

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

**Substantive Meeting
18 June 2020**

Virtual Meeting

Name of registrant: Vinaya Amutha Selvi Samuel

NMC PIN: 04C03480

Part(s) of the register: Registered Nurse – Sub part 1
Adult Nursing (9 March 2004)

Area of registered address: England

Type of case: Misconduct

Panel members: Paul Powici (Chair, Lay member)
Anita Underwood (Registrant member)
Ian Dawes (Lay member)

Legal Assessor: Justin Gau

Panel Secretary: Amira Ahmed

Facts proved: All

Facts not proved: none

Fitness to practise: Impaired

Sanction: Caution order (5 years)

Interim order: No order

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that Ms Samuel was not in attendance and that the Notice of Meeting had been sent to Ms Samuel's registered email address on 12 May 2020.

Further, the panel noted that the Notice of Meeting was also sent to Ms Samuel's representative at ERRAS Legal Services on 12 May 2020.

In the light of all of the information available, the panel was satisfied that Ms Samuel 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, employed at Medway Maritime Hospital:

1. On 22 November 2017, whilst on sick leave from Medway Hospital, you worked a bank shift at Maidstone Hospital;
2. Your conduct in charge 1 was dishonest in that you worked a bank shift when you had represented to your employer that you were unfit to work as a nurse;
3. On 19 May 2018, you left Medway Hospital prior to the end of your shift, informing your employer you had childcare commitments, and then commenced a bank shift at Maidstone Hospital;
4. Your conduct in charge 3 above was dishonest in that you represented to your employer that you were unable to work due to childcare commitments when this was not the case;

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

Background

Ms Samuel's registration commenced on 09 March 2004.

She joined the Medway NHS Foundation Trust ("the Trust) on 16 September 2016 as a band 6 clinical sister on Keats Ward, a specialist programme within the unplanned and integrated care directorate.

The NMC received a referral on 03 August 2018 following concerns that Ms Samuel was working at Maidstone Hospital whilst on sick leave or carers leave from Keats Ward.

Decision and reasons on facts

In reaching its decisions on the facts, the panel considered all the evidence adduced in this case. It had regard to the NMC meeting bundle, the NMC's statement of case, the written representations from Ms Samuel's representative in particular the most recent submissions and the testimonials provided.

At the outset of the meeting, the panel noted Ms Samuel has made full admissions to all the charges.

The panel therefore found the charges proved in their entirety, by way of Ms Samuel's admissions.

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 Ms Samuel's 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 suitability to remain on the register unrestricted.

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, Ms Samuel's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

In coming to its decision, the panel had regard to the case of *Roylance v GMC (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.'

The NMC invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' ("the Code") in making its decision.

The NMC identified the specific, relevant standards where Ms Samuel's actions amounted to misconduct.

The panel bore in mind its overarching objective is 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).

The NMC invited the panel to find Ms Samuel's fitness to practise impaired.

Dr Akinoshun on behalf of Ms Samuel's sent the NMC written representations stating that:

"I am fully aware that dishonesty is very difficult to remediate but I believe the panel can be reassured by the fact that the registrant has been practising safely since 2018 without any repetition of similar act of dishonesty. I implore the panel to consider the root cause analysis of her dishonesty ... and her struggle with two children without any adequate financial support.

Were the failings identified in this case liable to happen again?, The panel is invited to ask rhetorically "why hasn't it?". Because despite her working as a nurse without restriction on her practice from 2018 till now, there has been no repetition. This allows the panel to be satisfied that it is highly unlikely this will be repeated again in the future.

...

It is finally submitted that in view of the all the issues raised above, the fitness to practise of the Registrant is not currently impaired and she does not currently pose risk to the patients or public. I hereby submit that the risk of repetition is nil."

The panel accepted the advice of the legal assessor which included reference to *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311 and *Ivey v Genting Casinos Ltd t/a Crockfords* [2017] UKSC 67.

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.

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

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;

20.8 Act as a role model of professional behaviour at all times.

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 a member of the public would consider dishonest conduct deplorable and the charges therefore amount to serious misconduct.

The panel found that Ms Samuel's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Ms Samuel'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 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.'*

There was no evidence before the panel to find that patients were caused physical harm as a result of Ms Samuel's misconduct, but that limbs b, c and d of the Dame Janet Smith test were engaged. The panel determined that Ms Samuel's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into

disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty as being serious.

Regarding insight, the panel considered that Ms Samuel has made full admissions and has demonstrated an understanding that what she did was wrong and how this impacted negatively on the reputation of nursing. Ms Samuel in her response to the charges stated:

“The NMC referral has given me the opportunity to reflect upon my actions and enable me to develop further insight on how my conduct in this case might lead to fundamental breach in trust and confidence. As a registered nurse, it is important to maintain proper standards of conduct and behaviour and public confidence in the nursing profession. I have been able to step back and develop further learning and insight into my misconduct. I now fully understand the seriousness and the implications of my actions and behaviour in relation to the nursing profession, public confidence and the wider public perception of the profession. I now consider my misconduct to be a fundamental departure from the standards expected of a registered nurse.”

The panel was satisfied that whilst dishonesty is difficult to remediate Ms Samuel has gone a long way along the path of remediation as evidenced by her reflection, the testimonials from her employer and her unblemished employment since the incident. Therefore, the panel carefully considered the evidence before it in determining whether or not Ms Samuel has remediated her practice. The panel took into account the written representations from Dr Akinosun on behalf of Ms Samuel, the testimonials and the fact that she is currently practising as a nurse with no concerns being raised by her employer.

The panel decided based upon the evidence before it that a finding of impairment is not necessary on the grounds of public protection.

The panel bore in mind that 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.

A sister with significant nursing experience should have realised that in booking a shift at another hospital whilst on sick leave from her employment is dishonest and the public would expect the regulator to take appropriate action.

The panel determined that a finding of impairment on public interest grounds is required because public confidence in the profession would be undermined if a finding of impairment were not made in this case.

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

Sanction

The panel considered this case very carefully and decided to make a caution order for a period of five years. The effect of this order is that Ms Samuel's name on the NMC register will show that she is subject to a caution order and anyone who enquires about her registration will be informed of this order.

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 panel noted that in the Notice of Meeting, dated 12 May 2020, the NMC had advised Ms Samuel that it would seek the imposition of a 3-6 month suspension order with a review if it found Ms Samuel's fitness to practise currently impaired.

The panel also bore in mind the written representations from Dr Akinosun that stated a caution would be appropriate in this case. He explained:

“According to SG, caution order might also be appropriate where the nurse's history is such that the panel is confident that there is no risk to the public or to patients which requires the nurse's practice to be restricted. I made this particular submission based on the fact that she has been practising safely for almost two years post incident without being involved in any act of dishonesty.”

Decision and reasons on sanction

Having found Ms Samuel'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. 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:

- Ms Samuel's personal financial gain;
- Her actions had the potential to put patients at a risk of harm as she would be too tired after an all day shift to work safely.

The panel also took into account the following mitigating features:

- Ms Samuel's difficult personal circumstances at the time of charges;
- Her full admissions to the charges;
- Her evidence of insight and reflection;
- She has been working since the incident and has learned from the incident;
- She has put in place methods to assist her in her personal circumstances in the future;
- Her positive testimonials

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 SG, 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 noted that Ms Samuel has shown insight into her conduct. The panel noted that she made admissions has shown evidence of genuine remorse. Ms Samuel has engaged with the NMC since referral. The panel has been told that there have been no adverse findings in relation to Ms Samuel's practice either before or since these incidents.

The panel considered whether it would be proportionate to impose a more restrictive sanction and looked at a conditions of practice order. The panel noted that there were no workable conditions that could address the dishonesty in this case.

The panel concluded that no useful purpose would be served by a conditions of practice order. It is not necessary to protect the public and would not assist Ms Samuel's nursing practice. The panel gave serious consideration to the imposition of a suspension order and took account of the NMC guidance in relation to dishonesty. However, the panel were of the view that exceptionally and having taken account of the testimonial from Ms Samuel's employer for the last two years, together with the difficult personal circumstances she was under at the time as well as the remorse, insight and reflection she has demonstrated it was possible to step back from a suspension order.

A caution order would also allow a nurse whose practice was valued by her employer and had no clinical issues to continue to practice.

The panel has decided that a caution order would adequately meet the public interest needs in this case. For the next five years, Ms Samuel's employer - or any prospective employer - will be on notice that her fitness to practise had been found to be impaired and that her practice is subject to a caution order.

The panel noted the positive testimonials from current and previous of Ms Samuel. They stated:

“she is a good worker, able to perform her job as required and her knowledge of nursing is vast...I have never known her other than honest and trustworthy.” [sic]

...

“Vinaya has learnt her lesson the hard way and bitter way. The whole incident has mentally and emotionally scoured her inflicting self-regrets over the incident... she has proven us her worth and has demonstrated self-respect, integrity and honesty and we have never had any concerns since she stepped through our doors”.[sic]

Having considered the general principles above and looking at the totality of the findings on the evidence, the panel has determined that to impose a caution order for a period of five years would be the appropriate and proportionate response. It would mark not only the importance of maintaining public confidence in the profession, but also send the public and the profession a clear message about the standards required of a registered nurse.

In making this decision, the panel carefully considered the sanction bid of the NMC but it determined that a caution was appropriate as Ms Samuel has shown no deep seated attitudinal issues, has learnt from her mistakes and shown remorse, insight and remediation. The panel also noted that these incidents occurred during a period of difficult personal circumstances and that Ms Samuel was under a great deal of pressure. The panel also took into account that there is no evidence of direct harm to patients and Ms Samuel is currently working as a nurse with no clinical issues.

At the end of this period the note on Ms Samuel's entry in the register will be removed. However, the NMC will keep a record of the panel's finding that her fitness to practise had been found impaired. If the NMC receives a further allegation that Ms Samuel's fitness to practise is impaired, the record of this panel's finding and decision will be made available to any practice committee that considers the further allegation.

This will be confirmed to Ms Samuel in writing.

That concludes this determination.