

PUBLIC RECORD

Dates: 26/5/2023 & 28/09/2023

Medical Practitioner's name: Dr Nadarajah NIRANJAN

GMC reference number: 4188111

Primary medical qualification: MB BS 1980 University of Colombo

Type of case: Outcome on non-compliance

New - Non-compliance with a performance assessment: Non-compliance found

Summary of outcome

Suspension for 12 months
Review hearing directed
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mr Gennaro Baffa
Lay Tribunal Member:	Mrs Alison Miller-Varey
Medical Tribunal Member:	Dr Sarah Marwick
Tribunal Clerk:	Mr Matt O'Reilly (26/5/2023) Miss Racheal Gill (28/9/2023)

Attendance and Representation:

Medical Practitioner:	Not present and represented
Medical Practitioner's Representative:	Ms Laura Stepheson, Counsel (26/5/2023) instructed Clyde & Co Ms Grace Forbes, Counsel (28/9/2023) instructed by Clyde & Co
GMC Representative:	Ms Collette Renton, Counsel

Attendance of press / public

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

Overarching Objective

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

Determination on consideration of non-compliance - 26/05/2023

Outcome of Applications Made at the Outset of Proceedings

1. A preliminary issue was raised by the GMC with a request to hold the proceedings wholly in private due to XXX. This was supported on behalf of Dr Niranjana. The Tribunal determined to hear the proceedings wholly in private. This determination will be handed down in private. However, as this case concerns Dr Niranjana's misconduct and performance, a redacted version will be published at the close of the hearing.

Background

2. In November 2020, Dr Niranjana was working as a GP Partner at Victoria Medical Centre ('the Centre'). On 2 November 2020, the GMC received a referral from NHS England and NHS Improvement – London Region ('NHSE') in relation to patient safety concerns raised during a Care Quality Commission inspection at the centre.

3. On 18 May 2021, the GMC wrote to Dr Niranjana to tell him that he was directed under Rule 7(3) and Schedule 1 of the Fitness to Practise Rules 2004 ('the Direction') to undertake an assessment of his performance ('PA').

4. XXX.

5. On 20 July 2021, Dr Niranjana submitted XXX.

6. On 21 July 2021, the GMC cancelled the PA due to XXX.

7. On 27 August 2021 he provided XXX.
8. On 22 September 2021, Dr Niranjana provided XXX.
9. On 29 October 2021, Dr Niranjana confirmed that XXX.
10. On 8 December 2021, the GMC received XXX.
11. On 17 January 2022, Dr Niranjana confirmed that XXX.
12. On 20 May 2022, Dr Niranjana provided XXX.
13. Further reminders were sent to Dr Niranjana by the GMC on 15 September 2022 and 23 September 2022, in which he was formally warned that failure to undergo a PA may result in the case being referred to the Medical Practitioners Tribunal Service ('MPTS') for a non-compliance hearing.
14. On 17 October 2022, the GMC wrote to remind Dr Niranjana of the Direction.
15. Further reminders were sent to Dr Niranjana on 31 October 2022, 14 November 2022, 10 January 2023, 8 February 2023 and 3 March 2023, in which he was warned that failure to undergo a PA may result in the case being referred to the MPTS for a non-compliance hearing.
16. Accordingly, it is alleged that Dr Niranjana has failed to comply in full with the GMC's direction and further alleged that there is no good reason for his failure to comply with the GMC's direction.
17. At the outset of the hearing, Ms Stephenson told the Tribunal that Dr Niranjana is aware of this hearing, XXX. Ms Stephenson told the Tribunal that Dr Niranjana is 72 years old, has not worked for 2 years and has effectively retired. She said that he is applying for voluntary erasure. She said that Dr Niranjana had, as a matter of fact not undertaken a PA, but wished to put forward submissions as to whether there was a good reason for the failure. She further stated XXX.

The Evidence

18. In reaching a decision on the matter of non-compliance, the Tribunal has given careful consideration to all of the evidence adduced in this case.

Documentary Evidence

19. The Tribunal received a bundle of documentary evidence which included but was not limited to:

- Performance assessment decision – dated 18 May 2021;
- Email from the GMC to Dr Niranjana regarding re-assessment of professional performance – dated 18 May 2021;
- Performance assessment invitation letter – dated 18 May 2021;
- Performance assessment portfolios – dated 18 May 2021 and undated
- Various correspondence between the GMC and Dr Niranjana (and/or his representatives Clyde and Co);
- XXX;
- XXX;
- Email to Dr Niranjana from the GMC attaching decision to refer him to a non-compliance hearing – dated 16 March 2023;
- Letter attaching decision to refer to non-compliance hearing – 16 March 2023;
- IOT determination – 23 January 2023.

Submissions on Behalf of the GMC

20. On behalf of the GMC, Ms Renton set out the background of this case in detail. She submitted that the doctor may seek to suggest XXX.

21. Ms Renton submitted that that XXX.

22. Ms Renton referred the Tribunal to XXX.

23. Ms Renton submitted that Dr Niranjana has indicated he would apply for voluntary erasure, and was given time to do so prior to the commencement of non-compliance proceedings. She said that the necessary evidential level to show a good reason for failure to comply has not been met. Ms Renton submitted that even if the Tribunal are minded to XXX, there are still XXX periods where there is no evidence of a good reason he could not comply.

24. Ms Renton submitted that, XXX, the Tribunal may also consider whether there is evidence of a realistic prospect of the doctor being able to comply with the assessment in a reasonable timeframe. She submitted that XXX. She submitted that if Dr Niranjana truly will not practise again and is to apply for voluntary erasure, then it would not be possible for Dr

Niranjan to comply in a reasonable timeframe. She said that GMC are naturally cautious in accepting this position, due to this assertion having previously been made and no application received.

25. Ms Renton submitted that the GMC has to date not received any application for voluntary erasure.

26. Ms Renton was invited to give submissions in respect of whether the GMC was able to proceed with its investigation in a proportionate way without the need for a PA. Ms Renton submitted that the GMC sought advice from its Medical Case Examiner and the Performance Assessment Review Group which deemed it necessary.

Submissions on Behalf of Dr Niranjn

27. Ms Stephenson submitted that there has been a failure to comply with the GMC's direction to undertake the performance assessment. She submitted however that Dr Niranjn had good reason, XXX.

28. Ms Stephenson accepted that it is for the judgement of the Tribunal when considering XXX and whether they are sufficient to support a finding of good reason. XXX

29. Ms Stephenson submitted that XXX.

30. In response to the Tribunal's query regarding whether any other proportionate investigation could be undertaken to assist the GMC, she said that it must be right that the GMC is in possession of a detailed CQC investigation report to included appendices and expert evidence. She submitted that the position is one of *passing the ball back* to the GMC as this is their investigation and so it must be for them to set out why public protection would be placed at risk by reason of Dr Niranjn's failure to undertake a PA. She invited the Tribunal to consider that as the Tribunal did not have this evidence before it, it may feel that the burden has not been discharged.

The Tribunal's Determination on Non-Compliance

31. The Tribunal is aware that the burden of proof rests on the GMC and that it is for the GMC to prove non-compliance. The Tribunal is also aware that the standard of proof is that applicable to civil proceedings, which is the balance of probabilities.

32. The Tribunal accepted the advice provided by the Legally Qualified Chair and noted that it should ask itself the following questions:

- has the doctor failed to comply with the GMC's direction or request to provide information?
- if so, is there a good reason for the doctor's failure to comply?

33. In making its determination, the Tribunal had regard to the Guidance. The Tribunal noted paragraph A17 of the NCG:

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.'

34. The Tribunal noted at the outset of this hearing, Ms Stephenson, on Dr Niranjan's behalf, conceded that the doctor has not complied with the performance assessment.

35. The Tribunal was satisfied that the GMC had properly notified Dr Niranjan of the requirement to undergo an assessment of his performance and that Dr Niranjan has not done so, and therefore had failed to comply.

36. The Tribunal then considered whether there was a good reason for Dr Niranjan's failure to comply. The Tribunal noted the Guidance at paragraph A24 was relevant to its deliberations:

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

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

37. The Tribunal had regard to a letter sent from Dr Niranján's solicitor, dated 16 November 2022, to the GMC, in which it stated:

'XXX'

38. The Tribunal noted however that it did not have before it any independent verifiable evidence that XXX.

39. The Tribunal also considered whether the doctor could comply in a reasonable timeframe. It noted Ms Stephenson's submission that Dr Niranján XXX and that he intends to apply for voluntary erasure, the Tribunal was of the view that there is no real prospect of him undertaking the assessment.

40. The Tribunal finds that Dr Niranján has not demonstrated that his failure to comply will "*not create a risk to public protection because the GMC can still investigate the concern*". The concerns which informed the decision to direct a PA are concerns of clinical competence arising from a CQC report. The Tribunal is satisfied that these are widespread in nature. Based on the description given of those concerns in the bundle as well as the reasoning of the MCE and PARG of which extracts have been produced, that a PA is necessary. Ms Stephenson has referred to the expert evidence already obtained however this relates to two discrete patients and issues of probity. Correspondingly, there are clear risks to the public if no wider assessment of the doctor's performance is obtained and the extent of potential impairment not fully or adequately understood.

41. The Tribunal also considered the fact that Dr Niranján is under a duty both to allow his regulator to monitor concerns raised in relation to his practice and to co-operate with the legitimate processes and procedures used by his regulator in carrying out its functions.

42. In all the circumstances, the Tribunal concluded that Dr Niranjana had failed to comply with the GMC direction and did not have a good reason for his failure to comply. The Tribunal therefore determined that non-compliance had been found.

Determination on sanction - 28/09/2023

43. Having determined that there was non-compliance by reason of Dr Niranjana's failure to undertake a performance assessment in accordance with Schedule 1 of the Rules; the Tribunal went on to consider what direction, if any, to make.

Submissions on behalf of the GMC

44. Ms Renton, Counsel, provided written submissions contending that the appropriate and proportionate direction in this case was an order of suspension for 12 months. Ms Renton drew the Tribunal's attention to Part C of the Guidance which provides guidance to the Tribunal on the appropriate direction, if any, to impose and the Tribunal's findings on non-compliance.

45. Ms Renton reminded the Tribunal that Dr Niranjana's reason for his non-compliance was XXX and that it had previously determined that this did not amount to a "good reason" in the context of non-compliance. She submitted that whilst Dr Niranjana had provided some evidence of XXX, there was no evidence that he will comply in the future and that conditions are sufficient to meet the regulatory purpose of protecting the public. Further she submitted that an order of conditions was not appropriate because Dr Niranjana has shown a history of non-compliance and minimal communication.

46. Ms Renton submitted that suspension would meet the regulatory purpose of protecting the public:

- a. *protecting, promoting, and maintaining the health, safety and wellbeing of the public* – there is no evidence the Dr Niranjana is working currently and therefore the public will be protected by the reassurance he cannot return to work without compliance.
- b. *promoting and maintaining public confidence in the profession* – the public would expect a doctor whose performance is in question, who has failed to undertake an assessment of performance since 18 May 2021 and who has subsequently been out of work to be suspended from practice.
- c. *promoting and maintaining proper professional standards and conduct for the members of the profession* – as per C25 of the Guidance, the deterrant effect of suspension would meet this limb.

Submissions on behalf of Dr Niranjan

47. Ms Forbes, Counsel, submitted that Dr Niranjan has, in effect, fully retired with no intention to return to practice medicine. She reminded the Tribunal that Dr Niranjan wished to begin the voluntary erasure process from the GMC register, however the process had been stalled. She submitted that Dr Niranjan's representatives are keen to provide XXX.

48. Ms Forbes brought the Tribunal's attention to paragraph C13 of the Guidance which states that where conditions might be appropriate where the doctor has provided some mitigation. She submitted that the Tribunal has previously had the benefit of XXX. She submitted that this amounted to some mitigation on Dr Niranjan's part.

49. Ms Forbes submitted that Dr Niranjan has been subject to robust IOT conditions, most recently reviewed and maintained by agreement of the parties on 10 August 2023, and referred the Tribunal to paragraph C16 of the 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

She submitted that the Tribunal may want to consider that imposing conditions in line with those maintained by the IOT last month, with the addition of the condition that the performance assessment, which is the subject of these proceedings, must be completed before practice could be resumed. However she conceded that in reality, there was no intention or capability for Dr Niranjan to resume to practise.

50. She submitted that conditions are likely to be sufficient in the full context, with regard to the information about XXX and that an imposition of suspension would be unduly punitive in this case.

The Tribunal's Approach

51. The Tribunal reminded itself that it is not making any finding of impairment.

52. The Tribunal also reminded itself that the main reason for making any direction is to protect the public and that any direction is not made to punish or discipline doctors, even

though they may have a punitive effect. In reaching its decision, the Tribunal has taken the Guidance into account and borne in mind the overarching objective.

53. The Tribunal was aware that the decision as to the appropriate direction, if any, to make on Dr Niranjan's registration was a matter for this Tribunal exercising its independent judgment. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Niranjan's interests with the public interest.

The Tribunal's Decision

54. The Tribunal also kept foremost in mind the provisions of the 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.

55. The Tribunal bore in mind its finding of non-compliance, alongside the evidence already adduced and the submissions of Ms Renton and Ms Forbes.

No Action

56. The Tribunal first considered taking no action in the case of Dr Niranjan. However, it determined that in view of its findings on non-compliance, it would be neither sufficient, proportionate nor in the public interest to conclude this case by taking no action.

Conditions

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

58. The Tribunal considered the C13 and C14 of the Guidance:

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C13 Conditions might be appropriate where the doctor has provided some mitigation for their non-compliance that, whilst not sufficient to satisfy the tribunal that the doctor had a good reason for their past non-compliance, does satisfy the tribunal that the doctor will comply in the future and that conditions are sufficient to meet the regulatory purpose of protecting the public.

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.

59. The Tribunal noted that Dr Niranjan has failed, without good reason, to comply with a reasonable request by the GMC that he undergo a performance assessment. In addition, the Tribunal noted that Dr Niranjan had not been working in a clinical setting for two years, and, as set out by his representatives, has essentially retired. The Tribunal has been told that Dr Niranjan has no intention or capability of returning to work and still maintains he wishes to apply for voluntary erasure.

60. The Tribunal carefully considered the issue of a possible condition that Dr Niranjan must undergo a performance assessment before he could return to work as submitted by Ms Forbes. It considered that such a broad and unilateral condition would be inappropriate and not in line with the non-compliance conditions bank and Guidance.

61. The Tribunal considered the standard condition within the non-compliance bank for undergoing a performance assessment within a specified time frame. However, in view of the concession made on behalf of Dr Niranjan (that he will not be returning to work), the Tribunal determined that such a condition would be unworkable.

62. The Tribunal also determined that it did not have before it any independent XXX evidence to provide for the mitigation intended by the Guidance by the paragraphs referred to above. The Tribunal was therefore not satisfied that an order of conditions was workable or was the appropriate or proportionate order to make in the circumstances.

63. The Tribunal therefore concluded that conditions would be insufficient to ensure protection of patients, meet the public interest and to maintain proper professional standards of conduct for the members of the profession.

Suspension

64. Having determined that the imposition of conditions would not be appropriate, the Tribunal then went on to consider suspension of Dr Niranjan's registration. It considered the following paragraphs of the Guidance relevant to this case:

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.

65. The Tribunal considered that Dr Niranjan had opportunities to comply with the performance assessment direction, first made in 2021. It bore in mind that Dr Niranjan said XXX. Dr Niranjan also said he has no intention of practising medicine and he wished to seek voluntary erasure (although to date no such application has been made).

66. In the Tribunal's view, there was a risk to patient safety in allowing a doctor back to practise who had questions raised over his competence, whose skills had not been assessed by means of a performance assessment and who had been out of practise for some time.

67. The Tribunal therefore determined that a period of suspension would be an appropriate and proportionate sanction which would uphold the overarching objective.

68. In relation to the length of the period of suspension, the Tribunal was mindful of Dr Niranjan's current disengagement with proceedings XXX. It determined that a period of 12 months' suspension was necessary, appropriate and proportionate for the protection of the public and in the public interest. A direction of this length would also allow time for Dr Niranjan to engage if he wished or was capable to do so.

69. The Tribunal directed a review hearing to be held before the end of the period of suspension. Dr Niranjan should understand that the onus is on him to demonstrate compliance and that if at any time he considers that he has fully complied with the direction to undergo a performance assessment, he can make a request for the GMC to consider arranging an early review of his non-compliance order.

Determination on immediate order - 28/09/2023

70. Having determined that Dr Niranjan's registration be suspended for 12 months, the Tribunal has now considered, in accordance with Section 38 of the Medical Act 1983 as amended, whether to impose an immediate order on his registration.

Submissions on behalf of the GMC

71. Ms Renton, Counsel, submitted that the current interim order of conditions should remain in place and therefore an immediate order of suspension is not required. She submitted that the IOT conditions imposed on Dr Niranjan should continue through the 28-day appeal period and the substantive suspension order would take effect once that appeal period is over. She submitted that this would be sufficient to meet the aims of the overarching objective. She submitted that this was not a case where an immediate order would be required to maintain public confidence and uphold standards of conduct and behaviour.

72. Upon questioning by the Tribunal, the GMC position can be properly summarised as follows. The GMC contend that the appeal period is protected by the existing interim order and invites the Tribunal to vary the said order so that it comes to an end upon expiry of the appeal period. Thereafter the substantive non-compliance direction of suspension can take effect.

73. In the event that the Tribunal determined that it was without power to vary the duration of an existing interim order of conditions, Ms Renton clarified the GMC's alternative submission would be for an immediate order of suspension and the revocation of the interim order.

Submissions on behalf of Dr Niranjan

74. Ms Forbes, Counsel, submitted that an immediate order was not necessary. She submitted that there has to be a degree of exceptionality when imposing an immediate order

and that this was not such a case. She submitted that there is a sliding scale of seriousness in respect of non-compliance and this was at the lower end.

75. Ms Forbes further submitted that there would not be any objection from Dr Niranjani if the Tribunal had the power to vary the length of the interim order and then for the suspension to take effect. Her alternative submission, in the event the existing interim order of conditions cannot be foreshortened today, was that the doctor be subject to the ongoing order of conditions and his suspension would take effect in 28-days.

The Tribunal's Decision

76. The Tribunal had regard to the relevant paragraphs of Guidance, in particular paragraph C3 and C38:

C3 At this stage, the tribunal will need to be informed if there is an existing interim order on the doctor's registration and have sight of all relevant documentation. This includes the most recent interim order determination, so that they can be satisfied that any order they make will address all relevant risks. Where the doctor's practice will be restricted under a non-compliance order, it will usually be desirable to revoke any existing interim order to avoid there being two separate orders in place.

C38 The tribunal may impose an immediate order where it is satisfied that it is:

a necessary to protect members of the public

b desirable in the public interest to maintain public confidence and uphold proper standards of conduct and behaviour

c in the interests of the doctor

77. The Tribunal considered it appropriate to revoke the IOT conditions imposed on Dr Niranjani. The Tribunal accepted the advice of the LQC that it did not have the power to vary the length of the existing interim order. In any event the Tribunal took into account paragraph C3 of the Guidance and determined it was undesirable to have two separate orders in place particularly of differing nature (one conditions and one suspension). It was satisfied that limbs *a* and *b* of C38 were engaged and it was necessary on those grounds to make an immediate order. The Tribunal has determined that it is necessary for the protection of members of the public and in the public interest to suspend Dr Niranjani's registration with immediate effect.

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78. The Tribunal was concerned that there would be a risk to patient safety if Dr Niranjan was allowed to return to unrestricted practise pending any appeal, when there were outstanding unresolved concerns about his performance.

79. In addition, it was of the view that public confidence in the profession would be undermined if an immediate order were not made.

80. This means that Dr Niranjan's registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

81. The interim order is hereby revoked.

82. That concludes this hearing.