

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

**MUNTAZIR RAFIK (SO-11858)**

**A(19)17**

**AND**

**GENERAL OPTICAL COUNCIL**

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**DECISION OF THE REGISTRATION APPEALS COMMITTEE  
15 JANUARY 2020**

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| <b>Committee Members:</b>                 | Ms Julia Wortley (Chair/Lay)<br>Ms Nicola Jayne Enston (Lay)<br>Ms Victoria Smith (Lay)<br>Ms Claire Roberts (Optometrist)<br>Ms Denise Connor (Optometrist) |
| <b>Clinical adviser:</b>                  | Mr Nicholas Seivewright  |
| <b>Legal adviser:</b>                     | Ms Francesca Keen  |
| <b>GOC Presenting Officer:</b>            | Ms Ling  |
| <b>Appellant<br/>present/represented:</b> | Yes  |
| <b>Appellant representative:</b>          | Mr McGee (Counsel)<br>Ms Masud (Solicitor)   |
| <b>Hearings Officer:</b>                  | Ms A Shabani   |
| <b>Outcome:</b>                           | Appeal allowed.  |

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This is an appeal by the Appellant against the decision by the Registrar, advised on 17 October 2019, not to grant restoration to the General Optical Council's (GOC) Register, as a student optometrist.

## Background

1. The Appellant was first registered with the GOC in October 2015. On 4 September 2019 he was removed from the GOC student register for failing to complete his online student registration form and for failing to pay the required thirty pounds fee.
2. The relevant chronology of events is as follows: following repeated reminders by email, sent from the GOC to the Appellant, the Appellant was advised that he would be removed from the Register due to his failure to complete his student registration form and for failure Appellant to pay the required renewal fee of thirty pounds.
3. On 4 September 2019 the GOC wrote to the Appellant informing him that his name had been removed from the Register. On 09 September 2019, the Appellant completed an online restoration application form. On 10 September the Appellant contacted the GOC, after receiving an email from the GOC Registrations department, to make an online payment of thirty pounds. The Appellant received an invoice for that payment on the same date.
4. The GOC subsequently contacted the Appellant and requested that he complete a restricted activities form, having declared on the completed form that he had practised whilst unregistered. On 23 September 2019 the Appellant returned the restricted activities form to the GOC. On 26 September 2019 the GOC contacted the Appellant and requested further information regarding the restricted activities that had been undertaken by the Appellant during the period that he was unregistered. The Appellant confirmed, in an email of the same date, that he had seen thirty-four patients in total between 3 September 2019 and 19 September 2019.
5. On 17 October 2019 the Appellant was informed that the Registrar had refused his application for restoration to the register. The reasons provided by the Registrar were as follows:  
*'The Registrar is not satisfied that you are fit to train. From the information you have provided, you appear to have completed sight tests and completed an assessment whilst knowing you were unregistered. You also referenced [REDACTED] which could impact your fitness to train – these were not declared to us when you made your application on 10/09/2019'.*
6. On 5 November 2019 the Association of Optometrists contacted the GOC and informed it that they were representing the Appellant and that he wished to appeal the Registrar's decision.

7. Prior to the hearing the Committee was provided with a GOC bundle of documentation, which the Committee labelled as C1. The Appellant provided the Committee with two bundles of documents, the first bundle of documents, which the Committee labelled A1, contained the following:
  - i. 12 character references;
  - ii. a Royal Mail track and trace report;
  - iii. [REDACTED]
  - iv. Witness statement of [REDACTED].
8. The second bundle of documents, which the committee labelled as A2, contained the following:
  - i. Witness statement of [REDACTED].

#### **Evidence**

9. The Committee heard evidence from the Appellant on oath. His evidence was that whilst studying for an exam on 09 September 2019, he became aware that his name did not appear on the GOC register. The Appellant told the Committee that as a consequence of this information, he made attempts to gain access to his online GOC account and was unable to access it because he could not remember his password for the account. He told the Committee that owing to the university email account having expired, three months after leaving university, he was unable to obtain a temporary password to gain entry. He also informed the Committee that he had not received either of the letters sent recorded delivery by the GOC. He acknowledged that the letter dated 4 September 2019 had been collected and signed for on 7 September 2019, but stated that his father had collected this letter and never passed it to him. It was agreed by all parties that the letter dated 16 July 2019 had been returned to the GOC, by Royal Mail, unopened. The Appellant told the Committee that in an attempt to ensure that his name was put back on to the register, prior to an upcoming exam on the 11 September 2019, he completed an online form, which the GOC website had directed him to.
10. The Appellant informed the Committee that he contacted the GOC on the 10 September 2019 and asked to pay the fee for his registration. He explained to the Committee that in his mind, as he had completed the form and paid the thirty pounds fee, his name would be restored to the register.
11. The Appellant told the Committee that he then attended his Stage 2 exam on the 11 September 2019 and had presumed that his name was restored to the register. He told the Committee that his biggest “error” was not checking that his name had been restored to the register at this time.
12. [REDACTED].

13. The Appellant gave evidence to the Committee that upon returning to work, on 19 September 2019, he informed his supervisor that there had been an issue with his registration. The Appellant told the Committee that his supervisor advised that he check the register again, which he did after work on the same day. It was at this point that the Appellant stated that he realised that his name was still not on the register. The Appellant told the Committee that at this juncture, he stopped work immediately and did not treat any other patients.
14. The Appellant confirmed, during his oral evidence, that he had seen patients on a number of dates between the 3 September 2019 and the 19 September 2019 because he had been working under the albeit misguided assumption that he had been restored to the register because he had completed the online form and paid his fee. The Appellant told the Committee, he ceased practising, from the 19 September 2019, as he realised that his name had not been restored, notwithstanding the form being completed and the fee being paid.
15. He also accepted, during the course of his evidence that the burden of ensuring his registration details, including an up-to-date email address, lay with him. Further, he also acknowledged that the responsibility for ensuring that his name appeared on the register was entirely his.

### **Submissions**

16. The Committee heard submissions from both parties.
17. Ms Ling, on behalf of the GOC, submitted that the appeal should be refused for the reasons previously outlined by the Registrar and because the Appellant was not a 'fit and proper' person.
18. Mr McGee invited the Committee to allow the appeal, submitting that the Appellant:
  - i. was a person of previous good character;
  - ii. had been credible and honest throughout the proceedings and previous dealings with the GOC;
  - iii. that the Appellant's actions amounted to a mistake on his part;
  - iv. had demonstrated genuine remorse;
  - v. had accepted responsibility for his actions throughout proceedings; and
  - vi. was deemed, [REDACTED].

### **Determination**

19. The Committee accepted the advice of the Legal Adviser which had reminded the Committee of the following:

- i. the persuasive burden rests on the Appellant to demonstrate that he is a 'fit and proper person' to be re-admitted to the register, but there is no standard of proof;
  - ii. the issue of his fitness to return to the register is based on the Committee's independent judgement;
  - iii. Section 23G(1) of the GOC Registration Appeal Rules 2005 states that the options available to the Committee are as follows:
    - dismiss the appeal;
    - allow the appeal;
    - substitute the original decision with any other decision that could have made by the person who made the original decision; and
    - remit the case to the person who made the original decision for disposal in accordance with the directions of this Committee.
20. The Committee found the Appellant's evidence to be plausible and credible. The Committee accepted that giving evidence before it was a stressful and an unfamiliar experience for the Appellant and in its view might have explained why there were some inconsistencies in parts of his evidence. However, the Committee was in no doubt that the Appellant's failure to effect renewal of his registration, by 15 July 2019, was the result of an honest and genuine mistake on his part. The Committee was of the view that the Appellant had nothing to gain by deliberately failing to renew his registration.
21. The Committee accepted the evidence before it that the GOC bulk reminders had been issued to the Appellant's 'expired' university email account and that he had not received them. The Committee was also satisfied, on the evidence presented to it, that the first the Appellant knew of his removal from the register, was 9 September 2019. The Committee noted, in particular, that the Appellant had taken immediate steps to secure his entry back onto the register, by completing an online restoration form and by paying the thirty pounds fee required of him. Albeit the Appellant acknowledged to the Committee that he did not fully understand the difference between a renewal form and a restoration form, at that time.
22. The Committee was aware of its primary duty to protect the public and the public interest. The Committee accepted that the risk of repetition in the Appellant's case was negligible. Noting in particular that the Appellant had taken a number of steps to ensure that there was not a repeat of his conduct, such as creating a new email account, for use by the GOC, and which was connected to his mobile telephone and outlook email account. That he had set up "*reminders*" on his electronic and paper diaries, to act as a further fail safe, and ensure that the GOC bulk email reminders reached him in the future.

23. The Committee also noted the Appellant's [REDACTED], which stated [REDACTED]. In addition, the Committee was reassured by the extra measures, which the Appellant outlined as having taken [REDACTED].
24. The Committee was provided with character references that speak of the Appellant and his character in glowing terms.
25. The Committee also noted that the Appellant had demonstrated particular resolve in his commitment to qualifying and working in the optometry profession, having retaken his A-level exams and by restarting a degree having decided that he preferred optometry to biomedical science.
26. Taking all of the evidence before it into account, the Committee determined that the Appellant had demonstrated that he is a 'fit and proper' person to undertake training. It also determined that the Appellant's restoration to the register would not put members of the public at unwarranted risk of harm. Further, the Committee was satisfied that his restoration to the register would also not undermine the need to uphold proper professional standards and public confidence in the profession.
27. The Committee therefore allowed the appeal, quashed the decision appealed against and substituted the Registrar's decision with the decision to allow the Appellant to be restored to the Register.

**Chairman of the Committee: Julia Wortley**

Signed \_\_\_\_\_ 15 January 2020

**Appellant: Muntazir Rafik**

Signed \_\_\_\_\_ 15 January 2020

| <b>FURTHER INFORMATION</b>   |
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| <b>Appeal</b>  |
| Where the decision by the Registrar been upheld by the Registration Appeals Committee, the appellant may appeal against that decision through the Courts. The relevant court is shown at section 23G(4)(b)-(c) of the Opticians Act 1989 (as amended). |
| <b>Professional Standards Authority</b>  |
| This decision will be reported to the Professional Standards Authority.  |
| <b>Contact</b>   |
| If you require any further information, please contact the Council's Hearings Manager at 10 Old Bailey, London, EC4M 7NG or, by telephone, on 020 7580 3898.   |