

**Nursing and Midwifery Council
Fitness to Practise Committee**

**Substantive Order Review Meeting
Thursday 17 August 2023**

Virtual Meeting

Name of Registrant: **Isata Mansaray**

NMC PIN 94Y0021S

Part(s) of the register: Nursing – Sub part 1
Adult Nurse – February 1997
Registered Midwife – September 1999
Specialist Community Public Health Nurse –
September 2003

Relevant Location: Gillingham

Type of case: Misconduct

Panel members: Adrian Blomefield (Chair, Lay member)
Claire Rashid (Registrant member)
Anna Ferguson (Registrant member)

Legal Assessor: Robin Ince

Hearings Coordinator: Renee Melton-Klein

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Striking-Off order to come into effect on 26
September 2023 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Mrs Mansaray's registered email address by secure email on 7 July 2023.

The panel took into account that the Notice of Meeting provided details of the review including the date (14 August) after which the meeting would take place and the fact that this meeting would be heard virtually.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Mansaray has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision and reasons on review of the current order

The panel decided to impose a striking-off order. This order will come into effect at the end of 26 September 2023 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the sixth review of an initial substantive conditions of practice order originally imposed for a period of 9 months by a Fitness to Practise Committee panel on 27 November 2019. The order was reviewed at meetings on 10 August 2020, 19 August 2021, 17 May 2022 and 15 November 2022. On the first review a conditions of practice order was imposed for a period of 12 months and on the second review the conditions of practice order was imposed for a period of 9 months. On the third review, a conditions of practice order was imposed for 6 months. On the fourth review on 15 November 2022, the conditions of practice order was imposed for 3 months to come into effect on 27 December 2022. At the fifth review on 13 February 2023, when a hearing took place, the panel determined to replace the conditions of practice order with a suspension order of six months.

The current order is due to expire at the end of 26 September 2023.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved which resulted in the imposition of the substantive order were as follows:

'That you a registered Health Visitor:

1. Accessed one or more clinical records when there was no clinical need to do so.

2. In relation to Child A:

a)

b)

c) On or around 5 July 2016 incorrectly labelled Child A's 10-12 month ASQ paperwork.

3. ...

4. In relation to Child C:

a) ...

b) ...

c) ...

d) ...

e) ...

f) Did not carry out and/or document a family health needs assessment for the family.

g) ...

h) Incorrectly labelled the 2.5 year development review as 'Child C Scan' on RIO.

5. In relation to Child D:

a) ...

b) ...

c) On or around 8 June 2017 failed to undertake an adequate safeguarding risk assessment of Child D's circumstances in light of information shared by the social care safeguarding team at the Medway Foundation Trust.

d)

6. You failed on more than one occasion to complete documentation and/or patient records contemporaneously.

7. Failed on more than one occasion to accurately label attachments to patient records.

8. ...

9. ...

10. For one or more children did not ensure that heel prick test results were recorded.

11. On one or more client's records, did not carry out and/or document infection control risk assessments.

12. ...

13. ...

AND in light of the above, your fitness to practise is impaired by reason of your MISCONDUCT.'

The fifth reviewing panel determined the following with regard to impairment:

'The panel considered whether Mrs Mansaray's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mrs Mansaray had not demonstrated sufficient insight and had not engaged substantively with previous review panels. At this hearing, the panel determined that this had not changed. It noted that the last reviewing panel suggested that Mrs Mansaray provide evidence of professional development, testimonials from a line manager or supervisor regarding her work practices, and a written reflective piece demonstrating her insight. However, none of this information has been provided.

The panel also found that Mrs Mansaray has not provided any insight by way of reflection to show acceptance of responsibility for her actions, and the current conditions of practice have not been addressed. The panel noted that the proceedings and the successive orders have been longstanding over a period of three and a half years and that it has no information about whether Mrs Mansaray has been working in a registered role and could therefore demonstrate strengthening of her practice, or whether she has been out of practice. The panel was concerned that there was no evidence of compliance with the conditions imposed and has clearly breached conditions 2 and 4 and that Mrs Mansaray has not acted with the degree of responsibility in abiding by the conditions, as would be expected of a registrant.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public protection and public interest grounds is required.

For these reasons, the panel finds that Mrs Mansaray's fitness to practise remains impaired.'

The fifth reviewing panel determined the following with regard to sanction:

'Having found Mrs Mansaray's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Mansaray's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where 'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.' The panel considered that Mrs Mansaray's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered the continuation of the current conditions of practice order.

Mrs Mansaray is not known to have practised in a role requiring her NMC registration since 2019. The panel noted that Mrs Mansaray has not substantively engaged with the NMC since the imposition of the conditions of practice order on 27 November 2019 and there is no information before it to indicate that Mrs Mansaray is complying or is willing to comply with any conditions imposed upon her practice.

The panel next considered whether imposing a further conditions of practice order on Mrs Mansaray's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel noted that Mrs Mansaray has not provided any information evidencing compliance with the current conditions imposed or the recommendations of the previous reviewing panel. It was mindful that the proceedings have been ongoing for over 5 years since Mrs Mansaray was first referred. The panel did not have before it any information about whether Mrs Mansaray is, or has been working in a clinical setting, nor any indication of insight through reflection, or evidence that she has strengthened her practice. It was concerned that Mrs Mansaray has not shown compliance with the conditions and may be in breach if she is working in a registered role. In particular she has not complied with condition 2 requiring submission of evidence of training courses, and condition 4 requiring submission of a reflective piece prior to any review. It considered that Mrs Mansaray has been given numerous opportunities to attend and engage with the proceedings and has noted that the current review has been scheduled as a hearing rather than a meeting specifically to facilitate her engagement.

The panel noted that the charges found proved in this case might not ordinarily lead to a suspension, but that Mrs Mansaray's actions and inactions since the imposition of the conditions of practice order were a cause for concern.

The panel considered that Mrs Mansaray's noncompliance with the current conditions may indicate attitudinal concerns, and a conditions of practice order would no longer be sufficient to protect the public. Further, in the absence of engagement and lack of evidence to suggest compliance by Mrs Mansaray, the panel cannot have confidence that she would abide by a conditions of practice order.

On this basis, the panel concluded that a conditions of practice order is no longer practicable nor the appropriate order in this case. The panel concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest. The panel noted the NMC guidance that;

'A nurse, midwife or nursing associate must comply with the conditions of a conditions of practice order. It's a serious problem if they don't, and it could mean the panel reviewing the order will replace the conditions with a suspension order or make a striking-off order'.

The panel determined therefore that a suspension order is now the appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 6 months which would provide Mrs Mansaray with an opportunity to engage with the NMC and provide evidence of compliance with this panel's recommendations. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 26 March 2023 in accordance with Article 30(1).

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

The panel gave consideration to the imposition of a striking off order, but determined that, at this time, such a course would be disproportionate. However, the panel noted that this option will remain open to the next reviewing panel. That panel may be assisted by:

- *Mrs Mansaray's engagement with the NMC, by telephone or otherwise;*
- *Mrs Mansaray's attendance at the next review hearing;*
- *An indication of whether Mrs Mansaray intends to practice as a registrant in the future;*
- *Evidence of professional development;*
- *Details of any current employer;*
- *Testimonials from a line manager or supervisor that detail Mrs Mansaray's current work practices; and*
- *A written reflective piece demonstrating Mrs Mansaray's insight into her failings.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Mansaray's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle.

The panel heard and accepted the advice of the legal assessor.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Mrs Mansaray's fitness to practise remains impaired.

The panel noted that last reviewing panel found that Mrs Mansaray had not demonstrated sufficient insight and had not engaged substantively with previous review panels. At this hearing, the panel determined that this situation had not changed. It noted that the last reviewing panel suggested that Mrs Mansaray provide evidence of professional development, testimonials from a line manager or supervisor regarding her work practices, and a written reflective piece demonstrating her insight. However, none of this information has been provided despite several attempts by the NMC to contact Mrs Mansaray, most recently on 5 and 24 July 2023, by telephone and by email.

In its consideration of whether Mrs Mansaray has taken steps to strengthen her practice, the last reviewing panel noted that the proceedings and the successive orders have been longstanding over a period of more than three years and that there had been no information about whether Mrs Mansaray had been working in a registered role and could therefore demonstrate any strengthening of her practice. Today's panel had nothing further before it to suggest any change in this assessment, except to note the aggravating factor that it has been a further six months and there has still been no engagement from Mrs Mansaray.

As today's panel has received no further information since the last review, it has determined that Mrs Mansaray is still liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required in order to uphold public confidence in the nursing profession and in the NMC as its regulator.

For these reasons, the panel finds that Mrs Mansaray's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Mansaray fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Mansaray's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Mansaray's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether a conditions of practice order on Mrs Mansaray's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was of the view, that although the initial misconduct was remediable, Mrs Mansaray's failure to engage with the conditions of practice orders that were in place over the course of the three previous years made a conditions of practice order unworkable.

The panel next considered imposing a further suspension order. The panel very carefully considered the sanction guidance and was of the view that, whilst a further suspension order would protect the public and meet the public interest for the time it was in place, a suspension order was no longer sufficient to address the requirement for a registered nurse to adhere to professional standards. Mrs Mansaray has not engaged with the NMC despite these proceedings and the successive orders being in place for nearly four years. The panel noted that Mrs Mansaray has not demonstrated any remorse for her misconduct, nor has she demonstrated any insight into her previous failings, despite being given multiple opportunities to do so. The panel was therefore of the view that there was no evidence before it to show that Mrs Mansaray had any intention to engage with the NMC and demonstrate that she no longer posed a risk to the public. Accordingly, the panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances.

The panel determined that it was necessary to take action to prevent Mrs Mansaray from practising in the future and could not foresee what, if anything, would compel Mrs Mansaray to engage, demonstrate insight, or strengthen her practice after nearly four years. The panel took into account the active role previous panels and the NMC have taken to engage with Mrs Mansaray. The panel noted that the fourth reviewing panel stipulated that the next review should be heard at a hearing to give her a robust opportunity to attend and engage, with the understanding at that time that a suspension or strike-off would be a real possibility at the next review. The fifth reviewing panel did impose a suspension order, with the further indication that further non-engagement could lead to a strike-off order. The panel noted that at every stage of these fitness to practise proceedings, including both hearings and meetings, each panel and the NMC took great care to ensure that Mrs Mansaray was receiving communications regarding proceedings, which included a recent telephone call on 5 July 2023 and a further email on 5 July 2023 which stated:

'I write further to my voice message.

I will be sending you the notice of review meeting in the next few days, and you can still request a hearing if you would like to address the panel.

Please send me any documents you would like the panel to have sight of.

Please also feel free to give me a call if you would like to discuss your case.'

Moreover, the panel took account of the requirement of nurses to engage with their regulator (as set out in paragraph 22.1 of the Code of Professional Standards of Practice and Behaviour for Nurses and Midwives (“the Code”)) and noted that Mrs Mansaray has not engaged with the NMC for well over three years. Although she attended the substantive hearing on 27 November 2019, she did not engage with the first review hearing on 10 August 2020, or any subsequent review.

The panel appreciated that the SG suggested that, before imposing a striking-off order, a panel should ask itself three questions, namely:

- *“Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?”*
- *Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?”*

The panel considered that all three questions could be answered in the affirmative. In the absence of any information explaining why she was unable and/or unwilling to engage with the NMC over such a long period of time, Mrs Mansaray’s continuing and persistent lack of engagement in the regulatory process: did raise fundamental questions about her professionalism (in failing to follow the Code); did damage public confidence in the profession (her actions suggest a deliberate flouting of her obligations as a professional to set an example, which would damage public confidence, especially in the NMC as a regulator); and failed to maintain professional standards (again, in failing to follow the Code for such a long period of time).

In all the circumstances, the panel concluded that the only sanction that was appropriate to protect the public and serve the public interest was a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 26 September 2023, in accordance with Article 30(1).

This decision will be confirmed to Mrs Mansaray in writing.

That concludes this determination.