

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

**Substantive Hearing  
1 – 2 December 2022**

Virtual Hearing

<b>Name of registrant:</b>	<b>Busani Tanaye</b>
<b>NMC PIN:</b>	98Y0333E
<b>Part(s) of the register:</b>	Registered Nurse – Sub Part 1 Mental Health Nurse, level 1: 27 October 1998
<b>Relevant Location:</b>	Hounslow
<b>Type of case:</b>	Conviction
<b>Panel members:</b>	Anthony Kanutin (Chair, Lay member) Mary Scattergood (Registrant member) Tom Ayers (Lay member)
<b>Legal Assessor:</b>	Megan Ashworth
<b>Hearings Coordinator:</b>	Tyrena Agyemang
<b>Nursing and Midwifery Council:</b>	Represented by Assad Badruddin, Case Presenter
<b>Mr Tanaye:</b>	Not present and unrepresented
<b>Facts proved:</b>	Charge 1
<b>Facts not proved:</b>	N/a
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Striking-off order</b>
<b>Interim order:</b>	<b>Interim suspension order (18 months)</b>

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

The panel was informed at the start of this hearing that Mr Tanaye was not in attendance and that the Notice of Hearing letter had been sent to Mr Tanaye's registered email address by secure delivery on 26 October 2022.

Mr Badruddin, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

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

In the light of all of the information available, the panel was satisfied that Mr Tanaye has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

## **Decision and reasons on proceeding in the absence of Mr Tanaye**

The panel next considered whether it should proceed in the absence of Mr Tanaye. It had regard to Rule 21 and heard the submissions of Mr Badruddin who invited the panel to continue in the absence of Mr Tanaye. He submitted that Mr Tanaye has voluntarily absented himself.

Mr Badruddin referred the panel to three emails dated 27, 31 October 2022 and 1 December 2022 which all state Mr Tanaye will not be attending the hearing and his requests that the hearing proceeds and is heard in his absence.

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 (Anthony William)* (No.2) [2002] UKHL 5, *GMC v Adeogba* [2016] EWCA Civ 162 and *GMC v Visvardis* [2016] EWCA Civ 162.

The panel has decided to proceed in the absence of Mr Tanaye. In reaching this decision, the panel has considered the submissions of Mr Badruddin, the correspondence from Mr Tanaye, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *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:

- No application for an adjournment has been made by Mr Tanaye;
- Mr Tanaye has informed the NMC that he has received the Notice of Hearing and confirmed he is content for the hearing to proceed in his absence;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- The charges relate to events that occurred in 2019;
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Tanaye in proceeding in his absence, although the panel considered that it was limited as the evidence relied upon is documentary, and Mr

Tanaye has had the opportunity to consider it in advance of the hearing and has had time to send in written submissions.

Furthermore, the limited disadvantage is the consequence of Mr Tanaye's decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Tanaye. The panel will draw no adverse inference from Mr Tanaye's absence in its findings of fact.

### **Details of charge**

That you, a registered nurse:

- 1) On 22 October 2021, At Kings Lynn Crown Court were convicted of Sexual Assault on a female contrary to Section 3 of the Sexual Offences Act 2003

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

### **Decision and reasons on facts**

The panel accepted the advice of the legal assessor.

The charge concerns Mr Tanaye's 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**

On 18 August 2020 the NMC received a referral from the Deputy Director for patient safety and quality at the Norfolk and Suffolk NHS Foundation Trust (“the Trust”).

The Deputy Director raised concerns about Mr Tanaye and stated that he had been suspended due to a charge of sexual assault, which occurred on 26 July 2019 on a team night out in Norwich. The sexual assault was committed by Mr Tanaye on a female colleague at his home address. The female colleague reported it to the police and a police investigation was carried out.

On 4 November 2020, Mr Tanaye pleaded not guilty to a charge of Sexual Assault. A subsequent trial was held in the Crown Court at Kings Lynn on 22 October 2021 where Mr Tanaye was found guilty and convicted of Sexual Assault contrary to section 3 of the Sexual Offences Act 2003.

Mr Tanaye was sentenced on 24 March 2022 to 18 months imprisonment suspended for 21 months. The Judge also added to the suspended sentence, a rehabilitation activity requirement for 60 days and an unpaid work requirement of 150 hours. Mr Tanaye has also been placed on the sex offenders register for a period of 10 years and given a restraining order for 10 years to not contact the said female colleague for the same period. Mr Tanaye was dismissed by his employer.

## **Fitness to practise**

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

## Submissions on impairment

Mr Badruddin addressed the panel on the issue of impairment and reminded it to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and *Fleischmann GDC* [2005] EWHC.

Mr Badruddin submitted that the conduct of Mr Tanaye which has led to a conviction, raises fundamental concerns with his position as a nurse. He told the panel that the offence is serious and although, not related to his clinical practice, was in relation to his nursing as the victim was a colleague of his and the incident took place on a night out with colleagues, in an effort to help integrate staff.

Mr Badruddin addressed the panel on the aggravating features in this case, submitting that Person A was significantly intoxicated and Mr Tanaye took advantage of her by manipulating the situation, so that Person A would end up at his address. He submitted that there was a degree of planning that took place, which then led to unwanted sexual touching and kissing by Mr Tanaye.

Mr Badruddin referred the panel to the Judge's sentencing remarks, in relation to mitigating factors which state:

*Bearing in mind your age and your good character and the time that has passed since this incident, I have decided by the nearest whisker that it is possible to suspend a sentence of imprisonment.*

Mr Badruddin submitted that Mr Tanaye's actions would be viewed as deplorable by any reasonable member of the public, let alone patients. He submitted that the first three

limbs of the Grant test are engaged as Mr Tanaye's actions could deter members of the public from receiving medical care. He further submitted that if a member of the public were to be informed of the facts of this case, they would identify that a nurse has sexually assaulted a colleague and this would damage the reputation of the profession and the public's trust in nurses.

Furthermore, Mr Badruddin submitted that a finding of impairment is necessary on both the grounds of public protection and public interest. He told the panel that Mr Tanaye has demonstrated very limited remorse or insight regarding the impact of his actions on colleagues, patients and the wider public; impact that would reflect negatively on the nursing profession. He therefore invited the panel to make a finding of impairment.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Cohen v GMC [2008] EWHC 581 (Admin)* and *Sawati v GMC [2022] EWHC 283 (admin)*.

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

The panel next went on to decide if as a result of the conviction, Mr Tanaye'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 and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

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

- 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 had regard to the Crown Court sentencing remarks and found that a colleague did suffer physical and emotional harm as a result of Mr Tanaye's conduct. Mr Tanaye's conduct and subsequent conviction has breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.



The panel had regard to the Nursing and Midwifery Council's Code of Conduct ("the Code"). The panel found that the following provisions of the Code have been breached in this case:

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

*To achieve this, you must:*

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

*20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people*

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

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

The panel determined that sexual assault is a very serious breach of the trust and confidence placed in him a nurse. The panel determined that although no patients were harmed and there were no concerns with Mr Tanaye's clinical practice, patients could be reluctant to obtain treatment and care from a nurse convicted of these charges and therefore as a result could lead to detrimental effects on their health and wellbeing.

Furthermore, the panel determined that Mr Tanaye's actions are a serious departure from the standards expected of a registered professional. It noted that Mr Tanaye has been convicted which resulted in a custodial sentence of 18 months, suspended for 21 months, which will be operative until February 2024. Mr Tanaye is also required to complete a rehabilitation activity for 60 days and unpaid work of 150 hours. The Judge also imposed a restraining order for Mr Tanaye not to contact Person A directly or indirectly for a period of 10 years and he is also subject to the notification requirement (Sex Offenders Register) for a period of 10 years.

The panel was of the view that registered professionals occupy a position of privilege and trust in society and are expected at all times to be professional. Colleagues, patients and

the wider public must be able to trust registered professionals with their lives and the lives of their loved ones. Mr Tanaye's convictions raise questions about his overall integrity which may undermine public confidence in the profession.

Regarding insight, the panel considered Mr Tanaye had very limited insight. The panel acknowledged Mr Tanaye's consistent denial of the charges and that in such circumstances, it may be challenging to demonstrate. Nevertheless, the panel was of the view that he could have produced a reflective piece addressing the potential impact on sexual assault victims, the nursing profession and the wider public, but the panel had nothing before it to demonstrate any remorse, insight or acknowledgment of his conviction.

In its consideration of whether Mr Tanaye has addressed his practice, the panel took into account that although this was work related and involved his colleagues, there were no concerns in relation to Mr Tanaye's clinical practice.

The panel is of the view that there is a risk of repetition based on the lack of insight. 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 required. The panel took into account the impact on public confidence, should a nurse with this type of conviction be allowed to practice with no restrictions and the damage to the profession as a result.

The panel further determined that a finding of impairment on public interest grounds was also required to declare and uphold proper standards of conduct and behaviour. The public expect nurses to act with integrity so that patients and their family members can trust registered professionals.

Having regard to all of the above, the panel was satisfied that Mr Tanaye'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 Tanaye off the register. The effect of this order is that the NMC register will show that Mr Tanaye 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.

### **Submissions on sanction**

Mr Badruddin informed the panel that in the Notice of Hearing, dated 26 October 2022, the NMC had advised Mr Tanaye that it would seek the imposition of a striking-off order if it found Mr Tanaye's fitness to practise currently impaired.

Mr Badruddin suggested some aggravating features of the case such as the criminal conviction involving sexual assault against a female colleague and a degree of planning by Mr Tanaye took place in order to carry out the sexual assault. Regarding mitigating features, he submitted that Mr Tanaye had been of good character with no previous conviction or concerns.

Mr Badruddin addressed the panel on the sanctions available to it. He submitted that neither no action or a caution order were appropriate as these sanctions would not restrict Mr Tanaye's practice and in light of the public protection and public interest concerns, these sanctions would not be a proportionate response.

Mr Badruddin submitted that a conditions of practice order would not be an appropriate sanction to impose as the concerns are not related to Mr Tanaye's clinical practice nor can they be remedied with training. He further submitted that a conditions of practice order would neither adequately address the public protection concerns nor the public interest in this case.

Mr Badruddin referred the panel to the SG and to the case of *Fleischmann* and submitted that due to the nature of the conviction, at the very least, Mr Tanaye requires temporary removal from the register.

Mr Badruddin submitted that as a substantive suspension order can only be imposed for the maximum period of 12 months, it would not cover the suspended custodial sentence which is for a period of 18 months and would be operative until February 2024. He also stated that as Mr Tanaye is also subject to the notification requirement (Sex Offenders Register) for a period of 10 years, it would be fundamentally incompatible to allow him to remain on the NMC register. He reminded the panel of the overarching objectives of the NMC and submitted that the most appropriate sanction in this case is a striking-off order. He therefore invited the panel to impose a striking-off order.

The panel accepted the advice of the legal assessor.

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

Having found Mr Tanaye'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 of the criminal conviction of sexual assault on a female colleague:

- Degree of planning took place by Mr Tanaye
- Took advantage of someone under the influence of alcohol
- No evidence of reflection, insight or remorse demonstrated
- The incident took place after a work social event which was intended to integrate staff from two wards

The panel also took into account the following mitigating features:

- Previous good character and history

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 Mr Tanaye'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 Tanaye's 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 Mr Tanaye's 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, given the nature of the charges in this case. The panel noted that the charges do not relate to Mr Tanaye's clinical practice and therefore the conviction in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Tanaye's registration would not adequately address the seriousness of this case and would not protect the public nor address the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel noted that a couple of the factors set out in the SG which might make a suspension order appropriate, appeared to be present in this case, namely that it was a single instance and there was no evidence of repetition. However, the panel was of the view that the conduct itself, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse and was particularly serious. It considered that members of the public would be shocked and troubled if a Registrant, convicted of sexual assault on a female colleague, still subject to his suspended sentence, and on the Sex Offender Register for 10 years, were only temporarily removed from the register. The panel concluded that the serious breach of the fundamental tenets of the profession evidenced by Mr Tanaye's actions is fundamentally incompatible with him remaining on the register.

The panel also acknowledged the maximum length of a substantive suspension order was a period of 12 months which would not cover the suspended custodial sentence which is for 18 months and that would be operative until February 2024. 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 Tanaye's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Tanaye's actions were serious and to allow him to remain on the register 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 Mr Tanaye'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 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 will be confirmed to Mr Tanaye 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 Mr Tanaye's 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 Mr Badruddin. He submitted that an interim suspension order for a period of 18 months is the should be imposed due to the public protection and public interest concerns in this case and to cover the appeal period should Mr Tanaye decide to appeal the panel's decision.

Mr Badruddin submitted that the regulatory concerns found proved are very serious and relate to a criminal conviction for sexual assault. He further submitted that there is a risk of repetition of the facts found proved due to Mr Tanaye's lack of insight. Furthermore, he submitted that due to and the seriousness of the case and the public protection and public interest concerns, it would be incompatible for a conditions of practice order to be imposed and for Mr Tanaye to remain on the register during the appeal period. He therefore invited the panel to impose an interim suspension order.

The panel accepted the advice of the legal assessor.

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

The panel accepted the submissions of Mr Badruddin and 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 determined that it would be wholly inappropriate to impose a conditions of practice order on Mr Tanaye, due to the reasons already identified in the panel's determination for imposing the substantive order, nor according to its decision on sanction.



The panel determined there is a risk of repetition due to Mr Tanaye's lack of insight and it therefore imposed an interim suspension order for a period of 18 months to cover the appeal period should Mr Tanaye decide to appeal the decision.

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

That concludes this determination.