

PUBLIC RECORD

Dates: 01/11/2023 - 02/11/2023

Medical Practitioner's name: Dr Medhat KESHTA

GMC reference number: 4432133

Primary medical qualification: MB BCh 1982 Zagazig University

Type of case

Restoration following
disciplinary erasure

Summary of outcome

Adjourned to a new Tribunal

Tribunal:

Legally Qualified Chair	Mr Julian Weinberg
Lay Tribunal Member:	Ms Jacqueline Telfer
Medical Tribunal Member:	Dr Laura Florence

Tribunal Clerk:	Mrs Rachel Horkin
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Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mrs Fatema Keshta
GMC Representative:	Ms Ceri Widdett, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Application to Adjourn the hearing - 02/11/2023

1. The Tribunal granted Dr Keshta’s application, made pursuant to Rule 33 of the GMC (Fitness to Practise) Rules 2004, as amended (‘the Rules’), that he be represented by his daughter, Mrs Fatema Keshta, at this hearing.
2. On day one of the hearing before the Tribunal was seized of the case, a legal issue arose regarding the legality of hearing oral evidence from witnesses who were abroad, namely residents of Egypt and Turkey. Their respective witness statements had been provided to the Tribunal by Dr Keshta in support of his application for restoration prior to the commencement of the hearing and the GMC had indicated that they wished to cross-examine each of those witnesses.
3. The Tribunal, being mindful that Dr Keshta was not legally represented, brought to Mrs Keshta’s attention that, if she wished to call live evidence from witnesses who were residents of Egypt and Turkey, and whom the GMC and Tribunal would wish to question, then, pursuant to the principle derived from the case of *Secretary of State for the Home Department v Agbabiaka [2021] UKUT 286 (IAC)*, permission from the relevant state would have to be obtained for evidence to be taken in the UK.
4. The Tribunal informed Mrs Keshta that, should she seek to rely on the witness’s written testimonials, then the Tribunal may not be able to attach as much weight as might have been the case if oral evidence were given on oath. This was because evidence admitted in that way would not have been subject to the scrutiny of cross-examination or potentially questioning from the Tribunal. The Tribunal also reminded Mrs Keshta that, this being Dr Keshta’s third application for restoration, if this were denied, then the Tribunal has the power to indefinitely suspend his right to reapply for restoration.
4. Upon making enquiries with the GMC, it became apparent that it would take some time to obtain the required consent to hear these witnesses. Mrs Keshta also reminded the Tribunal that Egypt is currently in a state of emergency given the current Israel-Hamas conflict. Mrs Keshta stated that it may take some time to obtain the required consent from the appropriate governmental departments.

Submissions

5. Mrs Keshta therefore made an application under Rule 29 of the Rules to adjourn this hearing to enable Dr Keshta time to meet the consent requirements.
6. On behalf of the GMC, Ms Ceri Widdett, Counsel submitted that an adjournment was not necessary and that the hearing should go ahead. Ms Widdett submitted that the relevant permission was not required given that this Tribunal was not a Court or other “administrative tribunal” within the meaning of *Agbabiaka* and that the relevant requirement to seek

permission did not apply to this hearing. Ms Widdett submitted that, in fairness to Dr Keshta, this is a matter for the Tribunal to determine.

The Tribunal's decision

7. The Tribunal has borne in mind the *Receiving witness evidence at Medical Practitioners Tribunal hearings. Guidance for Decision Makers, Parties and Representatives* ('the guidance') published in October 2023 to the MPTS. The guidance was specifically drawn up to address the issues raised by the *Agbabiaka* case to assist tribunals with the issues to consider when receiving video link or telephone evidence from witnesses located abroad.

8. The guidance sets out the detailed procedure to be adopted in relation to applying for permission at a hearing if such permission had not been obtained by applying to an MPTS case manager prior to a hearing. The Tribunal has had regard to paragraphs 45 - 47 of the guidance which states:

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

46. The Foreign, Commonwealth and Development Office (FCDO) has established the Taking of Evidence Unit (ToE) for the purpose of ascertaining the stance of different overseas governments to the taking of oral evidence from persons within their territory. Where the MPTS is made aware by a party that they wish to call oral evidence from a witness located outside of the UK, the MPTS will assist parties by liaising with the ToE to identify whether the relevant state has given or will give permission.

47. As the ToE requires time to engage with the relevant state, it is vital that the party relying on a witness located outside of the UK notifies the MPTS and the other party to the proceedings at the earliest possible stage. Failure to notify at least 12 weeks prior to the hearing is likely to result in the MPTS being unable to assist parties and the witness' evidence may be rendered inadmissible.

10. In particular the Tribunal has borne in mind paragraph 60 of the guidance which states that where the relevant permission has not been sought:

"60... The tribunal may wish to consider whether or not it can properly receive the evidence in accordance with Rule 34(1) and, if not, the interests of justice and fairness in proceeding with the hearing including the impact of not receiving evidence from the witness or of any delay in the hearing proceeding if evidence from the witness is not received at that time. The tribunal may wish to consider whether the evidence may

reasonably be obtained solely in writing (including by questions being put in writing by the cross-examining party and by the tribunal if necessary) or by the witness being required to attend.”

9. The Tribunal rejected Ms Widdett’s submission that the case of *Agbabiaka* did not apply to this hearing. The MPTS had provided Tribunal members with an extensive and detailed Circular and attached guidance specifically addressing how the taking of evidence from witnesses abroad was to be managed in these circumstances. The Tribunal therefore concluded that there was no basis for concluding that such guidance did not apply.

12. The Tribunal has borne in mind that this is Dr Keshta’s third application for restoration and that the Tribunal has the power to indefinitely suspend his right to reapply for restoration pursuant to Rule 41(9) if his substantive application for restoration were refused. The Tribunal acknowledged and balanced the need to hear this case expeditiously with the necessity to provide Dr Keshta with a fair hearing.

10.13. The Tribunal considered that it could unduly prejudice these proceedings if Dr Keshta were not allowed to adduce his best evidence in support of his application which could include Dr Keshta giving evidence from Egypt should he choose to do so. The Tribunal acknowledged that written evidence may well be given less weight than oral evidence that cannot be cross examined. The Tribunal noted that these are character witnesses and professional colleagues, and their evidence goes to an issue which is directly relevant to Dr Keshta’s application for restoration and also to the issues of barring further applications.

11. In these circumstances, the Tribunal has determined that in the interests of fairness, it was appropriate to adjourn these proceedings for the relevant permissions to be obtained and therefore grants the application pursuant to Rule 29.

12. The concludes the hearing.