

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

**Substantive Order Review Hearing
Thursday, 27 June 2024**

Virtual Hearing

Name of Registrant:	David Muza
NMC PIN	18A0014S
Part(s) of the register:	Registered nurse - Sub part 1 RNMH - Level 1 (16 March 2020)
Relevant Location:	Glasgow
Type of case:	Misconduct
Panel members:	Dale Simon (Chair, lay member) Alison Thomson (Registrant member) Ray Salmon (Lay member)
Legal Assessor:	Megan Ashworth
Hearings Coordinator:	Khatra Ibrahim
Nursing and Midwifery Council:	Represented by Brittany Buckell, Case Presenter
Mr Muza:	Present and unrepresented at this hearing
Order being reviewed:	Suspension order (6 months)
Fitness to practise:	Not Impaired
Outcome:	Order to lapse upon expiry in accordance with Article 30(1), namely 5 August 2024

Decision and reasons on review of the substantive order

The panel decided to allow the current suspension order to lapse on expiry, namely at the end of 5 August 2024.

This is the first review of a substantive suspension order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 4 January 2024.

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

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

'Details of charge

'That you, a Registered Nurse,

- 1. On or about 30 January 2021, submitted to the University of Edinburgh a document purporting to be a reference from Colleague A when it was not, in support of an application for two PhD programmes*

- 2. Your action at 1 above was dishonest in that you:*
 - 2.1 Were presenting a document as a genuine reference when you knew it was not*

 - 2.2 Intended by so doing to mislead persons considering your application into believing it was a genuine reference*

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

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.'

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 and to maintain professional boundaries. 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/ fitness to practise is impaired in the sense that S/He:

- a) ...*
- 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 finds that the final three limbs in Dame Janet Smith's "test" are engaged. It determined that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It noted that no concerns have been identified in relation to your clinical practice. However, your actions were dishonest, breached the fundamental tenet of the profession to act with honesty and integrity, and were liable to bring the profession into disrepute.

Regarding insight, the panel considered you have made both admissions and have expressed remorse for your actions both in your written statement and in your live evidence. You have acknowledged that what you did was wrong and how this impacted negatively on the reputation of the nursing profession. You apologised for your misconduct to the panel, and also to Witness 1, the University and the NMC in your written statement and oral evidence. You explained your understanding on how difficult it is to prove honesty. Consequently, the panel determined you have

shown some insight. However, the panel considered that your insight is limited. You have not provided sufficient evidence of reflection and understanding in relation to your actions. You have not demonstrated a real understanding of why you acted as you did, why it was so serious, or how you would prevent yourself from acting in a similar way in future.

The panel noted that dishonesty is difficult, although not impossible, to remediate. It considered that you have not yet demonstrated sufficient insight to address your dishonesty. Neither have you demonstrated any relevant steps taken to address your failings, for example, training in professional ethics. The panel further noted that in your written statement, you admitted that you did not realise that your misconduct was dishonest, until you 'reflected' on it. The panel considered this inconsistent with your evidence at this hearing, that you were aware at the time, that your actions were wrong. It noted that prior to becoming a nurse, you had a career as a teacher, including work at a University. It considered that you must have been aware of the significance of submitting a fraudulent reference and did not accept that your actions were impulsive as you suggest. It therefore considered that your assertion of impulsiveness, demonstrates your lack of insight into your behaviour.

The panel further noted that it had little information about your current situation and no up to date testimonials addressing your practice and character since these events. It noted that your current employer is not aware of these proceedings and was concerned that this demonstrated a lack of transparency on your part, even if you are not formally required to tell your employer. Consequently, the panel determined that you have presented no remediation, limited insight, and limited remorse.

The panel is of the view that there is a risk of repetition based on the fact that your insight is limited, and there is no evidence of remediation in this case. The panel therefore decided that your fitness to practice is currently impaired, in that you remain liable to act in such a way as to breach fundamental tenets of the profession, undermine public confidence in the profession, and act dishonestly.

The panel bore in mind 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.

The panel determined that a finding of impairment on wider public interest grounds is required because a well-informed member of the public would expect a nurse facing such allegations, particularly relating to dishonesty, to have their fitness to practice found impaired. 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 finds your fitness to practise impaired on the wider public interest grounds.

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 Sanctions Guidance (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:

- You did not volunteer your dishonesty, but only acknowledged it once you were confronted;*
- You have shown limited insight;*
- There was a degree of premeditation in relation to your misconduct.*

The panel also took into account the following mitigating features:

- *You admitted the Charges against you when confronted, and within the early stages of this case, namely, the case management form;*
- *You did not require the witnesses to attend the hearing, due to your full admissions of the Charges;*
- *Your misconduct was an isolated incident with no direct harm to patients;*
- *You have demonstrated some remorse and have apologised for your actions.*

The panel noted that dishonesty is always serious. However, it had regard to the SG and the legal advice it received when assessing the level of seriousness of the dishonesty in this case. The panel considered that although there was an element of premeditation or calculation in your actions, this took place within a narrow timeframe and could be characterised as opportunistic rather than planned in advance. You reacted to your discovery, shortly before the application deadline, that your original referee was not available, and Witness 1 was not at work. Nevertheless, you then carried out a series of deliberate actions which you must have known were wrong, and you had the time and opportunity to reflect, reverse your actions and take alternative steps before submitting the form. The panel noted that there was no direct financial gain, although there was an element of personal gain in seeking to secure your PhD place. There was no direct risk to patients, and no abuse of power. Your dishonesty was isolated and was not long standing, systematic, or sustained. The panel considered that your dishonesty was towards the lower end of the dishonesty spectrum, and could be characterised by actions undermining, rather than destroying, trust.

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 interest 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 of impairment 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 is of the view that there are no practical or workable conditions that could be formulated, given the nature of the Charges in this case and the deficiencies in your insight at this stage.

Furthermore, the panel concluded that the placing of conditions on your registration would not address 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 panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. The panel noted that although dishonesty is attitudinal, this was an isolated instance and there was no evidence of deep-seated attitudinal problems. Although the panel determined that there was a risk of repetition in your case, it felt that a period of suspension would afford you the time to reflect on your practice and for you to gain full insight.

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. In concluding this, the panel considered the fact that your dishonesty is at the lower end of the spectrum of dishonesty, and that this was an isolated incident with no real harm caused to patients. The panel took into consideration your admissions and remorse and determined that a suspension order would aid you in developing your insight and addressing your past failings. The panel further bore in mind that no issues have been raised in relation to your clinical practice and considered that there is a public interest in allowing you the opportunity to rehabilitate yourself so that the public can retain the skills of an otherwise competent practitioner.

The panel noted the hardship such an order will inevitably cause you. However, this is outweighed by the public interest in this case. The panel noted that it would be open to you to maintain your clinical skills in practice as a support worker, should you wish to do so.

The panel considered that this order is necessary to mark the seriousness of your misconduct in order to maintain 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.

In making this decision, the panel carefully considered the submissions of Ms Jones in relation to the sanction that the NMC was seeking in this case. However, the panel considered that your misconduct does not meet the threshold required to impose a striking-off order.

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 and to afford you sufficient time to gain the necessary insight and strengthen your practice.'

Decision and reasons on current impairment

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

The panel had regard to all of the documentation before it, including the NMC bundle, your reflective pieces, certificate of training and the testimonials you submitted. It has taken account of your submissions and those of Ms Buckell, on behalf of the NMC.

Ms Buckell submitted that you have complied with the recommendations of the previous panel in that you have provided several personal and professional testimonials, have undertaken a course in probity and ethics, prepared a reflective piece and evidence of how you have strengthened your practice in the areas required. She submitted that the NMC is neutral, and it is for the panel to consider whether your reflections and testimonials demonstrate full insight into your conduct.

You addressed the panel and apologised for your past misconduct and said that this has been a challenging time for you and your family. You directed the panel to the documents you provided and said that this has been a learning experience for you and that you have reflected on your past misconduct.

The panel 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 your fitness to practise remains impaired.

The panel noted that the original panel found that you had limited insight. At this hearing, the panel had sight of positive testimonials, reflective pieces, a certificate of a training course in probity and ethics, and evidence of strengthening of practice. One such example of a testimonial from your manager, dated 20 May 2024, is as follows:

'...Since handling his suspension in my previous role at iCare24, where he was working as an agency registered nurse, I kept David on as a Senior Carer as we had never received anything but positive feedback regarding his nursing care. During the last six months he has demonstrated a strong commitment to his work and patient care. I was during this period happy for him to join my new agency Car1ng24...'

The panel determined that you demonstrated an understanding of why what you did was wrong and how this impacted negatively on the reputation of the nursing profession, your colleagues, patients and also your family. It was of the view that in relation to complying with the suspension order, you confirmed that you have been working as a non-registered carer at the Home. It concluded that you have been fully engaging with the NMC's process, and that the authors of the testimonials were fully aware of the circumstances surrounding your suspension and they were all able to comment favourably on your nursing practice, character, honesty and integrity.

In addition to the documents aforementioned, the panel also had sight of an extensive reflective piece, which shows the remorse you felt following the decision you made to provide the false reference to the University. You also detailed the fact that you have worked to gain a further understanding of the importance of record keeping and being honest, particularly in relation to your nursing practice. The panel also noted that your reflections did not concentrate on how you had been affected but demonstrated a

comprehensive understanding of the impact of your dishonesty on others, including the public's confidence in the nursing profession.

In relation to furthering your skillset and knowledge, the panel had before it a certificate from a course related to probity and ethics and that you sought advice from the NMC on securing an appropriate course.

The panel was aware that the suspension order was imposed on the ground of public interest, and although the concerns were not directly related to patient care, the concerns were serious as they relate to honesty, which is a fundamental tenet of nursing. It noted that you had recognised this indirect risk to public protection within your reflections. The panel was of the view that although the concerns were serious, the public would be satisfied that you have been held to account for your actions, by way of a six-month suspension order. It was also of the view that whilst you have been working as a carer, rather than a nurse, this order would have had a negative impact on you, both financially and reputationally.

The original panel determined that you were liable to repeat matters of the kind found proved. In light of the information before it today, this panel determined that you are now not liable to repeat matters of the kind found proved.

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 not required, as the six-month suspension order will have addressed the public confidence and professional standards elements in this case.

For these reasons, the panel finds that, although your fitness to practise was impaired at the time of the incidents, given all of the above, your fitness to practise is not currently impaired.

In accordance with Article 30(1), the substantive suspension order will lapse upon expiry, namely the end of 5 August 2024.

This will be confirmed to you in writing.

That concludes this determination.