PUBLIC RECORD

Dates: 07/11/2022 – 08/11/2022

Medical Practitioner's name:	Dr Eckhard VOLLE
GMC reference number:	7031723
Primary medical qualification:	State Exam Med 1983 Freie Universität Berlin

Type of case

Review - Misconduct

Outcome on impairment

Not Impaired

Summary of outcome

Suspension to expire

Tribunal:

Legally Qualified Chair	Ms Sirah Abraham
Medical Tribunal Member:	Dr Roberto Tamsanguan
Lay Tribunal Member:	Ms Jacqueline Telfer

Tribunal Clerk:	Miss Jan Smith

Attendance and Representation:

Medical Practitioner:	Present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Simon Lewis, 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 Impairment - 08/11/2022

1. At this review hearing the Tribunal has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr Volle's fitness to practise is impaired by reason of misconduct.

Background

2. Dr Volle qualified in 1983 from Freie Universität Berlin. Between July 2015 and March 2017 Dr Volle was working as a consultant radiologist for Medica Reporting. In May 2018 Dr Volle started working for South Tees Hospitals NHS Foundation Trust ("South Tees Trust") as a diagnostic radiologist.

3. On 28 October 2016, whilst Dr Volle was working for Medica Reporting, a Clinical Governance Committee commissioned an urgent review into Dr Volle's reporting because of concerns that he was not working at the required standard of a neuro-radiologist. Restrictions were put on Dr Volle's practice in November 2016 and then January 2017. In March 2017 Dr Volle left Medica Reporting. Dr Volle was referred to the GMC by his Responsible Officer, Dr E, of Medica Reporting, in June 2017. Concerns were raised regarding Dr Volle's knowledge, skills and performance. Dr E was concerned that Dr Volle had left Medica Reporting with unresolved concerns and he was not confident that alternative safeguards were in place.

4. In relation to Patient A, Dr Volle failed to identify acute small carotid infarcts in a head MRI scan on 26 September 2016. In relation to Patient B, Dr Volle failed to identify a fracture

of the left inferior facet of C5 with subluxation of the left C5/6 facet joint on a CT cervical spine scan on 1 October 2016.

5. In May 2019, the GMC received a referral from South Tees Trust in relation to Patient C. Patient C, who was then four-months old, underwent a CT scan of the brain on 19 June 2018 which was reported by Dr Volle. The clinical history provided to Dr Volle was that Patient C had multiple seizure episodes, presented with abnormal posturing, a high pitched cry, and eyes rolling. Patient C's head circumference was noted as over the 99.6th centile. Dr Volle failed to identify that extra cerebral fluid collections on the scan were clearly subdural, and that there was local mass effect with effacement of sulci overlying the cerebral convexities. He did raise the possiblty that the extracerebral fluid collections might represent subdural hygromas. Furthermore, Dr Volle did recommend an MRI scan which was performed the next day, on 20 June 2018.

6. Dr Volle reported on the MRI scan of 20 June 2018. He failed to recognise that it was signficantly degraded and he failed to recommend a further MRI be undertaken with sedation or anaesthetic. He failed to describe whether the extra axial fluid collections were due to subdural or subarachnoid fluid or that the predominant feature of the scan was subdural fluid which was not of CSF signal.

7. In relation to both scans, Dr Volle failed to mention the possiblity of non-accidental injury either in his reports or in a clinical discussion with the treating consultant paediatrician on 21 June 2018.

8. Patient C had, in fact, first been brought to hospital in an ambulance on 17 May 2018 with a history of an unresponsive episode. On that occasion a lumbar puncture had been attempted but was unsuccessful. No scans were undertaken. Patient C was treated for presumed sepsis and discharged with a diagnosis of cow's milk protein allergy. There was no suggestion that Dr Volle was aware of Patient C's attendance in May 2018 when he reported on the scans in June 2018.

9. On 24 September 2018, Patient C was seen in clinic by two consultant neurosurgeons who considered that the imaging from June 2018 demonstrated subdural haematomas. Patient C was subsequently the subject of Family Court proceedings in which Patient C's mother accepted shaking Patient C, prior to Patient C's presentation at hospital on 17 May 2018.

10. Dr Volle's case was initially considered by a Medical Practitioners Tribunal ('MPT'), at a hearing which took place between 6 and 14 June 2022 (June 2022 Tribunal).

The June 2022 Tribunal

11. On Day 3 of the hearing in June 2022, Dr Volle admitted the allegation in its entirety. Furthermore, he admitted that his fitness to practise was impaired by reason of misconduct. Dr Volle was initially represented but, after the opening of the case, he instructed his legal representative to withdraw due to Dr Volle having insufficient funds to continue to instruct him.

12. In reaching its decision on impairment, the June 2022 Tribunal first considered whether the admitted facts were a sufficiently serious departure from the standards of conduct reasonably expected of Dr Volle as a registered medical practitioner to amount to misconduct which was serious.

13. In the case of Patient A, the June 2022 Tribunal accepted that Dr Volle's mistake fell short of the standards of conduct expected among medical practitioners but that it did not fall sufficiently short of those standards to amount to misconduct that was serious. The June 2022 Tribunal noted that the error was not one of clinical judgement but a mistake as to the type of scan being looked at and it was a mistake that was entirely possible for any radiologist to make. In those circumstances, the June 2022 Tribunal did not consider that the behaviour was so seriously below the standard of care that it could be described as deplorable by fellow practitioners or that it amounted to serious misconduct.

14. In respect of Patient B, the June 2022 Tribunal noted that Dr Volle had failed to identify the fracture/subluxation in the CT scan on 1 October 2016 and that it was subsequently identified on MRI imaging on 5 October 2016. It concluded that Dr Volle's issuing of a final report, without either seeing all the images or giving a warning that all the images had not been viewed, was behaviour which fell so far below the standard of a competent consultant radiologist that it amounted to serious misconduct.

15. In respect of Patient C, the June 2022 Tribunal was of the view that Dr Volle's conduct in relation to Patient C was serious misconduct in two areas. Firstly, Dr Volle's failure to specifically mention the possibility of non-accidental injury in his review of either the CT scan on 19 June 2018 or the MRI scan on 20 June 2018 or in his clinical discussion with the Consultant Paediatrician on 21 June 2018 was serious misconduct.

16. Secondly, the June 2022 Tribunal was of the view that the failure to recommend that a repeat MRI scan be conducted under sedation in light of the level of degradation in the MRI of 20 June 2018 also amounted to serious misconduct, particularly in the context of his failure to raise the possibility of non-accidental head injury.

17. The June 2022 Tribunal went on to consider whether the serious misconduct found in relation to Patient B and Patient C led to Dr Volle's fitness to practise being impaired.

18. In terms of remediation and insight, the June 2022 Tribunal noted that Dr Volle had indicated his intention to accept the facts in relation to Patient B in advance of the hearing. His acceptance of the facts in relation to Patient C was indicated on the third day of the hearing through his representative.

19. The June 2022 Tribunal noted that in his reflective document of July 2021, Dr Volle clearly accepted that the error in regard to Patient B was an omission on his behalf. He showed an understanding of the errors he had made and identified the steps he needed to take to ensure this would not happen again. Since 2016 Dr Volle had ceased carrying out any remote reporting and, of his own volition, had decided no longer to undertake any night shifts. The June 2022 Tribunal determined that this demonstrated a good level of remediation and insight in relation to Patient B.

20. The June 2022 Tribunal found that whilst Dr Volle, in his letter of 23 July 2021, had not accepted responsibility for his errors in relation to Patient C, there was an indication that he had accepted the feedback of medical colleagues. It noted, however, that Dr Volle had made comment in his reflective document of the same date, that in relation to what he had learned as a result of the activity '*I take the GMC experts criticism for not organising a repeat MRI scan under General Anaesthetic with a pinch of salt.'* The June 2022 Tribunal noted that Dr Volle had, again of his own volition, stopped reporting paediatric neuro-radiology scans. However, it considered that there was no detailed evidence of reflection and, as already indicated, nothing that demonstrated his acceptance of responsibility. It considered that Dr Volle's repeated references to the family court ruling in his various documents and correspondence demonstrated a complete lack of understanding of the concerns about his failings. The June 2022 Tribunal further noted the absence of any reflective document from Dr Volle subsequent to his acceptance of responsibility in relation to Patient C. It concluded that the level of remediation and insight demonstrated by Dr Volle in relation to Patient C was very low.

21. The June 2022 Tribunal was mindful that it had no information as to Dr Volle's current work, other than the fact he was working full time as a radiologist. It also had no up-to-date testimonials, no information regarding Dr Volle's recent CPD engagement or attendance at his discrepancy meetings.

22. The June 2022 Tribunal had had sight of numerous CPD certificates, all but one which were dated from 2016 and 2017. The testimonials were considered to be of little relevance at that time, particularly in light of the fact there was no further up-to-date testimonial evidence.

23. The June 2022 Tribunal considered that, notwithstanding the material provided by Dr Volle in relation to Patient B and its conclusions as to his remediation and insight in relation to Patient B, looked at in the round, and taking into account the findings in relation to Patient C, Dr Volle's fitness to practise was impaired.

24. The June 2022 Tribunal was clear that Dr Volle had acted in the past so as to put patients at risk and, in so doing, had acted to bring the medical profession into disrepute. Whilst it considered that his misconduct was remediable it did not consider, particularly in relation to Patient C, that the behaviour had been remediated and so concluded that at this stage there was a risk of the conduct being repeated.

25. The June 2022 Tribunal acknowledged that all three limbs of the overarching objective were engaged and a finding of impairment was required in order 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. The June 2022 Tribunal concluded that a failure to make a finding of impairment of fitness to practise would undermine public confidence in the profession and in the regulatory process.

26. The June 2022 Tribunal therefore determined that Dr Volle's fitness to practise was impaired by reason of his misconduct.

27. In reaching its decision on the appropriate sanction, if any, to impose on Dr Volle's registration, the June 2022 Tribunal considered the large number of testimonials and references placed before it, covering the period from April 2012 to November 2021. It noted that it was far from clear that all referees were aware of the allegations and some of the

references appeared to be in support of job applications. However, the June 2022 Tribunal took the view that the authors of the references would have been aware of the incident involving Patient C because of its serious nature and consequently were able to place more weight on those references.

28. The June 2022 Tribunal acknowledged that, taking the references together, they showed that Dr Volle had good standing in the medical profession and that they were supportive of his clinical skills. The references from other members of the MDT showed that Dr Volle had wide support from other clinicians and allied health care professionals. Whilst it noted that none of the references directly addressed the allegations, the June 2022 Tribunal accepted that there were references which dealt with the quality of Dr Volle's reporting, the fact that Dr Volle had improved protocols, and Dr Volle's approach to communicating. The June 2022 Tribunal did have concerns that, given that it was told that Dr Volle was working at the time of the hearing, there were no further references since the end of 2021. It was further concerned by the lack of information as to Dr Volle's current employment with virtually no information having been provided to them in relation to Dr Volle's professional life in 2022, apart from an appraisal certificate dated March 2022.

29. The June 2022 Tribunal took the view that Dr Volle's conduct was serious but fell short of being fundamentally incompatible with continued registration. It was concerned that, given the low level of insight, there was a risk to patient safety but it did not conclude that Dr Volle posed a *significant* risk of repeating behaviour. In the June 2022 Tribunal's view, Dr Volle had demonstrated potential for remediation and there was no evidence that demonstrated remediation was unlikely to be successful.

30. The June 2022 Tribunal concluded that a period of suspension would reflect the gravity of the misconduct and meet the public interest of maintaining public safety and promoting public confidence in the medical profession and maintain proper professional standards. It concluded that the appropriate period of suspension was one of 4 months. The June 2022 Tribunal considered that this should be sufficient time for Dr Volle to reflect on his failings in relation to Patient C and demonstrate insight and remediation.

31. The June 2022 Tribunal determined to direct a review of Dr Volle's case.
At the review hearing, the onus would be on Dr Volle to demonstrate how he has developed insight and remediated his conduct. Any reviewing Tribunal may be assisted if Dr Volle provided:

- A reflective statement considering the potential harm to Patient C as a result of Dr Volle's failure to raise the possibility of non-accidental injury and to address the failure to recognise that the MRI on 20 June 2018 was significantly degraded
- Evidence of relevant CPD courses in the areas of safeguarding and non-accidental head injury
- Evidence of relevant reading in relation to radiological standards in the area of suspected non-accidental head injury
- Up-to-date references and testimonials
- Information as to Dr Volle's work since November 2021 and future work plans.

Today's Review Hearing

32. The Tribunal has reviewed Dr Volle's case and has considered, in accordance with Rule 22(1)(f) of the Rules, whether his fitness to practise remains currently impaired by reason of misconduct.

Evidence

33. The Tribunal took account of all the evidence adduced during the course of these proceedings, which included but was not limited to:

- Record of Determinations from the hearing which took place between 6 to 14 June 2022;
- Reflective statement from Dr Volle, dated 31 October 2022;
- Testimonial from Dr F, dated 22 August 2022;
- Testimonial from Dr G, dated 6 September 2022;
- Testimonial from colleagues at Royal Preston Hospital relating to Dr Volle's post between 31 January to 4 June 2022;
- Article on Non Accidental Head Injuries, dated 10 May 2021;
- Non Accidental Head Injuries, dated 5 November 2021;
- Understanding Subdural Collections in Paediatric Abusive Head Trauma;
- Research by Mr H into Radiological Features of Physical Abuse in Children, 2022;
- Article relating to Paediatric Abusive Head Trauma, June 2022;
- Details of Paediatric Radiology Webinar, February 2022;
- Testimonial from National Locums, dated 28 July 2022;
- Paediatric Radiology Webinar, attended August 2022.

34. Dr Volle gave oral evidence at this hearing, under oath.

Submissions

35. On behalf of the GMC, Mr Simon Lewis, Counsel, submitted that the GMC's position in relation to both impairment of fitness to practise and sanction was neutral and that it was the Tribunal's decision alone.

36. Mr Lewis referred the Tribunal to paragraphs 163 and 164 of the Sanctions Guidance (SG), which relate in particular to review hearings, and the paragraphs in that document relating to insight. He had no further submissions to make.

37. In his oral evidence, Dr Volle told the Tribunal that the period between March and September 2022 was the worst of his life when he experienced extremely painful issues in his personal life. However, in the light of the findings of the Tribunal in June 2022, he had undertaken Continuing Professional Development (CPD) courses in an effort to get "state of the art" updates on the interpretation of paediatric radiology. Dr Volle said that he had attended a 3-day course on this subject to learn how such injuries are dealt with, specifically in practice in the UK.

38. Dr Volle submitted that, prior to his suspension he was considered to be an "excellent clinician" by his colleagues at the Royal Preston Hospital. He referred the Tribunal to the testimonial submitted by his colleagues at that hospital who stated that Dr Volle "on every occasion it has always been clear to us that he has his patients' best interests at heart". His colleagues went on to say that Dr Volle "is helpful, courteous and is very engaged with the radiographers in terms of teaching and sharing knowledge."

39. Dr Volle submitted that he accepted that the previous Tribunal was concerned about patient safety, particularly in relation to Patient C. He told the Tribunal that he understood their concern and that he has taken remedial action to ensure patient safety. Dr Volle referred the Tribunal to the CPD activities he has undertaken as well as a large volume of reading. In particular, he referred to the articles relating to Understanding Paediatric Subdural Collections in Paediatric Abusive Head Trauma. Dr Volle stated that this paper clarified all the different methods which are currently in use and enabled him to understand how the UK deals with these injuries. Dr Volle emphasised to the Tribunal that he would "never, ever, undertake paediatric radiology again".

40. In relation to his future plans, if he were allowed to return to unrestricted practice, Dr Volle told the Tribunal that the Lancashire Teaching Hospitals NHS Trust has told him that he would be welcome to continue to work at the Trust as he is an expert in neuro-oncology, specialising in brain tumours. Dr Volle said that, whilst he has not been able to work recently, he has not missed any updates in his field and would still be able to teach registrars in radiology and younger doctors who were going to work in this field.

The Relevant Legal Principles

41. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. As noted above, the June 2022 Tribunal set out the matters that a future Tribunal may be assisted by. The Tribunal reminded itself that at this review hearing, there is a persuasive burden on Dr Volle to demonstrate that his fitness to practise is no longer impaired and that he is fit to return to unrestricted practice.

42. This Tribunal must determine whether Dr Volle's fitness to practise is impaired today, taking into account his conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

The Tribunal's Determination on Impairment

43. The Tribunal took into account all of the documentary evidence provided to it, Dr Volle's oral evidence and the submissions of Counsel. It also noted Dr Volle's oral evidence that, when he completed his report in respect of Patient C, he did not have a full understanding of paediatric non accidental injuries and he stated that he will not undertake any paediatric radiology in the future. The Tribunal accepted that Dr Volle now accepted he was at fault in relation to Patient C and that, at the time of his reporting on this patient, he was "wrongheaded."

44. The Tribunal also noted the evidence that Dr Volle has provided to show how he has maintained and updated his clinical knowledge and skills with focussed learning. The Tribunal took account of the CPD activities he has undertaken, including the 3-day webinar which he attended in August 2022. It acknowledged Dr Volle's reflections on how he has continued to develop insight and remediate his behaviour, as set out in his detailed reflective statement, dated 31 October 2022. In particular, Dr Volle accepted all his failings in respect of Patient C and has taken remedial action to make patients safer. The Tribunal accepted that Dr Volle has

developed his insight by the reading and learning he has undertaken during the period of his suspension.

45. The Tribunal accepted that Dr Volle is clearly very skilled with a low error rate, although he did make some significant mistakes. However, the Tribunal considers that Dr Volle has learnt from his mistakes and has developed insight into them. The Tribunal also noted that there had been no further incidents since 2018. The Tribunal bore in mind the references and testimonial evidence, which are recent and which attest to Dr Volle's skills and knowledge. It is also mindful that the Royal Preston Hospital have held Dr Volle's post open for him, an indication of the high regard in which he is held. Given Dr Volle's level of insight, the remediation he has undertaken, and his excellent references, the Tribunal has concluded that the risk of repetition is low. The Tribunal was satisfied that Dr Volle had provided all the evidence that the previous Tribunal considered would be of assistance to a reviewing Tribunal.

46. The Tribunal has determined that the wider public interest in maintaining public confidence in the profession and declaring and upholding proper professional standards arising from the previous misconduct will have been served by the time of the expiry of Dr Volle's suspension on 18 November 2022. The steps taken by Dr Volle, in terms of developing insight and remediation, were sufficient such that a finding of impaired fitness to practise is no longer required in the wider public interest and is neither appropriate nor proportionate. The Tribunal has therefore determined that Dr Volle's fitness to practise is no longer impaired by reason of misconduct.

47. The Tribunal concluded that this decision would adequately satisfy the overarching objective: 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.

48. The Tribunal was aware that the suspension imposed by the June 2022 Tribunal expires on 18 November 2022. In view of the necessity to meet the requirements of the overarching objective, the Tribunal determined that the suspension should continue until its expiry.

49. That concludes this case.