

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

**Substantive Meeting
Wednesday, 14 – Thursday 15 February 2024**

Nursing and Midwifery Council
10 George Street, Edinburgh, EH2 2PF

Name of Registrant: Tinashe Chibanda

NMC PIN: 16E0177E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing (Level 1) – 17 September 2016

Relevant Location: Bournemouth

Type of case: Conviction

Panel members: Philip Sayce (Chair, registrant member)
Paul Hepworth (Lay member)
Bryan Hume (Lay member)

Legal Assessor: Graeme Henderson

Hearings Coordinator: Rim Zambour

Facts proved: Charge 1

Facts not proved: None

Fitness to practise: Impaired

Sanction: **Striking-off order**

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

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mr Chibanda's registered email address by secure email on 4 January 2024.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation and that the meeting would commence on or after 12 February 2024.

In the light of all of the information available, the panel was satisfied that Mr Chibanda 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 05 January 2023, at Bournemouth Crown Court, were convicted of the following offence

Sexual Assault contrary to s.3 of the Sexual Offences Act 2003

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

Background

The charges arose whilst Mr Chibanda was employed as a registered nurse. It is alleged that on 3 October 2021 Mr Chibanda attended a nightclub in Bournemouth. At around 03:30am he approached a female and spoke with her. The female was unknown to Mr Chibanda.

Mr Chibanda was witnessed on the stairs with a female. He was seen with his arms around her and she was struggling to get away from him. Mr Chibanda had his hand in the area of her groin. When the female moved to leave he put his hands underneath and inside her underwear, touching her vagina.

The female got away from Mr Chibanda by attracting the attention of two people who were passing by and reported this immediately to staff. The Police interviewed Mr Chibanda who denied the offence. DNA evidence supported the female's version of events. In his second police interview Mr Chibanda made no comment.

Mr Chibanda was charged and on 5 January 2023 he pleaded guilty to an offence of Sexual Assault at Bournemouth Crown Court.

On 9 February 2023 Mr Chibanda was sentenced as follows; a three year Community Order with the requirements of 200 hours of unpaid work, attendance for 40 days at an accredited programme, and a 10 day rehabilitation activity requirement.

Mr Chibanda's name was also placed on the Sex Offenders Register for five years.

The panel had no information as to whether Mr Chibanda has completed any aspect of his sentence.

Decision and reasons on facts

The charge concerns Mr Chibanda's conviction and, having been provided with a copy of the signed certificate of conviction, the panel finds that the facts are found proved in accordance with Rule 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.’*

Accordingly, the panel finds that the facts in charge 1 are found proved.

Fitness to practise

Having found the charge proved the panel went on to consider the issue of impairment. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as *“Can the nurse, midwife or nursing associate practise kindly, safely and professionally?”*

Representations on impairment

The NMC invited the panel to take the view that the facts found proved amount to current impairment. 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 made written representations in relation to impairment.

It was noted that in the Case Management Form Mr Chibanda admitted that his fitness to practice is impaired by reason of his conviction. However current impairment is a matter for the panel to consider in exercising its judgment.

The panel accepted the advice of the legal assessor.

Decision and reasons on impairment

In considering the issue of impairment the panel considered the test of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 76, she said:

‘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 he:

- a) has in the past acted and/or is liable in the future to act as so 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 although no patients were harmed by Mr Chibanda’s actions, the nature of the crime meant that the panel could not be assured he would not repeat his conduct with a patient. Accordingly limb a was engaged with regard to the future.

The panel determined that Mr Chibanda’s conviction had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It determined that limbs b and c were engaged with regard to the past and the future.

Regarding insight, the panel considered that Mr Chibanda only expressed limited remorse during his criminal case. It had no evidence before it to suggest that Mr Chibanda has had any insight into his actions, nor how his actions have affected others and the nursing profession.

In its consideration of whether Mr Chibanda has taken steps to strengthen his practice, the panel had no evidence before it to indicate that Mr Chibanda had demonstrated

remediation or that he had taken any steps to strengthen his practice or to satisfy it that the risk of repetition had diminished.

The panel is of the view that there is a risk of repetition based on the predatory nature of the crime he was convicted of. Further, the fact that Mr Chibanda demonstrated predatory behaviour in a '*stranger attack*' meant that he could be a danger to vulnerable patients. The panel determined 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 considered that a member of the public would be concerned if Mr Chibanda's fitness to practise was not found to be impaired.

Having regard to all of the above, the panel was satisfied that Mr Chibanda'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 Chibanda off the register. The effect of this order is that the NMC register will show that Mr Chibanda 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 in the Notice of Meeting, dated 4 January 2024, the NMC had advised Mr Chibanda that it would seek the imposition of a striking-off order if it found Mr Chibanda's fitness to practise currently impaired.

The panel also bore in mind the NMC's written representations on sanction which are as follows:

'We consider that these factors do not apply in Mr Chibanda's case. In addition whilst the offence relates to a single instance of misconduct a Suspension Order would not be adequate to protect the public or meet the public interest considerations of the case. Temporary removal from the register would be insufficient to protect patients, maintain public confidence and uphold professional standards.

.....

Mr Chibanda's behaviour fundamentally undermines his trustworthiness as a registered professional. His conviction is wholly incompatible with remaining on the nursing register. The NMC submit that the appropriate and proportionate sanction in all circumstances of this case is a Striking-off Order.'

Decision and reasons on sanction

Having found Mr Chibanda'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:

- Sexual offence in a '*stranger attack*'
- Lack of insight into conduct and the impact of the conviction itself

- Limited evidence of remorse

The panel also considered whether there were any mitigating features in this case and found that based on the information before it there were none.

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 Chibanda'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 Chibanda'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 Chibanda'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 conviction in this case. Furthermore, the panel concluded that the placing of conditions on Mr Chibanda's 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 suspension order may be appropriate where some of the following factors are apparent:

- *No evidence of harmful deep-seated personality or attitudinal problems;*

The panel determined that Mr Chibanda's actions were indicative of a deep-seated personality or attitudinal problem and concluded that his behaviour exhibited harmful attitudinal traits.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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 had regard to SG issued by the NMC and in particular the section dealing with serious cases (SAN 2):

'Panels deciding on sanction in cases about serious sexual misconduct will, like in all cases, need to start their decision-making with the least severe sanction, and work upwards until they find the appropriate outcome. They will very often find that in cases of this kind, the only proportionate sanction will be to remove the nurse, midwife or nursing associate from the register.'

The panel saw no reason to depart from the guidance. The conduct, as highlighted by the facts found proved, was a serious breach of the fundamental tenets of the profession and is fundamentally incompatible with Mr Chibanda remaining on the register. Mr Chibanda'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 to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

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 Chibanda's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

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.

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

That concludes this determination.

This will be confirmed to Mr Chibanda in writing.