

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

**Substantive Order Review Hearing
28 February 2020**

Nursing and Midwifery Council
114-116 George Street, Edinburgh, EH2 4LH

Name of registrant: Craig Black

NMC PIN: 96C0191S

Part(s) of the register: Registered Nurse (sub part 1)
Mental Health Nurse – September 1999

Area of registered address: Renfrewshire

Type of case: Misconduct

Panel members: Paul Morris (Chair, lay member)
Jane Scattergood (Registrant member)
Suzanna Jacoby (Lay member)

Legal Assessor: Robert Frazer

Panel Secretary: Xenia Menzl

Nursing and Midwifery Council: Represented by Patricia Comiskey, Case
Presenter

Craig Black: Not present and not represented

Order being reviewed: Conditions of practice order (3 Months)

Outcome: Strike-off order to come into effect on 6 April
2020 in accordance with Article 30 (1)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Black was not in attendance and that the Notice of Hearing had been sent to Mr Black's registered address by recorded delivery and by first class post on 14 January 2020.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Hearing was sent to Mr Black's registered address on 14 January 2020. The notice of hearing was never collected and eventually returned to sender. Further the panel noted that Mr Black had been notified of the hearing via email on 3 February 2020 and again on 27 February 2020.

The panel took into account that the Notice of Hearing provided details of the review hearing including the time, dates and venue of the hearing and, amongst other things, information about Mr Black's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Ms Comiskey, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (the Rules).

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Black has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Black

The panel next considered whether it should proceed in the absence of Mr Black. The panel had regard to Rule 21(2), which states:

'21.— (2) Where the registrant fails to attend and is not represented at the hearing, the Committee—

- (a) *shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;*
- (b) *may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or*
- (c) *may adjourn the hearing and issue directions.'*

Ms Comiskey invited the panel to continue in the absence of Mr Black on the basis that he had voluntarily absented himself. She referred the panel to the on table papers which showed that attempts have been made to contact Mr Black via email on the 3 February 2020 and again on 27 February 2020.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R. v Jones (Anthony William), (No.2)* [2002] UKHL 5. The panel noted the case of *General Medical Council v Adeogba* [2016] EWCA Civ 162 which states that in the absence of explanation or request for adjournment, the balance in proceeding favours the regulator.

The panel has decided to proceed in the absence of Mr Black. In reaching this decision, the panel has considered the submissions of Ms Comiskey and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *Adeogba* and had regard to the overall interests of justice and fairness to all parties. It noted that

- No application for an adjournment has been made by Mr Black;
- Mr Black has not engaged with the NMC and has not responded to any of the letters sent to him about this hearing;

- There is no reason to suppose that adjourning would secure his attendance at some future date;
- The order is due to expire at the end of 6 April 2020;
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Black.

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

At the outset of the hearing, Ms Comiskey made a request that parts of the hearing of Mr Black's case be held in private on the basis that there will be mention of his health. The application was made pursuant to Rule 19 of the Rules.

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 Mr Black's health, the panel determined to hold such parts of this hearing in private.

Decision and reasons on review of the current order

The panel decided to impose a striking-off order. This order will come into effect at the end of 6 April 2020 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the fourth review of an order imposed by a panel of the Conduct and Competence Committee. The original order was one of Conditions of Practice for a period of 12 months on 7 December 2015. It was varied and extended for a further 12 months on 28 November 2016. It was again varied on 27 November 2017 and extended for 24 months. On 9 December 2019 the order was extended for 3 months. The current order is due to expire at the end of 6 April 2020.

The charges found proved by way of admission which resulted in the imposition of the substantive order were as follows:

'That you, whilst employed by NHS Greater Glasgow & Clyde as a Band 5 Charge Nurse based on Ward 4, Larkfield Unit on 17 October 2013:

1.

2. *Inappropriately restrained Patient A.*

Admitted and found proved

3. *Failed to treat Patient A with dignity and respect in that you, after you restrained Patient A to the floor:*

3.1. *did not ensure that she was assisted to get up off the floor*

Admitted and found proved

3.2. ...

Failed to carry out observations and/or a physical examination of Patient A after you restrained her, or, in the alternative, failed to record in Patient A's notes that you had carried out observations and/or a physical examination.

Admitted and found proved

The third reviewing panel determined the following with regard to impairment:

'The panel determined that there has been no material change in this case. It noted that Mr Black has not demonstrated that he has gained insight into his previous misconduct. Further, Mr Black has not yet remedied his practice. The panel noted that he has not been able to complete a return to practice course, but further that there is no evidence that he has completed any training courses.

In light of this the panel determined that there is a risk of repetition of Mr Black's previous failings. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel had borne in mind that its primary function was to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is required.

For these reasons, the panel finds that Mr Black's fitness to practise remains impaired.'

The third reviewing panel determined the following with regard to sanction:

'The panel next considered the imposition of a conditions of practice order. It noted that Mr Black has already been subject to a conditions of practice order for 4 years and has not provided evidence that he has attempted to remedy his practice and comply with his conditions. However, the panel was of the view that the current conditions of practice order is sufficient, at this stage, to protect the public and address the wider public interest.

Accordingly, and with some hesitation, the panel determined, pursuant to Article 30(1) (c) of the Nursing and Midwifery Order 2001, to extend the current conditions of practice order for a period of 3 months, which will come into effect on the expiry of the current order. It decided to extend the following conditions which it considered remain appropriate and proportionate in this case:

- 1. You must successfully complete a TMAV training course or equivalent and send a copy of your results to the NMC at least 14 days before any NMC review hearing or meeting; failing which, you must provide an explanation with supporting documentation demonstrating why you have been unable to do so, such explanation and documentation to be sent to the NMC at least 14 days before any review hearing or meeting*
- 2. You must produce a written reflective piece which demonstrates sufficient insight into the impact of your acts and omissions. The reflective piece should address how the incident with Patient A arose; the impact of your actions and responses on Patient A and the reputation of the nursing profession; and how you would manage a similar situation were it to recur. This is to be submitted to the NMC at least 14 days before any NMC review hearing or meeting.*

3. *You must tell the NMC within 14 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.*
4. *You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.*
5. *a) You must within 14 days of accepting any post or employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.*

b) You must within 14 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.
6. *You must immediately tell the following parties that that you are subject to a conditions of practice order under the NMC's fitness to practise procedures, and disclose the conditions listed at (1) to (5) above, to them.*
 - *Any organisation or person employing, contracting with, or using you to undertake nursing work.*
 - *Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing or midwifery services.*
 - *Any prospective employer (at the time of application) where you are applying for any nursing or midwifery appointment.*
 - *Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application).*

The panel considered the appropriateness of a suspension order but was of the view that this would serve no useful purpose and was satisfied that the existing conditions of practice remain sufficient to protect the public and address the public interest. The panel also considered that a striking-off order, although available to it, was disproportionate at this time. The panel was mindful that Mr Black has been subject to a conditions of practice order for 4 years, during which time he has made little or no apparent progress. For these reasons it considered that the continuation of the existing order for a period of 3 months was appropriate and would allow Mr Black a further opportunity to demonstrate some progress in complying with the order. In the event of no such evidence being provided then all options will remain open to the next reviewing panel including a striking off order.

The panel encourages Mr Black to engage further with the proceedings at his next review hearing. The future reviewing panel may be assisted by:

- *Medical evidence outlining Mr Black's health conditions*
- *Evidence that Mr Black has applied for return to practice courses*
- *Evidence of any relevant training courses he has completed*
- *Evidence of how Mr Black is attempting to keep his nursing skills and knowledge up to date, for example any articles he has read*
- *Testimonials from any paid or unpaid work'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Black's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. It has noted the decision of the last panel. However, it has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle. It has taken account of the submissions made by Ms Comiskey on behalf of the NMC.

Ms Comiskey referred the panel to the relevant pages in the bundle outlining the background of the case. She submitted that Mr Black had previously engaged in the process and submitted representations to the previous panels. Ms Comiskey referred the panel to the last panel's determination in regards to impairment. She submitted that there has been no new information, and that therefore, for the same reasons as stated by the previous panel, Mr Black's fitness to practise is currently impaired.

The panel heard and accepted the advice of the legal assessor.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Mr Black's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mr Black had not gained insight into his previous misconduct. At this hearing the panel had no new information to suggest that this has changed.

In its consideration of whether Mr Black has remedied his practice, the panel took into account that Mr Black has not practised since October 2013. It also took into account that there have not been any updates in regards to Mr Black attending any training or information on how he has kept up to date with current nursing practice. It noted that the previous panel had specifically continued the existing order for three months to give Mr Black a further opportunity to provide evidence of this. In the absence of any such evidence the panel therefore determined that Mr Black has not remedied his practice.

The last reviewing panel determined there was a risk of repetition. Today's panel has received no new information to suggest otherwise. In light of this, this panel determined that Mr Black is there was a risk of repetition. The panel therefore decided that a finding

of current impairment of Mr Black's fitness to practice is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Mr Black's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Black's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

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 Black's practice would not be appropriate in the circumstances. The panel considered that Mr Black's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified.

The panel next considered whether conditions of practice on Mr Black's registration would still be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel has heard no new information that Mr Black has complied with the conditions of practice imposed. The panel was mindful that Mr Black has not practised as a nurse since October 2013 despite his repeated reassurances regarding his desire to meet the

conditions and to return to nursing. The panel noted that despite Mr Black voicing his desire to return to nursing there is no evidence before it that he has taken any remediable steps. The panel was also mindful that Mr Black has been subject to a conditions of practice order since the original panel implemented one on 7 December 2015. In all the circumstances the panel therefore determined that conditions of practice are no longer workable or proportionate.

The panel next considered imposing a suspension order. The panel noted that Mr Black has not provided evidence of remorse for his misconduct, any remedial steps taken or shown any further insight into his failings. The panel noted that there has been no meaningful attempt by Mr Black to provide evidence to this panel, or any previous panel, in regards to his fitness to practise. In these circumstances the panel determined that a period of suspension would not serve any useful purpose.

The panel determined that the public interest will be best served by not prolonging proceedings any longer than needed. Mr Black has had over four years to comply with conditions to enable his return to safe practice. Despite assurances and good intentions nothing at all has been forthcoming. The panel determined that it was necessary to take action to prevent Mr Black from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

The panel therefore directs the registrar to strike Mr Black's name off the register.

This striking-off order will take effect upon the expiry of the current conditions of practice order, namely the end of 6 April 2020 in accordance with Article 30(1)

This will be confirmed to Mr Black in writing.

That concludes this determination.