

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

**Substantive Meeting
Friday 24 March 2023**

Virtual Meeting

Name of Registrant: **Mr Olamide Adewumi Oluwajana**

NMC PIN 2012507E

Part(s) of the register: Registered Nursing Associate
(December 2020)

Relevant Location: Romford

Type of case: Conviction

Panel members: Ashwinder Gill (Chair, Lay member)
Elaine Biscoe (Registrant member)
David Boyd (Lay member)

Legal Assessor: Charles Parsley

Hearings Coordinator: Jasmin Sandhu

Facts proved: Charge 1

Facts not proved: N/A

Fitness to practise: Impaired

Sanction: **Striking-off order**

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

Reasons for reconvened case

This panel of the fitness to practise committee sat on 6 March 2023 to consider this case at a substantive meeting. The panel has reconvened today as it has been established that its previous determination makes reference to misconduct within the impairment reasoning. Today, the panel will reconsider this matter, determining impairment solely on the ground of conviction.

Decision and reasons on service of Notice of Meeting

The panel was aware that the Notice of Meeting (for this reconvened meeting) had been sent to Mr Oluwajana's registered email address by secure encrypted email on 15 March 2023. Further, the panel noted that a copy of this Notice of Meeting was also sent to Mr Oluwajana's representative on the same date.

It was confirmed to the Nursing and Midwifery Council (NMC) by Mr Oluwajana that he was content for short notice of this reconvened meeting to enable his case to be reheard today, 24 March 2023.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the charge and stated that the meeting would be taking place on or after 24 March 2023.

In light of all of the information available, the panel was satisfied that Mr Oluwajana 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). It noted that whilst the full 28-day notice period had not been given, Mr Oluwajana has confirmed that he is content to waive the notice period.

Details of charge

That you, a registered nursing associate:

- 1) On 6 May 2022 were convicted at Snaresbrook Crown Court of Sexual Assault on a female. **[FOUND PROVED]**

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

Background

The NMC received a self-referral from Mr Oluwajana on 24 May 2022, in which he set out that he had recently been convicted of sexual assault, for which he was given a two-year custodial sentence suspended for two years.

The incident referred to in the referral took place on 22 September 2019 where a female attended Mr Oluwajana's place of residence (at that time), along with a man she was said to have been dating. Mr Oluwajana was present along with a third male. The female is said to have retreated to a room with her date where they had consensual sex, during which the third male entered the room and raped her. Mr Oluwajana is said to have also entered the room, aggressively fondled her breasts and took photographs of the couple having sex.

Decision and reasons on facts

The charge concerns Mr Oluwajana's conviction and, having been provided with a copy of the memorandum of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3), as follows:

- '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 announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Oluwajana'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

In its written representations, the NMC referred to The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ('the Code'), outlining the sections which it submitted have been breached in this case.

The NMC require the panel to bear in mind its overarching objective 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 NMC referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and submitted that the limbs two and three as set out in *Grant* were engaged.

The NMC submitted that Mr Oluwajana's actions constitute a serious departure from the standards expected of a registered professional. It is submitted that Mr Oluwajana's conviction raises questions about his overall integrity which may undermine public confidence in the profession and bring its reputation into disrepute.

The NMC outlined that impairment is a forward-thinking exercise, looking to future risk. In this regard, the NMC referred the panel to the comments of Silber J in *Cohen v General Medical Council* [2008] EWHC 581 (Admin), namely (i) whether the concerns are easily remediable; (ii) whether they have in fact been remedied; and (iii) whether they are highly unlikely to be repeated.

It is submitted by the NMC that Mr Oluwajana has not remedied the concerns in this case and that a finding of current impairment is required on public protection grounds. The NMC submitted that Mr Oluwajana has displayed no insight, has not provided a reflective statement addressing the impact of his actions, nor evidence of relevant training or testimonials. Furthermore, it was submitted that Mr Oluwajana has not shown any remorse or regret following his conviction. In light of the lack of insight or remediation, it is submitted that there is a high risk of repetition should Mr Oluwajana be allowed to continue practicing.

The NMC further submitted that there is a public interest requirement in a finding of impairment being made in this case in order to declare and uphold proper standards of conduct and behaviour and to maintain confidence and trust in the profession.

The panel accepted the advice of the legal assessor which included reference to the relevant case law.

Decision and reasons on impairment

The panel next went on to decide if as a result of the conviction, Mr Oluwajana's fitness to practise is currently impaired.

The panel had regard to the Code and considered that the following provisions had 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

20.2 act with ... integrity at all times, treating people fairly and without ... harassment

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

The panel bore in mind that nurses and nursing associates 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 and nursing associates with their lives and the lives of their loved ones. 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 76, she 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 determined that limbs a – c were engaged in this case. The panel had regard to the risk assessment outlined in the probation service's pre-sentence report dated 20 May 2022 as follows:

'Mr Oluwajana has been assessed as posing a medium risk of causing serious harm to women. The risk is both sexual and psychological.'

Should Mr Oluwajana carry out a further sexual offence, it is reasonable to state that it would happen in the company of others or be of a less direct nature, for example: sexual assault in a crowded area or if he was alone with a vulnerable female patient.'

On this basis, the panel determined that Mr Oluwajana is liable to put patients at an unwarranted risk of harm in the future.

Further, given the seriousness of the conviction as well as bearing in mind that Mr Oluwajana will remain on the Sex Offenders' Register for a period of 10 years, the panel determined that Mr Oluwajana's conduct has brought the profession into disrepute and has breached the fundamental tenets of the nursing profession. The panel took the view that members of the public would be discouraged to seek care from someone who had been convicted of such a serious sexual offence and who remains on the on the Sex Offenders' Register (for 10 years from the date of conviction).

The panel had regard to the case of *Cohen v General Medical Council*, in which the court set out three matters which it described as being '*highly relevant*' to the determination of current impairment:

- (a) Whether the conduct that led to the charge(s) is easily remediable?*
- (b) Whether it has been remedied?*
- (c) Whether it is highly unlikely to be repeated?'*

In considering whether the conduct in this case is easily remediable, the panel took account of the NMC's guidance '*Can the concern be addressed?* (FTP-13a). This outlines the following:

‘Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include:

- *criminal convictions that led to custodial sentences*

...’

Having borne in mind the above guidance and the nature of these concerns, the panel determined that Mr Oluwajana’s conduct would be difficult to remediate.

With regards to whether the conduct has been remedied, the panel noted that Mr Oluwajana has not engaged with the NMC and there has been no evidence of remorse, regret or insight from him. Further, the panel has borne in mind that Mr Oluwajana continued to deny the allegations against him when interviewed for a pre-sentence report, in which his defence was described as *‘implausible’*.

Bearing in mind the risk assessment carried out by the probation service in their pre-sentence report, the panel determined that Mr Oluwajana does pose a risk to the public, particularly female patients in his care, and that there is a risk of repetition in this case. In light of this ongoing risk, together with Mr Oluwajana’s lack of remediation, the panel concluded that a finding of current 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.

In this regard, the panel decided that a finding of impairment was also in the public interest. It noted that this case concerns a conviction for a serious sexual offence and considered that an informed member of the public would be concerned should a finding of current impairment not be made in these circumstances.

Sanction

The panel has decided to make a striking-off order. The effect of this order is that the NMC register will show that Mr Oluwajana 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.

Representations on sanction

The panel noted that the NMC is seeking the imposition of a striking-off order, should a finding of current impairment be made.

Decision and reasons on sanction

Having found Mr Oluwajana'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:

- Conduct which put someone at risk of suffering (emotional/psychological) harm – especially as photos were taken
- Conduct resulted in being placed on the Sex Offenders' Register
- A (suspended) custodial sentence imposed
- Lack of insight shown as to impact on the victim, the public and the profession

The panel also took into account the following mitigating feature:

- No concerns about the Mr Oluwajana's general clinical practice

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and its finding of current impairment. 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, as well as the public protection and public interest issues identified, an order that does not restrict on Mr Oluwajana's practice would not be appropriate in the circumstances.

The panel next considered whether placing conditions of practice on Mr Oluwajana's registration would be a sufficient and appropriate response. It determined that there were no practical or workable conditions that could be formulated to address the ongoing concerns in this case. The panel noted that these concerns do not relate to Mr Oluwajana's clinical practice and that there is no suggestion of incompetence or identifiable areas in his nursing practice which would require assessment, supervision, or retraining. As such, the panel concluded that the placing of conditions on Mr Oluwajana's registration would not adequately mitigate the risk in this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It had regard to the SG which outlines the circumstances where a suspension order may be appropriate:

- ...
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- ...
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

- ...
- ...

The panel considered that the above factors were not present in this case and that a suspension order was not appropriate. It considered that Mr Oluwajana's conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nursing associate and is fundamentally incompatible with him remaining on the register.

The panel bore in mind that the guidance set out in *Council for the Regulation of Health Care Professionals v General Dental Council & Fleischmann* [2005] EWHC 87 (Admin) that a practitioner should not be permitted to return to practice until they have satisfactorily completed their criminal sentence. Mr Oluwajana was sentenced to 24 months imprisonment suspended for two years. This was only imposed in May 2022, which indicates that even the maximum period of 12 months suspension would be incompatible with this principle.

The panel also took into account that Mr Oluwajana is to remain on the Sex Offenders' Register for a period of 10 years from conviction. It took the view that it would not be appropriate for Mr Oluwajana to return to practice unrestricted whilst on the Sex Offenders' Register, particularly given the risk assessment outlined in the pre-sentence report, suggesting an ongoing risk to females.

In these circumstances, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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 was of the view that the above factors were relevant. It considered that the concerns highlighted in this case do raise fundamental questions about Mr Oluwajana's professionalism. Further, given the seriousness of his actions, the panel considered that public confidence could not be maintained if Mr Oluwajana were to remain on the NMC register, particularly given that he will be marked on the placed on the Sex Offenders' Register for 10 years. It considered that Mr Oluwajana's actions would adversely affect the public's view of how a registered nursing associate should conduct himself and therefore nothing short of removing him from the register would be sufficient in this case.

The panel therefore concluded that a striking-off 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 nursing associate.

This will be confirmed to Mr Oluwajana 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 this case. It was aware that 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 Oluwajana's own interests until the striking-off sanction takes effect.

The panel heard and accepted the advice of the legal assessor.

Representations on interim order

In its written representations, the NMC invited the panel to impose an 18-month interim suspension order. It was submitted that an interim suspension order was necessary on the grounds of public protection and was also otherwise in the public interest.

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 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 decided to impose an interim suspension order for a period of 18 months to cover the 28-day appeal period. The panel was of the view that 18 months would allow sufficient time to lodge an appeal, should Mr Oluwajana wish to do so, and for any appeal to be heard and determined in full.

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

That concludes this determination.