

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

**Substantive Meeting  
Wednesday, 4 September 2024**

Virtual Meeting

|                                 |  |
|---------------------------------|--|
| <b>Name of Registrant:</b>      | Scott Macleod  |
| <b>NMC PIN</b>                  | 01A0861E   |
| <b>Part(s) of the register:</b> | Registered Mental Health Nurse (2004)  |
| <b>Relevant Location:</b>       | North Yorkshire  |
| <b>Type of case:</b>            | Conviction   |
| <b>Panel members:</b>           | Rachel Forster (Chair, lay member)<br>Pamela Campbell (Registrant member)<br>Lorraine Wilkinson (Lay member) |
| <b>Legal Assessor:</b>          | Simon Walsh  |
| <b>Hearings Coordinator:</b>    | Leigham Malcolm  |
| <b>Facts proved:</b>            | Charge 1   |
| <b>Fitness to practise:</b>     | Impaired   |
| <b>Sanction:</b>                | <b>Striking-off order</b>  |
| <b>Interim order:</b>           | <b>Interim suspension order (18 months)</b>  |

## **Decision and reasons on service of Notice of Meeting**

The panel noted that the documents before it indicated that the Notice of Meeting had been sent to Mr Macleod's personal email address on 19 July 2024. The panel also noted that the registered email address the Nursing and Midwifery Council (NMC) held for Mr Macleod was his work NHS email address, and not his personal email address. The panel was therefore concerned that the Notice of Meeting had not been effectively served in accordance with Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The NMC Case Officer in charge of Mr Macleod's case helpfully provided the panel with further information. The panel had sight of an email dated 5 March 2024 from Mr Macleod to the NMC in which he accepted that his fitness to practise is impaired along with a request to be removed from the NMC register. The email came from Mr Macleod's personal email address. In view of this email, the panel was satisfied that although the Notice of Meeting had not been sent to Mr Macleod's registered email address, the email address it had been sent to was actively used by Mr Macleod. Therefore, there was good reason to believe that he would have received the Notice of Meeting sent on 19 July 2024.

The panel took into account that the Notice of Meeting provided details of the allegations as well as a timeframe during which a substantive meeting would be held.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Macleod 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:*

1. *On 22 June 2023, at York Magistrates' Court, were convicted of three counts of making an indecent image/pseudo image of a child*

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

## **Decision and reasons on facts**

The charge concerns Mr Macleod'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.'*

## **Background**

Mr Macleod joined the NMC register on 28 January 2004 as a Registered Nurse (mental health).

On 2 February 2022 Mr Macleod was arrested by the North Yorkshire Police on suspicion of making an indecent photograph/pseudo-photograph of a child. Devices were seized from Mr Macleod, and upon preliminary searches, an indecent image of a child was found

on his hard drive. Mr Macleod was released on bail until 2 March 2022, with conditions not to have any unsupervised contact with any child under the age of 18.

Following the arrest Mr Macleod was referred to the NMC on 11 February 2022 by Tees, Esk & Wear Valleys NHS Foundation Trust (the Trust), where he had worked since October 2017. Mr Macleod was placed on special leave by the Trust pending the police investigation.

On 22 June 2023, at York Magistrates' Court, Mr Macleod pleaded guilty to three counts of making an indecent photograph/pseudo-photograph of a child.

On 11 August 2023 at York Crown Court, Mr Macleod was sentenced to 24 months imprisonment, suspended for 24 months. In addition, Mr Macleod was required to carry out 250 hours of unpaid work in the community, participate in a Sex Offender Group Work Programme for 90 days, and undertake a Rehabilitation Programme for 30 Days. Further, a Sexual Harm Prevention Order was made until further Order, and Mr Macleod was made subject to notification requirements for 10 years.

### **Fitness to practise**

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

The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This 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 accepted the advice of the legal assessor which included reference to *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

## Decision and reasons on impairment

The panel next went on to decide if as a result of the conviction, Mr Macleod'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. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

*'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

Mr Macleod received a conviction for three counts of making an indecent image/pseudo image of a child. Although the conduct for which Mr Macleod received a conviction related to his life outside of work, the panel considered that he had failed to promote professionalism and trust in the nursing profession. The conduct breached fundamental tenets of the nursing profession and brought its reputation into disrepute.

Mr Macleod pleaded guilty in court and has demonstrated some insight and remorse; however, the panel afforded this little weight given the nature and seriousness of the conduct in this case. As this conduct relates to sexual misconduct and abuse of a child, the panel referred to the guidance on considering sanctions in serious cases (SAN-2). This states that *'in fitness to practise, any conviction relating to images or videos involving child sexual abuse is likely to raise fundamental questions about the ability of the nurse, midwife, or nursing associate to uphold the standards or values set out in the Code.'* The panel recognised that this was the case here and that a finding of impairment is necessary primarily on the grounds of public interest, but also on the grounds of public protection given the nature of the conduct and that Mr Macleod's nursing practice would put him in close proximity to vulnerable people.

The panel considered the conduct for which Mr Macleod received the conviction to be extremely serious and to gravely undermine public confidence in the nursing profession. The panel determined that, in this case, a finding of impairment on public interest grounds was required in order to maintain public confidence in the nursing profession.

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

### **Decision and reasons on sanction**

Having found Mr Macleod's fitness to practise to be currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. 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.

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 decision on sanction is a matter for the panel independently exercising its own judgement.

The panel identified the following aggravating features:

- The case includes three instances of abuse of a child.
- Mr Macleod breached his bail conditions.

The panel also identified the following mitigating features:

- Mr Macleod has demonstrated insight into the effect of his conduct upon the profession and has expressed remorse.
- Mr Macleod's guilty plea at court.

As required by Article 29(3) of the Nursing and Midwifery Order 2001, the panel first considered (pursuant to Article 29(4)) whether to undertake mediation or to take no further action. It considered that neither of these outcomes would be appropriate as neither would restrict Mr Macleod's practice. The public would therefore not be protected, and the public interest would not be satisfied. The panel then moved on to consider the four available sanctions set out in Article 29(5) of the Order.

The panel first considered the imposition of a caution order but again determined that, due to the nature and seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Macleod's practice would not be appropriate in the circumstances. The panel considered Mr Macleod's conviction to seriously undermine public confidence in the nursing profession. For this reason, 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 Macleod's registration would be a sufficient and appropriate response. The panel concluded that the placing of conditions on Mr Macleod's registration would not adequately address the

seriousness of this case, would not protect the public, and would not satisfy the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where the misconduct is not fundamentally incompatible with the nurse remaining a registered professional. The panel considered the conduct for which Mr Macleod received the conviction to be extremely serious and to gravely undermine public confidence in the nursing profession. It also considered it to be fundamentally incompatible with him remaining on the register.

Therefore, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, the panel considered whether a striking-off order would be the appropriate and proportionate sanction to impose, taking 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?*

All three factors above are engaged in this case. Mr Macleod's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel was of the view that to allow Mr Macleod to continue to practise as a nurse would not sufficiently protect the public and 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. Nothing short of this would be sufficient in this case.



The panel directs the registrar to strike Mr Macleod's name off the register. The effect of this order is that the NMC register will show that Mr Macleod has been struck-off the register.

The panel considered that this order was necessary to protect the public, maintain 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 Macleod in writing.

### **Decision and reasons on interim order**

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

The panel was satisfied that an interim order is 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 allow for any potential appeal.

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

That concludes this determination.