

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

**Substantive Meeting
Friday 11 November 2022**

Virtual Meeting

Name of registrant: Jason Pearn

NMC PIN: 92Y0119E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nurse Level 1 (1 April 1995)

Relevant Location: Exeter

Type of case: Conviction

Panel members: Georgie Hill-Jones (Chair, Lay member)
Louise Poley (Registrant member)
Catherine Askey (Registrant member)

Legal Assessor: Peter Jennings

Hearings Coordinator: Renee Melton-Klein

Facts proved: Charge 1

Facts not proved: None

Fitness to practise: Impaired

Sanction: **Striking-off order**

Interim order: **Interim suspension order (18 months)**

Details of charge

That you, a registered nurse:

1. Were convicted on 10 August 2021 of 3 counts of: make an indecent photograph / pseudo-photograph of a child.

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

Decision and reasons on service of Notice of Meeting

As this was a meeting, as distinct from a hearing, the parties were not in attendance. The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mr Pearn's registered email address on 6 October 2022.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation and of the first date at which the meeting may be held.

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

Background

The Nursing and Midwifery Council (NMC) received a referral from the Royal Devon and Exeter Foundation Trust ("the Trust") on 29 April 2020. Mr Pearn commenced employment at the trust on 2 April 1995 having first entered the NMC register as a Registered Nurse, specialising in adult care in April 1995.

The referral was made regarding Mr Pearn's arrest on 28 April 2020 by the Devon and Cornwall Constabulary on suspicion of possession and distributing indecent images of children online. The images were uploaded from an Internet Protocol address linked to Mr Pearn's name. This included ongoing downloading and sharing of indecent imagery via Twitter, with some of the images categorised as the most serious category A, which relates to content showing penetrative sexual activity with children aged eight to 12 years. On 27 May 2021, Mr Pearn was charged with three counts of making indecent images of children described as categories A, B and C.

On 10 August 2021 upon Mr Pearn's own confession at the Exeter Crown Court, he was convicted on indictment, of making indecent photograph / pseudo-photograph of a child x 3, contrary to Section 1(1)(a) Protection of Children Act 1978. On 29 October 2021, Mr Pearn was sentenced to six months imprisonment, suspended for 24 months, and required to undertake Rehabilitation Activity as directed by Probation of up to 45 days. During sentencing the judge ordered that Mr Pearn be placed on a Sexual Harm Prevention Order for a period of seven years under Section 103 Sexual Offences Act 2003.

On 29 June 2021 Mr Pearn was dismissed from the Trust and a referral was made to the Disclosure and Barring Service (DBS). The DBS confirmed that with effect from 5 February 2022, Mr Pearn was barred from working in the care of children and vulnerable adults.

Decision and reasons on facts

The charge concerns Mr Pearn'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). This 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... 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.*

Also, in correspondence with the NMC, Mr Pearn has admitted the conviction.

Representations on impairment

The panel took note of the following submission from the NMC regarding impairment:

29. Despite Mr Pearn's insight into his conduct, the NMC consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behavior (sic). The public expect nurses to act with honesty and integrity so that patients and their family members can trust registered professionals. Mr Pearn's actions undermine public confidence in the nursing profession.

30. The NMC also consider a finding if (sic) impairment is appropriate on public protection grounds as the conviction indicates there is an ongoing risk of harm to patients, particularly children, in Mr Pearn's care.

Decision and reasons on impairment

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

The panel next went on to decide if, as a result of this conviction, Mr Pearn's fitness to practise is currently impaired.

The panel accepted the advice of the legal assessor.

The NMC guidance requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This includes the need to declare and maintain proper standards and to maintain public confidence in the profession and in the NMC as a regulatory body.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. 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 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 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 in Paragraph 76 to refer to Dame Janet Smith's test in her Fifth Shipman Report and said that the panel should ask:

Do our findings of fact in respect of the [doctor's]... conviction...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 considered that there was no evidence to suggest that Mr Pearn has in the past placed patients at risk of harm, noting that the behaviour surrounding his conviction occurred in his private life, and did not involve his clinical practice. The panel therefore considered that limb a. of the above test was not directly engaged by Mr Pearn's past actions. Nonetheless the panel could not exclude the issue of risk to patients for the reasons set out below.

The panel did consider that limbs b. and c. were engaged by Mr Pearn's past conduct. Mr Pearn has received a conviction for serious criminal offences, which undermines trust in the nursing profession and bring it into disrepute. The panel considered that Mr Pearn's conduct has breached the fundamental professional tenets of complying with the law and upholding the reputation of the nursing profession.

The panel had regard to the terms of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) ("the Code"), and considered that the following sections were engaged in this case:

'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

...

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.

...

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 ... integrity at all times...

...

20.4 keep to the laws of the country in which you are practising”

The panel considered that section 1 of the Code was engaged in this case as Mr Pearn’s conduct involved accessing indecent images of children. The panel was of the view that Mr Pearn has also breached section 20 of the Code, by not keeping to the laws of this country and acting without integrity, thereby harming the public trust in nurses and bringing the profession into disrepute.

The panel next considered whether Mr Pearn was liable to act in a way to bring the profession into disrepute and to breach fundamental tenets of the profession in the future. Mr Pearn had pleaded guilty to his offences at the Court; as stated in the NMC submission on impairment the:

Judge states that “you indicated in the Magistrates’ Court that you were going to plead guilty at the first available opportunity” and that this was an “unambiguous, emphatic admission of guilt”.

The panel also noted the following written statement submitted to the NMC by Mr Pearn:

“In the situation that I find myself in it is obvious to me that the outcome will be removal from the register. I’m sure you will have seen my previous emails regarding this. I don’t want to waste the NMC’s valuable time for what is the only outcome. I have moved on from this dark point in my life. Whilst I have given more than half my life to caring for people and would be ecstatic to be able to continue I can see that as trust is a principle tenet of the nursing profession it

would be hard to regain that from my peers and the public. I have undertaken counselling (sic) and therapy specifically tailored to myself and my conviction, prior to any sentencing and at my own cost as well. Working with the Lucy Faithful group and Safer Lives to work out why this has happened, never to defend it as this crime is abhorrent especially to me as a father. I can provide a written statement from my therapist and an apology statement written to the judge. I am complying with my probation team and have complied with the authorities from day one."

The NMC submitted that Mr Pearn did have insight into his conduct and the panel also noted this. However, the panel was of the view that Mr Pearn's conduct was very serious and occurred over a substantial period of time. The panel therefore considered that Mr Pearn did remain liable to act in a way that could bring the profession into disrepute and to breach fundamental tenets of the profession in the future.

Whilst the panel has considered that there is no evidence that Mr Pearn's behaviour placed his patients at risk of harm, as stated, it did involve a failure to safeguard vulnerable individuals. Given the seriousness of the conviction the panel considered that there does remain a risk that Mr Pearn could act in a way to fail to safeguard vulnerable individuals in the future which could include patients. The panel considered that whilst limb a. of Dame Janet Smith's test was not directly engaged by Mr Pearn's past actions, it was engaged in relation to the issue of potential future risk. The panel therefore determined that it is necessary to make a finding of impairment on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are both to protect, promote and maintain the health, safety and wellbeing of the public and patients, and also to uphold and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing profession and upholding the proper professional standards for members of the profession. The panel considered that members of the public, patients and their families place trust in nurses, and they would be shocked to hear of a nurse receiving a conviction for serious criminal offences of this nature. The panel considered that public confidence in the nursing profession and in the NMC as a regulator would be undermined if a finding of impairment were not made in the circumstances of this

case. The panel therefore determined that a finding of impairment was also necessary on public interest grounds.

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

Representations on sanction

The panel noted that in the Notice of Meeting, dated 6 October 2022, the NMC had advised Mr Pearn that it would seek the imposition of a striking-off order if the panel found Mr Pearn's fitness to practise currently impaired.

The panel noted the NMC's submission that:

'Mr Pearn's behaviour resulted in a custodial sentence, suspended for two years and a sexual harm prevention order for 7 years. The conduct and behaviours displayed are extremely serious and regarded 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.'

Decision and reasons on sanction

Having found Mr Pearn'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 decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Criminal convictions for serious offences involving children

The panel also took into account the following mitigating features:

- Voluntary efforts have been made to address his offences, by attending counselling and pertinent courses
- Early admissions to the NMC and the Court acknowledging the seriousness of his offences

Prior to considering the sanctions available to it in ascending order, the panel had regard to the NMC's guidance on considering sanctions for serious cases. The guidance states that:

“Sexual offences include accessing, viewing, or any other offence relating to images or videos involving child sexual abuse or exploitation. These types of offences gravely undermine patients' and the public's trust in nurses, midwives and nursing associates. Some offences relating to images or videos of child sexual abuse are considered more serious than others in the criminal courts. However, in fitness to practise, any conviction relating to images or videos involving child sexual abuse is likely to involve a fundamental breach of the public's trust in nurses, midwives and nursing associates.

Furthermore, the guidance also states that, in general, a nurse or midwife should not be permitted to start practising again until they have completed their sentence for a serious offence, a principle established in the case of *CHRE v GDC and Fleischmann* [2005] EWHC 87 (QB). Although this is a general rule, it does not mean that the panel has no choice but to remove the nurse or midwife from the register permanently. The panel bore in mind that Mr Pearn is currently serving an ongoing suspended sentence, as well as being subject to community orders and a Sexual Harm Prevention Order for a period of seven years since the date he was sentenced.

The panel paid particular regard to these considerations when considering what action to take in this case.

The panel first considered whether to take no action but concluded that this would be wholly inappropriate in view of the seriousness of Mr Pearn's conviction. The panel decided that taking no action would not protect the public and it would not satisfy the wider public interest.

The panel next considered 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, however the Fitness to Practise Committee wants to mark that the behaviour was unacceptable and must not happen again."

The panel considered that Mr Pearn's behaviour was extremely serious and not at the lower end of the spectrum, and therefore a caution order would be inappropriate. The panel decided that imposing a caution order would not protect the public and it would not satisfy the wider public interest.

The panel next considered whether to impose a conditions of practice order. The panel noted that this case did not involve concerns regarding Mr Pearn's clinical practice. The conduct in this case concerned Mr Pearn's behaviour. The panel considered whether conditions such as restricting Mr Pearn from working with child patients might be sufficient

to protect the public, but it bore in mind that the possibility of contact with, for example, visitors under the age of 18 could not feasibly be excluded. The panel was of the view that there were no workable or practicable conditions which could address the behaviour for which Mr Pearn has been convicted. Furthermore, having regard to the high public interest considerations in this case, the panel considered that conditions of practice would not be a proportionate sanction. They would not address the seriousness of the case and would fail to uphold confidence in the nursing profession and in the NMC as a regulator.

The panel next considered whether to impose a suspension order. The panel had regard to the SG, and the factors to consider when deciding whether to impose a suspension order. The panel considered that there was evidence of harmful and deep-seated personality problems on Mr Pearn's part, given the nature of the conviction. Whilst there was no evidence that Mr Pearn had repeated his behaviour since receiving the conviction, the panel considered that there is a risk of repetition.

The panel reminded itself that the offences for which Mr Pearn was convicted involve a fundamental breach of patients' and the public's trust in the nursing profession. The panel determined that a suspension order would not be appropriate or proportionate in the circumstances of this case.

The panel went on to consider whether to impose a striking-off order. The panel had regard to the NMC's guidance on considering sanctions for serious cases, which states that very often in cases of this kind, the only proportionate sanction will be to remove the nurse or midwife from the register. The panel considered that this was applicable in the circumstances of this case, and that Mr Pearn's behaviour raised fundamental questions about his professionalism. The panel considered that a striking-off order was the only sanction sufficient to protect patients and members of the public and to maintain professional standards, and that public confidence in the nursing profession would not be maintained if Mr Pearn were not removed from the register.

Balancing all of these factors and after taking into account all the documentary 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 Pearn's behaviour in bringing the profession into disrepute by adversely

affecting the public's view of how registered nurses conduct themselves, the panel has concluded that nothing short of a striking-off order would be sufficient in this case. The panel considered that this order was necessary to maintain public confidence in the profession, and to declare to the public and the profession the standard of behaviour required of a registered nurse.

This will be confirmed to Mr Pearn 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 Pearn's own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Decision and reasons on interim order

Under Article 31 of the Nursing and Midwifery Order 2001 ("the Order"), the panel considered whether an interim order should be imposed in this case. A panel may only make an interim order if it is satisfied that it is necessary for the protection of the public, and/or is otherwise in the public interest, and/or is in the registrant's own interests.

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 suspension order will be replaced by the striking-off order 28 days after Mr Pearn is sent the decision of this hearing in writing.

That concludes this determination.