

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Meeting
3-4 March 2020

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

Name of registrant:	Colin Alan Shipton
PIN:	8310242E
Part(s) of the register:	Nursing, Sub part 1 RN3, Registered Nurse - Mental Health (24 March 1987)
Area of Registered Address:	England
Type of Case:	Conviction
Panel Members:	Najrul Khasru (Chair, Lay member) Carla Hartnell (Registrant member) Chris Thornton (Lay member)
Legal Assessor:	Andrew Reid
Panel Secretary:	Aoife Kennedy
Facts proved:	All
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking off order
Interim Order:	Interim suspension order (18 months)

Decision on Service of Notice of Meeting:

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 Conduct and Competence Committee or the Health 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 letter of notice of this substantive meeting was sent to Mr Shipton’s address on the register on 27 January 2020. The panel is satisfied that the notice was sent more than 28 days in advance of this meeting. The panel therefore finds that notice has been served in accordance with the Rules.

Details of charges:

That you, a registered nurse

1) On 15 January 2019 in Doncaster Magistrates Court, were convicted of the following:

a) Possession of an indecent photograph/pseudo photograph of a child contrary to s.160 of the Criminal Justice Act 1988;

b) Possession of extreme pornographic images – act of intercourse/oral sex with a dead/alive animal contrary to s.63 (1) (7) (d) of the Criminal Justice and Immigration Act 2008

That you, a registered nurse:

2) On 5 February 2019 in Sheffield Crown were convicted of possession of a prohibited image of a child/pseudo photograph of a child contrary to s.160 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 Shipton from Rotherham Doncaster and South Humber NHS Foundation Trust (“the Trust”) on 17 October 2017. The Trust had been made aware by the police that Mr Shipton was the subject of a police investigation which included possession of indecent images of children. Mr Shipton had been employed by the Trust from 5 September 1983 until 3 April 2017 when he took flexible retirement. He subsequently returned to part time employment on 17 April 2017 as a Community Psychiatric Nurse and this was the role he was employed in at the time of the referral.

Police were alerted to the fact that Mr Shipton had provided a service user with a computer as a gift which contained pornographic images of children. Mr Shipton was arrested by the police on 21 September 2017 following a search of his home address. He was subsequently charged and resigned from his position at the Trust before a disciplinary investigation could be completed.

Mr Shipton has two convictions recorded against him for three separate offences, all related to child pornography, a specified offence.

On 15 January 2019 Mr Shipton appeared before Doncaster Magistrates Court charged with the following offences:

- a. Possession of an indecent photograph/pseudo photograph of a child contrary to s.160 of the Criminal Justice Act 1988;
- b. Possession of extreme pornographic images – act of intercourse/oral sex with a dead/alive animal contrary to s.63(1) (7) (d) of the Criminal Justice and Immigration Act 2008;

Mr Shipton pleaded guilty and the Magistrates decided that their sentencing powers were not sufficient and committed the case to the Crown Court for sentence.

On 5 February 2019 Mr Shipton appeared before Sheffield Crown Court on an additional charge and pleaded guilty to:

- a. Possession of a prohibited image of a child.

On 26 February 2019 Mr Shipton was sentenced for all matters to an 18 month Community Order with the following requirements:

- a) 30 days Rehabilitative Activity requirement,
- b) 150 hours unpaid work;
- c) Victim surcharge and forfeiture and destruction of exhibits

In sentencing Mr Shipton, Her Honour Judge Harrison 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 limits the Registrant's access to computers and the internet.

The Judge's sentencing remarks when dealing with the issue of an immediate custodial sentence were as follows:

"You have clearly looked for images of children, in my judgment, but it seems to me that I can step back from immediate custody because of the limited number of images that we are talking about here. You would be, ordinarily, in a category which would see a starting point of one year's custody, but giving you credit for your guilty pleas, the fact that you have no previous convictions and the limited number of images means that I can step back from immediate custody".

Mr Shipton was also required to sign the sex offenders register for a period of 5 years, pursuant to the Sexual Offences Act 2003.

Determination on facts:

The panel bore in mind that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged.

The panel carefully considered all the documentary evidence contained in the NMC meeting bundle.

The panel accepted the advice of the legal assessor.

The charges concern Mr Shipton's alleged convictions for serious sexual offences. Having been provided with a copy of the certificates/memoranda of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) 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 (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.

In these circumstances the panel determined that Conviction as a route to impairment had been established.

Decision on impairment

The panel next went on to decide if, by reason of his convictions, Mr Shipton's fitness to practise is currently impaired.

The panel accepted the advice of the legal assessor.

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 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 ... 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 took into account the NMC guidance on criminal convictions and cautions, which states as follows:

“if the criminal offending took place in the nurse or midwife’s private life, and there’s no clear risk to patients or members of the public, then it is unlikely that we’ll need to take regulatory action to uphold confidence in nurses and midwives, or professional standards. We’d only need to that if the nurse or midwife was given a custodial sentence (this includes suspended sentences) or the conviction was for a specified offence”.

The guidance makes it clear that “*specified offence*” relates to offences which include sexual offences, and that child pornography offences are cited specifically.

The panel found that Mr Shipton's actions engage limbs a, b and c of the Grant judgment in that his actions involving pornography were serious and put patients at unwarranted risk of harm, and bring the profession into disrepute. 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. 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 that Mr Shipton's conduct and his conviction amount to a serious departure from the accepted standards and proper behaviour expected of a registered nurse. The panel determined that the conduct which led to Mr Shipton's convictions breached fundamental tenets of the nursing profession and brought it into disrepute.

The panel recognised that Mr Shipton pleaded guilty to the offences and had no previous convictions. It had sight of his emails to the NMC dated 17 and 20 January 2020. The panel considered that Mr Shipton has not demonstrated remorse or insight into his actions. He has had limited engagement with these proceedings and the panel has seen no evidence of remediation.

The panel is of the view that there is a risk of repetition based on Mr Shipton's lack of insight, remorse or remediation. It therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel determined that, in this case, a finding of impairment on public interest grounds was required. It was of the view that a member of the public would be shocked to discover that a Registered Nurse's fitness to practise was not found to be

impaired after a panel had been furnished with details of a conviction that involved pornographic images of children.

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

Determination on sanction:

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

In reaching this decision, the panel had regard to all the evidence adduced in this case. The panel accepted the advice of the legal assessor. 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 considered the following to be aggravating factors of the case:

- Mr Shipton's conduct was serious and involved images of the sexual abuse of children;
- Mr Shipton has demonstrated no insight or remorse into his conduct.

The panel considered the following to be mitigating factors of the case:

- Mr Shipton entered guilty pleas to all the criminal charges against him.

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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 Shipton's misconduct 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 Shipton's registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG in making this consideration.

The panel was 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 misconduct identified in this case was not something that can be addressed through retraining. The panel further considered that a conditions of practice order would not be practicable given Mr Shipton's email dated 20 January 2020 in which he stated that he had no desire to work as a nurse in future and wishes for his name to be permanently removed from the register.

The panel therefore concluded that it was not possible to formulate appropriate conditions in this case and, in any event, the placing of conditions on Mr Shipton's registration would not adequately address the seriousness of this case and would not protect the public or meet the wider 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):

- a single instance of misconduct but where a lesser sanction is not sufficient
- no evidence of harmful deep-seated personality or attitudinal problems
- the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour

The panel considered that Mr Shipton's conduct demonstrated clear attitudinal issues in that it involved the abuse and exploitation of children. The panel had particular regard to the following part of the SG:

“Sexual offences including accessing, viewing or other involvement in child pornography, which involves the abuse or exploitation of a child. These type of offences gravely undermine patients’ and the public’s trust in nurses and midwives. In the criminal courts, some offences of child pornography offences are considered more serious than orders. However, in fitness to practise any conviction for child pornography is likely to be involve a fundamental breach of the public’s trust in nurses and midwives.”

Further, the panel took into account that Mr Shipton's name is on the Sex Offenders register for 5 years. 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 fundamental tenets of the profession evidenced by Mr Shipton's actions is fundamentally incompatible with his remaining on the register.

Balancing all of these factors, the panel determined that a suspension order would not be an appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following from the SG:

- Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?
- Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?
- Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?

Mr Shipton'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 case demonstrate that Mr Shipton's actions were so serious that to allow him to continue practising 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, 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 Shipton'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 protect patients and the public. It was also 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 and expected of a registered nurse.

Determination on Interim Order

The panel accepted the advice of the legal assessor.

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 Shipton is sent the decision of this hearing in writing.

That concludes this determination.