

Nursing and Midwifery Council Fitness to Practise Committee

Substantive Meeting 20 December 2021

Virtual Meeting

Name of registrant:	Darren Thomas Hancock	
NMC PIN:	16I1774S	
Part(s) of the register:	Registered Nurse Adult Nursing – September 2019	
Area of registered address:	Falkirk	
Type of case:	Conviction	
Panel members:	Suzy Ashworth	(Chair, Lay member)
	Carol Porteous	(Registrant member)
	Helen Eatherton	(Registrant member)
Legal Assessor:	John Bassett	
Panel Secretary:	Max Buadi	
Consensual Panel Determination:	Accepted	
Facts proved:	Charge 1	
Facts not proved:	N/A	
Fitness to practise:	Impaired	
Sanction:	Striking-off order	
Interim order:	Interim suspension order (18 months)	

Decision and reasons on service of Notice of Meeting

The panel was provided with the Notice of Meeting letter that had been sent to Mr Hancock's registered email address on 10 November 2021.

The panel took into account that the Notice of Meeting provided details of the allegations as well as the time frame for a Consensual Panel Determination (CPD) meeting.

The panel accepted the advice of the legal assessor.

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

Details of charge

That you, a registered nurse, were convicted on 9 February 2021 of:

1. Between 23 November 2019 and 26 November 2019; both dates inclusive, at [redacted] and elsewhere you did take or permit to be taken or make indecent photographs or pseudo-photographs of children: contrary to the Civic Government (Scotland) Act 1982 Section 52 (1) (A) as amended.

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

Consensual Panel Determination

At the outset of this meeting, the panel was made aware that a provisional CPD agreement had been reached between the NMC and Mr Hancock.

The agreement, which was put before the panel, sets out Mr Hancock's full admission to the facts alleged in the charge, and that his fitness to practise is currently impaired by reason of his conviction. It is further stated in the agreement that the appropriate sanction in this case would be a striking-off order.

The panel has considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

The Nursing & Midwifery Council and Darren Thomas Hancock, PIN 1611774S ("the Parties") agree as follows:

1. *Darren Thomas Hancock is content for his case to be dealt with by way of a CPD meeting.*

The charge

2. *Mr Hancock admits the following charge:*

That you, a registered nurse, were convicted on 9 February 2021 of:

1. *Between 23 November 2019 and 26 November 2019; both dates inclusive, at [redacted] and elsewhere you did take or permit to be taken or make indecent photographs or pseudo-photographs of children: contrary to the Civic Government (Scotland) Act 1982 Section 52 (1) (A) as amended.*

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

The facts

3. *Mr Hancock appears on the register of nurses, midwives and nursing associates maintained by the NMC as a Registered Nurse Adult (RNA), sub part 1 and has been a registered nurse since 19 September 2019.*
4. *The NMC received a referral from the Head of Nursing at NHS Forth Valley ('the Board') in relation to Mr Hancock. The information received was that Mr Hancock informed the Board's recruitment department on 29 November 2019 that he would be unable to attend work as he had been charged with a crime against children, and bail conditions set that meant he could not attend work. On 4 December 2019 Mr Hancock submitted a self-referral to the NMC.*
5. *At the material time Mr Hancock worked as a nurse in the Accident and Emergency (A&E) department. He was dismissed on 18 March 2021.*
6. *On 28 November 2019 Mr Hancock was arrested and charged with offences under the Civic Government (Scotland) Act 1982 Section 52 (1) (A), and was released on bail on 29 November 2019. There is no information available from Police Scotland as to the precise detail of the offence.*
7. *On 9 February 2021 Mr Hancock appeared before Falkirk Sheriff Court ('the Court') where he entered a guilty plea to the following offence:*

Between 23 November 2019 and 26 November 2019; both dates inclusive, at [redacted] and elsewhere you did take or permit to be taken or make indecent photographs or pseudo-photographs of children: contrary to the Civic Government (Scotland) Act 1982 Section 52 (1) (A) as amended.

8. *On 8 April 2021 Mr Hancock appeared before the Court for sentencing, and was sentenced to a Community Payback Order: Supervision Period for 3 years including unpaid work/activities period of 225 hours to be completed within 12 months, and made subject to the reporting requirements set out under the Sexual Offence Act 2003 for a period of 3 years from 8 April 2021. There are no sentencing remarks available from the Court.*

Impairment

9. *Mr Hancock's fitness to practise is currently impaired by reason of conviction on public protection and public interest grounds. In agreeing this the parties have had regard to the questions posed by Mrs Justice Cox adopting the approach of Dame Janet Smith in the 5th Shipman Report in Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant [2011] EWHC 927 (Admin): which are: -*

- a) *Has in the past, 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, and/or is she liable in the future to bring the professions into disrepute;*
- c) *has in the past, and/or is she liable in the future to breach one of the fundamental tenets of the professions;*
- d) *has in the past, and/or is she liable in the future to act dishonestly."*

10. *Limbs a, b and c are engaged in this case.*

11. *In regards to limb a) although Mr Hancock did not cause any harm to patients directly in his care, nor was the offence committed in a location where he was employed to provide nursing care, the victims of his offence – the children in the images – would have suffered harm as a result of Mr Hancock's conduct, and others would be put at risk of harm by the*

perpetuation of the market for such images. The conviction raises serious concerns about the potential risk he poses to others as a result of his behaviour in accessing images of child abuse.

12. In regards to limb b) Mr Hancock has engaged in sexual conduct which could be considered to be deplorable by fellow practitioners and members of the public. NMC guidance on 'Cases involving sexual misconduct 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, midwives and nursing associates'...'in fitness to practise, any conviction for child pornography is likely to involve a fundamental breach of the public's trust in nurses, midwives and nursing associates.' It is clear that Mr Hancock's conduct brings the profession into disrepute in that the public's trust in the nursing profession has been seriously undermined.

13. In addition, Mr Hancock has been convicted of a serious criminal offence which has caused significant damage to the reputation of the nursing profession, and the nature of the offending is a gross breach of the trust that members of the public place in registered and regulated professionals, in this case a nurse.

14. In regards to limb c) Mr Hancock's criminal conviction for a serious sexual offence has breached a fundamental tenet of the nursing profession in that he has failed to keep to the laws of the country.

15. Mr Hancock has also breached the following standards of The Code (2018):-

20. Uphold the reputation of your profession at all times.

To achieve this you must:

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

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

16. For the reasons set out in paragraphs 9-15, above, Mr Hancock accepts that at the time of committing the offence, his fitness to practise as a nurse was impaired.

Remediation, reflection, training, insight, remorse

17. In considering the question of whether Mr Hancock's fitness to practise is currently impaired, the Parties have considered Cohen v General Medical Council [2008] EWHC 581 (Admin) in which the court set out three matters which it described as being 'highly relevant' to the determination of the question of current impairment;

a) Whether the conduct that led to the charge(s) is easily remediable.

b) Whether it has been remedied.

c) Whether it is highly unlikely to be repeated.

18. The conduct that led to Mr Hancock's conviction for a serious sexual offence involving children could be said to be difficult to remediate, both in terms of public protection and the wider public interest.

19. Mr Hancock submitted a short written statement to the NMC dated 6 October 2021 in which is stated: 'I accept that my conviction means that my fitness to practice is impaired and I do not dispute any of the facts presented by the NMC.' Further that: 'I would like to stress that I am deeply ashamed of my actions, and would seek to assure the panel that I am truly committed to making the changes necessary, so that I do not commit any offences in the future. I am willing to discuss any thoughts you may have and I hope that I can convey to you that I will never commit such an offence again.'

20. Mr Hancock does express an acceptance of current impairment and that he is committed to making necessary changes to avoid offending. However, at

this stage, it is accepted that the possibility of future offending cannot be ruled out. His Social Worker has written to the NMC and stated that Mr Hancock: 'has been completing offence-focused work as part of his Programme and Supervision requirements. The purpose of this offence-focused work is to reduce the likelihood of further sexual offending. [PRIVATE].'

21. Whilst Mr Hancock remains the subject of criminal orders imposed, in part at least, to address his risk of reoffending, it would be premature to conclude he no longer poses a risk to the public. As such, and as accepted by Mr Hancock, his fitness to practice is currently impaired on public protection grounds.

Public interest impairment

22. A finding of impairment is necessary on public interest grounds.

23. In Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that:

"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."

24. The conduct of Mr Hancock has fallen far short of the standards the public would expect of professionals caring for them, public confidence in the professions has been seriously undermined. A finding of impairment is therefore required to maintain public confidence in the profession and

professional standards by marking Mr Hancock's conduct as wholly unacceptable offending behaviour for a registered nurse.

25. Mr Hancock accepts that his fitness to practice is currently impaired on public interest grounds.

Sanction

26. Mr Hancock accepts that the appropriate sanction in this case is a Striking Off Order.

27. The parties have considered the NMC's Sanction Guidance, bearing in mind that it provides guidance, not firm rules. The purpose of sanction is not to be punitive; however, in order to address the public interest including protecting the public, maintaining confidence in the profession and upholding proper standards of conduct and behaviour, sanctions may have a punitive effect.

28. The aggravating factors in this case are as follows:

- a) Mr Hancock has a conviction for a serious criminal sexual offence.*
- b) Mr Hancock received a criminal sentence of a Community Payback Order and has been made subject to the reporting requirements set out under the Sexual Offence Act 2003 for a period of 3 years, expected to end on 8 April 2024.*

29. The mitigating feature in this case is as follows:

- a) Mr Hancock has admitted the charge and that his fitness to practice is impaired by reason of his conviction.*

30. NMC guidance on considering sanctions for serious cases gives specific guidance on sanctions for sexual offences and criminal convictions. Sexual offending, particularly against children, is identified as likely to seriously undermine confidence in the profession and involves a serious and fundamental breach of public trust in nurses, midwives and nursing associates. As a general rule a registered professional should not be permitted to start practising again, if at all, until they have completed a

sentence for a serious offence (Council for the Regulation of Health Care Professionals v [1] General Dental Council and [2] Fleischmann [2005] EWHC 87 [QB]). Mr Hancock will not have completed his sentence until 2024 at the earliest, and will be subject to the reporting requirements set out under the Sexual Offence Act 2003 for a period of 3 years, from 8 April 2021 and expected to end on 8 April 2024.

- 31. Taking no further action or imposing a caution order would be inappropriate as they would not address the public protection concerns identified in this document. These sanctions would not reflect the seriousness of the convictions and therefore public confidence in the professions and professional standards would not be maintained.*
- 32. Imposing a Conditions of Practice Order would not be appropriate as there are no identified clinical concerns that could be addressed with conditions. This sanction would not reflect the seriousness of the convictions therefore public confidence in the professions and professional standards would not be maintained.*
- 33. Imposing a suspension order would temporarily protect the public but would not be appropriate as Mr Hancock would still be subject to a criminal sentence at the conclusion of a maximum period of suspension. This sanction would not reflect the seriousness of the convictions and therefore public confidence in the profession and professional standards would not be maintained*
- 34. In any event, a Striking Off Order is the appropriate sanction in this case.*
- 35. Mr Hancock's criminal offending has so seriously undermined the public's trust and confidence in him. His criminal offending and subsequent sentence is fundamentally incompatible with being a registered professional nurse. Only a Striking Off Order will be sufficient to protect patients, maintain public confidence in the profession and maintain professional standards.*

Interim order

36. An interim order is required in this case. The interim order is necessary for the protection of the public and otherwise in the public interest. This is because any sanction imposed by the panel will not come into immediate effect but only after the expiry of 28 days beginning with the date on which the notice of the order is sent to the registrant or after any appeal is resolved. An interim order of 18 months is necessary to cover any possible appeal period. An interim suspension order is appropriate as this would be consistent with the sanction imposed by the panel and would address public protection and public interest concerns already identified in this document.

Here ends the provisional CPD agreement between the NMC and Mr Hancock. The provisional CPD agreement was signed by Mr Hancock and the NMC on 14 December 2021.

The panel heard and accepted the legal assessor's advice. He referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. He reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Mr Hancock. Further, the panel should consider whether the provisional CPD 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 professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

Decision and reasons on the CPD

The panel decided to accept the CPD.

The panel noted that Mr Hancock admitted the facts of the charges. While the panel noted that it only had a printed signature from Mr Hancock and did not have correspondence to

confirm that he agreed with the CPD, the panel was satisfied that it could infer from the documentation before the panel that Mr Hancock consented to the CPD. It noted that Mr Hancock had been convicted and had legal representation in the NMC proceedings. It also bore in mind that he was sent notice of this meeting so the onus would be on Mr Hancock to inform the NMC of any disagreements he had. Accordingly, the panel was satisfied that the charge is found proved by way of Mr Hancock's admission, as set out in the signed provisional CPD agreement.

Decision and reasons on impairment

The panel then went on to consider whether Mr Hancock's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Mr Hancock, the panel has exercised its own independent judgement in reaching its decision on impairment.

The panel finds that limbs a, b and c of *Grant* are engaged. The panel was of the view that, in acting the way that he did, the children in the images would have suffered harm as a result of Mr Hancock's actions. It determined that Mr Hancock brought the nursing profession into disrepute, as he breached fundamental tenets of the nursing profession by receiving a criminal conviction for a serious offence.

The panel had regard to the case of *Cohen*, and considered whether the three areas of concern identified in Mr Hancock's nursing practice are capable of remediation, whether they have been remediated, and whether there is a risk of repetition of similar concerns occurring at some point in the future.

The panel noted that Mr Hancock accepted that his fitness to practice is impaired. The panel also took account, in particular, to paragraph 19 of the CPD agreement which detailed a written statement by Mr Hancock and paragraph 20, which details a statement from his social worker. While the panel acknowledge this, it was of the view that there is no evidence before the panel to demonstrate that the risk of repetition has been mitigated.

Therefore, the panel determined that a finding of impairment on public protection grounds is required.

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. It determined that a fully informed member of the public would be appalled by Mr Hancock's conviction, and extremely concerned should a finding of no current impairment be made in light of his convictions.

Having regard to all of the above, the panel was also satisfied that Mr Hancock's fitness to practise as a registered nurse is currently impaired on public interest grounds.

In this respect the panel endorsed paragraphs 9 to 25 of the provisional CPD agreement.

Decision and reasons on sanction

Having found Mr Hancock's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel had regard to the CPD. It 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:

- Mr Hancock has a conviction for a serious criminal sexual offence.
- Mr Hancock received a criminal sentence of a Community Payback Order and has been made subject to the reporting requirements set out under the Sexual Offence Act 2003 for a period of 3 years, expected to end on 8 April 2024.

The panel also took into account the following mitigating features:

- Mr Hancock has admitted the charge and that his fitness to practice is impaired by reason of his conviction.

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 conviction, and the public protection issues identified, an order that does not restrict Mr Hancock's practice would not be appropriate in the circumstances. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Hancock's 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 conviction identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Hancock's registration would not adequately address the seriousness of the conviction and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The panel noted that Mr Hancock's had received a serious criminal conviction relating to a sexual offence. The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the

serious breach of the fundamental tenets of the profession evidenced by Mr Hancock's actions is fundamentally incompatible with him remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Mr Hancock's conviction represents a significant departure from the standards expected of a registered nurse, and is fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Hancock's actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel accepted that under the principle in *Fleischmann*, there would have to be exceptional circumstances to justify making an order that would allow Mr Hancock to resume practising as a nurse before the expiry of the sentence imposed as a result of his conviction. The panel considered that there were no such exceptional circumstances in this case.

Balancing all of these factors, the panel agreed with the CPD that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the importance of public protection and the effect of Mr Hancock's actions in bringing the profession into disrepute by adversely affecting the public's view of

how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

This will be confirmed to Mr Hancock's in writing.

Decision and reasons on interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Hancock's own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

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 agreed with the CPD 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 Mr Hancock's is sent the decision of this hearing in writing.

That concludes this determination.