

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

**Substantive Order Review Hearing
Thursday 30 May 2024**

Virtual Hearing

Name of Registrant: Mohamed Sesay

NMC PIN: 01A0235E

Part(s) of the register: Registered Nurse- Sub Part 1
Adult Nurse – 5 January 2004

Relevant Location: London

Type of case: Misconduct

Panel members: Scott Handley (Chair, Lay member)
Alison Thomson (Registrant member)
Helen Kitchen (Lay member)

Legal Assessor: Graeme Henderson

Hearings Coordinator: Rebecka Selva

Nursing and Midwifery Council: Represented by Emily Saji, Case Presenter

Mr Sesay: 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 at the end of 4 July 2024 in
accordance with Article 30 (1)**

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

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

You indicated that you supported the application.

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 in connection with [PRIVATE] as and when such issues are raised in order to protect your privacy.

Decision and reasons on review of the substantive order

The panel decided to impose a conditions of practice order for a further period of 12 months and to vary the existing conditions when the order comes into effect.

This order will come into effect at the end of 4 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 5 June 2023.

The current order is due to expire at the end of 4 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:

'That you, a registered nurse:

1. Between 1 November 2017 and August 2018 on 'Ward One':

a) On one or more occasions stroked Colleague A's arm.

b) On one occasion, touched Colleague A's ear.

c) On one occasion:

i) Touched Colleague A inappropriately.

ii) After being told by Colleague A not to touch her, you said 'oh you should be friendlier' or words to that effect.

...

e) On one occasion you attempted to sit too close to Colleague A by wheeling your chair close to her.

...

3. On one or more occasions on 'Ward One', you would attempt to sit too close to Colleague C.

...

9. Your conduct in Charges 1a – c, 1 e and 3, failed to respect the professional and/or personal boundaries of colleagues on Ward One.

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:

'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 found that limbs b) and c) of the test mentioned above has been met in this case. The panel has heard no evidence that any patients were affected as a result of your behaviour. Nevertheless, It found that your misconduct did breach the fundamental tenets of the nursing profession, specifically that you failed to act in a professional manner. As a result, your behaviour in breaching boundaries with your colleagues has brought the reputation of the nursing profession into disrepute.

However, the panel was satisfied that the misconduct in this case is remediable and therefore capable of being addressed.

In considering whether you have demonstrated any insight and/or taken any steps to address the concerns around your misconduct, the panel took into account your oral evidence, your submissions and the bundle you provided which included a number of character references. The panel determined that you have shown limited remorse for the incidents during your oral submissions, and that you have shown limited insight into the impact your misconduct had on your colleagues, particularly Colleague A and Colleague C, on public perception of the nursing profession and the NMC as its regulator. Furthermore, you have provided no evidence of steps you have taken to strengthen your practice in the areas of concern, for example training courses.

The panel acknowledged the most up-to-date employment character references you have provided from Homerton Healthcare NHS Foundation Trust, dated 23 May 2022 (from the Ward Manager) and dated 30 January 2023 (from the Matron/Lead Nurse). However, the panel noted that it is not clear whether these referees were fully aware of the nature of the charges.

The panel also noted that there is no evidence of the misconduct found proved being repeated since these incidents. However, due to your lack of insight into your behaviour and there being no evidence of remediation from you, the panel determined that there is a real risk of this behaviour being repeated. It 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 there would be public expectation for staff within the profession to work without the fear of having their boundaries breached, and would therefore expect this kind of behaviour to be marked as unacceptable. It concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case. The panel therefore finds that your fitness to practise is also 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:

'The panel first considered whether to take no action but concluded that this would be inappropriate as it would not address the concerns identified in this 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 a conditions of practice order would be the sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel noted that there have been no reports of similar behaviour being repeated since the incidents. The panel considered that imposing conditions such as thorough retraining, supervision and regular meetings with your line manager or mentor would be effective in helping you to work on strengthening your practice, and at the same time mitigate the risks identified and protect the public.

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 your case. It took into account that there have been no reports of similar incidents/regulatory concerns occurring either prior to the incidents, or since the incidents. It also considered that there is no evidence of deep-seated attitudinal problems. The panel therefore concluded that a conditions of practice order is appropriate and proportionate and 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 came to the conclusion that the conditions set out below are workable and measurable, and it noted that you are willing to comply with any conditions imposed.

In making this decision, the panel carefully considered the submissions of Mr Wigg in relation to the sanction that the NMC was seeking in this case. However, the panel determined that a lesser sanction in this instance has been identified that could suitably address the concerns around your practice, and at the same time ensure that the public remain protected.

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 Nurse in Charge of any shift.*
- 2. You must ensure that you are indirectly supervised any time you are working. Your supervision must consist of working at all times on the same shift as, but not always directly observed by, another registered nurse.*
- 3. You must have a personal development plan (PDP). This PDP must include:*
 - training on professional boundaries with a certified provider. Such training must be face-to-face and involve you undergoing a formal assessment on the learning you have gained; and*

- *keeping a written reflective diary noting down any issues that you have encountered in the workplace regarding managing professional boundaries and how you have sought to address them.*
- 4. *You must meet with your line manager, mentor or supervisor on a monthly basis to discuss your progress on your PDP in the areas mentioned in condition 3 above.*
- 5. *You must obtain a report from your line manager, mentor or supervisor commenting on your professional practice and on your progress with your PDP in the areas mentioned in condition 3 above prior to any review hearing.*
- 6. *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.*
- 7. *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.*
- 8. *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.*
 - e) *Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity*
9. *You must tell your NMC 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.*
10. *You must allow your NMC 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. The panel determined that this would allow you sufficient time to work on engaging with these conditions whilst in practice.

Before the order expires, a panel will hold a review hearing to see how well you have 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 attendance at a future hearing;*
- *A written reflective piece;*
- *Up-to-date character references and testimonials from paid and/or unpaid employment, specifically from colleagues that you work with, attesting to your nursing practice; and*
- *Evidence of relevant training you have completed (e.g. certificates).'*

Decision and reasons on current impairment

The panel has considered carefully whether your fitness to practise remains impaired. The panel asked itself whether you can practise 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 and responses from you. It has taken account of the submissions made by Ms Saji on behalf of the NMC. She referred the panel to the background of your case and the findings by the original panel at your substantive hearing.

Ms Saji submitted that you have continued to engage with the NMC however you have not provided any written reflective pieces.

Ms Saji referred the panel to your on-table document in which you stated that you have not been working. She submitted that it is accepted by the NMC that you would not have been able to get any employment related testimonials, but you would still have been able to provide the NMC with other testimonials or references.

Ms Saji drew the panel's attention to your various Continuing Professional Development (CPD) training that you had completed from 10 October 2023 to 16 October 2023.

However, Ms Saji submitted that as you have not been working since the imposition of the conditions of practice order, you have not been able to comply with any of the conditions. She submitted that an order preventing you from unrestricted practice remains necessary

on the grounds of public protection, and that such an order remains otherwise in the public interest to protect the reputation of the profession and to declare and uphold proper standards of conduct and behaviour within the nursing profession.

Ms Saji invited the panel to extend the current conditions of practice order for a further 12 months as this would allow you the opportunity to make further attempts to seek employment as a registered nurse and be able to demonstrate strengthened practice to remediate the concerns.

The panel also had regard to your submissions.

You submitted that you had worked for the NHS since 1994 and worked as a registered nurse for 25 years before [PRIVATE] and continuing nursing work for agencies. You submitted that during these years of employment you have never had any concerns raised about you.

You told the panel, in regard to the incident, that you may have touched someone at work, but it was not intentional.

You told the panel that you had to pay to complete the CPD training courses set out in your on-table documents.

You informed the panel that you have not been employed for a year. You told the panel that [PRIVATE].

You told the panel that at the Barts Health NHS Trust (Trust) you were popular because you were a nice person and liked to make jokes with people. You also told the panel that you had good contact with the staff and if any shifts needed to be covered, you were often called.

In response to panel questions, you clarified that you have not been able to secure any face-to-face training in respect of maintain professional boundaries.

You clarified that you have not done any nursing work in the past 12 months. You informed the panel that you applied for Healthcare Assistant roles and completed relevant training but were not successful in obtaining a role. You told the panel that Islington Borough Council instructed you to complete a one-day training course. When this was completed, the Council instructed you to go to Fulham hospital in search of work, but this was also unsuccessful.

You clarified for the panel that you have not been able to provide any reflective statements because, in the event that you had secured employment, you wanted to be able to collate it with a PDP plan and produce it with support from the employer.

You clarified that you had applied for positions at the Trust and to a care agency for domiciliary care.

You told the panel that in the past you had experience of caring for older people, worked in stroke rehabilitation units, worked in endocrinology, and worked as a surgical nurse.

You stated to the panel that a ban was put on your employment from July 2019. In 2021 this ban was lifted, and you continued to work as a surgical nurse up until the substantive hearing in 2023 via Total Assist agency.

You told the panel that although [PRIVATE], you wanted to return to nursing.

You clarified for the panel that you regretted the incidents and that you would apologise to the witnesses if you were able.

You stated that you have found it difficult to disclose your conditions of practice order to prospective employers as most of your interviews are conducted online.

You informed the panel that although you have not completed any training in relation to professional boundaries, you now that you are aware that you cannot talk and be as friendly to people as you were prior to these proceedings. You told the panel that you will complete training on professional boundaries when you have the financial capacity to do

so. You confirmed that to date, you had not fully investigated ways in which you could carry out this training.

You clarified for the panel that you have recently applied for [PRIVATE] and await the outcome.

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 your fitness to practise remains impaired.

The panel noted that the original panel found that you had limited insight. At this hearing the panel did not have any new information before it to suggest that you have demonstrated any insight into your misconduct. The panel concluded, on the basis of today's hearing, that you have not developed insight into your misconduct including in relation to the impact of your conduct on your colleagues and the profession, although had some increased awareness of personal boundaries.

Further, there was no information before the panel to show that you had taken steps to strengthen your practice around the areas of concern found proven. Although it is aware that you have not been working as a nurse or otherwise in healthcare and so have not had an opportunity to demonstrate this in a professional context. In the absence of any new information or any material change before it, the panel could not exclude the possibility of similar misconduct being repeated in the future. 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 due to the seriousness of the issues and for the reasons given above, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that your fitness to practise remains impaired.

Decision and reasons on sanction

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 imposing a conditions of practice order 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 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 have been unable to comply with your conditions of practice due to your current employment status, but that you are engaging with the NMC and willing to comply with any conditions imposed.

The panel was of the view that a varied conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there was no evidence of general incompetence and that the misconduct related to poor judgement rather than clinical incompetence. In this case, 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 your case.

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 4 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 Nurse in Charge of any shift.
2. You must ensure that you are indirectly supervised any time you are working. Your supervision must consist of working at all times on the same shift as, but not always directly observed by, another registered nurse.
3. You must have a personal development plan (PDP). This PDP must include:
 - training on professional boundaries with a certified provider. Such training must be face-to-face and involve you undergoing a formal assessment on the learning you have gained; and
 - keeping a written reflective diary noting down any issues that you have encountered in the workplace regarding managing professional boundaries and how you have sought to address them.

You must send your NMC case officer a copy of your PDP no longer than 14 days after it has been agreed with your line manager, mentor or supervisor.

4. You must meet with your line manager, mentor or supervisor on a monthly basis to discuss your progress on your PDP in the areas mentioned in condition 3 above.
5. You must obtain a report from your line manager, mentor or supervisor commenting on your professional practice and on your progress with your PDP in the areas mentioned in condition 3 above prior to any review hearing.

The report and updated PDP must be provided to your NMC case officer prior to any review hearing.

6. 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.
7. 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.
8. 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.
 - e. Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity
9. You must tell your NMC 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.
10. You must allow your NMC 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 4 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 you have 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 attendance at a future hearing;
- A written reflective piece;
- Up-to-date character references and testimonials from paid and/or unpaid employment, specifically from colleagues that you work with, attesting to your nursing practice; and
- Evidence of relevant training you have completed (e.g. certificates).

This will be confirmed to you in writing.

That concludes this determination.