

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

**Substantive Order Review Hearing
Wednesday, 31 July 2024**

Virtual Hearing

Name of Registrant:	Ludo Msinamwa
NMC PIN	05H01980
Part(s) of the register:	Registered Nurse – Adult Nurse (August 2005)
Relevant Location:	Causeway Coast and Glens
Type of case:	Misconduct
Panel members:	Vicki Wells (Chair, registrant member) Jane Lewry (Registrant member) David Boyd (Lay member)
Legal Assessor:	Hala Helmi
Hearings Coordinator:	Muminah Hussain
Nursing and Midwifery Council:	Represented by Mohsin Malik, Case Presenter
Miss Msinamwa:	Not present and not represented
Order being reviewed:	Conditions of practice order (12 months)
Fitness to practise:	Impaired
Outcome:	Conditions of practice order (12 months) to come into effect on 7 September in accordance with Article 30 (1)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Msinamwa was not in attendance and that the Notice of Hearing had been sent to Miss Msinamwa's registered email address by secure email on 28 June 2024.

Mr Malik, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Msinamwa's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Msinamwa has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Miss Msinamwa

The panel next considered whether it should proceed in the absence of Miss Msinamwa. The panel had regard to Rule 21 and heard the submissions of Mr Malik who invited the panel to continue in the absence of Miss Msinamwa.

Mr Malik submitted that there had been no engagement at all by Miss Msinamwa with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion. He informed the panel that the NMC contacted Ms Msinamwa on 10 July 2024 asking her to confirm her attendance, and there was no response to that email. Ms Msinamwa was also called by her case office on 19 July 2024, and the call was declined.

Mr Malik submitted that it would be fair and in the interest of justice, to proceed in the absence of Ms Msinamwa. He submitted that Ms Msinamwa has voluntarily absented herself.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Msinamwa. In reaching this decision, the panel has considered the submissions of Mr Malik and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Msinamwa;
- Miss Msinamwa has not engaged with the NMC and has not responded to any of the letters sent to her about this hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Miss Msinamwa.

Decision and reasons on review of the substantive order

The panel decided to confirm the current conditions of practice order.

This order will come into effect at the end of 7 September 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 10 August 2023.

The current order is due to expire at the end of 7 September 2024.

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 nurse:

1. Having agreed undertakings recommended in the light of a case to answer being found in respect of the regulatory concerns set out in Schedule 1, failed to remedy the issues identified in your practice in that you breached the undertakings listed in schedule 2.

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

Schedule 1

Medication administration

Concerns with falls management and escalating concerns

Poor record keeping

Failure to adhere to care plan – moving and handling

Schedule 2

Undertaking 9

You will work with your workplace manager, supervisor or mentor to create a personal development plan (PDP). Your PDP will address the concerns about:

- Following care plans in relation to moving and handling after a person has fallen
- Your assessment and observations of people after they have fallen
- Your documentation in relation to falls.

You will:

- Send your case officer a copy of your PDP within 2 weeks of these undertakings becoming effective
- Meet with your workplace manager, supervisor or mentor at least every two weeks to discuss your progress towards achieving the aims set out in your PDP
- Send your case officer a report from your workplace manager, mentor or supervisor every month. This report will show your progress towards achieving the aims set out in your PDP and comment on the standard of your practice in relation to the specific areas detailed in this undertaking.

The original panel determined the following with regard to impairment:

'The panel next went on to decide if as a result of the misconduct, your fitness to practise is currently 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. To justify that trust, nurses 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 Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) 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/ fitness to practise is impaired in the sense that S/He:

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) ...

The panel finds that your misconduct had put patients at risk of harm and had breached some of the fundamental tenets of the nursing profession and therefore had brought its reputation into disrepute.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel determined that there is limited insight from you into why timely completion and submission of the PDP is so important; that was the first and essential step required to strengthen your practice.

The panel took account that there has been no reflective piece, training or testimonials put before it to address the regulatory concerns identified. The

panel determined that there is a risk of repetition, given that there had been continuing undertakings since 2018, leading to the new undertakings effective from 22 December 2020 which showed that there were still concerns about your ability to practise safely and without restriction after a long period of undertakings.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety, and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is also required. The panel was of the view that it was your responsibility to do the PDP and you had a duty to address the revised undertakings and cooperate with your regulator. The panel accept that there may have been some difficulty in achieving this, however extensions were given by the NMC and they were clear that it was supposed to be provided in a particular timeframe.

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

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

The original panel determined the following with regard to sanction:

'Having found your 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:

- Undertakings that have been in place since 2018*
- Limited insight into failings*

The panel also took into account the following mitigating features:

- Made an admission*
- Difficulties at the time including the impact of Covid-19 and communicating with line manager who was abroad for lengthy periods*

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 your 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 your 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 your 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, in particular:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- No evidence of general incompetence;*
- Potential and willingness to respond positively to retraining;*
- Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- The conditions will protect patients during the period they are in force; and*
- Conditions can be created that can be monitored and assessed.*

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that you would be willing to comply with conditions of practice.

The panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able to return to practise as a nurse.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order. The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession

a clear message about the standards of practice required of a registered nurse.

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

- 1. You must keep the NMC informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.*
 - b) Giving your case officer your employer's contact details.**

- 2. You must keep the NMC informed about anywhere you are studying by:
 - a) Telling your case officer within seven days of accepting any course of study.*
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.**

- 3. You must keep us informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.*
 - b) Giving your case officer your employer's contact details.**

- 4. You must keep us informed about anywhere you are studying by:
 - a) Telling your case officer within seven days of accepting any course of study.*
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.**

- 5. You must immediately give a copy of these conditions to:
 - a) Any organisation or person you work for.*
 - b) Any agency you apply to or are registered with for work.*
 - c) Any employers you apply to for work (at the time of application).**

d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

- 6. You must not be the nurse in charge of a shift.*
- 7. You must not be the sole nurse on a shift.*
- 8. You will ensure that you are supervised by another registered nurse at any time you are working. Your supervision will consist of working with, but not always directly observed by a registered nurse nominated by your workplace manager.*
- 9. You will work with your workplace manager, supervisor or mentor to create a personal development plan (PDP). Your PDP will address:*
 - Falls prevention*
 - Management of patients following a fall including:*
 - Assessments*
 - Observations*
 - Moving and handling*
 - Care planning and escalation*

You will:

- Send your case officer a copy of your PDP within a month of starting your employment*
- Meet with your workplace manager, supervisor or mentor at least every month to discuss your progress towards achieving the aims set out in your PDP*
- Send your case officer a report from your workplace manager, mentor or supervisor every three months. This report will show your progress towards achieving the aims set out in your PDP and comment on the standard of your practice in relation to the specific areas detailed in this undertaking.*

The period of this order is for 12 months.'

Decision and reasons on current impairment

The panel has considered carefully whether Miss Msinamwa's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC considers that the following question can help decide whether a professional's fitness to practice is impaired; can the nurse, midwife or nursing associate practice kindly, safely and professionally? 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. It has taken account of the submissions made by Mr Malik on behalf of the NMC.

Mr Malik referred the panel to the background of the case. He referred to the case of *Abrahaem v GMC* [2008] EWHC 183 (Admin).

Mr Malik submitted that Ms Msinamwa has not provided a reflective piece, testimonials or a progress report as per the previous panel's recommendations. He submitted that Ms Msinamwa has not demonstrated any reflection or insight.

Mr Malik submitted that the misconduct in this case puts patients at risk of harm and had breached some of the fundamental tenets of the nursing profession, and therefore brought its reputation into disrepute. He submitted that without remediation or full insight into the misconduct, there is a risk of repetition.

Ms Malik submitted that a finding of continuing impairment is necessary on the grounds of public protection, and is also necessary on public interest grounds to maintain public confidence in the nursing and midwifery profession and to uphold proper standards of conduct and behaviour.

Mr Malik invited the panel to extend the current conditions of practice order for 12 months if Ms Msinamwa's fitness to practice is found to be impaired. He submitted that this is necessary and proportionate in the circumstances of the case.

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 Miss Msinamwa's fitness to practise remains impaired.

The panel had no new material from Ms Msinamwa, therefore there was no new information to suggest a change from the previous panel's findings. There was no information to demonstrate improved insight, continuous safe practice or compliance with the conditions. There was nothing in front of the panel to suggest that Ms Msinamwa has demonstrated an understanding of how her actions had put patients at a risk of harm, and how it has impacted on the reputation of the nursing profession. In its consideration of whether Miss Msinamwa has taken steps to strengthen her practice, the panel received no new information.

The original panel determined that Miss Msinamwa was liable to repeat matters of the kind found proved. Today's panel has heard no new information. In light of this, this panel determined that Miss Msinamwa 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.

Decision and reasons on sanction

Having found Miss Msinamwa'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 protect the public or be 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 Msinamwa'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 Msinamwa'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 protect the public or be in the public interest to impose a caution order.

The panel next considered whether imposing a further conditions of practice order on Miss Msinamwa'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 was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest. In this case, there are conditions could be formulated which would protect patients during the period they are in force.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Miss Msinamwa's case as it would like to give her more time to engage with the NMC.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the

current order, namely at the end of 7 September 2024. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

‘For the purposes of these conditions, ‘employment’ and ‘work’ mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, ‘course of study’ and ‘course’ mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must keep the NMC informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer’s contact details.

2. You must keep the NMC informed about anywhere you are studying by:
 - a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.

3. You must keep us informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer’s contact details.

4. You must keep us informed about anywhere you are studying by:
 - a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.

5. You must immediately give a copy of these conditions to:
 - a) Any organisation or person you work for.
 - b) Any agency you apply to or are registered with for work.
 - c) Any employers you apply to for work (at the time of application).

d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

6. You must not be the nurse in charge of a shift.
7. You must not be the sole nurse on a shift.
8. You will ensure that you are supervised by another registered nurse at any time you are working. Your supervision will consist of working with, but not always directly observed by a registered nurse nominated by your workplace manager.
9. You will work with your workplace manager, supervisor or mentor to create a personal development plan (PDP). Your PDP will address:
 - Falls prevention
 - Management of patients following a fall including:
 - Assessments
 - Observations
 - Moving and handling
 - Care planning and escalation

You will:

- Send your case officer a copy of your PDP within a month of starting your employment
- Meet with your workplace manager, supervisor or mentor at least every month to discuss your progress towards achieving the aims set out in your PDP
- Send your case officer a report from your workplace manager, mentor or supervisor every three months. This report will show your progress towards achieving the aims set out in your PDP and comment on the standard of your practice in relation to the specific areas detailed in this undertaking.

The period of this order is for 12 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 7 September 2024 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well Miss Msinamwa has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Your engagement
- Your attendance
- A reflective piece; and,
- A progress report if this is not covered by reports already submitted under condition 9.

This will be confirmed to Miss Msinamwa in writing.

That concludes this determination.