

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

**Remitted Substantive Hearing
13-14 January 2022**

Virtual Hearing

Name of registrant:	Paul Simpson
NMC PIN:	96I1370E
Part(s) of the register:	Registered Nurse – sub part 1 Adult Nursing (30 August 1999) Supplementary Nurse Prescriber (4 April 2007)
Area of Registered Address:	Worcestershire
Type of Case:	Misconduct
Panel Members:	David Crompton (Chair, Lay member) Mary Karasu (Registrant member) Linda Redford (Lay member)
Legal Assessor:	Suzanne Palmer
Panel Secretary:	Anjeli Shah
Mr Simpson:	Not present and not represented
Nursing and Midwifery Council:	Represented by David Claydon, Case Presenter
Facts proved by admission (12 March 2021):	Charges 1 and 2
Facts not proved: (12 March 2021)	N/A
Fitness to practise: (21 September 2021)	Impaired
Sanction: (14 January 2022)	Striking-off order

**Interim Order:
(14 January 2022)**

Interim Suspension Order for 18 months

Decision on Service of Notice of Hearing

The panel was informed that Mr Simpson was not in attendance and that written notice of this hearing had been sent to Mr Simpson's registered email address on 2 December 2021.

Mr Claydon, 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). He submitted that although the Rules do not require receipt of notice of hearing, Mr Simpson had emailed the NMC on 12 November 2021, indicating that he was aware of the hearing (although this email preceded the date of the notice being sent). Mr Claydon submitted that the panel could be satisfied that notice had been served on an email address where Mr Simpson was receiving mail.

The panel accepted the advice of the legal assessor.

The panel took into account that the notice letter provided details of the charges, the time, dates and link to join the virtual hearing and, amongst other things, information about Mr Simpson's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

The panel noted that under the amendments made to the Rules during the COVID-19 emergency period, notice of hearing can be sent to a postal address held for the registrant on the register, or an email address the registrant has notified the NMC of for the purposes of communication.

In the light of all of the information available, the panel was satisfied that Mr Simpson has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision on proceeding in the absence of the registrant

The panel next considered whether it should proceed in the absence of Mr Simpson.

The panel had regard to Rule 21(2) of the Rules which states:

- (2) Where the registrant fails to attend and is not represented at the hearing, the Committee—*
- (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;*
 - (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or*
 - (c) may adjourn the hearing and issue directions.*

Mr Claydon, on behalf of the NMC, referred the panel to an email from Mr Simpson, dated 12 November 2021, which indicated his intention not to attend the hearing, and in which he invited the panel to continue in his absence. He submitted that there was a clear indication that the panel should proceed in the absence of Mr Simpson. Mr Claydon submitted that there had been no application for an adjournment, and that there was nothing to be served by not proceeding in the absence of Mr Simpson. He submitted that Mr Simpson had voluntarily absented himself from these proceedings. Mr Claydon submitted that the power to proceed in a registrant's absence should be used sparingly, however where Mr Simpson was aware of the hearing, and had decided not to attend, there was sufficient ground to enable the panel to proceed in his 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 also had regard to the principles applied in the case of *Adeogba v GMC* [2016] EWCA Civ 162.

The panel has decided to proceed in the absence of Mr Simpson. In reaching this decision, the panel has considered the submissions of Mr Claydon, and the advice of the legal assessor. The panel had particular regard to the factors set out in the cases of *Jones* and *Adeogba*. The panel had regard to the overall interests of justice and fairness to all parties. The panel considered that:

- Mr Simpson is aware of the hearing, and has confirmed in an email to the NMC dated 11 November 2021, that he will not be attending and that he wishes for the panel to continue in his absence;
- Mr Simpson has been provided with information by the NMC indicating that he has the right to attend the hearing and/or be represented, to engage with the process by submitting written documentation and submissions, of the panel’s power to proceed in his absence and of his right to request an adjournment so that he may attend on a future date. Mr Simpson has chosen to waive those rights to participate in these proceedings, although he has submitted documentation which the panel can consider in his absence;
- Mr Simpson has not requested an adjournment, or provided any indication regarding his unavailability to attend this hearing and his desire to participate in a hearing on a future date;
- When this matter was considered at a previous substantive hearing in 2021, Mr Simpson also chose not to attend or be represented;
- There is therefore no evidence to suggest that an adjournment would result in Mr Simpson’s attendance at a hearing on a future date;
- Mr Simpson has voluntarily absented himself from this hearing;

- The issues arose between 2015 and 2018, and there is therefore a strong public interest in the expeditious disposal of this hearing.

There is some disadvantage to Mr Simpson in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to Mr Simpson, he will not be present to challenge the evidence relied on at this hearing, or be able to give evidence on his behalf. However, in the panel's judgment, this can be mitigated. The panel can take into account previous written information, documentation and submissions that Mr Simpson has provided to the NMC, which are before this panel. Furthermore, the panel considered that any disadvantage arising from Mr Simpson not being present at the hearing is the consequence of his decision to absent himself, to waive his right to attend and/or be represented and to not provide any further documentary evidence (since the information provided earlier in these proceedings).

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Simpson.

Decision and reasons on application under Rule 19

The panel had regard to an email from Mr Simpson to NMC, dated 12 November 2021, in which he requested that the entirety of the hearing was held in private, given that there would be reference to his health and information regarding third parties. This application was made pursuant to Rule 19 of the Rules.

Mr Claydon, on behalf of the NMC, acknowledged that the previous proceedings had been held entirely in private, and that any matters relating to third parties being heard in a public forum, or being published by the NMC, would cause difficulties for those individuals. However, he submitted that, whilst entirely a matter for the panel's professional judgement, the position of the NMC was that this hearing should be heard in public, except for any matters relating to Mr Simpson's health or third parties. Mr Claydon accepted that with such matters, the rights of Mr Simpson and the third parties

to privacy overrode the presumption of hearings being held in public. However, he submitted that the previous proceedings being heard in private was not a determining factor for this hearing. Mr Claydon submitted that the nature and substance of the matters to be considered in this hearing, required careful assessment of the public interest, and whether as a result, these matters should be heard in public, and be published by the NMC. He therefore submitted that the hearing should be heard primarily in public, with any references to matters of Mr Simpson's health and third parties being heard in private, and those matters being redacted from any final published determination.

The panel accepted the advice of the legal assessor. While Rule 19 (1) provides, as a starting point, that hearings shall be conducted in public, Rule 19 (3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel gave the application careful consideration. The panel considered that any reference to Mr Simpson's health and information regarding third parties were sensitive matters, and that the public interest in hearing those matters in a public forum, and in being published by the NMC, was outweighed by the right of, Mr Simpson and those third parties, to privacy and confidentiality. However, the panel also had regard to the nature of this hearing. There had been previous findings in relation to the facts, misconduct and impairment, and this remitted panel was purely tasked with considering the issue of sanction. The panel therefore considered that it could distinctly separate matters relating to Mr Simpson's health and information third parties, from the rest of the matters it was due to consider. The panel considered that given the nature and substance of the matters to be considered in this case, there was a strong public interest in hearing those matters in a public forum, and for those to be published by the NMC. This would satisfy the overriding principles of transparency in these proceedings and the regulatory process, as well as upholding and maintaining wider public confidence in the nursing profession and the NMC.

Having carefully balanced the interests of Mr Simpson and the third parties in this case, with the wider public interest in ensuring the transparency of these proceedings, the panel determined to hold this hearing partially in private. The panel will go into private session when issues relating to Mr Simpson's health and information regarding third parties are raised, and will ensure that such matters are redacted from any final determination published by the NMC. The panel will conduct the remainder, and majority, of the hearing in public. The panel is satisfied that the public interest in airing those remaining matters in an open forum, and being published by the NMC, outweighs Mr Simpson's right to privacy, given the nature and substance of the matters to be determined by the panel in this case.

Background

This is a remitted hearing, following an appeal made by the Professional Standards Authority for Health and Social Care (the Authority) to the High Court.

This case was originally considered by a panel of the Fitness to Practise Committee (FtPC) at a substantive hearing on 14-15 January 2021, 21 January 2021 and 11-12 March 2021. Mr Simpson was not in attendance and not represented at the hearing. He made admissions to all of the charges, in a case management form, dated 21 August 2020. At the substantive hearing, the panel of the FtPC, found the charges proved by way of Mr Simpson's admissions. On 12 March 2021, that panel went onto find that whilst the facts found proved amounted to serious misconduct, Mr Simpson's fitness to practise was not currently impaired, on either public protection or public interest grounds.

Following the conclusion of the substantive hearing, the Authority submitted an appeal to the High Court against the decision of the FtPC panel to find that Mr Simpson's fitness to practise was not currently impaired. The appeal was submitted on the basis that the panel's decision was insufficient for the protection of the public, within the

meaning of Section 29(4A) of the National Health Service Reform and Health Care Professionals Act 2002 (as amended) (the Act). The grounds of appeal were as follows:

1. That the panel failed to identify or appreciate the seriousness of the misconduct;
2. That the panel was wrong to conclude that Mr Simpson's fitness to practise did not require a finding of impairment on public interest grounds;
3. That the panel erred in giving excess weight to Mr Simpson's alleged insight, remediation and remorse; and
4. That the panel failed to give adequate reasons for a finding that Mr Simpson's fitness to practise was not impaired on public interest grounds.

The appeal was considered by the High Court. On 23 September 2021, Judge Steven Kovats QC, sitting as a Deputy Judge of the High Court, ordered by consent between the Authority, the NMC and Mr Simpson, to:

1. Allow the appeal of the Authority;
2. Quash the decision of the panel of the FtPC on 12 March 2021 to find that Mr Simpson's fitness to practise is not currently impaired on public interest grounds;
3. Substitute the decision of the panel of the FtPC on 12 March 2021 with a finding that Mr Simpson's fitness to practise is currently impaired by reason of his misconduct on public interest grounds;
4. Remit the case of Mr Simpson to a differently constituted panel of the FtPC

Following the findings of the panel of the FtPC on facts in 2021, and the appeal of the Authority being allowed, and the directions set out above by the judge on 23 September 2021, this reconstituted panel will only be considering the matter of sanction, in relation to the following charges originally found proved, by way of Mr Simpson's admissions:

'That you, a registered nurse

1. *Have downloaded or otherwise obtained and/or viewed images of animals which were of a sexual nature.*

2. *Have downloaded or otherwise obtained and/or viewed images of children which were of a sexual nature.*

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

Determination on sanction:

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

In reaching this decision, the panel has had regard to all of the documentary evidence in this case. The panel heard submissions from Mr Claydon, on behalf of the NMC. 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 accepted the advice of the legal assessor, who referred the panel to the SG, and the principles arising from the case of *Giele v GMC* [2005] EWHC 2143 (Admin)

Mr Claydon submitted, on behalf of the NMC, that this panel should be considering the issue of sanction in light of the previous findings on facts, misconduct and the decision of the High Court, with the consent of all parties, to make a finding of impairment on public interest grounds. Mr Claydon submitted that Mr Simpson had admitted two separate charges of downloading and viewing indecent images of children and animals, and that the panel should have the NMC's overriding statutory objectives of public protection and the wider public interest at the forefront of its mind. He submitted that the panel should consider how the public interest, and maintenance of confidence in the nursing profession, would be affected by Mr Simpson's misconduct.

Mr Claydon submitted that the NMC's sanction bid was for that of a striking-off order. He submitted that Mr Simpson's misconduct is fundamentally incompatible with remaining on the NMC register, and that upholding confidence in the nursing profession requires the imposition of such a sanction. Mr Claydon referred the panel to a number of relevant factors to consider. He submitted that the facts had always been admitted by Mr Simpson, during the course of the NMC's as well as the police investigation, and he invited the panel to consider the level of insight, remorse and remediation demonstrated by Mr Simpson into his misconduct.

Mr Claydon submitted that whilst Mr Simpson had made admissions to the facts during the course of the NMC's proceedings and during a previous interview with the police, there was the absence of a number of relevant factors, which engaged wider public interest considerations. [PRIVATE]. Mr Claydon also submitted that Mr Simpson had not considered or provided an explanation of the effect of his behaviour on the victims, namely the children involved in the production of illegal images and content. He submitted that this was a matter he should have clearly considered. He further submitted that Mr Simpson had not considered the impact of his misconduct [PRIVATE]. Mr Claydon submitted that the pattern of behaviour demonstrated an escalation, from viewing illegal material online, [PRIVATE], something which he gave no consideration of in his police interview.

Mr Claydon drew the panel's attention to inconsistencies in the account given by Mr Simpson during the police investigation. [PRIVATE]. Mr Claydon invited the panel to have regard to these matters when assessing the level of remorse, insight and remediation demonstrated by Mr Simpson. He submitted that it was clear that Mr Simpson had demonstrated some remorse, but without sufficient insight and remediation, this matter was made substantially more serious. Mr Claydon referred the panel to relevant documentation, and submitted that Mr Simpson had admitted, [PRIVATE], to viewing illegal material online between 2015 and 2018. He submitted that this was a lengthy period of time, [PRIVATE], it would require a higher level of remorse, insight and remediation from Mr Simpson.

Mr Claydon referred to the sanctions in ascending order, and submitted that this matter was too serious to take no action or to impose a caution order. He submitted that Mr Simpson had made admissions to serious sexual misconduct, which escalated over a period of time. Mr Claydon submitted that whilst there had been some remorse, this was only in the developing stages, was often “self-serving” and did not address the public interest considerations surrounding his behaviour.

Mr Claydon submitted that this case was also too serious to consider imposing a conditions of practice order. He referred the panel to Mr Simpson’s police interview, regarding his use of illegal material online, [PRIVATE]. In light of this, Mr Claydon submitted that there were no workable conditions which could be formulated to address this type of behaviour, and which could regulate Mr Simpson coming into contact with young people in some form. He also submitted that conditions of practice would be insufficient to satisfy the high public interest considerations in this case, albeit these matters occurred in Mr Simpson’s private life.

Mr Claydon submitted that the starting point should be removal from the register, and invited the panel to consider whether this should be temporary or permanent. He referred to the NMC’s guidance ‘Considering sanctions for serious cases’ (17 December 2021), in particular the section for cases involving sexual misconduct. Mr Claydon invited the panel to conclude that this is a matter where Mr Simpson’s conduct is fundamentally incompatible with remaining on the NMC register, in light of the insufficient insight, remorse and remediation demonstrated by him, [PRIVATE], and the lack of explanation in relation to the situation he found himself in.

In response to questions from the panel, Mr Claydon submitted that whilst he accepted Mr Simpson was never convicted of a criminal offence, this did not diminish the seriousness of his misconduct. He submitted that Mr Simpson was a registered nurse who admitted accessing illegal material online, during the course of a police interview, which amounted to admissions of serious criminal conduct. Mr Claydon submitted that the fact there was no conviction did not detract from the need to take appropriate action.

In relation to a high bar for public interest considerations alone, in cases which do not engage public protection concerns, Mr Claydon submitted that the high bar has been met, given the serious nature of the misconduct which was alleged and accepted by Mr Simpson. He submitted that this case involved a significant departure from the standards a registered nurse is required to follow, and that members of the public would think that such conduct is deplorable and has brought the nursing profession into disrepute. Mr Claydon submitted that given the absence of reflection and remediation, a very limited level of insight, and the requirement to maintain confidence in the nursing profession and the NMC, for this type of misconduct, the high bar had been met in this case.

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

Aggravating factors:

- Very limited evidence of insight and remorse by Mr Simpson and no consideration of the impact of his behaviour on the victims involved in the production of illegal online content. Whilst Mr Simpson submitted written information to the NMC to consider for the previous substantive hearing in 2021, which was before this panel, he has not submitted any further documentary evidence for this panel to consider, except two emails to indicate his intention not to attend the hearing, and the request for the hearing to be conducted in private;
- [PRIVATE];
- This conduct involved a behavioural and attitudinal issue, which is by its nature, is more difficult, although not impossible, to remediate;
- The facts which Mr Simpson made admissions to involved serious sexual misconduct. These were the subject of admissions by Mr Simpson during the course of the NMC's proceedings and during a police interview in 2018, at which Mr Simpson had a solicitor present, and would have known that he was admitting to conduct which amounted to a criminal offence, albeit the conduct did not result in a conviction;

- Mr Simpson abused the trust the public place in him as a registered nurse. In his senior position, Mr Simpson was expected to act as a role model for more junior registered nurses and other members of the profession. Mr Simpson's misconduct abused the trust and confidence that patients and members of the public place in registered nurses, who hold a privileged position; and
- [PRIVATE].

Mitigating factors:

- Personal mitigation, [PRIVATE];
- Mr Simpson has made admissions to the facts from the outset of the NMC's proceedings and has responded to all correspondence from the NMC. Furthermore, Mr Simpson gave consent to the High Court substituting a finding of impairment on public interest grounds, which the panel considered could have demonstrated the development of some insight on his part; and
- Mr Simpson has demonstrated some remorse and insight, albeit the evidence of this is very limited.

The panel then went onto consider what action, if any, to take in this case.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case, which involved sexual misconduct and engaged high public interest considerations. The panel decided that taking no further action 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 Simpson's conduct was not at the lower end of the spectrum of impaired fitness to practise, given that it involved serious sexual misconduct. The panel therefore considered that a caution order would be inappropriate in view of the seriousness of the case and the high public interest considerations that it engaged. The panel decided that imposing a caution order would not satisfy the wider public interest.

The panel next considered whether placing conditions of practice on Mr Simpson's registration would be sufficient and appropriate. The panel was mindful that any conditions imposed must be proportionate, measurable, workable and practicable.

The panel considered that this case did not involve any concerns about Mr Simpson's clinical practice or competence and there was no suggestion that he had ever harmed children or patients in the course of his professional work. It was a case which involved concerns about his behaviour and attitude, given his accessing of pornographic material online, in his personal life but in circumstances where, on his own admission, the material he accessed included categories which were illegal. The panel considered that Mr Simpson's admitted behaviour was of a nature such as to cause harm to the children involved in the material he viewed. There was also some evidence to suggest that he acted in such a way as to cause harm to [PRIVATE]. Moreover the admitted behaviour was likely to bring the profession into serious disrepute. The panel considered that there were no workable, measurable, practicable or proportionate conditions which could address this type of behaviour. The panel also bore in mind Mr Simpson's previous indication that he had no intention of working as a nurse again, and it therefore considered that there was nothing to suggest Mr Simpson's ability or willingness to comply with such conditions. Furthermore, having regard to the seriousness of Mr Simpson's sexual misconduct, the panel was not satisfied that a conditions of practice order would address the high public interest considerations in this case.

The panel considered whether to impose a suspension order. The panel had regard to the SG, in particular the following factors which may make imposing a suspension order appropriate:

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

The panel did not consider that this was a single instance of misconduct. It bore in mind that Mr Simpson's behaviour, whilst occurring in his private life, involved viewing and accessing illegal material online. Whilst Mr Simpson was never convicted of a criminal offence, he made admissions to this conduct in his police interview in 2018, knowing that this conduct amounted to a criminal offence.

[PRIVATE]. The panel considered that the misconduct in this case was behavioural in nature, and did raise questions in relation to the possibility of a harmful deep-seated behavioural or attitudinal issue.

The panel determined that from the limited documentary evidence before it, Mr Simpson had demonstrated limited insight and remorse into his misconduct. He had made early admissions throughout the NMC's proceedings and during the course of the police investigation. However, the panel considered that he had failed to consider and recognise the impact of his behaviour on the victims involved, [PRIVATE]. The panel determined that whilst Mr Simpson had provided documentary evidence earlier on these proceedings, he had not submitted relevant and substantial information for this panel to consider, to indicate any development of insight and remorse on his part. In relation to remediation, the panel bore in mind that concerns involving behaviour and attitude are

difficult, albeit not impossible, to remediate. [PRIVATE], and without his full consideration of the impact of his behaviour on those involved as well as the reputation on the nursing profession and the NMC as a regulator, the panel concluded that Mr Simpson had failed to demonstrate sufficient evidence of remediation.

The panel also had regard to the NMC's guidance 'Considering sanctions for serious cases' (17 December 2021), in particular the section for cases involving sexual misconduct, which states:

'Conduct ranging from criminal convictions for sexual offences to sexual misconduct with patients, colleagues or patients' relatives could undermine a nurse, midwife or nursing associate's trustworthiness as a registered professional.

When making decisions on sanctions in this kind of case, the Fitness to Practise Committee should consider the guidance on sexual boundaries produced by the Professional Standards Authority.

Sexual misconduct will be particularly serious if the nurse, midwife or nursing associate has abused a special position of trust they hold as a registered caring professional. It will also be particularly serious if they have to register as a sex offender. The level of risk to patients will be an important factor, but the panel should also consider that generally, sexual misconduct will be likely to seriously undermine public trust in nurses, midwives and nursing associates.

Sexual offences include accessing, viewing, or any other offence relating to images or videos involving child sexual abuse or exploitation. These types of offences gravely undermine patients' and the public's trust in nurses, midwives and nursing associates. Some offences relating to images or videos of child sexual abuse are considered more serious than others in the criminal courts. However, in fitness to practise, any

conviction relating to images or videos involving child sexual abuse is likely to involve a fundamental breach of the public's trust in nurses, midwives and nursing associates.

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. This will allow people who have not heard all of the evidence in the case, which includes the victims, to properly understand the decision.'

The panel accepted, as indicated within the guidance, that sexual misconduct of this type is extremely serious and engages high levels of public interest, because it is inherently likely to undermine public confidence in the nursing profession. In the panel's view, it would require a high level of insight, remorse and remediation before a registered nurse could persuade a panel that this type of misconduct did not justify removal from nursing practice. The panel considered that there was an absence of sufficient insight, remorse and remediation on Mr Simpson's part, despite him being afforded every opportunity to engage meaningfully with these proceedings and provide such information to this panel. Mr Simpson had only provided limited information at an earlier stage of the proceedings, and in the absence of providing anything further for this panel to consider, it determined that no useful purpose would be served by the imposition of a suspension order. The panel considered that Mr Simpson's behaviour fell at the higher end of the spectrum of sexual misconduct, and that it was fundamentally incompatible with being a registered professional. The panel considered that Mr Simpson's misconduct undermined the trust and confidence placed in registered nurses by patients, members of the public and fellow practitioners.

The panel had regard to the principle of proportionality, and it considered the right of Mr Simpson not only to practise in his chosen profession, but the return of an otherwise skilled and competent practitioner to practice. In this respect, it bore in mind that there was no evidence to suggest there had ever been any concerns with Mr Simpson's clinical practice, and that prior to these incidents, he was practising as a senior registered nurse. The panel also recognised the ability of individuals to modify their behaviour, and considered the need to give them a chance to develop themselves as well as to address and put concerns right. The panel carefully had regard to these considerations and conducted a balancing exercise. However, it determined that Mr Simpson's rights were outweighed by the wider public interest considerations of this case. The panel considered that cases involving sexual misconduct engaged high levels of concern regarding an individual's behaviour, which were more difficult to put right, albeit not impossible. In order to remediate, there would need to be compelling evidence of insight, remorse and remediation. However, in the absence of such evidence, the panel considered that members of the public would expect the NMC as a regulator to take action to permanently remove Mr Simpson from the register.

In the absence of sufficient mitigation in this case, the panel concluded that a suspension order would not be appropriate and proportionate in the circumstances of this case. Such a sanction would fail to uphold and maintain confidence in the nursing profession and the NMC as a regulator, and it would not send the correct message to members of the public about the standards of conduct and behaviour expected of a registered nurse.

The panel then considered whether to impose a striking-off order. The panel had regard to the SG which states that:

'This sanction is likely to be appropriate when what the nurse, midwife or nursing associate has done is fundamentally incompatible with being a registered professional. Before imposing this sanction, key considerations the panel will take into account include:

- *Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?*
- *Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate 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?'*

The panel considered that Mr Simpson's serious sexual misconduct did raise fundamental questions about his professionalism. It considered that had he submitted compelling evidence of insight, remorse and remediation, the panel may have been minded to consider temporary removal from the register. This would have afforded Mr Simpson the opportunity to demonstrate to a future panel that he has continued to reflect on his behaviour, its impact on those involved and on the reputation of the nursing profession and the NMC and to show what steps he has taken to put his behaviour right. Therefore, the panel considered that public confidence in nurses could not be maintained unless Mr Simpson were to be permanently removed from the register, and that a striking-off order was the only sanction sufficient to maintain professional standards.

The panel considered that at the time of the incidents Mr Simpson was a senior registered nurse, and was expected to act as a role model to junior colleagues, as well as an ambassador for the nursing profession. His serious sexual misconduct fell far below the standards and trustworthiness expected of a registered nurse. The panel considered that Mr Simpson's behaviour was fundamentally incompatible with remaining on the NMC's register. The panel was of the view that the findings in this particular case demonstrate that Mr Simpson's actions were so serious and that anything short of permanent removal from the NMC register would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mr Simpson'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 a striking-off 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 considered the submissions made by Mr Claydon, on behalf of the NMC, that an interim suspension order, for a period of 18 months, should be made to cover any appeal period. He submitted that without such an interim order, if Mr Simpson were to submit an appeal, he would be able to practise without restriction until such an appeal is concluded.

The panel accepted the advice of the legal assessor.

The panel recognised that there is a high bar to impose an interim order on public interest grounds alone. However, having regard to the seriousness of the facts found proved and the reasons set out in its decision to impose a striking-off order, the panel considered that such a high bar had been met in the circumstances of this case. The

panel therefore determined that an interim order is in the public interest, and that to do otherwise, would be incompatible with its earlier findings, and would undermine public confidence in the nursing profession and the NMC as a regulator.

The panel considered that an interim conditions of practice order would be insufficient to satisfy the public interest, having regard to the seriousness of the facts found proved, and the findings made by the panel when deciding to impose a striking-off order. The panel concluded that an interim suspension order is appropriate and proportionate in the circumstances of this case.

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 suspension order will be replaced by a striking-off order 28 days after Mr Simpson is sent the decision of this hearing in writing.

That concludes this determination.