

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

**Substantive Hearing
11 April 2022**

Virtual Hearing

Name of registrant:	Christopher Ewan
NMC PIN:	12H1207E
Part(s) of the register:	Registered Nurse – Adult Nursing Adult Nurse – Level 1- 8 April 2013
Area of registered address:	Merseyside
Type of case:	Conviction
Panel members:	Rachel Ellis (Chair, Lay member) Sue Rourke (Registrant member) Sue Davie (Lay member)
Legal Assessor:	Justin Gau
Hearings Coordinator:	Sophie Cubillo-Barsi
Nursing and Midwifery Council:	Represented by Aoife Kennedy, Case Presenter
Christopher Ewan:	Not present and unrepresented
Facts proved:	Charges 1, 2, 3, 4, 5, 6
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 Ewan was not in attendance and that the Notice of Hearing letter had been emailed to Mr Ewan's registered email address on 10 March 2022.

Ms Kennedy, 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, dates and, amongst other things, information about Mr Ewan's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Ewan 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 of Mr Ewan

The panel next considered whether it should proceed in the absence of Mr Ewan. It had regard to Rule 21 and heard the submissions of Ms Kennedy who invited the panel to continue in the absence of Mr Ewan.

Ms Kennedy referred the panel to an email from Mr Ewan, dated 31 March 2022, in which he states:

"Good afternoon. That is correct, I will not be attending..."

Further, Mr Ewan indicated within his case management form, dated 20 January 2022, that he would not be attending the hearing.

In light of this, Ms Kennedy submitted that Mr Ewan has voluntarily absented himself. Ms Kennedy stated that Mr Ewan has not requested an adjournment and there is a strong public interest in the expeditious disposal of this case. Ms Kennedy submitted that it would be fair and proportionate to proceed in Mr Ewan's absence.

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 has decided to proceed in the absence of Mr Ewan. In reaching this decision, the panel has considered the submissions of Ms Kennedy and the written submissions made by Mr Ewan, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and 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 Ewan;
- Mr Ewan has informed the NMC that he has received the Notice of Hearing and confirmed he is content for the hearing to proceed in his absence;
- 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.

There is some disadvantage to Mr Ewan in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered email address, he will not be able to challenge the evidence relied upon by the NMC in person

and will not be able to give evidence on his own behalf. However, in the panel's judgment, this can be mitigated particularly given that Mr Ewan accepts all of the regulatory charges. Furthermore, the limited disadvantage is the consequence of Mr Ewan'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 Ewan. The panel will draw no adverse inference from Mr Ewan's absence in its findings of fact.

Details of charge

That you, a registered nurse, on 14 July 2021 were convicted of:

1. Make an indecent photograph / pseudo-photograph of a child.
2. Make an indecent photograph / pseudo-photograph of a child.
3. Possess prohibited images of children.
4. Possess prohibited images of children.
5. Possess an indecent photograph / pseudo-photograph of a child.
6. Possess extreme pornographic images - act of intercourse/oral sex with a dead/alive animal.

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

Background

Mr Ewan joined the NMC register in April 2013. Mr Ewan commenced employment at Liverpool University Hospital Trust (the Trust) in May 2013.

On 22 June 2020 police went to Mr Ewan's home address and took various devices which were analysed. The police discovered indecent images, 137 Category A, including 10 videos, 219 Category B, including two videos, 130 Category C, one prohibited image of a child and 21 extreme pornographic images.

Mr Ewan was arrested. He pleaded guilty on 14 July 2021. On 3 September 2021 Mr Ewan was sentenced to ten months' imprisonment suspended for 24 months, placed on the Sex Offenders Register for ten years, placed on a Sexual Harm Prevention Order for ten years and was instructed to undertake 40 Rehabilitation Activity Requirement days as directed by an authorised provider of probation.

The NMC received two referrals, one from the Trust and another from the Police.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Kennedy, who informed the panel that Mr Ewan made full admissions to all of the charges and that this is evidenced within Mr Ewan's Case Management Form, dated 20 January 2022.

The panel also has before it the Crown Court Certificate of Sentence dated 3 September 2021.

The charge concerns Mr Ewan's conviction and, having been provided with a copy of the Certificate of Sentence, and Mr Ewan's admissions, 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.'

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider whether Mr Ewan'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.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgment.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the conviction amounts to misconduct. Secondly, only if the conviction amounts to misconduct, the panel must decide whether, in all the circumstances, Mr Ewan's fitness to practise is currently impaired as a result of that conviction.

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Ms Kennedy invited the panel to take the view that Mr Ewan's conviction amounted to misconduct. She referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code), specifically:

"20 Uphold the reputation of your profession at all times

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

20.2 ...

20.3 ...

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

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress"

Ms Kennedy submitted that the nursing profession is a 'caring profession' and Mr Ewan's conviction related to children, the most vulnerable members of society. Ms Kennedy stated that Mr Ewan's conviction and conduct falls far short of what is expected of a registered nurse and that a member of the public would consider Mr Ewan's conviction deplorable.

Submissions on impairment

Ms Kennedy moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Whilst Ms Kennedy acknowledged that no patients were placed at a direct risk of harm, she submitted that harm was caused to the vulnerable children who were exploited within the pictures, which were viewed by Mr Ewan. Ms Kennedy submitted that Mr Ewan's conduct is of the most serious kind, bringing the nursing profession into disrepute by undermining the confidence and trust in the profession. She further submitted that Mr Ewan's convictions have breached the fundamental tenets of the nursing profession.

Ms Kennedy referred the panel to the case of *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin). She submitted that the misconduct in this case is not easily remediable. Further, Ms Kennedy submitted that the panel do not have anything before it to demonstrate that Mr Ewan has developed insight into his conviction or whether he has begun to remedy his misconduct. To the contrary, Mr Ewan has indicated that he does not wish to return to the nursing profession.

Ms Kennedy submitted that the concerns are of the most serious kind and that Mr Ewan's actions mean that he is liable to put patients at a risk of harm in the future. Further, Ms Kennedy invited the panel to find that in the absence of any insight and/or remediation, there is a risk of repetition. In light of this, Ms Kennedy submitted that Mr Ewan's fitness to practise is currently impaired on both public protection and public interest grounds.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

When determining whether Mr Ewan's conviction amounted to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Mr Ewan's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Ewan's actions amounted to a breach of the 2015 Code (updated in 2018). Specifically:

“20 Uphold the reputation of your profession at all times

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

20.2 ...

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

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

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

20.6 ...

20.7 ...

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to”

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, when considering the facts of the case and having the Crown Court Certificate of Sentence and the sentencing remarks before it, the panel determined that Mr Ewan's actions did fall seriously short of the conduct and standards expected of a nurse and that his conviction amounted to misconduct.

Decision and reasons on impairment

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

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 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 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; and/or*
- d) [...]

Although the conviction in question was not related to Mr Ewan's clinical practice and occurred in a domestic setting, the nature of the criminal conduct is such that it potentially impacts on the safety of patients, in particular, the safety of children. Children suffer harm as a result of indecent images being made, possessed and distributed. Offences involving indecent images of children exploit children and amount to an abuse of children. It is therefore not guaranteed that a member of the public in Mr Ewan's care would be safe, or indeed, feel safe, in his care. The panel therefore determined that Mr Ewan is liable to place patients at a risk of harm in the future, that his conviction, for such serious and morally culpable offences, has brought the nursing profession into disrepute and breached fundamental tenets of the profession.

Regarding insight, the panel noted that Mr Ewan had made early admissions, accepted that his fitness to practise is impaired and has explained that he no longer wishes to be on the NMC register. However, the panel had no information before it to evidence Mr Ewan's understanding of how his actions have affected his role as a nurse and the reputation of the nursing profession in general.

The panel determined that Mr Ewan's conduct which led to a criminal conviction and suspended custodial sentence is such that it would be difficult to remedy and falls so far short of the standards the public expect of professionals caring for them that public

confidence in the nursing and midwifery professions could be undermined if a finding of impairment was not made. Should such conduct be repeated, there is a risk of putting other members of the public at risk of harm and also the risk of further damage to the reputation of the profession. 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; 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.

In addition, the panel concluded that public confidence in the profession would be seriously undermined if a finding of impairment were not made in this case and therefore also finds Mr Ewan's fitness to practise impaired on the grounds of public interest.

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

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mr Ewan off the register. The effect of this order is that the NMC register will show that Mr Ewan has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Kennedy invited the panel to impose a striking-off order. She reminded the panel that Mr Ewan's conduct involved sexual offences and the exploitation of children. Ms Kennedy submitted that removing Mr Ewan's name from the register would be the only sanction that would protect the public and address the public interest concerns.

Decision and reasons on sanction

Having found Mr Ewan'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 judgment.

The panel took into account the following aggravating features:

- Mr Ewan's conduct relates to serious sexual offences for which a custodial sentence was received;
- Mr Ewan's conduct involved the repeated exploitation of children; and
- Mr Ewan has not shown any evidence of insight and/or remediation.

The panel also took into account the following mitigating features:

- Mr Ewan made early admissions to both criminal and regulatory proceedings.

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 Ewan'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 Ewan's conduct 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 Ewan's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Ewan's registration would not adequately address the seriousness of this case, would not protect the public nor be in the public interest.

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, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour;*
- *...*
- *...*

The conduct, as highlighted by Mr Ewan's conviction, was a significant departure from the standards expected of a registered nurse. His conduct was not a single instance and there is evidence before the panel to demonstrate that Mr Ewan has a harmful deep seated personality or attitudinal problem. Furthermore, the panel had not been provided with any evidence relating to Mr Ewan's insight. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mr Ewan's actions is fundamentally incompatible with Mr Ewan remaining on the register and it could not be satisfied that Mr Ewan will not repeat his behaviour.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction, particularly when considering the public interest concerns in this case. Further, the panel noted that a suspension order imposed today would expire before the conclusion of his suspended sentence order in criminal proceedings.

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 Ewan's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Ewan's actions were extremely serious and to allow him to continue practising, would place the public at risk, undermine public confidence in the profession and in the NMC as a regulatory body. The panel determined that an informed member of the public, would be seriously

concerned should a nurse, convicted of such serious sexual offences, currently serving a suspended custodial sentence, be permitted to remain on the register.

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 effect of Mr Ewan'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 protect the public, 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 Ewan in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Ewan's own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Kennedy. She invited the panel to impose an 18 month interim suspension order, in order to cover any appeal period, should an appeal occur.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months in order to cover any appeal period, should Mr Ewan appeal this decision.

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

That concludes this determination.