

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

Substantive Meeting

24 May 2019

Nursing and Midwifery Council, 114-116 George Street, Edinburgh, EH2 4LH

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| Name of registrant: | Mr Jason Bland |
| NMC PIN: | 08A0890E |
| Part(s) of the register: | Registered Nurse – Mental Health |
| Area of Registered Address: | England |
| Type of Case: | Conviction |
| Panel Members: | Nicola Jackson (Chair, lay member) Lorraine Shaw (Registrant member) Ian Dawes (Lay member) |
| Legal Assessor: | Mike Bell |
| Panel Secretary: | Kelly O'Brien |
| Facts proved: | All |
| Facts not proved: | None |
| Fitness to practise: | Impaired |
| Sanction: | Striking-off order |
| Interim Order: | Suspension order – 18 months |

Details of charge

That you, a Registered Nurse:

- 1. On 20 August 2018 were convicted at the Crown Court at St Albans of sexual activity with female person with a mental disorder/learning disability- care worker – penetration of anus, vagina, mouth by penis/part of body*

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

Decision on service of notice of meeting

The panel was informed at the start of this meeting that written notice of this meeting had been sent to Mr Bland's registered address in prison by recorded delivery and by first class post on 22 March 2019. Royal Mail Track and Trace documentation confirmed that notice of this hearing was delivered and signed for at Mr Bland's registered address in prison on 23 March 2019 in the printed name of "HMPBURE".

The panel took into account that the notice of meeting letter provided details of the allegation, and that it will be heard by way of meeting on or after 17 May 2019.

The panel accepted the advice of the legal assessor.

In light of all of the information available, the panel was satisfied that Mr Bland had been served with notice of this hearing in accordance with the requirements of Rules 11A and 34. It noted that the rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Preliminary matters

The panel had regard to the letter from Mr Bland dated 24 March, and the letter from his formal representative dated 20 May 2014. The panel considered that there was nothing contained therein which would preclude this case being held as a meeting.

Decision on the findings on facts and reasons

The panel accepted the advice of the legal assessor.

The charges concern Mr Bland'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) of the Rules which states:

- (2) Where a registrant has been convicted of a criminal offence—
 - (a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and
 - (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.
- (3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that he is not the person referred to in the certificate or extract.

Decision on impairment

The panel considered if, as a result of this conviction, Mr Bland's fitness to practise is currently impaired.

In reaching its decision the panel had regard to all the documentation before it including the written submissions from Mr Bland's representative, Mrs Bland.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the panel considered the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) in reaching its decision, in paragraph 74 she said:

“In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.”

Mrs Justice Cox went on to say in Paragraph 76:

“I would also add the following observations in this case...as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor’s fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

Do our findings of fact in respect of the doctor’s misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. 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 found the first three limbs of Grant were engaged in this case.

The panel considered that Mr Bland had been convicted of a sexual offence involving a vulnerable patient under his care. The panel noted that the Court, having taken account of Mr Bland’s guilty plea sentenced as follows: (a) 16 months imprisonment; (b) a requirement to register on the Sex Offender register for a period of 10 years; and (c) a Restraining Order for 10 years.

The panel had regard to the sentencing Judge's remarks in the Crown Court Sentencing Transcript "*having heard the victim read out her victim person statement, as I've said, there have clearly been serious long term effects on her already fragile mental health.*" and "*your actions have had a significant and ongoing effect on her life and her mental wellbeing*". The panel considered that this was a case of serious patient harm and a grave breach of professional trust.

The panel was mindful that the charges were so serious that they would be very difficult to remediate.

The panel considered that the nature of the conviction reflects serious attitudinal issues. The panel had regard to Mr Bland's written statement dated 24 March 2019 and also his representatives letter of 20 May 2019 and had no evidence before it that Mr Bland has any insight into the nature and extent of his actions, and the consequences of his actions on the patient, the patient's family, colleagues, and the reputation of the profession. Accordingly, it is of the view that there is a real risk of repetition and there are serious public protection concerns. The panel therefore concluded that Mr Bland was impaired on 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 required. The panel determined that the public would be appalled and dismayed by the actions of Mr Bland and that a finding of no impairment 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 Mr Bland's fitness to practise is currently impaired.

Determination on sanction

The panel considered this case and decided to make a striking-off order. It directs the registrar to strike Mr Bland off the register. The effect of this order is that the NMC register will show that Mr Bland been removed from the register.

In reaching its decision, the panel had regard to all the evidence in this case. The panel accepted the advice of the legal assessor. The panel bore in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the Sanctions Guidance (the SG) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

Before making its determination on sanction, the panel had regard to the aggravating and mitigating features in this case.

The panel considered the aggravating features to be:

- The patient in question was vulnerable as a result of her mental ill health and status as a patient;
- There is evidence of actual patient harm both physical and psychological;
- Mr Bland was in a position of trust and there was a real imbalance of power due to the therapeutic nature of the relationship;
- The public nature of the conviction and the impact that this had on the reputation of the profession.

The panel considered the mitigating features to be:

- Mr Bland's guilty plea in the Crown Court following his self-referral to his supervisor.

The panel had regard to the NMC Sanctions Guidance, particularly the guidance relating to criminal convictions involving misconduct. The panel considered that Mr

Bland has abused his position of trust. The panel was further satisfied that the nature of the conduct giving rise to the conviction was likely to seriously undermine public confidence in the profession.

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 into account the Sanctions Guidance, 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 considered that Mr Bland's offences were not at the lower end of the spectrum and that a caution order would be inappropriate in view of the conviction of a serious sexual offence. The panel decided that it would be neither proportionate, nor protect the public, nor be in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Bland's registration would be a sufficient and appropriate response. The panel considered that a conditions of practice order would not be appropriate in this matter, in that there are no identifiable areas of retraining required to meet the concerns in this case except, perhaps, training on professional boundaries. More particularly, such an order would not sufficiently restrict Mr Bland's practice so as to offer suitable protection to members of the public and there are no suitable conditions which could reasonably be imposed. Such an order would also not mark the seriousness of the conduct and would not be sufficient to maintain public trust and confidence in the profession.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel noted that this would restrict Mr Bland's practice and, as such provide protection for members of the public for so long as it is in force.

However, Mr Bland's conduct, as highlighted by the remarks of the sentencing Judge, was a serious breach of trust. It was also a significant departure from the standards expected of a registered nurse, and the panel was not satisfied that a period of suspension would satisfy the public interest or uphold public trust and confidence in the profession or the NMC. Balancing all of these factors, the panel has determined that a suspension order would not be an appropriate or proportionate sanction.

The panel therefore went on to consider the appropriateness of a striking-off order. The panel considered that Mr Bland's conduct is fundamentally incompatible with on-going registration. The panel considered that a striking-off order is necessary to protect the public and maintain public confidence in the profession.

Mr Bland's conviction is of a very serious nature. He has dishonoured the nursing profession, abused his position of trust, harmed a vulnerable patient, and the public would be appalled if he were permitted to practice as a registered nurse. Any sanction less than a striking-off order would fundamentally undermine the public confidence in the profession and in the NMC as a regulatory body. The panel further noted that there are serious public protection concerns which could not be satisfied with a lesser sanction than a striking-off order.

The panel had regard to the case of *in CRHP v GDC and Fleischmann [2005] EWHC 87 Admin* and noted that "*where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence*". The panel considered that Mr Bland had been sentenced to 16 months imprisonment for sexual offences against a patient. It noted that he is on the Sex Offenders Register for a period of 10 years, and a restraining order is in place.

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. It concluded that, given the seriousness of the criminal

offence, nothing short of this would be sufficient to uphold public confidence and the reputation of the profession. It would also send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

Accordingly, the panel decided to make a striking-off order.

Determination on interim order

The panel considered that an interim order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The conditions for the interim order will be the same as those detailed in the substantive order.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.