

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

**Substantive Hearing
Monday, 11 September 2023- Tuesday, 12 September 2023**

Virtual Hearing

Name of Registrant: Rajesh Uthamaraj

NMC PIN 02K08130

Part(s) of the register: Registered Adult Nurse Sub part 1
RN1: Adult nurse, level 1 (22 November 2002)

Relevant Location: Blaenau Gwent

Type of case: Conviction

Panel members: Sue Heads (Chair, Lay member)
Lisa Punter (Registrant member)
Sue Davie (Lay member)

Legal Assessor: Ben Stephenson

Hearings Coordinator: Roshani Wanigasinghe

Nursing and Midwifery Council: Represented by Unyime Davies, Case Presenter

Mr Uthamaraj: Present, not represented. Assisted by Jamie Devine.

Facts proved: All

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 31 October 2022 at Cardiff Crown Court were convicted of the following offences;

a) Assault by beating x 4 contrary to section 39 of the Criminal Justice Act 1988

b) Threatening a person with a bladed article in a private place contrary to section 52 of the Offensive Weapons Act 2019.

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

Decision and reasons on application for hearing to be held in private under Rule 19

At the outset, Ms Davies, on behalf of the Nursing and Midwifery Council (NMC), informed the panel that you intend to make reference to your health and personal circumstances. She therefore invited the panel to hear parts of this hearing in private. The application was made pursuant to Rule 19 of the Rules.

You agreed to this application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there will be reference to your health, the panel determined to hold those parts of the hearing in private in order to protect your privacy.

Background

The NMC received a referral on 28 July 2022 from Bankhouse Care Home in respect of you.

You were arrested on 10 May 2022 and remanded in custody on 12 May 2022. On 31 October 2022, you pleaded guilty to five offences, four of which are an assault by beating contrary to section 39 of the Criminal Justice Act and one offence of threatening a person with a bladed article in a private place, contrary to section 52 of the Offensive Weapons Act 2019. **[PRIVATE]**

You were sentenced on 9 December 2022 to a total of 20 months imprisonment and were issued with a five-year Restraining Order.

Decision and reasons on facts

The charges concern your conviction and, having been provided with a copy of the certificate of conviction, and with your own admission at the outset of this hearing, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3).

Fitness to practise

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

Evidence and submissions on impairment

You gave evidence to the panel under affirmation. In your oral evidence, you explained to the panel your account of the events from which your conviction arose. You told the panel that you were sorry for your actions. You said you were stressed out through the Covid pandemic, which was a difficult time for you. You said that you were the only nurse on duty at a nursing home and that 12 residents died, which had an impact on you and your personal life. You explained your family and personal circumstances at the time of the events from which your conviction arose. You told the panel [PRIVATE], and that you were not working at the time of the events.

[PRIVATE].

You told the panel that you are a good nurse and that you care for your residents. You said that you have completed courses on Anger Management and Stress Management. You said that you have reflected on your actions and that you now know to be more patient when in heated situations. You said that you wish to return to nursing. You said that your convictions did not impact on your practice as a nurse. With regards to the impact that such convictions would have on patients, their families, your colleagues, and the wider public, you stated that if the public were aware of the full circumstances of your case, they would not be worried if you were to treat their families.

Ms Davies 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. Ms Davies submitted that, through your actions, you have breached parts of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) (The Code), in particular, section 20.

Ms Davies also referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin). She submitted that you that you have in the past brought and/or are liable in the future to bring the nursing

profession into disrepute and that you have in the past breached and/or are liable in the future to breach one of the fundamental tenets of the nursing profession.

Ms Davies invited the panel to find that your fitness to practice is currently impaired on the grounds of public interest. She submitted that it was the panel's decision whether to find your fitness to practice impaired on the grounds of public protection. Ms Davies submitted that your convictions are difficult to remediate and that the courses completed by you do not sufficiently demonstrate ways in which you have addressed the conviction. She submitted that although you had pleaded guilty at the Crown Court, you have shown very limited insight into your actions. She referred the panel to the sentencing remarks made by the Judge, who stated "*you are a high and imminent risk of causing serious harm [PRIVATE]*". Ms Davies therefore invited the panel to find that your practice is impaired.

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, your 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 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 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) 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 b and c were engaged both as to the past and future. It considered that, as your case does not relate to clinical practice, limb a was not engaged.

The panel bore in mind your responsibilities as a registered nurse and your duties. The panel appreciated that these concerns did not occur in a clinical setting.

However, by holding the position of a registered nurse, you had and have a responsibility to always act with integrity.

The panel considered the sentencing remarks which stated that you are a high and imminent risk of causing serious harm **[PRIVATE]**. It further noted that the Judge had found that there were three victims to your violence and that the offence was too serious to be dealt with by anything other than a sentence of immediate imprisonment.

The panel determined that you have brought the nursing profession into disrepute, by reason of your convictions; you committed a number of serious crimes of violence, received a custodial sentence, and have a five-year Restraining Order in place. The panel also determined that these actions have breached fundamental tenets of the nursing profession; in reaching this decision, the panel had sight of the following sections of the Code:

“You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.

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

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress”

The panel noted that you had changed your position from acknowledging that you were impaired in your handwritten letter dated 11 November 2022 in which you wrote “*I fully understand that I no longer am fit enough to nurse as per regulatory concerns...*”, to now stating that you are no longer impaired. It acknowledged that the letter of 11 November 2022 was written whilst you were in prison.

The panel found that you have demonstrated poor insight into why your criminal convictions could damage the trust and confidence which the public places in the profession. You also had poor insight into the role of the NMC as regulator in declaring and upholding the relevant professional standards expected of a registered nurse. The panel considered that you have demonstrated no insight into the impact of your convictions on your colleagues and the wider public interest. It found that you spoke about the impact on yourself rather than anyone else.

The panel noted that criminal convictions are difficult to remediate. However, the panel determined that although it might be possible to remediate, there was very little evidence of any remediation.

The panel considered that any conduct resulting in a criminal conviction is particularly serious. The panel noted that there are no concerns involving your clinical nursing practice and took into account the testimonials of your work colleagues which were all supportive of your good practice. However, the panel is of the view that there remains a risk of

repetition based on the seriousness of the conviction and your lack of insight and remediation.

It then considered whether there is a current public protection concern. **[PRIVATE]**. Given you were found to be of “*imminent threat*” to them, the panel therefore decided 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/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 was also required. The panel determined that the public and other nurses would be appalled by your actions, and your actions have brought the profession into disrepute. Any other finding would undermine public confidence in the profession, and the NMC as its regulator.

Having regard to all of the above, the panel was satisfied that your 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 your name from the register. The effect of this order is that the NMC register will show that you have 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 to the NMC’s published guidance on sanctions (‘the SG’). The panel accepted the advice of the legal assessor.

Submissions on sanction

In her submissions on sanction, Ms Davies invited the panel to impose a striking-off order. Ms Davies outlined what the NMC considered to be the aggravating and mitigating features of this case, and submitted that, because of the seriousness of the facts underlying your conviction, the only sanction that would suitably satisfy the public protection and public interest would be to permanently remove your name from the register.

Ms Davies invited the panel to consider SAN-2, 'Considering sanctions for serious cases', of the fitness to practice library when considering its decision.

Ms Davies submitted that in this particular case, there are factors which call into question whether you should remain on the register. She reminded the panel that the violent behaviour [PRIVATE]. She reminded the panel that you threatened [PRIVATE] with a bladed article. She submitted that your actions call into question your professionalism.

Ms Davies submitted that it is accepted that your clinical practice is not being called into question. However, she submitted that the public protection, public interest concerns and public confidence in the nursing profession would be seriously undermined if a striking-off order was not imposed today.

You said that you love working in the nursing career and that you wish to continue working. You said that you want to help your community. You said that you are sorry for your actions. You said that you hoped you would be offered the opportunity to continue to work as a nurse. You said that you do not accept that you pose any risk to the public.

Decision and reasons on sanction

Having found your 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:

- Multiple, serious and violent actions on different dates which led to an immediate custodial sentence of 20 months imprisonment and a five-year restraining order;
- Three vulnerable victims; and
- Lack of insight and remediation.

The panel noted that there are no concerns as to your clinical practice and that you have provided testimonials which attest to this. However, the panel did not consider that these amounted to mitigating factors in relation to the charges against you. The panel therefore could not identify any mitigating factors in this case.

The panel had regard to SAN-2, 'Considering sanctions for serious cases', of the fitness to practice library when considering its decision. It bore in mind that the guidance included reference to the case of Bolton v Law Society [1994] 1 WLR 512, which stated:

"Cases about criminal offending by nurses, midwives or nursing associates illustrate the principle that the reputation of the professions is more important than the fortunes of any individual member of those professions. Being a registered professional brings many benefits, but this principle is part of the 'price'."

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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took account of the SG, 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 was of the view that your behaviour was not at the lower end of the spectrum of fitness to practise 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.

The panel next considered whether placing conditions of practice on your nursing registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel was of the view that there are no practical or workable conditions that could be formulated, given the seriousness and the nature of the conviction in this case. The panel noted that the concerns in this case relate solely to your conduct and behaviour outside of your clinical practice; there were no identifiable areas of clinical nursing practice which needed to be addressed.

The panel also determined that the public protection and public interest elements of this case would not be met by the imposition of a conditions of practice order, given your conviction.

The panel then considered whether a suspension order would be the proportionate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *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 finds that none of these factors are engaged in this case.

Your behaviour, highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse and a breach of the fundamental tenets of the profession. Your conviction related to violence on multiple occasions. You have shown poor insight into the circumstances that led to your offending, and the panel has heard evidence suggesting attitudinal concerns. The panel determined that in all the circumstances, a suspension order would be inadequate.

Finally, in considering a striking-off order, the panel had regard to 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?*

Your actions represented a significant departure from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register. The panel's findings in this case demonstrate that your offending is serious, and the panel is satisfied that to allow you to continue practising would greatly undermine public confidence in the profession and in the NMC as a regulatory body.

Whilst the panel acknowledges the effect that a striking-off order will have on you, it considered the public protection and public interest concerns identified outweigh any effect on you. As noted in the guidance the reputation of the profession is more important than the fortunes of any individual member.

Balancing all of these factors, the panel has determined that the appropriate and proportionate sanction is that of a striking-off order. Having considered the effect of your

behaviour in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, the panel has concluded that nothing short of this would be sufficient in the particular circumstances of 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 you 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 is in your own interests until the striking-off sanction takes effect. The panel accepted the advice of the legal assessor.

Submissions on interim order

Ms Davies submitted that, given the panel's reasons for imposing the striking-off order, an interim suspension order of 18 months to protect the public and is in the public interest. She submitted that public confidence in the profession would be seriously damaged if you were allowed to practise without restriction during the appeal period. Ms Davies submitted that an interim order of 18 months was required to allow sufficient time for any appeal lodged to conclude.

You did not oppose the application.

Decision and reasons on interim order

The panel is satisfied that an interim order is in the public interest. It had regard to the seriousness of the case and the reasons set out in its decision on sanction in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate in this case, due to the reasons set out in its decision on sanction. The panel therefore imposed an interim suspension order for a period of 18 months in order to protect the public and to maintain public confidence in the profession and in the NMC as its regulator. The panel determined that an 18-month period is required to allow sufficient time for any appeal lodged to conclude.

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

That concludes this determination.