

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Hearing
19 December 2019

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant:	Catherine K M Motaung
NMC PIN:	01H1733O
Part(s) of the register:	Registered Nurse - Sub Part 1 Adult Nurse (August 2001)
Area of Registered Address:	Shropshire
Type of Case:	Conviction
Panel Members:	Martyn Griffiths (Chair, Lay member) Carolyn Jenkinson (Registrant member) Linda Redford (Lay member)
Legal Assessor:	Nicholas Levisieur
Panel Secretary:	Alison Martin
Mrs Motaung:	Not present and not represented in absence
Nursing and Midwifery Council:	Represented by James Edenborough, Case Presenter
Facts proved by admission:	1
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim Order:	Interim Suspension Order (18 months)

Details of charge:

That you, a registered nurse:

On 31 August 2018 at the Shrewsbury Crown Court were convicted of

- 1. Care worker: ill-treat/wilfully neglect an individual
Contrary to s.20(1) of the Criminal Justice and
Courts Act 2015*

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

Decision on Service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Motaung was not in attendance and that written notice of this hearing had been sent to Mrs Motaung's registered address by recorded delivery and by first class post on 19 November 2019. Royal Mail's Track and Trace documentation shows that notice of this hearing was delivered to Mrs Motaung's registered address on 21 November 2019 at 12:02. Further, the panel noted that notice of this hearing was also sent to Mrs Motaung's representative at the Royal College of Nursing (RCN) on 19 November 2019.

The panel accepted that the notice letter provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mrs Motaung's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Edenborough submitted the NMC had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (“the Rules”).

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Motaung has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision on proceeding in the absence of the Mrs Motaung

The panel next considered whether it should proceed in the absence of Mrs Motaung.

The panel had regard to Rule 21 (2) which states:

- (2) Where the registrant fails to attend and is not represented at the hearing, the Committee—
 - (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;
 - (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
 - (c) may adjourn the hearing and issue directions.

Mr Edenborough invited the panel to continue in the absence of Mrs Motaung on the basis that she had voluntarily absented herself. Mr Edenborough drew the panel’s attention to the correspondence from Mrs Motaung’s representatives at the RCN. He

submitted that there was no reason to believe that an adjournment would secure her attendance on some future occasion. He also drew the panel's attention to a "Your response to the charges" form completed by Mrs Motaung on 26 November 2019.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised "*with the utmost care and caution*".

The panel noted the correspondence from Mrs Motaung's then representative at the RCN in which they stated that Mrs Motaung will not be attending the hearing and that she consents to the hearing proceeding in her absence. The panel also noted the "Your response to the charges" completed by Mrs Motaung.

The panel has decided to proceed in the absence of Mrs Motaung. In reaching this decision, the panel has considered the submissions of the case presenter, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R. v Jones (Anthony William), (No.2) [2002] UKHL 5*. It has had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Motaung;
- there is no reason to suppose that adjourning would secure her attendance at some future date;
- the charges relate to events that occurred in November 2017;
- there is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Motaung in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, and she has admitted the allegation, she will not be able to give evidence on her own behalf. However, in the panel's judgment, this can be mitigated. Furthermore,

the limited disadvantage is the consequence of Mrs Motaung's decision to absent herself from the hearing, waive her rights to attend and/or be represented.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Motaung. The panel will draw no adverse inference from Mrs Motaung's absence in its findings of fact.

Background

The charges arose whilst Mrs Motaung was employed as a registered nurse by Bradeney House Care Home (the "Home") where she had been employed since 2015.

On 7 November 2017 two residents fell to the floor. One resident, Resident A, sustained a hip fracture as a result of the fall. It is alleged that the registrant failed to clinically assess either resident following the falls and that she handled Resident A in a rough manner, poking him on the side of the head on two separate occasions.

On 21 November 2017 Mrs Motaung was arrested and later charged with the ill-treatment, wilful neglect of Resident A.

On 31 August 2018 Mrs Motaung submitted a guilty plea at Shrewsbury Crown Court and was convicted of Care worker ill-treat/wilfully neglect an individual contrary to s.20(1) of the Criminal Justice and Courts Act 2015. Sentencing was adjourned until 20 March 2019 when Mrs Motaung was sentenced to imprisonment for six months suspended for 12 months, with 30 days of rehabilitation.

Mr Edenborough, on behalf of the NMC, provided the panel with a copy of a certificate of conviction and gave a summary of the circumstances leading to Mrs Motaung's conviction. He informed the panel that Mrs Motaung is still in the active period of the suspension of the custodial sentence.

Mr Edenborough drew the panel's attention to Closed Circuit Television (CCTV) footage provided by the Home and submitted that it is clear that Mrs Motaung's fingers make contact with the head of Resident A in a rough manner on three occasions. Mr Edenborough further submitted that it is also material that it was not a single incident so that the panel may infer from this what her disposition was toward the resident. Mr Edenborough submitted that at no time during the CCTV footage does Mrs Motaung attend to examine Resident A. Mrs Motaung also failed to document the fall in the patient notes, and she failed to notify staff at the handover of it.

When considering impairment, Mr Edenborough told the panel that Resident A, an elderly and vulnerable resident, sustained a fractured hip and would have been in considerable pain and discomfort for some hours before his admission to hospital. Mrs Motaung moved Resident A into a sitting position by pushing his head. Mr Edenborough submitted that one could consider her actions to have been deliberate and thereafter to involve a lack of care.

Mr Edenborough drew the panel's attention to Mrs Motaung's reflective piece.

Mr Edenborough submitted that both public protection and the wider public interest are engaged in this case. While Mrs Motaung has indicated her intention to retire, Mr Edenborough submitted to the panel that it did not take away the real risk of harm to patients if Mrs Motaung were to decide to return to practise in the future.

Mr Edenborough informed the panel that the NMC had omitted to obtain the sentencing remarks.

Admissions

In the "Your response to the charges" form Mrs Motaung admitted the following charge:

On 31 August 2018 at the Shrewsbury Crown Court were convicted of

1. Care worker: ill-treat/wilfully neglect an individual
Contrary to s.20(1) of the Criminal Justice and
Courts Act 2015

Accordingly, the panel announced that charges 1 were proved by admission under Rule 24 (5) of the Rules.

Decision on impairment

The panel next went on to decide if as a result of this conviction Mrs Motaung's fitness to practise is currently 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.

Neither the Nursing and Midwifery Order nor the Rules define what is meant by impairment of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted. In deciding this matter, the panel has exercised its professional judgement.

The panel considered and applied the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)* 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.

Mrs Justice Cox went on to say in Paragraph 76:

"I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.”

The panel firstly considered whether Mrs Motaung has in the past acted so as to put a patient or patients at unwarranted risk of harm; and/or have in the past brought the nursing profession into disrepute; and/or have in the past breached one of the fundamental tenets of the nursing profession. The panel had regard to the CCTV footage which clearly shows the incident in which Resident A was poked roughly with force on two occasions by Mrs Motaung. Thereafter it shows a lack of care with Mrs Motaung having walked off without assessing either Resident A or his wife. The panel also noted that Resident A suffered actual harm. The panel found that the incident of 7 November 2017 represented numerous and fundamental breaches of the Code and that the nature and extent of Mrs Motaung’s misconduct is such that the first three limbs (a, b and c) of the Shipman test, approved of in Grant, are engaged in her case.

The allegation in this case is that by reasons by Mrs Motaung’s conviction her fitness to practise is impaired. The conviction is one for ill treatment and wilful neglect of an elderly resident who was living with dementia to whom Mrs Motaung owed a duty of care. She was sentenced for that offence to a six month period of imprisonment which was suspended for a period of 12 months and was ordered to undertake 30 days of rehabilitation activity. There is some evidence that in July 2019 Mrs Motaung was cooperating with the Probation Service and had carried out some of the required activities. She continues to be subject to the suspended sentence of imprisonment. In these circumstances, the panel is satisfied that a finding of impairment is required both to protect the public and in the wider public interest grounds. In these circumstances were a finding that Mrs Motaung was not impaired made, the reputation of the NMC, as the professional regulator, would be severely diminished in the eyes of the general public.

The panel had regard to the fact that patients and the public place trust in the nursing profession, and that nurses are expected to act in a way which justifies that trust. Honesty and integrity are the bedrock of the nursing profession and the panel considered that these were fundamental tenets of the profession. The panel therefore considered that Mrs Motaung's actions, in respect of the charges found proved, breached fundamental tenets of the profession identified above. Her actions were also of such a nature as to bring the profession into disrepute.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. Having regard to the seriousness of the conviction for which Mrs Motaung has been sentenced to imprisonment for six months suspended for 12 months, with 30 days of rehabilitation, the panel considered that this matter engaged high public interest considerations. The panel determined that, in this case, a finding of impairment on public interest grounds was also required.

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

Determination on sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the Registrar to strike Mrs Motaung off the register. The effect of this order is that the NMC register will show that Mrs Motaung has been struck-off the register.

In reaching this decision, the panel has had regard to all of the evidence in this case. The panel heard submissions from Mr Edenborough, on behalf of the NMC.

Mr Edenborough submitted that the appropriate sanction is a striking off order. Mr Edenborough made suggestions as to the aggravating and mitigating circumstances of Mrs Motaung's case.

The panel accepted the advice of the legal assessor.

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) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement. The panel had regard to the need to protect the public and uphold the wider public interest. It did so particularly reminding itself that Mrs Motaung has been convicted of an offence of ill treatment of and the wilful neglect of an individual under her care and given a six month suspended prison sentence for this by the Crown Court.

Before making its decision on the appropriate sanction, the panel considered any aggravating and mitigating features in Mrs Motaung's case.

The panel found the aggravating features to be:

- The vulnerability of the victim.
- Mrs Motaung held a position of leadership in the Home and her direction of the Healthcare Assistant (HCA) was woefully lacking.
- The degree of ill treatment and wilful neglect by Mrs Motaung of a vulnerable patient.
- The reputational damage to the profession.

- Although aware that because of her health she was probably unfit to work, Mrs Motaung chose to do so.

The panel found the mitigating factors to be:

- The medical evidence provided by Mrs Motaung's General Practitioner. The panel accept that her health at this time was compromised.
- Mrs Motaung states that she was working in an environment which was short staffed.
- Mrs Motaung's reflective account demonstrates some insight and remorse.
- Mrs Motaung's probation officer speaks to her having demonstrated remorse and a recognition of her failings, and a positive attitude towards the Court Order.
- The online training undertaken by Mrs Motaung although the panel attach little weight to this.

The panel determined that the ill treatment of Resident A reflected attitudinal shortcomings on the part of Mrs Motaung. The panel noted that Mrs Motaung handled Resident A roughly and without compassion on three occasions within a single incident. This behavior was compounded by her failing to assess both the residents after their fall. The panel note Mrs Motaung's observation in her reflective piece that the HCA "dragging him [Resident A] with that injured failing sore limb was cruel and amounted to abuse." The panel agreed with Mrs Motaung and were of the view that this could have been avoided had she assessed Resident A properly and directed the HCA appropriately.

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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the Sanctions Guidance, which 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 Mrs Motaung’s misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case and the real risk of repetition. The panel decided that a caution order would not adequately protect the public and would not satisfy the wider public interest.

The panel next considered whether placing conditions of practice on Mrs Motaung’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:

Conditions may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):

- 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
- the nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision
- patients will not be put in danger either directly or indirectly as a result of conditional registration
- the conditions will protect patients during the period they are in force
- it is possible to formulate conditions and to make provision as to how conditions will be monitored

The failings demonstrated by Mrs Motaung are founded in her attitude which the panel found to be callous and her treatment of Resident A to be rough and uncaring. The

panel noted Mrs Motaung's lack of self-awareness of her own health concerns and how this impacted on those for whom she had a caring responsibility.

The panel is of the view that there are no practical or workable conditions that could be formulated, given Mrs Motaung's attitude and demeanour during the incident in November 2017. The behaviour that resulted in the criminal conviction was not something that can be addressed through retraining.

Furthermore the panel concluded that the placing of conditions on Mrs Motaung's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates that a suspension order would be appropriate where (but not limited to):

- Does the seriousness of the case require temporary removal from the register?
- Will a period of suspension be sufficient to protect patients and the public interest?

This sanction may be appropriate where the misconduct is not fundamentally incompatible with continuing to be a registered nurse or midwife in that the public interest can be satisfied by a less severe outcome than permanent removal from the register. This is more likely to be the case when some or all of the following factors are apparent (this list is not exhaustive):

- a single instance of misconduct but where a lesser sanction is not sufficient;
- no evidence of harmful deep-seated personality or attitudinal problems;
- no evidence of repetition of behaviour since the incident;

- the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;
- in cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions;
- in cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.

The aggravating factors that the panel took into account, in particular, are the actual and potential patient harm and the risk of repetition of Mrs Motaung's ill-treatment and wilful neglect of a vulnerable individual. The behaviour, as highlighted by the facts found proved and which led to Mrs Motaung's criminal conviction for ill treatment and wilful neglect of an individual, was a significant departure from the standards expected of a registered nurse. The panel found that the serious breaches of the fundamental tenets of the profession evidenced by Mrs Motaung's behaviour were fundamentally incompatible with her remaining on the register.

The panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following from the SG:

Key considerations are:

- can public confidence in the professions and the NMC be maintained if the nurse or midwife is not removed from the register?
- is striking-off the only sanction which will be sufficient to protect the public interest?

- is the seriousness of the case incompatible with ongoing registration (see above for the factors to take into account when considering seriousness)?

This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional, which may involve any of the following factors.

- A serious departure from the relevant professional standards as set out in key standards, guidance and advice.
- Doing harm to others or behaving in such a way that could foreseeably result in harm to others, particularly patients or other people the nurse or midwife comes into contact with in a professional capacity. Harm is relevant to this question whether it was caused deliberately, recklessly, negligently or through incompetence, particularly where there is a continuing risk to patients. Harm may include physical, emotional and financial harm. The seriousness of the harm should always be considered.
- Abuse of position, abuse of trust, or violation of the rights of patients, particularly in relation to vulnerable patients.
- Any violent conduct, whether towards members of the public or patients, where the conduct is such that the public interest can only be satisfied by removal.
- Persistent lack of insight into seriousness of actions or consequences.
- Convictions or cautions involving any of the conduct or behaviour in the above examples.

Mrs Motaung's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Motaung's actions were so serious that to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mrs Motaung's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

Determination on interim order

The panel considered the submissions made by Mr Edenborough that an interim order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

If no appeal is made, then the interim order will be replaced by the striking-off order 28 days after Mrs Motaung is sent the decision of this hearing in writing.

That concludes this determination.