

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

**Substantive Meeting
Monday 7 February 2022**

Virtual Meeting

Name of registrant:	Aaron Peter Fussell
NMC PIN:	04I0271E
Part(s) of the register:	RNA: Adult nurse, Level 1 (May 2005)
Area of registered address:	Manchester
Type of case:	Conviction
Panel members:	Darren Shenton (Chair, Lay member) Linda Tapson (Registrant member) James Kellock (Lay member)
Legal Assessor:	Caroline Hartley
Hearings Coordinator:	Holly Girven
Consensual Panel Determination:	Amended
Facts proved:	Charge 1
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Suspension order (6 months with no review)
Interim order:	No order

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that Mr Fussell was not in attendance and that the Notice of Meeting had been sent to Mr Fussell's registered email address on 4 January 2022.

Further, the panel noted that the Notice of Meeting was also sent to Mr Fussell's representative at the Royal College of Nursing (RCN) on 4 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, the Consensual Panel Determination (CPD) agreement and the approximate date of the meeting.

In light of all of the information available, the panel was satisfied that Mr Fussell 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 2nd December 2020 at Greater Manchester Magistrates Court you were convicted as follows:

On 27 December 2019 at Trafford intentionally touched a woman aged 16 or over and that touching was sexual when she did not consent and you did not reasonably believe that she was consenting

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

Consensual Panel Determination

At the outset of this meeting, the panel was made aware that a provisional agreement of a CPD had been reached with regards to this case between the Nursing and Midwifery Council (NMC) and Mr Fussell.

The agreement, which was put before the panel, sets out Mr Fussell's full admissions to the facts alleged in the charge and that his fitness to practise is currently impaired by reason of his conviction. It is further stated in the agreement that an appropriate sanction in this case would be a suspension order for a period of ten months with no review.

The panel has considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

'The Nursing & Midwifery Council and Aaron Peter Fussell PIN 04I0271E ("the Parties") agree as follows:

- 1. Aaron Peter Fussell is content for his case to be dealt with by way of a CPD meeting. He understands that if the panel determines that a more severe sanction should be imposed, the panel will adjourn the matter for this provisional agreement to be considered at a CPD hearing.*

The charge

- 2. Mr Fussell admits the following charge:*

That you a registered nurse:

On 2nd December 2020 at Greater Manchester Magistrates Court you were convicted as follows:

On 27 December 2019 at Trafford intentionally touched a woman aged 16 or over and that touching was sexual when she did not consent and you did not reasonably believe that she was consenting

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

The facts

- 3. Mr Fussell appears on the register of nurses, midwives and nursing associates maintained by the NMC, as a registered adult nurse. He has been a registered nurse since 9 May 2005.*

- 4. On 27 December 2019 Mr Fussell was sitting at a table, in a bar with a friend, when a female member of staff approached to speak to them about the bill. Mr Fussell pretended that he could not hear her, and she leaned in to speak. Mr Fussell then pulled her t-shirt away from her chest and raised his head as though looking down her top.*

- 5. Mr Fussell was interviewed by the police on 23 February 2020. During the interview he denied being guilty of the offence but he did make a full comment interview accepting that he had pulled the neck of the barmaid's T-shirt approximately an inch away. He described this as "a bit of fun for banter", following previous verbal banter. In response to being asked why the verbal banter had become physical, Mr Fussell replied "I felt that she was slightly provocative by leaning over the table". Towards the end of the interview Mr Fussell stated that his behaviour had been "misguided and misjudged...but that it was not malicious." He also said that he regretted his actions.*

- 6. Mr Fussell received a postal requisition of written charges from Greater Manchester Police on 8 July 2020 and he appeared at Greater Manchester Magistrates Court on 2 December 2020.*

- 7. Mr Fussell entered a guilty plea at his first appearance on 2 December 2020. He was sentenced to a 6 month community order to finish on 1 June 2020 [sic], with a curfew requirement with electronic monitoring*

between 6pm and 7am. He was also ordered to pay £200 in compensation to the victim.

- 8. On 15 July 2020, The Nursing and Midwifery Council (“NMC”) received a referral from the Deputy Chief Nurse at Central Manchester University Hospitals NHS Foundation Trust (“the Trust”) advising that Mr Fussell had been charged with sexual touching. Shortly afterwards, on 21 July 2020, Mr Fussell also referred himself to the NMC.*
- 9. At the time Mr Fussell was employed by the Trust as a Clinical Adviser in the Employee Health & Wellbeing department.*
- 10. The NMC obtained a certificate of conviction which confirmed the conviction for the offence of sexual touching of a female aged 16 or over, contrary to section 3 of the Sexual Offences Act 2003. It also confirmed the sentence of a community order with a requirement that Mr Fussell comply with a curfew with electronic monitoring between 18:00 and 07:00 each day for a period of six months. He was also ordered to pay £200 in compensation to the victim.*
- 11. In February 2021 the NMC referred this to the Case Examiners to determine whether there was a case to answer. Mr Fussell, through his representatives, provided observations to the Case Examiners that included a detailed reflective statement in which he accepted his wrongdoing and referred to his behaviour as unacceptable. It was said that he misread the situation and that it was not his intention to cause distress, upset, exposure or any form of sexual gratification but that he recognised that he had caused harm.*
- 12. On 3 June 2021 Mr Fussell’s representatives returned the case management form, in which Mr Fussell admitted both the charge and impairment.*

Impairment

Mr Fussell's fitness to practise is currently impaired by reason of his conviction

13. With reference to the questions formulated by Dame Janet Smith in her Fifth Report from Shipman, approved in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) by Cox J;

- 1. 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*
- 2. Has in the past brought and/or is liable in the future to bring the professions into disrepute; and/or*
- 3. Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the professions; and/or*
- 4. Has in the past acted dishonestly and/or is liable to act dishonestly in the future?*

14. The parties agree that limbs 2 and 3 are engaged in this case.

15. The provisions of the Code constitute fundamental tenets of the nursing profession. Mr Fussell agrees that he did not keep to and uphold the standards and values set out in the Code and that he breached the following sections of the Code:

- 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.*

16. Mr Fussell accepts that he has brought the reputation of the profession into disrepute. He understands the impact of a criminal conviction for a

sexual offence is such that it “could erode the trust that patients place in nurses”.

17. Although the victim in this case was not a patient, Mr Fussell also acknowledges that his conduct caused unwarranted harm to a member of the public.

18. In considering current impairment the parties have referred to the case of Cohen v General Medical Council [2008] EWHC 581 (Admin) in which the court set out three matters which it described as being ‘highly relevant’ to the determination of the question of current impairment;

- 1. Whether the conduct that led to the charge(s) is easily remediable.*
- 2. Whether it has been remedied.*
- 3. Whether it is highly unlikely to be repeated.*

19. NMC guidance entitled ‘Is the concern remediable?’ states that it may not be possible to remedy conduct including criminal convictions which led to a custodial sentence or involved dishonesty, particularly if it was serious and sustained over a period of time or directly linked to the nurse’s practice. This case did not lead to a custodial sentence.

20. Although it is more difficult to remedy failings of this nature, the parties agree that it is not impossible. The identified failings can be remedied through insight, reflection and training.

21. As noted above, on 19 February 2021 Mr Fussell, through his representatives, provided a reflective statement in which he explained: “It was not my intention to cause distress, upset, exposure or any form of sexual gratification. However, despite my intentions, at humour and not harm, I succeeded in causing only the latter. I was, in turn, immediately upset on finding I had caused distress to [the victim]... I recognise that such actions, even if intended in jest, are never appropriate. This is

especially true for me whose training and employment expound consent, curtesy (sic) and respect for all individuals and groups... Objectively I recognise my actions to have been deeply inappropriate and that I have caused hurt to [the victim] through them. I accept such actions to be inappropriate in any environment.”

Mr Fussell goes on to say:

“[The victim] had no opportunity to consent and was not informed of my intention, and for this I am truly sorry. I would not consider breaching client wishes, or boundaries of space, in my professional capacity. I should not, therefore, consider doing so elsewhere or in any other capacity and will not in the future.... In accordance with the Code, the public has a right to expect that a registered nurse always promotes professionalism and trust by keeping to the laws of the country and not treating people in a way that would cause upset or distress. My actions breached this expectation and for this I am also very sorry. I also did not act as a role model of professional behaviour and again for this I am very sorry.”

22. Also included in his response were several testimonials including some from professional colleagues, all of whom stated that this behaviour was out of character

One former manager states:

“In the four years that he worked for me, I found him to be an extremely capable, trustworthy and likeable individual. He was incredibly polite, considerate and respectful to all his colleagues and to his patients who held him in high regard. I never received any adverse comments or expressions of concerns regard his conduct or manner.(sic), I recall a number of occasions where his professionalism was positively commented upon by patients.”

Another colleague writes:

“In my opinion, Aaron has always conducted himself as a professional, when interacting with clients and other staff members...I felt it was important to write this character reference for Aaron to help support him in this matter. I can only describe my former colleague to you as the honest professional Nurse and colleague I know always representing the Trust and the NHS with pride and respect”

A personal friend describes Mr Fussell as:

“... [A]n individual of exceptional character and integrity. I have seen him go out of his way to help others when no one else would, without the need of thanks or payment. Aaron is an intelligent and sociable person with commitment to his role within the NHS helping people move forward with their lives. I find the suggestion of this charge to be totally alien to the character of Aaron”.

Another personal friend says they have always known Mr Fussell:

“as a trustworthy and reliable friend and colleague.”

Someone who has known Mr Fussell for over 15 years stated that they were:

“[S]taggered to learn of the charge as in all the years I have known him he has always behaved impeccably to everyone he has come in to contact with whether they be male, female or a child. He has always been liberal in his views and been respectful to everyone irrespective of their race, creed or religion”

Another longstanding friend said they:

“[F]ind it very hard to believe the allegation...It would be totally out of character for him to do such a thing”

A friend of Mr Fussell’s father, who has known Mr Fussell since childhood says:

“I have always known Aaron to be a polite, considerate and intelligent character. In my experience he has always acted responsibly and maturely both in his professional and personal life. He has been a close friend to myself and my family for many years”.

23. *In addition to the above mentioned testimonials certificates for e-learning in “Boundaries” and “Safeguarding adults, level 1” both of which were completed 18th February 2021 were also provided. In respect of this training Mr Fussell says this was in order to reinforce his personal knowledge and to generate an opportunity for further self-development and that he was reminded “ ... that personal dignity is perforce a concept developed by the individual. Interference with a person’s dignity is therefore present whenever said individual feels it to be present. Interference to one individual may not be perceived as such by another. Recognition of this in no way removes, or mitigates, the action of interference in dignity but should highlight the inherent rights of the individual... Re-examination of safeguarding principles has highlighted the necessary point that sexual abuse is not limited to direct physical contact but can be perceived in teasing or looking of a sexual nature...”*

24. *These documents are attached as Appendix 1.*

25. *Mr Fussell has provided a further reflective statement dated 18 August 2021. (Appendix 2). This reflection starts with an apology to the victim as well as to Mr Fussell’s family, former colleagues and the NMC. He also confirms that his actions significantly breached the expectations of the public and says:*

“As First of all I would again like to apologise to [the victim], to my family, former colleagues and to the NMC. In accordance with the Code, the public has a right to expect that a registered nurse always promotes professionalism and trust by keeping to the laws of the country and not treating people in a way that would cause upset or distress. My actions significantly breached this expectation and for this I am so sorry. I also did not act as a role model of professional behaviour and again for this I am very sorry.

I have considered the Code in detail in order to refresh my knowledge...

I fully understand how a conviction of this specific type of offence could erode the trust that patients place in nurses. There will always be a different perception for someone convicted for an offence of a sexual nature and I appreciate why this is. I am ashamed and remorseful of my actions but determined, going forward, to demonstrate that this is not who I am. I want to be able to prove that I am a good nurse capable of safe and effective practice and I am willing to work hard to ensure that I will be a model of integrity in my future career.”

Mr Fussell concludes this reflective statement by saying:

“I understand the importance of sharing information with employers and my obligation under the Code and confirm that going forward I will act in full accordance with the Code I attest to my recognition of culpability, dismay, remorse and sorrow regarding this event and affirm this will be the one, and only, such event. I love being a nurse and able to provide care to my patients and I very much hope that I will be allowed to continue to practise in the future.”

26. The NMC accepts that Mr Fussell’s responses demonstrate an acceptance of personal responsibility as well as an understanding of the seriousness of his actions, together with significant insight.

Public protection impairment

27. A finding of impairment is not necessary on public protection grounds.

28. Going through the criminal process, admitting to his family and colleagues what he had done, and losing the job he loved have been salutary lessons which indicate a lowered risk of repeating the behaviour

that led to the NMC charge. This is reflected by Mr Fussell's appreciation of the impact that this type of conviction has on both the reputation of the profession and also how it "could erode the trust that patients place in nurses". Mr Fussell, in his reflections also talks not only of remorse but also of shame, in telling people what he had done. He also acknowledged comprehension of the impact that his actions could realistically have on his beloved career. All of which is indicative of insight. Mr Fussell also recognised in his early reflections that even though his actions did not cause any physical harm, he did cause harm to the victim.

29. In light of Mr Fussell's reflections, high level of insight, training and positive references the risk of repetition of future similar conduct has greatly been reduced. The parties agree that the risk of repetition is minimal and that a finding of current impairment is not required on the grounds of public protection.

Public interest impairment

30. A finding of impairment is necessary on public interest grounds.

31. In Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that:

"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."

32. *It is accepted that Mr Fussell's conduct fell significantly short of what is expected of a registered nurse, and that the impact of a conviction of a sexual nature is particularly damaging to the reputation of the profession and highly likely to undermine the public's trust and confidence in the profession.*

33. *A finding of impairment is required in this case to uphold standards and to firmly declare that such conduct is not acceptable, even in circumstances where it was not intended to cause harm.*

34. *This also accords with the comments of Sales, J at paragraphs 50-51 of Yeong v General Medical Council [2009] EWHC 1923 (Admin), which also involved sexual misconduct. The principles from these comments is twofold.*

1. *There will be occasions where impairment must be found as a matter of public policy, to uphold public confidence in the profession, where to make no such finding would have an adverse impact on public confidence in the profession*
2. *The efforts made by the practitioner to address his problems and to reduce the risk of recurrence of such misconduct in the future may be of far less significance than in other cases, such as those involving clinical errors or incompetence.*

35. *Accordingly the parties agree that Mr Fussell's fitness to practice is impaired on public interest grounds alone.*

Sanction

36. *The appropriate sanction in this case is 10 months suspension. It is also agreed that a review is not necessary. The NMC sanctions guidance has been considered.*

37. *The aggravating feature of this case is that it is a specified offence, which resulted in a significant sentence involving a restriction of his freedom, albeit through an electronically monitored curfew and not a custodial sentence*

38. *The mitigating features are as follows:*

- *The level of insight and remorse shown*
- *Previous or Subsequent good practice/ good character*

39. *The guidance 'Considering sanctions for serious cases' specifies:*

"Panels deciding on sanction in cases about serious sexual misconduct will, like in all cases, need to start their decision-making with the least severe sanction, and work upwards until they find the appropriate outcome. They will very often find that in cases of this kind, the only proportionate sanction will be to remove the nurse, midwife or nursing associate from the register. If the panel decides to impose a less severe sanction, they will need to make sure they explain the reasons for their decision very clearly and very carefully".

40. *The Parties agree that the general rule in Council for the Regulation of Health Care Professionals v General Dental Council & Fleischmann [2005] EWHC 87 (Admin) that a practitioner should not be permitted to return to practice until they have satisfactorily completed their criminal sentence does not apply in this case, the Registrant having completed their community order on 1 June 2021.*

41. *In considering what sanction would be appropriate the Parties began by considering whether this is a case in which it would be appropriate to take no further action. It is agreed that this would not be sufficient to address the public interest considerations in this case. The conviction was clearly serious and needs to be marked so as to maintain confidence*

in the nursing profession and its regulator, and to publicly declare and maintain proper standards of conduct and behaviour.

42. The Parties next considered whether a caution order would be appropriate. A caution order would not restrict Mr Fussell's practice. The Parties agree that, given the serious nature of the charge such an outcome would be insufficient to maintain public confidence or to act as a declaration of appropriate standards of conduct and competence amongst the nursing and midwifery professions.

43. In light of there being no live clinical or public protection concerns in this case, the Parties agree that a conditions of practice order would not be relevant or appropriate; and furthermore, the misconduct in the case is so serious that it merits some form of removal from the register.

44. The sanction in this case is finely balanced between that of a lengthy suspension order or a striking-off order. The Parties have considered the NMC's sanction guidance in relation to proportionality which says: "Being proportionate means finding a fair balance between the nurse, midwife or nursing associate's rights and our overarching objective of public protection. We need to choose a sanction that doesn't go further than we need to meet this objective. This reflects the idea of right-touch regulation, where the right amount of 'regulatory force' is applied to deal with the target risk, but no more."

45. Although serious, Mr Fussell's misconduct is capable of remedy and he has demonstrated, through significant insight and remediation as set out above, that any risk of repetition has been greatly reduced. As such, Mr Fussell's conduct is not fundamentally incompatible with continued registration.

46. *The NMC's guidance sets out that a number of factors which, is present, indicate that a suspension order is appropriate, namely:*

- *A period of suspension will be sufficient to protect patients, public confidence in nurses, midwives or nursing associates, or professional standards.*
- *There has been a single instance of misconduct but where a lesser sanction is not sufficient.*
- *There is no evidence of harmful deep-seated personality or attitudinal problems.*
- *There is no evidence of repetition of behaviour since the incident.*
- *The Committee is satisfied that the nurse, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour.*

47. *Taking into account Mr Fussell's engagement, early admissions, insight and efforts to address the identified concerns, the Parties agree the above factors are present in this case. Accordingly, the appropriate and proportionate sanction is an order of suspension. The serious features of the case can be appropriately recognised by the length of the suspension order, which should be for 10 months.*

48. *The Parties agree that a striking-off order is not the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards. As such, a striking-off order would be disproportionate in this case.*

49. *There is also a significant public interest in an otherwise competent and highly regarded nurse returning to practice and the intended sanction in this case will allow Mr Fussell to do so, once the public interest has been addressed.*

50. *Because there are no live public protection, clinical or attitudinal concerns in this case, a review of the order is not necessary.*

Interim order

51. For the same reasons set out above an interim order is not required in this case.

52. The parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the panel. The parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.'

Here ends the provisional CPD agreement between the NMC and Mr Fussell. The provisional CPD agreement was signed by Mr Fussell on 15 December 2021 and the NMC on 17 December 2021.

Decision and reasons on the CPD

The panel decided to amend the CPD.

The panel heard and accepted the legal assessor's advice, who referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. She reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Mr Fussell. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Mr Fussell admitted the facts of the charge. Accordingly the panel was satisfied that the charge is found proved by way of Mr Fussell's admission as set out in the signed provisional CPD agreement.

The panel accepted the CPD in relation to impairment. The panel amended the CPD in relation to the proposed sanction. The panel noted the NMC's guidance on CPDs states:

'The panel is free to decide to impose a less restrictive sanction than proposed in the provisional agreement. They can do this without any adjournment being necessary (this applies to both meetings and hearings).'

The panel imposed a suspension order for six months with no review, the full reasons for this decision are given below.

Decision and reasons on impairment

The panel considered whether Mr Fussell's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Mr Fussell, the panel has exercised its own independent judgement in reaching its decision on impairment.

In respect of Mr Fussell's conviction, the panel noted paragraph ten of the provisional CPD agreement and endorsed paragraph 15.

The panel then considered whether Mr Fussell's fitness to practise is currently impaired by reason of his conviction. The panel determined that Mr Fussell's fitness to practise is currently impaired on the ground of public interest alone. In this respect the panel endorsed paragraphs 13 to 35 of the provisional CPD agreement.

The panel determined that the risk of repetition is minimal, Mr Fussell is of previous good character, and he has not appeared in front of his regulator before. The panel noted the reflective statement and training certificates provided, as well as the extracts from

references that are outlined in the CPD. The panel determined that Mr Fussell has shown significant remorse and insight into the conduct that led to his conviction. The panel therefore determined that a finding of impairment on public protection grounds is not necessary.

However, the panel considered that Mr Fussell has received a criminal conviction for an offence of a sexual nature. The panel determined that Mr Fussell has breached fundamental tenets of the nursing profession and brought the profession into disrepute. The panel determined that a finding of impairment is necessary in this case to maintain public confidence in the nursing profession and the NMC as its regulator, as well as to declare proper standards of conduct. As such, the panel determined that Mr Fussell's fitness to practise is impaired on the grounds of public interest.

Decision and reasons on sanction

Having found Mr Fussell'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 feature:

- Mr Fussell received a criminal conviction for an offence of a sexual nature

The panel also took into account the following mitigating features:

- Mr Fussell made early admissions to the charges
- Mr Fussell has demonstrated full insight and significant remorse
- Mr Fussell is of previous good character

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 considered that public confidence in the nursing profession and the NMC as its regulator would be undermined should it not impose an order. 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 an order that does not restrict Mr Fussell'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 due to the sexual nature of Mr Fussell's conviction, this was not a case at the lower end of the spectrum and as such a caution order would be inappropriate in view of the issues identified. The panel considered that a caution order would not sufficiently mark the seriousness of Mr Fussell's conviction. 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 Fussell's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- No evidence of harmful deep-seated personality or attitudinal problems;
- Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;
- No evidence of general incompetence;
- Potential and willingness to respond positively to retraining;
- Patients will not be put in danger either directly or indirectly as a result of the conditions;
- The conditions will protect patients during the period they are in force; and
- Conditions can be created that can be monitored and assessed.

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charge in this case. The panel considered that it has found that a finding of impairment on the grounds of public interest and not public protection and determined that conditions of practice would not address the public interest concerns in this case.

The panel concluded that the placing of conditions on Mr Fussell's registration would not adequately address the seriousness of this case and would not uphold public confidence in the nursing profession or 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 the following relevant 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 was satisfied that the factors listed above were relevant in this particular case. The panel recognised that Mr Fussell's criminal conviction, his admission to the regulatory charge and his acceptance of a finding of impairment will impact Mr Fussell's career and have had a salutary effect on him. This was evident from his insight, reflective pieces, and character references.

The panel considered that a suspension order is 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.

In the panel's judgment, it was not a finely balanced decision between a lengthy suspension and a striking-off order, and determined that a suspension order would be sufficient to uphold public confidence and maintain standards. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mr Fussell's case to impose a striking-off order. It did consider whether a striking-off order would be proportionate. Whilst the panel noted Mr Fussell's conviction of a sexual nature, it considered the context of the agreed circumstances of the conviction, and further considered the significant insight shown by Mr Fussell. Taking account of all the information before it, and of the mitigation provided, the panel concluded that in this case a striking-off order would be disproportionate. Further, the panel determined that Mr Fussell's conviction was not fundamentally incompatible with him remaining on the register.

The panel noted the hardship a suspension order will inevitably cause Mr Fussell. However, this is outweighed by the public interest in this case.

Balancing all of these factors the panel agreed with the CPD that a suspension order would be the appropriate and proportionate sanction.

The panel determined that a suspension order for a period of six months was appropriate in this case to mark the seriousness of the misconduct. The panel noted that the CPD states that a suspension order of ten months would be appropriate. However, the panel balanced the context of the agreed circumstances of the conviction (set out in paragraphs four and five of the CPD), the significant insight and remorse demonstrated by Mr Fussell, alongside the public interest consideration of returning an otherwise competent nurse to the profession. The panel determined that the public interest could be upheld by a suspension order of six months, which would be sufficient to mark the seriousness of the conviction and would uphold public confidence in the nursing profession.

Having found that Mr Fussell's fitness to practise is currently impaired, the panel bore in mind that it determined there were no public protection concerns arising from its decision.

In this respect it found Mr Fussell's fitness to practise impaired on the grounds of public interest alone.

In accordance with Article 29 (8A) of the Order the panel may exercise its discretionary power and determine that a review of the substantive order is not necessary.

The panel noted that in the CPD the NMC and Mr Fussell are in agreement that no review is needed of any suspension order imposed.

The panel determined that it made the suspension order having found Mr Fussell's fitness to practise currently impaired solely in the public interest. The panel was satisfied that there were no public protection issues, and it was further satisfied with Mr Fussell's level of insight. Therefore, the panel did not order a review of the suspension order.

Accordingly, the current suspension order will expire, without review, six months after it comes into force, following the expiry of any appeal period.

Decision and reasons on interim order

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 Fussell's own interest. The panel heard and accepted the advice of the legal assessor.

The panel noted that the CPD states that an interim order is not necessary.

The panel was not satisfied that an interim order is necessary for the protection of the public, for the same reasons as it found that a finding of impairment is not necessary to protect the public. The panel was not satisfied that an interim order is otherwise in the public interest as the substantive suspension order is sufficient to mark the seriousness of the conduct and uphold public confidence in the nursing profession. 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 not to impose an interim order.

The panel did not impose an interim order.

That concludes this determination.