

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

**Substantive Meeting
Tuesday 15 August 2023 – Wednesday 16 August 2023**

Virtual Meeting

Name of Registrant:	Daniel William Barrett
NMC PIN	16F0308E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing - September 2016
Relevant Location:	Worcestershire
Type of case:	Conviction
Panel members:	Adrian Blomefield (Chair, Lay member) Claire Rashid (Registrant member) Anna Ferguson (Registrant member)
Legal Assessor:	Robin Ince
Hearings Coordinator:	Deen Adedipe
Nursing and Midwifery Council:	Not Applicable
Mr Barrett:	Not present and unrepresented
Facts proved:	Charges 1 and 2
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 Barrett 's last known correspondence address at HM Prison by recorded delivery and by first class post on 1 June 2023.

The panel had regard to the Royal Mail '*Track and trace*' printout which showed the Notice of Hearing was delivered to Mr Barrett 's correspondence address on 2 June 2023.

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, the date after which this matter would be heard and the fact that this meeting would be heard virtually.

In the light of all of the information available, the panel was satisfied that Mr Barrett 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 charges

1) On 12 July 2021 at Worcester Crown Court, you were convicted of the following offences:

a) Between 23 February 2006 and 22 February 2009 installed equipment, with the intention of enabling yourself, for the purposes of obtaining sexual gratification, to observe another person, namely Person 1, doing a private act, knowing that Person 1 did not consent to being observed for your, that third person's, sexual gratification.

b) Between 01 January 2016 and 31 December 2017 recorded other persons namely Person 2, doing a private act with the intention that you would, for the purpose of obtaining sexual gratification, look at images of them, including her naked breasts, knowing that Person 2 did not consent to your recording the act with that intention

c) Between 23 February 2006 and 22 February 2009 installed equipment, with the intention of enabling yourself, for the purposes of obtaining sexual gratification, to observe another person, namely Person 2, doing a private act, knowing that Person 2 did not consent to being observed for your, that third person's, sexual gratification.

d) Between 01 January 2016 and 31 December 2017 recorded other persons namely Person 2 and Person 3, doing a private act with the intention that you would, for the purpose of obtaining sexual gratification, look at an image of them doing the act, knowing that they did not consent to your recording the act with that intention.

e) Between 01 May 2007 and 01 October 2009 being a person aged 18 or over, for the purpose of obtaining sexual gratification, intentionally engaged in sexual activity in presence of a child under 13, namely Person 2, knowing or believing that the child was, or intending that the child should be, aware that you were engaging in that activity.

Decision and reasons to amend the charge

Having noted factual errors in the charges as laid out above which are at variance with the certificate of conviction the panel considered it necessary to make amendments to the charges in order to correct a factual inaccuracy regarding the venue of one of the convictions. The panel considered the issue of prejudice to Mr Barrett but determined that this is fair to him as the charges would accurately reflect the certificate of conviction. The panel also noted that Mr Barret had been convicted of charges 1 (a-d) at Redditch Magistrates' Court on 12 July 2021 and had been convicted on charge 1 (e) at Worcester Crown Court on 6 January 2022.

Details of charges as amended

1) On 12 July 2021 at **Redditch Magistrates** Court, you were convicted of the following offences:

a) Between 23 February 2006 and 22 February 2009 installed equipment, with the intention of enabling yourself, for the purposes of obtaining sexual gratification, to observe another person, namely Person 1, doing a private act, knowing that Person 1 did not consent to being observed for your, that third person's, sexual gratification.

b) Between 01 January 2016 and 31 December 2017 recorded other persons namely Person 2, doing a private act with the intention that you would, for the purpose of obtaining sexual gratification, look at images of them, including her naked breasts, knowing that Person 2 did not consent to your recording the act with that intention

c) Between 23 February 2006 and 22 February 2009 installed equipment, with the intention of enabling yourself, for the purposes of obtaining sexual gratification, to observe another person, namely Person 2, doing a private act, knowing that Person 2 did not consent to being observed for your, that third person's, sexual gratification.

d) Between 01 January 2016 and 31 December 2017 recorded other persons namely Person 2 and Person 3, doing a private act with the intention that you would, for the purpose of obtaining sexual gratification, look at an image of them doing the act, knowing that they did not consent to your recording the act with that intention.

2) On 6th January 2022, at **Worcester Crown Court**, you were convicted of the following offence:

a) Between 01 May 2007 and 01 October 2009 being a person aged 18 or over, for the purpose of obtaining sexual gratification, intentionally engaged in sexual activity in presence of a child under 13, namely Person 2, knowing or believing that the child was, or intending that the child should be, aware that you were engaging in that activity.

Background

Mr Barrett first entered onto the Nursing and Midwifery Council (NMC) register in September 2016 as a Registered Nurse, specialising in adult care.

The NMC received three anonymous referrals from members of the public in December 2020 regarding Mr Barrett's fitness to practise.

At the time the concerns were raised, Mr Barrett was working as a registered nurse. However, the concerns in the referrals related to issues in Mr Barrett's private life.

The following facts were alleged:

- On 12 July 2021, at Redditch Magistrates' Court, and on 6 January 2022 at Worcester Crown Court, Mr Barrett pleaded guilty and was convicted of the offences detailed in the certificate of conviction and the charges above.
- On 9 May 2022, Mr Barrett was sentenced to a total of 33 months imprisonment and a Sexual Harm Prevention Order for an indefinite period. He was also barred from working with children by the Disclosure and Barring Service (DBS).

Decision and reasons on facts

The charges concern Mr Barrett'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) which states:

- '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 they are not the person referred to in the certificate or extract.'*

A certificate of conviction signed by an officer of the court has been provided for the convictions and is proof of the convictions as per Rule 31(2)(a).

In addition, the panel had regard to Mr Barrett's admissions in respect of charges 1 (a-d) in his written application for Voluntary Removal dated 6 November 2022 (incorrectly dated 2023).

The panel find charges 1 (a-d) and charge 2 (a) proved based on the certificate of conviction.

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Barrett's fitness to practise is currently impaired by reason of Mr Barrett's convictions. 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.

Statutory Ground of Conviction

The panel accepted the advice of the legal assessor in deciding whether the convictions amounted to the statutory ground of Conviction. The panel was aware that it had to find that the criminal convictions were of such severity that Mr Barrett's fitness to practise may be impaired and applied an objective test.

The panel took account of the NMC's written statement of case and accepted that some of the Nursing and Midwifery Council's Code of Conduct (the Code) was breached by these convictions, namely:

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.5 respect and uphold people's human rights

5 Respect people's right to privacy and confidentiality

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

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

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

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to'

The panel further noted that Mr Barrett was convicted of four offences of voyeurism and one offence of committing a sexual act in the presence of a 13-year-old female child, which took place over a number of years. [PRIVATE] He was sentenced to a total of 33 months' imprisonment and was, in addition, made subject to a Sexual Harm Prevention Order for an indefinite period and was barred from working with children by the Disclosure and Barring Service.

Bearing all these factors in mind the panel had little hesitation in concluding that the convictions were at the higher level of severity and therefore that the statutory ground of Conviction was applicable.

Decision and Reasons on Impairment

Having found that the statutory ground of Conviction was applicable, the panel next went on to decide if as a result of the convictions, Mr Barrett's fitness to practise is currently impaired.

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 accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The panel considered that the NMC's guidance explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. The question that will help decide whether a professional's fitness to practise is impaired is:

'Can the nurse, midwife or nursing associate practise kindly, safely and professionally?'

Answering this question involves a consideration of both the nature of the concern and the public interest.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. 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 and 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.

The panel considered whether Mr Barrett's practice is currently impaired as a result of these convictions and had regard to the judgment of Mrs Justice Cox in the case of *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*
- d) ... '*

The panel determined that all three limbs a,b and c were engaged.

The panel was of the view that, despite the fact that the convictions relate to Mr Barrett's private life, convictions of this type present a risk to adults and children alike, with whom Mr Barrett will come in contact if he is allowed to continue to practise.

The panel considered the sentencing remarks which indicate that Mr Barrett's harmful behaviour was displayed in multiple offences of a sexual nature over a number of years with aggravating features with multiple victims including a child under the age of 13.

These behaviours raise concerns which are considered in the restraining and sexual harm prevention orders which restrict Mr Barrett from direct and indirect contact (including through social media) with the victims, internet access, communication with any person under the age of 16 through internet or social media, living, staying, communicating with any female child under the age of 16 without prior express approval of social services and / or the child's parent or guardian who has knowledge of Mr Barrett's convictions.

Registered professionals occupy a position of privilege and trust and the panel therefore determined that there is evidence of a clear risk of harm from Mr Barrett to adults and children. This could potentially include those who may happen to be in Mr Barrett's care.

The panel finds that Mr Barrett's conduct and convictions had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to such criminal offending extremely serious. It determined that the charges and conviction were high up on the spectrum of seriousness.

Regarding insight, the panel noted that Mr Barrett made admissions to the charges and had engaged with the NMC proceedings. In his application for voluntary removal from the NMC Register dated 6 November 2023, Mr Barrett accepts that he is '*not fit for practice*'. Mr Barrett further states:

'4 x account of voyeurism. 1 account of sexual activity in presence of a child. Happened between 2006 – 2007. Had a sexual addiction and perversions. I have brought disrepute and shame to my profession. I have lost the public trust. I am very sorry.'

The panel noted that Mr Barrett has not provided any further evidence regarding his '*sexual addiction and perversions*' and therefore has no information as to whether he has addressed these apparent motivations for his criminal behaviour. He has not added any further reflections on his conduct and therefore the panel found that Mr Barrett at best, only has a limited level of insight.

The panel also noted that despite being “found out” on the first occasion of voyeurism, [PRIVATE], Mr Barrett nonetheless eventually went on to repeat his voyeuristic behaviour on an additional three occasions. This cast doubt upon his ability not to repeat his actions. The panel was therefore not assured that such behaviour would not happen again.

The panel noted that Mr Barrett had been in prison and had not practised as a nurse since his conviction. The panel had no information before it that demonstrates any remediation for his behaviour. The panel is therefore of the view that there is a high risk of repetition, given the seriousness and extent of his criminal offending.

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.

The panel determined that it is unlikely that a member of the public who was aware of the nature of Mr Barrett’s criminal offending would consider him suitable to work as a nurse. As such, in this case, a finding of impairment on public interest grounds was also required to uphold proper professional standards and public confidence in the NMC

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

Decision and reasons on sanction

Having found Mr Barrett '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:

- Sexual offences (including those involving children) which are categorised as '*specified offences*' in the NMC guidance.
- Convictions
- Currently serving custodial sentence

The mitigating factors in this case include:

- Mr Barrett's admissions
- Pleading guilty

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 Barrett'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 Barrett's offending 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 Barrett'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 criminal offending and conviction identified in this case was not something that can be addressed through retraining. The offence listed in the charges, and the facts behind those offences, do indicate harmful deep-seated personality or attitudinal problems. There are also no areas of clinical concern which might more readily be addressed by way of training or assessment. There are no practical conditions that could be put in place that would protect the public or maintain public confidence.

Furthermore, the panel concluded that the placing of conditions on Mr Barrett'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;*
- *patients will not be put in danger either directly or indirectly as a result of the conditions*
- *the conditions will protect patients during the period they are in force*
- *conditions can be created that can be monitored and assessed.'*

Mr Barrett's convictions were a significant departure from the standards expected of a registered nurse. The panel considered the case of *Council for the Regulation of Health Care Professionals v (1) General Dental Council and (2) Fleischmann* [2005] EWHC 87 (QB) and particularly the general principle that a nurse, midwife or nursing associate should not be permitted to start practising again until they have completed a sentence, which in this case would be April 2024.

The panel noted that this general principle does not mean that where a registered professional has more than 12 months left to run on a sentence, when their case reaches a substantive hearing a panel has no option but to strike their name from the register. Rather, regard should be had to the nature of the conviction, the public policy considerations that informed the criminal sentencing, what, if any, cross applicability those considerations have on professional regulation and matters which are of unique relevance to regulatory sanctions such as remorse, reflection and insight.

Mr Barrett's criminal convictions are for multiple serious offences, they involve a child, which is specifically highlighted in the NMC guidance as particularly serious and more difficult to put right. A suspension order would also not be sufficient in the case to mark the seriousness of Mr Barrett's actions. Mr Barrett's conduct suggests a serious deception, undermining his trustworthiness entirely. If he were to stay on the register, this would risk substantially undermining public confidence in the profession, given the nature of the conviction

The panel therefore agreed with the NMC's statement of case that the serious breach of the fundamental tenets of the profession evidenced by Mr Barrett's actions is fundamentally incompatible with Mr Barrett remaining on the register.

Consequently, 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 agreed with the NMC’s statement of case that Mr Barrett’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 Barrett’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 was mindful that its purpose is not to punish Mr Barrett for a second time and that the sentence passed by the criminal court is not necessarily a reliable guide to how seriously the conviction affects Mr Barrett’s fitness to practise. The panel also considered that cases relating to criminal offending by nurses, midwives or nursing associates illustrate the principle that the reputation of the professions is more important than the fortunes of any individual member of those professions. Being a registered professional brings many benefits, but this principle is part of the ‘price’.

The NMC guidance at SAN-3e states:

‘The courts have supported decisions to strike off healthcare professionals where there has been lack of probity, honesty or trustworthiness, notwithstanding that in other regards there were no concerns around the professional’s clinical skills or any risk of harm to the public. Striking-off orders have been upheld on the basis that they have been justified for reasons of maintaining trust and confidence in the professions.’

The panel considered that Mr Barrett’s criminal behaviour resulted in a custodial sentence of 33 months and a restraining and sexual harm prevention order for an indefinite period of time. The conduct and behaviours displayed are extremely serious and the panel regarded

them as being fundamentally incompatible with being a registered professional. The convictions, by their very nature, involve sexual misconduct involving the most vulnerable members of society, children. Allowing continued registration would not only place the public at a risk of harm but it would be seriously damaging to the reputation of the profession.

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

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 the only suitable interim order would be that of a suspension order, as to do otherwise would be incompatible with its earlier findings. The suspension will be for a period of 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 the substantive striking off order 28 days after Mr Barrett is sent the decision of this hearing in writing.

That concludes this determination.