

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

**Substantive Order Review Hearing
Wednesday 5 January 2022**

Nursing and Midwifery Council
Virtual Hearing

Name of registrant:	Donna-Marie Lloyd
NMC PIN:	03I0270W
Part(s) of the register:	Registered Nurse – Mental Health Nursing (September 2006)
Area of registered address:	Cardiff
Type of case:	Misconduct
Panel members:	Adrian Smith (Chair, lay member) Terry Shipperley (Registrant member) Tricia Breslin (Lay member)
Legal Assessor:	Ian Ashford-Thom
Hearings Coordinator:	Alice Byron
Nursing and Midwifery Council:	Represented by Raj Joshi, Case Presenter
Mrs Lloyd:	Not present and unrepresented
Order being reviewed:	Suspension order (5 months)
Fitness to practise:	Impaired
Outcome:	Striking Off Order to come into effect on 10 February 2022 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 Mrs Lloyd was not in attendance and that the Notice of Hearing had been sent to Mrs Lloyd's registered email address on 7 December 2021.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and venue of the hearing and, amongst other things, information about Mrs Lloyd's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Joshi, 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 Mrs Lloyd has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision and reasons on proceeding in the absence of Mrs Lloyd

The panel next considered whether it should proceed in the absence of Mrs Lloyd. The panel had regard to Rule 21 and heard the submissions of Mr Joshi who invited the panel to continue in the absence of Mrs Lloyd. He submitted that Mrs Lloyd had voluntarily absented herself.

Mr Joshi referred the panel to emails from Mrs Lloyd, dated 4 January 2022, which state:

'I am unable to attend the meeting as I am in work

I have no intentions of returning to nursing and wish the panel to consider this so the matter can be concluded'

'I have pursued another career and been working with them for 3yrs now'

In light of this correspondence, Mr Joshi submitted that Mrs Lloyd has received notice of this hearing, is aware that it is taking place and has voluntarily absented herself.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Lloyd. In reaching this decision, the panel has considered the submissions of Mr Joshi and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Lloyd;
- Mrs Lloyd has informed the NMC that she has received the Notice of Hearing and confirmed that she will not be attending;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- 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 Mrs Lloyd.

Decision and reasons on receiving submissions from an interested party

Mr Joshi informed the panel that written representations had been sent to the NMC via email by a family member of Patient A for consideration by the panel. He told the panel that these submissions were originally provided for consideration for the previous reviewing panel on 4 August 2021. Mr Joshi outlined that the previous reviewing panel decided not to accept these submissions into evidence at the last hearing as it did not

consider that the statement had legal relevance to the task of reviewing the substantive order.

Mr Joshi stated that while Rule 24 (13a) makes provision at an initial hearing for a person with an interest in proceedings to make written representations on sanction, Rule 25 sets out that there is not an analogous provision in relation to review hearings. Thus, if it is the case that there is no express provision dealing with the position on a review, the principle of relevance should be considered.

Mr Joshi endorsed the submissions of the case presenter at the previous hearing on 4 August 2021. He told the panel that the statement relates to the facts and background to the case found proved at the substantive hearing and does not go to the issues before the panel today, namely current impairment and any potential sanction. Mr Joshi therefore submitted that these submissions are not legally relevant to the panel's reviewing role today. Accordingly, Mr Joshi invited the panel not to accept this written statement as evidence in this case.

The panel accepted advice from the legal assessor who reminded the panel of its discretionary powers to admit evidence under Rule 31 subject to the requirements of relevance and fairness. He advised that the panel's tasks at this substantive order review were limited to determining the issue of current impairment and, potentially, the issue of sanction. Accordingly, material which did not go to either issue did not have legal relevance to the panel's tasks today. He advised that the submissions address matters which had already been determined by the substantive panel. He advised that if the panel took the view that the statement did not go to current impairment or sanction, the requirement of being relevant to this panel's tasks would not be satisfied.

The panel considered whether the document should be admitted pursuant to Rule 31. The panel decided that the written statement relates to facts of the case, which is a matter that had already been decided by the Fitness to Practice Committee panel on 12 May 2020 at the original substantive meeting. The panel reminded itself of its role at this hearing, being to consider Mrs Lloyd's current impairment and, if current impairment is found, to impose the appropriate sanction. The panel had sympathy for the interested party and understood the reasons why they may wish the submissions to be considered, however it determined

that this statement did not have any legal relevance to the panel's review today. The panel therefore decided not to accept the submissions as evidence.

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a striking off order.

This order will come into effect at the end of 10 February 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive suspension order originally imposed for a period of nine months by a Fitness to Practise Committee panel on 12 May 2020. This was reviewed on 27 January 2021 where the reviewing panel imposed a suspension order for a period of six months. This was further reviewed on 4 August 2021 and the reviewing panel imposed a further suspension order for a period of 5 months.

The current order is due to expire at the end of 10 February 2022.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

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

'That you, a registered nurse, on 9 September 2015:

1. Directed colleague C to:

- a) Take patient A's neurological observations every four hours.*
- b) Let patient A continue sleeping during lunch.*
- c) Elevate patient A's legs when his blood pressure reading was not within normal range instead of checking on patient A yourself.*

2. Did not escalate patient A's condition when:

- a) *He failed to react to neurological observations you conducted.*
 - b) *He fell out of bed.*
 - c) *His blood pressure fell.*
 - d) *He dry retched.*
3. *Did not commence timely neurological observations for patient A following his fall.*
4. *Did not ask for patient A to be reviewed by a doctor or consultant.*
5. *Did not record patient A's seizure, fall or graze to the back of his head in his notes on the morning they occurred.*
6. *Did not complete a body map outlining patient A's injuries.*
7. *Provided an inadequate handover in that you:*
- a) *Stated patient A was still sleeping and there were no problems with him.*
 - b) *Did not handover that patient A had been seen to retch.*
 - c) *...*

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

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

'The panel considered whether Mrs Lloyd's fitness to practise remains impaired. 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 noted the previous reviewing panel's finding that Mrs Lloyd had not developed sufficient insight. Today, this panel was of the view that this remains the case. Mrs Lloyd has not provided any reflective evidence to demonstrate that she understands the full impact of her actions. The panel therefore concluded that Mrs Lloyd had not demonstrated insight into her failings.

In its consideration of whether Mrs Lloyd has remedied her practice, the panel noted that this was a single incident relating to a single patient. It determined that whilst the failings in Mrs Lloyd's practice are capable of remediation, she has not taken steps to remediate her practice. There has been no evidence of any additional training undertaken or any meaningful effort to engage in the process and express her future nursing intentions.

In light of the above, the panel determined that the concerns in this case are ongoing and that there is a real risk of repetition if Mrs Lloyd were to practise without restriction. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

Additionally, 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 the reasons set out above, the panel finds that Mrs Lloyd's fitness to practise remains impaired.'

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

'The panel next considered whether imposing a conditions of practice order on Mrs Lloyd's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. It was of the view that whilst some of the concerns

are remediable, the attitudinal concerns and lack of insight cannot be addressed by conditions. In addition, given Mrs Lloyd's lack of engagement with the process thus far, it could not say whether she would comply with any conditions if it were to impose any. The panel therefore concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest.

The panel considered the imposition of a further period of suspension. It determined that a suspension order would both protect the public and satisfy the wider public interest by not permitting Mrs Lloyd to practise as a registered nurse.

The panel did go on to consider whether a striking-off order would be appropriate in the circumstances. It concluded that such an order would not be proportionate at this time given its view on the appropriacy of a further short period of suspension. The panel highlighted the findings of the previous reviewing panel that if Mrs Lloyd fails to engage with the process, a future panel may consider that a point has come when the situation ceases to be compatible with ongoing registration and a striking-off order becomes the only proportionate outcome.

At this time, the panel was of the view that a further suspension order was the appropriate sanction in order to provide Mrs Lloyd with the opportunity to engage with the NMC and clearly evidence her future nursing intentions. It was of the view that five months was proportionate to provide her with sufficient time to engage with the process given the long period which has elapsed since she has practised as a nurse.

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

If Mrs Lloyd decides that she does wish to return to the profession in the future, then the next reviewing panel would be assisted by:

- *A statement to this effect from Mrs Lloyd;*
- *A written reflective piece (using a recognised model of reflection e.g. Gibbs reflective cycle) exploring the impact of her actions on her patients, colleagues and the reputation of the nursing profession and what she would do differently in the future;*
- *Evidence of how she has kept her nursing skills and knowledge up-to-date;*
- *Mrs Lloyd's attendance at the next hearing.*

Alternatively, if Mrs Lloyd reaches a settled intention that she wishes to leave the nursing profession, then the next reviewing panel would be assisted by:

- *A clear statement from Mrs Lloyd setting out that intention;*
- *Evidence of any steps she has taken towards leaving the profession or embarking on an alternative future career;*
- *Mrs Lloyd's attendance at the next hearing.*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Lloyd'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. Whilst it has noted the decision of the last panel, this panel 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, and emails from Mrs Lloyd which set out that she does not intend to continue practising as a registered nurse. It has taken account of the submissions made by Mr Joshi on behalf of the NMC. He submitted that Mrs Lloyd remains currently impaired. He provided the panel with a background to this matter and told the panel that the charges found proved were serious and a patient died following the incident to which the charges related.

Mr Joshi submitted that Mrs Lloyd has been given the opportunity to fully engage with the NMC during her period of suspension and has not done so. He highlighted that the previous reviewing panel set out information that a future panel would be assisted by, should Mrs Lloyd wish to return to the nursing profession. The panel had also outlined information which may assist a reviewing panel were Mrs Lloyd to reach a settled intention to leave the nursing profession. He told the panel that, with the exception of emails stating that she has no intention of returning to nursing and is in a new career, Mrs Lloyd has not provided any such evidence for the panel's consideration today.

In light of this, Mr Joshi invited the panel to impose a striking off order. He submitted that Mrs Lloyd has told the NMC that she wishes for this matter to be concluded. He submitted that Mrs Lloyd has absented herself from all of the hearings and wants nothing to do with these proceedings. In light of this to allow her registration as a nurse to merely expire would not reflect the gravity of this case, given Mrs Lloyd's decision not to participate in the regulatory process in a meaningful way. Mr Joshi submitted that a striking off order would suitably address public protection and also be in the public interest.

The panel also had regard to the emails provided by Mrs Lloyd, dated 4 January 2022.

The panel 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 Mrs Lloyd's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mrs Lloyd had not developed sufficient insight. At this hearing the panel considered that it did not have any new information before it which was not available to the previous panel, therefore Mrs Lloyd's insight into her failings remains insufficient.

In its consideration of whether Mrs Lloyd has remedied her practice, the panel took into account the recommendations made by the previous panels and Mrs Lloyd's subsequent failure to provide the recommended evidence, alongside her failure to engage with the NMC in any meaningful way. The panel considered that the clinical errors found proved were remediable, however it did not have before it any evidence to suggest any remediation on Mrs Lloyd's part.

The panel took into account Mrs Lloyd's emails which set out that she had left nursing, but considered that there was no clear statement of intention or information about Mrs Lloyd's current professional activity which may assist the panel in its review today.

In light of this, this panel determined that should Mrs Lloyd be allowed to practise again without restriction, the risk of repetition of the misconduct remains high. The panel therefore decided that a finding of continuing impairment 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 Mrs Lloyd's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Lloyd'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.

In considering whether to take no further action, the panel recognised that this would allow Mrs Lloyd's registration to lapse and had regard to the NMC Guidance on allowing orders to expire when a nurse or midwife's registration will lapse. The panel recognised that Mrs Lloyd has told the NMC that she no longer wishes to practise as a nurse, and a finding of impairment would be drawn to the future decision-maker's attention were Mrs Lloyd to attempt to re-join the register. However, the panel considered Mrs Lloyd's engagement with the NMC to be lacking in detail and therefore insufficient to justify serious consideration of this option. Furthermore, the panel considered that taking no further action would be inappropriate in view of Mrs Lloyd's lack of remorse, insight and remediation and in view of the need to uphold public confidence in the profession.

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 Mrs Lloyd'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 Mrs Lloyd'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 decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether a conditions of practice order on Mrs Lloyd's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mrs Lloyd's misconduct.

The panel has received information that Mrs Lloyd does not intend to return to practise as a nurse. In view of Mrs Lloyd's intention not to return to nursing, her limited engagement with the regulatory process and her lack of insight into the seriousness of her failings, the

panel considered that any conditions of practice order would not be workable and would serve no useful purpose.

The panel next considered imposing a further suspension order. The panel noted that Mrs Lloyd has not shown remorse for her misconduct. Further, Mrs Lloyd has not demonstrated any meaningful insight into her previous failings. The panel was of the view that considerable evidence would be required to show that Mrs Lloyd no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Mrs Lloyd 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 considered that a striking off order may cause financial hardship to Mrs Lloyd. However, in applying the principle of proportionality, the panel noted that Mrs Lloyd has been suspended from nursing for an extended period of time and has informed the NMC that she has been working in a new career for a period of three years. Further, the panel determined that, in any event, the need to protect the public and the wider public interest outweighed Mrs Lloyd's interest in this regard.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 10 February 2022 in accordance with Article 30(1).

This decision will be confirmed to Mrs Lloyd in writing.

That concludes this determination.