Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 08/04/2019 - 12/04/2019

Medical Practitioner’s name: Dr Augustine ONOJEJE-ORAKA

GMC reference number: 4181066

Primary medical qualification: MB BS 1985 University of Benin

Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome
Erasure

Immediate order imposed

Tribunal:

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<tr>
<td>Legally Qualified Chair</td>
<td>Mrs Linda Lee</td>
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<tr>
<td>Lay Tribunal Member:</td>
<td>Ms Gail Mortimer</td>
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<td>Medical Tribunal Member:</td>
<td>Dr Helen Denley</td>
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<td>Tribunal Clerk:</td>
<td>Ms Lorraine Curry</td>
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Attendance and Representation:

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<td>Medical Practitioner:</td>
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<td>Representative:</td>
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<td>GMC Representative:</td>
<td>Ms Emma Gilsenan, Counsel,</td>
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<td>instructed by GMC legal.</td>
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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 Facts - 10/04/2019

Background

1. These concerns were first raised with the General Medical Council (‘GMC’) on 11 November 2016 via a fitness to practise referral form completed by Dr A, Responsible Officer, London Region (South) NHS England. Dr A stated that following a Care Quality Commission (‘CQC’) inspection on 27 October 2016 it was revealed that Dr Onojeje-Oraka did not have indemnity cover and had not had cover since 1 July 2010.

2. The allegation that has led to Dr Onojeje-Oraka’s hearing can be summarised as follows: Dr Onojeje-Oraka worked as a General Practitioner at the Falmouth Road Group Practice (‘the Practice’) and did not have medical indemnity insurance. It is further alleged that Dr Onojeje-Oraka knowingly submitted three appraisals in which he falsely stated that he had medical indemnity insurance.

The Outcome of Applications Made during the Facts Stage

3. The Tribunal determined to grant Ms Gilsenan’s application, on behalf of the GMC, made pursuant to Rules 15 and 40 of the GMC Fitness to Practise Rules 2004, as amended (‘the Rules’) that the Notice of Hearing had been properly served on Dr Onojeje-Oraka. The Tribunal further granted Ms Gilsenan’s application to proceed with the hearing in the absence of Dr Onojeje-Oraka, pursuant to Rule 31 of the Rules. The Tribunal’s full decision on the application is included at Annex A.

4. The Tribunal granted Ms Gilsenan’s application, made pursuant to Rule 17(6) of the Rules, to amend paragraphs 2 and 3 of the allegation. The Tribunal’s full decision on the application is included at Annex B.

5. The Tribunal determined to grant Ms Gilsenan’s application, made pursuant to Rule 34(13), to hear the evidence of two witnesses via telephone link. The Tribunal’s full decision regarding this is included at Annex C.
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The Allegation

6. The Allegation (incorporating the amendments) made against Dr Onojeje-Oraka is as follows:

1. Between 2005 and October 2016, you worked as a General Practitioner ('GP') at the Falmouth Road Group Practice. To be determined

2. Between June 2010 and October 2016 (the Period), you practised as a GP and did not have medical indemnity insurance. To be determined

3. At the time you practised as a GP During the Period you knew that you did not have medical indemnity insurance. To be determined

4. Between 2014 and 2016, you knowingly submitted three appraisals, which contained falsified information, stating that you had medical indemnity insurance, with the following organisations:

   a. Medical Defence Union; To be determined
   b. Medical and Dental Defence Union of Scotland. To be determined

5. The information you submitted in the three appraisals, as referenced at paragraph 4 above, contained information which:

   a. was untrue; To be determined
   b. you knew to be untrue. To be determined

6. Your actions at paragraphs 2 to 5 were dishonest. To be determined

7. Between February 2018 and March 2018 you failed to cooperate with the General Medical Council’s investigation process in that you did not provide your Work Details Form when requested. To be determined

Factual Witness Evidence

7. The Tribunal received evidence on behalf of the GMC from the following witnesses:

   • Dr B, GP, via telephone
   • Dr C, GP Partner, Brixton Hill Group Practice, via telephone
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8. The Tribunal received evidence on behalf of the GMC in the form of a witness statement from the following witness who was not called to give oral evidence:

- Ms D, Investigation Officer at the GMC.

Documentary Evidence

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

- CQC report dated 2 July 2015
- CQC report dated 12 May 2016
- Fitness to practise referral form dated 11 November 2016
- Care Quality Commission Notice of proposal to cancel registration dated 16 November 2016
- Correspondence between LMC and NHS England including Dr Onojeje-Oraka’s timeline of events relating to indemnity cover from 2010 to 2016
- Performers List Decision Panel (‘PLDP’) oral hearing transcript dated 23 January 2017
- PLDP outcome letter dated 27 January 2017
- CQC report dated 2 February 2017
- NHS England PLDP appeal outcome dated 26 July 2017
- Letter from MDDUS dated 18 April 2018
- Statement from MDU dated 5 July 2018

The Tribunal’s Approach

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

11. The Tribunal reminded itself of the test to be applied when considering dishonesty as set out in Ivey v Genting Casinos UK Ltd (t/a Crockfords Club) [2016] EWCA Civ 1093 (04 November 2016) that a Tribunal:

- ‘must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of
his belief may evidence whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held.’

Once that had been established they must determine:-

- ‘whether his conduct was dishonest by applying the objective standards of ordinary decent people. It is not necessary for the individual to appreciate that what he has done is, by those standards, dishonest.’

The Tribunal’s Analysis of the Evidence and Findings

12. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

Paragraph 1

13. The Tribunal accepted as evidence the three appraisal documents that showed that Dr Onojeje-Oraka was actively undertaking GP activities between 2005 and 2016; it further noted that within these documents Dr Onojeje-Oraka indicates his start date at the Practice as being February 2005. It was also mindful of the CQC reports which also documented Dr Onojeje-Oraka was a GP at the Practice. The Tribunal therefore found paragraph 1 of the Allegation proved.

Paragraph 2

14. In relation to Dr Onojeje-Oraka not having indemnity insurance, the Tribunal reminded itself of Dr Onojeje-Oraka’s timeline of events where, by his own admission, he states that in June 2010 his membership with the MDU had lapsed:

"this was due to administrative error requesting subscription by lump sum payment instead of preferred usual monthly instalments”.

15. Dr Onojeje-Oraka prepared a document which he submitted by email to NHS England on 2 November 2016. He describes this as a “timeline of events relating to my indemnity cover arrangements from 2010 to date”. In that document he makes it clear that his membership with MDU lapsed on 30 June 2010 and he still did not have medical indemnity insurance in place at the time when he sent that email.
16. The Tribunal also noted from the transcript of his evidence at the PLDP oral hearing on 23 January 2017, that he reaffirmed that he had not had medical indemnity insurance over that period. The Tribunal therefore found paragraph 2 of the Allegation proved.

Paragraph 3

17. The Tribunal noted that within the PLDP oral hearing transcript Dr Onojeje-Oraka told the panel that:

“In terms of the indemnity cover here I think as time went on over that period of 6 years I did try to make attempt in between to reinstate my cover. I had a difficult time with MDU trying to certainly reinstate because they’re the only one with my first cover. So I kept going back to them in the hope that they might reinstate things for me but that never really happened and by the time I realised that I was trying to move to MPS and then subsequently MDDUS so I did make an attempt in between to certainly go back but because of the pressure that I was under I think I did lose track of it”.

18. The Tribunal determined that it is clear from his oral evidence at the PLDP that Dr Onojeje-Oraka knew he did not have indemnity insurance during the relevant period. The Tribunal therefore found paragraph 3 of the Allegation proved.

Paragraph 4(a) and 4(b)

19. The Tribunal noted the evidence of Dr B that in 2014 Dr Onojeje-Oraka had completed the section entitled “medical indemnity” in the appraisal toolkit and indicated that his provider was MDU and membership number XXX. Further Dr B stated that in 2015, Dr Onojeje-Oraka completed the appraisal toolkit to show that his provider was MDDUS and his membership number was XXX.

20. Dr C had stated that Dr Onojeje-Oraka had provided her with a copy of his appraisal for 2016 in which he had completed the section of the appraisal toolkit titled “medical indemnity” and provided a membership number of XXX and completed the name of the provider as MDDUS.

21. The Tribunal noted that Dr Onojeje-Oraka had never sought to deny that he had completed these sections of the toolkit for the appraisal.
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22. The Tribunal also took into account the letter dated 18 April 2018 from Mr E, Head of Membership Services at the MDDUS which states that “I confirm that Dr Onojeje-Oraka is not a current member of MDDUS and has never held active or inactive membership with MDDUS”. This is further corroborated by the witness statement of Mr F, Operations Director at the MDU, dated 5 July 2018 which states that “According to the MDU’s records, Dr Onojeje-Oraka was not a member of the MDU during the relevant period [1 January 2014 – 31 December 2015]”.

23. In the light of the above, the Tribunal has therefore found Paragraph 4(a) and 4(b) proved.

Paragraph 5(a) and 5(b)

24. The Tribunal noted that in his evidence to the PLDP, Dr Onojeje-Oraka said that:

“The way I come across to other people, that’s not the way I saw myself, in the sense that it wasn’t an attempt to mislead my appraisal or the system.”

25. The Tribunal had regard to the PLDP oral hearing transcript in which, when questioned if he discussed his lack of indemnity insurance with his appraiser, Dr Onojeje-Oraka stated that “I remember discussing that once with the appraiser”. The Tribunal were mindful that Dr Onojeje-Oraka further stated, during his PLDP hearing:

“I did mention that I cannot remember specifically which of these appraisal dates where I actually explained to the doctor, when I actually told them that I was actually in the process of changing, I am with MDU but I am looking to actually change and move forward and I am having some difficulties”

26. The Tribunal preferred the evidence of Dr B and Dr C on this matter, who the Tribunal regarded as credible witnesses who gave clear, fair and cogent evidence to the Tribunal.

27. Dr B told the Tribunal that Dr Onojeje-Oraka did not raise the subject of indemnity cover with him and stated that “if any issue had been raised I would have noted that”. Dr B further stated that if any issue regarding lack of indemnity insurance was raised then he would have stopped the appraisal and offered further time for Dr Onojeje-Oraka to rectify the situation and he would have informed the appraisal lead and/or the Responsible Officer.
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28. Dr C stated that Dr Onojeje-Oraka did not say that he had difficulty obtaining indemnity insurance during the 2016 appraisal and stated that if an issue had been raised she would have stopped the appraisal. Dr C further told the Tribunal that, following this, she would have needed to take advice from the appraisal lead/Deputy Medical Director. She stated that she had never been in this position before and "it was such an extraordinary thing, it didn’t cross my mind that a doctor would practise as a GP without indemnity insurance".

29. The Tribunal has also noted the decision of the first-tier Tribunal which states that:

"Turning to the issue of whether there was an intention by Dr Oraka to mislead his appraisers as to his indemnity status, either by commission or omission, we note that Dr Oraka does not dispute that he gave misleading written information about his indemnity status for his appraisals in 2013, 2014, 2015 and 2016 and also failed to verbally inform his appraisers that he was practising without indemnity at those appraisals. Furthermore, he accepted in evidence that he could have raised the issue of his lack of indemnity cover either in his declarations on the appraisal form or in subsequent discussions with his appraiser, but he omitted to do so."

30. Taking the above into consideration, along with its findings and paragraphs 3 and 4(a) and 4(b) the Tribunal finds paragraphs 5(a) and 5(b) found proved.

Paragraph 6

31. The Tribunal next considered if Dr Onojeje-Oraka’s conduct at paragraphs 2 to 5 of the Allegation were dishonest.

32. The Tribunal found that Dr Onojeje-Oraka knew that he was practising as an NHS GP without valid indemnity. He deliberately prevented his appraisers from discovering this by declaring on his appraisal forms that he had medical indemnity insurance with the MDU and MDDUS. It was mindful that Dr Onojeje-Oraka also provided a membership number on his appraisal forms which he knew to be a reference number in relation to his application and was not the number of a policy. The Tribunal found that Dr Onojeje-Oraka’s knowledge and state of mind to be such that he knew exactly what he was doing, which was a continued pattern of deception.
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33. The Tribunal noted the findings of the first-tier Tribunal who stated that in relation to dishonesty:

"Dr Oraka acknowledged at the hearing that he could have raised the issue of his lack of indemnity cover either in his declarations on the appraisal form or in subsequent discussions with his appraiser, but he omitted to do so. Whilst we have some sympathy for the circumstances in which he found himself, we do not consider they can be used to justify his actions or lack of action. We note, for example, that in 2015 Dr Oraka actively changed the details of his indemnity provider on his appraisal form and confirmed membership of MDDUS to his appraiser that year. Accordingly, we conclude that between 2013 and 2016 Dr Oraka deliberately misled his appraisers as to his indemnity status when he filled in his appraisal forms and deliberately omitted to correct the position in the declarations section or during the appraisals themselves”.

34. The Tribunal agreed with these conclusions, based on the evidence it had before it. The Tribunal found that an ordinary decent person would consider that all the actions detailed above by Dr Onojeje-Oraka would be dishonest.

35. The Tribunal has found that Dr Onojeje-Oraka’s actions regarding Allegations 4 and 5 were dishonest and has found paragraph 6 proved in this regard. In relation to paragraphs 2 and 3 the Tribunal was of the view that factually these Allegations are correct and found proved and the matter of dishonesty does not apply to these as it is not relevant. It therefore found paragraph 6 not proved in relation to allegations 2 and 3.

Paragraph 7

36. The Tribunal next considered if Dr Onojeje-Oraka failed to co-operate with the GMC’s investigation process by not completing his Work Details Form (‘WDF’) when requested as set out in Paragraph 7 of the Allegation.

37. The Tribunal noted that within the witness statement of Ms D she stated that Dr Onojeje-Oraka was sent a Rule 4 letter on 5 February 2018 which enclosed a WDF for him to complete and return to the GMC by 12 February 2018. No response was received from Dr Onojeje-Oraka. A further letter was sent on 14 February 2018 asking Dr Onojeje-Oraka to complete the WDF and return by 21 February, to which no reply was received. On 22 February 2018 Ms D emailed Dr Onojeje-Oraka’s registered email address stating that:
"I've posted documentation twice to your address, however I have not received a response. If you are unable to receive the post to the address which is registered at the GMC, I can email electronic versions if you are happy to receive confidential correspondence to this email address?"

38. Dr Onojeje-Oraka did not reply to the above email. A third letter was sent to him on 28 February 2018 reminding Dr Onojeje-Oraka that he had a professional obligation to provide the requested information and failing to do so could result in a further allegation of failing to engage with the GMC. It further stated that he had until 7 March 2018 to return his completed WDF, which Dr Onojeje-Oraka did not do. A final letter requesting the completed WDF was sent on 28 March 2018, again reminding him of his duty as a medical professional to comply with Good Medical Practice. This letter was delivered and signed for at Dr Onojeje-Oraka’s registered address, however, no correspondence from the doctor was received.

39. The Tribunal concluded that in the light of the above information, Dr Onojeje-Oraka has failed to co-operate with the GMC by failing to return his WDF when asked to do so. It therefore found paragraph 7 of the Allegation found proved.

The Tribunal’s Overall Determination on the Facts

40. The Tribunal has determined the facts as follows:

1. Between 2005 and October 2016, you worked as a General Practitioner (‘GP’) at the Falmouth Road Group Practice. **Found proved**

2. Between June 2010 and October 2016 (the Period), you practised as a GP and did not have medical indemnity insurance. **Found proved**

3. During the Period you knew that you did not have medical indemnity insurance. **Found proved**

4. Between 2014 and 2016, you knowingly submitted three appraisals, which contained falsified information, stating that you had medical indemnity insurance, with the following organisations:
   a. Medical Defence Union; **Found proved**
   b. Medical and Dental Defence Union of Scotland. **Found proved**

5. The information you submitted in the three appraisals, as referenced at paragraph 4 above, contained information which:
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a. was untrue; **Found Proved**

b. you knew to be untrue. **Found proved**

6. Your actions at paragraphs 2 to 5 were dishonest. **Found proved in respect of paragraphs 4 and 5 and found not proved in respect of paragraphs 2 and 3**

Between February 2018 and March 2018 you failed to cooperate with the General Medical Council’s investigation process in that you did not provide your Work Details Form when requested. **Found proved**

**Determination on Impairment - 11/04/2019**

1. The Tribunal now has to decide in accordance with Rule 17(2)(I) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Onojeje-Oraka’s fitness to practise is impaired by reason of misconduct.

**The Evidence**

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

**Submissions**

3. Ms Gilsenan, submitted that Dr Onojeje-Oraka’s fitness to practise is currently impaired by reason of his misconduct. She drew the Tribunal’s attention to its findings of facts and to Good Medical Practice (2013 edition) (‘GMP’) and the following case law when considering impairment:

- Cohen v GMC [2008] EWHC 581 (Admin);
- CHRE V NMC and Grant [2011] EWHC 927 (Admin);
- Chaudhary v GMC [2017] EWHC 2561 (Admin);
- GMC v Meadow [2006] EWCA Civ 1390
- Cheatle v GMC [2009] EWHC 645 (Admin)
- GMC v Patel [2018] EWHC 171 (Admin)

4. Ms Gilsenan submitted that Dr Onojeje-Oraka actively provided inaccurate information to deceive his appraisers on various occasions and this demonstrates that there is a pattern of dishonesty. She submitted that any form of dishonesty by a member of the medical profession is likely to be considered serious, particularly when committed within the context of their practice and when repeated.

5. Ms Gilsenan submitted that Dr Onojeje-Oraka breached a central tenet of the profession, the requirement to be honest and trustworthy at all times. She stated that Dr Onojeje-Oraka has not engaged with the GMC and has not demonstrated any
insight or remediation into his actions. She told the Tribunal that in relation to the matter of persistent dishonesty, it is very difficult to remedy.

6. Ms Gilsenan submitted that there is a necessity, in the circumstances of this case, to find Dr Onojeje-Oraka impaired in order to maintain public confidence and uphold standards of conduct and behaviour.

The Relevant Legal Principles

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

8. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct, and that the misconduct was serious; and then, whether the finding of that misconduct which was serious, could lead to a finding of impairment.

9. The Tribunal must also determine whether Dr Onojeje-Oraka’s fitness to practise is impaired today, taking into account Dr Onojeje-Oraka’s conduct at the time of the events and any relevant factors since then, such as whether the matters are remediable and have, in fact, been remedied.

10. The Tribunal were mindful of *CHRE v NMC and Paula Grant [2011] EWHC 927 QBD (Admin)*, in which Cox J, referring to paragraph 25.67 of the Fifth Shipman report, posed the following question:

   ‘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

   d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future.’
The Tribunal’s Determination on Impairment

Misconduct

11. The Tribunal first considered whether Dr Onojeje-Oraka’s actions amounted to misconduct.

12. The Tribunal has borne in mind that it must not draw any adverse inference from Dr Onojeje-Oraka’s decision not to attend the hearing.

13. The Tribunal was of the view that Dr Onojeje-Oraka could potentially have put patients at risk by undertaking clinical work without valid indemnity insurance. It noted that there was a continuous pattern of behaviour, in that he knowingly submitted three appraisals between 2014 and 2016 which stated that he had indemnity insurance when he did not. Dr Onojeje-Oraka provided a membership number for both the MDU and MDDUS which was not valid, which the Tribunal found at facts stage was “such that he knew exactly what he was doing, which was a continued pattern of deception”.

14. The Tribunal, therefore, was in no doubt that Dr Onojeje-Oraka’s conduct fell so far short of the standards of conduct reasonably to be expected of a doctor, as to amount to misconduct, which was serious. The Tribunal was of the view that Dr Onojeje-Oraka’s dishonest actions broke a fundamental tenet of the profession: doctors must be able to be trusted to act with honesty and integrity. It was satisfied that his conduct would be considered deplorable by fellow practitioners and concluded that Dr Onojeje-Oraka’s conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

Impairment by reason of misconduct

15. The Tribunal, having found that the facts proved amounted to misconduct, went on to consider whether Dr Onojeje-Oraka’s fitness to practise is currently impaired by reason of his misconduct.

16. The Tribunal noted that, when questioned in the PLDP hearing in regards to Dr Onojeje-Oraka’s awareness that he was not paying for indemnity insurance, he stated that “Certainly, you must excuse my naivety when it comes to the indemnity side of things and the implication of the indemnity”. The Tribunal noted that Dr Onojeje-Oraka was an experienced doctor and he would have been aware that he was required to have valid indemnity insurance.

17. The Tribunal note that in the First Tier Tribunal findings they report that in relation to Dr Onojeje-Oraka’s insight “we have grave concerns about Dr Oraka’s lack of insight in relation to indemnity cover; he told us that prospective, rather than retrospective, cover is most important at this point despite him not currently being in
practice and he also said that whilst indemnity cover is a safeguard for both clinicians and patients, it is more important for clinicians if there is a negligence issue”. This led this Tribunal to find that Dr Onojeje-Oraka has extremely limited insight in relation to the Allegations. It further notes that at no point has Dr Onojeje-Oraka acknowledged the impact of his actions on the public or on the profession or accepted responsibility for them.

18. The Tribunal were mindful that when questioned in the PLDP hearing, Dr Onojeje-Oraka stated that “once upon a time my indemnity was covered. That has been proven….I asked myself to reflect what happened, what went wrong, what changed you- why did I change. It was something you’ve been doing all of that when you were a much more inexperienced junior doctor, you could pay your indemnity, up until that particular point”. This was the only evidence to suggest to the Tribunal that there had been any reflection or remediation by Dr Onojeje-Oraka. There has been no other evidence put before this Tribunal in relation to reflection or remediation by Dr Onojeje-Oraka nor has he engaged with the GMC investigation. The Tribunal were not persuaded that this demonstrated sufficient insight or true reflection or remediation.

19. The Tribunal, having identified this lack of insight, have no doubt that there is a continued risk of repetition of the misconduct.

20. The Tribunal also had regard to Good medical practice (2013 edition) (‘GMP’). It found the following paragraphs to be engaged in this case:

"1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.

63 You must make sure you have adequate insurance or indemnity cover so that your patients will not be disadvantaged if they make a claim about the clinical care you have provided in the UK.

68 You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.

71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.
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a You must take reasonable steps to check the information is correct.

b You must not deliberately leave out relevant information.

73 You must cooperate with formal inquiries and complaints procedures and must offer all relevant information while following the guidance in Confidentiality”.

21. The Tribunal considered the three limbs of the statutory overarching objective and determined that all three were engaged in this case. The Tribunal found that by failing to have indemnity insurance, Dr Onojeje-Oraka had potentially put patients at risk, had brought the profession into disrepute and breached a fundamental tenet of the profession.

22. It considered that a finding of impairment was necessary in order to uphold the statutory overarching objective to protect the public interest, including the need to maintain public confidence in the profession and to maintain proper professional standards and conduct for members of the profession.

23. The Tribunal also found that in deliberately misleading his appraisers as to his indemnity status, Dr Onojeje-Oraka had acted dishonesty.

24. Accordingly, The Tribunal has therefore determined that Dr Onojeje-Oraka’s fitness to practice is impaired by reason of misconduct.

Determination on Sanction - 12/04/2019

1. Having determined that Dr Onojeje-Oraka’s fitness to practise is impaired by reason of misconduct, the Tribunal must now decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

The Evidence

2. The Tribunal took into account all the evidence received during the facts stage of the hearing. The Tribunal heard no further evidence at this stage.

Submissions

3. Ms Gilsenan acknowledged that the decision as to the appropriate sanction to impose in this case is a matter solely for the Tribunal exercising its own independent judgement. She drew the Tribunal’s attention to the relevant paragraphs of the GMP and the Sanctions Guidance February 2018 edition (‘SG’).
4. Ms Gilsenan drew the Tribunal to paragraphs 20 – 23 in regards to imposing proportionate sanctions and asked the Tribunal to bear this in mind when making its decision.

5. Ms Gilsenan stated that Dr Onojeje-Oraka has no previous findings of impaired fitness to practise. However she drew the Tribunal to its finding at Impairment stage where the Tribunal stated that there was a “continued pattern of deception” by Dr Onojeje-Oraka. She stated that Dr Onojeje-Oraka has demonstrated persistent and consistent dishonesty over a significant period of time. She stated that Dr Onojeje-Oraka has not engaged whatsoever with the GMC investigation and referred the Tribunal to paragraph 16 of its determination on Impairment where it states that “Dr Onojeje-Oraka was an experienced doctor and he would have been aware that he was required to have valid indemnity insurance”. Ms Gilsenan further submitted that Dr Onojeje-Oraka has not demonstrated any reflection or remediation and dishonesty, by its nature, is difficult to remediate. Ms Gilsenan stated that Dr Onojeje-Oraka has not offered any apology for his actions and has not offered any evidence to demonstrate that he has insight.

6. Ms Gilsenan stated that this is not a case where there are exceptional circumstances which would warrant the Tribunal to take no action. In relation to conditions, she drew the Tribunal to paragraphs 79 – 90 and stated that it is difficult to envisage what conditions, if any, would be suitable in this case, given the Tribunal’s findings at stages 1 and 2.

7. Ms Gilsenan directed the Tribunal to paragraph 91 of the SG regarding situations where a period of suspension may be sufficient, pointing out that this is often appropriate in cases where a doctor had demonstrated a level of insight into their misconduct and had taken significant steps to remediate. She submitted that, given Dr Onojeje-Oraka’s complete lack of insight and remediation in this case, this sanction was not appropriate.

8. Ms Gilsenan went on to direct the Tribunal to the sections of the SG which deal with erasure, particular paragraphs 107, 109 and 128. She submitted that erasure may be appropriate even where the doctor does not present a risk to patient safety. She stated that this is a case where the dishonesty has been serious, persistent and deliberate. She reminded the Tribunal of their findings at the impairment stage and stated that Dr Onojeje-Oraka has demonstrated a disregard of the principles of GMP. She submitted that a sanction of erasure is therefore necessary to maintain public confidence in the profession.
The Tribunal’s Determination on Sanction

9. The Tribunal took into account the submissions of Ms Gilsenan. It also had regard to the evidence it received at stage 1 and its own findings at stages 1 and 2.

10. It bore in mind that the decision as to the appropriate sanction to impose is a matter for the Tribunal exercising its own independent judgement. In order to ensure that it imposed a sanction that was no more restrictive than necessary, the Tribunal considered the least restrictive sanction first and only considered more restrictive sanctions if the less restrictive was insufficient to protect the public.

11. The Tribunal applied the principle of proportionality, balancing the doctor’s interests with the public interest. It also bore in mind that the purpose of sanction is not to be punitive, although the sanction imposed may have a punitive effect.

12. When considering sanctions, the Tribunal took into account the SG. The Tribunal bore in mind that it must have regard to the statutory overarching objective as a whole and should not give excessive weight to any one limb. The overarching objective is set out in Section 1(1B) of the Medical Act 1983, as amended:

   ‘a. To protect, promote and maintain the health, safety and wellbeing of the public;

   b. To promote and maintain public confidence in the medical profession; and,

   c. To promote and maintain proper professional standards and conduct for members of that profession.’

13. The Tribunal has borne in mind the aggravating factors in the case of Dr Onojeje-Oraka, which include:

   • His repeated and prolonged dishonesty over a period of 3 years;
   • His presentation of inaccurate appraisal documents on three separate occasions to two different appraisers;
   • His practising as a GP without indemnity insurance for 6 years;
   • His serious departure from GMP;
   • The potential risk of harm to patients as a result of him not having indemnity insurance

14. The Tribunal identified the following mitigating factor: Dr Onojeje-Oraka is a man of previous good character, against whom there have been no adverse findings in the past.
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15. The Tribunal has borne in mind the ‘timeline of events relating to indemnity cover arrangements from 2010 to date’ which Dr Onojeje-Oraka’s submitted to NHS England. This included some factors which Dr Onojeje-Oraka put forward as mitigation.

- He stated that his membership with the MDU lapsed due to “an administrative error requesting lump sum payment”, which he could not afford;
- The partnership had become less profitable than when he joined the partnership leading to a reduction of income for the partners;
- He had to cover for members of staff who were off sick for prolonged periods, so he did not have the time to devote to renewing his medical indemnity insurance;
- His partners were not supportive of him;
- He was “naive” about insurance matters;
- He outlined various family and personal difficulties and stressors;
- He stated that work-related stress and his fellow partner “was not willing to cooperate it made this option [group cover scheme] difficult to take on though more cost effective and with potential to prevent lapse of indemnity”.

16. The Tribunal also noted that in Dr Onojeje-Oraka’s email dated 2 November 2016 he stated that “I am really ever so sorry that my conduct has not been as expected due to constellation of mitigating circumstances”.

17. The Tribunal noted that Dr Onojeje-Oraka has not provided any supporting evidence of his mitigating circumstances to the Tribunal. The Tribunal were not persuaded that the mitigating factors described by Dr Onojeje-Oraka lessened the serious departure from GMP. It notes that Dr Onojeje-Oraka was an experienced partner in the Practice and that doctors in his position, by nature, have stressful jobs and this is not an excuse to practise without valid indemnity insurance or to be dishonest.

**No action**

18. The Tribunal first considered whether it could take no action. It noted that when a doctor’s fitness to practise is impaired, taking no action is usually only appropriate when there are exceptional circumstances. There were no exceptional circumstances in this case, which justified taking no action.
19. The Tribunal therefore determined that it would not be adequate, proportionate or in the public interest, to conclude this case by taking no action.

Conditions

20. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Onojeje-Oraka’s registration. It took into account the following paragraphs of the SG:

‘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.

…

84 Depending on the type of case (eg health, language, performance or misconduct), some or all of the following factors being present (this list is not exhaustive) would indicate that conditions may be appropriate:

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

85 Conditions should be appropriate, proportionate, workable and measurable.’

21. The Tribunal had already found that Dr Onojeje-Oraka has demonstrated extremely limited insight into his misconduct. It also had regard to its findings of persistent dishonesty and found that there were no conditions which could be formulated to deal with such dishonesty, nor would conditions adequately mark the seriousness of the Tribunal’s findings.

22. Accordingly, the Tribunal found that conditions would not sufficiently protect either patients or the public interest.
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Suspension

23. The Tribunal then went on to consider whether a period of suspension would be an appropriate and proportionate sanction to impose on Dr Onojeje-Oraka’s registration. The Tribunal bore in mind the following paragraphs of the SG:

‘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).

93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions …’

24. The Tribunal also had regard to paragraph of the SG, which provides that suspension may be appropriate where:

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

25. The Tribunal considered Dr Onojeje-Oraka’s actions resulted in serious breaches of GMP. Dr Onojeje-Oraka has not demonstrated any real insight into his misconduct nor has he offered any apology or shown remorse to this Tribunal.

26. The Tribunal has seen no evidence of any steps taken by Dr Onojeje-Oraka toward remediation or any meaningful reflection on his part.

27. In all the circumstances of this case, the Tribunal concluded that suspension would not be sufficient in order to maintain public confidence in the medical profession and to uphold standards of conduct expected of doctors.

Erasure

28. Having determined that imposing conditions on or suspending Dr Onojeje-Oraka’s registration would be insufficient sanctions, the Tribunal determined to erase
his name from the Medical Register. It had regard to the following paragraphs of the SG:

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

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

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

... 

d. Abuse of position/trust (see Good medical practice, paragraph 65: ‘You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession’)

... 

h. Dishonesty, especially where persistent and/or covered up ...

i. Putting their own interests before those of their patients (see Good medical practice paragraph 1: – ‘Make the care of [your] patients [your] first concern’ and paragraphs 77–80 regarding conflicts of interest)

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

124 Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor’s clinical responsibility (eg providing false statements or fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities should be able to trust the integrity of doctors, and where a doctor undermines that trust there is a risk to public confidence in the profession. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.

128 Dishonesty, if persistent and/or covered up, is likely to result in erasure...

29. When considering whether Dr Onojeje-Oraka’s misconduct was so serious as to be incompatible with continued registration, the Tribunal reminded itself of the findings it had already made in respect of Dr Onojeje-Oraka’s persistent, deliberate dishonesty.
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submitting false details in his appraisal, with the view to deceive his appraisers in relation to his lack of indemnity insurance, along with his profound lack of insight, the Tribunal determined that his conduct represented a serious departure from the principles set out in GMP.

30. The Tribunal determined that, for the reasons stated above, Dr Onojeje-Oraka’s misconduct was fundamentally incompatible with continued registration on the Medical Register. Therefore, the Tribunal concluded that erasing Dr Onojeje-Oraka’s name from the Medical Register would be the only proportionate sanction to impose in order to protect the public, maintain public confidence in the medical profession and declare and uphold the proper standards of conduct and behaviour.

31. Accordingly the Tribunal determined that Dr Onojeje-Oraka’s name should be erased from the Medical Register.

Determination on Immediate Order - 12/04/2019

1. After the conclusion of the previous stage of the hearing when the Tribunal’s decision on sanction was announced, but prior to hearing submissions on an immediate order, the GMC drew the Tribunal’s attention to new information they had received. This consisted of a screen shot of a telephone call from Dr Onojeje-Oraka taken by the GMC Contact Centre at 08:47 am on Monday 8 April 2019, the first morning of this hearing. Dr Onojeje-Oraka asked for his call to be returned and left his mobile number.

2. The GMC also provided a telephone note that indicated that at 10:38am on 12 April 2019 the GMC had contacted Dr Onojeje-Oraka who confirmed that he was currently abroad and had been abroad for a week. Dr Onojeje-Oraka indicated that there may be factors that might have had a bearing on the hearing. The call was not completed as the line was disconnected.

3. The Tribunal wishes to express its concern that the fact and detail of Dr Onojeje-Oraka’s telephone call was not made available earlier in proceedings. The Tribunal has found allegations against Dr Onojeje-Oraka proved (including dishonesty), and found that his fitness to practise is impaired, and has determined to erase his name from the medical register. The Tribunal cannot speculate on what further information might have been provided in relation to Dr Onojeje-Oraka’s communication with the GMC, or whether any such information may have been relevant to the Tribunal’s considerations at the preceding stages of this hearing.
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4. Having determined that Dr Onojeje-Oraka’s name be erased from the Medical Register, the Tribunal has now considered whether to impose an immediate order of suspension on his registration in accordance with Section 38(1) of the Medical Act 1983, as amended.

GMC Submissions

5. Ms Gilsenan submitted that an immediate order was necessary and appropriate in this case in order to uphold the public interest. She directed the Tribunal to paragraphs 172 and 173 of the sanction Guidance which deals with immediate orders. She reminded the Tribunal of the comments it had made at various paragraphs in its determinations on Impairment and Sanction and stated that it was necessary to impose an immediate order of suspension until the substantive order of erasure takes effect. She informed the Tribunal that Dr Onojeje-Oraka currently has an interim order on his registration which is due to expire on 4 May 2019 and invited the Tribunal to revoke this.

The Tribunal’s Determination

6. In making its decision the Tribunal exercised its own judgement.

7. The Tribunal took account of paragraph 172 and 178 of the Sanctions Guidance, which state:

‘The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor...’

‘Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.’

8. In all the circumstances, the Tribunal determined to impose an immediate order of suspension on Dr Onojeje-Oraka’s registration. It was satisfied that this was necessary for the protection of the public and in the public interest. In particular, and of primary importance, given the facts of this case, the Tribunal determined that the public interest, which encompasses maintenance of confidence in the profession
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and declaring and upholding proper standards of behaviour, demanded an immediate suspension.

9. This means that Dr Onoeje-Oraka’s registration will be subject to the immediate order of suspension from when notification is deemed to have been served. The substantive direction, as already announced, will take effect 28 days from when written notice of this determination has been served upon Dr Onoeje-Oraka, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

10. The interim order currently imposed on Dr Onoeje-Oraka’s registration will be revoked with immediate effect.

11. That concludes this case.

Confirmed
Date 12 April 2019
Mrs Linda Lee, Chair
APPLICATION TO PROCEED IN DR ONOJEJE-ORAKA’S ABSENCE

1. Dr Onojeje-Oraka was neither present nor represented at the hearing. Ms Gilsenan therefore made an application, pursuant to Rule 31 of the Rules, for the Tribunal to proceed with Dr Onojeje-Oraka’s case in his absence.

SERVICE

2. Ms Gilsenan first invited the Tribunal to find, in accordance with Rules 15 and 40 of the Rules, that all reasonable efforts had been made to serve Dr Onojeje-Oraka with notice of this hearing.

3. In considering whether notice of this hearing had been properly served on Dr Onojeje-Oraka, the Tribunal had regard to the GMC’s Information letter, dated 6 March 2019, sent by Special Delivery to Dr Onojeje-Oraka’s registered address. That letter was also sent by email to Dr Onojeje-Oraka’s registered email address. The Tribunal also had regard to the MPTS Notice of Hearing, dated 6 March 2019, also sent to Dr Onojeje-Oraka’s registered address by Special Delivery and by email that same day. The Tribunal was satisfied that the Notice of Hearing contained, amongst other things, details of the date, time, and location of this hearing.

4. The Tribunal noted that both the GMC’s Information letter and the MPTS Notice of Hearing were signed for by a signatory “Onojeje-Oraka” which could be the doctor or someone on his behalf. The Tribunal was satisfied that service to Dr Onojeje-Oraka’s registered address was complete.

5. The Tribunal was therefore satisfied that all reasonable efforts had been made to inform Dr Onojeje-Oraka of these proceedings, and that notice of this hearing had been properly served upon him in accordance with the Rules.

PROCEEDING IN ABSENCE

6. Ms Gilsenan submitted that Dr Onojeje-Oraka has received both the GMC and MPTS documents sent to his registered address and registered email address. She submitted that Dr Onojeje-Oraka has voluntarily absented himself from the hearing and that there is no evidence to suggest that Dr Onojeje-Oraka seeks an adjournment nor is there any assurance that an adjournment would secure his
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attendance. She submitted that it was appropriate and in the public interest to proceed in Dr Onojeje-Oraka’s absence.

7. In considering whether to proceed with the case in Dr Onojeje-Oraka’s absence, the Tribunal took into account the submissions made by Ms Gilsenan on behalf of the GMC but exercised its own judgement. It bore in mind that although it has the discretion to proceed to consider the case in the doctor’s absence, that discretion should be exercised with the utmost care and caution having regard to all the circumstances of which it is aware. The Tribunal recognised that fairness to the practitioner was important, but also took into account fairness to the GMC and the interests of the public. The Tribunal bore in mind that in making its decision it must balance Dr Onojeje-Oraka’s interests against those of the GMC and the wider public interest.

8. In making its decision, the Tribunal bore in mind the need to protect the public. This is the Tribunal’s statutory overarching objective, which includes:

- protecting, promoting and maintaining the health, safety and well-being of the public;
- promoting and maintaining public confidence in the medical profession; and
- promoting and maintaining proper professional standards and conduct for members of that profession.

9. In all the circumstances, the Tribunal was satisfied that Dr Onojeje-Oraka is aware of these proceedings and that he has voluntarily absented himself from them. There has been no application for an adjournment from Dr Onojeje-Oraka and given his lack of communication with the GMC, the Tribunal was concerned that he would not attend a hearing on an alternative date. Dr Onojeje-Oraka is not legally represented and there has been no indication that he wishes to seek representation or to be represented at the hearing.

10. Having considered all the information before it, the Tribunal was satisfied that Dr Onojeje-Oraka’s voluntary absence and the seriousness of the issues raised in this case (including matters relating to dishonesty) meant that it was appropriate to proceed with the case in his absence. It concluded that the wider public interest in the case proceeding expeditiously outweighs Dr Onojeje-Oraka’s own interests in
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adjourning, particularly when no useful purpose would be served by adjourning to a later date.

11. The Tribunal wished to emphasise that it has drawn no adverse inference from Dr Onojeje-Oraka’s decision not to attend the hearing.

12. The Tribunal therefore determined to exercise its discretion in accordance with Rule 31 and to proceed to consider Dr Onojeje-Oraka’s case in his absence. It was satisfied that it was in the interests of justice to do so.

ANNEX B – 10/04/2019

1. On behalf of the GMC, Ms Gilsenan made an application for the Tribunal to use its power, under Rule 17(6), to amend paragraphs 2 and 3 of the allegation by inserting the words ‘the Period’ in paragraph 2 and in paragraph 3 replacing the words ‘At the time you practised as a GP’ with the words ‘During the period’.

2. Ms Gilsenan submitted that in these circumstances there would be no injustice to Dr Onojeje-Oraka in amending the allegations as it clarifies the GMC’s case.

3. The Tribunal has noted the email sent to Dr Onojeje-Oraka on 29 March 2019, informing him that an application to amend the allegation would be made by the GMC. The Tribunal noted Onojeje-Oraka did not reply to this email.

4. The Tribunal noted the provisions of Rule 17(6)(b) which allow an amendment to an allegation if it could be made without injustice. It considered that the proposed amendments sought to clarify the GMC’s case and there would be no injustice to Dr Onojeje-Oraka. The Tribunal was therefore content to allow all of the amendments in fairness to all parties and formally amended paragraphs 2 and 3 of the allegation. The amended allegation is set out in the body of the determination.

ANNEX C – 10/04/2019

Application to hear witness evidence via telephone link

1. Ms Gilsenan, on behalf of the GMC, made an application under Rule 34(14) for the GMC witness, Dr B and Dr C, to give oral evidence via telephone link. She submitted that Dr B is currently residing overseas and this would be the most convenient way of him addressing the Tribunal. She further submitted that Dr C has
professional commitments and it would therefore be preferable for her to give oral evidence via telephone link.

2. The Tribunal had regard as to whether the evidence of these witnesses should be in person or whether to agree with the application of Ms Gilsenan that it could be heard by telephone link. The Tribunal noted that it had the power to hear evidence by telephone pursuant to Rule 34(14) of the Rules.

3. Having regard to the submissions by Ms Gilsenan, it determined that this was a case where such evidence could be given by telephone link.

4. The Tribunal considered that, given the circumstances described, the use of telephone link would be an expeditious way in which to receive oral evidence from these two witnesses. It determined that it was in the interests of justice to allow the application.