the Chairman at this hearing, instead of putting the question required by that Rule, asked the appellant whether the charge was admitted and to that the appellant answered that it was. Thereafter the solicitor representing the Council proceeded to outline the circumstances under which the offences were committed as they had appeared at the Crown Court. After she had done so, the appellant and Mr. Pine were asked if they wanted to say anything and Mr. Pine answered that they did not. The Committee then proceeded to retire and to deliberate, and on their return the Chairman said that the Committee found the facts proved and would be justified in erasing the appellant's name from the register but that the Committee wished to hear anything which might be said in mitigation. Mr. Pine thereupon addressed the Committee, called a character witness, and the Committee put various questions to the appellant which he answered. The substance of the representations which Mr. Pine put to the Committee was that the reason why the appellant had committed the offences in question was an entirely altruistic one connected with his extreme concern for the disadvantaged patients with whom he had to deal in the course of his practice.

It appeared that many such patients were unable to obtain the use of equipment which would have been of the greatest assistance in making their lives more satisfactory and alleviate their problems of sight from which they suffered. The appellant, finding that such equipment was not available through lack of funds, resolved to build up a fund which would enable him to supply, or at least would enable these patients to be supplied, with suitable equipment, and in order to build up the fund the appellant resorted to the plan of obtaining money from the Health Authority by false claims.

The next step in the procedure was that the Committee retired and, having returned, the Chairman announced that the Committee had decided to erase the appellant's name from the register because he had been convicted of ten offences of dishonesty. She added: "The Committee has been greatly helped by hearing all that has been said in mitigation, but nevertheless takes the view that as many as ten offences make this case so serious that there is no alternative to erasure."

In that state of matters it was argued for the appellant that the Committee had fallen into errors of procedure which had distracted their attention from a consideration of the proper issue which arose upon the charge against the appellant. It was maintained that on a proper reading of Section 11(1)(*a*) of the 1958 Act it was for the Committee to consider the whole circumstances under which the offences mentioned in the charge were committed with a view to considering whether or not the result was to make the appellant unfit to have his name on the register.

Then the argument ran thus—that because the Committee at the outset, instead of merely asking the appellant whether he admitted the convictions, had asked him whether he admitted the charge, that foreclosed the question whether he was unfit to be on the register.

The Committee, it was accepted, duly went on to consider whether their discretion to direct the appellant's name to be erased should be exercised for or against that course in the light of mitigating circumstances. But it was said that the Committee had misdirected itself by treating this as a matter of mitigation rather than as a question of the unfitness or otherwise of the appellant to have his name on the register.

Now, it may be accepted that there was a technical mistake on the part of the Chairman of the Committee in that the appellant was asked not whether he admitted the convictions mentioned in the charge but whether he admitted the charge. But in their Lordships' view this initial mistake did not have any significant effect upon the subsequent course of the proceedings or upon the justice of these proceedings insofar as the Committee were required to give due consideration to the whole circumstances before making up their minds whether or not to direct erasure of the appellant's name.

It is to be observed that after the solicitor to the Committee had outlined the circumstances so far as she was concerned with them the appellant and Mr. Pine were asked if they wanted to say anything but they answered in the negative. At that stage it would have been open to the appellant or Mr. Pine to say that although the convictions were admitted, and also the general circumstances, nevertheless there were other circumstances connected with the appellant's motives for doing what he did which, properly considered, led to the conclusion that he was not unfit to be on the register.

However, the Committee went away. When they came back and said that they thought erasure would be justified but that they wished to hear mitigation, it seems to their Lordships that the Committee were doing no more than saying that the nature of the offences, involving as they did the dishonest obtaining of money from the Health Authority by false claims, was such as on the face of it to render the appellant unfit to have his name on the register, and that is a view which in their Lordships' opinion the Committee were entitled to reach, but that the Committee then did wish to consider any other circumstances which might be put before them by the appellant and they did consider these circumstances. They listened to all that was said about the appellant's motives, about his background, about his dedication to his profession, and indeed everything that was sought to be placed before them and it was only after they had done so that they reached the conclusion that the appellant's name should be erased from the register.

Despite the technical defect which emerged at the beginning of the proceedings and which formed the peg on which this appeal was founded their Lordships do not consider that, looking at the procedure followed by the Committee as a whole, there was any failure to observe the proper procedure from the point of view of the Committee being fully informed about all the circumstances which might enter into the formulation of the Committee's decision as to whether or not to erase the appellant's name, and their Lordships are satisfied that in all the circumstances there has not been any miscarriage of justice in this case.

It is, of course, the normal practice of this Board to refrain from interfering with the finding of a professional Disciplinary Committee unless there is some convincing reason for reaching the conclusion that the Committee have gone wrong. Their Lordships are unable to find any ground for intervention in the present case and will accordingly humbly advise Her Majesty that the appeal be dismissed. There will be no order for costs.

312932—2 Dd 0074336 60 12/80

In the Privy Council

JOHN BRIAN LOWE

v.

GENERAL OPTICAL COUNCIL

DELIVERED BY
LORD KEITH OF KINKEL

Printed by HER MAJESTY'S STATIONERY OFFICE
1980