

PUBLIC RECORD**Dates:** 07/04/2021 - 08/04/2021

Medical Practitioner's name: Dr Tomasz FRYZLEWICZ
GMC reference number: 6151888
Primary medical qualification: Lekarz 1985 Akademia Medyczna w Krakowie

Type of case	Outcome on impairment
Review - Language impairment	Impaired

Summary of outcome

Suspension, 10 months.
Review hearing directed

Tribunal:

Lay Tribunal Member (Chair)	Ms Alice Moller
Lay Tribunal Member:	Mr Chris Weigh
Medical Tribunal Member:	Dr Pavan Rao
Tribunal Clerk:	Mr Matthew Rowbotham

Attendance and Representation:

Medical Practitioner:	Present and not represented
GMC Representative:	Mr Peter Warne, 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 - 08/04/2021

1. The Tribunal convened to review Dr Fryzlewicz's case in accordance with Rule 22 of the General Medical Council's ('GMC') (Fitness to Practise) Rules 2004, as amended ('the Rules'). The Tribunal had to decide, in accordance with Rule 22(1)(f), whether Dr Fryzlewicz's fitness to practise is impaired by reason of not having the necessary knowledge of English to practise medicine safely.

Background

2. In 2014 concerns were raised about Dr Fryzlewicz's knowledge of the English language by way of a referral to the GMC by Cardio Analytics, who employed Dr Fryzlewicz between 2007 and 2013. Some confusion had arisen as a result of his limited English language proficiency whilst he worked for Cardio Analytics. Cardio Analytics stated that Dr Fryzlewicz's English language skills had deteriorated during the time that he had been employed and that efforts to get him to go to English lessons had been unsuccessful in improving his skills.
3. Between July 2014 and February 2015, Dr Fryzlewicz undertook International English Language Testing System (IELTS) tests, in which he failed to achieve the minimum standard required. The General Medical Council (GMC) referred Dr Fryzlewicz's case to a Fitness to Practise Panel of the Medical Practitioners Tribunal Service (MPTS).

2015

4. Dr Fryzlewicz's initial hearing took place from 19-28 October 2015 (the 2015 Panel). The 2015 Panel determined that Dr Fryzlewicz's fitness to practise was impaired by reason of his lack of knowledge of English. It determined that his deficiencies were capable of remedy and considered that a period of conditional registration was appropriate. The 2015 Panel imposed conditions, including direct supervision, on Dr Fryzlewicz's registration for a period of twelve months. It considered that this was a realistic period for Dr Fryzlewicz to undertake further study in the English language and achieve a result in an IELTS test which met the minimum standard required by the GMC.

2016

5. Dr Fryzlewicz's case was reviewed on 10-18 November 2016 (the 2016 Tribunal). The 2016 Tribunal found that Dr Fryzlewicz had undertaken the IELTS but failed to achieve the required overall score of at least 7.5. The 2016 Tribunal determined that Dr Fryzlewicz breached a condition by his failure to inform potential employers and his Responsible Officer of the conditions upon his registration but that he had not done so wilfully. The 2016 Tribunal imposed a further period of conditions for twelve months, including direct supervision.

2017

6. Dr Fryzlewicz's case was reviewed on 28-29 November 2017 (the 2017 Tribunal). The 2017 Tribunal was informed of further concerns from two employers relating to Dr Fryzlewicz's clinical skills, medical knowledge and communication skills, which had led to situations where patients were placed at risk of harm. Dr Fryzlewicz had not undertaken a further IELTS test and there was no evidence from him of any formal training in English language. The 2017 Tribunal determined that conditional registration was no longer appropriate or proportionate and suspended Dr Fryzlewicz's registration for a period of six months.

2018

7. Dr Fryzlewicz's case was reviewed between 7, 8 June 2018 and 11 July 2018 (the 2018 Tribunal). The 2018 Tribunal heard that Dr Fryzlewicz had undertaken two IELTS test in March and April 2018 and achieved an overall score of 6 in both March and April 2018. It concluded that Dr Fryzlewicz's fitness to practise remained impaired by reason of him not having the necessary knowledge of English, the minimum overall IELTS score required being 7.5. The Tribunal imposed conditions, including close supervision, for a period of 9 months, to enable Dr Fryzlewicz to: secure suitable employment; address deficiencies in his knowledge of the English language; demonstrate that he is fully able to communicate effectively in English and gain further insight into the reasons for his referral to the GMC.

2019

8. Dr Fryzlewicz's case was reviewed on 21-22 March 2019 (the 2019 Tribunal). The 2019 Tribunal determined that there was no objective or independent evidence before it that

Dr Fryzlewicz's knowledge of English had changed since the matter was last considered by the Tribunal in 2018. The 2019 Tribunal was of the opinion that Dr Fryzlewicz was distracted from gaining full insight into his lack of the necessary knowledge of English by his belief that he was being persecuted for religious and political reasons. The Tribunal determined that a further period of conditions was necessary to protect patients and maintain public confidence in the profession. It determined to maintain the conditions imposed by the 2018 Tribunal.

2020

9. Dr Fryzlewicz's case was reviewed on 25 March 2020 (the 2020 Tribunal). Dr Fryzlewicz was not present or represented at this hearing, but did provide a written submission. In relation to Dr Fryzlewicz's impairment, the Tribunal found that Dr Fryzlewicz's had made further progress in attaining a good level of English. However, he had not provided the Tribunal with evidence that he had passed either the IELTS or the medical version of the Occupational English Test (OET), which it accepted was the standard objective test. The 2020 Tribunal was also concerned about Dr Fryzlewicz's level of insight. It found that Dr Fryzlewicz did not appear to understand the importance of successive GMC requests for him to undertake an authorised test to demonstrate the necessary knowledge of English Language to practise medicine safely. The 2020 determined that Dr Fryzlewicz's fitness to practise remained impaired.
10. The 2020 Tribunal went on to suspend Dr Fryzlewicz for a period of 12 months. The Tribunal had regard to Dr Fryzlewicz's limited engagement in the 2020 proceedings, his lack of insight and limited efforts to remediate. It determined that 12 months would allow Dr Fryzlewicz the time to take either a IELTS or OET.
11. The 2020 Tribunal ordered a review of Dr Fryzlewicz's case. The 2020 Tribunal found that it would assist this review Tribunal if Dr Fryzlewicz provided:
 - Evidence that he has a good command of the English language. This should be in the form of satisfactory IELTS or OET test scores (medical profession version) unless there are truly exceptional circumstances justifying other evidence; and
 - Evidence of up to date Continuing Professional Development (CPD) specific to his area of practice.

Today's Hearing

12. The Tribunal now 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 Fryzlewicz's fitness to practise remains impaired by reason of not having the necessary knowledge of English to practise medicine safely.

The Evidence

13. The Tribunal received documentary evidence including, but not limited to, determinations of the previous Tribunals; correspondence between Dr Fryzlewicz and the GMC; a list of books read by Dr Fryzlewicz; certificates relating to English language courses Dr Fryzlewicz had recently undertaken; and a letter to this Tribunal from Dr Fryzlewicz.

Submissions

On Behalf of The GMC

14. Mr Warne said that, since the last hearing, Dr Fryzlewicz had received correspondence from the GMC reminding him of the dates of this hearing and deadlines for submitting evidence. Mr Warne submitted that the evidence Dr Fryzlewicz submitted prior to this hearing dated from 2014 – 2019, which pre-dates this hearing, and should not be considered by this Tribunal. Mr Warne acknowledged that Dr Fryzlewicz had provided more recent evidence for this hearing, including a GCSE English certificate. However, he submitted that the test for Dr Fryzlewicz to establish that he has remediated the concerns raised by the last Tribunal had not been met.
15. Mr Warne also addressed Dr Fryzlewicz's insight, and noted in Dr Fryzlewicz letter to the Tribunal that he states the '*GMC bureaucrats are using unworkable and unproportioned measures, rather than looking at a workable solution to [his] situation*'. Mr Warne pointed out that Dr Fryzlewicz's letter alleged that GMC '*bureaucrats*' put pressure on an IELTS examiner not to give Dr Fryzlewicz higher marks and put pressure on a consultant in hospital to change their written, positive opinion about him. Mr Warne said Dr Fryzlewicz's accusations are groundless, as the GMC did not and would not do this.

16. Mr Warne submitted that on the basis of the evidence, Dr Fryzlewicz's fitness to practise remains impaired by reason of him not having demonstrated the necessary knowledge of English.

Dr Fryzlewicz

17. Dr Fryzlewicz submitted that he is currently fit to practise. He told the Tribunal that he has practised cardiology for a long time, and said that his skills would be particularly helpful in treating people during the coronavirus pandemic.

18. Dr Fryzlewicz explained that the GMC gave him a licence to practise in 2007 when he submitted an IELTS score of 6.0. He said that it is only because of a change in the law since this time that meant he now needed a score of 7.5 that he is unable to practise.

19. Dr Fryzlewicz said that he was surprised by the level of detail the GMC went into in investigating the concerns that had been raised about his language skills and claimed that the GMC had acted using '*un-humanitarian methods*'.

20. Dr Fryzlewicz's reminded the Tribunal that this is the twelfth hearing he has had on this matter. Each sanction was imposed unfairly and made it harder for him to improve his language skills. He said that, as he is not fluent in English, it has been difficult for him to defend himself at these hearings. Dr Fryzlewicz said how stressful he has found the situation he is in and emphasised the impact it has had on his personal life and finances.

21. Dr Fryzlewicz submitted that he should be able to return to work as a doctor in order to earn a living and support his family. He said that he has found it hard to attend medical conferences and courses due to his financial situation, and that this has also meant he had been unable to revalidate his license.

22. Dr Fryzlewicz said that, in the IELTS tests he has taken, he has achieved good scores in some parts, such as speaking and listening, but has not yet passed the test completely in one session. In addition, Dr Fryzlewicz submitted that he had recently passed a GCSE English course with a score of 5, which he submitted is the equivalent of a 7 – 8 mark in an IELTS test. He said that it would be beneficial for the GMC to meet with others who had worked with him and assessed his language to get an idea of his 'real' language skills.

23. Dr Fryzlewicz submitted that the efforts he has made to pass his English courses demonstrated that he has insight into the concerns that have been raised.
24. A Tribunal member asked Dr Fryzlewicz why he had not taken the IELTS or OET since the last review hearing. He said that it was not a good tool for him to demonstrate his language skills; he needed more time to pass the tests than is allowed; and that he was not ‘talented at languages in this way’, so opted for another test.

The Relevant Legal Principles

25. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision on 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 practice.
26. This Tribunal must determine whether Dr Fryzlewicz’s fitness to practise is impaired today, taking into account Dr Fryzlewicz not having the necessary knowledge of English to practise medicine safely at the time of the events and any relevant factors since then such as whether the matters are remediable, and have been remedied.
27. This Tribunal took account of the conclusions of previous Tribunals, including concerns about Dr Fryzlewicz’s level of insight into why he needed to demonstrate the requisite level of English to practise medicine safely.
28. The Tribunal had regard to the overarching objective and the MPTS document ‘*Guidance for Medical Practitioners Tribunals on dealing with concerns about a doctor’s knowledge of English*’ 14 July 2016, in particular paragraph 7 which states:

In almost all cases, where a doctor fails to achieve the minimum acceptable [OET or] IELTS score, it will result in a finding of impairment. However, there may be exceptional circumstances to justify the tribunal in making a finding that the doctor’s fitness to practise is not impaired.

29. The Tribunal also took account of the 6 February 2018 and 1 October 2018 guidance which states:

From 6 February 2018 an additional test of English language called the Occupational English Test – medicine profession version (OET) will also be routinely and automatically accepted. Prior to this date, OET has already been accepted on a case by case basis for the registration of doctors and therefore the system is known and has been subject to a thorough benchmarking exercise that has confirmed that it is as rigorous as IELTS.

In order to demonstrate the required proficiency, doctors need to achieve at least a grade B in each of the four domains tested in the OET in a single sitting, to meet the GMC's language requirements. The OET tests ability in the same four language domains as IELTS but has been developed for 12 healthcare professions (including medicine, dentistry and nursing). The content for the reading and listening domains is the same for all professions. However, the content of the writing and speaking domains is specific to the relevant profession.

If a doctor comes to a review hearing and has taken and passed OET whilst the condition (to undertake IELTS) has been in place, a tribunal should accept a pass in OET as evidence that they have the necessary knowledge of English (subject to the pass being achieved in the past 2 years and there being no other more recent evidence that casts doubt on the question of them having the necessary knowledge of English).

OET have introduced a numerical score. For a period of time candidates will receive a numerical score (0-500) alongside their alphabetical score (A to E). Eventually OET will stop producing alphabetical scores.

In order to meet the GMC's language requirements, doctors need to achieve at least a grade 'B' in each of the four domains tested in the OET in a single sitting. The GMC has not changed any of its requirements in light of the updates to OET and the same grades are required.

The Tribunal's Determination on Impairment

- 30.** This Tribunal was not provided with evidence that Dr Fryzlewicz had passed either an IELTS with a score of 7.5 or higher, or an OET test with a grade B or higher, or a score of 350 points or above in the OET test. It considered whether there were any 'exceptional circumstances' that would justify a finding that Dr Fryzlewicz's fitness to practise is no

longer impaired. The Tribunal also reminded itself that the 2020 Tribunal found that it would assist this Tribunal if Dr Fryzlewicz's provided such evidence.

31. The Tribunal considered Dr Fryzlewicz's assertion in his letter to it that there has been *'indirect discrimination based on [his] nationality if [his] language qualification is not accepted.'* There was no evidence to support this allegation against the GMC.
32. To his credit, Dr Fryzlewicz had passed his GCSE examination in English Language with a score of 5, demonstrating a commitment to improving his English Language skills and success in achieving a good pass mark.
33. However, the Tribunal was concerned that Dr Fryzlewicz had not focused on passing either the IELTS or OET test since his last review. Relevant guidance provides that doctors have two options, the IELTS or OET test. The GMC has provided more flexibility to doctors needing to demonstrate English language skills since 2018. But the Tribunal found that Dr Fryzlewicz continued to lack insight into the importance of demonstrating the requisite English language skills through the tests authorised by the GMC.
34. Given all the circumstances of this case, The Tribunal determined that Dr Fryzlewicz's fitness to practise remained impaired by reason of not having demonstrated the necessary knowledge of English to practise medicine safely.

Determination on Sanction - 08/04/2021

1. Having determined that Dr Fryzlewicz's fitness to practise remains impaired by reason of not having demonstrated the necessary knowledge of English to practise medicine safely, the Tribunal now has to decide in accordance with Rule 22(h) of the Rules what action, if any, it should take with regard to Dr Fryzlewicz's registration.
2. The Tribunal has taken into account the background to the case and the evidence received during the earlier stage of the hearing to reach a decision on what sanction, if any to impose.

Submissions

On behalf of the GMC

3. Mr Warne submitted that the appropriate sanction in this case would be a further period of suspension. He drew the Tribunal's attention to the following paragraph of the Sanctions Guidance (November 2020) ('SG'):

103 Where a doctor is suspended because of findings in relation to insufficient knowledge of English, a six-month suspension is likely to be needed in the first instance. This is to give the doctor sufficient time to improve their language skills, and take an English language assessment. In cases that relate solely to either health or knowledge of English (where erasure is not available as a sanction) the tribunal can suspend a doctor's registration indefinitely where necessary.

4. Mr Warne also asked the Tribunal to have regard to Paragraphs 82a and c of SG when considering if the sanction of conditions would be appropriate.

82 Conditions are likely to be workable where:

a the doctor has insight

[...]

c the tribunal is satisfied the doctor will comply with them

[...]

Mr Warne said that Dr Fryzlewicz had previously been given a sanction of conditions, but a reviewing Tribunal had found that this sanction had not addressed the issues regarding Dr Fryzlewicz's knowledge of English language. The Tribunal had then suspended him.

5. Mr Warne said that the 2020 Tribunal had concluded:

'Dr Fryzlewicz still does not fully understand or accept the reasons for the restrictions on his registration, namely that he does not have the necessary knowledge of English and the impact this has on patient safety. The Tribunal had regard to Dr Fryzlewicz's limited engagement in these proceedings, his lack of insight and limited efforts to

remediate. The Tribunal determined that a period of suspension would allow Dr Fryzlewicz to gain insight and obtain the necessary level of English language.'

6. Mr Warne reminded the Tribunal that the onus was on Dr Fryzlewicz to demonstrate that he has a level English language for him to work safely as a doctor. Mr Warne submitted that he has not done that, despite being invited or directed to obtain satisfactory results in either of the IELTS or OET tests. Mr Warne said that, realistically, the only way for Dr Fryzlewicz to restore his fitness to practise would be for him to pass one of these two tests. Mr Warne said that Dr Fryzlewicz had attempted to set a standard acceptable to himself, and not that of the GMC or the MPTS.
7. Mr Warne submitted that Dr Fryzlewicz does not appear to have accepted the position of the GMC in these proceedings, which indicates an ongoing lack of insight, as he has ignored what he has been asked to do by the GMC and seeks to blame others. Mr Warne submitted that a further period of suspension would give him the chance to demonstrate a change in attitude.
8. Mr Warne concluded by submitting that, if the Tribunal imposed a further period of 12 months suspension, a future reviewing Tribunal would have the option to suspend Dr Fryzlewicz indefinitely; this could focus Dr Fryzlewicz's mind on what he has to do to avoid this fate.

Dr Fryzlewicz

9. Dr Fryzlewicz submitted that the most appropriate sanction in this case would be for the Tribunal to take no action.
10. Dr Fryzlewicz reminded the Tribunal of his specialism in cardiology and how he would be of benefit to the NHS during the coronavirus pandemic if he were allowed to work again. Dr Fryzlewicz submitted that he knew of consultants who would be happy to have him return to work after taking his exams.
11. Dr Fryzlewicz also reminded the Tribunal that he had passed courses in English Language, including a university course, which assessed his language skills over a long period of time.
12. In terms of insight, Dr Fryzlewicz said that doctors should 'self-criticise'. He added that he should ensure any actions he took were safe; he would not pretend to have assisted a

patient if he had not done so. In addition, his work would be overseen by others, if he were back at work.

13. Dr Fryzlewicz submitted that suspension was not the most appropriate sanction in this case, as it would be *'un-workable and un-proportionate'* and would be *'against the patient, himself [the doctor] and the idea of medicine'*.
14. When asked by a Tribunal member if he would be willing to take an OET test, Dr Fryzlewicz responded by saying that he *'was ready to take the [OET] test, any test necessary'* and that he should now be *'very near the [pass] scores of the IELTS test'*.

The Relevant Legal Principles

15. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement.
16. In reaching its decision, the Tribunal has taken account of the SG and of the overarching objective. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Fryzlewicz's interests with the public interest and need to uphold the reputation of the medical profession. It has borne in mind that the purpose of sanctions is not to be punitive, but to protect patients and the wider public interest, although the sanction may have a punitive effect.

The Tribunal's Determination

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

No action

18. The Tribunal noted the positive progress Dr Fryzlewicz had made, including completing an English Language course, achieving a GCSE qualification in English Language and reading several books in English.
19. However, the Tribunal could not find any exceptional circumstances in this case to justify taking no action. It concluded that it would not be sufficient, proportionate or in the public interest to take no action.

Conditions

20. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Fryzlewicz's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.
21. The Tribunal had regard to paragraphs 82a and c of the SG, outlined in Mr Warne's submissions.
22. The Tribunal was mindful that Dr Fryzlewicz's license had been subject to conditions previously, but that his fitness to practise remained impaired upon review of these conditions. This indicated to the Tribunal that conditions may not be workable. The Tribunal also considered that his level of insight is such that it could not be satisfied he would comply with conditions, as he had previously disregarded invitations or directions to take the relevant tests.
23. Dr Fryzlewicz has not yet shown sufficient insight into the need to demonstrate the required English language skills to practise safely as a doctor. The Tribunal is not satisfied that conditions are feasible in all these circumstances.
24. The Tribunal found that imposing a period of conditions on Dr Fryzlewicz would not be appropriate or workable in this case.

Suspension

25. The Tribunal then went on to consider whether suspending Dr Fryzlewicz's registration would be appropriate and proportionate.
26. The Tribunal was aware that Dr Fryzlewicz had made positive progress during his previous period of suspension, and accepted his evidence that he was ready to take the OET test, or similar test.
27. Mr Warne told the Tribunal that OET tests are now offered in 20 locations around the country. It takes 2 - 3 weeks for tests to be booked, with a date for the test given to the candidate approximately 2 weeks after this. The test costs £180. Test results are provided to the candidates within a month.

28. The Tribunal considered that a period of 10 months suspension would be appropriate, to give Dr Fryzlewicz the time to complete an OET or IELTS test; this would ensure patient safety and uphold professional standards, as well as maintaining public trust in the medical profession.
29. The Tribunal determined to direct a review of Dr Fryzlewicz’s case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Fryzlewicz to demonstrate:
- Evidence that he has a good command of the English language. This should be in the form of satisfactory OET (medical profession version) or IELTS test scores unless there are truly exceptional circumstances justifying other evidence; and
 - Evidence of up to date Continuing Professional Development (CPD) specific to his area of practice.
30. The MPTS will send Dr Fryzlewicz a letter informing him of his right of appeal and when the direction and the new sanction will come into effect. The current order of suspension will remain in place during the appeal period.

Confirmed

Date 09 April 2021

Ms Alice Moller, Chair