

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Hearing
22 November 2019

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant:	Mohamed Kamara
NMC PIN:	06H0539E
Part(s) of the register:	Registered Nurse (Sub Part 1) Mental Health Nursing – June 2007
Area of Registered Address:	England
Type of Case:	Conviction
Panel Members:	Paul Morris (Chair, Lay member) Carla Hartnell (Registrant member) Jayanti Durai (Lay member)
Legal Assessor:	Gillian Hawken
Panel Secretary:	Caroline Pringle
Mr Kamara:	Not present and not represented in absence
Nursing and Midwifery Council:	Represented by James Edenborough, Case Presenter
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 3 May 2018 at the Crown Court at Snaresbrook of rape of a female aged 16 years or over.

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

Decision on service of notice of hearing

The panel was informed at the start of this hearing that Mr Kamara was not in attendance and that two copies of the written notice of this hearing had been sent to him on 18 October 2019 by first class post and recorded delivery. The first of these was sent to Mr Kamara's registered address. The second copy was sent to HMP The Verne, where Mr Kamara is currently serving a custodial sentence. Royal Mail Track and Trace documentation confirmed that the copy of the notice letter sent to HMP The Verne was collected from the Portland Delivery Office on 21 October 2019.

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

Mr Edenborough submitted the NMC 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.

In the light of all of the information available, the panel was satisfied that Mr Kamara had been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision on proceeding in the absence of the Registrant

The panel next considered whether it should proceed in the absence of Mr Kamara.

The panel had regard to Rule 21 (2) which states:

(2) Where the registrant fails to attend and is not represented at the hearing, the Committee—

(a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;

*(b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant;
or*

(c) may adjourn the hearing and issue directions.

Mr Edenborough invited the panel to continue in the absence of Mr Kamara.

Mr Edenborough referred the panel to the most recent correspondence from Mr Kamara, dated 24 October 2019, in which Mr Kamara requests a postponement of this hearing until *'the final outcome of my appeals to clear my name'*. However, Mr Edenborough informed the panel that Mr Kamara's appeal was dismissed on 4 October 2019 and his criminal solicitors confirmed on 31 October 2019 that Mr Kamara's appeal

has formally concluded. Mr Edenborough informed the panel that the NMC has no information about any further possible appeal.

Mr Edenborough informed the panel that the NMC had advised Mr Kamara that he could ask to participate in this hearing remotely from prison, but it was for Mr Kamara to make any necessary arrangements with the prison to facilitate this. Mr Edenborough drew the panel's attention to an email, dated 21 November 2019 from Mr Kamara's Offender Manager. This confirmed that he had spoken with Mr Kamara that afternoon, Mr Kamara had received this correspondence from the NMC, and he had made no requests regarding this hearing.

In these circumstances, Mr Edenborough invited the panel to proceed in the absence of Mr Kamara. He submitted that there was no information to suggest that there was any ongoing appeal, nor had Mr Kamara made any requests to the prison to participate in the hearing remotely or to send further written submissions, and that there is a public interest in the expeditious disposal of cases.

The panel accepted the advice of the legal assessor which included reference to the case of *GMC v Adeogba* [2016] EWCA Civ 162 and *R. v Jones (Anthony William)*, (No.2) [2002] UKHL 5.

The panel decided to proceed in the absence of Mr Kamara. In reaching this decision, the panel considered the submissions of the case presenter, and the advice of the legal assessor. It noted that, although Mr Kamara has requested a postponement until his appeal has concluded, his appeal on 4 October 2019 was refused and the panel had no information about any further appeals. It also had particular regard to the email from Mr Kamara's Offender Manager, received yesterday (21 November 2019), which stated that Mr Kamara had made no requests to participate in this hearing remotely. It had no reason to believe that adjourning to a future date would secure his attendance or participation. The panel also bore in mind that there is a public interest in the expeditious disposal of cases. This matter has already been listed once before and did

not proceed. The panel considered that it would be contrary to the public interest not to proceed today.

In these circumstances, the panel decided that it was fair, appropriate and proportionate to proceed in the absence of Mr Kamara.

Background

Mr Kamara's referral to the NMC arose following his conviction on 3 May 2018 at Snaresbrook Crown Court for the rape of a female aged 16 years and over.

Mr Kamara's victim was a patient (Patient A) who had been detained under Section 2 of The Mental Health Act. She had been diagnosed with post-traumatic stress disorder, emotional unstable personality disorder and long-term depression. She had also recently self-harmed and caused serious injury to one of her eyes, requiring medical attention. Patient A was assigned a one-to-one mental health nurse, 24 hours a day, due to the level of risk she posed to herself.

On the relevant day, Mr Kamara was Patient A's allocated one-to-one mental health nurse. Mr Kamara raped Patient A in her hospital bed on the ward.

Mr Kamara pleaded not guilty but, on 3 May 2018, was convicted of rape. On 5 July 2018 he was sentenced to 15 years imprisonment. Mr Kamara was also placed on the Sex Offenders Register indefinitely, made subject to a Sexual Harm Prevention Order, and was ordered to pay a victim surcharge of £170.

Mr Kamara appealed his conviction on 4 October 2019 but the appeal was refused.

Decision on the findings on facts and reasons

The panel had regard to Rule 31(2) and (3) of the Rules which state that:

- (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.*

Having been provided with a copy of a certificate of conviction, the panel was satisfied that on 3 May 2018 at Snaresbrook Crown Court Mr Kamara was convicted of rape of a female aged 16 years or over.

Accordingly, the charge is found proved.

Decision on impairment

Having announced its finding on the facts, the panel then moved on to consider whether Mr Kamara'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 it as a registrant's suitability to remain on the register unrestricted.

Mr Edenborough referred the panel to the sentencing judge's remarks and endorsed these to the panel.

The panel has accepted the advice of the legal assessor which included reference to the case of *Yeong v GMC* [2009] EWHC 1923 (Admin).

The panel had regard to the judge's sentencing remarks and the circumstances surrounding Mr Kamara's criminal offence. Mr Kamara has been convicted of raping an extremely vulnerable patient in her hospital bed. The panel considered that not only was this a very serious criminal conviction, but that it also constituted a gross breach of trust and an abuse of his position. The panel also noted that the sentencing judge had found that Mr Kamara had displayed a *'total lack of remorse, because [he] maintain[ed] [his] innocence'* and concluded that he posed *'a significant risk to female members of the public who are vulnerable'*.

Having regard to the above, the panel determined that there would be a risk to patients and the public if Mr Kamara were allowed to practise unrestricted. It therefore decided that a finding of current impairment is required on public protection grounds.

The panel also had regard to the advice of the legal assessor and the guidance given in *Yeong* that *'where a [panel] considers that the case is one where the misconduct consists of violating such a fundamental rule of the professional relationship between ... practitioner and patient and thereby undermining public confidence in the [nursing] profession, a finding of impairment of fitness to practise may be justified on the grounds that it is necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the practitioner and in the profession.'* The panel considered that Mr Kamara's conviction was so serious and so contrary to the fundamental tenets of the nursing profession that a finding of current impairment was also required on public interest grounds. It considered that a member of the public, in full possession of the facts of this case, would entirely lose confidence in the nursing profession and the NMC as a regulator if a finding of current impairment were not made in these circumstances.

Having regard to all of the above, the panel was satisfied that Mr Kamara's fitness to practise is currently impaired, both on public protection and public interest grounds.

Determination on sanction

The panel considered this case and decided to make a striking-off order.

In reaching this decision, the panel had regard to all the evidence that has been adduced in this case, together with the submissions of Mr Edenborough, on behalf of the NMC.

The panel accepted the advice of the legal assessor who referred it to the NMC's Sanctions Guidance. The panel bore 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 Sanctions Guidance published by the NMC. It bore in mind the NMC's sanction bid was that of a striking-off order, but it recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel considered that the aggravating factors in this case were:

- Mr Kamara has been convicted of a serious sexual offence;
- His victim was extremely vulnerable;
- His crime was committed on the ward, where patients should expect to feel safe;
- He has been assessed by the criminal court as dangerous;
- He has demonstrated no remorse or insight.

The panel could not identify any mitigating factors.

The panel first considered whether to take no action but concluded that this would be inappropriate. Taking no further action would not restrict Mr Kamara's practice and would therefore not protect the public. It would also not mark the seriousness of this case. For these reasons, the panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel next considered whether a caution order would be appropriate in the circumstances, but concluded that it would not for the same reasons. A caution order would not restrict Mr Kamara's practice and would therefore not protect the public. As regards the public interest, the panel had regard to the Sanctions Guidance, which 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 Kamara's behaviour 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 therefore decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered a conditions of practice order. However, it was of the view that, given the nature of Mr Kamara's conviction, it would not be possible to formulate workable conditions which would protect the public. The panel also considered that conditions of practice would not adequately address the seriousness of this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The Sanctions Guidance indicates that a suspension order would be appropriate where:

'...the misconduct is not fundamentally incompatible with continuing to be a registered nurse or midwife in that the public interest can be satisfied by a less severe outcome than permanent removal from the register. This is more likely to be the case when some or all of the following factors are apparent (this list is not exhaustive):

- *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*

- *the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour*
- ...
- ...'

Although Mr Kamara's criminal conviction arose from a single incident, it is incredibly serious in nature and Mr Kamara has demonstrated no insight or remorse for his actions. It also bore in mind the extreme vulnerability of his victim, the breach of trust involved and the Court's assessment of Mr Kamara as dangerous. In light of these factors, the panel was not satisfied that a suspension order would be sufficient to protect the public or satisfy the public interest.

Finally, in looking at a striking-off order, the panel took note of the following from the Sanctions Guidance:

'Key considerations are:

- *can public confidence in the professions and the NMC 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 the public interest?*
- *is the seriousness of the case incompatible with ongoing registration (see above for the factors to take into account when considering seriousness)?*

This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional, which may involve any of the following factors.

- *A serious departure from the relevant professional standards as set out in key standards, guidance and advice.*

- *Doing harm to others or behaving in such a way that could foreseeably result in harm to others, particularly patients or other people the nurse or midwife comes into contact with in a professional capacity. Harm is relevant to this question whether it was caused deliberately, recklessly, negligently or through incompetence, particularly where there is a continuing risk to patients. Harm may include physical, emotional and financial harm. The seriousness of the harm should always be considered.*
- *Abuse of position, abuse of trust, or violation of the rights of patients, particularly in relation to vulnerable patients.*
- *Any serious misconduct of a sexual nature ...*
- *...*
- *...*
- *Persistent lack of insight into seriousness of actions or consequences.*
- *Convictions or cautions involving any of the conduct or behaviour in the above examples.'*

The panel considered that Mr Kamara's criminal conviction is a serious departure from the standards expected of a registered nurse and the actions which led to it were entirely counter to the fundamental tenets of the nursing profession. The panel was in no doubt that Mr Kamara's actions, and subsequent conviction, are fundamentally incompatible with ongoing registration. It considered that, due to the very serious nature of Mr Kamara's conviction and the surrounding circumstances, the only sanction which would adequately protect the public and satisfy the public interest is a striking-off order. The panel decided that to take any other action in this case would undermine public confidence in the profession and the NMC as a regulatory body, and leave the public exposed to a future risk of harm.

The panel therefore decided that the appropriate and proportionate sanction is a striking-off order.

Determination on interim order

The panel considered the submissions made by Mr Edenborough that an 18 month interim suspension order should be made to cover the statutory appeal period, on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension 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, the ongoing risk posed by Mr Kamara, and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.