PUBLIC RECORD

Dates: 27/08/2024 - 29/08/2024

Medical Practitioner's name:	Dr Abubakr Ali Kambal OSMAN
GMC reference number:	6099725
Primary medical qualification:	MB BS 2002 University of Khartoum

Type of case
Restoration following disciplinary erasure

Summary of outcome
Restoration application granted. Restore to Medical Register.

Tribunal:

Legally Qualified Chair	Mr Paul Moulder
Medical Tribunal Member:	Dr Farhan Munawar
Medical Tribunal Member:	Dr Candida Borsada

Tribunal Clerk:	Mr Matt O'Reilly

Attendance and Representation:

Medical Practitioner:	Present, not represented
GMC Representative:	Ms Jade Bucklow, Counsel

Attendance of Press / Public
In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held partly in public and partly in private.

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Restoration - 29/08/2024

1. The Tribunal has convened to consider Dr Osman's application for his name to be restored to the medical register following his erasure for disciplinary reasons in 2017.

2. The Tribunal has considered the application in accordance with Section 41 of the Medical Act 1983, as amended ('the Act') and Rule 24 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules').

3. This is Dr Osman's first application to be restored to the medical register.

Background

4. Dr Osman's case was considered by a Medical Practitioners Tribunal between 19 June 20217 and 3 July 2017 ('the 2017 Tribunal'). The Allegation related to Patient A and Patient B, both of whom were patients of Dr Osman when he was a General Practitioner at Goodwood Court Medical Centre.

5. Dr Osman's case was referred to the GMC by Sussex Police following his arrest for the suspected offence of obstructing HM Coroner in the execution of her duty in relation to the death of Patient B. This related to the suspected falsification of medical records and lying to the Coroner's Officer in relation to a consultation with Patient B shortly before his death. The GMC subsequently received further information from NHS England in relation to events surrounding the death of Patient A. After investigation by the Police no criminal prosecution was proceeded with.

Patient A

6. Patient A had been under the care of the Child and Adolescent Mental Health Service (CAMHS). On 2 April 2013 CAMHS had written to Dr Osman advising him to stop Patient A's

Mirtazapine. On 8 April 2013 Dr Osman stopped the Mirtazapine but on 12 April he issued a repeat prescription for a three-month supply of the drug to Patient A. On 17 May 2013 CAMHS wrote to Dr Osman advising him to stop Patient A's Concerta. A subsequent letter from CAMHS dated 19 July 2013 confirmed that both drugs should be stopped. On 5 August 2013, however, Dr Osman prescribed Patient A a three-month supply of Mirtazapine and a one month supply of Concerta. On 21 October 2013 Patient A committed suicide.

7. On 25 October 2013 the Coroner wrote to the Practice requesting a full medical report which should include any medication that he was being prescribed and a full medical history. Dr Osman responded to the Coroner on 29 October 2013 but his report contained no information under the heading 'Current and recent medication'.

8. On 31 October 2013 Dr Osman provided NHS England (in response to a request) with a set of medical records for Patient A which was incomplete: entries for 4 and 5 August 2013 (relating to a request for medication followed by a prescription being issued) and entries from 2 April 2013 and 8 May 2013 relating to medications reviews were missing.

9. The 2017 Tribunal found that between 8 April 2013 and 5 August 2013 Dr Osman failed adequately to review or monitor Patient A's medication, issued Patient A with prescriptions (on 12 April 2013 and 5 August 2013) which were not clinically indicated; and inappropriately prescribed a three-month supply of Mirtazapine.

10. The 2017 Tribunal further found that on 29 October 2013 Dr Osman provided to the Coroner a record of Patient A's medication which was incomplete and which he knew to be incomplete. The 2017 Tribunal accepted the GMC's case that Dr Osman had deliberately omitted the information relating to current and recent medication as he was attempting to conceal the fact that he had recently issued repeat prescriptions for both Mirtazapine and Concerta. The 2017 Tribunal also found that on 31 October he provided NHS England with a set of medical records for Patient A which he knew to be incomplete.

Patient B

11. Patient B was a known heroin user. On 17 February 2014 he contacted the Practice to seek advice in relation to an abscess in his groin. Dr Osman, as the triage doctor on that day, spoke to Patient B. The 2017 Tribunal found that this consultation took place over the telephone and not (as Dr Osman had contended) in person.

12. In the early hours of 20 February 2014 Patient B died at home from a fatal bleed after the abscess burst.

13. On 20 February 2014 Dr Osman made an entry in Patient B's medical records which documented a purported examination of Patient B on 17 February *("I had seen him on the 17th February as he came in in the morning; abscess in groin area fingernail-sized, slightly tender had already burst with some pus coming out. Wasn't unwell").*

14. Also on 20 February 2014 Dr Osman informed the Coroner's Officer that he had seen Patient B a few days previously and that he had examined the abscess in his groin, that the abscess was not too big and that it had not presented as such a risk during his examination. He provided the Coroner's Officer with a copy of Patient B's medical notes which contained the (false) entry referred to above.

15. On 12 March 2014 Dr Osman spoke again to the Coroner's Officer, asserted that he had examined Patient B's abscess on 17 February and reiterated the (false) examination findings in the medical notes.

16. The 2017 Tribunal found that on 17 February 2014 Dr Osman failed to undertake a proper assessment of Patient B by undertaking, or arranging for, a physical examination of him, and inappropriately issued a prescription for Flucloxacillin without having examined him and when it was not clinically indicated. The 2017 Tribunal further found that Dr Osman failed to refer Patient B to hospital and failed to record in Patient B's medical records how long the abscess had been present for and whether he was suffering from a fever.

17. The 2017 Tribunal also found that Dr Osman had made an entry in Patient B's medical records containing false information; made a number of false statements to the Coroner's Officer in respect of Patient B on 20 February 2014; provided to the Coroner's Officer on 20 February 2014 a copy of Patient B's medical notes which contained the false entry he had made; and on 12 March 2014 again made false statements to the Coroner's Officer in respect of Patient B.

18. In respect of dishonesty, the 2017 Tribunal concluded that Dr Osman *"knowingly provided the Coroner with an incomplete record of Patient A's medication, which did not include specific information that had been requested … this was done in order to conceal the fact that [he] had recently prescribed Patient A medication that [he] had been advised to stop by the CAMHS team."*. The 2017 Tribunal applied the *Ghosh* test and was satisfied that his conduct would be considered dishonest by the standards of ordinary and honest people and that Dr Osman must have realised that his conduct was dishonest by those standards. It was also satisfied that his conduct in knowingly providing incomplete records to NHS England would again be regarded as dishonest by the standards of ordinary and decent people and

that Dr Osman must have realised that his conduct in consciously choosing to omit something that was highly relevant was dishonest.

19. In relation to Patient B, the 2017 Tribunal did not accept Dr Osman's evidence that when he made the false entry he genuinely believed that he had seen Patient B. It found that the impetus for him to update the record was the call from the Coroner's Officer and that the making of false statements was behaviour which would be considered dishonest by the standards of ordinary and honest people and would have been known to be dishonest by Dr Osman.

20. Dr Osman made a number of admissions in respect of the Allegation and the 2017 Tribunal subsequently made a number of findings of fact:

1. Between 8 April 2013 and 5 August 2013, you:

    a. failed to adequately review or monitor Patient A's medication; **Admitted and found proved**

    b. issued Patient A with the following prescriptions that were not clinically indicated:

        i. Mirtazapine on 12 April 2013; **Admitted and found proved**

        ii. Mirtazapine on 5 August 2013; **Admitted and found proved**

        iii. Concerta on 5 August 2013. **Admitted and found proved**

2. Your prescribing as set out at paragraph 1b i to ii was inappropriate in that you prescribed Patient A a three month supply of Mirtazapine. **Found proved**

3. On 29 October 2013, you provided to the Coroner a record of Patient A's recent medication which:

    a. was incomplete; and/or **Admitted and found proved**

    b. you knew to be incomplete. **Found proved**

4. On or around 31 October 2013, you provided NHS England with a set of medical records for Patient A which you knew to be incomplete.
Admitted and found proved

5. On 17 February 2014, you:

   a. failed to undertake a proper assessment of Patient B, in that you failed to:

      i. undertake a physical examination of Patient B;
      Found proved

      ii. arrange for Patient B to undergo a physical examination.
      Found proved

   b. inappropriately issued Patient B with a prescription for Flucloxacillin:

      i. without having examined Patient B; **Found proved**

      ii. when such was not clinically indicated. **Found proved**

6. On 17 February 2014, you failed to refer Patient B to hospital. **Found proved**

7. On, or around, 17 February 2014, you failed to record in Patient B's medical records:

   a. how long Patient B's abscess had been present for; **Found proved**

   b. whether Patient B was suffering from a fever. **Found proved**

8. On 20 February 2014, you:

   a. made an entry in Patient B's medical records containing false information, in that you made the entry set out in Schedule 1.
   Found proved

   b. made a number of false statements to Mr C, Coroner's Officer, in that you:

i. stated that you had, "seen [Patient B] a few days previously and examined the abscess in his groin" or words to that effect; **Found proved**

ii. described Patient B's abscess as, "not too big" or words to that effect; **Found proved**

iii. stated that Patient B's abscess, "had not presented as such a risk during your examination" or words to that effect. **Found proved**

c. provided Mr C with a copy of Patient B's medical notes which contained the false entry set out in Schedule 1. **Found proved**

9. On 12 March 2014, you made a number of false statements to Mr C, Coroner's Officer, in that you stated that:

a. you had examined Patient B's abscess on 17 February 2014, or words to that effect; **Found proved**

b. reiterated the examination findings found in Schedule 1 to Mr C. **Found proved**

10. You knew that your representations as described at paragraphs 8 and 9 above were false in that you knew you had not undertaken a physical examination of Patient B on 17 February 2014. **Found proved**

11. Your actions as described at paragraphs 3, 4, 8, 9 and 10 were:

a. misleading; **Admitted in relation to 3(a), Found proved in relation to 3(b), 4, 8, 9 and 10**

b. dishonest. **Found not proved in relation to 3(a), Found proved in relation to 3(b), 4, 8, 9 and 10**

Schedule 1

"History: TC with Mr C from coroners office 404032. Pt passed away – i had seen him on teh 17th February at teh beginning of my triage day as he came in in the morning ; abscess in groin area fingernail sized slightly tender had already burst with some pus coming out. Wasn't unwell.

Examination: fax centre of copy of nodes to 404042."

21. When considering misconduct in respect of Patient A, the 2017 Tribunal concluded that there had been a number of systematic failings in the care and treatment of Patient A. It determined that Dr Osman's failings had fallen below the expected standards, but that they were not so serious as to amount to misconduct.

22. When considering misconduct in respect of Patient B, the 2017 Tribunal was of the view that Dr Osman's failure to examine Patient B or arrange for him to be examined at the practice or to refer him to hospital, and Dr Osman's failure to make a proper record of that consultation, were seriously below the standards expected of a reasonably competent GP. The 2017 Tribunal concluded that Dr Osman's actions amounted to serious misconduct. It also determined that Dr Osman intended to mislead and had acted dishonestly on multiple occasions. This included, in relation to Patient A, providing incomplete medical records to the Coroner and to NHS England. In relation to Patient B, making false entries into his medical records and providing the Coroner's officer with medical notes which Dr Osman knew contained a false entry.

23. The 2017 Tribunal concluded that Dr Osman's dishonest behaviour fell far short of the standards that the public and the profession were entitled to expect from all registered medical practitioners. The 2017 Tribunal determined that Dr Osman's dishonest behaviour, which included departures from the fundamental tenet of probity, would be considered serious and wholly unacceptable by both the public and fellow practitioners. It concluded that Dr Osman's intentionally misleading and dishonest actions amounted to serious misconduct.

24. When considering impairment in respect of Dr Osman's failings relating to his clinical care of Patient B, the 2017 Tribunal concluded that he had full insight and recognised the seriousness of his failings, as well as their consequences. It was satisfied that he expressed deep sorrow and regret for them and that Dr Osman had made impressive efforts to remediate his misconduct. The 2017 Tribunal concluded that the risk of repetition in relation to his clinical care of Patient B was very low. It determined that Dr Osman's fitness to practise was not impaired in relation to his clinical treatment of Patient B.

25. When considering impairment in respect of Dr Osman's probity, the 2017 Tribunal took account of his statement that he had been dishonest, though it noted that he had made a number of qualifications to that statement in his evidence. The 2017 Tribunal noted that Dr Osman told it that he had let down his profession, his patients and the Coroner. The 2017 Tribunal took the view that Dr Osman struggled to come to terms with and to openly accept his guilt in relation to his misleading and dishonest actions. It accepted that Dr Osman recognised the harm that his dishonesty caused and that he was remorseful. The 2017 Tribunal considered Dr Osman's steps to remediate, the CPD he had undertaken and the significant progress to address his dishonest actions. It concluded that Dr Osman had shown sufficient insight into his dishonest behaviour, and submitted credible evidence to demonstrate that he, at the time of the determination, maintained high standards of probity, so that the risk of repetition was very low.

26. The 2017 Tribunal considered however that it had a duty to maintain the public's confidence in the profession and to declare and uphold proper standards of conduct and behaviour. It considered that doctors occupy a position of privilege and trust in society and are expected to act with integrity and that the public was entitled to expect that doctors be honest and trustworthy at all times. It bore in mind that Dr Osman's dishonest actions did not amount to a single incident, but multiple incidents involving more than one patient and including intentionally misleading and dishonest behaviour to a Coroner. The 2017 Tribunal was in no doubt that public confidence in the medical profession would be undermined if it were not to make a finding of impairment. It determined that Dr Osman's fitness to practise was impaired by reason of misconduct in respect of his dishonesty.

27. The 2017 Tribunal reconvened on 3 July to consider the question of sanction. It imposed a sanction of suspension for 4 months and determined that a review hearing was not required.

GMC Appeal

28. Following the decision of the 2017 Tribunal, the GMC successfully appealed the decision to suspend Dr Osman's registration for four months. The 2017 Tribunal's decision was quashed by the High Court and the sanction of erasure was substituted on 13 December 2017.

The Current Restoration Hearing

29. This Tribunal has convened to consider Dr Osman's first application for his name to be restored to the medical register in accordance with Section 41 of the Medical Act 1983 (as amended) and Rule 24 of the GMC (Fitness to Practise) Rules 2004 (as amended).

The Evidence

30. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included, but was not limited to:

- The 2017 Tribunal's Record of Determinations;
- The transcripts of the 2017 MPT hearing;
- The High Court Order quashing the 2017 Tribunal's decision to suspend Dr Osman's registration and replacing it with an order of erasure, dated 13 December 2017;
- Dr Osman's application for restoration to the register, dated 14 January 2024;
- Testimonials, various;
- Dr Osman emails concerning GP Return to Practice Programme, various;
- Dr Osman's Appraisal for 2017-2018;
- A list of Continuous Professional Development, various;
- Email in respect of a Diploma in Diabetes, dated 26 August 2024;
- GMC v Dr Osman Skeleton Argument to appeal the 2017 Tribunal's decision to suspend Dr Osman's registration;
- Various additional supporting documents.

Witness Evidence

31. The Tribunal received oral testimonial evidence on behalf of Dr Osman from the following witnesses:

- Dr C, Regional Medical Director for AT Medics / Operose Health, Northwest London and GP Educator;
- Dr D, Clinical Lead, Canberra Old Oak Surgery, Northwest London;
- Miss E, Regional Manager, AT Medics / Operose Health.

32. Dr Osman also provided oral evidence during the hearing.

Summary of Dr Osman's oral evidence

33. Dr Osman said that after he was erased from the register by the High Court in 2017 he was feeling low, ashamed, embarrassed and full of self-pity and he did not know how he was going to take care of his family. He said he was lucky that his employers (AT Medics / Operose Health) continued to employ him and offered him a job as a manager. He said he continued working hard and wanted to prove himself. He said that two things helped him

shape his understanding of his misconduct: XXX, and speaking about his misconduct and the findings of the 2017 Tribunal with colleagues and family. He said that he recognised that he had been making excuses and blaming his conduct on others and circumstances in his life at that time, but had come to realise that he himself was to blame and admitted his failings.

34. Dr Osman said that he used the 2017 Tribunal's findings to target his medical knowledge, PDP, and read more about record keeping, probity and ethics. He said that he had discussions with Dr C who he said was very helpful in opening his mind with simple discussions as a learning opportunity. Dr Osman said initially his role at AT Medics / Operose Health was purely administrative, non-clinical, ensuring performance, safety and efficiency in the six practices in his region, which would include meeting the enhanced services Quality and Outcomes Framework ('QOF') scheme and clinical governance. He said that an earlier role he held before his current role was that of a quality improvement manager which was mainly to do with targets and performance, working with thirteen practices, but then he held the role of deputy regional manager then as a regional manager, working with six practices. Dr Osman said that he also did voluntary work and that it gave him a lot of satisfaction but there was much more that he could do.

35. When asked by the Tribunal how he had moved on from having been erased, Dr Osman said that he appreciated the difficult position the GMC and the Tribunal had because his actions were repeated acts of dishonesty. He said he appreciated the job of the GMC maintaining public confidence in the profession but also protecting the public from bad doctors. He said that he had moved on quite a lot from that time and was more at peace with himself as he had built on and learned from his mistakes. Dr Osman said that *"we are all human"* and that doctors always strive for excellence, although invariably mistakes will happen and learning from them can lead to improvement. Dr Osman said that he targeted certain areas for his CPD as a result of case-based discussions which he then developed with further reading. Dr Osman told the Tribunal about the CPD he had undertaken, including probity and ethics courses and having completed a Diploma in Diabetes in 2018.

36. Dr Osman accepted that he had deliberately misled the Coroner's office and NHS England. Dr Osman said that he had felt incensed that he was under investigation, as he considered himself to have been a very good GP partner and in his pain and arrogance from the situation he kept on repeating his denials until he believed it himself. He said he maintained those denials when he was arrested by the police and when appearing at the 2017 Tribunal.

37. Dr Osman told the Tribunal that it was about two years later when he fully admitted the truth. Dr Osman said that XXX. He said that he had been blaming others rather than

taking responsibility himself; he needed to accept his failures; and he recognised that he had previously maintained a deep denial. He said one of the things he found when he started looking back at what happened between 2014 and 2017 and the amount of courses he went on was that he was not looking to learn from his failures to own up to them. Rather, he had been seeking to justify the story he had in his mind and that was why he did not examine himself properly. He said that he first started to admit the full extent of his actions around 2020/2021 as a result of these XXX and he started to speak openly to his colleagues about what happened to him. Dr Osman described a particularly pivotal moment when he was challenged in a practice meeting, which had brought home to him the need for complete openness.

38. Dr Osman said that he had previously apologised to Patient A's parents at the Coroner's inquests and Patient B's brother at his inquest as he wanted to convey his sympathies for their loss and for his part in prolonging their misery although at that point he had not shared the full information with the Coroner. He accepted that he was portraying his failure to share the information with the Coroner as an oversight.

39. In his current role Dr Osman said that he had observed consultations with doctors and patients. Dr Osman said that he was exposed to a lot of relevant processes in general practice and was involved in attending clinical practice meetings, clinical updates, and medical safety meetings in his role. In that event he had not considered doing a clinical fellowship or clinical placement as a way of keeping his knowledge up to date. He accepted that he felt he had become quite *"rusty"* in terms of patient consultations, however observing Dr C had been helpful. He said that he had made enquiries in respect of a GP return to practice program should his application for restoration be successful. Dr Osman said that he would need to ensure that he would be practicing safely in a supportive environment.

40. Dr Osman said that it was important for him to apply for restoration to be able to "*forgive himself"*, having become low in self-esteem. He said that in admitting his failures and making the decision to learn from them, he had been able to share those failures so they were not repeated and to put the patient at the centre of care. He also said that he could improve patient care in his region with the voluntary and community events as part of his atonement.

41. When considering public confidence in the profession, Dr Osman said that, on the basis that the GMC made a correct decision to erase him from the medical register at the time, he hoped that the procedure also allowed for someone to be restored to the register if they were suitable. He said that if he were restored to the register, confidence in that regulatory process and upholding standards would be maintained.

Submissions

Submissions on behalf of the GMC

42. Ms Bucklow, Counsel on behalf of the GMC, referred the Tribunal to the MPTS *'Guidance for medical practitioners tribunals on restoration following disciplinary erasure'* ('the Guidance'). She said the Guidance set out important factors for the Tribunal's consideration when determining whether to restore Dr Osman's name to the medical register. She said that the discretion the Tribunal had was broad and that it could restore the doctor if it determined that he was fit to practise and that any restoration would have to be without conditions or restrictions. Ms Bucklow submitted that this was an important consideration because whilst Dr Osman had set out things in his statement that he would do, effectively undertaking self-imposed restrictions on his practise, these were not binding.

43. Ms Bucklow submitted that the onus was on Dr Osman to satisfy the Tribunal that he was fit to return to unrestricted practise. She reminded the Tribunal that it should not go behind the original findings that led to Dr Osman's erasure. She said that the test to be applied was that, having considered the circumstances which led to erasure, together with the extent of remediation and insight demonstrated, the Tribunal must consider whether the doctor is now fit practise having regard to each of the three elements of the overarching objective.

44. Ms Bucklow submitted that the application for restoration by Dr Osman was opposed by the GMC and that he was not fit to be restored to the medical register. Ms Bucklow referred the Tribunal to the relevant paragraphs of the Guidance. She said that, unfortunately and despite the efforts of all, the judgment on appeal quashing the original sanction of suspension and substitution of erasure was not available. She said however, that it was known that Dr Osman was erased from the register due to his dishonesty. Ms Bucklow said that the application for restoration should be refused.

45. Ms Bucklow reminded the Tribunal that the 2017 Tribunal did not find Dr Osman impaired by reason of the clinical concerns, rather that it was the probity matters which gave rise to a finding of misconduct and impairment. She said that dishonesty itself was at the top end of the spectrum of misconduct and that it was well established in case law that even one-off instances of dishonesty could be sufficient to lead to a sanction of erasure. Ms Bucklow submitted that Dr Osman's dishonesty was repeated; that there was an element of sophistication to it; that it related to two separate patients following their deaths; that the dishonesty was in relation to both patients in communication with the Coroner's office and,

in respect of Patient A, it also related to NHS England. She said that the context of this was that Dr Osman was dishonest within legal proceedings in the coronial process and the coronial inquiry into the deaths of two patients. Ms Bucklow said that the dishonesty was sustained through each of these stages, and that it directly related to Dr Osman's clinical practice. She invited the Tribunal to consider that it may find it difficult to come up with circumstances in which dishonesty could be any more serious for a medical professional. She said Dr Osman's conduct was fundamentally incompatible with being a doctor.

46. Ms Bucklow submitted that Dr Osman indicated that his understanding of the judgment by the High Court regarding the sanction of erasure was that his insight was the issue. She said that even if this Tribunal were to find that Dr Osman had insight, dishonesty was still difficult to remediate because dishonesty was a behavioural and attitudinal concern, particularly where it has been repeated and sustained over a long period of time. Ms Bucklow said that there was some difficulty for the Tribunal as it did not have a comparison in terms of what the High Court's findings were in relation to Dr Osman's insight and remediation at that point, compared to the position now. She said however that ultimately, when deciding whether to restore Dr Osman to the register, the Tribunal would have to assess some of those criteria again, as at present, in determining whether he was fit to practise having regard to the overarching objective.

47. Ms Bucklow submitted that the Guidance also indicated that the Tribunal may wish to consider whether the doctor has shown insight into the matters which led to his erasure in the first place. She said that Dr Osman has accepted his wrongdoing but that the timing of the development of his insight was problematic. The matters related to two separate patients some months apart, with almost identical allegations, and that there was certainly no reflection on his actions between Patient A and Patient B. Ms Bucklow said that Dr Osman repeated the conduct with Patient B, it seemed without hesitation. She said he did not develop insight close in time to his actions, at the time of his arrest, at the inquest, nor during the GMC investigation, when the allegations were put to him. Ms Bucklow said that Dr Osman also maintained his false account regarding his actions at the 2017 hearing.

48. Ms Bucklow submitted that the Tribunal would need to consider whether Dr Osman had apologised to those involved. She said that he did apologise at the respective inquests to someone close to Patient A and Patient B. However, at that time Dr Osman was still not being open and transparent to those families about the true extent of his actions. When considering remediation, Ms Bucklow submitted that Dr Osman provided evidence of courses in relation to ethics and probity, but that most of those courses predate the 2017 Tribunal hearing in which he maintained a dishonest position. Ms Bucklow submitted that the lack of a

reason for the dishonesty and the fact it had been sustained for so long may give rise to concerns about a risk of repetition.

49. When considering the overarching objective and in particular patient safety, Ms Bucklow submitted that although Dr Osman had not been found impaired by reason of his clinical care in respect of either patient, the Tribunal may consider that probity was relevant to patient safety. The falsifying of medical records could impact on the continuity of care in general. When considering the passage of time since Dr Osman last practised as a doctor, Ms Bucklow said that the Guidance also referred to a greater likelihood that a doctor's knowledge and skills would have deteriorated, the longer they are absent from practice.

50. Ms Bucklow said Dr Osman had, to his credit, maintained employment with his current employer within the medical field since he was erased from the register, albeit in a managerial administrative role that had not required a clinical qualification. Ms Bucklow acknowledged however that Dr Osman had undertaken what appeared to have been a significant amount of self-directed learning, reading and discussions with colleagues about particular clinical issues. However, she submitted, Dr Osman had not undertaken any clinical research or fellowship, nor a formal clinical placement. Ms Bucklow submitted that Dr Osman's learning was not measurable or structured; his recent efforts to maintain his clinical knowledge would not be enough to ensure that he was currently fit to practise because he would be returning to the register unrestricted.

51. When considering public confidence in the profession, Ms Bucklow referred the Tribunal to paragraphs B58 and B59 of the guidance which state:

> *"patients and members of the public must be able to trust doctors with their health, safety and well being. Doctors are expected to act with honesty and integrity to ensure their behaviour justifies that trust'*
>
> *'Where a doctor's past behaviour is so serious that it remains capable of undermining the trust that the public places in doctors, it is unlikely that restoration will be in line with the overarching objective. This applies to behaviour both inside and outside of a doctor's professional practice. There will be some cases where, even if insight and remediation have been fully demonstrated, public confidence in the profession would be undermined by allowing the doctor to practise again."*

52. Ms Bucklow submitted that these paragraphs reflect the circumstances of Dr Osman's case and that public confidence would be undermined if Dr Osman were restored to the

register. Ms Bucklow submitted that it took Dr Osman an unacceptable length of time to admit what he had done; his misconduct was so serious that restoration would undermine public confidence in the profession. She submitted that a fully informed member of the public would be very concerned to learn that Dr Osman had been allowed to return to practice. Ms Bucklow said it would undermine public confidence in the medical profession, in the regulatory process and the maintenance of proper professional standards if Dr Osman were allowed to practise again. She submitted that even if the Tribunal were satisfied that Dr Osman's conduct was unlikely to reoccur, there was an expectation that conduct of this nature marks the end of a doctor's career.

Submissions made by Dr Osman

53. Dr Osman reminded the Tribunal that it could take into account the 2017 Tribunal's decision on Facts and Impairment, which had not been the subject of an appeal. Dr Osman drew the Tribunal to that decision in respect of his insight, remediation, remorse, CPD and the low risk of repetition. He referred the Tribunal in some detail to the Guidance and what he submitted were the relevant paragraphs.

54. Dr Osman invited the Tribunal to review his witness statement and oral evidence in cross examination. He also invited the Tribunal to consider the testimonial evidence from his colleagues. These, he submitted, referred to his increasing insight and sharing of learning to prevent future failure, by himself and the whole team. Dr Osman said that he was using his experience to nurture a supportive environment, championing both the patient and community events, and this too was supported in statements from his colleagues.

55. Dr Osman said that the 2017 Tribunal had identified his partial acceptance of dishonesty but still recognised some insight. He had attempted to apologise to the patients' families regarding their loss at the end of the coronial hearing. He said that his insight journey had started early on. Despite the length of time, Dr Osman said, he did not sit back but had developed full insight and he continued to explore and understand where things went wrong and why. Dr Osman referred the Tribunal to the support he has had from his colleagues. In respect of remediation, he referred the Tribunal to courses he has completed which included probity, ethics, prescribing and management of vulnerable patients. Dr Osman referred the Tribunal to his detailed reflective statements, and noted that a lot of his CPD was targeted and including learning from case based discussions, cases he picked up from clinical meetings he attended and from his own observations.

56. Dr Osman pointed towards his learning from his own failure, trying to promote a duty of candour and efforts to put patients at the centre of care when dealing with complaints, in

relation to good practice. Although he acknowledged that the Guidance set out that dishonesty can be difficult to remediate, Dr Osman submitted that the Guidance did not say that it was impossible to remediate.

57. Dr Osman said that he had continued working between 2014 to 2017 as a doctor, under supervision, and there had been no repetition of similar concerns. He submitted that, although an administrative one, his current role was as close to the environment in which the concerns arose as was possible. His job carried responsibility in a general practice setting, and there had been no concerns. Dr Osman said that he had some responsibility for dealing with complaints and CQC inspections in his role as a regional manager. He had been continuously employed with the same company since he was erased and had been twice promoted. Dr Osman submitted that he had demonstrated his learning, by assessable evidence of monthly governance meetings, medicine safety meetings and three clinical audits. He had been able to observe doctor-patient interactions.

58. Dr Osman also told the Tribunal that he had completed his Diploma in Diabetes and scored high in that course, keeping his medical skills up to date. Dr Osman also told the Tribunal about his intended engagement with 'the Listening Place' charity, for which he had almost completed induction.

59. Dr Osman referred the Tribunal to his testimonial evidence. Although Dr C had expressed that Dr Osman was not ready to return to practise immediately, Dr Osman said this was because of the high standards Dr C has and because Dr Osman has been out of practise for six years. Dr Osman admitted that he was probably a *"little rusty"* in respect of his consultation skills, but submitted that this provided an unfair conundrum regarding a return to practice. Dr Osman reminded the Tribunal of the evidence of his intended steps to ensure that he was safe to practice and the supporting evidence.

60. In respect of the overarching objective, Dr Osman said that his misconduct did not appear in the list which the Guidance referred to expressly as being generally unsuitable for restoration. However, Dr Osman said, he was not minimising the seriousness of his actions and recognised that the list set out was not exhaustive. As regarded the perception of the public, whilst acknowledging the decision of the High Court, Dr Osman said the 2017 Tribunal had been made up of two doctors and one lay member: it was significant that they had not considered Dr Osman's actions to be incompatible with continued registration. He said that in his role he was taking care of the region of six practices of 70,000 patients.

61. Dr Osman said that he believed that his experience in respect of his probity has given him a deeper understanding of his personality, strengths and weaknesses. He admitted his

dishonesty, that he had previously felt that good doctors could not make mistakes, but now recognised that doctors are human beings who make mistakes. Dr Osman said that the cause of his initial prolonged struggle to accept his failure was a lesson well-learned and one that would last a lifetime; sharing his experiences with colleagues would improve patient safety and make him a better doctor.

The Tribunal's Approach

62. The Tribunal reminded itself that its power to restore a practitioner to the medical register is a discretionary power to be exercised in the context of the Tribunal's primary responsibility to act in accordance with the statutory overarching objective, to protect the public.

63. Whilst the Tribunal has borne in mind the submissions made by the parties, the decision as to whether to restore Dr Osman's name to the medical register is a matter for this Tribunal exercising its own judgment.

64. Throughout its consideration of Dr Osman's application for restoration, the Tribunal was guided by the approach laid out in the Guidance.

65. The Tribunal reminded itself that the onus is on Dr Osman to satisfy it that he is fit to return to unrestricted practise and that the Tribunal should not seek to go behind the original Tribunal finding on facts and impairment.

66. The test to be applied by Tribunals when considering if a doctor should be restored is that set out in *GMC v Chandra [2018] EWCA Civ 1898*, namely: "*having considered the circumstances which led to erasure and the extent of remediation and insight, is the doctor now fit to practise having regard to each of the three elements of the overarching objective*".

67. The Tribunal reminded itself that, in making its decision, it should consider the following factors:

- the circumstances that led to disciplinary erasure;
- whether the doctor has demonstrated insight into the matters that led to erasure, taken responsibility for their actions, and actively addressed the findings about their behaviour and skills including consideration of:

    - insight and remorse;
    - remediation and risk of repetition;

- whether findings about the doctor's behaviour have been remedied;
- likelihood of repetition of the previous findings about the doctor's behaviour;

- The MPT should also consider any activities the doctor has undertaken since erasure and whether these are relevant to their current fitness to practise. Examples of things which may have a bearing on the tribunal's decision are whether:

    - the doctor has obtained employment in a field related to medicine and used it to keep up to date with developments in their specialty
    - the doctor has completed a professional or academic qualification such as a PhD, diploma or MSc in a relevant subject

- steps the doctor has taken to keep their skills and knowledge up to date; and
- the lapse of time since erasure.

68. After considering these factors, the Tribunal reminded itself it should step back and balance its findings against whether restoration meets the overarching objective. In making its decision, the Tribunal took account of all the evidence before it, both oral and documentary, along with the submissions made.

The Tribunal's Decision

<u>The circumstances that led to disciplinary erasure</u>

69. The Tribunal reminded itself of the detailed background set out above in respect of the circumstances of Dr Osman's case and those which led to his erasure from the medical register. It bore in mind that the GMC successfully appealed the 2017 Tribunal's decision to suspend Dr Osman's registration and the suspension was quashed and replaced with an order of erasure by the High Court in December 2017.

70. The Tribunal was mindful that it did not have before it the judgment from the High Court with its reasoning as to why the suspension was replaced with erasure. The Tribunal was assured by Ms Bucklow that extensive efforts had been made by the GMC to obtain the High Court judgment but that it had not been possible. The Tribunal only had Dr Osman's recollection from the appeal hearing in which he said that the Judge's decision was based on his level of insight.

71. By agreement of the parties, the Tribunal had sight of the GMC's Skeleton Argument for the appeal, although the Tribunal bore in mind that the Court may not have accepted all

of the submissions made. It could be confirmed from the Skeleton Argument that the GMC only appealed the sanction imposed by the 2017 Tribunal. It followed that this Tribunal could rely on the 2017 Tribunal's decision on Facts and Impairment.

72. The Tribunal noted that the 2017 Tribunal had determined that, whilst there had been systematic failings in the care and treatment of Patient A, which fell below the expected standards, it was not satisfied that that the failings were so serious as to amount to misconduct. The 2017 Tribunal had also considered that the clinical failings in relation to Patient B amounted to serious misconduct but concluded that the clinical treatment of Patient B did not lead to the conclusion that Dr Osman's fitness to practise was impaired, on the basis that he had full insight into these clinical failings and had made significant efforts at remediation. The 2017 Tribunal did however find Dr Osman's fitness to practise impaired by reason of the 'probity' concerns.

73. The Tribunal noted that part of the GMC's argument in appealing the 2017 Tribunal's decision on sanction was in respect of Dr Osman's:

i. denial that he knew the record of Patient A's recent medication was incomplete; and
ii. denial that he had made a false entry in Patient B's medical records; and
iii. denial that he had made false statements about his care of Patient B.

<u>Whether the doctor has demonstrated insight into the matters that led to erasure, taken responsibility for their actions, and actively addressed the findings about their behaviour or skills</u>

74. Dr Osman had been questioned about the extent to which he had apologised to others concerning his misconduct. The Tribunal took into account that there had been some apology, but that had not been on the basis of Dr Osman's full disclosure of his dishonesty. Since that time, for other reasons an apology had not been pursued. Therefore, the Tribunal could only give limited credit for any attempt at apology. The Tribunal concluded however that, given the lapse of time, there were factors both for and against expecting Dr Osman to apologise now for his actions. Therefore, the Tribunal did not consider that the fact that Dr Osman has not since apologised to the families to reflect negatively on his insight and remediation at this stage.

75. The Tribunal considered with care Dr Osman's witness statement and his oral testimony given to the hearing. The Tribunal considered Dr Osman's reflections document prepared starting in 2014 and which had been available for the 2017 hearing. It also had

available the transcript of that hearing and the determination of the Tribunal. Comparing the doctor's position in 2017 with that set out in his witness statement provided to this Tribunal, it noted that Dr Osman's acceptance of his dishonest misconduct had developed considerably. He had now fully accepted that his misconduct had been intentionally dishonest and had reflected on the reasons for this.

76. Dr Osman had described to the Tribunal that he had believed that good doctors could not make mistakes which was why he had difficulty in coming to terms with his actions which led to his erasure. He spoke about being a perfectionist but understood that doctors are humans and humans make mistakes, but he had now reached an understanding that mistakes should not be covered up and were learning opportunities to improve patient care.

77. In his oral evidence Dr Osman referred to two situations which led him to develop his insight. The first was undertaking XXX. He said that this had taken some effort by him to go to XXX and admit what he had done when XXX, that he felt ashamed and embarrassed and feared how he would be judged. He said that XXX.

78. Dr Osman said that the second thing which led him to go on his journey of insight was by opening up to his colleagues about what had happened. In his witness statement, dated 22 July 2024, he stated:

> *"In 2020, two years into my role as a senior manager, I encountered a challenging incident. Several staff members at one of our sites were consistently late to work and occasionally left early, providing various excuses. This behaviour was affecting our delivery of care, resulting in staff shortages, longer telephone queues, and patient complaints. The site manager sought my assistance in addressing the issue. I visited the GP practice and called for an admin meeting. During the meeting, I spoke about the importance of responsibility, our duty of care to patients and colleagues, and how the staff's actions were negatively impacting our services. I highlighted that some staff members were being dishonest by not fulfilling their paid roles.*
>
> *During the discussion, an admin member retorted, "Well, we are not the ones who were struck off because of dishonesty." I was mortified, wishing the ground would swallow me whole. Until then, I had believed that only my line managers were aware of my history. This incident led me to question who else knew about my past and what they might be saying behind my back. I began to doubt whether my position as a senior manager was still tenable and whether I still commanded the respect of my team. I contemplated resigning but realised that this would be similar to running away from my problems.*

I decided to confront the situation head-on. I first contacted my superiors, explaining my position and history. I then took the initiative to inform the GPs at each site about my background. I openly shared that I had been struck off the register due to dishonesty and even provided some of them with the MPTS decision. This act of transparency was extraordinarily liberating."

79. The Tribunal accepted Dr Osman's evidence as to XXX he had undertaken and the formative effects of this and his experience with his colleagues. As a result, Dr Osman told the Tribunal, he had thereafter resolved to be very open with colleagues about his past. The Tribunal also accepted that Dr Osman now understood that when there is a patient complaint, the patient and their interests were at the centre of that complaint rather than the doctor's interests.

80. The Tribunal considered that the testimonial evidence both written and oral were extremely positive and supported Dr Osman's evidence that he has been completely open with his colleagues regarding the circumstances which led to his erasure. The evidence suggested that Dr Osman has fully taken on board his failings, learned from them and was incorporating the learning from them into his current role to improve patient care.

81. Having heard Dr Osman and read his reflections, and taking into account the very positive testimonials, the Tribunal was satisfied that Dr Osman has acknowledged and fully accepted his misconduct both in respect of his clinical failings and in respect of his dishonesty. It was satisfied Dr Osman now knows that he should have acted differently, recognises where he went wrong and the potential impact of his actions on patients, the public and the profession.

82. The Tribunal was therefore satisfied that Dr Osman has full insight into his actions.

<u>Remediation of past misconduct</u>

83. When considering whether Dr Osman had fully remediated his actions, the Tribunal reminded itself that dishonesty was difficult to remediate and that in the particular circumstances of this case, the dishonesty was at the top end of the spectrum. The Tribunal had no doubt that, as matters stood in 2017, erasure had been the appropriate sanction.

84. Whilst the Tribunal considered that Dr Osman's dishonesty had been repeated and sustained over a long period of time, the Tribunal considered that the events in 2014 were now separated from the present by a considerable period. In that time, the evidence is that

Dr Osman has developed full insight into his misconduct. He has also held responsible positions related to and adjacent to GP practice.

85. Dr Osman has worked closely to the environment in which these regulatory matters occurred at a high level of responsibility within the medical field, albeit not in a clinical role, but dealing with patient complaints, CQC inspections, clinical governance and practice performance. He has done this without repetition of his misconduct and incorporated the learning from it in his role and shared this with his colleagues.

86. In regard to these positions, he has provided the Tribunal with an impressive array of testimonials. The three witnesses who gave oral evidence were uniformly positive about Dr Osman's openness about his past misconduct. The testimonial evidence attested to Dr Osman's high standards, integrity and learning from his experience from these matters. The Tribunal was therefore satisfied that Dr Osman has remediated his misconduct.

87. The Tribunal determined that in all the circumstances it was highly unlikely there would be any repetition of Dr Osman's past misconduct.

What the doctor has done since their name was erased from the register

88. The Tribunal considered what Dr Osman had done since his name was erased from the medical register.

89. The Tribunal noted that Dr Osman was promoted from Quality Assurance Manager to Deputy Regional Manager for North West London, and subsequently to Regional Manager for North West London within AT Medics / Operose Health.

90. Dr Osman has completed a Diploma in Diabetes and attended clinical team meetings as an observer. He has provided extensive CPD evidence undertaken regularly since his erasure, which include probity and ethics and those which have specifically targeted the concerns identified by the 2017 Tribunal.

The steps the doctor has taken to keep their medical knowledge and skills up to date

91. The Tribunal took account of paragraph B34 of the guidance:

> *"The longer the doctor has been away from clinical practice, the greater the likelihood that their knowledge and skills will have deteriorated to a degree that may place*

patients at risk. Tribunals should pay close regard to how the doctor has maintained their knowledge during a lengthy period away from the register."

92. The Tribunal noted that, in evidence Dr Osman accepted he would be a "*little rusty*" in terms of patient consultations. It also noted however that Dr Osman has already made initial enquires regarding a GP Return to Practice Programme, and he has a good support network on whom he could rely. In addition, the Tribunal took into account that Dr Osman has been working in GP practices in his current role.

93. Dr Osman has occasionally sat in on patient consultations as an observer and acknowledged that he would not put himself in a position where he would be working above his skill level. Given his insight and reflections on the patient as the centre of care and having worked in management in the medical field for several years, the Tribunal was satisfied that Dr Osman would not put himself in a similar position to that which led to his erasure.

94. In addition, Dr Osman provided the Tribunal with an extensive list of CPD undertaken over recent years. He has also recently undertaken a Diploma in Diabetes. Taking this together with the fact that, in his recent roles, Dr Osman has been responsible for ensuring that GP practices meet current standards, the Tribunal considered that Dr Osman has been able to keep his medical knowledge up to date.

95. The Tribunal was satisfied that Dr Osman has maintained his clinical knowledge through his CPD courses to an acceptable standard.

<u>The lapse of time since erasure</u>

96. The Tribunal took account of paragraph B33 of the guidance:

"The length of time that has elapsed since the doctor was erased will be relevant although will not necessarily equate to them no longer posing a risk to patients or to public confidence in the profession."

97. The Tribunal noted that Dr Osman was erased in December 2017 but given the roles he has held close to the environment of a GP in the field of medicine, the lapse of time was not a significant detrimental factor. It also considered that the lapse of time has enabled Dr Osman to develop his insight fully and remediate his misconduct.

Will restoration meet the overarching objective?

98. The Tribunal next had regard to the statutory overarching objective. In so doing, it performed a balancing exercise, weighing its findings above with its obligations under the individual limbs of the overarching objective which are:

a. To protect, promote and maintain the health, safety and well-being of the public;

b. To promote and maintain public confidence in the profession; and

c. To promote and maintain proper professional standards and conduct for members of that profession.

99. The Tribunal considered that Dr Osman's impaired fitness to practise was not related to his clinical performance as a doctor, rather it was from his probity. The Tribunal was satisfied that his clinical knowledge and skills were sufficiently up to date and that he was an experienced GP, albeit having been out of practice since 2017.

100. As already set out the Tribunal was satisfied that Dr Osman had a good support network were he to return to the register, and has already made initial enquiries in respect of the GP Return to Practice Programme. It was satisfied that given his learning and insight, Dr Osman would not put himself in a similar position to the circumstances which led to his erasure again and that it was unlikely there was a risk of repetition.

101. The Tribunal was therefore satisfied that the first limb of the overarching objective would not be undermined were Dr Osman allowed to return to the register.

102. When considering the second limb of the overarching objective, public confidence in the profession, the Tribunal considered that Dr Osman's dishonesty was serious, at the top end of the spectrum of dishonesty, not only to NHS England but also to a Coronial inquest on two occasions and to the 2017 Tribunal. It was repeated and a position Dr Osman held for a prolonged period.

103. The Tribunal considered however that the Guidance sets out types of case where restoration is generally unlikely to meet the overarching objective. The circumstances under which Dr Osman was erased was not listed within those most serious of case, albeit the list was non-exhaustive.

"B49 Restoration is unlikely to meet the overarching objective if the doctor was erased for conduct that was of an exceptionally serious nature such as being convicted of the following types of criminal offence:

- *Murder*
- *rape or sexual assault by penetration*
- *sexual offences involving children or adults with a mental disorder impeding choice. This could include the creation, possession or distribution of child sex abuse materials.*
- *offences involving human trafficking, slavery, servitude and forced or compulsory labour*
- *extortion and blackmail."*

104. The Tribunal was of the view, therefore, that restoration following erasure for dishonest misconduct might be inconsistent with the maintenance of public confidence. However, given that the list in paragraph B49 did not embrace the particular misconduct in this case, the Tribunal considered that it should make a judgement based on the particular circumstances of the case and its view of the seriousness of the misconduct, judged against the doctor's insight, remediation and the risk of repetition. It also acknowledged the public interest in having the service of experienced doctors, provided they were judged fit to practise.

105. The Tribunal considered that the Guidance was not prohibitive of returning a doctor to the register in such circumstances. The Tribunal acknowledged that dishonesty is a serious matter for doctors and strikes at the fundamental principles of the profession. It also accepted that the original dishonest misconduct had been repeated and persistent, which made the matter more serious. The Tribunal considered, however, that since 2017, Dr Osman had held down responsible positions managing a series of GP practices, which had involved him in dealings with other persons and other organisations. There was no allegation of any repetition of similar, or any concerns. During this period, Dr Osman had been given considerable responsibility and promoted through similar roles.

106. The Tribunal was impressed by Dr Osman's evidence, in his witness statement and the evidence of his testimonial witnesses, as to the way he had reflected and taken responsibility for his past misconduct. It was evident that Dr Osman had learnt from reflecting on his past errors and had used this to good effect with those with whom he worked.

107. The Tribunal considered that Dr Osman's name having been erased from the medical register met the public interest at that time in December 2017 and sent a clear message to the profession. It was clear that his insight at that time was materially lacking in important

respects, as he acknowledges. However, since that time, the Tribunal considered that Dr Osman had provided persuasive evidence of his development of current full insight, full remediation and a very low risk of repetition.

108. The Tribunal was of the view that, in considering the effect on public confidence, the well-informed member of the public would have regard not just to the misconduct found, but also the full circumstances of Dr Osman's development of insight and remediation steps. The Tribunal was satisfied that a member of the public fully informed of all the circumstances of this case would not have their confidence in the profession undermined if Dr Osman were allowed to return to the registrar.

109. The Tribunal was therefore satisfied that the second limb of the overarching objective would not be undermined were Dr Osman allowed to return to the register.

110. When considering whether the maintaining of proper professional standards would be undermined if Dr Osman were allowed to return to the register, the Tribunal considered that a message had been sent out to the profession that Dr Osman's conduct was unacceptable by the sanction of erasure in 2017. Given all the circumstances of this case and those set out in respect of the first two limbs of the overarching objective, the Tribunal was satisfied that professional standards would not be undermined were Dr Osman allowed to return to the register.

111. Accordingly, and with regard to all of the particular circumstances of this case and evidence before it at this time, the Tribunal determined that Dr Osman's name should be restored to the medical register. It therefore determined to grant Dr Osman's application for restoration to the medical register.