

**Nursing and Midwifery Council**  
**Fitness to Practise Committee**  
**Consensual Panel Determination Hearing**  
**27 August 2019**

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

<b>Name of registrant:</b>	Ion Urse
<b>NMC PIN:</b>	10A0132C
<b>Part(s) of the register:</b>	RN1 Registered Nurse – Sub Part 1 Adult – 25 January 2010
<b>Area of Registered Address:</b>	England
<b>Type of Case:</b>	Conviction
<b>Panel Members:</b>	Jacqueline Mitton (Chair, Lay member) Michael Duque (Registrant member) Derek McFaul (Lay member)
<b>Legal Assessor:</b>	John Caudle
<b>Panel Secretary:</b>	Charlie Russell
<b>Mr Urse:</b>	Not present and not represented
<b>Nursing and Midwifery Council:</b>	Represented by Neil Jeffs, Case Presenter
<b>Consensual Panel Determination:</b>	Accepted
<b>Facts proved by admission:</b>	All
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Strike Off
<b>Interim Order:</b>	Suspension (18 months)

## **Decision on service of notice of hearing**

The panel was informed at the start of this hearing that Mr Urse was not in attendance and not represented in his absence. Written notice of this hearing had been sent to Mr Urse's registered address by recorded delivery and by first class post on 26 July 2019. Notice of hearing was also sent to Mr Urse's representative at the Royal College of Nursing (RCN) on the same date.

The panel had regard to the Royal Mail 'Track and Trace' printout which showed the notice of hearing was delivered to Mr Urse's neighbour at his registered address on 27 July 2019.

Mr Jeffs, on behalf of the Nursing and Midwifery Council (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, dates and venue of the hearing and, amongst other things, information about Mr Urse's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of the information available, the panel was satisfied that notice had been served, as advised by the legal assessor, in compliance and accordance with Rules 11 and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (The Rules).

## Decision on proceeding in the absence of Mr Urse

The panel then considered whether to proceed in the absence of Mr Urse.

Mr Jeffs accepted that the Consensual Panel Determination (CPD) agreement (“the provisional agreement”) does not provide information on Mr Urse’s non-attendance as is usually expected. However, he submitted that there is ongoing communication between Mr Urse’s NMC Case Officer and his representative at the RCN. Mr Jeffs directed the panel to an email dated 16 August 2019, from Mr Urse’s named representative at the RCN. That email reads:

*“As promised, please now find attached signed CPD agreement on behalf of the Registrant.*

*I would be grateful if you could acknowledge safe receipt of this email and thereafter, confirm whether the Panel has accepted the agreement as soon as possible on 27 August 2019.”*

Mr Jeffs invited the panel to proceed in Mr Urse’s absence on the basis that he has voluntarily absented himself from these proceedings. He submitted that Mr Urse has agreed to the proposed provisional agreement. Mr Jeffs also submitted that it is implicit in the wording of the email of 16 August 2019 that Mr Urse is content for the hearing of his case to proceed in his absence today. Mr Jeffs reminded the panel of the public interest in the expeditious disposal of NMC hearings and submitted that it was in the interests of justice to proceed in Mr Urse’s absence today.

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), (No.2) [2002] UKHL 5*.

The panel has decided to proceed in the absence of Mr Urse. In reaching this decision, the panel has considered the submissions of Mr Jeffs, the written representations from Mr Urse's representative contained within the provisional agreement, 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 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 Urse;
- there has been engagement with the NMC;
- there is no reason to suppose that adjourning would secure his attendance at some future date;
- Mr Urse has agreed to the provisional agreement;
- there is a strong public interest in the expeditious disposal of the case.

In light of all the information before it, the panel was satisfied that Mr Urse had been properly notified of today's hearing and that he had chosen to voluntarily absent himself from the hearing and thereby waived his right to be present.

In these circumstances, the panel has decided that it is fair and appropriate to proceed in the absence of Mr Urse.

Mr Jeffs subsequently informed the panel that he had received an email from Mr Urse's representative indicating an agreement to proceed in his absence today.

### **Application to amend the charge**

The panel heard an application made by Mr Jeffs to amend the wording of the schedule of charge, as set out in paragraphs 2 - 5 of the provisional agreement.

The proposed amendment was to change the date from '2 October 2018' to '4 September 2018'. It was submitted by Mr Jeffs that Mr Urse does not oppose the

proposed amendment and that the revised charge would be in accordance with the evidence.

The panel accepted the advice of the legal assessor that Rule 28 of the Rules states:

28.— (1) At any stage before making its findings of fact, in accordance with rule 24(5) or (11), the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the Fitness to Practise Committee, may amend—

(a) the charge set out in the notice of hearing; or

(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.

(2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue.

The panel was satisfied that there would be no prejudice to Mr Urse and no injustice would be caused to either party by the proposed amendments being allowed. It was therefore appropriate to allow the amendments, as applied for, to ensure clarity and accuracy.

### **Consensual panel determination**

Mr Jeffs informed the panel that prior to this hearing a provisional agreement of a consensual panel determination had been reached with regard to this case between the NMC and Mr Urse.

The agreement, which was put before the panel, sets out Mr Urse's full admission to the facts alleged in the charges, that his actions amounted to misconduct, and that his fitness to practise is currently impaired by reason of his 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 agreement reached by the parties.

That provisional agreement reads as follows:

The Nursing and Midwifery Council ("NMC") and Mr Ion Urse, ("the Registrant") PIN 10A0132C ("the parties") agree as follows:

### **The Charge**

1. The Registrant admits the following charge:

*That you a registered nurse,*

- 1. On 2 October 2018, were convicted of two counts of intentionally exposing your genitals intending that someone would see them to cause harm or distress contrary to section 66 of the Sexual Offences Act 2003*

*And in light of the above your fitness to practise is impaired by reason of your conviction.*

### **Application to amend charge**

2. The NMC makes an application under Rule 28 to amend the charge as set out above.

**Rule 28: Amendment of the charge**

Rule 28. (1) At any stage before making its findings of fact, in accordance with [rule 24(5) or (11)], the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) [or the Fitness to Practise] Committee, may amend:

(a) the charge set out in the notice of hearing; or

(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.

(2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue.

3. The application is sought to amend the date from '2 October 2018' which was the day the Registrant was sentenced, to '4 September 2018', which is the date the Registrant was actually convicted.
4. The amendment rectifies a minor typographical error in the charge, and there is no prejudice to the Registrant. The Registrant does not oppose the amendment.
5. As such, the panel are respectively invited to amend the charge accordingly.

**Agreed facts**

The agreed facts are as follows:

6. The Registrant qualified as a Registered Adult Nurse on 25 January 2010. At the material time, he was employed at the Maidstone and Tunbridge Wells NHS Trust as an Accident & Emergency Band 5 Nurse. There are no reported clinical concerns with the Registrant's practice.
7. The Registrant self-referred to the NMC on the 6 August 2018. The Registrant informed the Council that he had been charged with two counts of indecent exposure on 31 July 2018. The incident took place outside of the Registrant's place of work and he stated that he was on annual leave at the time of the incident.
8. On 30 July 2018 at approximately 17:00pm the Registrant arrived at Gillingham Town Centre. During the course of the evening the Registrant visited three pubs and consumed 7 pints of beer and a whiskey and coke.
9. At or around 23:00pm the Registrant is seen on CCTV to be following two females. The CCTV footage shows the Registrant walking along Jeffrey Street with his left hand rubbing his genital area before lifting his shirt and exposing his penis, which was hanging out of his trousers. The Registrant dropped his shirt, but made no attempt to put his penis back in his trousers.
10. The Registrant is subsequently viewed walking towards a female ("Victim 1"). Victim 1 was on the phone, when she noticed the Registrant walking towards her. The Registrant had his penis out and was masturbating whilst looking at her. Victim 1 walked away and the Registrant initially followed her. The Registrant then stopped walking but continued masturbating whilst making eye contact with Victim 1, who went into a nearby restaurant and was distressed by the incident.



11. The Registrant was seen by a second female (“Victim 2”) on the corner of Jefferson Street outside a café. Victim 2 was alone in her vehicle and stopped at the traffic lights. Victim 2 saw the Registrant standing on the opposite side of the road, smiling strangely at her. Victim 2 noticed the Registrant had his penis in his hand and was masturbating. As the lights turned green, Victim 2 shouted out “you’re a pervert” to which the Registrant laughed and walked away. Victim 2 was distressed by what had happened. Both victims provided a statement to the police.
  
12. The Registrant was subsequently arrested at approximately 23:15pm. He was subsequently charged and pleaded guilty to two counts of indecent exposure on 4 September 2018. The Registrant was sentenced to 42 days imprisonment, suspended for two years on 2 October 2018. He was ordered to pay £200 compensation, and was entered on to the Sex Offender’s Register for a period of 7 years. The memorandum of conviction is appended to this agreement at **Appendix 1**.
  
13. The Registrant admitted the allegations [PRIVATE]

## **Impairment**

14. The Registrant admits that his fitness to practice is impaired by reason of his conviction.
  
15. The parties have considered the factors outlined by Dame Janet Smith in the Fifth Shipman Report, and approved by Mrs Justice Cox in the case of CHRE v NMC & Grant [2011] EWHC 927 (Admin) (hereafter “Grant”).
  
16. The Registrant accepts that as a result of his conviction he:

- i. Has in the past brought, and/or is liable in the future to bring the nursing profession into disrepute
- ii. Has in the past breached, and/or is liable in the future to breach one of the fundamental tenets of the nursing profession

17. The Registrant accepts that his sexualised behaviour towards two totally unsuspecting members of the public caused them undue emotional harm and distress. It is agreed that his actions, by masturbating in public, is so far below the standards expected of a registered professional in the caring profession, that his continued unrestricted practice would profoundly undermine the reputation of the profession.

18. Nurses and midwives occupy a respectable position in society and accordingly are held to a high professional standard because of the trust and confidence colleagues, patients and members of the public place in them. As such, it is agreed that members of the public aware of the particular circumstances of this offence would be deterred from accessing healthcare services as a result.

19. The Registrant accepts that the conduct which gave rise to his conviction amounted to a breach of fundamental tenets of the **NMC's 'Code of Professional standards of practice and behaviour for nurses and midwives' (March 2015) ("the Code")** as noted below:

Section 20: Uphold the reputation of your profession at all times

- Paragraph 20.1. keep to and uphold the standards and values set out in the Code
- Paragraph 20.4. keep to the laws of the country in which you are practising
- Paragraph 20.8. act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

20. Nurses are required to promote professionalism and trust, this includes behaviour in their private life. As such, there is a duty to consistently display a personal commitment to the standards of practice and behaviour set out in the Code, and act as a model of integrity for others to aspire to.

21. The Registrant's conviction breaches those fundamental tenets. The nature of his offending is in abject discord with the key qualities expected of a registered nurse responsible for caring for others' physical and emotional wellbeing.

22. The Registrant has shown insight and has taken steps to address the underlying causes for his actions that day. Notwithstanding the level of insight shown, it is accepted that conduct arising from reprehensible behaviour in a nurse's private life which leads to a criminal conviction is conduct which is more difficult to put right because it is not directly linked to his clinical practice. Tangible and targeted remediation such as training and demonstrable nursing competency cannot remedy this type of concern.

23. Consequently, the parties agree that the Registrant's conduct breached fundamental tenets of the profession and has brought the reputation of the profession into disrepute.

24. The NMC has also considered the comments of Mrs Justice Cox in *Grant* at paragraph 74:

*"In determining whether a practitioner's fitness to practise is impaired..., 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".*

25. The parties agree that a finding of impairment is necessary to declare and uphold proper professional standards. The parties further agree that public confidence in the nursing profession and in the NMC as regulator would be undermined if a finding of impairment were not made in this case.

## **Sanction**

26. The parties have had regard to the NMC's Sanctions Guidance ("SG") and agree that the appropriate sanction in this case is a **striking off order**.

27. The parties agree that the aggravating factors in this case are, as follows:

- i. The Registrant received a conviction for sexualised conduct towards two females.
- ii. The Registrant has been entered on to the Sex Offenders Register. This entry evidences how serious the criminal courts viewed the offence. Furthermore, entry on the Sex Offenders Register negatively impacts upon public confidence in the profession.

28. The mitigating factors in this case are:

- i. The incident took place in the Registrant's private life.
- ii. The Registrant made early admissions and has taken remedial steps to address the underlying causes which led to his conviction.

29. The parties have considered each of the available sanctions in turn and agree that in a case involving a conviction involving sexual misconduct, taking no action would be an inappropriate response.

30. Equally, a caution order would be neither sufficient nor proportionate. With regard to the SG the parties note that a caution order is appropriate where a case is at the lower end of the spectrum of impaired fitness to practice. That, the parties agree, cannot be said in this case.
31. As there are no concerns with the Registrant's clinical practice, there are no workable conditions which could be formulated. Nor, would a conditions of practice order adequately meet the wider public interest considerations in this case.
32. The parties acknowledge that there are features in this case which may suggest a suspension order for the maximum period would be appropriate. Particularly, the parties note that the Registrant's conviction, took place in his private life, represents a *'single instance of misconduct but where a lesser sanction is not sufficient'* and that there has been *'no evidence of repetition since the incident.'*
33. Notwithstanding this, the parties agree that the Registrant's conduct, in publically masturbating in front of two females is so reprehensible, it can only be described as conduct which is fundamentally incompatible with being a registered professional.
34. The parties have had regard to the NMC Guidance on **considering sanctions for serious cases**, in respect of criminal offending and sexual offences. The guidance states:

*"Sexual misconduct will be particularly serious if the nurse or midwife has abused a special position of trust they hold as a registered caring professional. It will also be particularly serious if they have to register as a sex offender. The level of risk to patients will be an important factor, but the panel should also consider that generally, sexual misconduct will be likely to seriously undermine public trust in nurses and midwives"*

*“Cases about criminal offending by nurses and midwives illustrate the principle that the reputation of the professions is more important than the fortunes of any individual member of those professions. Being a registered professional brings many benefits, but this principle is part of the ‘price’.”*

35. The parties agree with the general principle that a nurse or midwife should not be permitted to start practising again until they have completed a sentence (including a suspended sentence) for a serious offence, as highlighted in the case of CHRE v General Dental Council and Fleischmann [2005] EWCH 87 (Admin).

*I am satisfied that, as general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained.*

36. For the reasons set out above, the parties agree that the appropriate sanction which will maintain public confidence in this case is a striking off order. The parties agree that the Registrant’s behaviour is fundamentally incompatible with him remaining on the register. It is agreed that the conviction raises fundamental concerns about the Registrant’s professionalism; that public trust and confidence in the professions could not be maintained by any lesser sanction; and that striking-off is the only sanction which will be sufficient to maintain professional standards.

37. The parties agree that there is a public interest for the Registrant to be subject to an interim suspension order for 18 months to cover the appeal period. It is acknowledged that there is a high bar for an Interim Order on public interest grounds

alone. However the panel are invited to consider that having found the Registrant's actions incompatible with ongoing registration, to not impose an Interim Order would be discordant with that decision.

38. The parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the panel. The parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges set out as section 1 above, and the agreed statement of facts set out at section 2 above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.

Here ends the provisional agreement between the NMC and Mr Urse. The provisional agreement was signed by Mr Urse and on 15 August 2019 and the NMC on 22 August 2019.

In reaching its decision, the panel accepted Mr Jeffs' submissions, the advice of the legal assessor and bore in mind that in considering the provisional agreement the panel should have regard to the law and guidance in respect of misconduct, impairment and sanction. The panel should consider whether the provisional 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 profession and the regulatory body, and declare and uphold proper standards of conduct and behaviour for nurses.

## **Facts**

The panel noted that Mr Urse admitted the facts of the charge. It further noted that Mr Urse received a criminal conviction. The panel was satisfied that the charges are found proved by way of Mr Urse's admissions as set out in the signed provisional agreement. Accordingly the panel endorsed paragraph's 6 - 13 of the provisional agreement.

## Impairment

The panel then considered whether Mr Urse's fitness to practise is currently impaired by reason of his conviction. Whilst acknowledging the provisional agreement between the NMC and Mr Urse, and Mr Urse's admission of impairment, the panel has exercised its own independent judgement in reaching its decision on impairment.

The panel endorsed paragraph 19 of the provisional agreement and agreed that Mr Urse had breached paragraphs 20.1, 20.4, and 20.8 of the Code.

The panel adopted the findings of the provisional agreement in relation to impairment, as set out at paragraphs 14 – 25. The panel had regard to the guidance given in the judgment of Mrs Justice Cox in the case of *Grant*. At paragraph 74 of that judgment, she said:

“In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.”

Mrs Justice Cox went on to say in Paragraph 76:

“Do our findings of fact in respect of the ... misconduct... 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. has in the past acted dishonestly and/or is liable to act dishonestly in the future.

The panel considered that Mr Urse's conduct engaged categories a, b and c of the guidance in *Grant*. The panel concluded that Mr Urse's behaviour brought the profession into disrepute and breached fundamental tenets of the profession, as detailed in the provisional agreement.

The panel considered that the behaviour that led to Mr Urse's conviction was wholly unacceptable and noted that his criminal convictions were for serious offences. It had regard to paragraph 22 of the provisional agreement, in which it is said that Mr Urse 'has shown insight and has taken steps to address the underlying causes for his actions that day'. While the panel acknowledged Mr Urse's apparent insight, it was not satisfied that this was sufficient to undermine the necessity for a finding of impairment.

The panel took into account that Mr Urse was in a position of trust as a registered nurse. The panel had particular regard to paragraph 18 of the provisional agreement. While the panel accepted that the events which led to Mr Urse's conviction occurred outside of practice hours, it has seen information to suggest that Mr Urse's actions have caused two unsuspecting members of the public 'undue emotional harm and distress'. The panel noted that Mr Urse acknowledged and accepted that his fitness to practise is currently impaired by reason of his conviction, and that his actions breached fundamental tenets of the nursing profession as a result of his sexual offences. The panel considered that Mr Urse could be regarded as a risk to patients, because of his offences.

The panel then went on to ask itself whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case. Given the seriousness the case, and the actual emotional harm caused, the panel found that the trust of the public and patients in the nursing profession would be harmed if a finding of impairment were not made.

For all these reasons, the panel determined that Mr Urse's fitness to practise is currently impaired.

## **Sanction**

Having found Mr Urse's fitness to practise currently impaired the panel went on to consider what sanction, if any, is appropriate in this case. The panel bore in mind that any sanction imposed must be appropriate and proportionate. The purpose of any sanction is not intended to be punitive even though it may have a punitive effect. The panel had careful regard to the Sanctions Guidance (SG). The decision on sanction is a matter for the panel exercising its own independent judgement.

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

The panel considered each available sanction in turn, starting with the least restrictive and moving upwards.

The panel endorsed paragraphs 27 and 28 of the provisional agreement, which set out the aggravating and mitigating features in this case.

The panel first considered whether taking no action would be an appropriate and proportionate response. The panel endorsed paragraph 29 of the provisional agreement

and accepted that this would be inappropriate in view of the Mr Urse's conviction, and the seriousness of the case. The panel decided that it would be neither proportionate nor protect the public, nor be in the public interest to take no further action. The panel determined that a caution order would be inappropriate for the same reasons.

The panel went on to consider whether a conditions of practice order would be appropriate. The panel endorsed paragraph 31 of the provisional agreement and accepted that a conditions of practice order would be inappropriate in this case as there are no identified issues with Mr Urse's clinical practice. Further, the panel noted that Mr Urse is currently serving a 42 day prison sentence suspended for two years. In any event, the panel considered that a conditions of practice order would be insufficient to maintain public confidence in the NMC as regulator, as it would not serve to mark the seriousness of Mr Urse's conviction.

The panel went on to consider the imposition of a suspension order and endorsed paragraph 32 of the provisional agreement. Mr Urse's conduct was a serious breach of trust and a significant departure from the standards expected of a registered nurse. While the panel accepted that the events took place in Mr Urse's private life, and could be described as a 'single instance of misconduct', it noted that Mr Urse had been convicted of serious sexual offences and placed on the Sex Offenders Register for seven years.

The panel has determined that given the aggravating features in this case a suspension order would not be an appropriate or proportionate sanction. The panel was not satisfied that a period of suspension would satisfy the public interest or uphold public confidence in the profession or the NMC. The public would be both shocked and dismayed to discover that a nurse had intentionally exposed his genitals in an attempt to cause harm or distress to members of the public.

Mr Urse's behaviour was fundamentally incompatible with him remaining on the register. To allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel endorsed paragraph 36 of the provisional agreement. It concluded that nothing short of a striking-off order would be sufficient to uphold public confidence and the reputation of the profession. This sanction would also send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

For all the reasons set out above, the panel determined that a striking-off order was the appropriate sanction in this case.

The panel considered that it was otherwise in the public interest to impose an interim suspension order for the period of 18 months to cover the appeal period, and endorsed paragraph 37 of the provisional agreement.

This decision will be confirmed to Mr Urse in writing.

That concluded this determination.