

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

**Substantive Meeting
Thursday 18 April 2019**

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

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| Name of registrant: | Damien Anthony Keogh |
| NMC PIN: | 9614594E |
| Part(s) of the register: | Registered Nurse – Sub part 1 Mental Health Nursing – September 2001 |
| Area of registered address: | Hull |
| Type of case: | Conviction |
| Panel members: | Jane Kivlin (Chair, registrant member) Kevin Hope (Registrant member) Claire Corrigan (Lay member) |
| Legal Assessor: | Simon Walsh |
| Panel Secretary: | Sara Page |
| Facts proved: | All |
| Fitness to practise: | Impaired |
| Sanction: | Striking-off order |
| Interim order: | Interim suspension order (18 months) |

Decision on service of Notice of Meeting:

The panel was informed at the start of this meeting that Mr Keogh was not in attendance and that written notice of this meeting had been sent to Mr Keogh's registered address by recorded delivery and by first class post on 26 February 2019.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and venue of the meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Keogh 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 17 August 2018, in the Crown Court at Kingston upon Hull were convicted of:
 - a) 3 counts of sexual activity with a person with a mental disorder/learning disability by a care worker (no penetration)
 - b) 2 counts of sexual activity with a person with a mental disorder/learning disability by a care worker (penetration)

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

Determination on the facts:

The charges concern Mr Keogh's conviction and, having been provided with a copy of the Certificate of Conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3). These state:

- “31.— (2) Where a registrant has been convicted of a criminal offence—
- (a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and
 - (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.
- (3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.”

The Certificate of Conviction states that Mr Keogh was tried and, upon his own confession, was convicted of the aforementioned allegations. He was sentenced to 45 months imprisonment and was required to sign on the sex offenders register indefinitely.

Accordingly, the panel finds the charge proved in its entirety by way of the Certificate of Conviction.

Background

Mr Keogh was first admitted to the register of nurses and midwives maintained by the NMC on 1 October 2001 and is a Registered Mental Health Nurse.

Mr Keogh's practice has not previously been the subject of regulatory intervention.

At the time of the conduct giving rise to the above referenced conviction, Mr Keogh was employed as a psychiatric nurse by Navigo, a mental health organisation in North East Lincolnshire. He was responsible for the care of a patient, Patient A, suffering from recurrent depressive disorder with borderline personality traits.

In early 2015, Mr Keogh entered into an intimate relationship with Patient A. By the end of 2015, that relationship had become sexual. There was some dispute at trial as to the precise parameters of the relationship but it was agreed that on multiple occasions Patient A had performed oral sex on Mr Keogh causing him to ejaculate, that he had penetrated her vagina with his fingers and that regular consensual vaginal intercourse had taken place.

In March 2016, the relationship came to an end. This, and the fact that the relationship happened at all, has had a lasting and detrimental effect on Patient A's emotional, psychological, and general mental health.

The law seeks to protect vulnerable people from being the subject of sexual advances by their carers and, as such, it is an offence to engage in sexual activity with a mentally disordered individual whilst responsible for their care.

On 17 August 2018, Mr Keogh pleaded guilty to the offences set out in the charges.

On 23 October 2018, Mr Keogh was sentenced to 45 months imprisonment. He was also required to sign on the sex offender register indefinitely.

Determination on fitness to practise:

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Keogh's fitness to practise is currently impaired by reason of his 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.

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 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...”

The panel finds that Mr Keogh caused emotional and psychological harm to Patient A and that this was inevitable given the circumstances of the relationship. As an experienced mental health nurse, this is something the panel was satisfied that Mr Keogh should have known. Mr Keogh’s conduct had no doubt breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute, namely ‘The Code: Professional standards of practice and behaviour for nurses and midwives (2015)’. In particular,

“20 Uphold the reputation of your profession at all times

To achieve this, you must:

- 20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress
- 20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers...”

The panel also considered the case of *Ronald Jack Cohen v General Medical Council [2008] EWHC 581 (Admin)*, namely whether the conduct is easily remediable, whether it has been remedied and whether it is highly unlikely to be repeated.

Regarding insight, the panel considered that Mr Keogh made admissions and indicated in his letter dated 22 February 2019 that he is “very regretful for the repercussions to all involved”.

There has not been any evidence put before the panel of remediation and Mr Keogh has indicated that he wishes to be removed from the register as he no longer wishes to practise as a health care professional in the future.

Despite Mr Keogh's assertions that he no longer wishes to practise as a nurse, the panel must consider the likelihood of repetition if Mr Keogh were, in the future, to decide otherwise. The panel took into account that despite his experience as a mental health nurse, he persisted in the relationship with Patient A for over a year. Due to the seriousness of Mr Keogh's conviction and the lack of evidence that he has sufficient insight into his failings and has remedied his conduct, there may be a risk of repetition on the future. 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 also required.

Having regard to all of the above, the panel was satisfied that Mr Keogh'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 Keogh off the register. The effect of this order is that the NMC register will show that Mr Keogh is not on the register and has been removed by a fitness to practise panel.

The panel accepted the advice of the legal assessor.

The NMC had advised Mr Keogh that it would seek the imposition of striking-off order if the found his fitness to practise currently impaired.

The panel also bore in mind Mr Keogh's request to have his case concluded and for his name to be removed from the register.

Having found Mr Keogh'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 determined that there had been a clear breach of a fundamental tenets of the profession and considered the aggravating features to be the following:

- Harm to a vulnerable patient, which was foreseeable; and
- Abuse of a position of trust over a prolonged period.

The panel was unable to identify any mitigating features.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the conviction. 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 conviction, and the public protection issues identified, an order that does not restrict Mr Keogh'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 Keogh's conduct was at the higher 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 Keogh'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 conduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Keogh'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;
- The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour...

The relationship between Mr Keogh and Patient A spanned over a year and therefore could not be considered a single instance of misconduct. Given Mr Keogh's conviction, the panel concluded that his departure from the standards expected of a registered nurse was so significant that it could properly give rise to a concern that he has harmful personality or attitudinal problems. In addition, the panel has not been able to identify a negligible risk of Mr Keogh's behaviour being repeated in future and therefore it would be wholly inappropriate to impose a suspension order.

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 Keogh's actions were prolonged and significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with him remaining on the register. The panel bore in mind the NMC's guidance on cases that involved sexual misconduct or criminal convictions which highlights these as being more serious cases. Mr Keogh abused his position of trust over a prolonged period with a particularly vulnerable patient in his care. 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 Keogh'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 has considered whether an interim 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 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 conviction 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 allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.