

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

**Substantive Meeting
Friday 3 March 2023**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ
10 George Street, Edinburgh, EH2 2PF

Name of Registrant:	Samuel Hicks
NMC PIN	18G4398E
Part(s) of the register:	Registered Learning Disabilities Nurse Effective – 30 September 2018
Relevant Location:	North Yorkshire
Type of case:	Conviction
Panel members:	David Crompton (Chair, Lay member) Florence Mitchell (Registrant member) Fiona Abbott (Lay member)
Legal Assessor:	Justin Gau
Hearings Coordinator:	Amanda Ansah
Mr Hicks:	Not present and unrepresented
Facts proved:	Charges 1a, 1b, 1c
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Suspension order (18 months)

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Mr Hicks' registered email address on 17 January 2023.

The panel accepted the advice of the legal assessor.

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

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

Details of charge

That you, a registered nurse:

- 1) On 20 October 2021 at the Crown Court at York were convicted of:
 - a) Making indecent photographs of children x 3;
 - b) Possessing and extreme pornographic image;
 - c) Possession of a prohibited image.

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

Decision and reasons on facts

The charges concern Mr Hicks' 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) and (3). These state:

'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 (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.*
- (3) *The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.'*

Background

Mr Hicks was referred to the NMC on 26 June 2020 by Tees, Esk and Wear Valleys NHS Foundation Trust (the Trust), having been arrested on 18 June 2020 in relation to the following allegations:

- Three counts of making an indecent photograph/pseudo-photograph of a child;
- One count of possessing a prohibited image of a child; and
- One count of possessing extreme pornographic image/images portraying an act of intercourse/oral sex with a dead/live animal.

On 22 June 2020, Mr Hicks was suspended from the Trust on receipt of allegations that he had been charged with a serious criminal offence. Mr Hicks was subsequently charged on 21 September 2021.

Mr Hicks pleaded guilty and was convicted at York Crown Court on 20 October 2021 on 3 counts of making indecent photographs of children, possessing an extreme pornographic image and possession of prohibited image.

On 8 December 2021, Mr Hicks was sentenced to:

- 10 months imprisonment suspended for 18 months

- 150 hours unpaid work in the community
- 46 days rehabilitation activity requirement
- Sex Offenders Registration 10 years
- Sexual Harm prevention Order 10 years
- Victim Surcharge £149.

Fitness to practise

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

Representations on impairment

The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC reminded the panel that impairment needs to be considered as of today's date, i.e., whether Mr Hicks' fitness to practice is currently impaired as a result of his conviction. The NMC defines impairment as a registered professional's suitability to remain on the register without restriction. Where the acts or omissions of a registered professional are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the NMC's Code of Conduct.

The NMC submitted that Mr Hicks was in breach of the following provisions of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ("the Code") that he was subject to at the relevant time:

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 ...

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

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

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

The NMC further submitted that Mr Hicks' actions are a serious departure from the standards expected of a registered professional. Mr Hicks' has been convicted of a number of serious criminal offences, which impact upon public protection and undermine trust and confidence in the profession. Mr Hicks' actions and behaviour has brought the profession into disrepute and is likely to erode the trust and confidence in the profession.

The NMC consider the following questions from the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin)) (Grant) are relevant in all cases when assessing past conduct and future risk:

- i) has [Mr Hicks] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or*
- ii) has [Mr Hicks] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
- iii) has [Mr Hicks] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and/or*
- iv) has [Mr Hicks] in the past acted dishonestly and/or is liable to act dishonestly in the future*

The NMC submitted that limbs i) – iii) of the Grant test are engaged in this case and although the concerns do not relate to Mr Hicks' clinical practice, the NMC form the view that they represent a risk of harm to children. Further, the nature of the conviction indicates a sexual interest in children, which in turn could mean that there is a risk of harm to a child, including any children that Mr Hicks would come into contact with during his practice as a nurse.

The NMC referred the panel to its guidance on Insight and strengthened practice where it states that it should first be considered whether the concerns are capable of being addressed and that a small number of concerns are so serious that it may be less easy for the nurse to put right the conduct. These concerns include “criminal convictions that led to custodial sentences”.

The NMC submitted that it is unlikely that Mr Hicks would be able to address and put right the concerns and he has not engaged in the NMC fitness to practise proceedings, neither has he worked as a registered professional since he was suspended from the Trust.

The NMC submitted that because of this, there is a continuing risk to the public due to Mr Hicks’ lack of insight and there would be a risk of repetition and consequent harm if Mr Hicks were to return to unrestricted practice as a nurse.

The NMC consider there is a public protection and public interest requirement in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311, *Nandi v GMC* [2004] EWHC 2317 (Admin), and *GMC v Meadow* [2007] QB 462 (Admin).

Decision and reasons on impairment

The panel next went on to decide if as a result of the conviction, Mr Hicks’s 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. To justify that trust, nurses must 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 judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* 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.'

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, deficient professional performance, adverse health, conviction, caution or determination show that his/her/their fitness to practise is impaired in the sense that S/He/They:

- 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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel finds that patients are at risk of physical and emotional harm as a result of Mr Hicks's conduct and conviction. Mr Hicks's conviction had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel had regard to The Code: Professional standards of practice and behaviour for nurses and midwives (2018) ("the Code") and determined that as a result of Mr Hicks' conviction, the following provisions of the Code have been breached:

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 ...

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

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

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

Regarding insight, the panel was of the view that given the nature of the concerns it would be difficult for Mr Hicks to demonstrate any insight. Nevertheless, he has not attempted to do this as he has not engaged with these proceedings and has not provided any response to the concerns raised about his practice.

In its consideration of whether Mr Hicks has taken steps to strengthen his practice, the panel noted that given his suspension from the Trust and no information regarding where he is currently working, he has not been able to demonstrate strengthened practice.

The panel is of the view that although the conduct does not relate to Mr Hicks' clinical practice, it represents a risk of harm to children. The nature of the conviction indicates a sexual interest in children, which in turn could mean that there is a risk of harm to a child, including any children that Mr Hicks would come into contact with during his practice as a nurse. The panel 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 also required. It was of the view that an informed member of the public would be shocked to know that Mr Hicks were allowed to practice without restriction despite being convicted of the offences outlined. It determined that public confidence and trust in the regulator would be undermined if a finding of impairment were not made in these circumstances.

Having regard to all of the above, the panel was satisfied that Mr Hicks' 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 Hicks off the register. The effect of this order is that the NMC register will show that Mr Hicks 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 the NMC seek the imposition of a striking-off order if it found Mr Hicks' fitness to practise currently impaired. The NMC submitted that a striking-off order would be the most appropriate and proportionate sanction to impose in this case and referred the panel to the NMC Guidance where it states: *"that conduct ranging from criminal convictions for sexual offences ... could undermine a nurse, midwife or nursing associate's trustworthiness as a registered professional"*.

The NMC further submitted that although the conviction itself was not related to Mr Hicks' clinical practice, the facts surrounding the conviction are serious and have the potential for unwarranted patient harm and to undermine trust and confidence in the nursing profession. It is fundamentally incompatible with ongoing registration as a nurse. The conduct and behaviour displayed are extremely serious and regarded as being fundamentally incompatible with being a registered professional. Allowing continued registration would be seriously damaging to the reputation of the profession.

Decision and reasons on sanction

Having found Mr Hicks' 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 took into account the following aggravating features:

- Conviction for serious sexual offences
- Conduct was not isolated
- Seriousness reflected in the fact that a suspended prison sentence was imposed
- Risk of repetition
- Risk of serious damage to the reputation of the profession

The panel also took into account the following mitigating feature:

- Some underlying health issues referred to in the criminal proceedings (referenced in the judge's comments at court)

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 Hicks' 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 Hicks' 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 Hicks' registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. Furthermore, the panel concluded that the placing of conditions on Mr Hicks' registration would not adequately address the seriousness of this case and would not protect the public.

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

- *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;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*

- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse and displayed harmful deep-seated personality problems. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mr Hicks' actions is fundamentally incompatible with Mr Hicks 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 Hicks' 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 particular case demonstrate that Mr Hicks' 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 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 Hicks' 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 Hicks 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 Hicks' own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC that an interim suspension order should be imposed on the basis that it is necessary for the protection of the public and otherwise in the public interest. In the absence of such an order and in the event of an appeal, Mr Hicks' would be allowed to practise without restriction pending the outcome of any such appeal.

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. 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.

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 for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months in order to meet the public protection and public interest issues identified in this case.

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

That concludes this determination.