

Nursing and Midwifery Council Fitness to Practise Committee

Substantive Hearing 1 and 21 December 2020

Nursing and Midwifery Council
Virtual Hearing

Name of registrant:	Alex Lunt
NMC PIN:	16E1318E
Part(s) of the register:	Registered Nurse – Sub Part 1 Mental Health Nursing – September 2016
Area of registered address:	Derbyshire
Type of case:	Conviction
Panel members:	Robert Barnwell (Chair, Lay member) Judith Robbins (Registrant member) Linda Redford (Lay member)
Legal Assessor:	Angela Hughes
Panel Secretary:	Xenia Menzl
Nursing and Midwifery Council:	Represented by Jessica Bass, Case Presenter
Mr Lunt:	Present and not represented
Facts proved:	All Charges
Fitness to practise:	Impaired
Sanction:	Striking-Off Order
Interim order:	Interim Suspension Order, 18 Months

Decision and reasons on application for hearing to be held in private

At the outset of the hearing Ms Bass, on behalf of the Nursing and Midwifery Council (NMC), informed the panel that you intend to raise matters of your health and personal life. She submitted that these parts of the hearing should be in private. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You supported the application. However, you made a request that the entirety of the hearing be held in private. You submitted that you may wish to raise sensitive matters relating to your health, personal life and history which you would not wish to be in the public domain. You submitted that, whilst the suggestion is made that the material the hearing is based on is already part of the public domain and therefore appropriate to be discussed in public, without the context of the new information no new information would be brought to the public and would simply be repeating public record. You also submitted that if the information were to be made public it would only be to your detriment and without any gain to the public. You submitted that should the panel not be with you on this, you would be content for the hearing to go into private to discuss private life or health.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel considered whether to hold the entirety of the hearing in private as requested by you. The panel was of the view that your conviction was already in the public domain and that holding the hearing in private would serve no purpose but to your benefit. It concluded that the public interest to hold this hearing in public was on balance greater than the protection of your privacy. However, having heard that there may be reference to sensitive, private or health information, the panel determined to hold such parts of the hearing in private as required.

Decision and reasons on application to admit further evidence

The panel heard an application made by Ms Bass under Rule 31 to allow further evidence to the hearing. Ms Bass informed the panel that she had two further documents which were previously mentioned in the papers, one was the 'Sexual Harm Prevention Order' and the other one was an e-mail from your managing officer, dated 30 November 2020, confirming that you have been placed on the Child's Barred List and also on the Vulnerable Adult Barred list. Ms Bass submitted that the evidence is highly relevant and although this was mentioned in the papers the information was unclear. She submitted that this information will assist the panel with their decision regarding impairment because it shows the seriousness and gravity of your offences. She further submitted that these papers may become important for the panel to consider should they move on to the stage of sanction. She submitted that this will assist the panel with regards to the restrictions you have been placed under, not only with regards to your nursing practice. Ms Bass submitted that this is not new information you were not aware about and solely serves to clarify matters.

You stated that you had no issue with the two documents to be made available to the panel. However, you informed the panel that you are appealing the inclusion on the barred list for vulnerable adults. You asked the panel to bear this in mind when making their decision.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings and also reference to the case of *L v Law Society* (2008) EWHC Civ 811.

The panel gave the application serious consideration. The panel noted that the information contained in the additional documents has been alluded to in the papers and that these documents solely serve to clarify on issues mentioned in the papers.

The panel considered whether you would be disadvantaged by the admittance of the additional information and concluded that this is information already known to you and that this is information that is available in the public domain. It therefore concluded that there is no disadvantage to you should it admit the further documentation.

In these circumstances, the panel came to the view that it would be fair and relevant to accept the additional documents into evidence.

Details of charge

That you a registered nurse:

1. On 23 October 2019 at the Northern Derbyshire Magistrates' Court were convicted of the following offences:
 - a. Arrange/facilitate the commission of a child sex offence.
 - b. Make an indecent photograph/pseudo-photograph of a child x 2.
 - c. Distribute an indecent photograph/pseudo-photograph of a child.

AND your fitness to practise is impaired by reason of your conviction

Facts

The charges concern your 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.'*

The panel also noted your admission to the charge.

Conviction

On 23 October 2019 you were convicted after trial at the Crown Court sitting at Derby. You were convicted of arranging/facilitating the commission of a child sex offence, twice making indecent photograph/pseudo-photograph of a child, and distributing an indecent photograph/pseudo-photograph of a child. You were sentenced on 28 February 2020 to a three year community order, requiring you to participate in the Sex Offenders Groupwork Programme for 90 days, carry out unpaid work for 200 hours and undertake Rehabilitation Activity Requirements for a maximum of six days. Additionally, a Sexual Harm Prevention Order (SHPO) was imposed for a period of ten years and you were placed on the Sex Offenders Register for a period of five years.

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, 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.

Submissions on impairment

Ms Bass addressed the panel on the issue of impairment and reminded the panel to have regard to protecting 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.

Ms Bass submitted that you breached number 20 of the code in that with your actions you did not uphold the reputation of your profession at all times and have not kept to the laws of the country in which you are practising. She 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 submitted that your serious criminal convictions bring the nursing profession into disrepute. She stated that the nursing profession, by its nature, is a caring profession and convictions of this type where the victims are children, the most vulnerable members of our society, are contrary to this most fundamental tenet.

Ms Bass referred the panel to the NMC Guidance which describes '*accessing, viewing, or other involvement in child pornography*' as one of a number of issues more difficult to put right. She referred the panel to your written submissions and submitted that your insight is self-focused, you deflect responsibility by saying that you did not seek out photographs of children or a parent and child, and demonstrate no understanding or remorse towards the victims portrayed in the photographs.

Ms Bass invited the panel to carefully take into account the sentencing remarks which highlight that you require to undertake Sexual Offending courses. She submitted that these courses have not yet started. Ms Bass further submitted that you have been made subject of a SHPO for ten years, have been placed on the sex offenders register for a period of five years and also been put on the DBS barred lists.

Ms Bass acknowledged that there is no evidence that these crimes were committed at work or that the children portrayed were patients. However, she submitted that the criminal

courts placed these restrictions on you and were not persuaded that the risk is managed by the treatment undertaken by you so far. Ms Bass submitted that the panel should seriously consider the risk to the public when determining your fitness to practise.

Ms Bass submitted that your actions are so serious that a finding of current impairment is required in order to maintain public confidence in the profession and to uphold proper professional standards. She submitted that the public would be shocked to learn that a registrant found guilty of these offences was deemed fit to practise as a nurse. Ms Bass referred the panel to the NMC guidance which states:

'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 involve a fundamental breach of the public's trust in nurses and midwives.'

Ms Bass noted that you suggest that you have addressed your offending behaviour and that there is no risk to the public going forward. However, she invited the panel to consider the nature of the therapy you have received and that your therapist describes developing ongoing relapse prevention plans. She submitted that this alludes to the conclusion that there is an ongoing risk of relapse. She submitted that the sentencing of the court suggests that there is an ongoing risk of repetition. Whilst Ms Bass acknowledged that you have sought out help she submitted that you are only a few months into a three year community order and a ten year SHPO. She submitted that your suggestion that this significantly reduced the risk to the public shows a lack of insight into the gravity of the offences or the task of addressing offending of this type.

Ms Bass submitted that for all these reasons there is a risk to the public and that a risk of repetition remains. She submitted that your actions are so serious that a finding of current

impairment is required to protect the public and to maintain public confidence in the profession and to uphold proper professional standards.

You submitted that, to the best of your knowledge, you have never denied, deflected or minimised your actions of looking at indecent images of children. You stated that you accept full responsibility of seeking out photographs of this kind in the past.

You addressed the risk of repetition. You stated that this is an ongoing consideration in any individual's circumstance. You stated that you believe that there is a low risk of you reoffending on the basis of the unknown. You explained that you discussed the risk of repetition with your therapist in terms of your treatment program, however you stated that you do not see a situation where this would occur. You stated that your therapist has not produced a risk assessment relating to you and that that any work undertaken or recommended by your therapist is not due to a risk assessment.

You dismissed Ms Bass' submission that you were only a few months into your community order and that this means you have not remediated your past actions. You stated that her submission dismisses the extent of the work you have undertaken with your therapist and that you have been doing slightly over two years of intense psychological work, which you fully consented to and have paid for yourself. You stated that it is self-evident that around 90 hours of work on one-to-one basis outweighs what has been ordered by the court. You said that this certainly exceeds to any sensible degree the minimum standard of sentencing ordered by the court. However, you stated that you are still to complete what has been ordered by the court in the future and that your programme is commencing in February 2021, which you stated shows how *'fairly low down the priority list'* your case is.

You referred the panel to your written submissions which detail the circumstances which led to the escalation of your behaviour was remiss. You stated that your behaviour was amiss and that you regret having acted that way. However, you stated that the circumstances of your offence have meaningfully changed.

You stated that when asking the question if you had done enough work to prevent any reoffending, in itself, you would probably say no. However, you stated that you have done a great deal of work, managed the risk of repetition by understanding your behaviour and to prevent reoccurrence. You stated that you are presently satisfied that the learning you have undertaken is not something that can be unlearned. You stated that [PRIVATE]. You stated that since you have been aware of this and having studied and reflected yourself intensely, your view of the situation has changed. You stated that you no longer feel the sense of futility and no longer feel that your actions are inevitable. You said that you found yourself in a pattern of behaviour that is regrettable, however you have been able to assess this and learn from your experiences. You stated that a similar issue would not reoccur. You stated that you are going to be vigilant of yourself and your behaviour and that this goes past the realm of offending.

You stated that you feel you have improved a great deal more than at the start of the process. You stated that you believe the hearing undertaken today is to protect the reputation of the nursing profession. However, you stated that you never conducted any offending behaviour whilst working as a nurse and that you have been an exemplary nurse. You stated that the problems experienced have been in the realm of your private life and at no point did you allow your behaviour to intrude your professional life. You stated that you understand that it might be appropriate that the NMC take action against you, however you hoped that this would not be at the extreme end of the scale. You stated that since the point of arrest you have done *'more or less everything humanly possible to address the issue'*. You stated that you do not believe that the intervention imposed on you by the court works, however that time will demonstrate proof of that. You stated that you accept that the general public would *'like to see me crucified'*, however, you stated that the public interest is more an issue of politics. You stated that your history of working and functioning as a nurse has been to a very high standard and that you have demonstrated that you have made changes in your behaviour to prevent the mistakes of your past.

You stated that you do believe that a change has occurred in this case and that you have '*done good in this world as a nurse*'. You stated that you are '*not the villain*'. You said that you have not misused your position as a registered nurse at any point and that you have not made any mistakes as a registered nurse.

You stated that you feel that you have addressed your past conduct as best as you can and that you have done everything you can to resolve your past mistakes positively. You stated that you would like to do the public good as a registered nurse in the future.

During cross examination you stated that you did not seek out to look at indecent images of children and that this was an accidental discovery. You stated that you were seeking out to look at pornography but not specifically indecent pictures of children. You stated that after the first accidental discovery you sought out to look for them but that it was not deliberate in the first instance. You stated that you did not seek out indecent images of children but that you discovered and then returned to them.

You explained that you sought out communication with a fellow consenting adult to have '*perhaps unpleasant but unsavoury conversations which took place entirely in the realm of fantasy*'. You understand that the police found out that the man you were in conversation with had no children and was, just like you, talking about fantasies.

When asked to clarify your written statement '*I do hold that if my vulnerabilities had not been preyed upon, I would not have committed this offence*' and how this statement did not deflect from your responsibility, you explained that had you found yourself in different circumstances your conduct would not have escalated as quickly as it did. You stated that you are wholly responsible for what you have done and that the fact that you were encouraged to do so does not minimise what you did. You stated that had you not found yourself in that exact situation your behaviour might have escalated more slowly and maybe into a different direction.

You explained that you are to commence the court ordered courses in February 2021 but that this is subject to change due to the current Covid-19 pandemic. You stated that the court ordered courses are known to put the risk of reoffending up and not down. You confirmed that this was your understanding and that you do not think that this course has existed long enough to show robust evidence of success. However, you stated that you intend to undertake and approach the course '*with a degree of healthy scepticism*'. You stated that you do not encourage the panel to overvalue the court ordered course.

You acknowledged that the impact your conduct had on the nursing profession has not been your biggest concern over the past couple of years and that you have spent more energy on considering the effects on slightly more definite human agents rather than a collection that is the impression of nursing. You stated that you feel that it is '*not particularly a good look*' and when you think of the concrete effect on the profession you cannot see that nursing is either helped or hindered by your conduct.

When asked if you reflected on the human aspects of your conduct and if that included the victims you stated that the fact is '*almost sort of self-evident*' that you were looking at victims of abuse of which you knew rather than understood and considered previously. You stated that, in particular, you had not considered, in the past either by accident or intention, the effect of your conduct on victims of indecent images, and the effect of knowing that these materials are available and exist. You said that these images may or may not be seen and in the face of shame and vulnerability that people are obliged to hold in themselves, account for actions such as your own. You stated that this is something that you had not previously considered, and presumably it would have made the actual commissioning and undertaking of offences rather difficult to contemplate. You stated that it is interesting that a person, such as yourself, can so easily dehumanise a person and their experience through '*simply not caring to look*'.

During panel questions you explained that you qualified as a nurse in 2016 and have therefore been qualified for four years, whilst being suspended for two of them. You stated that you have just over two years of experience as a registered nurse.

You told the panel that before nursing you obtained a degree in psychology and sociology, worked in retail and also worked as a mental health support worker on a voluntary basis as well as a few months of youth work. You stated that you found working as a mental health support worker rewarding and that you wanted to do something in the area of mental health. You explained that after taking some time away from that area you came back looking into and building a career in that area. You admitted that you did not have a great deal of range and scope of nursing practice in 2013 and joined due to pragmatic reasons rather than nursing being a childhood dream.

You explained to the panel that your area of practice was working on a mental health inpatient ward for children and adolescents. You stated you had been a staff nurse and worked in that ward for two years at the point of your arrest.

When asked what the NMC Code meant to you, you stated that in a sense it is self-evident and that the code largely concerns clinical practice and the work tied to it. You stated that there are a lot of provisions under the code that would not make sense outside of the nursing profession and that it is a series of instructions and guidance on how to conduct yourself in the area, largely but not exclusively, of practice.

When asked in specific about point 20 of the code, promoting professionalism and trust and to uphold the reputation of the profession at all times and how you would respond to that in terms of your conduct, you stated that you think that it is right and proper and that it is a pressing concern and that you have failed to do so.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *General Medical Council 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, 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. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the 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 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 found that whilst no patients were put at risk or were caused physical or emotional harm as a direct result of your conviction there has been harm to the vulnerable children depicted in the indecent images viewed by you. The panel was therefore of the view that your conduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to indecent images of children extremely serious.

Regarding insight, the panel considered that during your evidence you have wrapped yourself up in psychological jargon and avoided speaking directly from your own point of view. It found that you tended to say '*a person such as myself*' rather than '*I*' and concluded that this was a way of distancing yourself from your conduct. The panel further noted that the language you used such as '*mistakes*' minimised your conduct and the impact it might have had on the lives of the children portrayed in the images. It determined that your inability to give straight answers to Ms Bass' and the panel's questions showed that you had no remorse about the children. The panel found it especially unclear whether you had referred to your own or the children's shame and vulnerability. It was of the view that you have not shown any consideration to the lives of the children who had been exploited in the production of the indecent images during your oral evidence. The panel

was especially concerned by the denial, deflection and avoidance shown in the use of your language and wording. The panel was of the view that this attitude was deeply concerning. The panel further found it concerning that you implied in your evidence that despite your reflection on your offences and the treatment that you had undergone, there is no guarantee that you will not reoffend in the future.

Furthermore the panel considered your comments regarding the fact that impairment can be found on the ground of public perception of the nursing profession and that a nurse's conduct can bring the profession into disrepute. It was deeply concerned by the fact that you stated this was '*politics*' and concluded that it shows a complete disregard that the code of conduct affects the professional as well as the personal life of a nurse. The panel concluded that you clearly think that these are two separate aspects of a nurse's life.

Additionally, the panel was of the view that your description of your work as a nurse contrasted with the fact that you only worked as a registered nurse for about two years after you qualified. In addition, the panel found it concerning that you worked on a child and adolescent inpatient ward at the time of your offences and that your statements lead to the conclusion that you think that those two aspects of your life can be clearly separated.

The panel is of the view that there is a risk of repetition based on the lack of insight. 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 was of the view that the public would be shocked to learn that a registrant found guilty of these offences was deemed fit

to practise as a nurse and therefore decided that a finding of impairment is also necessary on the ground of public interest.

Having regard to all of the above, the panel was satisfied that your 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 you off the register. The effect of this order is that the NMC register will show that you have 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.

Submissions on sanction

Ms Bass outlined the aggravating and mitigating factors in this case. She submitted that your actions were serious in their nature and warrant action to be taken. She submitted that a caution order would not be appropriate in this case as your actions were not at the lower end of the spectrum and that such an order would not protect the public.

Ms Bass submitted that this is not a case of general incompetence or clinical failing which could be addressed through assessment or retraining. She submitted that a nurse capable of these offences has demonstrated harmful deep-seated personality and attitudinal problems which affected vulnerable children and their parents. She submitted that this cannot be addressed through conditions of practice.

Ms Bass acknowledged that a suspension order would protect the public for the period of suspension. However, she submitted that this was not a single instance of misconduct, but

three charges relating to very serious criminal offences. Whilst you have not repeated that behaviour since your conviction, there is evidence of harmful deep-seated personality and attitudinal problems. She also submitted that the panel found that you lack insight and that for all of these reasons a suspension order was not appropriate in this case.

Ms Bass referred the panel to the SG relating to cases involving sexual misconduct and submitted that the only appropriate sanction in your case is removal from the register. She acknowledged that you have stated that you have received extensive therapy. However, she referred the panel to the case of *CHRHCP v (1) GDC (2) Fleishmann 2005 EWHC 87 (Admin)* and reminded it that you are currently still in treatment for your offending behaviour and that neither the outcome nor whether it is successful is known. Ms Bass submitted that the fact that you are in therapy is not a compelling reason to depart from the general rule as set out in the SG. She furthermore reminded the panel that you are still subject to an ongoing criminal sentence.

Ms Bass submitted that a strike-off order is only required to protect the public from a real risk of harm. She also submitted that allowing you to practise would undermine the confidence in the nursing profession as a whole and the NMC as a regulator. She submitted that an informed member of the public would be extremely concerned should someone who was convicted of such serious offences would be allowed to practise unrestricted. She therefore submitted that a striking off order is the only appropriate order in your case.

You submitted that you feel the most appropriate sanction for the panel to consider is a conditions of practice order. You stated that a conditions of practice order would be able to address the concerns identified and that your behaviour is not incompatible with remaining on the register. You submitted that a conditions of practice order would protect patients directly and indirectly by assessing your current, not your past, behaviour directed towards children. You stated that any conditions the panel imposed would be supported through the safeguards already in place. You stated that conditions of practice would serve as an

ongoing risk assessment. You said that you would be happy to comply with any conditions imposed.

You stated that you noted that the panel raised concerns regarding your level of insight and submitted that you may have not communicated especially well on the previous occasion. You stated that you do not feel that you denied or deflected from your actions but made efforts to be precise between general and personal terms. You stated that if you were avoidant to some degree this was justified as this is not an easy conversation to have. You stated that you believe that you have shown insight into your behaviour in the criminal proceedings as well as in the NMC proceedings and said that this is evident in the judge's sentencing remarks.

You stated that there is no risk to the public when it comes to the adult population and that the only risk identified will be managed by you not having any contact with children. You stated that this is a situation with an abstract risk which is perceived and is not reflective of your person or history as a person. You stated that it is difficult to say whether you may repeat the behaviour or that this would be related to your nursing practice. You stated that you do not pose any risk to the public when practising as a nurse. You stated that you have previously worked with vulnerable people and that you had not taken advantage of your position. You said that a conditions of practice order would mean that you are much more exposed to scrutiny, supervision and control and would therefore mitigate the risk to the public.

You addressed the question of what a member of the public would think of your behaviour. You confirmed, as you previously stated, this is a question of politics. You stated that the public is not a single entity with no single behaviour. You stated that with limited knowledge they would say your behaviour was deeply troubling. However, you stated that not taking into account your two years of therapy would be remiss and that social intervention can be effective and that two years would be enough time to make a lasting change. You stated that a member of the public, having a certain degree of moral

property, would consider these factors and that otherwise the public interest is not a valid measure.

You stated that it should be noted that you had in the past not shown this behaviour at the workplace and that it is not likely that you will do so in the future. You also stated that you do not think that your behaviour is so serious that it can be considered of the highest order as described within the SG. You acknowledged that it would, had you abused your position as a nurse to commit your offences.

You stated that a striking-off order, as requested by the NMC, would not purposefully address the public interest as it would avoid risk management. You again stated that you had not committed these offences whilst working in your position as a registered nurse. You stated that a striking-off order would therefore not mitigate the risk but rather suggest to the public that the NMC is avoiding responsibility. You therefore stated that conditions of practice are appropriate to manage the risk. You stated that the public would be satisfied that the NMC considered that two years of therapy is sufficient time to affect change. Furthermore, you submitted that the public would be served by coming into contact with a mental health nurse who has been in contact with these measures, which will result in an enhancement of your nursing skills. You stated that should the NMC consider two years of therapy too short, a member of the public and ultimately a service user, would be disconcerted and wonder if it is not adequate for a registrant why would it be enough for them.

You stated that whilst there is no definite outcome measure for your treatment it cannot be assumed that your work has been ineffective. You stated that the measure should be your personal development, your change and growth in character and the work you have undertaken so far.

You stated that you do not believe you have breached a fundamental tenet of the profession as you have not caused any harm to patients and have not acted in any way that endangered patients whilst you were working as a registered nurse. You have always

tried to seek the best outcome for your patients and that you are demonstrably competent as a nurse.

When asked by the panel with regard to article 20.1 of the Code and what the Code means to you under these circumstances, you stated that whilst committing the offences you were not acting as a nurse and that you have been committing these as a private individual. You stated that the professional sphere would be you providing nursing services and responding to emergencies and that this is different from your personal sphere where you identify as Alex, an individual. You stated that an individual cannot be solely identified with their profession and that you are an individual who happens to hold a professional qualification. You admitted that as an individual your behaviour was sometimes remiss, however professionally your record has been exemplary.

The panel heard and accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found your 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:

- Serious sexual offences;
- Offences involved children; and
- Lack of insight.

The panel also took into account the following mitigating features:

- Early admissions to the offences both to the criminal courts and the NMC.

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 offences, and the public protection issues identified, an order that does not restrict your 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 your offences were 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 your 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. The panel noted that your case does not relate to your clinical practice. The panel was of the view that the offences committed by you were not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public or would be in the public interest.

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 repetition of behaviour since the incident;*

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse and demonstrates harmful deep-seated personality and attitudinal problems. The panel noted that your conviction was not only for viewing indecent images more than once but also for distributing indecent images of children. Furthermore, it noted that you attempted to arrange and facilitate the commission of a child sex offence. It determined that your actions made you an active member of a child pornography community. It concluded that these actions together are serious and are fundamentally incompatible with being on the register and are a serious breach of the fundamental tenets of the profession.

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?*

The panel noted your submissions stating that a nurse's private life does not affect their ability to be a safe and competent practitioner. However, it reminded itself that nurses occupy a position of privilege and trust in society and are expected at all times to be professional meaning they must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. The panel therefore determined that your actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with you remaining on the register. The panel

was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you 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 effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, 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 you 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 your own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Bass. She invited the panel to impose an interim suspension order, as the substantive decision will not come in to force for 28 days. She submitted that an interim order is necessary to cover the period between

now and any appeal being made and the substantive order coming into force. She submitted that an interim order is necessary to protect the public and address the public interest. She submitted that an interim conditions of practice order would not be appropriate in this case due to the reasons set out by the panel in their determination.

You did not have any specific submissions with regard to an interim order.

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.

If no appeal is made, then the interim suspension 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.