

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

**Substantive Hearing  
16 & 19 December 2022**

Virtual Hearing

**Name of registrant:** Miss Kirshina Nikita Summan

**NMC PIN:** 16J0031E

**Part(s) of the register:** RNA (2017)  
RM (2019)

**Relevant location:** West Midlands

**Type of case:** Conviction

**Panel members:** Ini Udom (Chair, lay member)  
Marcia Smikle (Registrant member)  
Stacey Patel (Lay member)

**Legal Assessor:** Michael Hosford-Tanner

**Hearing coordinator:** Leigham Malcolm

**Nursing and Midwifery Council:** Represented by Mr Anthony James, NMC Case  
Presenter

**Miss Summan:** Present and represented by Ms Zahra Ahmed

**Facts proved by admission:** Charge 1

**Fitness to practise:** Impaired

**Sanction:** Caution Order (5 years)

## **Details of charge**

*That you, a registered nurse and registered midwife:*

- 1) On 06 April 2022 at Wolverhampton Crown Court was convicted of the offence of harbouring an escaped prisoner.*

*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**

At the outset of the hearing Ms Ahmed, on your behalf, informed the panel that during the course of proceedings there would be reference to your physical and mental health and also matters of your personal and private life. She made an application to hear such parts in private pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr James, on behalf of the Nursing and Midwifery Council (NMC), supported the 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.

The panel determined to hear any information relating to your physical and mental health or any matters of your personal life in private in accordance with Rule 19.

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

Ms Ahmed informed the panel that you admitted Charge 1. The charge concerns your conviction and, having been provided with a copy of the certificate of conviction, and in view of your full admission, the panel found the facts of your case 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.

You did not admit impairment.

### **Oral evidence and submissions on impairment**

Mr James 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.

Mr James submitted that the conduct for which you received a conviction represented a serious lapse of judgement. He submitted that your conduct gave rise to a concern and that you may demonstrate a similar lapse of judgment whilst working as either a nurse or midwife, creating a clear risk of harm to patients in your care.

Mr James highlighted that your conduct, harbouring an escaped prisoner, spanned six days and he submitted that this length of time acted as an aggravating feature. He referred the panel to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin). He submitted that you had attempted to minimise your involvement, but it was abandoned only on the day of the sentencing hearing.

In view of your conviction, Mr James invited the panel to find your fitness to practise currently impaired on the grounds of public protection as well as in the public interest.

You gave evidence under affirmation. You told the panel that you have reflected on your actions and the consequences not only for yourself but also for your children, colleagues, the public, and the wider nursing and midwifery professions. The panel heard how you feel that you have let yourself and your children down by receiving a conviction and suspended custodial sentence. You told the panel that your conviction has led you to reflect on how your actions impact others and how you want to develop as a professional nurse and midwife.

You told the panel that now, if you were to find yourself in the same situation, you would contact the police straight away.

[PRIVATE]. You told the panel that you have realised that you need to 'open up' and 'ask for help when it is needed', and you explain to the panel the support systems that you now have in place.

[PRIVATE].

Ms Ahmed informed the panel that of your own initiative you undertook and completed the Edward Jenner Programme, an NHS leadership programme, in January 2022. She submitted that this leadership programme along with your reflection has caused a shift in your mindset. She submitted that you are no longer the same person that you were at the time of the incident and would not repeat such conduct again. She referred the panel to references and testimonials from your current colleagues and senior managers which all speak positively of you as a professional midwife and your clinical practice.

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

The panel accepted the advice of the legal assessor. It then went on to decide if as a result of the conviction, your fitness to practise is currently impaired.

Nurses and midwives 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 and midwives with their lives and the lives of their loved ones. To justify that trust, nurses and midwives 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 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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel determined that there was no evidence before it that you have, at any time, posed a risk or placed patients at risk of harm. The panel bore in mind that since the incident you have continued to practice as a midwife without any concerns being raised. It took account of Mr James' submission that your conduct gave rise to a concern that you may demonstrate a similar lapse of judgment whilst working as either a nurse or midwife, creating a clear risk of harm to patients in your care. However, the panel determined that this was speculative, and the panel found that there is no real risk of repetition. The panel did, however, determine that the conduct for which you received a conviction breached fundamental tenets of the nursing and midwifery professions and brought the professions into disrepute.

The panel took account of your lengthy and detailed reflective statement as well as the positive testimonials and your oral evidence. The panel determined that you demonstrated significant insight during your oral evidence. It was clear that you had reflected deeply on your conduct and were able to illustrate the impact of your conviction not only on yourself but also on your children, colleagues, the public and the reputation of the nursing and midwifery professions.

The panel also bore in mind that you now have support systems in place and are aware of the need to ask for help when necessary. However, you received a conviction and suspended custodial sentence for harbouring an escaped prisoner, who had been convicted of a serious offence. Whilst the conduct did not relate to your clinical practice, the panel determined that it was extremely serious and breached The Code; Professional Standards of Practice and Behaviour for Nurses and Midwives, (the Code), in that you failed in your duty to uphold the reputation of the professions at all times, pursuant to section 20, 20.3 and 20.4.

The panel accepted Mr James' submission that your conduct undermined the criminal justice system and the police.

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.

Whilst the panel decided that your fitness to practice is not currently impaired on public protection grounds, it decided that given the seriousness of your conduct and your resulting conviction warranting the imposition of a suspended term of imprisonment, the public would expect the NMC to take action. For these reasons, the panel determined that

a finding of impairment on public interest grounds was required to maintain confidence in the nursing and midwifery professions and to uphold the standards required.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

## **Sanction**

The panel considered this case very carefully and decided to make a caution order for a period of five years. The effect of this order is that your name on the NMC register will show that you are subject to a caution order and anyone who enquires about your registration will be informed of this order.

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 James informed the panel that in the Notice of Hearing, dated 14 November 2022, the NMC had advised you that it would seek a striking-off order if the panel were to find your fitness to practise currently impaired.

Mr James provided the panel with a list of aggravating features when he addressed the panel on impairment.

Mr James submitted that the custodial sentence compounded the seriousness of your conviction. He referred to the cases of *Bolton v The Law Society* [1994] WLR 512 and *Fleischmann* [2005] EWHC 87 (Admin). He submitted that your conduct with the police



called your trustworthiness into account and that the incident represented a serious lapse of judgement. He also submitted that insight is less important where the public interest is engaged, citing the case of *Ranga v General Medical Council [2022] EWHC 2595 9Admin*).

Mr James submitted that a striking off order would be the only way to protect the reputation of the nursing and midwifery professions as well as uphold public confidence.

Ms Ahmed submitted that there is no evidence which raises fundamental questions about your clinical practice and ability to be a nurse. She highlighted that you pleaded guilty at the plea and case management hearing at the Crown Court and referred the panel to the judges' remarks during your sentencing hearing on 18 May 2022:

*"...the court would be surprised if her professional body or hospital took any action which meant her employment was terminated, particularly given her record...."*

Ms Ahmed told the panel that you have not benefited from the offence that you committed and invited the panel to impose the least draconian sanction. She noted that no deep-seated attitudinal issues had been identified and no patients had been put at risk of harm. She stressed that the offending was totally unconnected to your clinical practice. She referred the panel to the NMC's Sanctions Guidance (SG) and submitted that in your case a caution order would satisfy the public interest concerns. In respect of a conditions of practice order she accepted that there may not be any specific conditions which could be devised to meet the public interest concerns.

Ms Ahmed submitted that your case is borne out of unique circumstances which will not be repeated. She referred the panel to the case of *Bawa-Garba v General Medical Council [2018] EWHC 76 (Admin)* and submitted that removal or erasure from the register were not the only options available to a panel, even in cases where more serious criminality has been proven. She submitted, with reference to paragraph 76 of *Bawa-Garba*, that there is a difference between a jury and a tribunal, and that the tribunal needs to look to the future

and not punish the registrant but to look at how standards can be maintained and to mark the records.

### **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 identified the following aggravating features:

- your conduct was the result of a serious lapse of judgement;
- you received a custodial sentence, although it was suspended for one year;
- you did not immediately cooperate with the police;
- the escapee was harboured by you for six days.

The panel also identified the following mitigating features:

- your early guilty plea;
- the incident was a one-off;
- the panel has accepted that you have shown remorse, developed insight and strengthened your nursing/midwifery practice;
- you have continued in practice as a valued member of the team, and the panel has already accepted that there is no risk of repetition.

The panel considered that the mitigating factors outweighed the aggravating factors, especially given that it had received strong evidence that you have continued to work to a high standard as a midwife since the offence was committed in December 2020.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of your case. The panel bore in mind that the conduct for which you received a conviction and suspended sentence breached fundamental tenets of the nursing and midwifery professions and brought the professions into disrepute. In these circumstances, 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 SG and the case of *Fleischmann* [2005] EWHC 87 (*Admin*). It bore in mind that in respect of conviction cases such as yours the SG states:

*“The law says that, when making its decision on sanction, the Fitness to Practise Committee should consider:*

- the fact that a nurse, midwife or nursing associate convicted of a serious offence is still serving their sentence (even if on probation), and*
- whether the nurse, midwife or nursing associate should be able to restart their professional practice before they have completed their sentence*

*In general, the rule is that a nurse, midwife or nursing associate should not be permitted to start practising again until they have completed a sentence for a serious offence. This is a general rule that it would be right for the Fitness to Practise Committee to consider, but it does not mean that the Committee has no choice but to remove the nurse, midwife or nursing associate from the register permanently.”*

The case of *Fleischmann* states as a 'general principle' a registrant 'should not be permitted to resume their practice until they have satisfactorily completed their sentence', which would include the period of suspension of a term of imprisonment. The court in *Fleischmann* goes on to state 'only circumstances which plainly justify a different course should permit otherwise'.

The panel also bore in mind that at no time has your clinical practice been called into question or have patients been at risk of harm. Further, since the incident you have continued to practice as a midwife without any concerns being raised. Indeed, you have been promoted and encouraged to apply for a second promotion. The panel was mindful of the overwhelmingly positive testimonials from senior managers about your practice. You have demonstrated considerable reflection and insight into your conviction and illustrated to the panel the impact it has had not only on yourself but also on your children, colleagues, the public and the reputation of the nursing and midwifery professions.

The panel took account of the Edward Jenner Programme, an NHS leadership programme, that you undertook of your own volition and the steps you took to seek and understand the perspectives of your colleagues and patients in relation to your conviction, and how this assisted you in developing your insight and in strengthening your practice. The panel decided that you had gone to great lengths to make up for any harm you may have caused to the reputation of the nursing and midwifery professions, as a result of your conviction, and to develop both personally and professionally.

The panel was mindful that personal mitigation cannot play a significant role in its determination of an appropriate sanction, particularly where impairment was only found in the public interest. It did however take some account of the circumstances in which you committed the offence, including [PRIVATE] and the impact of the Covid-19 pandemic where you were redeployed to work in critical care.

The panel has considered the likely impact of your actions on the reputation of the profession in the mind of a well-informed member of the public. The panel has an

indication of the impact on a well-informed person in that the sentencing judge indicated that they would be surprised if your professional body took any action which meant your employment would be terminated. The panel has, however, been careful to use its own judgement in this respect.

The panel did consider whether it would be proportionate to impose a more restrictive sanction in this case and looked at a conditions of practice order. The panel concluded that no useful purpose would be served by a conditions of practice order and it is not necessary to protect the public. The panel further considered that a suspension order would be disproportionate in this case, not least as you are still currently working as a midwife without cause for concern or restriction.

In a similar vein, the panel considered that it would be wholly disproportionate to remove you from the Register. Furthermore, it is in the public interest to keep hard-working and dedicated nurses and midwives on the register, especially in cases where there are no public protection concerns such as yours.

In the specific circumstances of your case, the panel determined that it could depart from the general principle in the case of *Fleischmann* and that it would be neither proportionate nor necessary to remove you from the Register temporarily or permanently.

Having considered the general principles above and looking at the totality of the findings on the evidence, the panel has determined that to impose a caution order for the maximum period of five years would be the appropriate and proportionate response. A caution order would adequately address the public interest concerns in your case given your significant insight and the steps you have already taken to strengthen your practice. It would mark not only the importance of maintaining public confidence in the profession, but also send the public and the profession a clear message about the standards required of a registered nurse or midwife. Given the seriousness of the offence, the panel determined that a caution order for anything less than five years would suffice.

For the next five years your employer - or any prospective employer - will be on notice that your fitness to practise had been found to be impaired and that your practice is subject to this sanction.

At the end of this period the note on your entry in the register will be removed. However, the NMC will keep a record of the panel's finding that your fitness to practise had been found impaired. If the NMC receives a further allegation that your fitness to practise is impaired, the record of this panel's finding, and decision will be made available to any practice committee that considers the further allegation.

This decision will be confirmed to you in writing.

That concludes this determination.