

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

**Substantive Meeting  
Monday 15 August 2022**

Nursing and Midwifery Council  
Virtual Meeting

<b>Name of registrant:</b>	<b>Jonathan Reyes</b>	
<b>NMC PIN:</b>	03J02680	
<b>Part(s) of the register:</b>	Registered Nurse – Sub Part 1 Adult Nursing (October 2003)	
<b>Relevant Location:</b>	Southend-on-Sea	
<b>Type of case:</b>	Conviction	
<b>Panel members:</b>	Adrian Smith Tracey Chamberlain Michael Glickman	(Chair, Lay member) (Registrant member) (Lay member)
<b>Legal Assessor:</b>	Attracta Wilson	
<b>Hearings Coordinator:</b>	Elena Nicolaou	
<b>Facts proved:</b>	All	
<b>Facts not proved:</b>	None	
<b>Fitness to practise:</b>	Impaired	
<b>Sanction:</b>	<b>Striking-off order</b>	
<b>Interim order:</b>	<b>Interim suspension order (18 months)</b>	

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

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mr Reyes' email address, and registered address by recorded delivery on 28 June 2022.

The panel took into account that the Notice of Meeting provided details of the allegation, and otherwise complied with the requirements of Rule 11A (2) of the Nursing and Midwifery Council (NMC) Fitness to Practise Rules 2004 (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 Reyes has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Rules as amended.

## **Details of charge**

That you, a registered nurse:

1. You were convicted on 25th February 2021 and 11th August 2021 at Basildon Crown Court of Sexual Assault, contrary to the Sexual Offences Act 2003 x 7.

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

## **Background**

The charges arose whilst Mr Reyes was employed as a registered nurse by Boscombe Lodge Care Home (the Home). The NMC received a referral from Essex Police (the Police) on 6 January 2020 in relation to Mr Reyes.

On 19 December 2019, Mr Reyes was arrested on suspicion of five accounts of sexual assault. Between March and October 2019, while working at the Home, Mr Reyes was said to have sexually assaulted four members of staff and was witnessed kissing an elderly female resident.

Mr Reyes was convicted on 25 February 2021 and 11 August 2021, contrary to the Sexual Offences Act 2003 x 7.

### **Decision and reasons on facts**

The charge concerns Mr Reyes' conviction and, having been provided with a copy of the certificate of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3). These state:

- '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.'*

In addition, the panel had regard to the NMC's statement of case, certificate of conviction, sentencing remarks and the police report.

The panel also had regard to records of telephone conversations between Mr Reyes and the NMC.

## **Fitness to practise**

Having found facts in reliance on Rule 31 (2) of the Rules, the panel then considered whether, on the basis of the facts found proved, Mr Reyes' 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.

## **Submissions on impairment**

The panel reminded itself of the NMC's 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 panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*.

The NMC provided written submissions on impairment, which are as follows:

*'Impairment needs to be considered as of today's date, i.e. whether Mr Reyes' fitness to practice is currently impaired as a result of the conviction. The NMC defines impairment as a registered professional's suitability to remain on the register without restriction. There is no burden or standard of proof to apply as this is a matter for the fitness to practice panel's own professional judgement.*

*We consider the following questions from the case of **Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)** can be answered in the affirmative both in respect of past conduct and future risk:*

- 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 [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
- c) has [the Registrant] in the past committed a breach of one of the*

*fundamental tenets of the [nursing] profession and/or is liable to do so in the future*

*d) has [the Registrant] in past acted dishonestly and/or is liable to act dishonestly in the future*

*The panel must also consider the comments of **Cox J in Grant at paragraph 101:***

*“The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case”.*

*In this case, limb a, b, and c as set out in Grant are engaged.*

*Mr Reyes put a vulnerable resident at unwarranted risk of harm, by the very nature of his conduct displayed. We have not been provided with any evidence which suggests that residents would not be put at unwarranted harm in the future.*

*Nurses occupy a position of trust and must act and promote integrity at all times. Professionalism and integrity are fundamental tenets of the profession that have been severely breached in this case. The public has the right to expect high standards of registered professionals. The seriousness of the conviction are such that it calls into question Mr Reyes’ professionalism and trustworthiness in the workplace. This therefore has a negative impact on the reputation of the profession and, accordingly, has brought the profession into disrepute.*

*With regard to future risk it may assist to 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.*

The NMC's guidance entitled "**Can the concern be addressed?**" FTP-13a, states as follows:

*"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*
- *inappropriate personal or sexual relationships with patients, service users or other vulnerable people*

*Mr Reyes has displayed no insight into his conduct as there has been no engagement with the NMC process, which indicates that the public and colleagues remain at risk of harm. Mr Reyes' actions resulted in convictions for seven sexual offences. The convictions would undermine public confidence in the profession.*

*We consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behavior. The public expect nurses to act with honesty and integrity so that patients and their family members can trust registered professionals. Mr Reyes' actions and undermine public confidence in the nursing profession.'*

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council (No 2) [2000] 1 A.C. 311.*

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

The panel next went on to decide if, as a result of the convictions, Mr Reyes' fitness to practise is currently impaired. It considered that the convictions and the actions which gave rise to them constituted breaches of The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates (2015) (the Code). It identified the following paragraphs of the Code had been breached:

**‘1 Treat people as individuals and uphold their dignity**

To achieve this, you must:

- 1.1 treat people with kindness, respect and compassion
- 1.2 make sure you deliver the fundamentals of care effectively

**4 Act in the best interests of people at all times**

To achieve this, you must:

- 4.3 keep to all relevant laws about mental capacity that apply in the country in which you are practising, and make sure that the rights and best interests of those who lack capacity are still at the centre of the decision-making process

**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... 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...’

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 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 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; ...*

The panel finds that a patient was put at risk as a result of the conduct which led to Mr Reyes' conviction. Mr Reyes' conviction had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel considered that limbs a, b and c of *Grant* are engaged in this case.

The panel considered that Mr Reyes' actions were very serious and involved both colleagues and a vulnerable patient. Mr Reyes' actions brought the profession into disrepute, and the public would be shocked to learn of his actions. There has been no evidence before the panel of any insight, reflection or remorse from Mr Reyes in respect of his actions, and nothing to demonstrate that he has an understanding of the impact his actions could have had on colleagues, patients, the public and the wider profession.

The panel considered that Mr Reyes had breached fundamental tenets of the profession. The only responses received from Mr Reyes are via telephone calls recorded in call logs, dated 18 January 2022, in which he said that he pleaded guilty to his offences and dated 4 May 2022, in which he stated that he no longer wishes to engage with the fitness to practise process, and that his name should be struck off the register.

The panel considered that there has been no change in the level of risk, as Mr Reyes has disengaged with the regulatory proceedings and there is no evidence that he has made any attempts to address his actions. The panel also noted that Mr Reyes' actions involved a vulnerable patient. The panel considered that there remains a risk of harm to the public and a risk of repetition. 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 and 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 is required, due to the importance of upholding professional standards. In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in a case involving sexual assaults, and therefore also finds Mr Reyes' fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Reyes' fitness to practise is currently impaired on both public protection and public interest grounds.

## **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 Reyes off the register. The effect of this order is that the NMC register will show that Mr Reyes 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.

## **Submissions on sanction**

The NMC provided written submissions on sanction, which are as follows:

*'We consider the following sanction is proportionate:*

- *Striking-off order*

*With regard to our sanctions guidance the following aspects have led us to this conclusion. Taking the least serious sanctions first:*

- Taking no action and a caution order** - it is submitted that taking no action and a caution order would not be appropriate in this case. The NMC sanctions guidance (SAN-3a) states that taking no action will be rare at the sanction stage and this would not be suitable where the nurse presents a continuing risk to patients. In this case, the seriousness of the concerns raised means that taking no action would not be appropriate. A caution order would also not be appropriate as this would not be in the public interest nor mark the seriousness and would be insufficient to maintain high standards within the profession or the trust the public place in the profession.*

- b. **Conditions of Practice Order** - The NMC's sanctions guidance (SAN-3c) states that a conditions of practice order may be appropriate when there is no evidence of harmful deep-seated personality or attitudinal problems; there are identifiable areas of the registered professionals practice in need of assessment and/or retraining; and there is no evidence of general incompetence. In this case the behaviour conduct from Mr Reyes raises significant attitudinal concerns. This is a case which also involves multiple sexual assaults, which is a serious offence. This clearly raises fundamental questions about the public's ability to trust the profession. These convictions mean that a conditions of practice order is inadequate in dealing with this case.
- c. **Suspension Order** - A suspension order would also not be sufficient in the case to mark the seriousness of Mr Reyes' actions. Mr Reyes' conduct suggests a serious deception, undermining his trustworthiness entirely. If he were to stay on the register, this would risk substantially undermining public confidence in the profession, given the nature of the numerous convictions, and the period over which it happened.
- d. **Striking-off Order** - A striking-off order would be the most appropriate and proportionate sanction to impose in this case. The guidance on criminal convictions and cautions (FTP-2c) states:-

*"If the criminal offending took place in the nurse, midwife or nursing associate's private life, and there's no clear risk to patients or members of the public, then it is unlikely that we'll need to take regulatory action to uphold confidence in nurses, midwives or nursing associates, or professional standards. We'd only need to do that if the nurse, midwife or nursing associate was given a custodial sentence (this includes suspended sentences), or the conviction was for a specified offence."*

The NMC guidance at SAN-3e states:

*"The courts have supported decisions to strike off healthcare professionals where there has been lack of probity, honesty or trustworthiness, notwithstanding that in other regards there were no concerns around the*

*professional's clinical skills or any risk of harm to the public. Striking-off orders have been upheld on the basis that they have been justified for reasons of maintaining trust and confidence in the professions”.*

*Mr Reyes' behaviour resulted in a custodial sentence. The conduct and behaviours displayed is extremely serious and is regarded as being fundamentally incompatible with being a registered professional. The convictions, by their very nature, involve sexual misconduct. Allowing continued registration would be seriously damaging to the reputation of the profession.'*

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

The panel accepted the advice of the legal assessor which included reference to *Council for the Regulation of Healthcare Professionals v General Dental Council & Fleischmann [2005] EWHC 87 (Admin)*.

Having found Mr Reyes' 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:

- Conviction for multiple sexual offences, one of which involved a vulnerable patient;
- Failure to engage meaningfully with the NMC; and
- No evidence of insight, remorse or reflection.

The panel considered that there were no mitigating features 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 and the public protection issues identified. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Reyes' 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 Reyes' actions were 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, nor would it protect patients and the public.

The panel next considered whether placing conditions of practice on Mr Reyes' registration would be a sufficient and appropriate response. The panel considered that there are no clinical issues in this case and the concerns identified are not something that can be addressed through retraining. The panel is of the view that there are no practical or workable conditions that could be formulated that would address the concerns, given the nature of the charges in this case. Furthermore, the panel concluded that the placing of conditions on Mr Reyes' registration would not adequately address the seriousness of this case and would not protect the public. Mr Reyes has also disengaged with the regulatory proceedings, and the panel concluded that conditions of practice would not be appropriate in this case.

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:

- *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 considered that this is a serious case resulting in a criminal conviction. Mr Reyes' actions were not a single/ one-off incident, and involved sexual assaults on colleagues and a vulnerable patient. There is evidence suggesting deep-seated attitudinal concerns. It considered that Mr Reyes has not provided any information or evidence that indicates he has any insight into his actions or the impact that they would in all likelihood have had on colleagues, patients, the public and the wider profession. There is nothing before the panel that demonstrates that Mr Reyes has addressed the concerns or demonstrated remorse, and it has received no reflective pieces from him.

Mr Reyes' actions, as highlighted by the facts found proved, were 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 Reyes' actions is fundamentally incompatible with him remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction, nor would it address the wider public interest.

The panel noted that Mr Reyes was given a 23-month custodial sentence suspended for two years in October 2021. This sentence remains current. He was also placed on the sex offenders register for a period of 10 years. In accordance with the general principles outlined in the case of *Fleischmann*, the panel determined that Mr Reyes should not be permitted to resume practice as his sentence remains extant.

Finally, in considering 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?*

The panel considered that a striking-off order was the only appropriate sanction that would protect the public and maintain public confidence in the profession, in this case. For the reasons outlined above, a suspension order would not be sufficient to address the concerns.

Mr Reyes' 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 Reyes' 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. The panel considered that this order was necessary both to protect the public and 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 Reyes 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 Reyes' own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Submissions on an interim order**

The panel took account of the written submissions made by the NMC, which are as follows:

*'A substantive sanction cannot take effect until the end of the appeal period, which is 28 days after the date on which the decision letter is served, or, if an appeal has been lodged, before the appeal has been finally determined.'*

*'As such, if a finding is made that Mr Reyes' fitness to practise is impaired on a public interest and on a public protection basis and a restrictive sanction imposed, we invite the panel to impose an 18 month interim order in the same terms as the substantive order should be imposed on the basis that it is necessary for the protection of the public and 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 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 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 Reyes is sent the decision of this hearing in writing.

That concludes this determination.