

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

**Substantive Meeting
29 December 2021**

Virtual Meeting

Name of registrant: Gregory James Smithson

NMC PIN: 96I1700E

Part(s) of the register: RNMH: Mental Health Nursing (30 August 1999)

Area of registered address: East Riding of Yorkshire

Type of case: Conviction

Panel members: Peter Cadman (Chair, Lay member)
Christine Callender (Registrant member)
Patricia Richardson (Lay member)

Legal Assessor: Andrew Granville-Stafford

Hearings Coordinator: Amira Ahmed

Facts proved: 1

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 informed at the start of this meeting that Mr Smithson was not in attendance and that the Notice of Meeting had been sent to his registered email address on 23 November 2021.

The panel took into account that the Notice of Meeting provided details of the allegation and the powers of the panel.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Smithson had been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

That you, a registered nurse:

1. On 6 November 2020, at Hull & Holderness Magistrates' Court, were convicted of making an indecent photograph/pseudo-photograph of a child.

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

Background

The NMC received a referral about Mr Smithson on 21 January 2021. The referral came from Humberside Police ('the Police').

On 22 July 2019 the Police identified that Gregory Smithson had accessed an IP address and uploaded an indecent image of a child to the internet via an anonymous chat service, KIK.

This was investigated and during various Police interviews Mr Smithson explained that he had begun offending over three years ago when he was working as a psychiatric nurse. He also mentioned that it was more about the collection than the material, but understood what he was doing to be wrong.

Gregory Smithson was subsequently charged, resulting in a conviction on 6 November 2020 at Hull & Holderness Magistrates' Court of making an indecent photograph or pseudo-photograph of a child.

In his sentencing remarks the judge said that Mr Smithson was found in possession of some 320 images of category A, of which 94 were unique; 223 at category B, 66 were unique; and category C, 477 images of which 143 were unique images. He described these as horrific, revolting and disgusting.

On 4 December 2020, Gregory Smithson was sentenced at Hull Crown Court to 10 months imprisonment suspended for 18 months with a rehabilitation activity requirement of up to 30 days, Registration under Sexual Offenders Act for 10 years, Sexual Harm Prevention Order made under s103 of the Sexual Offences Act 2003, forfeiture of mobile telephone, and a victim surcharge of £149.

Decision and reasons on facts

The panel took account of Rule 10 (2) and were satisfied that this case should be heard as a meeting rather than a hearing.

The charge concerns Mr Smithson's conviction and, having been provided with a copy of the certificate of conviction, and Mr Smithson's admissions, 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.'*

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Smithson's fitness to practise is currently impaired by reason of his conviction. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

The panel accepted the advice of the legal assessor.

Decision and reasons on impairment

The panel next went on to decide if as a result of the conviction, Mr Smithson's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must 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) [...]*

Although the conviction in question was not related to Mr Smithson's clinical practice and occurred in a domestic setting, the nature of the criminal conviction is such that it impacts on the safety of patients, in particular, the safety of children in his care. Children suffer harm as a result of indecent images being made, possessed and distributed. Offences

involving indecent images of children exploit children and amount to an abuse of children. It is therefore not guaranteed that a member of the public in Mr Smithson's care, would be safe, or indeed, feel safe, in his care.

Regarding insight, the panel noted that Mr Smithson had made early admissions and has explained that he no longer wishes to be on the NMC register.

The panel determined that Mr Smithson's conduct which led to a criminal conviction and custodial sentence is such that it is not possible to remedy and falls so far short of the standards the public expect of professionals caring for them that public confidence in the nursing and midwifery professions could be undermined if a finding of impairment was not made. It concluded that there is no evidence that the concerns in this case can be remediated. Should such conduct be repeated, there is a risk of putting other members of the public at risk of harm and also the risk of further damage to the reputation of the profession. 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; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mr Smithson's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Smithson's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mr Smithson off the register. The effect of this order is that the NMC register will show that Mr Smithson has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Representations on sanction

The panel noted that the NMC had notified Mr Smithson that it would seek the imposition of a striking off order if it found Mr Smithson's fitness to practise currently impaired.

Decision and reasons on sanction

Having found Mr Smithson's 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. 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:

- Mr Smithson's offending happened over a prolonged period.
- Mr Smithson's conduct related to particularly vulnerable members of society, children.

The panel also took into account the following mitigating features:

- Mr Smithson completed the Stop It Now programme and engaged fully with Project Nova. It is their view that that Mr Smithson showed genuine remorse for the harm caused by his offending.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Smithson'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 Smithson'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 misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Smithson's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The 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 Smithson's actions is fundamentally incompatible with Mr Smithson's 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 considering 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 Smithson's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Smithson'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.

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 of the matters identified, in particular the effect of Mr Smithson's 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 a striking off order 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 Smithson in writing.

Interim order

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

The panel accepted the advice of the legal assessor.

Decision and reasons on interim order

The panel decided 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 substantive striking off order 28 days after Mr Smithson's is sent the decision of this hearing in writing.

That concludes this determination.