

## PUBLIC RECORD

Dates: 16/06/2022

Medical Practitioner's name: Dr Foster MLANGENI

GMC reference number: 3622681

Primary medical qualification: State Exam Med 1986 Freie Universität Berlin

Type of case **Outcome on non-compliance**  
Review - Non-compliance Non-compliance found

## Summary of outcome

12 months suspension

## Tribunal:

Legally Qualified Chair	Mr Ali Sarwar
Lay Tribunal Member:	Mrs Sue Fishburn
Medical Tribunal Member:	Dr Sarah Marwick

Tribunal Clerk:	Ms Fiona Johnston
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## Attendance and Representation:

Medical Practitioner:	Not present and not represented
GMC Representative:	Ms Fiona Wise, Counsel

## Attendance of Press / Public

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

## Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

## Determination on non-compliance - 16/06/2022

1. 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.
2. The Tribunal accepted the GMC's submissions, made pursuant to Rules 20 and 40 of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'), that notice of this hearing had properly been served on Dr Mlangeni, and granted its application, made pursuant to Rule 31 of the Rules, that this hearing should proceed in his absence. The Tribunal's full decision is included at Annex A.

## Background

3. This is the first review of Dr Mlangeni's case following a Medical Practitioners Tribunal (MPT) Non-compliance hearing which took place on 28 May 2021
4. On the 12 February 2019, the GMC received an International Market Information System (IMI) report alert from Ms A at the Regional office for Health and Social Affairs, (Landesamt für Gesundheit und Soziales Berlin - LAGeSO). This alert stated that Dr Mlangeni had been prohibited from practice in Germany as of 23 October 2017 due to "*Substantial reasons concerning the practice of the professional.*" At the time of receiving the IMI alert, Dr Mlangeni had no open cases with the GMC and further information was requested via the IMI system.

5. A response was received via the IMI system (undated and with no name attributed to it) which advised,

*“By decision of 09.01.2017, Mr Mlangeni was removed from the licence as a doctor.*

*Mr Mlangeni appealed against the decision before the Berlin Administrative Court. Immediate enforcement was ordered. It has not yet been decided, but Mr Mlangeni is currently not entitled to practise as a doctor.”*

6. On 28 February 2019, the GMC enquiries team sought to obtain further information from LAGeSO of the incident that led to the disciplinary enquiries and subsequent prohibition of Dr Mlangeni’s practice in Germany. A response was received from Mr B, LAGeSO, dated 01 March 2019 in which he advised,

*“...we are not allowed to fully respond to your enquiry in case of Mr Mlangeni for reasons related to German data protection law.*

*We’re just allowed to mention, that Mr Mlangeni was revoked his license to practise medicine by administration notice dated 9th January, 2017. Meanwhile, the judgement is final and legally binding. Mr Mlangeni is therefore permanent not entitled to practise as a doctor in Germany.*

*For further questions or details of why the doctor is subject to disciplinary sanctions... please contact Mr Mlangeni personally to consult....”*

7. On 3 May 2019, the GMC requested clarification from Mr B but to date no response has been received to this email.

8. The GMC wrote to Dr Mlangeni’s registered postal address on 16 April 2019 requesting a copy of the outcome letter and determination providing the reasoning for his being prohibited from practice in Germany and advising him that a GMC investigation will be opened. On 13 May 2019 a work details form was sent to Dr Mlangeni to complete.

9. This information was requested again under s35A(1A) of the Medical Act 1983 of the GMC fitness to practise procedures on the 3 July 2019.

10. This information was chased by the GMC on the following dates,

- 25 July 2019 (via post);
- 31 January 2020 (via post);
- 3 March 2020 (via post);
- 12 June 2020 (via post);
- 08 July 2020 (via email with previous letters from the GMC attached). An automatically generated delivery to recipient’s email was received on the same date); and

- 07 August 2020 (A delivery to recipient's email was received on the same date).
11. On 17 June 2020, the GMC sent an email to Dr Mlangeni's registered email address requesting that he confirm his contact details. Dr Mlangeni responded via email on the same date confirming his registered postal address, which was the same address that the GMC had been writing to. Dr Mlangeni did not provide any information in relation to outstanding requests from the GMC regarding his removal from the German medical register.
12. On 11 September 2020, Ms C of the GMC telephoned Dr Mlangeni to ask if he has received the GMC correspondence. Dr Mlangeni is said to have stated that he had received the GMC documents but only a week prior to the telephone conversation taking place. The telephone note further states that Dr Mlangeni said that he will respond to the GMC request for information by the week ending 18 September 2020. To date no response to the GMC's request for information has been received from Dr Mlangeni.
13. On 6 November 2020 the Assistant Registrar (AR) decision to refer Dr Mlangeni to a non-compliance hearing, the AR considering that Dr Mlangeni had not provided any reasons for failing to provide the requested information. The letter was further emailed on 12 November 2020 and a delivery to recipient's email was received.
14. On 8 January 2021, Dr Mlangeni emailed to the GMC and stated,
- "I am 65 years old and worked as doctor since 1986. I had no problems at all until an anonymous patient wrote something on social media causing a lot of problems as it is a trend (in such cases in social media) to follow suit. I can sincerely say that I worked with integrity all my life. Although I plead for leniency, I leave it to the commission to decide how to proceed and will accept whatever decision is made."*
15. On 8 January 2021, a Medical Practitioners Tribunal ('the January 2021 Tribunal') sat to consider Dr Mlangeni's non-compliance case. Dr Mlangeni did not attend the hearing and the Tribunal was of the view that he had voluntarily absented himself from those proceedings and determined that it was fair and reasonable to proceed in Dr Mlangeni's absence.
16. After determining to proceed in Dr Mlangeni's absence, on 8 January 2021, the January 2021 Tribunal heard submissions from the GMC in relation to non-compliance. Whilst it was deliberating on this issue, Dr Mlangeni sent an email to the MPTS and applied for an adjournment of those proceedings in order to try and "find" legal advice. The January 2021 Tribunal considered the principle of fairness in relation to both Dr Mlangeni and the GMC. It determined that it would be unfair to proceed with hearing this case in Dr Mlangeni's absence when he has now sought to engage with his regulator and wishes to attend a future hearing with his "trusted lawyer" who has represented him in the past and "knew the cases."
17. Following the January 2021 Tribunal accepting Dr Mlangeni's request to adjourn these proceedings, it indicated that it had viewed a bundle of documents ('the bundle') in relation

to Dr Mlangeni's non-compliance hearing. The January 2021 Tribunal considered, in fairness to all parties it would recuse itself. It determined that any future involvement of the Tribunal members in Dr Mlangeni's case could be perceived to be prejudicial to any further decision making. The case was relisted accordingly to the 28 May 2021 ('May 2021 Tribunal').

#### 28 May 2021 Non-compliance hearing

18. The May 2021 Tribunal concluded that the GMC's direction for Dr Mlangeni to provide a copy of the outcome letter and determination providing the reasoning for his being prohibited from practice in Germany was reasonable. It considered that he failed to comply with the reasonable request by the GMC and that there was no objective evidence to suggest that his failure to comply was '*unavoidable or otherwise excusable*'. In those circumstances, it determined that non-compliance had been found.

19. The May 2021 Tribunal determined to impose an order of suspension on Dr Mlangeni's registration for a period of 12 months. It considered that a period of 12 months should be sufficient to allow for further progress to be made in the case, should Dr Mlangeni be willing to comply. It directed a review of his case prior to the expiry of the period of suspension and imposed an immediate order of suspension on his registration.

20. The May 2021 Tribunal reviewing Dr Mlangeni's case requested Dr Mlangeni to provide the following:

- Further information from LAGeSO or from Dr Mlangeni about the matters that led to the disciplinary enquiries and subsequent prohibition of Dr Mlangeni's practice in Germany; and
- Any other information which Dr Mlangeni considers will assist the reviewing Tribunal.

#### **Today's Tribunal**

21. This Tribunal has convened to review Dr Mlangeni's case.

#### **Evidence**

22. In reaching its decision, the Tribunal has had regard to all the documentary evidence presented to it. This included but was not limited to:

- Tribunal Record of Determinations for Non- Compliance Tribunal ('NCT') hearing, dated 28 May 2021;
- Details of Non-Compliance for NCT June 2021 hearing;
- Letter from MPTS to Dr Mlangeni with NCT hearing outcome, dated 1 June 2021;
- Letter from MPTS to Dr Mlangeni confirming substantive order from NCT in effect, dated 8 July 2021;

- Email from GMC attaching correspondence to Dr Mlangeni regarding direction for further information, dated 9 May 2022;
- Letter from GMC Dr Mlangeni regarding direction for further information, dated 10 May 2022;
- Letter from MPTS to Dr Mlangeni informing of provisional Non-Compliance Tribunal Review hearing date, dated 21 April 2022;
- GMC information letter with Details of Non-Compliance to Dr Mlangeni, dated 10 May 2022;
- Notice of Hearing letter sent by MPTS to Dr Mlangeni, dated 9 May 2022;
- Rule 34(9) letter from GMC to Dr Mlangeni enclosing draft hearing bundle, dated 16 May 2022.

### Submissions

23. On behalf of the GMC, Ms Wise submitted that Dr Mlangeni has continued to fail to comply with the GMC's direction offering no good reason why he has failed to provide this information.

24. Ms Wise referred to and invited the Tribunal to consider various paragraphs in the 'Non-compliance Guidance for Medical Practitioner Tribunals' ('the Non-compliance guidance').

25. Ms Wise submitted that matters had not moved on since the May 2021 Tribunal non-compliance hearing. She stated that there was currently no evidence that Dr Mlangeni had complied or engaged with the reasonable request to provide the outcome letter and determination providing the reasoning for his being prohibited from practice in Germany from LAGeSO.

26. Ms Wise stated that Dr Mlangeni had been given significant time to comply with the request and that no information had been submitted on his behalf.

27. Ms Wise submitted that it was a matter of fact as to whether Dr Mlangeni had complied with the GMC direction. She stated that the Tribunal could be assured that this was a case where there was continued non-compliance with the GMC direction for information.

### Tribunal's approach

28. In reviewing the direction made by the 2021 Tribunal to suspend Dr Mlangeni's registration for a period of 12 months, the Tribunal exercised its own independent judgement.

29. The Tribunal had regard to the Non-compliance hearings guidance for medical practitioner tribunals ('the non-compliance guidance') and all the evidence produced in this case when making its decision.

30. At this stage of the hearing the Tribunal asked itself the following question (as per paragraph C53 of the Non-compliance guidance) (September 2019), namely whether Dr Mlangeni has:

- a) *continued to fail to comply with the direction or request to provide information that led to the non-compliance order being made, and*
- b) ...

### **Tribunal's decision**

31. Whilst the Tribunal has borne in mind the submissions made, the decision regarding non-compliance is one for it to reach, exercising its own judgement.

32. The Tribunal noted the original referral and the decision for Dr Mlangeni to provide the GMC information regarding his disciplinary proceedings and subsequent prohibition of his practice in Germany. The Tribunal took into account that Dr Mlangeni has been informed of the outcome of the 2021 Tribunal hearing, it considered that the original direction that Dr Mlangeni should produce the letter and determination from LAGeSO, in light of all the information available.

33. The Tribunal noted that Dr Mlangeni has failed to comply with the direction to provide this information from LAGeSO, and that it had been found that there was not a good reason for the doctor having failed to comply. A Tribunal on 28 May 2021 had found a failure to comply with the direction and imposed a suspension for 12 months.

34. The Tribunal noted that Dr Mlangeni has failed to comply thereafter with the original direction of 28 May 2021 to provide such information and had continued to fail to engage with the regulatory authority subsequently. The Tribunal determined that Dr Mlangeni's ongoing resistance to providing this information and limited cooperation with the process is demonstrative of a pattern of behaviour.

35. Having considered the evidence provided to it, the panel found that Dr Mlangeni has not engaged in any way with the GMC since the 28 May 2021 Tribunal. It found that he had not provided the information that led to his disciplinary and subsequent prohibition of his practice in Germany.

36. Accordingly, the Tribunal determined that Dr Mlangeni has continued to fail to comply with the direction of 28 May 2021 to provide the GMC with this information.

37. Therefore, in the circumstances the Tribunal has determined that continued non-compliance has been found.

### **Determination on Sanction - 16/06/2022**

38. Having determined that there is a continued non-compliance of a GMC direction by reason of Dr Mlangeni's failure to provide information as to why his practice has been prohibited in Germany, the Tribunal then had to decide in accordance with Rule 22A(h) of the Rules on the appropriate direction, if any, to make.

### Submissions

#### On behalf of the GMC

39. Ms Wise, submitted that a direction extending the suspension of Dr Mlangeni's registration of 12 months was required for the protection of the public and patient safety in Dr Mlangeni's case. She drew the Tribunal's attention to its non-compliance determination and relevant paragraphs of the Non-compliance hearings guidance for Medical Practitioner Tribunals ('the Guidance').

40. Ms Wise submitted that Dr Mlangeni has not provided any of the evidence since first it was requested 3 years ago nor any of the information the 2021 Tribunal advised would be useful to a Tribunal reviewing his case in the future.

### The Tribunal's Determination on Sanction

41. The Tribunal is aware that the decision as to the appropriate direction, if any, to impose on Dr Mlangeni's registration is a matter for this Tribunal exercising its independent judgment. In reaching its decision, the Tribunal has taken account of the Non-compliance hearings guidance for medical practitioner tribunals (the guidance), including the following paragraphs:

*C7 In considering whether to make a non-compliance order, the question for the tribunal is whether, on the basis of their finding in respect of non-compliance, action is needed to protect the public.*

*C8 Protection of the public means acting in a way that meets the three elements of the statutory overarching objective:*

- a. protecting, promoting and maintaining the health, safety and well-being of the public,*
- b. maintaining public confidence in the profession*
- c. promoting and maintaining proper professional standards and conduct for the members of the profession.*

*C54 Where they make a finding of continued non-compliance the tribunal should consider whether, on the basis of their findings, an order is required to protect the public. The general principles above relating to non-compliance orders will apply.*

*C55 The following additional factors will be relevant to the tribunal's decision:*

*a whether there is any new information before the tribunal that might affect the tribunal's decision on the appropriate order, and .....*

**C56** *In making its decision, the tribunal can decide to:*

*a extend the order*

*b vary the order*

*c revoke the order.*

42. The Tribunal reminded itself that the main reason for imposing any direction is to protect the public and that directions made on review of a non-compliance order are not imposed to punish or discipline doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Mlangeni's interests with the public interest.

### **The Tribunals decision**

43. As outlined in its previous determination, in which it found that there was continuing non-compliance, the Tribunal have concerns that without the benefit of the required information from LAGeSO regarding Dr Mlangeni's practice, the Tribunal therefore cannot rule out a risk to patient safety and considered that public confidence in the profession would be undermined if action were not taken. It further considered that its findings required a declaration and upholding of the standards expected from members of the profession. Thus, all the three limbs of the overarching objective are engaged. The Tribunal determined that action is required to protect the public.

### **No Action**

44. Having determined that action was required to protect the public as a result of its finding of continuing non-compliance, the Tribunal determined it was inappropriate for the Tribunal to conclude the case by taking no action.

45. The initial concerns were raised in 2019 and Dr Mlangeni has not complied with the direction to provide the required information despite having had nearly three years to comply. The doctor has consistently and persistently failed to do so. There were no exceptional circumstances in this case.

46. The Tribunal considered that allowing Dr Mlangeni to return to unrestricted practise would be neither sufficient, proportionate nor in the public interest.

### **Conditions**

47. The Tribunal next considered whether it would be appropriate to impose a period of conditions on Dr Mlangeni's registration. It has borne in mind that any conditions must be appropriate, proportionate, workable and measurable.

48. The Tribunal had regard to the Non-compliance guidance, in particular, but not limited to, paragraph C14, in relation to the matter of the suitability of imposing conditions to meet the overarching objective, which states:

*“C14. Conditions are unlikely to be appropriate where a doctor has explicitly refused to comply with a direction or request to provide information or has failed to respond to a direction or request to provide information, and there is no mitigating information available.*

49. Given that Dr Mlangeni has not complied with the direction to provide the GMC with information about his practice in Germany, the Tribunal could not be satisfied that he would comply with any conditions it could impose. Moreover, given the lack of up-to-date information about his practice as a result of his failure to submit any information the Tribunal considered that it was not able to formulate any workable conditions to address the concerns.

50. The Tribunal was of the view that in these circumstances conditions would not adequately protect the public and uphold the overarching objective. It therefore determined that it would be neither sufficient nor appropriate to direct the imposition of conditions on Dr Mlangeni’s registration.

## Suspension

51. Having determined that the imposition of conditions would not be appropriate the Tribunal considered whether to suspend Dr Mlangeni’s registration for a further period.

52. The Tribunal took into account relevant parts of the Non-compliance guidance; in particular the following paragraphs were all integral to its decision:

*“C22. In the context of non-compliance, an order of suspension sends a message about the important role the GMC and MPTS play in making sure that a doctor’s practice meets the expected standards and that the public is adequately protected where fitness to practise concerns have been raised.*

*C23. When considering whether a period of suspension is a proportionate response to a doctor’s non-compliance, the tribunal may want to take into account the previous opportunities the doctor has had to comply and the level of the doctor’s engagement with the fitness to practise process.*

*C24. Suspension is likely to be appropriate where a doctor has explicitly refused to comply with a direction or request to provide information, or has failed to respond to a direction or request to provide information, and there is no mitigating information to suggest that conditions are likely to be sufficient.*

*C25. Suspension has a deterrent effect and can be used to send a signal to the doctor, the profession and public about what behaviour is expected from a registered doctor. Suspension from the register also has a punitive effect, in that it prevents the doctor from practising and therefore from earning a living as a doctor during the period of suspension, although this is not its purpose.”*

53. The Tribunal took into account the original concerns about Dr Mlangeni that were raised, and the 2021 Tribunal’s conclusion that the direction that he should submit a copy of the outcome letter and determination was reasonable. It was cognisant that Dr Mlangeni has failed to comply with his regulatory body since 2019. The Tribunal considered this to be a significant amount of time whereby Dr Mlangeni has had ample opportunity to engage and provide the GMC with this information.

54. The Tribunal determined that a period of suspension would uphold all three limbs of the overarching objective and would send a message to the profession and the wider public as to the importance of complying with the directions of the regulator.

### Duration of Suspension

55. The Tribunal went on to consider the length of suspension, taking into account paragraphs C29 and C30 of the guidance. It considered that Dr Mlangeni had 12 months during the period of suspension imposed by the 2021 Tribunal with which to comply with the GMC direction. The Tribunal considered that any extension to the direction for suspension less than 12 months would not be proportionate to the seriousness of the non-compliance or the risks identified.

56. The Tribunal determined that the appropriate and proportionate action was to extend the current order of suspension by a further period of twelve months. The Tribunal considered that such period would enable Dr Mlangeni to provide a copy of the outcome letter and determination providing the reasoning for his practice being prohibited in Germany and provide evidence to a Tribunal reviewing his case of his compliance.

57. The Tribunal had regard to paragraph C33 of the Non-compliance guidance in that regard:

***C33** The tribunal should make clear in their determination that the onus is on the doctor to demonstrate compliance and that if at any time the doctor considers they have fully complied, they can make a request to the GMC for them to consider arranging an early review of the non-compliance order.*

58. The Tribunal reminds Dr Mlangeni that it is open to him to comply with the direction at any time and that if he considers he has fully complied, he can request an early review of this direction.

59. The Tribunal has directed to extend the period of suspension on Dr Mlangeni's registration for 12 months. The MPTS will send Dr Mlangeni a letter informing him of his right of appeal and when the direction and the new order will come into effect. The current order of suspension will remain in place during the appeal period.

#### **Directing a Review**

60. A Tribunal will review Dr Mlangeni's case at a hearing to be held before the end of the period of suspension. It will then consider whether it should take any further action in relation to his registration. Dr Mlangeni will be informed of the date of that hearing, which he will be expected to attend. The Tribunal reviewing Dr Mlangeni's case would be assisted by receiving the following:

- Further information from LAGeSO or from Dr Mlangeni about the matters that led to the disciplinary enquiries and subsequent prohibition of Dr Mlangeni's practice in Germany; and
- Any other information which Dr Mlangeni considers will assist the reviewing Tribunal.

61. That concludes this hearing.

ANNEX A – 16/06/2022

## Service and proceeding in Dr Mlangeni's absence

### Service

62. Dr Mlangeni is not present or represented at this hearing. The Tribunal therefore considered whether notice of this hearing had been properly served upon Dr Mlangeni in accordance with the Rules.

63. The Tribunal considered the submissions of Ms Fiona Wise, Counsel, on behalf of the GMC, that notification of the hearing had been properly served upon Dr Mlangeni.

64. The Tribunal was provided with a copy of a Proof of Service Bundle which included a screenshot of Dr Mlangeni's registered home address in Berlin and registered email address. The Tribunal had regard to the GMC information letter and email, sent by the GMC to Dr Mlangeni's registered address dated 9 May 2022. The Tribunal noted the email delivery receipt on the same date and the proof of delivery signed by Dr Mlangeni's on the 12 May 2022.

65. The Tribunal also had regard to the Rule 34(9) letter and email, sent by the GMC to Dr Mlangeni's registered address and email address on 16 May 2022. The Tribunal noted the email delivery receipt on the same date and the proof of delivery signed by Dr Mlangeni on the 20 May 2022.

66. In light of the emails and letters from the GMC to Dr Mlangeni and his signature on the proof of delivery document, the Tribunal was satisfied that notice was properly served upon Dr Mlangeni in accordance with the Rules.

### Proceeding in Absence

67. Having determined that notice of this hearing has been properly served on Dr Mlangeni, the Tribunal went on to consider whether it would be appropriate to proceed with the hearing in his absence in accordance with Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.

68. The Tribunal took into account Ms Wise's submissions that Dr Mlangeni had voluntarily absented himself from these proceedings. Ms Wise submitted that all reasonable efforts have been made to inform Dr Mlangeni of today's hearing and adjourning the hearing today would not resolve matters nor has Dr Mlangeni sought an adjournment. She submitted that the Tribunal should proceed in the doctor's absence.

69. The Tribunal balanced Dr Mlangeni's interests with the public interest in deciding whether to proceed in his absence. It considered that there is no evidence to suggest that Dr Mlangeni wishes to engage with this hearing and he had not applied for an adjournment.

70. The Tribunal was of the view that, it being satisfied that he had notice of the hearing, he had waived his right to attend and has absented himself from this hearing. Further, there would be no benefit in adjourning the hearing as there is no evidence to suggest he would engage at a later date.

71. The Tribunal concluded that it is in the public interest and in the interests of justice to proceed with this hearing today. The Tribunal was satisfied that all reasonable efforts had been made to serve Dr Mlangeni with notice of the hearing in accordance with the Rules. The Tribunal determined that it was fair and reasonable to proceed in Dr Mlangeni's absence.