

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

**Substantive Meeting
Friday 7 October 2022**

Nursing and Midwifery Council
Virtual Meeting

Name of registrant: Neil Graham Rankin

NMC PIN: 07B4150E

Part(s) of the register: Registered Nurse
Adult Nursing – April 2007

Relevant Location: Lancashire

Type of case: Conviction

Panel members: Bryan Hume (Chair, Lay member)
Rosalyn Mloyi (Registrant member)
Paul O'Connor (Lay member)

Legal Assessor: Jayne Salt

Hearings Coordinator: Elena Nicolaou

Facts proved: Charge 1

Facts not proved: None

Fitness to practise: Impaired

Sanction: **Striking-off order**

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

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mr Rankin and his representative via email on 26 August 2022.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, the date the meeting would be held after, and that the meeting would be held virtually.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Rankin 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 23 March 2021 at Lancashire Magistrates Court, were convicted of 3 counts of possession of an indecent photograph / pseudo photograph of a child **[Proved]**

And, in light of the above, your fitness to practice is impaired by reason of your conviction

Decision and reasons on facts

The charge concerns Mr Rankin's conviction and, having been provided with a copy of the certificate of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3). These state:

'31.— (2) Where a registrant has been convicted of a criminal offence—

- (a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and*
- (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.*
- (3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.'*

Background

On 14 July 2020, the NMC received a referral from North West Ambulance Service NHS Trust ('the Trust'), raising concerns about Mr Rankin. At the relevant time, Mr Rankin was working as a Registered Nurse and Specialist Practitioner at the Trust.

Following an investigation by the police in July 2020, the police seized four electronic devices from Mr Rankin's home [PRIVATE].

Mr Rankin was subsequently charged with three offences and appeared at Lancashire Magistrates' Court on 23 March 2021. On 23 June 2021, Mr Rankin was convicted and sentenced.

Fitness to practise

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

Representations on impairment

The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. The panel has referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*.

The NMC invited the panel to find that Mr Rankin's fitness to practise is currently impaired on both public protection and public interest grounds. It submitted that limbs a, b and c of Grant are engaged in this case. The NMC submitted that *'We consider the Registrant has displayed insight insofar as he accepts the charges against him and that his fitness to practice is impaired. The NMC notes the transcript of Sentencing Remarks from Preston Crown Court, dated 25 October 2021, and the comments in relation to the Registrant's previous good character and the mitigation provided to the Judge at the criminal trial. However, the Judge also made the following statement: [PRIVATE].'*

The NMC submitted that it *'considers the nature and severity of the Registrant's offending to be a gross breach of the trust that members of the public place in registered and regulated professionals, in this case a nurse. The nature of the conviction and the sentence imposed has brought the profession into disrepute in that the public's trust in the nursing profession will have been very seriously undermined.'*

The NMC submitted that parts 1, 4, 20.1, 20.4 and 20.8 of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code) have been breached. It submitted that there is a continuing risk to the public due to the extremely serious nature of the behaviour and that it occurred over a sustained period of time. It submitted that Mr Rankin's actions have brought the nursing profession into disrepute and breached fundamental tenets of the profession. The NMC also submitted that there is a public interest in a finding of impairment in order to declare and uphold the proper standards of conduct and behaviour as a registered nurse.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included *Grant* and *Cheatle v General Medical Council [2009] EWHC 645 (Admin)*.

Decision and reasons on impairment

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

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

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

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

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

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

- a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

- b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) ...

The panel finds that Mr Rankin's conviction had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It has had sight of the certificate of conviction and the Sentencing Remarks provided. It agreed that limbs a, b and c of *Grant* are engaged in this case.

The panel is of the view that there is a real risk of harm and repetition in this case, due to the seriousness of the conviction and significant period of time the incidents occurred over. The panel considered that this behaviour indicates a deep-seated attitudinal problem, and that it is not easily remediable. Mr Rankin's actions fell significantly below of the standards expected of a registered nurse. The panel has limited evidence before it that Mr Rankin has demonstrated reflection, remorse or insight in relation to the impact his actions had on the individuals directly involved, as well as the public. It also took into account the Sentencing Remarks that have been provided. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that, in this case, a finding of impairment on public interest grounds was required. It considered that the public would be appalled to learn that a registered nurse convicted of such serious matters would be permitted to practise unrestricted.

Having regard to all of the above, the panel was satisfied that Mr Rankin's fitness to practise is currently impaired on both public protection and public interest grounds.

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 Rankin off the register. The effect of this order is that the NMC register will show that Mr Rankin has been struck-off the register.

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

Representations on sanction

The panel noted that in the Notice of Meeting, dated 26 August 2022, the NMC had advised Mr Rankin that it would seek the imposition of a striking-off order if it found his fitness to practise currently impaired.

The NMC submitted that:

'The NMC identify the following as aggravating factors: That the conviction relates to [PRIVATE].

In relation to mitigating factors, it is relevant that the Registrant pleaded guilty during the criminal proceedings and has engaged with the fitness to practise process.'

The NMC submitted that taking no further action would not be appropriate, due to the seriousness of the concerns and that it would not protect the public, nor uphold the public interest.

The NMC submitted that a caution order would not be appropriate, again due to the seriousness of the concerns in this case. It referred to the SG and submitted that the *'conviction was not at the lower end of the spectrum and a caution order would be inappropriate in view of the seriousness of the case. It would be neither proportionate nor in the public interest to impose a caution order.'*

In relation to a conditions of practice order, the NMC submitted that Mr Rankin's actions resulted in a criminal conviction, and that there are deep-seated attitudinal concerns associated with such a conviction, that it would be difficult to safeguard via a conditions of practice order. It submitted that conditions of practice would not be proportionate, nor would it uphold the public interest.

In relation to a suspension order, the NMC submitted that Mr Rankin received a suspended custodial sentence, and that he should not be permitted to return to nursing practise. It submitted that the nature of the conviction raises fundamental concerns about his ability to protect and care for others, and public confidence in the profession would be undermined if Mr Rankin were not removed from the register. The NMC submitted that a suspension order that temporarily removes Mr Rankin from the NMC register would not be a sufficient, appropriate or proportionate sanction.

The NMC therefore submitted that a striking-off order would be the most appropriate sanction in this case. It submitted that the behaviour that led to the conviction was a significant departure from the standards expected of a registered nurse, and it breached fundamental tenets of the profession. The NMC submitted that Mr Rankin's conviction is fundamentally incompatible with him remaining on the register. The NMC submitted that:

'The findings in this particular case are such that to allow the Registrant to return to practise would undermine public confidence in the profession and in the NMC as a regulatory body. The position of the NMC is that nothing short of a striking off order would be sufficient or proportionate in this case.'

Such an order is necessary for the protection of the public and to mark the importance of maintaining public confidence in the profession. It will also send to

the public and the profession a clear message about the standard of behaviour required of a registered nurse.'

Decision and reasons on sanction

Having found Mr Rankin's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- No insight demonstrated in relation to the impact Mr Rankin's actions had on those directly involved, as well as the public.
- That this was not an isolated incident and demonstrated a clear pattern of behaviour.

The panel also took into account the following mitigating features:

- That Mr Rankin admitted to the concerns.
- That Mr Rankin had asked for voluntary removal from the register, indicating that he recognises his behaviour was not in line with the fundamental tenets of nursing.

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.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Rankin's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the*

behaviour was unacceptable and must not happen again.' The panel considered that Mr Rankin's conviction 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 Rankin's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The concerns identified in this case were not something that can be addressed through retraining, and there are no clinical practice issues. Furthermore, the panel concluded that the placing of conditions on Mr Rankin's 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; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The conduct, as highlighted by the facts 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 Rankin's actions is fundamentally incompatible with him remaining on the register. The panel determined that the serious nature of the conviction indicates that Mr Rankin should not be permitted to return to nursing practice, and that a period of temporary suspension would not be beneficial in the

circumstances. The panel determined that this is behaviour that demonstrated a deep-seated attitudinal problem, and is not easily remediable.

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 Rankin's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Rankin's actions were extremely 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 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 Rankin's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Mr Rankin in writing.

Interim order

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

Representations on interim order

The panel took account of the representations made by the NMC. It submitted that an 18-month interim suspension order should be imposed to cover the 28-day appeal period.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the 28-day appeal period.

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

That concludes this determination.