

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

**Substantive Meeting
Wednesday, 26 – Thursday, 27 February 2025**

Virtual Meeting

Name of Registrant:	Fergus Emmett O'Driscoll
NMC PIN	99I0385N
Part(s) of the register:	Nurses part of the register Sub part 1 RNMH: Mental health nurse, level 1 (12 September 2003)
Relevant Location:	Northern Ireland
Type of case:	Conviction
Panel members:	Vicki Wells (Chair registrant member) Alison McVitty (Lay member) Jim Blair (Registrant member)
Legal Assessor:	Richard Tyson
Hearings Coordinator:	Adaobi Ibuaka
Facts proved:	Charge 1 in its entirety
Facts not proved:	None
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 that the Notice of Meeting had been sent to Mr O'Driscoll's' registered email address by secure email on 23 January 2025.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, date and the fact that this meeting was heard virtually.

In the light of all of the information available, the panel was satisfied that Mr O'Driscoll 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 04 July 2024 were convicted of:

a) On a date unknown between the 1st day of April 2020 and the 10th day of May 2020, intentionally penetrated the vagina of [redacted] with your fingers, the penetration was sexual, [redacted] aged 18 years or over [redacted] you knew or could reasonably be expected to know that you are related to [redacted] in that way, contrary to Article 69 of the Sexual Offences (NI) Order 2008.

b) On a date unknown between the 1st day of April 2020 and the 15th day of May 2020, intentionally penetrated the vagina of [redacted] with your fingers, the penetration was sexual, [redacted] aged 18 years or over [redacted] and you knew or could reasonably be expected to know that you are related to [redacted] in that way, contrary to Article 69 of the Sexual Offences (NI) Order 2008.

c) On a date unknown between the 15th day of May 2020 and the 30th day of June 2020, intentionally penetrated the vagina of [redacted] with your fingers, the penetration was sexual, [redacted] aged 18 years or over [redacted] and you knew or could reasonably be expected to know that you are related to [redacted] in that way, contrary to Article 69 of the Sexual Offences (NI) Order 2008.

d) On a date unknown between the 1st day of May 2020 and the 31st day of May 2020, intentionally penetrated the mouth of [redacted] with your penis, the penetration was sexual [redacted] aged 18 years or over [redacted] and you knew or could reasonably be expected to know that you are related to [redacted] in that way, contrary to Article 69 of the Sexual Offences (NI) Order 2008.

e) On a date unknown between the 1st day of July 2020 and the 31 day of July 2020, intentionally penetrated the vagina of [redacted] with your penis, the penetration was sexual [redacted] aged 18 years or over [redacted] and you knew or could reasonably be expected to know that you are related to [redacted] in that way, contrary to Article 69 of the Sexual offences (NI) Order 2008.

f) On a date unknown between the 1st day of July 2020 and the 31st day of July 2020, intentionally penetrated the anus of [redacted] with your penis, the penetration was sexual [redacted] aged 18 years or over and [redacted] you knew or could reasonably be expected to know that you are related to [redacted] in that way, contrary to Article 69 of the Sexual Offences (NI) Order 2008.

g) On a date unknown between the 1st day of April 2020 and the 31st day of May 2020 unlawfully supplied controlled drug of Class A, namely Cocaine, to another in contravention of section 4(1) of the Misuse of Drugs Act 1971, contrary to Section 4(3)(a) of the Misuse of Drugs Act 1971.

h) On a date unknown between the 1st day of April 2020 and the 31st day of May 2020 unlawfully supplied controlled drug of Class A, namely Ecstasy, to another in contravention of section 4(1) of the Misuse of Drugs Act 1971, contrary to Section 4(3)(a) of the Misuse of Drugs Act 1971.

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

Background

The charges arose whilst Mr O'Driscoll was employed as a registered nurse by Western Health and Social Care Trust (the Trust).

It is alleged that Mr O'Driscoll had subjected a person who was a relation to him, to serious sexual assaults and also supplied an unknown person with controlled substances, such as Ecstasy and Cocaine all between April 2020 and July 2020.

Mr O'Driscoll pleaded guilty to 6 counts of sexual assault on an adult and 2 counts of supplying Class A drugs on 4 July 2024, and he was sentenced on 4 October 2024.

Decision and reasons on facts

The Nursing and Midwifery Council (NMC) charges arise from Mr O'Driscoll's criminal convictions and, having been provided with a copy of the certificate of conviction and hearing the advice of the legal assessor, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3). These state:

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

Fitness to practise

The panel next considered whether, on the basis of the facts found proved, Mr O'Driscoll's fitness to practise is currently impaired by reason of his convictions. 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 asks 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 to maintain public confidence in the profession and in the NMC as a regulatory body. The panel was referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

With regard to impairment, the NMC invited the panel to find Mr O'Driscoll's fitness to practise impaired on public protection and public interest grounds, submitting that in regards to the case of *Grant* numbers 2 and 3 can be answered in the affirmative in this case.

The NMC submitted that Mr O'Driscoll's convictions are related to his personal life, but the nature of the conviction has brought the profession into disrepute and breached fundamental tenets of the profession. Mr O'Driscoll's conduct, both in terms of having sexual relations with someone to whom he was related and supplying drugs to that individual, was egregious and fell significant below the standards expected of a registered nurse.

The NMC submitted that impairment is a forward thinking exercise which looks at the risk the registrant's practice poses in the future. NMC guidance adopts the approach of Silber J in the case of *R (on application of Cohen) v General Medical Council* [2008] EWHC 581 (Admin) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.

The NMC further submitted that they do not consider that the issues in this case are easily remediable, and referred the panel to the NMC's guidance entitled "*Can the concern be addressed?*" FTP-15a which states as follows:

'Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include:

- Criminal convictions that led to custodial sentences.*
- Inappropriate personal or sexual relationships with people receiving care or other vulnerable people or abusing their position as a registered nurse, midwife or nursing associate or other position of power to exploit, coerce or obtain a benefit.*
- Incidents of harassment, including sexual harassment, and other forms of sexual misconduct, whether it occurs inside or outside professional practice.'*

The NMC submitted that Mr O'Driscoll has been convicted of having sex with an adult relative under Article 69 of the Sexual Offences (NI) Order 2008; Supplying of Ecstasy and Cocaine under the Misuse of Drugs Act 1971. The NMC further submitted that these are considered specified offences under its guidance at FTP-2c, and that these offences are so serious it would be very difficult to remediate the damage done by them to uphold trust and confidence in the profession.

The NMC submitted that Mr O'Driscoll has not engaged with the NMC's investigation and as such there is no evidence to suggest that, difficult as it would be, the concerns have been remedied or that Mr O'Driscoll is unlikely to reoffend. They further submitted that, risk of repetition aside, there is a substantial public interest in a finding of impairment being made in this case due to the egregious nature of Mr O'Driscoll's conduct.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on impairment

In coming to its decision, the panel had regard to the NMC's Guidance DMA-1 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/midwives 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.

The panel accepted the NMC's submission that Mr O'Driscoll's behaviour breached the following sections of the Code:

'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

...

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

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 first considered whether any of the limbs of the Grant test were engaged. The panel determined that limbs (b) and (c) of the *Grant* test were engaged in this case both in the past and in the future.

The panel considers that Mr O'Driscoll's actions that led to the convictions breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to serious sexual assaults, especially where the victim was a relation, and supplying of drugs, to be extremely serious.

Regarding insight, the panel considered whether Mr O'Driscoll had any insight and determined that there was no evidence provided to show he understood the gravity of his convictions. Mr O'Driscoll has not engaged with the NMC at all and so did not provide any reflective pieces to show that he had insight onto his actions and has not taken accountability for how his actions could be seen as bringing the profession into disrepute. The panel determined that there was no evidence that Mr O'Driscoll has understood the gravity of the charges found proved by way of the convictions.

In light of the seriousness of the convictions and there being no evidence of insight, remorse or strengthening of practice, the panel determined that there was a high risk of Mr O'Driscoll's behaviour being repeated. The panel accordingly found that limbs (b) and (c) of the *Grant* test were fully engaged. It therefore found that a finding of impairment is necessary on the ground of public protection.

The panel bore in mind that the overarching objectives of the NMC is 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 as a member of the public, aware of the nature of the charges in this case would be horrified that the nurse against whom such charges were found proved by way of conviction, would be allowed to practise unrestricted.

Having regard to all of the above, the panel was satisfied that Mr O'Driscoll's fitness to practise is currently impaired on both public protection and public interest grounds.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mr O'Driscoll off the register. The effect of this order is that the NMC register will show that Mr O'Driscoll 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 NMC submitted in its Statement of Case that a striking-off order would be the most appropriate and proportionate sanction to impose in this case, if the panel determined that Mr O'Driscoll's fitness to practice is currently impaired.

Decision and reasons on sanction

Having found Mr O'Driscoll'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 is of the view that the aggravating features of Mr O'Driscoll's case were the extremely serious nature of the convictions, especially as the victim was a relation, together with Mr O'Driscoll's lack of engagement with the NMC.

The panel found that there were no mitigating factors in Mr O'Driscoll's case.

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 O'Driscoll'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 Mr O'Driscoll's convictions 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 Mr O'Driscoll's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case.

Furthermore, the panel concluded that the placing of conditions on Mr O'Driscoll'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 panel had regard to the SG which 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 took into consideration the extremely serious nature of the charges, which occurred on multiple occasions, and the lack of engagement with the NMC and concluded that these were evidence of a harmful and deep-seated attitudinal problem.

In the panel's view the conduct, proved by way of conviction, was a very significant and serious departure from the standards expected of a registered nurse. The panel noted that the actions that resulted in the convictions breached the fundamental tenets of the profession and brought the profession into disrepute. The panel were of the view that the convictions were so serious that temporary removal would not uphold the public confidence in the profession.

Therefore, 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?*

Mr O'Driscoll's actions were a very serious and significant departure from the standards expected of a registered nurse, and are fundamentally incompatible with him remaining on the register as they raised fundamental questions about its professionalism and without making a striking-off order public confidence in the nursing profession could not be maintained. The panel was of the view that the findings in this particular case demonstrate that Mr O'Driscoll's actions were extremely serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

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.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period or, if an appeal is made, before it has been finally disposed of, 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 O'Driscoll'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 written representations made by the NMC that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest.

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 actions that led to the convictions 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 potential period of appeal

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

That concludes this determination.

This will be confirmed to Mr O'Driscoll in writing.