

**Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Hearing
16 March 2020**

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

Name of registrant:	Mr Keith Masuku
NMC PIN:	05H1354E
Part(s) of the register:	Registered Nurse – Sub Part 1 Learning Disabilities Nursing (21 October 2005)
Area of registered address:	Hampshire
Type of case:	Misconduct and conviction
Panel members:	Philip John Sayce (Chair, Registrant member) Kevin Connolly (Lay member) Anne Owen (Registrant member)
Legal Assessor:	Michael Levy
Panel Secretary:	Oliver Stephens
Nursing and Midwifery Council:	Represented by Christopher Scott, NMC Case Presenter
Mr Masuku:	Not present nor represented in absence
Order being reviewed:	Case 1: Suspension Order (6 months) Case 2: Suspension Order (12 month)
Fitness to Practise:	Case 1: Impaired Case 2: Impaired
Outcome:	Case 1: Striking-off order in accordance with Article 30(2) and (4) Case 2: Striking-off order in accordance with Article 30 (2) and (4)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Masuku was not in attendance, and he was not represented in his absence.

The panel was informed that the notice of this hearing was sent to Mr Masuku on 2 March 2020 by recorded delivery and first class post to his registered address.

The panel took into account that the notice of hearing provided details of the review hearing including the time, dates and venue of the hearing and, amongst other things, information about Mr Masuku's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Mr Scott, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (the Rules). Mr Scott conceded that Mr Masuku had not been provided with the required 28 day notice period as required by rule 11 of the Rules. Mr Scott referred the panel to the documents before it and a series of emails between the NMC case officer and Mr Masuku's then representative.

Mr Scott submitted that notwithstanding formal service not being provided with 28 days of notice, listing the matter for 16 March 2020 was for the convenience of Mr Masuku and his then representative. Further, Mr Scott submitted that Mr Masuku's representative accepted short notice on his behalf, as set out in an email from his then representative to the NMC, dated 27 February 2020, which states:

"Yes that's fine, I accept short notice on behalf of Mr Masuku."

The panel accepted the advice of the legal assessor.

The panel found that service was effective in terms of Rule 11. The panel noted that the original review was relisted at Mr Masuku's request and whilst he was represented he waived the 28 day notice period.

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

Decision and reasons on proceeding in the absence of Mr Masuku

The panel next considered whether it should proceed in the absence of Mr Masuku. The panel had regard to Rule 21(2), which states:

- ‘21.—** (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 Scott invited the panel to continue in the absence of Mr Masuku. Mr Scott submitted that there is a statutory obligation on the NMC to review substantive orders before their expiry in order to uphold the overarching objective of public protection. Mr Scott submitted therefore that there is a significant public interest in proceeding to review the order today. Mr Scott further submitted that there is no request for an adjournment and there is no reason to believe that an adjournment would secure Mr Masuku’s attendance at a future date. Mr Scott also informed the panel that Mr Masuku had not provided a reason for his non-attendance. Mr Scott also referred the panel to the documentation previously relied upon.

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*' as referred to in the case of *R v Jones* [2002] UKHL 5.

The panel has decided to proceed in the absence of Mr Masuku. In reaching this decision, the panel has considered the submissions of Mr Scott, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that there had been no adjournment application by Mr Masuku and that there is no reason to suppose that adjourning the proceedings would secure his attendance at a future date. The panel noted the email from Mr Masuku's representative, dated 27 February 2020, which states:

"Keith consents to the hearing going ahead on the dates 16-19 March."

The panel considered that the change of date of the hearing was made at the request of Mr Masuku and in these circumstances it considered that he had chosen to voluntarily absent himself. The panel noted that this is a mandatory statutory review and both orders are due to expire on 26 March 2020. Accordingly, the panel determined it is both in the public interest and in Mr Masuku's interest to review the matter expeditiously.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Masuku.

Decision and reasons on review of the current order

The panel decided to impose a striking-off order with immediate effect in respect of Case 2, in accordance with Article 30(2) and (4) of the Nursing and Midwifery Order (2001) (as amended) ("the Order"). In respect of Case 1, it considered that when considered in totality an striking-off order was also appropriate.

This is the second review of two substantive orders originally imposed in respect of Mr Masuku's registration.

Case 1 (059001):

On 28 September 2018 a panel of the Fitness to Practise Committee imposed a conditions of practice order for a period of 12 months. That order was reviewed on 27 September 2019 in accordance with Article 30(2) and (4)(d) of the Nursing and Midwifery Order 2001 (as amended) ("the Order") and the conditions of practice order was replaced with a six month suspension order. The panel is reviewing this order pursuant to 30(2) of the Order.

Case 2 (063154):

On 28 January 2019 a panel of the Fitness to Practise Committee imposed a suspension order for a period of 12 months. That order was also reviewed on 27 September 2019 in accordance with Article 30(2) and (4)(d) of the Order and the suspension order was extended for a period of one month in order that it could be reviewed alongside the substantive order in Case 1. The panel is reviewing this order pursuant to 30(2).

The charges found proved which resulted in the imposition of substantive orders were as follows:

Case 1:

That you while employed as the Registered Manager of Mere Lodge Care Home,

1. *Failed to ensure that there was an adequate system in place for the management of resident's finances.*
2. *You actions as set out in charge 1 caused and or contributed to a discrepancy in,*
 - (a) *Resident A's finances in the sum of £816;*

(b) Resident B's finances in the sum of £6915;

(c) Resident C's finances in the sum of £6913.15.

Case 2:

That you a registered nurse,

- 1. On 15 September 2017, were convicted of driving a motor vehicle with excess alcohol contrary to section 5(1)(a) of the Road Traffic Act 1988*
- 2. On 15 September 2017, were convicted of failing to surrender without reasonable cause or as soon as reasonably practicable on 18 October 2016 at Nottingham Magistrates' Court, having been released on bail in criminal proceedings contrary to section 6(1) and 6(2) of the Bail Act 1976.*
- 3. Failed to comply with a community order contrary to schedule 8 Criminal Justice Act 2003*

The first reviewing panel determined the following with regard to impairment:

"Case 1

The panel had regard to information before it and considered whether there had been a change of circumstances since the previous hearing. The panel noted that since the original substantive hearing, there had been another substantive hearing, in relation to convictions Mr Masuku had received for driving a motor vehicle with excess alcohol, for failing to surrender without reasonable cause and for failing to comply with a community order. The panel noted that a panel of the Fitness to Practise Committee had imposed a 12 month suspension order in respect of that matter at a substantive hearing on 28 January 2019.

The panel also had regard to a note of a telephone call dated 11 April 2019, in which an NMC case officer was asked by an individual from Flawless Care whether Mr Masuku was able to work around vulnerable patients, as a job offer was pending. The NMC case officer responded by referring to the conditions of practice order, and confirming there were no restrictions from Mr Masuku working with vulnerable patients. The panel had made enquiries during this hearing in relation to the nature of this job offer and asked for further information about the telephone call. However, the NMC case officer had been unable to confirm further details, and it had not been possible to make contact with the individual who had made the original telephone call in April 2019. The panel had no information in relation to Mr Masuku's current employment, and whether he had in fact sought or taken up employment as a registered nurse, or in another capacity.

Other than this, the panel considered that there had been no new information. Mr Masuku had not engaged with the NMC's proceedings since March 2018. The panel therefore had no evidence of insight and remediation before it, in order to demonstrate any steps taken by Mr Masuku to address his failings. The panel also had no evidence to understand whether or not Mr Masuku had complied with the conditions of practice order. In this respect, the panel noted that a suspension order had been imposed in January 2019, and when this came into effect, the conditions of practice order would not have been workable. However, it noted that the conditions of practice order was imposed in September 2018, which provided a few months where Mr Masuku would have been able to work as a nurse under the conditions, and to demonstrate evidence of remediation. Furthermore, Mr Masuku had not demonstrated any evidence of complying with the recommendations made by the previous panel, such as demonstrating insight and reflection into his misconduct, providing references and testimonials or demonstrating any professional development.

Given the lack of evidence of insight and remediation, and no information to suggest that Mr Masuku had made any attempts to address his failings, the panel considered that a risk of repetition remains. The panel therefore determined that a finding of impairment remains necessary on the grounds of public protection.

The panel bore 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 considered that there is a duty on registered nurses to engage with their regulator. The panel considered that Mr Masuku's failure to engage with these proceedings and to demonstrate any evidence of addressing his failings was a serious matter. The panel therefore determined that a finding of impairment also remains necessary on public interest grounds, in order to maintain confidence in the nursing profession and in the NMC as a regulator.

Case 2

The panel considered the information before it, noting that there had been no new information since the previous substantive hearing. There was no evidence to suggest that Mr Masuku had complied with the recommendations made by the substantive hearing panel. Mr Masuku had not provided a reflective piece to demonstrate evidence of insight and remorse, nor had he provided any evidence to demonstrate the successful completion of the community order and the drink impaired drivers programme.

The panel had regard to the seriousness of the criminal convictions and the impact of Mr Masuku's behaviour in undermining the reputation of the profession and bringing it into disrepute. The panel considered that Mr Masuku had not demonstrated any steps to address such behaviour and its impact on the wider profession. The panel therefore considered that a risk remains of Mr Masuku repeating behaviour which could bring the profession into disrepute in the future.

The panel noted that this case did not concern Mr Masuku's clinical practice and therefore did not give rise to any public protection concerns. The panel therefore determined that a finding of impairment is not required on public protection grounds, as did the original substantive hearing panel.

However, the panel bore in mind the wider public interest which includes maintaining confidence in the nursing profession and in the NMC and upholding proper standards of conduct. Having regard to the seriousness of Mr Masuku's behaviour, for which he had received criminal convictions, and his lack of engagement and steps to address such behaviour, the panel determined that a finding of impairment remains necessary on public interest grounds. This finding would maintain confidence in the nursing profession and in the NMC as a regulator.

For these reasons, the panel finds that Mr Masuku's fitness to practise remains impaired, in relation to both of these cases."

The first reviewing panel determined the following with regard to sanction:

"Case 1

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the risk of repetition identified and the seriousness of the case. The panel determined that taking no action would not protect the public and it would not satisfy the public interest.

The panel then considered whether to impose a caution order but concluded that this would also be inappropriate in view of the risk of repetition identified and the seriousness of the case. The panel determined that imposing a caution order would not protect the public and it would not satisfy the public interest.

The panel next considered the further imposition of a conditions of practice order. In assessing whether a conditions of practice order would be appropriate, proportionate and workable, the panel had regard to a number of factors. The panel noted that Mr Masuku had not been engaging with these proceedings, and therefore it had no information in relation to his employment, and whether he had been working as a nurse. The panel had no information before it to suggest that Mr Masuku had been able to comply with the current conditions of practice order. The panel balanced this with the fact that Mr Masuku was made subject to a suspension order in January 2019 in respect of his other case. From that point

Mr Masuku would have been unable to practise as a registered nurse, and therefore would have been unable to comply with the conditions of practice order. However, the panel noted that Mr Masuku had been subject to this conditions of practice order for a few months prior to the imposition of the suspension order, during which time there had been no evidence of complying with the conditions. Furthermore, there had been no other evidence of engagement, no demonstration of insight or any attempts to remediate his failings and no other information to assist the panel in assessing whether it would be possible for Mr Masuku to work safely under conditions of practice.

Unlike the panel which dealt with the original substantive hearing, this panel was in a position to take into account the fact of the three criminal convictions that led to Mr Masuku's suspension order in January 2019. Although the offences were committed in 2017, Mr Masuku's fitness to practise in respect of them was not considered until after the conditions of practice order was imposed. The original substantive hearing panel was therefore unable to take the convictions into account in its determination. Mr Masuku had continued to fail to engage with these proceedings, and to demonstrate any recognition of the impact of his behaviour on the reputation of the nursing profession. In these circumstances, the panel considered that it would not be possible to formulate practicable and workable conditions which would address the outstanding risks with Mr Masuku's practice and protect the public, but which would also address the seriousness of these matters, and therefore satisfy the public interest. Furthermore, the suspension order imposed in respect of the convictions meant that the conditions of practice order was no longer workable. The panel concluded that a conditions of practice order would not be appropriate and proportionate in the circumstances of this case.

The panel next considered whether to impose a suspension order. The panel considered that a suspension order would protect the public, as well as satisfying the public interest, by marking the seriousness of these matters, and maintaining confidence in the nursing profession and in the NMC as a regulator. The panel considered that a suspension order would give Mr Masuku the opportunity to engage with these proceedings, and to demonstrate evidence of insight and

remediation, in order to facilitate his return to safe practice, if Mr Masuku wishes to return to nursing.

The panel considered whether to impose a striking-off order, but determined that this would be disproportionate at this time. The panel did not consider that the original misconduct was fundamentally incompatible with remaining on the register. The panel considered that permanent removal would run contrary to the purpose of a suspension order, which would give Mr Masuku the ability to take steps to address his failings and to demonstrate evidence of insight and remediation to a future reviewing panel.

The panel is satisfied that a suspension order is appropriate and proportionate in the circumstances of this case. The panel considered that a suspension order for six months would give Mr Masuku sufficient time to engage with these proceedings, and to demonstrate evidence of insight into his failings and evidence of steps he has taken to remediate.

The panel decided to conclude this review under Article 30(2) and determined to impose a suspension order with immediate effect, under Article 30(4)(d) of the Order. The panel noted that if it were to conclude this review under Article 30(1) of the Order, the suspension order would come into effect upon the expiry of the current order, and therefore the conditions of practice order would remain in place until the end of 30 October 2019, despite being unworkable. The panel therefore imposed the suspension order in respect of this case with immediate effect. This order will expire at the end of 27 March 2020.

This order will be reviewed by another panel prior to its expiry. That panel may revoke the order, allow the order to lapse on expiry, confirm or extend the order or replace the order with another order, including that of a striking-off order.

A future reviewing panel may be assisted by evidence of the following:

- *Mr Masuku's engagement with these proceedings and/or his attendance at the review hearing;*

- *A reflective piece written by Mr Masuku demonstrating insight and reflection into the effect of his misconduct on residents, his colleagues, his employer and on the reputation of the nursing profession, with particular reference to safeguarding and the duty to protect vulnerable people;*
- *Up to date references and testimonials in relation to any employment Mr Masuku has undertaken, whether paid or unpaid, and whether in the healthcare sector or not;*
- *Any attempts by Mr Masuku to keep his clinical skills and knowledge up to date.*

Case 2

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the risk of repetition of the behaviour identified and the seriousness of the case. The panel determined that taking no action would not satisfy the public interest.

The panel then considered whether to impose a caution order but concluded that this would also be inappropriate in view of the risk of repetition of the behaviour identified and the seriousness of the case. The panel determined that imposing a caution order would not satisfy the public interest.

The panel next considered whether to impose a conditions of practice order. The panel noted that this case did not concern Mr Masuku's clinical practice, but related to criminal convictions he had received. The panel therefore considered that conditions of practice would not be appropriate in this type of case, given that it concerned Mr Masuku's behaviour. Furthermore, having regard to the seriousness of these matters, the panel determined that a conditions of practice order would not satisfy the public interest.

The panel next considered the current suspension order. The panel noted that this is an early review of an existing suspension order, and it considered whether it would be appropriate to confirm, extend or replace the order. The panel noted that the previous substantive panel imposed a suspension order to mark the

seriousness of Mr Masuku's behaviour and to uphold the reputation of the nursing profession. The panel considered that the current order remained appropriate in order to uphold the wider public interest. The panel further considered that allowing the current suspension order to remain in place would continue to give Mr Masuku the opportunity to engage with these proceedings and to demonstrate evidence of insight and remorse in relation to his behaviour.

The panel considered whether to impose a striking-off order, but determined that this would be disproportionate in circumstances where the current suspension order gave Mr Masuku the opportunity to demonstrate evidence of insight and remediation into his behaviour.

The panel is satisfied that allowing the current suspension order to continue remains appropriate and proportionate in the circumstances of this case. However, the panel considered it was necessary to extend the current suspension order for a period of one month, in order to ensure its date of expiry was concurrent with the suspension order imposed in respect of Mr Masuku's other case.

The panel therefore decided to extend the current suspension order for one month, in accordance with Article 30(2) and (4)(b) of the Order. This order will expire at the end of 27 March 2020.

This order will be reviewed by another panel prior to its expiry. That panel may revoke the order, allow the order to lapse on expiry, confirm or extend the order or replace the order with another order, including that of a striking-off order.

A future reviewing panel may be assisted by evidence of the following:

- Mr Masuku's engagement with these proceedings and/or his attendance at the review hearing;*
- A reflective piece written by Mr Masuku demonstrating insight and remorse into the convictions and the impact of his behaviour on members of the public and on the reputation of the nursing profession."*

Decision and reasons on current impairment

The panel has considered carefully whether Masuku'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 suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. It has noted the decision of the last panel. However, it 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. It has taken account of the submissions made by Mr Scott, on behalf of the NMC. He informed the panel of the background of the case and referred the panel to the relevant pages in the bundle. Mr Scott referred the panel to the recommendations provided by the previous panel in relation to what Mr Masuku could provide to assist a future reviewing panel. Mr Scott submitted that this material was not before the panel today and that Mr Masuku had not attended or engaged with the NMC beyond fixing a date in relation to today's hearing. Mr Scott also submitted that Mr Masuku had not provided a reflection in relation to either of the two cases. Mr Scott therefore submitted that the misconduct in Case 1 has not been remediated and there remained a risk of repetition. In relation to Case 2, Mr Scott submitted that whilst there are no clinical concerns there were actions which resulted in a criminal conviction and failure to comply with criminal sanctions for which Mr Masuku has provided no redress or remediation. Mr Scott submitted that in relation to Case 2, Mr Masuku's fitness to practice remains impaired in order to uphold the public interest.

Mr Scott therefore submitted that in respect of both Case 1 and Case 2, Mr Masuku's fitness to practice is currently impaired. In respect of the appropriate sanction, Mr Scott submitted that this is a matter for the panel and its professional judgment. Mr Scott reminded the panel that the full range of orders are available to the panel today.

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 Mr Masuku's fitness to practise remains impaired in relation to each matter.

Case 1

The panel considered that it had no new information before it. The panel noted that Mr Masuku had not engaged with the NMC's proceedings, notwithstanding a request to change the date of today's hearing. The panel also considered that there is a history of non-engagement in relation to the NMC. The panel therefore had no evidence of insight or remediation in order to demonstrate any steps taken by Mr Masuku to address his failings before it. Accordingly, the panel considered that a risk of repetition remains. The panel therefore determined that a finding of current impairment remains 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 considered that there is a duty on registered nurses to engage with their regulator. Similar to the last review panel, the panel considered that Mr Masuku's failure to engage with these proceedings and to demonstrate any evidence of addressing his failings was a serious matter. The panel therefore determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

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

Case 2

The panel considered the information before it, and similarly noted that there had been no new information since the previous review hearing. There was no evidence to

suggest that Mr Masuku had complied with the recommendations made by the review hearing panel. Mr Masuku had not attended or engaged with his regulator or provided a reflective piece to demonstrate evidence of insight and remorse. The panel considered that this demonstrated a pattern of behaviour, particularly in light of Mr Masuku's non-compliance with sanctions issued by the court and his regulator. In this regard, the panel considered there was evidence of deep-seated attitudinal issues in relation to Mr Masuku's duty to engage and comply with orders imposed on him.

The panel also had regard to the seriousness of the criminal convictions and the impact of Mr Masuku's behaviour in undermining the reputation of the profession and bringing it into disrepute. The panel considered that Mr Masuku had not demonstrated any steps to address such behaviour or its impact on the wider profession. The panel therefore considered that a risk remains of Mr Masuku repeating behaviour which could bring the profession into disrepute in the future.

The panel considered that Case 2 did not give rise to any extant public protection concerns and accordingly a finding of impairment was not necessary on the grounds of public protection.

However, the panel bore in mind the wider public interest which includes maintaining confidence in the nursing profession and in the NMC and upholding proper standards of conduct. Having regard to the seriousness of Mr Masuku's behaviour, resulting in criminal convictions and his continued lack of engagement and steps to address such behaviour, the panel determined that a finding of impairment remains necessary on public interest grounds. The panel considered this would maintain confidence in the nursing profession and in the NMC as its regulator.

For these reasons, the panel finds that Mr Masuku's fitness to practise remains impaired in relation to both Case 1 and Case 2.

Decision and reasons on sanction

Having found Mr Masuku'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 considered each of the cases and made separate determinations in respect of each of them.

Case 1

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the risk of repetition and 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 risk of repetition and seriousness of the case a caution order would be inappropriate. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether conditions of practice on Mr Masuku'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 noted that Mr Masuku had not been engaging with these proceedings, and therefore it was unlikely that appropriate or workable conditions could be formulated. The panel considered that Mr Masuku has continually failed to engage with these proceedings, except to change the date of his original meeting. The panel also considered Mr Masuku has not provided any evidence to demonstrate recognition of the impact of his behaviour on the reputation of the nursing profession. In these circumstances, the panel considered that it would not be possible to formulate practicable and workable conditions which would address the outstanding risks with Mr Masuku's practice and therefore address the public protection concerns. Nor did the panel consider conditions would be able to be formulated which would also address the seriousness of these matters, and therefore satisfy the public interest. The panel was therefore not able to formulate conditions of practice.

The panel next considered imposing a further suspension order. The panel noted that Mr Masuku has not shown any evidence of remediation or remorse for his misconduct. Further, Mr Masuku has not demonstrated any insight into his previous failings. The panel had careful regard to the recommendations of the previous review panel and noted that the panel considered a suspension order would allow Mr Masuku the opportunity to engage and demonstrate evidence of insight and remediation with a view to safely returning to practice. The panel considered that it did not have any evidence before it in relation to this.

The panel also considered that it was able to take into account the circumstances in relation to Case 2 and the seriousness of the convictions. It considered Mr Masuku continues to disengage with these proceedings and had not demonstrated any insight of the impact of his behaviour on the reputation of the nursing profession. The panel considered that when considered alongside Case 2 and viewed in totality for the reasons set out below in relation to Case 2, that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Mr Masuku from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

This striking-off order will replace the current suspension order with immediate effect in accordance with Article 30(2)

Case 2

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the risk of repetition and 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 risk of repetition and seriousness of the case a caution order would be inappropriate. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether to impose a conditions of practice order. The panel noted that this case did not concern Mr Masuku's clinical practice, but related to criminal convictions he had received. The panel therefore considered that conditions of practice would not be appropriate in this type of case, given that it concerned Mr Masuku's behaviour. Furthermore, having regard to the seriousness of these matters, the panel determined that a conditions of practice order would not satisfy the public interest. The panel also considered that in order for a conditions of practice order to be effective that Mr Masuku's continued engagement would be required. This has not been evidenced to date. The panel also noted there was nothing before it for it to conclude that this would change in the future.

The panel next considered imposing a further suspension order. The panel noted that the previous review panel imposed a further period of suspension in order to give Mr Masuku the opportunity to engage with these proceedings and to demonstrate evidence of insight and remorse in relation to his behaviour. The panel noted that it had no evidence before it to suggest that Mr Masuku has demonstrated any insight, remorse or remediation.

The panel also had regard to the NMC SG, and considered that when considered together with Case 1, this was not a single instance of misconduct and there appeared to be evidence of deep-seated attitudinal problems. The panel considered that Mr Masuku has shown a pattern of behaviour of non-engagement and non-compliance, in relation to both his professional regulator and in relation to compliance with orders as set out by the Court despite direction by a reviewing panel of steps he could take to demonstrate evidence of remediation and insight. It gave careful consideration as to whether a period of suspension would be sufficient to mark the public interest in this case. In all the circumstances, the panel considered a further period of suspension would not be sufficient in this case, given the seriousness of the matter and the pattern of non-compliance and non-engagement. The panel considered that the only order appropriate which could ensure that the public confidence in both the nursing profession and in the NMC as regulator is maintained, is that of a striking-off order.

This striking-off order will replace the current suspension order with immediate effect in accordance with Article 30(2).

This decision will be confirmed to Mr Masuku in writing.

That concludes this determination.