

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

Substantive Hearing

23 April 2019

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant:	James Hitch
NMC PIN:	09A1241E
Part(s) of the register:	Registered Nurse Part 1 Children (7 September 2009)
Area of Registered Address:	England
Type of Case:	Conviction
Panel Members:	John Hamilton (Chair, Lay member) Donna Hart (Registrant member) Clive Chalk (Lay member)
Legal Assessor:	Ian Ashford-Thom
Panel Secretary:	Sophie Cubillo-Barsi
Registrant:	Not present and not represented
Nursing and Midwifery Council:	Represented by Neil Jeffs
Facts proved:	Charge 1
Fitness to practise:	Impaired
Sanction:	Striking off order
Interim Order:	Interim suspension order – 18 months

Details of charge:

That you, a registered nurse;

- 1) On 27th October 2017 at the Teesside Magistrates Court were convicted of the following offences;
 - a) Made 86 Indecent photographs, (Category A), namely, of children. **Charge found proved**
 - b) Made 236 indecent photographs, (Category B) namely of children. **Charge found proved**
 - c) Made 432 indecent photographs, (Category C), namely, of children. **Charge found proved**

Contrary to Sections 1 (1) (A) and 6 of the Protection of Children Act 1978

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

Decision on Service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Hitch was not in attendance and that written notice of this hearing had been sent to Mr Hitch's registered address by recorded delivery and by first class post on 21 March 2019. Notice of this hearing was delivered and signed for on 22 March 2019, alongside the printed name of 'Hitch'.

The panel took into account that the notice letter provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mr Hitch's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Mr Jeffs, on behalf of the NMC, submitted the NMC 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.

In the light of all of the information available, the panel was satisfied that Mr Hitch has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34. It noted that the rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision on proceeding in the absence of the Registrant

The panel next considered whether it should proceed in the absence of Mr Hitch.

The panel had regard to Rule 21 (2) states:

- (2) Where the registrant fails to attend and is not represented at the hearing, the Committee—

- (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;
- (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
- (c) may adjourn the hearing and issue directions.

Mr Jeffs referred the panel to a Case Management Form, signed by Mr Hitch on 9 February 2019, within which Mr Hitch indicates that he would not be attending a future hearing and would not be represented in his absence. Mr Jeffs further referred the panel to a telephone note detailing a conversation between Mr Hitch and an NMC case officer, dated 20 March 2019, within which Mr Hitch states that he will not be attending today's hearing. Further, within Mr Hitch's Response to the Notice of Hearing, dated 5 April 2019, Mr Hitch reiterates the fact that he will not be attending today's hearing.

Mr Jeffs invited the panel to continue in the absence of Mr Hitch on the basis that he had voluntarily absented himself and that there was no reason to believe that an adjournment would secure his attendance on some future occasion.

The panel 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 further noted the case of *R (on the application of Raheem) v Nursing and Midwifery Council [2010] EWHC 2549 (Admin)* and the ruling of Mr Justice Holman that:

“...reference by committees or tribunals such as this, or indeed judges, to exercising the discretion to proceed in the person's absence "with the utmost caution" is much more than mere lip service to a phrase used by Lord Bingham of Cornhill. If it is the law that in this sort of situation a committee or tribunal should exercise its discretion "with the utmost care and caution", it is extremely important that the committee or tribunal in question demonstrates by its language (even though, of course, it need not use those precise words) that it appreciates that the discretion which it is exercising is one that requires to be exercised with that degree of care and caution.”

The panel has decided to proceed in the absence of Mr Hitch. In reaching this decision, the panel has considered the submissions of the case presenter, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *Jones*. It has had regard to the overall interests of justice and fairness to all parties. It noted that:

- no application for an adjournment has been made by Mr Hitch;
- Mr Hitch has indicated on several occasions that he does wish to attend a hearing;
- there is no reason to suppose that adjourning would secure his attendance at some future date;
- the charges relate to events that occurred in 2017;
- there is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Hitch in proceeding in his absence. He will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on his own behalf. However, in the panel's judgment, this can be mitigated. The panel has read written representations provided by Mr Hitch, prior to the hearing. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Hitch's decisions to absent himself from the hearing, waive his rights to attend

and/or be represented and to not provide evidence or make submissions on his own behalf.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Hitch. The panel will draw no adverse inference from Mr Hitch's absence in its findings of fact.

Background

The NMC received a referral regarding Mr Hitch from Cleveland Police on 17 August 2018. At the time of the referral, Mr Hitch was not working in a nursing capacity, but was previously employed as a Paediatric Nurse by North Tees and Hartlepool NHS Foundation Trust until 10 December 2015.

On 27 October 2017, Mr Hitch appeared at the Teesside Magistrates' Court and pleaded guilty to the offences referred to above. Mr Hitch was committed to the Teesside Crown Court for sentencing.

On 26 March 2018, Mr Hitch was sentenced to 18 months imprisonment for the 'Category A' offences, suspended for 24 months; 6 months imprisonment for the 'Category B' offences (to run concurrent and suspended for 24 months); 6 months imprisonment for the 'Category C' offences (to run concurrent and suspended for 24 months); to be subject of a Sexual Harm Prevention Order until further order by the Court; and to be placed on the Sex Offenders' register for a period of 10 years.

The suspended sentence was the subject of two conditions. First, a requirement that Mr Hitch attend 31 sessions on an accredited sex offender programme, namely the Horizon. Secondly, that Mr Hitch attend for 30 days rehabilitation activity as and when required to do so by those administering the scheme.

Decision on the findings on facts and reasons

The charges concern Mr Hitch's conviction. The panel made reference to Rule 31 (2) and (3) of the Rules in this regard, which states:

- (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.

Having been provided with evidence of Mr Hitch's consistent admissions to the charges and a copy of the memorandum of conviction, the panel found charge one proved in its entirety.

Submission on impairment:

Having announced its finding on all the facts, the panel then moved on to consider whether Mr Hitch'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 suitability to remain on the register unrestricted.

Mr Hitch has admitted that he is currently impaired. However, the panel bore in mind that the issue of impairment is one for its own independent judgement.

In his submissions Mr Jeffs invited the panel to take the view that Mr Hitch's actions amount to a breach of *The Code: Professional standards of practice and behaviour for nurses and midwives (2015)* (the Code). Mr Jeffs submitted that Mr Hitch's conduct raises fundamental concerns regarding his position as a registered professional. Mr Jeffs stated that the conduct and offences were particularly grave, concerning sexual motivation and involvement with child pornography.

Mr Jeffs referred the panel to the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) 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.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
- d. ...

Mr Jeffs submitted that Mr Hitch's conduct leading to the conviction clearly has the potential to seriously undermine trust and confidence in the profession, with the effect that it could deter patients from accessing care provided by him and, consequently, put patients at unwarranted risk of harm. Mr Jeffs submitted that Mr Hitch's convictions

have clearly brought the profession into disrepute and breached fundamental tenets of the profession.

Mr Jeffs further submitted that the underlying conduct leading to Mr Hitch's conviction is not easily remediable. He acknowledged that Mr Hitch has sought assistance from third parties and is required to undertake rehabilitation activity as part of the sentence imposed. However, Mr Jeffs submitted that it cannot be said that the conduct has been remedied. He stated that Mr Hitch continues to serve his sentence within the community and referred the panel to the case of *CRHP v General Dental Council & Fleischmann* [2005] EWHC 87 (Admin) in this regard. Mr Jeffs submitted that a finding of impairment is necessary to declare and uphold proper professional standards. He stated that the public confidence in the nursing profession and in the NMC as regulator would be undermined if a finding of impairment is not made in this case, particularly given the nature of Mr Hitch's conviction.

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

Decision on impairment

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

The panel noted that the conviction was very serious and that possession of category A images of children would normally attract a custodial sentence. Such a criminal offence, is considered deplorable by the public and breaches the fundamental tenets of the nursing profession.

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 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 judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*. The panel accepted the submissions made by Mr Jeffs in that, as a paediatric nurse, Mr Hitch's conduct has placed patients at an unwarranted risk of harm. Further, Mr Hitch's conviction relates to serious, sexual offences, all of which have brought the profession into disrepute and breached fundamental tenets of the nursing profession.

The panel acknowledged that Mr Hitch has made full admissions to his conduct throughout both the criminal and regulatory proceedings. Further, it noted that Mr Hitch is required to attend rehabilitation programmes as part of his sentence. The panel had no evidence before it that Mr Hitch had previously harmed patients in his care. However, given the nature of Mr Hitch's conviction and his need for treatment of his apparent underlying attitudinal issue, the panel determined that until such time that Mr Hitch has completed his rehabilitation programme(s), there remains a risk of repetition of the conduct which led to his conviction and a potential risk to patients. 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. It was of the view that Mr Hitch's conduct would be considered deplorable by members of the public and determined that in this case, a finding of impairment on public interest grounds was required.

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

Determination on 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 Hitch off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case. The panel accepted the advice of the legal assessor. 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 Sanctions Guidance (SG) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

Mr Jeffs invited the panel to impose a striking off order. He submitted that anything less than a suspension order, would not sufficiently mark the seriousness of the case. Mr Jeffs stated that Mr Hitch's conduct is such that permanent removal from the register is necessary.

The panel noted that Mr Hitch had requested voluntary removal from the register. However, voluntary removal is not appropriate in this case because of the seriousness of the facts found proved and the high level of public interest engaged.

The panel considered the following aggravating and mitigating factors:

Aggravating

- The course of conduct occurred over a prolonged period of time, indicating a serious underlying attitudinal issue;
- The conviction relates to serious offences, at the highest level, involving children that resulted in Mr Hitch been placed on the Sex Offenders' register and a Sexual Harm prevention order;
- Mr Hitch is a registered paediatric nurse.

Mitigating

- Mr Hitch has made early admissions throughout both the criminal and regulatory proceedings;
- Mr Hitch is currently undergoing treatment to address his underlying attitudinal issues.

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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 Hitch's conduct which led to his conviction was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of his actions. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

When considering a conditions of practice order, the panel determined there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. Mr Hitch's conduct which led to his conviction is extremely serious and not something that can be addressed through retraining. Furthermore the panel concluded that the placing of conditions on Mr Hitch's registration would not adequately address the significant public interest concerns in 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 very 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 Hitch's conduct and conviction is attitudinal and fundamentally incompatible with him remaining on the register. The public interest in this case is very high. To allow Mr Hitch 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. When making this decision, the panel referred to the SG including the guidance in relation to sexual misconduct. Having regard to the matters it identified, in particular the effect of Mr Hitch'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.

Determination on Interim Order

The panel next considered the submissions made by Mr Jeffs that an interim order should be made to allow for the possibility of an appeal. He submitted that such an order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension 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. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.