

PUBLIC RECORD

Dates: 05/05/2022 - 06/05/2022

Medical Practitioner's name: Dr Pawel MIKLASZEWICZ
GMC reference number: 6121969
Primary medical qualification: Lekarz 1992 Akademia Medyczna w Krakowie

Type of case **Outcome on impairment**
Review - Deficient Impaired
professional performance

Summary of outcome

Erasure

Immediate order imposed

Tribunal:

Legally Qualified Chair:	Mrs Laura Paul
Lay Tribunal Member:	Mr Andrew Gell
Medical Tribunal Member:	Dr Deborah Brooke
Tribunal Clerk:	Ms Jennifer Coakley

Attendance and Representation:

Medical Practitioner:	Present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Ms Emma Gilsenan, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Impairment - 06/05/2022

1. At this review hearing the Tribunal has to decide in accordance with Rule 22(1)(f) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules') whether Dr Miklaszewicz's fitness to practise is impaired by reason of deficient professional performance.

The Outcome of Applications Made during the Impairment Stage

2. The Tribunal granted an application made by Ms Gilsenan on behalf of the GMC, to admit further documentary evidence. This application was made pursuant to Rule 34(1) of the Rules. The Tribunal's full decision on the application is included at Annex A.

3. The Tribunal refused an application made by Dr Miklaszewicz, to admit further documentary evidence. This application was made pursuant to Rule 34(1) of the Rules. The Tribunal's full decision on the application is included at Annex B.

Background

4. Dr Miklaszewicz qualified in Poland in 1992 and has worked in the UK since 1995. He initially worked in a non-clinical capacity in the UK whilst working intermittently as a locum GP in Poland. Dr Miklaszewicz commenced training in psychiatry in 2009. Having spent a year at CT1 level in Wales, he moved to a CT2 post in Devon in 2011. He ceased clinical work in April 2016 and later exited the training programme in September 2016.

2019 Tribunal

5. The facts found proved at Dr Miklaszewicz's hearing which concluded in January 2019 ('the 2019 Tribunal') were firstly, that he stated dishonestly to his Educational Supervisor, in 2015, that he had registered with a GP local to Bodmin hospital, when he had not done so. Registering with a local GP was a requirement of Dr Miklaszewicz's Remedial Training Plan ('RTP'). The RTP had been devised for him by the Health Education South West Deanery.

Secondly, the 2019 Tribunal also found proved that, following a professional performance assessment by the GMC in 2017, Dr Miklaszewicz's performance was unacceptable in certain areas of his practice, and a cause for concern in others.

6. The 2019 Tribunal went on to determine that Dr Miklaszewicz's fitness to practise was impaired by reason of both misconduct and deficient professional performance. It determined to suspend Dr Miklaszewicz's registration for a period of 12 months.

2020 Tribunal

7. Dr Miklaszewicz's case was reviewed on 18 June 2020 ('the 2020 Tribunal'). Dr Miklaszewicz did not attend and was not represented at that review hearing. He had not responded to an invitation from the GMC for a further assessment of his professional practice issued in or around August 2019.

8. The 2020 Tribunal reflected upon the findings of the 2019 Tribunal. In relation to misconduct, it noted that the 2019 Tribunal had found that Dr Miklaszewicz's dishonesty 'risked bringing the profession into disrepute. Further, it also risked undermining public confidence in the profession and the need to maintain proper professional standards and conduct for members of the profession'. It also found that Dr Miklaszewicz had not provided any assurance that the allegations found proved would not be repeated.

9. The 2020 Tribunal noted that it had not been provided with any evidence that Dr Miklaszewicz had taken the appropriate steps to allay these concerns. He had not taken notice of the suggestions of the 2019 Tribunal, nor had he put any other material before the 2020 Tribunal. Accordingly, the 2020 Tribunal could not be satisfied that Dr Miklaszewicz would not repeat this misconduct in the future, which would undermine public confidence in the profession.

10. The 2020 Tribunal determined that Dr Miklaszewicz's fitness to practise remained impaired by reason of misconduct.

11. In relation to deficient professional performance, the 2020 Tribunal had not been provided with any evidence to satisfy it that Dr Miklaszewicz had developed insight into, or had remediated, any of the identified deficiencies in his professional performance. The 2020 Tribunal noted that there was no evidence that Dr Miklaszewicz had worked since April 2016. He did not provide any evidence of his continued professional development, nor had he responded to the GMC's request to take part in an assessment of his professional practice. It concluded that there was a risk that Dr Miklaszewicz's performance was unsatisfactory in a number of important areas of his practice.

12. The 2020 Tribunal therefore determined that Dr Miklaszewicz continued to pose a risk to patient safety, such that his fitness to practise remained impaired by reason of deficient professional performance.

13. The 2020 Tribunal considered that a further period of suspension would allow Dr Miklaszewicz to re-engage with the GMC's processes and give him the opportunity to regain his fitness to practise.

14. The 2020 Tribunal was concerned that, in the absence of any evidence to the contrary, Dr Miklaszewicz had not worked since April 2016 and it was of the view that he would need to complete a marked amount of re-training in order to be able to practise medicine safely.

15. The 2020 Tribunal observed that the outlook was less hopeful that Dr Miklaszewicz was interested in re-joining the medical profession. However, it did not conclude that his original misconduct and deficient professional performance warranted erasure of his name from the Medical Register at that stage because it was of the view that remediation of both his misconduct and the deficiencies in his professional practice remained a possibility.

16. When determining the period of suspension, the 2020 Tribunal concluded that, given the level of remediation and insight that Dr Miklaszewicz would need to achieve, a period of 12 months would be appropriate. This would ensure patient safety and the maintenance of public confidence in the profession.

2021 Tribunal

17. Dr Miklaszewicz's case was most recently reviewed on 12 July 2021. Dr Miklaszewicz attended this hearing.

Misconduct

18. The 2021 Tribunal was not provided with any documentary evidence from Dr Miklaszewicz to demonstrate that he had developed any insight into, or had remediated, his dishonest behaviour. The 2021 Tribunal accepted Dr Miklaszewicz's oral evidence, however, in which he expressed genuine remorse for his conduct and acknowledged that what he did was wrong. The 2021 Tribunal considered that Dr Miklaszewicz had developed insight into his previous misconduct and concluded that the risk of repetition of such conduct in the future was very low.

19. The 2021 Tribunal therefore concluded that Dr Miklaszewicz's fitness to practise was no longer impaired by reason of misconduct.

Deficient Professional Performance

20. The 2021 Tribunal was not provided with any documentary evidence to demonstrate that Dr Miklaszewicz had remedied the identified deficiencies in his clinical practice, despite the request of previous Tribunals to provide up-to-date documentation. The 2021 Tribunal was of the view that there was a significant risk of repetition of similar incidents of poor clinical practice in the future.

21. Although the 2021 Tribunal noted that Dr Miklaszewicz said in his oral evidence that he had kept his medical knowledge up-to-date by reading books and watching videos of clinical studies at the recommendation of professional colleagues, he did not provide a log of his reading and online activities. The 2021 Tribunal concluded that Dr Miklaszewicz had failed to demonstrate that he was fit to return to clinical practice. It was satisfied that patients would be put at risk and public confidence would be undermined if a finding of impairment were not made. The 2021 Tribunal therefore determined that Dr Miklaszewicz's fitness to practise remained impaired by reason of deficient professional performance.

22. The 2021 Tribunal determined that, given Dr Miklaszewicz's fitness to practise was no longer impaired by reason of misconduct, he had demonstrated some insight into his deficient professional performance, and indicated that he sought to pursue retraining and supervised practice, conditions would be workable in this case.

23. The 2021 Tribunal noted that Dr Miklaszewicz had been out of clinical practice since April 2016 and had stated that whilst suspended he had been unable to secure any opportunities to return to practice, even in an observational or non-clinical role. The 2021 Tribunal concluded that the potential for remediation had been demonstrated in the four specific areas of concern identified in Dr Miklaszewicz's practice, and that he had indicated that he wanted the opportunity to re-train and return to practice. Dr Miklaszewicz stated that he had taken steps to contact a consultant who would be willing to help him. The 2021 Tribunal considered that these were all factors which would indicate that conditions were the appropriate sanction.

24. The 2021 Tribunal considered that a further period of suspension would be disproportionate. It concluded that imposing conditions on Dr Miklaszewicz's registration would adequately safeguard patients and the public.

25. The 2021 Tribunal was of the opinion that a period of nine months would provide sufficient time for a Performance Assessment to take place and for a report to be produced and made available, for Dr Miklaszewicz to consider its findings and, if necessary, act on areas that required addressing.

26. The 2021 Tribunal determined that a period of conditional registration for nine months was the appropriate and proportionate sanction in Dr Miklaszewicz's case.

27. The 2021 Tribunal directed a review of Dr Miklaszewicz's case. It stated that a reviewing Tribunal may be assisted by the following up-to-date information:

- Performance Assessment Report;
- Formal feedback report from supervisor;
- Any feedback from colleagues/workplace (as applicable);
- Up-to-date written reflective statement;

- Documentary evidence of ongoing Continuing Professional Development ('CPD') activity;
- Personal Development Plan ('PDP');
- Any other evidence that Dr Miklaszewicz considers may be of assistance.

Today's Hearing

The Evidence

28. The Tribunal has taken into account all the evidence received, both oral and documentary.
29. Dr Miklaszewicz gave oral evidence at the hearing.
30. In summary, he confirmed that he had never tried to avoid responsibility and accepts that he should not return to normal practise until he has fulfilled the requirements of a performance assessment. He said that, since the last hearing, he has continued to work towards organising a supervised placement but has been unsuccessful in obtaining one. In the future he hopes to be able to work with someone in a clinical setting who will be able to provide feedback so that he can improve and progress.
31. Dr Miklaszewicz explained that he accepts the conclusions of the Assessment Team; that he is not fit to practise and that three areas of his practice were assessed as *Unacceptable* and two areas were a *Cause for concern*.
32. The Tribunal had regard to the documentary evidence provided, including various correspondence sent from the GMC to Dr Miklaszewicz regarding a Performance Assessment and the current review hearing.
33. The Tribunal also had regard to the Performance Assessment Report, dated 23 January 2022, detailing Dr Miklaszewicz's assessment which took place in September 2021. The Assessment Team's formal unanimous opinion was that the standard of Dr Miklaszewicz's professional performance had been deficient, and he was not fit to practise. The Assessment Team noted that Dr Miklaszewicz was not employed in any clinical capacity in the UK or Poland at the time of the assessment. He was in the process of studying, in Poland, for a PhD and his only contact with patients was as a PhD candidate. Dr Miklaszewicz was assessed at CT2 level in Psychiatry; the level at which he was employed prior to his suspension.
34. The Assessment Team found Dr Miklaszewicz's performance in the areas of *Maintaining Professional Performance* and *Working with Colleagues* to be a *Cause for Concern*. It found his performance in the areas of *Assessment of Patients' Condition, Clinical Management* and *Relationships with patients* to be *Unacceptable*.

35. In *Maintaining*, the Assessment Team noted that Dr Miklaszewicz demonstrated some acceptable performance in respect of knowledge, reflection and use of guidelines. However, his unacceptable performance in each of those same areas gave rise for concern, especially in regard to patient safety. There were multiple examples of lack of knowledge of important guidelines that are commonly required in psychiatry. Dr Miklaszewicz showed a lack of insight into his performance and did not display an awareness of what he might or should have done. This led the Assessment Team to a conclusion of *Cause for Concern*.

36. In *Assessment*, the Assessment Team found that Dr Miklaszewicz did not have a structured and safe approach to assessing and managing risk. His history-taking was rarely adequate enough to address the presentation fully. There was an omission of important likely causes of presentation and in particular red flags. His assessments were often superficial, and he took information at face value rather than probing. This all had the potential to put both patients and colleagues at risk and led the Assessment Team to find his performance *Unacceptable*.

37. In *Management*, the Assessment Team found that Dr Miklaszewicz demonstrated a pattern of unacceptable performance in response of selecting and explaining treatment, prescribing and safety netting. There was a persistent failure to describe structured and complete management plans and inadequate use of multi-disciplinary resources which are common in psychiatry. The potential for causing distress and anxiety, repeated examples of a clear risk to patient safety through using inadequately structured decisions and an incomplete approach to prescribing led to a conclusion of *Unacceptable*.

38. In *Patients*, the Assessment Team found that Dr Miklaszewicz's frequent use of jargon was inconsistent, sometimes an explanation was given but often not. Many of his descriptions and references were difficult to follow and sometimes baffling. He used complex and out-of-date language and uncommon analogies. He frequently failed to check if the patient understood or to allow them to ask questions. He often talked over the patient if they were trying to ask questions. Seeking and obtaining informed consent was a concern in many of the consultations. The potential for causing distress and risk to patient safety, through inadequate collaboration, asking leading questions, inappropriate language and failing to provide adequate information, led to a conclusion of *Unacceptable*.

39. In *Colleagues*, the Assessment Team found that Dr Miklaszewicz demonstrated an understanding of using advice from colleagues with specific expertise, including external agencies such as social workers. He showed respect and concern for his colleagues, which was appropriate. However, it was clear to the Assessment Team that Dr Miklaszewicz's knowledge of support services and multi-disciplinary teams was limited. The Assessment Team was particularly concerned about Dr Miklaszewicz's performance in relation to essential collaborations with colleagues in other services and in relation to effective teaching. There was also a noted lack of structure to colleague interactions. The evidence led to a conclusion of *Cause for Concern*.

40. In the course of the assessment, the Assessment Team found that issues of patient safety arose on many occasions, and this was a major concern. Dr Miklaszewicz's performance was erratic, and it was clear that he lacked both concentration and a structured approach to each of the scenarios. He showed a lack of insight into problems he had faced in dealing with the consultations. His performance in the Knowledge Test demonstrated that he had a level of theoretical knowledge but the Objective Structured Clinical Examinations ('OSCEs') and subsequent Case Based Discussion ('CBD') showed a limited ability to put that knowledge into practice. The Assessment Team made repeated observations when Dr Miklaszewicz's acceptable answers in the CBD had not been demonstrated during the OSCEs.

41. The Assessment Team found that, throughout the assessment, there was a persistent and repeated failure to meet the standards of *Good Medical Practice* and there were multiple examples where patients and colleagues could be put at risk. The Assessment Team saw no evidence of any remedial effect since the previous performance assessment and would be concerned with allowing Dr Miklaszewicz to work at any level, even with supervision.

42. The Assessment Team's overall opinion was that Dr Miklaszewicz is not fit to practise.

Submissions

Ms Gilsenan

43. On behalf of the GMC, Ms Emma Gilsenan submitted that Dr Miklaszewicz's fitness to practise is currently impaired by reason of deficient professional performance.

44. Ms Gilsenan submitted that it was understandable that Dr Miklaszewicz has been unable to provide a supervisor or workplace report given that he has not held any clinical roles or work placements since his last hearing. She submitted however that limited weight could be given to the same explanation in terms of the lack of any evidence of CPD activity, a reflective statement, or a PDP, none of which required clinical placements or roles.

45. Ms Gilsenan submitted that the Tribunal may find it difficult to reach a determination that Dr Miklaszewicz's deficient professional performance is highly unlikely to be repeated in light of the recent performance assessment findings of a pattern of serious concerns, and in the absence of any evidence to demonstrate that these concerns have been remediated.

46. Ms Gilsenan submitted that Dr Miklaszewicz is aware of the significance of engaging in regulatory proceedings and has accepted that he is aware of the persuasive burden on him to demonstrate that he is not currently impaired. This is his third review hearing, and he attended the previous review hearing. She noted that, despite this, Dr Miklaszewicz has not provided any objective or documentary evidence.

47. Ms Gilsenan submitted that, in light of the recent performance assessment, there is a very strong argument that Dr Miklaszewicz's performance has declined since the 2017

performance assessment; he has now been assessed by the Performance Team as not fit to practise at all.

48. Ms Gilsean submitted that Dr Miklaszewicz has not discharged the burden placed on him to demonstrate that he is no longer impaired. To the contrary, the Tribunal has recent, cogent and thorough evidence from the recent performance assessment that he is not fit to practise and that he has demonstrated a concerning pattern of patient safety issues, erratic performance, lack of insight into his problems, a limited ability to put knowledge into practice and a persistent and repeated failure to meet the standards of *Good Medical Practice*.

49. Ms Gilsean invited the Tribunal to find that Dr Miklaszewicz's fitness to practise is currently impaired by reason of deficient professional performance. She submitted that this was clearly not an exceptional case which may justify a finding of no impairment, and that a finding of impairment is necessary in order to maintain proper professional standards.

Dr Miklaszewicz

50. Dr Miklaszewicz submitted that he accepts that his fitness to practise remains impaired.

51. Dr Miklaszewicz stated that he has no intention of entering unrestricted practice. He hopes to continue to make efforts to be assessed in a clinical context but does not challenge the fact that his performance is impaired. He confirmed that, should anyone consider placing him in a hospital environment, they would be fully informed about the results of his recent performance assessment.

52. Dr Miklaszewicz submitted that he thinks that he should be trying to establish more about why he did not pass the performance assessment, and if any such reasons are irreversible. He thought that submitting a reflective statement and other evidence would be tantamount to trying to change the verdict of the recent performance assessment and submitted that he would submit documentary evidence only when he believes that his fitness to practise is no longer impaired.

53. Dr Miklaszewicz submitted that he thinks that suspending his registration would serve appropriately in respect of patient safety, but he remains hopeful that there is still a way of improving. He does not think that he should be excluded from the profession at this stage and would like to be given the opportunity to engage with people who are willing to help him. Dr Miklaszewicz was reminded by the Tribunal that the issue of sanction, if appropriate, would be considered at a later stage.

The Relevant Legal Principles

54. The Tribunal reminded itself that the decision of impairment is a matter for the Tribunal's judgement alone. As noted above, the previous Tribunal set out the matters that a

future Tribunal may be assisted by. This Tribunal is aware that it is for the doctor to satisfy it that he would be safe to return to unrestricted practise.

55. This Tribunal must determine whether Dr Miklaszewicz's fitness to practise is impaired today, taking into account his conduct and performance 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.

56. Throughout its deliberations, the Tribunal has been mindful of its responsibility to uphold the overarching objective as set out in the Medical Act 1983 (as amended). That objective is as follows:

- a. To protect, promote and maintain the health, safety and wellbeing of the public;
- b. To maintain public confidence in the profession; and
- c. To promote and maintain proper professional standards and conduct for members of the profession.

The Tribunal's Determination on Impairment

57. The Tribunal had regard to the recent performance assessment and the Performance Team's unanimous conclusion that Dr Miklaszewicz is not currently fit to practise. This Tribunal has not been provided with any evidence to demonstrate an increased level of insight into Dr Miklaszewicz's deficient professional performance or that any further steps towards remediation have been undertaken. In the absence of any such evidence, the Tribunal was of the view that there is a significant risk of repetition of similar incidents of poor clinical practice in the future.

58. The Tribunal has also not been provided with any evidence that Dr Miklaszewicz has kept his knowledge and skills up-to-date. Dr Miklaszewicz told the Tribunal that he has not provided any such evidence because he does not believe that he is currently fit to practise.

59. In all the circumstances, the Tribunal concluded that Dr Miklaszewicz has failed to demonstrate that he is fit to return to clinical practice. It was satisfied that patients would be put at risk, and that public confidence in the profession would be undermined, if a finding of impairment were not made.

60. This Tribunal has therefore determined that Dr Miklaszewicz's fitness to practise remains impaired by reason of deficient professional performance.

Determination on Sanction - 06/05/2022

1. Having determined that Dr Miklaszewicz's fitness to practise is impaired by reason of deficient professional performance, the Tribunal now has to decide in accordance with Rule 22(1)(h) of the Rules what action, if any, it should take with regard to Dr Miklaszewicz's registration.

The Evidence

2. The Tribunal has taken into account the background of the case and the evidence received during the earlier stage of the hearing where relevant to reaching a decision on what action, if any, it should take with regard to Dr Miklaszewicz's registration.
3. No further evidence was provided at this stage.

Submissions

Ms Gilsenan

4. On behalf of the GMC, Ms Gilsenan submitted that, when weighing all the evidence as a whole, Dr Miklaszewicz has not demonstrated that he is aware of the risks he poses to patients, nor has he provided an action plan as to how he proposes to address those risks. She submitted that there remains a high risk of repetition of poor clinical practice, as recognised by the Assessment Team, and that Dr Miklaszewicz is not currently fit to practise even with supervision.
5. Ms Gilsenan submitted that the lack of evidence of remediation, or that Dr Miklaszewicz has kept his knowledge and skills up-to-date, falls short of demonstrating that the risk of repetition has been reduced since the 2021 performance assessment took place.
6. Ms Gilsenan submitted that the outcome of the 2021 performance assessment makes plain that the serious and wide-ranging practice concerns can only be managed by way of suspension or erasure.
7. Ms Gilsenan reminded the Tribunal that the Assessment Team noted that issues of patient safety arose on many occasions, which it considered to be a major concern. It also found Dr Miklaszewicz's performance to be erratic, he showed a lack of insight into his problems, showed a limited ability to put his knowledge into practice, and there was a persistent and repeated failure to meet the standards of *Good Medical Practice* ('GMP'). Ms Gilsenan submitted that the Assessment Team was too concerned to allow Dr Miklaszewicz to work at any level, even with supervision.
8. Ms Gilsenan submitted that Dr Miklaszewicz has persistently and continually shown a failure to address his performance concerns and has not provided any information to say that he has kept his clinical knowledge and skills up-to-date; this is despite him having numerous opportunities to demonstrate that the level of risk he has posed to patients could be reduced or managed.
9. Ms Gilsenan drew the Tribunal's attention to the relevant paragraphs of the SG, in particular paragraphs 107 and 109 a, b and j:

'107 The tribunal may erase a doctor from the medical register in any case – except one that relates solely to the doctor's health and/or knowledge of English – where this is the only means of protecting the public.'

'109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).

a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.

b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.

...

j Persistent lack of insight into the seriousness of their actions or the consequences.'

10. Ms Gilsean also drew the Tribunal's attention to paragraph 130 of the SG:

'130 A particularly important consideration in these cases is whether a doctor has developed, or has the potential to develop, insight into these failures. Where insight is not evident, it is likely that conditions on registration or suspension may not be appropriate or sufficient.'

11. Ms Gilsean submitted that it appears unlikely that a further period of suspension would see Dr Miklaszewicz engaging, reflecting or developing insight to address the concerns raised. She submitted that he has had a number of opportunities to do so since 2019 but he has not acted upon them.

12. Ms Gilsean submitted that, when considering the issues as a whole, it is proportionate to erase Dr Miklaszewicz's name from the Medical Register. She invited the Tribunal to do so.

Dr Miklaszewicz

13. Dr Miklaszewicz submitted that he does not argue with the conclusions of the Assessment Team and that he agrees that he is not currently fit to practise. He submitted that the fact that he has removed himself from clinical practice demonstrates that he recognises the seriousness of the problem.

14. Dr Miklaszewicz submitted that he does not suggest any measures other than suspension. He submitted that erasure would not be the best option of dealing with his situation.

15. Dr Miklaszewicz submitted that he would still like to take steps to be reassessed and retrained in order for him to update his skills. He considered that he would still be able to remediate.

16. Dr Miklaszewicz acknowledged that the recent performance assessment makes it look as though there has been a decline in his professional performance. He stated however that he was pleased with how he scored in the Knowledge Test as part of the performance assessment, and that he tends to perform best in written examinations.

17. Dr Miklaszewicz submitted that suspending his registration would be the least restrictive measure which would be enough to protect the public.

The Tribunal’s Determination

18. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement.

19. In reaching its decision, the Tribunal has taken account of the *Sanctions Guidance* (November 2020 Edition) (‘the SG’). It has borne in mind that the purpose of a sanction is not to be punitive, but to protect patients, maintain public confidence in the profession, and meet the wider public interest, although it may have a punitive effect.

20. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Miklaszewicz’s interests with the public interest. It has taken account of the overarching objective, which includes the protection of the public, the maintenance of public confidence in the profession, and the promotion and maintenance of proper professional standards and conduct for members of the profession.

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

22. In relation to this review, the Tribunal has considered its powers as set out in Section 35D(12) of The Medical Act 1983.

Mitigating and Aggravating Factors

23. In mitigation, the Tribunal bore in mind that Dr Miklaszewicz has conveyed to this Tribunal that he has an understanding of the severity of the findings of the Assessment Team. He described the impact of the conclusions of the recent performance assessment as ‘devastating’ and recognised that he is not currently fit to practice.

24. In terms of aggravating factors, the Tribunal noted that Dr Miklaszewicz has been provided with several opportunities throughout the history of these proceedings to address the concerns surrounding his deficient professional performance, to develop his insight into

those concerns and take steps to remediate. At the last review hearing he was given clear direction about the importance of provided evidence to the Tribunal to demonstrate the progress he has made. He has, however, failed to provide any such evidence.

No action

25. The Tribunal first considered whether to conclude the case by allowing the current order of conditions to lapse, or revoking that order, and taking no further action.

26. The Tribunal was of the view that, given its finding that Dr Miklaszewicz's fitness to practise remains impaired by reason of deficient professional performance, it would be neither appropriate, nor in the interests of the public, to conclude the case by taking no action. There are no exceptional circumstances in this case which would justify taking no action.

Conditions

27. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Miklaszewicz's registration, remembering that any conditions imposed should be appropriate, proportionate, workable and measurable.

28. This Tribunal bore in mind the conclusions of the recent Assessment Team that Dr Miklaszewicz is not currently fit to practise, even with supervision. It noted that Dr Miklaszewicz has not provided any objective or documentary evidence for today's hearing and was therefore of the view that there would remain a risk to patients should he be allowed to return to practice with conditions on his registration. As such, it determined that imposing conditions would be inappropriate as such a sanction would be insufficient to protect the public.

Suspension

29. The Tribunal next considered whether suspending Dr Miklaszewicz's registration would be appropriate.

30. Though a period of suspension would protect the public, the Tribunal was of the view that imposing such an order when Dr Miklaszewicz has not demonstrated any progress or even any engagement with the regulatory process would undermine public confidence and would not send an appropriate message about the seriousness of a persistent and ongoing lack of insight and remediation by a doctor whose fitness to practise has been found to be impaired. Furthermore, given his persistent failures so far, the Tribunal concluded that Dr Miklaszewicz would be unlikely to engage and address the concerns about his fitness to practise during a further period of suspension.

31. For these reasons, the Tribunal determined that suspension would not be an appropriate sanction.

Erasure

32. Having determined that suspension was not appropriate, the Tribunal next considered erasure. It had regard to the relevant paragraphs of the SG, including paragraph 109. It considered that sub-paragraphs a and j were engaged in this case:

'a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.

...

j Persistent lack of insight into the seriousness of their actions or the consequences.'

33. The Tribunal also considered paragraph 130 of the SG to be engaged in this case:

'130 A particularly important consideration in these cases is whether a doctor has developed, or has the potential to develop, insight into these failures. Where insight is not evident, it is likely that conditions on registration or suspension may not be appropriate or sufficient.'

34. The Tribunal considered Dr Miklaszewicz's ongoing deficient professional performance and the conclusions made by the recent Assessment Team. The concerns included issues of patient safety which arose on many occasions, erratic performance, a lack of insight into his problems, showing a limited ability to put his knowledge into practice, and a persistent and repeated failure to meet the standards of GMP. The Assessment Team was too concerned to allow Dr Miklaszewicz to work at any level, even with supervision.

35. The Tribunal has been provided with no evidence that Dr Miklaszewicz has developed insight into his deficient professional performance, nor provided any evidence of remediation, despite having numerous opportunities to do so. The Tribunal noted that, in terms of insight, there is a need for a practitioner to take ownership on their path to remediation and to engage in self-reflection and self-management. It considered that Dr Miklaszewicz has not demonstrated that he has done so. The Tribunal concluded that, in failing to provide any relevant objective or documentary evidence despite being guided by previous Tribunals in terms of evidence to submit which may assist a reviewing Tribunal, Dr Miklaszewicz has demonstrated a persistent lack of insight into the seriousness of his actions.

36. Furthermore, the Tribunal noted that there is no evidence that Dr Miklaszewicz has kept his professional knowledge and skills up-to-date.

37. In all the circumstances, the Tribunal has concluded that it is both proportionate and necessary to direct that Dr Miklaszewicz's name be erased from the Medical Register. It

considered that this is the only means to protect members 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 the medical profession.

38. The Tribunal has determined to erase Dr Miklaszewicz's from the Medical Register. The MPTS will send Dr Miklaszewicz a letter informing him of his right of appeal and when the direction and the new sanction will come into effect.

Determination on Immediate Order - 06/05/2022

1. Having determined that Dr Miklaszewicz's name be erased from the Medical Register, the Tribunal has considered, in accordance with Rule 22 of the Rules, whether Dr Miklaszewicz's registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Ms Gilsean made an application for the imposition of an immediate order of suspension to be imposed pending the sanction of erasure taking effect. She submitted that this would be appropriate and proportionate given the concerns raised by the recent performance assessment and the Tribunal's findings thus far. She invited the Tribunal to impose an immediate order of suspension to protect patients and so that public confidence in the profession is not undermined.

3. Dr Miklaszewicz submitted that he did not intend to practise so he did not oppose Ms Gilsean's application.

The Tribunal's Determination

4. Given the concerns raised by the recent performance assessment and the Tribunal's decision that it is necessary to erase Dr Miklaszewicz's name from the Medical Register, the Tribunal determined that an immediate order was appropriate in order to ensure patient safety and to maintain public confidence in the profession.

5. The MPTS will send Dr Miklaszewicz a letter informing him of his right of appeal and when the direction and the new sanction will come into effect. Dr Miklaszewicz's registration will be suspended from today and will remain in place during the appeal period. If an appeal is made, the immediate order of suspension will remain in force until the appeal has concluded.

Annex A – Application to admit evidence - 06/05/2022

1. At the outset of the hearing, Ms Emma Gilsenan, Counsel on behalf of the GMC, made an application pursuant to Rule 34(1) of the Rules to admit further documentary evidence.
2. The documents included a bundle detailing the attempts made by the GMC and the MPTS to serve notice of this hearing upon Dr Miklaszewicz, an email from Dr Miklaszewicz to the GMC dated 7 January 2022 confirming usage of his email address, email correspondence between the GMC and Dr Miklaszewicz dated 4 May 2022, and records of two telephone notes detailing conversations which occurred between the GMC and Dr Miklaszewicz on 4 May 2022.
3. Ms Gilsenan submitted that these documents were relevant in terms of service, particularly given that Dr Miklaszewicz has provided no response to any correspondence from the GMC or MPTS until 4 May 2022. She also submitted that it would be fair to admit these documents.
4. Dr Miklaszewicz did not object to Ms Gilsenan’s application and stated that he may also wish to rely upon the documents when presenting his case. He stated that he had not received the emails notifying him of this review hearing and that he has had similar problems with his email account in the past but was reluctant to change his email address as he did not want to lose correspondence from the past.

The Tribunal’s decision

5. The Tribunal had regard to Rule 34(1) which states:

‘The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.’
6. The Tribunal was of the view that the documents outlined by Ms Gilsenan were of potential relevance to the case being considered at this review hearing. It also bore in mind that the application was not opposed by Dr Miklaszewicz. It considered that it would be fair to admit the documents.
7. Accordingly, the Tribunal determined to grant Ms Gilsenan’s application.

Annex B – Application to admit further evidence - 06/05/2022

1. At the outset of the hearing, Dr Miklaszewicz made an application pursuant to Rule 34(1) of the Rules to admit further documentary evidence.
2. The documents Dr Miklaszewicz wished to admit were transcripts of previous MPT hearings, including the substantive hearing which concluded in January 2019, and the two review hearings held in 2020 and 2021.
3. Dr Miklaszewicz submitted that he did not want this hearing to be based on an incorrect image about him and he would feel much safer if he could refer to parts of the transcript should he need to during this review hearing.
4. Ms Gilsean submitted that the determinations of each MPT are set out in full in the hearing bundle. She submitted that it is not clear what specific issue or issues the transcripts of previous hearings would be relevant to, and that it would not be relevant or fair in the circumstances to admit them.

The Tribunal’s decision

5. The Tribunal had regard to Rule 34(1) which states:

‘The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.’

6. The Tribunal was of the view that it would be unlikely that the transcripts of previous hearings would contain material relevant to the task of the Tribunal at this review hearing; namely to assess the progress made by Dr Miklaszewicz since his previous review hearing and whether his fitness to practise is currently impaired. When asked by the Tribunal, Dr Miklaszewicz was unable to specify which parts of the transcripts he would seek to rely upon. He stated that he could not identify a specific issue but he had a general sense that they were important.
7. Further, the Tribunal was conscious that, if the transcripts were admitted, it would be incumbent upon the Tribunal to consider them properly, which would take a substantial amount of time. The Tribunal was mindful that it has a duty to deal with the matters at this review hearing as expeditiously as possible. As such, the Tribunal determined that it would be disproportionate to admit the transcripts given their unlikely relevance at this review hearing.
8. The Tribunal determined that it would not be relevant, fair or appropriate for this Tribunal to re-examine evidence from previous hearings or appear to undermine the decisions of previous Tribunals.
9. Accordingly, the Tribunal determined to refuse Dr Miklaszewicz’s application.

10. The Tribunal made it clear to Dr Miklaszewicz that it would be content to consider any further application to admit additional evidence at a later stage, should it become available. Dr Miklaszewicz indicated that he may be receiving a supportive letter from his PhD supervisor during the course of the hearing.