

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

**Substantive Meeting
Monday 21 February 2022**

Virtual Meeting

Name of registrant: **Adrian Broomhall**

NMC PIN: 90E0923E

Part(s) of the register: RN1: Adult Nurse – Level 1 (5 July 1993)

Area of registered address: Surrey

Type of case: Conviction

Panel members: Adrian Ward (Chair, lay member)
Esther Craddock (Registrant member)
Jacqueline Metcalfe (Registrant member)

Legal Assessor: Trevor Jones

Hearings Coordinator: Holly Girven

Facts proved: Charges 1, 2, 3, 4 and 5

Facts not proved: None

Fitness to practise: Impaired

Sanction: **Striking-off order**

Interim order: **Interim suspension order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that Mr Broomhall was not in attendance and that the Notice of Meeting had been sent to Mr Broomhall's registered email address on 18 January 2022.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, and further noted that Mr Broomhall in a Case Management Form (CMF) indicated he wished the matter to be considered at a meeting.

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

On 24 March 2021 at Staines Magistrates' Court were convicted of

1. Making an indecent photograph/pseudo-photograph of a child
2. Attempting to engage in sexual communication with a child
3. Engaging in sexual communication with a child
4. Cause/incite a girl aged under 16 to engage in sexual activity – no penetration – offender aged over 18
5. Meeting a girl aged under 16 following grooming

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

Decision and reasons on facts

The charges concerns Mr Broomhall'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 panel also had regard to written submissions from Mr Broomhall.

Background

Surrey Police (the Police) received information in October 2019 that Male A was using a social media application to communicate with another adult male. In the conversation both parties discussed their sexual interest in children. The adult male that Male A was talking to was an undercover police officer. A subsequent investigation by the Police identified Mr Broomhall as Male A.

On 13 November 2019, the Police executed a search warrant at Mr Broomhall's home address. He was arrested and a number of electronic devices were seized. Evidence subsequently uncovered by the Police suggested that Mr Broomhall had engaged in a number of sexualised conversations online with children, and with persons with a sexual interest in children.

The Police spoke to Person A, a 14 year old girl at the time she talked with Mr Broomhall online. Person A recalled the conversations with Mr Broomhall and that he was an 'NHS nurse' who had sent a picture in a blue NHS uniform. Person A told the Police that Mr Broomhall's chat started off being "nice" but then became sexual. Person A recalls that Mr Broomhall asked to meet her on approximately 10 occasions. Mr Broomhall also asked Person A to masturbate during a call. Person A advised the Police that she was honest about her age when she talked with Mr Broomhall.

Mr Broomhall arranged to meet Person A outside her school. Person A recalls when she met Mr Broomhall he had bought her a necklace. Person A also advised that Mr Broomhall hugged her for a couple of minutes and told her that she was "pretty". Person A told the Police that Mr Broomhall tried to get her to go towards his car "to kiss and have sex in the car" but she said "no".

Evidence provided by the Police suggests that Mr Broomhall continued to have online interaction with Person A after this meeting and sent Person A a book as a gift.

Mr Broomhall communicated with another individual, Person B, who identified as a 10 year old between 5- 6 November 2019. The images within the chat were consistent with a 10 year old girl and the chat was sexual in nature. Enquiries revealed Person B's online account to be that of an adult male who had pretended to be a 10 year old girl.

The items seized from Mr Broomhall's house by the Police were also found to contain four "Category C" images and "child abuse search terms" were found on the devices. The Police interrogation of Mr Broomhall's laptop also found other chat content with adults, in which Mr Broomhall talked about child abuse.

Mr Broomhall was subsequently charged with a number of offences, as outlined in the charges, and pleaded guilty on 24 March 2021 at North Surrey Magistrates' Court. The Certificate of Conviction signed by an Officer of the Court states that at the Crown Court on 21 April 2021, Mr Broomhall was sentenced to a total of 21 months imprisonment, suspended for 24 months. In addition, there was a requirement for 140 hours of unpaid work and a 40-day rehabilitation activity requirement. The Judge also ordered that Mr

Broomhall's name be placed on the Barring List and a 10 year Sexual Harm Prevention Order was made.

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Broomhall's fitness to practise is currently impaired by reason of Mr Broomhall's conviction. There is no statutory definition of fitness to practise. However, the Nursing and Midwifery Council (NMC) has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

Representations on impairment

The NMC requires the panel to bear in mind its overarching objective to protect 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. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and *Council for the Regulation of Health Care Professionals v (1) General Dental Council and (2) Fleischmann* [2005] EWHC 87 (QB).

In its written submissions, the NMC invited the panel to make a finding of impairment on both public protection and public interest grounds. The submissions state:

'There is a lack of insight and remorse regarding the impact on the vulnerable victims. The conduct in this case is indicative of underlying attitudinal concerns that are particularly difficult to remedy.

We consider that there is a continuing risk to the public due to [Mr] Broomhall's lack of full insight, failure to demonstrate meaningful reflection and due to the very nature of the convictions. The risk of repetition in this case is high given the pattern of behaviour over a prolonged period of time.

We consider there is a strong public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour.

[Mr] Broomhall's conduct engages the public interest because it involves multiple offences relating to the abuse of vulnerable children. The public would be greatly concerned if it were to hear of a nurse with such convictions being allowed to practice with, or without, restriction.'

In a CMF, dated 10 September 2021, Mr Broomhall indicated that he accepted that his fitness to practise is impaired. In a reflective statement sent to the NMC on 10 February 2022, Mr Broomhall states:

'I understand you have a duty to protect the public and I know how easy it is to dismiss someone like me who did something that is so evil. That is why at the beginning I wanted to remove myself from the register as I didn't think that I deserved to be on it. But as [PRIVATE] and have had the hindsight to see why I made the mistakes I made, I made a conscious decision to ask if I could be kept on the register even if it means some restrictions or a more intense scrutiny by yourselves as I feel that with my knowledge I could help even if it is more of a research nurse or doing some sort of medical help from behind a desk with little or no contact with vulnerable or children, I'm more generally trained so contact with children is remote. I will fully understand the decision you will make is one that is based on protecting the general public and I will abide by that decision.'

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included *Grant* and *Fleischmann*.

Decision and reasons on impairment

The panel next went on to decide if as a result of the conviction, Mr Broomhall'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 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) ...'

The panel finds that the public was put at risk and Patient A was likely to have been caused emotional harm as a result of Mr Broomhall's conduct which resulted in his conviction. Mr Broomhall's conduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel considered that Mr Broomhall's conduct occurred over a prolonged period of time, and was not an isolated incident. The panel was concerned that Mr Broomhall had sent a picture of himself in his nursing uniform to Person A as it considered this was highly likely to negatively affect Person A's perception of nurses.

The panel considered that Mr Broomhall had fallen short of the following standards outlined in 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code):

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.5 respect and uphold people's human rights

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

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

21 Uphold your position as a registered nurse, midwife or nursing associate

To achieve this, you must:

21.5 never use your status as a registered professional to promote causes that are not related to health'

Regarding insight, the panel considered that Mr Broomhall has shown insufficient insight. The panel noted the reflective statement provided by Mr Broomhall, and the information about his personal circumstances at the time of the incident. However, the panel was concerned that Mr Broomhall's statement did not address the impact of his actions on Person A, the public or the reputation of the nursing profession. The panel further noted that Mr Broomhall's statement focused on his online activity, as opposed to talking to and meeting Person A. The panel considered that Mr Broomhall has not demonstrated any significant remorse, instead focusing on the impact on himself. The panel noted that Mr Broomhall has stated he has worked to address the issues that led to his behaviour, but the panel considered that he has not sufficiently outlined or provided material information so it could be satisfied that the risk of repetition is highly unlikely.

The panel noted that in the sentencing remarks it is stated that:

'detailed pre-sentence report... it notes your low risk of reconviction, a medium risk of harm to children and it certainly notes your reaction and your attempts to do something to reduce the risk.'

The panel is of the view that there is a risk of repetition based on Mr Broomhall's lack of insight and remorse. The panel also considered that Mr Broomhall was described as presenting a medium risk of harm to children, and determined that as such there remains a risk to the public. 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 and 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 due to the serious, and sexual, nature of Mr Broomhall's conviction. The panel determined that public confidence in the nursing profession, and the NMC as its regulator, would be undermined should it make a finding of no impairment.

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

Representations on sanction

The panel noted that in the Notice of Meeting, dated 18 January 2022, the NMC had advised Mr Broomhall that it would seek the imposition of a striking-off order if it found Mr Broomhall's fitness to practise currently impaired.

The panel also bore in mind Mr Broomhall's representations outlined in his reflective statement. He stated that he wishes to remain on the NMC register under restrictions.

Decision and reasons on sanction

Having found Mr Broomhall'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 Broomhall's conduct persisted over a prolonged period of time
- Mr Broomhall has shown insufficient insight and demonstrated a lack of remorse
- The sexual nature of the convictions

The panel also took into account the following mitigating features:

- Mr Broomhall's personal circumstances at the time of his offending

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 Broomhall'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 Broomhall'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 Broomhall'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 Broomhall's registration would not adequately address the seriousness of this case and would not protect the public. The panel determined that allowing Mr

Broomhall to practise, even if subject to a conditions of practice order, would undermine public confidence in the nursing profession and the NMC as its regulator.

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;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

The panel considered that this was not a single instance of misconduct, as Mr Broomhall's conduct occurred from 2015-2019. The panel also considered that the conviction indicates there is a deep-seated personality or attitudinal issue, and that Mr Broomhall has demonstrated only limited, if any, insight.

The panel noted the case of *Fleischmann*, and considered that Mr Broomhall is still serving his sentence. The panel noted that a Sexual Harm Prevention Order was imposed for a period of 10 years.

In this particular case, the panel determined 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?*

Mr Broomhall'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 Broomhall's actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel noted Mr Broomhall's personal circumstances at the time, but determined that the seriousness of his conduct outweighed the mitigation provided.

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 Broomhall'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 sanction would be sufficient in this case. The panel considered that Mr Broomhall had abused his position as a nurse by sending Person A an image of himself in his nursing uniform.

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 Broomhall 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 Broomhall's own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC that an interim suspension order was necessary.

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.

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

That concludes this determination.