

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

**Substantive Meeting
Monday 26 September 2022**

Virtual Meeting

Name of registrant:	Kevin Anderson
NMC PIN:	12J0171N
Part(s) of the register:	Registered Nurse – Mental Health Nursing (October 2012) Supplementary Nurse Prescriber (V300) – September 2019
Relevant Location:	Derry City and Strabane
Type of case:	Conviction
Panel members:	Michael Murphy (Chair, registrant member) Jude Bayly (Registrant member) Ian Dawes (Lay member)
Legal Assessor:	Ian Ashford-Thom
Hearings Coordinator:	Alice Byron
Facts proved:	Charge 1
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 noted that the Notice of Meeting had been sent to Mr Anderson's registered email address on 17 August 2022. Mr Anderson had not responded, whether by returning the case management form or otherwise. The panel was informed that Mr Anderson has not engaged with the NMC since his referral.

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 time, first possible date, and venue of the meeting.

In the light of all of the information available, the panel was satisfied that Mr Anderson 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).

The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Details of charge

That you, a registered nurse:

- 1) On 19 May 2021 were convicted at the Crown Court sitting at Londonderry of the following offences between July 2018 and June 2020:
 - a) 17 counts of making an indecent photograph or pseudo photograph of a child contrary to Article 3(1)(a) of the Protection of Children (Northern Ireland) Order 1978.
 - b) 2 counts of being in possession of an extreme pornographic image contrary to Section 63 of the Criminal Justice and Immigration Act 2008.

And in light of the above your fitness to practise is impaired by reason of your conviction as set out in charge 1 above.

Decision and reasons on facts

The panel accepted the advice of the Legal Assessor.

The charges concern Mr Anderson's convictions and, having been provided with a copy of the certificate of conviction, dated 15 July 2021, 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

The charges arose whilst Mr Anderson was employed as a Community Psychiatric Band 6 Nurse, working within the Western Health and Social Care Trust (the Trust).

On 15 June 2020, Mr Anderson was arrested by the Police Service of Northern Ireland on suspicion of making, possessing and distributing indecent images of children. Mr Anderson admitted that he had viewed such material for sexual gratification, but denied that he had distributed these images.

On 19 May 2021, Mr Anderson entered a guilty plea at the Crown Court sitting at Londonderry and was convicted of the charges as outlined above.

On 25 June 2021, Mr Anderson was sentenced to a Community Service order of 80 hours, a three-year Probation Order and a Sexual Offences Prevention Order for a period of five years. Mr Anderson was also placed on the Sex Offenders Register for a period of five years, which will expire on 25 June 2026.

Mr Anderson has resigned from his position at the Trust.

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Anderson's fitness to practise is currently impaired by reason of Mr Anderson's 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 cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *CHRE v NMC and Grant* and *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Decision and reasons on impairment

The panel next went on to decide if as a result of the conviction, Mr Anderson'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 and act in accordance with the law. 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/their fitness to practise is impaired in the sense that S/He/They:

- 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*

The panel noted that there was no evidence before it of any clinical concerns, or actual physical or emotional harm caused to patients by Mr Anderson's conviction. However, the panel determined that patients and the public as a whole were put at risk of harm as a result of Mr Anderson's offending behaviour due to the perpetuation of the market for such images.

The panel concluded that Mr Anderson's conviction had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' ("the Code"), and concluded that Mr Anderson had breached the following areas of the Code:

'1 *Treat people as individuals and uphold their dignity*

To achieve this you must:

1.1 treat people with kindness respect and compassion

20 *Uphold the reputation of your profession at all times*

To achieve this you must:

20.1 keep and uphold the standards and values set out in the Code

20.4 keep to the laws of the country in which you are practising

*20.5 treat people in a way that does not take advantage of their vulnerability
or cause them upset or distress'*

Regarding insight, the panel considered that Mr Anderson admitted the offences at police interview and entered guilty pleas at the Crown Court, however he has not engaged with the NMC and its regulatory proceedings. The panel concluded that Mr Anderson has not demonstrated an understanding of how his actions would put his patients and the public at a risk or harm, and how his convictions have impacted negatively on the reputation of the nursing profession.

In its consideration of whether Mr Anderson has taken steps to strengthen his practice, the panel took into account that there was no evidence before it that Mr Anderson's conviction resulted in any clinical failings on his part. However, the panel has no information before it, such as evidence of training or a reflective piece, which would satisfy the panel that Mr Anderson has taken steps to strengthen his practice following his convictions. The panel also took into account the NMC guidance on serious concerns which are more difficult to put right, which sets out:

"A small number of concerns are so serious that it may be less easy for the nurse, midwife or nursing associate to put right the conduct, the problems in their practice, or the aspect of their attitude which led to the incidents happening.

[...]

We will need to do this where the evidence shows that the nurse, midwife or nursing associate is responsible for:

[...]

- *criminal offending relating to accessing, viewing, or other involvement relating to images or videos involving child sexual abuse.”*

As a consequence of Mr Anderson’s lack of engagement with the NMC, the panel had no information before it about his current circumstances, including his compliance with his Crown Court sentence. In the absence of such information, the panel concluded that there is a risk of repetition of the charges 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 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 as a reasonably informed member of the public would be concerned if a nurse who had been recently convicted of 19 counts of possession indecent images of children were found to be fit to practise without restriction.

Having regard to all of the above, the panel was satisfied that Mr Anderson’s fitness to practise is currently impaired.

Sanction

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

Representations on sanction

The panel noted that in the case management form which was sent to Mr Anderson, the NMC had advised Mr Anderson that it would seek the imposition of a striking-off order if it found Mr Anderson's fitness to practise currently impaired.

Decision and reasons on sanction

Having found Mr Anderson'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 Sanctions Guidance (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 Anderson has been convicted of serious sexual offences;

The panel could not identify any mitigating features in this matter.

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 public interest issues identified, an order that does not restrict Mr Anderson'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 Anderson's conviction was serious and therefore 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 Anderson'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 in this case do not relate Mr Anderson's clinical practice and therefore are not something which could be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Anderson'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:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*

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 Anderson's actions is fundamentally incompatible with Mr Anderson 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 Anderson's actions were significant departures from the standards expected of a registered midwife, 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 Anderson's actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body. The panel considered that members of the public would be extremely concerned and appalled were Mr Anderson to remain on the register.

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

Representations on interim order

The panel took account of the representations made by the NMC that an interim order of suspension should be imposed on the basis that it is necessary for public protection or otherwise in the public interest in order to uphold public confidence in the profession and the NMC as regulator. It considered an interim order of 18 months is necessary to cover any possible 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 in order to cover the period of any potential appeal of this order.

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

That concludes this determination.