

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

**Substantive Hearing
Tuesday, 2 – Friday, 5 May 2023**

Virtual Hearing

Name of Registrant:	Adrian Jon Barker
NMC PIN	0910205E
Part(s) of the register:	Registered Nurse - Sub Part 1 Adult Nursing - September 2009
Relevant Location:	Derbyshire
Type of case:	Misconduct/Caution
Panel members:	Andrew Macnamara (Chair, lay member) Julie Clennell (Registrant member) Penelope Titterington (Lay member)
Legal Assessor:	Sanjay Lal
Hearings Coordinator:	Catherine Acevedo
Nursing and Midwifery Council:	Represented by Anna Leatham, Case Presenter
Mr Barker:	Present and represented by Wafa Shah, Counsel instructed Thompsons Solicitors
Facts proved by admission:	All
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Details of charge

That you, a registered nurse:

- 1) Engaged in conversations with Person A that involved the sexualisation of one or more children including:
 - a) Exchanging pictures of them;
 - b) Discussing obtaining their underwear;
 - c) Exchanging pictures of their underwear;
 - d) Masturbating whilst looking at pictures of them and / or their underwear;
 - e) Masturbating into their underwear;
 - f) Giving them and / or returning their underwear that had been ejaculated into;
 - g) Discussing their underwear;
 - h) Discussing their physical attributes;
 - i) Discussing them engaging in sexual acts;
 - j) Discussing Person A video calling from Relative A's bedroom;
- 2) On one or more occasion masturbated into underwear provided by Person A at service station toilets;
- 3) On one or more occasion provided Person A with underwear purported to belong to a child;
- 4) Your actions at 1 and / or 2 and / or 3 above were sexually motivated in that you were seeking sexual gratification.

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

That you, a registered nurse:

- 1) On 25 March 2020 received a caution for possession of an extreme image on 28 June 2018 contrary to section 63 (1) (7) (d) of the Criminal Justice and Immigration Act 2008

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

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

Ms Shah made a request that parts of this case be held in private on the basis that there will be reference to your health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Leatham indicated that she supported the application to the extent that any reference to your health should be heard in private.

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.

Having heard that there will be reference to your health, the panel determined to hold those parts of the hearing in private in order to maintain your privacy.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Shah, who informed the panel that you made full admissions to the charges. You admitted to the misconduct charges 1- 4 in their entirety and you admitted to the charge in respect of your caution.

The panel therefore finds the misconduct charges 1- 4 proved in their entirety, and the charge in respect of your caution, proved, by way of your admissions.

Background

On 23 November 2018, you were arrested on suspicion of possessing indecent images of children and interviewed by police on the same date.

The suspicion was raised as the result of an initial police investigation in relation to another person ('Person A'). Following a review of Person A's device, chats were discovered between Person A and you with the exchanging of images. The chat log shows a conversation between you and Person A between 6 May and 24 August 2017.

Following a police investigation, it was evident that there were no indecent images of children on any of the devices seized from you that were forensically investigated. However, there was evidence that you had received one 'extreme' pornographic image (not involving children) which you admitted possessing and on 25 March 2020 you accepted a police Caution for an offence of possession of extreme pornography, contrary to section 63(1)(7)(d) of the Criminal Justice and Immigration Act 2008. You self-referred to the NMC as a result of this caution.

It is alleged that you and Person A met with one another to exchange underwear purporting to belong to children, to masturbate into them and return the underwear to each other.

You were interviewed by police. You accepted the chat logs were between you and Person A and that you had met Person A on two occasions. You said you felt pressured

into the meetings. You accepted taking underwear though denied it was from a family friend's 14 year old daughter. Instead, you stated that some was from an adult friend and some had been purchased from a shop.

The police provided the NMC with the redacted copies of the chat logs, initially only with the messages sent by you and subsequently with the messages from Person A unredacted. The police have redacted the images exchanged between you and Person A though confirm in a letter dated 20 July 2022 that these were mostly of young females, some in underwear. These were not deemed to be indecent except for one image of a female child under the age of 18 that was assessed to be a Category C image of a child. However, no charges were brought against you as no indecent images of children were found on your phone.

The chat logs suggest that you had sexual fantasies involving children by virtue of the exchanging of pictures of them, discussing their underwear and physical attributes as well as masturbating whilst looking at pictures of them and masturbating into their underwear.

The disclosure from the police also referred to the imposition of a Sexual Risk Order which was granted on 5 February 2021. This remained in place until 4 February 2023. The Sexual Risk Order imposed a number of restrictions on your conduct and behaviour, predominantly centred around your ownership of devices capable of storing images/accessing the internet, use of social media and use of the internet.

At the time of the police involvement, you were employed by Derbyshire Community Health Services NHS Foundation Trust as a Band 6 nurse. It is understood that the Trust did not proceed with a formal disciplinary investigation and you remained employed albeit in a non-patient facing role.

There have been no other referrals to the NMC and there are no other police matters recorded against you or ongoing.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. 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 panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

Your evidence under oath

The panel heard evidence from you under oath. You told the panel that at the time of the police involvement and when you receive the caution, you were employed by the Trust and remain employed up until today. You said your main role is delivering various training to staff within the organisation both clinical and corporate training. You said you do not provide any clinical services to any members of the public. You said it was a role that you opted to apply for and successfully gained in an interview. You have been in this role since April 2020. You confirmed that you do not have any other referrals against you other than this one to the NMC.

You provided testimonials from your previous line manager who is the People Development Lead, and from Lead Clinical Educator who is your current direct line

manager. You also provided the panel with a CPD log and confirmed that you are up to date with all your training requirements.

You told the panel that the police took five or six devices from your home when you were arrested including a laptop, two phones, a tablet and several USB storage devices. You confirmed that following their forensic analysis of your devices charges were not pursued against you in relation to possession of indecent images of children. However, you did accept a caution in relation to possession of an extreme image which did not relate to children.

In relation to charges involving the chat log, you referred to the Sexual Risk Order imposed by the courts which came to an end in February 2023. You confirmed that the police have not sought to obtain a further order against you. You said that the chat logs now make you feel absolutely disgusted and horrified and you cannot believe you were involved.

You said at that time you sought sexual gratification from your behaviour but you feel completely differently now and no longer feel any sexual gratification from the chat log. You said you have engaged in CBT therapy between 2018 to 2020. You said you have also accessed specialist psychosexual therapy in 2023. You referred the panel to your reflections detailing how you became 'that person' and how you will ensure that this does not happen again.

You explained other steps you have taken. You said you had a parental lock on your phone for approximately a year so that you could not access adult content. You said you have decided not to use social media of your own volition. You said your current coping strategies include engaging in interests outside of work that enable you to fill your time and which give you joy and fulfilment such as gardening and reading. You said you have a good support network. This whole experience has brought you closer to your friends and family, and you can have very open and frank conversations with them, particularly if you find that you are struggling.

You said your relapse prevention plan involves recognising any potential triggers and how to deal with them. You mentioned that you have identified your health as a trigger.

[PRIVATE]

You said that having a caution of this kind impacts on the reputation of nurses and the profession and is not good for public perception. You said the public can feel very uncomfortable about the nature of the caution and will feel it is unacceptable for a nurse to have a caution. In relation to the misconduct charges you said the public would have concerns that a nurse that has acted this way was allowed to practise as it is not behaviour expected of a nurse.

You said your conduct has affected your colleagues and your employer as they might feel unable to trust you and you have to rebuild that trust. You have tried to regain trust by being open and honest with your employer and the team to show there is no risk of repetition of any of your behaviours.

You said you are completely disgusted and horrified by your behaviour and you cannot believe you got involved in this situation. You said you are embarrassed and very, very remorseful. Having had six years to reflect on the incidents and with the various therapy, talking, with reflecting, you said you are confident that you have completely changed your behaviour.

You said you make no excuses and fully accept responsibility for your conduct. You said you want to put this behind you and move forward and be a good, committed nurse and a role model for the organisation and the nursing profession. You said you would love to continue in your current role, not because of any potential restrictions but because you enjoy conducting training. You said you get a lot of positive feedback from your training.

Submissions on misconduct and impairment

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Ms Leatham invited the panel to take the view that the facts found proved, both individually and cumulatively, amount to misconduct and were serious departures from the standards expected of a registered professional. She referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) and identified the specific, relevant standards where the NMC say your actions amounted to misconduct.

Ms Leatham also referred the panel to the NMC guidance on using social media responsibly.

Ms Leatham submitted that evidence of the screenshots of those messages alongside the police interview demonstrate that you engaged in inappropriate conversation online with another individual for a period of over three months. She submitted that the communication, was sexual in nature and sexually motivated, involving multiple references to children with you describing a sexual interest in children as young as 11. She submitted that not only was there inappropriate communication, but that on at least two occasions, you met up with another individual at a service station toilet, masturbated into what was purported to be underwear belonging to children, and then returned that underwear.

Ms Leatham submitted that the conduct cannot be described as anything other than very serious and whilst these regulatory concerns did not relate to your clinical nursing practise, the conduct was so serious as to justify a finding of misconduct.

Ms Leatham then moved on to the issue of impairment and reminded the panel that it must consider both the misconduct as well as the caution. She addressed the panel on the need 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. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Leatham submitted that, whilst the concerns occurred in your private life, the conduct presented a risk of emotional and physical harm to children. She submitted that you have brought the profession into disrepute and breached fundamental tenets of the profession.

Ms Leatham submitted that you have raised health concerns as a reason behind turning to these conversations and behaviour surrounding the sexualisation of children. She submitted that this explanation as a motivation from going from adult pornography to discussing sexualisation of children and masturbating into underwear purporting to be from a child, should be carefully considered. She submitted that the panel may consider that it does not sufficiently explain the motivation when it has not seen any independent documentary evidence in support of your health concerns.

Ms Leatham moved on to insight and the steps you have taken to address the concerns. She referred the panel to NMC guidance on serious concerns which are more difficult to put right and submitted that one such example provided in the NMC guidance relates to cases involving viewing or other involvement in child pornography. She submitted that, whilst you did not access child pornography, the police caution related to an extreme pornographic image and whilst the misconduct also did not involve child pornography, it does raise serious concerns about your attitudes towards the sexualisation of children. She submitted that both the misconduct and caution indicate underlying attitudinal concerns, which by their very nature are difficult to remedy.

Ms Leatham submitted that the panel has heard oral evidence from you and received your reflective pieces, the CPD log testimonials and the letter from TLC in respect of your assessment. She submitted that, whilst these documents may assist the panel in assessing your insight, they should be carefully considered.

In respect of the caution, Ms Leatham submitted that you made admissions early on and this was born out of a self-referral. She submitted that your reflective piece was timely. However, the admissions and reflective piece in respect of the misconduct was not provided to the NMC at any stage of the proceedings prior to the first day of the substantive hearing and may indicate that your insight is still developing.

Mr Leatham submitted that your CPD log includes a course relevant to the concerns. However, she reminded the panel that attitudinal concerns are much harder to address, especially within the confines of an internal trust training programme.

Ms Leatham submitted that the panel has also received a number of testimonials from your employers. However, this is not a case where there are clinical concerns and so it may place relatively limited weight on those testimonials. She submitted that the testimonials do not address the attitudinal concerns raised but accepted that they speak highly of you in terms of your clinical practise. She also submitted that the references gave no assurance that those providing them were aware of the full extent of the allegations against you or that you had admitted all the allegations in full.

Ms Leatham referred the panel to the therapy and lifestyle clinic TLC letter. She submitted that the panel has not heard sworn evidence from the professional who conducted the assessment, and therefore the weight to be attached to this can only go so far in terms of their screening assessment.

In relation to whether your conduct is likely to be repeated, Ms Leatham submitted that it is relevant that this conduct took place over a three month period, albeit it was conduct that occurred in 2017. She submitted that the conduct escalated in that it was not restricted to conversations alone with this sexual attitude towards children escalating to meeting up with a person physically on two occasions with the intention of seeking to pursue those sexual fantasies. In addition, she reminded the panel that the caution was for the

possession of an extreme pornographic image on the 28 June 2018. She therefore submitted that the concerns in this case were not isolated.

Ms Leatham referred the panel to the Sexual Risk Order which was granted on 5 February 2021. This remained in place until 4 February 2023.

Ms Leatham submitted that where there is a very serious departure from the standards expected, the panel needs to carefully consider whether the insight goes far enough to be completely reassured that there is no further risk to the public. She submitted that there is a public interest in a finding of impairment being made in this case. She submitted that your actions undermine the public confidence in the nursing profession and is conduct which calls into question the continuing suitability for you to remain on the register without restriction. She submitted that a well-informed member of the public would be seriously concerned if a finding of impairment was not made.

Ms Shah submitted on your behalf that misconduct relating to the chat logs is admitted.

With regards to impairment in relation to the caution and the misconduct, Ms Shah invited the panel to find that there is no impairment on the grounds of public protection either for the caution or for the misconduct.

Dealing specifically with the caution, Ms Shah invited the panel to find that it was one image and that the police dealt with it by way of a caution. She submitted that you admitted the conduct and self-referred to the NMC in respect of it. She submitted that the conduct that led to the caution was isolated. She submitted that there has been a significant period of time since the imposition of the caution which was in 2018 and there has been no repetition whatsoever. Ms Shah submitted that you have been subject to an order which has made all of your devices subject to scrutiny by the police. She invited the panel to find that the police, exercising their functions, satisfied themselves fully that there was nothing that presented a risk on any of your devices.

Ms Shah submitted that you have also provided the panel with a reflective piece, made admissions, not only by way of his self-referral to the NMC, but also to the police. Within your reflective piece, she submitted you have reflected on the impact such images can have on the treatment of animals, the wider harm the possession of such images causes and also the impact that your actions have had on the reputation of the profession. She submitted that you have demonstrated remorse, referring to the image as disgusting and acknowledging that it was completely unacceptable and apologising wholeheartedly to this panel for possession of it.

Ms Shah submitted that your admissions are whole-hearted and the evidence of insight, coupled with a complete lack of evidence of repetition, demonstrates that this was an isolated incident and the likelihood of repetition is so remote that there is no ongoing risk to the protection of the public.

Ms Shah submitted that you fully acknowledge that the fact that you received a caution for the possession of such an image will concern your regulator and the public. On that basis, she submitted that the panel may take the view that despite the fact that there is no evidence to suggest there is an ongoing risk to the public, there are grounds for a finding of impairment on a public interest basis.

Ms Shah then turned to the charges 1 to 4 which relate to misconduct. She submitted that you have provided the panel with a reflective piece and admitted to all of the allegations, acknowledging that those are your chat logs in a public forum. She reminded the panel that although those logs were viewed by the police, no criminal activity resulted from them, so they do not amount to criminal conduct.

Ms Shah submitted that the fact that you have elected to come to a public forum and acknowledge that those are your chat logs is the strongest evidence that you genuinely wish to remediate and earn back the trust of your colleagues and the public. She submitted that you have not sought to minimise the contents of those chat logs and during the course of your evidence you have described your conduct as disgusting, deviant and

horrifying. She invited the panel to find that, albeit abhorrent, there is no evidence that you ever acted inappropriately or came into contact with children or exhibited any behaviour with children that was inappropriate. Nor is there any evidence that you have escalated what has been referred to in these chat logs.

Ms Shah submitted that your conduct may raise concerns about your attitude. However, she submitted that you ceased that communication well before the police got involved and it is not the case that you only ceased these conversations after the police arrested you. There has been no repetition whatsoever and you have cooperated throughout with the police. She submitted there is no evidence of any further police investigations against you, or any further criminal charges being brought against you.

Ms Shah asked the panel to consider that the Sexual Risk Order was obtained against you but no attempt was made by the police to renew or extend that order, which came to an end in February 2023 and so the evidence before this panel is that the authorities do not view you as an ongoing risk.

Ms Shah submitted that you have engaged with the hearing process and given evidence, demonstrating remorse and shame for your actions. You have described the various steps taken to ensure that you never find yourself engaging in such activity again. She submitted that you have gone well beyond any order that was imposed upon you. You have completely gone off social media and had a parental lock on your phone for a period of time. She submitted you have also provided evidence of the work you have done on yourself. She referred the panel with to an independent letter from a psychosexual therapist. You also spoke of your support network which include family and friends and a colleague who are fully aware of what happened in 2017.

Ms Shah invited the panel to find that the risk of repetition of your misconduct is negligible. There is no evidence of repetition which amounts to some six years of no repetition of this misconduct. She submitted that there is nothing that has been presented to this panel that

demonstrates that there is an ongoing risk such that requires a finding of impairment to protect the public.

Ms Shah submitted that you acknowledge the seriousness of the misconduct. You accept that you need to gain back the trust of your colleagues, the profession and the public. She submitted that you accept that there may be grounds for the panel to make a finding of impairment on a public interest basis to maintain public confidence in the nursing professions and uphold standards.

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

When determining whether the facts found proved in respect of charges 1 - 4 amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code. Specifically:

“1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.5 respect and uphold people’s human rights

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

20.2 *act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment*

20.3 *be aware at all times of how your behaviour can affect and influence the behaviour of other people*

20.5 *treat people in a way that does not take advantage of their vulnerability or cause them upset or distress*

20.10 *use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times”*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

The panel noted that you accept that your actions amount to misconduct. The panel considered that your behaviour demonstrates a real risk to children. The panel considered that your conduct of engaging in inappropriate conversations online with Person A occurred over a period of over three months and was both serious and sexual in nature with you describing a sexual interest in children. The panel considered that this was extremely inappropriate communication which escalated to you meeting with Person A on another two occasions, at a service station toilet, where you masturbated into what was purported to be underwear belonging to children, and then returned that underwear.

The panel also took into account the NMC guidance on using social media responsibly which stated:

“Nurses, midwives and nursing associates may put their registration at risk, and students may jeopardise their ability to join our register, if they act in any way that is unprofessional or unlawful on social media including (but not limited to):

- *bullying, intimidating or exploiting people*

It is important to consider who and what you associate with on social media. For example, acknowledging someone else's post can imply that you endorse or support their point of view. You should consider the possibility of other people mentioning you in inappropriate posts. If you have used social media for a number of years, it is important to consider, in relation to the Code, what you have posted online in the past".

The panel was of the view that your conduct cannot be described as anything other than a very serious departure from the standards expected and although the concerns do not relate to your clinical nursing practise, they were so serious as to justify a finding of misconduct.

The panel therefore found that your actions fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct and your caution, 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. 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 the approach adopted by Dame Janet Smith's 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) ...'*

The panel found that limbs a, b and c are engaged. The panel finds that although patients were not directly put at risk of harm as a result of your caution and misconduct, members of the public namely children were put at unwarranted risk of harm. The panel found that your misconduct and caution had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered your oral evidence and reflections. It noted that you made admissions and have demonstrated an understanding of how your actions put children at a risk and you have demonstrated an understanding of why what you did was

wrong and how this impacted negatively on the reputation of the nursing profession. The panel noted you demonstrated remorse and shame and apologised for your misconduct. You also described how you would handle the situation differently in the future so as to not repeat the same behaviours.

The panel noted that you raised health concerns as a reason behind turning to these conversations and behaviour surrounding the sexualisation of children.

The panel was of the view that the misconduct and caution evidenced behaviour that is more difficult to put right. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to address the concerns. The panel noted that whilst you did not access child pornography, the police caution related to an extreme pornographic image and whilst the misconduct also did not involve child pornography.

The panel has also received a number of testimonials from your employers.

Although the panel noted that the evidence you provided was not specific to the risks to children, taking all the above into consideration, including the passage of time, the panel considered that there was insufficient evidence before it to conclude that you represent an ongoing risk to the public. The panel therefore decided that a finding of impairment is not 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.

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 finds your fitness to practise is impaired on the grounds 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 from 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 Leatham informed the panel that in the Notice of Hearing, dated 16 March 2023, the NMC had advised you that it would seek the imposition of a striking-off order if it found your fitness to practise currently impaired. She outlined for the panel what the NMC considers to be the aggravating and mitigating features of this case.

Ms Leatham submitted that to take no further action or impose a caution order is not appropriate in this case in view of the seriousness of the misconduct and the caution. She submitted that you have breached multiple fundamental tenets of the profession and is not at the lower end of seriousness.

Ms Leatham submitted that in terms of a condition of practice order, this is not a case where there are identifiable clinical deficiencies in your nursing practice. You have been

subject to an interim conditions of practice order since 3 December 2020 which ensured that you did not carry out direct patient care. She submitted that this was prior to the facts being found proved by your admissions and the panel's finding of impairment and would not protect the public or uphold standards.

In terms of a suspension order, Ms Leatham submitted that you have demonstrated insight and the panel found that you do not pose a risk of repeating the misconduct. However, in the NMC's submission the concerns are the type that are incompatible with remaining on the register. She submitted that this was not a single incident.

Ms Leatham submitted that the concerns relating to your misconduct and caution raise fundamental questions about your professionalism and that public confidence in the profession could not be maintained if you were not removed from the register. Ms Leatham submitted that a striking-off order is the only appropriate sanction to mark the seriousness of this case and maintain professional standards.

The panel bore in mind Ms Shah's submissions. She asked the panel to consider either a caution order, a conditions of practise order or a suspension order.

Ms Shah submitted that it would be disproportionate to restrict your practise for any lengthy period of time due to the lack of repetition, the clear mitigating factors, namely that there was a self-referral and that there has been no repetition. She submitted there have been significant efforts made by you to cooperate with the police and they no longer consider you a risk. She submitted that you have engaged fully with the NMC, you have acknowledged everything you were involved with in 2017 in a public forum and you have addressed the panel in respect of your insight and remorse.

Ms Shah addressed the panel on a caution order. She submitted that a caution order does not prevent you from working but it does satisfy the public interest. In these circumstances, where there is no ongoing risk, and there is genuine remorse and insight, she submitted that a caution order would be appropriate. She reminded the panel that a caution order would be in place for 5 years.

Ms Shah submitted that a conditions of practice order would serve the purpose of reminding you that you are subject to a sanction which imposes requirements on you. She submitted that a conditions of practice order was also a message to the public and other members of the profession that if nurses engage in certain conduct, there will be consequences. She submitted that conditions would satisfy the public interest and reminded the panel of the public interest in a good safe nurse going back to practise. She invited the panel to consider a condition where you can only work with Derbyshire Community Health Services.

Ms Shah then addressed the panel on a suspension order. She submitted that this is not a case where the public need to be protected, she stated that it is a public interest case and the suspension order would mark the seriousness of it. She invited the panel to consider a very short suspension order of one or two months and submitted that this length of time would serve the principle of proportionality. She submitted that were you to be suspended for a lengthy period of time, you would likely lose your current role. She submitted that you have no clinical contact with anyone and do not present any risk to patients. Ms Shah asked the panel to consider the impact on you, and that to deprive you from practising in circumstances where you do not present any risk to the public and where you do not come into contact with the public, would be wholly disproportionate.

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:

- Your conduct was sexually motivated.

- The proven misconduct charges took place over a period of 3 months and you initiated some of those conversations.
- Your conduct put children at risk of harm.
- Your conduct involved the sexualisation of children.
- Your conduct raises fundamental questions about your professionalism.

The panel also took into account the following mitigating features:

- You made admissions to all of the charges at the start of this hearing.
- You have demonstrated insight and remorse.
- The matter occurred some time ago, the misconduct occurred in 2017 and you received a police caution in 2018.

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, 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 the misconduct and police caution 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 misconduct identified in this case was 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.

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:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel considered that this was not a single incident. Your misconduct where you engaged in a conversation which involved the sexualisation of children, occurred over a period of 3 months and escalated to you meeting with Person A on two occasions. It noted that your caution also involved the possession of an extreme pornographic image involving an animal and although the possession of this extreme image did not result in a conviction, the nature of the image was very serious.

The panel took into account that you have worked without any issues being raised about your conduct since these matters occurred and you have shown insight into your behaviour. The panel found that you do not present an ongoing risk to the public. However, the panel took into account the NMC guidance on cases involving sexual misconduct. It was of the view that your conversations and actions involving the sexualisation of children and putting them at risk for the purposes of sexual gratification seriously undermines public trust in nurses.

The panel determined that 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 your actions is fundamentally incompatible with you 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?*

Each of your actions were significant departures from the standards expected of a registered nurse, and cumulatively they 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 registered nurses 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 decision 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 interests 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 Leatham. She invited the panel to impose an interim suspension order for a period of 18 months to cover the period for an appeal on the grounds that it is in the wider public interest.

Ms Shah invited the panel to mirror the interim conditions of practice order that is currently in place, which was an order which was deemed appropriate in the circumstances when this matter was being investigated. She submitted that this is the only fair way to proceed.

Decision and reasons on interim order

The panel was satisfied that an interim order is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved by your admissions 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 balanced your right to an appeal with the public interest and the need for proportionality. However, the panel having regard to its earlier determination that ongoing registration is incompatible with the public interest and in the particular circumstances of the case determined that the only proportionate interim order would be one of an interim suspension order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the appeal period.

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.