

PUBLIC RECORD

Dates: 18/12/2023

Medical Practitioner's name: Dr Essam ALY

GMC reference number: 4360476

Primary medical qualification: MB BCh 1985 University of Asyut

Type of case

Restoration following
disciplinary erasure

Summary of outcome

Adjourned to a new Tribunal

Tribunal:

Legally Qualified Chair	Mrs Jayne Wheat
Medical Tribunal Member:	Dr Bridget Langham
Medical Tribunal Member:	Dr Nagarajah Thevamanoharan

Tribunal Clerk:	Ms Jemine Pemu
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Attendance and Representation:

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

Attendance of Press / Public

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

Application to adjourn - 18/12/2023

Background

1. On day one of the hearing, convened to consider Dr Aly's second application for Restoration to the Register after disciplinary erasure, a preliminary issue arose regarding the procedure to be followed at the hearing. This was in relation to the difference between Dr Aly relying on his written submissions and then making oral submissions to the Tribunal and Dr Aly's ability to give oral evidence under oath or affirmation. This issue arose because Dr Aly was appearing remotely from Egypt.
2. Dr Aly had been informed via an email from the MPTS administration on 12 December 2023 that the Tribunal would be unable to hear oral evidence from him because of the principles derived from the case of *Secretary of State for the Home Department v Agbabiaka [2021] UKUT 286 (IAC) ('Agbabiaka')*. This case has had repercussions for judicial and quasi-judicial tribunals receiving evidence, with the Upper Tribunal stating that permission from another state (whether on an individual or general basis) is required before oral evidence can be taken from within that state by a court or tribunal in the United Kingdom. The case has led to guidance being published by the MPTS on the procedure to be followed when a witness is to give evidence in an MPT hearing, from outside the U.K.
3. The Legally Qualified Chair (LQC), mindful of Dr Aly not being legally represented in the hearing, explained to Dr Aly the difference between providing submissions during the course of the hearing and giving evidence under oath. Principally in relation to the weight that a Tribunal might attribute to oral evidence that is subject to scrutiny by being tested in cross examination and Tribunal questions.
4. The Tribunal heard a submission from Ms Jade Bucklow, Counsel, on behalf of the GMC, that it was open to the Tribunal to use its discretion to allow oral evidence from Dr Aly, and that it was the GMC's view that MPT hearings did not fall within the scope of the criteria

in *Agbabiaka*, therefore permission did not need to be sought from the state (Egypt) before oral evidence could be given by Dr Aly.

5. The Tribunal had regard to the guidance document ‘*Receiving witness evidence at Medical Practitioners Tribunal hearings. Guidance for Decision Makers, Parties and Representatives*’ (‘the guidance’) and to a recent internal Tribunal circular published in October 2023 entitled ‘*Taking/Receiving evidence from witnesses abroad*’, which references the guidance. The Tribunal could not identify a good reason as to why it should not follow the guidance and determined that as a result, oral evidence could not be heard at this hearing because no enquiries had been made to ascertain whether permission was required or had been granted for oral evidence to be heard. The Tribunal was particularly mindful of paragraph 45 of the guidance which states:

45. Where the witness is located in a state outside the UK, consideration must also be given to whether that state has given permission for that oral evidence to be received, as to [do] so without permission risks damaging UK diplomatic relations with other states†. It is not for individual tribunals to form their own view of what may, or may not, damage the UK’s relations with another state.

6. Therefore, the Tribunal allowed Dr Aly time to consider whether he would like to proceed with the hearing, relying on his written submissions and documents, and making oral submissions rather than giving oral evidence. The LQC explained to Dr Aly that it was open to him to apply for an adjournment of his application for restoration, on the basis that he wanted to give evidence on oath or affirmation to the Tribunal when making his application.

7. Dr Aly informed the Tribunal that he wished to apply to adjourn his application for restoration. The Tribunal then heard submissions from both Dr Aly and Ms Bucklow for the GMC.

Submissions

Dr Aly

8. Dr Aly made an application under Rule 29 of the GMC (Fitness to Practise) Rules 2004, as amended (‘the Rules’), to adjourn this hearing to allow him time to meet the requirements to enable him to give oral evidence from Egypt during the course of the hearing.

9. Dr Aly submitted that, as this is his second application for restoration, he would like the hearing to proceed without restrictions and for him to give his best evidence to the Tribunal hearing his application. He submitted that he would like to give oral evidence under oath during the hearing.

10. Dr Aly submitted that he was unaware of the changes in the procedure which occurred between his previous restoration application made in 2022 and his current restoration application. He submitted that he was informed about the changes last week and

he initially suggested that he could travel to the UK from Egypt to give evidence, but he was unable to travel due to the short notice provided.

On behalf of the GMC

11. Ms Jade Bucklow, Counsel, submitted that the GMC did not oppose Dr Aly's application to adjourn. She submitted that the matter of permissions being sought with a state outside the U.K. before oral evidence under oath could be heard, was only brought to Dr Aly's attention a matter of days before the hearing. Ms Bucklow submitted that it is through no fault of Dr Aly's that he has not been able to go through the process to allow him to give evidence in advance of this hearing.

Advice from the Legally Qualified Chair

12. The LQC advised that the Tribunal should strike a balance between fairness to the doctor and the public interest. She stated that this would include having regard to factors such as the efficient progress of proceedings, the use of resources, the history of the case and the particular circumstances of the application that has been made and whether an adjournment will result in the participation of the doctor at the reconvened hearing.

13. The decision to adjourn is discretionary but should include clear reasons as to why an adjournment was or was not acceded to, and the overall test for the granting or refusing of an adjournment is one of procedural fairness.

Tribunal's Decision

14. The Tribunal has borne in mind the guidance in relation to hearing oral evidence from a state outside of the U.K. A copy of this guidance was also provided to Dr Aly. The guidance covers a range of circumstances but specifically covers the issues raised by the *Agbabiaka* case to assist tribunals with the matters to consider when receiving video link or telephone evidence from witnesses located abroad.

15. The guidance sets out the detailed procedure to be adopted in relation to applying for permission at a hearing if such permission had not been obtained by applying to an MPTS case manager prior to a hearing. The Tribunal has had regard to paragraphs 45 - 51 of the guidance, which cover the procedures likely to be necessary.

16. The Tribunal was particularly mindful of paragraph 45 which states:

45. Where the witness is located in a state outside the UK, consideration must also be given to whether that state has given permission for that oral evidence to be received, as to [do] so without permission risks damaging UK diplomatic relations with other states†. It is not for individual tribunals to form their own view of what may, or may not, damage the UK's relations with another state.

17. The Tribunal also bore in mind paragraph 60 of the guidance which states that where the relevant permission has not been sought:

“60... The tribunal may wish to consider whether or not it can properly receive the evidence in accordance with Rule 34(1) and, if not, the interests of justice and fairness in proceeding with the hearing including the impact of not receiving evidence from the witness or of any delay in the hearing proceeding if evidence from the witness is not received at that time. The tribunal may wish to consider whether the evidence may reasonably be obtained solely in writing (including by questions being put in writing by the cross-examining party and by the tribunal if necessary) or by the witness being required to attend.”

18. The MPTS had provided Tribunal members with extensive and detailed guidance specifically addressing how the taking of evidence from witnesses abroad was to be managed in these circumstances. It was the Tribunal’s view that it was no fault of Dr Aly that this process had not been canvassed with him during the case management process leading up to this hearing. The Tribunal considered that Dr Aly would have been unaware of the change in procedure since he last appeared remotely from Egypt, until he was put on notice of potential difficulties in giving evidence late last week.

19. The Tribunal, having considered the guidance, determined that the procedure outlined therein would be the correct process for liaison between the MPTS and the Doctor.

20. The Tribunal has borne in mind that this is Dr Aly’s second application for restoration and that the Tribunal has the power to indefinitely suspend his right to reapply for restoration pursuant to Section 41(9) of the Medical Act 1983, if his second application for restoration were refused. The Tribunal acknowledged and balanced the need to hear this case expeditiously with the necessity to provide Dr Aly with a fair hearing.

21. The Tribunal considered that it could unduly prejudice these proceedings if Dr Aly were not allowed to adduce his best evidence in support of his application which could include Dr Aly giving evidence from Egypt should he choose to do so. Oral evidence would be subject to scrutiny via cross examination and questioning, and therefore has the potential to carry more weight than submissions alone.

22. In these circumstances, the Tribunal determined that in the interests of fairness, it was appropriate to adjourn these proceedings to afford Dr Aly the opportunity to liaise with the MPTS, as set out in the guidance, for the relevant permissions to be obtained if necessary. The Tribunal therefore granted Dr Aly’s application to adjourn. The Tribunal considered that it was not in a position to fix a new hearing date, given the guideline timescales of up to 12 weeks in obtaining the necessary permissions. It was mindful that the hearing today was not formally opened, therefore this Tribunal was not seized of the matter and that a freshly constituted Tribunal could be appointed to deal with Dr Aly’s application in due course.

23. That concludes the hearing.