

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

**Substantive Meeting
Thursday, 1 August 2024**

Virtual Meeting

Name of Registrant: Hana Musa

NMC PIN 12K0149E

Part(s) of the register: Registered Nurse – Adult
RNA – 17 May 2013

Relevant Location: Windsor and Maidenhead

Type of case: Misconduct

Panel members: Anthony Griffin (Chair, Lay member)
Louise Poley (Registrant member)
Carson Black (Lay member)

Legal Assessor: John Moir

Hearings Coordinator: Hamizah Sukiman

Facts proved: Charges 1a, 1b, 1c, 2, 3b, 3c, 4a, 4b, 4c and 5b

Facts not proved: Charges 3a, 5a and 5c

Fitness to practise: Impaired

Sanction: **Suspension order (9 months)**

Interim order: **Interim suspension order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Miss Musa's registered email address by secure email on 18 June 2024. However, the panel noted that Miss Musa's contact details recorded in the Nursing and Midwifery Council ('NMC') Register has not been provided. The panel considered that it could not be satisfied that the email address which appears in the Notice of Meeting is Miss Musa's registered email address, without verifying that the email address matches that on the NMC Register.

The Hearings Coordinator provided the panel with a screenshot of Miss Musa's email address as it appears on the NMC Register. The panel was satisfied that, with this screenshot, the Notice of Meeting had been sent to Miss Musa's registered email address.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, that this meeting will take place on or after 23 July 2024 and the fact that this meeting was heard virtually.

In the light of all of the information available, the panel was satisfied that Miss Musa 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).

Details of charge

That you, a registered nurse:

During the night shift of 24-25 December 2022

- 1) Attended work when you were unfit to safely carry out your duties as a nurse in that you:
 - a) appeared unbalanced and unaware of your actions
 - b) shouted and swore at a colleague
 - c) followed a colleague and had to be asked to stop

On 28 December 2022:

- 2) Attended work when you were unfit to safely carry out your duties as a nurse.
- 3) Failed to provide an adequate level of care towards Patient A in that you:
 - a) attempted to give Patient A thickened fluid whilst they were unconscious
 - b) allowed your hair to “dangle” over Patient A’s face
 - c) Wiped Patient A’s face aggressively with a tissue
- 4) Failed to communicate effectively with paramedics and/or other colleagues in that you:
 - a) Used verbally abusive and/or offensive language towards them and/or in their presence
 - b) Used threatening language towards them
 - c) Accused the paramedics, without justification, of being racist/acting in a racist manner towards you
- 5) Failed to act in a professional manner towards paramedics in that you:
 - a) impeded their initial assessment of Patient A
 - b) Interfered with their equipment
 - c) attempted to give Patient A fluid whilst they were being assessed by the paramedics;

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

Background

The charges arose whilst Miss Musa was employed through an agency as a registered nurse at Lynwood Care Centre ('the Home'). On 28 December 2022, Miss Musa was arrested.

Following observations that Patient A's health was deteriorating, Miss Musa called 111, the out-of-hour's GP, and 999 for Patient A to receive medical treatment. It is alleged that paramedics arrived and considered that Miss Musa was unfit to be at work. Miss Musa was allegedly slurring her words, being unsteady on her feet, including tripping over, instructing South Centre Ambulance Service ('SCAS') staff on what to do, touching their equipment, and trying to give the patient fluids whilst SCAS were trying to assess and treat him for breathing issues. It is also alleged that Miss Musa became verbally abusive to SCAS, and her behaviour appeared highly inappropriate from an on-duty nurse. Patient A passed away whilst SCAS were on scene.

On 24 April 2023, Thames Valley Police informed the NMC that it decided to take no further action.

It is further alleged that, a few days prior to this incident, Miss Musa attended work whilst being unfit to do so, and acted inappropriately on that shift towards colleagues.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the documentary evidence before it provided by the NMC, particularly the NMC's written submissions on facts, as outlined in paragraphs 2 to 16 in the Statement of Case. The panel noted that Miss Musa has not returned a completed Case Management Form to the NMC, and no documentation has been submitted for the panel's consideration.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel had regard to the written statements of the following witnesses on behalf of the NMC:

- Witness 1: Paramedic at South Central Ambulance Service NHS Foundation Trust
- Witness 2: Emergency Care Assistant at South Central Ambulance Service NHS Foundation Trust (at the time of the incident)
- Witness 3: Healthcare Assistant at the Home

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

The panel then considered each of the disputed charges and made the following findings.

Charge 1a)

“That you, a registered nurse:

During the night shift of 24-25 December 2022

- 1) Attended work when you were unfit to safely carry out your duties as a nurse in that you:
 - a) appeared unbalanced and unaware of your actions”

This charge is found proved.

In reaching this decision, the panel considered Witness 3’s witness statement to the NMC, dated 31 May 2024, which stated that Miss Musa was “*unbalanced whilst holding the plate*”, and Miss Musa was “*dropping the food some of which fell on [Witness 3]’s shoes*”. Witness 3 further remarked that, as the night went on, Miss Musa “*kept on repeating herself, to the extent that [PRIVATE]*”.

The panel also considered Witness 3’s local statement on the incident, which stated that Miss Musa appeared “*unsteady and doesn’t look right*”. The panel accepted that the local statement is undated. However, the panel was satisfied that the local statement is consistent with Witness 3’s witness statement to the NMC. The panel determined that Witness 3 appeared to show concern when Miss Musa displayed these behaviours, and it was satisfied that there is no animosity between Witness 3 and Miss Musa. The panel was satisfied that Witness 3’s clear and consistent accounts spoke directly towards this charge.

Accordingly, the panel found this charge proved on the balance of probabilities.

Charge 1b)

That you, a registered nurse:

During the night shift of 24-25 December 2022

- 1) Attended work when you were unfit to safely carry out your duties as a nurse in that you:
 - b) shouted and swore at a colleague

This charge is found proved.

In reaching this decision, the panel took into account its findings on Witness 3's credibility as outlined in Charge 1a above.

The panel considered Witness 3's witness statement to the NMC, which stated:

"When I came back, she started shouting at me by the time I have opened the door to get in to the house I was working at that time. I asked why and she kept on shouting and swearing at me. [...] I had never witnessed that kind of behaviour before where she just kept on shouting and had been saying a lot of things that I couldn't understand where it was coming from."

The panel determined that Witness 3's account in her witness statement is consistent with her account in the local statement, which noted that Miss Musa "*started shouting at [Witness 3] calling [her] a 'snake' and 'bitch'*". The panel was satisfied that both accounts provided by Witness 3 are clear and consistent, and directly relates to this charge.

Accordingly, the panel found this charge proved on the balance of probabilities.

Charge 1c)

"That you, a registered nurse:

During the night shift of 24-25 December 2022

- 1) Attended work when you were unfit to safely carry out your duties as a nurse in that you:
 - c) followed a colleague and had to be asked to stop"

This charge is found proved.

In reaching this decision, the panel took into account its findings on Witness 3's credibility as outlined in Charges 1a and 1b above.

The panel considered Witness 3's witness statement, which stated that, following the incident outlined in Charge 1b above, Miss Musa *"started following [Witness 3] and another carer and has been repeating herself again and again even though we were attending to the residents she never stopped."*

In response to Miss Musa following her, Witness 3 stated:

"As I had enough of her following us and also we were starting already with personal care and attending to the residents, I have warned her that if she will not stop, I would call [Colleague 1] again and eventually she stopped."

The panel determined that this account is consistent with Witness 3's local statement, which stated that Miss Musa *"started to follow [Witness 3] and the other agency until [Witness 3] told her to back OFF as we had enough of how she treated us"*.

The panel was satisfied that Witness 3's accounts of the incident are clear, not contradicted and directly relates to this charge.

Accordingly, the panel found this charge proved on the balance of probabilities.

Charge 2

"That you, a registered nurse:

On 28 December 2022:

- 2) Attended work when you were unfit to safely carry out your duties as a nurse."

This charge is found proved.

In reaching this decision, the panel considered the accounts of both Witness 1 and Witness 2.

The panel considered Witness 1's MG11 Witness Statement, dated 28 December 2022, which stated:

“HANA was very close to me and appeared to be slurring her words, she stated that the day shift had not done their job properly and kept repeating this. She appeared [PRIVATE], through her words, body language [sic] and the way she walked - unsteady on feet. I could not see her pupils as the lighting was dim and her eyes were dark brown. I was keen to see if I could check them for any signs of her behaviour.”

The panel also considered Witness 1’s inquiry on whether Miss Musa was fit to work:

“I asked if she should be fit to work and she stated that she had no choice ...”

The panel further considered Witness 2’s MG11 Witness Statement, dated 28 December 2022, which stated:

“As I was doing observations ANNA sat on the patients [sic] bed towards the middle and as she was sat on the bed she was swaying from side to side. There was [sic] multiple occasions where she would grab the patients face mask, by grabbing the bag attached. I asked her to leave it alone but kept replying “IM TRYING TO HELP” Whilst still swaying on the bed”

The panel accepted that the witness statement refers to “ANNA”. However, the panel was satisfied that this was a typographical error in the witness statement, and it determined that Witness 2 was referring to Miss Musa throughout the document.

The panel was satisfied that both Witness 1 and Witness 2’s account were consistent and indicated that Miss Musa appeared to be unfit to work. The panel considered that both Witness 1 and Witness 2 directly witnessed Miss Musa on this shift, and independently provided statements on how she appeared. The panel further considered that Witness 1 and 2 were at the Home in their professional capacity and were not known to Miss Musa. The panel was satisfied that there is no indication of fabrication on either witness’ part.

Accordingly, the panel found this charge proved on the balance of probabilities.

Charge 3a)

“That you, a registered nurse:

On 28 December 2022:

3) Failed to provide an adequate level of care towards Patient A in that you:

a) attempted to give Patient A thickened fluid whilst they were unconscious”

This charge is found NOT proved.

In reaching this decision, the panel took into account its findings on Witness 1 and 2’s credibility as outlined in Charge 2 above.

The panel considered Witness 1’s MG11 witness statement, which stated:

“I suggested that if we put the straw from the drink into the patient’s [sic] mouth then it may be able to assist [sic] us with the level of the response of the patient. She did this and there was no response from the patient. HANA took the straw out and poured the drink into the patients [sic] mouth and she did this on two occasions.”

The panel also considered Witness 2’s MG11 witness statement, which stated:

“... HANA tried to give the patient some orange juice as she stated he looks really dry ... She began to give him orange juice and was spilling it all over his face and his mouth ...”

The panel was satisfied that Witness 1 and Witness 2 refer to the same incident in their statements. The panel determined that there is a clear inconsistency between the two statements, namely Witness 1’s statement indicating that Miss Musa attempted to give Patient A fluids on the advice of Witness 1. The panel noted that Witness 1 did not refer to Miss Musa informing either witness that Patient A “looks really dry”, as indicated by Witness 2.

The panel was not satisfied that Miss Musa’s attempt to give Patient A fluids was a failure to provide Patient A with an adequate level of care, as it may have been on the advice of

Witness 1, who was the paramedic at the time. Accordingly, the panel found this charge not proved on the balance of probabilities.

Charge 3b)

“That you, a registered nurse:

On 28 December 2022:

- 3) Failed to provide an adequate level of care towards Patient A in that you:
 - b) allowed your hair to “dangle” over Patient A’s face”

This charge is found proved.

In reaching this decision, the panel took into account its findings on Witness 2’s credibility as outlined in Charges 2 and 3a above.

The panel considered Witness 2’s MG11 witness statement, which stated:

“... Her hair was dangling in his face, to which we told her that her hair was dangling over his face.”

The panel was of the view that the use of “we” implied that both Witness 2 and Witness 1 were aware of Miss Musa’s hair dangling over Patient A’s face. The panel noted that Witness 1 does not make reference to Miss Musa’s hair in either her MG11 witness statement or her witness statement to the NMC.

However, the panel considered that Witness 1, as the paramedic, was likely engaged in clinical observations on Patient A, and was not paying as much attention to Miss Musa as Witness 2, who was there as an Emergency Care Assistant. The panel also considered that Witness 1’s omission may be due to Miss Musa’s dangling hair being perceived by Witness 1 as a minor issue, in relation to her general behaviour on that shift.

The panel was not satisfied that Witness 1's omission amounted to an inconsistency in Witness 2's evidence. Therefore, the panel concluded that Witness 2's account is clear and directly relates to this charge.

Accordingly, the panel found this charge proved on the balance of probabilities.

Charge 3c)

"That you, a registered nurse:

On 28 December 2022:

- 3) Failed to provide an adequate level of care towards Patient A in that you:
 - c) Wiped Patient A's face aggressively with a tissue"

This charge is found proved.

In reaching this decision, the panel took into account its findings on Witness 2's credibility as outlined in Charges 2, 3a and 3b above.

The panel considered Witness 2's MG11 witness statement, which stated:

"HANA then got a tissue and began to wipe his face in an aggressive manner which I thought was extreme for the circumstances and more than necessary"

The panel noted that Witness 1 does not refer to this incident in either her MG11 witness statement or her witness statement to the NMC.

However, the panel was satisfied that this incident is more likely than not to have occurred, as it was remarked by Witness 2, who was present at the time. The panel considered that Witness 1, as a paramedic, would have been more focused on completing the clinical observations, and would have likely focused her attention on the monitoring of Patient A and the equipment, rather than Miss Musa. The panel concluded that Witness 1's omission does not indicate a contradiction on Witness 2's evidence, which is otherwise clear, consistent and directly relates to this charge.

Accordingly, the panel found this charge proved on the balance of probabilities.

Charge 4a)

“That you, a registered nurse:

On 28 December 2022:

- 4) Failed to communicate effectively with paramedics and/or other colleagues in that you:
 - a) Used verbally abusive and/or offensive language towards them and/or in their presence”

This charge is found proved.

In reaching this decision, the panel took into account its findings on Witnesses 1 and 2’s credibility as outlined in Charges 2 and 3 above.

The panel considered Witness 2’s MG11 witness statement on Miss Musa’s language whilst clinical observations were being performed on Patient A, which stated:

“... as soon as it was printed ANNA snatched the paper from the machine, she stated ‘I TOLD YOU SHE WAS FUCKING UNWELL. [PRIVATE] ... I stated not to touch the patient and she replied to say ‘IM A FUCKING BAND 7 WHAT CLINICAL GRADE ARE YOU’ ‘DO NOT DISRESPECT ME LIKE THAT’ whilst pointing her finger at me. She cornered me and held the ECG paper in my face...”

The panel noted its finding on the “ANNA” typographical error, as outlined in Charge 2 above.

The panel also considered Witness 2’s MG11 witness statement on Miss Musa’s language after Patient A was deceased, which stated:

“We asked one of the senior nurses if they were a senior nurse and ANNA replied by shouted aggressively towards us ‘NO ONE IS MORE SENIOR THAN ME’. HANA continued to be aggressive towards the nurse.

[...]

... she was still being aggressive when she turned to say ‘FUCK THIS, IM [sic] GOING HOME’ she went to grab her coat and bag.”

The panel also considered Witness 1’s MG11 witness statement, which stated:

“... the nurse has become aggressive and swore at her and grabbed our machines from her.”

The panel noted that this charge is an ‘and/or’ charge, namely it may find this charge proved on either the use of verbally abusive language, or offensive language. However, based on the information before it, the panel was satisfied that Miss Musa used both verbally abusive and offensive language towards Witness 2 and towards her colleagues.

Accordingly, the panel found this charge proved on the balance of probabilities.

Charge 4b)

“That you, a registered nurse:

On 28 December 2022:

- 4) Failed to communicate effectively with paramedics and/or other colleagues in that you:
 - b) Used threatening language towards them”

This charge is found proved.

In reaching this decision, the panel took into account its findings on Witnesses 1 and 2’s credibility as outlined above.

The panel considered Witness 1's MG11 witness statement, which stated:

"She stated 'IM GOING TO SET YOUR LIVES ON FIRE'. I decided to film her to document her behaviour ..."

The panel also considered Witness 2's MG11 witness statement documenting the same incident, which stated:

"As this was being done HANA came back up to us, still shouting she was stating ... 'I'LL SET YOUR LIVES ON FIRE."

The panel determined that both Witness 1 and Witness 2 were consistent in their account of Miss Musa's words, namely, to threaten to "set [their] lives on fire". The panel was satisfied that both accounts were clear and related directly to the charge.

Accordingly, the panel found this charge proved on the balance of probabilities.

Charge 4c)

"That you, a registered nurse:

On 28 December 2022:

- 4) Failed to communicate effectively with paramedics and/or other colleagues in that you:
 - c) Accused the paramedics, without justification, of being racist/ acting in a racist manner towards you"

This charge is found proved.

In reaching this decision, the panel took into account its findings on Witnesses 1 and 2's credibility as outlined above.

The panel considered Witness 1's MG11 witness statement, which stated:

“HANA accused me of being racist saying ‘YOUR [sic] RACIST, I KNOW HOW YOU TREAT PEOPLE LIKE ME’ and pointed her finger at me.”

The panel also considered Witness 2’s MG11 witness statement, which stated:

“As this was being done HANA came back up to us, still shouting she was stating ‘YOUR [sic] ALL FUCKING RACIST. IS THIS WHAT YOU DO TO BLACK WOMEN, YOUR [sic] ALL RACIST.”

The panel determined that the two accounts are both clear and consistent and is not contradicted by any other evidence. The panel was satisfied that Miss Musa accused the paramedics of being racist towards her. The panel considered its previous findings in Charge 2, namely that neither Witness 1 nor Witness 2 were previously known to Miss Musa, which would indicate animosity or racist feelings towards her.

Accordingly, the panel found this charge proved on the balance of probabilities.

Charge 5a)

“That you, a registered nurse:

On 28 December 2022:

- 5) Failed to act in a professional manner towards paramedics in that you:
 - a) impeded their initial assessment of Patient A”

This charge is found NOT proved.

In reaching this decision, the panel took into account its findings on Witnesses 1 and 2’s credibility as outlined above.

The panel considered Witness 2’s MG11 witness statement, which outlined Miss Musa’s demeanour during Patient A’s initial assessment:

“As we arrived we went to KINGFISHER ward where a female called HANA let us into the ward and gave us basic details of the patient. From this interaction, the female appeared to be slurring her words and acting unprofessionally and seemed to be delaying the process to assess the patient. We explained we wanted to assess the patient and therefore she took us to the room ...”

The panel also considered Witness 1’s MG11 witness statement, which stated:

“As we arrived we waited a while outside the door before being let in by a nurse I now know to be HANA. She stated showed us to his room and a piece of paper with observations on it and appeared to be in order and satisfied with the observations.

My initial thoughts were the patient was not as poorly as originally made out. I explained that I thought his observations were good and she stated she has a gut feeling that something was not quite right.”

The panel accepted both witnesses’ account that there was a wait before they were able to assess Patient A, but it was not satisfied that this delay constituted Miss Musa impeding on their initial assessment. The panel acknowledged that it had insufficient evidence on the exact time that Witnesses 1 and 2 had to wait, and consequently, whether there was a justifiable reason for the delay.

The panel determined that, based on Witness 1’s evidence, Miss Musa appeared to encourage Witnesses 1 and 2 to conduct a thorough observation, after Witness 1 initially concluded that Patient A was *“not as poorly as originally made out”*. The panel was not satisfied that Miss Musa was impeding either witness, and it noted that neither witness remarked that she had impeded them during the initial assessment of Patient A.

Accordingly, the panel found this charge not proved on the balance of probabilities.

Charge 5b)

“That you, a registered nurse:

On 28 December 2022:

- 5) Failed to act in a professional manner towards paramedics in that you:
 - b) Interfered with their equipment”

This charge is found proved.

In reaching this decision, the panel took into account its findings on Witnesses 1 and 2’s credibility as outlined above.

The panel considered Witness 1’s MG11 witness statement on Miss Musa’s interference with equipment, which stated:

“I put the oxygen bottle bag on the bed and opened the bag, as i [sic] was going to get a mask suitable for the patient, i [sic] went to get the high oxygen mask however HANA got out the child's mask. I explained it was not the one i [sic] needed. She asked how many ML's of oxygen i [sic] was going to give him and asked if i [sic] was going to give him two, i [sic] replied to say i [sic] am going to give him 15 litres of high flow oxygen.”

Witness 1 also remarked:

“I was made aware that HANA picked up our kit and put it on the patient. She was asked to stop but just shouted abuse at us.”

The panel also considered Witness 2’s MG11 witness statement, which stated:

“ANNA grabbed our ZOLL which is a piece of medical equipment, she picked this up and put it onto the patients [sic] arm. I asked her what she was doing and she stated ‘IM JUST TRYING TO HELP, YOUR [sic] MOVING HIM’. She became aggressive towards me as I told her not to touch our equipment and was shouting at us over the patients [sic] bed...”

The panel noted its finding on the “ANNA” typographical error, as outlined in Charge 2 above.

The panel was satisfied that both accounts from Witness 1 and Witness 2 are clear, consistent and relate directly to the charge.

Accordingly, the panel found this charge proved on the balance of probabilities.

Charge 5c)

“That you, a registered nurse:

On 28 December 2022:

- 3) Failed to act in a professional manner towards paramedics in that you:
 - c) attempted to give Patient A fluid whilst they were being assessed by the paramedics;”

This charge is found NOT proved.

In reaching this decision, the panel took into account its findings on Witnesses 1 and 2’s credibility as outlined above. The panel also noted its finding in Charge 3a above.

The panel considered Witness 1’s MG11 witness statement on giving Patient A fluids, which stated:

“I suggested that if we put the straw from the drink into the patients mouth then it may be able to assist [sic] us with the level of the response of the patient. She did this and there was no response from the patient. HANA took the straw out and poured the drink into the patients mouth and she did this on two occasions. The juice dribbled [sic] out as the patient was not absorbing any of the juice and i stopped her from doing any more because it was not working and i was concerned this would make the patients breathing worse.”

The panel also took into account Witness 2’s MG11 witness statement, which stated:

“Whilst we were completing the observations, HANA tried to give the patient some orange juice as she stated that he looks really dry.”

The panel determined that Witness 1 and 2 are broadly consistent on this incident insofar as Miss Musa attempting to give Patient A fluids, but they were contradictory in why Miss Musa had chosen to do so. However, the panel was satisfied that, as the paramedic performing the clinical observations, Miss Musa's attempts to give fluids to Patient A appeared to have been on Witness 1's advice.

The panel considered Witness 1's evidence, and it determined that if Miss Musa's actions were unjustified, both Witnesses 1 and 2 would have stopped Miss Musa from continuing. The panel considered that Witness 1's evidence suggested that Miss Musa attempted to give fluids to Patient A on two occasions without being stopped. The panel was satisfied that this indicated that Witness 1 was content with Miss Musa's attempts. Consequently, the panel is unable to conclude that Miss Musa's actions were impeding Witness 1.

Accordingly, the panel found this charge not proved on the balance of probabilities.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss Musa's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage, and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Miss Musa's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

The NMC invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' ('the Code') in making its decision.

The NMC, in paragraphs 17 to 19 of its Statement of Case, referred the panel to the cases of *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin) as well as *R (Calhaem) v General Medical Council* [2007] EWHC 2606 (Admin).

The NMC also identified the specific, relevant standards where Miss Musa's actions amounted to misconduct, namely paragraphs 1.1, 1.2, 1.4, 7, 8.1, 8.2, 8.5, 8.6, 19.1, 20.1, 20.2, 20.3, 20.5, 20.8, 20.9 and 20.10 of the Code.

The panel considered the NMC's written submission, on paragraph 22 of the Statement of Case, which stated:

"The NMC consider the misconduct serious because Miss Musa is alleged to have attended work whilst unfit for duty on two occasions and behaved in an unprofessional manner towards colleagues/fellow medical professionals, as well as exhibiting unsafe and unprofessional behaviour towards a patient that was vulnerable at the time."

On impairment, the NMC invited the panel to find Miss Musa's fitness to practise impaired. The panel had regard to paragraphs 23 to 34 of the NMC's Statement of Case, which referred to the NMC's guidance on impairment, the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) as well as *R (on application of Cohen) v General Medical Council* [2008] EWHC 581 (Admin).

On the limbs as outlined in the Dame Janet Smith's "test", the NMC's written submission stated:

"Limb (a)

28. Nurses occupy a position of trust and are required to keep to and uphold the standards expected of them in the Code. This is to ensure members of the public feel confident in placing their and their loved ones' health in the hands of clinical professionals. By attending work whilst unfit Miss Musa placed all of the residents in her care at unwarranted risk of harm; and by interfering with the equipment and the care that the emergency responders were attempting to provide Patient A, along with attempting to give Patient A juice whilst they were unconscious Miss Musa specifically placed Patient A at unwarranted risk of harm.

Limb (b)

29. Professionalism and trust are fundamental tenets of the profession. By attending work whilst unfit and interfering with the equipment and care that the emergency responders were attempting to provide Patient A, Miss Musa has brought the

reputation of the profession into disrepute. She has also placed her own priorities above the interests of those in her care.

Limb (c)

30. Fellow clinical professionals have the right to work in a conducive environment and be treated with respect by their colleagues. Miss Musa's words and actions towards her colleagues breached the fundamental tenet of professionalism, call into question her professionalism and trustworthiness in the workplace, and demonstrate conduct that has fallen significantly short of the standards expected of a registered nurse."

The panel also considered the NMC's submissions with regard to public protection:

35. "Miss Musa attended work whilst unfit and behaved in an unprofessional manner towards colleagues on two separate occasions. On one of those occasions, her unprofessional behaviour was directed towards emergency responders who were attending the Home to provide care to a deteriorating resident. The NMC submit that the concerns are not easily remediable and are more difficult to put right because as the Senior Nurse on duty, Miss Musa was directly responsible for placing residents at risk of neglect/harm. The evidence suggests that she placed her own priorities before her professional duty to ensure the safety and dignity of those in her care. Insight, along with tangible and targeted remediation such as training and demonstrable nursing competency, are unlikely to remedy this type of concern.

36. The NMC submit that Miss Musa has displayed no insight. She has not engaged with the NMC's proceedings since the referral was received. She has not, for example, provided a reflective piece to explain why she worked at the Home whilst unfit nor any evidence of [PRIVATE], nor has she demonstrated an understanding of the seriousness of her behaviour or its effect on her patients and colleagues, the profession as a whole or the wider public. The Panel can therefore not be reassured that the risk of repetition has been alleviated.

37. Miss Musa has not practised as a registered nurse since January 2023 and consequently, she has been unable to demonstrate improved practice, nor has she provided evidence of strengthened practice such as training in professional conduct. The NMC therefore consider that the risk of repetition remains.

38. The NMC submit that there is a continuing risk of harm to the public due to Miss Musa's lack of insight and remediation, and the risk of repetition."

The panel also considered the NMC's submissions on public interest, which stated:

43. "We consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour. It is submitted that a member of the public appraised of the facts, would be shocked to hear that a registered nurse who had attended work whilst unfit for duty on two occasions and behaved in an unprofessional manner towards colleagues was allowed to practice without restriction. As such, the need to protect the wider public interest calls for a finding of impairment to uphold standards of the profession, maintain trust and confidence in the profession and the NMC as its regulator. Without a finding of impairment, public confidence in the profession, and the regulator, would be seriously undermined.

44. As noted above Miss Musa has not shown any awareness of how her conduct affects her patients, colleagues, the profession as a whole or the wider public.

45. Therefore, the NMC submit that a finding of impairment is also necessary on the ground of public interest."

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

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code. The panel had regard to the case of *Roylance*, which defines misconduct as a 'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'

The panel considered each of the charges found proved in turn.

With regard to Charge 1 taken together, the panel determined that practising whilst being unfit for duty is a breach of a fundamental tenet of nursing. The panel considered that Miss Musa had a key role in the Home, and she was aware that she was not fit to work but failed to inform other members of staff of her unfitness. The panel concluded that this is a serious departure from the standards expected of a registered nurse, and it amounted to misconduct.

On Charge 2, the panel had regard to its finding on Charge 1 above. The panel was satisfied that, on that shift, Miss Musa was aware that she was unfit to carry out her nursing duties safely but chose to do so, nonetheless. The panel considered that Witnesses 1 and 2, who both attended the Home, remarked on Miss Musa's unfitness. The panel concluded that this is a serious departure from the standards expected of a registered nurse, and it amounted to misconduct.

With regard to Charge 3b, the panel was satisfied that Miss Musa's actions were unprofessional and inappropriate. However, the panel has insufficient detail indicating how much of her hair was dangling, and whether she had her hair tied back but some had come undone. Accordingly, the panel was satisfied that this was not sufficiently serious to amount to misconduct.

With regard to Charge 3c, the panel considered that fundamental tenets in nursing include the treatment of patients with kindness and compassion. The panel considered that Patient A was dying, and Miss Musa treated Patient A aggressively. The panel concluded that this is a departure from the standards expected of a registered nurse, and it amounted to misconduct.

With regard to Charge 4a, the panel determined that clear, appropriate communication is a fundamental tenet of nursing practice. The panel considered that Miss Musa was communicating with paramedics in a clinical setting, and it determined that unprofessional and inappropriate communication could have had an impact on patient safety. The panel also determined that Miss Musa's inappropriate communication was neither professional nor kind. The panel concluded that this is a serious departure from the standards expected of a registered nurse, and it amounted to misconduct.

On Charge 4b, the panel considered that Miss Musa's actions prevented colleagues from feeling safe within a working environment. The panel was satisfied that Miss Musa's actions were unprofessional and was a significant departure from the standards of communicating with colleagues expected of a registered nurse. Accordingly, the panel was satisfied that it amounted to misconduct.

With regard to Charge 4c, the panel considered that it has received no information from Miss Musa or Witnesses 1 and 2 which would indicate that Miss Musa's actions were warranted. It determined that Miss Musa's actions were inflammatory, and highly unprofessional behaviour amongst colleagues. The panel concluded that this is a serious departure from the standards expected of a registered nurse, and it amounted to misconduct.

On Charge 5b, the panel determined that this occurred within a clinical setting where Witnesses 1 and 2 were in the process of treating Patient A, and Miss Musa was interfering with that process. The panel considered how Miss Musa had to be told to leave the medical equipment alone, and it determined that this was unprofessional conduct. The panel concluded that this is a serious departure from the standards expected of a registered nurse, and it amounted to misconduct.

The panel was of the view that Miss Musa's actions, taken together, did fall significantly short of the standards expected of a registered nurse, and that Miss Musa's actions amounted to a breach of the Code. Specifically:

'1 *Treat people as individuals and uphold their dignity*

To achieve this, you must:

- 1.1 *treat people with kindness, respect and compassion.*
- 1.2 *make sure you deliver the fundamentals of care effectively.*

7 Communicate clearly

8 Work co-operatively

To achieve this, you must:

- 8.1 *respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate.*
- 8.2 *maintain effective communication with colleagues.*
- 8.5 *work with colleagues to preserve the safety of those receiving care.*

13 Recognise and work within the limits of your competence

To achieve this, you must:

- 13.4 *take account of your own personal safety as well as the safety of people in your care.*

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

To achieve this, you must:

- 19.1 *take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place.*

20 Uphold the reputation of your profession at all times

To achieve this, you must:

- 20.1 *keep to and uphold the standards and values set out in the Code.*
- 20.2 *[...] treating people fairly and without discrimination, bullying or harassment.*
- 20.3 *be aware at all times of how your behaviour can affect and influence the behaviour of other people.*
- 20.9 *maintain the level of health you need to carry out your professional role.'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Miss Musa's actions in all but one of

the charges found proved did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Miss Musa's fitness to practise is currently impaired. The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper

professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/their fitness to practise is impaired in the sense that S/He/They:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d)'*

On whether Miss Musa has acted in a way which put patients at risk of unwarranted risk of harm, the panel concluded that this limb is engaged, as Miss Musa's interference with the paramedics could have placed Patient A at risk of harm, albeit no actual harm came to Patient A.

On the second and third limbs, the panel was satisfied that Miss Musa's misconduct has breached a fundamental tenet of the profession, namely the treatment of others – both patients and colleagues – kindly and professionally. The panel concluded that Miss Musa's treatment and communication with both the paramedics and her colleagues at the Home are neither kind nor professional. Furthermore, the panel determined that Miss Musa was not practising safely when she knowingly attended work when she knew she was unfit to

do so. Accordingly, the panel was of the view that Miss Musa had brought the profession into disrepute with her misconduct.

The panel was satisfied that the fourth limb is not engaged in this case.

With regard to the future, the panel was satisfied that the misconduct in this case is capable of remediation. The panel considered that Miss Musa has demonstrated some attitudinal concerns with regard to her communication with colleagues, but it concluded that this was remediable with adequate reflection and developed insight.

However, the panel received no documentation from Miss Musa indicating her insight into her misconduct or any evidence of remediation and the strengthening of her practice. The panel determined that the two incidents occurred within a few days of each other. Accordingly, the panel concluded that there is a risk that Miss Musa repeats her conduct, in the absence of her insight. Therefore, the panel concluded that a finding of impairment is necessary on the ground of public protection.

The panel determined that the public confidence in the profession would be undermined if a finding of impairment were not made in this case. The panel concluded that a well-informed member of the public would be concerned if Miss Musa was allowed to practise without restriction at this time, in light of the findings against her. Accordingly, the panel finds Miss Musa's fitness to practise also impaired on public interest grounds.

Having regard to all of the above, the panel was satisfied that Miss Musa's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of nine months. The effect of this order is that the NMC register will show that Miss Musa's registration has been suspended.

Representations on sanction

The NMC, in its Statement of Case, invited the panel to impose a 12-month suspension order with review.

The NMC invited the panel to consider the following aggravating factors:

- Miss Musa was in a position of authority during the shift of 27/28 December 2022;
- Miss Musa is alleged to have attended work [PRIVATE]. It is further alleged that she intimated that she had no choice but to work, regardless of fitness;
- The police had to be called to assist on 28 December 2022;
- Repetition of behaviour; and
- No evidence of insight, remorse, or strengthened practice.

The panel also considered the NMC's submissions of the following mitigating factors:

- No other adverse incidents since registration; and
- [PRIVATE].

The panel had regard to the NMC's written submission on the appropriate sanction, as outlined in paragraph 50 and its sub-paragraphs, which stated:

*"50.3. A **conditions of practice order** would be inappropriate in the circumstances of this case. Whilst conditions could arguably be fashioned to offer specific retraining and/or supervision, it would not adequately mark the public interest or address the attitudinal concerns. Additionally, Miss Musa has not engaged with the NMC and therefore it is unlikely that any conditions imposed would be workable, enforceable, or practical.*

50.4. A **suspension order** is the appropriate sanction in this case. Whilst it is acknowledged that this case does not involve a single isolated incident, and Miss Musa has not shown insight (as per the Guidance (SAN-3d)), the NMC submits that based on Miss Musa's mitigation and registration history the seriousness of the case requires temporary removal from the register and would be sufficient to protect patients and public confidence in nurses and professional standards. The behaviour giving rise to the concerns took place over a finite period i.e., over the course of approximately five days. A period of suspension would also afford Miss Musa the opportunity to reengage with the NMC to provide evidence of insight, remorse, and remediation.

50.5. A **striking-off order** would be inappropriate. It is submitted that being proportionate calls for finding a fair balance between the registrant's rights and the NMC's overarching objective of public protection. Having reviewed the key considerations set out in the NMC guidance at SAN-3e, the NMC submit that a striking-off order is not the only sanction that would protect patients and members of the public and maintain professional standards."

Decision and reasons on sanction

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

Having found Miss Musa's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Miss Musa was in a position of authority during the shift of 27/28 December 2022;
- Miss Musa knowingly attended work whilst [PRIVATE];
- The police had to be called to assist on 28 December 2022;

- There were two incidents over a five-day period; and
- No evidence of insight, remorse, or strengthened practice.

The panel also took into account the following mitigating features:

- Miss Musa appeared to [PRIVATE].

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 Miss Musa'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 Miss Musa'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 placing conditions of practice on Miss Musa'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 took into account the SG, for example:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Potential and willingness to respond positively to retraining;*
- *Conditions can be created that can be monitored and assessed.*

The panel accepted that some of the concerns identified in this case can be remedied through imposing conditions on Miss Musa's practice. However, the panel considered the attitudinal concerns – as outlined in its finding on impairment – as well as Miss Musa's lack of meaningful engagement with the NMC thus far. The panel was not satisfied that, even if

conditions could be formulated to address her attitudinal concerns, Miss Musa would engage and comply with the conditions imposed upon her practice.

The panel concluded that the placing of conditions on Miss Musa's registration would not be workable in this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
and
- *No evidence of repetition of behaviour since the incident.*

The panel considered that whilst there were two instances relating to the same concerns, they occurred over a very short period of time, approximately four days. The panel noted [PRIVATE]. Whilst the panel considered that there was a risk of harm to Patient A, no actual harm resulted from Miss Musa's misconduct. Consequently, it was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Miss Musa's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction. The panel noted the hardship such an order will inevitably cause Miss Musa. However, this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

The panel was satisfied that a nine-month suspension would adequately protect the public and meet the public interest concerns. The panel also determined that a suspension order for a period of nine months would allow Miss Musa adequate time to reflect and develop insight into her misconduct, as well as meaningfully engage with the NMC.

At 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.

Any future panel reviewing this case would be assisted by:

- Miss Musa's meaningful engagement with the NMC, including her attendance at a future review hearing;
- Evidence of insight into her misconduct; and
- Evidence of remediation, and testimonials from any voluntary or paid work which support this.

This will be confirmed to Miss Musa in writing.

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Musa's own interests until the suspension sanction takes effect.

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

Representations on interim order

The panel took account of the written representations made by the NMC, which stated:

"If a finding is made that Miss Musa's fitness to practise is impaired on a public protection basis and a restrictive sanction imposed, we consider an interim order should be imposed on the basis that it is necessary for the protection of the public and otherwise in the public interest for the same reasons as set out above. An interim suspension order is sought for a period of 18 months so that it remains in place during the 28-day appeal period and until any appeal can be determined (in the event that one is filed)."

Decision and reasons on interim order

The panel determined that not to impose an interim suspension order would be wholly incompatible with its earlier findings.

The panel considered the guidance on interim orders (INT-1). The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. The panel concluded that an interim suspension order is consistent with its findings on impairment and sanction.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months, to cover any relevant appeal period.

If no appeal is made, then the interim suspension order will be replaced by the suspension order 28 days after Miss Musa is sent the decision of this hearing in writing.

That concludes this determination.