

## PUBLIC RECORD

Date: 25/11/2022

Medical Practitioner's name: Dr Gyorgy RAKOCZY

GMC reference number: 5158347

Primary medical qualification: MD 1979 Semmelweiss Orvostudományi Egyetem

**Type of case** **Outcome on impairment**

Review - Language impairment Impaired

**Summary of outcome**  
Suspension, 12 months.  
Review hearing directed

**Tribunal:**

Legally Qualified Chair	Mr Damian Cooper
Medical Tribunal Member:	Dr William Seligman
Medical Tribunal Member:	Dr Nagarajah Theva

Tribunal Clerk:	Ms Angela Carney
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**Attendance and Representation:**

Medical Practitioner:	Present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Ms Anam Khan, 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 - 25/11/2022

1. At this review hearing the Tribunal now 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 Rakoczy's fitness to practise is impaired by reason of not having the necessary knowledge of English.

## Background

2. Dr Rakoczy graduated from Semmelweis University in Hungary in 1979.

## The 2019 Tribunal

3. Dr Rakoczy's case was first considered by a Medical Practitioners Tribunal ('MPT') between 21 January – 7 February 2019 ('the 2019 Tribunal').

4. At the time of the events which were the subject of Dr Rakoczy's initial hearing, he was employed as a Consultant Paediatric Surgeon at Central Manchester University Hospitals NHS Trust ('the Trust'), a post he took up substantively in 2008.

5. In summary, the allegations that led Dr Rakoczy's to the 2019 Tribunal were that between 23 November 2016 and 25 November 2016, and on 9 January 2017, Dr Rakoczy underwent a GMC assessment of his standard of professional performance and was observed by a Performance Assessment Team (PAT). Part of the PAT conclusions were that there were some issues with Dr Rakoczy's ability to communicate in English and it was recommended that he underwent an assessment of his English language in accordance with the International English Language Testing System ('IELTS'). On 16 September 2017, Dr Rakoczy took the test in which he failed to achieve the minimum standard required. Dr Rakoczy undertook a further test in May 2018 and also failed this test.

6. By way of background, the 2019 Tribunal noted that from 2013 Dr Rakoczy was working with restrictions imposed by the National Clinical Assessment Service (NCAS). NCAS found that overall Dr Rakoczy's English skills were satisfactory, although there were some areas for improvement, which included improving minor mistakes in grammar and to 'soften' directness in speech. A GMC investigation was opened into Dr Rakoczy's fitness to practise, and he was referred to a Medical Practitioners Tribunal hearing (the 2019 Tribunal).

7. The 2019 Tribunal determined that Dr Rakoczy's fitness to practise was not impaired by reason of his deficient professional performance. However, it took the view that a lack of English language skills at the required standard could present a potential risk to patient safety. The 2019 Tribunal determined that Dr Rakoczy's fitness to practise was impaired by reason of his knowledge of English language alone and that such a finding was required in order to maintain public confidence in the profession and to promote and maintain proper professional standards for members of the profession. The 2019 Tribunal imposed conditions on Dr Rakoczy's registration for a period of twelve months and directed a review. Dr Rakoczy appealed the decision of the 2019 Tribunal. The appeal was dismissed by the High Court (Dr Rakoczy having given evidence that he withdrew the appeal) and conditions were imposed on his registration until 20 May 2020.

#### The 2020 Tribunal

8. Dr Rakoczy's case was reviewed by an MPT in 2020, which concluded on 6 May 2020 ('the 2020 Tribunal').

9. The 2020 Tribunal had regard to an email that Dr Rakoczy had sent to the MPTS on 2 April 2020 enclosing his OET test results, which were dated 8 February 2020. He scored an average of 327.5 against the requirement of 350, achieving a C+ score. The 2020 Tribunal determined that it did not have new evidence before it which demonstrated that Dr Rakoczy met the GMC criteria and standard of knowledge of the English language.

10. The 2020 Tribunal determined that Dr Rakoczy's fitness to practise was impaired by reason of not having the necessary knowledge of the English language. The 2020 Tribunal determined that a period of conditional registration for twelve months was appropriate and directed a review.

#### The 2021 Tribunal

11. Dr Rakoczy's case was then reviewed by an MPT in April 2021 ('the 2021 Tribunal').

12. The 2021 Tribunal noted that the GMC accepts two English language tests as evidence of the necessary knowledge of English, the IELTS and the OET. It noted that Dr Rakoczy had not attempted to complete either test since the 2020 hearing, despite this being a condition on his registration. Therefore, the 2021 Tribunal determined that Dr Rakoczy had not provided it with any satisfactory objective or independent evidence that his knowledge of English had changed since the matter was last considered by the 2020 Tribunal.

13. The 2021 Tribunal remained concerned with Dr Rakoczy's level of insight and found that he had not recognised the importance of demonstrating the requisite English language skills through the tests authorised by the GMC. It took the view that Dr Rakoczy appeared to be caught up in the wider issue about the nature of the tests rather than doing what was

required of him by the GMC in order to demonstrate that he had the necessary knowledge of English.

14. The 2021 Tribunal acknowledged Dr Rakoczy's concerns with the requirements of the tests in that he believes that they are discriminatory in relation to people of his age (specifically, in his view, those over the age of 60). However, the 2021 Tribunal was of the view that the GMC's position is clear, in that it relies on a satisfactory IELTS or OET test for a doctor to demonstrate objectively that they have the necessary knowledge of the English language.

15. The 2021 Tribunal was of the view that patients require doctors to have the necessary knowledge of English in order to treat them safely. The 2021 Tribunal concluded that a finding of impairment was required in order to protect patients, to maintain public confidence in the medical profession, and to promote and maintain proper professional standards for members of the profession. It determined that Dr Rakoczy's fitness to practise remained impaired by reason of not having the necessary knowledge of English.

16. The 2021 Tribunal was mindful that Dr Rakoczy has made little progress since the last review hearing and was of the opinion that he did not fully understand or accept the reasons for the restrictions on his registration, namely that he does not have the necessary knowledge of English and the impact this has on patient safety. The 2021 Tribunal determined that imposing a further period of conditions on Dr Rakoczy's registration would not be appropriate or proportionate.

17. Given Dr Rakoczy's lack of insight into the need to pass the required test in order to satisfy the GMC that he has the required knowledge of the English language, the 2021 Tribunal determined that the only appropriate sanction was one of suspension. The 2021 Tribunal considered that a period of 12 months suspension would be appropriate, to give Dr Rakoczy the time to complete an OET or IELTS test. This would protect patient safety and uphold professional standards, as well as maintaining public trust in the medical profession.

18. Dr Rakoczy appealed the 2021 Tribunal's decision, but the appeal was determined to be out of time and did not proceed.

19. The 2021 Tribunal stated that a future tribunal may be assisted by the following:

- Evidence of satisfactory IELTS or OET test scores (medical profession version); and
- Evidence of up to date Continuing Professional Development (CPD) specific to his area of practice.

## The Evidence

20. The Tribunal has taken into account all the evidence received, both oral and documentary.

21. The Tribunal received the following documentary evidence which included but was not limited to:

- Record of Determinations 2019, 2019, 2020 and 2021
- Bundle of supporting witness statements prepared for 2020 MPT review hearing
- Witness statement of Dr Rakoczy prepared for 2021 review hearing
- Email from Dr Rakoczy to MPTS with submissions for the Tribunal, attaching:
  - Letter from Cambridge Assessment dated 5 April 2018
  - National Geographic article
  - Cognitive Neuroscience of Aging: Linking Cognitive and Cerebral Aging

### Submissions

22. On behalf of the GMC, Ms Anam Khan invited the Tribunal to make a finding that the doctor's fitness to practice remains impaired. She said that the previous tribunal formed the view that the doctor's focus was on the wider issues in relation to his concerns about the nature of the English language tests, which demonstrated a lack of insight and it considered this to be an aggravating feature. She stated that notwithstanding this, Dr Rakoczy maintains his arguments regarding the validity of these tests, arguments which have been rejected by previous tribunals. She said that Dr Rakoczy was advised by previous tribunals that such arguments demonstrate a lack of insight. She reminded the Tribunal that since the last review hearing, the doctor has again done nothing to engage with the expectations of him to seek to remediate his impairment by improving his English language.

23. Ms Khan referred the Tribunal to paragraphs 4 to 9 of the GMC guidance on knowledge of the English language. She said that paragraph 4 states that the primary factor for consideration in such cases is the outcome of any language assessment which the doctor has undertaken. She stated that the results of such a test are a key factor in deciding if a doctor is impaired because they lack the necessary knowledge of English. The guidance goes on to set out what the minimum scores are in respect of the IELTS which is to score at least 7.5 overall and on the OET test to score, at least Grade B or a numerical score of 350. Ms Khan submitted that the Tribunal does not have any fresh evidence of an improved score, and the only evidence before it is the previous scores, which were below the minimum acceptable.

24. Ms Khan submitted that there is evidence of the doctor's fitness to practice being impaired by reason of not having the necessary knowledge of English. She reminded the Tribunal of the findings of the previous tribunals, that there were no exceptional circumstances in this case to justify taking to justify departure from the guidance and submitted that this was the same today. She submitted that Dr Rakoczy has failed to discharge the responsibility that rests upon him to show why he ought to be allowed to return to unrestricted practice and how his fitness to practise is not impaired.

25. Ms Khan submitted that a finding of impairment continues to be necessary to protect patients and to maintain the public confidence in the medical profession and uphold proper professional standards.

26. Dr Rakoczy referred the Tribunal to the evidence he provided to the previous tribunal regarding the matter of age discrimination with the language tests used by the GMC. He said that his appeal to the High Court represented insight, in that, he was not fighting for himself but for other doctors in the UK.

27. Dr Rakoczy referred the Tribunal to the sixty-five statements he provided to the previous tribunals which included testimonials from seven UK professors. Dr Rakoczy referred to the statement from Professor A, with whom he worked in 1991 as a Registrar in Glasgow. He said that he had provided evidence in the bundle from other relevant professors, which supported his opinion about the discriminatory nature of the IELTS test. He said that the GMC had not called any expert witnesses regarding the matter of age discrimination with the IELTS test.

28. Dr Rakoczy said that he has insight into the fact that he is now 70 years old and can no longer work in the UK. He said that after today's hearing he will request Voluntary Erasure if the GMC does not recognise the problem with the IELTS test.

### **The Relevant Legal Principles**

29. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. As noted above, the previous tribunal set out the matters that a future review tribunal may be assisted by. This Tribunal is aware that it is for the doctor to satisfy it that he would be safe to return to unrestricted practise.

30. This Tribunal must determine whether Dr Rakoczy's fitness to practise is impaired today. In doing so it would consider Dr Rakoczy's insight into his language failings and whether the matters are remediable, have been remedied and any likelihood of repetition.

### **The Tribunal's Determination on Impairment**

31. The Tribunal noted that Dr Rakoczy provided no new evidence regarding having the necessary knowledge of English and relied on the testimonials he provided to previous review tribunals. It noted that previous review tribunals had found these testimonials to be insufficient.

32. The Tribunal noted that Dr Rakoczy's continued focus was on the age discrimination matter he had raised previously regarding the English language tests. Dr Rakoczy addressed the Tribunal in preliminary matters concerning this issue again. The LQC explained that Dr Rakoczy was unfortunately labouring under a misapprehension in his expressed belief that the MPTS somehow acted in a supervisory capacity over the GMC. The Legally Qualified

Chair (LQC) further explained the specific role of this Tribunal in determining whether Dr Rakoczy's fitness to practise was impaired by reason of his knowledge of English.

33. The Tribunal noted that Dr Rakoczy stated that his age put him at a disadvantage in undertaking the tests and that the IELTS test had not been validated in the over 60 population. It took account of the letter dated 5 April 2018 from Mr B, Chief Executive, Cambridge Assessment. Mr B stated:

*'The committee confirmed that IELTS is designed to be taken by adult candidates of all ages and that we have not commissioned research on validity for any specific adult age ranges.'*

*'The committee also stated that although fewer people over 60 take Academic IELTS the analysis we have conducted shows that those who do take the test tend to outperform other age groups in Speaking and Writing and overall perform on a par with other age groups.'*

34. The Tribunal noted that the GMC accepts two English language tests as evidence of the necessary knowledge of English, the IELTS and the OET. The Tribunal noted that Dr Rakoczy had not undertaken an English language test since February 2020. Dr Rakoczy had also not undertaken any language skills courses to assist his use of the English language. In the Tribunal's view, there was therefore no objective or independent evidence before it as to whether Dr Rakoczy's English language skills had improved or deteriorated. The Tribunal had seen no evidence of remediation on the part of Dr Rakoczy at all.

35. The Tribunal noted the bundle of statements from colleagues that Dr Rakoczy had provided to the earlier review Tribunals in this case. These statements had been insufficient to satisfy earlier review tribunals and this Tribunal was also not satisfied that such subjective, and now dated, evidence was sufficient to challenge in any way the results of the objective tests Dr Rakoczy had undertaken previously. The Tribunal could not identify any exceptional circumstances which might persuade it that Dr Rakoczy's English language skills were sufficient that he could return to unrestricted practice.

36. The Tribunal was mindful of the matters that the 2021 Tribunal suggested this Tribunal may be interested in. The Tribunal has explained its position in relation to the English Language tests. Further, it had seen no evidence of Dr Rakoczy's ongoing CPD. It noted Dr Rakoczy's submissions during the hearing that he did not intend to return to UK medical practice.

37. The Tribunal was of the opinion that in focusing on the age discrimination matter rather than undertaking either the IELTS or OET Test demonstrated a lack of insight by Dr Rakoczy. This was further demonstrated in him persisting in his expectation that the MPTS could somehow overrule the GMC or direct the GMC in relation to its use of the English language tests, having been told that this was not the function of the MPTS.

38. The Tribunal, having no new or objective evidence that Dr Rakoczy has the necessary knowledge of English, determined that patients may be put at risk and public confidence in the profession would be undermined if a finding were to be made that his fitness to practise was not impaired. Further, the Tribunal was of the view that a finding of impairment was also necessary to promote and maintain proper professional standards for member of the medical profession. It could not return a doctor to unrestricted practice when the only objective evidence before it was that the doctor did not have the necessary skills in English for safe practice.

39. This Tribunal therefore determined that Dr Rakoczy's fitness to practise is currently impaired by reason of his not having the necessary knowledge of English.

#### Determination on Sanction - 25/11/2022

1. Having determined that Dr Rakoczy's fitness to practise is impaired by reason of not having the necessary knowledge of the English language, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

#### The Evidence

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

#### Submissions

3. On behalf of the GMC, Ms Khan submitted that a sanction of suspension should be imposed. She submitted that all three limbs of the overarching-objective are engaged in this case.

4. Ms Khan submitted that taking no action would be inappropriate as there are no exceptional circumstances in this case to justify such a decision. She referred the Tribunal to paragraph 163 of the Sanctions Guidance (November 2020) ('the SG'), which states:

*'163 It is important that no doctor is allowed to resume unrestricted practice following a period of conditional registration or suspension unless the tribunal considers that they are safe to do so.'*

Ms Khan submitted that it is not safe for Dr Rakoczy to return to unrestricted practice.

5. Ms Khan stated that Dr Rakoczy was previously under conditional registration, imposed in both 2019 and 2020, and he had failed sufficiently to engage with the conditions and undergo an appropriate English language test. She submitted that conditions would be unworkable in this case. She said that Dr Rakoczy has not responded to remediation and has limited insight and therefore conditional registration is inappropriate.



6. Ms Khan submitted that the Tribunal ought to maintain the status quo and extend the current period of suspension. She reminded the Tribunal that the previous tribunal imposed a sanction of suspension to allow Dr Rakoczy time to undertake an English language test but he had again failed to do so. Indeed, she said, Dr Rakoczy had elected not to do the test.

7. Ms Khan referred the Tribunal to paragraph 97d of the SG which states:

*'97. Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*

*d. In cases that relate to knowledge of English, where the doctor's language skills affect their ability to practise and there is a risk to patient safety if the doctor were allowed to continue to practise even under conditions.'*

8. She submitted that paragraph 97d is made out and submitted that suspension is the appropriate sanction today.

9. Dr Rakoczy referred the Tribunal to his testimonials and disagreed that they had been considered *'insufficient'*. He stated that he does have insight. He told the Tribunal that the High Court appeal process took almost a year, and this may be a reason that he has not undertaken an IELTS test. He said that the only problem is with his English language skills and there are no concerns about his clinical practice, as the 2019 Tribunal had found.

### **The Tribunal's Determination on Sanction**

10. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken account of the Sanctions Guidance (May 2017) (the SG). It has borne in mind that the purpose of the sanctions is not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect.

11. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Rakoczy's interests with the public interest. The public interest includes, amongst other things, the protection of patients, the maintenance of public confidence in the profession, and the declaring and upholding of proper standards of conduct and behaviour.

12. The Tribunal has already given a detailed determination on impairment, and it has taken those matters into account during its deliberations on sanction.

### **Aggravating and mitigating factors**

13. The Tribunal could not identify any mitigating circumstances in this case.

14. The Tribunal considered that Dr Rakoczy appeared to have chosen to disregard the advice provided by the earlier tribunals regarding what the next review tribunal would be interested in seeing from him. Each tribunal had been clear about the expectation on Dr Rakoczy in order for him to be able to show he met the requisite standard in English. The Tribunal considered this to be an aggravating factor in this case, as was Dr Rakoczy's continued emphasis on his perceived unfairness of the IELTS and OET tests.

### **No action**

15. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Rakoczy's case, the Tribunal first considered whether to conclude the case by taking no action.

16. The Tribunal considered that there were no exceptional circumstances on which it might be justified in taking no action against Dr Rakoczy's registration. The Tribunal determined that in view of its findings on impairment, it would be not be sufficient, proportionate or in the public interest, to conclude this case by taking no action.

### **Conditions**

17. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Rakoczy's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

18. The Tribunal noted that Dr Rakoczy had been subject to conditional registration and had failed to engage with the conditions and in taking an English language test in order to facilitate his return to work. Dr Rakoczy had also set out in the evidence before the Tribunal his clear intention not to undertake either English language test whatever the findings of this Tribunal. Given Dr Rakoczy's attitude to the English language test and limited insight into the requirements of this MPTS process, the Tribunal could not be satisfied that Dr Rakoczy would comply with conditional registration. The Tribunal considered that there are no conditions that could be devised that would protect the public interest and maintain public confidence in the medical profession.

19. The Tribunal has, therefore, determined that it would not be sufficient to direct the imposition of conditions on Dr Rakoczy's registration.

### **Suspension**

20. The Tribunal considered that suspension is the only appropriate sanction in this case given the aggravating factors identified. The Tribunal noted that Dr Rakoczy has had 12 months to undertake and pass either the IELTS or OET test. The Tribunal has borne in mind paragraph 97d above and considered it of relevance in this case. It determined to direct the suspension of Dr Rakoczy's registration.

21. In determining the appropriate period of suspension, the Tribunal considered that a period of 12 months suspension would be appropriate, to give Dr Rakoczy the time to undertake English language study, having not undertaken any for some considerable time, to complete an OET or IELTS test and to assimilate a portfolio of CPD sufficient to satisfy a review tribunal of his readiness to return to unrestricted practice. In the Tribunal's view, this would protect patient safety and uphold professional standards, as well as maintaining public trust in the medical profession.

### **Erasure**

22. The Tribunal noted that the sanction of erasure was not available to it in a language case such as this.

### **Review Hearing**

23. The Tribunal determined to direct a review of Dr Rakoczy's case. A review hearing will convene shortly before the end of the period of the suspension. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Rakoczy to demonstrate that he has the necessary knowledge of English language and is fit to return to unrestricted practice. It therefore may assist the reviewing tribunal if Dr Rakoczy provided:

- evidence of satisfactory IELTS or OET test scores (medical profession version);
- evidence of up to date Continuing Professional Development (CPD) specific to his area of practice; and
- any other information that he considers will assist the tribunal.

24. That concludes this hearing.