

**Nursing and Midwifery Council**  
**Fitness to Practise Committee**  
**Substantive Hearing**  
**27 September 2019**

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

<b>Name of registrant:</b>	Steven James Bayes
<b>NMC PIN:</b>	81A0222E
<b>Part(s) of the register:</b>	Registered Adult Nurse
<b>Area of Registered Address:</b>	England
<b>Type of Case:</b>	Conviction
<b>Panel Members:</b>	Paul Morris (Chair, lay member) Anita Underwood (Registrant member) Belinda Poole (Lay member)
<b>Legal Assessor:</b>	Gillian Hawken
<b>Panel Secretary:</b>	Kelly O'Brien
<b>Registrant:</b>	Present and not represented
<b>Nursing and Midwifery Council:</b>	Represented by Susan Jean, Case Presenter, NMC Legal Team
<b>Facts proved by admission:</b>	<b>All</b>
<b>Facts not proved:</b>	<b>None</b>
<b>Fitness to practise:</b>	<b>Impaired</b>
<b>Sanction:</b>	<b>Striking-off order</b>
<b>Interim Order:</b>	<b>Interim suspension order (18 months)</b>

## **Application to adjourn**

At the start of this hearing you made an application for these proceedings to be postponed on the basis that you were still in the process of lodging an appeal against your conviction. You submitted that following the postponement granted by the previous panel, you had made every effort to progress the appeal. You explained that you require barrister and solicitors to undertake the work and all you are able to do is chase them up to ensure they are conducting your case in a timely manner. You explained that you have had to change solicitor during the last 6 months, which has caused you delay, and you had originally expected to be in court by November 2019. You requested a further 6 month adjournment in order to progress matters.

Ms Jean told the panel that this is your third application for a postponement of your substantive hearing at the NMC. Ms Jean referred the panel to Rule 32 (4) and submitted that the panel should consider: the expeditious disposal of this case, the inconvenience of a postponement to all parties, and fairness to you. Ms Jean submitted that the previous panel's determination setting out what clear evidence would be expected to be adduced, and you have not been able to comply.

Ms Jean submitted that the panel have confirmation from the court that no appeal has been lodged. The panel does not have any further information as to when or if the appeal will be lodged or a likely time scale. She submitted that the previous panels have afforded you a 9 months delay to this hearing, but this situation cannot continue indefinitely.

Ms Jean submitted that you have been convicted of a very serious offence and there is a public interest in disposing of this hearing expeditiously. She submitted that there is no unfairness to you in proceeding as if your appeal is successful you will be able to invite the NMC to review any sanction imposed. Ms Jean invite the panel to reject your application and to proceed with the case with today.

The panel accepted the advice of the legal assessor.

The panel carefully considered the submissions by you and Ms Jean, and had regard to all the documentation before it. The panel decided not to grant your application to adjourn this hearing under Rule 32 (2) of the NMC Fitness to Practise Rules 2004 (as amended) (the Rules). In applying this rule the panel had careful regard to the public interest in the expeditious disposal of the case; the potential inconvenience caused to the parties; and fairness to you.

The panel considered that you did lodge an appeal hearing on 2 October 2018, and this was refused. The panel had regard to the email from the court dated 18 September 2019 confirming that no further appeal application has been made. You have been granted two adjournments by previous panels affording you 9 months to progress your appeal.

The panel considered that since the date of the last hearing, when the Fitness to Practise panel granted a 6 month adjournment, you have made efforts to progress your appeal. The panel had regard to the bundle of papers provided, and noted that it is unfortunate that there have been some lengthy delays from your solicitors. However, the panel does not have sufficient information to suggest that your appeal is going ahead, or an indication as to the likely timescale of this process.

The panel considered that you have been convicted of serious offences, and there is a public interest in the expeditious disposal of your case. The panel balanced this with fairness to you. The panel bore in mind that if your appeal is successful you will be able to invite the NMC to re-consider your case. It also considered that the NMC has previously been fair to you in granting you two previous adjournments.

## **Details of charge**

That you, a registered nurse:

- 1) On 13 February 2018, were convicted in the Crown Court at Kingston upon Hull of:
  - a) Making indecent photographs or pseudo-photographs of children;
  - b) Making indecent photographs or pseudo-photographs of children;
  - c) Possession of extreme pornographic images of intercourse/oral sex with dead/alive animals.

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

## **Decision on the findings on facts and reasons**

The panel accepted the advice of the legal assessor.

The charges concern your conviction and, having been provided with a memorandum of conviction, and on the basis of your admission, the panel finds that the facts are found proved in accordance with Rules 31 (2) and (3) of the Rules which states:

- (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**

On 27 October 2016 you were arrested on suspicion of a number of offences. At the time of your arrest you were working as a Band 7 Nurse and a Co-ordinator. After your arrest you were suspended by the Trust.

You were charged with two counts of making indecent photographs or pseudo-photographs of children and one count of possession of extreme pornography on 20 March 2017. On 13 February 2018 you were convicted in the Crown Court at Kingston Upon Hull.

The Judge's summing up identified that the registrant was in possession of still images and movies categorised as Category A. Category A is the most serious categorisation of child pornography. The images and videos involved children between 7 and 12 years old. (Charge 1).

The registrant was also convicted of being in possession of category B child pornography movies (Charge 2) and extreme pornographic images (Charge 3). The Judge noted that these images were downloaded over an extended period of time, namely between 21 October 2015 and 31 May 2016.

On 4 May 2018 you were sentenced to 12 months imprisonment. You were required to register as a sex offender for a period of 10 years. The Judge also made you the subject of a Sexual Harm Prevention Order for a period of 10 years, and ordered forfeiture and destruction of your laptop.

## Submissions on impairment

Having announced its finding on the facts, the panel then moved on to consider whether your fitness to practise is currently impaired by reason of your 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.

To assist the panel in its consideration of impairment, Ms Jean referred the panel to the bundle of documents which included transcripts from the Crown Court case. Ms Jean submitted that your conviction relating to your sexual interest, puts patients at a risk of harm in the future, and invited the panel to find current impairment on public protection grounds. Ms Jean submitted that you have breached fundamental tenets of the profession, and the terms of *The Code: Professional standards of practice and behaviour for nurses and midwives (2015)* (the Code). She referred the panel to paragraphs 20.1 and 20.4.

Mr Jean submitted that your actions and resulting conviction would undoubtedly bring the profession into disrepute and cause serious damage to the reputation of the profession. She submitted that impairment should also be found on public interest grounds.

In her submissions, Ms Jean referred the panel to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)* and addressed the panel on the need to uphold the reputation of the nursing profession. 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.

You told the panel that you denied the matters behind the conviction. You made no positive submissions in relation to impairment.

The panel accepted the advice of the legal assessor.

## Decision on impairment

The panel considered if, as a result of your conviction, your 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. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the panel considered the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)* in reaching its decision, in paragraph 76 she said:

"I would also add the following observations in this case...as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or



- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or...
- d. ...”

The panel considered that the first three limbs were engaged in this case.

The panel considered that there was no evidence that your conduct had placed patients at unwarranted risk of harm in the past. However, it considered that a registrant who made and possessed images of this nature was liable to place patients at unwarranted risk of harm in the future. The panel considered the nature of the images some of which were in Category A, the most serious.

The panel considered that you had in the past and was liable in the future to bring the nursing profession into disrepute. The making of images of this kind inevitably led to this conclusion. The panel noted the sentencing remarks of the Judge, in particular:

*“As I’ve indicated, in the presentence report you are still in denial... These images, the making of these images, took place over a considerable period. They were deliberate downloading of incident images of children and by virtue of the guilty verdicts you knew the nature of the images when you did that ... You had them for your own sexual pleasure. Young children were therefore sexually abused in the most serious way for people like you who find pleasure in the sexual abuse of children.”*

Offences of the kind identified in this case are very difficult to remediate. The panel considered you denied the matters alleged in the conviction. On that basis the panel recognises that you are not in a position to show insight or remediation. The panel considered that as a result of your sexual interest there is a risk of harm to patients in

the future, if your conduct were to be repeated. The panel is of the view that there is a risk of repetition and determined that your fitness to practise is impaired on the ground of public protection.

The panel considered that you had breached fundamental tenets of the profession, to act with integrity, and accepted Ms Jean's submission that you had breached paragraphs 20.1 and 20.4 of the Code.

The panel also considered whether the public interest required a finding of impairment to be made in this case. The panel determined that it did. A reasonable and fully informed member of the public would expect a finding of impairment to follow such a serious conviction. Any other outcome would undermine confidence in the profession and in its regulation. The panel therefore finds that your fitness to practise is currently impaired by reason of your conviction on both public protection and public interest grounds.

**Submissions on sanction:**

The panel then considered what sanction, if any, it should impose. In reaching its decision, the panel considered all the evidence before it, and heard submissions from Ms Jean, on behalf of the NMC.

Ms Jean invited the panel to impose a striking-off order, so as to reflect the seriousness of the matters found proved and the absence of any insight, remediation, or remorse. She addressed the panel on what she submitted to be the aggravating and mitigating factors in your case.

Ms Jean reminded the panel that you have not provided any evidence of insight or remediation and submitted that the charges in this case indicate a deep-seated, attitudinal problem. It was her submission your actions were fundamentally incompatible with ongoing registration. Ms Jean submitted that the reputation of the profession is more important than the interests of any individual member.

You made no submissions at this stage.

The panel accepted the advice of the legal assessor. She referred it to the NMC's Sanctions Guidance (SG) and in particular to the passages relating to sexual misconduct and convictions.

**Decision on sanction:**

The panel bore 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 published by the NMC. It

recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel had particular regard to following paragraphs from the SG:

*“Sexual offences include accessing, viewing or other involvement in child pornography, which involves the abuse or exploitation of a child. These types of offences gravely undermine patients’ and the public’s trust in nurses and midwives. In the criminal courts, some offences of child pornography offences are considered more serious than others. However, in fitness to practise, any conviction for child pornography is likely to be involve a fundamental breach of the public’s trust in nurses and midwives.*

*Panels deciding on sanction in cases about serious sexual misconduct will, like in all cases, need to start their decision-making with the least severe sanction, and work upwards until they find the appropriate outcome. They will very often find that in cases of this kind, the only proportionate sanction will be to remove the nurse or midwife from the register. If the panel decides to impose a less severe sanction, they will need to make sure they explain the reasons for their decision very clearly and very carefully. This will allow people who have not heard all of the evidence in the case, which includes the victims, to properly understand the decision.”*

Before making its determination on sanction, the panel had regard to the aggravating and mitigating features in this case.

The panel considered the aggravating features to be:

- Your lack of insight and the consequential risk to the public
- Your criminal behaviour was not an isolated event and occurred over a period of time

The panel considered the mitigating features to be:

- You have no previous regulatory history with the NMC

The panel noted that although you appear to have had no previous regulatory concerns, it referred to the SG and decided that this was a relatively minor consideration given the nature and the seriousness of the case.

The panel first considered whether to take no action but concluded that this would be inappropriate due to the serious nature of your conviction which is wholly unacceptable for a registered nurse. There are no exceptional circumstances that would justify taking such a course of action as it would be insufficient to address the wider public interest considerations in this case and would in turn seriously undermine public confidence in the profession and the NMC as a regulator. Furthermore this would place no restriction on your practice and therefore would not protect the public.

The panel then considered whether a caution order would be an appropriate or proportionate sanction. The panel is aware this sanction may be appropriate where the case is at the lower end of the spectrum of impaired fitness to practise. The panel is satisfied that due to the particularly serious nature of your conviction, it could not be said that this case was at the lower end of the spectrum of fitness to practise.

Accordingly, the panel has concluded that a caution order is not an appropriate or proportionate sanction as it would allow you to practise as a registered nurse without restriction and would therefore be wholly insufficient to protect the public and to serve the public interest in maintaining public confidence in the profession and the NMC as a regulator.

The panel next considered whether a conditions of practice order would be an appropriate and proportionate sanction. The panel is mindful that any conditions imposed must be relevant, proportionate, measurable and workable and are generally more appropriate where a registrant's clinical competence has been called into question. This is not such a case; no issues have been raised in relation to your clinical

practice, nor would conditions protect patients or the public. You have been convicted of extremely serious criminal charges committed over a period relating to making indecent images of children and extreme pornographic material. The panel has therefore concluded that there are no conditions of practice that could be formulated to address the particularly grave nature of your criminal behaviour.

The panel then went on to consider whether a suspension order would be an appropriate and proportionate sanction. You have been convicted of extremely serious criminal offences and your behaviour is a serious departure from the standards of conduct and behaviour expected of a registered nurse. Nurses occupy a position of privilege and trust in society and are expected to adhere to the Code at all times. They must ensure their conduct justifies the trust the public places in both them and the nursing profession. For these reasons the panel has concluded that temporary removal from the register would not be an appropriate sanction given the serious nature of your criminal conviction.

The panel determined that your criminal conviction is so serious and at odds with the role of a registered nurse that it would not be appropriate to allow you to remain on the register. The public would be appalled if you were permitted to continue practising as a registered nurse. The panel has therefore concluded that a suspension order is not a sufficient sanction to adequately protect the public and to address the wider public interest considerations in maintaining public confidence in the nursing profession, nor the NMC as a regulator and in the declaring and upholding of proper standards of conduct and behaviour.

Balancing all of these factors, and including the risk to public protection that arises from making and possessing such images, the panel has determined that the only appropriate and proportionate sanction in the particular circumstances of this case is a striking-off order. The panel has concluded that this order is necessary to mark the importance of maintaining public confidence in the profession and declaring and upholding of proper standards of conduct and behaviour. Furthermore, this will send to

the public and the profession a clear message about the standards of conduct and behaviour required of a registered nurse.

Therefore the panel decided to impose a striking off order. The effect of this order is that the NMC register will show that you have been struck-off the register.

## **Determination on interim order**

The panel considered the submissions made by Ms Jean that an interim order should be made on the grounds that it is necessary for the protection of the public and is in the wider public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension order is necessary for the protection of the public and is in the wider public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The reasons for the interim suspension order will be the same as those detailed in the substantive order.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.