

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

**Substantive Meeting  
Thursday 18 February 2021**

Virtual Hearing

<b>Name of registrant:</b>	Louis Tshimuanga
<b>PIN:</b>	02Y0424O
<b>Part(s) of the register:</b>	Registered Nurse – Sub-part 1 Mental Health Nursing – 1 December 2002
<b>Area of registered address:</b>	London
<b>Type of case:</b>	Conviction
<b>Panel members:</b>	Gregory Hammond (Chair, Lay member) Amy Noakes (Registrant member) Jennifer Portway (Lay member)
<b>Legal Assessor:</b>	Oliver Wise
<b>Panel Secretary:</b>	Catherine Acevedo
<b>Facts proved:</b>	Charge 1
<b>Facts not proved:</b>	None
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking-off order
<b>Interim order:</b>	Interim suspension order (18 months)

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

The panel was informed at the start of this meeting that Mr Tshimuanga was not in attendance and that the Notice of Meeting had been sent to Mr Tshimuanga's registered email address on 14 January 2021.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, date and venue of the meeting.

The panel accepted the advice of the legal assessor.

In light of all of the information available, the panel was satisfied that Mr Tshimuanga has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

## **Details of charge**

*That you, a registered nurse*

- 1. On 28 September 2018, at East London Magistrates' Court, were convicted of assault by beating, contrary to section 39 of the Criminal Justice Act 1988.*

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

## **Decision and reasons on facts**

The charge concerns Mr Tshimuanga's conviction and, having been provided with a copy of the memorandum of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3). These state:

**'31.—** (2) *Where a registrant has been convicted of a criminal offence—*

- (a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and*
- (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.*
- (3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.'*

The panel also noted that Mr Tshimuanga accepted the fact of the conviction.

## **Background**

At the material time Mr Tshimuanga was employed as a Band 5 registered nurse on Leadenhall Ward (the Ward) in the Tower Hamlets Centre for Mental Health. The Centre is part of Mile End Hospital and comes under the control of East London NHS Foundation Trust (the Trust). The Ward is a 19 bedded inpatient ward for older adults with functional mental illness.

On 26 April 2019 the NMC received a referral from a colleague of Mr Tshimuanga to explain that on 27 March 2018 she had responded to an incident whilst working as Duty Senior Nurse on the Ward, where Mr Tshimuanga was hitting a patient across the face. The referrer explained that Mr Tshimuanga had been found guilty of a criminal offence, which he had subsequently unsuccessfully appealed.

The Police disclosed their Case File Summary which describes the incident in more detail. A verbal argument between Mr Tshimuanga and the patient was witnessed by other staff. The patient picked up a chair, at which point another member of staff activated the emergency alarm, and the patient put the chair down. The patient and Mr Tshimuanga are described as reaching for each other and another staff member got between them but the patient fell to the floor. Mr Tshimuanga then slapped the patient around the head several times while the patient continued to lash out at him.

The Trust investigated the incident and produced three reports, dated 16 July 2018, 15 January 2019 and 3 April 2019. The Trust completed the first addendum report on 15 January 2019 in light of a criminal conviction. The second addendum report was produced as a result of Mr Tshimuanga's appeal against conviction and sentence.

There is information in the Trust's documents to suggest that the patient had targeted Mr Tshimuanga with aggressive behaviour and racist comments prior to the assault.

A memorandum of conviction from East London Magistrates Court confirms Mr Tshimuanga pleaded not guilty but was found guilty on 28 September 2018 of assault by beating contrary to section 39 of the Criminal Justice Act 1988. Mr Tshimuanga was sentenced to a community order comprising 120 hours' unpaid work within 12 months; pay £100.00 compensation; £85 victim surcharge; £620 costs.

Mr Tshimuanga appealed against his conviction and sentence. On 14 February 2019 Snaresbrook Crown Court partially allowed the appeal against sentence and varied the sentence. The Court cancelled the compensation element of the sentence but required Mr Tshimuanga to pay costs of the appeal in the sum of £415.00. The transcript of the appeal confirms that the compensation element was removed due to the mild injuries caused and also questioned if it was the appropriate forum to award compensation. Otherwise, the appeal was dismissed.

### **Fitness to practise**

Having reached its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Tshimuanga's fitness to practise is currently impaired by reason of Mr Tshimuanga's conviction. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

### **Representations on impairment**

The NMC requires the panel to bear in mind its overarching objective to protect 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. The panel has referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and the NMC guidance - *Serious concerns which are more difficult to put right*.

The NMC submitted that the offence in this case relates to an incident where Mr Tshimuanga hit a vulnerable patient. Whilst acknowledging the mild injuries suffered by the patient, not only has Mr Tshimuanga put the patient at an unwarranted risk of harm, but also has caused actual harm to a patient. When the attitudinal nature of the offences and Mr Tshimuanga's limited insight are considered, there is a high risk that his actions will be repeated.

The NMC submit that Mr Tshimuanga's actions are also so serious that a finding of current impairment is required in order to maintain public confidence in the profession and to uphold proper professional standards. The NMC submits that the public would be shocked to learn that a registrant found guilty of this offence, which directly relates to his work, was deemed fit to practise as a nurse.

The panel noted that Mr Tshimuanga provided a reflective piece dated February 2021, two references and evidence that he had completed the 120 hours of unpaid work ordered by the Court.

The panel accepted the advice of the legal assessor.

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

The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code). The NMC outlined the parts of the Code which it considered to be engaged in this case.

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

***“Prioritise people***

***1 Treat people as individuals and uphold their dignity***

*1.1 treat people with kindness, respect and compassion*

***4 Act in the best interests of people at all times***

***19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice***

***Promote Professionalism and Trust***

***20 Uphold the reputation of your profession at all times***

*20.4 keep to the laws of the country in which you are practising”*

The panel next went on to decide if as a result of the conviction, Mr Tshimuanga’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. 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 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) 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*
- a) ...'*

The panel found that limbs a-c of the Grant test were engaged in this case. The panel found that the public was put at risk and a patient was caused physical harm as a result of Mr Tshimuanga's criminal action. Mr Tshimuanga's criminal action had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel had sight of Mr Tshimuanga's reflective piece dated February 2021. The panel considered Mr Tshimuanga's reflective piece to be self-serving and lacking in any remorse. The reflective piece only acknowledged the effects his conviction had had on himself and demonstrated no insight into how his conduct had impacted on patients, colleagues and the nursing profession.

In its consideration of whether Mr Tshimuanga has remedied his practice, the panel took into account that there was no evidence of any training undertaken, and Mr Tshimuanga's reflective piece did not demonstrate that he had developed insight into his failing and

therefore it is of the view that there is a risk or repetition. In any event, the panel considered that Mr Tshimuanga's failing is so serious that it is very difficult to remediate. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC 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.

The panel determined that, in this case, a finding of impairment on public interest grounds was also required. The panel was of the view that a member of the public would be shocked if a finding of impairment was not made in this case.

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

## **Sanction**

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

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

## **Representations on sanction**

The NMC referred the panel to the NMC guidance (considering sanctions for serious cases).



The NMC submit that the correct sanction in this case is a striking-off order. The criminal conviction in this case represents not only a fundamental breach of trust, in that it resulted in actual harm to a vulnerable patient, but also conduct which is fundamentally incompatible with being a registered nurse. Finally, due to the vulnerable nature of the victim, a striking-off order is the only sanction which will be sufficient to protect members of the public and maintain professional standards.

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

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

The panel took into account the following aggravating features:

- Mr Tshimuanga's conduct involved a vulnerable patient.
- Mr Tshimuanga's actions caused actual harm to a patient.
- Mr Tshimuanga has demonstrated no insight.
- Mr Tshimuanga has demonstrated no remorse.

The panel also took into account the following mitigating features:

- This was a one-off incident from a nurse of otherwise good character.
- The patient had targeted Mr Tshimuanga with aggressive behaviour and racist comments prior to the assault.
- Two referees, one of whom is a registered nurse, attest to Mr Tshimuanga's criminal behaviour being out of character for a person they hold in high regard.

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 neither protect the public nor be 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 Mr Tshimuanga's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mr Tshimuanga's criminal conviction 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. The panel decided that it would neither protect the public nor be in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Tshimuanga's registration would be a sufficient and appropriate response. The panel is of the view that there are no practicable or workable conditions that could be formulated, given the nature of the charge in this case. Furthermore, the panel concluded that the placing of conditions on Mr Tshimuanga'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 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 Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel noted that Mr Tshimuanga's conviction related to a single incident and there was no evidence that he had repeated his criminal behaviour since the incident. However, the panel was not satisfied that Mr Tshimuanga had demonstrated insight or remorse into his failings. The circumstances of the criminal conviction, in the panel's view, was

evidence of a deep-seated attitudinal problem and it was not satisfied that Mr Tshimuanga does not pose a significant risk of repeating his behaviour in the future.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel concluded that the serious breach of the fundamental tenets of the profession evidenced by Mr Tshimuanga's actions is fundamentally incompatible with Mr Tshimuanga remaining on the register.

In this particular case, 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 paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives 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 patients, members of the public, or maintain professional standards?*

Mr Tshimuanga's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with his remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Tshimuanga's actions were serious and to allow him 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 Mr Tshimuanga's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of a striking-off order would be sufficient in this case.

The panel considered that this order was necessary to ensure public safety, 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 standards of behaviour required of a registered nurse.

### **Interim order**

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Tshimuanga's own interests until the striking-off sanction takes effect.

The panel accepted the advice of the legal assessor.

### **Representations on interim order**

The panel took account of the representations made by the NMC that it is necessary for the protection of the public and otherwise in the public interest for there to be an interim suspension order of 18 months to cover the appeal period.

### **Decision and reasons on interim order**

The panel was satisfied that an interim 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.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the appeal period.

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

This decision will be confirmed to Mr Tshimuanga in writing.

That concludes this determination.