

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

**Substantive Hearing
Tuesday 2 January 2024 – Thursday 4 January 2024**

Virtual Hearing

Name of Registrant:	David Muza
NMC PIN:	18A0014S
Part(s) of the register:	Registered nurse - Sub part 1 RNMH - Level 1 (16 March 2020)
Relevant Location:	Glasgow
Type of case:	Misconduct
Panel members:	David Evans (Chair, Lay member) Susan Ball (Registrant member) David Newsham (Lay member)
Legal Assessor:	Suzanne Palmer
Hearings Coordinator:	Hazel Ahmet
Nursing and Midwifery Council:	Represented by Selena Jones, Case Presenter
Mr Muza:	Present and not represented at the hearing
Facts proved:	Charges 1, 2, 2.1, 2.2 (all by admission)
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Suspension (6 months)
Interim order:	No interim order imposed

Details of charge

‘That you, a Registered Nurse,

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

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

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

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

Background

You were referred to the NMC on 17 April 2021 by Witness 3, former Night Nurse Manager at Springvale Care Home (‘the Home’). At the time of the concerns raised in the referral you were working as a registered nurse at the Home.

The alleged facts are as follows.

On 18 February 2021, Witness 3 was at the Home and noticed that an email had been sent to the University of Edinburgh from the generic Home email address on 30 January 2021. The contents of the email were a reference for you for entry onto a PhD programme at the University of Edinburgh. The reference was signed as being completed by Witness

3, however, you completed the reference yourself and sent it to the University of Edinburgh. When you were confronted about your actions at the Home, you admitted that you had sent the reference. You tendered your resignation.

You are currently working as a Bank Nurse via an agency, performing shifts at a Home and occasionally in a hospital setting.

Decision and reasons on facts

At the outset of the hearing, you informed the panel that you made full admissions to all Charges.

The panel therefore finds Charges 1, 2, 2.1, and 2.2, proved in their entirety, by way of your admissions.

At the outset of the hearing, Ms Jones informed the panel that, apart from one minor detail, you did not dispute the content of any of the NMC's witness statements and did not propose to question any of its three witnesses. She informed the panel that you did not object to the statements being read by the panel without the witnesses being called. She informed the panel that, [PRIVATE], Witness 2 was not available to attend in person, and that it had previously been agreed that Witness 3 would not be called. Ms Jones said that the NMC did not propose to call Witness 1 unless the panel wishes to ask her any questions. The panel therefore read the statements and related exhibits without hearing from the witnesses.

The panel also heard evidence from you under oath.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your

fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Ms Jones invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The NMC Code of professional conduct: standards for conduct, performance and ethics (the Code)'

Ms Jones submitted that you have admitted to all of the Charges which are proven, and to your credit, these admissions were made early on in this process, prior to this hearing.

Ms Jones submitted that you have not presented any evidence of remediation, nor attended any relevant courses to address your misconduct. She highlighted that there is no evidence which indicates that your behaviour is unlikely to be repeated in the future.

Ms Jones submitted that you admitted to your dishonesty, however, on the Case Management Form, you had denied that there was any planning behind this dishonesty, or that your fitness to practice is currently impaired. She submitted that on the form, you claimed yourself to be an honest person, which is at odds with your oral submission that you were dishonest.

Ms Jones submitted therefore, that any remorse you have expressed should not be deemed genuine, and that there is misconduct in this case.

You submitted that you accept the Charges against you which have been put forward, and that you are aware it is difficult to prove that you have changed and will not be dishonest once again.

You submitted that you are being genuine and truly are apologetic and have learned 'a lot' through this experience and are willing to make changes. You said that your actions were impulsive, [PRIVATE], the day before the application was due to be submitted, that the former University lecturer you initially approached to be a referee could not provide a reference within the timescale required. You said that Witness 1 was absent from work [PRIVATE], so you stated that this was your reason for not approaching her about providing a reference. You accepted that your actions showed an error of judgement.

Submissions on impairment

Ms Jones moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Jones submitted your fitness to practice is currently impaired, and that your actions were not a '*few moments*' of consideration, but rather a sequence of events which led to you dishonestly providing a falsified reference. Ms Jones submitted that the evidence of your misconduct was uncovered by Witness 3, and that this is how dishonesty had come to light; you did not admit your wrongdoing, until it was proven against you.

Ms Jones submitted that this situation is far from a misjudgement, and that it makes no difference as to whether you had begun your nursing role recently or had been in practice for many years. She submitted that the misconduct in this case relates to attitudinal concerns, not to experience.

Ms Jones submitted that the evidence presented does not show your misconduct to have been [PRIVATE], nor an impulse decision. She submitted that the sequence of events you explained, do not equate to a sudden action, but rather a series of thoughts and actions.

Ms Jones highlighted that you '*do not know why you did what you did*' and submitted that you therefore present no understanding [PRIVATE], and therefore, you cannot safeguard or ensure you would never repeat such behaviours.

Ms Jones said dishonesty is hard to remediate, and there is no remediation in this case. You have good knowledge of the NMC Code of conduct, particularly in relation to trust and honesty. She submitted that your conduct fell below what was expected from a registered nurse, and that there is a risk that this conduct could be repeated in the future.

Ms Jones submitted, that on the grounds of the wider public interest, your fitness to practice should be found impaired.

You did not submit anything specific in relation to impairment.

The panel accepted the advice of the legal assessor which included reference to a number of cases. These included *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *R (Remedy UK Ltd) v GMC* [2010] EWHC 1245 (Admin), *R (Calhaem) v GMC* [2007] EWHC 2606 (Admin), *Johnson & Maggs v NMC (No. 2)* [2013] EWHC 2140 (Admin), *Cohen v GMC* [2008] EWHC 581 (Admin), *CHRE v NMC & Grant* [2011] EWHC 927 (Admin), *Kimmance v GMC* [2016] EWHC 1808 (Admin), and *Lusinga v NMC* [2017] EWHC 1458 (Admin).

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

As advised by the legal assessor, the panel considered your actions in this case cumulatively, regarding the dishonesty proven in Charge 2, to be an aggravating feature of the actions referred to in Charge 1.

The panel was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code. Specifically:

[2018 The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates]

20 Uphold the reputation of your profession at all times

20.1 *keep to and uphold the standards and values set out in the Code*

20.2 *act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment*

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that your actions in this case were sufficiently serious to amount to misconduct.

The panel determined that your actions were a serious departure from what was expected of a registered nurse. It considered that various aspects of the Code were breached, and although you have admitted the Charges, and apologised, they remain serious in nature. The panel considered that writing your own reference and sending it in order to make it appear that it was sent by your colleague, would be regarded as deplorable by fellow members of the profession.

The panel determined that you have not upheld the standards and values set out in the Code, and that your actions amount to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, your fitness to practise is currently impaired.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

‘The question that will help decide whether a professional’s fitness to practise is impaired is:

“Can the nurse, midwife or nursing associate practise kindly, safely and professionally?”

If the answer to this question is yes, then the likelihood is that the professional’s fitness to practise is not impaired.’

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:

a) ...

b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

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

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

Regarding insight, the panel considered you have made both admissions and have expressed remorse for your actions both in your written statement and in your live evidence. You have acknowledged that what you did was wrong and how this impacted negatively on the reputation of the nursing profession. You apologised for your misconduct to the panel, and also to Witness 1, the University and the NMC in your written statement and oral evidence. You explained your understanding on how difficult it is to prove honesty. Consequently, the panel determined you have shown some insight. However, the panel considered that your insight is limited. You have not provided sufficient evidence of reflection and understanding in relation to your actions. You have not demonstrated a real understanding of why you acted as you did, why it was so serious, or how you would prevent yourself from acting in a similar way in future.

The panel noted that dishonesty is difficult, although not impossible, to remediate. It considered that you have not yet demonstrated sufficient insight to address your dishonesty. Neither have you demonstrated any relevant steps taken to address your failings, for example, training in professional ethics. The panel further noted that in your written statement, you admitted that you did not realise that your misconduct was dishonest, until you '*reflected*' on it. The panel considered this inconsistent with your

evidence at this hearing, that you were aware at the time, that your actions were wrong. It noted that prior to becoming a nurse, you had a career as a teacher, including work at a University. It considered that you must have been aware of the significance of submitting a fraudulent reference and did not accept that your actions were impulsive as you suggest. It therefore considered that your assertion of impulsiveness, demonstrates your lack of insight into your behaviour.

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

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

The panel bore in mind the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

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

undermined if a finding of impairment were not made in this case and therefore finds your fitness to practise impaired on the wider public interest grounds.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 6 months. The effect of this order is that the NMC register will show that your registration has been suspended.

Submissions on sanction

Ms Jones submitted that the allegations in this case are serious, and that there is no clear evidence of remediation and that there remains a real risk of repetition.

Ms Jones submitted that the mitigating features in this case are as follows:

- You admitted to the allegations at an early stage (on the Case Management Form);
- You did not require witnesses to attend this hearing and to give evidence.

Ms Jones submitted that the aggravating factors in this case are as follows:

- You did not make an admission voluntarily, rather, your misconduct was uncovered through a report by Witness 1 and a subsequent investigation;
- You have presented no genuine remorse and insight, as you maintain that you are an honest person;
- You have not fully accepted your actions and have sought to minimise them;
- Your misconduct occurred whilst your colleague was absent from work, and therefore, there was an element of planning behind your misconduct.

Ms Jones submitted that the public confidence in the profession and the regulation of it would be seriously diminished if you were to remain on the register. Therefore, Ms Jones confirmed that the NMC are seeking a striking-off order.

You submitted that you are genuinely remorseful, and genuinely do accept the Charges against you. You stated that you would not have admitted your misconduct if you were not genuine. You apologised once again to the NMC, to Witness 1, to the University, and to the public for your misconduct, and expressed your interest in continuing as a registered nurse.

The panel heard and accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

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

The panel also took into account the following mitigating features:

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

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

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public interest issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of*

impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.' The panel considered that your misconduct was not at the lower end of the spectrum of impairment and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

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

Furthermore, the panel concluded that the placing of conditions on your registration would not address the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

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

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. The panel noted that although dishonesty is attitudinal, this was an isolated instance and there was no evidence of deep-seated attitudinal problems. Although the panel determined that there was a risk of repetition in

your case, it felt that a period of suspension would afford you the time to reflect on your practice and for you to gain full insight.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

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

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

The panel considered that this order is necessary to mark the seriousness of your misconduct in order to maintain public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

In making this decision, the panel carefully considered the submissions of Ms Jones in relation to the sanction that the NMC was seeking in this case. However, the panel

considered that your misconduct does not meet the threshold required to impose a striking-off order.

The panel determined that a suspension order for a period of 6 months was appropriate in this case to mark the seriousness of the misconduct and to afford you sufficient time to gain the necessary insight and strengthen your practice.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Colleague and employer testimonials and references relating to your honesty, integrity, and practice;
- Evidence of your engagement with training or study to strengthen your practice in relation to honesty, ethics, and integrity;
- A reflective piece addressing the issues of honesty, ethics, and integrity, how those issues were impacted by your actions and how you would demonstrate those qualities in your practice going forward;
- Evidence of strengthened practice in relation to the Charges in your case.

This will be confirmed to you in writing.

Decision and reasons on interim order

Ms Jones applied for an interim suspension order for a period of 18 months on the grounds of public protection and in the wider public interest.

You did not oppose the imposition of an interim order.

The panel decided that it was not necessary to impose an interim order. It had regard to the seriousness of the matters found proven. However, it also bore in mind that it has found that there is no risk of harm to patients associated with this case, and that the threshold for imposing an interim order on purely public interest grounds is high.

The panel considered that public confidence in the nursing profession would not be seriously undermined if no interim order is imposed in this case pending any potential appeal. It noted that you have been practising without restriction since these events which occurred in January 2021, without further incident. It further noted that if you do not appeal, the substantive order will come into effect in 28 days' time. If you do appeal, but are unsuccessful in your appeal, the substantive order will come into effect at the conclusion of the appeal process. The panel considered that any public interest considerations in this case will be suitably and adequately addressed by the imposition of the substantive order.

That concludes this determination.