

PUBLIC RECORD**Dates:** 27/10/2021 – 28/10/2021 & 16/12/2021

Medical Practitioner's name: Dr Omar MAKKI

GMC reference number: 6111818

Primary medical qualification: MB ChB 1995 Al-Mustansirya University

Type of caseRestoration following
disciplinary erasure**Summary of outcome**

Restoration application granted. Restore to Medical Register.

Tribunal:

Legally Qualified Chair:	Mr Stephen Killen
Medical Tribunal Member:	Dr Anita Clay
Medical Tribunal Member:	Dr Noel Bevan

Tribunal Clerk:	Ms Jennifer Coakley (27/10/21-28/10/21) Ms Lauren Duffy (16/12/2021)
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Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Aidan Carr, Counsel, direct access
GMC Representative:	Mr Tom Orpin-Massey, 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 - 16/12/2021

1. This determination will be read in private. However, as this case concerns Dr Makki's misconduct a redacted version will be published at the close of the hearing with any matters XXX removed.
2. Dr Makki has applied to the General Medical Council ('GMC') for the restoration of his name to the Medical Register after his name was erased following fitness to practise proceedings which took place before a Fitness to Practise Panel in 2014 and 2015 ('the 2014 - 2015 Panel'), concluding on 10 April 2015. Dr Makki's name was erased from the Medical Register on 17 November 2015 following an unsuccessful appeal against sanction (but not against any findings) to the High Court.
3. The Tribunal has considered Dr Makki's application in accordance with Section 41 of the Medical Act 1983 (as amended) and Rule 24 of the GMC (Fitness to Practise) Rules 2004 (as amended) ('the Rules').

The Outcome of Applications

4. The Tribunal granted an application by Mr Aidan Carr, Counsel, on behalf of Dr Makki, made pursuant to Rule 41 of the Rules, for the public to be excluded from those parts of the proceedings during which matters would be discussed which XXX. Mr Tom Orpin-Massey, Counsel, on behalf of the GMC, had no objection to the application.
5. The Tribunal refused Mr Carr's application, made pursuant to Rule 41 of the Rules, for the public to be excluded from those parts of the proceedings during which matters relating to Dr Makki's previous place of work, as identified in paragraph 1 of the 2014 - 2015 hearing Allegation, would be discussed. Mr Orpin-Massey submitted that hearings are generally held in public except when they relate to confidential matters, such as health. He submitted that this is a matter of background fact and reference to it should be heard in public. The Tribunal bore in mind that these details are already in the public domain and it did not consider that justification had been established which would render it appropriate to deviate from the presumption that the hearing would be held in public whilst such matters are discussed, nor to commit to not referring to it in any subsequent determination.

6. The Tribunal refused Mr Carr's application, made pursuant to Rule 41 of the Rules, for the public to be excluded from those parts of the proceedings during which matters relating to XXX would be discussed. Mr Orpin-Massey submitted that there is no real basis for such matters to be heard in private. The Tribunal bore in mind that matters relating to XXX are again already in the public domain. Again, the Tribunal did not consider that justification had been established which would render it appropriate to deviate from the presumption that the hearing would be held in public when considering general matters regarding XXX. It determined that it would, however, hear any matters relating to XXX, if any such matters were to arise, in private session.

Background

7. Dr Makki qualified as a doctor in 1995. He worked as a trainee General Practitioner at XXX ('the Practice') between August 2011 and August 2012.

8. At the 2014 - 2015 hearing, Dr Makki admitted that, during a consultation with Patient A on 12 July 2012 he asked Patient A why she was prescribed Mirtazapine; that he exchanged email messages of a personal nature with Patient A using his Practice email account on 17 July 2012; and that, between 1 and 9 August 2012 and on or around 11 August 2012, he sent an inappropriate text message to Patient A.

9. Dr Makki also admitted that, in August 2012, he submitted to the Practice a copy of an email between him and Patient A dated 1 August 2012, in which he had altered the phrase '*came around to my place*' to '*come around to my place*'. He admitted that he then forwarded this amended email to Dr B, Medical Director for XXX, on 17 August 2012 when he knew he had altered it; and that, on 16 August 2012, he stated during a meeting with Dr B that he had never been to Patient A's home. Subsequently, during a meeting with Dr B on 15 November 2012, he admitted that he had altered the email.

10. The 2014 - 2015 Panel found proved that, during a consultation with Patient A on 12 July 2012, Dr Makki was told by Patient A '*I have suffered from anxiety and depression since I was 15 or 16 years old*' or words to that effect and that he knew or ought to have known that Patient A was therefore vulnerable. It was found proved that, on 17 July 2012, Dr Makki engaged in an inappropriate relationship with Patient A and that this, together with the exchange of emails of a personal nature with Patient A, were actions which were sexually motivated.

11. The 2014 - 2015 Panel also found proved that, on 16 August 2012, Dr Makki stated during a meeting with Dr B that he had never altered any emails. It was further found proved that the alteration of the email to Dr B, Dr Makki's statement during the meeting with Dr B about the altered emails, and the forwarding of the email to Dr B, were actions that were misleading and dishonest.

12. The 2014 - 2015 Panel determined that Dr Makki's conduct amounted to serious misconduct. It considered that his conduct would be regarded as deplorable by fellow

professionals and the public and had brought the profession into disrepute. It considered that Dr Makki had failed to uphold proper standards of behaviour and had departed from some of the fundamental tenets of the profession.

13. The 2014 - 2015 Panel found Dr Makki's fitness to practise to be impaired by reason of misconduct. It considered that there was a clear need to make such a finding to declare and uphold proper standards and to maintain public confidence in the medical profession.

14. The 2014 - 2015 Panel considered that Dr Makki's misconduct was fundamentally incompatible with continued registration and determined to direct that his name be erased from the Medical Register in order to protect patients, uphold public confidence and maintain standards in the profession. It determined that the public interest required that it be made clear that sexual misconduct and persistent dishonest behaviour is unacceptable for any member of the medical profession.

Evidence

15. This Tribunal was provided with the determinations of the 2014 - 2015 Panel and a copy of Dr Makki's application for restoration which was dated 5 February 2021.

16. The Tribunal was also provided with supporting documentation submitted on Dr Makki's behalf which included, but was not limited to:

- Letter of apology to Patient A, dated 3 January 2013;
- A copy of Dr Makki's degree certificate dated 28th October 2019 of a Masters in Public Health from the University of XXX;
- A certificate of attendance for the Clinic for Boundaries Studies – Maintaining Professional Boundaries online training course certificate, which was dated 16 December 2020;
- Email correspondence and application form regarding a GP Return to Practice Programme with NHS Health Education England, dated October 2021;
- Reflective statement, dated 4 October 2021;
- Dr Makki's Curriculum Vitae;
- References from various individuals; and
- A reading Log.

17. The Tribunal also received oral evidence from Dr Makki.

Submissions

On behalf of the GMC

18. In summary, on behalf of the GMC, Mr Orpin-Massey submitted that the GMC was neutral on the matter of restoration. He stated that this position should not be confused with actively supporting the application nor being indifferent to it.

19. Mr Orpin-Massey submitted that the Tribunal may think that many of Dr Makki's answers and written submissions have been impressive, however the original findings were particularly serious and involved sexually motivated conduct and protracted dishonesty. He submitted that it is a matter for the Tribunal exercising its professional judgement and upholding the overarching objective as to whether Dr Makki is now fit to practise.

20. Mr Orpin-Massey confirmed the GMC's view that, although it is not impossible for an erased doctor to undertake a clinical attachment, it is acknowledged that it is very difficult to do so, particularly in the circumstances of Dr Makki's case, given his previous fitness to practise findings, the Covid-19 pandemic and the likelihood of an extra person in a room not always being attractive for a medical practice.

On behalf of Dr Makki

21. In summary, on behalf of Dr Makki, Mr Carr submitted that the fundamental question of restoration to the Medical Register is one that should be answered in the affirmative.

22. Mr Carr submitted that the Tribunal should take into account Dr Makki's previous unblemished record, the significant change in terms of Dr Makki's insight and the remedial steps he has taken. He submitted that Dr Makki is not someone whose application is due to desperation to restore an income stream, but rather that Dr Makki is seeking redemption and forgiveness for his serious and acknowledged misconduct.

23. Mr Carr submitted that, although it is extremely difficult for doctors who have been erased to secure a clinical attachment, Dr Makki has done as much as he could to keep his medical knowledge and skills up to date. He asked the Tribunal to note that doctors who are erased are in a 'catch 22' situation – they cannot practise medicine, yet they have to keep their clinical skills up to date in order to be restored to the Medical Register.

24. Mr Carr drew the Tribunal's attention to the references provided attesting to Dr Makki's character and supporting his return to medical practice. Mr Carr submitted to the Tribunal that all doctors who return to practice after five years or more are required to undertake revalidation within 12 months. They must also initially work in an Approved Practice Setting to ensure that they have a connection to a designated body and a Responsible Officer; and he submitted that Dr Makki has put in place a self-devised mentoring system.

The Tribunal's Approach

25. Throughout its consideration of Dr Makki's application for restoration, the Tribunal was guided by the approach laid out in the MPTS Guidance document: *Guidance for medical practitioners tribunals on restoration following disciplinary erasure* (October 2019) ('the Guidance').

26. The Tribunal reminded itself that the onus is on Dr Makki to satisfy the Tribunal that he is fit to return to unrestricted practice. The Tribunal should not seek to go behind the findings of facts, impairment and sanction made by the 2014 - 2015 Panel.

27. The test to be applied by the Tribunal 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.'

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

- The circumstances that led to disciplinary erasure;
- Whether the doctor has demonstrated insight into the matters that led to erasure, taken responsibility for their actions, and actively addressed the findings about their behaviour and skills including consideration of:
 - Insight and remorse;
 - Remediation and risk of repetition;
 - Whether findings about the doctor's behaviour have been remedied;
 - Likelihood of repetition of the previous findings about the doctor's behaviour;
- What the doctor has done since their name was erased from the Register including consideration of overseas practice;
- Steps the doctor has taken to keep their skills and knowledge up to date; and
- The lapse of time since erasure.

29. The Tribunal also reminded itself that, after considering the above factors, it should step back and balance its findings against whether restoration meets the overarching objective, carefully considering each of the three elements and acting in a way which:

- protects, promotes and maintains the health, safety, and well-being of the public;
- promotes and maintains public confidence in the profession; and

- promotes and maintains proper professional standards and conduct for members of the profession.

The Tribunal's Decision

The circumstances that led to Dr Makki's disciplinary erasure

30. The Tribunal noted the serious nature of Dr Makki's misconduct which led to his erasure, as outlined by the 2014 - 2015 Panel in its determination, which involved sexually motivated behaviour towards a vulnerable patient and dishonesty. The 2014 - 2015 Panel found that Dr Makki's behaviour departed from a number of paragraphs of *Good Medical Practice* (2006 edition) and that he failed to follow the guidance set out in *Maintaining Boundaries* (2006). The 2014 - 2015 Panel considered that Dr Makki's conduct would be regarded as deplorable by fellow professionals and the public and he had brought the profession into disrepute. It determined that his misconduct amounted to serious misconduct and deemed it appropriate and necessary to erase his name from the Medical Register as a result.

Whether Dr Makki has demonstrated insight into the matters that led to erasure, taken responsibility for his actions and actively addressed the findings about his behaviour

Insight and remorse

31. In his oral evidence, Dr Makki explained how he has reflected upon his actions and their consequences over the past six years. He described the harm caused to Patient A, his wife, family, patients, friends, colleagues, employers and the wider medical community and also stated that he has tried to atone to everyone around him and beyond. Dr Makki confirmed that, although he initially sought to blame '*everything and anyone*', he now accepts that what happened was because of him and him only. He said that there are no words to describe how regretful he is and that he is a different person now compared with 2012. Dr Makki referred to the cost of him being trained as a doctor and the huge number of patients he could have treated and helped had he been able to continue working as a GP in A&E. He described the effects of his actions on the small GP practice where he had been working in terms of its reputation and the trust placed in it by its patients. Dr Makki also identified and recognised the consequential loss of trust in him by his colleagues.

32. Dr Makki stated that he does not want his name to be restored to the Register for financial reasons, but in order to give him the opportunity to help people, to make up for his misconduct and to obtain closure from that episode of his life.

33. The Tribunal considered that it was clear from Dr Makki's oral evidence that he had made significant efforts to gain an understanding of his previous behaviour and it was satisfied that he now fully accepts responsibility for his actions and their impact. Dr Makki did not appear to seek to diminish or undermine the findings of the 2014 - 2015 Panel. The

Tribunal had no reason to think that Dr Makki's expressions of remorse were anything other than genuine and unreserved.

34. The Tribunal was of the view that, although Dr Makki stated in his evidence that he had altered the email and maintained his lie in order to '*soften the blow*' XXX, he did not seek to use this as an excuse; rather he referred to it as context for his behaviour at that time and he freely accepted that it was dishonest and unacceptable.

35. The Tribunal had regard to the letter of apology which Dr Makki had sent to Patient A in January 2013. It noted that Dr Makki articulated his regret and remorse about his misconduct on numerous occasions during his oral evidence at this hearing. At no point did he seek to apportion any blame to Patient A, instead he accepted full responsibility for his misconduct.

36. The Tribunal was conscious of the fact that the 2014 - 2015 Panel concluded that Dr Makki's evidence was somewhat convoluted and evasive, as referred to in more detail at paragraphs 48 and 49 below. This Tribunal, however, was satisfied that Dr Makki's evidence demonstrated that, since his original hearing, Dr Makki has developed considerable insight into his actions. It was satisfied that he had accepted full responsibility and that he has reflected deeply on both his misconduct which was found to be sexually motivated and that which was dishonest. Dr Makki identified and acknowledged the wider implications of such misconduct on patients and the profession as a whole.

37. Having taken all of the evidence in this case into account, the Tribunal considered that an ordinary member of the public, aware of all the facts of this case, would consider that Dr Makki has gained and demonstrated well developed insight and significant remorse regarding both aspects of his misconduct.

Are the previous findings about Dr Makki's behaviour remediable?

38. The Tribunal reminded itself of the serious nature of Dr Makki's sexually motivated misconduct relating to Patient A, which involved the sending of text messages and emails and engaging in a telephone conversation. Whilst the Tribunal considered that any sexually motivated misconduct towards a patient is always by its very nature serious, it concluded that the facts as found proved in Dr Makki's case fell toward the lower end of the scale.

39. The Tribunal also reminded itself of the serious nature of the dishonesty element of Dr Makki's misconduct. It noted that this involved him altering a word in an email in August 2012 and maintaining that he had not done so until he eventually admitted that he had in November of that year. The Tribunal was conscious of the fact that the 2014 - 2015 Panel concluded that Dr Makki had '*repeatedly and persistently behaved in a dishonest way*' in this regard. This Tribunal considered that, while any dishonest misconduct on the part of a doctor is inherently serious, Dr Makki's misconduct in this case was relatively limited in scope and duration and it noted that he eventually admitted to it both in advance of and during the 2014 - 2015 hearing.

40. The Tribunal noted that the guidance makes it clear that it can be more difficult to demonstrate sufficient remediation in cases involving serious behaviour such as sexual misconduct or dishonesty. It considered, however, that whilst both aspects of Dr Makki's misconduct which ultimately led to his erasure were serious matters, the facts as found proved by the 2014 - 2015 Panel did not amount to examples of either sexually motivated or dishonest misconduct which would be impossible to remediate. It concluded that Dr Makki's misconduct in both respects was potentially remediable.

Have the findings about Dr Makki's behaviour been remedied?

41. Dr Makki described how a Maintaining Professional Boundaries course (which also dealt with probity/dishonesty issues) he undertook in December 2020 helped him to probe deeper into how his misconduct in 2012 came to happen and how he tried to deal with his mistakes. He said that he now has a better understanding of his personal vulnerabilities, situational risk factors and the root causes of what happened. Dr Makki stated that his learning from the course was '*transformational*' and he was adamant that his misconduct will never happen again. The Tribunal noted that the course was an intense one-to-one full-day session tailored to Dr Makki and the specific issues identified in his case, as opposed to a generalised course.

42. The Tribunal noted that this course was undertaken only relatively recently, and it was of the view that it would have been preferable had Dr Makki engaged in it sooner. However, it bore in mind that, when questioned about this by Tribunal members, Dr Makki stated that he had done an alternative boundaries course in 2012/2013 but had only become aware of the recent course much later after speaking with Mr Carr.

43. The Tribunal noted that, aside from this course which, as indicated above, also dealt with probity and dishonesty issues, Dr Makki did not provide evidence of attendance on any specific courses relating to probity/dishonesty either before or after his misconduct was considered by the 2014 - 2015 Tribunal. However, the Tribunal noted that the one-to-one course was intensive and tailored to his specific circumstances which included such issues.

44. The Tribunal had regard to the several testimonials submitted on Dr Makki's behalf which refer to him as an honest man whose dishonest actions were out of character. In one testimonial, dated 2 September 2021, Ms C, District Nurse, stated '*He [Dr Makki] knows he let everyone down and is working hard to find forgiveness. I believe that he is never going to repeat the mistakes he made which resulted in him being struck off as I feel that he has learnt from and accepted the errors he made. His conduct ever since has not caused me to be concerned that he would repeat his previous actions, if he were restored to the medical register.*'

45. The Tribunal noted that there is no evidence of any repetition of misconduct since the events in 2012. It also noted again that Dr Makki's presentation to this Tribunal was in stark contrast to that recorded by the 2014 - 2015 Panel. As previously outlined, Dr Makki has

made considerable progress in reflecting on the findings of the 2014 - 2015 Panel and his misconduct, he has fully accepted his own culpability and apologised unreservedly, and he has taken steps to source and attend relevant remedial courses. With regard to his attendance on the more recent boundaries course, the Tribunal accepted Dr Makki's evidence of having fully developed an understanding of his failings and the absolute need to maintain appropriate professional standards were he to be permitted to return to practise as a doctor.

46. Taking all of the available evidence into account and in the circumstances of this case, the Tribunal considered that an ordinary member of the public, aware of all the facts of this case, would consider that Dr Makki has demonstrated sufficient remediation and the Tribunal was satisfied that Dr Makki has remedied his misconduct.

Are the previous findings about Dr Makki's behaviour likely to be repeated?

47. The Tribunal has already found that Dr Makki has demonstrated genuine insight and that he has sufficiently remediated his misconduct.

48. The Tribunal noted the views of the 2014 - 2015 Panel regarding Dr Makki's evidence, to include the following:

'The panel accepted that there was some evidence which indicated an attitudinal problem, as your evidence to this panel was convoluted and somewhat evasive.'

49. This Tribunal, however, considered Dr Makki's attitude at this hearing to be entirely different and changed significantly for the better. Dr Makki was very forthcoming in his evidence and answers and the Tribunal considered that he did not attempt to diminish the seriousness of his misconduct or its consequences. Dr Makki accepted his actions were his responsibility and his alone. He presented as having fully reflected on his behaviour and he appeared genuinely apologetic and ashamed. The Tribunal noted that the actions which gave rise to his substantive hearing in 2014 - 2015 occurred in 2012 and, albeit that Dr Makki has been out of a clinical environment since 2015, it noted that there has been no evidence of repetition or further issues raised. The Tribunal noted that Dr Makki's misconduct appeared to be isolated episodes in an otherwise unblemished career. It considered that Dr Makki had accepted responsibility for his actions.

50. In light of the above, the Tribunal was satisfied that the risk of Dr Makki repeating his misconduct in the future was very low.

What has Dr Makki done since his name was erased from the Register?

51. Dr Makki confirmed that he has not provided any medical services since his name was erased from the Medical Register in 2015, either in the UK or overseas.

52. Since July 2012, Dr Makki has been a Director of a small, limited company owned and managed by Dr Makki and XXX. Since his erasure, Dr Makki has managed the company, whilst XXX is its main source of income.

53. Also since erasure, Dr Makki has worked in property development and investment as a means to supplement his family income and he offers advisory/consultancy services to friends. Dr Makki stated that he has gained knowledge and experience in finance and investing and was able to study and create different business models and maintain his professional communication skills at a high standard.

54. From January 2016 to August 2016, Dr Makki volunteered for a Médecins Sans Frontières mission to Libya in France as a Project Coordinator. This involved day to day management of the mission's projects, recruitment of local staff, procurement and warehousing, and providing support to the other teams. The Tribunal noted that, although Dr Makki was not working in a clinical capacity whilst undertaking this role, he was working alongside medical colleagues.

55. From June 2016 to December 2019, Dr Makki undertook a Masters degree in Public Health accredited by the University of XXX. The course provided Dr Makki with an opportunity to get a better understanding of strategic planning and evidence-based public health policies. His dissertation focussed on diet and obesity, which the Tribunal considered to be of relevance to the work of a GP.

56. As a result of the pandemic, in May 2020, Dr Makki made enquiries with regard to whether he could assist the NHS by taking up the role of medical support worker. Dr Makki was advised, however, that by that time a decision had been taken to close the application process for medical support workers.

What steps has Dr Makki taken to keep his medical knowledge and skills up to date?

57. Dr Makki stated that he has not undertaken any clinical attachments during the period since his erasure as he did not believe that this was possible. He said that he had considered undertaking observation with a GP but did not do so as it would have been necessary to inform each patient of his presence, and this would have put the GP in a difficult position.

58. Dr Makki stated that, during his period of erasure, he has been engaged in ongoing self-study in an attempt to keep his medical knowledge and skills up to date. Dr Makki stated that he has tried his best to maintain his medical knowledge and to use every opportunity to keep abreast of new changes to medical topics and national guidelines. He has focused on weekly updates by reliable medical information websites such as NICE, GP Notebook, Medscape, Public Health England and journals. In addition to this, Dr Makki stated that he revised with XXX and that this revision included topics which were of relevance to practise as a GP.

59. The Tribunal noted that Dr Makki does not appear to have kept a contemporaneous record of the reading he has undertaken, but that he instead provided a lengthy list of reading undertaken upon request by the Tribunal. Dr Makki did not provide any written reflections on his reading.

60. The Tribunal considered that Dr Makki appeared to be realistic when talking about his possible return to practice, stating that he would not expect to be able to work at the same speed as his colleagues immediately. He explained how he has had a career gap of around two years in the past and that it took him some time to get back to his usual speed. The Tribunal was of the view that Dr Makki has identified and appreciates the learning curve that would await him were he to be permitted to return to practise as a doctor.

61. In considering the reading and study Dr Makki has undertaken, which was not challenged by the GMC, the Tribunal was of the view that although many were online courses and potentially of lesser value than face to face courses, the subjects which were covered were nevertheless relevant to Dr Makki's specialty as a General Practitioner. The Tribunal was satisfied that the selection of reading material and courses were appropriate and that he had demonstrated evidence of genuine attempts to keep his medical knowledge up to date.

62. The Tribunal accepted that undertaking clinical attachments following erasure from the Medical Register appears to be particularly difficult, and it bore in mind that such difficulties have inevitably been exacerbated by the Covid-19 pandemic. It also accepted that the pandemic would have had an impact on the ability to undertake observations with a GP.

63. The Tribunal noted that, since his erasure, Dr Makki has completed a Masters degree in Public Health. It considered that this course was of some relevance to practice as a GP and that it could be considered to be part of Dr Makki's attempts to keep his clinical knowledge and skills up to date.

64. The Tribunal noted the proactive steps Dr Makki has taken to make enquiries about a GP refresher scheme, and his plans to enrol on that scheme if his name is restored to the Medical Register.

65. Aspects of the testimonials provided supported Dr Makki's evidence that he has been taking steps to keep his medical skills and knowledge up to date. For example, in the testimonial dated 12 September 2021, Dr D, Consultant in Emergency Medicine stated:

'I noticed ... that Omar has tried to keep his medical knowledge up-to-date and was aware of the latest developments in guidelines and policies which reassures me that he will be able to catch up quickly if he is allowed to practise medicine again.'

In a testimonial dated 13 September 2021, Dr E, General Practitioner stated:

'When we meet our discussions would frequently become medical as most of us are in the medical profession, and it has always been very reassuring to see Omar aware of

the most recent guidelines and developments and one would subconsciously forget that this man has not been practising for all this time. I am happy to provide Omar with any support he needs, not only with his application for restoration, but also afterwards, if he is restored to the medical register, as a friend, as a mentor, or even supervised work if he needs it.'

66. Dr Makki candidly stated that he has worried about having been away from clinical practice for so long and stated that he realises the responsibility involving people's lives should he be permitted to return. He explained that, should his name be restored to the Register, his intention would be not to immediately seek to treat patients, but to contact GP surgeries to secure some shadowing and to start with supervised employment to ensure that there is someone to help and guide him. He also stated that, should his name be restored to the Register, his intention would be to progress his application to the Royal College of General Practitioners GP refresher scheme – a programme of up to six months duration for those who have been away from practice for more than two years. He stated that he had researched this course and that it is intended to provide a safe environment for both the doctor and patients whilst the returning doctor updates their knowledge and skills. Further, the Tribunal noted that Dr Makki has taken steps to identify professional mentors who will be available to him for support and guidance if he were to be permitted to resume clinical practice.

67. The Tribunal considered that Dr Makki has devised a structured plan for refreshing his skills and abilities were he permitted to return to practice; and it noted that he was realistic about the inevitable effect of the considerable gap in his clinical career on his ability to resume a medical career. The Tribunal considered that Dr Makki has taken steps to keep his skills and knowledge up to date, albeit that these steps have been restricted by Dr Makki not having secured a clinical attachment or shadowing during his erasure; however, it accepted that issues around the Covid-19 pandemic may have made this more difficult. The Tribunal considered that, overall, Dr Makki has taken steps to keep his medical skills and knowledge up to date and it determined that these would be sufficient for a return to practice.

The lapse of time since erasure

68. Dr Makki's misconduct occurred in 2012 and his name was erased from the Medical Register in 2015. As such, the Tribunal noted that it has now been over 9 years since Dr Makki's misconduct; and over 6 years since his name was erased.

69. The Tribunal noted that Dr Makki worked as a General Practitioner for around three years following his misconduct in 2012, with no evidence of further misconduct. Also, as indicated above, the Tribunal noted that there has been no evidence of further misconduct since Dr Makki's erasure. In circumstances in which the Tribunal had already determined that Dr Makki's misconduct was remediable and had been remedied; and given that the Tribunal concluded that the misconduct was unlikely to be repeated, the Tribunal considered the lapse of time to be of relevance and supportive of Dr Makki's application for restoration.

70. Conversely, the Tribunal did note that the lapse of time will have had an inevitable impact on Dr Makki's clinical knowledge and skills given that he has not practised for a significant period. However, the Tribunal reminded itself of its conclusions with regard to Dr Makki's efforts to maintain his clinical knowledge and skills and, overall, it determined that the lapse of time since erasure had not been detrimental to the extent that Dr Makki's clinical knowledge and skills are insufficient for a possible return to practice.

Will restoration meet the overarching objective?

71. The Tribunal took into account the Guidance which states at B35:

'Having considered the different factors above, the tribunal must make findings in relation to whether the doctor is fit to practise. The tribunal should then step back and balance its findings against whether restoration will meet our overarching objective. This balancing exercise will involve careful consideration of each of the elements.'

72. Taking into account all of the factors it has considered above, the Tribunal determined that Dr Makki is potentially fit to practise. Having come to this conclusion, the Tribunal stepped back and balanced its findings against each element of the overarching objective.

73. The Tribunal first noted that Dr Makki's case was not one of the types of case set out as examples of those in which restoration is generally unlikely to meet the overarching objective. It proceeded to continue each limb of the overarching objective.

Protect, promote and maintain the health, safety, and well-being of the public

74. The Tribunal considered that Dr Makki's behaviour towards Patient A as found proved amounted to significant boundary transgressions. However, it reminded itself of its conclusion that Dr Makki was very unlikely to repeat such misconduct to be important. The Tribunal's decision in this regard was based in large part on the significant insight Dr Makki has now demonstrated and the remediation steps he has undertaken, including his participation in the one-to-one focussed Maintaining Professional Boundaries course with the Clinic for Boundaries Studies. In addition, the Tribunal placed weight on the genuine remorse and regret Dr Makki has displayed at this hearing, which included full acceptance of his behaviour; his shame and embarrassment; and his unreserved apologies to Patient A, his former colleagues, his family and the profession.

75. As outlined above, Dr Makki has sought to keep his medical skills and knowledge up-to-date and the Tribunal was satisfied that he has achieved this to a reasonable level, such that it was satisfied that he would be able to work safely if he returned to unrestricted practice in the UK.

76. The Tribunal recognised that, should Dr Makki's name be restored to the Medical Register, there would be certain safeguards in place including a requirement to initially work

in an Approved Practice Setting and would need to revalidate within 12 months. However, the Tribunal did not rely on these factors given that, as stated in the *Guidance*, the doctor must demonstrate that they have kept their medical knowledge and skills up to date and are safe to resume unrestricted practice.

77. In the circumstances of Dr Makki's case, the Tribunal therefore determined that restoring his name to the Medical Register would satisfy this limb of the overarching objective.

Promote and maintain public confidence in the profession

78. The Tribunal considered the following parts of the *Guidance* with particular care:

'B42 Where a doctor's past behaviour is so serious that it remains capable of undermining the trust that the public places in doctors, it is unlikely that restoration will be in line with the overarching objective. This applies to behaviour both inside and outside of a doctor's professional practice. There will be some cases where, even if insight and remediation have been fully demonstrated and there has been a significant lapse of time since erasure, public confidence in the profession would be undermined by allowing the doctor to practise again.'

'B43 Tribunals should ask themselves whether an ordinary, well informed member of the public who is aware of all the relevant facts would be concerned to learn the doctor had been allowed to return to practice. They should also have regard to the fact that maintaining public confidence in the profession as a whole is more important than the interests of an individual doctor.'

79. The Tribunal considered that, as a general proposition, a decision to restore to the Medical Register a doctor who has been erased for sexually motivated and dishonest misconduct may have the potential to damage public confidence in the profession.

80. However, the Tribunal reminded itself of the specific findings of fact which were made by the 2014 - 2015 Panel regarding Dr Makki's misconduct as outlined above; and it reminded itself of its conclusions that Dr Makki's misconduct is potentially remediable, it has been remedied, there has been no repetition and that it is unlikely that repetition will occur. The Tribunal did not consider that the facts as found proved with regard to either element of Dr Makki's misconduct were such that they remain capable of undermining the trust that the public places in doctors.

81. Taking all of the circumstances of this case into account, the Tribunal considered that a well informed member of the public who is aware of all of the relevant facts would not be concerned to learn that Dr Makki had been allowed to return to practice. The Tribunal therefore considered that the requirements of this limb of the overarching objective would not be adversely affected by a decision to restore Dr Makki's name to the Medical Register.

Promote and maintain professional standards and conduct for members of the profession

82. The Tribunal reminded itself that Dr Makki's misconduct which led to his erasure demonstrated behaviour which fell seriously short of the values and behaviours expected of all doctors. However, as outlined above, the Tribunal did not consider that Dr Makki's misconduct was such that it was not remediable.

83. The Tribunal reflected on its conclusions regarding Dr Makki's efforts to reflect, gain insight into and remediate his misconduct and to alleviate any concerns regarding the potential for repetition. Although Dr Makki was erased in 2015, his actions towards Patient A occurred in 2012, over nine years ago. This is a significant passage of time and Dr Makki appeared to the Tribunal to present as a different person to the doctor who committed his misconduct in 2012, or indeed to the doctor who presented to the 2014 - 2015 Panel.

84. Having heard Dr Makki's oral evidence during this hearing and having had the opportunity to question him, the Tribunal accepted that Dr Makki's expressions of shame, regret and a determination to serve a useful purpose and give something back to the profession were entirely genuine. It considered that Dr Makki has remediated his misconduct and that he posed a considerably low risk of repeating it.

85. Ultimately, the Tribunal was satisfied that Dr Makki's high level of insight, and his considerable efforts to reflect and remediate were such that restoring him to the Medical Register was also consistent with this limb of the overarching objective.

Conclusion

86. In conclusion, the Tribunal was satisfied that Dr Makki was a fit and proper person to be restored. Accordingly, it determined to direct that his name be restored to the Medical Register.