

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

**Substantive Meeting
Thursday, 15 August 2024**

Virtual Meeting

Name of Registrant: Robert Neill

NMC PIN: 98A0065E

Part(s) of the register: Registered Nurse – Adult (29 January 2001)

Relevant Location: Mold

Type of case: Conviction

Panel members: Gregory Hammond (Chair Lay member)
Mary Karasu (Registrant member)
Alison Hayle (Lay member)

Legal Assessor: Natalie Byrne

Hearings Coordinator: Sharmilla Nanan

Facts proved: Charges 1 and 2

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 the Notice of Meeting had been sent to Mr Neill's prison postal address by recorded delivery and by first class post on 3 July 2024.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, and that this meeting would take place on or after 8 August 2024, and advised that if Mr Neill had any responses to make that he should do so by 1 August 2024.

In the light of all of the information available, the panel was satisfied that Mr Neill has 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, on 21 February 2024, at the Crown Court at Mold, were convicted of:

1. Sexually Activity with a mentally disordered female – penetration.
2. Cause/incite sexual activity with a mentally disordered female – no penetration.

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

Background

On 28 November 2022, in the course of Mr Neill's work as a district nurse, he visited a 71 year old patient who suffered with a mental disorder and was unable to look after or protect herself.

Mr Neill sexually abused her in her own home. He touched her breasts and penetrated her vagina with his fingers. This abuse was captured by CCTV which the patient's family had installed to ensure their mother remained safe.

Mr Neill was prosecuted and convicted of the offences set out above on 21 February 2024. He was sentenced to 14 years imprisonment and was given an extended licence period of four years. He was also made the subject of a Sexual Harm Prevention Order.

Decision and reasons on facts

The charges concern Mr Neill's conviction and, having been provided with a copy of the certificate of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3). These state:

- '31.— (2) Where a registrant has been convicted of a criminal offence—*
- (a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and*
 - (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.*
- (3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.'*

The panel also noted that in Mr Neill's response to the charges, signed and dated 8 July 2024, he made an admission to charge 2.

Fitness to practise

Having decided its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Neill's fitness to practise is currently impaired by reason of Mr Neill's 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.

Representations on impairment

The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This includes 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 has referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC submitted in writing that limbs 1, 2 and 3 of *Grant* can be answered in the affirmative in this case. The NMC referred to the Judge's remarks when sentencing Mr Neill for his crimes, specifically '*it is difficult to imagine a worse case of breach of trust*'.

The NMC submitted that impairment is a forward thinking exercise which looks at the risk the registrant's practice poses in the future. However, some conduct is irremediable. The NMC submitted that this is a case where no amount of reflection, insight, remorse or training could mean Mr Neill was fit to practise again. His '*horrific*' conduct indelibly marks him as someone utterly unfit to be a registered professional in the NMC's submission.

In Mr Neill's response to the charges, signed and dated 8 July 2024, he accepted that his fitness to practise is impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

Breaches of the Code

The panel determined that Mr Neill's conduct fell seriously short of what is expected of a registered nurse. It found that the conduct underlying the conviction breached 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)', specifically the following:

'Prioritise people

You put the interests of people using or needing nursing or midwifery services first. You make their care and safety your main concern and make sure that their dignity is preserved and their needs are recognised, assessed and responded to. You make sure that those receiving care are treated with respect, that their rights are upheld and that any discriminatory attitudes and behaviours towards those receiving care are challenged.

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

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.

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

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

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

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

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carer'

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'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?"

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. 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 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/their fitness to practise is impaired in the sense that S/He/They:

- 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 finds that a vulnerable patient was caused harm as a result of the actions that led to Mr Neill's conviction. It also noted the emotional impact Mr Neill's actions had on the patient's relatives. Mr Neill's criminal actions have breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel considered whether Mr Neill's actions were capable of being addressed. The panel is of the view that there is a risk of repetition based on the judge's sentencing remarks in the criminal proceedings, as follows: *"...I am required to consider the issue of dangerousness, that is whether there is a significant risk of you committing further specified offences and if so whether there is a significant risk of your causing serious harm thereby. I am satisfied that you do present such a risk..."*. It concluded that Mr Neill's

actions underlying the convictions were not capable of remediation. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that, in this case, a finding of impairment on public interest grounds was required. It took into consideration that an informed member of the public would be shocked and horrified if a registrant were allowed to continue practising with no restrictions on their NMC registration in light of the criminal convictions highlighted in this case. 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.

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

Sanction

The panel has considered all the factors present in this case and has decided to make a striking-off order. It directs the registrar to strike Mr Neill off the register. The effect of this order is that the NMC register will show that Mr Neill's name 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 submitted that the proportionate sanction for this case is a striking off order. In its submission, the NMC submitted that it would ordinarily go through

the sanction options in ascending order of severity but consider that to do so in this case, to suggest, even only to dismiss, that any outcome other than strike off could be appropriate, would be absurd and offensive to the patient and her family. The NMC drew the panel's attention to the contents of the Pre-Sentence Report which describes Mr Neill as *'posing a high risk of causing serious harm to known adults and the public'*.

The panel took into account that it had no written representations from Mr Neill in respect of any sanction it may impose.

Decision and reasons on sanction

Having found Mr Neill'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 including its responsibility to consider every possible sanction in ascending order of seriousness. The panel also had regard to the fact that any decision on sanction is a matter for the panel independently exercising its own judgement.

The panel considered the NMC's guidance 'Considering sanctions for serious cases', specifically the section on 'Cases involving sexual misconduct'. It bore in mind that Mr Neill received a criminal conviction for sexual offences committed against a vulnerable patient. He abused his position of trust for his own benefit of sexual gratification. The panel was of the view that Mr Neill's conduct leading to the criminal convictions is very serious and not capable of being addressed. It noted that he was subject to a custodial sentence and sexual harm prevention order. The panel took into consideration that convictions which relate to sexual misconduct are always serious, and this case was at the upper end of the seriousness spectrum.

The panel took into account the following aggravating features:

- Mr Neill abused his position of trust.
- Mr Neill caused harm to a vulnerable patient.
- Mr Neill has demonstrated a lack of insight and remorse for his actions.

- At his criminal hearing, he made only partial admissions and put witnesses through cross examination before later accepting all charges against him.

The panel also took into account that Mr Neill said in his application for agreed removal dated 28 November 2022 [PRIVATE]. The panel did not accept that this would be considered mitigation for the conduct underlying the conviction.

The panel also took into account that personal mitigation carries less weight in regulatory proceedings than it would do in criminal proceedings.

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 Neill's 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 conduct underlying Mr Neill's conviction was 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 Mr Neill's registration would be a sufficient and appropriate response. The panel is of the view that there are no practicable or workable conditions that could be formulated, given the nature of the criminal conviction in this case. Furthermore, the panel concluded that the placing of conditions on Mr Neill'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 SG states some of the factors where a suspension order may be appropriate. The panel bore in mind that this was not a single instance of misconduct where a lesser sanction is not sufficient. It also noted that the conduct underlying the conviction was evidence of a harmful deep-seated personality or attitudinal problem. It bore in mind that in the judge's sentencing remarks, in relation to a risk of repetition, the judge stated "*...I am required to consider the issue of dangerousness, that is whether there is a significant risk of you committing further specified offences and if so whether there is a significant risk of your causing serious harm thereby. I am satisfied that you do present such a risk...*".

The panel concluded that the conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel determined that the serious breach of the fundamental tenets of the profession evidenced by Mr Neill's actions is fundamentally incompatible with Mr Neill remaining on the register.

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

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 Neill's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with his remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Neill'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 to the matters it identified, in particular the effect of Mr Neill'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 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 Neill 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 Neill's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC that that an interim suspension order should be imposed to cover the appeal period. It submitted that it would be wholly wrong for the panel to declare through making a striking off order that Mr Neill's conduct is fundamentally incompatible with being a registered professional and then, through a lacuna in the NMC's legislation, him be on the register whilst the appeal period elapses.

The panel also took into account that it had no written representations from Mr Neill in respect of the imposition of an interim order during the appeal period.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover any period of appeal.

If no appeal is made, then the interim suspension order will be replaced by the striking off order 28 days after Mr Neill is sent the decision of this hearing in writing.

That concludes this determination.