

Nursing and Midwifery Council Fitness to Practise Committee

**Substantive Meeting
Thursday 17 August 2023**

Virtual Meeting

Name of registrant:	Karl Morgan
NMC PIN:	85D0037W
Part(s) of the register:	RN1, Registered Nurse – Adult Nursing (June 1988)
Relevant location:	Cheshire
Type of case:	Conviction
Panel members:	Derek McFaull (Chair, Lay member) Jan Bilton (Lay member) Des McMorrow (Registrant member)
Legal Assessor:	Nigel Ingram
Hearings Coordinator:	Jasmin Sandhu
Consensual Panel Determination:	Accepted
Facts proved:	Charges 1a and 1b
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	Striking-off order

Details of charge

That you, a registered nurse:

1. On 6 April 2022 were convicted of the following offences at Cheshire Magistrates Court:
 - a. Possession of 97 category C indecent images of children **[Proved by conviction and admission]**
 - b. Making 97 category C indecent images of a child **[Proved by conviction and admission]**

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

Decision and reasons on service of Notice of Meeting

Notice of this meeting was sent to Mr Morgan's registered email address by secure encrypted email on 31 July 2023. The Notice set out details of the allegations, that this matter would be considered as a meeting rather than a hearing, and that the meeting would be taking place on or after 14 August 2023.

The panel accepted the advice of the legal assessor.

The panel was satisfied that Mr Morgan has been served with reasonable notice of this meeting in accordance with the requirements of Rules 11A and 34.

Consensual Panel Determination

A provisional agreement of a Consensual Panel Determination (CPD) has been reached between the Nursing and Midwifery Council (NMC) and Mr Morgan. The agreement, which was put before the panel, sets out Mr Morgan's full admissions to the facts alleged in the charges and that his fitness to practise is currently impaired by reason of his conviction. It

is further stated in the agreement that an appropriate sanction in this case would be that of a striking-off order.

The panel considered the provisional CPD agreement reached by the parties, which reads as follows:

'The Nursing & Midwifery Council ("the NMC") and Mr Karl Morgan ("Mr Morgan"), PIN 85D0037W ("the Parties") agree as follows:

1. Mr Morgan is aware of the CPD meeting.

The Charges

2. Mr Morgan admits the following charges:

That you, a registered nurse:

1. On 6 April 2022 were convicted of the following offences at Cheshire Magistrates Court:

- a) Possession of 97 category C indecent images of children*
- b) Making 97 category C indecent images of a child*

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

The Statement of Agreed Facts

- 3. Mr Morgan appears on the register of nurses, midwives and nursing associates maintained by the NMC as a Registered Nurse and has been on the NMC register since 1 July 2000.*
- 4. On 8 February 2021 the NMC received a referral from Cheshire Constabulary about Mr Morgan. Mr Morgan was arrested and interviewed by Police on 4 February 2021 on suspicion of possessing an indecent photograph or pseudo-photograph of a child and*

making an indecent photograph of children and distributing indecent photographs or pseudo-photographs of children.

5. *On 9 February 2021 the NMC received a self-referral from Mr Morgan regarding the incident. Mr Morgan explained that on 4 February 2021 his house was visited by the Police because Google had informed them that an image had been downloaded to his account of a partially clad female who was possibly under the age of 18.*
6. *Mr Morgan was arrested and his house was searched for electronic devices so they could be examined. He was then interviewed but not charged and released with no restrictions but remained under investigation whilst his electronics were examined.*
7. *At the time of the incident Mr Morgan was employed by Mid Cheshire Hospitals NHS Foundation Trust ("the Trust") as a Band 6 Charge Nurse on the adult orthopaedic and trauma ward. Mr Morgan had been working for the Trust since 25 July 1996. As of 5 February 2021 Mr Morgan was suspended whilst the Trust investigated the matter.*
Charge 1a-b
8. *Mr Morgan appeared before Cheshire Magistrates Court on 6 April 2022 and was charged and convicted of the offences of possessing indecent photograph/pseudo-photograph of a child. Mr Morgan is subject to a community order, which expires on 5 October 2023. He was placed on the sex offenders register for 5 years and was required to undertake rehabilitation activities for 35 days. Mr Morgan was also required to undertake 220 hours of unpaid work and a requirement for forfeiture and destruction of his Samsung mobile phone and Acer Iconia tablet.*
9. *The Parties agree that Mr Morgan's fitness to practise is impaired by reason of his conviction. The conviction relates to a serious offence.*

Impairment

10. *The Parties agree that Mr Morgan's fitness to practise is currently impaired by reason of conviction.*

11. The NMC's guidance¹ explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

12. If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.

13. Answering this question involves a consideration of both the nature of the concern and the public interest. In addition to the following submissions the panel is invited to consider carefully the NMC's guidance on impairment.

14. At the relevant time, Mr Morgan was subject to the provisions of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ('the Code'). The Code divides its guidance for nurses in to four categories which can be considered as representative of the fundamental principles of nursing care. These are:

- a) Prioritise people;
- b) Practice effectively;
- c) Preserve safety and
- d) Promote professionalism and trust

15. It is submitted, that the following parts of the Code have been breached in this case:

20 Uphold the reputation of your profession at all times

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...,

20.4 keep to the laws of the country in which you are practising

20.8 act as a role model of professional behaviour for students and newly qualified nurses to aspire to.

16. The Parties agree that consideration of the nature of the concern involves looking at the questions set out by Dame Janet Smith in her Fifth Report from Shipman, approved in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) by Cox J;

- *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*
- *Has in the past brought and/or is liable in the future to bring the professions into disrepute; and/or*
- *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the professions; and/or*
- *Has in the past acted dishonestly and/or is liable to act dishonestly in the future?*

17. The Parties agree that limbs 2 and 3 of the 'Grant test' apply in this case.

18. The Parties have considered the NMC's guidance on seriousness. The NMC invites the Panel to consider our guidance on how we determine seriousness (FTP-3). It notes that some serious concerns are more difficult to put right. These include criminal offending relating to accessing, viewing, or other involvement relating to images or videos involving child sexual abuse (FTP-3a). Mr Morgan's conviction is in relation to a serious offence of a sexual nature by being charged and convicted of possessing an indecent photograph/pseudo-photograph of a child. Therefore, we may need to take restrictive regulatory action as Mr Morgan has breached fundamental tenets of the profession by the very nature of his conviction. Registered professionals occupy a position of trust and must act and promote integrity at all times, fundamental tenets which have been breached in this case.

19. Serious concerns also include those based on public confidence and professional standards which mean that the NMC may need to take action even if the nurse, midwife, or nursing associate has shown that they have addressed the issues of concern such that they are highly unlikely to be repeated if ~~that~~ the past incidents themselves were so serious they could affect the public's trust in nurses, midwives and nursing associates. The guidance goes on to say we may also need to take action in cases where concerns were not directly related to the care of the nurse, midwife or nursing associate provided to people, but which call into question the basics of their professionalism. This may cover things that have happened in the nurse, midwife or nursing associate's private life. For example, if they've committed serious criminal offences such as Mr Morgan's case. Mr Morgan's past actions have brought the profession into disrepute. Trust and confidence are the bedrock of the nursing profession.

20. This guidance goes on to say that the NMC “may need to take restrictive regulatory action against nurses, midwives or nursing associates whose conduct has had this kind of impact on the public’s trust in their profession, who haven’t made any attempt to reflect on it, show insight, and haven’t taken any steps to put it right.”

21. Current impairment is an assessment of a nurse, midwife, or nursing associate’s fitness to practise at the present time. This assessment must be informed by past events but as it is a forward-looking exercise it is also necessary to assess whether Mr Morgan is likely to act in such way in the future. The parties refer to the case of *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;

- Whether the conduct that led to the charge(s) is easily remediable.
- Whether it has been remedied.
- Whether it is highly unlikely to be repeated.

Remorse, reflection, insight, training and strengthening practice

22. The Parties have therefore considered whether Mr Morgan has made any attempt to reflect on his conviction, whether he has shown any insight. The Parties have not considered if Mr Morgan has taken steps to strengthen his practice as the concerns in this case are not clinical.

23. Mr Morgan has not provided the NMC with a reflective statement to demonstrate remorse. Instead, in an email dated 1 June 2023 Mr Morgan stated that he retired in 2021 and does not intend to return to the nursing profession and also wishes to be removed from the NMC register.

24. In his completed case management form (CMF) dated 1 June 2023 Mr Morgan stated “I downloaded images of women in smart underwear, I have no interest in, and did not search for underage women, I, to my shame, did not register that some of the models were under 18. Downloading an image is classed as making an image, I most certainly did not take any pictures”. Mr. Morgan has very limited insight. He has not

exhibited remorse but has sort to justify and explain his actions. He has not reflected on the effect of his behaviour on the profession.

Public interest impairment

25. The Parties considered whether the Fitness to Practise Committee needs to take action to promote public confidence or professional standards for nurses. The NMC's guidance says this will only apply if a nurse, midwife or nursing associate's past conduct 'raises fundamental concerns about their trustworthiness as a registered professional'.

*26. 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."*

27. In considering this question, the Parties note again that a basic tenet of the profession has been breached by Mr Morgan's conviction.

28. In upholding proper professional standards and conduct and maintaining public confidence in the profession, the Fitness to Practise Committee will need to consider whether the concern is easy to put right. For example, it might be possible to address clinical errors with suitable training. A concern which hasn't been put right is likely to require a finding of impairment to uphold professional standards and maintain public confidence.

29. However, there are types of concerns that are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession. Mr. Morgan's conviction is so serious that it may not be possible to address sufficiently to allow a return to practice.

30. *In order to maintain and uphold public confidence in the profession, and in order to maintain and uphold professional standards, the Parties agree that a finding of impairment is required in the public interest.*

Sanction

31. *The appropriate sanction in this case is a striking off order.*

Rationale

32. *With regard to the NMC's sanctions guidance the following aspects have led us to this conclusion and looking at each of the sanctions in turn:*

No action or a caution order

33. *Taking into account our sanction guidance SAN-3a and SAN-3, the case is too serious for taking no action or a caution order. Mr Morgan's conduct clearly presents a continuing risk to the public and undermined the public's trust in nurses. Mr Morgan breached one of the fundamental tenets of the professions by way of his conviction. A caution order is only appropriate if there is no risk to the public or to patients requiring a nurse, midwife or nursing associate. Therefore, the Parties agree that these sanctions are not sufficient to ensure public confidence and trust in the profession.*

Conditions of practice

34. *The NMC's sanctions guidance states that a conditions of practice order may be appropriate when there are identifiable areas of the registered professionals practice in need of assessment and/or retraining; and conditions can be created that can be monitored and assessed. It is difficult to address the concerns in this case through re-training or assessment. The Parties agree that it would be not be possible to formulate workable conditions of practice which would address the concerns relating to Mr Morgan's conviction as the concerns are not clinical.*

A suspension order

35. Taking into account our sanction guidance SAN-3d, it notes we must consider whether the seriousness of the case requires Mr Morgan to be temporarily removed from register and if the period of suspension would be sufficient to protect public confidence in nurses, midwives or nursing associates. The Parties agree that temporary removal from the register would not be sufficient due to the serious sexual offences pertaining to minors. This behaviour is incompatible with remaining on register. Therefore, a more severe sanction would uphold proper professional standards and conduct and maintain public confidence in the profession.

Striking-off order

36. The Parties agree that a striking off order (SAN-3e) would be the most appropriate and proportionate sanction to impose in this case. Nothing short of this would properly reflect the seriousness of Mr Morgan's conviction relating indecent images of children. The guidance for considering sanctions for serious cases (SAN-2) states that: "Sexual offences include accessing, viewing, or any other offence relating to images or videos involving child sexual abuse or exploitation. These types of offences gravely undermine patients' and the public's trust in nurses, midwives and nursing associates. Some offences relating to images or videos of child sexual abuse are considered more serious than others in the criminal courts. However, in fitness to practise, any conviction relating to images or videos involving child sexual abuse is likely to involve a fundamental breach of the public's trust in nurses, midwives and nursing associates".

37. This was sexual offending that occurred over a 5 year period whilst Mr. Morgan was working as a nurse. Mr. Morgan has not offered any reflection nor has he sought to address the issues raised by his conviction. A Striking Off order is required to uphold the public interest and maintain confidence in the profession and the NMC as regulator.

38. The guidance on criminal convictions and cautions (FTP-2c) states: "If the criminal offending took place in the nurse, midwife or nursing associate's private life, and there's no clear risk to patients or members of the public, then it is unlikely that we'll need to take regulatory action to uphold confidence in nurses, midwives or nursing associates, or professional standards.

We'd only need to do that if the nurse, midwife or nursing associate was given a custodial sentence (this includes suspended sentences), or the conviction was for a specified offence."

39. Our guidance on specified offences (FTP-2c-1) relates to hate crimes, sexual offences and other serious offences. Sexual offences include offences which relate to images or videos involving child sex abuse. Therefore, the Parties agree that a striking-off order is the appropriate and minimum necessary sanction in all circumstances as Mr Morgan's conviction is incompatible with being on the register.

The Parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the panel. The Parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.'

The provisional CPD agreement was signed by Mr Morgan on 27 July 2023 and by the NMC on 31 July 2023.

Decision and reasons on the CPD

The panel decided to accept the CPD.

The panel heard and accepted the legal assessor's advice, who referred it to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'.

The panel was aware that it could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Mr Morgan. 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.

The panel noted that Mr Morgan has admitted the facts of the charges. It also had regard to the certificate of conviction signed by a court officer of Crewe Magistrates' Court and Rule 31(2) as follows:

'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.'

The panel was satisfied that the charges are found proved by way of Mr Morgan's admissions, as set out in paragraph two of the signed provisional CPD agreement.

Decision and reasons on impairment

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

The panel decided that the following provisions of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ('the Code') had been breached by Mr Morgan:

20 Uphold the reputation of your profession at all times

To achieve this, you must, as appropriate:

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
20.4 keep to the laws of the country in which you are practising
20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to.

In this respect, the panel endorsed paragraphs 14 and 15 of the provisional CPD agreement.

The panel also had regard to Dame Janet Smith's Fifth Shipman Report:

'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) ...*
- 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 was of the view that limbs (b) and (c) of the 'Grant test' were engaged. It determined that by acting in a manner which questions his professionalism, Mr Morgan has brought the reputation of the nursing profession into disrepute. The panel also considered that as a result of his conviction, which is one of a very serious nature, Mr

Morgan has breached his position of trust and failed to act and promote the integrity of the profession. Therefore, Mr Morgan has breached fundamental tenets of the nursing profession.

In this respect, the panel endorsed paragraphs 16 – 19 of the provisional CPD agreement.

The panel was aware that Mr Morgan has accepted that his fitness to practise is impaired by reason of his conviction. In making its own finding as to impairment, the panel took account of the case of *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 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?*

The panel was of the view that Mr Morgan's conviction concerning the possession of indecent photographs/pseudo-photographs of children is a serious offence. It had regard to the NMC's Guidance titled 'How we determine seriousness' (FTP-3) which outlines factors indicating serious concerns which are more difficult to put right:

- ...
- *criminal offending relating to accessing, viewing, or other involvement relating to images or videos involving child sexual abuse*
- ...

The panel determined that the above factor was present in this case and therefore the concerns would be difficult to remediate.

The panel took the view that Mr Morgan has not developed insight; he has not shown that he has reflected and has sought to justify his actions rather than shown any remorse. The

panel therefore had no evidence before it to indicate that Mr Morgan understands the wider impact of his actions on the profession or the NMC as regulator. The panel also bore in mind an email from Mr Morgan to the NMC (dated 1 June 2023), in which he stated that he retired in 2021, he does not intend to return to the nursing profession, and that he wishes to be removed from the NMC register.

The panel determined that a finding of impairment was necessary on public interest grounds. It had regard to the need to uphold proper professional standards and public confidence in the profession, which would be undermined if a finding of current impairment was not made at this time.

The panel therefore endorsed paragraphs 22 – 30 of the provisional CPD agreement.

Decision and reasons on sanction

Having found Mr Morgan'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 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 first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the public interest issues identified.

The panel then considered the imposition of a caution order but again determined that due to the seriousness of the case as well as the public interest issues identified, a caution order would not be appropriate or proportionate.

The panel next considered whether placing conditions of practice on Mr Morgan's registration would be a sufficient and appropriate response. The panel was of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. Mr Morgan's conduct and conviction was not related to his clinical practice and therefore cannot be addressed through retraining or assessment. The the panel also determined that the placing of conditions on Mr Morgan's registration would not adequately address the seriousness of this case and would not uphold the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It took into account the guidance set out by the SG detailing the factors present where a suspension orders appropriate and found that none of these factors were relevant in this case. The panel determined that Mr Morgan's conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse and that his actions are fundamentally incompatible with him remaining on the register.

As such, 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 determined that Mr Morgan's actions constituted a significant departure from the standards expected of a registered nurse and are fundamentally incompatible with him

remaining on the register. 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 effect of Mr Morgan'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.

In this regard, the panel endorsed paragraphs 31 – 39 of the provisional CPD agreement.

This will be confirmed to Mr Morgan in writing.

That concludes this determination.