

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

**Substantive Meeting
Thursday, 20 June 2024**

Virtual Meeting

Name of Registrant: Michael Thomas O'Reilly

NMC PIN 91Y0079N

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – 11 June 1994, Level 1

Relevant Location: Belfast

Type of case: Conviction

Panel members: Avril O'Meara (Chair, Lay member)
Jim Blair (Registrant member)
Alison James (Lay member)

Legal Assessor: Attracta Wilson

Hearings Coordinator: Jessie Miller

Facts proved: Charge 1

Facts not proved: None

Fitness to practise: Impaired

Sanction: Striking-off order

Interim order: Interim suspension order (18 months)

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 O'Reilly's registered email address by secure email on 15 May 2024.

Further, the panel noted that the Notice of Meeting was also sent to Mr O'Reilly's representative at the Royal College of Nursing (RCN) on 15 May 2024.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, date and the fact that this meeting was heard virtually.

In the light of all of the information available, the panel was satisfied that Mr O'Reilly 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', (the Rules).

Details of charge

That you, a registered nurse:

1. On 28 November 2022 were convicted of unlawfully assaulting a patient, contrary to section 42 of the Offences Against the Person Act 1861

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

Background

Mr O'Reilly was referred to the Nursing and Midwifery Council (NMC) on 4 August 2022 by the Group Clinical Nurse Manager for Just Nurses ("the Agency"), which is a part of the

Placement Group. He was working as an Agency Nurse in Antrim Area Hospital, with Kennedy Recruitment/Kennedy Health & Social Care (“the Nursing Agency”).

On 25 January 2022, an allegation was made by a student nurse against Mr O’Reilly of rough handling of and abusive behaviour towards Patient A. The allegations were not reported to the Nurse in Charge at the time as the student nurse returned to university. The student nurse reported it to her lecturers and the referral came from the university. The incident was escalated to safeguarding on 26 January 2022 and also referred to the Police Service of Northern Ireland (“PSNI”).

On 25 April 2022, Mr O’Reilly was interviewed by the PSNI and in July 2022, Mr O’Reilly was advised that he was being charged with the offence of Common Assault. On 28 November 2022, Mr O’Reilly appeared before The Magistrates Courts (Northern Ireland) and entered a guilty plea and was convicted of Common Assault contrary to Section 42 of the Offences Against the Person Act 1861. On 10 January 2023, Mr O’Reilly was sentenced to a period of imprisonment for 6 months suspended for 3 years.

Decision and reasons on facts

The charge relates directly to Mr O’Reilly’s 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.’*

The panel also had regard to emails sent to the NMC from Mr O'Reilly on various dates.

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr O'Reilly's fitness to practise is currently impaired by reason of Mr O'Reilly's 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 misconduct and impairment

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

The panel took account of the representations made by the NMC in relation to misconduct and the Code. The panel considered the provisions of the Code: Professional standards of practice and behaviour for nurses and midwives (2015) ('the Code').

The panel determined that the following parts of the Code are engaged 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,
- 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
- 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 considered that Mr O'Reilly's behaviour, which led to the criminal conviction, took place at work and involved a frail, vulnerable and elderly patient. He was also working alongside a student nurse who was working for the first time in a hospital setting. The panel determined that Mr O'Reilly's behaviour fell significantly short of the standards expected of a registered nurse and amounts to misconduct.

In an email dated 28 November 2022 from Mr O'Reilly to the NMC, he stated:

'I am extremely remorseful for what has happened and I apologise to the NMC, and your good self for doing something that I shouldn't have done. I would like my name to be removed from the NMC Register with immediate effect. I would like to cite my [PRIVATE].'

In an email dated 21 March 2024 from Mr O'Reilly to the NMC, he stated:

'The form was signed by me last week. You should have received it. I am just asking, my name to be removed from the Nursing Register...

I am wholly apologetic and remorseful for all that happened...'

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Cohen v General Medical Council* [2008] EWHC 581 (Admin), *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and *Council for the Regulation of HealthCare Professionals v [1] General Dental Council and [2] Fleischmann* [2005] EWHC 87 [QB].

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

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/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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that limbs a, b and c are engaged in this case. The panel finds that Patient A, who was elderly, frail and vulnerable, was assaulted and suffered harm as a result of Mr O'Reilly's actions. The panel determined that Mr O'Reilly's conduct which led to his conviction has breached the fundamental tenets of the profession, namely to prioritise patients, to practise effectively, to preserve safety, and to promote professionalism.

The panel determined that the seriousness of Mr O'Reilly's conviction is such that it calls into question his professionalism in the workplace namely the duty to promote patient safety as he has been convicted of unlawfully assaulting a patient in his care. This therefore has a negative impact on the reputation of the profession and, accordingly, has brought the profession into disrepute.

The panel determined that Mr O'Reilly has displayed genuine remorse. The panel noted that he had apologised to Patient A and their family, and has also acknowledged in his emails to the NMC that he is very sorry for his actions.

Regarding insight, the panel noted that Mr O'Reilly had initially denied the allegations when interviewed by the PSNI. However, he later made admissions resulting in a guilty plea and conviction. The panel determined that Mr O'Reilly has limited insight into the seriousness of his behaviour. The panel was not satisfied that Mr O'Reilly has demonstrated how he would handle himself in similar circumstances in the future.

In relation to strengthening of practice, the panel noted that Mr O'Reilly said that he has not worked in a nursing capacity or healthcare environment since mid-late 2022. In an email dated 28 November 2022 from him to the NMC, he stated:

'...I am also pragmatic enough to realise my Nursing Career is over.

The panel determined that there is a high risk of repetition given Mr O'Reilly's lack of insight into the seriousness of the behaviour leading to the conviction which arose whilst he was providing care to a vulnerable patient. 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, which involved a criminal conviction for the assault of a vulnerable patient, a finding of impairment on public interest grounds was required. If the panel did not make such a finding, it considered that it would seriously damage the public confidence in the regulator.

Having regard to all of the above, the panel was satisfied that Mr O'Reilly's 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 O'Reilly off the register. The effect of this order is that the NMC register will show that Mr O'Reilly 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 NMC stated that the appropriate and proportionate sanction in this case, is a striking-off order.

The panel noted that in the Notice of Meeting, dated 15 May 2024, the NMC had advised Mr O'Reilly that it would seek the imposition of a striking-off order if it found Mr O'Reilly's fitness to practise currently impaired.

Decision and reasons on sanction

Having found Mr O'Reilly's 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 Sanction Guidance (SAN-3) ('SG'). The panel also had regard to further guidance, 'Considering sanctions for serious cases' (SAN-2). The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Abuse of a position of trust whilst performing professional duties and whilst working with a student nurse
- Lack of insight into misconduct
- Conduct which caused a patient harm which Mr O'Reilly, as a registered nurse, should have been aware of
- Conduct which has resulted in a custodial sentence (albeit a suspended sentence)

The panel carefully considered whether there were any mitigating features in this case and determined that there were not. [PRIVATE] However, based on the evidence before it, the panel was not satisfied that this was a factor in the misconduct.

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, and the public protection issues identified, an order that does not restrict Mr O'Reilly's 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 O'Reilly's misconduct was 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.

The panel next considered whether placing conditions of practice on Mr O'Reilly's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charge in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr O'Reilly's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate 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;*
- *No evidence of repetition of behaviour since the incident;*

- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that this was a single instance of misconduct and there is no evidence of repetition of the behaviour since the incident. However, the panel has found that Mr O'Reilly has limited insight and poses a high risk of repeating the behaviour. The panel has also found that this was a serious breach of the fundamental tenets of the profession and determined that a suspension order would not be a sufficient, appropriate or proportionate sanction. It would not sufficiently address the seriousness of the concerns found proved, nor uphold the confidence in the nursing profession or regulator.

In looking at 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?*

Mr O'Reilly's actions were significant departures from the standards expected of a registered nurse, raise fundamental questions about his professionalism, 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 O'Reilly's 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. Therefore, the panel concluded that a

striking-off order is the only sanction that will be sufficient to protect patients, members of the public, or maintain professional standards.

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. Having regard to the matters it identified, in particular the effect of Mr O'Reilly's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in 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 Mr O'Reilly 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 O'Reilly'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

The panel took account of the representations made by the NMC that stated:

'If a finding is made that the registrant's fitness to practise is impaired on a public protection basis and a restrictive sanction imposed, we consider an 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. In this case we apply for an interim suspension order to cover the appeal period before the substantive sanction comes into effect...'

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 due to cover the appeal period before the striking-off order comes into effect.

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

That concludes this determination.