

## PUBLIC RECORD

Dates: 16/06/2023

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 with a request to provide information: Non-compliance found

## Summary of outcome

Indefinite suspension

## Tribunal:

Legally Qualified Chair	Mr Jonathan Storey
Lay Tribunal Member:	Ms Christina Baron
Medical Tribunal Member:	Dr Dawn Black
Tribunal Clerk:	Mr Larry Millea

## Attendance and Representation:

Medical Practitioner:	Not present and not represented
GMC Representative:	Ms Chloe Fordham, 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 consideration of non-compliance 16/06/2023

1. 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 on these applications is included in Annex A.

2. This is the second review of Dr Mlangeni's case following a Medical Practitioners Tribunal (MPT) hearing which concluded in May 2021 ('the May 2021 Tribunal'), and subsequent review hearing which concluded in June 2022 ('the 2022 Tribunal'). Dr Mlangeni's case was originally listed to be heard by an MPT in January 2021 ('the January 2021 Tribunal'), but that Tribunal adjourned following an application by Dr Mlangeni and the case was relisted to a differently constituted Tribunal (the May 2021 Tribunal).

## Background

3. 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.

4. 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.*

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*Immediate enforcement was ordered. It has not yet been decided, but Mr Mlangeni is currently not entitled to practise as a doctor."*

5. 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 9<sup>th</sup> January, 2017. Meanwhile, the judgement is final and legally binding. Mr Mlangeni is therefore permanently 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...."*

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

7. 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.

8. 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.

9. 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);

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- 08 July 2020 (via email with previous letters from the GMC attached). An automatically generated delivery to recipient's email notification was received on the same date), and;
- 07 August 2020 (A delivery to recipient's email notification was received on the same date).

10. 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.

11. On 11 September 2020, Ms C of the GMC telephoned Dr Mlangeni to ask if he had 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 would 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.

12. On 6 November 2020 the Assistant Registrar (AR) decided 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 notification was received.

13. 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."*

### The January 2021 Tribunal

14. On 8 January 2021, a Medical Practitioners Tribunal sat to consider Dr Mlangeni's non-compliance case. Dr Mlangeni did not attend the hearing. The January 2021 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.

15. 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 had now sought to engage with his regulator and wished to attend a future hearing with his "*trusted lawyer*" who had represented him in the past and "*knew the cases.*"

16. Following the January 2021 Tribunal accepting Dr Mlangeni's request to adjourn those proceedings, it indicated that it had viewed a bundle of documents in relation to Dr Mlangeni's non-compliance hearing. The January 2021 Tribunal considered, in fairness to all parties, that 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 then relisted to the May 2021 Tribunal.

#### The May 2021 Tribunal

17. Dr Mlangeni's non-compliance was then considered at a Medical Practitioners Tribunal hearing on 28 May 2021.

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 considered would assist the reviewing Tribunal.

#### The 2022 (Review) Tribunal

21. On 9 May 2022 Dr Mlangeni was sent a reminder letter by email that he was required to provide the GMC with a copy of the outcome letter and determination from LAGeSo, providing the reasoning for the prohibition placed on his registration. This letter was also sent by post on 10 May 2022.

22. Dr Mlangeni's non-compliance was then considered for a second time at an MPT review hearing on 16 June 2022.

23. The 2022 Tribunal noted that Dr Mlangeni had failed to comply with the original direction of 28 May 2021 to provide such information and had continued to fail to engage with the regulatory authority. The 2022 Tribunal determined that Dr Mlangeni's ongoing failure to provide this information and limited cooperation with the process was demonstrative of a pattern of behaviour.

24. Having considered the evidence provided to it, the 2022 Tribunal found that Dr Mlangeni had 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 proceedings and subsequent prohibition of his practice in Germany, although he had ample opportunity to do so. Accordingly, the 2022 Tribunal determined that Dr Mlangeni had continued to fail to comply with the direction of 28 May 2021 to provide the GMC with this information and that continued non-compliance had been found.

25. The 2022 Tribunal had *"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 2022 Tribunal therefore determined that action was required to protect the public.

26. The 2022 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. It determined that the appropriate and proportionate action was to extend the current order of suspension by a further period of twelve months. The 2022 Tribunal considered that such a 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.

27. The 2022 Tribunal indicated in its determination that a review tribunal would be assisted by receiving:

- 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 considered would assist the reviewing Tribunal.

28. On 28 June 2022 Dr Mlangeni was sent a reminder letter by post that he was required to provide the GMC with a copy of the outcome letter and determination from LAGeSo, providing the reasoning for the prohibition placed on his registration.

29. Dr Mlangeni was sent further reminders by email on 27 March 2023 and by post on 28 March 2023 and 25 April 2023.

### **Today’s Review Tribunal**

30. This Tribunal has convened to review Dr Mlangeni’s case. It has considered, under Rule 22A of the Rules, whether there has been a failure to comply with a request for information under Section 35A (1A) of the Act.

31. In reaching its decision, the Tribunal has given careful consideration to all of the evidence adduced in this case.

32. The Tribunal has taken into account the documentary evidence provided to it, which included but was not limited to: the determinations of the May 2021 and 2022 Tribunals; Letter from GMC to Dr Mlangeni regarding direction for further information, dated 28 June 2022; Email from GMC to Dr Mlangeni regarding direction for further information, dated 27 March 2023; Letter from GMC to Dr Mlangeni regarding direction for further information and proof of delivery, dated 28 March 2023; Letter from MPTS to Dr Mlangeni with listing date and instructions, dated 21 April 2023; Letter from GMC to Dr Mlangeni advising of provisional hearing date, dated 25 April 2023; emails from Dr Mlangeni to the MPTS and GMC confirming that he does not intend to participate in the hearing, dated 6 June 2023 and 15 June 2023.

### Submissions

33. Ms Fordham submitted that in reaching its decision, the Tribunal should consider the applicable paragraphs of the *Non-compliance hearings guidance for medical practitioners tribunals* ('the non-compliance guidance').

34. Ms Fordham submitted that the test set out at paragraph A20 of the non-compliance guidance, as per below, has been met in this case.

*A20 Where a case has been referred for hearing on the basis the doctor has failed to respond to a GMC direction or request to provide information, the GMC should produce proof of service of the correspondence containing the direction or request to provide information.*

35. Ms Fordham submitted that Dr Mlangeni has continued to fail to comply with the GMC requests for the relevant information, as evidenced by the correspondence contained within the hearing bundle.

36. Ms Fordham submitted that Dr Mlangeni has not suggested that there is any good reason for his non-compliance with the request, and she referred the Tribunal to paragraph A24 of the non-compliance guidance, which states:

*A24 Examples of good reason for failing to comply with a GMC direction or request to provide information could include, but are not limited to, where:*

- a there is objective evidence that demonstrates a doctor's adverse physical or mental health prevented them from complying with a GMC direction or*



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*request to provide information, and there is a realistic prospect of the doctor being able to comply in a reasonable timeframe in the future (see below)*

- b** a doctor can demonstrate they did not receive the GMC's direction or request to provide information and, since its existence came to the doctor's attention, they have not been provided with an opportunity, and / or sufficient time, to comply*
- c** a doctor can demonstrate they are not, or could not reasonably be expected to be, in possession of the information requested by the GMC*
- d** a doctor can demonstrate that, in all the circumstances, it was not reasonable for them to comply with the GMC's direction or request to provide information (see below)*
- e** a doctor can demonstrate that their failure to comply does not create a risk to public protection because the GMC can still investigate the concern (see below).*

37. Ms Fordham indicated that the Tribunal should also consider paragraph A29 of the non-compliance guidance, set out below, submitting that Dr Mlangeni's stated intention to retire is insufficient to amount to good reasons for failing to comply.

***A29** Stated intentions by a doctor to: no longer practise in the UK, relinquish their licence to practise or submit an application to have their name removed from the register, are also insufficient to amount to good reasons for failing to comply.*

38. Ms Fordham submitted that the Tribunal can therefore be satisfied, on the evidence before it, that there is a continued failure to comply with the request of the GMC.

### Legal advice

39. In reviewing the direction made by the 2022 Tribunal to suspend Dr Mlangeni's registration for a further period of 12 months, the Tribunal exercised its own independent judgement.

40. The Tribunal had regard to the non-compliance guidance and all the evidence produced in this case when making its decision.

41. At this stage of the hearing the Tribunal asked itself the following question, as per paragraph C53(a) of the non-compliance guidance, namely whether Dr Mlangeni has *“continued to fail to comply with the direction or request to provide information that led to the non-compliance order being made.”*

### **Tribunal’s decision**

42. 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.

43. Having considered the evidence provided to it, the Tribunal found that Dr Mlangeni has not engaged in any meaningful way with the GMC since the 2022 Tribunal. It found that he had not provided the information that led to his disciplinary hearing and subsequent prohibition from practice in Germany.

44. The Tribunal was satisfied that Dr Mlangeni has not provided any sufficient reasoning for his failure to comply with the GMC’s request for information, referring to the relevant paragraphs of the non-compliance guidance set out above. It noted that his statement that he has now retired does not meet the threshold for such a reason as per paragraph A29 of the non-compliance guidance set out above.

45. In reaching its determination, the Tribunal considered the determinations of the May 2021 and 2022 Tribunals, and concurred with the finding of the 2022 Tribunal that Dr Mlangeni’s ongoing failure to provide this information and limited cooperation with the process is demonstrative of a pattern of behaviour.

46. Accordingly, the Tribunal determined that Dr Mlangeni has continued to fail to comply with the direction to provide the GMC with this information, and subsequent requests for this information as evidenced within the hearing bundle provided by the GMC.

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

### **Determination on sanction 16/06/2023**

1. Having determined that Dr Mlangeni's failure to provide information under section 35A (1A) of the Medical Act 1983 (as amended) ('the Act') amounted to non-compliance, the Tribunal considered what sanction, if any, to impose.

### Submissions

2. Ms Fordham submitted that all three limbs of the overarching objective are applicable in this case, particularly in the absence of any information as to the reasons for Dr Mlangeni being struck off in Germany, which could present a serious risk to patient safety.

3. Ms Fordham submitted that members of the public and members of the profession should know that if doctors conduct themselves in a way anywhere in the world which is at odds, or even potentially at odds with the standards expected in this jurisdiction, then action will be taken.

4. Ms Fordham submitted that an indefinite order of suspension is therefore the appropriate order in this case, referring the Tribunal to the relevant paragraphs of the non-compliance guidance. She submitted that this would serve to protect patient safety and signal that doctors are not able to hide behind data protection laws which might prevent such information coming to light, and that this would serve to uphold all three limbs of the overarching objective.

5. Ms Fordham submitted that to take no action would be inappropriate given the potential risk to patient safety, and that conditions would be neither workable nor proportionate. She submitted that Dr Mlangeni has not evidenced any mitigation for his failure to comply and has not provided any acceptable or appropriate explanation for his repeated failure to comply. She submitted that whilst Dr Mlangeni has not specifically stated that he refuses to provide this information, the fact that he is aware of these proceedings and has made a deliberate choice, as set out in his emails, not to engage with the process is akin to his explicitly refusing to comply with the request. She also reminded the Tribunal of its findings, as per those of the 2022 Tribunal, that this represents a pattern of behaviour of refusing to comply with the request.

6. Ms Fordham submitted that the number of opportunities that Dr Mlangeni has had to provide the required information (or explanations as to why he cannot) and the length of time this has occurred over, when considered in light of the non-compliance guidance,

indicates that indefinite suspension is the correct order to impose in all the circumstances of this case.

### The Tribunal's Determination on Sanction

7. The Tribunal is aware that the decision as to the appropriate sanction, 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, and in particular paragraph C24.

*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.*

8. Throughout its deliberations, the Tribunal considered its overarching objective which includes:

- 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.

9. The Tribunal has also borne in mind that the purpose of an order in relation to non-compliance is not to punish or discipline doctors, although it acknowledged that such an order or sanction may have a punitive effect.

### No Action

10. The Tribunal first considered whether to conclude Dr Mlangeni's case and take no further action. If no action were to be taken, Dr Mlangeni would be free to practise unrestricted in the UK, and the Tribunal concluded that to allow this would be inappropriate in the circumstances of this case and would fail to uphold the overarching objective.

### Conditions

11. 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. It concluded that all three limbs of the overarching objective were applicable in this case.

12. The Tribunal was not satisfied that Dr Mlangeni would comply with any conditions imposed on his registration, noting that he states that he has retired from practice, and does not reside in the UK.

13. In any event, the Tribunal was of the opinion that conditions would not be proportionate or workable. The details of Dr Mlangeni's disciplinary proceedings in Germany remain unknown and so it would not be possible to formulate conditions which would be workable and address these unknown concerns, protecting patient safety.

14. The Tribunal also determined that conditions would not be proportionate in the light of Dr Mlangeni's ongoing failure to comply with the GMC's request for information and would fail to uphold the second and third limbs of the overarching objective.

### **Suspension**

15. 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.

16. The Tribunal concluded that suspension was the only sanction which would be workable and proportionate in this case (noting that the option of erasure is not available in non-compliance cases).

17. The Tribunal considered that a further period of suspension was necessary in order to protect patient safety by removing Dr Mlangeni's ability to practise medicine in the UK, particularly given the uncertainty around the nature of the findings made against him by the German regulator and the unknown risk he may pose to patients.

18. The Tribunal also considered that a further period of suspension was necessary in order to uphold the second and third limbs of the overarching objective. A further period of suspension would mark the seriousness of Dr Mlangeni's failure to engage with these proceedings or provide the information to the GMC which he was required, and repeatedly

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directed, to do. This would serve to maintain public confidence in the profession and to promote and maintain proper professional standards and conduct for the members of the profession, sending a clear signal of the expectations for doctors practising in the UK.

19. In considering the length of suspension, the Tribunal noted that, following two previous non-compliance hearings, Dr Mlangeni has been suspended for over two years and that the option of indefinite suspension was therefore available to it. It also noted the submissions on behalf of the GMC that Dr Mlangeni should be indefinitely suspended.

20. The Tribunal was mindful that Dr Mlangeni has repeatedly expressed that he does not intend to engage with these proceedings or the information request of the GMC and that he has retired, and that he now resides in Germany. Given Dr Mlangeni's ongoing failure to provide the necessary information over the course of several years, the Tribunal could identify no purpose for directing a shorter period of suspension. There was no information available to it that indicated the position would change in this respect, and that to repeat these proceedings (and those of the previous Tribunals) would be of no benefit to either the public interest, or the interests of Dr Mlangeni.

21. In all the circumstances, the Tribunal therefore determined that it was necessary, for the protection of patients, and in the wider public interest, to suspend Dr Mlangeni's registration indefinitely.

22. The Tribunal noted that Dr Mlangeni would be eligible to apply for a review hearing after 24 months, if he wished to do so.

23. The effect of this direction is that, unless Dr Mlangeni exercises his right of appeal, this decision will take effect 28 days from when written notice of this determination is deemed to have been served upon him. If Dr Mlangeni does decide to appeal against this decision, the suspension currently imposed on his registration will remain in force until the appeal is determined.

24. That concludes this case.

**Annex A – Service & Proceeding in absence 16/06/2023**

Service

1. Dr Mlangeni was neither present nor represented at the hearing. The Tribunal considered whether notification of this hearing had been properly served upon Dr Mlangeni.
2. Ms Fordham, counsel on behalf of the GMC, submitted that the notice of this hearing was sent by the Medical Practitioners Tribunal Service in accordance with Rule 20(1)(a) of the Fitness to Practise Rules 2004 ('the Rules').
3. The Tribunal was provided with a service bundle, which contained:
  - Screenshot of Dr Mlangeni's registered address and email address;
  - Rule 34(9) letter emailed to Dr Mlangeni's registered email address, dated 2 May 2023, including delivery receipt;
  - Rule 34(9) letter posted to Dr Mlangeni's registered address, dated 2 May 2023;
  - Courier tracking documentation showing delivery of Rule 34(9) letter on 5 May 2023;
  - Notice of Hearing letter sent by MPTS to Dr Mlangeni's registered address, dated 4 May 2023;
  - Courier tracking documentation showing delivery of Notice of Hearing letter on 8 May 2023;
  - Email from Dr Mlangeni to GMC confirming that he does not intend to participate in the hearing, dated 6 June 2023;
  - Further email from Dr Mlangeni to the MPTS & GMC confirming that he does not intend to participate in the hearing, dated 15 June 2023.
4. Ms Fordham submitted that the service bundle adequately demonstrated that the relevant documents had been served upon Dr Mlangeni for this hearing and that all efforts had been made to ensure that he was aware of the date of the hearing.
5. Ms Fordham submitted that as well as evidence of the formal requirement of the notice of hearing being served in the proper manner, there is also evidence of Dr Mlangeni's communications with the MPTS and GMC confirming that he received appropriate notice of the hearing.

6. Having considered all the evidence, the Tribunal determined that notice of this hearing had been served in accordance with Rule 40 of the Rules and paragraph 8 of Schedule 4 of the Medical Act 1983.

#### Proceeding in Absence

7. The Tribunal then went on to consider whether it would be appropriate to proceed with the hearing in Dr Mlangeni's absence pursuant to Rule 31 of the Rules.

8. Ms Fordham invited the Tribunal to proceed with the hearing in Dr Mlangeni's absence. She submitted that the relevant guidance set out by the Court of Appeal indicates the factors that should be considered and the circumstances under which a Tribunal may proceed in the absence of a practitioner. She submitted that in considering those criteria, the Tribunal should determine that it would be in the interest of justice to proceed in the doctor's absence in this case, referring the Tribunal to the emails from Dr Mlangeni stating that he would not be attending.

#### **Tribunal's Decision**

9. The Tribunal determined that Dr Mlangeni received notice of the hearing and had the opportunity to attend the hearing, but had voluntarily absented himself. The Tribunal noted that Dr Mlangeni had not requested an adjournment of today's hearing and also noted Dr Mlangeni's email to the GMC, dated 6 June 2023, where he states:

*"Thank you for your information! I just wanted to let you know that having retired a while ago I will not be participating in the hearing!  
I therefore leave it up to the GMC to decide how to proceed!  
Please inform me what your decision is!  
With pleasant greetings,  
Foster Mlangeni!"*

10. The Tribunal also considered Dr Mlangeni's further email of 15 June 2023 where he states:

*"Thanks for your mail but as I have already stated before, I have retired and will therefore not participate in the process!  
I will leave it to the GMC to make it's decision!"*



*Pleasant greetings,  
F. Mlangeni*

11. The Tribunal concluded that there was no information to suggest that Dr Mlangeni would attend if an adjournment was granted and Dr Mlangeni has made it clear on multiple occasions that he would not be engaging with these proceedings.

12. In the circumstances, the Tribunal agreed with the submission of Ms Fordham that it would not be unfair to proceed with the hearing in Dr Mlangeni's absence and that it was in the public interest for this hearing to proceed today.

13. The Tribunal therefore determined to proceed in the absence of Dr Mlangeni, in accordance with Rule 31.