PUBLIC RECORD

Date: 14/03/2025 - 14/03/2025

Doctor:	Dr Paul Jackson
GMC reference number:	4604350
Primary medical qualification:	MB ChB 1999 University of Leeds

Type of case
Restoration following voluntary erasure

Summary of outcome
Restoration application refused. No further applications for 4 months.

Tribunal:

Legally Qualified Chair	Mr Stephen Killen
Lay Tribunal Member:	Mr Colin Sturgeon
Registrant Tribunal Member:	Dr Jane Mamelok

Tribunal Clerk:	Ms Hinna Safdar

Attendance and Representation:

Doctor:	Present, not represented
GMC Representative:	Ms Katie Jones, 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 Facts and Restoration - 14/03/2025

1. The Tribunal has convened to consider Dr Jackson's application for his name to be restored to the Medical Register following his administrative erasure in 2017.

2. The Tribunal has considered the application in accordance with section 41 of the Medical Act 1983, as amended, and rule 24 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules').

3. This is Dr Jackson's first application for restoration.

Background

4. Dr Jackson qualified in 1999 from the University of Leeds. At the time of his administrative erasure, he was practising as a paediatric urologist and paediatric general surgeon.

5. Dr Jackson voluntarily erased his name from the UK Medical Register on 27 March 2017, after relocating to New Zealand ('NZ') to work as a paediatric surgeon. He is currently based in Wellington, NZ. On 5 September 2022, Dr Jackson applied for restoration to the register, submitting documentation, including a certificate of professional standing from the NZ Medical Council ('the NZMC') dated 11 August 2022. This certificate included information relating to an ongoing investigation and performance assessment requirement under the NZ regulatory frameworks, as outlined below.

6. In 2019, while employed at Wellington Regional Hospital ('the Hospital') under the Capital and Coast District Health Board ('the Health Board'), concerns were raised regarding Dr Jackson's clinical practice. XXX

7. Dr Jackson stepped down from clinical duties at the Hospital in March 2020. XXX

8. XXX

9. Subsequently, the NZMC required Dr Jackson to undergo a competence review, specifically a performance assessment, and he agreed to voluntary undertakings to limit his surgical practice. These undertakings required him to have his operative techniques approved by a supervisor prior to procedures but did not necessitate intraoperative supervision. However, since leaving the Health Board, Dr Jackson had not, at the time of his application for restoration, secured new surgical clinical employment, meaning the undertakings were not fully implemented, and the performance assessment remained on hold.

10. The NZMC explained that the performance assessment was intended to provide objective evidence of Dr Jackson's competence and assist in determining if further action was needed. When Dr Jackson applied for restoration to the UK Medical Register, the GMC requested evidence to confirm whether the concerns raised in NZ were relevant to his ability to practice in the UK. In response, Dr Jackson submitted his CV, certificates of continuing professional development from the Royal Australasian Society, and evidence disputing findings from NZ.

11. Dr Jackson underwent a GMC performance assessment in December 2023, which evaluated all domains of surgical clinical practice. While his knowledge and basic surgical skills were deemed acceptable, his performance in the domain of *'maintaining professional performance*' was found to be unacceptable, and the assessors concluded that it could place patients at risk. They commented as follows:

> *'The Team were concerned that he believed he would be able to return to unsupervised operative practice without any support or supervision. It is nearly four years since he last operated on a patient. Guidance from the Academy of Royal Colleges and GMC is clear that returning to work after an absence of two years or longer will require a period of retraining to protect patient safety. They do acknowledge that individual needs will vary and 'skills fade' may be mitigated by keeping up to date.*
>
> *In summary, Mr Jackson has kept his knowledge up to date. He has an acceptable knowledge of relevant guidelines and attended a range of appropriate courses and conferences. In the Surgical Skills category, he did show that he has acceptable basic surgical skills; the Team accept that his involvement in teaching is likely to have been a positive factor in this area. However, in the opinion of the Team, any surgeon who has been out of practice for a significant period of time will require a period of supervision of their operative skills; an unsupervised return to independent practice could pose a serious*

risk to patient safety. It is not safe to rely on self-assessment of surgical skills. The overall assessment in this category is therefore unacceptable.'

12. Dr Jackson disagreed with aspects of the GMC assessment, including criticism of his stoma positioning during a skills station. He maintained that his professional development was up-to-date and that his extensive surgical experience rendered further retraining unnecessary. Nonetheless, the assessment team recommended a formal return-to-work plan involving direct supervision for all surgical procedures, gradual relaxation of restrictions based on progress, and a mentor to support his return.

The Current Restoration Hearing

The Allegation and the Doctor's Response

13. As a result of the outcome of Dr Jackson's performance assessment, the GMC has made the following allegation against Dr Jackson, to be determined and taken into account as part of his application for restoration:

1. Between 08 and 10 December 2023 you underwent a General Medical Council assessment of the standard of your professional performance. Admitted and found proved

2. Your professional performance was unacceptable in the following area:

    a. Maintaining Professional Performance. To be determined

And that by reason of the matters set out above your fitness to practise is impaired because of your deficient professional performance. To be determined

The Admitted Facts

14. Dr Jackson made admissions to Paragraph 1 of the Allegation, as set out above, in accordance with rule 17(2)(d) of the Rules. In accordance with rule 17(2)(e) of the Rules, the Tribunal announced this paragraph of the Allegation proved.

15. In light of Dr Jackson 's response to the allegation made against him, the Tribunal is required to determine whether Dr Jackson's professional performance in the domain of 'Maintaining Professional Performance' was unacceptable.

The Evidence

16. The Tribunal has taken into account all the evidence that it has received, both oral and documentary.

17. Dr Jackson provided his own witness statement and also gave oral evidence at the hearing.

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

- Restoration Application, dated 5 September 2022
- Performance Assessment, dated 16 February 2024
- E-mail from Dr Jackson to GMC, dated 14 October 2022
- Report by Dr A, dated 21 May 2022
- Response to notification of concerns, dated 21 January 2022
- Settlement Agreement, dated 23 June 2022
- Work Details Form, dated 20 October 2022
- E-mail from NZMC with attachments, dated 13 December 2022
- Capital Coast DHB documents, Various dates
- Letter from Dr Jackson to GMC, dated 4 February 2024
- Dr Jackson CV, dated February 2023
- RACS CPD certification, dated 2022
- Performance Assessment portfolio
    - part 1, dated 7 July 2023
    - part 2, dated 8 August 2023
- Credentialing document, dated 2019
- E-mail from Dr Jackson with amended Undertaking, dated 1 September 2023
- Signed Voluntary Undertaking, dated 31 August 2023
- E-mail from Dr Jackson regarding employment status, dated 9 October 2023
- Feedback from Dr Jackson to GMC regarding Performance Assessment, dated 2 January 2024
- Dr Jackson's response to GMC regarding Performance Assessment Report, dated 27 March 2024
- Royal Australasian College of Surgeons CPD Certificate, dated 2023

Submissions on Facts

Submissions on behalf of the GMC

19. Ms Jones, counsel, submitted that the GMC relies on the findings of the performance assessment as evidence that Dr Jackson's professional performance was unacceptable in the area of maintaining professional performance. The assessment led to a recommendation that Dr Jackson was fit to practise on a limited basis, with several key restrictions outlined in the report. Ms Jones set out that the recommendations included:

- developing a formal return-to-work action plan with an educational supervisor;
- requiring direct supervision for all surgical procedures;
- allowing a gradual relaxation of restrictions if sufficient progress was demonstrated;
- prohibiting out-of-hours on-call work until Dr Jackson is deemed competent in surgical procedures; and
- that Dr Jackson receive mentoring during his return to practice.

20. Ms Jones highlighted that the performance assessors reached their conclusions after carefully considering relevant guidelines, particularly the 2017 guidance from the Academy of Medical Royal Colleges ('the 2017 Guidance'). The assessors acknowledged that while Dr Jackson had demonstrated up-to-date medical knowledge and performed surgical skills to an acceptable level, his lack of recent operative experience raised significant concerns about patient safety. She submitted that a key issue was that Dr Jackson believed he could return to independent practice without supervision, a stance the assessors considered unrealistic and unsafe.

21. Ms Jones submitted that a crucial aspect of the 2017 Guidance is its recommendation that any doctor who has been out of practice for more than two years requires a period of retraining to ensure patient safety. While acknowledging that individual circumstances vary, the guidance strongly warns against self-assessment of surgical skills and stresses the need for structured supervision. Since Dr Jackson had been away from operative practice for more than two years by the time he applied for restoration, the performance assessors concluded that an unsupervised return to surgery could pose serious risks to patient safety.

22. Ms Jones also addressed an alternative study cited by Dr Jackson—Stevens et al. (2022), which examined the return to work of seven trainee surgeons, the longest of whom had been away for 13 months. The study found that their skills returned after an average of four weeks with appropriate support. However, Ms Jones submitted that this study was not

official guidance and should be given little to no weight. The subjects of the study had not been out of practice for two years or more, making their experiences irrelevant to Dr Jackson's case. Furthermore, she emphasised that the 2017 Guidance is the authoritative standard applicable to Dr Jackson's situation, not individual research studies.

23. Ms Jones asserted that Dr Jackson does not have the discretion to choose which guidance applies to him. The relevant professional standards apply to all doctors, and the guidance cited in the performance assessment report is binding. She urged the Tribunal to base its decision on the official guidance and performance assessment findings, rather than Dr Jackson's selective research papers. Given the evidence and expert analysis presented, she submitted that the Tribunal should find, on the balance of probabilities, that Paragraph 2(a) of the Allegation is proved.

Submissions from Dr Jackson

24. Dr Jackson submitted that he has been fully transparent throughout the GMC process, providing all relevant data and answering all questions openly and honestly. The central issue under consideration is whether he has maintained professional standards during his time away from clinical practice. He asserted that he has consistently met the maintenance of professional standards required by the Royal Australasian College of Surgeons. He took up his appointment in NZ in 2016. He highlighted that this is the only broad surgical college with a structured system for assessing and auditing professional standards. Dr Jackson acknowledged the gap in his surgical practice and the necessity of a return-to-work plan.

25. Dr Jackson outlined the criteria on which he was assessed, including staying up to date with guidelines and regulations, continuing professional development, audit and review, reflection, and responding to feedback. However, he noted that a return-to-work plan was not part of this assessment, as maintaining professional standards is generally associated with ongoing credibility and expertise rather than re-entering clinical work after a break. Dr Jackson agreed that a robust return-to-work plan was necessary after an extended absence but argues that this is typically the responsibility of the employer rather than the individual doctor. He referenced a 2017 GMC paper that emphasised the role of healthcare employers in ensuring structured support, including occupational health access, induction programs, and mentorship.

26. With regard to concerns about 'skills fade', Dr Jackson critiqued the literature cited by the GMC and referred primarily to a 2014 review which included studies from other disciplines. He highlighted a study by Gray, which examined general practitioners in Ohio

returning to work after assessments similar to his, noting that 24% were deemed fully competent. However, he pointed out that this study lacked follow-up research on the long-term success of these doctors. He also referenced research by Dr Stephens et al, who investigated surgical skills retention. Their study, which focused on surgeons returning from parental leave, found that skill recovery was rapid, with confidence and motivation being the key determinants of successful reintegration. Dr Jackson concurred with their findings and suggested that returning surgeons benefit most from occupational health support, training courses, and mentorship, rather than prolonged assessment periods.

27. Dr Jackson acknowledged the GMC's recommendations for external assessment but submitted that the independent review conducted by the GMC found his medical knowledge to be 25% above the required threshold. He was also evaluated on his clinical decision-making, communication, and patient management skills, all of which were deemed satisfactory. In practical assessments, including performing surgical procedures relevant to his specialty, he was found to be competent. He submitted that, while the procedures assessed were categorised as basic surgical skills, they nonetheless included advanced tasks such as cancer surgery and stoma formation. Given these results, he challenged the suggestion by the GMC that he requires further supervision in clinical settings.

28. With regard to the absence of testimonials / letters in support of his application for restoration, Dr Jackson pointed to the acceptance of his case study for presentation at the Annual Scientific Congress of the Royal Australasian College of Surgeons, which was subsequently peer-reviewed and published in the Journal of Paediatric Surgery. He contended that this publication served as validation of his expertise and contribution to the field.

The Tribunal's Approach

29. 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 concerns raised. Dr Jackson 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.

30. The Tribunal reminded itself that it may draw reasonable inferences from the evidence but that it may not indulge in speculation. The Tribunal carefully considered what weight to give to the various pieces of hearsay evidence in this case.

The Tribunal's Analysis of the Evidence and Findings

31. The Tribunal has evaluated the evidence in order to make its findings on Paragraph 2(a) of the Allegation – that is, whether Dr Jackson's professional performance during his performance assessment between 8th and 10th December 2023 was unacceptable in the area of Maintaining Professional Performance. After careful consideration, the Tribunal concluded that paragraph 2(a) has been proved.

32. In reaching this conclusion, the Tribunal placed significant weight on the expertise and independence of the assessors, recognising that their conclusions aligned with the applicable 2017 Guidance, which was referenced in the performance report, as follows:

> *'The Academy of Medical Royal Colleges 'Return to Practice Guidance' published in June 2017 stated that it had been identified that a key factor affecting a doctor's successful return to practice was the length of time out of practice. Taking this information into account, the longer the period out of practice, the more robust the process of return to practice should be.*
>
> *An absence of three months or more appears more likely to significantly affect skills and knowledge. Therefore a review is recommended and support may be needed (although for shorter absences this will often not need to be a formal re-training programme and it will depend on individual needs). The approach should be commensurately more robust the longer the period of absence to ensure patient safety.*
> *In practice, an absence of two years or more seems generally accepted as a rule of thumb for when formal re-training will more often be required. The closer the absence grows to two years, the more likely it is that formal re-training will be helpful. Individual needs will vary, and therefore reviews on a case-by-case basis will be the only way to identify what support an individual will require to return to practice safely."*

33. The Tribunal was not presented with any independent expert evidence which challenged or undermined the conclusions reached by the performance assessors, or indeed which displaced their reliance on the 2017 Guidance. While Dr Jackson provided oral evidence raising several concerns about the report's conclusions, with reference to other studies or reports, the Tribunal considered that the different contexts of those studies and

reports, and their limited scope, undermined their applicability to Dr Jackson's position. The Tribunal noted that the 2017 Guidance is generally applicable to those in Dr Jackson's position, and it agreed with Ms Jones that it is not open to Dr Jackson to pick and choose the guidelines which apply.

34. The Tribunal found that the expert opinions presented in the performance assessment report were considered, balanced, fair, and firmly grounded in established guidance applicable to all medical practitioners. It noted that Dr Jackson largely accepted the findings of the assessment, with the exception of the conclusions relating to one of the OSCE Stations. However, with regard to these conclusions, the Tribunal noted that, although Dr Jackson was not content with the assessors' comments, they did not actually fail him on the station. Instead, they acknowledged that, while they would have approached the procedure differently, Dr Jackson's performance remained within an acceptable standard. Overall, the Tribunal considered that the assessment was balanced and conducted by highly experienced and qualified experts.

35. Taking all of the available evidence into account, the Tribunal was satisfied that Paragraph 2(a) of the Allegation was proved.

The Tribunal's Overall Determination on the Allegation

36. The Tribunal has determined the Allegation as follows:

1. Between 08 and 10 December 2023 you underwent a General Medical Council assessment of the standard of your professional performance. **Admitted and found proved**

2. Your professional performance was unacceptable in the following area:

    a. Maintaining Professional Performance. **Determined and found proved**

And that by reason of the matters set out above your fitness to practise is impaired because of your deficient professional performance. **To be determined**

Submissions on Impairment and Restoration

Submissions on behalf of the GMC

37. Ms Jones reminded the Tribunal that, if Dr Jackson were restored to the register, he would be allowed to practice without restrictions, conditions, or undertakings. In the context of the evidence from the performance assessment and conclusions of the assessors, she submitted that Dr Jackson would pose an unacceptable risk to patient safety due to the significant lapse of time since he last performed surgery on a real patient—almost five years.

38. Ms Jones referred to the MPTS 'Guidance for medical practitioners tribunals on restoration following voluntary or administrative erasure' ('the Restoration Guidance'), in particular paragraph B22 which is headed 'factors relevant to impairment'. She submitted that Dr Jackson could have provided independent testimonials to support his assertions regarding the quality of his work, his experience with complex cases, and his surgical skill set, but he had not done so. Consequently, Ms Jones submitted, the Tribunal was left with only Dr Jackson's self-assessment. Secondly, Ms Jones submitted that Dr Jackson had not taken steps to secure a trainee-level position in New Zealand to maintain his surgical skills, despite this being a potential option. Thirdly, Ms Jones submitted that Dr Jackson had not proactively investigated taking a training role or staff-grade position as a means to reduce risk upon returning to practice. Fourthly, Ms Jones submitted that Dr Jackson's proposed return-to-work plan heavily relied on self-assessment, which she said is widely recognised as inadequate for evaluating competence.

39. Ms Jones further submitted that the Tribunal should carefully consider whether Dr Jackson had thoroughly evaluated his own knowledge gaps and what steps he would take to mitigate any deficiencies. She also raised concerns regarding the likelihood that, if restored, Dr Jackson would be working in locum positions, which generally lack the necessary level of supervision and oversight recommended by the performance assessors. Additionally, she noted that there was no independent verification regarding whether Dr Jackson would require retraining or upskilling in certain procedures—his assertion that he would not require this was based solely on his own opinion.

40. Ms Jones submitted that Dr Jackson exhibited a tendency in his evidence to exaggerate his experience and abilities. As an example, she highlighted his statement that he had 30 years of experience as a paediatric surgeon when, in reality, he had only 15 years of experience in that role, with the 30-year figure appearing to refer to the time elapsed since he began medical school. She noted that this kind of exaggeration could be concerning when assessing his insight and reliability. Furthermore, Ms Jones reminded the Tribunal that, while it had been almost five years since Dr Jackson has last performed surgery in New Zealand, it

has been ten years since he last operated in the UK, and he has never worked at consultant level in the UK.

41. Ms Jones submitted that Dr Jackson lacked sufficient insight into the risks he posed to patient safety if restored to the register. Consequently, she submitted that his fitness to practice is impaired due to deficient professional performance. If the Tribunal agreed with the GMC's assessment, it would then need to consider whether Dr Jackson should be restored to the register.

42. Ms Jones reminded the Tribunal that the burden of proof in restoration cases rests with the doctor. According to section B1 of the guidance, the Tribunal must be satisfied that the doctor is fit to return to unrestricted practice in a way that aligns with the overarching objective. Section B2 states that the test for restoration is not met if the Tribunal finds the doctor's fitness to practice to be impaired. Therefore, if the Tribunal were to conclude that Dr Jackson's fitness to practice is impaired due to deficient professional performance, it would not be appropriate to restore him to the register.

43. Finally, Ms Jones referenced paragraphs B51 to B53 of the guidance, which require the Tribunal to balance its findings against the overarching objective. She reiterated that, if Dr Jackson's fitness to practice were found to be impaired, the guidance is clear that restoration should not be granted, as this would mean the doctor is not fit to practice in an unrestricted manner. She urged the Tribunal to take a cautious approach, emphasizing that patient safety must remain the paramount concern in their decision-making process.

Submissions from Dr Jackson

44. Dr Jackson discussed his willingness to accept a lower-level role, such as a registrar post, if necessary, to return to clinical practice. However, he submitted that delays in returning to the UK prompted him to seek temporary positions in NZ. Despite his efforts to secure work, he was unable to obtain a role due to fixed training programs and fellowship structures. He also faced regulatory barriers preventing him from working in general surgery or emergency medicine in NZ without reclassification by the NZMC. Financial obligations prevented him from returning to the UK without secured employment, placing him in what he described as 'a catch-22 situation'.

45. Dr Jackson disputed the proposition that he has been completely out of medicine since 2020, arguing that he has maintained his registration, remained engaged with

professional development, and expanded his expertise in areas such as contract negotiations, data analysis, and assisted dying legislation. He submitted that these additional skills could benefit the UK healthcare system. Dr Jackson stated that he did not initially apply for a registrar post in the UK because discussions at professional meetings led him to believe he could secure a locum consultant position with appropriate support. He remains open to lower-level roles if necessary, recognising the importance of re-entering paediatric surgery.

46. Dr Jackson reaffirmed his dedication to paediatric surgery and confidence in his ability to return. He acknowledged the need for a structured return-to-work plan but asserts that he has demonstrated the necessary competencies. He submitted that he commits to external review upon his return and intends to follow best practices for reintegration. He submitted that discussions with UK employers and the Royal College of Surgeons have reassured him that his return can be managed appropriately. He emphasised his extensive experience, long-standing commitment to the field, and proactive efforts to stay current with medical advancements. Ultimately, Dr Jackson submitted that he has met the criteria for maintaining professional standards and is prepared to work collaboratively to ensure a safe and competent return to clinical practice.

The Tribunal's Approach

47. Throughout its consideration of Dr Jackson's application for restoration, the Tribunal was guided by the approach laid out in the Restoration Guidance. The Guidance sets out at B1 that the test for the Tribunal to apply when considering restoration is:

> *Having considered all the relevant information presented, is the doctor fit to practise having regard to each of the three elements of the overarching objective?*

48. Having determined the facts, the Tribunal proceeded to consider whether Dr Jackson's fitness to practise is currently impaired by reason of deficient professional performance and whether or not his restoration ought to be granted.

49. In considering impairment, the Tribunal must first consider whether Dr Jackson's actions constitute deficient professional performance. The test is whether Dr Jackson's performance is unacceptably low and which has been demonstrated by a fair sample of his work. The standard to be applied is the level at which Dr Jackson would return to in the UK, if he were to be restored to the medical register – that of consultant. If the Tribunal does find deficient professional performance, it must then consider whether Dr Jackson's fitness to

practise is impaired as a result. The Tribunal reminded itself that, in considering impairment, there is no burden or standard of proof, and the decision of impairment is a matter for the Tribunal's judgment alone.

50. Thereafter, in considering restoration, the Tribunal reminded itself it should step back and balance its findings against whether restoration meets the overarching objective, carefully considering each of the three elements and acting in a way which:

- protects, promotes and maintains the health, safety, and well-being of the public;
- promotes and maintains public confidence in the profession; and
- promotes and maintains proper professional standards and conduct for members of the profession.

51. In considering these matters, the Tribunal again took account of all the evidence before it, both oral and documentary, and the submissions of the parties.

The Tribunal's Decision

Deficient Professional Performance

52. The Tribunal noted that the performance assessment which Dr Jackson completed was designed for a doctor of his level of standing and encompassed a diverse number of assessment areas. The Tribunal noted again that, while Dr Jackson takes issue with a number of aspects of the assessment, he broadly accepts the majority of the assessors' conclusions. He passed all relevant areas, save for the domain of maintaining professional performance. Dr Jackson does not take issue with the assessors' overall conclusions in those areas which he passed. The Tribunal was satisfied that Dr Jackson's performance was assessed against a fair sample of his work. It did not consider that evidence which would be sufficient to undermine the assessors' expertise, credibility or impartiality was adduced. It noted that the assessors' conclusions were in line with the applicable 2017 Guidance.

53. The Tribunal also reminded itself of its conclusions on the disputed fact in the Allegation – that Dr Jackson's performance in the domain of maintaining professional performance was unacceptable. It noted again the assessors' conclusions, as follows:

> *'The Team were concerned that he believed he would be able to return to unsupervised operative practice without any support or supervision. It is nearly four years since he last*

operated on a patient. Guidance from the Academy of Royal Colleges and GMC is clear that returning to work after an absence of two years or longer will require a period of retraining to protect patient safety. They do acknowledge that individual needs will vary and 'skills fade' may be mitigated by keeping up to date.

In summary, Mr Jackson has kept his knowledge up to date. He has an acceptable knowledge of relevant guidelines and attended a range of appropriate courses and conferences. In the Surgical Skills category, he did show that he has acceptable basic surgical skills; the Team accept that his involvement in teaching is likely to have been a positive factor in this area. However, in the opinion of the Team, any surgeon who has been out of practice for a significant period of time will require a period of supervision of their operative skills; an unsupervised return to independent practice could pose a serious risk to patient safety. It is not safe to rely on self-assessment of surgical skills. The overall assessment in this category is therefore unacceptable.'

54. Although Dr Jackson disagreed with the assessors' conclusions in this regard, as indicated the Tribunal received no objective or independent expert evidence to undermine them.

55. Taking the available evidence into account, together with its conclusions on the facts, the Tribunal was satisfied that Dr Jackson's assessment result in the domain of maintaining professional performance was unacceptably low and amounted to deficient professional performance.

Impairment

56. The Tribunal then proceeded to determine whether, as a result of Dr Jackson's deficient professional performance, his fitness to practise is impaired.

57. The Tribunal noted that the assessors' conclusions appeared to relate significantly to their view of Dr Jackson's lack of insight into his ability to return to work as a surgeon without the need for significant re-training / learning / supervision etc. It noted that reference was made to self-assessment being problematic.

58. In this regard, the Tribunal considered that Dr Jackson demonstrated in his oral evidence a high level of confidence in his abilities, sometimes suggesting that he has been working at a level beyond that of colleagues in the UK. That may well be so, however the

Tribunal noted that it had not been provided with any objective evidence upon which to make such an assessment. The Tribunal has not been provided with any testimonials or other evidence from colleagues which would assist it on this issue.

59. Further, Dr Jackson appeared, at times, to overestimate his experience, stating at one point that he has worked in a consultant role with 30 years of experience, which is not accurate. The Tribunal took into account the fact that Dr Jackson was participating in the hearing remotely from a significantly different time zone, and fatigue may have played a part in some of his answers (albeit that Dr Jackson did not make this case). However, the Tribunal did consider that Dr Jackson was, at times, prone to exaggeration regarding some aspects of his experience.

60. A significant concern for the Tribunal was Dr Jackson's written return-to-work plan, which the Tribunal considered to be inadequate to meet the concerns of the assessors. Dr Jackson's approach in this regard lacked depth and did not appear to the Tribunal to adequately address the inevitable gaps in his knowledge and skills as a result of the long gap in his surgical career. The Tribunal was concerned that the limited plan was evidence of limited insight on Dr Jackson's part regarding 'skills fade' and the need for a robust plan to ensure he can return to practice safely in the UK.

61. The Tribunal was concerned that, when asked in his oral evidence to identify any gaps in his skills, Dr Jackson struggled to do so. When pressed, he mentioned only laparoscopic skills, which the Tribunal found surprisingly limited given the long period away from surgery. The Tribunal accepted that, in his oral evidence, Dr Jackson's insight into the need for a robust return to work plan appeared to develop from his written evidence and his initial oral evidence, however it considered that it could not be satisfied that full insight has yet been attained.

62. The Tribunal acknowledged that Dr Jackson said he felt during his assessment and other times that he was required to present in a confident manner and that to do otherwise may be held against him. However, the Tribunal considered that the absence of full insight into one's inevitable need, in line with the 2017 Guidance, for some form of formal re-introduction to the workplace following such a significant gap from surgical practice is concerning. In this context, the Tribunal was concerned that Dr Jackson indicated in his oral evidence that, if restored to the register, he may seek locum positions, which inevitably would not have the same level of support or structure as a longer-term position. This is

particularly so, in light of the fact that Dr Jackson has never practised as a consultant in the UK and has not practised in the UK at all since 2015.

63. The Tribunal acknowledged that Dr Jackson indicated that he has continued to work in NZ in a clinical setting and his medical skills are therefore being kept up to date. However, it noted that Dr Jackson's current employment is not in surgery and, further, the Tribunal did not receive any corroborative evidence of the dates of employment, or regarding duties or hours worked etc. In addition, no testimonials from supervisors or colleagues etc were provided. As such, the Tribunal considered that it could attach little weight to this continuing employment as evidence of keeping skills and knowledge up to date.

64. Dr Jackson indicated that he has continued to engage in teaching activities, and these activities assist him significantly in keeping his skills and knowledge up to date. However, he did not provide any corroborative evidence detailing the frequency or detail of such teaching.

65. The Tribunal was cognisant of the fact that Dr Jackson stated that he has been attending courses and lectures. The Tribunal had not, however, seen any documentary evidence of what Dr Jackson has learnt from these courses or any evidence that he has kept his practical skills up to date.

66. The Tribunal also acknowledged that Dr Jackson successfully met the requirements of the CPD program under the Royal Australasian College of Surgeons from January to December 2023. However, it was unclear whether those courses had significant clinical content. While the Tribunal acknowledged Dr Jackson's own written and oral evidence of his actions to keep his skills and knowledge up to date, the Tribunal considered that a detailed log of learning / CPD, together with reflections on learning and certificates of attendance / completion would have assisted.

67. Overall, the Tribunal considered that the evidence before it was insufficient for it to be satisfied that Dr Jackson has taken sufficient steps to keep his medical knowledge and skills up to date during his period away from surgical practise. It considered that further evidence may well be available, but it was not presented.

68. The Tribunal has no doubt that Dr Jackson has been performing relevant private reading, and he is passionate about his subject, however it did not consider that sufficient documentary evidence was adduced to demonstrate that he had kept his practical experience up to date. While the decision at this stage is a matter for the Tribunal's

judgment, it is incumbent upon Dr Jackson to provide it with sufficient information so that it can be satisfied that he has kept his medical knowledge and skills up to date.

69. The Tribunal did consider that Dr Jackson began during his oral evidence to appreciate the need to develop a more robust and developed plan, and the need to address any 'skills fade' from his gap in surgical practise. The Tribunal recognised that Dr Jackson is developing insight into his situation but had not yet demonstrated full insight. The process of developing insight includes acknowledging that his extended absence from UK and surgical practice is a legitimate cause for concern, in the context of the overarching objective, as outlined.

70. While remediation is certainly possible for Dr Jackson, the Tribunal found that he has not yet remedied the deficiencies in his performance. The Tribunal considered that it would benefit Dr Jackson to take a step back to reflect fully on the impact of his gap in surgical experience on his skills and ability to resume unrestricted practice in the UK, to re-consider his return to work plan and devise a robust plan which will meet the needs of the overarching objective.

71. Taking all of the available evidence into account, the Tribunal considered that a finding of current impairment is required to meet all three limbs of the overarching objective, as outlined above. It determined that Dr Jackson currently poses a potential risk to patients if allowed to practise without restriction, public confidence in the profession could be undermined if a surgeon who had not practised surgery for almost five years were allowed to return without appropriate safeguards or assurances, and permitting Dr Jackson to resume unrestricted practise at the current time would not promote and maintain proper professional standards for members of the profession.

Restoration

72. Having determined that Dr Jackson's fitness to practise is currently impaired by reason of his deficient professional performance, the Tribunal went on to consider whether his application for restoration ought to be granted. The Tribunal reminded itself that its power to restore a practitioner to the Register is a discretionary power to be exercised in the context of the Tribunal's responsibility to act in accordance with the statutory overarching objective. Throughout its deliberations, the Tribunal was guided by the approach laid out in the Restoration Guidance.

73. The test set out at paragraph B1 of the Restoration Guidance for the Tribunal to apply is whether, having considered all the relevant information presented, the doctor is fit to practise having regard to each of the three elements of the overarching objective.

74. Paragraph B2 of the Restoration Guidance also states that *'The test for restoration will not be met if the Tribunal finds the doctor's fitness to practise to be impaired*'.

75. In light of the Tribunal's determination that Dr Jackson's fitness to practise is impaired by reason of his deficient professional performance, and taking into account the Restoration Guidance at paragraph B2, the Tribunal concluded that it was not appropriate to grant this application for restoration. The Tribunal took into account that the Restoration Guidance is not necessarily mandatory, however in light of its findings in respect of the Alleged facts and its conclusions regarding matters including Dr Jackson's insight and return to work plan, and its conclusions on impairment, as outlined above, the Tribunal did not consider that restoration would meet the aims of the overarching objective, and it did not consider that there were grounds in this case which would justify it in departing from the Restoration Guidance.

76. Dr Jackson's application for restoration is, therefore, refused by the Tribunal.

<u>Dr Jackson's ability to make further application for restoration</u>

77. Regulation 5(9) of the General Medical Council (Voluntary Erasure and Restoration following Administrative Erasure) Regulations Order of Council 2004 provides that, where a Tribunal decides to reject a restoration application, then the doctor may not make a further restoration application until the expiry of a period of 12 months from the date of the Tribunal's decision or such other period as the Tribunal may specify.

78. The Tribunal considered it apparent that, on the face of things, Dr Jackson is a reasonably highly experienced and, notwithstanding the issues outlined above, likely to be an otherwise competent doctor. It was conscious that Dr Jackson has not had the benefit of legal advice or representation to present his application and may not, therefore, have been fully aware of the issues to be addressed in this case or the evidence which would be required.

79. The Tribunal noted that Dr Jackson's application has taken some time to move through the system to hearing, and the results of the performance assessment will become less reliable as a barometer of current performance as time progresses.

80. In light of the unusual circumstances of this case, the Tribunal considered it appropriate to reduce the period within which Dr Jackson may make a further application for restoration to four months. The Tribunal considered that this would give Dr Jackson sufficient time to reflect on this determination, to reflect on his return to work plan, and to collate any necessary documentary evidence for the purposes of a fresh application. It is a matter for Dr Jackson as to what evidence he would wish to present, however the Tribunal considered that the following may be of assistance to him and a further Tribunal:

- A full and detailed up to date CV, including Dr Jackson's current employment (and its nature and duties);
- Testimonials from colleagues in the Health Board / Hospital in New Zealand (it is appreciated that it may not be possible for Dr Jackson to obtain such testimonials in light of the particular circumstances);
- Testimonials from colleagues in Dr Jackson's current employment;
- Any other testimonials Dr Jackson wishes to provide;
- A further reflective statement on the results of the Performance Assessment;
- A more robust and detailed return-to-work plan with an educational supervisor and addressing the recommendations of the performance assessors:
- Evidence that Dr Jackson has kept his clinical skills and knowledge up to date, to include:
    - a full list of CPD course undertaken, together with dates and certificates etc, if applicable;
    - a log of personal learning and reflections on that learning;
    - a log of practice procedures carried out
- Any other evidence which Dr Jackson wishes to provide.

81. That concludes this case.

ANNEX A – 14/03/2025

Application relating to the period before Dr Jackson will be able to re-apply for restoration

82. Ms Jones, on behalf of the GMC, submitted that a period of four months was not an adequate period of time before Dr Jackson would be able to make another application for restoration.

Submissions on behalf of the GMC

83. Ms Jones began by referencing the relevant guidance, which indicated that a period of 12 months or longer is generally appropriate in cases such as this. She explained that, in situations where an application has been refused, Tribunals typically set out specific recommendations outlining what the doctor needs to do or ought to do to strengthen a future application. This process, she submitted, usually takes around 12 months to complete. In the context of this particular case, Ms Jones submitted that the 12-month period is appropriate, given the nature of the recommendations made.

84. Ms Jones then addressed the possibility of a shorter period, such as four months, being considered. She acknowledged, having considered the legislative provisions and the guidance and having taken instructions, that the Tribunal does have discretion to set a shorter timeframe. However, she submitted that the circumstances of this case do not appear to lend themselves to such a reduction. She emphasised that this is ultimately a matter for the Tribunal to decide but argued that the specifics of the case do not justify deviating from the standard 12-month period. She submitted that the Tribunal should carefully consider the rationale behind the guidance and the facts of the case.

85. In addition to the procedural and practical considerations, Ms Jones highlighted the cost implications of an application being resubmitted too soon. She pointed out that if Dr Jackson reapplied before sufficient time has passed, both the GMC and Dr Jackson may need to instruct legal counsel, which carries significant financial costs. She submitted that this was an important factor to consider when determining the appropriate period for reapplication.

86. Finally, Ms Jones reiterated that, while the Tribunal has the power to set a shorter period, it is not appropriate in this case given the considerations outlined. She submitted that the final decision was for the Tribunal but urged careful reflection on the guidance, the circumstances of the case, and the potential cost implications.

Submission from Dr Jackson

87. Dr Jackson expressed his agreement with the Tribunal's decision to set a four-month period, describing it as a considered and entirely reasonable choice. He acknowledged that the Tribunal has taken into account the specific issues and has given guidance in its determination as to what must be done / evidenced before a further restoration application can be made, emphasising that the four-month period reflects the understanding that a re-application cannot proceed until these requirements are met. Dr Jackson also noted that the Tribunal has appropriately considered the practical realities of the process, such as the time it takes for the MPTS to list cases and schedule hearings, which would likely extend the overall timeline regardless of the initial four-month period.

88. Dr Jackson highlighted that he has already demonstrated his surgical skills and knowledge base during a GMC performance assessment. However, he submitted that lengthy procedural delays could necessitate repeating such an assessment, which adds to the complexity and time required for the process, in addition to expense to him. Dr Jackson submitted that a four-month period was appropriate, particularly as his case involves an application for restoration following administrative erasure as opposed to erasure following disciplinary erasure.

89. Dr Jackson submitted that the Tribunal had taken a 'balanced and thoughtful approach', stating that the four-month period adequately accounts for the procedural realities, the need to meet specific targets, and the nature of the application. He accepted that the Tribunal's findings overall were well-reasoned and appropriate given the circumstances of the case.

The Tribunals' Decision

90. In its main determination, the Tribunal set out its rationale for selecting four months as the period which Dr Jackson should be required to wait before making any further application for restoration. Having considered the submissions of both parties, the Tribunal did not consider that its rationale was significantly undermined or wrong, or that it was appropriate or proportionate to take a different course of action in this case. This Annex should therefore be read in conjunction with the relevant portion of the Tribunal's original determination on this issue.

91. The Tribunal remained conscious of the fact that the four-month period it arrived at will not require Dr Jackson to immediately make a further application. He has been given guidance as to what the Tribunal considered may assist him in any future application, and it is a matter for him to decide whether he is actually in a position to re-apply. However, having heard from Dr Jackson directly throughout this hearing, the Tribunal did not consider that he is likely to re-apply without taking the time to collate the required evidence in order to present the best case possible.

92. The Tribunal remained concerned by the prospect of the results of the performance assessment, which was very costly, to become obsolete, were Dr Jackson required to wait 12 months from today's date before re-applying. This is particularly so given that a hearing is most unlikely to be scheduled immediately.

93. Overall, the Tribunal considered that its original decision to reduce the period before which Dr Jackson can reapply for restoration to one of four months remains the appropriate and proportionate decision.