

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

Substantive Meeting

Friday, 14 June 2024

Name of Registrant: Naijil Paul

NMC PIN: 04E09130

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – May 2010

Relevant Location: Glasgow

Type of case: Misconduct

Panel members: Michelle McBreeze (Chair, lay member)
Nilla Varsani (Lay member)
Carole McCann (Registrant member)

Legal Assessor: Natalie Amey-Smith

Hearings Coordinator: Ruth Bass

Facts proved: Charges 1

Facts not proved: Charges 2

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 by email to Mr Paul on 9 May 2024, to an address that Mr Paul had been using to correspond with the Nursing and Midwifery Council (NMC). The Notice of Meeting was also sent to Mr Paul at his registered address by recorded delivery and by first class post on 9 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 from which the matter would be considered, and the fact that this meeting was to be heard virtually. The panel also had a signed statement of service which set out the information above.

In light of all of the information available, the panel was satisfied that Mr Paul 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', as amended (the Rules).

Details of charge

'That you, a registered nurse:

1) Failed to appear before Glasgow High Court on 4 December 2020 in connection with criminal charges brought under the Sexual Offences (Scotland) Act 2009.

2) Have left the jurisdiction of the United Kingdom to avoid criminal prosecution.

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

Decision and reasons to amend the schedule of charge

The panel had regard to the evidence before it and noted that the warrant issued to Mr Paul was dated 4 December 2019 and not 4 December 2020 as set out in charge 1. It also noted that the witness statement of Mr 1, dated 16 May 2023, stated that Mr Paul had failed to appear before the Glasgow High Court on 3 December 2019 and not 4 December 2019, which was the date the warrant was issued. Based on the contemporaneous warrant before the panel, the panel was of the view that these were typographical errors. It was satisfied that there would be no prejudice to Mr Paul by charge 1 being amended to reflect the contemporaneous evidence. It therefore determined to amend charge 1 to reflect the contemporaneous evidence before it and ensure clarity and accuracy.

Upon hearing and accepting the advice of the legal assessor, the panel determined to amend charge 1 as follows:

‘That you, a registered nurse:

1) Failed to appear before Glasgow High Court on/**or around** 4 December ~~2020~~ **2019** in connection with criminal charges brought under the Sexual Offences (Scotland) Act 2009.’

Background as taken from the NMC statement of case

Mr Paul is a registered nurse with the Nursing and Midwifery Council (‘the NMC’). Mr Paul was previously employed by the Acorn Park Care Home (‘the Home’) from 2015 until his resignation in August 2019. At the time of his resignation Mr Paul was employed as the registered manager for the Home.

In September 2018, a referral was received from the Home highlighting that Mr Paul was facing charges of sexual assault in respect of two colleagues at the Home.

On 17 August 2018, Mr Paul appeared in Court for a preliminary hearing in respect of the first two allegations of sexual assault. It was subsequently confirmed by the police that a third complainant came forward with allegations of sexual assault by Mr Paul.

On 9 January 2019, Mr Paul appeared in Court for a preliminary hearing in respect of the third charge of sexual assault. Mr Paul's substantive trial was due to begin on 4 December 2019. Mr Paul failed to attend Court on the first day of his trial.

Following his non-attendance at trial, a warrant was issued for Mr Paul's arrest the same day (4 December 2019).

The warrant was in respect of the following charges:

- [PRIVATE]
- [PRIVATE]
- [PRIVATE]
- [PRIVATE]

The police subsequently attended Mr Paul's property on 2 December 2020 where it was confirmed he was no longer residing. Mr Paul's [PRIVATE] outlined to the police that he had left the country the day before his trial was set to begin and was now residing in India with no intention of returning to the United Kingdom.

On 20 December 2023, the police confirmed that the warrant for Mr Paul's arrest remains outstanding.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the written representations made by the NMC. Mr Paul has not provided a response to the charges.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel had regard to the written statements of the following witness on behalf of the NMC:

- Mr 1: Detective Constable within the Fugitive Active Search Team attached to Police Scotland's Specialist Crime Division.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the documentary evidence provided by the NMC.

The panel then considered each of the charges and made the following findings.

Charge 1

'That you, a registered nurse:

1) Failed to appear before Glasgow High Court on/or around 4 December 2019 in connection with criminal charges brought under the Sexual Offences (Scotland) Act 2009.'

This charge is found proved.

In reaching this decision, the panel had regard to the warrant issued by Judge Lord Woolman on 4 December 2019 and the witness statement of Mr 1 dated 16 May 2023.

In considering the warrant, the panel noted that it stated that Mr Paul had *'failed to appear'* for the crime of:

'1) SEXUAL OFFENCES (SCOTLAND) ACT 2009 S3 - SEXUAL

2) SEXUAL OFFENCES (SCOTLAND) ACT 2009 S3 - SEXUAL

3) SEXUAL OFFENCES (SCOTLAND) ACT 2009

S7(1) - SEXUAL

4) SEXUAL OFFENCES (SCOTLAND) ACT 2009

S1 -SEXUAL

5) CONTRARY to Sections 3 and 7(1) of the Sexual Offences (Scotland) Act 2009 – SEXUAL'

The panel was satisfied by the warrant that Mr Paul had been called to appear at the Court for sexual offences on 4 December 2019 and had failed to do so.

The panel also had regard to the statement of Mr 1 which states:

'Mr Paul is aware that he is subject to a criminal investigation. He was scheduled to attend for trial at Glasgow High court on 03/12/2019. However, investigations reveal that he travelled from Glasgow airport the day before his scheduled court appearance and was destined to arrive in India.

...I am in no doubt that Mr Paul is aware of the warrant for his arrest, as I attended at his family home after he absconded and informed his [PRIVATE] of the matter.'

The panel accepted the evidence of Mr 1, noting that he was the Detective Constable who had attended Mr Paul's home address following the issuing of the warrant.

Having considered the contemporaneous warrant issued by the Court and the supporting statement of Mr 1, the panel was satisfied that there was sufficient and cogent evidence to find charge 1 proved. It accordingly found charge 1 proved on the balance of probabilities.

Charge 2

'That you, a registered nurse:

...

'Have left the jurisdiction of the United Kingdom to avoid criminal prosecution. AND in light of the above, your fitness to practise is impaired by reason of your misconduct.'

This charge is found NOT proved.

In considering this charge, the panel had regard to the statement of Mr 1 which states:

3. *'Mr Paul is aware that he is subject to a criminal investigation. He was scheduled to attend for trial at Glasgow High court on 03/12/2019. However, investigations reveal that he travelled from Glasgow airport the day before his scheduled court appearance and was destined to arrive in India.*
4. *I am in no doubt that Mr Paul is aware of the warrant for his arrest, as I attended at his family home after he absconded and informed his [PRIVATE] of the matter...*

5. *On attendance at Mr Paul's registered address, his [PRIVATE] confirmed she was in regular contact with him and that she would speak to him about coming home to surrender himself to police in Scotland.*

6. *In a later visit, Mr Paul's [PRIVATE] confirmed that she spoke to him about this, however, he stated that he was not willing to return as he feared he would not be believed. She further stated that Mr Paul told her that he would deal with his solicitor and not the police. Mr Paul's solicitor's details were not provided.*

7. *I attended Mr Paul's family address on 02/12/2020 along with my colleague, Detective Constable [Ms 2], where we met with Mr Paul's [PRIVATE] as per the above information. We were allowed to look around the address and confirmed that Mr Paul was not present and there was no evidence of him still residing in the property.'*

The panel noted that Mr 1 had stated that *'investigations reveal that [Mr Paul] travelled from Glasgow airport...and was destined to arrive in India'*. However, the panel had no evidence before it of the investigations mentioned by Mr 1, or what the investigations entailed. It had not been provided with any evidence of Mr Paul having left the United Kingdom, such as a flight details, evidence of purchase of a ticket, or evidence that he had entered India. The panel noted Mr 1's comments in respect of what he had been told by Mr Paul's [PRIVATE]. However, based on the evidence before it, the panel could only be satisfied that as of 2 December 2020 Mr Paul was no longer staying at his home address in the United Kingdom. There was insufficient evidence before the panel to be able to make a finding that Mr Paul had left the United Kingdom. The panel therefore did not find this charge proved on the balance of probabilities.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mr

Paul's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mr Paul's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

In its written representations, the NMC invited the panel to take the view that the facts found proved amount to misconduct. It referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' ('the Code') and identified specific, relevant standards where it submitted that Mr Paul's actions amounted to misconduct.

With regard to impairment the NMC invited the panel to find Mr Paul's fitness to practise impaired on public protection and public interest grounds stating that:

'...Mr Paul would pose a real and serious risk to colleagues if allowed to return to practise without restriction given that there is an outstanding warrant for his arrest relating to allegations of sexual assault of two colleagues, and a further third individual.

...

As Mr Paul has absconded to avoid facing criminal charges, the NMC submits it would in effect be impossible for him to remediate in respect of these matters unless he... face[s] criminal proceedings. Furthermore, it is submitted Mr Paul's actions in failing to respond to the charges, ... show a continuing pattern of avoidant behaviour.

...Taking the above into account the NMC submits Mr Paul poses a current and serious risk, particularly to professional colleagues.

...Consideration of public interest requires a panel to decide whether a finding of impairment is needed to uphold proper professional standards and conduct and/or to maintain public confidence in the profession.

...While Mr Paul absconding to avoid prosecution is not directly linked to his clinical practice as a nurse, as set out in the NMC's guidance on serious concerns based on public confidence or professional standards ('FTP-3c'), the NMC may need to take action where an individual's actions are so serious that they raise fundamental questions about their ability to uphold the standards and values set out in the Code.

...In this instance the NMC submits that the charges in issue clearly constitute matters so serious that a finding of impairment is needed to uphold professional standards, and furthermore, if no finding of impairment is made, it is submitted this would undermine public confidence and trust in the regulatory process and the NMC as a regulator.'

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, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) (Grant).

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Mr Paul's actions did fall significantly short of the standards expected of a registered nurse, and that his actions amounted to a breach of the Code. Specifically:

'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...

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

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel found that the failure of Mr Paul to appear before the Court having been granted bail on the premise that he would appear at the mandated time, for consideration of five serious sexual offences, was conduct that did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mr Paul'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 February 2024, 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. 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 *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 was of the view that limbs b and c are engaged.

With regard to limb b, the panel was satisfied that Mr Paul had breached fundamental tenets of the nursing profession; namely to act with integrity and comply with the laws of the country in which you are practising. With regard to limb c, the panel was satisfied that the breach of these fundamental tenets had brought the reputation of the profession into disrepute.

In considering whether Mr Paul has demonstrated any insight into his misconduct, the panel noted that Mr Paul had only corresponded with the NMC with regard to providing his contact details. Mr Paul has not provided a response to charge 1 nor engaged with the NMC in any meaningful way concerning this charge. The panel therefore had no evidence of insight or remediation to consider. The panel had regard to the fact that as

of 20 December 2023 the warrant for Mr Paul's arrest was still active. It was of the view that Mr Paul's failure to present before the UK authorities in line with the warrant since December 2019 was evidence of an intention to evade facing the criminal charges against him and abscond from the law. The panel therefore found that Mr Paul had demonstrated no evidence of insight or remediation, but had instead shown evidence of a deep seated attitudinal problem, by his prolonged and deliberate failure to evade facing the law.

In light of Mr Paul's lack of insight and remediation, the panel was of the view that there is a risk of repetition of the misconduct and decided that a finding of impairment is necessary on public interest grounds.

The panel also bore in mind the overarching objectives of the NMC; 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. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. It was of the view that members of the public would be extremely concerned if a nurse who had evaded a criminal trial for multiple serious sexual offences and had failed to engage with their regulator in any meaningful way, was allowed to practise without restriction. It therefore concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case.

Having regard to all of the above, the panel was satisfied that Mr Paul's fitness to practise is currently impaired.

Sanction

Having found Mr Paul'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 SG and heard and accepted the advice of the legal assessor.

The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Mr Paul has been evading serious criminal charges for a period of over 4 years;
- The criminal charges being evaded by Mr Paul relate to multiple extremely serious sexual assault allegations;
- The criminal charges being evaded by Mr Paul relate in part to allegations raised by professional colleagues; and
- Mr Paul has failed to show any insight into the seriousness of his actions in evading serious criminal charges, and has failed to meaningfully engage with these proceedings.

The panel was of the view that there were no mitigating features in this case to be considered.

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 an order that does not restrict Mr Paul'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 Paul'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 Paul'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 charges in this case. The misconduct identified in this case is not linked to Mr Paul's clinical practice, and is not something that can be addressed through retraining. Further, Mr Paul's failure to engage meaningfully with the NMC and his continued failure to surrender to the warrant, is further evidence that he would be unlikely to comply with a conditions of practice if they could be formulated. Furthermore, the panel concluded that the placing of conditions on Mr Paul's registration would not adequately address the seriousness of 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;*
- *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;*
- ...'

The panel was of the view that although Mr Paul had failed to appear before the Court on one occasion, his actions in absconding and failure to hand himself in to the police was evidence of longstanding and ongoing misconduct, and was indicative of deep-seated attitudinal problems amounting to an intentional course of action to evade criminal justice. The panel was satisfied that Mr Paul's complete lack of insight and

remediation by failing to appear, and continuing to avoid the UK authorities shows that there is a significant risk of Mr Paul repeating his misconduct.

The panel found that Mr Paul's conduct, as highlighted by the facts found proved, was 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 Paul's actions is fundamentally incompatible with Mr Paul remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, 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 Paul's 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 Paul's actions were very serious in that he had failed to turn up to his trial in the High Court, for serious sexual offences, has failed to surrender to the warrant for a period of over four years and has failed to engage in any meaningful way with the NMC. It determined that to allow Mr Paul 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. Having regard to the matters it identified, in particular the

effect of Mr Paul'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 Paul 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 Paul'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 written representations made by the NMC that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest. The NMC stated that the interim order should be imposed for a period of 18 months to cover the initial period of 28 days before the sanction comes into effect, and the time taken for the Court to consider any appeal in the event that one is lodged.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary in the public interest. The panel had regard to the seriousness of the fact 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 any appeal period.

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

That concludes this determination.