

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

**Substantive Meeting
Monday 20 June 2022**

Virtual Meeting

Name of registrant:	Stephen George Hargraves
NMC PIN:	97C0572E
Part(s) of the register:	Registered Nurse – Adult Nursing
Relevant Location:	Derbyshire
Type of case:	Conviction
Panel members:	Yvonne O'Connor (Chair – Registrant member) David Anderson (Lay member) Sophie Kane (Registrant member)
Legal Assessor:	Cyrus Katrak
Hearings Coordinator:	Vicky Green
Facts proved:	All
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order – 18 months

Decision and reasons on service of Notice of Meeting

In response to the current COVID-19 crisis, emergency changes were made to the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (the Rules). The emergency changes allow for the Notice of Meeting (the Notice) to be sent by the Nursing and Midwifery Council (NMC) by email instead of by recorded delivery post. This email must be sent securely to a confirmed email address for the registrant and/or representative.

The panel was informed at the start of this meeting that the Notice had been sent to Mr Hargraves' registered email address on 16 May 2022.

The panel took into account that the Notice of Meeting provided details of the allegations, the time, dates and the nature of the meeting.

The Notice made clear that the case would be considered at a meeting, and would be held in private on or after 20 June 2022. The panel noted that there has been no response from Mr Hargraves in response to the Notice.

The panel accepted the advice of the Legal Assessor.

In the light of all of the information available, the panel was satisfied that Mr Hargraves has been served with the Notice 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 3 September 2019 at Derby Crown Court you were convicted of Sexual Assault **[Proved]**

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

Background

The panel had sight of a signed Certificate of Conviction setting out that, on 3 September 2019, Mr Hargraves attended Derby Crown Court and pleaded guilty to one offence of sexual assault. It further confirms that, on 20 September 2019, he was sentenced to three months imprisonment, placed on the Sex Offenders Register for seven years and that a Restraining Order was made and would remain in place until further notice. The Judge also referred Mr Hargraves to the Disclosure and Barring Service (DBS). The panel also considered the statement of case prepared by the NMC for the purpose of this meeting, and an email from Mr Hargraves to the NMC dated 6 September 2018, in which he denied physical contact for which he later pleaded guilty.

The panel had regard to the transcript of the sentencing dated 20 September 2019 in which the Judge made the following remarks:

'Mr Hargraves, you pleaded guilty when this case was listed for a trial to count 2 of the indictment. So far as count 1 is concerned, as I understand it, that will be left on the file in the usual terms.

So far as this case is concerned, what happened, I am told, is this: You were working as a team leader of some sort in a nursing home in Littleover in Derby. You were working alongside a number of people, including the victim in this case that we have heard about, [Person A]

I am told by the prosecution that, so far as you are concerned, you had a friendly working relationship with your colleagues but, so far as is concerned, it seemed that you took a liking to her. You clearly had a sexual interest in her because on Facebook Messenger you sent to her sexualised materials, and I have been shown a screenshot of the first video you sent to her. When you sent that, her response was, "Twat" and there were two emojis that followed and it is a

question of interpretation as to what they mean. You then sent her further videos, again a sexualised one, followed by another one. On one of them I am told that the victim almost immediately replied, "Energy gross" or something of that nature with the emojis.

That is one thing to do, unpleasant videos and you are sending them to someone who you are saying you are unsure whether she was receptive to them or not. But very quickly, Mr Hargraves, you changed your tact because early one morning on 26 July, when you were at work with the victim, , you spoke to her. You said to her, "You look stunning. I could bend you over, it won't take me long and you'll shoot across the room".

There then follows on the next day something equally horrible, the way you say to her, "You look amazing. I was going to message you saying, 'Bring red wine and give me a blowjob', but I don't think your partner would approve". On these two occasions there were no other persons present to confirm that those things were said by you. There is no evidence as to what her response was and if it was silence and if it wasn't saying to you, "Yeah, let's do it" or something of that nature, you well knew that she was not interested in you. I can't see how these sort of statements can be classed as friendly banter. The word 'banter' is overused anyway these days but how can that be friendly banter in any way? Who is making anyone laugh about that?

It says here that on 27 July, when she was at the hospital with a resident, there was an incident about her forgetting a wheelchair. She was expecting a colleague of hers to bring it but you turned up instead. There came a stage when, whilst they were seating the resident in the chair, that thought something had happened.

But we come to the count that you pleaded guilty to and there is no doubt about that because what happens is you go up behind her and you place your hand between her legs.

In her statement describes it as "cupping my vagina". An internal investigation took place where this was reported and she said, "As I turned Stephen grabbed my bottom but his hands end up cupping my vagina". It is clear what happened on that day. When you were interviewed by the police about this, you made various assertions which I do not need to delve into at all because, no matter what you thought the atmosphere was or what you think was fair gain, this sort of behaviour is unacceptable.

The Crown in their document say that there may be sexualised banter taking place between the two but, as they quite rightly say, this cannot amount to consent to sexual touching, and I think that must be right.

So far as you are concerned, you are someone who has been hitherto of good character and by pleading guilty you have lost your good character. You have also lost your employment as a nurse and it is unlikely that you will be re-employed as a nurse ever again.

The Crown say they do not seek a sexual harm prevention order in your case and I understand why and make no order but, obviously, you will have to be subject to the Sex Offenders Register in these circumstances.

The Crown seek a restraint order, that you must not contact directly or indirectly. I have no hesitation in making that order and that will be until further order, so no contact whatsoever in any way, shape or form whatsoever. I then turn to the sentencing guidelines. The case falls into category 3B. For those who do not know, judges are given guidelines to follow and normally they are followed unless the judge feels that it is not in the interests of justice to follow them. I see nothing wrong with this guideline and accept that the starting point in a case like this would be to a high level community order and the range would be a community order to six months. I have to balance, in fixing the sentence that I do, what I am told by the Crown and what I am told by the defence and come up with a sentence that I feel is just. On the one hand, I have someone in front of me who has worked as a nurse for many years, in charge of a team of nurses and of good character, losing the good character, losing his career. But, on the other

hand, I have a woman who was working as a nurse as well and she has actually resigned from her job and has gone back to a career that she was doing before. That is not a thing that she wanted to do but she has felt compelled to do and so, therefore, the fact that you have lost your good character and your career is not something that I am afraid matters much in relative terms. She had to face the indignity of your comments to her which were not invited, your direct comments about wanting to do sexual things with her and she has had to put up with the indignity and the embarrassment of you touching her in a very personal space.

I consider that a custodial sentence is appropriate in this case. The guidelines say six months is the maximum that I should be looking at but I feel that a deterrent sentence needs to be passed in these circumstances, that people should not have to go to work and fear that they will be treated the way that this lady was treated. In my view, a short, sharp sentence is required as a deterrent is needed. In this case a four month sentence would have been appropriate. It is difficult to do the maths at ten per cent so I am reducing it to three months and it will be an immediate sentence. I appreciate that this could have ramifications on your family in terms of looking after them, and so on and so forth, but a short, sharp deterrent sentence is necessary. Three months. You will not serve the full three months. You will come out in short time. When you do, there will be conditions. Abide by the conditions and the matters come to an end, otherwise you will be in further jeopardy. Thank you.

The sex offenders register -- I think, is it five years in the circumstances?

THE COURT CLERK: It is seven, your Honour.

MR GIMSON: Seven,

JUDGE MOONCEY: It is seven. Thank you.

THE COURT CLERK: He will be referred to the Barring Authority as well.

JUDGE MOONCEY: Yes, that is automatic, so the barring order and the surcharge are automatic.

THE COURT CLERK: Yes.

JUDGE MOONCEY: Thank you.'

Decision and reasons on facts

The charge relates to Mr Hargraves' conviction and, having been provided with a copy of the certificate of conviction, the panel found the facts proved in accordance with Rule 31 (2) and (3).

Fitness to practise

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

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest, open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession

would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) ...'*

The panel determined that limbs a, b and c were engaged in this case.

The panel was of the view that the conduct that led to Mr Hargraves' conviction was extremely serious. The panel noted Mr Hargraves was asked by Person A to refrain from his inappropriate sexual behaviour, and despite being asked to stop, his behaviour continued and escalated resulting in him committing a sexual assault. The panel found that the sexual misconduct occurred at work, Mr Hargraves breached his position of trust as he was a senior nurse and crossed professional boundaries with a more junior colleague. Accordingly, the panel found that Mr Hargraves' conduct and consequent

conviction brought the profession into disrepute and breached fundamental tenets of the profession.

The panel was of the view that charges relating to sexual misconduct are attitudinal in nature and inherently difficult to remediate.

During this meeting, the panel made further enquiries with the NMC about Mr Hargraves' engagement. The NMC case officer confirmed that Mr Hargraves has not responded to any NMC correspondence since 6 September 2018 or provided any submissions or information for the panel to consider. Due to Mr Hargraves' non-engagement with the NMC, failure to submit any submissions or reflective statements to demonstrate that he understands the gravity of his actions, the panel had no information before it about his insight or attempts to remediate his behaviour. The panel therefore concluded that there was risk of repetition of the conduct found proved. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is also required. The panel was of the view that a fully informed member of the public would be shocked if a finding of impairment was not made in the circumstances of this case.

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

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

NMC sanction bid

The panel noted that the NMC sanction bid was a striking-off order.

Decision and reasons on sanction

Having found Mr Hargraves' 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 Hargraves' sexual misconduct occurred over a significant period of time and despite being asked to stop, his sexual misconduct persisted and escalated to sexual harassment.

- Mr Hargraves' sexual misconduct caused Person A to resign from her post and leave the profession.
- His sexual misconduct and conviction occurred at whilst he was work and abused his position of trust with a junior colleague.
- Mr Hargraves has failed to demonstrate any insight or remorse.
- Mr Hargraves sought to minimise his conduct by describing it at one point as *'banter'*.

The panel found no mitigating features 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. 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 and attitudinal issues identified, an order that does not restrict Mr Hargraves' 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 Hargraves' misconduct 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 Hargraves' registration would be a sufficient and appropriate response. Having found that there are serious attitudinal concerns about Mr Hargraves', taken together with the seriousness of the conviction and sexual conduct that led to his conviction, and his lack of engagement and insight, the panel is of the view that there are no practical or workable conditions that could be formulated. The panel was of the view that the concerns relating to sexual conduct could not be addressed through re-training. Furthermore, the panel concluded

that the placing of conditions on Mr Hargraves' registration would not adequately address the seriousness of this case and would not protect the public.

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 also had regard to the NMC guidance on 'Considering sanctions for serious cases' (SAN-2), having particular regard to the guidance relating to cases relating to sexual misconduct. It also had regard to criminal convictions and cautions (FTP-2c) in which the following is stated:

'If the criminal offending took place in the nurse, midwife or nursing associate's private life, and there's no clear risk to patients or members of the public, then it is unlikely that we'll need to take regulatory action to uphold confidence in nurses, midwives or nursing associates, or professional standards. We'd only need to do that if the nurse, midwife or nursing associate was given a custodial sentence (this includes suspended sentences), or the conviction was for a specified offence.'

This case concerns the sexual assault of a work colleague whilst on shift. The panel found that Mr Hargraves engaged in sexual misconduct involving a colleague whilst on shift as a registered nurse. The panel noted that the sexual misconduct persisted and led to a conviction of sexual harassment which it determined was

extremely serious. The panel was of the view that Mr Hargraves' sexual conduct would have inevitably caused emotional harm to Person A and in fact caused her to resign from work as a result of his conduct. The panel has heard no evidence that Mr Hargraves has gained any insight into his behaviour or conviction. Accordingly, the panel determined that it is likely that his behaviour would be repeated and, as a consequence, he poses a real risk to colleagues and the public including vulnerable patients or service users.

The conduct, as highlighted by the conviction found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mr Hargraves' actions is fundamentally incompatible with him remaining on the register.

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 Hargraves' 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 Hargraves' 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.

Balancing all of these factors and after taking into account all the evidence before it, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Hargraves' 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 therefore determined that Mr Hargraves' interests would be outweighed by the public interest in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

Decision and reasons on 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 Hargraves' own interest until the striking-off sanction takes effect.

The panel accepted the advice of the legal assessor.

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 due to cover the appeal period.

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

That concludes this determination.

This will be confirmed to Mr Hargraves in writing.