

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

**Substantive Hearing
Wednesday 20 November 2024**

Virtual Hearing

Name of Registrant:	Arcangel Benidicto Bathan
NMC PIN	10G00490
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – Level 1 – 16 July 2010
Relevant Location:	Basildon
Type of case:	Conviction
Panel members:	Sophie Lomas (Chair, Lay member) Sharon Peat (Registrant member) Bill Matthews (Lay member)
Legal Assessor:	Charles Parsley
Hearings Coordinator:	Sophie Cubillo-Barsi
Nursing and Midwifery Council:	Represented by Rowena Wisniewska, Case Presenter
Mr Bathan:	Not present and unrepresented at the hearing
Consensual Panel Determination:	Accepted
Facts proved:	Charges 1 a) and b)
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Bathan was not in attendance and that the Notice of Hearing letter had been sent to Mr Bathan's registered email address by secure email on 21 August 2024.

Further, the panel noted that the Notice of Hearing was also sent to Mr Bathan's representative at Thompsons Law on the same date.

Ms Wisniewska, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, date and the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Bathan's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

The panel noted that on 21 August 2024 Mr Bathan and his representative were informed that the hearing was to be listed for two days, namely 20 November 2024 and 21 November 2024. However, the panel was told that on 18 November 2024, both Mr Bathan and his representative were informed that the listing was to be reduced to one day, namely 20 November 2024.

In the light of all of the information available, the panel was satisfied that Mr Bathan has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence Mr Bathan

The panel next considered whether it should proceed in the absence of Mr Bathan. It had regard to Rule 21 and heard the submissions of Ms Wisniewska, who submitted that Mr Bathan had voluntarily absented himself from today's hearing and invited the panel to continue in his absence. In this regard Ms Wisniewska referred the panel to the Consensual Panel Determination (CPD) agreement, signed by Mr Bathan on 14 November 2024, which states:

'Mr Bathan is aware of the CPD hearing but does not intend to attend. He is content for it to proceed in both his absence and that of his representative, Michelle Stewart of Thompsons Solicitors. Both will make themselves available by telephone should clarification on any point be required.'

The panel heard and accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised "with the utmost care and caution" as referred to in the case of *R. v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mr Bathan. It had regard to the overall interests of justice and fairness to all parties. It noted that:

- Mr Bathan has engaged with the NMC and has signed a provisional CPD agreement which is before the panel today;
- There is no reason to suppose that adjourning would secure his attendance at some future date; and
- There is a strong public interest in the expeditious disposal of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mr Bathan.

Decision and reasons on application for hearing to be held in private

Ms Wisniewska next made a request that parts of today's hearing be held in private, on the basis that proper exploration of Mr Bathan's case involves reference to [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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 noted that within the CPD agreement, signed by Mr Bathan 14 November 2024, the following is agreed:

'[PRIVATE].'

In light of this information, and having heard that reference may be made to [PRIVATE], the panel determined to go into private session as and when such issues arise. It considered that Mr Bathan's right to privacy in relation to these matters outweighed the public interest in holding those parts of the hearing in public.

Decision and reasons on application to amend the charge

Ms Wisniewska informed the panel that within the notice of hearing letter, dated 21 August 2024, the date of conviction as set out in the charges is said to be 22 March 2024. Ms

Wisniewska explained that this date is wrong and that Mr Bathan received his conviction on 11 January 2024. The proposed amendment was as follows:

‘That you, a registered nurse:

*1. On ~~22 March 2024~~ **11 January 2024** at Basildon Magistrates Court, were convicted of...’*

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules.

The panel had before it an email from Mr Bathan’s representative, dated 18 November 2024, in which it confirmed that *‘there is no objection to the proposed charge amendment.’*

The panel was therefore of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Mr Bathan and no injustice would be caused to either party by the proposed amendment being allowed.

Details of charge

That you, a registered nurse:

- 1 On 11 January 2024 at Basildon Magistrates Court, were convicted of:
 - a) Recording another person doing a private act with the intention that you would, for the purpose of obtaining sexual gratification, look at an image of that other person doing the act, knowing that the other person did not consent to your recording the act with that intention, contrary to section 67(3) and (5) of the Sexual Offences Act 2003;

- b) Operating equipment, namely a mobile phone, with the intention of enabling another person, namely an unknown person, for the purpose of obtaining that the other person did not consent to your operation of that equipment with that intention, contrary to section 67(2) and (5) of the Sexual Offences Act 2003.

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

Consensual Panel Determination

Ms Wisniewska informed the panel that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the NMC and Mr Bathan.

The agreement, which was put before the panel, sets out Mr Bathan's full admissions to the charges and that his fitness to practise is currently impaired by reason of his conviction. It is further stated in the agreement that an appropriate sanction in this case would be striking off order.

The panel has considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

'Fitness to Practise Committee

Consensual panel determination ("CPD"): provisional agreement

The Nursing & Midwifery Council ("the NMC") and Mr Arcangel Benidicto Bathan ("Mr Bathan"), PIN 10G00490 ("the Parties") agree as follows:

1. *Mr Bathan is aware of the CPD hearing but does not intend to attend. He is content for it to proceed in both his absence and that of his representative, Michelle Stewart of Thompsons Solicitors. Both will make themselves available by telephone should clarification on any point be required.*

Preliminary issues

2. *[PRIVATE].*

The charge

3. *Mr Bathan admits the following charge:*

That you, a registered nurse:

1. *On 11 January 2024 at Basildon Magistrates Court, were convicted of:*
 - a) *Recording another person doing a private act with the intention that you would, for the purpose of obtaining sexual gratification, look at an image of that other person doing the act, knowing that the other person did not consent to your recording the act with that intention, contrary to section 67(3) and (5) of the Sexual Offences Act 2003;*
 - b) *Operating equipment, namely a mobile phone, with the intention of enabling another person, namely an unknown person, for the purpose of obtaining that the other person did not consent to your operation of that equipment with that intention, contrary to section 67(2) and (5) of the Sexual Offences Act 2003.*

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

Facts

- 4) *Mr Bathan first entered the NMC register of nurses, midwives and nursing associates on 16 July 2010 as a registered nurse in adult care. On 01 March 2019 his registration was amended to show that he was also a teacher and was registered with the Teaching Regulation Agency. At the relevant time Mr Bathan was employed by Anglia Ruskin University ('ARU') as a lecturer.*
- 5) *On 10 January 2024 Mr Bathan, aged 59 at the time, was arrested in connection with filming a 13-year-old girl, (unknown to him), getting changed at a sports centre. On a subsequent inspection of his mobile phone the police found further images of other people getting changed.*
- 6) *Mr Bathan was subsequently charged with offences of voyeurism and on 11 January 2024, in Basildon Magistrates Court, Mr Bathan pleaded guilty, to two offences of voyeurism as set out in the NMC charge.*
- 7) *On 18 January 2024, the NMC received a referral from ARU explaining that Mr Bathan had failed to attend work as expected, and on making enquiries, Mr Bathan had told the ARU of his court appearance, having pleaded guilty to voyeurism. Mr Bathan was advised by ARU to inform the NMC and he submitted a self-referral on the same day.*
- 8) *On 22 March 2024, at Basildon Magistrates Court, Mr Bathan was sentenced to a community order with (1) a rehabilitation activity requirement (completing any activity as required by the responsible officer up to a maximum of 40 days) and (2) an unpaid work requirement (100 hours to be completed within 12 months) and ordered to pay compensation of £300. He was made the subject of a Sexual Harm Prevention Order for a period of 5 years in addition to being ordered to comply with police sexual offender notification requirements, also for a period of 5 years.*

9) *On 23 September 2024, the NMC was informed by his representative that Mr Bathan admitted the charges in full, conceded impairment and acknowledged that the appropriate sanction would be a striking-off order.*

Conviction

10) *At the relevant time, Mr Bathan was subject to the provisions of The Code: Professional standards of practice and behaviour for nurses and midwives 2015 (“the Code”). The parties agree that the following provisions of the Code were engaged and breached in this case:*

Promote professionalism and trust

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*

20.4 *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*

11) *The NMC’s guidance FTP-2c, FTP 2c-1 and FTP-3 makes it clear that committing such a serious specified sexual offence can have a particularly negative impact upon public confidence in the profession.*

Impairment

12) *It is agreed that Mr Bathan’s fitness to practise is currently impaired by reason of his conviction, on the grounds of both public protection and public interest*

13) *The NMC guidance DMA-1 explains that impairment is not defined in legislation but is a matter for the consideration of the Fitness to Practise Committee. 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?”

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

15) *In order to answer this question, it is necessary to consider both the nature of the concern and the public interest.*

16) *In the case of Meadows & the General Medical Council [2006] EWCA Civ 1390 the following important observation was made about the purposes of this stage of the proceedings:*

‘The purpose of fitness to practise proceedings is not to punish a practitioner for past misdoing but to protect the public from the acts and omissions of those who are not fit to practise. The Fitness to Practise Panel therefore looks forward not back. However, in order to form a view as to the fitness to practise of a person to practise today it is evident that it will have to take account of the way in which a person concerned has acted or failed to act in the past.’

17) *The Parties agree that a consideration of the nature of the concern involves looking at the factors outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) namely:*

(a) has [the Registrant] in the past acted and/or is liable in the future to act as so 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 and/or

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

18)Also, a consideration of the comments made by 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.”

19. The Parties agree that limbs (a), (b) and (c) are engaged in this case in terms of the past and the future.

Limb (a - harm)

20. Mr Bathan used his mobile phone to secretly record images of people, including a child, getting changed for the purpose of obtaining sexual gratification. Victims are caused, or are potentially caused, emotional or psychological harm as a result of such a violation of privacy. Mr Bathan was ordered to pay compensation as a result of his offending.

21. *The Parties also agree that the serious nature of the convictions potentially result in members of the public being deterred from seeking necessary medical assistance from nurses, thus placing such persons at risk of harm.*

Limbs (b) – bringing the nursing profession into disrepute and (c) – breaching fundamental tenets of the nursing profession)

22. *Despite the fact that the conduct underpinning the conviction took place in Mr Bathan’s private life, nurses occupy a respectable position in society and accordingly are held to a high professional standard because of the trust and confidence colleagues, patients, and members of the public place in them. As such, there is a duty to consistently display a personal commitment to the standards of practice and behaviour set out in the Code, and act as a model of integrity for others to aspire to, even in their private life.*

23. *The Parties agree that Mr Bathan’s conviction and underlying behaviour has brought the nursing profession into disrepute and breached fundamental tenets of the nursing profession. The nature of the offending is in abject discord with the key qualities expected of a registered nurse responsible for caring for others physical and emotional wellbeing.*

24. *Impairment is a forward-thinking exercise which looks at the risk the registrant’s practice poses in the future. NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) by asking the questions:*

- (i) whether the concern is easily remediable;*
- (ii) whether it has in fact been remedied; and*
- (iii) whether it is highly unlikely to be repeated.*

Limb (i) – how easy to remediate

25. The NMC's guidance entitled 'Serious concerns which are more difficult to put right' (FTP-3a) makes it clear that Mr Bathan's conviction and underlying behaviour is indicative of a harmful deep-seated attitudinal issue is difficult if not impossible to remediate.

Limbs (ii) - remediation and (iii) – likelihood of repetition

26. The Parties have considered the NMC's guidance entitled 'Has the concern been addressed?' (FTP-15b) and 'Is it highly unlikely that the conduct will be repeated?' (FTP-15c).

27. Mr Bathan pleaded guilty, at the first opportunity, to the criminal charges and this was taken into account in the sentence.

28. In his self-referral to the NMC, dated 18 January 2024, Mr Bathan wrote:

'...I fully acknowledge the gravity of my actions and the harm they have caused. I take full responsibility for my behaviour and understand the serious implications of the offense. Disclosing that I was arrested and charged makes me deeply ashamed and regretful for the distress I have caused. My actions were a clear violation of professional, ethical and legal standards. I have reflected on the factors that led me to commit this offense and understand that the impact of my behaviour on others could have been avoided if I were more rational and sensitive, rather than selfish and immature. I am committed to seeking help and making amends for my actions.

... I want to express my sincere remorse and understanding of how my actions violated the law and the rights of others. I have learned valuable lessons from this experience and am determined to never repeat such unprofessional behaviour.

I understand the need for accountability and am fully committed to undergoing rehabilitation and counselling to address the underlying issues that led to my actions. I am determined to make amends and lead a law-abiding life in the future. If given a second chance, I am committed to proving that I can be a responsible and contributing member of society.

I sincerely apologise to the profession and to the individuals affected by my actions, the court, and the community at large. I am truly sorry for the harm I have caused and am dedicated to taking the necessary steps to ensure that such a situation will never arise again.'

29. In an email to the NMC dated 05 February 2024, Mr Bathan wrote:

'... Reflecting on this incident has been a deeply emotional journey for me. It has forced me to confront my own flaws and the harm caused by my actions. I wish to extend my heartfelt apologies for any distress, emotional harm or discomfort I may have caused.

I am truly sorry that my conduct had negative repercussions for others which also took a toll on my own mental well-being. Following the incident, my life quickly spiralled downward, leading me to experience profound feelings of despair.

[PRIVATE]

In recent weeks, I've been deeply reflecting on my actions and their consequences. As I look to the present, feelings of shame and guilt, remorse and anxiety still linger within me. However, I choose to view them as reminders that even in darkness, there is the potential to find illumination. I am determined to focus on the positive aspects of my journey, which have revealed valuable insights about myself.

Before this challenging period, my nursing career shone brightly. I take pride in my exemplary performance, both in clinical practice and academia. Throughout my career I have saved dozens of lives and improved the health span of countless patients. More recently, I have inspired and educated so many aspiring students in universities here and abroad. I have consistently upheld professional and legal standards, never posing a threat to those I serve. My record was pristine, akin to a clean sheet of paper.

Regrettably, a poorly made judgement has marred this otherwise clean record and led me to face this panel. This mistake stands out like a stark black dot amidst the pristine white paper. While many may only see this blemish, I shift my focus on the vast expanse of positive experiences that precede it. I refuse to define myself solely by this error, recognizing the broader context of my contributions and character.

... I acknowledge my wrongdoing and feel genuine remorse. Yet, I am determined to focus on the larger, brighter aspects of my life and rebuild my confidence to move forward. Though I've stumbled, I refuse to remain in the depths of despair.

Rather than merely wishing for an easier situation, I recognize the importance of developing skills to manage and overcome the challenges ahead. Despite my mistake, I firmly believe in my inherent goodness. Taking full responsibility for my actions, I am committed to rising above this setback and emerging stronger than before.

My ultimate goal is to emerge from this journey as a better professional—one who respects the rights, privacy, and dignity of others and who contributes positively to society. I am determined to undergo the necessary introspection and self-improvement to prevent any recurrence of similar behaviour. Page 9 of 11

... I fully understand that trust needs to be rebuilt, and I humbly ask for the opportunity to demonstrate through my actions that I am committed to this journey of redemption and personal growth...'

30. *It is therefore agreed that Mr Bathan has expressed remorse and demonstrated some insight through reflection. However, the Parties agree that a continuing risk to the public's safety and wellbeing remains on the basis that the concerns are so serious that they cannot be remediated.*

Public interest as a separate consideration

31. *In Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that:*

"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."

32. *The Parties agree that this consideration, regarding misconduct, is equally applicable in conviction cases.*

33. *Mr Bathan's convictions for voyeurism involving a child require a finding of impairment to (1) declare and uphold proper standards of the profession and to (2) maintain trust and confidence in the profession. It is agreed that without a finding of impairment, public confidence in the profession, and the regulator, would be seriously undermined.*

Sanction

34. *With reference to the NMC sanction guidance (SAN-1 to 3) and in consideration of (1) the case of Fleischmann [2005] EWHC 87 and (2) the available sanctions in*

ascending order of seriousness, the Parties agree that the appropriate and proportionate sanction in this case is a striking off order.

35. The over-arching objective of the NMC in exercising its functions is the protection of the public. (Article 3 (4) of the Nursing and Midwifery Order 2001) and Article 3 (4A) makes it clear that this involves the pursuit of the following objectives:

- a) To protect, promote and maintain the health, safety and wellbeing of the public;*
- b) To promote and maintain public confidence in the professions regulated under the Order; and*
- c) To promote and maintain proper professional standards and conduct for members of those professions.*

36. The parties have identified the following aggravating and mitigating factors:

37. The aggravating factors in this case are:

- Mr Bathan's conviction for a specified offence involved a child.*
- The underlying misconduct indicates a harmful deep-seated attitudinal and/or behavioural issue.*

38. The mitigating factors in this case are:

- Mr Bathan pleaded guilty to the offences at the earliest opportunity*
- Mr Bathan has engaged with the NMC, expressing remorse and demonstrating some insight through reflection.*

39. The sanctions of taking no further action or imposing a caution order would not sufficiently reflect the seriousness of the convictions nor address the public protection issues or wider public interest concerns.

40. *The nature of the convictions and underlying behaviour is not such that conditions of practice could be formulated to sufficiently protect the public or address the wider public interest considerations.*
41. *In rejecting the sanction of a suspension order the parties agree that Mr Bathan's behaviour and convictions are fundamentally incompatible with continued registration.*
42. *The only appropriate and proportionate sanction in this case is that of a striking-off order. the Parties agree that the underlying conduct giving rise to the convictions is fundamentally incompatible with ongoing registration for the reason outlined in paragraph 29 above. Mr Bathan's actions raise fundamental questions about his professionalism and the public's confidence in the profession could not be maintained without removal from the register. Only a striking-off order is sufficient to protect members of the public and maintain professional standards.*
43. *Moreover, Mr Bathan's sentence is ongoing. Apart from the Community Order the Sexual Harm Prevention Order and Sexual Offender Notification Requirements will be effective until 2029. The principle in the case of Council for the Regulation of Health Care Professionals v General Dental Council & Anor [2005] EWHC 87 (Admin) ('Fleischmann') therefore falls to be considered. In general terms, unless the circumstances plainly justify a different course, a practitioner should not be permitted to resume his practice until he has satisfactorily completed his sentence. The parties agree that the circumstances of this case do not justify "a different course".*

Interim order

44. *An 18 months' interim suspension order is necessary in this case to protect the public and maintain proper professional standards for the reasons set out above.*

This is to cover the period of time before the striking-off order takes effect, whether or not there is an appeal. Should no appeal be lodged within the requisite period, the interim order will automatically fall away. In the event of an appeal, it is expected that, given the backlog of cases in the courts, it would take up to 18 months to resolve matters.'

Here ends the provisional CPD agreement between the NMC and Mr Bathan. The provisional CPD agreement was signed by Mr Bathan on 14 November 2024 and the NMC on 15 November 2024.

Decision and reasons on the CPD

The panel decided to accept the CPD.

The panel heard and accepted the legal assessor's advice.

Ms Wisniewska referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. She reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Mr Bathan. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Mr Bathan admitted the facts of the charges. Accordingly the panel was satisfied that the charges are found proved by way of Mr Bathan's admissions, as set out in the signed provisional CPD agreement.

Decision and reasons on impairment

The panel then went on to consider whether Mr Bathan's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Mr Bathan, the panel has exercised its own independent judgement in reaching its decision on impairment.

In respect of his conviction, the panel considered the factors outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin)) namely:

(a) has [the Registrant] in the past acted and/or is liable in the future to act as so 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 and/or

(d) ...'

The panel determined that Mr Bathan's behaviour, which resulted in his conviction, had the potential to deter fully informed members of the public from seeking necessary medical treatment, thus placing the patient at an unwarranted risk of harm. It further determined that Mr Bathan's conduct brought the nursing profession into disrepute and breached fundamental tenets of the profession.

The panel noted that Mr Bathan's behaviour was such as to result in a criminal conviction for a serious offence. It determined that such behaviour is inherently difficult to remediate and in this regard the panel had before it the NMC's guidance on '*Serious concerns which are more difficult to put right*' (FTP-3a).

The panel noted that Mr Bathan has demonstrated some insight and remorse for his actions. However, the panel determined that Mr Bathan's behaviour was indicative of a deep seated attitudinal problem and therefore concluded that there remains a risk of repetition, and therefore a risk of harm to the public due to the seriousness of Mr Bathan's behaviour. The panel therefore determined that a finding of impairment was necessary on the grounds of public protection.

The panel bore in mind that 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. The panel determined that a fully informed member of the public, aware of Mr Bathan's conviction for voyeurism involving a child, would be seriously concerned should a finding of impairment not be made. The panel therefore determined that a finding of impairment on public interest grounds is also required.

Having regard to all of the above, the panel was satisfied that Mr Bathan's fitness to practise is currently impaired. In this respect, the panel endorsed paragraphs 12 to 33 of the provisional CPD agreement.

Decision and reasons on sanction

Having found Mr Bathan'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:

- Mr Bathan's conviction for a specified offence involved a child; and
- The underlying misconduct indicates a harmful deep-seated attitudinal and/or behavioural issue.

The panel also took into account the following mitigating features:

- Mr Bathan pleaded guilty to the offences at the earliest opportunity; and
- Mr Bathan has engaged with the NMC, expressing remorse and demonstrating some insight through reflection.

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 Bathan'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 Bathan's behaviour 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 Bathan'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. Furthermore, the panel concluded that the placing of conditions on Mr Bathan'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 conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel determined that the serious breach of the fundamental tenets of the profession evidenced by Mr Bathan's actions and subsequent conviction is fundamentally incompatible with Mr Bathan remaining on the register. In this particular case, the panel concluded 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?*

The panel was of the view that the findings in this particular case demonstrate that Mr Bathan's actions were so serious, raising fundamental questions about his professionalism, that 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 agreed with the CPD 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 Bathan's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered 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 Bathan in writing.

Decision and reasons on 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 Bathan's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

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 agreed with the CPD 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 summarise panel's reasons

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

That concludes this determination.