

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

**Substantive Order Review Meeting
Wednesday 16 August 2023**

Virtual Meeting

Name of Registrant: Carol Lesley Frostick

NMC PIN 00C2658E

Part(s) of the register: Registered Nurse - Children
Effective – March 2003

Relevant Location: Ashford

Type of case: Misconduct

Panel members: Anthony Griffin (Chair, Lay member)
Linda Tapson (Registrant member)
Judith Webb (Lay member)

Legal Assessor: Cyrus Katrak

Hearings Coordinator: Amie Budgen

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: Order to lapse upon expiry in accordance with Article 30 (1), namely at the end of 30 September 2023

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Ms Frostick registered address by recorded delivery and by first class post on 10 July 2023.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Meeting was sent to Ms Frostick's registered address on 10 July 2023.

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

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Ms Frostick 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).

Decision and reasons on review of the current order

The panel decided to allow the current order to lapse upon expiry, namely at the end of 30 September 2023 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 3 March 2023.

The current order is due to expire at the end of 30 September 2023.

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

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

'That you, a registered nurse whilst working as a Community Children's Nurse between 1 September 2019 and 30 September 2020:

- 1) *Did not provide adequate care to Patient A in that*
 - a) *You did not conduct port flushes as required*
 - b) *Did not escalate that you had not performed the flushes*
 - c) *Did not undertake tumour marker bloods*
 - d) *Did not escalate that you had not performed the tumour marker bloods*

- 2) *Did not maintain adequate records for Patient A in that you did not note that the following had not been carried out:*
 - a) *Port flushes*
 - b) *Tumour marker bloods*

- 4) *Did not provide adequate care to Patient B in that:*
 - a) *You did not conduct a respiratory review*
 - b) *You did not conduct spirometry*
 - c) *Did not escalate that you had not performed the actions in charge 4a) and or 4b) above*

- 5) *Did not maintain adequate records for Patient B in that you did not document that the following had not been carried out:*
 - a) *Respiratory review*
 - b) *Spirometry*

- 6) *Did not provide adequate care to Patient C in that:*
 - a) *You did not act on their low potassium levels*

- 7) *Did not provide adequate care to Patient D in that you did not check their notes prior to advising Colleague C to administer an injection*

- 8) *Did not comply with the reporting conditions following the death of Patient E in that you did not complete Form B*

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

The original panel determined the following with regard to impairment:

'The panel next went on to decide if as a result of the misconduct, Mrs Frostick's fitness to practise is currently 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. 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 found that limbs a, b and c of the Grant test were engaged in this case. The panel finds that patients put at unwarranted risk of harm as a result of Mrs Frostick's misconduct. By not maintaining adequate care records or providing adequate care to patients Mrs Frostick had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel took into account the written representations from Mrs Frostick's RCN representative dated 26 January 2023, which stated:

"Ms Frostick advises that she has not worked as a nurse since these incidents and has no intention to ever return to nursing. Ms Frostick does not wish to engage further nor provide any information for consideration at the meeting.

The outcome of the case is in the hands of the panel and Ms Frostick awaits the decision".

Regarding insight, the panel noted that Mrs Frostick had disengaged from proceedings beyond the local investigation and had not provided any evidence of reflection or developed insight into her misconduct. The panel noted that at the local investigation she appeared to accept some responsibility for her actions although her explanations were mostly brief and lack significant detail.

The panel was satisfied that the misconduct in this case is capable of being addressed. However, the panel had no evidence from Mrs Frostick that she had addressed her misconduct or undertaken any training to strengthen her practice or was willing to do so.

The panel is of the view that there is a risk of repetition based on Mrs Frostick's limited insight and lack of evidence of strengthened practice. 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; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This 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 public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mrs Frostick's fitness to practise impaired on the grounds of public interest.

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

The original panel determined the following with regard to sanction:

'The panel next considered whether placing conditions of practice on Mrs Frostick'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 is of the view that there are no practical or workable conditions that could be formulated, given Mrs Frostick's disengagement from NMC proceedings. She indicated that she has not worked as a nurse since these incidents and has

no intention to ever return to nursing. Furthermore, the panel concluded that the placing of conditions on Mrs Frostick'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 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 considered that although Mrs Frostick's misconduct was not a single instant and she had demonstrated limited insight, there was no evidence that she had repeated her misconduct and it did not consider that she had attitudinal problems. The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the panel concluded that it would be disproportionate at this stage. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mrs Frostick's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Mrs Frostick. However, this is outweighed by the public interest in this case.

The panel considered that this order is 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.

The panel determined that a suspension order for a period of 6 months was appropriate in this case to mark the seriousness of the misconduct.

At 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.

Any future panel reviewing this case would be assisted by:

- *Mrs Frostick's engagement with the NMC.*
- *Information about Mrs Frostick's future intentions with regards to her nursing career.*
- *A reflective statement.*
- *Evidence of professional development, including documentary evidence of completion of any relevant courses, and testimonials from a line manager or supervisor that detail your current work practices.*

This decision will be confirmed to Mrs Frostick in writing.'

Decision and reasons on current impairment

The panel has considered carefully whether Ms Frostick's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC guidance states that fitness to practise is a registrant's ability to practice kindly, safely and professionally. 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 original 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. It noted that there was an email from Ms Frostick's Royal College of Nursing (RCN) representative on 12 May 2023 stating that the RCN will no longer be representing her during these proceedings. The panel further noted, a previous email from Ms Frostick's RCN representative at the time, dated 26 January 2023. In that email, Ms Frostick's representative stated:

'Ms Frostick advises that she has not worked as a nurse since these incidents and has no intention to ever return to nursing. Ms Frostick does not wish to engage further, nor provide any information for consideration at the meeting.'

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 Ms Frostick's fitness to practise remains impaired.

The panel noted that the original panel found that Ms Frostick had insufficient insight and had disengaged with the NMC. At this meeting the panel considered that there has been no new material change in circumstances. It determined that consequently, Ms Frostick has not demonstrated an understanding of how her actions put patients at a risk of harm, nor demonstrated an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession. Further, it determined that Ms Frostick has not demonstrated how she would handle these situations differently in the future.

In its consideration of whether Ms Frostick has taken steps to strengthen her practice, the panel also took into account that there has been no engagement from Ms Frostick since her representative's email on 12 May 2023, which stated that the RCN are no longer representing her. It noted that Ms Frostick has not provided it with the original panel's recommendations such as any additional relevant training she may have undertaken or a reflective piece.

The original panel determined that Ms Frostick was liable to repeat matters of the kind found proved. Today's panel has received no evidence of any material change in circumstances. In light of this the panel determined that Ms Frostick remains liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment remains 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 Ms Frostick's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Ms Frostick 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 Ms Frostick'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 Ms Frostick'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 on Ms Frostick'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 meeting and the fact that Ms Frostick has disengaged with the NMC in these proceedings. The panel concluded that it could not formulate conditions of practice without Ms Frostick's engagement. Hence, a conditions of practice order would not adequately protect the public.

The panel considered the imposition of a further period of suspension. However, it noted Ms Frostick's declaration that she does not wish to return to nursing practice, nor engage with the NMC proceedings. Further, the panel took into account the email from Ms Frostick's RCN representative stating that the RCN are no longer instructed to represent her. It considered that this reviewing panel would have been assisted by Ms Frostick reflecting on her previous failings, developing her insight and steps taken to strengthen her practice, however due to Ms Frostick's non engagement and desire to leave the nursing profession, a further suspension order would not serve any purpose. The panel concluded therefore that a further suspension order would not be the appropriate, nor proportionate response in all the circumstances.

The panel did consider the imposition of a striking off order, however, it determined that the public would be protected by allowing the order to lapse on its expiry and this would also address the wider public interest. The panel determined that a striking off order, in this case, would be disproportionate.

The panel therefore determined that the current suspension order should lapse upon expiry, namely at the end of 30 September 2023.

The panel had regard to the NMC Guidance on '*Allowing nurses, midwives, nursing associates to be removed from the register when there is a substantive order in place*' [REV-3h], this guidance states which sets out that a registrant would need to apply to return to the NMC register after an order is lapsed. This guidance states:

'In looking at any application in the future, and deciding whether the nurse, midwife or nursing associate is capable of safe and effective practice and meets the requirements for health and character, the Registrar (or one of our Assistant Registrars who also make decisions on behalf of the Registrar) would be able to take account of the panel's decision whether the nurse, midwife or nursing associate's fitness to practise was still impaired when they were removed from the register.'

The panel determined that allowing the current order to lapse would be the most appropriate method which would continue to both protect the public and satisfy the wider public interest. It also had regard to the fairness of Ms Frostick in that it noted that she wished to leave the nursing profession, that her last registration fee expired on 31 March 2021, and that these proceedings are the only reason why she remains on the NMC register. It considered that Ms Frostick would have to apply to re-join the NMC register again if she did wish to return to nursing practice after this order has lapsed.

Accordingly, the panel determined to allow the current suspension order to lapse upon expiry at the end of 30 September 2023, in accordance with Article 30(1).

This will be confirmed to Ms Frostick in writing.

That concludes this determination.