

PUBLIC RECORD

Dates: 29/07/2022

Medical Practitioner's name: Dr Michael ISIMA
GMC reference number: 6121387
Primary medical qualification: MD 1977 Universitat Wien
Type of case: Outcome on non-compliance
Review - Non-compliance with a performance assessment: Non-compliance found

Summary of outcome

Conditions for 9 months
Review hearing directed

Tribunal:

Legally Qualified Chair	Ms Cerys Jones
Lay Tribunal Member:	Ms Miriam Karp
Medical Tribunal Member:	Dr John Alcolado

Tribunal Clerk:	Mr Rowan Barrett
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Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Daniel Woods, Counsel, instructed by KC Law Chambers.
GMC Representative:	Miss Anam Khan, 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 29/07/2022

1. This is the first review of Dr Isima's case following a Medical Practitioners Tribunal Non-Compliance hearing which concluded in October 2021.

Background

2. The GMC is conducting an investigation into Dr Isima's fitness to practise in respect of concerns raised about his clinical performance. These concerns arose following locum placements as a Specialist Registrar in Obstetrics and Gynaecology at Luton and Dunstable Hospital between June and October 2019 and Milton Keynes University Hospital between 4 and 7 October 2019. The fitness to practise concerns were initially brought to the attention of the GMC in April 2020 by Dr Isima's Responsible Officer, who advised that Dr Isima was involved in a Serious Incident in 2019 which resulted in a neonatal death. The GMC case examiner subsequently summarised the concerns as follows:

- poor communication skills,
- poor record keeping,
- acting outside the limits of his competence,
- failure to make decisions on management plans,
- no sense of urgency when asked to review patients
- delaying procedures inappropriately
- ignoring colleague advice,
- an inability to explain how he kept his professional portfolio up to date as a locum
- a general lack of insight into his clinical performance.

3. On 28 January 2021, Dr Isima was directed to undergo an assessment of his performance, under Rule 7(3) and Schedule 1 of the General Medical Council ('GMC') Fitness to Practise Rules (2004) ('the Rules'). Despite repeated correspondence from the GMC notifying Dr Isima that he must comply with this direction, which included correspondence between the GMC and Dr Isima and between the GMC and Dr Isima's

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legal representative, Dr Isima did not undertake a performance assessment. Dr Isima was subsequently referred to the non-compliance hearing in October 2021 ('the 2021 Tribunal').

4. The 2021 Tribunal determined that the GMC's direction for Dr Isima to undergo a performance assessment was reasonable, that Dr Isima had failed to comply with it and that he had provided no good reason for his failure to comply.
5. In considering whether the GMC's direction was reasonable, the 2021 Tribunal had regard to the Non-Compliance Guidance and the factors set out by the GMC Performance Assessment Review Group as appearing to demonstrate a pattern of poor or unacceptably low standards of professional performance. It reminded itself that it is not the responsibility of a non-compliance Tribunal to investigate whether any allegations made against a doctor are true, however, it was satisfied that the concerns in this case met the criteria set out in these guidance documents. In finding non-compliance, the 2021 Tribunal had regard to the Non-Compliance Guidance, and was satisfied that there was no evidence before it to suggest that Dr Isima had complied with the direction. Finally, the 2021 Tribunal again directed itself to the Non-Compliance Guidance in considering whether there was a good reason for Dr Isima's failure to comply and was satisfied that Dr Isima had not provided a good reason for this failure.
6. The 2021 Tribunal determined to impose a non-compliance order suspending Dr Isima's registration for a period of nine months. It first considered whether the imposition of conditions would be sufficient, however, was not satisfied that Dr Isima would comply with conditional registration and, on that basis, conditions were unlikely to be workable. The 2021 Tribunal therefore concluded that a period of suspension was the proportionate sanction in this case. It was satisfied that suspension would guard against the risk to patient safety arising from the clinical concerns, whilst sending a message to him, as well as the profession and the wider public, of the importance of compliance with the regulator. The 2021 Tribunal also considered that the non-compliance order of suspension would maintain public confidence in the medical profession.
7. The Tribunal in October 2021 stated in its determination that a review tribunal would be assisted by receiving:
 - evidence that Dr Isima has undergone a performance assessment, along with its results;

- any other information which Dr Isima considers will assist the reviewing Tribunal.

Review Tribunal

8. This Tribunal has met to review Dr Isima's case. It has considered, under Rule 22A of the Rules, whether there has been a continued failure to comply with an assessment under Schedule 1 of the Rules.
9. In reaching its decision, the Tribunal has given careful consideration to all of the oral and documentary evidence adduced in this case.
10. The tribunal has taken into account the documentary evidence received, which included but was not limited to:
 - Email correspondence between the GMC and Dr Isima and his representatives
 - A witness statement from Dr Isima dated 22 July 2022

On the day of the hearing, the Tribunal also received the following documents:

- A letter dated 25 July 2022 from the GMC to Dr Isima confirming the process for a performance assessment
- An assessment portfolio pro-forma to be completed by Dr Isima
- A workplace report pro-forma to be completed by Dr Isima

Submissions

11. The tribunal has considered the submissions made by Ms Anam Khan, Counsel, on behalf of the GMC and those made by Mr Daniel Wood on behalf of Dr Isima.
12. Ms Khan invited the Tribunal to find that Dr Isima has not complied with the GMC's direction that he undergo a performance assessment. Ms Khan submitted that Dr Isima's indication that he will now comply with the direction remains only an indication at this stage. Ms Khan referred the Tribunal to the Non-Compliance Guidance.
13. Ms Khan submitted that it would be speculative at this point for the Tribunal to attempt to assess how Dr Isima may approach arrangements for a performance assessment, and submitted that the important consideration is the position as of today. She reminded the

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Tribunal that the onus was on the doctor to demonstrate compliance, and noted that this was pointed out to Dr Isima in the determination of the 2021 Tribunal.

14. Mr Wood invited the Tribunal to find that sufficient steps had now been taken by Dr Isima to comply with the direction to undergo a performance assessment.
15. Mr Wood told the Tribunal that the GMC's allegations were firmly contested by Dr Isima. He submitted that, notwithstanding this, Dr Isima now understands that the validity of the assistant registrar's direction for the performance assessment is not a matter for this Tribunal. He told the Tribunal that, whatever Dr Isima's views about the propriety of this direction, he is now willing to undergo the performance assessment. Mr Wood submitted that this context is provided not to attempt to relitigate the decision of the previous Tribunal that there was no good reason for Dr Isima's non-compliance, but so that the Tribunal could take this into account in understanding why the case has progressed in this way.
16. Mr Wood submitted that there is no longer, as there has been in the past, an explicit refusal to undergo the performance assessment. He told the Tribunal that Dr Isima has now agreed to comply with the direction and desires to progress to an MPT hearing. Mr Wood submitted that, had this been the case 12 months ago, it is likely that his indication that he is willing to comply would have been sufficient at that stage. Mr Wood submitted that Dr Isima is, in the light of the correspondence with the GMC, now complying with the direction. Mr Wood submitted that Dr Isima does not submit at this stage that the suspension should be lifted entirely, and so whether the suspension was imposed on the basis of non-compliance or reverted to being imposed as an interim order, the requirement for the protection of the public would continue to be met. Mr Wood submitted that as there was no explicit refusal and was now an agreement to comply with the direction, the Tribunal should find that there was no non-compliance in this case.
17. Mr Wood submitted that, if the Tribunal did not agree with his primary submission, any continuation of the suspension on the basis of non-compliance should be a short one, with a review in short order, to allow a reviewing Tribunal to more easily judge that Dr Isima has taken sufficient steps to comply with the direction.

Tribunal's decision

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18. 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.
19. The Tribunal bore in mind that the concerns that led to the performance assessment requirement are serious and wide ranging and have been raised by two separate NHS Trusts. The Tribunal accepted the submission made at the previous non-compliance hearing in October 2021 and concurred with the decision of that Tribunal that the direction for Dr Isima to undergo a performance assessment was reasonable.
20. The Tribunal has had regard to Dr Isima's statement to the effect that he is now willing to undertake the performance assessment and has noted email correspondence between the GMC and Dr Isima, dated 25 July 2022, acknowledging his intention to comply with the direction. The Tribunal was encouraged that Dr Isima has recently begun to take steps to demonstrate his willingness to comply with the GMC Assistant Registrar's direction. The Tribunal considered, however, while that these statements indicate Dr Isima's intention to comply, they are not evidence of his having made actual arrangements for a performance assessment to take place. The Tribunal notes that the period of nine months suspension was imposed by the previous Tribunal in order to allow Dr Isima sufficient time to arrange and complete a performance assessment and considers that Dr Isima has had the opportunity to complete this process during this period. The Tribunal acknowledges that the situation may be different in a few weeks if Dr Isima completes the necessary steps for the performance assessment to take place, but at the present time, the Tribunal has not been presented with sufficient evidence to suggest that Dr Isima has yet taken concrete steps to comply with the direction at this stage.
21. The Tribunal then considered whether a good reason has been provided for Dr Isima's continued failure to undergo a performance assessment. It bore in mind the context provided in Dr Isima's witness statement that he has now reconsidered his position and decided to undergo the performance assessment before contesting the substantive matters, which he disputes, at a future MPT hearing. The Tribunal does not consider, however, that this constitutes a good reason for his failure to comply with the direction at any point in the last nine months.
22. In these circumstances the Tribunal is not satisfied that Dr Isima has complied with the GMC's direction at this stage and has therefore determined that non-compliance has been found.

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23. Having determined that there is a continued non-compliance of a GMC direction by reason of Dr Isima's failure to undergo a performance assessment, 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

24. Ms Khan, submitted that a non-compliance order was required for the protection of the public and patient safety. 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'). Ms Khan invited the Tribunal to impose conditions on Dr Isima's registration, including a condition that he continue to comply with the direction to undergo a performance assessment
25. Ms Khan submitted that, in light of the manifest risks to patients, it would not be appropriate to take no action, and further submitted that members of the public would be alarmed and surprised if no order was imposed on Dr Isima's registration today.
26. Ms Khan submitted that, while it was the GMC's primary submission that a non-compliance order should be imposed, if the Tribunal were to decide not to do so, it should instead impose an interim order. Ms Khan submitted that the risk found by the Interim Orders Tribunal in April 2021 has not diminished in the time since this order was made. She submitted that Dr Isima may pose a real risk to members of the public and that public confidence in the medical profession may be seriously undermined if Dr Isima were to be permitted to return to unrestricted practice.
27. Mr Wood submitted that there is no suggestion by Dr Isima of a return to unrestricted medical practice. Mr Wood reminded the Tribunal that these are allegations which, whilst serious, Dr Isima disputes.
28. Mr Wood invited the Tribunal to impose an interim order of conditions, which could satisfy the Tribunal that Dr Isima was not returning to unrestricted practice. He

submitted that this would present a route to compliance with the regulator in this situation which did not entail a formal or substantive sanction. Mr Wood submitted that, if the Tribunal were not minded to take this route, a non-compliance order for conditional registration would be appropriate.

29. Mr Wood submitted that a future finding of compliance should not require Dr Isima to have fully completed the performance assessment, but it should be sufficient for Dr Isima to provide evidence of concrete steps he has taken toward this at a future review. Mr Wood submitted that there must be an acknowledgement that Dr Isima is attempting to comply, even if it is not enough evidence for the Tribunal to conclude that he has now complied. Mr Wood submitted that imposing an interim order rather than a non-compliance order would demonstrate to Dr Isima and to the profession more generally that there is benefit to taking steps to comply with directions made by the GMC, and submitted that the purpose of these proceedings was to encourage, as well as enforce, compliance.
30. Mr Wood went on to contest the GMC's submission that Dr Isima's recent change of position and his indication that he is now willing to comply with the direction are not mitigating factors, and submitted that this should be taken into account by the Tribunal as mitigation.

The Tribunal's Determination on Sanction

31. The Tribunal is aware that the decision as to the appropriate direction, if any, to impose on Dr Isima'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 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.*

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

- a extend the order*
- b vary the order*
- c revoke the order.*

32. 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 Isima's interests with the public interest.

The Tribunal's decision

33. As outlined in its previous determination, in which it found that there was continuing non-compliance, serious and wide-ranging concerns have been raised about Dr Isima's clinical competency, and he has been involved in a Serious Incident which involved a neonatal death. Thus, all the three limbs of the overarching objective are engaged. The Tribunal determined that action is required to protect the public, maintain public confidence in the profession and to promote and uphold proper professional standards for members of the profession.
34. The Tribunal also considered Mr Wood's submission that it should impose an interim order of conditions rather than a non-compliance order. The Tribunal has determined that, having found that there has been non-compliance in this case and the time over which that has continued, the order imposed should be made on the basis of this finding, and should therefore be a non-compliance order.

No Action

35. 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.
36. The initial concerns were raised in 2019 and Dr Isima has not complied with the direction to undergo the performance assessment, despite having had ample time to do so.

Whilst the Tribunal notes that Dr Isima has recently agreed to undertake the performance assessment, he has not yet taken any concrete steps in this process. The Tribunal was satisfied that there were no exceptional circumstances in this case which would justify it taking no action.

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

Conditions

38. The Tribunal next considered whether it would be appropriate to impose a period of conditions on Dr Isima's registration. It has borne in mind that any conditions must be appropriate, proportionate, workable and measurable.
39. The Tribunal acknowledge that Dr Isima has indicated that he is now willing to comply with the direction to undergo the performance assessment and has begun to communicate with the GMC about the process. The Tribunal considers that, in light of this positive development, it is appropriate and proportionate to impose conditions which will allow Dr Isima to return to clinical practice with adequate support and supervision while completing his performance assessment. The Tribunal considers that the below conditions are sufficient to protect the public and meet the overarching objective.
40. In considering the appropriate conditions to impose, the Tribunal has had regard to the following paragraphs of the Non-Compliance Guidance:

C16 The tribunal can impose a condition relating to the assessment or request to provide information with which the doctor has failed to comply. For example, where the tribunal has found that a doctor has failed to comply with a direction to undergo a health assessment, they may direct that the doctor's registration is to be conditional on their compliance with a health assessment

C17 Any condition to undergo an assessment or provide information should stipulate a period of time within which the doctor is required to comply.

C18 Further conditions can be imposed in order to achieve the overarching regulatory purpose of protecting the public.

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41. The Tribunal notes that Dr Isima has now confirmed that he is willing to complete his performance assessment. On that basis, the Tribunal considers that it is now appropriate and proportionate to allow him to return to clinical practice while completing this process. However, the Tribunal determined that during this time, his registration should be subject to his compliance with the conditions set out below in order to protect patients and the public against the risks identified. The Tribunal determined that a period of nine months would provide sufficient time for Dr Isima to demonstrate that he has complied with the direction.

1 He must actively engage with the GMC to comply with the direction to complete a performance assessment and to do so by the date of the next review hearing

2 He must personally ensure that the GMC is notified of the following information within seven calendar days of the date these conditions become effective:

a of the details of his current post, including:

i his job title

ii his job location

iii his responsible officer (or their nominated deputy)

b the contact details for his employer and any contracting body, including his direct line manager

c of any organisation where he has practising privileges and/or admitting rights

d of any training programmes he is in

f of the contact details of any locum agency or out-of-hours service he is registered with.

3 He must personally ensure the GMC is notified:

a of any post he accepts, before starting it

b that all relevant people have been notified of his conditions, in accordance with condition 8

c if any formal disciplinary proceedings against him are started by his employer and/or contracting body, within seven calendar days of being formally notified of such proceedings

- d if any of his posts, practising privileges or admitting rights have been suspended or terminated by his employer before the agreed date within seven calendar days of being notified of the termination
 - e if he applies for a post outside the UK.
- 4 He must allow the GMC to exchange information with his employer and/or any contracting body for which he provides medical services.
- 5 He must get the approval of the GMC before starting work in a non-NHS post or setting.
- 6
- a He must be closely supervised in all of his posts by a clinical supervisor, as defined in the *Glossary for undertakings and conditions*. His clinical supervisor must be appointed by his responsible officer (or their nominated deputy).
 - b In addition, he must only work on a labour ward if directly supervised.
 - c He must not work until:
 - i his responsible officer (or their nominated deputy) has appointed his clinical supervisor and approved his supervision arrangements.
 - ii he has personally ensured that the GMC has been notified of these arrangements.
 - d He must provide a report from his clinical supervisor in advance of or at his next IOT review hearing.
- 7 He must not work in any locum post or fixed term contract of less than eight weeks duration.
- 8 He must personally ensure that the following persons are notified of the conditions listed at 1 to 7
- a his responsible officer (or their nominated deputy)
 - b the responsible officer of the following organisations
 - i his place(s) of work and any prospective place of work (at the time of application)
 - ii all his contracting bodies and any prospective contracting body (prior to entering a contract)

- iii any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application)
 - iv any locum agency or out-of-hours service he is registered with
 - v if any organisation listed at (i to iv) does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within the organisation. If he is unable to identify this person, he must contact the GMC for advice before working for that organisation.
- c the approval lead of his regional Section 12 approval tribunal (if applicable) - or Scottish equivalent
- d his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts).

Duration of Conditions

42. The Tribunal went on to consider the length of the period of conditions, taking into account paragraph C30 of the guidance. The Tribunal considers that any order imposed for less than six months would not be in line with the suggested time period required to complete a performance assessment. It has therefore determined to impose a period of conditions for nine months to provide sufficient time for Dr Isima to set up and fully comply with the direction.
43. The Tribunal therefore determined that the appropriate and proportionate action was to impose a period of conditions for nine months.
44. The Tribunal also had regard to paragraph C33 of the Non-compliance guidance:
- 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.*
45. The Tribunal reminds Dr Isima that if at any time during the period of he considers he has fully complied, he can request an early review of this direction.

46. The Tribunal has directed to impose a period of conditional registration for nine months. The MPTS will send Dr Isima 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

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

- Evidence that Dr Isima has engaged with and completed the performance assessment

48. That concludes this hearing.