

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

**Substantive Hearing
Tuesday, 30 August 2022
Wednesday 26 October 2022**

Virtual Hearing

Name of registrant: Tommaso Rasetti

NMC PIN: 10A0053C

Part(s) of the register: Nursing, Sub Part 1
RN1, Registered Nurse – Adult (11 January 2010)

Area of registered address: Hampshire

Type of case: Conviction, Caution & Misconduct

Panel members: Jonathan Storey (Chair, Lay member)
Natasha Duke (Registrant member)
Rachel Barber (Lay member)

Legal Assessor: Peter Jennings

Hearings Coordinator: Samiz Mustak (30 August 2022)
Anya Sharma (26 October 2022)

Nursing and Midwifery Council: Represented by David Claydon, Case Presenter

Mr Rasetti: Not present or represented

Facts proved: Charges 1, 2 & 3

Facts not proved: None

Fitness to practise: **Impaired**

Sanction: **Strike-off**

Interim order: **Interim Suspension Order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Rasetti was not in attendance and that the Notice of Hearing letter had been sent to his e-mail address as recorded on the Nursing and Midwifery Council (NMC)'s register on 6 July 2022.

Mr Claydon, on behalf of the NMC, submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, date and link to the virtual hearing and, amongst other things, information about Mr Rasetti's right to attend, be present and call evidence as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Rasetti has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Rasetti

The panel next considered whether it should proceed in the absence of Mr Rasetti. It had regard to Rule 21 and heard the submissions of Mr Claydon who invited the panel to continue in the absence of Mr Rasetti.

Mr Claydon referred the panel to the Proceeding in Absence bundle and set out the various e-mail exchanges between the NMC and Mr Rasetti. He told the panel that on 13 July 2022, the NMC received the following e-mail from Mr Rasetti:

'I am not part of the NMC anymore and I am not planning to reapply for any reason. I am not practicing anymore the nursing profession and I have more important issues to sort out. So I do not understand why you still sending me email regarding this hearing.

Therefore I am not planning to attend it and please stop contacting me.'

Mr Claydon further set out the following e-mail from Mr Rasetti, dated 18 August 2022:

'I am not registered with the NMC anymore and I am not planning at all to register again in the future.

Please stop sending me emails and I will not participate to any hearings'

Mr Claydon submitted that given the response from Mr Claydon, the panel could take the view that Mr Rasetti has voluntarily absented himself. Mr Claydon further submitted that no application for an adjournment has been made by Mr Rasetti, and that there is nothing to suggest that adjourning the hearing would secure Mr Rasetti's attendance, especially considering his responses. Further, Mr Claydon submitted that it is in the public interest for this case to be disposed of expeditiously.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'* as referred to in the case of *R v Jones (Anthony William)* [2002] UKHL 5.

The panel decided to proceed in the absence of Mr Rasetti. In reaching its decision, the panel considered the submissions of Mr Claydon and the advice of the legal assessor. It

has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Rasetti;
- Mr Rasetti has informed the NMC that he does not wish to attend the hearing, nor does he wish to further engage;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- The charges include events that have amounted to convictions in the criminal courts; and,
- There is a strong public interest in the expeditious disposal of this case.

The panel acknowledged that there would inevitably be some disadvantage to Mr Rasetti in proceeding in his absence and with no representative present. Although the evidence upon which the NMC relies had been sent to his e-mail address as recorded on the NMC's register, Mr Rasetti has stated that he does not wish to engage with the proceedings and will not therefore be able to challenge the evidence relied upon by the NMC in person or give evidence on his own behalf. The panel determined, however, that it can explore any inconsistencies in the evidence which it may identify. Furthermore, the disadvantage to Mr Rasetti stems from his own decisions to absent himself from the hearing, waive his right to attend or be represented, and not provide evidence or make submissions on his own behalf.

In these circumstances, the panel has decided that it is fair, appropriate, and proportionate to proceed in the absence of Mr Rasetti. The panel will draw no adverse inference from Mr Rasetti's absence in its findings of fact.

Details of charge, as amended

That you, a registered nurse

1. On 16 July 2021 were convicted at Southampton Crown Court of the following criminal offences
 - a. Adult attempt to engage in sexual communication with a child;
 - b. Attempt to cause/incite a girl 13 to 15 to engage in sexual activity – no penetration – offender 18 or over;
 - c. Make an indecent photograph/pseudo-photograph of a child;
 - d. Distribute an indecent photograph/pseudo-photograph of a child;
2. On the 21 September 2020 accepted a caution for the offence of possess a controlled drug of class B- Cannabis/cannabis resin.
3. On accepting the caution detailed in charge 2, failed to disclose the same to the NMC which you were required to do.

AND in light of the above, your fitness to practise is impaired by reason of your conviction in relation to charge 1, by reason of caution in relation to charge 2 and by reason of misconduct in relation to charge 3.

Decision and reasons on application to amend the charge

Mr Claydon made an application to amend the working of charge 1 b. He submitted that the amendment as applied for is a typographical correction and would better reflect the evidence in this case. Further, to make this amendment would cause no unfairness or injustice to any party. Mr Claydon applied to amend the charge as follows:

1. *On 16 July 2021 were convicted at Southampton Crown Court of the following criminal offences*

b. Attempt to cause/incite a girl 13 to 5 15 to engage in sexual activity – no penetration – offender 18 or over;

The legal assessor advised the panel that Rule 28 provides:

‘(1) at any stage before making its findings of fact, in accordance with [rule 24(5) or (11)] [...] the Fitness to Practise Committee, may amend:

(a) ...

(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.’

The panel noted that the proposed amendment arises out of a typographical error in the wording of the charge as opposed to any amendment to the substance of the charge. It considered that the proposed amendment would ensure that the charge better reflects the evidence in this case including the Certificate of Conviction. Therefore, the panel determined that charge 1 b could be amended with no unfairness or injustice caused.

Accordingly, the panel amended the wording of charge 1 b as sought from ‘13 – 5’ to ‘13 – 15’.

Background

Mr Rasetti was referred to the NMC on 28 August 2019 by Hampshire Constabulary due to his arrest for sexual offences.

Mr Rasetti was subsequently convicted of the following offences:

- Attempted s.15a sexual communications with a child, contrary to section 1(1) of the Criminal Attempts Act 1981.
- Attempting to cause or incite a child to engage in sexual activity, contrary to section 1(1) of the Criminal Attempts Act 1981.
- Making indecent photographs of a child, contrary to section 1(1)(a) of the Protection of Children Act 1978.
- Distributing indecent photographs, contrary to section 1(1)(b) of the Protection of Children Act 1978.

Following the above conviction, Mr Rasetti was sentenced on 13 August 2021. Mr Rasetti received a sentence of six months imprisonment, suspended for 24 months. The sentence also included a requirement to complete 150 hours of unpaid work, participate in the Horizon Programme for 31 sessions and complete a ten-day Rehabilitation Activity Requirement. Mr Rasetti is subject to a Sexual Harm Prevention Order for seven years, and to the notification requirements of the Sexual Offences Act for seven years. The sentencing judge ordered the forfeiture and destruction of the electronic devices seized by the police.

Further, when police searched Mr Rasetti's residence for the above offence, cannabis was found in Mr Rasetti's residence of a street value of £400 - £700. Mr Rasetti accepted a police caution on 21 September 2020 but did not inform the NMC of this.

Decision and reasons on facts

Charge 1:

1. On 16 July 2021 were convicted at Southampton Crown Court of the following criminal offences

- a. Adult attempt to engage in sexual communication with a child;

- b. Attempt to cause/incite a girl 13 to 15 to engage in sexual activity – no penetration – offender 18 or over;
- c. Make an indecent photograph/pseudo-photograph of a child;
- d. Distribute an indecent photograph/pseudo-photograph of a child;

The panel found this charge proved in its entirety.

In reaching its decision, the panel took into account the certificate of conviction, dated 4 January 2022, and an e-mail from Mr Rasetti's employer dated 7 May 2020.

The panel noted that the certificate of conviction, dated 4 January 2022, includes only the name of the convicted person, Mr Rasetti, but does not contain any further information.

The panel determined that over the course of scheduling this hearing, Mr Rasetti had been sent several e-mails informing him of this hearing and setting out the charges to be considered by the panel. It noted that Mr Rasetti has never contested the evidence to be put forward by the NMC, which includes the certificate of conviction. He has said that he will not be practising as a nurse and has never suggested that he was not the person who was convicted.

Further, the panel noted that on 7 May 2020, Mr Rasetti's employer provided the NMC with an e-mail in which it sets out:

'He disclosed that this related to potential drug offences – supply of cannabis - and also alleged distribution of child pornography. He did not disclose the allegation pertaining to sexual communication with a child. He advised us that he had not disclosed the investigation to us on advice from his RCN Solicitor as he had not been convicted of any offence but was only under investigation.'

Taking all of the above into consideration, the panel was satisfied that the person listed on the Certificate of Conviction is Mr Rasetti.

Having been provided with a copy of the Certificate of Conviction, the panel finds charge 1 provide in its entirety in accordance with Rule 31 (2) and (3).

Charge 2:

2. On the 21 September 2020 accepted a caution for the offence of possess a controlled drug of class B- Cannabis/cannabis resin.

The panel found this charge proved.

Having been provided with a copy of the Record of Caution, dated 21 September 2020, the panel finds charge 2 proved. It noted that Mr Rasetti's name and address are on the copy of the Record of Caution and that he informed his employer about the drug offence. The panel is satisfied that Mr Rasetti is the person to whom the caution relates.

Charge 3:

3. On accepting the caution detailed in charge 2, failed to disclose the same to the NMC which you were required to do.

The panel found this charge proved.

In reaching its decision, the panel took into account the witness evidence of Witness 1 and the Record of Caution dated 21 September 2020.

It noted that Witness 1 provides in their written statement:

‘Section 23 of the NMC Code (effective 31 March 2015) reads as follows:

23. Cooperate with all investigations and audits

This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register. To achieve this, you must:

...

23.2. tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction) ...

...I produce at Exhibit FS/4 a print-out from the NMC website, which sets out the process of self-referral. This guidance is available to registrants and members of the public. From my review of the register, I can confirm that there is no record of the NMC receiving a self-referral from the Registrant relating to the caution for cannabis possession. If this had been received, it would have been recorded by the Fitness to Practice team of the NMC but I do not know where.’

The panel also noted the NMC guidance *‘Making a self-referral’*.

The panel was satisfied that Mr Rasetti, as a registered nurse, had a duty to inform the NMC in accordance with section 23.2 of the Code as soon as possible about any caution or conviction. It noted that no evidence can be found that Mr Rasetti informed the NMC or made a self-referral as required by the Code and the *‘Making a self-referral’* guidance.

On this basis, the panel concluded that Mr Rasetti failed to inform the NMC of his 21 September 2020 caution, which he was required to do.

The panel therefore found charge 3 proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider whether Mr Rasetti's fitness to practise is impaired by reason of his convictions (charge 1) or of his caution (charge 2). It also considered whether the facts found proved in charge 3 amounted to misconduct and, if so, whether Mr Rasetti's fitness to practise is currently impaired as a result. 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, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage, and it has therefore exercised its own professional judgement.

In relation to misconduct, the panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amounted to misconduct.

Secondly, only if the facts found proved amounted to misconduct, the panel must decide whether, in all the circumstances, Mr Rasetti's fitness to practise is currently impaired as a result of that misconduct. Similarly, in relation to the convictions and caution, the panel considered whether they were serious and, if so, whether Mr Rasetti's fitness to practise is impaired as a result.

Submissions on misconduct and impairment

Mr Claydon invited the panel to take the view that the facts found proved amount to misconduct.

Mr Claydon identified the specific, relevant standards where the NMC contends that Mr Rasetti's behaviour amounted to misconduct, and submitted that paragraphs 20.1, 20.4 and 23.2 of the Code have all been engaged.

Mr Claydon reminded the panel that there is no standard of proof at this stage and that the panel must exercise its professional judgement.

Mr Claydon further reminded the panel that whilst a breach of the Code does not automatically amount to misconduct, in relation to charges 2 and 3, Code 23.2 specifically outlines the expectation to inform the NMC of any conviction or caution. Mr Claydon submitted that Mr Rasetti, as found above, failed to inform the NMC and he therefore invited the panel to conclude that his actions did amount to misconduct.

Addressing the panel next on impairment, Mr Claydon referred the panel to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and the four-limb "test". Mr Claydon submitted that all but the final limb (relating to dishonesty which is not part of the charges) are engaged.

Mr Claydon addressed the panel in relation to the three limbs.

In respect of limb one, Mr Claydon submitted that, whilst it is accepted by the NMC that Mr Rasetti's conviction relates to matters concerning his private life, there was potential for harm as Mr Rasetti did not inform the NMC and his employer.

Addressing the panel on the second and third limbs, Mr Claydon submitted that Mr Rasetti's conviction and caution did bring the profession into disrepute. He further submitted that the public expect nurses to abide by the Code as set by their regulator and

that, as found proved above, Mr Rasetti did not do this thus breaching fundamental tenets of nursing.

Further, Mr Claydon pointed out that Mr Rasetti has not provided any evidence of insight, remorse, or remediation. He also said that Mr Rasetti has chosen not to engage with the NMC and has gone so far as to say he does not wish to be contacted by the NMC.

Mr Claydon submitted that in cases of conviction, where the offence is of such a nature as here, remediation is difficult to evidence. However, if the panel were of the view that the actions could be remediated, the panel is to expect evidence of positive remedial action, which is absent here.

Mr Claydon submitted the panel that the aggravating feature to consider is the lack of insight, remorse, and remediation. He submitted that due to the lack of insight, remorse, and remediation, there is a risk of repetition and consequently a real risk of harm. Mr Claydon submitted that members of the public would be concerned by Mr Rasetti's conviction and caution and that a finding of impairment is required to protect the public and to maintain confidence in the professions and the NMC as a regulator.

Decisions and reasons on misconduct

The panel accepted the advice of the legal assessor.

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a 'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'

When determining whether Mr Rasetti's failure to inform the NMC of the caution amounted to misconduct, and when assessing the seriousness of his convictions and caution, the

panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code).

The panel was of the view that Mr Rasetti's actions did fall significantly short of the standards expected of a registered nurse, and that his actions amounted to a breach of the Code. Specifically:

'20.1 keep to and uphold the standards and values set out in the Code...

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

23.2 tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction) ...'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

These convictions are for sexual offences which involved, or potentially involved, children. When considering the facts of the case and having the Certificate of Conviction and the sentencing remarks before it, the panel determined that Mr Rasetti's convictions did fall seriously short of the conduct and standards expected of a nurse. It is satisfied that the public and fellow nurses would find Mr Rasetti's behaviour deplorable.

Further, having considered the Record of the Caution before it and Mr Rasetti's signed declaration to accept the caution, the panel determined that Mr Rasetti's caution also fell seriously short of the conduct and standards expected of a nurse.

The panel further noted that Mr Rasetti did not inform the NMC of his caution in charge 2 and that due to his actions, there was a potential for harm. It also noted the quantity of the

cannabis that had been found which suggested that this may be prolonged use of cannabis as opposed to a one-off use. Though the panel did consider that there is no evidence to suggest that Mr Rasetti's clinical practice was impacted by his use, it noted the effects of the drug and how it could impact an individual should they decide to work under its influence. The panel further noted that, once Mr Rasetti's employer came to learn of the caution, he was dismissed from his role. This indicated the seriousness with which the employer viewed his actions.

Nurses handle drugs in the course of their duties and the illegal use of drugs is in the panel's view a serious breach of acceptable standards with potential implications both for the safety of patients and for the reputation of the profession. It regarded Mr Rasetti's failure to inform the NMC of his caution, as required by the Code, as a serious failure in his obligations as a registered nurse.

The panel determined that Mr Rasetti's actions in not informing the NMC of his caution did fall short of the conduct and standards expected of a nurse and that it amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of Mr Rasetti's conviction, caution and misconduct, his 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. 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.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant*. 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.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the [doctor's] misconduct ... , conviction, caution or ... 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) ...'*

Although the conviction and caution were not related to Mr Rasetti's clinical practice and occurred in Mr Rasetti's private life, the nature of the criminal conduct is such that it potentially impacts on the safety of patients.

In relation to charge 1, the panel noted the serious nature of the charge. Nurses are expected to conduct themselves in a manner that upholds the standards of nursing and to obey the law, and this was not done by Mr Rasetti. In the panel's view, a member of the public in Mr Rasetti's care may not be safe, or indeed, feel safe. The panel determined that Mr Rasetti is liable to put patients at risk of harm in the future, and that his conviction, for sexual offences, has brought the nursing profession into disrepute and breached the fundamental professional principle that nurses comply with the law, uphold standards, and do not behave in a manner which is likely to reduce the trust which patients have in them.

Regarding charge 2, the panel noted that Mr Rasetti was cautioned for possessing a quantity of cannabis with a street value of £400-£700. It noted that this is not a small amount and suggests that the cannabis may not have been for one-off use but more prolonged. It again noted that there is no evidence that Mr Rasetti's clinical practice was impacted by his use. The panel was however concerned about the potential dangers of nurses who are habitual users of illegal drugs providing care to patients. The panel also considered that nurses by the nature of their role must handle controlled drugs and that the public needs to have confidence in nurses who manage such medications.

In the panel's judgement, Mr Rasetti is liable to place patients at a risk of harm in the future, and his caution for the possession of cannabis has brought the nursing profession into disrepute and breached fundamental tenets of the profession.

Concerning charge 3, the panel noted that, as found above, Mr Rasetti failed to inform the NMC of his caution in charge 2. In principle, the panel regards this as remediable, but the panel reminded itself that Mr Rasetti has informed the NMC that he does not wish to engage or be a registered nurse and has asked for contact not to be made with him. Nurses have an obligation to engage with the NMC and, due to Mr Rasetti's lack of engagement, there is no evidence before the panel to demonstrate that Mr Rasetti has remediated his actions or how he may remediate them in the future. The panel therefore determined that there is a risk of repetition in that Mr Rasetti may repeat such actions in the future.

The panel noted that there is no information before it to evidence any insight or remorse. It further noted that there is also no evidence to show Mr Rasetti's understanding of the impacts which his actions have had on the public, on his role as a nurse and on the reputation of the nursing profession in general.

The panel accordingly determined that Mr Rasetti's convictions, caution and misconduct create a risk of repetition which puts the public at risk of future harm and may cause further damage to the reputation of the profession. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC: to protect, promote and maintain the health, safety, and well-being of the public and patients, and also to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding proper professional standards for members of those professions.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mr Rasetti's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Rasetti'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 Rasetti off the register. As a result of this order the NMC register will show that Mr Rasetti 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 to the submissions of Mr Claydon and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Claydon referred the panel to the NMC SG and submitted that it is the NMC's position that the misconduct, caution and convictions in this matter warrant nothing less than a striking-off order. He submitted that having found Mr Rasetti's fitness to practise impaired, the next question for the panel is to decide on sanction, considering the public interest, which encompasses three separate strands, namely the protection of patients and others, the maintenance of public confidence in the professions and the regulatory body and the declaring and upholding of standards of conduct and behaviour.

Mr Claydon submitted that the aggravating features in this case are that these were serious sexual offences and that they related to the attempted contact and the intent to engage a child in sexual communications. He submitted that this was compounded by a failure to disclose the caution to the NMC as required, which indicates a further attitudinal issue which the panel has outlined in the fact finding and impairment stage. Mr Claydon submitted that Mr Rasetti has failed to demonstrate any insight, remorse and remediation.

Mr Claydon submitted that these features should be taken into account by the panel when considering sanction in this matter. Mr Claydon invited the panel to conclude that taking no action or imposing a caution order is inappropriate in this case, given the panel's findings. He submitted that to take no action or impose a caution order would not be sufficient to uphold the public interest in this matter as the case is simply too serious.

In considering a conditions of practice order, Mr Claydon submitted that it is neither appropriate nor proportionate, as these are not clinical issues but attitudinal issues which flow from serious convictions. He submitted that because of the lack of insight, remorse or

remediation and the lack of engagement there is nothing from Mr Rasetti to indicate that he would cooperate with conditions.

Mr Claydon submitted that the panel may therefore conclude that the only appropriate sanction is either a suspension order or a striking-off order. He submitted that the case warranted not temporary removal but permanent removal, given the nature and gravity of the offences and the subsequent failure to disclose to the NMC the caution relating to a large amount of cannabis.

Mr Claydon referred the panel to the guidance for cases involving sexual misconduct. He submitted that sexual misconduct will be particularly serious where there is a requirement to register as a sex offender. Mr Claydon submitted that the level of risk to patients will be an important factor and he referred the panel to its reasoning on the possible impact of the use of drugs on a nurse's work. Mr Claydon submitted that whilst it is noted that there were no concerns in regard to Mr Rasetti's nursing practice, the panel did cite this in their reasons.

Mr Claydon submitted that the failure to disclose the caution is also serious and it is noted that Mr Rasetti was dismissed by his employer when that came to light. He submitted that the guidance states that any conviction relating to images or videos involving children is likely to involve a fundamental breach of the public's trust in the nursing profession.

Mr Claydon submitted that the situation here of both serious convictions which have not been addressed regarding insight, remorse or remediation and a failure to be open with the NMC regarding a caution points to serious attitudinal issues. Mr Claydon submitted that he would invite the panel to conclude that the only appropriate sanction in this case is that of a striking-off order. A lesser sanction of a suspension order would not address the gravity of the offences and the attitudinal issues.

Decision and reasons on sanction

Having found Mr Rasetti'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:

- The serious nature of the offences for which Mr Rasetti has been convicted and cautioned
- Mr Rasetti has not provided any insight, remorse or remediation into the failings
- Significant attitudinal concerns in Mr Rasetti not disclosing a caution to the NMC
- Mr Rasetti has asked the NMC to stop contacting him regarding this case and has not engaged further

The panel found no mitigating features, though it noted that Mr Rasetti had pleaded guilty to the offences in the criminal courts and had accepted the caution.

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 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 Rasetti'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 Rasetti'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 Rasetti's registration would be a sufficient and appropriate response. The panel was of the view that Mr Rasetti has not provided any insight into his failings and has not demonstrated any remorse or remediation into the regulatory concerns against him. The panel is of the view that there are no practicable or workable conditions that could be formulated, given the nature of the charges in this case. The panel was of the view that the misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Rasetti's registration would not adequately address the seriousness of this case and would not protect the public or meet the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- ...
- ...

Mr Rasetti has shown no insight, the charges do not relate to a single incident, and the panel has found evidence of attitudinal problems. In the panel's view Mr Rasetti's conduct, as highlighted by the facts found proved, was a significant departure from the

standards expected of a registered nurse. 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?*

Although there were no concerns about Mr Rasetti's clinical competence, the panel was of the view that, based on the severity of the offending and the fact that it found three grounds of impairment - conviction, caution and misconduct, Mr Rasetti's actions were significant departures from the standards expected of a registered nurse and were fundamentally incompatible with him remaining on the register. The panel considered that to allow Mr Rasetti to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel noted that the SG states that the courts have supported decisions to strike off healthcare professionals where there has been a lack of probity, honesty or trustworthiness, notwithstanding that in other regards there were no concerns around the professional's clinical skills.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is a striking-off order. This is the only order that will adequately protect the public. Having regard to the effect of Mr Rasetti'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 the public, to maintain public confidence in the profession, and to declare to the public and the profession the standards of behaviour required of a registered nurse.

This will be confirmed to Mr Rasetti in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period or the conclusion of any appeal, 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 is in Mr Rasetti's own interest. The panel accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Claydon. He submitted that an interim suspension order for a period of 18 months should be imposed by the panel. He submitted that given the panel's decision of strike off, it is necessary to ensure that Mr Rasetti is not permitted to practise without any restriction during the appeal period.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. In reaching the decision to impose an interim order, the panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination on the substantive order. The panel took into account that in the event of an appeal the case may not be heard by the courts for some considerable time. The panel therefore imposed an interim suspension order for a period of 18 months.

In reaching its decision the panel took into account the impact that an interim order will have on Mr Rasetti. The panel is satisfied that the order is proportionate and properly balances the need to protect the public and the public interest with the effects on Mr Rasetti.

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

That concludes this determination.