

PUBLIC RECORD

Dates: 20/12/2024

Doctor:	Dr Frederick DONALDSON
GMC reference number:	4008710
Primary medical qualification:	MB BS 1992 University of the West Indies
Type of case	Outcome on non-compliance
Review - Non-compliance with a performance assessment	Non-compliance found

Summary of outcome

Indefinite suspension

Tribunal:

Legally Qualified Chair	Mr Mark Scott
Lay Tribunal Member:	Mr Alistair Griggs
Registrant Tribunal Member:	Dr Loralie Rodrigues
Tribunal Clerk:	Ms Hinna Safdar

Attendance and Representation:

Doctor:	Not present, not represented
GMC Representative:	Ms Harriet Dixon, 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 20/12/2024

1. This is a review of Dr Donaldson's case following a Medical Practitioners Tribunal (MPT) hearing which last concluded in December 2023.

Background

2. In December 2020, the Cwm Taf University Health Board (Health Board) raised concerns about Dr Donaldson's clinical competence after a Practitioner Performance Advice Service (PPAS) assessment found his performance below the expected level for a specialty-grade anesthetic/ITU doctor. The assessment highlighted deficiencies in core areas and inconsistencies in his practice. Despite efforts by the Health Board to implement an action plan for retraining, Dr Donaldson engaged minimally, attending only one meeting and failing to comment on or participate in the action plan. Furthermore, he did not provide the required DBS certification, resulting in his dismissal and subsequent referral to the General Medical Council (GMC).

3. In May 2021, the GMC directed Dr Donaldson to undergo a performance assessment. While initially agreeing, he later questioned the methodology and purpose, ultimately refusing to comply. Between November 2021 and March 2022, the GMC engaged in extensive correspondence with Dr Donaldson, answering his repeated queries and stressing the consequences of non-compliance. Despite his initial confirmation to attend the assessment, Dr Donaldson ultimately failed to follow through, leading to the cancellation of the assessment in July 2022. The GMC concluded that Dr Donaldson had failed to comply with its direction without valid justification.

4. In December 2022, a Tribunal reviewed the case. It determined that Dr Donaldson had been appropriately notified of the requirement to undergo a performance assessment and had failed to comply. The Tribunal found no valid reason for his non-compliance and deemed this a risk to public protection, as his competence could not be verified. To mitigate this risk and emphasise the importance of complying with GMC directives, the Tribunal suspended Dr Donaldson's medical registration for 12 months. The suspension was deemed necessary and proportionate to protect the public and uphold public confidence in the medical profession.

5. Further in December 2023, a reviewing Tribunal (the December 2023 Tribunal) concluded that the GMC had taken all reasonable steps to seek compliance and that Dr

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Donaldson had not provided evidence of maintaining his medical skills or any valid reason for non-compliance. It determined that Dr Donaldson continued to fail to comply, demonstrating no progress since the previous hearing.

6. The December 2023 Tribunal reviewed Dr Donaldson's non-compliance with a GMC directive to undergo a performance assessment and considered appropriate sanctions. The Tribunal deemed conditions unworkable, given Dr Donaldson's refusal to comply and absence of information regarding his professional development. It determined that suspension was the only viable sanction to protect the public and uphold standards. A 12-month suspension was imposed, allowing time for a performance assessment. A review hearing would assess his compliance before the suspension ended.

2024 Review Tribunal

7. This Tribunal has met to review Dr Donaldson's case. It has considered, under Rule 22A of the Rules, whether there has been a failure to undergo a performance assessment.

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

Submissions

9. The Tribunal has considered the submissions made by Ms Harriet Dixon, Counsel, on behalf of the GMC.

10. Ms Dixon submitted that the GMC has sent Dr Donaldson five reminder letters regarding the requirement to undergo a performance assessment. None of these letters received a response, and the latter two were not collected by Dr Donaldson. In addition, the GMC has made three telephone calls and left voicemails requesting a callback, but these also went unanswered.

11. In these circumstances, Ms Dixon submitted that the GMC has made all reasonable efforts to secure Dr Donaldson's compliance with the requirement to undergo a performance assessment. Despite this, Dr Donaldson has not undertaken the assessment. Ms Dixon submitted that, on the balance of probabilities, Dr Donaldson has continued to fail to comply with this requirement.

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12. With regard to whether there is a good reason for the non-compliance, Ms Dixon submitted that Dr Donaldson has not provided any evidence or explanation. She added that there is no indication that a valid reason exists, and it may be inferred that Dr Donaldson is wilfully disengaging from the regulatory process.

13. Ms Dixon reminded the Tribunal that, since the first non-compliance hearing on 2 December 2022, Dr Donaldson has not responded to any correspondence about the performance assessment. The only contact with the GMC in 2023 consisted of unrelated emails and a phone call in May 2023. These emails, included in the bundle in redacted form, do not address the performance assessment.

14. At the first review hearing on 15 December 2023, the reviewing Tribunal determined that there was no new information to explain Dr Donaldson's non-compliance and no evidence of good reason. Similarly, this Tribunal has no new information to consider. Since the December 2023 hearing, Dr Donaldson has not responded to any correspondence from the GMC or provided any relevant information.

15. Ms Dixon concluded that this Tribunal can be satisfied there is still no good reason for Dr Donaldson's continued non-compliance.

Legal advice

16. The Legally Qualified Chair (LQC) outlined Rule 22, where the Tribunal must consider the evidence and submissions and announce its finding regarding any continued non-compliance. The burden of proof rests on the GMC, which must establish continued non-compliance. The standard of proof to be applied is the balance of probabilities, as in civil proceedings.

17. The Tribunal must also have regard to the MPTS Non-Compliance Guidance. In Dr Donaldson's case, the 2022 tribunal found a failure to comply, and the 2023 tribunal found continued non-compliance. The current task is to determine whether there has been further continued non-compliance.

18. The Tribunal had regard to the non-compliance guidance, all the evidence provided and the submissions from parties when making its decision, specifically paragraphs C52 and C53 of the Non-compliance guidance (September 2019):

"C52 A non-compliance review hearing will include the following main elements:

a presentation of the GMC's case

b presentation of the doctor's case

c the tribunal's findings on the issue of whether there is continued non-compliance

d where there is a finding of continued non-compliance, the tribunal's decision on whether to make a non-compliance order

C53 The tribunal will need to consider, and make a finding, as to whether the doctor 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 failed to comply with any requirement imposed on them as a noncompliance condition at the previous hearing."

19. The LQC advised the Tribunal that if it finds there has been continued non-compliance, it must then consider whether there is a good reason for the doctor's failure to comply.

Tribunal's decision

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

21. The Tribunal has borne in mind paragraph A17, which states:

'A17 There does not need to be culpability on a doctor's part for the tribunal to conclude there is evidence that the doctor has 'failed to comply.' At this stage, the tribunal is simply considering whether there is evidence to show, as a matter of fact, the doctor has not complied with the GMC's direction or request to provide information.

22. The Tribunal noted the objective evidence that Dr Donaldson has not completed the performance assessment and that there remains no estimated time-frame by which he will comply with the Direction. Further, Dr Donaldson has disengaged with the GMC's investigation and these proceedings.

23. The Tribunal has borne in mind the Non-Compliance guidance and was satisfied that there was no good reason for Dr Donaldson's failure to comply, due to the lack of a realistic prospect of him participating in the performance assessment in a reasonable timeframe.

24. The Tribunal determined that both limbs of C53 of the Non-Compliance were engaged in that Dr Donaldson has “*continued to fail to comply with the direction or request to provide information that led to the non-compliance order being made*”, and “*failed to comply with any requirement imposed on them as a noncompliance condition at the previous hearing.*”

25. In all the circumstances, the Tribunal determined that Dr Donaldson has failed to comply with the Direction to undertake a performance assessment. The Tribunal therefore concluded that non-compliance had been found.

Determination on Sanction 20/12/2024

26. Having determined that there is non-compliance by reason of Dr Donaldson’s failure to comply with a performance assessment in accordance with Schedule 1 of the Rules, the Tribunal has considered whether a sanction should be imposed.

Submissions

27. Ms Dixon, Counsel, on behalf of the GMC submitted that, given the continued non-compliance by Dr Donaldson and his suspension for two years (two consecutive one-year periods), the only appropriate sanction in this case is one of an indefinite suspension.

28. Ms Dixon referred the Tribunal to the non-compliance guidance and to the general principles in the *Sanctions Guidance* (February 2024) (the SG), particularly C58:

“C58 Where a doctor’s registration is suspended, the tribunal may direct that the current period of suspension be extended up to 12 months. Where a doctor has been suspended under a non-compliance order for two consecutive years, it is open to the tribunal to suspend the doctor’s registration indefinitely.”

29. Ms Dixon submitted that, despite multiple opportunities, Dr Donaldson has not provided any evidence that he has addressed the concerns or taken steps to update his skills, increasing risks to patient safety and highlighting a lack of insight into the seriousness of the issues.

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30. Ms Dixon submitted that Dr Donaldson's continued non-compliance and disregard for regulatory proceedings undermines public confidence in the profession. Ms Dixon further submitted that his refusal to engage with the GMC, respond to correspondence relating to his non-compliance, or attend hearings demonstrates a disregard for professional standards and regulatory oversight. She asserted that allowing Dr Donaldson to return to practice without addressing these deficiencies would compromise public trust and weaken the integrity of the regulatory system.

31. Given these circumstances, Ms Donaldson submitted that indefinite suspension is the only appropriate response to protect public safety and uphold professional standards. She submitted that conditions would be unworkable due to Dr Donaldson's persistent non-compliance, and another suspension was necessary to send a clear message about the seriousness of failing to engage with regulatory requirements. She added that, while Dr Donaldson may request a review after two years, the decision for a indefinite suspension would reinforce the need for robust action to maintain confidence in the medical profession.

The Relevant Legal Principles

32. The Tribunal is aware that the decision as to the appropriate sanction, if any, to impose on Dr Donaldson'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).

33. 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.

34. The Tribunal has also borne in mind that the purpose of a sanction is not to punish or discipline doctors, but a sanction may have a punitive effect.

The Tribunal's Decision

No Action

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35. The Tribunal first considered whether to conclude Dr Donaldson's case and take no further action.

36. Given the concerns raised in relation to Dr Donaldson's continued failure to comply with the GMC's direction to undergo a Performance Assessment, the Tribunal was satisfied that it would be inappropriate and insufficient to take no action in this case taking into account the three limbs of the overarching objective.

Conditions

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

38. The Tribunal considered Dr Donaldson's continued lack of engagement with the GMC and its finding that he has continued to fail to comply with the direction for a Performance Assessment. It also considered Dr Donaldson's dismissal from employment and his lack of clinical practise over a three-and-a-half year period. The Tribunal was also mindful of the absence of information regarding Dr Donaldson keeping his medical knowledge and skills up-to-date. In all the circumstances, the Tribunal concluded that there were no conditions it could impose which would be workable or measurable. It therefore determined that conditions were not appropriate in these circumstances.

Suspension

39. The Tribunal then went on to consider whether it would be appropriate and proportionate to suspend Dr Donaldson's registration for a further 12 months or to indefinitely suspend his registration. The Tribunal has taken into account that this is a case of non-compliance with a direction by the GMC which has continued for over three years. Dr Donaldson has continued to fail to undergo the Performance Assessment directed by the GMC in May 2021.

40. The Tribunal concluded that there was no new information before it which may have a bearing on its decision as to the appropriate sanction to impose. Similarly, the Tribunal considered that there was no information to indicate that Dr Donaldson would engage with these regulatory proceedings in the future.

41. In reaching its decision, the Tribunal took into account the following paragraph of the Guidance.

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“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.

...

C27 After a doctor has been suspended under a non-compliance order for two consecutive years, and there is evidence of continued non-compliance, the tribunal can suspend the doctor indefinitely. A doctor cannot be erased for noncompliance.

C28 If a tribunal decides to direct indefinite suspension, there is no automatic further review hearing of the case, although it is open to the doctor to request a review after a period of two years have elapsed from the date when the indefinite suspension takes effect.”

42. The Tribunal considered that the performance assessment was directed over three years ago and there was no information provided from Dr Donaldson as to why he was unable to comply with this. In this case, he had been suspended for two years (two consecutive one-year periods) by two different tribunals and there had been no change in Dr Donaldson’s engagement or willingness to act on the direction imposed. The Tribunal noted that in June 2022, Dr Donaldson contacted the GMC to state that he was “*done with the GMC*” and the Tribunal understood this to mean that he had no intention to engage further with his regulator in respect of the performance assessment.

43. In all the circumstances, the Tribunal noted the submissions made by Ms Dixon and determined that it is appropriate, in respect of public protection, upholding the public interest and in Dr Donaldson’s own interest to extend the existing order for suspension indefinitely.

44. The Tribunal was of the view that, if Dr Donaldson were to be in a position to demonstrate compliance with the GMC’s direction in the future, it is open to him to request a review of his case after a period of 2 years have elapsed. The Tribunal further noted the power at Rule 21 of the Rules for the Registrar to refer a case to the MPTS where they consider an early review hearing to be desirable.

45. The effect of this direction is that, unless Dr Donaldson exercises his right of appeal, this decision will take effect on the date upon which the previous order would otherwise expire. The suspension currently imposed on his registration will remain in place until the outcome of any appeal is known, pursuant to Schedule 4 paragraph 11(1)(a) of The Medical

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Act 1983 (as amended). Additionally, if Dr Donaldson chooses to appeal against this decision the current suspension will remain in force until the appeal is determined.

46. That concludes this hearing.

ANNEX A – 20/12/2024

Service and proceeding in absence

47. Dr Donaldson is neither present nor represented today. The Tribunal has considered the submission that notification of this hearing has been properly served upon Dr Donaldson.

Submissions

48. Ms Harriet Dixon, Counsel, on behalf of the GMC submitted that the hearing should proceed in the absence of Dr Donaldson under Rule 31. She highlighted that Rule 31 allows proceedings to continue if the practitioner has been properly served with notice of the hearing, and all reasonable efforts to inform them have been made. Ms Dixon submitted that this criterion has been met.

49. Regarding service, Ms Dixon explained that the notice of hearing, dated 13 November 2024, was sent via Royal Mail special delivery to Dr Donaldson's registered address in Newport. This notice included all required details, such as the date, time, and virtual format of the hearing via Microsoft Teams. Attempts to deliver the notice were made on 14 November 2024 and 15 November 2024, but both were unsuccessful, leading to the notice being returned to the sender. However, Ms Dixon referenced the Medical Act and Rule 15, which establish that proof of sending is sufficient for proper service, regardless of receipt.

50. Ms Dixon set out that further efforts were made to ensure Dr Donaldson received the notice. On 3 December 2024, the notice was re-sent via first-class post, and on 4 December 2024, it was emailed to his registered email address with high importance which he had used for other unrelated communication with the GMC. Despite these steps, no response was received from Dr Donaldson to any communication attempts by the GMC or MPTS.

51. Ms Dixon averred that Dr Donaldson has consistently chosen not to engage with these proceedings, noting his stated disengagement with the GMC in 2022 and his absence from several prior hearings, including the non-compliance hearing on 2 December 2022, and a review hearing on 15 December 2023. Given his repeated lack of participation, Ms Dixon submitted that an adjournment would be unlikely to secure his attendance.

52. Finally, Ms Dixon emphasised the importance of balancing fairness to Dr Donaldson with the public interest in the timely resolution of regulatory proceedings. She argued that proceeding in his absence is justified, given sufficient safeguards to ensure fairness. She

urged the Tribunal to proceed with the hearing, citing Dr Donaldson's apparent awareness of the hearing date and his decision not to participate.

The Relevant Legal Principles

53. The Legally Qualified Chair (LQC) provided legal guidance on the relevant rules and case law regarding proceeding with a hearing in the absence of Dr Donaldson. Rule 40 outlines the service requirements for MPT hearings, with Rule 15 detailing the specific notice requirements. Rule 40(2) permits service by ordinary post or electronic mail, as corroborated by the proof of service bundle.

54. The LQC directed the Tribunal to the principles established in *R v Jones (2001) EWCA Crim 168* and *GMC v Adeogba (2016) EWCA Civ 162*, and 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.

55. Fairness to the registrant is crucial, but fairness to the regulator and the public interest must also be weighed. The LQC advised the Tribunal that it should avoid assumptions about the registrant's absence or treating it as an implicit admission. He said it is for the Tribunal to exercise its independent judgment, considering the GMC's submissions and ensuring that the decision aligns with principles of fairness.

The Tribunal's Decision

Service

56. The Tribunal has balanced Dr Donaldson's interests with the public interest in deciding whether to proceed in his absence. The Tribunal noted that the information letter, sent by the GMC in accordance with Rule 20(1)(b) dated 13 November 2024, was sent by Royal Mail Special Delivery Service with attempts made to deliver on 14 and 15 November 2024. It also noted that on 3 December 2024, the notice was re-sent via first-class post, and on 4 December 2024, it was emailed to his registered email address with high importance.

57. The Tribunal found that the GMC had made all reasonable efforts to serve notice on Dr Donaldson. Accordingly, having considered all the evidence before it, the Tribunal was satisfied that Dr Donaldson has been properly served with notice of this hearing in accordance with Rules 15 and 40 of the Rules and paragraph 8 of Schedule 4 of the Medical Act 1983.

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Proceeding in absence

58. Having been satisfied that notice was properly served upon Dr Donaldson, the Tribunal then considered whether to proceed with this hearing in his absence, in accordance with Rule 31 of the Rules.

59. The Tribunal considered that Dr Donaldson has chosen not to engage with his previous Non-Compliance hearings and review hearings in 2022 and 2023 respectively, noting that he had stated that he was "*done with the GMC*" in 2022.

60. The Tribunal was satisfied that Dr Donaldson was aware of these proceedings. The Tribunal noted that Dr Donaldson has not requested an adjournment and did not consider that an adjournment would secure Dr Donaldson's attendance as there was no indication that he would attend in any case. The Tribunal was satisfied, in these particular circumstances, that it was in the interests of justice to proceed in Dr Donaldson's absence.

61. The Tribunal therefore determined to proceed in Dr Donaldson's absence.