

PUBLIC RECORD

Dates: 24/07/2024 - 25/07/2024

Medical Practitioner's name: Dr Muhammad KHAN

GMC reference number: 5189848

Primary medical qualification: MB BS 1984 University of Peshawar

Type of case

Restoration following disciplinary erasure

Summary of outcome

Restoration application refused. Right to make further applications suspended indefinitely.

Tribunal:

Legally Qualified Chair	Ms Louise Sweet
Lay Tribunal Member:	Mrs Nicola Stephenson
Medical Tribunal Member:	Dr Anup Singh
Tribunal Clerk:	Ms Angela Carney

Attendance and Representation:

Medical Practitioner:	Not present, not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Christopher Hamlet, Counsel

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.

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 - 25/07/2024

Background

1. Dr Khan has applied to the General Medical Council ('GMC') for restoration of his name to the Medical Registrar following his disciplinary erasure in 2006.
2. The Tribunal has considered this application in accordance with the provisions set out in Rules 23 and 24 of The General Medical Council (Fitness to Practise) Rules 2004, as amended ('the Rules'), as well as in accordance with section 41 of the Medical Act 1983, as amended ('the Act').
3. This is Dr Khan's third application for restoration to the Medical Register.
4. Concerns were first raised about Dr Khan's performance in January 2003, following his appointment as a Locum Medical Officer at Bedford Prison. Further concerns regarding his prescribing and relationships with staff were also raised by HMP Exeter. As a result of the concerns raised, Dr Khan undertook a Performance Assessment, which took place in December 2003 and January 2004. Following the Performance Assessment Dr Khan was referred to a Fitness to Practise Panel which concluded in November 2004 ('the 2004 Panel').

The 2004 Panel

5. The 2004 Panel agreed with the findings of the Performance Assessment, and determined that Dr Khan's practice was unacceptable in the following areas:
 - a) Assessment of patients' conditions;
 - b) Providing or arranging treatment.
6. The 2004 Panel also agreed that Dr Khan's practice was a cause for concern in the following areas:
 - a) Referring patients when indicated and working within limits of competence;
 - b) Record keeping;
 - c) Treatment in emergencies;
 - d) Constructive participation in audit, assessment and appraisal;
 - e) Communication with patients;

- f) Educational activities;
- g) Relationships with colleagues/GPs/teamwork.

7. The 2004 Panel determined that Dr Khan's standard of past professional performance was 'seriously deficient', and it found 'fundamental and wide-ranging deficiencies' in his knowledge and skills. The 2004 Panel imposed an order of conditions on Dr Khan's registration for a period of 18 months, to allow him time to demonstrate that he was capable of achieving the necessary improvements.

2006 Panel

8. Dr Khan's case was reviewed by a Fitness to Practise Panel in May 2006 ('the 2006 Panel'). Dr Khan was not present and was not represented at that hearing. The 2006 Panel was not provided with any objective evidence to indicate that Dr Khan had improved his performance in the areas of identified serious deficiency. Further, it was not provided with any evidence that he had consulted with a Postgraduate Dean about his educational needs and produced a Personal Development Plan ('PDP') or that he had attended and passed both basic and intermediate life support courses, as required by the conditions imposed on his registration by the 2004 Panel. Given this, the 2006 Panel found that Dr Khan's fitness to practise remained impaired by reason of his deficient professional performance.

9. The 2006 Panel found that Dr Khan had failed to accept the findings made by the Performance Assessors and the 2004 Panel and determined that he had not taken any steps to address the serious deficiencies identified. It found that he had 'total, persistent and continued lack of insight into his failings' and their consequences and determined that there was a 'real risk of harm to patients' if he were permitted to return to any form of medical practise. The 2006 Panel determined to erase Dr Khan's name from the Medical Register.

2012 Panel

10. Dr Khan's first application for restoration was considered by a Fitness to Practise (Restoration) Panel on 13 July 2012 ('the 2012 Panel'). Dr Khan was present and self-represented at that hearing.

11. The 2012 Panel was not satisfied that Dr Khan had produced sufficient evidence to show that he had overcome the identified deficiencies of the past, he was fit to practice safely and without risk to patients and that his performance merited restoration. It noted that he had several years to prepare his hearing, but considered that *'...the results were marked by apparent indifference to elementary requirements of professional rigour'*

12. The 2012 Panel was concerned by the *'casual and unsearching way'* in which Dr Khan made his case for restoration and by the *'lack of measured objectivity'* in his approach. It found that Dr Khan had not thought his case through with due regard to Good Medical Practice (GMP), and that this gave grounds for *'serious misgivings about [his] grasp of professional obligations and regulatory expectations'*.

13. The 2012 Panel was troubled by the fact that Dr Khan continued to dwell on his own pride, as well as by his *'seeming reluctance to face up to the realities of what was required of [him] many years ago'*. The 2012 Panel determined that Dr Khan's insight was not sufficiently well developed to justify restoration to the Medical Register, concluding that it was not satisfied that Dr Khan's insight had reached the point at which it could reliably ensure that he would tackle the issues associated with his present and past performance effectively. The 2012 Panel considered that Dr Khan's insight was developing but was doing so only slowly. It remained concerned that the nature of the limitations upon that insight could well inhibit Dr Khan's capacity to tackle his performance deficiencies more generally. The 2012 Panel refused Dr Khan's application for restoration to the Medical Register. The 2012 Panel set out the following suggestions, as a minimum, that any future Tribunal considering Dr Khan's application for restoration may be assisted by:

- a) clear, substantial, verified and objective evidence from a range of authoritative sources as to the extent to which you have overcome the deficiencies identified in 2004;
- b) material demonstrating a credible approach to dealing with all the conditions imposed by the 2004 Panel;
- c) comprehensive evidence that you have produced a structured and systematic PDP, together with valid data on the outcomes of your continuing professional development affecting patients and your practice - including, but not limited to, action on the deficiencies identified in 2004;
- d) satisfactory evidence attested from a variety of sources that your insight has developed in such a way as to justify a conclusion that you fully understand the requirements of *Good Medical Practice* ('GMP'), and have faced up to the rigours of reflective practice without rancour; and
- e) a commitment to undergo any Performance Assessment that may be required by the GMC.

2017 Tribunal

14. Dr Khan's second application for restoration was considered by a Medical Practitioners Tribunal in November 2017 ('the 2017 Tribunal'). Dr Khan was present and self-represented at that hearing.

15. The 2017 Tribunal received a letter from Dr Khan's mentor, Dr A, Professor & Head of the ENT. It found that Dr A's testimonial was virtually identical to the wording of his testimonial dated 10 August 2011. It also found that the later testimonial contained unexplained hand-written amendments to dates. The 2017 Tribunal was concerned about the quality of the most recent testimonial. It noted the apparent lack of consideration given by Dr A to presenting a comprehensive and up to date summary of Dr Khan's progress. Rather, it appears that Dr A had simply reproduced a 2012 document with some minor

insubstantial amendments. Accordingly, the 2017 Tribunal could not attribute a great deal of weight to it.

16. The 2017 Tribunal had regard to the recommendations set out ‘as a minimum’ by the 2012 Panel. During that hearing, Dr Khan had stated that he was willing to undergo a Performance Assessment, if required. The 2017 Tribunal found that, with the exception of agreeing to undergo a Performance Assessment, Dr Khan had failed to provide any evidence suggested by the 2012 Panel. Dr Khan provided a number of CPD certificates and two testimonials from Dr A, which the 2017 Tribunal found were of limited weight. The 2017 Tribunal determined that the evidence presented by Dr Khan was neither sufficient nor satisfactory and fell far short of the standard required.

17. In relation to the 2012 Panel’s points, b and c, the 2017 Tribunal found it was not provided with material demonstrating a credible approach to the conditions imposed by the 2004 Panel, nor had it been provided with comprehensive evidence of a PDP. Dr Khan provided an undated letter from Dr A setting out his compliance with the 2004 conditions, and he asserted that this document also doubled as his PDP. Further, the 2017 Tribunal could not be sure how old the undated document was. The 2017 Tribunal found that this was insufficient to demonstrate that Dr Khan had undertaken a credible approach to the 2004 conditions. The 2017 Tribunal was not satisfied that it constituted a structured and systematic PDP, as it failed to provide any detail of the specific work undertaken other than the most basic list.

18. In relation to point d, the 2017 Tribunal was not provided with evidence from a variety of sources to show that Dr Khan’s insight has developed sufficiently, nor was it provided with any evidence to show that he had had regard to the requirements of GMP.

19. The 2017 Tribunal was concerned that Dr Khan’s insight fell far short of what would be expected at that stage. It found that Dr Khan had not provided sufficient evidence to demonstrate that he had addressed the deficiencies identified by the 2004 Panel and considered that it showed that either he could not comprehend his failings, or else that he was unsure how to evidence overcoming them.

20. The 2017 Tribunal found that Dr Khan had presented evidence that was first adduced at the 2012 hearing, despite the 2012 Panel setting out that the evidence was insufficient. It also found that Dr Khan had again placed reliance on the unverified testimonial of Dr A, despite the 2012 Panel expressly setting out that this testimonial was insufficient in terms of evidence.

21. The 2017 Tribunal also found that in Dr Khan’s oral evidence, he again relied on Dr A and did not appear to understand that the responsibility for producing sufficient evidence was his and his alone. Dr Khan referred to Dr A’s testimonial repeatedly as a justification for his compliance with all of the requirements previously placed upon him and repeatedly submitted to the 2017 Tribunal that this represented more than sufficient evidence to merit restoration.

22. The 2017 Tribunal was further concerned by Dr Khan's assertion that he was intending to retire next year (2018), and that this application was a matter of *'honour'*. It considered that restoration to the Medical Register must be based on remediation and insight, which it found lacking in Dr Khan's case.

23. The 2017 Tribunal determined that the evidence adduced at that hearing, both oral and documentary, fell far short of that recommended by the 2012 Panel and restoring Dr Khan to the Medical Register would not be in line with its overarching objective. Accordingly, the 2017 Tribunal determined to refuse Dr Khan's application to be restored to the Medical Register.

24. The 2017 Tribunal wished to make clear that any future Tribunal would be assisted by 'as a minimum':

- The evidence listed in the five bullet points, as first recommended by the 2012 Panel;
- The additional documentation referred to by Dr Khan at this hearing (including recent and up-to-date appraisals). Dr Khan may wish to discuss this documentation with a senior colleague to ensure it meets the required standard.

The current application for restoration

Documentary Evidence

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

- a) Dr Khan's Application for Restoration (including supplementary sheet), dated 11 August 2023
- b) UD8 form
- c) Minutes of the Fitness to Practise Panel hearing (now Medical Practitioners Tribunal hearing) November 2004
- d) Minutes from Fitness to Practice Review hearing (now Medical Practitioners Tribunal review hearing) in May 2006
- e) Bundle from July 2012 Restoration hearing
- f) Minutes from July 2012 Restoration hearing
- g) Bundle from November 2017 Restoration hearing
- h) Record of Determinations November 2017
- i) Email to the GMC from Dr Khan dated 23 November 2023
- j) Email correspondence between the GMC and Dr Khan

Submissions

26. Mr Hamlet, on behalf of the GMC, provided the Tribunal with the background to the case. He referred the Tribunal to the findings of the substantive Fitness to Practise Panel hearing in 2004 and Dr Khan's response to the deficiencies of the GMC Health Assessment.

27. Mr Hamlet also referred the Tribunal to the findings of the Panel at Dr Khan's restoration application hearing in July 2012 at which Dr Khan was present and represented. He submitted that the Tribunal may find resonance with that Panel's conclusion as follows:

'The Panel was concerned by the casual and unsearching way in which you made your case for restoration, and by the lack of measured objectivity in your approach. You appeared to think that once the period of your erasure had passed the five year point, restoration could be readily secured simply upon testimonial evidence.

Indeed, the Panel did not consider that you had thought your case through from the perspective of the GMC with close attention and with due regard to Good Medical Practice. This itself gave grounds for serious misgivings about your grasp of professional obligations and regulatory expectations. The Panel was troubled that you continued to dwell on matters upon which your pride has been hurt, and by your seeming reluctance to face up to the realities of what was required of you many years ago.'

28. Mr Hamlet referred the Tribunal to the suggestions as to what evidence may assist a future Tribunal should Dr Khan make a future restoration application. He submitted that Dr Khan failed to provide any of the evidence suggested.

29. Mr Hamlet referred to Dr Khan's restoration application and its contents. He said that it appeared that Dr Khan has been working in Pakistan. Mr Hamlet submitted that the only safe outcome would be to reject Dr Khan's restoration application, as he has failed to provide any objective evidence of his fitness to practise and had not made any efforts to address the deficiencies identified by the Performance Assessment. He submitted that there is no reasonable basis upon which Dr Khan's application should be granted.

30. Mr Hamlet further noted that, in light of the facts Dr Khan has had two previous unsuccessful restoration applications, his insight has not improved, nor has he made any efforts to remediate the deficiencies identified if the application is refused he would be making further submissions under Rule 41(9) of the Medical Act that the Tribunal should direct that Dr Khan's right to make any further such applications be suspended indefinitely.

The Tribunal's Approach

31. When determining the outcome of Dr Khan's restoration application, the Tribunal took account of the statutory overarching objective and had regard to the *'Guidance for medical practitioners tribunals on restoration following disciplinary erasure'* (the Guidance).

32. The Tribunal has borne in mind that where an application for restoration is made to a Tribunal, it may, if it thinks fit, direct that the doctor's name be restored to the register: Section 41(1) of the 1983 Act. The Tribunal has no power to grant registration with conditions, or to restrict it. If restoration is granted, then the doctor returns to unrestricted practice.

33. This is Dr Khan's third restoration application. The onus is on him to demonstrate that his name should be restored to the medical register. The Tribunal should not go behind the findings of the substantive and review Panels. The purpose of a restoration hearing is for the Tribunal to decide if the doctor is fit to return to practise, taking account of the statutory overarching objective and other relevant factors.

34. The Tribunal must take account of all evidence, submissions, relevant law and guidance. Factors to be considered by the Tribunal include:

- a) The circumstances which led to erasure
- b) Any relevant matters post-dating these circumstances
- c) The extent to which the doctor has shown remorse and insight
- d) The extent to which the doctor has remediated
- e) What the doctor has done since his name was erased
- f) Any steps taken to keep medical knowledge and skills up to date
- g) The length of time elapsed since erasure
- h) Any risk posed by the doctor
- i) Whether public confidence and professional standards would be damaged by restoring the doctor to the register.

35. There is a need to maintain public confidence in the medical profession. The reputation of the profession as a whole is of greater significance than that of an individual doctor.

36. The Tribunal must be satisfied that restoration would promote and maintain public confidence and uphold professional standards so that, notwithstanding the serious nature of the original matters which led to erasure, the overarching objective to protect the public would be achieved. The Tribunal has broad discretion when considering an application for restoration and may direct that a doctor's name be restored to the Medical Register if it thinks fit.

The Tribunal's Decision

37. The Tribunal first considered the information provided by Dr Khan in his restoration application form and via emails sent to the GMC.

38. In the work experience section of the application form, Dr Khan stated that from January 2015 to October 2020 he worked as a District Health Officer and from October 2020 to July 2023 and also worked in private practice in Pakistan.

39. In Dr Khan's supplemental information sheet he stated:

- 1. For the past five years he has been working as a MS – DHO Public health officer in preventative medicine and controlling all health activities in Khyber Paktoon khawa district headquarter hospitals, Pakistan.*
- 2. In 2013 he was awarded a diploma in Otorhinolaryngology*

3. *In 2010 he received recognition of his foreign post graduate qualification equivalent to Masters in Public health.*
4. *In 2011 he received a certificate of achievement after successfully completing and passing a health care management training course.*
5. *In October 2017 he was awarded a certificate of achievement.*
6. *'Being competent enough now you have to register me as ENT or preventative medicine as having courses and master degree and diplomas being a British citizen having the right to serve and get job. Now 65 still need a job not retired yet.'*

40. The Tribunal noted the Service of Experience certificate from Dr Khan (the Khyber Pakhtunkhwa Peshawar) he worked as M.S (BPSr19) DHQ Hospital Tank March 2014 to January 2015 and DHO (BPS-20) Battaqram January 2015 to October 2020.

41. The Tribunal noted the Certificate of Good Standing from the Pakistan Medical and Dental Council valid until 27 October 2023. The Tribunal inferred from this certificate that there has been no evidence of performance deficiencies which had led to disciplinary action whilst Dr Khan was working in Pakistan.

42. The Tribunal noted the email from Dr Khan dated 25 August 2023:

'... i am not to fill UD 8 from I filled because u asked for past 5year service history. so 2 years and 2 months was included in past govt job. it was required. ... like to pay your attention that I have been retired from government job at the age of 60 in October 2020 I attached my service history from 1987 till October 2020 then I was doing my own private clinic as a Gp. due to humans rights violation at peak in Pakistan. came back to my 2nd home Great Britain and love to work in preventive medicine. and public health and hospital manger..being fully trained as a manger of communicable diseases at district level and provincial level being bilingual can treat a lot of diseases without medicine and prevent spread of diseases and take of the the burdlen [sic] of load of diseases from the society (((pass my message to G M C Chairman ..))). for the benefit[sic] of the mixed society. waiting for urgent registration as public health specialist...'

43. The Tribunal noted the email from Dr Khan dated 29 September 2023:

'Respectable madam. the declaration of my recent 3 months job and almost last 5 years job sent to your office on 26 / 9 /2023 verified and attested by my colleague professor B so what else u like to know ...I mentioned several times that I am retired since 02/05/2019. at the age of 60 years. I also stated that I am doing my private practice. since retirement thanks dr muhammad khan ref 5189848.. the declaration of my private practice attested by my senior colleague.'

44. The Tribunal noted that in September 2023 this Professor B verified that Dr Khan was self-employed and working in private practice from May 2019 to August 2023.

45. The Tribunal noted the email from Dr Khan dated 26 November 2023 in which he stated:

'I am not withdrawing my application as my new qualification that recognized by PMDC Islamabad Pakistan dated 25/08/2008 .it is master public health u have to regigister [sic] me as a public health specialist .it is preventive medicine not clinical it doese [sic] not need fitness to practicice [sic] certificate .it need only restoration of my registration. this is M P H awarded by pmdc after interview and detailed personel [sic] hearing this in recognition of my foreign postgraduate Qualification #that is a higher diploma in international health. please consider it as a restoration on new ground completey [sic] different position from past. this pmdc recognition certificate.'

46. The Tribunal next considered each of the five recommendations for evidence that might assist a future Restoration Tribunal. These had been described 'as a minimum' by the 2012 Panel. These were adopted and a further one added by the 2017 Tribunal, now making six recommendations (a) to (f).

a) clear, substantial, verified and objective evidence from a range of authoritative sources as to the extent to which he has overcome the deficiencies identified in 2004;

47. Dr Khan has not provided any new documentary evidence to this Tribunal. The Tribunal noted that the certificates provided by Dr Khan predate the 2017 hearing. The Tribunal accepted that Dr Khan has been working in Public Health but he has provided no evidence at all as to his performance in the areas that were deficient. The Tribunal considered that Dr Khan has not met the requirement in recommendation a) at all.

b) material demonstrating a credible approach to dealing with all the conditions imposed by the 2004 Panel;

48. Dr Khan has provided no new evidence to meet this requirement. Dr Khan has made no reference in his correspondence to the GMC to the conditions imposed by the 2004 Panel, which were aimed at improving his clinical performance and knowledge of Good Medical Practice (GMP). The Tribunal considered that Dr Khan has not met the requirement in recommendation b) at all.

c) comprehensive evidence that he has produced a structured and systematic PDP, together with valid data on the outcomes of his continuing professional development affecting patients and his practice - including, but not limited to, action on the deficiencies identified in 2004;

49. Dr Khan has not provided a PDP. There is no evidence from a Post Graduate Dean of his training. There is no evidence that he has passed Professional and Linguistic Assessment Board (PLAB). Dr Khan has not provided evidence of Continuing Professional Development. Dr Khan has not provided any reflection or other documents to demonstrate how his deficiency

might affect his patients. Dr Khan has indicated in his correspondence that he wishes to work in a different area of medicine, namely in public health. This does not assist the Tribunal with any of the concerns raised at previous hearings. The Tribunal considered that Dr Khan has not met the requirement in recommendation c) at all.

d) satisfactory evidence attested from a variety of sources that his insight has developed in such a way as to justify a conclusion that he fully understands the requirements of Good Medical Practice ('GMP'), and have faced up to the rigours of reflective practice without rancour; and

50. Dr Khan has not provided any evidence that he has engaged in reflective practice. The Tribunal noted that Dr Khan has not attended this hearing, so there is no evidence from him that he has reflected on his deficiencies. There is no evidence that Dr Khan's insight has improved since 2017 Panel. The Tribunal considered that Dr Khan's correspondence with the GMC shows a continued lack of insight. Dr Khan refers to his '*right to a job as a British citizen*' as part of his application. In his email of 28 August 2023 Dr Khan requests '*urgent registration as public health specialist*'. In his email of 21 November 2023 Dr Khan requests to re-register '*as it's a complete changer [sic] of speciality*'

51. The Tribunal considered that these requests demonstrate a lack of insight into the concerns raised by his regulator as to his deficient performance and its role in protecting patient safety. Dr Khan is under the impression that changing speciality is an answer to the concerns raised when it is evidently not. This demonstrates a gross lack of insight on his part. The Tribunal considered that Dr Khan has not met the requirement in recommendation d).

e) a commitment to undergo any Performance Assessment that may be required by the GMC.

52. In his correspondence Dr Khan has made no reference to his commitment to undergo any Performance Assessment. The Tribunal has no indication from Dr Khan as to whether he is willing or not to undertake a Performance Assessment. The Tribunal considered that Dr Khan has not met the requirement in recommendation e).

f) Up to date Appraisals

53. The Tribunal accepted that Dr Khan was working in a public health role until retired in 2019 in Pakistan and then has worked in private practice for five years. It noted the Certificate of Good Standing from Pakistan which makes no suggestion of poor performance such that led to disciplinary action. However, the Tribunal noted at the 2017 hearing Dr Khan stated that he had 15 years of documents (equivalent to appraisals) completed by his employers in Pakistan and could provide these. Dr Khan applied for an adjournment in 2017 to provide them. His application was refused because it came so late in the day. The 2017 Tribunal suggested that Dr Khan provide these documents to any future Tribunal but has failed to do so nor has he provided any explanation as to why not.

54. The Tribunal, therefore, has no evidence as to what appraisals Dr Khan has completed nor of any outcomes, satisfactory or otherwise. The Tribunal considered that Dr Khan has not met the requirement in recommendation f).

55. The Tribunal is of the view that Dr Khan has not actively addressed any of the concerns regarding his performance or his knowledge of and commitment to Good Medical Practice. Dr Khan has not engaged with the concerns raised in any meaningful sense at all. He has failed to comply with any of the 2017 Tribunal's request to evidence insight and remediation.

56. The Tribunal is of the opinion that Dr Khan seems to be of the attitude, from the email exchanges between him and the GMC, that because he wishes to work in a different discipline (public health) to that which led to the 2004 proceedings he no longer needs to meet any of the Regulator's concerns as set out by the 2017 Tribunal.

57. The Tribunal noted that this is Dr Khan's third application for restoration. It is now seven years since his last application for restoration. It considered that he could have been under no misapprehension of what was expected of him. Dr Khan can be only readmitted to the register if there is satisfactory evidence that it is safe to do so. The requests for evidence are made for good reason, to protect the public.

58. The Tribunal reminded itself that the onus is on Dr Khan to satisfy the Tribunal that he can be safely admitted to the register. By providing no new evidence to this Tribunal he has not discharged his burden.

59. Accordingly, the Tribunal determined to refuse Dr Khan's application for restoration.

Determination on the application under Section 41(9) of the Medical Act - 25/07/2024

60. Following the Tribunal's refusal to grant Dr Khan's restoration application Mr Hamlet, submitted that it should direct that Dr Khan's right to make any further such applications be suspended indefinitely under Section 41(9) of the Medical Act, which states:

'41(9) Where, during the same period of erasure, a second or subsequent application for the restoration of a name to the register, made by or on behalf of the person whose name has been erased, is unsuccessful, a Fitness to Practise Panel may direct that his right to make any further such applications shall be suspended indefinitely.'

61. Mr Hamlet reminded the Tribunal of its findings in the restoration determination. He referred the Tribunal to the *'Guidance for medical practitioners tribunals on restoration following disciplinary erasure'* (the Guidance), which states:

'E1 If restoration is refused, the doctor must automatically wait at least 12 months 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.'

E2 If it is the doctor's second unsuccessful application, tribunals should consider whether to indefinitely suspend the doctor's right to apply for restoration.

E3 The doctor has the right to make representations on the question of whether the tribunal should use their power to indefinitely suspend further restoration applications.

62. In relation to Dr Khan's right to make representations Mr Hamlet referred the Tribunal to the MPTS Notice of Hearing (NoH) in which Dr Khan was informed of its powers under Section 41(9). Mr Hamlet stated that it would not be appropriate to adjourn these proceedings as Dr Khan has chosen not to engage in these proceedings.

63. Mr Hamlet reminded the Tribunal that it has been 18 years since Dr Khan was erased and that he has made very little effort to address the concerns raised. Mr Hamlet stated that Dr Khan has made three restoration applications where he had failed to address the Tribunal's concerns. He submitted that it is highly unlikely that he would be able or willing to make the necessary changes now or going forward in order to make a future viable restoration application. Mr Hamlet further submitted that this lack of engagement reinforces the fact that erasure was the correct decision to reach and it remains in the public interest.

64. When addressing the overarching objective, Mr Hamlet submitted that the original erasure decision was based on limbs b and c of the overarching objective and there remains a risk to patients in returning a doctor to practice who is underperforming. He further stated that there is little public interest in allowing further restoration applications, that are bound to fail.

65. Mr Hamlet submitted that it is the appropriate, fair and proportionate to indefinitely suspend Dr Khan's right to make any further such applications.

The Tribunal's Decision

66. In reaching its decision on the application under Section 41(9), the Tribunal had regard to the overarching objective and the Guidance. This is Dr Khan's third unsuccessful restoration application and the Tribunal is satisfied that it has the power to consider whether to indefinitely suspend the doctor's right to apply for restoration.

67. The Tribunal accepted that the application should only be granted if fair and proportionate to do so. The Tribunal was mindful that Dr Khan was not present at this hearing.

68. The Tribunal first considered the NoH, dated 13 June 2024, which states:

'As you have made at least one previous unsuccessful application for the restoration of your name to the Medical Register, it is open to the tribunal to direct that your right to make any further such applications be suspended indefinitely. This power is contained in section 41(9) of the Act.'

69. The Tribunal noted that Dr Khan received the NoH, which was sent by email and special delivery and signed for by him. It was satisfied that Dr Khan has chosen not to attend or to make representations under Section 41(9).

70. The Tribunal noted that it has now been seven years since Dr Khan's last restoration application in 2017. The Tribunal considered that the 2017 Tribunal's determination made it very clear to Dr Khan what was required of him should he make a further application for restoration. He has had ample to time to do so. He has had clear guidance from the GMC and previous determinations.

71. The Tribunal noted that Dr Khan has produced less and less evidence to support his applications for restoration. The Tribunal has already noted there was no new evidence produced at this hearing to address the 2017 Tribunal's concerns. None of the evidence requested to be produced by Dr Khan was unreasonable or even difficult for him to obtain, given the fact he was working in Pakistan in the medical profession.

72. The Tribunal was of the view that there needs to be a clear message to Dr Khan and the medical profession as a whole, that engagement with the regulator to address concerns over fitness to practice must be meaningful. The regulator, in exercising its duties, must protect the public.

73. The Tribunal noted that there has now been a considerable passage of time (18 years) since the deficiencies were dealt with by the 2004 Panel. As stated, it has been 7 years since the last Tribunal refused Dr Khan's application for restoration. Dr Khan was now back in the UK. There was no evidence that he was seeking to address the concerns raised. The Tribunal was of the view that, were Dr Khan to be permitted to make a further restoration application, a future Tribunal is likely to find itself in the same position.

74. Balancing all the factors set out above, the Tribunal was of the view that the application made was fair and proportionate on all of the facts. The Tribunal determined that Dr Khan's right to make any further such applications is suspended indefinitely under Section 41(9) of the Medical Act.

75. That concludes this case.

ANNEX A – 24/07/2024

Application on service and proceeding in absence

76. Dr Khan is neither present nor represented today at this Medical Practitioners Tribunal ('MPT') restoration hearing. The Tribunal therefore considered whether the relevant documents had been served in accordance with General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), and paragraph 8 of the fourth Schedule to the Medical Act 1983. In so doing, the Tribunal has considered all the information placed before it, together with the submissions made by Mr Hamlet, Counsel on behalf of the General Medical Council (the GMC).

77. Mr Hamlet, submitted there had been proper notice of the date of the proceedings and invited the Tribunal to proceed in the doctor's absence pursuant to Rule 31. Mr Hamlet confirmed that there has been no response from Dr Khan, despite this being his application for restoration.

78. Mr Hamlet referred the Tribunal to the relevant proof of service documents as follows:

- a. Screenshot of Dr Khan's GMC registered address,
- b. Email from Dr Khan to the GMC confirming that he was not withdrawing his restoration application, dated 26 November 2023,
- c. General Medical Council (GMC) Rule 23(2) letter sent by Special Delivery to Dr Khan, enclosing draft restoration hearing bundle, dated 16 May 2024,
- d. Royal Mail proof of delivery details of the Rule 23(2) letter and enclosures, dated 13 June 2024,
- e. GMC Rule 23(2) letter sent by Special Delivery from GMC to Dr Khan returned '*undelivered*', dated 13 June 2024,
- f. GMC Rule 23(2) letter sent by 1st class post to Dr Khan, enclosing draft restoration hearing bundle, dated 13 June 2024,
- g. MPTS Notice of Hearing (NoH) letter sent by email, dated 13 June 2024,
- h. MPTS NoH sent by Special Delivery, dated 13 June 2024,
- i. MPTS NoH letter proof of delivery which was signed for, dated 14 June 2024,
- j. GMC telephone notes attempting to call Dr Khan dated 9, 15 and 17 July 2024,
- k. GMC Pathfinder email to Dr Khan dated 19 July 2024 and
- l. Delivery receipt for the GMC Pathfinder email to Dr Khan dated 19 July 2024

79. Mr Hamlet submitted that there have been reasonable efforts to notify Dr Khan using the details he provided to the GMC. This included email, telephone and a letter sent by registered delivery. The Tribunal can be satisfied that service has been effective and, despite this being his application, it is fair and appropriate to proceed in the doctor's absence.

80. In relation to the question of an adjournment, Mr Hamlet reminded the Tribunal that this is Dr Khan's third restoration application, so he is aware of the procedure. He also stated

that Dr Khan has previously made successful application to adjourn and has not done so today. There was no indication that the Tribunal would be better off after an adjournment, given the lack of documentary evidence provided in support of his application.

The Tribunal Decision

Service

81. The Tribunal took account of the correspondence sent by the GMC and MPTS by recorded delivery, Royal Mail, email and telephone calls post November 2023 when the GMC was last in contact with Dr Khan. The Tribunal was mindful that the onus is on the doctor to ensure their registered address and contact details are up to date. The Tribunal noted that Dr Khan appeared to have signed for the registered letter which contained the hearing details.

82. Having considered the evidence before it and the submissions made by Mr Hamlet, the Tribunal was satisfied that that all reasonable efforts had been made to serve notice of this hearing on Dr Khan, not just by email, special delivery, post but also by attempting to telephone him.

83. Accordingly, the Tribunal was satisfied that Notice of this Hearing had been served on Dr Khan in accordance with Rule 15 and Rule 40 of the GMC (Fitness to Practise) Rules 2004 (the Rules), and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.

Proceeding in Absence

84. As the Tribunal was satisfied that notice had been properly served on Dr Khan, the Tribunal then considered whether to proceed with this hearing in his absence, in accordance with Rule 31 of the Rules, which states:

'31. Where the practitioner is neither present nor represented at a hearing, the Committee or Tribunal may nevertheless proceed to consider and determine the allegation if they are satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with these Rules.'

85. The Tribunal has borne in mind the relevant Rules, the case of *R v Jones [2003] 1 AC 1; [2002] UKHL 5* and the overarching objective. The Tribunal had regard to the following factors:

- a) The nature and circumstances of the doctor's behaviour in absenting himself;
- b) Whether the behaviour was voluntary and therefore that the doctor waived the right to be present;
- c) Whether an adjournment would result in the doctor attending on a subsequent occasion;
- d) The likely length of any such adjournment;
- e) Whether the doctor, although absent, wished to be represented, or whether he had waived his right to be represented;

f) The general public interest.

86. The Tribunal was mindful that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution and with a regard to the overall fairness of the proceedings. In doing so, it considered the need to balance Dr Khan's interests with the overarching statutory objective.

87. The Tribunal considered that the fair, economical, expeditious and efficient disposal of a restoration hearing for disciplinary reasons is of very real importance. The Tribunal must balance the interests of Dr Khan with the interests of the public.

88. The Tribunal noted that, despite this being Dr Khan's application for restoration, he has not engaged with the GMC since his email dated 26 November 2023, in which he confirmed that he wished to continue with his restoration application. Dr Khan has not responded to any of the GMC's and MPTS' correspondence since November 2023.

89. The Tribunal determined that Dr Khan has chosen to voluntarily absent himself from this hearing and therefore waived the right to be present.

90. Dr Khan has given no reason for his non-attendance, nor has he made any application to adjourn these proceedings. The Tribunal was of the view that an adjournment would serve no useful purpose in this case. There was no evidence before the Tribunal to suggest that Dr Khan would be more likely to attend a hearing if it were held at a later date.

91. The Tribunal has balanced Dr Khan's interests with the wider public interest in deciding whether to proceed in his absence. It noted that this is Dr Khan's third application for restoration and considered that he is familiar with these proceedings. Further, Dr Khan was given clear guidance at his last restoration hearing what would be expected of him should he make any restoration applications in the future.

92. The Tribunal concluded that it is in the public interest and in the interests of justice to proceed with this hearing today.

93. Accordingly, the Tribunal determined that it was fair and reasonable to proceed in Dr Khan's absence in accordance with Rule 31 of the Rules.