

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

**Substantive Order Review Hearing
Tuesday, 11 June 2024**

Virtual Hearing

Name of Registrant: Garby Tengu Ndumu

NMC PIN 01U0998E

Part(s) of the register: Registered Nurse – Adult – 20 July 2005

Relevant Location: Woking

Type of case: Misconduct

Panel members: Louise Guss (Chair, Lay member)
Christine Wint (Registrant member)
Oluremi Alabi (Lay member)

Legal Assessor: Peter Jennings

Hearings Coordinator: Amira Ahmed

Nursing and Midwifery Council: Represented by Shopna Roy, Case Presenter

Miss Ndumu: Not present; represented by Kayleigh McKeith of the Community Trade Union

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (12 months) to come into effect at the end of 20 July 2024 in accordance with Article 30 (1)**

Decision and reasons on review of the substantive order

The panel decided to impose a conditions of practice order (with changed conditions) for a period of 12 months.

This order will come into effect at the end of 20 July 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 22 June 2023.

The current order is due to expire at the end of 20 July 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:

1) *On 23 July 2019, in relation to Patient A:*

- a. *Moved Resident A; **[Proved by Admission]***
- b. *Failed to make sufficient efforts to contact the emergency services/escalate Resident A's care; **[Proved by Admission]***
- c. *Failed to commence basic life support:*
 - i. *in a timely manner; **[Found Proved]***
 - ii. *using an appropriate/effective method of CPR in that the rate of compressions were slow and/or not of adequate depth; **[Found Proved]***

2) *On 25 October 2019, in relation to Resident B:*

- b. *Failed to record Resident B's fluid input and/or urine output; **[Proved by Admission]***

The original panel determined the following with regard to impairment:

'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*

The panel finds that patients were put at risk and were caused physical and emotional harm as a result of Miss Ndumu's misconduct. Miss Ndumu's misconduct

had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Miss Ndumu has made some admissions though has not demonstrated an understanding of how her actions put the patient(s) at a risk of harm and the impact of her failures on Resident A's family. Miss Ndumu has demonstrated some understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession. The panel noted there is nothing before it to demonstrate that she has apologised to the patient's family for her misconduct nor sufficiently demonstrated how she would handle the situation differently in the future.

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 Miss Ndumu has taken steps to strengthen her practice. The panel took into account that there has been some reference to training, however not in all the relevant areas of concern. Furthermore, Miss Ndumu has undertaken a reflective piece at the local level but has not submitted a reflection to the NMC, particularly with regard to further insight about the impact of her misconduct and what she would do differently in the future.

Accordingly, the panel is of the view that there is a risk of repetition as she has not strengthened her practice through relevant training courses and was only able to work under supervision for three shifts and has since then not worked in a clinical role since August 2020. 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; 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 public interest grounds is required as the test set out by Dame Smith in the Shipman Report is met on the first

three limbs not just for the past, but Miss Ndumu remains liable in the future to put the public at risk of harm, bring the reputation of the profession into disrepute and breach fundamental tenets of the profession.

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 Miss Ndumu's fitness to practise impaired on the grounds of public interest.

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

The original panel determined the following with regard to sanction:

'Having found Miss Ndumu'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:

- *Lack of full insight into failings*
- *Serious failures in relation to basic nursing care, with the potential for unwarranted, serious, patient harm*
- *Potential to damage the reputation of the profession*

The panel also took into account the following mitigating features:

- *Some admissions*
- *A reflective piece provided*
- *Reference to some training*
- *Evidence of some remorse*

- *A number of contextual factors including:*
- *pressure in the work environment and*
- *difficulty in accessing the computer system.*

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 Ndumu'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 Ndumu'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 Ndumu'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, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *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.

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 disproportionate and would not be a reasonable response in the circumstances of Miss Ndumu's case because the panel concluded that failings identified are remediable and that Miss Ndumu has shown some insight. The panel was of the view that a suspension order would not give Miss Ndumu the opportunity to return to nursing and strengthen her practice.

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.

The panel determined that the following conditions 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 not be the sole nurse on duty of any shift.*
2. *You must ensure that you are working at all times on the same shift as, but not always directly observed by a registered nurse more senior than you.*
3. *You must work with your line manager or supervisor to create a personal development plan (PDP). Your PDP must address the concerns about relevant areas of CPR, life support/emergency care and clinical record keeping. You must send your case officer a copy of your PDP and progress ahead of any review.*
4. *You must complete training in the relevant areas of CPR, life support/emergency care and clinical record keeping and send evidence of this to your case officer ahead of any review*
5. *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.*
6. *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.*
7. *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.*

8. *You must tell your case officer, within seven days of your becoming aware of:*

- a) *Any clinical incident you are involved in.*
- b) *Any investigation started against you.*
- c) *Any disciplinary proceedings taken against you.*

9. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*

- a) *Any current or future employer.*
- b) *Any educational establishment.*
- c) *Any other person(s) involved in your retraining and/or supervision required by these conditions*

The period of this order is for 12 months.'

Submissions on Impairment and Sanction

Ms Roy on behalf of the NMC outlined the background of the case. She submitted that Miss Ndumu has not worked since the imposition of the order and has not worked as a nurse since July 2021. Ms Roy explained that Miss Ndumu has still not provided a reflective piece, has shown a lack of full insight and has not provided any evidence of up to date training in any of the areas of concern which leads to a risk of repetition remaining.

Ms Roy submitted that a finding of impairment is needed on both public protection and public interest grounds. She explained that in terms of an appropriate sanction, the panel should be mindful that Miss Ndumu's registration would have expired in July 2021 and remains on the NMC register due to these on-going proceedings. She explained that if the current order were allowed to lapse then Miss Ndumu would be removed from the NMC register and would need to reapply following the completion of a return to practice course.

Ms Roy submitted that Miss Ndumu has not shown any evidence of trying to find nursing employment and has also not shown evidence of any employment rejection letters. Ms Roy submitted that the current conditions of practice order remains appropriate and proportionate and should be continued. She explained that a suspension order or striking off order would neither be appropriate nor proportionate given the circumstances of this case and that Miss Ndumu has shown a willingness to engage in the process and some insight into her failings.

Ms McKeith submitted that Miss Ndumu is currently employed as a Customer Service Advisor for a travel insurance provider where she has worked since December 2021. Ms McKeith also explained that Miss Ndumu did not think that she needed to attend the hearing today but thought that having representation was most important. Ms McKeith explained that Miss Ndumu says she is eager to return to nursing practice and would like to complete her diabetes management training course as she has not been able to do this because of the on-going proceedings.

Ms McKeith submitted that Miss Ndumu has shown genuine remorse and developed insight into the concerns. Ms McKeith explained that Miss Ndumu has said she has been unable to find work as her registration has expired. Therefore, she submitted that the panel should lift the conditions of practice order as Miss Ndumu has shown that she wants to work as a nurse and is an experienced nurse who other than these proceedings has had no problems with her nursing practice.

Ms McKeith submitted that, if the panel do not agree to this course of action, then she asks for condition two to be lifted as Miss Ndumu will find it difficult to find employment where she has to be constantly monitored by a senior nurse.

Decision and reasons on current impairment

The panel has considered carefully whether Miss Ndumu's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in

light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle and the written submissions from Ms McKeith on behalf of Miss Ndumu. It has also taken account of the oral submissions made by Ms Roy on behalf of the NMC and by Ms McKeith.

The panel heard and accepted the advice of the legal assessor concerning the approach it should take to the review of a substantive order.

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 noted that the following were identified by the previous panel as helpful to this review:

- Your attendance at any review
- A further reflective piece
- Any evidence of training
- Any updates on your current work or future plans in nursing

While Ms McKeith attended on behalf of Miss Ndumu and provided details of current work and plans, no reflective piece nor evidence of training was supplied.

At this hearing the panel asked Ms McKeith for information about matters such as what steps Miss Ndumu would now take if she were to find herself in a similar situation in the future. It allowed her the opportunity to take instructions from Miss Ndumu on those issues.

In the panel's view the responses showed no further insight and a lack of understanding of the areas of Miss Ndumu's nursing practice that require development. For example, the

question of what Miss Ndumu would do in a similar situation in the future went effectively unanswered.

In its consideration of whether Miss Ndumu has taken steps to strengthen her practice, the panel took into account that she has not practised as a nurse since 2021 and has failed to gain employment since the imposition of the conditions of practice order. The panel noted that Miss Ndumu has not attempted to undertake any relevant training and has also not provided a reflective piece. It did note that she is represented at today's hearing, and she has been engaging with the proceedings as well as showing some remorse, though without any detail, in the written submissions provided by Ms McKeith on her behalf. However, given the limited insight and lack of remediation, the panel determined that a risk of repetition remains in place. 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 not only to protect patients but also to meet 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.

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

Decision and reasons on sanction

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

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Miss Ndumu'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 Ndumu's 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 imposing a further conditions of practice order on Miss Ndumu'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 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 Miss Ndumu has thus far been unable to engage with the conditions of practice order due to her not currently being employed in a clinical setting.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there were no deep-seated attitudinal problems. In this case, there are conditions that 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 an appropriate response in the circumstances of Miss Ndumu's case due to her engagement in the proceedings and the evidence of some, though limited, remorse and insight.

Accordingly, the panel determined, pursuant to Article 30(1)(b) 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 20 July 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 not be the sole nurse on duty of any shift.
2. You must ensure that you are working at all times on the same shift as, but not always directly observed by a registered nurse more senior than you.
3. a. You must create a Personal Development Plan (PDP) within three months of these conditions coming into effect. This PDP must address:
 - Prioritisation of care
 - Recognition of a deteriorating patient
 - CPR
 - Life support/emergency care and
 - Clinical record keeping
- b. you must send a copy of your PDP to your case office within seven days of completion.
- c. when you have gained employment you must work with your line manager and/or supervisor to review your PDP. You must send your case officer a copy of your PDP as agreed between you and your line manager and/or supervisor within one month of gaining nursing employment.
4. You must complete training in the relevant areas of:
 - Prioritisation of care
 - Recognition of a deteriorating patient
 - CPR
 - Life support/emergency care and
 - Clinical record keeping

You must send evidence of this to your case officer ahead of any review.

5. 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.

6. 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.

7. 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.

8. You must tell your case officer, within seven days of your becoming aware of:
 - a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.

9. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
 - a) Any current or future employer.

- b) Any educational establishment.
- c) Any other person(s) involved in your retraining and/or supervision required by these conditions

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 20 July 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 Ndumu has complied with the order. At the review hearing the panel may extend the order or make a further order taking effect on its expiry, it may revoke the order or any condition of it, it may vary any condition of it, or it may replace the order with another order.

Any future panel reviewing this case may be assisted by:

- Your attendance at any review of this order
- A reflective piece showing your understanding and insight into the impact of your misconduct on patients, colleagues, the public and the nursing profession
- Any evidence of training
- Any updates on your current work or future plans in nursing
- Any relevant up to date testimonials from any work undertaken paid or voluntary

This will be confirmed to Miss Ndumu in writing.

That concludes this determination.