

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

Substantive Meeting

8 January 2020

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

Name of registrant:	Mr Simon Landau
NMC PIN:	99I1361E
Part(s) of the register:	Registered Nurse – sub part 1 Adult Nursing (17 September 2002)
Area of Registered Address:	England
Type of Case:	Conviction
Panel Members:	Timothy Cole (Chair, Lay member) Deborah Hall (Registrant member) Gregory Hammond (Lay member)
Legal Assessor:	Jonathan Whitfield
Panel Secretary:	Anjeli Shah
Facts proved:	1
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	Striking-off Order
Interim Order:	Interim Suspension Order for 18 months

Details of charge:

That you, a registered nurse:

- 1. Were convicted on 12 April 2019 at Birmingham Crown Court of two counts of making an indecent photograph/pseudo-photograph of a child.*

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

Decision on Service of Notice of Meeting:

Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (“the Rules”) state:

‘11A.(1) Where a meeting is to be held in accordance with rule 10(3), the Fitness to Practise Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held.

*34.(3) Any other notice or document to be served on a person under these Rules may be sent by—
(a) ordinary post’*

The panel accepted the advice of the legal assessor.

The panel considered whether notice of this meeting has been served in accordance with the Rules.

Notice of this substantive meeting was sent to Mr Landau’s registered address on 29 November 2019 by recorded delivery and first class post. Notice of this meeting was signed for at Mr Landau’s registered address on 30 November 2019.

The panel is satisfied that the notice was sent at least 28 days in advance of this meeting. The panel therefore finds that notice has been served in accordance with the Rules.

The panel also noted that there has been no response from Mr Landau in relation to the notice of this meeting.

Background

The NMC received a self-referral from Mr Landau on 29 December 2017, following his arrest. At the time Mr Landau was employed as a Band 7 Theatre Charge Nurse at Grand Hope Hospital (“the Hospital”), which is part of Heart of England NHS Foundation Trust (“the Trust”). Mr Landau was suspended from the Trust on 27 November 2017 and was dismissed on 11 April 2018.

On 12 April 2019 Mr Landau pleaded guilty at Birmingham Crown Court (“the Court”) to two counts of making an indecent photograph/pseudo-photograph of a child.

On 24 May 2019 Mr Landau was sentenced at the Court. In respect of count 1 Mr Landau received a custodial sentence of five months imprisonment, suspended for 18 months; a rehabilitation activity requirement of 30 days; and an unpaid work requirement of 100 hours to be completed within 12 months. In respect of count 2 Mr Landau received a custodial sentence of one month’s imprisonment suspended for 18 months (to be served concurrently with the sentence for count 1) and the same two community elements as for count 1.

Decision on the findings on facts and reasons

The charges concern Mr Landau's conviction and, having been provided with a copy of the certificate of conviction dated 9 July 2019, the panel finds that the facts of charge 1 are found proved in accordance with Rule 31 (2) and (3) of the Rules 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 (s)he is not the person referred to in the certificate or extract.

Decision on impairment

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

The panel accepted the advice of the legal assessor.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be 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) 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. ...”

The panel considered that there was no evidence to suggest that Mr Landau has placed patients at risk of harm, noting that the behaviour surrounding his conviction occurred in his private life, and did not involve his clinical practice. Furthermore, there was no evidence before the panel of any concerns relating to Mr Landau's clinical practice. The panel therefore considered that limb a of the above test was not directly engaged by Mr Landau's past actions. Nonetheless the panel could not exclude the issue of risk to patients for the reasons set out below.

However, the panel did consider that limbs b and c were engaged by Mr Landau's past conduct. Mr Landau has received a conviction for serious criminal offences, which would undermine trust in the nursing profession and bring it into disrepute. The panel

considered that Mr Landau's conduct has breached fundamental tenets of the nursing profession.

The panel had regard to the terms of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) ("the Code"), and considered that the following sections were engaged in this case:

"17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this you must:

- 17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse
- 17.2 share information if you believe someone may be at risk of harm, in line with the laws relating to the disclosure of information
- 17.3 have knowledge of and keep to the relevant laws and policies about protecting and caring for vulnerable people

...

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with ... integrity at all times...

...

20.4 keep to the laws of the country in which you are practising”

The panel considered that section 17 of the Code was engaged in this case as Mr Landau’s conduct involved accessing indecent images of children. Upon coming across images of vulnerable individuals, Mr Landau would have had a duty to report these images, but he did not do so, thereby failing to take steps to protect the children within the images from risk of harm.

The panel considered whether Mr Landau was liable to act in a way to bring the profession into disrepute and to breach fundamental tenets of the profession in the future. Whilst Mr Landau had pleaded guilty to his offences at the Court, and he had self-referred to the NMC, he had not demonstrated any remorse for his behaviour and appeared to only demonstrate limited insight. Within Mr Landau’s responses to the NMC he focused on his perceived mistreatment in the workplace, rather than reflecting on and addressing the offences for which he was convicted. The panel therefore had no evidence to suggest that Mr Landau had remediated the behaviour for which he had been convicted. The panel therefore considered that Mr Landau did remain liable to act in a way that could bring the profession into disrepute and to breach fundamental tenets of the profession in the future.

Whilst the panel has considered that there is no evidence that Mr Landau's behaviour placed his patients at risk of harm, as stated, it did involve a failure to safeguard vulnerable individuals. Given Mr Landau's lack of remorse and limited insight, and the lack of evidence of remediation, the panel considered that there does remain a risk that Mr Landau could act in a way to fail to safeguard vulnerable individuals in the future which could include patients. The panel considered that whilst limb a of Dame Janet Smith's test was not directly engaged by Mr Landau's past actions, it was engaged in relation to the issue of potential future risk. The panel therefore determined that it is necessary to make a finding of impairment 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 wellbeing of the public and patients, and to uphold and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing profession and upholding the proper professional standards for members of the profession. The panel considered that members of the public, patients and their families place trust in nurses, and they would be shocked to hear of a nurse receiving a conviction for serious criminal offences of this nature. The panel considered that public confidence in the nursing profession and in the NMC as a regulator would be undermined if a finding of impairment were not made in the circumstances of this case. The panel therefore determined that a finding of impairment was also necessary on public interest grounds.

Having regard to all of the above, the panel was satisfied that Mr Landau'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 Landau off the register. The effect of this order is that the NMC register will show that Mr Landau has been struck-off the register.

In reaching this decision, the panel has had regard to all the documentary evidence in this case. The panel accepted the advice of the legal assessor. The panel bore 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.

The panel first considered what it deemed to be the aggravating and mitigating factors in this case and determined the following:

Aggravating factors:

- Mr Landau received a conviction for serious criminal offences;
- The behaviour was considered sufficiently serious by the judge for him to impose custodial sentences, albeit suspended;
- Mr Landau’s behaviour involved a failure to take actions to safeguard children, as upon discovering the images he should have reported them;
- Mr Landau has not demonstrated remorse and he has shown limited insight.

Mitigating factors:

- Mr Landau pleaded guilty to his offences in the Court;
- Mr Landau self-referred to the NMC.

Prior to considering the sanctions available to it in ascending order, the panel had regard to the NMC's guidance on considering sanctions for serious cases. The guidance states that:

“Sexual offences include accessing, viewing, or other involvement in child pornography, which involves the abuse or exploitation of a child. These types of offences gravely undermine patients' and the public's trust in nurses and midwives. In the criminal courts, some offences of child pornography offences are considered more serious than others. However, in fitness to practise, any conviction for child pornography is likely to involve a fundamental breach of the public's trust in nurses and midwives.”

Furthermore, the guidance also states that, in general, a nurse or midwife should not be permitted to start practising again until they have completed their sentence for a serious offence, a principle established in the case of *CHRE v GDC and Fleischmann* [2005] EWHC 87 (QB). Although this is a general rule, it does not mean that the panel has no choice but to remove the nurse or midwife from the register permanently, as set out in the case of *Chandrasekera v NMC* [2009] EWHC 144 (Admin). The panel bore in mind that Mr Landau is currently serving an ongoing suspended sentence, as well as being subject to community orders and a sexual harm prevention order for a period of seven years since the date he was sentenced.

The panel paid particular regard to these considerations when considering what action to take in this case.

The panel first considered whether to take no action but concluded that this would be wholly inappropriate in view of the seriousness of Mr Landau's conviction. The panel decided that taking no action would not protect the public and it would not satisfy the wider public interest.

The panel next considered 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, however the Fitness to Practise Committee wants to mark that the behaviour was unacceptable and must not happen again.”

The panel considered that Mr Landau’s behaviour was serious and not at the lower end of the spectrum, and therefore a caution order would be inappropriate. The panel decided that imposing a caution order would not protect the public and it would not satisfy the wider public interest.

The panel next considered whether to impose a conditions of practice order. The panel noted that this case did not involve concerns regarding Mr Landau’s clinical practice. The conduct in this case concerned Mr Landau’s behaviour. The panel was of the view that there were no workable or practicable conditions which could address the behaviour for which Mr Landau has been convicted. Furthermore, having regard to the high public interest in this case, the panel considered that conditions of practice would not address the seriousness of the case and would fail to uphold confidence in the nursing profession and in the NMC as a regulator.

The panel next considered whether to impose a suspension order. The panel had regard to the SG, and the factors to consider when deciding whether to impose a suspension order. The panel considered that there was evidence of harmful and deep-seated personality problems on Mr Landau’s part, given the nature of the conviction. Whilst there was no evidence that Mr Landau had repeated his behaviour since receiving the conviction, the panel considered that there is a risk of repetition, in light of his lack of insight and remorse.

The panel reminded itself that the offences for which Mr Landau was convicted involve a fundamental breach of patients' and the public's trust in the nursing profession. Taking this into account and Mr Landau's lack of insight and remorse for his behaviour, the panel determined that a suspension order would not be appropriate or proportionate in the circumstances of this case.

The panel went on to consider whether to impose a striking-off order. The panel had regard to the NMC's guidance on considering sanctions for serious cases, which states that very often in cases of this kind, the only proportionate sanction will be to remove the nurse or midwife from the register. The panel considered that this was applicable in the circumstances of this case, and that Mr Landau's behaviour raised fundamental questions about his professionalism. The panel considered that a striking-off order was the only sanction sufficient to protect patients, members of the public and to maintain professional standards, and that public confidence in the nursing profession would not be maintained if Mr Landau was not removed from the register.

Balancing all of these factors and after taking into account all the documentary 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 Landau's behaviour 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 a striking-off order 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

Under Article 31 of the Nursing and Midwifery Order 2001 (“the Order”), the panel considered whether an interim order should be imposed in this case. A panel may only make an interim order if it is satisfied that it is necessary for the protection of the public, and/or is otherwise in the public interest, and/or is in the registrant’s own interests.

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 Landau is sent the decision of this hearing in writing.

That concludes this determination.