

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

R(21)01

APPLICATION FOR RESTORATION

SUFYAN MALIK

**DETERMINATION OF THE REGISTRATION APPEALS COMMITTEE
5 OCTOBER 2022, 14 OCTOBER 2022 AND 28 OCTOBER 2022**

Committee Members:	Ms Julia Wortley (Chair/Lay) Dr Jackie Alexander (Lay) Mr Mark Richards (Lay) Ms Maninder Gudray (Optometrist) Ms Caroline Clark(Optometrist)
Legal adviser:	Ms Margaret Obi
GOC Presenting Officer:	Mr Dean Taylor
Applicant present/represented:	Yes and represented
Applicant representative:	Ms Katie Holland AOP
Hearings Officer:	Ms Abby Strong-Perrin
Outcome:	Application for Restoration Refused

1. On 5 October 2022, the Registration Appeals Committee of the General Optical Council met to consider an application by Mr Sufyan Malik ('the Applicant') for restoration to the register of optometrists ('the Register'). The Committee met to finalise its determination on 14 October 2022 and 28 October 2022 respectively.

Background

2. The Applicant first registered as an Optometrist on 20 August 2012. He has no adverse regulatory history apart from the decision made in 2018 ('the 2018 decision') that his name should be erased from the Register.
3. The 2018 decision relates to findings of misconduct against the Applicant made by a Fitness to Practise Committee ('the 2018 Committee') of the General Optical Council ('the Council'). The findings include inappropriate and sexually motivated behaviour towards two separate patients at the same practice and failing to provide a prescription to Patient A immediately after her consultation. The background to these findings can be summarised as follows:
 - In 2015 the Applicant was engaged as a Locum Optometrist. On 2 November 2015, during Patient C's sight test, the Applicant behaved flirtatiously towards her. He contacted her by text, without her consent, having obtained her telephone number improperly from the patient records. As Patient C had become concerned by the nature of the Registrant's conduct during her eyesight test, she made a recording of part of the consultation without his knowledge.
 - On or around 5 February 2016, at the practice, the Applicant behaved inappropriately during Patient A's consultation, while Child B was present in the consulting room.
4. The allegation considered by the 2018 Committee is set out below:

The Council alleges that you, Mr Sufyan Azeem Malik, a registered optometrist:

1. *On or around 2 November 2015, at [redacted], you conducted a sight test on Patient C and:*
 - a. *Your conduct towards Patient C was flirtatious; and/or*

- b. You obtained the telephone number of Patient C from her records;*
 - c. You obtained the telephone number of Patient C from her records without her consent; and/or*
 - d. You contacted Patient C via text message;*
 - e. You obtained the telephone number of patient C from her records without honestly believing that you had her consent*
- 2. On or around 5 February 2016, at [redacted], you conducted a sight test on Patient A and:*
- a. You stated to Patient A, whose son was present in the testing room, that*

'if only he had been left outside, my mind is wondering now', or words to that effect; and/or;
 - b. You stated to Patient A that you were 'thinking inappropriate thoughts' or words to that effect; and/or*
 - c. You stated to Patient A that you were 'sorry for saying inappropriate things, my mind gets carried away sometimes', or words to that effect; and/or*
 - d. You stated to Patient A that you could not believe that she was 'that old', or words to that effect; and/or*
 - e. You touched Patient A on her leg without her consent; and/or*
 - f. You dropped a spectacle lens in Patient A's lap and you:*
 - i. Attempted to retrieve it while stating 'there couldn't have been a*

better place for it to drop...well maybe' or words to that effect; and/or
 - ii. At the same time looked at Patient A's chest; and/or*

- g. You failed to provide Patient A with a signed, written prescription immediately following the test; and/or*
- 3. *Your conduct at 1(a) and/or 1(b) and/or 1(c) and/or 1(e) and/or 2(a) and/or 2(b) and/or 2(c) and/or 2(d) and/or 2(e) and/or 2(f) above was:*
 - a. inappropriate; and/or*
 - b. sexually motivated.*
- 4. *Your conduct at 2(g) above was inappropriate in that it was in contravention of Section 26(2) of the Opticians Act 1989*

And by virtue of the facts set out above, your fitness to practise is impaired by reason of misconduct.

The 2018 Decision

- 5. The allegations were found proved in their entirety. The Applicant admitted particulars 1(a), (b), (c) and (d), and 3(a) in relation to Patient C. The remaining particulars were found proved by the 2018 Committee.
- 6. When considering the issue of impairment the 2018 Committee determined that there was actual and potential emotional harm to both Patients A and C. The 2018 Committee determined that in acting as he did, the Applicant had brought the profession into disrepute, and there was no reassurance that he would be unlikely to do so again in the future.
- 7. The 2018 Committee went on to state:

“His reflective statement refers to “courses” that he has undertaken, but the Committee have only received a single advertisement of an online course with limited relevance to the breaches of the Code and without any certificates confirming completion. ...

The Committee determined that the Registrant’s actions amounted to a breach of one of the fundamental tenets of the profession, in not making the care of his patient his first concern. He abused his position of trust for personal, sexual reasons and his limited insight in respect of Patient C did not reassure the Committee that he was not liable to repeat his conduct in the future. The

Committee accepted, that he currently worked under conditions of practice which ensured he was chaperoned during sight tests. His absence of any meaningful insight meant that this was a procedural precaution on his part which did not meaningfully engage with a commitment to change his personal attitudes and conduct, which lay at the heart of his misconduct. ...

The Committee was concerned that the Registrant was at pains, through REDACTED, to impress on the Committee that he had given truthful evidence and that remained his position even as late as today. He had instructed REDACTED to embark on a searching test of the patient witnesses, and in particular Patient A. He showed no insight into the effects that this evidently had on both witnesses, despite the apology offered to Patient C, but stubbornly maintained his belief in her consent to be contacted. This did not sit comfortably with his assertion that he was now much better attuned to recognise sexual boundaries, particularly in a professional environment.

In regard to Patient A, the Registrant instructed that her character was to be traduced and she be regarded as a malevolent witness who had given untruthful evidence in pursuit of protecting her personal reputation.

The Committee found that the Registrant's fitness to practise as an Optometrist is impaired, on grounds of public protection and public interest.

8. At the sanction stage the 2018 Committee described the Applicant's behaviour as "repeated incidents of sexually motivated conduct towards two separate women, made within a short time of each other." The 2018 Committee noted that in relation to Patient A, a child was present, and that each patient appeared to have suffered at least some degree of emotional and psychological harm. The 2018 Committee concluded that the evidence of remediation and insight was limited.
9. The 2018 Committee acknowledged that the Applicant had no other relevant regulatory history and was a valued and highly skilled member of the profession. The 2018 Committee also noted that the Applicant had engaged with the proceedings and had produced a number of good character references. However, their value was limited as they were produced before the authors were aware of the full gravity of the incidents. Despite these positive features, the 2018 Committee concluded that a suspension order would be insufficient to protect the public from a real risk of harm, and to reassure the public. The 2018 Committee concluded that five of the seven factors which indicate that erasure may be the

appropriate sanction (as set out in paragraph 36.5 of the Indicative Sanctions Guidance) applied to this case; namely:

- a. *Serious departure from the relevant professional standards as set out in the Standards of Practice for registrants...*
- b. *Doing serious harm to individuals... and particularly where there is a continuing risk to patients;*
- c. *Abuse of position/trust i.e. misconduct occurred in the course of his employment (particularly involving vulnerable patients) or violation of the rights of patients;*
- d. *Offences of a sexual nature...*
- e. *e. ...*
- f. *f. ...*
- g. *g. Persistent lack of insight into seriousness of actions or consequences.*

10. The 2018 Committee concluded that erasure was the necessary, proportionate, and appropriate sanction.

APPLICATION FOR RESTORATION DETERMINATION

11. The Applicant gave oral evidence at the restoration hearing. Neither the Applicant nor the Council called any other witnesses to give oral evidence. The restoration hearing bundle provided to the Committee included the following documents:

- The Applicant's application for restoration;
- The 2018 decision;
- The Council's bundle for the 2018 substantive hearing;
- The Applicant's bundle for the 2018 substantive hearing'
- A screenshot of a LinkedIn profile;

- The Applicant's reflective statements x8 (dated 1 December 2018, 2 March 2019, 3 June 2019, 4 May 2020, 5 January 2021, 6 December 2021, 7 June 2022 and September 2022);
- The Applicant's CPD course certificates and course reflections;
- The Applicant's reflections on GOC Standards;
- Various character references from the Applicant's friends and colleagues.

The Applicant's Oral Evidence

12. The Applicant informed the Committee that he fully accepts the findings of the 2018 Committee. He acknowledged that he had '*crossed proper professional boundaries*' in respect of Patient C and although he maintained that his behaviour towards both patients was not sexually motivated, he stated that he recognised that such behaviour has "*no place in a personal space let alone a professional environment.*" He stated that he had learned from his mistakes and that as far as he was concerned the 2018 decision was final.
13. The Applicant stated that following the 2018 decision he "*took time out*" to "*deconstruct and understand what went wrong and what [he] could do differently.*" He informed the Committee that through his personal reflections he has now developed a deeper understanding of what is expected of him. The Applicant referred to his most recent reflective statement which he had prepared in September 2022. The Applicant stated that he regrets his behaviour on many levels including how he behaved during the hearing in 2018. He apologised for his actions and the impact his behaviour has had on colleagues, patients, and the profession. The Applicant confirmed that he had attended courses on insight, professional boundaries, remediation and reflection. He stated that initially he had focussed on personal development, but in the last few years he has also been attending a "*study circle*" which focuses on character development.
14. The Applicant informed the Committee that he currently owns a number of optical practices. He is also the Practice Manager for these businesses. He stated that management of the clinics and patient care is his priority. He also stated that he has a good working relationship with everyone that he works with. He is mindful of his interactions with women in particular and always ensures that he adopts a professional demeanour. In terms of career aspirations, the Applicant stated that, if restored to the Register as an Optometrist, his business role would still be his

priority, but it would be beneficial to patients and his career development if he could work within the practice 1 or 2 days a week. He explained that that this was because on occasion clinics had to be cancelled at short notice due to a shortage of clinical staff which “*is not nice for patients.*”

15. During examination in chief and during cross examination the Applicant denied that he had held himself out as being an Optometrist on LinkedIn. He stated that he had deactivated his LinkedIn account “*many years ago*” and the first time he saw the LinkedIn page within the hearing bundle (which bears the name - Sufyan Malik and refers to being an Optometrist) was when he received it from his legal representative. During cross examination the Applicant accepted that the LinkedIn page bore his photograph, the area he lives in, the university that he attended and a company that he had worked for.
16. During cross examination the Applicant confirmed that it remains his view that he was falsely accused by Patient A.
17. In response to questions from the Committee, the Applicant stated that to his knowledge he only ever had one LinkedIn account and he believed that he had deactivated it before he was erased by the 2018 Committee. He accepted that he had been ‘*flirtatious*’ with Patient C and in doing so he had crossed professional boundaries, but his intention had been to be “*friendly*”. In respect of Patient A, he stated that although her allegations were false, he has been able to theoretically put himself in her position and understands that she may have felt unsafe and violated. The Applicant informed the Committee that when he applied for a role with the Local Optical Committee Support Unit (LOCSU) he did not provide the Chief Executive with a copy of the 2018 decision but was open and honest about what had happened.

Submissions

18. Mr Taylor, on behalf of the Council, opposed the application for restoration.
19. Mr Taylor submitted that the 2018 Committee had found the Applicant’s evidence to be evasive and superficial and queried whether anything had changed. He further submitted that the seriousness of the conduct must be relevant to the Committee’s decision.

20. Mr Taylor invited the Committee to conclude that the Applicant was not candid with the Chief Executive of LOCSU and that his responses to the Committee, in respect of the LinkedIn account, were not convincing. Mr Taylor reminded the Committee that the courses undertaken by the Applicant had only recently been completed and therefore any insight that had been achieved was unlikely to be fully developed.
21. Mr Hamlet, on behalf of the Applicant, invited the Committee to disregard the LinkedIn page as a 'red herring' and a 'distraction'. He submitted that the provenance of the LinkedIn account was not clear and there was no evidence of any activity on that account since 2018.
22. Mr Hamlet acknowledged that the Applicant was impaired at the time of the hearing in 2018 but submitted that the two isolated incidents occurred 6-7 years ago and there has been no repetition. He reminded the Committee that the Applicant works within optical practices and has regular non-clinical contact with female patients and colleagues. He said there had been no similar incidents since the material events in 2015 and 2016.
23. Mr Hamlet submitted that the Applicant has demonstrated genuine insight and remorse. He further submitted that the Applicant has done all that can reasonably have been asked of him to demonstrate that he poses no risk to the public and has a great deal to offer patients. Mr Hamlet invited the Committee to conclude that in considering the public interest the balance weighs in favour of granting the application for restoration.

The Committee's Approach

24. The Committee reminded itself that the onus is on the Applicant to satisfy the Committee that he is fit to be re-admitted to the Register. The Committee should not seek to go behind the findings of the 2018 Committee's decision.
25. The Committee also reminded itself that it was for the Council to prove, on the balance of probabilities, that the LinkedIn account is the Applicant's account.
26. The Committee was also mindful that the Applicant was entitled to dispute the allegations and it would be wrong to equate his continued denial of sexually motivated behaviour with a lack of insight. Denials are not an absolute bar to a

finding of insight; just as admitting the facts and admitting misconduct does not necessarily mean that a practitioner understands the gravity of the facts found proved and is unlikely to repeat it. The assessment of the Applicant's insight is a matter for the Committee weighing all the evidence including his oral evidence.

27. The Committee accepted the advice of the Legal Adviser that the test to be applied when considering if an applicant should be restored is that set out in GMC v Chandra [2018] EWCA Civ 1898: Having considered the circumstances which led to erasure and the extent of remediation and insight, is the [the applicant] now fit to practise having regard to each of the three elements of the overarching objective?

28. The Committee has taken account of all the evidence, submissions, relevant law, and guidance. Factors to be considered by the Committee include:

- The circumstances which led to erasure;
- Any relevant matters post-dating these circumstances;
- The extent to which the applicant has shown remorse and insight;
- The extent to which the applicant has remediated;
- What the applicant has done since his name was erased;
- Steps taken to keep clinical knowledge and skills up to date;
- The length of time elapsed since erasure;
- Any risk posed by the applicant;
- Whether public confidence and professional standards would be damaged by restoring the applicant to the Register.

29. The Committee took account of all the evidence before it, both oral and documentary. It has also considered the submissions made by both parties.

The Committee's Decision

30. The Committee first determined whether the LinkedIn account was, on the balance of probabilities, the Applicant's account.

31. The Committee found a significant part of the Applicant's evidence in respect of the LinkedIn account to be very evasive and unconvincing. During cross examination, he was shown a copy of the LinkedIn in page and his initial response

to being asked if he was the person depicted in the photograph was “*It looks to be me*”. He then confirmed that it was his photograph. The Committee was aware that giving evidence is a stressful event and made allowances for that but concluded that the Applicant appeared reluctant to be open and honest that it was his image on the account.

32. The Committee noted that in addition to the photograph the LinkedIn account accurately reflected the area of the Applicant’s home address, the university he had attended, his qualification, and that he had previously worked for Boots. The Committee concluded that it was highly improbable that someone, other than the Applicant or someone instructed by him, had created this social media account.
33. The Committee made no finding as to whether the Applicant was holding himself out as an Optometrist. However, the Committee was satisfied that the LinkedIn account was the Applicant’s account. Therefore the Committee concluded that the Applicant had not been open and honest during his oral evidence, and this undermined his credibility and reliability.
34. The Committee went on to consider the factors relevant to the application for restoration.

The Circumstances that Led to Disciplinary Erasure

35. As outlined above, the 2018 Committee determined that the Applicant’s fitness to practise was impaired by reason of his misconduct. The Committee noted the nature and high level of seriousness of the Applicant’s actions. He was found to have abused his position of trust by engaging in sexually motivated behaviour towards two separate patients and exposed both patients to unwarranted psychological and/or emotional harm.
36. The Committee noted that the Applicant’s actions had brought the profession into disrepute and had breached one of the fundamental tenets of the profession in not making the care of his patient his first concern. The Committee had particular regard to the 2018 Committee’s findings at the sanction stage, in which it was stated that erasure was the only appropriate and proportionate sanction in the circumstances.

Insight and Remorse

37. The Committee considered the level and scope of the Applicant's insight and remorse. The Committee acknowledged that the Applicant had expressed regret, shame, and remorse. However, the Committee was not persuaded that this was because he genuinely recognises the impact his behaviour had on Patients A and C. The Committee also acknowledged that the Applicant has made a concerted effort to demonstrate insight but concluded that the depth and quality of his reflections were weak and unconvincing.
38. The Committee came to the conclusion that the Applicant had made a superficial attempt to demonstrate insight and remorse based on broad, generalised statements about the nature and gravity of his misconduct and the impact on others. However, when questioned by Mr Taylor and the Committee the Applicant failed to demonstrate meaningful insight. Although the Applicant appeared to have started the process of reflection from at least December 2018 and had produced a significant volume of reflective material the Committee was not persuaded that the quality of his reflections was sufficiently deep, and he did not appear to fully appreciate the impact of his behaviour on Patients A and C or the profession as a whole.
39. The Committee noted that the Applicant repeatedly stated, during his oral evidence, that he accepted full responsibility for his actions and had 'learnt lessons'. However, the Committee noted that the Applicant when asked, was unable to describe those self-development 'lessons' in any detail. The Committee considered that the Applicant was saying what he thought the Committee needed to hear. In relation to the further professional development training the Applicant has undertaken, the Committee was mindful that attending a course may be helpful, but it is the learning that has been achieved from that course and how it will be used in practice, which is of most significance. It was unclear to the Committee what the Applicant had learnt as the only mistake he could identify when asked by the Committee during his oral evidence was that he should have made better notes of the incident regarding his consultation with Patient A.
40. In these circumstances, the Committee concluded that the Applicant had not adequately demonstrated the ability to be self-critical, to fully acknowledge the rationale for his actions and take the opportunity to persuade the Committee that meaningful lessons have been learnt from the experience. The Committee

determined that the Applicant has demonstrated some insight. However, despite the efforts the Applicant has made to demonstrate insight, the Committee was not persuaded that he has made significant progress in relation to why he acted as he did. Therefore, the Committee concluded that the Applicant's insight is developing but there had not been a significant change in the level and scope of his insight since erasure.

Remediation

41. The Committee acknowledged that whilst findings of sexually motivated conduct are difficult to remediate, the risk of repetition may reduce, the longer the behaviour remains unrepeatable if there is commitment to change and meaningful reflection over time.
42. The Committee had regard to whether the Applicant had undertaken any remediation since his erasure and whether that remediation was relevant, measurable, and effective.
43. The Committee noted that the Applicant had undertaken numerous courses between May and October 2022. However, as stated above, it is the learning which has been achieved which is of most importance. The Committee was not persuaded that the Applicant has fully and appropriately reflected on his behaviour, particularly as he appeared to take the view one of the ways to address the finding of sexually motivated behaviour was to remove himself from certain situations rather than change his behaviour. In the Committee's view, although the Applicant has demonstrated some activity towards remediation, but he does not appear to fully recognise the gravity of the findings and has not fully accepted responsibility for his actions. The Committee concluded that until the Applicant fully addresses his insight, he is unlikely to be able to fully remediate his misconduct.

Risk of Repetition

44. The Committee took into consideration the Applicant's level of insight and its assessment of his remediation when considering whether there remained a risk that he would repeat his misconduct.
45. The Committee acknowledged that the relevant events occurred approximately 7 years ago and there is no evidence before it of repetition. However, the Committee took the view that if the risk has been reduced it is primarily because the personal consequences for the Applicant have been devastating and he would want to avoid something similar occurring in future, rather than a true acceptance and understanding of what he had done and why. The Applicant has not demonstrated sufficient insight into the conduct which underlies his misconduct and has not fully remediated his behaviour. Therefore, the Committee was of the view that the risk of repetition remains.

What the Applicant has done since their name was erased from the Register and the steps taken to keep their knowledge and skills up to date

46. The Committee noted that the Applicant remains involved in optometry as a business owner. Although he has been out of practice as an Optometrist for a significant period of time, the Committee noted that he has kept his knowledge and skills up to date. The Committee also noted that his clinical skills were not called into question during the 2018 hearing.
47. Therefore, the Committee was satisfied that a refusal of the application would not be on the basis of the Applicant's clinical competence.

The lapse of time since erasure

48. The Applicant was erased from the Register in 2018. Despite the passage of time the Committee was not satisfied that the Applicant has demonstrated sufficient insight and remediation for the reasons stated above.

Whether restoration will meet the statutory overarching objective

49. Having made the above findings, the Committee had regard to the statutory overarching objective. The Committee carefully balanced its findings against whether restoring the Applicant to the GOC Register will meet the overarching objective, considering each limb in turn.

Protecting, promoting, and maintaining the health, safety, and well-being of the public

50. The Committee was mindful of the serious findings that led to the Applicant's erasure in 2018. For the reasons it has already set out, with limited evidence of insight and remediation in relation to the Applicant's sexually motivated behaviour, the Committee concluded that the Applicant has not provided sufficient evidence that the public would be safe if he were to return to practise. As a consequence, the Committee determined that there would be an ongoing risk to patient safety if the Applicant were permitted to return to the Register. In these circumstances, the Committee concluded that restoration to the Register would undermine, rather than protect, promote, and maintain the health, safety, and well-being of the public.

Promote and maintain public confidence in the profession

51. In relation to the second limb of the overarching objective, the Committee took the view that public confidence in the profession would be seriously undermined by the restoration of the Applicant to unrestricted practice at this time.

52. In reaching this conclusion the Committee took into account the limited evidence of insight and remediation, within the context of a persistent and serious course of sexually motivated conduct. The Committee took the view that a well-informed member of the public would be concerned to learn that an Optometrist who had abused his position of trust and demonstrated sexually motivated behaviour, compromising the health and well-being of two patients, was permitted to return to the Register unrestricted, despite an inadequate level of insight and remediation.

Promote and maintain profession standards and conduct

53. With regard to the maintenance of professional standards and conduct for members of the profession, the Committee was satisfied, for the reasons given above, that restoring him to the Register would be inconsistent with promoting and maintaining professional standards of conduct in the profession.

Conclusion

54. Having carefully considered the evidence and specific circumstances of this case, the Committee was not satisfied that the Applicant is fit to return to the Register.

55. Accordingly, the Committee refused the Applicant's application to be restored to the Register of Optometrists.

Chair of the Committee: Ms Julia Wortley

Signed _____  _____ Date: 28 October 2022

FURTHER INFORMATION
Transcript
A full transcript of the hearing will be made available for purchase in due course.
Appeal
Any appeal against an order of the Committee must be lodged with the relevant court within 28 days of the service of this notification. If no appeal is lodged, the order will take effect at the end of that period. The relevant court is shown at section 23G(4)(a)-(c) of the Opticians Act 1989 (as amended).
Professional Standards Authority
This decision will be reported to the Professional Standards Authority (PSA) under the provisions of section 29 of the NHS Reform and Healthcare Professions Act 2002. PSA may refer this case to the High Court of Justice in England and Wales, the Court of Session in Scotland or the High Court of Justice in Northern Ireland as appropriate if they decide that a decision has been insufficient to protect the public and/or should not have been made, and if they consider that referral is desirable for the protection of the public.

Where a registrant can appeal against a decision, the Authority has 40 days beginning with the day which is the last day in which you can appeal. Where a registrant cannot appeal against the outcome of a hearing, the Authority's appeal period is 56 days beginning with the day in which notification of the decision was served on you. PSA will notify you promptly of a decision to refer. A letter will be sent by recorded delivery to your registered address (unless PSA has been notified by the GOC of a change of address).

Further information about the PSA can be obtained from its website at www.professionalstandards.org.uk or by telephone on 020 7389 8030.

Effect of orders for suspension or erasure

To practise or carry on business as an optometrist or dispensing optician, to take or use a description which implies registration or entitlement to undertake any activity which the law restricts to a registered person, may amount to a criminal offence once an entry in the register has been suspended or erased.

Contact

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.