

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

**Substantive Hearing  
Thursday, 4 July 2024 – Friday 5 July 2024**

Virtual Hearing

**Name of Registrant:** Shelton Mudzingwa

**NMC PIN** 15H0215E

**Part(s) of the register:** Registered Nurse – Mental Health Sub part 1  
RNMH level 1 – January 2016

**Relevant Location:** Telford

**Type of case:** Conviction and Misconduct

**Panel members:** Paul O'Connor (Chair, Lay member)  
Anne Murray (Registrant member)  
Richard Bayly (Lay member)

**Legal Assessor:** Ian Ashford-Thom

**Hearings Coordinator:** Elizabeth Fagbo

**Nursing and Midwifery Council:** Represented by Rowena Wisniewska, Case  
Presenter

**Mr Mudzingwa:** Present and unrepresented

**Facts proved by admission:** Charges 1a and 1b (conviction charge)  
Charge 2, 3 and 4

**Fitness to practise:** Impaired

**Sanction:** **Suspension order (6 months), with a review**

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

## Details of charge

That you, a registered nurse

1. On 10 January 2023 at Telford Magistrates' Court, were convicted of the following offences:

a. On 20 November 2022 at Telford in the county of Shropshire drove a motor vehicle, namely BMW X6 bearing INDEX SH05MUD on a road, namely M54, after consuming so much alcohol that the proportion of it in your breath, namely 81 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit; and **(ADMITTED)**

b. On 20 November 2022 at Telford in the county of Shropshire drove a mechanically propelled vehicle, namely BMW X6, registration number SH05 MUD dangerously on a road, namely the M54. **(ADMITTED)**

2. Failed to disclose the convictions set out in charge 1 to the NMC in a timely manner. **(ADMITTED)**

3. Failed to disclose the convictions set out in charge 1 to your employer, Pulse Nursing, in a timely manner. **(ADMITTED)**

4. Your actions at charges 2 and/or 3 lacked integrity in that you had a professional obligation to disclose your convictions to your regulator and employer as soon as you could, and you failed to do so. **(ADMITTED)**

AND in light of the above, your fitness to practise is impaired by reason of your convictions as set out in charge 1 above, and your misconduct as set out in charge 2-4 above.

## **Decision and reasons on application for hearing to be held in private**

At the outset of the hearing, Ms Wisniewska made a request that this case be held partially in private on the basis that proper exploration of your case involves [PRIVATE]. She submitted that the hearing should be held partially in private in order to protect the interests of the individual. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to go into private session as and when matters regarding [PRIVATE].

## **Background**

On 20 July 2023, the NMC received a self-referral from you. You informed the NMC that you had been convicted of 2 offences relating to driving whilst being over the alcohol limit and for dangerous driving on 20 November 2022. At the time of the incident, you were employed as a registered nurse at Pulse Nursing Agency (the Agency).

The convicted offences are as follows:

- 1) Drive motor vehicle when alcohol level above limit contrary to Section 5 Road Traffic Act (RTA) 1988 and Schedule 2 to the Road Traffic Offenders Act 1988; and
- 2) Drive a motor vehicle dangerously contrary to section 2 of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.

West Mercia Police arrested you after you were initially seen driving westbound on the eastbound carriageway of the M54 motorway. Your vehicle was located on the hard

shoulder of the motorway, and you were arrested and taken into police custody where you provided 2 samples of breath, the lower of which read 81 micro milligrams per 100 milligrams of breath. You were subsequently charged with dangerous driving and drink driving.

On 10 January 2023 at Telford Magistrates Court, you pleaded guilty to the offences and were sentenced to 12 months imprisonment, suspended for two years. You were also disqualified from driving for a period of 21 months.

You informed the Agency of the incident on 27 July 2023 and were subsequently suspended due to the non-disclosure of the allegations when they occurred in November 2022.

### **Decision and reasons on facts**

At the outset of the hearing, the panel heard from Ms Wisniewska, who informed the panel that you made full admissions to charges 1, 2, 3, and 4.

The panel also heard evidence from you under oath.

The charges concern your conviction and, having been provided with a copy of the certificate of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3).

The panel therefore finds charge 1, 2, 3, and 4 proved in their entirety, by way of your conviction and admissions.

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the convictions in charges 1a and 1b are sufficiently serious to impair

your fitness to practise and whether charges 2, 3 and 4 amount to serious misconduct and, if so, whether your 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, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of your conviction and/or misconduct.

### **Submissions on misconduct**

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 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.*'

Ms Wisniewska invited the panel to take the view that the facts found proved amount to misconduct. She submitted that charge 1 amounts to serious misconduct proved by way of conviction, and charge 2, charge 3, and charge 4 also amount to serious 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. Ms Wisniewska submitted that the following sections were applicable:

- *20 Uphold the reputation of your profession at all times*

- *23.2 tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction)*

She told the panel that in all circumstances of this case, your actions in the charges proved depart from good professional conduct and are sufficiently serious to constitute serious misconduct.

### **Submissions on impairment**

Ms Wisniewska addressed the panel on the issue of impairment and reminded the panel to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

Ms Wisniewska submitted that the following questions outlined by Dame Janet Smith in the fifth Shipman report can be answered in the affirmative in respect of this case, in that you:

- *Has in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or*
- *Has in the past brought and/or is liable in the future to bring the profession into disrepute; and/or*
- *Has in the past committed a breach of one of the fundamental tenets of the profession and/or is liable to do so in the future and/or*

- *Has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

Ms Wisniewska told the panel that the misconduct in this case is not related to clinical failings. However, the general public were put at risk of harm through your actions on 20 November 2022. She submitted that taking into account all the circumstances of the case and the serious nature of the of the misconduct it can be found that you have brought the profession into disrepute.

Ms Wisniewska submitted that you have breached fundamental tenets of the profession as you failed to uphold the reputation of the profession at all times. Further, she submitted that, although there is no dishonesty finding, you admitted to charge 4 which states that *'Your actions at charges 2 and/or 3 lacked integrity in that you had a professional obligation to disclose your convictions to your regulator and employer as soon as you could, and you failed to do so'*. She told the panel that although dishonesty and lack of integrity are different concepts there is a close nexus between the two and the panel may choose to apply the test in that way.

Furthermore, Ms Wisniewska submitted that all limbs of the test are engaged and, in this case by virtue of the findings of fact made she invited the panel to find that your fitness to practise is currently impaired by your past misconduct in respect of the events relating to your criminal conviction due to the incident of 20 November 2022 and the subsequent gap in reporting to the NMC and the Agency.

You told the panel [PRIVATE] and have also reflected on the incident and have learned from it. You submitted that you accept that your actions were wrong and understand that the risk of you repeating such conduct is questionable, however, you can assure the panel that you would never repeat such actions and you are working hard to regain trust in the profession.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *Grant above*.

## **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 was of the view that your actions did fall significantly short of the standards expected of a registered nurse and reflected multiple breaches of the Code. Specifically:

### ***'20 Uphold the reputation of your profession at all times***

*20.1 keep to and uphold the standards and values set out in the Code*

*20.2 act with honesty and integrity at all times, 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*

*20.4 keep to the laws of the country in which you are practising*

### ***23 Cooperate with all investigations and audits***

*23.2 tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction)'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. In assessing whether the charges amounted to misconduct, the panel considered the charges individually and cumulatively as well as the circumstances of the case as a whole.



The panel was of the view that the convictions in charges 1a and 1b were sufficiently serious to impair your fitness to practise. It noted that although no one was harmed in the incident, there was a potential risk of serious harm. The panel determined that charge 2 and charge 3 also amounted to serious misconduct, it took into account that at the time of the incident you had not been working at the Agency for a significant period of time, due to [PRIVATE], however, it was of the view that section 23.2 of the Code clearly outlines that it is a nurse's responsibility to notify the registration body and employers of any conviction. It was also of the view that charge 4 amounted to serious misconduct as it was a clear breach of the Code, section 20.2 *'act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment'*.

The panel concluded that your conduct did fall seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

### **Decision and reasons on impairment**

The panel next went on to decide whether as a result of the conviction and/or misconduct, your fitness to practise is currently impaired.

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. To justify that trust, nurses must be honest and open and act with integrity. 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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that there was no evidence before it to suggest that you had in the past put patients at risk or caused physical and emotional harm as a result of your conduct. Therefore, it determined that there was not enough information before it to demonstrate that you are liable to put patients at a risk of harm in the future. On this basis, the panel determined that limb 'a' of the 'test' was not engaged.

The panel found that your conduct, which resulted in you being convicted of two offences, had breached the fundamental tenets regarding professionalism and trust in the nursing profession and therefore brought its reputation into disrepute. It determined that limbs 'b' and 'c' in the above 'test' were also engaged in this case.

The panel was not satisfied that limb 'd' of the above 'test' was also engaged. Whilst integrity and trust were found to have been breached, there was no finding of dishonesty.

Regarding insight, the panel considered that you had made admissions, accept the charges, provided detailed context surrounding the events of 20 November 2022 and expressed remorse for your conduct. However, it was of the view that you have not fully considered how you might manage similar circumstances in the future. As a result, the panel concluded that your insight was not currently fully developed.

The panel was of the view that your ongoing suspended sentence demonstrates that there has not been a long enough period to suggest that there is no risk of you repeating such conduct. It noted that you started working again in January 2024, which with the passage

of time should allow you to demonstrate that you are now better able to cope with [PRIVATE] and your professional role. However, the sentence imposed by the court is not yet fully completed and as such the panel was not satisfied that there is enough information before it to suggest that there has been sufficient insight into the charges and that you have had the opportunity to fully demonstrate a significant positive turn around in your behaviour, or that you have remediated the concerns. On this basis, the panel concluded that there remains a real risk of repetition and 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 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.

In addition, 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 that your fitness to practise impaired on the grounds of public interest. It was of the view that a member of the public in possession of all the facts in this case would be surprised if a finding of impairment were not made by this regulator given the serious charges and your conviction.

Having regard to all of the above, the panel was satisfied that your 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 6 months. The effect of this order is that the NMC register will show that your registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC.

The panel accepted the advice of the legal assessor.

### **Submissions on sanction**

Ms Wisniewska informed the panel that in the Notice of Hearing, dated 21 May 2024, the NMC had advised you that it would seek the imposition of a sanction order if it found your fitness to practise currently impaired.

Ms Wisniewska outlined the aggravating factors she identified in this case:

- The charges are very serious
- A term of 12 months imprisonment was imposed suspended for two years
- Risk of harm caused on 20 November 2022 was significant
- There was a six-month delay in you informing the NMC and the Agency about your convictions

Ms Wisniewska also outlined the possible mitigating factor she identified in this case:

- You have shown insight and reflection into your behaviour
- You have shown that you are remorseful
- Provided a detailed account to the panel of the background matters and personal circumstances surrounding the November 2022 incident
- The offences did not take place in a clinical setting

Ms Wisniewska submitted that making no order would not be appropriate given the misconduct. She submitted that imposing a caution order would also not be appropriate due to the seriousness of this case.

Ms Wisniewska submitted that a conditions of practice order would not appropriately address the concerns regarding public protection and the public interest, in particular maintaining public confidence in the professions and declaring and upholding proper standards of conduct and behaviour. She submitted that there are no workable, relevant, measurable, or proportionate conditions that would address the misconduct, given the failings, which related to serious matters outside of a clinical setting.

Ms Wisniewska referred the panel to the NMC's SG. She submitted that there is no evidence of attitudinal or personality issues, and there is no evidence of there being a significant risk of repetition. She further submitted that although you fell short of the requirement to act with integrity at all times, there has not been a finding of dishonesty made by the panel.

Ms Wisniewska invited the panel to impose a suspension order for a period of 6 months. She submitted that a suspension order is the appropriate and proportionate order given the circumstances of the case.

The panel also bore in mind your submissions. You submitted that this incident has been tough for you, but that nursing is your life, and you thoroughly enjoy positively impacting people's lives. You submitted that if you were unable to practise as a nurse it would be like going back to square one. You stated that the economy is very difficult at the moment, and it would cause challenges in your ability to sustain a living. You told the panel that you are aware that what you did was wrong, and you understand that you could have killed someone or could have killed yourself as a result of your conduct and this is something that you have to live with for the rest of your life.

You further submitted that the incident which took place in November 2022 was out of character for you and [PRIVATE], which led you to drink that day. You submitted that you have owned up to your mistakes and have since removed all alcohol from your Home to ensure the safety of your kids and also to ensure your own safety. You told the panel that you have been engaging with your Church leaders for support, you are committed to moving forward despite any challenges and asked the panel for its leniency when making its decision today.

### **Decision and reasons on 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:

- Your criminal conviction which you are currently serving a suspended sentence for
- The incident was of a serious nature

The panel also took into account the following mitigating features:

- Your reflective piece
- You have shown remorse
- [PRIVATE]
- Seeking support from your Church leaders
- The positive character reference from your current employer

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 bore in mind that that the charges found proved in relation to your misconduct and conviction were not linked to your clinical practice and it was of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public or meet the public interest.

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;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel was of the view that a suspension order is appropriate in this case, as such an order would reflect the seriousness of this case, provide public protection whilst also addressing public interest. The panel did not find evidence of harmful deep-seated personality or attitudinal problems. However, it considered the misconduct and the circumstances around your conviction to be serious. It had regard to the positive testimonial provided by your current employer on your behalf.

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 your 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 may cause you. 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 determined that a suspension order for a period of 6 months was appropriate in this case to mark the seriousness of the misconduct. It also noted that the 6-month

suspension order will still be in effect when the suspended sentence of two years has concluded.

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:

- Evidence of testimonials from a line manager or supervisor that detail your current wellbeing; and internal coping mechanisms
- Evidence of the implementation of internal and external coping mechanisms
- An up-to-date reflective piece showing how your insight has developed

This will be confirmed to you 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 your own interests until the suspension sanction takes effect.

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

### **Submissions on interim order**

The panel took account of the submissions made by Ms Wisniewska. She submitted that the NMC is seeking the imposition of an interim suspension order for a period of 18 months to cover any appeal period until the substantive suspension order takes effect.

Ms Wisniewska submitted that given the seriousness of the charges found proved, an interim suspension order is necessary on the grounds of public protection and is also otherwise in the wider public interest.

### **Decision and reasons on interim order**

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 seriousness of the facts found proved and 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 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 protect the public and the wider public interest. Also to cover the 28-day appeal period and the duration of any appeal should you decide to appeal against the panel's decision.

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

That concludes this determination.