

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

**Substantive Hearing  
17 - 18 March 2021**

Virtual Hearing

**Name of registrant:** Mr Navin Joseph Luther

**NMC PIN:** 19H03100

**Part of the register:** Registered Nurse  
Adult (9 August 2019)

**Area of registered address:** Luton, England

**Type of case:** Misconduct

**Panel members:** Michael Murphy (Chair, registrant member)  
Anna Ferguson (Registrant member)  
Bill Matthews (Lay member)

**Legal Assessor:** Andrew Young

**Panel Secretary:** Leigham Malcolm

**Nursing and Midwifery Council:** Represented by Mr Michael Smalley, NMC Case  
Presenter

**Mr Luther:** Not present and not represented

**Facts proved:** Charge 1

**Fitness to practise:** Currently impaired

**Sanction:** Striking-off Order

**Interim order:** Interim Suspension Order (18 months)

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

The panel was informed at the start of this hearing that Mr Luther was not in attendance and that the Notice of Hearing letter had been sent to his registered email address on 15 February 2021, Mr Luther having told the NMC in an email dated 29 December 2019 that he could be contacted anytime at that address. The panel was further informed that the Notice of Hearing had also been sent to Mr Luther's last known address in India, as the NMC had reason to believe that he had returned to India.

The panel took into account that the Notice of Hearing provided details of the allegation, time and date, and details for joining the virtual hearing and, amongst other things, information about Mr Luther's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Mr Smalley, on behalf of the Nursing and Midwifery Council (NMC), submitted that it 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 Luther has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

The panel 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.

## **Decision and reasons on proceeding in the absence of Mr Luther**

The panel next considered whether it should proceed in the absence of Mr Luther. It had regard to Rule 21 and heard the submissions of Mr Smalley who invited the panel to continue in Mr Luther's absence as Mr Luther has not engaged with the NMC since December 2019 and has not responded to the charges. Mr Smalley informed the panel that the NMC had made several attempts to engage Mr Luther via email and telephone, all unsuccessfully.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mr Luther. In reaching this decision, the panel has considered the submissions of Mr Smalley and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones and General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Luther;
- Mr Luther has not provided the NMC with details of how he may be contacted other than his registered email address;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- The case relates to matters of a serious nature;
- There is a strong public interest in the expeditious disposal of the case.

The panel noted that the notice of hearing was sent to Mr Luther both via email and recorded international post, and there was nothing to suggest that the emails were undelivered. In the circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Luther.

## **Details of charge**

*That you, a registered nurse:*

1. *On 04 December 2019, received a caution for an offence of engage in sexual communication with a child, contrary to section 15A(1) and (3) of the Sexual Offences Act 2003.*

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

## **Decision and reasons on facts**

In reaching its decisions on the facts, the panel took into account the submissions of Mr Smalley as well as all of the documentary evidence before it. The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

## **Background**

Mr Luther began working for Luton and Dunstable University Hospital NHS Trust (LDHNT) on 30 May 2019. It is alleged that between 22 June 2019 and 24 June 2019 Mr Luther exchanged messages on an online dating site with a person under the age of 16. Mr Luther was suspended from duty on 27 June 2019. On 04 December 2019, Mr Luther

signed and received a caution for an offence of engaging in sexual communication with a child, contrary to section 15A(1) and (3) of the Sexual Offences Act 2003. LDHNT held a disciplinary hearing on 4 December 2019 and Mr Luther was subsequently summarily dismissed for gross misconduct on 5 December 2019.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. The legal assessor highlighted that section 15A(3) of the Sexual Offences Act 2003 requires the victim of the offence to be under 16 years of age. As there was information before the panel to confirm that the purported victim of the offence was not under 16 years of age, the legal assessor highlighted that it may be that the offence giving rise to the caution that Mr Luther received on 4 December 2019 had not actually been committed. He further advised, however, that this matter was not relevant to the panel's finding of fact but may be relevant at subsequent stages of the hearing.

The panel then moved on to consider the disputed charge and made the following finding.

### **Charge 1**

- 1. On 04 December 2019, received a caution for an offence of engage in sexual communication with a child, contrary to section 15A(1) and (3) of the Sexual Offences Act 2003.*

### **This charge is found proved.**

In reaching this decision, the panel took into account the caution received by Mr Luther on 4 December 2019.

The panel determined that, notwithstanding the uncertainty of whether or not the offence had been committed, there was a document before it, signed by Mr Luther, evidencing that he had received a caution for the offence set out in Charge 1. On the basis of the

certificate of caution dated 4 December 2019, signed by Mr Luther, the panel found this charge proved.

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Luther's fitness to practise is currently impaired by reason of his caution. 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.

### **Submissions on impairment**

Mr Smalley addressed the panel on the issue of impairment and reminded the panel to have regard to protecting 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. This included reference to the case(s) of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) and R v Shivpuri [1986] 2 All ER 334.

In relation to the test set out in the case of Grant, Mr Smalley submitted that the panel's findings of fact in respect of Mr Luther's caution do show that his fitness to practise is currently impaired. Mr Smalley submitted that Mr Luther's caution has brought the nursing profession into disrepute, and, in the absence of any evidence of insight or remediation, there remains a risk of repetition.

Mr Smalley invited the panel to find Mr Luther's practice currently impaired.

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

The panel accepted the advice of the legal assessor before moving on to decide if as a result of the caution, Mr Luther's fitness to practise is currently impaired.

The panel considered the matter raised by the legal assessor, namely, that as there was information before it to confirm that the purported victim of the offence was not under 16 years of age, it may be that the offence giving rise to the caution that Mr Luther received on 4 December 2019 may not have actually been committed. However, the panel accepts the legal assessor's advice that Mr Luther was probably guilty of an attempt to engage in sexual communication with a child contrary to Section 1 of the Criminal Attempts Act 2003. The panel will therefore consider the issue of impairment on the basis of the underlying criminal activity revealed by the documents before it.

The panel considered nurses to occupy a position of privilege and trust in society and are expected at all times to uphold the reputation of the nursing profession. 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.

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 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 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 fitness to practise is impaired in the sense that s/he:*

- 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 accepted Mr Smalley's submission that Mr Luther's caution has brought the nursing profession into disrepute and it determined that Mr Luther has failed to uphold the reputation of the profession. The panel was of the view that Mr Luther's conduct was in breach of the following areas of the Code: 20, 20.1, 20.3, 20.4, 20.5 and 20.10. Further, the panel was of the view that the conduct which gave rise to Mr Luther's caution is not easily remediable. There was no evidence before the panel that Mr Luther has taken any action to remediate the conduct, and little evidence of any insight into the resulting concerns.

Given that the conduct giving rise to Mr Luther's caution is not easily remediable, and in view of the absence of any insight or remediation, the panel could not be satisfied that the conduct would not be repeated.

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 noted that there are no public protection concerns arising from Mr Luther's nursing practice, however, it recognised the seriousness of the conduct which was of a sexual nature. In the circumstances of this case, the panel decided that Mr Luther's fitness to practise is currently impaired on the grounds of public interest alone.

For all of these reasons the panel was satisfied that Mr Luther'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 Luther off the register. The effect of this order is that the NMC Register will show that Mr Luther 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.

### **Submissions on sanction**

Mr Smalley highlighted to the panel that Mr Luther was guilty of serious criminal behaviour involving a child, which resulted in him being placed on the Sex Offender's Register until December 2021. Mr Smalley submitted that Mr Luther had in his email dated 19 December 2019 sought to minimise his offending behaviour and has even portrayed himself as the victim of the circumstances.

Mr Smalley submitted that the only appropriate sanction in this case is a striking-off order.

## Decision and reasons on sanction

Having found Mr Luther'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:

- Mr Luther received a police caution;
- The offence was serious, being of a sexual nature;
- Mr Luther is now on the Sex Offender's Register;
- Mr Luther has demonstrated a lack of insight into his offending behaviour;
- Mr Luther repeatedly sent messages of a sexual nature to a person he believed to be underage.

In term of mitigation, the panel took into account Mr Luther's early cooperation with the Trust investigation, the police and with the NMC's initial investigation.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness and nature 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 nature and seriousness of the case, an order that does not restrict Mr Luther'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 Luther's conduct, for which he received a

police caution, was not at the lower end of the spectrum and that a NMC caution order would not sufficiently address the public interest.

The panel next considered whether placing conditions of practice on Mr Luther'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 that the issue does not relate to Mr Luther's clinical practice.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The panel considered that Mr Luther had many opportunities to disengage from the exchange of messages with the victim. Although the incident spanned a short period of time, there were a large number of messages exchanged. Having considered the messages in detail the panel was of the view that they were predatory in nature and indicative of 'grooming' behaviour. The panel reached the view that the seriousness of this case was heightened by the fact that Mr Luther has been placed on the Sex Offender's Register for a period of two years.

The panel had regard to the context and cultural explanations that Mr Luther put forward to the police, however, there was no information before the panel today to support those explanations. In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, 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?*

Mr Luther'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 the findings in this particular case demonstrate that Mr Luther'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. Having regard to the effect of Mr Luther's actions in bringing 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 this 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 behaviour required of a registered nurse.

This will be confirmed to Mr Luther 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 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 Luther's own interest until the striking-off sanction takes effect.

The panel took account of the submissions made by Mr Smalley and accepted the advice of the legal assessor.

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 due to allow for any potential appeal period.

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

That concludes this determination.