

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

**Substantive Meeting
Tuesday 20 September 2022**

Virtual Meeting

Name of registrant: **Kenneth Peter Brambles**

NMC PIN: 81Y0107E

Part(s) of the register: Registered Nurse – Sub Part 1
RN1: Adult Nursing L1 – September 1994
Registered Nurse Sub Part 2
RN2: Adult Nursing L2 – March 1984

Relevant Location: North Lincolnshire

Type of case: Conviction

Panel members: Andrew Macnamara (Chair, lay member)
Terry Shipperley (Registrant member)
Catherine Cooper (Registrant member)

Legal Assessor: Suzanne Palmer

Hearings Coordinator: Shela Begum

Facts proved: Charge 1

Facts not proved: N/A

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 Mr Brambles was not in attendance and that the Notice of Meeting had been sent to Mr Brambles by recorded delivery on 12 August 2022.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Hearing was delivered on 15 August 2022 to the address of a prison where the NMC has been told by the Police that Mr Brambles currently resides. It was signed for against the printed name of 'PRISON'. The panel was mindful that the rules permit service at a registrants registered address or to a last known address, where the notice appears more likely to reach the registrant at that last known address.

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, dates and venue of the meeting.

In the light of all of the information available, the panel was satisfied that Mr Brambles 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 11 March 2022, at Great Grimsby Crown Court, were convicted of arson with recklessness as to whether life was endangered;

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

Decision and reasons on facts

The charge concerns Mr Brambles' conviction and, having been provided with a copy of the certificate of conviction dated 14 April 2022, 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

Mr Brambles has been registered as a nurse specialising in adult nursing since March 1984.

The panel was informed that Mr Brambles was made the subject of a substantive suspension order on 12 August 2021, in relation to charges of a physical assault on a patient, a conviction for driving under the influence of alcohol and failure to inform the NMC of that conviction. He appears to have informed the Police in November 2021 that he was a "retired" nurse.

The NMC received this referral in relation to Mr Brambles conviction for an incident which occurred on 25 November 2021. According to information provided by the Police, Mr Brambles set fire to his flat in a multi-occupancy building. He was also allegedly found to have an axe on him. When interviewed by the Police on 26 November 2021, Mr Brambles suggested that he accidentally started the fire whilst trying to fill a lamp and smoking a cigarette. Mr Brambles further told the Police

that he had the axe in his pocket as he was hammering down a door threshold. Information provided to the Police by the fire service suggested that the fire may have been started deliberately.

[PRIVATE].

On 26 November 2021, Mr Brambles was charged with arson with intent to destroy/damage property, being reckless as to whether property would be destroyed/damaged and being reckless as to whether the life of another would be endangered contrary to the Criminal Damage Act 1971. He was further charged with possession of an axe in a public place contrary to the Prevention of Crime Act 1953.

After being remanded in custody by the Magistrates Court, Mr Brambles appeared at Great Grimsby Crown Court on 11 February 2022. He entered a guilty plea to the offence of arson with recklessness as to whether life was endangered. The Crown Prosecution Services (CPS) offered no evidence in relation to the possession of an axe. On 11 March 2022 Mr Brambles was sentenced to a 28-month custodial sentence.

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Brambles' 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 panel noted that Mr Brambles has not provided any written representations in relation to impairment or provided any responses for the panel's consideration today. The panel took into account the written representations provided by the NMC in its statement of case.

The panel accepted the advice of the legal assessor.

Decision and reasons on impairment

The panel next went on to decide whether as a result of the conviction, Mr Brambles' 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/their fitness to practise is impaired in the sense that S/He/They:

a) ...

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 bore in mind that the concerns in this case do not relate to Mr Brambles clinical practice, and it did not have any evidence to suggest that patients were caused physical or emotional harm as a result of the actions which led to Mr Brambles' current conviction, although members of the public were put at risk of harm. Mr Brambles' conviction has brought the reputation of the nursing profession into disrepute, and breached the fundamental tenet of the profession that nurses should adhere to high standards of integrity in their personal and professional conduct.

Regarding insight, the panel considered that Mr Brambles acknowledged responsibility for his actions when he pleaded guilty to the criminal charge in February 2022. However, it noted that Mr Brambles has not engaged with the NMC's proceedings or provided a response to the NMC and therefore has not demonstrated that he understands the severity of his actions, why they occurred, how he would prevent any recurrence or how his conduct impacted negatively on the reputation of the nursing profession. The panel found that Mr Brambles has not demonstrated remorse and therefore found that Mr Brambles is lacking any significant insight in relation to his conviction.

The panel went onto consider whether Mr Brambles has taken steps to remediate the concerns. [PRIVATE]. The panel considered the nature of the conviction, and it was of the

view that serious criminal offending of this nature involves behavioural or attitudinal aspects which are particularly difficult to remediate.

Further, the panel noted that Mr Brambles has been subject to a previous criminal conviction and a previous substantive suspension order imposed in August 2021 in relation to separate matters which came before the NMC. Those earlier matters, which included serious criminal offending and a physical assault predated this even more serious criminal offence. The panel therefore concluded that there is a significant risk of repetition, and that any such repetition could put patients or members of the public at risk of harm.

The panel therefore determined 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 is also required. The panel concluded that Mr Brambles actions brought the reputation of the nursing profession into disrepute and that public interest is highly engaged in this case given that the concerns relate to a serious offence and a criminal conviction. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find the nature of Mr Brambles conviction extremely serious.

Having regard to all of the above, the panel was satisfied that Mr Brambles' 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 Brambles off the register. The effect of this order is that the NMC register will show that Mr Brambles 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 12 August 2022, the NMC had advised Mr Brambles that it would seek the imposition of a striking-off order if it found Mr Brambles' fitness to practise currently impaired. It had regard to the submissions on sanction set out in the NMC's statement of case.

Decision and reasons on sanction

Having found Mr Brambles' 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 Brambles has previously been before the NMC in relation to a separate referral also relating to a conviction;
- Lack of insight;
- Lack of remorse;
- Relates to a serious criminal conviction; and
- Actions give rise to public safety concerns.

The panel was not satisfied that there were any significant mitigating features in this case. [PRIVATE].

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 issues identified, an order that does not restrict Mr Brambles' 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 Brambles' conviction could not be considered to be 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 Brambles' 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 and that they relate to a criminal conviction, and to behavioural failings rather than clinical concerns. The concerns identified in this case were not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Brambles' registration would not adequately address the seriousness of this case in order to serve the public interest considerations, 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; and*

- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

The panel was not satisfied that any of the above factors were engaged in this case.

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 Brambles' actions is fundamentally incompatible with Mr Brambles 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?*

The panel determined that Mr Brambles' 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 Mr Brambles' actions were so serious that to allow him to remain on the 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 only sanction sufficient to protect the public and satisfy the wider public interest considerations is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mr Brambles' actions in bringing the

profession into disrepute by adversely affecting the public's view of how registered nurses should conduct themselves, the panel has concluded that nothing short of this would be sufficient in this case.

The panel acknowledged the hardship that this order may cause to Mr Brambles, although it noted that he is already suspended from the register and described himself to the Police as "retired". In any event, his interests are outweighed in this case by the public protection and public interest considerations.

The panel considered that this order was necessary to mark the seriousness of this case, and to maintain public confidence in the profession by sending 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 Brambles 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 Brambles' 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 which invited the panel to impose an interim order on the basis that it is necessary to protect the public and otherwise in the public interest. The NMC invited the panel to impose an interim order for a period of 18 months.

The panel heard and accepted the advice of the legal assessor.

Decision and reasons on interim order

The panel considered that Mr Brambles was already subject to a substantive suspension order in relation to a separate case with the NMC and that he is currently serving a custodial sentence. However, it noted that the NMC has no control over whether and when Mr Brambles is released from custody, and that the substantive order has now expired or will shortly do so. In light of its findings in relation to risk, the panel considered that an interim order was necessary to protect the public. The panel was also satisfied that an interim order is 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 period that any appeal may be lodged and the period for it to be heard.

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

That concludes this determination.