

PUBLIC RECORD

Dates: 15/08/2024 - 16/08/2024

Medical Practitioner's name: Dr Tomasz FRYZLEWICZ

GMC reference number: 6151888

Primary medical qualification: Lekarz 1985 Akademia Medyczna w Krakowie

Type of case: Review - Language impairment

Outcome on impairment: Impaired

Summary of outcome
Suspension, 12 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Sean Kyne
Medical Tribunal Member:	Dr Paul Mitchell
Medical Tribunal Member:	Dr Anjali Ahluwalia
Tribunal Clerk:	Mr Sewa Singh

Attendance and Representation:

Medical Practitioner:	Not present, not represented
Medical Practitioner's Representative:	None
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 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 - 15/08/2024

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 Fryzlewicz's fitness to practise is impaired by reason of not having the necessary knowledge of English.

The Outcome of Applications Made during the Impairment Stage

2. The Tribunal granted an application made by Ms Emma Gilsean, Counsel for the GMC, that service has been effected in accordance with the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), and that the hearing should proceed in Dr Fryzlewicz's absence. The Tribunal refused Dr Fryzlewicz's application for his case to be adjourned.

3. The Tribunal's reasons on the matters above are set out in Annex A.

Background

4. Dr Fryzlewicz was employed by Cardio Analytics between 2007 and 2013. Concerns were first raised about Dr Fryzlewicz's knowledge of the English language in 2014 by way of a referral to the GMC by Cardio Analytics. Some confusion had arisen as a result of his limited English language proficiency whilst he had been working for them. Cardio Analytics stated that Dr Fryzlewicz's English language skills had deteriorated during the time that he had been employed by them and that efforts to get him to go to English lessons had been unsuccessful in improving his skills.

5. 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 GMC referred Dr Fryzlewicz's case to a Fitness to Practise Panel of the Medical Practitioners Tribunal Service (MPTS).

2015

6. The first fitness to practise hearing to consider Dr Fryzlewicz's case 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 imposed a period of conditional registration, including direct supervision, on Dr Fryzlewicz's registration for a period of 12 months. The 2015 Panel 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

7. Dr Fryzlewicz's case was reviewed on 10 and 18 November 2016 (the 2016 Tribunal). The 2016 Tribunal found that, despite having undertaken the IELTS test Dr Fryzlewicz had failed to achieve the required overall score of at least 7.5. The 2016 Tribunal determined that Dr Fryzlewicz had 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 12 months, again including direct supervision.

2017

8. Dr Fryzlewicz's case was next 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 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 it decided to suspend Dr Fryzlewicz's registration for a period of six months.

2018

9. Dr Fryzlewicz's case was reviewed on 7-8 June and 11 July 2018 (the 2018 Tribunal). It was noted that from 6 February 2018, the GMC provided more flexibility to doctors needing to demonstrate English language skills by giving them the option of either taking the IELTS test or the Occupational English Test – medical profession version (OET). The 2018 Tribunal heard that Dr Fryzlewicz had undertaken two IELTS tests in March and April of 2018 and achieved an overall score of 6 in both tests. 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

10. 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 2018 Tribunal. 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 decided to impose a further period of conditions, unvaried, for a period of 12 months, to protect patients and maintain public confidence in the profession.

2020

11. An MPT Tribunal (the 2020 Tribunal) reviewed Dr Fryzlewicz's case on 25 March 2020. Dr Fryzlewicz was not present or represented at the hearing but provided a written submission. The 2020 Tribunal found that Dr Fryzlewicz 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 OET test, which the Tribunal accepted were the standard objective tests. The 2020 Tribunal was also concerned about Dr Fryzlewicz's level of insight into the reasons for his referral to the GMC. It found that he did not appear to understand the importance of successive GMC requests for him to undertake an authorised test to demonstrate the necessary knowledge of the English language to practise medicine safely in the UK. The 2020 Tribunal determined that Dr Fryzlewicz's fitness to practise remained impaired. Taking into account Dr Fryzlewicz's limited engagement in the 2020 proceedings, his lack of insight and limited efforts to remediate, the 2020 Tribunal determined to suspend his registration for a period of 12 months to allow time for him to take either the IELTS or OET tests.

2021

12. Dr Fryzlewicz's case was reviewed on 7-8 April 2021 (the 2021 Tribunal). The 2021 Tribunal found that Dr Fryzlewicz had passed his GCSE examination in English Language with a score of 5 but had not passed either the IELTS or OET test with the scores required by the GMC. The 2021 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. It 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 in the UK. The 2021 Tribunal determined to suspend Dr Fryzlewicz's registration for a period of 10 months to give him time to complete the IELTS or OET test.

2022

13. Dr Fryzlewicz's case was reviewed on 4 February 2022 (the 2022 Tribunal). The 2022 Tribunal was not presented with any evidence that Dr Fryzlewicz had passed either an IELTS or OET test with the minimum scores required to satisfy GMC requirements for English language competency. Dr Fryzlewicz had taken an IELTS test in December 2021, unsuccessfully. To his credit, despite his views about the IELTS test, Dr Fryzlewicz took the test and achieved an acceptable score in two of the four areas. Dr Fryzlewicz also submitted evidence that he had undertaken extensive online study via 'Lingoda' since his last review

hearing. The 2022 Tribunal concluded that this showed Dr Fryzlewicz's commitment to improving his English language skills and a certain level of insight as to why he needed to do so. However, the 2022 Tribunal was of the view that this was not sufficient to go behind Dr Fryzlewicz's recent IELTS score and it was also concerned that Dr Fryzlewicz continued to lack insight into the role of the GMC as a regulator, and the need for a Tribunal to see objective evidence of acceptable IELTS or OET scores and evidence of CPD. In the circumstances, the 2022 Tribunal determined that imposing conditions on Dr Fryzlewicz's registration for a period of 18 months was appropriate to give him time to find work, improve his English and gather the necessary evidence to provide to a reviewing Tribunal. The 2022 Tribunal indicated that a reviewing Tribunal may be assisted by:

- Evidence that Dr Fryzlewicz 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;
- Evidence of up to date CPD specific to his area of practice (including his portfolio of evidence);
- Patient feedback;
- Testimonials from colleagues;
- Report/s from his workplace supervisor.

2023

14. Dr Fryzlewicz's case was next reviewed on 3 – 4 August 2023 ('the 2023 Tribunal'). It was provided with a statement from Dr Fryzlewicz summarising his statements to the hearings in 2020, 2021, and 2022, as well as details of his present situation and what he had done since the 2022 hearing. The 2023 Tribunal also received from Dr Fryzlewicz his IELTS certificates dated 21 January 2023 and 29 July 2023. It also had regard to documents provided by Dr Fryzlewicz which had been considered by previous Tribunals, including a General Certificate of Secondary Education in English Language, testimonials, and Lingoda Certificates of English.

15. From the evidence before it, the 2023 Tribunal noted that Dr Fryzlewicz had taken the IELTS test twice since the 2022 Tribunal but had not achieved the minimum scores required by the GMC. His overall test results were 5.5 and 6.0 on 26 January 2023 and 29 July 2023 respectively. It considered whether there were any exceptional circumstances that would justify a finding that Dr Fryzlewicz's fitness to practise was no longer impaired by reason of his knowledge of English but determined that there were no exceptional circumstances.

16. In relation to insight, the 2023 Tribunal noted the steps taken by Dr Fryzlewicz to address the concerns identified. This included attendance at a conference in Barcelona, reading journals and magazines, and joining the British Cardiovascular Society. However, the 2023 Tribunal was concerned there was no evidence of any up-to-date Continuing Professional Development (CPD), any patient feedback, testimonials from colleagues, a report from a workplace supervisor, or evidence of completing his Personal Development

Plan (PDP), despite being advised by the 2022 Tribunal that this evidence would assist the reviewing Tribunal.

17. The 2023 Tribunal was not persuaded by the steps taken by Dr Fryzlewicz to be sufficient to demonstrate his insight. It noted that he continued to focus his attention on the unfairness of his circumstances and the changes in the acceptable standards of English language required by the GMC. The 2023 Tribunal considered that Dr Fryzlewicz's lack of insight was remediable if he accepted that he needed to meet the current standard of English language knowledge, and it was clear that it was Dr Fryzlewicz's responsibility to demonstrate his ability to meet the new standard. The 2023 Tribunal was of the view that until Dr Fryzlewicz changed his perception and attitude and provided objective evidence of an acceptable IELTS or OET score and evidence of CPD, all three limbs of the overarching objective continued to be engaged in this case. It concluded that Dr Fryzlewicz's fitness to practise was impaired by reason of not having the necessary knowledge of English.

18. The 2023 Tribunal was mindful that Dr Fryzlewicz had made some positive progress during the previous occasion when his registration was suspended, and it accepted that he has taken the IELTS test twice in the last eight months. In the circumstances, the 2023 Tribunal determined to suspend Dr Fryzlewicz's registration for a further period of twelve months. It considered that this period would give Dr Fryzlewicz the time to complete an IELTS or OET test and to provide robust evidence of greater insight.

19. The 2023 Tribunal directed a review and indicated that a reviewing Tribunal may be assisted by:

- *Evidence that Dr Fryzlewicz 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;*
- *Evidence of up to date CPD specific to his area of practice;*

Dr Fryzlewicz will also be able to provide any other information that he considers will assist.

Today's Review Hearing

20. This Tribunal has reviewed Dr Fryzlewicz's case and has considered, in accordance with Rule 22(1)(f) of the Rules, whether his fitness to practise remains currently impaired.

The Evidence

21. The Tribunal has considered all the evidence received, both oral and documentary.

22. The Tribunal noted that, following conclusion of the previous hearing, the GMC wrote to Dr Fryzlewicz on 14 September 2023 in which it confirmed the outcome of the hearing, and reminded him of the evidence which the 2023 Tribunal indicated would be helpful for the next review hearing. On 8 January 2024, the GMC sent an email to Dr Fryzlewicz again

reminding him of the evidence which might be helpful when his case was next reviewed. In an email to the GMC dated 22 February 2024, Dr Fryzlewicz confirmed receipt of the email dated 8 January 2024 and informed the GMC of his new postal address, and raised some questions relating to who was dealing with his case within the GMC, how he could collect necessary evidence of CPD specific to cardiology, and when his next hearing was scheduled.

23. On 23 February 2024, a case review officer at the GMC sent an email to Dr Fryzlewicz and confirmed that he had asked for Dr Fryzlewicz's registered address to be updated on the GMC's database, and the questions he had raised had been forwarded on to the relevant team within the GMC.

24. On 18 April 2024, the GMC wrote to Dr Fryzlewicz via email and advised him of the dates of his review hearing and reminded him again of the evidence which may assist the reviewing Tribunal.

25. The Tribunal received documentary evidence which included but was not limited to:

- Record of Determinations of the previous MPT hearings;
- Documents presented by or on behalf of Dr Fryzlewicz to previous MPT hearings, which included testimonials from his clinical colleagues in 2014, 2015 and 2019, general certificates of completion of secondary education in June 2020, a patient feedback letter dated October 2015, and IELTS reports from June 2006 and January 2023;
- Email exchange between the GMC and Dr Fryzlewicz, as set out above.

Submissions

The GMC

26. Ms Emma Gilsonan, Counsel, rehearsed the background to the case and took the Tribunal through the findings of the previous Tribunals.

27. Ms Gilsonan then addressed the Tribunal on the matter of impairment. She submitted that Dr Fryzlewicz has not provided any fresh evidence of his efforts to complete the IELTS or OET test scores or any evidence of CPD, as requested by the 2023 Tribunal. She acknowledged that the question as to whether Dr Fryzlewicz's fitness to practise remained impaired is a matter for this Tribunal exercising its own independent judgement. She referred the Tribunal to relevant case law.

28. Ms Gilsonan reminded the Tribunal that at a review hearing, the onus is on the practitioner to demonstrate that they had addressed the concerns raised in their case, and in this case, the concerns related to Dr Fryzlewicz's command of the English language. Ms Gilsonan submitted that the Tribunal may find that remediation in this case is insurmountable in light of the absence of any new evidence. She acknowledged that the concerns in this case are remediable. However, she submitted that there is no objective evidence before the

Tribunal today to suggest that the concerns in this case had been remediated since the last review hearing or that there was no risk of repetition.

29. Ms Gilson went on to say that Dr Fryzlewicz's attitude towards the regulator and the requirement that he must attain the minimum standard of the English language to practise medicine in the UK, was concerning. She said that the communications from Dr Fryzlewicz showed that he was more focused on what he believed to be political and religious persecution by the GMC, rather than on addressing the concerns in this case.

30. Ms Gilson submitted that there has been no progress since the case was last reviewed. She submitted that there was no evidence of insight and remediation. In view of the lack of such evidence before the Tribunal, Ms Gilson submitted that this Tribunal could be satisfied that Dr Fryzlewicz had not discharged the persuasive burden placed upon him to demonstrate that his fitness to practise is no longer impaired. She added that this is not an exceptional case to justify a finding of no impairment.

31. In the absence of any new evidence of insight, or any evidence to demonstrate the steps taken by Dr Fryzlewicz to address the concerns, Ms Gilson invited the Tribunal to find Dr Fryzlewicz's fitness to practise is impaired by reason of his not having the necessary knowledge of English.

The Relevant Legal Principles

32. Dr Fryzlewicz's fitness to practise was found to have remained impaired by reason of not having the necessary knowledge of English, initially in October 2015.

33. The Tribunal have to make a finding as to whether Dr Fryzlewicz's fitness to practise is now impaired by reason of not having the necessary knowledge of English.

34. The Tribunal will have regard to all of the evidence filed in this hearing, and to the submissions that have been made.

35. At this stage, The General Medical Council shoulders no burden of proof. The General Medical Council does not have to prove impairment.

36. By virtue of section 35C (2) of the Medical Act 1983 a person's fitness to practise shall be regarded as "impaired" for the purposes of this Act by reason only of:

'(da) not having the necessary knowledge of English (but see section 2(4));'

37. There is no legal test for determining impairment to practise. It is a matter entirely for the Tribunal to decide, as a matter of judgment, whether the Doctor's fitness is impaired in the light of its own skilled judgment on the facts and circumstances and in the light of the evidence before it.

38. The Tribunal has borne in mind the statutory overarching objective to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for the medical profession in s.1(1A) and s.1(1B) of Medical Act 1983.

39. The Tribunal is entitled to have regard for the General Medical Council's guidance in its publication Good Medical Practice (2013) (GMP).

40. The courts have said that four reasons for unfitness tend to recur and on the facts of some cases more than one of them will apply. They are that:

- i. the doctor presents a risk to patients;*
- ii. he has brought the profession into disrepute;*
- iii. he has breached one of the fundamental tenets of the profession;*
- iv. his integrity cannot be relied upon.*

41. In *Abrahaem v GMC [2008] EWHC 183 (Admin)*, the judge stated (at paragraph 23) that:

"In Practical terms there is a persuasive burden on the practitioner at a review to demonstrate that he or she has fully acknowledged why past professional performance was deficient and through insight, application, education, supervision or other achievement sufficiently addressed past impairments".

42. The Tribunal will be mindful of the guidance from Mrs Justice Cox in *Council for Healthcare Regulatory Excellence v. NMC and Paula Grant [2011] EWHC 927 (Admin)*, adopting the test proposed by Dame Janet Smith in the Shipman enquiry:

"Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future."*

43. Other relevant questions which the Tribunal may consider helpful to ask itself, on the authorities, are:

- i. *What insight does Dr Fryzlewicz demonstrate of the previous findings of Tribunals that he did not have the necessary knowledge of English?*
- ii. *Is the absence of the necessary knowledge remediable?*
- iii. *Has it been remedied?*
- iv. *What is the likelihood of repetition?*

The Tribunal's Determination on Impairment

Not Having the Necessary Knowledge of English

44. The Tribunal had regard to paragraph 14.1 of Good Medical Practice (GMP) (2013 version), which states:

'14.1 You must have the necessary knowledge of the English language to provide a good standard of practice and care in the UK'

45. Paragraph 9 of the Guidance for medical practitioners tribunals on dealing with concerns about a doctor's knowledge of English, states:

'9 A finding of exceptional circumstances could be made where there is other available evidence relating to a doctor's knowledge of English. This may include a doctor's previous IELTS test results or OET results, primary medical qualifications, applications to other medical authorities and experience of working in an English speaking environment.'

46. Applying paragraph 9, the Tribunal was not able to find exceptional circumstances in this case.

47. The Tribunal first considered whether Dr Fryzlewicz's level of insight and his insufficient knowledge of the English language were remediable.

48. The Tribunal was mindful of the findings of the 2023 Tribunal in relation to Dr Fryzlewicz's insight and remediation, and its views and findings in respect of the evidence placed before it. It also took account of the evidence which the 2023 Tribunal considered may assist the reviewing Tribunal, as set out above.

49. Dr Fryzlewicz has provided a bundle of documents, as referred to above. The Tribunal noted that documents within the bundle had already been presented as evidence to previous Tribunal review hearings. It was concerned that there was no new evidence since the last review hearing. The Tribunal also took into account that neither within the bundle, nor within any of the correspondence between Dr Fryzlewicz and the GMC since the last review hearing, was there any reference to any efforts or steps he had taken to address the concerns identified in this case. There is no evidence before the Tribunal today Dr Fryzlewicz has a good command of the English language, in the form of satisfactory OET (medical profession version) or IELTS test scores. Dr Fryzlewicz has not provided any up-to-date evidence of CPD

activity specific to his area of medical practice, that being cardiology. In addition, there is no evidence of any patient feedback, testimonials from colleagues, or a report from a workplace supervisor. Within the correspondence Dr Fryzlewicz had with the GMC, there is no explanation from him as to whether he had or why he had not taken a further IELTS or OET test, or in respect of any lack of evidence relating to CPD. The Tribunal was disappointed that Dr Fryzlewicz had not provided any evidence to demonstrate what he had done to address the matters giving rise to the concerns in this case.

50. The Tribunal had regard to the correspondence from Dr Fryzlewicz to the GMC in which he sought to criticise the GMC's role and the way it had treated him. For example, in an email dated 14 August 2024, Dr Fryzlewicz stated:

'GMC administrators' misconduct regard me as a Polish doctor of medicine and as a patient. GMC administrators' dealing with me resulted in XXX.'

'I protest against bureaucratic and administrative pressure on doctors of medicine to not allow them to undertake independent medical decisions. Such pressure sometimes leads to breaking The Hippocratic Oath. It is incorrect political pressure on doctors.'

'Some GMC administrators and The MPTS members are lay people in the medical field and act in a more or less politically hidden way. It is dangerous for doctors of medicine and patients too.'

51. Dr Fryzlewicz went on to state:

'In my case, accusation that my English language skills were insufficient to work in NHS has been recognised as false by many consultants of medicine who worked with me in many hospitals. All documents proving this have been many times shown by me to The MPTS.'

52. The Tribunal considered that this suggested an attitudinal issue on the part of Dr Fryzlewicz towards the functions of the GMC, and it was concerned by this. Instead of focusing on completing his IELTS or OET tests with the required pass score, Dr Fryzlewicz appeared to challenge the legitimacy or the necessity of a fundamental tenet of GMP. Dr Fryzlewicz continues to focus on what he perceives to be the unfairness of his circumstances and his mistaken belief that the level of his English language is at the required standard to be able to practise medicine safely in the UK. To progress and move forward positively, he will need to change his focus to the present and his future opportunities to practise.

53. There is no evidence to suggest that he understood the potential impact his actions, and his failure to attain the necessary standard of the English language, had on patients, the medical profession, and public confidence in the medical profession.

54. The Tribunal had no confidence from Dr Fryzlewicz's responses that he recognised the GMC had to set a standard, as the regulator, for English language and it was responsible for

ensuring that standard was met in the interests of patient safety. The Tribunal considered that the concerns identified in this case are, in theory, remediable. However, they have not been remediated. Based on the evidence before it, the Tribunal considered that the risks previously identified had not reduced since the last review hearing.

55. The Tribunal balanced Dr Fryzlewicz's interest against the public interest. It was mindful of the overarching objective which is to protect, promote and maintain the health, safety, and wellbeing of the public; to maintain public confidence in the profession; and to promote and maintain proper professional standards and conduct for members of the profession.

56. In all the circumstances, the Tribunal determined that Dr Fryzlewicz's fitness to practise is impaired by reason of his not having the necessary knowledge of English.

Determination on Sanction - 16/08/2024

1. Having determined that Dr Fryzlewicz's fitness to practise is impaired by reason of his not having the necessary knowledge of English, the Tribunal has to decide in accordance with Rule 22(1)(h) of the Rules what action, if any, it should take with regard to his 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 Fryzlewicz's registration.

Submissions

3. On behalf of the GMC, Ms Gilsean submitted that in the circumstances of this case, it was necessary and appropriate to impose a further period of suspension, although she acknowledged that it was a matter for the Tribunal making its own independent judgement. She referred the Tribunal to the Sanctions Guidance ('SG') (February 2024 version) ('the SG') and reminded it that it must start with the least restrictive sanction. She highlighted relevant paragraphs of the SG which she said indicated why taking no action or imposing a period of conditions is not appropriate in this case. She added that, when Dr Fryzlewicz's registration had been made subject to conditions on previous occasions, he failed to satisfy them. Further, she submitted that Dr Fryzlewicz had not provided any evidence to this Tribunal of the steps he has taken to address the concerns regarding the standard of his English language and therefore imposing conditions would be neither workable or appropriate in this case.

4. Ms Gilsean then referred the Tribunal to paragraphs 91 – 106 of the SG, in particular paragraph 94 which she said indicated that suspension is appropriate in a case involving deficient professional performance or where a practitioner's level of the English language was shown to be deficient, but where they had demonstrated they had gained insight into

their deficiencies and had the potential to remediate. Ms Gilsey submitted that in this case Dr Fryzlewicz has shown no insight into the concerns or the risks identified, has not provided any new evidence of the steps he has taken to address those concerns, has not provided any IELTS or OET tests scores, and has not provided evidence of keeping his CPD up to date. She added the requirements upon Dr Fryzlewicz were no different to any other doctor despite his feeling that he was being persecuted by the GMC. Ms Gilsey submitted that a further period of suspension is the only appropriate and proportionate sanction to address the risks identified in this case.

5. Ms Gilsey invited the Tribunal to impose a further period of suspension.

The Relevant Legal Principles

6. The decision as to the appropriate sanction to impose, if any, in this case was a matter for this Tribunal exercising its own judgement. Neither party bears any burden of proof at the sanction stage. That is to say that there is no onus on either party to persuade the Tribunal as to the appropriateness of any particular sanction.

7. In reaching its decision, the Tribunal took account of the SG. 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 they may have a punitive effect.

8. Throughout its deliberations the Tribunal applied the principle of proportionality, balancing Dr Fryzlewicz's interests with the public interest. It reminded itself that it should only impose the minimum sanction necessary to achieve the over-arching objective. In deciding what sanction, if any, to impose the Tribunal considered each of the sanctions available, starting with the least restrictive.

9. The available sanctions are set out in section 35D(9) of the Medical Act 1983.

“(12) On a review arranged under subsection (11A) or (11B) a Medical Practitioners Tribunal may, if they think fit—

- (a) except in a health or language case, direct that the person's name shall be erased from the register;
- (b) direct that the person's registration in the Register shall be suspended during such period not exceeding twelve months as may be specified in the direction;
- (c) direct that the current period of conditional registration shall be extended for such further period from the time when it would otherwise expire as may be specified in the direction; or
- (d) revoke the direction, or revoke or vary any of the conditions imposed by the direction, for the remainder of the current period of conditional registration, but the Tribunal shall not extend any period of conditional registration under this section for more than three years at a time.”

10. Throughout its deliberations, the Tribunal was mindful of the overarching objective which is to:

- (a) protect, promote and maintain the health, safety and well-being of the public;
- (b) promote and maintain public confidence in the medical profession; and
- (c) promote and maintain proper professional standards and conduct for the medical profession.

Mitigating and Aggravating Factors

11. The Tribunal identified the following mitigating and aggravating factors in this case.

Mitigating

12. The Tribunal had regard to paragraphs 24 and 25 of the SG which set out matters that may be considered mitigating factors. Having carefully considered the evidence before it today, the Tribunal was unable to identify any mitigating factors in this case.

Aggravating

13. The Tribunal had regard to paragraphs 50 – 60 of the SG which set out matters that may be considered aggravating factors.

14. The Tribunal has already set out within its determination on impairment its findings in respect of Dr Fryzlewicz's lack of insight into the concerns identified in this case. It does not intend to rehearse those here. In summary:

- Dr Fryzlewicz has not provided any new evidence since the last review hearing, nor was there any reference to any efforts or steps he had taken to address the concerns identified in this case, in his correspondence with the GMC;
- There is no evidence that Dr Fryzlewicz has sufficient command of the English language, in the form of satisfactory OET (medical profession version) or IELTS test scores;
- Dr Fryzlewicz has not provided any up-to-date evidence of CPD activity specific to his area of medical practice;
- There is no evidence of any patient feedback, testimonials from colleagues, or a report from a workplace supervisor;
- There is no evidence from Dr Fryzlewicz of insight into the potential impact of what his knowledge of the English language may have on patient safety, the medical profession, and on public confidence in the medical profession;
- Dr Fryzlewicz does not accept that his English language skills are deficient;
- The matters in this case have been ongoing for almost ten years and yet there appears to be no significant improvement to satisfy the GMC or an MPT hearing that

Dr Fryzlewicz's English skills are such that he is able to practise without any impact on patient safety.

The Tribunal's Determination

15. The Tribunal noted the submissions made by Ms Gilsenan and considered the evidence received.

No action

16. 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.

17. The Tribunal determined that, in view of its findings on impairment, it would be neither sufficient, proportionate nor in the public interest to conclude this case by taking no action. Taking no action may be appropriate where there are exceptional circumstances. The Tribunal was unable to identify any exceptional circumstances in this case that would justify taking no action.

Conditions

18. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Fryzlewicz's registration. It has borne in mind paragraph 85 of the SG that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

19. The Tribunal had regard to paragraphs 81(d), 82 and 83 of the SG. These state:

'81 Conditions might be most appropriate in cases:

- a*
- b*
- c*
- d where a doctor lacks the necessary knowledge of English to practise medicine without direct supervision.*

82 Conditions are likely to be workable where:

- a the doctor has insight*
- b a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings*
- c the tribunal is satisfied the doctor will comply with them*
- d the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.*

83 *When deciding whether remedial training is possible, the tribunal needs to consider any objective evidence that has been submitted. For example, assessments of the doctor’s performance, health or knowledge of English, evidence about the doctor’s practice, health or knowledge of English.’*

20. The Tribunal was mindful that Dr Fryzlewicz’s registration had been subject to conditions previously on five separate occasions, and that at each subsequent review hearing, his fitness to practise was found to be impaired. The Tribunal has taken into account its findings in relation to Dr Fryzlewicz’s insight, and the aggravating factors, as set out above. Dr Fryzlewicz has been advised on numerous occasions of what is expected of him in relation to his English language skills and CPD, but he has not engaged in the process. Instead, Dr Fryzlewicz continues to focus on what he perceives as persecution by the GMC, and sought to criticise the GMC’s role and the way it has treated him. Examples of this are set out within the Tribunal’s determination on impairment. Dr Fryzlewicz also stated in an email to the GMC dated 13 August 2024:

‘In my case, accusation that my English language skills were insufficient to work in NHS has been recognised as false by many consultants of medicine who worked with me in many hospitals. All documents proving this have been many times shown by me to The MPTS.’

21. The Tribunal considered that Dr Fryzlewicz’s level of insight was such that it could not be satisfied he would comply with conditions. The Tribunal therefore determined that conditions would not be appropriate or workable in the circumstances of this case.

Suspension

22. The Tribunal then went on to consider whether suspending Dr Fryzlewicz’s registration would be appropriate and proportionate.

23. The Tribunal had regard to paragraphs 91, 94 and 97(d). These state:

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

94 *Suspension is also likely to be appropriate in a case of deficient performance or lack of knowledge of English in which the doctor currently poses a risk of harm to patients but where there is evidence that they have gained insight into the deficiencies and have the potential to remediate if prepared to undergo a rehabilitation or retraining programme.*

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

d In cases that relate to knowledge of English, where the doctor's language skills affect their ability to practise and there is a risk to patient safety if the doctor were allowed to continue to practise even under conditions.'

24. The Tribunal has noted that Dr Fryzlewicz has taken the IELTS and OET tests in the past but failed to achieve the standard required by the GMC. The Tribunal acknowledged Dr Fryzlewicz has made some commitment in the past to improving his English language competency, for example by completing a General Certificate in Secondary Education. However, such qualifications are not recognised by the GMC as appropriate tests of English language skills, and Dr Fryzlewicz is required to complete the IELTS or OET test to the required standard. The Tribunal considers that there is no new evidence to satisfy it that Dr Fryzlewicz presented no risk to patient safety, or that his English language skills were at the standard required by the GMC. In the circumstances, the Tribunal determined that a further period of suspension would be the appropriate and proportionate sanction in this case.

Length of Suspension

25. In deciding on the length of the suspension, the Tribunal considered that a period of 12 months suspension would be appropriate. The Tribunal took into account Dr Fryzlewicz's correspondence with the GMC and the reasons for seeking a postponement of his hearing, which included matters relating to XXX. The Tribunal was mindful that Dr Fryzlewicz had indicated that he would be well enough to participate in these proceedings in three to four months. The Tribunal considered therefore that it was appropriate to take this period into account when determining the length of the suspension. The Tribunal determined that twelve months was the appropriate period. This would give Dr Fryzlewicz the time to complete an IELTS or OET test and to undertake appropriate CPD and to demonstrate evidence of greater insight. This would also serve to ensure patient safety and uphold professional standards, as well as maintain public confidence in the medical profession.

Review Hearing

26. 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 how he has developed insight and addressed the concerns identified in this case.** It therefore may assist the reviewing Tribunal if Dr Fryzlewicz provides:

- 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;
- Evidence of up to date Continuing Professional Development (CPD) specific to his area of practice.

Dr Fryzlewicz will also be able to provide any other information that he considers will assist.

27. The Tribunal has directed to suspend Dr Fryzlewicz's registration for 12 months. The MPTS will send a letter to Dr Fryzlewicz 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 any appeal period.

28. That concludes the case.

ANNEX A – 16/08/2024

Application: Service, Adjournment and Proceeding in Absence

Service of Notice of the Hearing

1. Dr Fryzlewicz is neither present nor represented at this hearing.
2. Ms Emma Gilsenan, Counsel for the GMC, submitted that the Notice of Hearing had been properly served on Dr Fryzlewicz in accordance with the Rules and invited the Tribunal to proceed with the hearing in his absence.
3. Ms Gilsenan referred the Tribunal to the GMC's proof of service bundle which included a screenshot of the GMC database showing Dr Fryzlewicz's registered address and his registered email address and telephone contact number. She reminded the Tribunal that it is the responsibility of Dr Fryzlewicz to keep his registered address up to date with the GMC.
4. The Tribunal noted that on 4 July 2024, the GMC sent its information letter and hearing bundle to Dr Fryzlewicz via email at his registered email address. The email informed Dr Fryzlewicz that his hearing was to be held today. In the information letter, which was attached to the email, the GMC also included the date of this hearing, and reminded Dr Fryzlewicz of the rules requiring parties to provide each other with copies of any documents they intend to present as evidence, and requested Dr Fryzlewicz to provide any documents no later than 18 July 2024.
5. Also on 4 July 2024, the MPTS sent the Notice of Hearing (NoH) to Dr Fryzlewicz to his registered email address. The NoH included the date and time of the hearing, and advised him that it would be held virtually via MS Teams. The NoH also informed Dr Fryzlewicz that the Tribunal can decide to proceed in his absence in accordance with the relevant rules. The Tribunal noted the Royal Mail Track and Trace (RMTT) receipt showed the NoH was delivered at Dr Fryzlewicz's registered address on 9 July 2024 and signed for. The RMTT receipt also showed the weight of the item to be 51 grams.
6. On 24 July 2024, the GMC sent a further email to Dr Fryzlewicz asking him to confirm he had received the email of 4 July 2024 and the attached bundle and letter. It also again informed him that the hearing was to take place today.
7. The Tribunal noted the RMTT receipt showed that a package was delivered at Dr Fryzlewicz's registered address on 29 July 2024 and signed for. The RMTT receipt also showed the weight of the item to be 556 grams.
8. The Tribunal was also provided with email chain of correspondence between the GMC and Dr Fryzlewicz. In this was an email from the GMC to Dr Fryzlewicz, dated 8 August

2024, attaching a further letter regarding his hearing. On 9 August 2024, Dr Fryzlewicz responded stating:

*‘Thank you for your email dated 08 Aug 2024 regarding the scheduled hearing on 15 and 16 August 2024 before the Medical Practitioners Tribunal (**‘the tribunal’**).’*

9. He further stated:

‘Firstly I have not received any documents from the GMC relating to the hearing, including information about the composition of the GMC team and their planned actions against me. This makes it difficult for me to prepare my defence in front of the Tribunal. I am unable to afford a barrister to help me organize my defence and obtain the necessary documents. I am doing my best to defend myself and have made efforts to improve my English language skills by taking special courses and participating in medical conferences.’

10. The Tribunal noted that the weight of the two packages – 51 and 556 grams – would suggest these were the MPTS NoH and the GMC hearing bundle respectively. It was therefore satisfied, from the information before it, that both the NoH included details of today’s hearing and that it had been served upon Dr Fryzlewicz in accordance with Rule 40 of the Rules.

Adjournment Application

11. The Tribunal had regard to Dr Fryzlewicz’s email to the GMC, dated 9 August 2024.

12. It noted his comment in relation to not receiving the documents, as set out above. Dr Fryzlewicz also went on to say:

‘Secondly, the most important reason is that XXX.

I am unable to participate in the Tribunal hearing remotely; however, I anticipate being able to take part in the hearing in person in about three to four months, XXX.

Due to the above reasons, I kindly request the Tribunal team to postpone my hearing for approximately four months. This would allow me to XXX and adequately prepare all necessary documents, thus giving me a fair chance to defend myself XXX in attendance.’

13. On 12 August 2024, the GMC attempted to contact Dr Fryzlewicz on the number provided by him on the GMC database, but without success. The GMC then sent an email to Dr Fryzlewicz in which it advised him that his request for postponement would be forwarded on to the MPTS for consideration. The GMC also advised Dr Fryzlewicz:

'For the GMC to advise their position on the request for postponement, are you able to provide any evidence of XXX? Can you also provide the evidence as to why you believe your situation will have improved in four months' time? Once I have received this, the GMC will consider our position.'

14. The GMC also advised Dr Fryzlewicz that it would be asking the reviewing Tribunal to impose a further period of suspension upon his registration.

15. In an email to the GMC on 13 August 2024, Dr Fryzlewicz stated:

'I cannot take part in the hearing on 15 and 16 Aug 2024 (the Assumption of the Blessed Virgin Mary) in person or online XXX.'

16. He then requested the names of the contacts at the MPTS responsible for making decisions, and then went on to state:

'Now I cannot take part in the hearing on 15 and 16 Aug 2024 in person or online because of XXX.'

and

'XXX. Once again I ask you to postpone the hearing to give me honest possibilities to defend my life, submit all documents from my side, and show the efforts and achievements which I made after my last hearing.'

17. Also on the same date, the GMC sent an email to Dr Fryzlewicz in which it advised him that the current order of suspension on his registration would expire on 6 September 2024, and that the hearing could not therefore be postponed for the length of time he had suggested in his email of 9 August 2024, as the order needed to be reviewed before the expiry date. The GMC went on to say:

'As such, the hearing will open on 15 August, and your request for a postponement will be considered by the Tribunal at that time. It will be a matter for them whether they decide to proceed, or whether they decide to extend the current order and look to relist the matter, so that you can attend XXX.'

18. Following this, further correspondence was received by the GMC from Dr Fryzlewicz in which he set out his concerns about the way he had been treated by the GMC and his previous employer, stating that this had XXX. He also raised concerns about the composition of the reviewing Tribunal considering his case. XXX.

19. Also on 13 August 2024, via email, the GMC asked Dr Fryzlewicz to provide details of XXX.

The Tribunal's decision on the adjournment application

20. The Tribunal received advice from the Legally Qualified Chair that Rule 29(2) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'), sets out that:

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

21. The Tribunal has taken account of the submissions made by Ms Gilsenan and the written submissions made by Dr Fryzlewicz in his email correspondence with the GMC.

22. The Tribunal has taken into account the principles set out in the case of *Hayat v GMC [2018] EWCA Civ 2796* which include that Tribunals have a discretion to adjourn hearings, but must take into account the public interest in the fair, expeditious and efficient disposal of allegations. It also had regard to Article 6 of the European Convention on Human Rights (ECHR) in relation to a fair trial.

23. The Tribunal reminded itself of the overarching objective. It has borne in mind the public interest and Dr Fryzlewicz's interest in concluding the case expeditiously, and its duty to ensure a fair hearing.

24. The Tribunal has already determined that service had been effected, and that Dr Fryzlewicz had received the NoH and the hearing bundle.

25. It noted that Dr Fryzlewicz was present at his previous review hearing in August 2023. At that hearing, as set out in that Tribunal's determination on sanction, it was clear that a hearing would be listed to review his case in twelve months. Further, the GMC wrote to Dr Fryzlewicz on 14 September 2023 and 8 January 2024 reminding of the evidence which the reviewing Tribunal may be assisted by. The GMC also wrote to Dr Fryzlewicz on 18 April 2024 and advised him of the dates of his review hearing and again reminded him of the evidence which may assist the reviewing Tribunal.

26. XXX.

27. For the above reasons, and in the absence of any evidence, the Tribunal determined to refuse the application.

Proceeding in Absence

28. Having determined that the NoH has been properly served in accordance with the Rules, the Tribunal went on to consider, under Rule 31, whether it should proceed with the hearing in Dr Fryzlewicz's absence. In reaching its decision, the Tribunal took into account Ms Gilsenan's submissions.

29. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest. It took into account that the MPTS NoH makes clear to Dr Fryzlewicz that the Tribunal can consider his case in his absence. Despite this, Dr Fryzlewicz has not engaged with the process, and has instead requested an adjournment of his case, and sought to criticise the GMC and the MPTS for the way he has been treated by them. From the information before it, the Tribunal could not be sure as to whether an adjournment is likely to result in Dr Fryzlewicz's attendance and/or participation at a hearing in the future.

30. The Tribunal was mindful that the concerns in this case are serious in that they relate to Dr Fryzlewicz's lack of knowledge of the English language, which could potentially have an adverse impact on patient safety, the role of the regulator, the medical profession and public confidence in the medical profession, if this case were to be adjourned. The Tribunal considered that there is a public interest in disposing of the case expeditiously. In the circumstances of this case and in light of the information before it, the Tribunal considered that there would be no disadvantage to Dr Fryzlewicz in his case proceeding in his absence. The Tribunal was satisfied that Dr Fryzlewicz had voluntarily absented himself from these proceedings.

31. The Tribunal was satisfied, given the seriousness of the issues raised in this case, that it was appropriate to proceed with the case in Dr Fryzlewicz's absence. It therefore determined to proceed with the case.