

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

**Substantive Hearing
04 – 05 November 2019**

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant:	Steve Gill
NMC PIN:	17A0012E
Part(s) of the register:	Sub Part 1 Adult Nurse - February 2017
Area of Registered Address:	England
Type of Case:	Conviction
Panel Members:	Andy Thompson (Chair, Lay member) Jodie Banner (Registrant member) Stella Armstrong (Registrant member)
Legal Assessor:	Nicholas Levisieur
Panel Secretary:	Xenia Menzl
Mr Gill:	Present and not represented
Nursing and Midwifery Council:	Represented by Leeann Mohamed
Facts proved by admission:	1a, 1b, 1c, 1d
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim Order:	Interim Suspension Order for 18 months

Details of charge as amended:

That you, a registered nurse:

1) On 10 December 2018 at Birmingham Crown Court you were convicted of the following offences:

a) Making indecent photograph or pseudo photograph of child.

Found proved by way of conviction and admission

b) Making indecent photograph or pseudo photograph of child.

Found proved by way of conviction and admission

c) Making indecent photograph or pseudo photograph of child.

Found proved by way of conviction and admission

d) Distributing indecent photograph or pseudo photograph of child.

Found proved by way of conviction and admission

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

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Mohamed, on behalf of the NMC, to amend the wording of charges 1a, b, c and d.

The proposed amendment was to reflect the wording that was used in the certificate of conviction. Ms Mohamed submitted that the unamended charges had been drafted in terms of the indictment and not as per the certificate of conviction. She argued that the amendment would allow the charges accurately to reflect the certificate of conviction.

You did not object to the application to amend the charges.

Original charge

[PRIVATE]

Proposed charge

1)a) Making indecent photograph or pseudo photograph of child.

Original charge

[PRIVATE]

Proposed charge

1)b) Making indecent photograph or pseudo photograph of child.

Original charge

[PRIVATE]

Proposed charge

1)c) Making indecent photograph or pseudo photograph of child.

Original charge

[PRIVATE]

Proposed charge

1)d) Distributing indecent photograph or pseudo photograph of child.

The panel accepted the advice of the legal assessor.

Rule 28 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (“the Rules”) states:

28.— (1) At any stage before making its findings of fact, in accordance with rule 24(5) or (11), the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the Fitness to Practise Committee, may amend—

(a) the charge set out in the notice of hearing; or

(b) the facts set out in the charge, on which the allegation is based,

unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

(2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue.

The panel was of the view that these amendments were in the interests of justice. The panel was satisfied that there would be no prejudice to you and it would be fair to you and the NMC to allow the amendments. It was therefore appropriate to allow the amendments to ensure that the charges reflect the wording on the certificate of conviction.

Decision and reasons on application under Rule 19

At the outset of the hearing you made a request that the hearing be held in private on the basis that the High Court of Justice will be making a decision on the potential extension of an interim order imposed by the Health and Care Professions Council (HCPC). You submitted that this is a third party investigation and that the outcome of this hearing might have the potential to influence that investigation. The application was made pursuant to Rule 19 of the Rules.

Ms Mohamed objected to the application. She submitted that at this stage the nature of the HCPC investigation is not clear. Ms Mohamed noted that the outcome of this hearing has the potential to affect the HCPC's assessment but pointed out that they are an independent regulator. She submitted that the matters of this hearing are based on a conviction which is a public document and that this form of privacy is not applied in any other jurisdiction.

The legal assessor reminded the panel that while Rule 19 (1) provides, as a starting point, that hearings shall be conducted in public, Rule 19 (3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Rule 19 states

- 19.—(1) *Subject to paragraphs (2) and (3) below, hearings shall be conducted in public.*
- (2) *Subject to paragraph (2A), a hearing before the Fitness to Practise Committee which relates solely to an allegation concerning the registrant's physical or mental health must be conducted in private.*
- (2A) *All or part of the hearing referred to in paragraph (2) may be held in public where the Fitness to Practise Committee—*
- (a) *having given the parties, and any third party whom the Committee considers it appropriate to hear, an opportunity to make representations; and*
- (b) *having obtained the advice of the legal assessor, is satisfied that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant.*
- (3) *Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied—*
- (a) *having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and*
- (b) *having obtained the advice of the legal assessor, that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.*
- (4) *In this rule, "in private" means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.*

Having heard both submissions, the panel determined not to grant the application. The panel determined that the conviction upon which the NMC's case is built on is already in the public domain and therefore already accessible to the public. There is no proper public or private interest in preventing either a regulatory body (in this case the HCPC) or the High Court from knowing the details and outcome of this case.

Background

On the 10 December 2018 at Birmingham Crown Court you were convicted of making and distributing indecent photographs or pseudo photographs of children. You have been sentenced to 18 months imprisonment of which you have served over half. Additionally, your name is listed on the Sex Offender Register for 10 years and you are subject to a Sexual Harm Prevention Order for a period of 5 years under s. 103 of the Sexual offences Act 2003.

Decision on the findings on facts and reasons

At the outset of this hearing you told the panel that you admit the charges.

The charges concern your conviction and, having been provided with a copy of the certificate of conviction, the panel finds that the facts are found proved by way of admission and in accordance with Rule 31 (2) and (3) of the Rules which states:

- (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 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 also had regard to part of the transcript of the hearing at the Crown Court at Birmingham. It considered this to provide contextual information upon which your convictions are based.

Decision on impairment

The panel next went on to decide if as a result of your conviction your 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 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. In this regard the panel considered the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) 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.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, 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 he/she:

- 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 finds that there is a risk of harm to the public in that you participated in the exchange of pictures that showed abuse of the most serious kind, in one case involving a two year old child. You were participating in and facilitating an abusive system that harms the public and in particular those who are the subject matter in those images. The panel considered the judge's sentencing remarks in which she said:

'Yours was an offence which resulted in the distribution of category A imagery including one image of the most vulnerable of children whose imagery was found on your computer, namely a 2-year-old child. That behaviour took place over a period of time and although I do not conclude that you utilised websites that were designed to distribute to high volumes of recipients it was plain that part of your motivation was that people unknown to you of any number might be able to access the images that you supplied either directly or indirectly by further sharing.'

The panel next considered whether you had brought the profession into disrepute. The offending behaviour giving rise to your conviction is incompatible with the values and ethos of the nursing profession. That is a caring profession which builds on working closely and intimately with vulnerable people. The panel again noted the judge's sentencing remarks in which she pointed out that you distributed *'imagery including one image of the most vulnerable of children'* and that this *'behaviour took place over a long period of time'*.

The panel concluded that by possessing and distributing such images you have brought the profession into disrepute.

The panel lastly considered whether you had breached *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) ("the Code") by possessing and distributing these images. In coming to its conclusion the panel considered the section of the Code which refers to *'Promote professionalism and trust'*:

'You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.'

The panel concluded that in possessing and distributing these kind of images you have breached the following sections of the Code:

20. Uphold the reputation of your profession at all times

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

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

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

20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times.

The panel considered that you showed some limited insight and some remorse. You have demonstrated an understanding of how your actions put the children who were the subject of these images and who are part of the public at a risk of harm. In your statement that you read to the panel, you explained:

I recognise that the safety of the child is paramount, and that the sanctity of childhood is precious and is to be protected by all – even more so by a healthcare professional. Every image depicts somebody's child somewhere in the world. I am ashamed and embarrassed to have been involved in any way in this. Images of abuse not only affect the child and their family at the time, but carry through time, continuing into later life. With images being perpetuated via

the Internet and seen by a wider, unknown audience, those affects can adversely influence future relationships, careers and even generations to come.’ (sic)

You have demonstrated some understanding of why your actions were wrong and how this impacted negatively on the reputation of the nursing profession. You have told the panel nothing about what you have done to address the very serious failings revealed by your offending. You have referred the panel to the judge’s sentencing remarks but have provided it with no supporting material. The panel knows nothing of any psychotherapeutic intervention nor of any assessment of you undertaken during your time in prison or after your release. It has thus very limited information before it to enable it to assess to what extent you have truly understood the very serious nature of your behaviour and whether you have altered your life accordingly.

The panel, in this context, noted your submission to it that the number of images referred to by the judge in her sentencing remarks were in fact wrong and that there was evidence that those were in fact significantly and materially lower. It also noted your explanation to it that you could not have carried out the offence for which you were convicted of distributing images because of discrepancies between the date of the offence and the age of your computer.

The panel also took note of your comment toward the end of your statement which appears to contradict those earlier paragraphs where you explain that you fully understand the nature of your offending and express remorse for it:

‘I urge any person reading this the engage extreme caution when downloading content of unknown origin and where the nature of the content is not apparent prior to download. I failed to report such content, opting instead to delete’ (sic)

The panel considered these matters carefully and considered that they indicate, despite your admissions, you are seeking to avoid responsibility for your actions and are

therefore not taking full responsibility for them. This is not the behaviour of a person with proper insight into his actions.

The panel, in assessing, whether you have remediated your behaviour, had almost nothing before it save the sentencing remarks of the judge:

'I consider you to be a man of previous exemplary good character. The nature of your work and the way in which you have educated yourself so as to be able to perform it speaks volumes about that character which to most people held you in very high esteem.

You are also a man now that I accept demonstrates genuine understanding and empathy with the victims of your offences and genuine remorse. Also, I accept from your counsel someone who will not re-offend.'

You have told the panel nothing at all as to what led you to offend and what steps you have taken to seek help or to modify your behaviour. Nor have you told it anything about the circumstances of your working and daily life. The panel knows nothing about your former professional career. It has had no access to any testimonials nor to any reports from the probation service or your supervisor. It cannot in these circumstances determine that you have done anything to remediate your behaviour.

In these circumstances it is satisfied that you are impaired and that such a finding is also required on public interest grounds.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and wellbeing of the public and patients, and to uphold and 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 due to the

nature of the conviction and your name being on the sex offenders' register for 10 years and therefore the high public interest in this specific case.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Determination on sanction:

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

In reaching this decision, the panel has had regard to all the evidence that has been presented in this case, together with the submissions of Ms Mohamed and you.

The panel accepted the advice of the legal assessor.

The panel acknowledged the NMC sanction bid of a striking-off order, but was not bound by such a bid, and has exercised its independent judgement. 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) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel has also taken account of the aggravating and mitigating factors in this case.

The panel identified several aggravating factors in this case.

- 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
- Offending took place over a period of three years
- Lack of insight

The panel considered your engagement with the regulatory process a mitigating factor.

The panel is aware that it can impose any of the following sanctions; take no further action, make a caution order for a period of one to five years, make a conditions of practice order for no more than three years, make a suspension order for a maximum of one year, or make a striking-off order.

The panel considered the potential sanctions in ascending order of restrictiveness.

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 your criminal conviction was very serious and a caution order would be wholly insufficient to mark the severity of your 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 your 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 SG 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?*

The aggravating factors that the panel took into account, in particular, were the serious nature of your criminal conviction and the length of time over which it occurred. The panel concluded that the nature of your conviction is fundamentally incompatible with remaining on the register as a member of the profession. The public interest is engaged because of the seriousness of the offence and imposing this sanction would undermine the public confidence in the NMC as a regulator. 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:

'Before imposing this sanction, key considerations the panel will take into account include:

- *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 NMC Guidance for Cases Involving Sexual Misconduct states:

'Panels deciding on sanction in cases about serious sexual misconduct will, like in all cases, need to start their decision making with the least severe sanction, and work their way upwards until they find the appropriate outcome. They will very often find that in cases of this kind, the only proportionate sanction will be to remove the nurse or midwife from the register.'

You have been convicted of the serious criminal offence of possession and distribution of indecent images of children. As a result of this, you have been sentenced to 18 months imprisonment, your name is listed on the Sex Offender Register for 10 years and you are subject to a Sexual Harm Prevention Order for a period of 5 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, you have shown a lack of insight and remorse for your actions.

In these circumstances, the panel concluded that your conduct was fundamentally incompatible with you remaining on the register. It was of the view that public confidence in the nursing profession could only be maintained if you were permanently removed from the NMC register.

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 you are sent the decision of this hearing in writing, during which time you are able to lodge an appeal against this decision.

The panel therefore considered whether to impose an interim order to prevent you 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 conviction 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 you are sent the decision of this hearing in writing.

That concludes this determination.