

**The Royal Pharmaceutical Society of Great Britain
In the Matter of an Appeal to the Registration Appeals Committee**

**Miss Siobhan Goodrich: Chair
Dr Anthony Theobald: Pharmacy Member
Mr Paul Sommerfeld: General member**

Date of Hearing: 7th December 2007

Between:

SHAHINA MOHAMED

Appellant

and

**THE ROYAL PHARMACEUTICAL SOCIETY
OF GREAT BRITAIN**

Respondent

Representation

For the appellant: Mr Graham Southall- Edwards instructed by the PDA

For the respondent: Mr Tom Rider of Field Fisher Waterhouse

DECISION

Introduction.

1. Miss Shahina Mohamed appeals against the decision of the Registrar made on 15th August 2007 to refuse her application for registration in the Register of Pharmacists on the grounds that she had failed to satisfy the Registrar that her fitness to practice is not impaired as required under Article 11(a) (ii) of the Pharmacists and Pharmacy Technicians Order 2007 (“the Order”). The decision of the Registrar is an appealable decision under Article 42 and the appeal is brought under Article 43 of the Order.

The Background

2. On 9th January 2006 the Appellant was formally cautioned by Greater Manchester Police for an offence of obtaining property by deception. The bare facts were that in August 2005 the Appellant altered a cheque sent to her by her former employer so as to increase the sum paid to her by £1000.
3. At the time the offence was committed the Appellant was a 21 year old student at the University of Bradford about to embark on the third year of her pharmacy degree. On 11th February 2006 the Appellant wrote to the Society making brief reference to the fact of her recent police caution and asked that her case be considered. By letter dated 10th March 2006 the Fitness to Practice Directorate advised the Appellant that the Society was unable to review the declaration as she was currently a university student and stated “...*you will need to declare your caution to the Society when you become a pre-registration student. The details of the caution will then be referred to the Infringements Committee who will make a decision as to the appropriate course of action to take in your case.*”
4. In her application for registration which was received by the Society on 6th July 2007 the Appellant advised the Society fully of the details of her police caution and the circumstances in which it arose. She expressed her deep remorse for the offence. In response to requests for further information the Appellant also provided character references from Mr Patel and Dr Gillian Hawkesworth who spoke of their knowledge of the Appellant’s character.
5. In the Society’s internal memorandum dated 26th July 2007 it was observed that the offence involved an act of dishonesty committed against an employer. The mitigating features including the isolated nature of the incident, the open admission by the Appellant, her remorse and insight and cooperation with the police and the Society were noted. It was recommended that registration be refused on the grounds that the offence was serious, relevant to pharmacy and recent. It was noted: “*If the applicant wishes to appeal, the appropriate procedure would be for the Registration Appeals Committee to take a view on the balance to be struck between the seriousness of the offence and the mitigation offered.*”

6. By letter dated 15th August 2007 the Registrar advised the Appellant that she was not satisfied that her fitness to practice was not impaired and that her application for registration was refused. The reasons given were that :
“*you have committed a serious offence of the theft of a significant sum of money from your employer. The offence was recent, committed whilst you were on your MPharm course, and is relevant to the practice of pharmacy where professionals must hold a position of trust. If committed by a registrant, this sort of offence will always result in a hearing by the Disciplinary Committee and, in previous such cases, removal has been considered a proportionate response.*”
The Registrar concluded by advising the Appellant as to her right to appeal the decision to this Committee.

The Appeal.

7. Article 11 of the Order provides that:

“Subject to the provisions of and rules under this Order, a person shall be entitled to be registered in the Register of Pharmacists if-

(a) he satisfies the Registrar that-

(i) he is appropriately qualified ...

(ii) his fitness to practice is not impaired... ”

8. It is common ground between the parties that the nature of this appeal is by way of a rehearing. The Committee would add that its task is to consider the application afresh in the light of all relevant evidence and to decide whether it is satisfied that the Appellant’s fitness to practice is not impaired as at the date of the hearing. This is essentially a matter of judgement. The burden of establishing that the appealed decision should be overturned lies upon the Appellant. In so far as any facts are in issue the standard of proof to be applied is the civil standard.
9. In the detailed Grounds of Appeal submitted on her behalf the Appellant raised a number of challenges to the Registrar’s decision. Whilst many of these were effectively abandoned and/or considerably modified during the course of the hearing the Committee considers it appropriate to record the essence of the case advanced on the Appellant’s behalf and to comment thereon hereafter.
10. It was originally contended on the Appellant’s behalf that the statutory criteria laid down in Article 48 of the Order do not apply to a person who at the time of the commission of the offence was neither a registered Pharmacist nor a pre-registration Pharmacist. This point was sensibly abandoned at the outset of the hearing. Article 48 (1) sets out the circumstances in which a person’s fitness to practice shall be regarded as “impaired” for the purpose of the Order and includes in subparagraph (j) “*a police caution in the British Islands.*” Further Article 48(4) expressly provides that :

“A person’s fitness to practice may be regarded as impaired because of matters arising –

- (a)...
- (b) at any time.”

The reference to a “person” in subparagraph (4) is notable for it contrasts with other references to a “registrant” elsewhere in Article 48. It is thus clear that the Article applies to an applicant’s fitness to practice at any time before registration.

11. It was also contended that following notification by the Appellant in February 2006 the Society had ample opportunity to refer the matter to the Infringements Committee so that that Committee, by reference to the Statutory Committee or otherwise, could determine whether to permit the Appellant to register in future. In this regard it was submitted that the Society was now unreasonably and unfairly depriving the Appellant at a late stage of “the right” to fully qualify as a Pharmacist. It was also suggested that the Appellant had acquired a legitimate expectation that she would be registered. The Committee reject these contentions. So far as the jurisdiction of the former Infringements Committee is concerned, we accept the Respondent’s submission that there was no statutory power to make a determination in respect of a prospective application for the following reasons.

12. Prior to 30th March 2007 the powers in respect of registration were governed by the Pharmacy Act 1954 and regulations made thereunder. Rule 3 of The Infringements Committee (Procedure) Rules 2005 required the Committee to consider all alleged infringements:

- “.. (i) within the Society’s enforcement responsibility
- (ii) of ethical standards,
- (iii) of standards of conduct; and
- (b) decide the most appropriate course of action to deal with such infringements.”

13. Rule 3 (2) provided a range of potential actions in respect of “*the person concerned*” which included: no further action (coupled with a caution where appropriate), a letter of advice, a warning, criminal proceedings or reference to the Statutory Committee. Rule 2 defined “*the person concerned*” as:

“the person alleged to have committed an infringement (and may include an individual or company registered, or applying for registration with the Society, or any person who, although not registered with the Society, is alleged to have committed an infringement within the Society’s enforcement responsibility).”

The Committee accepts the Respondent’s submission that “*the society’s enforcement responsibility*” relates to its powers under section 80 the Medicines Act 1968 in respect of corporate misconduct by members of a board or officers who are not registered Pharmacists.

14. The relevant power of the Statutory Committee to take action was also limited to “*a person applying to have his name registered*”. At one stage it was suggested by Mr Edwards that in February 2006 the Appellant was applying

for registration. The Committee reject this submission. The Committee accept that there was no power in February 2006 that would have enabled the Infringements Committee to take action in respect of matters brought to its attention by a student until she applied for registration and, further, that neither the 1954 Act nor its Byelaws enabled the Society to prevent a person from engaging in pre-registration training.

15. In any event, so far as the issue of expectation is concerned, the Committee notes that it is not suggested that the Appellant had been led to believe that any future application would be successful. The Committee considers that the Society correctly stated that it was unable to consider the circumstances disclosed by the Appellant in February 2006 whilst she was a student. Mr Rider accepted that the Society's letter could have been clearer in explaining exactly when the Infringements Committee would be able to consider the caution, namely, when the Appellant actually made her application. The Committee finds, however, that any lack of clarity had no effect upon the Appellant's expectation or any decision she made. Her own evidence was that she would have continued with her studies and her pre-registration training in any event. As it is, by the time the Appellant did apply for registration, the Order was in force and this Committee had been created.

16. The Committee also considers that the assertion that this Appellant has "the right" to be registered is misconceived. It is plain from the mandatory terms of Article 11 of the Order that a suitably qualified applicant whose fitness to practice is not impaired is entitled to be registered as of right. There are however, a range of circumstances (as set out in Article 48) that constitute prima facie evidence of impairment. By reason of her police caution the Appellant deprived herself of her entitlement to be registered and that remains the position unless and until she establishes that her fitness to practice is not impaired.

17. It was also contended in the Grounds of Appeal that the refusal by the Registrar was against the interests of the public which has contributed a significant sum of money in the education of the Appellant. Taken to its logical conclusion this submission suggests that a public interest in educational investment would require that an applicant who meets the qualification requirements must be registered irrespective of the broader issue of fitness to practice. The Committee disagrees. It is well established that the core public interest that must be safeguarded when considering an application or appeal lies in the protection of members of the public, the maintenance of public confidence in the profession and the declaration and upholding of proper standards.

18. It was also contended that the refusal to register the Appellant is, in effect, an additional punishment to the police caution and that it is therefore unfair and unjust. The Committee considers that this submission portrays a fundamental misapprehension as to the purpose of regulatory proceedings the object of which is not to punish the individual concerned but to safeguard the public interest as properly defined. Any punishment imposed by a court serves an

entirely different function. Further, even in the absence of a court sanction, it is almost inevitable that an unsuccessful applicant for registration will have been personally, financially and professionally affected by the refusal to register but such factors are of no relevance if registration is not in the public interest.

19. Surprisingly it was also contended that the offence committed “*is not significantly relevant to the practice of pharmacy.*” The Committee agrees with the Respondent’s submission that if this assertion actually reflects the Appellant’s own belief it would demonstrate a worrying lack of insight into the seriousness of the offence she committed and its relevance to the profession in which she seeks to practice. The offence was one of dishonesty committed against an employer at a time when the Appellant was seeking to further a career in Pharmacy. It seemed to be submitted that the fact that the Appellant was not then bound by or fully familiar with the terms of the Code of Standards and Ethics was relevant to the assessment of her fitness to practice. The Committee disagrees. The Appellant’s actions were basically dishonest by any ordinary standards and the fact of her offence inevitably raises an issue as to her fitness to practice.

20. “Fitness to practice” is not defined in the Order. It is a comprehensive term that includes, amongst other, matters the applicant’s ability to provide a competent and safe service to members of the public as well as the ability to behave in an ethical and responsible way. Parliament through legislation places great trust in both individual pharmacists and the profession as a body. It is fundamental that the public should be able to have confidence and trust in members of the profession. The Code of Standards and Ethics which guides those admitted to the Register requires that pharmacists ensure that they will behave with integrity and probity, adhere to accepted standards of professional and personal conduct and that they will not engage in any behaviour or activity likely to bring the profession into disrepute. It is necessary that those seeking admission to the Register are able to demonstrate (by the absence, for example, of any conviction or caution) that their character is such that they can be trusted by the profession and the public to abide by the Code and maintain the highest standards of personal and professional conduct. In circumstances where an applicant has previously been involved in disreputable conduct it is thus essential to examine the full circumstances and evaluate carefully the current insight and moral attitude of the person who seeks admission to the Register so as to assess the issue of their fitness to practice in the context of the public interest which includes public confidence in the profession and the maintenance of standards. An important aspect is how the public and members of the profession might view the admission of an applicant to the Register who had previously acted dishonestly in relation to an employer.

21. An offence of dishonesty is a very serious matter and theft from an employer is even more serious. The Committee have considered very carefully the Appellant’s evidence and the written character evidence provided by Mr Patel who employed the Appellant in an administrative capacity during holiday periods from 2002. He found the Appellant to be honest, hardworking and reliable and he regarded her subsequent offence as being out of character.

Other written testimonials provided also speak highly of the Appellant's general reputation for trustworthiness. In particular, Ms Shah who acted as the Appellant's Pre Registration Manager during her training between July 2006 and August 2007 provided a written testimonial stating that the Appellant had demonstrated herself to be honest and trustworthy. Ms Shah confirms that in the knowledge of the details of her offence, the Appellant has been offered the position of second Pharmacist with Tesco Pharmacy.

22. In her subsequent letter and her oral evidence the Appellant fully described the circumstances that led her to behave in such an uncharacteristic way. The Committee accepts that the offence was borne out of desperation because the Appellant believed that she had not been fully paid the commission due to her for the telephone sales work she had undertaken during the summer so as to fund her studies. It accepts that she felt under considerable financial pressures to pay her university fees so as to begin her third year. She had attempted to deal with her employers so as to be paid the sums due to her but to no avail. It accepts her evidence that her alteration of the cheque on the very day it was received reflected the £1000 that she believed was due to her and her anger and frustration with her former employer in the context of acute financial pressures. The Appellant frankly accepted that her method of dealing with her grievance against her former employer was dishonest, wholly inappropriate and lacking in judgement. She cooperated fully with the police and repaid the sums stolen. It accepts also that the Appellant immediately felt ashamed of her conduct and has learnt from her painful experience. The Committee is satisfied that the Appellant has full insight into the gravity of her offence, has shown remorse and has conducted herself appropriately since.
23. In the light of the evidence adduced the Committee accepts that this was an isolated offence which was not premeditated and was entirely out of character. It is a matter that weighs in the Appellant's favour that she contacted the Society shortly after she was cautioned by the police. The Committee entertained concern that in her initial letter to the Society the Appellant's original self declaration was somewhat economical in that it could have misled the Society as to the true and grave nature of the offence for which she was cautioned. On balance it accepts that the Appellant did not intend to mislead and believed that fuller information would be requested from her, as indeed it was.
24. The Committee accepts that it is very unlikely that the Appellant will again commit a similar offence but it considers that this, in itself, is not sufficient to establish that the Appellant's "fitness to practice" is not impaired. The circumstances of the offence inevitably give rise to legitimate concern as to the Appellant's judgement and her ability to deal with general issues with probity and honesty when under pressure— a situation that may commonly occur in practice as in life. In this regard the Committee were considerably assisted by the evidence of Dr Gillian Hawkesworth who had the opportunity to observe the Appellant's development in her third year at University. Dr Hawkesworth, a former President of the Society, was an impressive witness who conscientiously confined her evidence to her opinion of the Appellant based on her contact with her as her project tutor. She told us that despite the

pressure that the Appellant must have been under in her third year she worked exceptionally hard and developed and matured very considerably. Her considered opinion was that it was extremely unlikely that the Appellant would repeat such behaviour and that the Appellant fully understands the importance of integrity and honesty.

25. The Committee is satisfied also by the evidence of the Appellant herself that she is truly aware of the full extent of the ethical responsibilities that go hand in hand with membership of the Society and professional standing as a pharmacist. The Committee considers that judged in the light of the evidence as to the Appellant's insight, remorse and her subsequent behaviour, sufficient time has elapsed since the commission of the offence to mark its gravity in the regulatory context as well as to enable it to be satisfied that her fitness to practice is not now impaired.

The Decision

26. It is right to say that the Committee considers that the decision of the Registrar was right on the basis of the material then before her. It was entirely correct in the circumstances of this case that the view was taken that the issues relevant to this appeal should be tested and probed in a hearing not least because of the public interest in the maintenance of high standards and public confidence in the profession. In the light of the evidence now adduced before it the Appellant has satisfied the Committee that her fitness to practice is not impaired. Accordingly it allows the Appeal and directs that the name of the Appellant is entered in the Register of Pharmacists forthwith.

**Siobhan Goodrich
Chair**