PUBLIC RECORD

Dates: 25/01/2021 – 27/01/2021 and 27/07/2021 - 30/07/2021

Medical Practitioner's name:	Dr Nicholas MYTTAS
GMC reference number:	3044373
Primary medical qualification:	Ptychio Iatrikes 1983 National Capodistrian University of Athens

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Impaired

Summary of outcome

Suspension, 28 days.

Tribunal:

Legally Qualified Chair	Mrs Aaminah Khan
Medical Tribunal Member:	Mr Ghulam Mufti
Medical Tribunal Member:	Dr Nigel Langford

Tribunal Clerk:	Chloe Ainsworth 25/01/2021 – 27/01/2021 Anne Bhatti 27/07/2021 – 29/07/2021 Edward Kelly 30/07/2021

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Andrew Hockton, Counsel, instructed by Hempsons – 27/01/2021; 27/07/2021 – 30/07/2021
GMC Representative:	Mr Hugh Barton, 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 Facts - 28/07/2021

Background

1. Dr Myttas qualified in 1983 from National and Kapodistrian University of Athens. He relinquished his licence to practise on 3 October 2015 and the GMC confirmed to him in writing that his licence to practise would be removed with effect from 30 October 2015.

2. On 27 November 2018, Patient A attended an occupational health session with Dr C after being referred by his employers. During the session, Patient A advised Dr C that he had been having sessions with Dr Myttas. Following the conclusion of the session, Dr C sent a letter to Dr Myttas, dated 20 December 2018, requesting further information about Patient A's current psychiatric or psychological diagnosis. On receipt of the response from Dr Myttas, Dr C noticed that the letter did not display his GMC number. Therefore, Dr C checked the GMC register and noted that Dr Myttas did not have a licence to practise. This concerned Dr C as she was unclear if Dr Myttas was acting as Patient A's counsellor or psychiatrist, and because of what she perceived as Patient A's reluctance to facilitate correspondence between her and Dr Myttas.

3. On 7 March 2019, Dr C outlined her concerns in an email to an employer liaison officer at the GMC, who then forwarded the email to the GMC fitness to practise team. The information gathered from this investigation forms the basis for part of the Allegation against Dr Myttas.

4. It is also alleged that between 31 October 2015 and 10 January 2019, Dr Myttas provided psychiatric treatment to Patient A, in which he prescribed medication, gave advice regarding the appropriateness of medication, dosage of medication, period of monitoring and interpretation of test results. It is further alleged that Dr Myttas consulted with Patient A on 8 November 2018 and failed to make any record of the consultation. On 9 November 2018 Dr Myttas sent a letter to Dr B, the contents of which allegedly implied

that he held a current licence to practise. Similarly on 10 January 2019, Dr Myttas sent a letter to Dr C which also allegedly implied that he held a licence to practise.

The Outcome of Applications Made During the Facts Stage of the Hearing

Application to amend paragraph 2 of the Allegation

5. The Tribunal granted the GMC's application, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to amend paragraph 2 of the Allegation, as follows:

> *'2. Between 31 October 2015 and 10 January 2019, you provided psychiatric treatment to Patient A in ~~that~~ the course of which you:'*

On behalf of the GMC, Mr Barton, Counsel submitted that the change proposed was grammatical and that it would more accurately reflect the case. Dr Myttas did not oppose this change. The Tribunal considered that the proposed amendment did not cause any unfairness to Dr Myttas and determined to grant Mr Barton's application.

Application for adjournment

6. The Tribunal granted Dr Myttas' application, made pursuant to Rule 29(2) of the Rules, to adjourn the hearing so that he could obtain and instruct counsel to represent him. Mr Barton did not oppose this application and submitted that it would assist him in preparing further documentation, which he would be applying to admit into evidence under Rule 34(1) of the Rules in due course. The Tribunal determined to reconvene on 27 January 2021 to obtain an update from Dr Myttas and/or his legal representative.

7. A further application to adjourn was made on behalf of Dr Myttas on 27 January 2021, by Mr Hockton, Counsel who had recently been instructed to act for Dr Myttas. The Tribunal granted the application to adjourn and the case was subsequently reconvened on 27 July 2021. The Tribunal's full determination can be found at Annex A.

Application to adduce further evidence

8. At the start of the reconvened hearing, the Tribunal granted the GMC's application to adduce further evidence, made pursuant to Rule 34 (1) of the Rules. The GMC adduced further redacted medical records of Patient A to cover the period Dr Myttas had been consulting with Patient A. Mr Hockton on behalf of Dr Myttas had no objection to further evidence being adduced.

Application to withdraw paragraph 2 (a) and amend paragraph 3 of the Allegation

9. There was a further application made by Mr Barton to amend the Allegation. The Tribunal granted the GMC's application, made pursuant to Rule 17(6) of the Rules, to withdraw paragraph 2 (a) of the Allegation and amend paragraph 3 of the Allegation, as follows:

> *'3. You consulted with Patient A on 8 November 2018 and you failed to make ~~any~~ a proper record of that consultation.'*

Mr Hockton had no objection to paragraph 2 (a) being withdrawn and was neutral on the amendment to paragraph 3.

10. The Tribunal determined that there was no injustice to the parties for paragraph 2 (a) to be withdrawn. The Tribunal determined to allow the word 'proper' to replace the word 'any' in paragraph 3. The Tribunal was of the view that it would hear arguments from both parties and determine the correct interpretation of what a 'proper' record of a consultation means. The Tribunal considered that although the amendment put a different slant of that paragraph of the Allegation it did not materially change the essence of the Allegation, which was that Dr Myttas had been practising as a medically licensed psychiatrist when he was not permitted to do so. The Tribunal also took account of the neutral stance of Mr Hockton. The Tribunal determined that there was no injustice to the parties if the amendment was made.

The Allegation and the Doctor's Response

11. The Allegation made against Dr Myttas is as follows:

That being registered under the Medical Act 1983 (as amended):

1. You relinquished your licence to practise on 30 October 2015.
Admitted and found proved

2. Between 31 October 2015 and 10 January 2019, you provided psychiatric treatment to Patient A in ~~that~~ the course of which you:
Amended under Rule 17(6)

   a. ~~prescribed medication;~~ **Withdrawn under rule 17(6)**

   a. gave advice with regards to the appropriate:

      i. medication; **Admitted and found proved**

      ii. dosage of medication; **Admitted and found proved**

      iii. period of monitoring; **Admitted and found proved**

   b. interpreted test results. **Admitted and found proved**

3. You consulted with Patient A on 8 November 2018 and you failed to make ~~any~~ a proper record of that consultation. **Amended under Rule 17(6). To be determined**

4. On 9 November 2018, you sent a letter to Dr B the contents of which implied that you held a current licence to practise.
Admitted and found proved

5. On 10 January 2019, you sent a letter to Dr C the contents of which implied that you held a current licence to practise.
Admitted and found proved

6. Your actions as set out at paragraphs 4 and 5 were misleading.
Admitted and found proved

7. At the time of your actions as set out at paragraphs 2 – 6 you:

   a. did not hold a licence to practise;
   Admitted and found proved

   b. knew that you did not hold a licence to practise.
   Admitted and found proved

8. And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. **To be determined**

The Admitted Facts

12. At the outset of these proceedings and also at the start of the reconvened hearing, Dr Myttas, through his counsel Mr Hockton, made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

13. In light of Dr Myttas's response to the Allegation made against him, the Tribunal is required to determine paragraph 3 of the Allegation, whether Dr Myttas consulted with Patient A on 8 November 2018 and failed to make a proper record of that consultation.

14. The Tribunal also received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Dr C, private General Practitioner, Roodlane Medical Limited;
- Dr B, General Practitioner, Grove Medical Centre;
- Mr D, Investigation Officer, General Medical Council.

15. Dr Myttas provided his own witness statement dated 23 November 2020.

Documentary Evidence

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

- Letters to and from Dr Myttas and Dr C dated 20 December 2018 and 10 January 2019;
- Email from GMC to Dr Myttas confirming that his licence to practice would be removed with effect from 30 October 2015 dated 3 October 2015;
- Correspondence between GMC and Dr Myttas dated 15 April 2019 to 11 December 2019;
- Letters to and from Dr Myttas and Dr E dated 5 to 11 November 2018;
- GP Records of Patient A, various dates;
- Referral from Roodlane Medical Limited dated 11 March 2019;
- Letter from Roodlane Medical Ltd to the GMC providing further information dated 17 April 2019.

The Tribunal's Approach

17. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Myttas does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

The Tribunal's Analysis of the Evidence and Findings

18. The Tribunal considered each outstanding paragraph of the Allegation separately and evaluated the evidence and the submissions made by both Counsel in order to make its findings on the facts.

19. Mr Barton, on behalf of the GMC, reminded the Tribunal that Dr Myttas now accepted that he had acted in a clinical capacity by providing treatment to Patient A and had played an active role, writing a considerable number of letters to Patient's A GP. Mr Barton submitted that keeping proper records was a key requirement of Good Medical Practice ('GMP') dated April 2019 and referred the Tribunal to paragraph 19. He further reminded the Tribunal of the response of Dr Myttas to the GMC when asked about his records, which was that he had not kept any. It was submitted on behalf of the GMC that the letter sent to Patient A's GP the day after the consultation, was primarily a response to enquiries made by the GP and was no substitute for proper medical records.

20. On behalf of Dr Myttas, Mr Hockton stated that it was clear from the correspondence that Dr Myttas did communicate regularly with Patient A's GP in order to update him and that his reference to having made no records was in the context of providing counselling to Patient A. Mr Hockton submitted that paragraph 3 was strictly concerned with the single consultation on 8 November 2018 and reminded the Tribunal that there was no allegation in respect of any other consultations. Mr Hockton also referred the Tribunal to paragraphs 19 and 21 of GMP and submitted that the letter to the GP sent by Dr Myttas on 9 November 2018 was a proper record as it followed closely the requirements set out in paragraph 21 of GMP.

Paragraph 3

21. In relation to paragraph 3 of the Allegation the Tribunal considered whether Dr Myttas failed to make a proper record of the consultation with Patient A on 8 November 2018. The Tribunal took into consideration the letter that Dr Myttas sent to Patient A's GP on 9 November 2018.

22. The Tribunal considered paragraph 20 of Mr D's witness statement dated 20 January 2020:

> *'Dr Myttas subsequently provided copies of a letter sent from Patient A GP, Dr [B], dated 5 November 2018, and a letter sent from Dr Myttas to Dr [B], dated 9 November 2018.' [sic]*
>
> The Tribunal noted that Mr D confirmed that Dr Myttas had sent the letter dated 9 November 2018 to Dr B.

23. The Tribunal also considered paragraph 9 of Dr B's statement dated 31 January 2020:

> *'On 15 November 2018 I received a letter from Dr Myttas. The letter was dated 9 November 2018.'*
>
> Dr B had confirmed that he had received the letter from Dr Myttas dated 9 November 2018.

24. The Tribunal took into consideration the following paragraphs of GMP:

> *'19 Documents you make (including clinical records) to formally record your work must be clear, accurate and legible. You should make records at the same time as the events you are recording or as soon as possible afterwards.*
>
> *21 Clinical records should include:*
>
> *a relevant clinical findings*

b the decisions made and actions agreed, and who is making the decisions and agreeing the actions
c the information given to patients
d any drugs prescribed or other investigation or treatment
e who is making the record and when.'

25. The Tribunal considered the submission of Mr Barton that Dr Myttas had accepted to the GMC that he had made no records and there were none made over his regular involvement with Patient A, however the Tribunal was persuaded by the point made by Mr Hockton that paragraph 3 of the Allegation was only concerned with the single consultation on 8 November 2018 and whether a proper record had been made of that single consultation.

26. The Tribunal noted the letter dated 9 November 2018 was clear, accurate and legible. It contained the relevant clinical findings, the decisions made and actions agreed. It also contained the information which had been given to Patient A and any drugs to be prescribed. It was clear that Dr Myttas made the record because he had sent and signed the letter. The Tribunal noted that the letter was not written contemporaneously to the consultation, however it was written the following day.

27. The Tribunal concluded that all the limbs of paragraph 21 GMP had been met. The letter referred to the discussion which Dr Myttas had with Patient A on 8 November 2018 regarding Patient A's treatment. The Tribunal considered GMC's position that Dr Myttas wrote the letter only in response to Patient A's GP, Dr B's letter and not of his own accord. The Tribunal however was of the view that Dr Myttas had written to Patient A's GP on at least 11 occasions in order to provide an update regarding Patient A.

28. The Tribunal was satisfied that the letter to Patient A's GP sent by Dr Myttas on 9 November 2018 was a proper record of the consultation on 8 November 2018, as it contained a record of all of the requirements of paragraph 21 of GMP, therefore found paragraph 3 of the Allegation not proved.

The Tribunal's Overall Determination on the Facts

29. The Tribunal has determined the facts as follows:

That being registered under the Medical Act 1983 (as amended):

1. You relinquished your licence to practise on 30 October 2015.
Admitted and found proved

2. Between 31 October 2015 and 10 January 2019, you provided psychiatric treatment to Patient A in ~~that~~ the course of which you:
Amended under Rule 17(6)

~~a. prescribed medication;~~ Withdrawn under rule 17(6)

a. gave advice with regards to the appropriate:

i. medication; **Admitted and found proved**

ii. dosage of medication; **Admitted and found proved**

iii. period of monitoring; **Admitted and found proved**

b. interpreted test results. **Admitted and found proved**

3. You consulted with Patient A on 8 November 2018 and you failed to make ~~any~~ a proper record of that consultation. **Amended under Rule 17(6). Determined and found not proved.**

4. On 9 November 2018, you sent a letter to Dr B the contents of which implied that you held a current licence to practise.
Admitted and found proved

5. On 10 January 2019, you sent a letter to Dr C the contents of which implied that you held a current licence to practise.
Admitted and found proved

6. Your actions as set out at paragraphs 4 and 5 were misleading.
Admitted and found proved

7. At the time of your actions as set out at paragraphs 2 – 6 you:

a. did not hold a licence to practise;
Admitted and found proved

b. knew that you did not hold a licence to practise.
Admitted and found proved

8. And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. **To be determined**

Determination on Impairment - 29/07/2021

1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before in the Facts determination, Dr Myttas' fitness to practise is impaired by reason of misconduct.

The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, which was all documentary evidence.

3. The Tribunal also received the following additional evidence on behalf of Dr Myttas which contained and was not limited to:

- Curriculum Vitae to October 2015;
- CPD Certificate Ethics and Probity dated July 2021;
- CPD Certificate Documentation and Record-Keeping dated July 2021;
- Thank You Book;
- Thank You Cards;
- Testimonial references;
- A reflective statement;
- A draft revised letterhead.

Submissions

On behalf of the GMC

4. On behalf of the GMC, Mr Barton submitted that Dr Myttas' fitness to practise is impaired. Mr Barton submitted that the misconduct was serious and sustained. Dr Myttas had seen Patient A, for three years and three months (the period in paragraph 2 of the Allegation) whilst not having a licence to practice. During that time he had not been subject to annual regulatory oversight and revalidation, nor was he covered by medical indemnity. Dr Myttas had held himself out to be a licenced practitioner and had seen Patient A on a weekly basis, sometimes twice a week. Patient A was a vulnerable patient who had complex needs and was being treated for significant mental illness, including episodes of psychosis.

5. Mr Barton submitted that throughout the relevant time period, Dr Myttas was advising on Patient A's medication, dosage and the type of treatment he would receive, as well as advising other healthcare professionals. Further, he was providing treatment to Patient A at a specialist consultant level. From the volume of letters he had sent to Patient A's GP surgery, he not only knew that other doctors would act on his instructions, he was telling them what to do. Mr Barton reminded the Tribunal of the letters which had been sent by Dr Myttas regarding Patient A, which was part and parcel of the admission in paragraph 2 of the Allegation of providing psychiatric treatment. The misconduct was persistent and sustained.

6. Mr Barton referred the Tribunal to the reflective statement of Dr Myttas in which he had stated that it was a misunderstanding on his part, having relied upon the advice of

unidentified colleagues. Mr Barton invited the Tribunal to consider with great care Dr Myttas' assertions that he had misunderstood, because he had chosen not to give oral evidence at any stage and expose himself to cross examination. There was no evidence from his senior colleagues where he had taken advice from regarding Patient A. He submitted that Dr Myttas was an experienced psychiatrist with a '*licence to practise for decades*'. Mr Barton submitted that it was not credible that Dr Myttas did not realise that he could not act the way he did without a licence.

7. Mr Barton submitted that if this was a genuine misunderstanding then it would be expected that he would make a full disclosure, instead of passing it off as mere life coaching and stalled repeated requests for documentation from the GMC. He submitted that only when the GMC had made a legal request, did Dr Myttas at that point disclose the letter dated 9th of November 2018, which undermined his position that he was only acting as a life coach. Mr Barton suggested that the Tribunal could find that Dr Myttas had deliberately misled the two health professionals that he had written to.

8. Mr Barton invited the Tribunal to find that the facts proved amounted to serious misconduct, as Dr Myttas was practising without a licence for a lengthy period, compounded by misleading two separate health care professionals. He also noted that the letterhead Dr Myttas' letters contained was also misleading. Mr Barton referred the Tribunal to paragraphs of GMP which were relevant to how Dr Myttas had acted (paragraphs 10, 17, 65, 12, 66 and 71).

9. Mr Barton submitted that any approach to the issue of impairment must take into account the overarching objective and the need to uphold proper standards of behaviour, which required a finding of impairment in this case.

<u>On behalf of Dr Myttas</u>

10. Mr Hockton submitted that it was an important point of principle that impairment was confined to the facts set out in the notice of Allegation. If dishonesty was to be alleged it must be unambiguously pleaded, which it was not in this case and this approach as suggested by the GMC should be disregarded. Mr Hockton submitted that regard must be made to how person has acted and the context of Dr Myttas' behaviour must be examined. The purpose of making a finding of impairment was not to punish but to protect the public from those who are not fit to practise. Mr Hockton submitted that in the context of an otherwise unblemished career, there may not be impairment despite misconduct. In order to cross that threshold misconduct must be serious, for example conduct which would be regarded as deplorable by fellow professionals.

11. Mr Hockton submitted that this was an isolated incident as it involved one patient, Dr Myttas had long years of service and an unblemished record. He submitted that Dr Myttas' conduct falls far below the threshold of serious professional conduct. Mr Hockton reminded the Tribunal that Dr Myttas has had a distinguished career, he first qualified in 1974, he has a full list of the doctors affiliations and practised as senior

consultant at some of the leading hospitals and has dealt with extremely difficult circumstances, in child and adolescence psychiatry. There was no evidence of patient harm. There has been no suggestion that the advice given whilst he did not have a licence was in anyway wrong or harmful.

12. Mr Hockton submitted that Dr Myttas had been criticised for not giving oral evidence at the hearing, however he does not have to do so. He has admitted the Allegation and had engaged in proceedings. In light of his age and the stress of these proceedings on Dr Myttas, there should be no criticism of the fact that he has not given evidence. He has made full admissions in relation to all the matters now under consideration.

13. Mr Hockton submitted that Dr Myttas had insight into paragraph 2 of the Allegation. Dr Myttas first saw Patient A as the treating psychiatrist looking after Patient A when he was fully registered with a licence to practise. The arrangement which he entered into with Patient A, was in Patient A's best interests. Moreover, Patient A had not made any complaint about Dr Myttas. Patient A had minor psychotic symptoms linked to use of cannabis, and he was at all material times on a small dosage of medication. The key was that Dr Myttas had not prescribed the medication, Dr Myttas was under the impression that he was allowed to advise on medication as long as the prescription was done by the GP who had licence to prescribe. This was a case where there was a safety net in place where the GP was insured, and the delivery of treatment was undertaken within the GP practice under the supervision of the GP.

14. Dr Myttas had been open and transparent at all times with his involvement with Patient A in letters sent to GP. His involvement was one of counselling and providing psychotherapy and that of itself did not attract any need for a licence to practise. He submitted that it should also be borne in mind that the GMC guidance on what a doctor can and cannot do without a licence makes specific reference to not being able to prescribe. He was not acting in bad faith and was acting in Patient A's best interests.

15. Mr Hockton submitted that Dr Myttas accepted that the letters sent to the two medical professionals could be misunderstood, but that was not his intention. He has now amended his letterhead to make clear that he is retired and has no licence to practice. He has also completed courses on probity and ethics and a course on record keeping. This has been a very bitter lesson for him and great strain on him and his family. He has shown profound shame and remorse, apologised to the Tribunal and had shown insight and remorse in relation to this case. He was deeply sorry to find himself after so many years of practice in the position he was in. Mr Hockton submitted that it was highly relevant if the conduct was easily remediable and had been remediated, which it had in this case and highly unlikely to be repeated. Therefore the Tribunal was invited to find that there was no current impairment on the facts of the case.

The Tribunal's Determination on Impairment

The Relevant Legal Principles

16. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.

17. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct, which was serious and, secondly, whether its findings on this lead to a finding of impairment.

18. As this stage, impairment, it is not a matter of proof, therefore the standard and burden of proof referred to at the end of stage 1 have no application, instead it is a matter of judgment for the Tribunal.

19. The Tribunal considered it should be misconduct linked to the practice of medicine or conduct that otherwise brings the profession into disrepute, *Roylance v GMC [2000]*.

20. The Tribunal considered whether the facts found proved amount to conduct that is sufficiently serious to amount to misconduct. As stated by Lord Clyde in *Roylance v GMC [2000]*, *'it is not any professional misconduct which will qualify. The professional conduct must be serious'*. This threshold has been described in the case of *Meadow v GMC [2006]* as being conduct which would be regarded as deplorable by fellow practitioners.

21. Mere negligence does not constitute misconduct. A single negligent act or omission is less likely to cross the threshold of misconduct than multiple acts or omissions, however depending on the circumstances a single negligent act or omission, if particularly grave, could constitute misconduct *(Calhaem v GMC [2007] EWHC 2606)*.

22. The Tribunal took into consideration that impairment is a separate and distinct concept to misconduct as set out in *(Cheatle v GMC [2009] EWHC 645 (Admin))*. A finding of misconduct does not inevitably lead to a finding of impairment.

23. In the case of *Meadow v GMC [2006] EWCA Civ 1390*, the purpose of fitness to practice proceedings was set out, which is not to punish the practitioner for past misdoings, but to protect the public against the acts and omissions of those who are not fit to practice, therefore looking forward, taking account of how the doctor has acted or failed to act in the past.

24. The Tribunal must determine whether Dr Myttas' fitness to practise is impaired today, taking into account Dr Myttas' 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.

25. Insight is a key aspect in the determination of the issues of remediation and ongoing impairment. There is a distinction between insight into the misconduct that has occurred and insight of how to avoid recurrence of the misconduct in the future.

26. The Tribunal bore in mind the overarching objective in s1 (1A) and (1B) of the Medical Act 1983, which is 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 the medical profession. The Tribunal considered the overarching objective as a whole, not giving excessive weight to any one limb.

27. The Tribunal took into account, in the case of *Council for the Healthcare Regulatory Excellence v Nursing and Midwifery Council, Paula Grant* it was stated that (para 74):

> *'In determining whether a practitioner's fitness to practice is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

28. In *CHRE v NMC and Paula Grant [2011] EWHC 927 (Admin)*, Mr Justice Cox cited with approval the test set out by Dame Janet Smith in the fifth report of the Shipman Inquiry (para 25.67), where Dame Smith identified a test for panels considering impairment, which is as follows:

> *'Do our findings of fact in respect of the doctor's deficient professional performance, show that his fitness to practise is impaired in the sense that he:*
>
> *(a) Has in the past acted and/or is liable in the future to so act so as to put a patient or patients at unwarranted risk of harm and/or;*
> *(b) Has in the past brought and/or is liable in future to bring the medical profession into disrepute and/or;*
> *(c) Has in the past breached and/or is liable in the future to breach one of the fundamental tenants of the medical profession and/or;*
> (d) *Has in the past acted dishonestly and/or is liable to act dishonestly in future.'*

29. The Tribunal also considered the case of *El-Baroudy v GMC 2013 EWHC 2894 (Admin)*, and the principle that impairment is confined to facts alleged in the Allegation. The Tribunal has to base decision on what facts have been found proved at the facts stage. It also considered the case of *Salha and Abusheikha v GMC 2003 WL 22826909*, where it was established in this case and others that if dishonesty alleged it needs to be unambiguously formulated and adequately particularised.

The Tribunal's Determination on Impairment

Misconduct

30. The Tribunal took into consideration that Dr Myttas had made full admissions to parts of the Allegation to be considered for impairment.

31. The Tribunal first considered whether Dr Myttas' actions amount to misconduct. Misconduct can be found in circumstances where there have been serious departures from expected standards of conduct and behaviour, which can be identified by reference to GMP.

32. With regard to Dr Myttas' conduct, the Tribunal identified that the following paragraphs of GMP are particualrly relevant:

> *'12 You must keep up to date with, and follow, the law, our guidance and other regulations relevant to your work.'*
>
> *65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*
>
> *66 You must always be honest about your experience, qualifications and current role.*
>
> *71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.*
>
> *a You must take reasonable steps to check the information is correct.*
>
> *b You must not deliberately leave out relevant information.'*

33. The Tribunal considered whether Dr Myttas' conduct was a single isolated incident. The Tribunal was the view that whilst the Allegation only related to one patient, the course of action, namley providing psychiatric treatment to Patient A, took place over a period of three years and three months. During this time he had written at least 11 letters to different healthcare professionals in respect of Patient A, two of whom had both been misled by his letters and assumed that he was Patient A's psychiatrist, with a licence to practise. The Tribunal was of the view that Dr Myttas' conduct was persistent over a period of time and it was not an isolated incident.

34. Dr Myttas had admitted that he had sent letters to Patient A's GP which implied that he held a current licence to practise. Dr Myttas had advised Patient A on what treatment

was required and interpreted test results. In the letters which had been sent out to the GP, he did not give any impression other than that he was acting as a psychiatrist. He was not clear in his letters that he was a retired psychiatrist, without a licence and the Tribunal considered that the onus was on Dr Myttas to make the position clear. The Tribunal was of the view that there was a clear breach of paragraphs 66 and 71 of GMP.

35. The Tribunal considered Patient A to be a vulnerable patient who had been referred for symptoms of psychosis. The Tribunal also took the view that Dr Myttas was not as up front with the GMC during their investigations as he could have been, it was only when the GMC sent a legal letter under section 34 (a) Medical Act, that Dr Myttas provided to the GMC the correspondence he had sent to Patient A's GP. The Tribunal considered that whilst Patient A had not complained or had not been harmed and Dr Myttas had not prescribed medication himself, he had advised Patient A's GP on what medication to prescribe whilst the GP was not aware that Dr Myttas was not a psychiatrist with a licence to practise.

36. The Tribunal considered Dr. Myttas' response that the GMC's advice for doctors who provide counselling to patients without a licence to practise was limited. The Tribunal was of the view that Dr Myttas was a senior consultant in his field of work and had been working as a doctor for 34 years. However, following his retirement he ought to have known that he was not permitted to continue to provide medical care.

37. The Tribunal was of the view that as Dr Myttas had provided psychiatric treatment over a prolonged period when he had no licence and given that his actions had misled other medical professionals, that fellow practitioners would consider Dr Myttas' actions as a deplorable. Dr Myttas had at least 11 opportunities to make clear in his correspondence to his fellow practitioners that he was not a practising psychiatrist. The GP had trusted the opinion of Dr Myttas' because they had believed he was a consultant psychiatrist. The Tribunal concluded there had been serious departures from GMP.

38. For these reasons, the Tribunal concluded that Dr Myttas' conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

Impairment

39. Having found that the facts found proved amounted to misconduct, the Tribunal went on to consider whether, as a result of that misconduct, Dr Myttas' fitness to practise is currently impaired.

40. The Tribunal considered whether Dr Myttas had insight into his conduct and its effects, and took into consideration his reflective statement:

> *'I mistakenly thought that not having a license precluded me from writing prescriptions. I now understand the scope of a licence is wider than this and it includes advising on medication. I now see that it was wrong for me to assume*

that I could ask his GP to continue prescribing on my behalf after relinquishing my licence,'

...

'I feel a profound sense of shame and remorse for not having better understood the limitations of my role. I would like to assure the Tribunal that I have learned from my mistakes and that I pose no risk going forward.'

The Tribunal noted that the Dr Myttas had apologised and shown remorse for his conduct.

41. The Tribunal accepted Dr Myttas' position that there was not a lot of information available from GMC regarding his limits on his practice. However, the Tribunal was of the view that considering Dr Myttas' seniority it was reasonable for him to have taken further advice on the limits of his role. He is still on the register and the onus was on him to find out. The Tribunal noted that Dr Myttas had developed insight. Dr Myttas had provided a reflective statement, which took into account the importance of having a licence.

42. The Tribunal considered whether the conduct was remediable and whether Dr Myttas had taken steps to remediate. The Tribunal considered the Ethics and Probity, Documentation and Record Keeping courses he had undertaken, and that he had changed his letterhead to make it clear he was no longer a psychiatrist with a licence to practise and that he had retired. In his reflective statement, he listed some of the issues related to his conduct. He had taken into account the impact of his conduct on public confidence and public safety and had apologised for treating Patient A without a licence. The Tribunal considered the following statement from Dr Myttas Reflective Statement:

'In October 2015 when I relinquished my licence, I informed him that his medication management would need to be transferred to another psychiatrist whilst continuing with me with psychotherapeutic treatment. He was unwilling, saying he could not trust another clinician, and he did not want to give his history all over again. He wished to continue with me, otherwise, he said, he would drop out of treatment altogether. This worried me as I felt he was still very much in need of support and treatment. Therefore I took the view that it was in his best interest for him to continue seeing me whilst his GP prescribed for him as needed. I explained that I would not be able to issue further prescriptions for him and should his GP decline, for whatever reason, to continue with repeat prescribing, and should he still need medication, another psychiatrist would need to become involved. He was confident he would not be needing medication for much longer and on that basis, I continued updating his GP on a frequent basis (every two to six months).'

43. The Tribunal was of the view that Dr Myttas' conduct was remediable and were satisfied with the steps he had taken to remediate.

44. The Tribunal went on to consider whether there was a likelihood of repetition. The Tribunal was of the view that Dr Myttas was now well aware of the limits of what he can do when practising without a licence and he had learnt from these proceedings. The Tribunal concluded there was a very low risk of repetition.

45. The Tribunal considered whether, despite the remediation and low risk of repetition, the public interest required a finding of impairment. It was in the public interest for a doctor to be clear in their correspondence with patients and other professional colleagues whether or not they had a licence to practise. As Dr Myttas had misled other professionals and treated Patient A without a licence to practise for a prolonged period, the Tribunal was of the view that Dr Myttas had brought the medical profession into disrepute. During the period that Dr Myttas had been practising without a licence, without medical indemnity and without being monitored by his regulator. The Tribunal noted that no CPD or evidence had been provided that Dr Myttas had remained clinically up to date between 2015 and 2019 whilst he was overseeing Patient A's psychiatric treatment. Dr Myttas was working and acting as psychiatrist, he had advised on treatment and what investigation needed to be carried out. In his letters to the GP he was advising on diagnosis, and new medication, which was not a role that would be expected from a counsellor. The Tribunal considered that whilst there was no evidence of patient harm, there was still a potential risk to patient safety because Dr Myttas did not have a licence to practise, as his practice was not being monitored or kept up to date by complying with regulatory requirements.

46. In these circumstances, the Tribunal considered that a finding of impairment was necessary to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the profession.

47. The Tribunal, therefore, determined that Dr Myttas' fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 30/07/2021

1. Having determined that Dr Myttas' fitness to practise is impaired by reason of misconduct, 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 proceedings where relevant. The Tribunal received no further evidence at this stage from the GMC or from Dr Myttas.

Submissions

GMC Submissions

3. On behalf of the GMC, Mr Barton directed the Tribunal's attention to a number of paragraphs of the Sanctions Guidance ('SG') (November 2020) including those relevant to proportionality, mitigating and aggravating features, and sanction.

4. Mr Barton listed the mitigating and aggravating features which he contended were relevant in this case, as follows:

Mitigating features:

- Dr Myttas has practised for many years without issue;
- Dr Myttas has testimonials highlighting that he is a dedicated and committed doctor;
- Dr Myttas made admissions to the Tribunal;
- The Tribunal has found that Dr Myttas has remediated his misconduct and the risk of repetition is low;
- Dr Myttas has apologised and expressed remorse for his actions;
- Dr Myttas provide a reflective statement demonstrating that he has developed insight; and
- The misconduct involved a single patient, who made no complaint and there is no evidence that the patient came to harm.

Aggravating features:

- Dr Myttas admitted misconduct which was sustained over three years including sending 11 letters;
- The patient was vulnerable, and while no harm came to the patient, there was a potential risk to patient safety;
- The misconduct was not the misjudgement of an inexperienced doctor, rather, Dr Myttas is an experienced and senior clinician;
- Dr Myttas was without indemnity cover and was not being monitored by the GMC;
- The misconduct represents multiple departures from GMP; and
- The Tribunal had noted at stage 2 that Dr Myttas had not been as open with the GMC investigation as he could have been.

5. Mr Barton submitted that taking no action would only be appropriate in exceptional cases and that taking no action in this case would be inconsistent with the Tribunal's findings at the impairment stage. Further, taking no action would be inadequate in light of the public interest and would not meet the overarching objective. He submitted that conditions would not be appropriate or workable, in the circumstances of this case given that Dr Myttas does not have a licence. Mr Barton submitted that suspension is appropriate in order to send a

message to the public and the profession as to acceptable standards of conduct and behaviour and to maintain confidence in the profession.

6. Mr Barton acknowledged that this is not a case where it is necessary to erase Dr Myttas' registration. Mr Barton clarified that no dishonesty had been alleged by the GMC and none had been found by the Tribunal. Moreover, as the Tribunal had already established that Dr Myttas has insight, has remediated and is unlikely to repeat his actions, erasure would be disproportionate.

7. Mr Barton submitted that any suspension need not be immediate because Dr Myttas does not have a licence to practise, in any event. He submitted that should the Tribunal be minded to impose a suspension, the length of the suspension would be a matter for the Tribunal. Mr Barton submitted that anything less than suspension would not satisfy the public interest.

Dr Myttas' Submissions

8. On behalf of Dr Myttas, Mr Hockton submitted that Dr Myttas' actions represented an isolated case in the context of a long unblemished career. He directed the Tribunal's attention to the comprehensive array of glowing testimonials, which showed that he was a highly competent psychiatrist. Mr Hockton submitted that the testimonials are powerful supporting evidence to Dr Myttas' character, professionalism, and integrity.

9. Mr Hockton noted that there was no patient complaint nor any suggestion of any harm to the patient in this case. The treatment in question was advice and there is no evidence or suggestion that the advice given was wrong. He noted that Dr Myttas has apologised, shown insight and remorse, and made full admissions. He stressed that there is no allegation of dishonesty and that Dr Myttas had never set out to mislead anyone. Mr Hockton submitted that whilst there were a number of letters sent, it was the same mistake made on a number of occasions, rather than different mistakes. There was also a safety net of the involvement of the GP.

10. Having regard to the extensive mitigating features, Mr Hockton endorsed the helpful list noted by the GMC and submitted that on the unusual facts of this case, taking no action is an option open to the Tribunal. He submitted that there are exceptional circumstances and that the purpose of sanction is not to punish a doctor. He contended that taking no action would be appropriate because Dr Myttas has already relinquished his licence. Set against a long unblemished career, no patient harm or complaint, full admissions, the remediation and no risk of repetition, Mr Hockton contended that it is possible to conclude that there are exceptional circumstances that satisfy the terms of the SG to take no action. Mr Hockton submitted that a finding of impairment has an impact in itself and is sufficient to meet the public interest and maintain public confidence in the profession. He submitted that any further sanction would serve no purpose and would be unfairly punitive, excessive, and disproportionate.

11. Mr Hockton submitted that conditions would need to be appropriate and workable, but as Dr Myttas is not practising, they would serve no purpose. Mr Hockton submitted that any suspension should be no longer than is necessary and if the Tribunal minded to impose an order of suspension, in order to send out a message to the profession, a very short period of suspension, of no more 28 days, would be sufficient to satisfy the public interest. Mr Hockton submitted that there is no need for any longer duration of suspension and that would be meaningless. He asserted that this is not a case where Dr Myttas' conduct is fundamentally incompatible with continued registration, and erasure would be wrong in principle and in law.

The Tribunal's Determination on Sanction

12. The Tribunal had regard to the submissions of Mr Barton on behalf of the GMC and Mr Hockton on behalf of Dr Myttas, its findings at the facts and impairment stages and the advice of the Legally Qualified Chair ('LQC'), which it accepted. The Tribunal has already given detailed determinations on facts and impairment and has taken those matters into account during its deliberations on sanction.

13. In reaching its decision, the Tribunal has given careful consideration to the principles within the SG. It has borne in mind the main reason for imposing sanctions is to protect the public, pursuant to the overarching objective. A doctor's conduct has an inevitable impact on the reputation of the profession and the public's confidence in it. The public has a right to expect high standards of any practitioner. Sanctions are not imposed to punish or discipline doctors, but they may have a punitive effect.

14. The Tribunal has borne in mind that in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive and then consider each sanction in ascending order. Should it consider that a sanction is appropriate and proportionate, it will not go on to consider a more restrictive sanction. It should also have regard to the principle of proportionality, weighing the interests of the public against those of the doctor. The Tribunal considered and balanced the aggravating and mitigating factors in this case.

Aggravating and Mitigating Features

Aggravating Features

15. The Tribunal considered the following to be aggravating features in the case:

- Dr Myttas admitted misconduct, which was repeated and sustained over three years – including sending over 11 letters;
- The patient was vulnerable;
- Dr Myttas is a highly experienced senior doctor, and should have been aware of the principles set out in GMP and the importance of a licence;

- Dr Myttas was without appropriate indemnity cover when providing treatment as a psychiatrist and was not being monitored by the GMC; and
- Dr Myttas conduct represented multiple departures from GMP, albeit not including dishonesty.

16. The Tribunal balanced those aggravating features against what it considered to be the mitigating features in this case.

Mitigating Features

17. In mitigation, the Tribunal had regard to the following features of the case:

- The Tribunal accepted that Dr Myttas did not deliberately mislead the two medical professionals that he wrote to;
- The misconduct is in the context of a long unblemished career;
- The misconduct involved a single patient;
- There was no patient harm and no patient complaint;
- The advice provided by Dr Myttas was not incorrect;
- Dr Myttas made full admissions to the Tribunal;
- Dr Myttas has glowing testimonials highlighting his dedication and commitment as a doctor;
- Dr Myttas has remediated, has insight, and has reflected;
- Dr Myttas has apologised for his actions and expressed genuine remorse;
- There is a very low risk of repetition;
- Dr Myttas has demonstrated evidence of CPD in relation to understanding his actions; and
- Dr Myttas has taken steps, in terms of changing his letter heads on his letters, indicating an appreciation of his behaviour.

No action

18. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Myttas' case, the Tribunal first considered whether it should conclude proceedings by taking no action. The Tribunal considered paragraphs 68-70 of SG, which state that taking no action is reserved for those cases that are exceptional or unusual and so are rare.

19. The Tribunal took into account that there is fairly limited information provided by the GMC which is readily available for doctors who have relinquished their licence and that has not assisted Dr Myttas in this case. Also, whilst the Tribunal took into account there were multiple breaches of GMP, which were serious departures from GMP, the Tribunal accepts that Dr Myttas was not dishonest and did not intentionally set out to mislead in his actions. The Tribunal bore in mind the many mitigating factors and the very positive testimonial

evidence it had before it. The Tribunal also noted that insight and remediation alone are unlikely to be sufficient to amount to exceptional circumstances.

20. The Tribunal considered its findings at the impairment stage, in particular that it had found that the actions of Dr Myttas had brought the medical profession into disrepute along with a potential risk to patient safety. The Tribunal determined that a reasonable member of the public or profession, fully informed of the circumstances of this case, would likely be concerned if no action were taken, even taking into account the considerable mitigation and Dr Myttas long unblemished career. The Tribunal considered the need to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the profession, required a sanction to be imposed in this case.

21. The Tribunal was of the view that taking no action would send the wrong message to the public and profession as to standards of behaviour and conduct expected of a medical professional. The Tribunal therefore has determined that taking no action would be neither appropriate nor proportionate, as this would not satisfy the over-arching objective.

Conditions

22. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Myttas' registration. It has borne in mind that any conditions must be appropriate, proportionate, workable and measurable. In doing so, the Tribunal considered the list of factors in paragraph 81 of the SG, which it did not regard as necessarily exhaustive, that it may take into account when determining whether an order of conditions would be appropriate.

23. The Tribunal was satisfied that the imposition of conditions would not be appropriate, proportionate, workable or measurable in the particular circumstances of this case, given that Dr Myttas has no licence and is not working as a psychiatrist.

Suspension

24. The Tribunal then went on to consider whether suspending Dr Myttas' registration would be appropriate and proportionate.

25. In doing so, the Tribunal has, amongst others, considered paragraph 91 of SG, which it considered relevant and appropriate:

> *"91. Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention."*

26. The Tribunal concluded that imposing a period of suspension on Dr Myttas is necessary to achieve aspects of the overarching objective in maintaining public confidence in doctors and to promote and maintain proper professional standards and conduct for members of the medical profession.

27. The Tribunal recognised that the conduct is unlikely to be repeated, has been remediated and that Dr Myttas has developed insight. However, while there were not specific patient safety issues in this case, Dr Myttas' actions will have impacted on the reputation of the profession. The Tribunal determined that the public interest requires that the misconduct be marked by the imposition of a suspension.

28. The Tribunal determined that the imposition of a period of suspension is necessary, appropriate and proportionate to mark the seriousness of Dr Myttas' misconduct and sends a message to members of the public and the profession regarding conduct which is expected of a medical professional.

Erasure

29. Having determined that the appropriate, proportionate and necessary sanction in the case of Dr Myttas is one of suspension, the Tribunal did not go on to consider the more restrictive sanction of erasure. Nevertheless, the Tribunal determined that Dr Myttas' conduct was not fundamentally incompatible with remaining on the medical register.

Duration of Suspension

30. In determining that a period of suspension is the appropriate and necessary sanction, the Tribunal had particular regard to paragraph 100 of the SG and acknowledged the many mitigating features of this case and that Dr Myttas had remediated. The Tribunal determined that the public interest would be satisfied with a short period of suspension. The Tribunal is of the view that any length of suspension above 28 days would serve no purpose and would be disproportionate. Dr Myttas does not need time to further remediate his conduct or reflect on his actions. The Tribunal determined that this duration of suspension is appropriate and of sufficient length to mark the gravity of the misconduct and send a message to the profession regarding behaviour expected of a doctor.

Directing a Review

31. In reaching its decision on whether to direct a review, the Tribunal bore in mind paragraph 164 of SG, which provides:

> *"164. In some misconduct cases it may be self-evident that, following a short suspension, there will be no value in a review hearing. However, in most cases where a period of suspension is imposed, and in all cases where conditions have been imposed, the tribunal will need to be reassured that the doctor is fit*

to resume practice – either unrestricted or with conditions or further conditions. A review hearing is therefore likely to be necessary, so that the tribunal can consider whether the doctor has shown all of the following (by producing objective evidence):

a. they fully appreciate the gravity of the offence

b. they have not reoffended

c. they have maintained their skills and knowledge

d. patients will not be placed at risk by resumption of practice or by the imposition of conditional registration."

32. The Tribunal determined that there is no need for a review hearing in this case. It identified that Dr Myttas has insight, has remediated and the risk of repetition is very low. Dr Myttas does not need to demonstrate anything else to a future Tribunal. The imposition of a 28-day suspension is necessary to send a message to the public and profession, however, this is sufficient to satisfy the public interest.

Immediate Order

33. Having determined that a period of suspension is necessary, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Myttas' registration should be subject to an immediate order.

34. The Tribunal had regard to the relevant paragraphs of SG including, but not limited to, paragraph 172 which provides:

"172. The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order."

35. The Tribunal took into account the submission from Mr Barton on behalf of the GMC that an immediate order is not necessary as Dr Myttas has no licence. Given that there are no public safety concerns in this matter, and the short duration of his suspension, the Tribunal determined that an immediate order is unnecessary to protect the public and is not in the public interest. Dr Myttas does not have a licence to practise and understands that this is required if he wishes to practise medicine.

36. This means that Dr Myttas' registration will be suspended 28 days from when notice of this decision is deemed to have been served upon him, unless he lodges an appeal.

37. There is no interim order to revoke.

38. That concludes this case.

Confirmed
Date 30 July 2021 Mrs Aaminah Khan, Chair

ANNEX A – 27 January 2021

Application to Adjourn the Hearing

113. This determination will be read in private as it includes reference to XXX. As this case relates to Dr Myttas' misconduct, a redacted version will be published at the close of the hearing with matters relating to XXX removed.

114. Dr Myttas' hearing commenced on 25 January 2021 and at the outset of the hearing, Dr Myttas was present, but not represented. On the first day of the hearing, Mr Barton opened the case on behalf of the GMC after which Dr Myttas requested that he have some time to prepare for his oral evidence and submissions. The Tribunal adjourned early to allow Dr Myttas this time and also XXX.

115. When the Tribunal resumed on 26 January 2021, Dr Myttas made an application pursuant to Rule 29(2) of the Rules, to adjourn the hearing so that he could obtain and instruct a counsel to represent him. Mr Barton did not oppose this application and submitted that it would assist him in preparing further documentation, which he would be applying to admit into evidence under Rule 34(1) of the Rules in due course. The Tribunal determined to reconvene on 27 January 2021 to obtain an update from Dr Myttas and/or his legal representative.

116. On day three of the hearing, Dr Myttas was present and represented by Mr Andrew Hockton, who made an application to adjourn this hearing pursuant to Rule 29(2) of the Rules.

Submissions

117. Mr Hockton submitted that Dr Myttas feels 'XXX and out of his depth' and that this has been amplified by the GMC's application to admit further evidence. Mr Hockton submitted that Dr Myttas feels that he requires the assistance of a legal team to present his case. He submitted that the legal firm Hempsons cannot act as his representatives without an adjournment. He further submitted the proposed adjournment would be for 21 to 28 days to allow time for the legal team to familiarise itself with the case.

118. Mr Hockton submitted that it was highly regrettable that Dr Myttas had not obtained legal representation prior to the commencement of the hearing, but said that it was understandable that Dr Myttas initially thought that the case would be straightforward. Mr

Hockton submitted that Dr Myttas will be disadvantaged if he does not have the benefit of legal representation.

119. Mr Hockton referred the Tribunal to the cases of *R v Jones* and *Adeogba* and submitted that it should use this as a basis to consider the application adjournment. He submitted that under Article 6, Dr Myttas has the right to legal representation. In addition, he submitted that given the late application to adduce further evidence by the GMC, in the circumstances fairness to Dr Myttas required an adjournment.

120. Mr Barton submitted that the GMC opposes the application to adjourn the hearing. Mr Barton made submissions on Article 6 and its constituent parts and that the absence of legal representation itself does not render the proceedings unfair.

121. Mr Barton submitted that it was the informed decision of Dr Myttas to proceed in this case unrepresented and that he has conducted all aspects of prehearing preparation without formal legal representation. He submitted that the case of *Adeogba* confirmed that the principals in the case of *Jones* are a 'useful starting point' for the decision made by a Tribunal as to whether to grant an adjournment. He submitted that the judgment highlights clear distinctions between a criminal trial and civil proceedings. Mr Barton submitted that the similarity should not be taken too far as this could then be unfair to the GMC.

122. Mr Barton submitted that the draft bundle was sent to Dr Myttas on 17 February 2020 for the case which was due to take place in April 2020, but was delayed due to the pandemic. He submitted that adjourning the hearing would run counter to the overarching objective and that the judgment states that the process should not be frustrated by the practitioner. Furthermore, Mr Barton submitted that the caselaw primarily relates to proceeding in absence. Mr Barton submitted that these are not complex proceedings and it was a modest sized bundle, which Dr Myttas has studied in advance and agreed upon. He submitted that it is not unfair to Dr Myttas to proceed, but would be unfair to the GMC if the Tribunal were to grant an adjournment.

123. In response to Mr Barton's submissions, Mr Hockton submitted that Dr Myttas has clearly engaged with the GMC and that this is not a case where the doctor has sought to frustrate the hearing process. Mr Hockton also submitted that Dr Myttas is aged 68 and that this could add to the XXX he must face in confronting these matters against a highly experienced and able counsel acting for GMC without any legal representation.

The Tribunal's Decision

124. The Tribunal had regard to paragraph Rule 29(2) of the Rules which provides that:

> *'Where a hearing of which notice has been served on the practitioner in accordance with these Rules has commenced, the Committee or Tribunal considering the matter may, at any stage in their proceedings, whether of their own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as they think fit.'*

125. Throughout the decision-making process the Tribunal bore in mind the statutory overarching objective.

126. The Tribunal carefully considered the principle of fairness in relation to both Dr Myttas and the GMC. The Tribunal considered that so far Dr Myttas has engaged with the GMC investigation, MPTS case management and this hearing. It noted that there has been has no indication that Dr Myttas is intentionally trying to frustrate the hearing process.

127. The Tribunal considered Mr Barton's submissions that there is a public interest in hearing Dr Myttas' case expeditiously and that there has already been a delay in hearing this case due to the current Covid-19 pandemic. However, the Tribunal also noted that this delay was not caused by Dr Myttas. The Tribunal considered Mr Hockton's submissions that Dr Myttas' new legal team would require between three weeks and one month to familiarise itself with the case. The Tribunal considered that this was an appropriate period of time and found this to further indicate Dr Myttas' willingness to engage with the process. However, the Tribunal recognised that if the adjournment was granted, it may not be possible to fix the new hearing dates that soon.

128. The Tribunal was concerned by XXX. The Tribunal considered that proper legal representation XXX and ability to present his case.

129. The Tribunal noted that the GMC has a further 90-page bundle to admit into evidence. The Tribunal considered that an adjournment would provide an opportunity for Dr Myttas' legal team to familiarise itself with the case and review this additional documentation.

130. In light of the reasons set out above, the Tribunal determined it was in the interest of justice and fairness to adjourn today's proceedings. The Tribunal therefore granted Mr Hockton's application to adjourn this hearing.