PUBLIC RECORD

Dates: 05/02/2024 - 08/02/2024
24/02/2024

Medical Practitioner's name: Dr Harry NDUKA

GMC reference number: 5182806

Primary medical qualification: MB BS 1992 University of Ibadan

Type of case
Restoration following disciplinary erasure

Summary of outcome
Restoration application refused.
No further applications allowed for 12 months from last application.

Tribunal:

Legally Qualified Chair:	Mr Andrew Lewis
Medical Tribunal Member:	Dr Bridget Langham
Medical Tribunal Member:	Dr Richard Vautrey

Tribunal Clerk:	Miss Maria Khan (05/02/2024 - 08/02/2024) Miss Keely Crabtree (24/02/2024)

Attendance and Representation:

Medical Practitioner:	Present, not represented
GMC Representative:	Ms Ceri Widdett, 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 - 24/02/2024

1. The Tribunal has convened to consider Dr Nduka's application for his name to be restored to the Medical Register following his erasure for disciplinary reasons in 2018.

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 GMC (Fitness to Practise) Rules 2004, as amended ('the Rules').

3. This is Dr Nduka's first application to be restored to the Medical Register.

Background

4. Dr Nduka qualified in 1992 from the University of Ibadan, Nigeria, and practised as a doctor in Nigeria until 1997. He passed his PLAB exam in 1998 and began working as a Specialist Registrar in Obstetrics and Gynaecology in the UK in 1999. At the time of the events that led to Dr Nduka's erasure he was practising as a locum registrar in Obstetrics and Gynaecology at Salisbury NHS Foundation Trust.

5. The circumstances that led to Dr Nduka's erasure relate to an MPTS hearing that took place in 2016 and a subsequent MPTS review hearing that concluded in January 2018.

The 2016 Tribunal Hearing

6. Dr Nduka's case was initially considered by a Medical Practitioners' Tribunal in a hearing which convened on 25 July 2016 and concluded on 15 December 2016.

7. Dr Nduka had been referred to the GMC in July 2013 over matters that related to his clinical practice, conduct and communication. An Interim Orders Panel ('IOP') convened on 13 August 2013 and determined to suspend Dr Nduka's registration for 15 months. After a successful application for an early review, the reviewing IOP varied the interim order from one of suspension, to conditions. The interim order was reviewed and maintained periodically and was extended by the High Court, in Dr Nduka's presence, on 10 November 2014 for a period of six months.

8. The 2016 Tribunal found proved that Dr Nduka had applied for three separate posts in Obstetrics and Gynaecology over a period of time from August 2013 to April 2015 and each time failed to declare in his application that he was the subject of an ongoing fitness to practise investigation by the GMC. Further, in one application Dr Nduka stated that the interim order of conditions had expired when it was still active. The Tribunal also found proved that Dr Nduka on

each occasion had answered *'no'* to direct questions on the application forms asking, *'are you currently the subject of a fitness to practise investigation or proceedings by a licensing or regulatory body in the UK or in any other country?'*

9. The Tribunal found that at all relevant times Dr Nduka was the subject of an ongoing investigation therefore his answers were untrue and misleading, and that he knew his answers to be untrue. The Tribunal was of the view that any third party reading the application forms would not understand Dr Nduka was under investigation and that Dr Nduka knew as much, and determined that he was dishonest in his repeated incorrect completion of forms.

10. The 2016 Tribunal concluded that Dr Nduka's repeated dishonest behaviour over a prolonged period of time breached his duty to be honest as set out in *Good medical practice* 2013 ('GMP') and demonstrated a level of disregard for his regulator, falling short of the standards expected of a medical practitioner so as to amount to misconduct.

11. When determining impairment, the Tribunal found there was no evidence Dr Nduka had acknowledged his dishonesty, and he had become further entrenched in his views that the GMC was treating him unfairly. The Tribunal noted Dr Nduka's expressions of grief were genuine. However, his lack of insight and remorse led the Tribunal to conclude there was the risk of repetition of his misconduct.

12. In light of Dr Nduka's lack of insight into the impact of his actions and his continued denial of his misleading and dishonest behaviour, the Tribunal determined that Dr Nduka's fitness to practise was impaired by reason of his misconduct in order to uphold public confidence in the profession. The Tribunal, concluding that Dr Nduka's behaviour was not fundamentally incompatible with continued registration, determined to suspend Dr Nduka's registration for four months and directed a review hearing. The Tribunal advised that for the review hearing Dr Nduka should provide evidence of reflection and that he had kept his medical skills and knowledge up to date.

13. Dr Nduka went on to appeal against the Tribunal's decision in the High Court, under Section 40 of the Medical Act 1983 ('the Act'), arguing that the suspension was excessive and disproportionate, and that the determinations on facts and impairment were wrong. On 17 May 2017 the appeal was dismissed on all grounds and Dr Nduka was ordered to pay for the GMC costs.

The 2018 Tribunal Hearing

14. A review hearing commenced in September 2017, split over three dates, concluding on 17 January 2018. Dr Nduka was present at his hearing save for the last day.

15. The Tribunal noted that Dr Nduka had not yet accepted the 2016 Tribunal's judgement and demonstrated a continued lack of insight. The Tribunal found that Dr Nduka continued to blame IT system errors and, notwithstanding the evidence of Dr Nduka's limited CPD submissions

and information to demonstrate he was maintaining his skills, there was no evidence that Dr Nduka had made any attempts at remediation. In his reflective statement Dr Nduka stated:

"I have not been dishonest and am not impaired and this is the determination".

16. The Tribunal considered Dr Nduka's failure to properly reflect on his actions, his lack of insight and his limited efforts to keep his medical skills and knowledge up to date, and concluded that his fitness to practise remained impaired.

17. When considering sanction the Tribunal took into account the aggravating factors of the case. These included the persistent lack of insight, no apology or acceptance of the findings of persistent dishonesty and limited evidence of understanding the implications of the Tribunal's and even the High Court's findings with respect to dishonesty. The Tribunal could find no mitigating factors.

18. The Tribunal, seeing no evidence of any change in Dr Nduka's attitude throughout the regulatory process, concluded that a further period of suspension with a review directed would be unlikely to change Dr Nduka's persistent lack of insight into the seriousness of his dishonesty and misconduct. In these circumstances the Tribunal determined that the only appropriate sanction was one of erasure.

19. On 2 October 2017 Dr Nduka appealed to the European Court of Human Rights (ECHR). On 9 February 2018 the European Court wrote to Dr Nduka, returning his appeal because it had not been properly signed. Shortly after the date, Dr Nduka resubmitted his application. By a letter dated 5 July 2018 the ECHR wrote to Dr Nduka rejecting his appeal as inadmissible, pursuant to the decision of single judge of the Court.

20. Dr Nduka appealed again to the High Court on 29 December 2020. On 13 July 2021, the appeal was struck out for being out of time.

The Current Restoration Hearing

The Outcome of Applications made during the hearing

21. The Tribunal refused Dr Nduka's application, made on Day 1 of the hearing, to strike out the new Allegation and exclude the evidence on which it was based. The Tribunal's full decision on the application is included at Annex A.

22. The Tribunal granted both parties' applications to adduce further evidence throughout the hearing.

New allegations of impaired fitness to practise

23. Further to the application for restoration the GMC has alleged that since Dr Nduka was erased there have been concerns that call into question Dr Nduka's fitness to practise.

24. These concerns were raised with the GMC on 10 July 2018 by Dr A, Clinical Associate Professor at University College London ('UCL') Medical School after an application for a Clinical Teaching Fellow post at the Medical School, dated 21 June 2018, was received from Dr Nduka. The post was advertised on www.jobs.ac.uk as well as the UCL website and stipulated that full registration with the GMC was essential.

25. Dr A became aware of the application as she was chairing the interview panel for the role and was shortlisting for it. As part of the shortlisting procedure, Dr A was responsible for checking all applicants' GMC registration. When Dr A checked Dr Nduka's registration, she discovered that he had been erased from the GMC Register in January 2018.

26. Being aware that impersonating being a doctor was against the law, on 10 July 2018 Dr A emailed Mr B, who was Head of Performance and Health with the Fitness to Practise Directorate at the GMC at the time of the events. Dr A thought Mr B may advise her on how best to proceed.

27. On 11 July 2018 Dr A received email correspondence from the GMC advising that Dr Nduka was no longer registered with the GMC and, therefore, they could not take the concern further. Should Dr Nduka apply for registration in the future, however, the information Dr A provided would be taken into account.

The New Allegations (Statement of Case) and the Doctor's Response

28. The statement of case is as follows:

That being registered under the Medical Act 1983 (as amended):

1. On 17 January 2018 a Medical Practitioners Tribunal determined to direct that your name be erased from the Medical Register. The erasure took effect on 19 February 2018.
To be determined

2. On 21 June 2018 you applied for a Clinical Teaching/Training Fellow in Medical Education post at University College London Medical School ('the Application') and in doing so you gave the false impression that you held full registration with the General Medical Council ('GMC') at the time the Application was submitted.
To be determined

3. In the Application you falsely stated that you were 'currently in dispute at court over harassment on my full registration'.
To be determined

4. You knew that:

a. the job specification for the post referred in paragraph 2 said that GMC full registration was essential;
Admitted and found proved

b. at the time you submitted the Application:

i. you did not hold GMC full registration;
To be determined

ii. there were no ongoing court proceedings in relation to your registration.
To be determined

5. Your actions as described at:

a. paragraph 2 were dishonest by reasons of paragraphs 4a and 4bi;
To be determined

b. paragraph 3 were dishonest by reasons of paragraph 4bii.
To be determined

The Admitted Facts

29. Dr Nduka, who was self-represented, made an admission to paragraph 4a of the Allegation, as set out above, in accordance with Rule 17 (2)(d) of the Rules. In accordance with Rule 17 (2)(e) of the Rules, the Tribunal announced this sub-paragraph proved.

The Facts to be Determined

30. In light of Dr Nduka's response to the allegations made against him, the Tribunal was required to determine the remaining paragraphs of the Allegation.

The Evidence

31. The Tribunal took into account all the evidence that it has received, both oral and documentary.

Witness Evidence

32. The Tribunal received evidence on behalf of the GMC from the following witnesses:

- Dr A, Clinical Associate Professor at UCL, via video link. Dr A also provided a witness statement dated 21 December 2023.

Dr A's Evidence

33. Dr A, under cross-examination by Dr Nduka, told the Tribunal that one of the criteria for shortlisting for the role was full GMC registration and her role was to go through all applications and look on the GMC Register as standard practice, to ensure the applicants were registered.

34. Dr A clarified that there were no specific questions on the application form that asked for either a doctor's GMC registration number or if they had a licence to practise and it was only when she had checked the GMC Register that she saw Dr Nduka's status of his name being erased from the Register.

35. Dr A stated that she had not read the section of the Application in which Dr Nduka wrote that he was *'currently in dispute at court over harassment on his full registration'*, before contacting the GMC. She had contacted the GMC for advice after seeing Dr Nduka's registration status, as opposed to referring him or questioning his honesty, as she had not been in this situation before.

36. Dr A told the Tribunal she was not aware that when an appeal is made against a MPT substantive sanction, that sanction does not become effective until the appeal is decided. Dr Nduka talked Dr A through the appeal he had made to the ECHR, the appeal eventually being dismissed on 5 July 2018, after he had submitted the application form. Dr A conceded that based on this information and the fact that Dr Nduka had clearly highlighted on the Application that there was an ongoing dispute, there was no false impression given by Dr Nduka regarding his registration status.

37. At the end of the GMC's evidence, Dr Nduka submitted that there was not sufficient evidence to find paragraph 2 of the statement of case proved.

38. The Tribunal heard submissions from Dr Nduka and Ms Widdett, on behalf of the GMC. Ms Widdett reminded the Tribunal that Dr Nduka had applied for a job where full registration was a requirement and submitted that there was sufficient evidence to find paragraph 2 of the statement of case proved, pursuant to Rule 17 (2)(g) of the Rules.

39. The Tribunal took into account all the evidence adduced by the GMC. The Tribunal noted that in his application Dr Nduka had written that '*am currently in dispute at court over harassment on my full registration'* and *'due to dispute with regulator of which am awaiting being found innocent am not currently doing clinical work since sept 2017 but am innocent and xpext to get the dispute resolved in my favour I have ability to work as a research associate as i the needed requirements, am able to use computer statistical applications'*.

40. The Tribunal also had regard to the evidence of Dr A, who stated in her oral evidence that what Dr Nduka had written in the Application did not give her the false impression that he held full registration with the GMC.

41. The Tribunal took into consideration that Dr Nduka had made reference twice in the Application to being in dispute about his registration and drew attention to the fact that he was not currently doing clinical work.

42. Taking all the evidence together, the Tribunal found that what Dr Nduka wrote was unclear but on a fair reading did not give the false impression that he held full registration with the GMC. The Tribunal was satisfied that, on the contrary, what he wrote drew attention to the fact that his registration was at least in doubt. The Tribunal found that this view was supported by Dr A's evidence.

43. For these reasons, the Tribunal found that there had not been sufficient evidence adduced to prove paragraph 2 and found there was 'no case to answer'.

Dr Nduka's Evidence

44. Dr Nduka provided various statements, undated, relating to his restoration application, remediation, additional concerns, the ECHR applications and dishonesty. He also gave oral evidence at the hearing.

45. Dr Nduka told the Tribunal that following the reviewing Tribunal's direction that his name be erased from the Medical Register, he appealed to the ECHR within the stipulated 28-day appeal period and on the understanding that during any appeal period the previous sanction would stay in force. In this case, the previous sanction was one of suspension.

46. Dr Nduka stated that he had appealed to the ECHR as he did not see how he could have gone back to the High Court in England after having his previous appeal dismissed in May 2017. Dr Nduka, on the advice of his lawyer, lodged the appeal with the ECHR initially on 2 October 2017 after being told on the first day of his review hearing that the GMC submission on sanction was one of erasure. Dr Nduka did not receive a response from the ECHR and, concerned it had not been received, submitted a repeat application on 8 January 2018. On 9 February 2018 the ECHR wrote to Dr Nduka acknowledging that the original application had been received, but returning it because it had not been signed. Dr Nduka updated the information, stating his name had now been erased from the Medical Register since the original application, signed it and resubmitted the appeal between 15-17 February 2018.

47. Dr Nduka emailed the GMC on 25 February 2018 regarding his ECHR appeal and received a response the following day, advising that as he had not appealed to the High Court against the MPT decision by 18 February 2018, the last date to lodge an appeal, the sanction of erasure was now effective.

48. Dr Nduka told the Tribunal that he received a decision from the ECHR dated 5 July 2018, advising that his application was inadmissible.

49. When asked about his understanding of what *'full registration'* meant, Dr Nduka explained that he believed this applied to anyone who did not have provisional registration with the GMC, which applied only to those doctors still in an internship. He accepted that while being suspended from practice in 2016 he was not permitted to practise as a doctor but his name was still on the Medical Register. In Dr Nduka's mind, this meant he still had full registration. He clarified his understanding that if his name was erased from the Register, he would not have full registration.

50. Dr Nduka told the Tribunal that the wording of the 2018 Tribunal's sanction was not specific and that it merely stated he could appeal to any relevant court. Dr Nduka was of the view that the GMC did not have the right to stipulate which courts doctors could or could not apply to, and that his appeal to the ECHR, in his mind, was valid and within the 28-day appeal period following the 2018 sanction of erasure. Therefore, Dr Nduka also believed that he was under an order of suspension until the appeal was resolved.

51. Dr Nduka told the Tribunal that he had not received any information specifically relating to how to lodge an appeal against the Tribunal's decision. When he was presented with a copy of a letter that had been emailed to him by the MPTS, setting out the appeals procedure along with the Record of Determinations and the outcome of the MPT review hearing on 18 January 2018, Dr Nduka stated he could not recall receiving the documents. When shown the email and the documents, he told the Tribunal he must have received them but could not recall reading them. He accepted that the appeals procedure set out in the letter states which High Courts in the UK an appellant could appeal to. However, he explained that he did not believe that the MPTS or GMC were entitled to tell him which appeal route to pursue and he had already appealed to the EHCR.

52. Dr Nduka stated that in light of his understanding at the time, when he completed the Application on 21 June 2018, he did not hide anything and correctly stated that he had ongoing court proceedings, as the decision from the ECHR was not received until 5 July 2018. He had not been asked if he was actively registered and was confused as to how to explain the situation:

> *"I wanted the person reading the Application to understand that firstly I am in a current dispute with the regulator and subsequent is that I have had full registration … I thought I was suspended but it was erasure as GMC did not recognise the ECHR for the dispute.*
>
> *… I did mention I'm not allowed to do anything clinical, if it was purely teaching and my situation allowed me and I got interview I would have gone on to interview and said all of this. I didn't know whether to proceed any further".*

Documentary Evidence

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

- Application form submitted to the ECHR, dated 2 October 2017;
- Application form submitted to the ECHR, undated;
- Evidence of roles requiring a licence to practise, undated;
- Correspondence from the ECHR, dated 9 February 2018;
- Correspondence from the ECHR, dated 5 July 2018;
- Proof of postage receipt to the ECHR, undated;
- Email correspondence between Dr Nduka and the GMC, dated 25-26 February 2018;
- Email from Dr Nduka to the GMC chasing outcome of MPT review hearing and internal correspondence confirming MPTS will send the determination to Dr Nduka by email, dated 18 January 2018;
- Email to Dr Nduka from MPTS enclosing letter confirming outcome of MPT review hearing, Record of Determinations and Appeals note, dated 18 January 2018;
- Letter confirming outcome of MPT review hearing, Record of Determinations and Appeals note sent to Dr Nduka's registered address, returned to sender as not collected by Dr Nduka;
- Email from MPTS to Dr Nduka confirming the erasure has come into effect, dated 19 February 2018;
- Proof of Service document provided to the MPTS showing that he posted correspondence to the ECHR on 8 January 2018;
- Record of Determinations from the substantive MPT hearing that concluded on 15 December 2016;
- Approved Judgement from Appeal, dated 17 May 2017;
- Record of Determinations from the MPT review hearing that concluded on 17 January 2018;
- Notice of appeal filed at Supreme Court, dated 29 December 2019;
- Appeal submitted to High Court, dated 29 December 2020;
- Order striking out appeal, dated 13 July 2021;
- Dr Nduka's application for restoration and accompanying emails, dated 3 June 2023 - 19 September 2023;
- Certificate of Completion of Level 2 Masters in Gynaecological Surgery (MIGS) of the Gynaecological Endoscopic Surgical Education and Assessment (GESEA), dated 4 February 2023;
- Certificate of Completion of Level 2 European College of Human Reproduction and Embryology (ECRES) of the GESEA, dated 18 February 2023;
- Evidence of further continuing education, undated;
- Correspondence relating to data breaches, undated;

- Image from a book relating to cyber terrorism, undated.

The Tribunal's Approach

54. In reaching its decision on the allegation, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Nduka does not need to prove anything in respect of the Allegation. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

55. In relation to dishonesty, the Legally Qualified Chair ('LQC') referred the Tribunal to the case of *Lawrence v General Medical Council* [2015] EWHC (Admin), in which Collins, J states at paragraph 35:

> *"The civil standard applies, but where dishonest or particularly a serious offence is alleged the decision makers must be aware of the need for such cogent evidence. A direction making clear that need is in my judgment required coupled with a requirement for them to consider the full circumstances…"*

56. The LQC also reminded the Tribunal of the guidance at paragraphs 67-71 in the case of *Fish v General Medical Council* [2012] EWHC 1269 (Admin):

> *"What, however, seems to be a proposition of common sense and common fairness is this: an allegation of dishonesty should not be found to be established against anyone, particularly someone who has not been shown to have acted dishonestly previously, except on solid grounds."*
>
> *"An allegation of dishonesty against a professional person is one of the allegations that he or she fears most. It is often easily made, sometimes not easily defended and, if it sticks, can be career-threatening or even career-ending."*

57. The LQC referred the Tribunal to the test for dishonesty as set out in *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67:

> *"When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."*

58. The LQC advised the Tribunal that the GMC did not have to prove a motive but it must be right that the absence of any motive or ulterior motive may well make it less likely the doctor was dishonest. The Tribunal should assess Dr Nduka in the light of all the evidence, including the documents and submissions of both parties, and his good character, and ask if the GMC have persuaded it that it was more likely than not that Dr Nduka's account was untrue.

The Tribunal's Analysis of the Evidence and Findings

59. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings.

Paragraph 1

60. The Tribunal took into account Dr Nduka's evidence that while he accepted that on 17 January 2018 the Tribunal had determined to direct his name be erased from the Medical Register, he assumed the sanction of erasure would not come into effect until the outcome of his appeal to ECHR.

61. The Tribunal had regard to the documentary evidence which made it clear that the GMC did not recognise an appeal to the ECHR appeal as one that would prevent a sanction taking effect, and also to the evidence that Dr Nduka received information specifying which were the 'relevant courts' he could lodge an appeal with. The Tribunal is satisfied that, as Dr Nduka did not submit an appeal to the relevant court within the 28-day appeal period, the sanction of erasure therefore did come into effect on 19 February 2018.

62. Accordingly, the Tribunal found paragraph 1 of the Allegation proved.

Paragraph 3

63. The Tribunal took into account Dr Nduka's evidence that at the time of completing and submitting the Application, his belief was that because he had referred the dispute and lodged an appeal with ECHR, his statement was true. The Tribunal was of the view that while the wording of the statement could have been better, it was a fact that Dr Nduka was in dispute about his full registration and the harassment to which he referred was the way he described the GMC trying to erase him from the register.

64. The Tribunal had regard to Dr Nduka's understanding of *'full registration',* which was not disputed and concluded that while Dr Nduka's statement may have been inaccurate, it was not false in the normal sense of the word.

65. Accordingly, the Tribunal found paragraph 3 of the Allegation not proved.

Paragraph 4b(i) and (ii)

66. The Tribunal reminded itself that paragraph 4 of the Allegation does not merely allege that Dr Nduka did not hold GMC full registration but also that he knew this to be the case. The Tribunal accepted Dr Nduka's evidence that he believed he continued to hold full registration, although he understood he was suspended. The Tribunal accepted that he believed that the effect of his appeal to the ECHR was that the order for erasure did not take effect while that appeal was still outstanding.

67. The Tribunal was satisfied Dr Nduka had not lodged an appeal to a 'relevant court' that could have prevented the erasure taking effect. Nevertheless, the Tribunal accepted that there were ongoing court proceedings in relation to Dr Nduka's registration at the time he made the Application and the Tribunal had seen satisfactory evidence of that, including a document from the ECHR dated 5 July 2018 rejecting Dr Nduka's application as being inadmissible.

68. The Tribunal had regard to what Dr Nduka believed to be true and concluded that he believed he held full registration and he did have ongoing court proceedings at the time he completed the Application.

69. Accordingly, the Tribunal found paragraph 4(b) of the Allegation not proved in its entirety.

Paragraph 5b

70. As the Tribunal found paragraph 4(b) of the Allegation not proved in its entirety, it followed that paragraph 5(b) of the Allegation was also found not proved.

The Tribunal's Overall Determination on the Allegation

71. The Tribunal has determined the Allegation as follows:

That being registered under the Medical Act 1983 (as amended):

1. On 17 January 2018 a Medical Practitioners Tribunal determined to direct that your name be erased from the Medical Register. The erasure took effect on 19 February 2018.
Determined and found proved

2. On 21 June 2018 you applied for a Clinical Teaching/Training Fellow in Medical Education post at University College London Medical School ('the Application') and in doing so you gave the false impression that you held full registration with the General Medical Council ('GMC') at the time the Application was submitted.

Found not proved. No case to answer pursuant to Rule 17(2)(g)

3. In the Application you falsely stated that you were 'currently in dispute at court over harassment on my full registration'.
Not proved

4. You knew that:

a. the job specification for the post referred in paragraph 2 said that GMC full registration was essential;
Admitted and found proved

b. at the time you submitted the Application:

i. you did not hold GMC full registration;
Not proved

ii. there were no ongoing court proceedings in relation to your registration.
Not proved

5. Your actions as described at:

a. paragraph 2 were dishonest by reasons of paragraphs 4a and 4bi;
Found not proved. No case to answer pursuant to Rule 17(2)(g)

b. paragraph 3 were dishonest by reasons of paragraph 4bii.
Not proved

Impairment

72. As a result of its findings, The Tribunal determined that Dr Nduka's fitness to practise was not impaired by reason of the new Allegation and the matter no longer had any bearing on the application for restoration.

Submissions on the Doctor's Application for Restoration

Submissions on behalf of the GMC

73. On behalf of the GMC, Ms Widdett reminded the Tribunal that should it determine to restore Dr Nduka's name to the Register, he would be returning to unrestricted practice and the Tribunal was not permitted to impose any restriction. The Tribunal must decide, having considered the circumstances which led to erasure and the extent of remediation and insight, whether the doctor is now fit to practise. The Tribunal should also have regard to the three

elements of the statutory overarching objective and apply these when looking back and assessing how the insight, remediation and risk of repetition has developed over time.

74. Ms Widdett referred the Tribunal to the case of *Sawati v GMC* [2022] EWHC 283 (Admin), a dishonesty case that grappled with the notion of insight and the acceptance of dishonesty, and drew a distinction between primary and secondary allegations of dishonesty. Dr Nduka's case was one of primary dishonesty.

75. Ms Widdett reminded the Tribunal of the findings of the 2016 Tribunal in relation to insight. That Tribunal found that Dr Nduka's reflections seemed to reiterate his contention that others were to blame for his dishonest actions and he had been victimised and harassed by the GMC and he felt aggrieved by that. To a certain extent they may have been his genuine view.

76. Ms Widdett submitted the 2016 Tribunal had found no signs of remorse and therefore there was a possibility of repetition. Dr Nduka had sought to blame the computer system for his dishonest conduct after previously stating the dishonesty was due to typographical errors. The 2016 Tribunal also found Dr Nduka's attitude toward the GMC to be concerning.

77. Ms Widdett then took the Tribunal through the mitigating and aggravating factors of this case. Ms Widdett acknowledged that there were no concerns relating to Dr Nduka's clinical practice; he had practised for many years without any adverse regulatory findings and had positive assessments through his colleagues. Dr Nduka was self-represented but had engaged actively throughout this hearing.

78. Ms Widdett submitted that the aggravating factors were that Dr Nduka had not apologised for his actions or the impact of them on others and there was no evidence of insight into his wrongdoing. There had been no acceptance of his dishonesty and he sought to minimise his role and place blame on others. Dr Nduka's registration had been suspended, initially. The 2017/2018 review Tribunal noted that Dr Nduka sought to use the appeal to demonstrate he was subject to an injustice by the regulatory process and this indicated a lack of insight as he had not accepted the judgement. Ms Widdett further submitted that the 2017/2018 Tribunal noted that Dr Nduka continued to blame the IT system which was evidence of a failure to reflect properly and also a lack of insight.

79. In terms of remediation at the 2017/2018 review hearing, the Tribunal noted that Dr Nduka had made limited efforts to keep his medical knowledge up to date. Dr Nduka's submission relating to CPD hours he had completed was unsustainable as it was not supported by any objective evidence, and the Tribunal also noted that Dr Nduka had not fully completed all the CPD courses he had commenced. She submitted that the Tribunal should conclude that there was effectively no evidence of remediation or insight.

80. Ms Widdett submitted that the 2017/2018 Tribunal could find no mitigating factors and taking into consideration his statement that he had not been dishonest and was not

impaired, it formed the view that Dr Nduka would be unlikely to change with regards to his insight into the seriousness of his dishonesty and, therefore, erasure was the appropriate sanction.

81. Ms Widdett then took the Tribunal through the paragraphs of the guidance that, she submitted, were relevant in this case.

82. Ms Widdett acknowledged that Dr Nduka, in this hearing, did say he accepted his dishonesty. However, this was after being pressed and was at least in part inconsistent with other evidence he had given. In the background seemed to be the thrust of Dr Nduka's evidence that he was dishonest but it was because the IT system was not working properly and this, therefore, was not a genuine acceptance of his dishonesty. In his written application, Dr Nduka continued to blame the hacking of his *nhsjobs* account and subsequent lack of investigation, demonstrating no acceptance and no insight.

83. Ms Widdett told the Tribunal that Dr Nduka claimed that his City & Guilds diploma was sufficient evidence of his insight as it had taught him to contact the recipients of any forms to make sure they receive the correct details due to frequent miscommunication that could occur. However, Ms Widdett submitted, this was inconsistent with any acceptance that he had acted dishonestly.

84. Ms Widdett submitted that Dr Nduka's references to having observed a period of five years erasure appeared to be putting forward the argument that the sanction of erasure was a way of penalising him. Dr Nduka was focused on how he could not practise for five years rather than the impact of his behaviour on others and on public confidence in the profession. Regarding the impact on public confidence, there was no evidence of this from Dr Nduka until he was prompted by direct questions from the LQC.

85. Ms Widdett submitted that in relation to remorse, empathy and apology, Dr Nduka said he was apologetic but he did not know what for and seemed to focus more on the impact on himself rather than the impact of his behaviour on others. Dr Nduka did accept there was an impact on colleagues but there was no acceptance of any impact on public perception of the medical profession, nor any apology for that. Ms Widdett further submitted that Dr Nduka said he had '*served*' the full five years as if it were a sentence.

86. Ms Widdett then addressed the matter of remediation and identifying how Dr Nduka would behave differently in the future to avoid similar matters arising again. While dishonesty may be difficult to remediate, it was remediable. The question was whether Dr Nduka's dishonesty was likely to be repeated. Ms Widdett referred to Dr Nduka's written evidence in which he wrote of not being at risk of reoffending, that he had served the period without getting early justice and that his religious beliefs did not allow him to be dishonest, suggesting he has never been dishonest. Ms Widdett submitted that the statement contained no evidence of any remediation with regards to dishonesty, for example no online course on probity. Dr Nduka's oral evidence was, she submitted, that he had learned his lesson by being erased for five years.

87. Ms Widdett next addressed the Tribunal with regards to Dr Nduka keeping his medical practice up to date. She submitted that the onus was on Dr Nduka to demonstrate that he had maintained his medical practice and she submitted that less weight should be attached to online courses that he had taken. There was evidence of CPD in 2018 and certificates for Masters qualifications. The Tribunal would have to look at whether these were relevant, measurable and effective. Dr Nduka had done some clinical observation for a period of three weeks, which was very limited, with no supervisor or any testimonials to support Dr Nduka by saying his clinical skills were up to date. When asked about taking a course on probity, Dr Nduka accepted it may have been useful but added that he '*had been busy*'.

88. Ms Widdett invited the Tribunal to take a step back and balance its findings against whether restoration would meet the overarching objective. She submitted that there had been no issue of public safety but it was for the Tribunal to determine whether this was relevant in this case. It was the GMC's case that in terms of promoting public confidence in the profession, restoration would not promote that objective. Ms Widdett submitted that it was important for the Tribunal to consider any future risk posed by Dr Nduka to the public and public confidence in the profession.

Submissions and further evidence by Dr Nduka

89. Dr Nduka submitted that he had appealed twice against the MPT decisions and neither time did the appeals go in his favour. He was apologetic about this and said that during this period he had reflected on the outcomes. Dr Nduka submitted he did not say that lightly; court was stressful and costly and when the judgment was not in one's favour one had to accept it.

90. Dr Nduka submitted that he had accepted the dishonesty and no longer blamed others. He had also never tried to cover up any of his actions. Dr Nduka pointed out that the allegations of dishonesty which had been brought by the GMC in its statement of case had been found not proved and this was relevant in that most reasonable people would say the risk of dishonesty had been reduced.

91. Dr Nduka told the Tribunal that the MPTS had seen cases of doctors accused of lying on applications where some of those doctors gave no apology but the MPTS decided to impose no sanction. Dr Nduka had shown remorse and insight and also accepted the issues for those forms that he was dishonest on.

92. In relation to insight, Dr Nduka reminded the Tribunal of the employability and administration course he had taken. He was mentioning the course, he said, as it helped for him to know other ways to act if he were to encounter such a situation again. This was not the only thing, but it had helped him to realise that preventing this type of mistake happening again was his responsibility, highlighting the fact that he was aware of the impact of his behaviour on his colleagues.

93. Dr Nduka submitted he had served his five years erasure which had now become six and a half years. He could have gone to another country to work but instead took responsibility for his actions, which could be seen as redemptive. He apologised for any distress he had caused to anyone, including the GMC, MPTS and any other doctors involved.

94. Dr Nduka then drew the Tribunal's attention to the courses and training he had undertaken to keep his medical skills and knowledge up to date. He had done some training at the European College and obtained a Masters certification, taking exams during the COVID-19 pandemic. The Royal College of Obstetrics and Gynaecology (RCOG) had assessed him in 2018, requiring him to get 30 points. Therefore any allegation that the number of points he had were below what was required was untrue. Dr Nduka reminded the Tribunal he had registered for final RCOG exam but was unable to sit it because he was erased from the medical register.

95. Dr Nduka reiterated that he was under consideration for a PhD in Obstetrics and Gynaecology. The Head of Department at UCL had told Dr Nduka that once he was restored to the medical register and if he found a supervisor, he would then be able to commence his PhD. This was proof that would show the public that he continued to educate himself. With regards to standards of practice and public confidence, he would continue to show that he would maintain public confidence and uphold professional standards.

96. Dr Nduka submitted that the circumstances leading to his erasure had been remedied. He told the Tribunal he had not written a reflective piece as his understanding was that a reflective statement was not a requirement and believed that it could be used against the doctor. Dr Nduka reminded the Tribunal he did not have a lawyer to help him prepare his submissions. He believed that the process of writing his submissions demonstrated that there was ongoing reflection.

97. Dr Nduka then talked the Tribunal through his insight regarding the impact of his actions on others. There were various people that Dr Nduka now interacted with, including staff at UCL, the French university, the European College and Lister Hospital. His interactions with them had not shown any *'below board'* behaviour and proved he continued to show insight not to be dishonest with anyone he was currently interacting with.

98. Dr Nduka submitted that he knew that all the circumstances of the case had to be taken into consideration by the Tribunal before reaching a decision. He reminded the Tribunal that his behaviour had not fallen into the more serious categories of sexual assault, blackmail or human trafficking.

99. Addressing the concern of a risk of repetition, Dr Nduka told the Tribunal he was not at risk of reoffending when one took into account that the courts and Information Commissioner's Office had been informed of his matters. The court findings had not been in his favour and he understood the judgment. Dr Nduka had no criminal record and reminded the Tribunal that he had people he was responsible for, XXX.

100. Dr Nduka submitted the City & Guilds course would help him not to repeat the behaviour in terms of making sure the information on any application forms was correct, and if there was a mistake it could be corrected before the recipient pointed it out.

101. Dr Nduka submitted that repetition was more likely when a person has not served any punishment, and the punishment in itself is a form of deterrent. Sanctions were imposed to deter the behaviour from recurring, and serving five years punishment was not something he took lightly. He had served the sanction and therefore the risk of repetition was low.

102. Dr Nduka invited the Tribunal to agree that he had demonstrated significant and above normal insight, and demonstrated remediation under difficult circumstances, shown remorse throughout and demonstrated his clinical skills were kept up to date. Putting all the circumstance together, Dr Nduka asked that the Tribunal restore him to the register. If there were any clinical concerns, he was happy to undergo a clinical assessment.

The Tribunal's Approach

103. 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, as set out later in this determination.

104. While the Tribunal has borne in mind the submissions made by the parties, the decision as to whether to restore Dr Nduka's name to the Medical Register is a matter for this Tribunal exercising its own judgment.

105. Throughout its consideration of Dr Nduka's application for restoration, the Tribunal was guided by the approach set out in the MPTS *'Guidance for medical practitioners tribunals on restoration following disciplinary erasure'* ('the guidance').

106. The Tribunal reminded itself that the onus is on Dr Nduka to satisfy it that he is fit to return to unrestricted practice and that the Tribunal should not seek to go behind the previous Tribunals' findings on facts, impairment and sanction.

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

a. the circumstances that led to the erasure;
b. whether Dr Nduka has demonstrated insight into the matters that led to erasure, taken responsibility for his actions and actively addressed the findings about his behaviour or skills;
c. what Dr Nduka has done since his name was erased from the register;
d. the steps Dr Nduka has taken to keep his skills and knowledge up to date; and
e. the lapse of time since erasure;

and then go on to determine whether restoration will meet the overarching objective considering any factors relevant to the original erasure and the new information.

108. The test to be applied by Tribunal's 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.*'

a. The protection, promotion and maintenance of the health, safety and well-being of the public.
b. The promotion and maintenance of public confidence in the medical profession.
c. To promote and maintain proper professional standards and conduct for members of the medical profession.

The Tribunal's Decision

The circumstances which led to Dr Nduka's erasure

109. The Tribunal had careful regard to the determinations and findings of the 2016 and 2017/2018 hearings throughout its deliberations and the background to the case as set out in detail above.

110. This Tribunal then went on to consider whether Dr Nduka has now addressed the concerns raised by the previous Tribunals.

Insight and Remorse

111. The Tribunal had regard to paragraph B10 of the guidance:

'Insight and remorse

B10 Factors that can be relevant to a doctor demonstrating genuine insight include, but are not limited to, evidence they have:

a considered the concern, understood what went wrong and accepted they should have acted differently

b demonstrated that they fully understand the impact or potential impact of their performance or conduct, for example by showing remorse…

c demonstrated empathy for any individual involved, for example by apologising fully…

d taken steps to remediate and to identify how they will act differently in the future to avoid similar issues arising…'

112. The Tribunal carefully considered the oral and written evidence provided by Dr Nduka. It took into account that Dr Nduka now accepted courts in the UK and the ECHR did not rule in his favour.

113. The Tribunal acknowledged that it was not a pre-condition of finding insight that Dr Nduka accept the findings of the previous Tribunals. Nevertheless, the Tribunal found that Dr Nduka's insights into why it was generally wrong to give false information in application forms was weak.

114. The Tribunal found that Dr Nduka's weak insight was reflected in his application for restoration. The Tribunal noted instances where Dr Nduka used misleading phrases in his application which the Tribunal found indicated that he had still not developed insight or understanding that the first step on the road to acting honestly was to record things accurately and not merely write what he wished had happened.

115. The Tribunal noted that, in his application and written evidence, Dr Nduka stated he had commenced a substantial clinical observership included '*a broad spectrum of cases',* however in his oral evidence on 7 February 2024 he conceded that he had only undertaken a three-week informal arrangement following of a colleague in an A&E department. There was no reflection provided by Dr Nduka or any written evidence explaining what he had learned. Additionally, there was no testimonial from the person he was shadowing.

116. In his oral evidence on 7 February 2024, Dr Nduka told the Tribunal that in fact, the formal observership had not begun because of difficulties in arranging it. On the evening of 7 February 2024, he emailed the GMC requesting that a line in the main bundle referring to his observership *'had been doing a period of clinical observership attachment at hospital to reacquaint myself with NHS procedures. This includes a broad spectrum of cases.'* should be redacted on the electronic bundle. On 8 February 2024 Dr Nduka invited the Tribunal to delete this part of his written evidence.

117. The Tribunal also noted that in his written evidence, Dr Nduka said that the online Masters, course he had taken part in was online because of the COVID-19 pandemic. However, it became apparent during his evidence that the bulk of the course was always online and he had been unable to attend practical clinical work, not because of Covid, but because he did not have registration with the GMC.

118. The Tribunal did not conclude that Dr Nduka had been deliberately dishonest, but did find that he had, even in his application for restoration, displayed a disturbing lack of insight into the need to be accurate. The Tribunal also noted that this approach persisted, even after he had completed a City and Guilds diploma in administration, which, he told the Tribunal, taught him about the importance of accuracy when completing documents.

119. In relation to the City & Guilds diploma, the Tribunal was of the view that Dr Nduka's claim that this demonstrated he had remediated the concerns about him, highlighted a lack of understanding on Dr Nduka's part that the central concern about his fitness to practise was dishonesty, not accuracy, and the City and Guilds course did not address this at all.

120. The Tribunal asked Dr Nduka a number of direct questions about his insight into the importance and impact of dishonesty. He acknowledged that putting something inaccurate in an application form is not the right thing, but added *'unforeseen things happen'*. He accepted that doing so dishonestly would not promote trust, but added that a member of the public would *'want an explanation'* and would be unhappy if there were none. He was asked what effect dishonesty in applications would have on public view of doctors, he replied *'I can't answer that. Politicians say things that they can later correct. I am not sure I am capable of answering about the effect on the public'*.

121. The Tribunal also asked Dr Nduka if he would make a dishonest entry in an application form in future. He replied that he would not. When he was asked why not, he replied that this was because of the experience he had over nine years. He explained that he had been punished and this was a deterrent for the future.

122. The Tribunal concluded that Dr Nduka displayed a disturbing lack of understanding into the impact of dishonesty, whether because he could not accept that he had been dishonest, or otherwise. In this regard, the Tribunal noted that in his written application for restoration, Dr Nduka was still blaming other people, for the entries and application forms that had led to his erasure. He continued to claim that there was evidence that his account had been tampered with by others.

123. The Tribunal found that the only evidence that Dr Nduka was starting to develop some insight arose during the hearing when he accepted the previous Tribunals' decisions and acknowledged that some of the things he had written in support of his application for restoration could be open to misinterpretation, for example what he had written about the clinical observership and his reference to a Masters qualification obtained from IRCAD University being conducted remotely due to the COVID-19 pandemic.

124. The Tribunal was of the view that, to his credit, Dr Nduka was able to display some understanding into how some of the things he wrote were exaggerated or could be misleading. However, he had no understanding of why he phrased things in such a manner nor did he seem apologetic or express any remorse.

125. When asked about the impact of his actions, Dr Nduka talked about how the Tribunal members and GMC had been inconvenienced, along with those who worked at the MPTS and High Courts. Dr Nduka was unable to go any deeper than this.

126. The Tribunal concluded that any insight Dr Nduka had was extremely limited, late and superficial, and not reflected in supporting evidence (including documentation or testimonials) from what he had done since his erasure.

Remediation and risk of repetition

127. When considering Dr Nduka's remediation, the Tribunal had regard to paragraph B15 of the Guidance, which states:

> *'B15 Remediation can take several forms, including, but not limited to:*
>
> *a participating in training, supervision, coaching and/or mentoring relevant to the concerns raised*
>
> *b attending courses relevant to the concerns raised, for example anger management, maintaining boundaries, ethics or English language courses*
>
> *c evidence that shows what a doctor has learnt following the events that led to the concerns being raised, and how they have applied this learning in their practice (where applicable)*
>
> *d evidence of good practice in a similar environment to where the concerns arose.'*

128. The Tribunal took into account the steps Dr Nduka had taken in the last five years to remedy his conduct. It was concerned that no remediation was undertaken to address the dishonesty and had regard to Dr Nduka's response to the question of why he had not attended a course on probity; that this may have been useful but he had been busy.

129. The Tribunal had regard to Dr Nduka's written statement relating to remediation, in which Dr Nduka said he believed that he had remediated some concerns. He also stated that he had received feedback relating to his '*nhsjob*' account being tampered with and how this had led to him making the dishonest statements on the job application forms in 2013-2015. In relation to the reviewing Tribunal of 2017/2018 not receiving a reflective statement, Dr Nduka stated that he had not provided one because he had read that now the GMC recommended that reflective pieces were not to be used to determine fitness to practise.

130. The Tribunal looked for evidence that Dr Nduka had taken any relevant steps to remediate and could find none. It was of the view that in the last five years, Dr Nduka had done very little to tackle the issue of dishonesty.

131. The Tribunal decided that, even without admitting his own dishonesty, Dr Nduka could have taken probity courses in order to reflect on what probity is and why it is important. The Tribunal noted that there were no testimonials from colleagues in relation to his honesty in any sphere of life and the Tribunal was left to conclude that Dr Nduka had done nothing to demonstrate his understanding of what dishonesty is or the effect that it has

on others, or that he had taken steps that could reassure a tribunal that he could be relied upon to be honest in the future.

132. The Tribunal concluded that Dr Nduka's extremely limited insight and lack of remediation meant that the risk of Dr Nduka repeating the actions that led to his suspension and subsequent erasure, was significant.

Steps Dr Nduka has taken to keep his medical skills and knowledge up to date

133. The Tribunal had regard to the postgraduate Masters certification(s) obtained from the IRCAD university and accepted that Dr Nduka had undertaken a course of relevant study. However, the Tribunal noted that there was no documentary or other independent evidence explaining what Dr Nduka had learned nor was there any evidence of reflection from Dr Nduka that explained to the Tribunal what he had learned and how it would satisfy the Tribunal that he had kept his skills up to date.

134. The Tribunal reminded itself that it had ascertained during Dr Nduka's oral evidence that the clinical observership that he stated in his written evidence he was currently doing, was actually only for three weeks and was very limited, with no supervisor report or any testimonials to support Dr Nduka's claims that he was keeping his medical skills and knowledge up to date.

135. The Tribunal noted that there was limited evidence of the following:

- Relevant and focused CPD or clinical observership;
- Reports from any supervisors or tutors;
- Reflection on what Dr Nduka had learned and how the learning could change/develop/improve his practice.

136. The Tribunal took into account Dr Nduka's offer to undertake a clinical assessment. The Tribunal had regard to the MPTS Guidance on restoration and concluded that it was not "*necessary for the tribunal to fairly carry out its function"* for two reasons. First, clinical concerns had no bearing upon the reasons for Dr Nduka's erasure so that a clinical assessment would do nothing to remove the remaining concerns regarding his honesty. Secondly, evidence of maintaining clinical skills can be reasonably obtained by other means. The Tribunal acknowledge that it was difficult to obtain a relevant, clinical observation, but was satisfied that it could be done. Dr Nduka could follow CPD courses of the sort he would need for revalidation if he were in practice.

137. The Tribunal concluded that the two certificates before it were not sufficient evidence to reassure it that Dr Nduka had kept his skills, sufficiently up-to-date for it to be safe for him to return to unrestricted practice.

Is Dr Nduka fit to be restored?

138. The Tribunal took into account the lapse of time and acknowledged there had been no further acts of dishonesty since the erasure. The Tribunal balanced this with the fact the Tribunal had seen no evidence of what Dr Nduka had been doing since his erasure to demonstrate his honesty. The Tribunal was satisfied that there had been sufficient time for Dr Nduka to accumulate evidence of positive good conduct, which Dr Nduka had not put before the Tribunal. The Tribunal took into account its findings in relation to insight, remorse, remediation and risk of repetition.

139. The Tribunal concluded that Dr Nduka was not currently fit to be restored and summarises its primary concerns as follows, in the hope that this may be of some assistance to Dr Nduka in the future:

- He still lacked insight and any that was evidenced was limited and late, only developing through the course of this hearing;
- He had yet to demonstrate any learning into the actions that led to his suspension and subsequent erasure from the Register;
- He was still making errors in relation to providing ambiguous and misleading statements;
- He had not shown any evidence of relevant CPD or learning relating to probity or relevant areas of practice;
- There is insufficient material before the Tribunal to satisfy it that Dr Nduka has maintained his clinical skills.

Will Restoration Meet the Overarching Objective?

140. Having made the above findings as to whether Dr Nduka is fit to practise, 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. The protection, promotion and maintenance of the health, safety and well-being of the public.
b. The promotion and maintenance of public confidence in the medical profession.
c. To promote and maintain proper professional standards and conduct for members of the medical profession.

141. The Tribunal determined that Dr Nduka had not developed sufficient insight into the seriousness of his actions and, as a consequence, had been unable to take the appropriate remediation required to address the Tribunal's concerns and demonstrate that he would behave differently if placed in the same situation in the future.

142. The Tribunal was of the view that if Dr Nduka were to be restored to the Register, there would be a risk to patient safety. Dr Nduka had provided very limited evidence as to what he has been doing to maintain his medical skills and knowledge since his erasure over six years ago, in January 2018, and the Tribunal had no objective evidence as to his medical skills or any objective assessment of his current medical knowledge.

143. The Tribunal next considered the second limb of the overarching objective; the need to promote and maintain public confidence in the medical profession. The Tribunal took the view that an ordinary and well-informed member of the public would be concerned if a doctor who has not gained full insight or remediated his misconduct was restored to the medical register and allowed to practise without restriction. The Tribunal concluded that public confidence in the profession would be seriously undermined by the restoration of Dr Nduka into unrestricted practice at this time.

144. With regard to the maintenance of professional standards and conduct for members of the profession, the Tribunal took into account that the 2016 Tribunal had not found Dr Nduka's dishonesty in relation to the three application forms completed between August 2013 and April 2015 to be fundamentally incompatible with continued registration. However, the 2017/2018 reviewing Tribunal had been concerned enough by Dr Nduka's persistent lack of insight and failure to remediate, to direct that his name be erased from the Register.

145. In light of Dr Nduka's continued failings to this day to understand the implications and impact of his dishonesty, and the lack of evidence that he had taken the steps necessary to satisfy the Tribunal he was ready to return to unrestricted practice, the Tribunal concluded that restoring Dr Nduka to the Register would be inconsistent with promoting and maintaining professional standards of conduct in the profession.

Conclusion

146. In conclusion, the Tribunal was not satisfied that Dr Nduka is currently fit to practise and accordingly, it determined that Dr Nduka's name should not be restored to the Medical Register.

Dr Nduka's Right to Make Further Applications for Restorations

147. Dr Nduka must automatically wait at least 12 months from the date of this restoration application before applying again. The Tribunal has no discretion to make this period longer or shorter unless the doctor has made two or more previous applications, which is not the case here.

148. That concludes this case.

ANNEX A - 05/02/2024

Application to strike out the new Allegation and exclude the evidence on which it is based

149. Prior to the start of the hearing on 5 February 2024, Dr Nduka raised a matter relating to the new Allegation and the evidence provided by Dr A that had given rise to it.

150. Dr Nduka told the Tribunal that the Application for the post at UCL was submitted on 21 June 2018 and came to the attention of the GMC on 10 July 2018. He referred the Tribunal to Rule 4(5) of the Rules, which states:

> *'No allegation shall proceed further if, at the time it is first made or first comes to the attention of the General Council, more than five years have elapsed since the most recent events giving rise to the allegation, unless the Registrar considers that it is in the public interest for it to proceed.'*

151. Dr Nduka submitted that more than five years had lapsed since the GMC received the information and today's hearing. No issue had been raised in relation to public interest, the Application was for a post at UCL and Dr Nduka submitted that the new Allegation was not admissible on a fair reading of Rule 4(5) and should not be considered by the Tribunal.

152. Dr Nduka told the Tribunal there was relevant case law which supported his submissions.

153. Dr Nduka then submitted that the Application to UCL was personal data and should not have been shared with the GMC by Dr A. He further submitted that the UCL website states this kind of data should only be stored for three years and raised the question of whether it was fair that the GMC kept the Application for consideration, for the purpose of making further allegations. Dr Nduka said he was not registered with the GMC at the time the evidence was submitted, thus it was unfair to store it.

154. Dr Nduka added that as UCL categorically stated that they did not store applications for more than three years, the GMC could not justify keeping the Application beyond the three years. He told the Tribunal that this was unreasonable and unfair.

155. Ms Widdett submitted that the GMC had kept the evidence provided by Dr A as it could not do anything with the information at that time, Dr Nduka's name having been erased from the medical register. However, the GMC's role was to comply with the statutory overarching objective and was obliged to keep the information to use in applications such as this application for restoration.

156. Ms Widdett submitted that the wording of Rule 4(5) did not assist Dr Nduka as the events giving rise to the concerns were raised in July 2018 to the GMC. She submitted that Rule 4(5) did not apply to the period between the receipt of the new Allegation and the use by

this Tribunal. Ms Widdett further submitted there was no restriction under GDPR to the GMC holding Dr Nduka's job application beyond three years because it needed to do so in order to protect the public.

The Relevant Legal Principles

157. The LQC gave the following advice in front of the parties. He advised that Rule 4(5) applies only to the time between the events giving rise to an allegation and the complaint to the registrar.

158. The LQC also advised that the courts have identified cases where there is a delay between the events giving rise to an allegation and the final hearing and the Tribunal would consider the issue of delay in fairness to Dr Nduka because he was not represented. The LQC advised that the Tribunal should consider if there had been any unreasonable delay by the Registrar, the extent of any prejudice to the doctor and any other reason why hearing the new Allegation was unfair.

The Tribunal's Decision

159. The Tribunal was satisfied that Rule 4(5) applied only to the time between the events giving rise to an allegation and the referral to the registrar. There was no dispute that the matters giving rise to the Allegation were reported to the GMC on 10 July 2018, within a month of the Application being made on 21 June 2018. The Tribunal was therefore satisfied that Rule 4(5) did not apply in this case.

160. The Tribunal then considered whether it should exclude the evidence of Dr A because the copies of Dr Nduka's job application had been improperly preserved in breach of GDPR. The Tribunal accepted that the GMC could take no action in respect of the allegation raised with it in July 2018 because Dr Nduka's name had been erased from the medical register. The Tribunal was also satisfied that the GMC was under a duty to keep the material upon which the new Allegation was based, to use in the event of any application by Dr Nduka to be restored to the register.

161. The Tribunal noted that UCL deleted applications after three years and some of the institutions to which Dr Nduka had applied deleted the information after a shorter period. The Tribunal was satisfied this did not affect the duty of the GMC to keep the material as long as necessary to protect the public. The fact that the institutions to which Dr Nduka applied to work for had no further need of his applications had no bearing on the GMC's need to preserve the material.

162. The Tribunal then considered whether the deletion of the Application by UCL while the GMC had preserved the Application gave rise to any unfairness towards him. The Tribunal was satisfied that it did not because there was no suggestion that the GMC had caused material to be deleted.

163. Finally, the Tribunal considered whether the delay between 2018 and the date of this Tribunal in 2024 gave rise to such unfairness that the Tribunal should not hear the new Allegation. The Tribunal was satisfied that it did not for the following reasons. First, there had been no delay by the GMC, who raised this Allegation as soon as it reasonably could, when Dr Nduka applied for restoration. Secondly, the new Allegation relied entirely upon documentation and no significant issue arose regarding the memories of witnesses. Thirdly, there was no other identifiable prejudice to Dr Nduka arising from the passage of time.

164. Accordingly, the Tribunal was satisfied that the GMC could proceed with the new Allegation, and the evidence of Dr A and the documents she produced were admissible in support of that allegation.