

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Meeting
16 August 2019

Nursing and Midwifery Council, 114-116 George Street, Edinburgh, EH2 4LH

Name of registrant:	Thomas Ryan Rose
NMC PIN:	15F0098W
Part(s) of the register:	Registered Nurse (Sub Part 1) Adult Nursing – June 2015
Area of Registered Address:	Wales
Type of Case:	Conviction
Panel Members:	Anne Asher (Chair, Registrant member) Jude Bayly (Registrant member) Alex Forsyth (Lay member)
Legal Assessor:	Graeme Henderson
Panel Secretary:	Caroline Pringle
Facts proved:	1 and 2
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim Order:	Interim suspension order (18 months)

Decision on proof of service

The panel considered whether notice of this meeting has been served in accordance with the rules. Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended state:

‘11A.(1) Where a meeting is to be held in accordance with rule 10(3), the [Fitness to Practise] Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held.

34.(3) Any other notice or document to be served on a person under these Rules may be sent by—
(a) ordinary post’

The panel accepted the advice of the legal assessor.

It noted that the letter of notice of this substantive meeting was sent to Mr Rose’s address on the register by both first class post and recorded delivery on 8 July 2019. This letter informed him that his case would be considered at a meeting on or after 12 August 2019 and asked that he provide any response or comments by 6 August 2019. Royal Mail ‘Track and Trace’ confirmed that notice was delivered and signed for at Mr Rose’s registered address on 9 July 2019. A copy of the notice was also emailed to Mr Rose on 9 July 2019.

The panel was satisfied that notice had been sent more than 28 days in advance of this meeting. The panel therefore determined that notice had been served in accordance with the Rules.

Details of charge

That you, a registered nurse:

1. On 26 October 2018 you were convicted of one count of making indecent photograph or pseudo-photograph of child, contrary to section 1(1)(a) of the Protection of Children Act 1978.
2. On 11 December 2018 you were convicted of one count of possession of indecent photographs of a child, contrary to section 160(1) of the Criminal Justice Act 1988.

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

Background

The NMC received a referral in respect of Mr Rose from the National Crime Agency on 6 February 2018. Mr Rose had been arrested on 1 February 2018 on suspicion of making, processing and distributing indecent images of children. The concerns were linked to Mr Rose accessing online video conferencing platforms to view live and pre-recorded child abuse, and sharing and viewing indecent images of children.

On 12 October 2017, an officer from the United States Homeland Security Department undertook authorised observations in an online video conferencing facility which was being streamed live. The live streamed event involved an adult male masturbating and ejaculating in the presence of his 8 year old daughter. Mr Rose was present in the conferencing room and watched the live event. He also posted the comment in the conferencing room "are you going to cum on her".

On 1 February 2018 Mr Rose was arrested and his phone was seized. A forensic examination of his phone revealed an 11 minute colour video depicting the anal

penetration of a male child aged between 10-12 years of age. This is a Category A indecent image of a child.

Mr Rose was interviewed under caution on 2 February 2018 and admitted that he had visited the online conferencing room and he did recall seeing an adult male and a young child but that at the time he was high on drugs. Mr Rose later admitted in the same interview that he was present in the online conferencing facility and watched the video and typed in the comments.

Mr Rose was interviewed again on 14 June 2018 and claimed that he had no knowledge of the Category A video and that it may have been uploaded by an unknown person at a sex party.

The police report states that 'recovered from his laptop was evidence that the accused had actively sought out indecent videos of children whilst being present in the online conferencing facility'.

On 26 October 2018 Mr Rose appeared at Cardiff and the Vale Magistrates Court and upon entering a guilty plea, was convicted of making indecent photograph or pseudo-photograph of child, contrary to section 1(1)(a) of the Protection of Children Act 1978.

On 11 December 2018 Mr Rose appeared at Cardiff Crown Court and upon entering a guilty plea, was convicted of possession of indecent photographs of a child, contrary to section 160(1) of the Criminal Justice Act 1988.

On 11 December 2018 in the Crown Court at Cardiff Mr Rose received a suspended sentence with a Community Order for three years with the following requirements:

1. To participate in Horizon - Sex Offenders Management Programme for 29 days
2. To carry out 200 hours of unpaid work before 10 December 2019
3. To undertake Rehabilitation Activity Requirement for a maximum of 10 days.
4. To pay a total of £335

The sentencing judge also made a Sexual Harm Prevention Order (SHPO) for a period of 5 years under s.103 of the Sexual Offences Act 2003. Among other things, this order prohibits Mr Rose from having unsupervised contact with any children under the age of 18, other than that which is inadvertent and otherwise unavoidable in everyday life.

Mr Rose was also placed on the Sex Offenders Register for a period of 5 years, pursuant to the Sexual Offences Act 2003.

Decision on the findings on facts and reasons

Charge 1

- 1. On 26 October 2018 you were convicted of one count of making indecent photograph or pseudo-photograph of child, contrary to section 1(1)(a) of the Protection of Children Act 1978.**

This charge is found proved.

The panel had regard to rules 31(2) and 31(3) of the Rules which state that:

- (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.

The panel had a copy of a certificate of conviction which showed that on 26 October 2018 at Cardiff and the Vale Magistrates Court Mr Rose was convicted of making indecent photograph or pseudo-photograph of child, contrary to section 1(1)(a) of the Protection of Children Act 1978.

The panel therefore found charge 1 proved.

Charge 2

- 2. On 11 December 2018 you were convicted of one count of possession of indecent photographs of a child, contrary to section 160(1) of the Criminal Justice Act 1988.**

The panel had a copy of a certificate of conviction which showed that on 11 December 2018 at Cardiff Crown Court Mr Rose was convicted of one count of possession of indecent photographs of a child, contrary to section 160(1) of the Criminal Justice Act 1988.

The panel therefore found charge 2 proved.

Decision and reasons on impairment

Having found the facts proved, the panel then moved on to consider whether Mr Rose's fitness to practise is currently impaired as a result of his convictions.

In this regard the panel considered test set out by Mrs Justice Cox in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) where at paragraph 76 she said:

'I would also add the following observations in this case...as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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 found that limbs (a), (b) and (c) of the Grant test were engaged in this case.

The panel accepted that no concerns have been raised about Mr Rose's clinical practice and that the conviction was obtained in the course of his personal life, not connected to his work. However, the panel was of the view that a nurse who possessed images of this nature, which were in Category A and classified as the most serious

images, is liable to place patients at unwarranted risk of harm in the future, as a nurse will always come into contact with children in his role, either as patients or as members of the public.

The panel considered that Mr Rose's actions involving child pornography constituted two very serious criminal convictions, which severely undermined the integrity of the profession. It was of the view that his conduct and the convictions are a serious departure from the accepted standards and proper behaviour expected of a registered nurse and brought the reputation of the nursing profession into disrepute.

The panel also noted that the NMC's Code of Conduct requires that nurses and midwives keep to the laws of the country in which they practise and uphold the reputation of the professions at all times. It therefore considered that Mr Rose had breached a fundamental tenet of the nursing profession.

In considering whether Mr Rose is currently impaired, the panel had regard to the factors identified in the case of R (on application of Cohen) v GMC [2008] EWHC 581 (Admin). These include whether the conduct which led to the charge is easily remediable, whether it has been remedied and whether it is highly unlikely to be repeated.

The panel considered that Mr Rose's conduct, being outside of his nursing competencies and related to his personal life and conduct, was inherently difficult to remediate. In reaching this conclusion, the panel had regard to the fact that Mr Rose has been convicted of two offences involving child pornography on separate occasions, demonstrating a pattern of behaviour and a potential underlying attitudinal concern.

The panel also had no evidence before it of any remorse and Mr Rose has demonstrated very limited insight. The panel had before it a letter from Mr Rose, dated 29 March 2019. It considered that this letter demonstrated no remorse for the impact on the children involved. What little insight he showed was, in the view of the panel, largely

self-facing and focused on the impact the conviction and NMC proceedings had had on him and his family.

In the absence of insight, remorse or remediation the panel concluded that there remains a risk of repetition and therefore a finding of current impairment was required on the grounds of public protection.

The panel also 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 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 was of the view that a reasonable and fully informed member of the public would expect a finding of impairment to follow such a very serious conviction and would be shocked and offended if impairment were not found. Any other outcome would undermine confidence in the profession and its regulator. The panel therefore determined that a finding of current impairment is also necessary on grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Rose's fitness to practise is currently impaired by reasons of his convictions.

Determination on sanction

The panel considered this case and decided to make a striking-off order. It directs the registrar to strike Mr Rose off the register.

The panel accepted the advice of the legal assessor who referred it to the NMC's Sanctions Guidance and the cases of Obukufe v GMC [2014] EWHC 408 (Admin) and Council for the Regulation of Health Care Professionals v (1) GDC and (2) Fleischmann [2005] EWHC 87 (QB). The panel bore 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 published by the NMC. It noted the NMC's statement of case' in which the NMC submitted that the appropriate sanction was that of a striking-off order, but the panel bore in mind that the decision on sanction was a matter for the panel, exercising its own independent judgement.

The panel considered that the aggravating factors in this case were:

- Very serious conduct involving images of the sexual abuse of children resulting in a Sexual Harm Prevention Order and having to register on the Sex Offenders Register;
- Very limited insight;
- No remorse.

The panel did not identify any mitigating factors.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. Taking no further action would not protect the public, nor would it satisfy the public interest.

The panel next considered a caution order but concluded that this would also be inappropriate for the same reasons. The panel considered that Mr Rose's criminal convictions were very serious and a caution order would be wholly insufficient to mark the severity of his wrongdoing.

The panel next considered a conditions of practice order but determined that this would also be inappropriate and unworkable. The concerns in this case do not relate to Mr Rose's clinical practice and are therefore not particularly amenable to conditions. Furthermore, the panel was of the view that a conditions of practice order would be insufficient to address the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The Sanctions Guidance indicates that a suspension order would be appropriate where (but not limited to):

- 'does the seriousness of the case require temporary removal from the register?
- will a period of suspension be sufficient to protect patients and the public interest?

This sanction may be appropriate where the misconduct is not fundamentally incompatible with continuing to be a registered nurse or midwife in that the public interest can be satisfied by a less severe outcome than permanent removal from the register. This is more likely to be the case when some or all of the following factors are apparent (this list is not exhaustive):

- 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 aggravating factors that the panel took into account, in particular, were the serious nature of Mr Rose's criminal convictions and his lack of insight and remorse. The panel noted that Mr Rose received two criminal convictions involving child pornography on two separate occasions. It could therefore not categorise his behaviour as 'a single instance of misconduct'. The panel was not satisfied that Mr Rose had insight into his wrongdoing and had already concluded that there remained a risk of repetition. Having

regard to all the circumstances of this case, the panel was not satisfied that a suspension order would be sufficient to mark the public interest.

It therefore moved on to consider a striking-off order. It took note of the following sections of the Sanctions Guidance:

'Key considerations are:

- can public confidence in the professions and the NMC 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 the public interest?
- is the seriousness of the case incompatible with ongoing registration (see above for the factors to take into account when considering seriousness)?

This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional, which may involve any of the following factors.

- A serious departure from the relevant professional standards as set out in key standards, guidance and advice.
- ...
-
- Any serious misconduct of a sexual nature, including involvement in child pornography.
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- ...
- Persistent lack of insight into seriousness of actions or consequences.
- Convictions or cautions involving any of the conduct or behaviour in the above examples.

Mr Rose has received two serious criminal convictions involving child pornography. As a result of these, he has received a suspended sentence with a Community Order for three years along with a SHPO. His name will also be on the Sex Offenders Register for five years.

The panel considered that this was a serious departure from the standards expected of a registered nurse. It brought the profession into disrepute and undermined the trust which the public ought to be able to have in members of the nursing profession. In addition to this, Mr Rose has shown a lack of insight and remorse for his actions.

In these circumstances, the panel concluded that Mr Rose's conduct was fundamentally incompatible with him remaining on the register. It was of the view that public confidence in the nursing profession could only be maintained if Mr Rose was permanently removed from the NMC register. The panel considered that it was inappropriate for Mr Rose to remain on the register as he was continuing to serve his sentence.

For these reasons, the panel determined that the only appropriate and proportionate sanction in this case was a striking-off order. It concluded that nothing short of this would be sufficient to maintain public confidence in this case.

Determination on interim order

The panel was aware that the striking-off order would not come into effect for 28 days from the date that Mr Rose is notified of this decision, during which time he is able to lodge an appeal against this decision.

The panel therefore considered whether to impose an interim order to prevent Mr Rose from practising during this 28 day appeal period. The panel was aware that it may only

make an interim order if it is necessary for the protection of the public or is otherwise in the public interest.

The panel was satisfied that an interim suspension 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. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.