

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

**Substantive Meeting
17 September 2021**

Regus
Forsyth House, Cromac Square, Belfast, BT2 8LA

Name of registrant:	Thomas David Harrison	
NMC PIN:	17G0286E	
Part(s) of the register:	Registered Nurse – Adult (RNA)	
Area of registered address:	Manchester	
Type of case:	Conviction	
Panel members:	John Brookes	(Chair, lay member)
	Claire Rashid	(Registrant member)
	Sadia Zouq	(Lay member)
Legal Assessor:	Marian Killen	
Panel Secretary:	Max Buadi	
Consensual Panel Determination:	Accepted	
Facts proved:	Charges 1	
Facts not proved:	None	
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 Notice of this Meeting had been sent via email to an email address held on the NMC register on 9 August 2021.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and venue of the meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Harrison 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).

Consensual Panel Determination

At the outset of this meeting, the panel was made aware that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the NMC and Mr Harrison.

The agreement, which was put before the panel, sets out Mr Harrison's full admissions to the facts alleged in the charges, and that his fitness to practise is currently impaired by reason of that conviction. It is further stated in the agreement that an appropriate sanction in this case would be a striking off order.

The panel has considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

1. Thomas Harrison is content for his case to be dealt with by way of a CPD meeting. Mr Harrison understands that if the panel determines that a less severe sanction should be imposed, the panel will adjourn the matter for this provisional agreement to be considered at a CPD hearing.

The charge

2. Mr Harrison admits the following charges:

That you, a Registered Nurse:

1. *Were convicted on 16 September 2020 at the Crown Court sitting at Liverpool of arranging or facilitating the commission of a child sex offence contrary to section 14 of the Sexual Offences Act 2003.*

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

The facts

3. Mr Harrison appears on the register of nurses, midwives and nursing associates maintained by the NMC as a Registered Nurse- Adult and has been a Registered Nurse since 9 September 2017.
4. The NMC opened a referral against Mr Harrison on 4 August 2020 having received information from the Local Authority Designated Officer and Risk Manager in Liverpool. The information was that Mr Harrison had been arrested and or charged with sexual offences against children.
5. At the time of his arrest Mr Harrison was employed by Cornerstone Surgery in St Helens who referred the same concerns to the NMC on 5 August 2020.
6. The facts of Mr Harrison's offending are set out in His Honour Judge Woodhall's sentencing remarks contained in appendix A of this document but can be summarised as follows.

7. On 25 July 2020 Mr Harrison engaged online with an individual who he believed had a sexual interest in children. During the conversation Mr Harrison stated he had previously abused children. He expressed an interest in abusing the four month old child of the individual he was messaging.
8. On the 27 July 2020 Mr Harrison continued to engage with the individual. He arranged for the individual and his child to attend his home for the purpose of abusing the child. The individual, who was an undercover police officer, attended Mr Harrison's home address. Mr Harrison was arrested, interviewed and subsequently charged. During police interview Mr Harrison made no comment to questions put to him.
9. On 16 July 2020 Mr Harrison was convicted following his guilty plea at the Crown Court sitting at Liverpool. He was sentenced on 9 October 2020 to two years imprisonment. He was also made subject to a Sexual Harm Prevention Order for a period of 10 years. In sentencing Mr Harrison His Honour Judge Woodhall found that one was necessary to protect the public from the commission of further sexual offences. By virtue of the offence and length of sentence imposed he was also required to register on the Sex Offenders Register for a period of 10 years.
10. Mr Harrison admitted the charge set out in paragraph 2 and current impairment in his Voluntary Removal Application form dated 6 May 2021 and his returned Case Management Form dated 28 May 2020.

Impairment

11. Mr Harrison's fitness to practise is currently impaired by reason of his conviction.
12. Current impairment is not defined in the Nursing and Midwifery Order 2001 or The Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (SI2004/1761). The question of current impairment is often approached by addressing the questions posed by Dame Janet Smith in her Fifth Shipman Report, as endorsed by Mrs Justice Cox in the leading case of *Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant* [2011] EWHC 927 (Admin):

“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

(i) has in the past, and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm;

(ii) has in the past, and/or is she liable in the future to bring the professions into disrepute;

(iii) has in the past, and/or is she liable in the future to breach one of the fundamental tenets of the professions;

(iv) has in the past, and/or is she liable in the future to act dishonestly.”

13. The first three questions of are engaged in this case. The nature of the conviction carries with it an inherent risk posed by Mr Harrison to vulnerable and young patients. This being shown by the necessity to impose a Sexual Harm Prevention Order for a period of 10 years.
14. The nature of the conviction and the sentence imposed has brought the profession into disrepute in that the public's trust in nurses will have been undermined.
15. The nature of the conviction shows that Mr Harrison has failed to act with kindness and compassion placing his own desires above those of his intended victim. Whilst this did not occur during his work as a nurse this type of behaviour breaches one of the fundamental tenets of the profession.
16. Impairment is a forward thinking exercise which looks at the risk the registrant's practice poses in the future. NMC guidance adopts the approach of Silber J in the case of *R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin)* by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.
17. Our Guidance FTP-3a identifies sexual offending as being more difficult to put right.
18. Our guidance FTP-13a identifies that where criminal convictions lead to a custodial sentence the conduct may not be remediable.

19. Mr Harrison remains the subject of a criminal sentence designed to address the risk he poses to the public. It follows that it cannot be said that he is highly unlikely to repeat the behaviour.

Public protection impairment

20. A finding of impairment is necessary on public protection grounds.

21. Based on the above paragraphs, Mr Harrison remains a risk to the public whilst he is the subject of his criminal sentence and a finding of impairment is required to address that risk should Mr Harrison wish to practice as a nurse.

Public interest impairment

22. A finding of impairment is necessary on public interest grounds.

23. In *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that:

“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.”

24. The conduct of Mr Harrison has fallen so far short of the standards the public would expect of professionals caring for them public confidence in the professions has been undermined. This suggests that members of the public might take risks with their own health and wellbeing by avoiding treatment or care from nurses. A finding of impairment is therefore required to maintain public confidence in the profession

and professional standards by marking Mr Harrison's conduct as unacceptable behaviour for a registered professional.

25. Mr Harrison's fitness to practice is impaired on public protection and public interest grounds.

Sanction

26. The appropriate sanction in this case is a Striking Off Order

27. The following aggravating features are present in this case;

- Mr Harrison has been convicted of a serious sexual offence involving the attempted sexual abuse of a 4 month old baby.
- Mr Harrison received a sentence of immediate custody.

28. The following mitigating features are present in this case.

- No clinical concerns have been identified.

29. NMC guidance SAN-2 gives specific guidance on sanctions for sexual offences and criminal convictions. Sexual offending, particularly against children, is identified as likely to seriously undermine and involve a fundamental breach of public trust in nurses, midwives and nursing associates. As a general rule a nurse, midwife or nursing associate should not be permitted to start practicing again until they have completed a sentence for a serious offence. Mr Harrison will not have completed his sentence until 20:30.

30. Taking no further action or imposing a caution order would be inappropriate as they would not address the public protection already identified in this document. These sanctions would not reflect the seriousness of the charge therefore public confidence in the professions and professional standards would not be maintained.

31. Imposing a Conditions of Practice Order would not be appropriate as there are no identified clinical concerns that could be addressed with conditions. This sanction would not reflect the seriousness of the charge therefore public confidence in the professions and professional standards would not be maintained.
32. Imposing a suspension order would temporarily protect the public but would not be appropriate as Mr Harrison would still be subject of a criminal sentence as the conclusion of a maximum period of suspension. This sanction would not reflect the seriousness of the charge therefore public confidence in the professions and professional standards would not be maintained.
33. Mr Harrison's criminal offending and subsequent sentence is fundamentally incompatible with being a registered professional. Only a Striking Off Order be sufficient to protect patients, maintain public confidence in the professions and maintain professional standards.

Referrer's comments

34. Cornerstone Surgery have been invited to comment on this CPD and any relevant response will be made available to the panel.

Interim order

35. An interim order is required in this case. The interim order is necessary for the protection of the public and otherwise in the public interest. This is because any sanction imposed by the panel will not come into immediate effect but only after the expiry of 28 days beginning with the date on which the notice of the order is sent to the registrant or after any appeal is resolved. An interim order of 18 months is necessary to cover any possible appeal period. An interim suspension order is appropriate as this would be consistent with the sanction imposed by the panel and would address public protection and public interest concerns already identified in this document.

Here ends the provisional CPD agreement between the NMC and Mr Harrison. The provisional CPD agreement was signed by Mr Harrison and the NMC on 5 August 2021.

Decision and reasons on the CPD

The panel decided to accept the CPD.

The panel heard and accepted the legal assessor's advice. She referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. She reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Mr Harrison. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Mr Harrison admitted the facts of the charges. Accordingly the panel was satisfied that the charges are found proved by way of Mr Harrison admissions. The panel also found that the statutory ground of conviction has also been proved as set out in the certificate of conviction.

Decision and reasons on impairment

The panel then went on to consider whether Mr Harrison's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Mr Harrison, the panel has exercised its own independent judgement in reaching its decision on impairment.

The panel noted that Mr Harrison had admitted the charge against him. It was also provided with a certificate of conviction which confirmed that on 16 September 2020 at Crown Court in Liverpool Mr Harrison was convicted of:

- Arrange / facilitate the commission of a child sex offence

The panel was therefore satisfied that the facts are proved in this case.

The panel noted that Mr Harrison also admits that his fitness to practise is currently impaired by reason of his conviction. However, the question of current impairment remains a matter for the panel's independent judgement.

The panel finds that limbs a, b and c of *Grant* are engaged. It agreed that the nature of Mr Harrison's conviction is very serious and involved very vulnerable baby who was, in the past, placed at unwarranted risk of harm. It also breached fundamental tenets of the profession and brought the profession into disrepute. The panel also bore in mind that Mr Harrison is subject to a Sexual Harm Prevention Order for a period of 10 years.

The panel bore in mind that the issue it had to determine was that of current impairment. It therefore had to look to the future and consider whether Mr Harrison's conviction was likely, in the future, to put patients at unwarranted risk of harm, breach fundamental tenets of the profession or bring the profession into disrepute. In this regard, it considered the three questions posed by Silber J in *Cohen v GMC* [2008] EWHC 581 (Admin):

- (i) Whether the conduct that led to the charge(s) is easily remediable;
- (ii) Whether it has been remedied;
- (iii) Whether it is highly unlikely to be repeated.

The panel agreed that the nature of Mr Harrison's conduct was difficult to remediate, for the reasons given in paragraph 17 and 18 of the CPD agreement. It also noted that there is no evidence of any insight, remorse or remediation. In light of this, the panel was of the view that the risk of repetition remains.

Therefore, the panel determined that a finding of impairment on public protection grounds is required.

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. It determined that a fully informed member of the public would be appalled by Mr Harrison's conviction, and extremely concerned should a finding of no current impairment be made in light of his convictions.

Having regard to all of the above, the panel was also satisfied that Mr Harrison's fitness to practise as a registered nurse is currently impaired on public interest grounds.

In this respect the panel endorsed paragraphs 11 to 25 of the provisional CPD agreement.

Decision and reasons on sanction

Having found Mr Harrison'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 did not agree with the following aggravating factor set out in paragraphs 28 of the CPD agreement:

- Mr Harrison received a sentence of immediate custody.

The panel considered that this was just part of the conviction. It was of the view that another aggravating factor was:

- Mr Harrison's conduct was premeditated and pre-planned;

The panel also did not agree with the mitigating factor set out in paragraphs 28 of the CPD agreement. It was of the view that there were no mitigating factors in this case.

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 Harrison'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 Harrison'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 Harrison's registration would be a sufficient and appropriate response. Given the nature of the charge in this case, the panel is of the view that there are no practical or workable conditions that could be formulated. Furthermore, the panel concluded that the placing of conditions on Mr Harrison's registration would not adequately address the seriousness of this case and would not protect the public, nor would it satisfy the public interest considerations.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The panel noted that Mr Harrison had received a serious criminal conviction relating to a sexual offence. Mr Harrison has not offered anything by way of insight for this panel to take account of in making its determination.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mr Harrison's actions is fundamentally incompatible with him remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction

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

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

Mr Harrison's conduct represents a significant departure from the standards expected of a registered nurse, and is fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Harrison'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.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel agreed with the CPD 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 Harrison'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 Harrison in writing.

Decision and reasons on interim order

The panel also agreed with paragraph 35 that an interim suspension order was necessary to protect the public, and was otherwise in the public interest. The panel therefore made an 18 month interim suspension order to cover the 28 days before the striking-off order comes into effect and, should Mr Harrison seek to appeal this decision, the time it will take for any appeal to be heard.

That concludes this determination.