

PUBLIC RECORD

Dates: 17/11/2022

Medical Practitioner's name: Dr Rebecca May KLEIN
GMC reference number: 6166937
Primary medical qualification: MB BS 2008 University of Newcastle upon Tyne

Type of case	Outcome on impairment
Review - Misconduct	Impaired

Summary of outcome

Erasure

Tribunal:

Legally Qualified Chair	Mr Paul Moulder
Lay Tribunal Member:	Mrs Alison Storey
Medical Tribunal Member:	Dr Nagarajah Theva
Tribunal Clerk:	Ms Lauren Clark

Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	n/a
GMC Representative:	Ms Janet Ironfield, Counsel

Attendance of Press / Public

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

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 - 17/11/2022

1. This determination will be read in private. However, as this case concerns Dr Klein's misconduct a redacted version will be published at the close of the hearing with any matters relating to XXX removed.
2. 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 Klein's fitness to practise is impaired by reason of misconduct.

The Outcome of Applications Made during the Impairment Stage

3. The Tribunal accepted Ms Ironfield's submissions, on behalf of the GMC, made pursuant to Rules 20 and 40 of the Rules, that notice of this hearing had properly been served on Dr Klein, and granted an application, made pursuant to Rule 31 of the Rules, that this hearing should proceed in her absence. The Tribunal's full decision on these applications is included at Annex A.

Background

4. Dr Klein was referred to the GMC by the Medical Director of Serco Limited following events which occurred in 2014 whilst she was employed by Serco Limited as a Forensic Medical Examiner (FME). Dr Klein's case related to her failure to examine two suspected victims of rape between November and December 2014 and her failure to return several police statements relating to examinations she undertook in October and November 2014.

2018

5. Dr Klein's case was first considered by a Medical Practitioners Tribunal in March 2018 (the 2018 Tribunal). The 2018 Tribunal concluded that Dr Klein had deliberately chosen

not to examine Patient A and Patient C, which demonstrated a repeated pattern of failures affecting vulnerable patients. The Tribunal found Dr Klein's explanations to be inconsistent and it considered that her attempts to justify her actions demonstrated a persistent lack of insight.

6. The 2018 Tribunal was not provided with any evidence from Dr Klein to demonstrate that she had taken steps to remedy the deficiencies in her practice. It concluded that Dr Klein's misconduct had not been remedied and that her fitness to practise was impaired by reason of misconduct.

7. The 2018 Tribunal determined to suspend Dr Klein's registration for a period of ten months to allow time to uphold the statutory overarching objective and mark the seriousness of Dr Klein's misconduct. It also considered that this would allow Dr Klein time to gather sufficient evidence to demonstrate that she had developed adequate insight and had remediated her actions.

2019

8. Dr Klein's case was reviewed in February 2019 (the 2019 Tribunal). The 2019 Tribunal noted that Dr Klein had failed to engage with the GMC since the 2018 hearing and she had not provided any of the information requested by the 2018 Tribunal.

9. The 2019 Tribunal determined that, without any evidence before it to suggest otherwise, there remained a risk of repetition and a risk of harm to patients. It also concluded that public confidence in the profession and professional standards would be undermined if a finding of continued impairment was not made. It therefore determined that Dr Klein's fitness to practise remained impaired by reason of her misconduct.

10. The 2019 Tribunal determined to impose a further period of suspension for 12 months. The 2019 Tribunal considered that this would allow Dr Klein sufficient time to gather evidence that she had fully developed insight and had remediated.

2020

11. Dr Klein's case was reviewed in February 2020 (the 2020 Tribunal). The 2020 Tribunal noted Dr Klein's continued lack of meaningful engagement with the GMC since the 2019 hearing. It also noted that Dr Klein had not provided any of the evidence that the 2019 Tribunal had requested of her.

12. The 2020 Tribunal concluded that Dr Klein demonstrated a persistent lack of insight into the seriousness of her misconduct, that there remained a risk of repetition and a risk of harm to patients. It found that public confidence in the medical profession would be undermined if a finding of impairment was not made. It therefore determined that Dr Klein's fitness to practise remained impaired by reason of misconduct.

13. The 2020 Tribunal determined to impose a further period of suspension for 12 months. The 2020 Tribunal considered that this was sufficient to protect the public and was the appropriate and proportionate sanction. It considered that Dr Klein's actions did not yet amount to fundamental incompatibility with continued registration.

2021

14. Dr Klein's case reviewed in February 2021 (the 2021 Tribunal). The 2021 Tribunal was heartened by the attendance of Dr Klein at the hearing, which it considered was evidence that she had begun the process of remediation and reflection. It considered that, although limited, Dr Klein's insight was emerging, and it was encouraged by her progress.

15. The 2021 Tribunal was of the view that there was further work to be undertaken by Dr Klein in terms of remediation and insight. It also noted that, other than Dr Klein stating that she regularly read the British Medical Journal and The Lancet, there was an absence of any evidence of continued professional development (CPD). The Tribunal determined that Dr Klein's progress in terms of her CPD was behind that of her progress in terms of remediation and insight and she had a considerable way to go before she would be in a position to resume her practice. The 2021 Tribunal was encouraged that Dr Klein appeared to acknowledge the work she had to do in this regard and was further encouraged by her enthusiasm to return to medical practice. The 2021 Tribunal determined that Dr Klein's fitness to practise remained impaired by reason of her misconduct.

16. The 2021 Tribunal determined to impose a further period of suspension for 12 months. It considered that suspending Dr Klein's registration would provide her with the opportunity to provide the objective evidence requested of her so that she could return to practice. It also considered that it would satisfactorily uphold the overarching objective. The 2021 Tribunal considered that a period of 12 months suspension was both appropriate and proportionate and would provide Dr Klein with the opportunity to address the outstanding concerns in relation to her insight and remediation and demonstrate that she has kept her knowledge and skills up to date.

February 2022

17. Dr Klein's case was most recently reviewed in February 2022 (the February 2022 Tribunal). The February 2022 Tribunal noted that, since April 2021, Dr Klein had failed to engage with the GMC. The February 2022 Tribunal noted that it had not been provided with any evidence to demonstrate an increased level of insight into her misconduct or that any further steps towards remediation had been undertaken. It had also not been provided with any evidence that Dr Klein had kept her knowledge and skills up to date or of the current state of her wellbeing.

18. The February 2022 Tribunal considered that it had not received the evidence needed to demonstrate that Dr Klein was fit to return to unrestricted practice or to return to practice with conditions on her registration. It reached this decision on the basis that it simply did not have any evidence to assure it that any conditions imposed would be workable. In the circumstances, it determined that a further period of suspension continued to be the least restrictive sanction needed to uphold the overarching objective.

19. The February 2022 Tribunal had regard to Dr Klein's wish to return to practice that she had expressed at the 2021 hearing and repeated in a telephone conversation with the GMC in April 2021. It considered that Dr Klein may benefit from a shorter period of suspension where she could focus her attentions on developing insight, and demonstrate the steps taken to ensure that her knowledge and skills are up to date.

20. The 2022 Tribunal considered that suspending Dr Klein's registration for a period of nine months would be both appropriate and proportionate in all the circumstances. It was of the view that a period of suspension for this duration should encourage Dr Klein to engage once again with these proceedings. The February 2022 Tribunal was also of the view that nine months would be sufficient time to provide Dr Klein with the opportunity to take such positive steps as outlined above. It was satisfied that a period of suspension for this duration would be sufficient to meet the three limbs of the overarching objective.

21. The February 2022 Tribunal directed a review and noted that Dr Klein may wish to provide the following to a reviewing tribunal:

- A reflective journal with regular entries (at least monthly) demonstrating Dr

Klein's insight into the circumstances, both professional and personal, which led to the index events and her subsequent understanding of the impact of those events in all areas of her life and on the reputation of the profession and the wider public interest. It would be helpful if the entries had a particular focus on how Dr Klein intends to manage the competing agendas of her personal and professional life in the future and what strategies she will use to support herself in this endeavour.

- Evidence of continuing professional development including a route map outlining her return to practice. The following are examples of the type of evidence Dr Klein may want to provide to the next Tribunal:
 - Evidence she had made contact with the Foundation Programme Director and Post Graduate Dean at the local Deanery;
 - Evidence she has made contact with the Return to Practice Programme;
 - Evidence of, or plans to undertake, any clinical attachments;
 - Evidence she had attended CPD courses to keep her knowledge and skills up to date.

- XXX.

The Evidence at Today's Hearing

22. The Tribunal has taken into account all the evidence received including the determinations of the previous Tribunal's and correspondence from the GMC to Dr Klein.

Submissions

23. On behalf of the GMC, Ms Ironfield ran through background of Dr Klein's case (as outlined above).

24. Ms Ironfield referred the Tribunal to the determination of the 2021 Tribunal. She submitted that this hearing was significant as Dr Klein participated and demonstrated engagement with the regulatory process. However, she submitted, the engagement proved to be transient as, soon after the hearing, there was no further engagement. She submitted that no evidence of further insight, reflection or remediation was provided to the February 2022 Tribunal.

25. Ms Ironfield stated that the February 2022 Tribunal imposed a nine-month suspension in the hope this would encourage Dr Klein to engage. She submitted that there has been no engagement and no further evidence provided.

26. Ms Ironfield submitted that Dr Klein has failed to demonstrate that her fitness to practise is no longer impaired and that she is safe to return to unrestricted practice. As such, she submitted that Dr Klein’s fitness to practise remains impaired by reason of her misconduct.

The Relevant Legal Principles

27. 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 she would be safe to return to unrestricted practice.

28. This Tribunal must determine whether Dr Klein’s fitness to practise is impaired today, taking into account Dr Klein’s conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

The Tribunal’s Determination on Impairment

29. The Tribunal considered the previous determinations and the submissions from Ms Ironfield.

30. The Tribunal noted the 2018 Tribunal’s determination that Dr Klein’s actions amounted to serious misconduct. Having regard to her lack of engagement, the 2018 Tribunal determined that it was not satisfied that Dr Klein’s misconduct was highly unlikely to be repeated and it determined that her fitness to practise was impaired.

31. The Tribunal went on to consider the subsequent reviews and in particular, the 2021 Tribunal’s determination. Dr Klein attended this hearing, and the 2021 Tribunal was ‘heartened’ by her attendance. It was of the view that she had begun the process of reflection and remediation. Dr Klein also told the 2021 Tribunal of XXX and the difficult personal circumstances she was facing. The 2021 Tribunal considered that, although limited,

Dr Klein's insight was emerging, and it was encouraged by her progress. However, since April 2021, Dr Klein failed to engage with the GMC.

32. The Tribunal today was of the view that there has been no further progress since the February 2022 review hearing or indeed the February 2021 hearing. The Tribunal has not been provided with any evidence to demonstrate an increased level of insight into her misconduct or that any further steps towards remediation have been undertaken. The Tribunal has also not been provided with any evidence that Dr Klein has kept her knowledge and skills up to date.

33. The Tribunal considered that there remained the potential that Dr Klein could put patients at unwarranted risk of harm in the future. The Tribunal therefore determined that Dr Klein's fitness to practise was impaired, based on a risk of repetition of misconduct.

34. Whilst the Tribunal acknowledged that Dr Klein may still be experiencing XXX and difficult personal circumstances, it was of the view that Dr Klein's failure to engage meant that it does not have any up to date information regarding this.

35. The Tribunal considered that Dr Klein's overall engagement in these proceedings has been extremely limited. It took the view that her non-engagement had worsened as it was now clear that Dr Klein has not provided the GMC with up to date contact details and it has been unable to have any recent contact with her. The Tribunal was of the view that Dr Klein's continued failure to engage with her regulator and to provide updated information also damages public confidence in the profession and undermines professional standards. Therefore, the Tribunal considered that a finding of impairment was also necessary, in order to maintain public confidence in the profession and to maintain professional standards.

36. The Tribunal determined that Dr Klein's fitness to practice remains impaired by reason of her misconduct.

Determination on Sanction - 17/11/2022

1. Having determined that Dr Klein's fitness to practise is impaired by reason of misconduct, 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 Klein's registration.

The Evidence

2. The Tribunal has taken into account the background to 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 Klein's registration.

Submissions

3. On behalf of the GMC, Ms Ironfield submitted that taking no action is not appropriate in this case. She submitted that there are no exceptional circumstances, and it would not be in the public interest to conclude the case by taking no action. Ms Ironfield stated that, given the risk Dr Klein presents to patients and the fact that a risk of repetition could not be ruled out, no previous Tribunal considered that conditions were appropriate. Further, given Dr Klein's failure to keep the GMC updated with current contact details, she submitted that conditions would not be workable.

4. Ms Ironfield told the Tribunal that Dr Klein now approaches the end of the current nine-month suspension. She submitted that this suspension was intended to enable her to have sufficient time to develop further insight and undertake remediation whilst also demonstrating that she has kept her medical knowledge and skills up to date. Ms Ironfield submitted that there is no evidence that she has engaged with those objectives. She submitted that, instead, there has been a further example of non-engagement in that, since April 2021, Dr Klein has failed to keep the GMC updated with her current contact details.

5. Ms Ironfield invited the Tribunal to consider whether the sanction of erasure is now the appropriate sanction. Ms Ironfield submitted that the passage of time is not sufficient to support any inference to support Dr Klein has sufficiently remediated and gained considerable insight. Ms Ironfield referred to the relevant paragraphs of the Sanctions Guidance (November 2020) ('SG'). She reminded the Tribunal of the 2018 Tribunal's findings that Dr Klein departed from the principles of Good Medical Practice. Ms Ironfield also submitted that there had been a late and limited acceptance of wrongdoing by Dr Klein. Ms Ironfield referred the Tribunal to its earlier finding that Dr Klein's non-engagement had worsened since Dr Klein's attendance at the 2021 hearing.

6. Ms Ironfield referred the Tribunal to paragraph 109(j) of the SG (set out below). Ms Ironfield submitted that there is no evidence of Dr Klein having built on or maintained a degree of progress that she had been found to have started to make in 2021. She submitted that the continued pattern of non-engagement may provide grounds to find that Dr Klein's lack of insight is persistent, and she may now be unwilling to unable to remediate. Ms

Ironfield invited the Tribunal to have regard to the clear warnings provided by two of the previous Tribunals that Dr Klein's failure to produce evidence of insight and remediation may give rise to a determination that she is reluctant to take remedial action.

7. Given the worsening failure on the part of Dr Klein to engage with her regulator, Ms Ironfield submitted that the Tribunal should consider the sanction of erasure.

The Tribunal's Determination

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

9. In reaching its decision, the Tribunal has taken account of the SG. It has borne in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although it may have a punitive effect.

10. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Klein'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 promoting and maintaining of proper professional standards and conduct for members of the profession.

11. The Tribunal considered each sanction in ascending order of seriousness, starting with the least restrictive. It bore in mind the importance of not allowing a doctor to resume unrestricted practice following a period of suspension unless it is considered that it is safe to do so.

No action

12. In reaching its decision as to the appropriate sanction, if any, to impose in this case, the Tribunal first considered whether to conclude by taking no action. The Tribunal determined that there were no exceptional circumstances to justify taking no action in this case.

Conditions

13. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Klein’s registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

14. The Tribunal determined that given Dr Klein’s lack of engagement in these proceedings and the seriousness of his misconduct, conditions would not be appropriate, proportionate, workable or measurable.

Suspension

15. The Tribunal next considered whether it would be appropriate to impose a further period of suspension on Dr Klein’s registration. The Tribunal had regard to paragraphs 92 and 97 of the SG, which sets out situations in which suspension may be the appropriate course:

‘92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession)

...

97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.

...

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor’s unwillingness to engage.

...

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.

16. At this stage in proceedings, the Tribunal was not satisfied that the above factors, set out in sub-paragraphs (e) and (g) in particular, were present in Dr Klein’s case. Whilst Dr Klein attended the hearing in 2021 and appeared to have begun to make some progress towards remediating her misconduct and demonstrating some insight, the Tribunal noted that, even then, she did not provide any objective evidence. The Tribunal had regard to the fact that Dr Klein had not engaged with the GMC since April 2021, and it considered that this demonstrated a serial unwillingness to engage with her regulator. The Tribunal noted that the events that gave rise to Dr Klein’s misconduct date back to 2014. Since Dr Klein’s initial hearing in 2018, the Tribunal considered that Dr Klein has had ample time to demonstrate her potential for remediation and has not done so.

17. The Tribunal was also concerned that it had no information on whether Dr Klein had kept her medical knowledge and skills up to date during her time suspended from the Medical Register.

18. In light of her worsening non-engagement, the Tribunal further considered that, in this case, there is evidence that demonstrates that remediation would be unlikely to be successful, because of Dr Klein’s apparent unwillingness or inability to take any proactive steps to demonstrate that she is trying to remedy her misconduct.

Erasure

19. The Tribunal, having concluded that a suspension order would be insufficient to protect the wider public interest, determined that the appropriate and proportionate sanction is erasure. In reaching this conclusion the Tribunal took into account the following factors as set out in the below paragraphs of the SG:

‘108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor

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

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.'

20. The Tribunal had regard to the 2018 Tribunal's findings that there had been a serious departure from the principles in Good Medical Practice. The Tribunal noted that at Dr Klein's previous review hearing, notwithstanding her failure to engage, the February 2022 Tribunal gave her another nine months with the hope that this would allow her additional time to focus on remediating her misconduct and develop her insight, but she has failed to do so.

21. The Tribunal also had regard to the warnings provided to Dr Klein by the 2019 and 2021 Tribunals that further non-engagement on Dr Klein's part might lead a future Tribunal to conclude that she was unable or unwilling to engage and that erasure might then be viewed as the appropriate sanction. The Tribunal noted that Dr Klein was present at the 2021 hearing and therefore will have received a copy of the 2021 Tribunal's determination. The Tribunal also had regard to its earlier finding that Dr Klein's non-engagement had worsened since April 2021 in that she has failed to keep the GMC up to date with her contact details and the GMC is now unable to make contact with her.

22. Whilst the Tribunal at this review noted the 2018 Tribunal's finding that Dr Klein's misconduct was not fundamentally incompatible with continued registration, it concluded that, due to the persistence of her failure to engage and address the concerns regarding her fitness to practise over the period of these proceedings from 2018, these factors are now fundamentally incompatible with her registration as a doctor. It was satisfied that Dr Klein is unwilling or unable to remediate her misconduct. Accordingly, the Tribunal has concluded that erasure is the appropriate and proportionate sanction. In the view of the Tribunal, no lesser sanction would serve to protect patient safety, maintain public confidence in the profession and maintain professional standards.

23. The Tribunal therefore directed that Dr Klein’s name be erased from the Medical Register. The MPTS will send Dr Klein a letter informing her of her right of appeal and when the direction and the new sanction will come into effect.

24. Unless Dr Klein exercises her right of appeal, her name will be erased from the medical register 28 days from the date on which written notice of this decision is deemed to have been served upon her. The suspension currently imposed on Dr Klein’s registration shall continue to have effect until the appeal period has concluded. If Dr Klein decides to exercise her right of appeal, the period of suspension currently imposed on her registration shall continue to have effect until the appeal has been decided. A note explaining Dr Klein’s right of appeal will be sent to her.

25. This concludes the case.

ANNEX A – 17/11/2022

Application on proof of Service and Proceeding in Absence

Service

1. Dr Klein is neither present nor represented at this hearing.

2. The Tribunal therefore first considered whether notice of this hearing had been properly served on Dr Klein in accordance with Rules 20 and 40 of the GMC Fitness to Practise Rules 2004, as amended (‘the Rules’) and paragraph 8 of Schedule 4 of the Medical Act 1983, as amended. In doing so, the Tribunal has taken into account all of the information placed before it, together with Ms Ironfield’s submissions on behalf of the GMC.

3. Ms Ironfield referred the Tribunal to a screenshot from the GMC register which confirms Dr Klein’s registered address. She further directed the Tribunal’s attention to the GMC information letter which was sent to Dr Klein’s registered address on 7 October 2022. Ms Ironfield highlighted the proof of delivery document which notes that the letter was signed for by ‘KLEIN’ on 18 October 2022. Ms Ironfield also drew the Tribunal’s attention to the Medical Practitioners Tribunal Service (‘MPTS’) Notice of Hearing (‘NoH’) which was sent

to Dr Klein's registered address on 12 October 2022. This was returned to the MPTS and received on 19 October 2022 with the enveloped marked as 'addressee gone away'.

4. Ms Ironfield also referred the Tribunal to a telephone note which indicated that a member of the public called the GMC on 21 October 2022. The member of the public explained that her daughter had signed for a letter (the GMC information letter signed for on 18 October 2022) without checking the addressee properly. She informed the GMC that she had moved into the address in June 2022 but understood that Dr Klein had left the property in February 2022.

5. Ms Ironfield drew the Tribunal's attention to the following chronology which evidence the GMC's attempts to contact Dr Klein:

- The GMC wrote to Dr Klein's registered address on 27 March 2022 confirming the outcome of the February 2022 hearing;
- The GMC emailed Dr Klein on 21 April 2022 asking whether she was content for confidential correspondence to be sent to her by email;
- On 3 May 2022, the GMC attempted to call Dr Klein on her mobile number. The number was unreachable so there was no facility to leave a message. The GMC sent a further email on 3 May 2022 which stated it had not received a response from its earlier email and that it had tried to call her. The GMC asked Dr Klein to confirm her contact number and postal address;
- On 11 May 2022, the GMC called Dr Klein's mobile number and landline. There was no facility to leave a message on her mobile number but a message was left on her landline;
- On 21 June 2022, the GMC called Dr Klein's mobile number and landline. There was no facility to leave a message on her mobile number but a message was left on her landline. A further email was also sent to Dr Klein asking her to respond by 27 June 2022;
- The GMC wrote to Dr Klein's registered address on 27 July 2022 to request information in preparation for today's review hearing.

6. Ms Ironfield submitted that the GMC has used all practical means at its disposal in attempts to make contact with Dr Klein. She submitted that the rules on service require the GMC to demonstrate service has been sent to Dr Klein's registered address. Whilst it may not be possible to demonstrate Dr Klein has had sight of the NoH, she submitted this does not render service ineffective.

7. The Tribunal noted the documents provided, including the notification letters from the GMC and the MPTS.

8. The Tribunal had regard to the GMC's attempts at contacting Dr Klein since the February 2022 hearing. The Tribunal considered that it was clear from the evidence provided that the GMC has made attempts to contact Dr Klein via post, email and telephone in order to try and obtain up to date contact details for her. The Tribunal noted that it the responsibility of the practitioner to provide the regulator with current and up to date contact details. As no response was received by Dr Klein, the GMC information letter and MPTS NoH were sent to Dr Klein's registered address.

9. In the circumstances, the Tribunal is satisfied that the GMC and MPTS has properly served notice of the hearing on Dr Klein, in accordance with Rules 20 and 40 of the GMC (Fitness to Practise) Rules 2004.

Proceeding in absence

10. The Tribunal has already determined that service is effective on Dr Klein. The Tribunal then considered, in accordance with Rule 31 of the Rules, whether to proceed with the case in Dr Klein's absence.

11. Ms Ironfield invited the Tribunal to proceed in Dr Klein's absence. Ms Ironfield referred the Tribunal to the GMC's attempts at communicating with Dr Klein since her last review hearing in February 2022. In summary, she submitted that the GMC has used all available methods to make contact with Dr Klein. Ms Ironfield reminded the Tribunal that it is the practitioners responsibility to keep the contact details up to date. She submitted that Dr Klein has deliberately chosen not to engage with the regulator. Having regard to the long history of these proceedings, she submitted that adjourning the hearing today is unlikely to result in Dr Klein attending a future hearing. She concluded that it is in the public interest to proceed with the case in his absence.

12. The Tribunal was mindful that the discretion to proceed in Dr Klein's absence should be exercised with utmost care and caution and with regard to the overall fairness of the proceedings.

13. The Tribunal had regard to the guidance provided in *R v Jones [2003] 1 AC HL* and *GMC v Adeogba 2016 EWCA Civ 162*. It noted in particular the following relevant considerations:

- The nature and circumstances of the doctor's behaviour in absenting herself.
- In particular, whether the behaviour was voluntary and therefore that the doctor waived the right to be present;
- Whether an adjournment would result in the doctor attending on a subsequent occasion;
- Whether the doctor, although absent, wished to be represented, or whether she had waived his right to be represented.

14. The Tribunal had regard to the chronology of the case. Again, it noted that the onus is on the practitioner to inform the regulator of up to date contact details. The Tribunal was satisfied, bearing in mind the chronology set out above, that the GMC has made all reasonable efforts to contact Dr Klein about today's hearing.

15. The Tribunal recognised that there would be a degree of disadvantage to Dr Klein by neither being present nor being represented at the hearing. It also acknowledged that Dr Klein may not be aware of today's hearing. However, the Tribunal took into account the fact that Dr Klein had attended the 2021 hearing. It therefore inferred that she was aware that she was still subject to an order of suspension and that the proceedings were ongoing. Given that the onus is on Dr Klein to engage with her regulator and keep it up to date with her contact details, the Tribunal considered, if she had not received the notice of the current hearing, she had put herself in this position.

16. The Tribunal considered that were it to adjourn today, it would be very unlikely given Ms Ironfield's account of Dr Klein's lack of engagement with the GMC that she would attend or arrange representation for a future hearing. Having regard to the fact that previous Tribunal's had found Dr Klein's fitness to practise impaired the current suspension is soon due to expire, and without the review the public might be left unprotected, the Tribunal concluded that it was in the public interest that the hearing proceeds today.

17. Therefore, in accordance with Rule 31, the Tribunal determined that in the particular circumstances of this case it is fair and reasonable to proceed in Dr Klein's absence.