

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

**Substantive Hearing
Wednesday 2 – Thursday 3 September 2020**

Virtual Hearing

Name of registrant: Lloyd Moyo

NMC PIN: 03A0200S

Part(s) of the register: Registered Nurse – Sub part 1
Mental Health Nursing (6 March 2007)

Area of registered address: Fife

Type of case: Conviction

Panel members: Sophie Lomas (Chair, lay member)
Patience McNay (Registrant member)
Christine Moody (Lay member)

Legal Assessor: Michael Bell

Panel Secretary: Catherine Acevedo

Nursing and Midwifery Council: Represented by Samantha Forsyth, Case
Presenter

Mr Moyo: Present and represented by Scott Flannigan,
Counsel instructed by the Royal College of
Nursing (RCN)

Facts proved: 1

Facts not proved: None

Fitness to practise: Impaired

Sanction: **Striking off order**

Interim order: **Interim suspension order (18 months)**

Details of charge

That you, a registered nurse:

- 1. Were convicted on 15 April 2019 at Glasgow Sheriff Court of sexual assault.*

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

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Mr Flannigan made a request that this case be held partly in private on the basis that there will be reference to the health of a family member. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Forsyth indicated that she supported the application to the extent that any reference to your family member's health should be heard in private.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to go into private session if and when there was any reference to your family member's health.

Decision and reasons on facts

The charge concerns your conviction and, having been provided with a copy of the certificate of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3).

Background

You were arrested on the 3 November 2017 following an allegation of sexual assault that took place on the 27 September 2017 against a lone female who was known to you,

You denied the offence. However, on 24 May 2019 at Glasgow Sheriff Court you were subsequently found guilty.

You were sentenced to a Community Payback Order with an 18 month Supervision Requirement and have had a notice of reference under section 7 of the Protection of Vulnerable Groups (Scotland) Act.

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, your fitness to practise is currently impaired by reason of your 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.

Submissions on impairment

The panel heard evidence from you under affirmation. You referred to your reflective statement and explained that you wrote this after you had been convicted during the time

of your interim order suspension in preparation for this hearing. You expanded on various sections of your reflective statement. The panel accepted your evidence insofar as it was of assistance to it.

Ms Forsyth addressed the panel on the issue of impairment and reminded the panel 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. She referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin). Ms Forsyth submitted that limbs b and c are engaged in that you brought the medical profession into disrepute and you have breached fundamental tenets of the profession.

In relation to insight, Ms Forsyth submitted that you continue to deny the matters that led to your conviction although you accept that you have been convicted and are impaired by reason of your conviction. With regard to remediation, Ms Forsyth submitted that your actions might be viewed as incapable of remediation and that the public would be shocked to find that a registrant had a conviction for sexual assault. She further submitted that you have been unable to articulate how a similar situation would not occur in the future.

Ms Forsyth submitted that a finding of impairment is necessary on the grounds of public protection and in the wider public interest. She submitted that your conviction poses a risk to the public and patients and would undermine confidence in the profession and the NMC as its regulator

Mr Flannigan submitted that you accept that your fitness to practice is impaired by reason of your conviction. He submitted that this was an isolated incident which involved an acquaintance in your private life and did not involve patients or colleagues. He submitted that you do not pose a risk and have worked with female patients and colleagues for many years without incident. You have engaged with social work to develop your insight and how you propose to conduct yourself in the future. Mr Flannigan submitted that the panel

can have regard into what you have said regarding the impact your conviction has had on the victim, the community and the nursing profession and also the stigmatising effect it has had on you. Mr Flannigan referred to *Amao v NMC [2014] EHC 147 (Admin)* and submitted that the fact that you continued to deny that the incident occurred did not preclude the panel from finding that you had insight into the issues arising from your conviction. He submitted that the risk of repetition in your case is low.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included *Grant*, and *Cohen v GMC [2008] EWHC 581 (Admin)*.

Decision and reasons on impairment

The panel next went on to decide if as a result of the conviction, your 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*
- d) ...*

The panel found limbs a, b and c engaged in the *Grant* test. The panel found that you have brought the medical profession into disrepute. The panel was of the view that although the matters which gave rise to your conviction did not relate to your nursing practice, during clinical practice you will likely come into close contact with female patients and colleagues. The panel considered that were this to occur, such patients and colleagues may be put at risk by such behaviours and could be caused physical and emotional harm. The panel also found that your conduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel took into account your oral evidence. It noted that you spoke in general terms of the effect that actions such as those you were convicted of might have upon other parties and public confidence in the profession. However, it considered that you failed to detail specifics about how you would use what you had learned from your supervision to formulate strategies to ensure that a similar situation might be avoided in the future. This was despite being questioned in detail on these issues by Ms Forsyth, Mr Flannigan and the panel itself. The panel considered the case of *Amao* and noted that you had failed to show any insight into how you would modify your future behaviour to avoid repetition.

The panel also took account of all the documentary evidence before it. The panel gave consideration to the various testimonials and references provided by you for this hearing. Whilst the panel observed that you had testimonials which spoke positively of your nursing practice, it concluded that they were of little assistance to it in respect of development of insight.

Regarding insight, whilst the panel acknowledged that you continue to deny the assault, you had shown limited insight into your actions and offered little explanation into the matters that led to the conviction. The panel was of the view that you did not fully address the impact the conviction had on the victim focussing more on how you have been impacted personally. In its consideration of whether you have remedied your practice, the panel was of the view that you have disassociated yourself from your actions and you have been unable to apply what you have learnt theoretically to your own situation.

The panel is of the view that there is a risk of repetition based on your lack of insight into your behaviour around women and this potentially puts patients at risk of physical harm and emotional and psychological harm although it noted that the incident occurred outside of the confines of your clinical practice. 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.

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

Submissions on sanction

The panel heard further evidence from you under affirmation.

Ms Forsyth informed the panel that in the Notice of Hearing, dated 31 July 2020, the NMC advised you that it would seek the imposition of a striking off order if it found your fitness to practise currently impaired. She submitted that the panel may consider that your conduct raises fundamental concerns about your professionalism and is incompatible with remaining on the register.

The panel also bore in mind Mr Flannigan's submissions that your actions were not incompatible with remaining on the register and a striking off order would be disproportionate. He submitted that this was an isolated incident within your private life involving an acquaintance and was not a patient or colleague. There has been no repetition of the behaviour which occurred in September 2017. Mr Flannigan submitted that you have developing insight into your actions and referred the panel to your oral evidence today where you said that you would deescalate by removing yourself from any similar situation. No issues have been raised in your nursing practice involving patients and colleagues. He also referred the panel to rehabilitative work you have undertaken.

The panel heard and accepted the advice of the legal assessor. He referred the panel to the Sanctions Guidance (SG) and the *Council for the Regulation of Healthcare Professionals v General Dental Council* and *Fleischmann [2005] EWHC 87 (Admin)*.

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 considered your oral evidence. It was of the view that the evidence you gave today indicated that you are at the beginning stages of developing insight into the areas of concern highlighted in the panel's determination on impairment. However, the panel was not satisfied that you have shown full insight into these concerns and you did not set out the appropriate strategies and mechanisms which it might have expected you to discuss in relation to them. You have also failed to give a proper explanation of the incident that led to the conviction.

The panel took into account that you had already been subject to an interim suspension order and that there are only three months remaining of your supervision requirement.

The panel also 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:

- Your actions amounted to a very serious sexual assault.
- Your offence involved a breach of trust.
- Lack of full insight into how you would avoid repetition of the conduct in question.
- You are subject to notification requirements under the Sexual Offences Act 2003.

The panel also took into account the following mitigating features:

- You have demonstrated some insight by accepting that your fitness to practice is impaired by your reason of your conviction.
- This was an isolated incident.
- Positive character references.

The panel noted the guidance within the SG in relation to the assessment of the seriousness of a case and in particular to cases involving sexual misconduct. The panel having considered all relevant information before it, concluded that this is a very serious case.

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 protection 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 the matters that led to your 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 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 of the view that there are no practical or workable conditions that could be formulated as the concerns identified were not clinical. The behaviour identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on your

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 a 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;*

Whilst the panel noted that these factors were apparent in your case, it also observed that 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 your actions is fundamentally incompatible with you 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?*

The panel concluded that your actions giving rise to your conviction and the seriousness of this case amounted to significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you 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 effect of your 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 this would be sufficient in this case.

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

This decision will be confirmed to you in writing.

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 your own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Forsyth. She submitted that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest.

Mr Flannigan advised that having discussed the terms of the panels determination on sanction with you, that he had no submission to make in relation to Ms Forsyth's application.

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 due to summarise panel's reasons

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

That concludes this determination.