

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

**Substantive Meeting  
Thursday 24 November 2022**

Virtual Meeting

<b>Name of registrant:</b>	<b>David Limbo</b>
<b>NMC PIN:</b>	06I0405E
<b>Part(s) of the register:</b>	Registered Nurse – Sub Part 1 Adult Nursing (7 September 2007)
<b>Relevant Location:</b>	Greenwich
<b>Type of case:</b>	Conviction
<b>Panel members:</b>	Patricia Richardson (Chair, lay member) Susan Jones (Registrant member) Rachel Barber (Lay member)
<b>Legal Assessor:</b>	Fiona Moore
<b>Hearings Coordinator:</b>	Jennifer Morrison
<b>Facts proved:</b>	All
<b>Facts not proved:</b>	None
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Suspension order (9 months) with review</b>
<b>Interim order:</b>	<b>Interim suspension order (18 months)</b>

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

The panel noted that the Notice of Meeting had been sent to Mr Limbo's registered email address on 20 October 2022. It considered that the Notice of Meeting provided details of the allegation and the date on which or after the case would be considered. The panel also noted that Mr Limbo had been invited to respond to the allegations and comment on the Nursing and Midwifery Council's (NMC) statement of case.

The panel accepted the advice of the legal assessor.

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

## **Details of charge**

That you, a registered nurse:

- 1) On 12 March 2018 at Woolwich Crown Court upon your own confession were convicted on indictment of controlling or coercive behaviour in an intimate or family relationship.

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

## **Background**

On 15 August 2016, Mr Limbo was charged with alleged offences against [PRIVATE]. These included allegations of behaviour such as controlling their finances, pushing them, controlling their social media accounts and mobile phone, and cutting off their hair. On 21 August 2016, Mr Limbo self-referred to the NMC, and advised that he had been formally charged by the police in relation to the allegations.

On 12 March 2018, in Woolwich Crown Court, Mr Limbo was convicted of ‘*controlling or coercive behaviour in an intimate or family relationship*’. He was sentenced on 8 June 2018 to a 12-month community sentence, and was ordered to carry out 80 hours of unpaid work and to pay a victim surcharge of £85.00. In a letter dated 7 January 2019, the Disclosure and Barring Service restricted Mr Limbo from working with adults or children.

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

The charge concerns Mr Limbo’s conviction and, having been provided with a copy of the certificate of conviction dated 26 June 2018, the panel finds that the facts are found proved in accordance with Rules 31(2) and (3). These state:

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

### **Fitness to practise**

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

### **Representations on impairment**

The panel has borne in mind its overarching objective to protect the public and uphold the wider public interest. This includes the need to declare and uphold proper standards of performance and conduct, and maintain public confidence in the profession as well as in the NMC as a regulatory body.

In its written representations, the NMC submitted that the facts surrounding Mr Limbo's conviction represented several breaches of the NMC Code (The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates [2015]).

The panel had regard to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin), *Roylance v General Medical Council* [2000] AC 311 and *Cohen v General Medical Council* [2008] EWHC 581 (Admin).

The panel accepted the advice of the legal assessor, who also referred it to *Sanusi v General Medical Council* [2019] EWCA Civ 1172:

*'...where a registrant chooses not to attend a tribunal hearing...he or she must be taken to appreciate that if adverse findings are made, they will not be in a position to address...the tribunal on matters of mitigation in any changed circumstances flowing from those adverse findings...'*

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

The panel next went on to decide if as a result of the conviction, Mr Limbo'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 make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

Per *Roylance*, the panel considered that where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances can be determined by referring

to the NMC Code. It found that Mr Limbo's actions that led to his conviction breached the following paragraphs of the NMC Code:

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

*To achieve this, you must:*

*1.1 treat people with kindness, respect and compassion.'*

***'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.*

*20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress.'*

In this regard, the panel considered the judgement of Mrs Justice Cox in the case of *CHRE v NMC and Grant*. 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 endorsed Dame Janet Smith's 'test' as established in the fifth report of the Shipman Inquiry, 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) [...].'

The panel found that limbs (b) and (c) are engaged. Mr Limbo's conduct towards [PRIVATE] demonstrated attitudinal issues and was a significant departure from the standards expected of a registered nurse. A reasonably informed member of the public would be extremely concerned to learn that a nurse had been convicted of coercive and controlling behaviour towards a [PRIVATE] family member. Whilst it did not occur in a clinical setting or involve patients, Mr Limbo's behaviour and subsequent conviction breached fundamental tenets of the nursing profession, and brought its reputation into disrepute.

The panel next considered whether Mr Limbo's fitness to practise is currently impaired.

Although Mr Limbo pleaded guilty to the offences, it is clear from emails sent by Mr Limbo to the NMC in 2018 that he did not accept the Court's findings, and instead blamed prosecutors, his legal team and police incompetence for his situation. Mr Limbo stated that he only pleaded guilty '*under duress*', and whilst he self-referred to the NMC, his engagement with the NMC ended in 2018. This suggests little to no insight into his behaviour towards his family member, nor the potential impact on the reputation of the nursing profession.

The panel considered the remarks of the sentencing judge, who noted that whilst Mr Limbo's conduct caused [PRIVATE] substantial distress and had a substantial adverse effect on their day-to-day activities, it lacked an element of significant violence to place it at the most serious end of the spectrum and did not justify a custodial sentence. Therefore,

the panel considered that Mr Limbo's conduct may be remediable. However, it has seen no evidence to suggest that Mr Limbo is remorseful for his actions, or that he has taken steps to remediate them. The panel therefore concluded that there is a real risk of repetition.

Whilst the panel did not identify an ongoing risk to the public, it had regard to the comments of Mrs Justice Cox at paragraph 101 of *Grant*:

*'The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case.'*

The panel has borne in mind that the overarching objectives of the NMC are not only to protect, promote and maintain the health, safety and wellbeing of the public and patients, but to meet the public interest. This includes maintaining public confidence in the nursing and midwifery professions, and declaring and upholding proper standards of conduct and performance for members of those professions.

The panel determined that a finding of impairment on public interest grounds is necessary to meet the public interest considerations of this case.

## **Sanction**

The panel has considered this case very carefully and has decided to make a suspension order for a period of nine months. The effect of this order is that the NMC register will show that Mr Limbo's registration has been suspended.

In reaching this decision, the panel had regard to all the evidence that has been adduced in this case and to the NMC's published guidance on sanctions ('the SG'). The panel accepted the advice of the legal assessor.

## **Representations on sanction**

The panel noted that in the Notice of Meeting dated 20 October 2022, the NMC had advised Mr Limbo that it would seek the imposition of a nine-to-12 month suspension order if it found Mr Limbo's fitness to practise currently impaired. In its written representations, the NMC submitted that the *'the public interest in this case lies with maintaining public confidence in the profession and upholding proper professional standards by declaring that the registrant's behaviour was unacceptable.'*

## **Decision and reasons on sanction**

Having found Mr Limbo'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. It had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel considered the following aggravating factors in this case:

- The facts underlying Mr Limbo's conviction relate to controlling or coercive behaviour toward a [PRIVATE] family member and represented an abuse of a position of trust.
- The Disclosure and Barring Service has restricted Mr Limbo from working with adults or children.
- Mr Limbo has shown no insight, remorse or remediation.

The panel considered the following mitigating factors in this case:

- Mr Limbo's conduct did not occur in a clinical setting or involve patients.
- Mr Limbo self-referred to the NMC.

The panel noted that Mr Limbo had referred to a difficult relationship with [PRIVATE]. However, it was mindful of the principle established in *Sanusi*.



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, an order that does not restrict Mr Limbo'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 this case was not at the lower end of the spectrum, and determined 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 Limbo's registration would be an appropriate and proportionate response. As the concerns do not relate to his clinical practice, the panel was not satisfied that practical or workable conditions could be formulated. Additionally, the panel was not satisfied that the attitudinal concerns raised through Mr Limbo's lack of insight could be addressed through conditions of practice. The panel also determined that placing conditions on Mr Limbo's registration would not adequately address the seriousness of this case or uphold the public interest.

The panel has determined that a suspension order would be the most appropriate and proportionate sanction to safeguard the public interest. Whilst it considered the facts underlying Mr Limbo's conviction to be serious, and that he had been subject to restrictions imposed by the Disclosure and Barring Service, it had regard to the sentencing judge's view that they were not at the most serious end of the spectrum. The panel also considered that whilst there is some evidence of underlying attitudinal issues, the matters do not relate to Mr Limbo's clinical practice.

The panel was satisfied that in the circumstances of this case, Mr Limbo's conduct was not fundamentally incompatible with remaining on the register. A period of suspension would suitably mark the seriousness of this case and maintain public confidence in the nursing

profession. It would also afford Mr Limbo an opportunity to re-engage with the NMC and to demonstrate evidence of insight, remorse and remediation.

The panel did go on to consider a striking-off order, but concluded that it would be disproportionate at this time. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mr Limbo's case to impose a striking-off order.

The panel noted the hardship such a suspension order will inevitably cause Mr Limbo. However, this is outweighed by the public interest in this case.

The panel considered that this order is 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.

The panel determined that a suspension order for a period of nine months is required in this case.

At the end of the period of suspension, another panel will review the order. At the review hearing, the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

This will be confirmed to Mr Limbo in writing.

### **Interim order**

As the suspension 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 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 is in Mr Limbo's own interests until the suspension order takes effect. The panel accepted the advice of the legal assessor.

### **Representations on interim order**

In its written representations, the NMC submitted that an 18-month interim order on the same terms as the substantive order was otherwise in the public interest.

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

The panel was satisfied that an interim order is otherwise in the public interest. It had regard to the reasons set out in its decision for the substantive order in its decision to impose an interim order.

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

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

That concludes this determination.