Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Tuesday 29 August – Wednesday 30 August 2023

Virtual Hearing

Name of Registrant:	**Joseph Onyait**
NMC PIN	19E1397E
Part(s) of the register:	Registered Nurse – Sub part 1 Adult Nursing, level 1 – 30 July 2019
Relevant Location:	Oxford
Type of case:	Conviction
Panel members:	Richard Weydert-Jacquard (Chair, registrant member) Donna Hart (Registrant member) Gill Mullen (Lay member)
Legal Assessor:	Laura McGill
Hearings Coordinator:	Rim Zambour
Nursing and Midwifery Council:	Represented by Matthew Kewley, Case Presenter
Mr Onyait:	Not present and not represented
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 Hearing

The panel was informed at the start of this hearing that Mr Onyait was not in attendance and that the Notice of Hearing letter had been sent to Mr Onyait's registered email address by secure email on 20 July 2023.

Mr Kewley, 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.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Onyait's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Onyait has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Onyait

The panel next considered whether it should proceed in the absence of Mr Onyait. It had regard to Rule 21 and heard the submissions of Mr Kewley who invited the panel to continue in the absence of Mr Onyait.

Mr Kewley referred the panel to the email from Mr Onyait dated 21 August 2023 in which he stated the following:

‘I would have loved to be present in my hearing as I have a lot I wanted to share with the board but it's just that I am busy on some program that is going to enable me continue my nursing professional out side the UK.’

Mr Kewley also referred to a further email from Mr Onyait dated 22 August 2023 in which he indicates that he is content for the hearing to proceed in his absence. Mr Kewley submitted that Mr Onyait had voluntarily absented himself and that there has been no request by him to adjourn the case. He further submitted that there is a public interest in the expeditious disposal of this case.

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 Onyait. In reaching this decision, the panel has considered the submissions of Mr Kewley, the emails from Mr Onyait, 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 Onyait;
- Mr Onyait has indicated that he has received the Notice of Hearing and confirmed he is content for the hearing to proceed in his absence and as such has voluntarily absented himself;
- Mr Onyait has had the opportunity to present written evidence to the panel in support of his case and has done so;
- There is no reason to suppose that adjourning would secure his attendance at some future date; and

- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Onyait in proceeding in his absence. He will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give live oral evidence on his own behalf in relation to his future plans. However, in the panel's judgement, this has been mitigated by written evidence. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Onyait's decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mr Onyait. The panel will draw no adverse inference from Mr Onyait's absence in its findings of fact.

Details of charge

That you, a registered Nurse:

1) On 20 April 2022 in the Crown Court sitting at Oxford, were convicted of Controlling and coercive behaviour in an intimate or family relationship contrary to section 76(1) of the Serious Crime Act 2015

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 Onyait on 27 July 2020. At the time Mr Onyait was employed as a Band 5 Nurse by Oxford University Hospitals NHS Foundation Trust (the Trust).

Mr Onyait was charged with multiple offences on 14 June 2023. He was convicted of controlling and coercive behaviour in an intimate or family relationship contrary to section 76(1) of the Serious Crime Act 2015 on 20 April 2022.

It was found that Mr Onyait's behaviour towards Person A over a 4-year period from February 2016 to December 2020 amounted to controlling and coercive conduct. [PRIVATE].

Mr Onyait was sentenced to 27 months' imprisonment and to pay a victim surcharge, as well as being made subject to a restraining order under the Protection from Harassment Act 1997.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Kewley who informed the panel that according to Rule 31(2), where a registrant has been convicted of a criminal offence the certificate of conviction shall be conclusive proof of the conviction. He submitted that the panel can be satisfied both upon the certificate of conviction and the transcript of facts upon which the conviction was based, that the NMC has discharged its burden of proving charge 1.

The panel was provided with a copy of the certificate of conviction certified by a competent officer of the court and dated 13 July 2023. The panel noted that the certificate of conviction clearly states that Mr Onyait has pleaded guilty to and been convicted of

controlling or coercive behaviour in an intimate or family relationship on 20 April 2022. He was sentenced to 27 months imprisonment on 11 May 2022.
The panel also had sight of the transcript of prosecution opening facts and the Judge's sentencing remarks dated 11 May 2022. Accordingly, the panel finds that the facts in charge 1 are found proved in accordance with Rule 31(2).

Fitness to practise

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

Submissions on impairment

Mr Kewley 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 of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

Mr Kewley submitted that Mr Onyait's practice is impaired due to the public interest considerations of this case as there is no material before the NMC to suggest that he lacks clinical skills or that he has ever presented a direct risk to patients in his care previously. Further, that this is a public interest impairment case that arises due to the seriousness of the facts upon which Mr Onyait was convicted.

Mr Kewley referred the panel to paragraphs 20, 20.1 and 20.4 of the NMC Code and reminded the panel that the nursing profession is built on qualities such as kindness, compassion and being caring. He submitted that the conduct Mr Onyait engaged in towards his [PRIVATE] was at odds with both The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code) and concepts of being kind, caring and compassionate. Mr Kewley informed the panel that Mr Onyait acted in a way [PRIVATE]. Further, that this was not a one-off, isolated incident but was rather sustained conduct over several years. Mr Kewley submitted that this conviction is very serious, emphasised by the fact that it could only be addressed by the imposition of a custodial sentence.

Mr Kewley further submitted that within the correspondence between the NMC and Mr Onyait, there is no real recognition of there being any wrongdoing, or any evidence of remorse as a result of his actions. Mr Kewley submitted that the comments made by Mr Onyait in his Voluntary Removal application to the NMC appear to attack the character of his [PRIVATE] and indicate a total lack of insight into his criminal offence.

Furthermore, Mr Kewley submitted that there is no evidence of any insight into the impact that Mr Onyait's actions have had on the reputation of the profession, and there is no evidence to suggest that he appreciates that this type of conviction is capable of undermining public confidence in the profession.

Mr Kewley submitted that although there is no suggestion of direct patient risk, a conviction of this nature raises fundamental concerns about Mr Onyait's character and his suitability to remain on the register without restriction. Further, that this is a conviction of such seriousness that if impairment is not found, public confidence in the profession would be undermined and a finding of impairment is therefore required to declare and uphold the proper standards of conduct and behaviour.

Mr Kewley invited the panel to find that Mr Onyait is currently impaired on a public interest basis.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *R (on application of Cohen) v General Medical Council* [2008] EWHC 581 and *CHRE v NMC and Grant*.

Decision and reasons on impairment

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

Nurses 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 with their lives and the lives of their loved ones. To justify that trust, nurses must 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 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/their fitness to practise is impaired in the sense that s/he/they:

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 Mr Onyait’s conviction has engaged limbs b and c of the *Grant* test.

The panel considered whether Mr Onyait’s fitness to practice is currently impaired by reason of his misconduct on either public protection or public interest grounds. It recognised that there was no patient involvement, and this conviction was not related to Onyait’s clinical practice. The panel therefore accepted that Mr Onyait’s actions had not put patients in his care at a direct risk of unwarranted harm.

The panel found that Mr Onyait’s conviction is so serious that it could undermine public confidence in the nursing profession and bring the reputation of the profession into disrepute despite taking place in his private life and that the second limb of the *Grant* test is engaged as a result.

The panel determined that the trust placed in nurses is a fundamental tenet that Mr Onyait has breached. The panel was of the view that the public would find difficulty in trusting a

registrant with such a serious conviction and no evidence of insight or reflection. Therefore, the third limb of the *Grant* test is also engaged.

The panel determined that in his actions, Mr Onyait has breached the following elements of the Code:

> ***'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 discrimination, bullying or harassment*
>
> ***20.3.*** *be aware at all times of how your behaviour can affect and influence the behaviour of other people*
>
> ***20.4.*** *keep to the laws of the country in which you are practising*
>
> ***20.5.*** *treat people in a way that does not take advantage of their vulnerability or cause them upset or distress*
>
> ***20.8.*** *act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to…'*

Regarding insight, the panel considered the three limbs of the *Cohen* test. It determined that the charge is remediable, although it would be difficult due to the deep-seated attitudinal problem related to it. The panel was of the view that Mr Onyait had not shown any evidence of remediation, insight or remorse. The panel considered Mr Onyait's comments in his Voluntary Removal application and determined that there does not appear to be any recognition of his behaviour or the impact it has had on the profession. The panel finally determined that the conduct is highly likely to be repeated as a result of

the lack of reflection, the attacking of the victim's character, lack of insight and the fact that this charge relates to a deep-seated attitudinal concern.

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 alone was required.

Having regard to all of the above, the panel was satisfied that Mr Onyait'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 Onyait off the register. The effect of this order is that the NMC register will show that Mr Onyait 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 Kewley stated that whilst sanction is a matter for the panel's independent professional judgement, it is the NMC's submission that the appropriate and proportionate sanction in this case is that of a striking off order.

Mr Kewley set out the aggravating features of the case. He submitted that it is the NMC's view that there are no mitigating factors in this case which could lessen the overall seriousness of the offence in question.

Mr Kewley submitted that while no previous fitness to practice history could in certain cases be considered a mitigating feature, in cases such as this which involve a very serious criminal conviction, that the SG states that the absence of a fitness to practice history is not relevant.

Mr Kewley submitted a striking-off order is the only appropriate sanction in this case. He submitted that the panel should consider if Mr Onyait's conduct was a significant departure from the standards expected of a registered nurse and is fundamentally incompatible with remaining on the register.

Mr Kewley submitted that the findings in this particular case demonstrate that Mr Onyait's actions are serious and cannot be tolerated. He submitted that Mr Onyait has shown no reflection, has continued to attack the victim's character and has shown no real prospect of insight. To allow Mr Onyait to continue practising would undermine public confidence in the profession and the NMC as regulatory body. Mr Kewley submitted that nothing short of a striking-off order would be sufficient in this case.

Decision and reasons on sanction

Having found Mr Onyait'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:

- Lack of insight into conduct and the impact of the conviction itself
- Absence of remorse
- A pattern of sustained behaviour over a period of time, including violence and threats of violence towards Mr Onyait's [PRIVATE]
- Mr Onyait actively sought to blame the victim.

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 took into account the fact that Mr Onyait has had no prior fitness to practice history. However, the panel considered the following section in the SG which states:

> *'The fact that a nurse, midwife or nursing associate doesn't have a past fitness to practise history in general may have some relevance when considering the decision on sanction, depending on the types of charges that have been found proved. For example, suppose the allegations relate to clinical failings and are shown to be one-off failings during a long career. In this case, this could be a relevant consideration for a panel when considering sanction alongside any evidence of insight, reflection and strengthened practice.'*

The panel determined that in the context of the severity of this case, the concerns relate to a criminal conviction with elements of deep-seated attitudinal issues that there was no evidence before the panel that Mr Onyait has addressed the concerns. As such, the panel applied the following element of the SG in determining that Mr Onyait's absence of a fitness to practice history is not relevant in this case. The SG states that:

> *'If the allegations relate to deep-seated attitudinal concerns, such as displaying discriminatory views and behaviours that the professional hasn't fully addressed, the absence of a fitness to practise history is unlikely to be relevant to a panel when considering sanction.'*

The panel also considered the testimonial provided by Mr Onyait's family member but did not deem it to be a mitigating feature as the testimonial did not point to any meaningful insight or remorse on Mr Onyait's behalf.

The panel also considered Mr Onyait's late admission of guilt but found that this could not be considered pertinent mitigation as Mr Onyait has not since shown any evidence of developing his insight nor has he demonstrated any remorse.

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 interest issues identified, an order that does not restrict Mr Onyait'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 Onyait's conduct 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. Furthermore, the panel determined that the imposition of a caution order would not uphold the proper professional standards.

The panel next considered whether placing conditions of practice on Mr Onyait's registration would be a sufficient and appropriate response. It was of the view that the conduct identified in this case was not something that can be addressed through retraining because it was not related to clinical skills or practice. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the conduct in this case. Furthermore, there is no evidence before the panel that Mr Onyait

has strengthened his practice or has demonstrated that he would not repeat the conduct again. The panel took into account that he continues to be subject to a sentence and has been released from custody on licence. The panel considered the principle in the case of *CRHP V GDC and Fleishman [2005] EWHC 87* that a registrant currently subject to a sentence of the Criminal Court should not return to practice before the sentence had been completed. Furthermore, the panel concluded that the placing of conditions on Mr Onyait's registration would not adequately address the seriousness of this case and would not meet the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where some of the following factors are apparent:

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

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

The panel considered that there was a risk of repetition as it found that Mr Onyait has not demonstrated any remorse, reflection, insight and therefore no remediation.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mr Onyait's actions is fundamentally incompatible with Mr Onyait remaining on the register.

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 Onyait's actions were significant departures from the standards expected of a registered nurse, and as such the panel considered were fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Onyait'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 Onyait'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 standard of behaviour required of a registered nurse.

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

Submissions on interim order

The panel took account of the submissions made by Mr Kewley, on behalf of the NMC, that an interim suspension order for a period of 18 months should be made on the grounds that it is in the public interest. He submitted that the high threshold for imposing an interim order on public interest grounds alone had been met given the seriousness of the panel's findings in this case, in that the conduct is fundamentally incompatible with Mr Onyait's continued registration.

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 on public interest grounds alone. 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 in order to cover the 28-day appeal period.

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

That concludes this determination.