

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

**Substantive Meeting
Friday, 24 May 2024**

Virtual Meeting

Name of Registrant: **Brian McGlynn**

NMC PIN 84Y0144S

Part(s) of the register: Registered Nurse Adult – RN1 Nurse
Independent / Supplementary Prescriber – V300

Relevant Location: South Ayrshire

Type of case: Conviction

Panel members: Bryan Hume (Chair, Lay member)
Claire Martin (Registrant member)
Sophie Kane (Registrant member)

Legal Assessor: Neil Fielding

Hearings Coordinator: John Kennedy

Facts proved: Charge 1

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 that the Notice of Meeting had been sent to Mr McGlynn's registered email address by secure email on 18 April 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 McGlynn 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) On 8 September 2023 at Ayr Sheriff Court, were convicted of one count of sexual assault contrary to Section 3 of the Sexual Offences (Scotland) Act 2009

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

Decision and reasons on facts

The charge concerns Mr McGlynn's conviction and, having been provided with a copy of the memorandum of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3). 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.'*

Background

The charges arose whilst Mr McGlynn was employed as a registered nurse by Ayr Hospital.

On 19 December 2022, Mr McGlynn self-referred themselves to the NMC regarding an incident on 22 July 2022 whilst at work at Ayr Hospital, where he worked as a registered nurse. It was alleged that Mr McGlynn sexually assaulted another colleague in that he placed his hand under her clothing and touched her breast.

Mr McGlynn was cautioned and charged on 9 December 2022 and bail conditions were set from 10 February 2023 – the conditions were that Mr McGlynn does not approach or contact, nor attempt to approach nor contact the female named in the charge(s) in any way.

On 8 September 2023, after pleading not guilty, Mr McGlynn was found guilty of the charge of sexual assault on a female, contrary to section 3 of the Sexual Offences (Scotland) Act 2009 at Ayr Sheriff Court.

Mr McGlynn was sentenced on 24 October 2023 to a community payback order with supervision for a period of 12 months. As a consequence of the conviction, Mr McGlynn was made subject of the sex offenders notification requirements for 12 months.

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr McGlynn's fitness to practise is currently impaired by reason of Mr McGlynn'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 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 cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and *Cohen v GMC* [2008] EWHC 581 (Admin).

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, and *Nandi v GMC* [2004] EWHC 2317 (Admin).

Decision and reasons on impairment

The panel next went on to decide if as a result of the conviction, Mr McGlynn'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) ...'

The panel finds that Mr McGlynn's conviction had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to sexual assault extremely serious.

The panel considered limbs *a*, *b*, and *c* of *Grant* are all engaged. Regarding limb *a* the panel noted a conviction of sexual assault against a nursing colleague is a significant risk to the wider public protection and could further cause a risk of harm to patients.

The panel considered the following parts of the NMC Code to be relevant in this case:

1 Treat people as individuals and uphold their dignity;

1.5 respect and uphold people's human rights

20 Uphold the reputation of your profession at all times;

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 discrimination, bullying or harassment

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 to aspire to.

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, a finding of impairment on public interest grounds was required. The panel considered that the conviction for a sexual offence goes against the fundamental tenets of safe nursing practice and a well-informed member of the public would be shocked if a registered nurse who was ordered onto the Sexual Offenders Register was not found impaired.

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

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 McGlynn off the register. The effect of this order is that the NMC register will show that Mr McGlynn 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 panel noted that in the Notice of Meeting, dated 18 April 2024, the NMC had advised Mr McGlynn that it would seek the imposition of a striking-off order if it found Mr McGlynn's fitness to practise currently impaired.

The panel also bore in mind Mr McGlynn has made no response to the charge during this process and had plead not guilty at trial where he was convicted.

Decision and reasons on sanction

Having found Mr McGlynn'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. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Criminal conviction for his sexual offence which brings the profession into disrepute
- Being ordered to register on the Sexual Offenders Register
- The offence took place at work
- Harm was caused to the victim
- Lack of insight

The panel also noted that there are 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. 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 McGlynn'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 McGlynn's criminal conviction meant this 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 McGlynn'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 was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr McGlynn'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;*

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 the serious breach of the fundamental tenets of the profession evidenced by Mr McGlynn's actions is fundamentally incompatible with Mr McGlynn 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 McGlynn'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

McGlynn'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.

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 McGlynn'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 McGlynn 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 McGlynn'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 an interim order is necessary to provide for any possible appeal period.

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 any possible 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 McGlynn is sent the decision of this hearing in writing.

That concludes this determination.