

PUBLIC RECORD

Dates: 31/07/2024 - 01/08/2024

Medical Practitioner's name: Dr Htay KYWE
GMC reference number: 2463906
Primary medical qualification: MB BS 1976 Med Inst (III) Mandalay

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

Restoration application refused. No further applications allowed for 12 months from last application.

Tribunal:

Legally Qualified Chair	Ms Marianne O'Kane
Lay Tribunal Member:	Ms Val Evans
Medical Tribunal Member:	Mr Thomas George

Tribunal Clerk:	Mr Joel Taylor-Garratt
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Attendance and Representation:

Medical Practitioner:	Not present, not represented
GMC Representative:	Ms Janet Ironfield, Counsel

Attendance of Press / Public

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

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

DETERMINATION ON RESTORATION FOLLOWING DISCIPLINARY ERASURE - 01/08/2024

1. The Tribunal has convened to consider Dr Kywe's application for his name to be restored to the Medical Register following his erasure for disciplinary reasons in 2010.
2. The Tribunal has considered the application in accordance with Section 41 of the Medical Act 1983, as amended ('the Act') and Rule 24 of the GMC (Fitness to Practise) Rules 2004, as amended ('the Rules').
3. This is Dr Kywe's first restoration hearing, although he had made two previous applications that did not progress to be heard by a Medical Practitioners Tribunal.

Background

4. Dr Kywe qualified in 1976 and, at the time of the events that led to his erasure, he was practising as a GP at the Paddington Surgery in West London.
5. The circumstances that led to Dr Kywe's erasure were first considered at a hearing before a Fitness to Practise Panel (FTPP) in May 2009 ('the 2009 Panel'), which found Dr Kywe's fitness to practise to be impaired by reason of misconduct and deficient professional performance and determined to suspend his registration. The case was later reviewed by a FTPP in May 2010 ('the 2010 Panel'), which determined to erase his name from the register on the same grounds. Dr Kywe did not attend either of these hearings, nor was he represented.
6. In summary, the circumstances of the deficient professional performance can be summarised as a series of clinical failings, which included failing to order appropriate tests, poor record keeping, failure to appropriately monitor patients' conditions and, in one instance, failure to inform a patient of their health condition. These failings related to four different patients over a five-year period. Additionally, in respect of misconduct, Dr Kywe

had failed to comply with a requirement to undertake a Performance Assessment, despite repeated requests.

The 2009 Panel

7. The 2009 Panel determined that Dr Kywe's fitness to practise was impaired by reason of his deficient professional performance and his misconduct. It took a serious view of the number, level and nature of the findings against Dr Kywe. It noted that a recurrent theme in the case had been Dr Kywe's failure to discharge his duties and responsibilities with regard to the management of four patients. This was compounded by his failure to respond to the GMC requests that he undertake a Performance Assessment. The Panel found that his misconduct was repeated and a serious departure from the professional standards set out in Good Medical Practice (2001) ('GMP'), which is the version that was in effect at the material time. However, it concluded that, while the acts and omissions were serious, they were not fundamentally incompatible with continued registration and determined to suspend Dr Kywe's registration for a period of 12 months.
8. The 2009 Panel set out the evidence that a reviewing Panel would expect to have before it:
 - *'evidence of Dr Htay Kywe's compliance with the GMC request that he undergoes a performance assessment and the submission of a Performance Assessment Report;*
 - *evidence as to the steps Dr Htay Kywe has taken during his suspension of his continued professional development, including relevant journals read and courses attended;*
 - *evidence of Dr Htay Kywe's plans for return to medical practice; and*
 - *testimonials as to Dr Htay Kywe's character and conduct during the period of his suspension.'*

The 2010 Panel

9. The 2010 Panel, which reviewed the case, noted that Dr Kywe had not engaged with the Regulator since the 2009 hearing. Further, he had not provided any of the evidence directed by the 2009 Panel, as set out above, and had failed to respond to a further four requests from the GMC that he undertake a Performance Assessment.
10. The 2010 Panel considered the following factors from paragraph 82 of the Sanctions Guidance to be particularly relevant:

‘Particularly serious departure from the principles set out in Good Medical Practice ie behaviour fundamentally incompatible with being a doctor.

A reckless disregard for the principles set out in Good Medical Practice and/or patient safety.

Doing serious harm to others (patients or otherwise), either deliberately or through incompetence and particularly when there is a continuing risk to patients...

Persistent lack of insight into seriousness of actions or consequences.’

11. The 2010 Panel noted that Dr Kywe had had an opportunity to reflect on the 2009 Panel’s findings on impairment and to cooperate with the GMC, but had not done so, and the Panel recorded a *‘total failure’* to engage in the process. This had been exacerbated by his failure to demonstrate any Continuing Professional Development (‘CPD’), with the risk of further deskilling. It concluded that, in conjunction with his continued, persistent failure to engage with the GMC over the preceding year, his deficient professional performance and misconduct was such that it was fundamentally incompatible with continued registration.
12. Accordingly, the 2010 Panel determined to erase Dr Kywe’s name from the Medical Register and considered that this was the only sanction that would protect patients, maintain public confidence in the profession and uphold and declare proper standards of conduct and behaviour.

The Current Restoration Hearing

The Outcome of Applications made during the hearing

13. Dr Kywe did not attend this hearing, nor was he represented. The Tribunal granted the GMC’s application, made pursuant to Rule 40 and 31, that notice of the hearing had been served on Dr Kywe and that the hearing should proceed in his absence. The Tribunal’s full determination can be found at Annex A.

The Evidence

14. The Tribunal has taken account of all the evidence and information that it has received.

Witness Evidence

15. Dr Kywe did not provide a witness statement or written submissions and did not attend the hearing to give evidence. No other witnesses attended for either party.

Documentary Evidence

16. The GMC provided documentary evidence which included the minutes from both the 2009 and 2010 Panels, email correspondence between Dr Kywe and the GMC and Dr Kywe's three restoration applications.

Submissions on behalf of the GMC

17. On behalf of the GMC, Ms Ironfield, Counsel, submitted that the Tribunal should refuse Dr Kywe's application. She referred the Tribunal to the MPTS '*Guidance for medical practitioners tribunals on restoration following disciplinary erasure*' ('the Guidance'), which she said set out the approach that the Tribunal should take.
18. Ms Ironfield submitted that the Guidance was clear that the onus was on Dr Kywe, as the doctor making this application for restoration, to satisfy the Tribunal that he was fit to return to unrestricted practice.
19. Ms Ironfield reminded the Tribunal of the background to the original Allegation and the findings of the 2009 and 2010 Panels. She submitted that the 2009 Panel found that Dr Kywe's clinical performance in relation to four patients was seriously deficient and took place over the course of five years. Ms Ironfield submitted that Dr Kywe's conduct had common features across these patients, which included not carrying out tests, failing to communicate about the patients' health, not involving the patients in decisions about their care, not taking adequate notes or recording follow up actions. Ms Ironfield reminded the Tribunal that the 2009 Panel found that Dr Kywe's performance was not fundamentally incompatible with continued registration but that his failure to engage with the Regulator brought it close to this threshold. It also found that Dr Kywe had shown no insight into his actions or their consequences. Ms Ironfield submitted that, as Dr Kywe had not participated in a Performance Assessment, the Panel did not know whether the failures as found proved were remediable, there being no evidence on the issue.

20. Ms Ironfield submitted that the 2009 Panel had set out clear recommendations that Dr Kywe could follow to demonstrate his insight and remediation but that he failed to comply with any of these recommendations, which included undertaking a Performance Assessment. Ms Ironfield told the Tribunal that, following the 2009 Panel, the GMC wrote to Dr Kywe on four occasions in 2009 to invite him to undertake a Performance Assessment but that Dr Kywe did not respond to any of these invitations, and no Performance Assessment was undertaken.
21. Ms Ironfield submitted that Dr Kywe's position was compounded by the time of the 2010 Panel because of his persistent lack of engagement with the fitness to practise process and a Performance Assessment. He had failed to take up the advice from the 2009 Panel and there was no information from him regarding insight or remediation. She said that this lack of engagement has continued through to this hearing with which, with the exception of some emails to the GMC regarding administrative matters, Dr Kywe has failed to engage, even to acknowledge correspondence about his restoration application. Ms Ironfield submitted that Dr Kywe's disengagement, which has now lasted over 14 years, has continued up to and including this hearing. She submitted that Dr Kywe's continuing lack of engagement with the hearing process and the GMC could be said to be ingrained.
22. Ms Ironfield referred the Tribunal to the relevant parts of the Guidance, including paragraph B6:
- 'B6 It will be important for the MPT to assess whether the doctor has demonstrated insight into the findings that led to their erasure. It is crucial that a doctor has genuine insight into what went wrong and appreciates what could have been done differently. They should also understand how they could act differently in the future to avoid similar concerns occurring again.'*
23. Ms Ironfield submitted that, whilst demonstrating his insight was crucial for the restoration process, Dr Kywe had not provided any evidence of developing insight in the time since the first substantive hearing, 15 years ago, nor had he provided any evidence regarding any efforts to remediate. Ms Ironfield also submitted that Dr Kywe had never apologised for his actions, expressed any remorse nor indicated that he had reflected on his conduct or appreciates the impact on others.
24. Ms Ironfield submitted that the circumstances that led to Dr Kywe's erasure from the register included a pattern of similar concerns amongst the complainants. She submitted

that the repeated nature of this conduct meant there was a real risk of Dr Kywe repeating it if he were to be restored to the register as he had provided no evidence to indicate that this risk had been assuaged. Ms Ironfield submitted that this continuing risk has very serious ramifications.

25. Ms Ironfield told the Tribunal that it was 14 years since Dr Kywe's name was erased from the register and that he had been suspended from practising for some years before that. She submitted that this length of time created a real risk of a significant dilution of Dr Kywe's clinical knowledge and skills. Ms Ironfield submitted that Dr Kywe had provided no evidence of his undertaking any form of CPD, or even the most basic measures to show how he had kept his skills up to date.
26. Ms Ironfield submitted that it was unclear what Dr Kywe had been doing since his erasure. She identified that Dr Kywe's CV, provided as part of his restoration application, stated '*Care home owner / Service Provider 2005 to 2018*' but that it was unclear in precisely what capacity Dr Kywe was involved in any care home. Ms Ironfield submitted that Dr Kywe had provided '*extremely limited*' evidence of his undertaking any work in a field related to medicine.
27. Ms Ironfield submitted that, due to the lack of evidence produced by Dr Kywe, the Tribunal was in no better position now than the 2009 Panel to assess if his failures are remediable. She also submitted that, as it was at the 2010 Panel, Dr Kywe's persistent failure to engage with the GMC was fundamentally incompatible with registration. Ms Ironfield submitted that Dr Kywe's conduct involved serious departures from Good Medical Practice, involving multiple patients over five years and that these findings were still capable of undermining public trust in the profession.
28. Ms Ironfield submitted that restoring Dr Kywe's name to the register would not meet the Tribunal's duty to promote and maintain proper professional standards. Ms Ironfield submitted that, because of the historic circumstances and Dr Kywe's lack of engagement, he had not made the case that he is fit to practise without restrictions. She said that there was an insufficient evidential basis on which the application should succeed and that it would be consistent with the public interest for the Tribunal to refuse the application.

The Tribunal's Approach

29. The Tribunal reminded itself that its power to restore a practitioner to the Medical Register in accordance with Section 41 of the Act is a discretionary power. This power is to be exercised in the context of the Tribunal's primary responsibility to act in accordance with the statutory overarching objective to protect the public, as set out later in this determination.
30. While the Tribunal has borne in mind the submissions made by the parties, the decision as to whether to restore Dr Kywe's name to the Medical Register is a matter for this Tribunal exercising its own judgment. The Tribunal reminded itself that, should it direct that Dr Kywe's name be restored to the Medical Register, it cannot impose any restrictions on his practice.
31. Throughout its consideration of Dr Kywe's application for restoration, the Tribunal was guided by the approach laid out in the Guidance.
32. The Tribunal reminded itself that the onus is on Dr Kywe to satisfy it that he is fit to return to unrestricted practice and that the Tribunal should not seek to go behind the original Tribunal's findings on facts, impairment or sanction. As the erasure was imposed at a review, the Tribunal is bound by the both the original and the reviewing Panel's decisions.
33. The case of *GMC v Chandra [2018] EWCA Civ 1898* and the Guidance paragraph at B2 set out that the test for the Tribunal to apply when considering restoration is:

'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?'
34. The Tribunal reminded itself that, in making its decision, it should consider the following five factors set out within paragraphs B4-B34 of the guidance which address:
 - a. the circumstances which led to the erasure;
 - b. whether Dr Kywe has demonstrated insight into the matters that led to erasure, taken responsibility for his actions and actively addressed the findings about his behaviour or skills;
 - c. what Dr Kywe has done since his name was erased from the register;

- d. the steps Dr Kywe has taken to keep his skills and knowledge up to date; and
- e. the lapse of time since erasure;

and then go on to determine whether restoration will meet the overarching objective.

The Tribunal's Decision

35. The Tribunal has considered the GMC's submissions carefully and has evaluated the evidence in order to reach its decision as to whether Dr Kywe is fit to practise.

The circumstances which led to Dr Kywe's erasure

36. The Tribunal considered the seriousness of Dr Kywe's conduct and his deficient professional performance. It reminded itself that Dr Kywe's deficient professional performance was not a one off event, relating as it did to multiple patients, one of whom was a child, over a period of five years. This conduct was all related to clinical care, involving arranging tests, monitoring and record keeping and had put patients at risk of harm. The Tribunal considered that it was a combination of this and Dr Kywe's failure to engage with the GMC that this deficient professional performance that led to his name being erased from the register.
37. The Tribunal noted that the 2009 Panel determined that the facts found proved regarding deficient professional performance demonstrated that Dr Kywe's actions were *'inappropriate, not in the best interests of the patient and not of a standard expected of a reasonably competent General Practitioner.'*
38. The Tribunal noted, in respect of the findings of misconduct, that Dr Kywe did not respond to three requests to undertake a Performance Assessment prior to the 2009 hearing, nor did he comply with the four subsequent requests made after the 2009 hearing. Dr Kywe did not provide any evidence to the 2010 Panel that he had complied with the 2009 Panel's directions, as set out above.
39. The Tribunal noted that Dr Kywe had not engaged at either the 2009 or 2010 Panels, did not provide any of the requested evidence to the 2010 Panel and did not comply with multiple requests to undertake a Performance Assessment. The Tribunal also noted that the 2010 Panel was particularly concerned by Dr Kywe's failure to cooperate with a Performance Assessment.

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

40. In considering whether Dr Kywe has demonstrated insight, the Tribunal considered paragraphs B10 - B12 of the Guidance, which state:

'B10 Factors that can be relevant to a doctor demonstrating genuine insight include, but are not limited to, evidence they have:

- a considered the concern, understood what went wrong and accepted they should have acted differently*
- b demonstrated that they fully understand the impact or potential impact of their performance or conduct, for example by showing remorse (see below)*
- c demonstrated empathy for any individual involved, for example by apologising fully (see below)*
- d taken steps to remediate and to identify how they will act differently in the future to avoid similar issues arising (see below)*

B11 The doctor is unlikely to be able to demonstrate genuine insight if they have failed to demonstrate some or all of the factors above or have only demonstrated them in a limited way.

B12 Expressing remorse involves the doctor taking responsibility and exhibiting regret for their actions. This could include evidence that the doctor has:

- a been open and honest about and admitted their wrongdoing*
- b apologised fully*
- c undertaken appropriate remediation.'*

41. The Tribunal considered that Dr Kywe had not provided any evidence to demonstrate that he has developed any level of insight since the substantive hearing in 2009.

42. The Tribunal considered that Dr Kywe had failed to demonstrate his insight because he had not provided any evidence to that effect. The Tribunal considered that it was in no better position than the previous Panels on this matter.

43. No evidence had been provided by Dr Kywe to suggest that he had taken any responsibility for his actions, or that he had apologised or shown remorse. The Tribunal

considered that the only evidence to this was in the 2009 Panel's references to emails sent by Dr Kywe during the local investigation, in which he contested Patient A's claims.

44. In considering whether Dr Kywe has fully remediated his misconduct and deficient professional performance, the Tribunal considered paragraph B15 of the Guidance, which states:

'B15 Remediation can take several forms, including, but not limited to:

- a participating in training, supervision, coaching and/or mentoring relevant to the concerns raised*
- b attending courses relevant to the concerns raised, for example anger management, maintaining boundaries, ethics or English language courses*
- c evidence that shows what a doctor has learnt following the events that led to the concerns being raised, and how they have applied this learning in their practice (where applicable)*
- d evidence of good practice in a similar environment to where the concerns arose.'*

45. Dr Kywe had not provided any evidence about any efforts he had made to remediate, nor had he provided any evidence of any relevant CPD. The Tribunal noted that the 2009 Panel had concluded that Dr Kywe's failings were potentially remediable but it considered that it had not seen any evidence that Dr Kywe had remediated. This Tribunal is in no different position to the 2009 and 2010 Panels in this regard.

46. In considering the risk of repetition, the Tribunal was mindful of paragraph B23 of the Guidance, which states:

'B23 Tribunals can also consider the following factors in assessing whether the concerns are likely to be repeated:

- a whether there was a pattern of similar concerns*
- b the environment in which a doctor has been working since their erasure*
 - i. where a doctor has been working in a similar environment to where the concerns arose and has been exposed to situations when there was a risk of repeating the concerns, the absence of repetition will be relevant*

ii. where a doctor has not been working in a similar environment to where the concerns arose the absence of repetition will be of little or no relevance

c the circumstances giving rise to the concerns – if the concerns arose in unique circumstances which are themselves unlikely to be repeated, then, it may suggest that the risk of repetition in the future is reduced

d what steps a doctor has put in place to avoid the circumstances arising again and/or to cope with those circumstances, should they arise again

e whether the doctor has an otherwise positive professional record, including an absence of any other concerns from past or current employers or another regulatory body'

47. In light of the lack of acceptance of fault, insight or remediation, the Tribunal concluded that a risk of repetition, and therefore a risk of harm to patients, remains.

48. The Tribunal considered that Dr Kywe's deficient performance involved a pattern of similar concerns over an extended period of time. He had also shown a pattern of not cooperating with his Regulator. The Tribunal considered that, because Dr Kywe had not complied with a Performance Assessment, it could not make an assessment of his clinical skills, nor had it seen any evidence of Dr Kywe maintaining his clinical skills and knowledge.

49. The Tribunal therefore concluded that the risk of repetition remained.

What Dr Kywe has done since his name was erased from the register

50. The Tribunal noted that Dr Kywe's CV stated that he was a care-home owner until 2018 but considered that it had seen no evidence about the capacity in which he was involved. It also noted that Dr Kywe stated on his application that he was retired, which suggested that he had not been working in any clinical capacity.

51. The Tribunal considered that Dr Kywe had provided no evidence to explain what work he had undertaken since his name was erased from the register, other than that he had some connection to a care home.

The steps Dr Kywe has taken to keep his medical knowledge and skills up to date

52. The Tribunal considered that Dr Kywe had provided no evidence of any efforts he had made to keep his medical knowledge and skills up to date. The only references to academic studies predated Dr Kywe's erasure.

The lapse of time since erasure

53. The Tribunal was mindful of paragraphs B33 and B34 of the Guidance:

'B33 The length of time that has elapsed since the doctor was erased will be relevant although will not necessarily equate to them no longer posing a risk to patients or to public confidence in the profession.'

'B34 The longer the doctor has been away from clinical practice, the greater the likelihood that their knowledge and skills will have deteriorated to a degree that may place patients at risk. Tribunals should pay close regard to how the doctor has maintained their knowledge during a lengthy period away from the register.'

54. The Tribunal noted the significant lapse of time since Dr Kywe's erasure and preceding suspension. It considered that Dr Kywe had been out of practice since at least 2007 and that this raised serious concerns about the degradation of his clinical skills and knowledge. The Tribunal was particularly concerned because of the lack of any evidence that Dr Kywe had made any efforts to maintain his skills and knowledge, to complete any relevant CPD or that he had worked in any position related to medicine in the intervening years.

Will restoration meet the overarching objective?

55. Having made the above findings as to whether Dr Kywe is fit to practise, the Tribunal next had regard to the statutory overarching objective. In so doing, it performed a balancing exercise, weighing its findings above with its obligations under the individual limbs of the overarching objective which are:

- To protect, promote and maintain the health, safety and well-being of the public
- To promote and maintain public confidence in the profession, and

- To promote and maintain proper professional standards and conduct for members of that profession.

Protecting, promoting and maintaining the health, safety, and well-being of the public

56. In considering the risk of repetition, the Tribunal was mindful of paragraphs B37 - B39 of the Guidance, which state:

'B37 In restoration hearings, it will be important for the MPT to consider any future risk posed by a doctor to patients and members of the public. If the doctor was erased for disciplinary reasons, their conduct or performance was previously judged to be so serious that erasure was the only means by which the public could be protected or that public confidence in the medical profession and proper professional standards and conduct for doctors could be maintained.

B38 The doctor's response to their erasure and the levels of insight, remorse and remediation they have demonstrated will be important to the tribunal's assessment of future risk.

B39 Restoration should not be granted if the tribunal considers there to be a risk the behaviour or performance will be repeated which may result in physical or emotional harm being caused to a patient.'

57. The Tribunal considered that Dr Kywe's deficient professional performance had put patients at risk and was concerned that Dr Kywe had not complied with requests to undertake a Performance Assessment.
58. Dr Kywe provided no evidence that the areas of concern had been addressed, or that there was any insight or a reduction in the risk of repetition. Accordingly, the Tribunal determined that at the current time, that risk to patient safety remains.

Promote and maintain public confidence in the profession

59. As the Tribunal concluded that it had no evidence of Dr Kywe's insight or remediation, it determined that his restoration would pose a risk to public confidence in the medical profession.

60. The Tribunal considered that a well-informed member of the public, who was aware of all the relevant facts of this case, would be concerned should Dr Kywe be allowed to return to unrestricted practice.
61. The Tribunal reminded itself that patients and members of the public must be able to trust doctors with their health, safety and wellbeing. It considered that Dr Kywe had provided no evidence to demonstrate that patients would be protected if he were to return to unrestricted practice.

Promote and maintain professional standards and conduct

62. Having regard to the Guidance and for the reasons set out above, the Tribunal determined that were it to allow Dr Kywe's name to be restored to the Medical Register, it would be failing to maintain proper professional standards and conduct for members of the profession.
63. The Tribunal found it particularly concerning that Dr Kywe had persistently and consistently failed to engage with the regulatory process and had continued to do so regarding this hearing. He did not engage with the GMC prior to the 2009 Panel, did not engage with either the 2009 or the 2010 Panels and has continued not to engage with this hearing, providing no evidence in support of his restoration application.
64. The Tribunal concluded that there were no factors present which would indicate that restoration was likely to meet the overarching objective or would be in the public interest.
65. Therefore, the Tribunal determined that it would be failing to uphold all three limbs of the overarching objective were it to grant Dr Kywe's restoration application. Accordingly, it determined that Dr Kywe's name should not be restored to the Medical Register.

Dr Kywe's right to make further applications for restorations

66. It remains open for Dr Kywe to re-apply for restoration of his name to the register. If he wishes to do so, he must wait for at least 12 months from the date of his application before submitting any further application.

ANNEX A – 31/07/2024

Service of Notice of the Hearing

67. Dr Kywe is neither present nor represented at this hearing.
68. Ms Ironfield, Counsel, on behalf of the GMC, provided the Tribunal with documents regarding service of these proceedings on Dr Kywe. This included a copy of the Medical Practitioners Tribunal Service (MPTS) listing notification letter sent to Dr Kywe’s email address, dated 12 April 2024. The GMC information letter was sent to Dr Kywe by email on 21 May 2024 and subsequently to his registered address on 5 June 2024. Royal Mail Track and Trace documentation confirmed that this was signed for by someone by the name of ‘KYWE’ on 7 June 2024.
69. The Tribunal was given a copy of the MPTS Notice of Hearing letter, dated 6 June 2024, which was emailed and posted to Dr Kywe’s registered address by Royal Mail Special Delivery on the same day. Royal Mail Track and Trace documentation was not received for this letter but a subsequent copy of the Notice of Hearing letter, sent on 18 June 2024, was confirmed as delivered and signed for by someone by the name of ‘KYWE’ on 19 June 2024. The Tribunal was also provided with emails from Dr Kywe regarding these proceedings, the last being from 19 December 2023, which confirmed his email address.
70. The Tribunal had regard to the case of *General Medical Council v Adeogba; General Medical Council v Visvardis* [2016] EWCA Civ 162 which confirms that the GMC has a duty to communicate with a doctor at the registered address they provide. Dr Kywe had not notified the GMC of any change in his contact details. The Tribunal was therefore satisfied that Dr Kywe had received correspondence from both the GMC and the MPTS sent by post and by email to his registered addresses.
71. The Tribunal had regard to the service bundle provided by the GMC, as well as Ms Ironfield’s submissions. Having considered all of the evidence before it, including noting Dr Kywe’s own email communication to the GMC in December 2023, the Tribunal was satisfied that notice of the hearing had been served in accordance with Rule 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) (‘the Rules’) and paragraph 8 of Schedule 4 to the Medical Act 1983 (as amended).

Proceeding in Dr Kywe's absence

72. The Tribunal went on to consider whether it would be appropriate to proceed with this hearing in Dr Kywe's absence pursuant to Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with appropriate care and caution, balancing the interests of the doctor with the wider public interest.
73. Ms Ironfield invited the Tribunal to proceed in Dr Kywe's absence. Ms Ironfield submitted that Dr Kywe is aware of these proceedings, which he himself had instigated. Ms Ironfield submitted that Dr Kywe has voluntarily absented himself from these proceedings and submitted that there was no indication that an adjournment would be of benefit to these proceedings as Dr Kywe had disengaged from proceedings. Ms Ironfield also submitted that there had been a detectable pattern of failures on Dr Kywe's behalf to engage in regulatory proceedings dating back to 2006.
74. The Tribunal was satisfied that all reasonable efforts had been made to inform Dr Kywe of the hearing but that he had not responded to confirm his attendance or preferences as to the mode of hearing, he had not complied with any of the Case Management directions, including the provision of evidence in support of his restoration application. The documents provided by the GMC and MPTS to Dr Kywe included all appropriate guidance and informed him of his options to seek adjournment or assistance, as well as informing him that the hearing may proceed in his absence.
75. The Tribunal considered Dr Kywe's email responses from 15 and 19 December 2023. The Tribunal was satisfied that Dr Kywe was aware of the restoration process through his communications with the GMC in December 2023. The Tribunal was also satisfied that Dr Kywe had voluntarily absented himself from these proceedings. Considering the public interest in these matters, the Tribunal reminded itself that the question of fairness also means fairness to the GMC and accepted that it was in public interest to proceed with this hearing today.
76. Additionally, the Tribunal considered that these proceedings were instigated by Dr Kywe, yet he had not engaged since December 2023. It also considered that there was no evidence that an adjournment would result in Dr Kywe's attendance, given his lack of meaningful engagement throughout the history of these proceedings and specifically in relation to this current hearing, which arises from his own restoration application.

77. Therefore, in accordance with Rule 31, the Tribunal has determined to proceed in Dr Kywe's absence.