

**Date:** 15/04/2020

**Medical Practitioner's name:** Dr Kevin NEWLEY

**GMC reference number:** 2602064

**Primary medical qualification:** MB ChB 1982 University of Leicester

**Type of case**

Review - Misconduct

**Outcome on impairment**

Impaired

**Summary of outcome**

Conditions, 24 months.  
Review hearing directed

**Tribunal:**

Legally Qualified Chair	Mr Julian Weinberg
Lay Tribunal Member:	Mr Peter Scofield
Medical Tribunal Member:	Dr Shehleen Khan
Tribunal Clerk:	Ms Angela Carney

**Attendance and Representation:**

Medical Practitioner:	Present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Adam Lodge, Counsel

**Attendance of Press / Public**

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

## **Record of Determinations – Medical Practitioners Tribunal**

### **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 - 15/04/2020**

1. The Tribunal agreed, in accordance with Rule 41XXX of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'), that parts of this hearing should be heard in private where the matters under consideration are confidential, XXX. As such, this determination will be read in private, but a redacted version will be published following the conclusion of this hearing, with those matters relating to XXX removed.
2. The Tribunal must 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 Newley's fitness to practise is impaired by reason of misconduct.

### **The Outcome of Applications Made during the Impairment Stage**

3. The Tribunal granted Dr Newley's application, made pursuant to Rule 41XXX of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that, parts of this hearing should be heard in private where the matters under consideration are confidential, XXX.

### **Background**

4. Dr Newley qualified from Leicester University in 1982 and joined the Maples Surgery in Leicester in 1989. Until 2016 he worked as a sole practitioner with a patient list of around 2800. Between 2002 and 2010 Dr Newley also worked as a GP musculo-skeletal specialist at Leicester General Hospital, undertaking his own clinic for one session per week. Dr Newley retired from practice on 31 January 2016 and the Maples Surgery was dissolved.
5. Dr Newley was referred to the GMC by the Leicestershire and Lincolnshire Area Team of NHS England, following an investigation and the results of an external audit commissioned by the Primary Care Trust (PCT).
6. The case related to Dr Newley's care and treatment of eight patients in his capacity as their General Practitioner. He was referred to a Medical Practitioners'

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Tribunal hearing which commenced in 2017 and concluded on 25 January 2019 (The 2019 Tribunal).

7. The 2019 Tribunal found the following matters proved:

### **Patient A**

Between June 2006 and December 2011, in providing treatment to Patient A Dr Newley failed to:

- on 7 June 2006, record an appropriate history of Patient A;
- on 2 July 2010 make an entry in Patient A's medical records of Dr Newley consultation with Patient A.

### **Patient B**

Between March 2014 and August 2014, in providing treatment to Patient B Dr Newley failed to:

- on 27 May 2014 record an appropriate history and advice given to Patient B;
- on 8 July 2014 obtain an appropriate history of Patient B in that Dr Newley did not:
  - question whether the pain was constant,
  - question whether the pain was worsening and
  - record an appropriate history.

Between March 2014 and August 2014, in providing treatment to Patient B Dr Newley failed to on 17 July 2014 obtain an appropriate history of Patient B in that Dr Newley did not question Patient B about:

- bladder functions;
- bowel functions;
- sensory impairment in the perineum;
- whether the pain was constant;
- whether the pain was worsening.

Between March 2014 and August 2014, in providing treatment to Patient B Dr Newley failed to on 17 July 2014 record an appropriate history of Patient B.

Between March 2014 and August 2014, in providing treatment to Patient B Dr Newley failed to on 1 August 2014 question Patient B about bladder functions and bowel functions.

### **Patient C**

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Between June 2010 and August 2011, in providing treatment to Patient C Dr Newley failed to on 28 June 2010:

- record an appropriate history of Patient C;
- recommend a digital rectal examination for Patient C;
- recommend urine dipstick testing for Patient C;
- make an adequate record of Dr Newley's consultation with Patient C in that Dr Newley did not indicate the basis of his diagnosis and he did not record his intended follow up plan for Patient C.

Between June 2010 and August 2011, in providing treatment to Patient C Dr Newley failed to on, or shortly after, 22 September 2010:

- contact Patient C following his test results asking for him to attend the surgery in the near future;
- recommend urine dipstick testing for Patient C.

Between June 2010 and August 2011, in providing treatment to Patient C Dr Newley failed to on 18 November 2010:

- urgently refer Patient C; and
- recommend a digital rectal examination for Patient C.

Between June 2010 and August 2011, in providing treatment to Patient C, Dr Newley failed to on 2 August 2011:

- obtain an appropriate history of Patient C in that he did not question Patient C about urinary symptoms;
- record an appropriate history of Patient C;
- recommend a digital rectal examination for Patient C;
- make an adequate record of his consultation with Patient C.

Between June 2010 and August 2011, in providing treatment to Patient C, Dr Newley failed to on 4 August 2011 obtain an appropriate history of Patient C in that he did not:

- refer to the presence or absence of clinical symptoms;
- record an appropriate history of Patient C;
- recommend a digital rectal examination for Patient C.

In providing treatment to Patient C in 2011 Dr Newley communicated inappropriately by saying to him on 2 August 2011 (or another date) "*Well, I'm still not referring you*" or words to that effect.

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In providing treatment to Patient C Dr Newley communicated inappropriately by saying to him on 4 August 2011 (or another date) “*If it’s positive what are Dr Newley going to do about your great big prostate? Have it chopped out?*” or words to that effect.

### **Patient D**

Between January 2008 and April 2012, in providing treatment to Patient D Dr Newley failed to on 15 January 2008 record an appropriate history or recommend a digital rectal examination of Patient D.

Between January 2008 and April 2012, in providing treatment to Patient D Dr Newley failed to on, or shortly after, 23 November 2010, 2 August 2011 and 22 September 2011 recommend a digital rectal examination of Patient D.

Between January 2008 and April 2012, in providing treatment to Patient D Dr Newley failed to on 20 April 2012 obtain and record an appropriate history, and recommend a digital rectal examination for Patient D.

### **Patient E**

Between February 2008 and July 2013, in providing treatment to Patient E Dr Newley failed to record an appropriate history of Patient E in relation to 10 July 2008, 8 October 2008, 19 January 2009, 28 April 2009, 3 August 2009, 9 November 2009, 28 April 2010, 26 July 2010, 6 April 2011, 11 January 2012, 28 March 2012, 30 May 2012, 29 April 2013 and 10 July 2013.

Between February 2008 and July 2013, in providing treatment to Patient E Dr Newley failed to recommend digital rectal examination for Patient E on 8 October 2008, 19 January 2009, 3 August 2009, 28 April 2010, 9 November 2010 and 29 April 2013.

### **Patient F**

In July 2013, in providing treatment to Patient F Dr Newley failed to on the dates listed in Schedule C record an appropriate history of Patient F.

### **Patient G**

Between February 2012 and March 2012, in providing treatment to Patient G Dr Newley failed to on 13 February 2012 obtain an appropriate history of Patient G in that he did not question Patient G about neurological symptoms and sensory symptoms and failed to record an appropriate history of Patient G.

Between February 2012 and March 2012, in providing treatment to Patient G Dr Newley failed to on 4 May 2012 request for Patient G to undergo: an ECG, ambulatory blood pressure monitoring (‘ABPM’) or home blood pressure monitoring (‘HBPM’); and chemical reagent strip testing of urine.

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Between February 2012 and March 2012, in providing treatment to Patient G Dr Newley failed to on 3 January 2014 record an appropriate history of Patient G.

Between February 2012 and March 2012, in providing treatment to Patient G Dr Newley failed to on 3 January 2014 request for Patient G to undergo an ECG, ABPM or HBPM and chemical reagent strip testing of the urine and failed to provide and record any follow up advice given.

Between February 2012 and March 2012, in providing treatment to Patient G Dr Newley failed to on 27 February 2014 request for Patient G to undergo an ECG, ABPM or HBPM and chemical reagent strip testing of the urine and failed to provide Patient G with follow up advice.

8. The 2019 Tribunal found that Dr Newley's failures in providing good clinical care breached the principles in paragraphs 3, 21, 22 50 and 51 (2006 edition) and paragraphs 1, 15, 19 and 21 (2013 edition) of the GMC's Good Medical Practice (GMP). The failings related to inadequate communication, record keeping, and sharing information with colleagues.
9. The 2019 Tribunal determined that the extent and gravity of Dr Newley's breaches of the principles of GMP were sufficiently serious that those parts of the allegation found proved amounted to misconduct. It found that Dr Newley's conduct fell far below what was acceptable. In particular, the 2019 Tribunal noted that Dr Newley failed to recommend a Digital Rectal Examination (DRE) on some 15 occasions and that these failings exacerbated the risks to patients.
10. The 2019 Tribunal found that Dr Newley's failures in record keeping were numerous and serious. It also found that the potential impact of Dr Newley's failures on the consistency, continuity and appropriateness of the care for his patients was significant. The January 2019 Tribunal was satisfied that Dr Newley's fellow professionals would regard the range and extent of his failures as deplorable and that his failings amounted to misconduct.
11. The 2019 Tribunal considered that the failings identified were capable of being remediated but had not been remediated. It noted that Dr Newley had attended a number of courses prior to November 2017, when he gave oral evidence to the Tribunal. The 2019 Tribunal was not persuaded that Dr Newley's attendance at these courses demonstrated a significant understanding of why he failed in the areas identified. It also found little or no evidence to show what he had learnt or how he had applied his learning.
12. The 2019 Tribunal bore in mind that remediation was a process and that Dr Newley had not worked since 2015. However, from the evidence Dr Newley

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adduced, it was not persuaded that he was developing sufficient insight into his misconduct.

13. Whilst the 2019 Tribunal accepted the difficulties presented by Dr Newley's IOT conditions, it considered that the interim conditions did not prevent him from doing more than he had done. It noted that Dr Newley undertook a record keeping course of approximately an hour's duration and provided limited commentary/reflection. The 2019 Tribunal was not persuaded that Dr Newley understood or accepted the potential risks associated with his sub-standard record keeping and history taking.

14. The 2019 Tribunal accepted that Dr Newley would not deliberately set out to cause harm but it was not reassured that he could take appropriate histories. It found that Dr Newley provided nothing to demonstrate that he recognised the failings in the advice which he gave or that he appreciated the damage, actual or potential, which it could have caused. The 2019 Tribunal also found there was no evidence of Dr Newley's thoughts about his failure to arrange urgent tests, or how he had made changes to and improved his record keeping. In the absence of any such evidence, the 2019 Tribunal was unable to give Dr Newley credit for understanding and appreciating how he could and would act differently in the future.

15. The 2019 Tribunal concluded that, although the process of remediation had started, wide ranging failures identified at the facts stage had not been remedied. The 2019 Tribunal determined that there remained a risk to patients and a risk that Dr Newley's misconduct may be repeated. The 2019 Tribunal determined that Dr Newley's fitness to practise was impaired by reason of his misconduct.

16. The 2019 Tribunal determined that, whilst Dr Newley's approach, attitude and limited insight remained an issue with regard to patient safety, the maintenance of public confidence in the profession and the promotion and maintenance of proper professional standards and conduct, they were capable of remedy if he chose to engage effectively.

17. The 2019 Tribunal determined that suspension would be an appropriate sanction which would sufficiently protect patients and meet the public interest. The 2019 Tribunal did not regard Dr Newley's misconduct as being fundamentally incompatible with continued registration and was satisfied that complete removal from the register would be a disproportionate response. The 2019 Tribunal determined to suspend Dr Newley's registration for a period of nine months, in order to provide Dr Newley with an opportunity to demonstrate that he could reach a point where he could, once again, competently and confidently practise without restriction and to allow him sufficient time to reflect on his conduct.

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18. The 2019 Tribunal noted that the onus would be on Dr Newley to demonstrate that he had remediated his misconduct. It considered that the reviewing Tribunal would be assisted by the following:

- A reflective statement addressing what he has learned in respect of the Tribunal's findings of facts and impairment and demonstrating his level of insight.
- Evidence of meetings and case-based discussions with a mentor.
- Evidence of Dr Newley's appraisal discussions to demonstrate that he has reflected upon his learning and identified any further development needs.
- An indication as to Dr Newley's future plans in respect of the practice of medicine.
- Evidence of Dr Newley's Continuing Professional Development (CPD).
- Evidence that Dr Newley has maintained his clinical skills and medical knowledge.
- Current testimonials as to Dr Newley's character and conduct during the period of his suspension, written in the knowledge of his suspension by this Tribunal and of the Tribunal's reasons.

### **The Evidence**

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

20. Dr Newley provided a number of statements and also gave oral evidence at the hearing.

21. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included, but was not limited to:

- MPTS Record of Determination dated 13 February to 10 March 2017, 6 to 27 November 2017, 26 February to 23 March 2018 (non-sitting days 2 and 12 to 16 March), 14 to 23 May 2018, 11 to 15 June 2018, 17 to 21 September 2018 and 22 to 25 January 2019
- Correspondence between Dr Newley, the GMC and the MPTS between July 2019 and January 2020
- Dr Newley's reflections dated 14 January 2020
- Dr Newley's letter dated 13 March 2020
- Dr Newley's Appraisals dated 2016/17 to 2018/19

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- Letter dated 17 March 2020 from Ms H, Advanced Nurse Practitioner

### Submissions

22. On behalf of the GMC, Mr Lodge reminded the Tribunal that a persuasive burden falls on Dr Newley to demonstrate that his fitness to practise is no longer impaired. Mr Lodge stated that the previous 2019 Tribunal found there was little or no evidence to show that Dr Newley had understood his failing. The 2019 Tribunal set out what Dr Newley could do to demonstrate he had remedied his misconduct.

23. Mr Lodge submitted that in light of the documents provided by Dr Newley it appears that very little has changed since January 2019. Mr Lodge submitted that Dr Newley's engagement has been extremely limited and the documents show only partial remediation and there is little evidence that he has kept his skills up to date. Mr Lodge referred the Tribunal to Dr Newley's reflections in which he accepted that his record keeping had become complacent and that he now fully understands the importance of keeping up to date records. He stated that Dr Newley also accepted that he would now do some things differently. Mr Lodge stated that Dr Newley criticised the process of the GMC and MPTS and pointed out several perceived errors by the GMC expert and in the MPTS Tribunal's Record of Determinations.

24. Mr Lodge stated that many of the documents provided by Dr Newley relate to the 2019 hearing. Further, he submitted that despite all the material provided there is very little further evidence which addresses the information sought by the 2019 Tribunal. Mr Lodge stated that in relation to Dr Newley's reflective statement he appears to be more focussed on the perceived issues of the previous hearing rather than showing any recent efforts to reflect on his misconduct.

25. Mr Lodge reminded the Tribunal of Dr Newley's reference to the High Court Appeal in which he stated *'I think this is devious and unethical behaviour from the GMC whose remit proudly asserts "working with doctors"'*. Mr Lodge submitted that this reflects a lack of insight at this stage.

26. Mr Lodge stated that Dr Newley has provided very little evidence that he has maintained his skills and knowledge. Mr Lodge acknowledged that Dr Newley has not been working for approximately five years, XXX. He stated that Dr Newley has not provided any certificates of courses he has undertaken.

27. Mr Lodge referred the Tribunal to the letter dated 17 March 2020 from Ms H, Advanced Nurse Practitioner and stated that the letter does not focus on Dr Newley's current remediation, but related to a previous patient.

28. Whilst Mr Lodge accepted that, as Dr Newley worked as a sole practitioner and it may have been difficult for him to provide testimonials or seek a Mentor, Dr Newley could have made better efforts. Mr Lodge submitted that he has not undertaken great

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steps to remediate his failings. Mr Lodge submitted that Dr Newley's evidence demonstrated a rigidity of thought process which would be a risk to patient care in the future.

29. Taking all of the above into account, Mr Lodge submitted that Dr Newley's fitness to practise remains impaired by reason of misconduct.

30. Dr Newley provided the Tribunal with some background information XXX.

31. Dr Newley stated that the findings of the 2019 Tribunal were incorrect, as they were based on Dr I's expert report. He stated that he does not agree with the expert report and some of the 2019 Tribunal's findings.

32. Dr Newley stated that XXX, he has only been able to review articles from 'GP on-line' via the internet. He stated that he has completed about five GP updates but XXX he has been unable to complete further CPD.

33. Dr Newley told the Tribunal that, as he is suspended from the GP Performers List he was unable to collate information. He said that NHS England stated that they would like him to return to the GP Performers List, but he would need to undergo an assessment in order to return to work, which may include supervision or mentoring. Dr Newley told the Tribunal that the Performer's List assessment must be undertaken within six months of a GMC suspension being lifted.

34. Dr Newley referred the Tribunal to his appraisals, and stated that in the future he would like to return to practice but is not sure he would be able to return XXX. Dr Newley referred the Tribunal to his years of previous clinical experience and practice and reminded the Tribunal that he had received the 'Beacon Award' several years ago. He stated that he was a sole practitioner.

35. Dr Newley stated that he wished to go through the list of the 2019 Tribunal's findings with new evidence that he has but he accepted that it was not appropriate for that to be done at this review hearing. Dr Newley stated that his opinion regarding his treatment and management of Patients B, C, D and E remained unchanged. He stated his treatment was correct and that he has provided information from NICE which proves this.

36. Dr Newley told the Tribunal that it had been his intention to return to GP locum work and had approached GP practices but was unsure if this would be XXX.

37. Dr Newley referred the Tribunal to the High Court Judgement which concluded that the determinations made by the 2019 Tribunal, based on the evidence before it at that time, was correct. Dr Newley stated that the new evidence he has provided should be taken into account, even if it resulted in a new Fitness to Practise hearing. Dr Newley questioned what recourse he had in this respect. He stated that wishing to adduce the

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new evidence did not show lack of insight but showed the '*courage of my convictions*', which was not a bad thing in his opinion.

38. In relation to questions from the Tribunal Dr Newley confirmed that he would be much more careful with his record keeping and sharing information with other medical practitioners as he would not be working in isolation. He stated that he would need to produce more comprehensive medical records and appropriate and detailed management plans. Dr Newley submitted that it would be impossible for him to repeat his failings with regard to the errors that he made both in relation to those errors he agreed with and those with which he did not, as the guidelines have now been updated so there can be no confusion as to what action to take.

39. In relation to his fitness to practise Dr Newley stated that the Tribunal had a number of options: to continue the suspension until his referral of, and the GMC's investigation into Dr I is complete or for the Tribunal to accept the new evidence and to end his suspension.

### **The Relevant Legal Principles**

40. The Legally Qualified Chair provided legal advice to the Tribunal, which was agreed by both parties.

41. The Tribunal reminded itself that the decision of impairment is a matter for its judgement alone. As noted above, the previous Tribunal set out the matters that a future Tribunal may be assisted by. This Tribunal is aware that there is a persuasive burden on Dr Newley to satisfy it that he would be safe for him to return to unrestricted practice.

42. This Tribunal must determine whether Dr Newley'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 noted Dr Newley's failures to provide good care, determined by the 2019 Tribunal, included:

- Communication failures
- Record keeping
- Sharing information with colleagues

44. The Tribunal noted Dr Newley's reflections dated 14 January 2020, in which he commented on his treatment and management of each patient in relation to the

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2019 Tribunal. In that document Dr Newley stated that he agreed with some of his errors but disagreed with others, based on the new evidence he has provided.

45. The Tribunal noted the practical constraints on Dr Newley XXX. However, it also noted that he has provided limited evidence that he has kept his clinical skills and knowledge up to date. Further, Dr Newley stated that he could not have completed more on-line courses in relation to his Continuing Professional Development XXX. The Tribunal noted that Dr Newley recognised and accepted that his record keeping was below the standard expected of a reasonably competent General Practitioner, but there is insufficient evidence that he has fully addressed all of the deficiencies identified by the 2019 Tribunal.

46. The Tribunal noted that there is an irreconcilable difference of opinion between Dr Newley and a number of the 2019 Tribunal's factual findings. Because of that, Dr Newley was unwilling to accept a number of failings found proved. Dr Newley stated that he would not be able to demonstrate insight into his failings as he was adamant that a number of the 2019 Tribunal's factual findings were wrong and that he had acted appropriately. This Tribunal found Dr Newley to be resolute and rigid in his view about his own clinical practice. The Tribunal recognises that it is not a requirement that Dr Newley accepts the 2019 Tribunal's findings in order for him to establish that he has developed insight, but the Tribunal is mindful that at this review hearing it cannot go behind the 2019 Tribunal's findings.

47. The Tribunal took into account Dr Newley's submissions that there are now guidelines in place that would prohibit a repetition of his failings in relation to DRE and also that he would not be working as a sole practitioner. It also noted Dr Newley's recognition that he may have become de-skilled.

48. Notwithstanding his personal circumstances, the Tribunal considered that Dr Newley has provided limited evidence in relation to those matters that the 2019 Tribunal indicated would be useful to a future reviewing Tribunal. There is limited evidence in relation to Dr Newley's insight or remediation of the failings found proved, or how he has kept his skills and knowledge up to date during his suspension. The Tribunal reminded itself that there is a persuasive burden on Dr Newley to demonstrate that he is fit to return to unrestricted practice, and he has not sufficiently done so.

49. The Tribunal considered that Dr Newley has started the process of remediation, in recognising that some areas of his practice are deficient, notably in relation to record keeping. However, that process is by no means complete. The Tribunal is of the opinion that the risk of repetition has been diminished but there remains an ongoing risk. Therefore, the Tribunal cannot be satisfied it would be highly unlikely that Dr Newley would repeat his misconduct in the future, thereby presenting an ongoing risk of harm to patients.

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50. The Tribunal is also satisfied that public confidence in the medical profession and the need to uphold proper standards for that profession would be undermined if a finding of impairment were not made in this case given the ongoing risk of harm to patients.

51. The Tribunal has therefore determined that Dr Newley's fitness to practise is currently impaired by reason of his misconduct.

### Determination on Sanction - 15/04/2020

#### Submissions

1. On behalf of the GMC, Mr Lodge submitted that the appropriate sanction in this case is one of a further period of suspension. Mr Lodge submitted that taking no action would not be appropriate and given Dr Newley's lack of remediation, conditions would also not be appropriate.
2. Mr Lodge submitted that the case is essentially at the same stage as January 2019. The tenor of Dr Newley's reflective document is that he is the victim. He referred the Tribunal to the Sanctions Guidance (November 2019) ("the SG"). He stated that XXX he has failed to provide satisfactory evidence of insight. He acknowledged that there is some evidence of insight but not enough to revoke the suspension in this case. Mr Lodge submitted that a further period of suspension would allow Dr Newley to provide the evidence suggested by the 2019 Tribunal.
3. Dr Newley stated that he appears to be in a '*catch 22*' situation similar to a year ago in relation to insight. He said that he has provided evidence which has come to light since the 2019 hearing that his clinical management in some of the cases was appropriate. He submitted that the new evidence does not show a lack of insight but rather '*a flexibility of thinking*'.
4. Dr Newley stated that he expects he will be in the same position again in relation to insight until the GMC has concluded its investigation into his referral of Dr I. Dr Newley expressed a wish to return to practice XXX.

#### The Tribunal's Approach

5. 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 had regard to 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.
6. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Newley's interests with the public interest. The public

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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.

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

### The Tribunal's Decision

#### No Action

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

9. The Tribunal considered that there are no exceptional circumstances in which it might be justified in taking no action against Dr Newley's registration. The Tribunal determined that in view of its findings on impairment, which identified an ongoing risk of patient harm, it would be neither sufficient, proportionate, nor in the public interest to conclude this case by taking no action.

#### Conditions

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

11. The Tribunal considered paragraph 84 of the SG, which states:

*84 Depending on the type of case (eg health, language, performance or misconduct), some or all of the following factors being present (this list is not exhaustive) would indicate that conditions may be appropriate:*

*a no evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage*

*b identifiable areas of their practice are in need of assessment or retraining*

*c willing to respond positively to retraining, with evidence that they are committed to keeping their knowledge and skills up to date throughout their working life, improving the quality of their work and promoting patient safety*

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*d ...*

*e ...*

12. The Tribunal has noted that Dr Newley was present throughout his substantive fitness to practise hearing which commenced in February 2017 and concluded in January 2019 and that he was present at today's hearing. In doing so, it considered that Dr Newley has demonstrated a willingness to engage with the regulatory process.

13. The Tribunal is in agreement with the 2019 Tribunal's determination that Dr Newley's misconduct is capable of remediation. It has taken account of the areas identified, both by the 2019 Tribunal and this Tribunal, with regard to those areas of Dr Newley's practice which are in need of improvement. It also noted that Dr Newley accepted that it will be necessary for him to undertake some retraining before returning to clinical practice.

14. Whilst the Tribunal accepts that Dr Newley has not yet demonstrated full insight into his misconduct, nor has he fully remediated his failings, it considered that he has the potential to respond positively to conditional registration. Further, the Tribunal considered that conditions would allow Dr Newley the opportunity to demonstrate that he can fully remediate his misconduct and can practise safely with the appropriate supervision. The Tribunal considered that Dr Newley may be able to provide some objective evidence, such as passing the assessment for inclusion on the GP Performers List. The Tribunal was satisfied that a period of conditional registration would be sufficient to protect the public and maintain public confidence in the profession.

15. The Tribunal is satisfied that a further period of suspension would not serve any useful purpose, would not be appropriate in this case and considered it would be unduly punitive. The Tribunal was also mindful that Dr Newley would become further de-skilled.

16. Therefore, the Tribunal has concluded that it is appropriate, necessary and proportionate to impose conditions on Dr Newley's registration for a period of 24 months. In view of XXX and the current pandemic, the Tribunal considered that a period of 24 months would allow Dr Newley sufficient time to return to and undertake a period of supervised clinical practice.

The following conditions are publishable.

1. He must personally ensure the GMC is notified of the following information within seven calendar days of the date these conditions become effective:

a The details of his current post, including:

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- i his job title
    - ii his job location
    - iii his responsible officer (or their nominated deputy)
  - b the contact details of his employer and any contracting body, including his direct line manager
  - c any organisation where he has practising privileges and/or admitting rights
  - d any training programmes he is in
  - e of the organisation on whose medical performers list he is included
  - f of the contact details of any locum agency or out of hours service he is registered with
2. He must personally ensure the GMC is notified:
- a of any post he accepts, before starting it
  - b that all relevant people have been notified of his conditions, in accordance with condition 10.
  - c if any formal disciplinary proceedings against him are started by his employer and/or contracting body, within seven calendar days of being formally notified of such proceedings
  - d if any of his posts, practising privileges, or admitting rights have been suspended or terminated by his employer before the agreed date within seven calendar days of being notified of the termination
  - e if he applies for a post outside the UK.
3. He must allow the GMC to exchange information with any person involved in monitoring his compliance with his conditions.
4. a He must have a workplace reporter appointed by his responsible officer (or their nominated deputy).
- b He must not work until:

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- i his responsible officer (or their nominated deputy) has appointed his workplace reporter
  - ii he has personally ensured that the GMC has been notified of the name and contact details of his workplace reporter.
5.
  - a He must design a Personal Development Plan (PDP), with specific aims to address the deficiencies in the following areas of his practice:
    - Communication
    - Record keeping
    - Sharing information with colleagues
  - b His PDP must be approved by his responsible officer (or their nominated deputy).
  - c He must give the GMC a copy of his approved PDP within three months of these substantive conditions becoming effective.
  - d He must give the GMC a copy of his approved PDP on request.
  - e He must meet with his responsible officer (or their nominated deputy), as required, to discuss his achievements against the aims of his PDP.
6. He must only work in a group practice setting where there is a minimum of two GP partners or employed GPs (excluding himself). The GPs must be partners or permanently employed GPs who are on the GP register (this excludes locum staff).
7.
  - a He must be closely supervised in all of his posts by a clinical supervisor, as defined in the *Glossary for undertakings and conditions*. His clinical supervisor must be approved by his responsible officer (or their nominated deputy).
  - b He must not work until:
    - i his responsible officer (or their nominated deputy) has appointed his clinical supervisor and approved his supervision arrangements

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- ii he has personally ensured that the GMC has been notified of the name and contact details of his clinical supervisor and his supervision arrangements.
- 8. a He must get the approval of his responsible officer (or their nominated deputy), before working:
  - i out-of-hours
  - ii on-call.
- 9. He must not work in any locum post or fixed term contract of less than one month's duration.
- 10. He must personally ensure the following persons are notified of the conditions listed at 1 to 9:
  - a his responsible officer (or their nominated deputy)
  - b the responsible officer of the following organisations:
    - i his place(s) of work, and any prospective place of work (at the time of application)
    - ii all of his contracting bodies and any prospective contracting body (prior to entering a contract)
    - iii any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application)
    - iv any locum agency or out of hours service he is registered with
    - v if any of the organisations listed at (i to iv) does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within that organisation. If he is unable to identify that person, he must contact the GMC for advice before working for that organisation.
  - c the responsible officer for the medical performers list on which he is included or seeking inclusion (at the time of application)

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d his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts).

### **Review**

17. The Tribunal determined to direct a review of Dr Newley's case. A review hearing will convene shortly before the end of the period of conditional registration, unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Newley to demonstrate that he has developed insight into his failings and remediated his misconduct. It therefore may assist the reviewing Tribunal if Dr Newley provided the following:

- A further reflective statement addressing what he has learned in respect of the 2019 Tribunal's findings of facts and impairment and demonstrating his level of insight.
- Evidence to demonstrate that he has reflected upon his learning and identified any further development needs.
- Evidence of Dr Newley's Continuing Professional Development (CPD).
- Evidence that Dr Newley has maintained his clinical skills and medical knowledge.
- Current testimonials as to Dr Newley's character and conduct during the period of his conditional registration, written in the knowledge of his conditional registration by this Tribunal and of the Tribunal's reasons.
- Any further evidence that Dr Newley considers will assist a reviewing Tribunal.

18. The Tribunal has determined to impose conditions on Dr Newley's registration for a period of 24 months. The MPTS will send Dr Newley a letter informing him of his right of appeal and when the direction and the new sanction will come into effect. If Dr Newley exercises his right to appeal the current order of suspension will remain in place during any appeal period.

**Confirmed**  
**Date** 15 April 2020

Mr Julian Weinberg, Chair