

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

**Substantive Order Review Hearing  
Friday, 14 February 2025**

Virtual Hearing

<b>Name of Registrant:</b>	Anne Ndlovu	
<b>NMC PIN</b>	12K0981E	
<b>Part(s) of the register:</b>	Registered Nurse – Sub Part 1 Mental Health Nursing (Level 1) – February 2022 Nurse Independent / Supplementary Prescriber (Level 1) –November 2013	
<b>Relevant Location:</b>	Leicester	
<b>Type of case:</b>	Misconduct	
<b>Panel members:</b>	Adrian Ward Carole McCann Christine Moody	(Chair) (Registrant member) (Lay member)
<b>Legal Assessor:</b>	Juliet Gibbon	
<b>Hearings Coordinator:</b>	Peaches Osibamowo	
<b>Nursing and Midwifery Council:</b>	Represented by Leesha Whawell, Case Presenter	
<b>Anne Ndlovu:</b>	Not present and unrepresented	
<b>Order being reviewed:</b>	Conditions of practice order (6 months)	
<b>Fitness to practise:</b>	<b>Impaired</b>	
<b>Outcome:</b>	<b>Order to lapse upon expiry on 22 February 2025, in accordance with Article 30 (1).</b>	

## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Ms Ndlovu was not in attendance and that the resuming Notice of Hearing had been sent to Ms Ndlovu's registered email address by secure email on 21 January 2025.

Ms Whawell, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rule 32(3) of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Whawell submitted that good service was found to have been effected at the hearing on 16 January 2025 and that there is no minimum timeframe for written service in relation to resuming hearings. Nevertheless, written service of notice of this resuming hearing was sent on 21 January 2025 via email.

The panel accepted the advice of the legal assessor.

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

In the light of all of the information available, the panel was satisfied that Ms Ndlovu has been served with notice of this resuming hearing in accordance with the Rules.

## **Decision and reasons on proceeding in the absence of Ms Ndlovu**

The panel next considered whether it should proceed in the absence of Ms Ndlovu. The panel had regard to Rule 21 and heard the submissions of Ms Whawell who invited the panel to continue in the absence of Ms Ndlovu. She submitted that Ms Ndlovu had voluntarily absented herself as she had full knowledge of the hearing.

Ms Whawell referred the panel to an email from Ms Ndlovu's representative Ms Ndlovu's dated 14 January 2025, which clearly stated that she would not be attending the hearing and was happy for the hearing to proceed in her absence.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Ms Ndlovu. In reaching this decision, the panel has considered the submissions of Ms Whawell, the representations made on Ms Ndlovu's behalf, and the advice of the legal assessor. It has had particular regard to the relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Ms Ndlovu;
- Ms Ndlovu has informed the NMC via her representative at the RCN that she has received the original Notice of Hearing and confirmed she is content for the hearing to proceed in her absence; and
- There is a strong public interest in the expeditious review of the substantive order, given that it expires on 22 February 2025.

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

### **Decision and reasons on review of the substantive order**

The panel decided to allow the order to lapse upon expiry with impairment at the end of 22 February 2025 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of 6 months by a Fitness to Practise Committee panel (the original panel) on 24 July 2024.

The current order is due to expire at the end of 22 February 2025.

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

*‘That you, a registered nurse, between 1 March 2022 and 30 June 2022:*

*1) Prescribed an Ozempic pen (Semaglutide) to Patient A without clinical justification and/or at an incorrect starting dose of 1mg weekly in light of Patient A’s BMI.*

*2) Failed to provide Patient A with adequate written and/or verbal instructions regarding the Ozempic pen (Semaglutide) in that it was unclear:*

- a) How to administer the Ozempic Pen (Semaglutide);*
- b) What dosage to take.*

*3) Failed to discuss the Ozempic pen (Semaglutide) prescription with Patient A’s GP.*

*4) Offered and/or provided the following regulated services without being appropriately registered for them by the CQC:*

- a) Ozempic pen (Semaglutide) injections for weight loss; b) Endoscopic ear wax removal.*

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

The original panel approved a consensual panel determination as follows, with regard to impairment:

*‘Public protection impairment*

*46. The Parties are conscious that consequent to the ICOPO imposed on 04 July 2022, Mrs Ndlovu has not been able to act as a non-medical prescriber nor prescribe medication. They have thus been unable to demonstrate strengthened practise, therefore the risk of repetition remains.*

*Additionally, the NMC have not received evidence of further training undertaken by Mrs Ndlovu in, for example, medication management and administration, medication competency, and prescribing, to address the areas of deficiency. A finding of impairment is thus necessary on public protection grounds. Public interest impairment*

*47. In Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that: "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."*

*48. Consideration of the public interest therefore requires the Fitness to Practise Committee to decide whether a finding of impairment is needed to uphold proper professional standards and conduct and/ or to maintain public confidence in the profession.*

*49. It is submitted that there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour. The prioritisation of people, practising in line with the best available evidence, preservation of safety with reference to prescribing and provision of services within the law, guidance, and regulations, and the upholding of the reputation of the profession are fundamental tenets of the profession. Nurses must ensure that their conduct at all times justifies the public's trust in the profession. It is submitted that a member of the public appraised of the facts, would be shocked to hear that a registered nurse was entitled to practice without restriction in the circumstances. As such, the need to protect the wider public interest calls for a finding of impairment to uphold standards of the profession, maintain trust and confidence in the profession and the NMC as its regulator. Without a finding of impairment,*

*public confidence in the profession, and the regulator, would be seriously undermined, particularly where there is a risk of repetition, as is present in this case.*

*50. Based on the above paragraphs, the Parties agree that Mrs Ndlovu's fitness to practise is impaired on public protection and public interest grounds.'*

The original panel approved a consensual panel determination as follows, with regard to sanction:

*'54.1. Taking no further action or imposing a caution order would be wholly inappropriate as they would not sufficiently address the seriousness of the concerns in this case and would not meet the wider public interest. Prescribing where inappropriate and acting outside of one's scope of practice could potentially cause harm if not put right and is also sufficiently serious to undermine public confidence in the profession.*

*54.2. Imposing a conditions of practice order would be appropriate. The NMC's guidance (SAN-3c) provides that conditions will be appropriate where there are identifiable areas of the nurse's practice in need of assessment/retraining, there is potential and willingness to respond positively to retraining, patients will not be put in danger directly or indirectly as a result of the conditions, patient will be protected for the period they are in force, and the 36 conditions can be monitored and assessed. The NMC consider that these factors are all present. There is no evidence of harmful deep-seated personality or attitudinal problems, nor evidence of general incompetence. Workable conditions could be put in place in relation to identifiable areas of Mrs Ndlovu's practice in need of assessment and retraining, for example completing non-medical prescribing competency assessments/courses before being allowed to prescribe medication.*

*54.3. In the circumstances, the Parties consider that a suspension order or a striking order would be wholly disproportionate.*

*55. The NMC considers that 6 months would provide Mrs Ndlovu sufficient time to strengthen her practise. A review before expiry would afford the NMC the opportunity to ensure that the misconduct has been sufficiently remediated.'*

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

The panel has considered carefully whether Ms Ndlovu'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 ability to practice kindly, safely and professionally. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle, submissions on Ms Ndlovu's behalf and the on table bundle. It has taken account of the submissions made by Ms Whawell on behalf of the NMC. She submitted that the original panel approved a consensual panel determination after making one amendment. The agreed sanction was a 6 month conditions of practice order made on 24 July 2024.

Ms Whawell submitted Ms Ndlovu had previously informed the NMC that she was finding it difficult to find a suitable course and had asked for assistance with this. However, she has not complied with the conditions of practice order or strengthened her practice.

Ms Whawell submitted that the persuasive burden lies with the registrant to prove that they have sufficiently addressed their past impairment as Ms Ndlovu has not worked as a nurse for two and a half years. Ms Whawell submitted that Ms Ndlovu has not discharged this burden and she submitted that a finding of impairment remains appropriate.

Ms Whawell submitted that the concern in the last hearing was that Ms Ndlovu's registration fee was due to expire on 31 January 2025, but as this deadline has now passed and Ms Ndlovu did not pay the registration fee, it is clear that Ms Ndlovu is only on the register as a result of this substantive order.

As such, Ms Whawell submitted that allowing the substantive order to lapse upon expiry would be the most appropriate course of action. Ms Ndlovu's RCN representative's email of 14 January 2025 concurs with this position and asks for the order to lapse upon expiry.

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 Ms Ndlovu's fitness to practise remains impaired.

The panel noted that the original panel found that Ms Ndlovu had full insight. At the substantive meeting the panel accepted a consensual panel determination in which Ms Ndlovu admitted her failings and showed remorse for her actions. Ms Ndlovu demonstrated an understanding of how her actions caused harm to patient A and potentially put other patients at risk by depriving them of access to medication. Ms Ndlovu demonstrated an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession. The panel noted that Ms Ndlovu's continued engagement with the NMC shows a high level of insight.

In its consideration of whether Ms Ndlovu has taken steps to strengthen her practice, the panel took into account that she has not worked as a nurse or nurse prescriber for over two and a half years, as such she has not strengthened her practice and has been unable to satisfy the conditions of the conditions of practice order. There is no evidence of any relevant training to strengthen her practice. Furthermore, the panel made reference to the RCN's letter of 14 January 2025 that states that Ms Ndlovu currently resides in Zimbabwe and has no intention of returning to nursing in the foreseeable future.

In light of this, this panel determined that Ms Ndlovu has not remedied her misconduct and there is, therefore, a risk that she may repeat matters of the kind admitted and found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.



The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

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

### **Decision and reasons on sanction**

Having found Ms Ndlovu'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 had regard to the NMC Guidance on '*Removal from the register when there is a substantive order in place*', reference '*REV-3h*', last updated 30 August 2024

#### ***'2. Lapse with impairment***

*Where the professional would no longer be on the register but for the order in place, a reviewing panel can allow the order to expire or, at an early review, revoke the order. Professionals in these circumstances will automatically be removed from the register, or lapse, upon expiry or revocation of the order. The panel will record that the professional remains impaired.*

*A panel will allow a professional to lapse with impairment where:*

- the professional would no longer be on the register but for the order in place,*
- the panel can no longer conclude that the professional is likely to return to safe unrestricted practice within a reasonable period of time;*
- a striking off order isn't appropriate.*

### **Public protected by finding of impairment**

*Before allowing a professional to leave the register by lifting a substantive order or allowing it to expire, the panel should make it clear whether they consider the professional's fitness to practise to be currently impaired.*

*This is because nurses, midwives or nursing associates, whose registration lapses or are removed from the register after a suspension or conditions of practice order expires or is lifted, can apply for readmission. In looking at any application in the future, and deciding whether the nurse, midwife or nursing associate is capable of safe and effective practice and meets the requirements for health and character, the Registrar (or one of our Assistant Registrars who also make decisions on behalf of the Registrar) would be able to take account of the panel's decision whether the nurse, midwife or nursing associate's fitness to practise was still impaired when they were removed from the register.'*

The panel took into account that Ms Ndlovu's NMC registration expired on 31 January 2024, as such, she only remains on the register due to the current substantive order in place. The panel noted that Ms Ndlovu's reflection on her decision to allow her NMC registration to lapse clearly indicated that she no longer intends to practise as a nurse in the foreseeable future. The panel took into account the original panels' decisions and reasons why a striking-off order was considered inappropriate. This panel also noted Ms Ndlovu's engagement with her regulator and concluded that a striking-off order remains inappropriate and disproportionate in this case given the nature of the misconduct found proved.

The panel is satisfied that a finding of impairment will adequately protect the public and sufficiently address the public interest concerns in this case. In reaching this decision the panel took into account that when the current order expires Ms Ndlovu will cease to be on the NMC register and she will not be able to return to practice without formally applying to be readmitted to the register, when the registrar will take into consideration that there is a current finding of impairment against her name.

The panel therefore decided to allow the current conditions of practice order to lapse upon expiry on 22 February 2025 in accordance with Article 30(1).

This will be confirmed to Ms Ndlovu in writing.

That concludes this determination.