

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Meeting
9 September 2019

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

Name of registrant:	Michael Tobechei Ohaegbu
NMC PIN:	15G0693E
Part(s) of the register:	Registered Nurse – Sub Part 1 – Adult Nursing (24 October 2015)
Area of Registered Address:	England
Type of Case:	Conviction
Panel Members:	Mary Monnington (Chair, Registrant member) Judith Robbins (Registrant member) Jennifer Portway (Lay member)
Legal Assessor:	Simon Walsh
Panel Secretary:	Catherine Acevedo
Facts proved:	Charge 1
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim Order:	Interim suspension order (18 months)

Details of charge:

That you, a registered nurse:

1. On 13 December 2018 at Kingston Upon Hull Crown Court, were convicted of three offences of Voyeurism.

And in light of the above, your fitness to practise is impaired by reason of your convictions.

Charge found proved

Decision on Service of Notice of Meeting

The panel was informed at the start of this meeting that written notice of this hearing had been sent to Mr Ohaegbu's registered address by recorded delivery and by first class post on 5 August 2019.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Ohaegbu 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 the rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Background

Mr Ohaegbu was employed as a Band 5 Registered Nurse on an oncology ward at Castle Hill Hospital, Hull and East Yorkshire NHS Foundation Trust. Whilst the alleged incidents did not take place during the course of Mr Ohaegbu's employment as a registered nurse, following his arrest, Mr Ohaegbu was suspended from employment pending the outcome of the criminal proceedings.

The NMC received a referral from the Police in relation to this matter on 8 August 2016. Mr Ohaegbu was arrested on 28 July 2016 and subsequently charged on 8 August 2016 with various counts of voyeurism, namely, recording a private act contrary to sections 67(3) and (5) of the Sexual Offences Act 2003. Mr Ohaegbu appeared at Hull and Holderness Magistrates' Court on 24 October 2016.

Mr Ohaegbu was tried and convicted in the Crown Court at Kingston Upon Hull on 13 December 2018 upon indictment of sexual offences (England) under the Sexual

Offences Act 2003. The three convictions are for 'Voyeurism', a section 67 offence under the Act. It was the same victim for all three offences. Mr Ohaegbu was imprisoned for two periods of 12 months to run consecutively, and one period of 12 months to run concurrently (24 months total). He was placed on the sex offenders register for 10 years and subject to a 'restraining order' (without limitation of time).

Decision on the findings on facts and reasons

The charges concern Mr Ohaegbu's convictions and, having been provided with a copy of the certificate/memorandum of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3) of the Rules which states:

- (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.

Decision on impairment

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

The panel was of the view that Mr Ohaegbu's actions did fall significantly short of the standards expected of a registered nurse, and that his actions amounted to a breach of the Code. Specifically:

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

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 judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) 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.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for

panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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 determined that limbs b and c of the *Grant* test are engaged in this case. The panel was of the view that Mr Ohaegbu's conduct has clearly brought the reputation of the nursing profession into disrepute. The conviction relates to serious offences which resulted in custodial sentences. Further, Mr Ohaegbu has breached one of the fundamental tenets of the profession by not adhering to the laws of the country.

The panel considered the seriousness of the allegations. The panel referred to the court transcript, which detailed the Judge's sentencing remarks on 13 December 2018. He stated "it is a case of raised harm and raised culpability. The raised harm is because you recorded in what was at the time effectively [the victim's] home. It is raised culpability because there was a significant degree of planning".

The panel noted, in relation to the effect your actions have had on the victim, the Judge said “But I cannot overstate, particularly having seen your victim, how serious this offending is”. The panel also noted the Judge’s comments regarding your role as a nurse. “I am asked to take into account the impact upon you, that is to say you lost your employment and will never be able to work again as a nurse”.

The panel took into account that Mr Ohaegbu has admitted that he was convicted as set out in the charge and has also admitted that his fitness to practice is impaired.

In light of Mr Ohaegbu’s lack of insight, the panel could not be satisfied that Mr Ohaegbu would not repeat the behaviour found proved. It therefore determined that there is a risk of repetition in Mr Ohaegbu’s case.

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 was of the view that the public would be shocked to hear that a registered nurse had received a sentence of imprisonment for voyeurism. The panel therefore determined that, in this case, a finding of impairment on public interest grounds was required.

Having regard to all of the above, the panel was satisfied that Mr Ohaegbu’s fitness to practise is currently impaired.

Determination on 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 Ohaegbu off the register. The effect of this

order is that the NMC register will show that Mr Ohaegbu 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. The panel accepted the advice of the legal assessor. 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 Sanctions Guidance (SG) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel determined that taking no action, attempting to mediate in this case or imposing only a caution order would all be wholly inappropriate and inadequate.

The panel next considered whether placing a conditions of practice order on Mr Ohaegbu's registration would be a sufficient and appropriate response. However, the panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charge in this case. The conviction in this case does not relate to Mr Ohaegbu's clinical abilities and is not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Ohaegbu's registration would not adequately address the seriousness of this case and would not address the public interest concerns.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The conduct, as highlighted by the sentencing Judge, was a significant departure from the standards expected of a registered nurse. The panel determined that the serious breach of the fundamental tenets of the profession evidenced by Mr Ohaegbu's actions are fundamentally incompatible with his remaining on the register. In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

The panel was of the view that the findings in this particular case demonstrate that Mr Ohaegbu's actions were serious and to allow him to continue practising 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. Mr Ohaegbu's actions brought 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 a striking-off order 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.

Determination on Interim Order

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 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 Ohaegbu is sent the decision of this meeting in writing.

That concludes this determination.