

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

**Substantive Meeting  
Friday 24 March 2023**

Virtual Meeting

**Name of Registrant:** **Mr James Alan Townsend**

**NMC PIN** 12J0246E

**Part(s) of the register:** Registered Nurse – Mental Health Nursing  
(February 2017)

**Relevant Location:** Leeds

**Type of case:** Conviction

**Panel members:** Ashwinder Gill (Chair, Lay member)  
Elaine Biscoe (Registrant member)  
David Boyd (Lay member)

**Legal Assessor:** Charles Parsley

**Hearings Coordinator:** Jasmin Sandhu

**Facts proved:** Charge 1

**Facts not proved:** N/A

**Fitness to practise:** Impaired

**Sanction:** **Striking-off order**

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

## **Reasons for reconvened case**

This panel of the fitness to practise committee sat on 6 March 2023 to consider this case at a substantive meeting. The panel has reconvened today as it has been established that its previous determination makes reference to misconduct within the impairment reasoning. Today, the panel will reconsider this matter, determining impairment solely on the ground of conviction.

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

The panel was aware that the Notice of Meeting (for this reconvened meeting) had been sent to Mr Townsend by recorded delivery sometime in March 2023. It noted that Mr Townsend is currently in prison and that the Notice was sent to his relevant prison address. Further, a copy of this letter was sent to Mr Townsend's representative at the Royal College of Nursing (RCN).

Although the panel did not have confirmation of the exact date in March 2023 that the Notice was sent out to Mr Townsend, it noted that on 22 March 2023, the RCN informed the Nursing and Midwifery Council (NMC) that Mr Townsend is content to waive the 28-day notice period to enable his case to be reheard on 24 March 2023.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the charge and stated that the meeting would be taking place on or after 24 March 2023.

In light of all of the information available, the panel was satisfied that Mr Townsend 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 whilst the full 28-day notice period had not been given, Mr Townsend has confirmed, through his RCN representative, that he is content to waive his right to a 28-day notice period.

## **Details of charge**

That you, a registered nurse

1. On 4 February 2022, at Leeds Crown Court, were convicted of rape of a woman aged 16 or over. **[FOUND PROVED]**

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

## **Background**

On 16 September 2019 the NMC received a referral by Cygnet Health Care. The charges arose whilst Mr Townsend was employed as a registered mental health nurse by Cygnet Sheffield Hospital (the Hospital).

On 14 September 2019, following a staff night out, it was alleged that Mr Townsend went back to another employee's home address where he had sexual intercourse with her against her will. Following this, Mr Townsend was arrested on suspicion of rape.

On 4 February 2022, at Leeds Crown Court, Mr Townsend was convicted of rape of a woman aged 16 or over. It is said that the victim was a homosexual junior colleague with no sexual interest in men, a fact allegedly known by Mr Townsend.

Mr Townsend was sentenced to eight years imprisonment and had a restraining order imposed against him. Mr Townsend was also placed on the Sex Offenders' Register for life.

## **Decision and reasons on facts**

The charge concerns Mr Townsend's conviction and, having been provided with a copy of the memorandum of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3), as follows:

- ‘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.’*

### **Fitness to practise**

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Townsend’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 fitness to practise as a registrant’s suitability to remain on the register unrestricted.

### **Representations on impairment**

In its written representations, the NMC referred to The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (‘the Code’), outlining the sections which it submitted have been breached in this case.

The NMC submitted that Mr Townsend’s actions constitute a serious departure from the standards expected of a registered professional. It submitted that Mr Townsend has been convicted of a serious sexual offence, which impacts upon public protection and undermines trust and confidence in the profession.

The NMC require the panel to bear in mind its overarching objective to protect 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. The NMC referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and submitted that the first three limbs as set out in *Grant* were engaged.

The NMC outlined that with regard to future risk, the panel may consider the comments of Silber J in *Cohen v General Medical Council* [2008] EWHC 581 (Admin), namely (i) whether the concerns are easily remediable; (ii) whether they have in fact been remedied; and (iii) whether they are highly unlikely to be repeated.

It was submitted by the NMC that there is a continuing risk to the public due to Mr Townsend's lack of remorse, insight, reflection and remediation. The NMC submitted that there is a real risk that the behaviour would be repeated, and that harm would be caused. As a result, the NMC invited the panel to find Mr Townsend's fitness to practise impaired on the grounds of public protection.

The NMC further submitted that there is a public interest requirement in a finding of impairment being made in this case in order to declare and uphold proper standards of conduct and behaviour and to maintain confidence in trust in the profession.

The panel also had regard to the correspondence from Mr Townsend's representative dated 9 February 2023, which stated:

*'I write to confirm that Mr Townsend admits the fact that he was convicted of rape and sentenced to serve 8 years in prison. He also concedes that in these circumstances his fitness to practise is impaired and accepts the NMC's sanction bid of a striking off order.'*

The panel accepted the advice of the legal assessor.

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

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

The panel had regard to the Code and considered that the following provisions had been breached in this case:

**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 honesty and 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

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

The panel bore in mind that 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. 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 76, she 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) 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 determined that limbs a – c were engaged in this case. In relation to the first limb, the panel took into account that the victim concerned was said to have been caused psychological harm. As such, it found that Mr Townsend's actions put a colleague at an unwarranted risk of harm. The panel was taken the view that, given the circumstances of this serious offence and his lack of insight, Mr Townsend is liable in the future to put patients at an unwarranted risk of harm. The panel also found that Mr Townsend's conviction of a serious sexual offence, has brought the profession into disrepute and has breached the fundamental tenets of the nursing profession. It considered that members of the public would be concerned, were they to receive treatment from a nurse who had been convicted of a sexual offence and has been placed on the Sex Offenders' Register for life.

The panel had regard to the case of *Cohen v General Medical Council*, in which the court set out three matters which it described as being '*highly relevant*' to the determination of current impairment:

- '(a) Whether the conduct that led to the charge(s) is easily remediable?*
- (b) Whether it has been remedied?*
- (c) Whether it is highly unlikely to be repeated?'*

In considering whether the conduct in this case is easily remediable, the panel took note of the NMC's guidance '*Can the concern be addressed?* (FTP-13a). This outlines the following:

*'Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include:*

- *criminal convictions that led to custodial sentences*

...'

Having borne in mind the above guidance and the nature of these concerns, the panel determined that Mr Townsend's conduct would be difficult to remediate.

With regards to whether the conduct has been remedied, the panel was of the view that there was no evidence of remorse, regret or insight from Mr Townsend. The panel noted that on 30 September 2019, Mr Townsend provided a response to the NMC, detailing that an act of a sexual nature had taken place outside of work with a colleague, but that it was his understanding that it was consensual. Mr Townsend has not provided any further response or reflective piece.

The panel was of the view that due to the seriousness of this case, together with Mr Townsend's lack of remorse, insight and reflection, there is a continuing risk to the public. The panel therefore concluded 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 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.

In this regard, the panel decided that a finding of impairment was also in the public interest. It noted that this case concerns a conviction for a serious sexual offence and considered that an informed member of the public would be concerned should a finding of current impairment not be made in these circumstances.

## **Sanction**

The panel decided to make a striking-off order. The effect of this order is that the NMC register will show that Mr Townsend 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 the NMC is seeking the imposition of a striking-off order, should a finding of current impairment be made.

### **Decision and reasons on sanction**

Having found Mr Townsend's fitness to practise currently impaired by reason of his conviction, 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:

- Conviction for a serious sexual offence resulting in a custodial sentence, a restraining order and indefinite reporting as a sex offender
- The victim was a junior work colleague whom the registrant knew to be homosexual
- Severe psychological harm was caused to the victim
- Demonstrated no remorse, insight or remediation

The panel was of the view that there were no mitigating features relevant in this case.

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, as well as the public protection and public interest issues identified, an order that does not restrict Mr Townsend's practice would not be appropriate in the circumstances.

The panel next considered whether placing conditions of practice on Mr Townsend's registration would be a sufficient and appropriate response. It determined that there were no practical or workable conditions that could be formulated to mitigate the ongoing concerns in this case. The panel noted that these concerns do not relate to Mr Townsend's clinical practice and therefore would be difficult to address by the imposition of conditions. Further, the panel was aware that Mr Townsend is currently serving an eight-year custodial sentence and so in any event, would be unable to comply with any conditions of practice. Furthermore, the panel concluded that a conditions of practice order would not adequately address the seriousness of this case and would not uphold the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It had regard to the SG which outlines the circumstances where a suspension order may be appropriate:

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

The panel considered that the above factors were not present in this case and that a suspension order was not appropriate. It was of the view that Mr Townsend's conduct, as highlighted by the facts found proved, was a significant departure from the standards

expected of a registered nurse and is fundamentally incompatible with him remaining on the register.

In considering a striking-off order, the panel took account 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 was of the view that the above factors were relevant. It considered that the concerns highlighted in this case do raise fundamental questions about Mr Townsend's professionalism. Further, given the seriousness of his actions, the panel considered that public confidence could not be maintained if Mr Townsend's were to remain on the NMC register, particularly given that he will be on the Sex Offenders' Register for life. The panel therefore concluded that a striking-off 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 Townsend 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 this case. It was aware that 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 Townsend's own interests until the striking-off sanction takes effect.

The panel heard and accepted the advice of the legal assessor.

## **Representations on interim order**

In its written representations, the NMC invited the panel to impose an 18-month interim suspension order. It was submitted that an interim suspension order was necessary on the grounds of public protection and was also otherwise in the public interest.

## **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 its 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 decided to impose an interim suspension order for a period of 18 months to cover the 28-day appeal period. The panel was of the view that 18 months would allow sufficient time to lodge an appeal, should Mr Townsend wish to do so, and for any appeal to be heard and determined in full.

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

That concludes this determination.