

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

**Substantive Order Review Meeting
Wednesday 9 August 2023**

Virtual Hearing

Name of registrant: Valerie Ross

NMC PIN: 76B5054E

Part(s) of the register: Registered Nurse, sub part 2
RN2: adult nurse, level 2 (30 September 1976)
Registered Nurse, sub part 1
RN1: adult nurse, level 1 (14 June 1998)

Relevant Location: Gateshead

Type of case: Misconduct

Panel members: Dr Katharine Martyn(Chair, registrant member)
Jude Bayly (Registrant member)
Shaun Donnellan (Lay member)

Legal Assessor: Caroline Hartley

Hearings Coordinator: Rene Aktar

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry in accordance with
Article 30 (1), namely 22 September 2023**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that Mrs Ross was not in attendance and that the Notice of Meeting had been sent to Mrs Ross' registered email address on 3 July 2023.

The panel took into account that the Notice of Meeting provided details of the substantive order being reviewed, the time, date and venue of the meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Ross 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 substantive order

The panel decided to allow the current suspension order to lapse upon its expiry at the end of 22 September 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This order will come into effect at the end of 22 September 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 18 months by a Fitness to Practise Committee panel on 17 February 2023.

The current order is due to expire at the end of 22 September 2023.

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

'Details of charge (as amended)

That you, a registered nurse whilst working at the The Elms Kimblesworth (“the Home”):

- 1) .

- 2) *Following Resident A having sustained a fall on 19 October 2018 failed to undertake the following actions / assessments and / or record such actions:*
 - a) *Update(s) to the care plan / falls care plan;*
 - b) *Care Plan evaluation sheet;*
 - c) *Falls Assessment;*
 - d) *Physical observations;*
 - e) .
 - f) .
 - g) .
 - h) .
 - i) *“Special observations” / increased observations;*
 - j) *Complete a post falls injury form;*

- 3) *Following Resident A having sustained a fall on 20 October 2018 at around 14:30, failed to undertake the following actions / assessments and / or record such actions:*
 - a) *Update the Care Plan / Falls Care Plan;*
 - b) *Care Plan evaluation sheet;*
 - c) *Falls Assessment;*
 - d) .
 - e) .
 - f) .
 - g) *A full body check / body map;*
 - h) *Call for an ambulance / call 999 / seek medical attention from a doctor;*
 - i) *“Special observations” / increased observations;*
 - j) *Complete a post falls injury form;*

Facts not proved: Charges 1a, 1b, 1c, 1d, 1e, 1f, 2e, 2f, 2g, 2h, 3d, 3e, 3f

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:

'Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mrs Ross' 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/ fitness to practise is impaired in the sense that S/He:

- 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)'*

For reasons already set out above in relation to misconduct, the panel considered that limbs a, b and c were engaged by Mrs Ross' misconduct in this case.

The panel concluded that Mrs Ross had in the past acted so as to put a resident at an unwarranted risk of harm. The panel determined that her misconduct namely her failure to seek medical assistance, escalate the residents concerns and record keeping breached fundamental tenets of nursing practice. Additionally, the panel was of the view that her misconduct is liable to bring the nursing profession into disrepute. In the panel's judgement, the public do not expect a nurse to act as Mrs Ross did as they require nurses to adhere to the appropriate professional standards at all times and to safeguard the health and wellbeing of patients.

The panel however recognised that it had to make an assessment of Mrs Ross' fitness to practise as of today. This involves not only taking account of past misconduct but also what has happened since the misconduct came to light and whether she would pose a risk of repeating the misconduct in the future.

The panel had regard to the case of Cohen and considered whether the concerns identified in Mrs Ross' nursing practice were capable of remediation, whether they have been remedied and whether there was a risk of repetition of a similar kind at some point in the future. In considering those issues the panel had regard to the nature and extent of the misconduct and considered whether Mrs Ross had provided evidence of insight and remorse.

The panel noted that it had no evidence before it of insight from Mrs Ross.

The panel was satisfied that all the regulatory concerns identified were capable of remediation. The panel took account of the positive testimonials Mrs Ross provided from past colleagues. It also bore in mind that since the incident, Mrs Ross continued to work in another care home, Kingsway Nursing Home, which had similar residents found at the Home. It took account of a testimonial provided by her manager at the time, dated 19 March 2020, which stated:

"...I was Manager at Kingsway Nursing home until 31/10/2019. Throughout the time that I was manager I had no concerns regarding Val's fitness to practice. During supervisions with care staff they were all complimentary of Val and felt confident in her abilities as nurse in charge.... I recall in the summer of 2019 we had a resident transferred from Kimblesworth Nursing home who had previously been cared for by Val. It was clear to me that the resident was very relieved and over-joyed to be joining a home where Val was now working. The resident's relatives were also delighted..."

The panel noted that it appeared that Mrs Ross continued to work with no concerns raised against her practice. Additionally, the manager at the time was of the view that Mrs Ross was a good and safe nurse. However, the panel was of the view that this testimonial did not inform the panel of any remediation of the concerns raised namely, her record keeping and seeking medical advice.

In light of the above, the panel had no evidence before it that Mrs Ross had taken steps to strengthen her practice and remediate the concerns identified. The panel is of the view that in the absence of any insight from Mrs Ross and her lack of

remediation there remains a risk of repetition of the concerns raised, albeit a low one.

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 was satisfied that having regard to the nature of the misconduct in this case, “the need to uphold proper professional standards and public confidence in the profession would be undermined” if a finding of current impairment were not made. It was of the view that a fully informed member of the public would be concerned by Mrs Ross’ misconduct should she be permitted to practice as a registered nurse in the future without some form of restriction.

Having regard to all of the above, the panel was satisfied that Mrs Ross’ fitness to practise is currently impaired.’

The original panel determined the following with regard to sanction:

‘Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of six months, with a review before expiry of the order. The effect of this order is that the NMC register will show that Mrs Ross’s registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and to the NMC’s published guidance on sanction (‘the SG’). It

recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Denholm submitted that the appropriate sanction in this case is a six-month suspension order with a review before the expiry of the order. Ms Denholm referred to the SG and reminded the panel to consider the principle of proportionality and that it must strike a balance between Mrs Ross's interests and those of the NMC. She also stated that any sanction imposed must be proportionate and go no further than is necessary in order to protect the public and uphold the public interest. Mrs Denholm outlined aggravating and mitigating factors for the panel to consider.

Ms Denholm invited the panel to consider the sanctions in ascending order, and to have regard to the public protection and public interest issues in deciding on the most appropriate and proportionate sanction. She submitted that taking no action would not address the public protection and public interest issues, and that a caution order would not be appropriate, as this case did not involve misconduct at the lower end of the spectrum of impaired fitness to practise. Ms Denholm submitted that a conditions of practice order may be appropriate, to address Mrs Ross's misconduct in relation to record keeping, however in light of Mrs Ross's failure to contact emergency services and delay in documenting this incident, a condition of practice order would not address these failings in light of the public interest issues identified. She submitted that in all the circumstances, a conditions of practice order is not appropriate in this case.

In addressing a suspension order, Ms Denholm submitted that Mrs Ross's conduct is so serious and relates to fundamental tenets of the profession, namely, patient care, observations and record keeping. She submitted that a period of suspension is necessary to protect patients from a risk of harm, uphold professional standards and maintain public confidence in the profession.

Ms Denholm submitted that a striking off order was not appropriate and disproportionate at this time.

Decision and reasons on sanction

Having found Mrs Ross'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 NMC's published guidance on sanctions. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel considered the following aggravating factors in this case:

- *Mrs Ross was the nurse in charge at the time of her misconduct.*
- *Mrs Ross's misconduct put Patient A, a vulnerable patient, at risk of suffering harm.*
- *This was not an isolated incident.*
- *Mrs Ross has not demonstrated sufficient insight.*

The panel also considered the following mitigating factors in this case:

- *Mrs Ross has provided positive testimonials and a reference from a subsequent employer, which evidenced safe practice.*
- *Mrs Ross's misconduct involved one patient, over a relatively short period of time.*

The panel first considered whether to take no action but concluded that this would be inappropriate in the light of its finding of current impairment. 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 in the light of the identified risk of harm to patients, an order that does not restrict Mrs Ross's practice would also be inappropriate 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 has found that Mrs Ross's misconduct was not at the lower end of the spectrum of impaired fitness to practise and concluded that a caution order would be insufficient to mark the seriousness of these charges. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next carefully considered whether placing conditions of practice on Mrs Ross's registration would be an appropriate and proportionate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. It considered that conditions of practice may have been sufficient to address the nature of the misconduct in relation to Mrs Ross's recording keeping. However, the panel bore in mind Mrs Ross's lack of engagement with these proceedings, its earlier findings in relation to Mrs Ross's lack of insight and the fact she is not currently practising. The panel found that a conditions of practice order would serve no useful purpose as there is no evidence before it to suggest that she would comply with any conditions of practice order.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It found that the following factors in the SG which may indicate that a suspension order is appropriate are engaged:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- No evidence of repetition of behaviour since the incident;*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

Accordingly, the panel determined to impose a suspension order for the period of six months, with a review before expiry of the order. The panel considered that such a period of time would afford Mrs Ross the opportunity to engage meaningfully with the NMC, develop her insight and take steps to improve her practice.

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

The panel noted the hardship such an order will inevitably cause Mrs Ross. However, Mrs Ross's interests in this respect are outweighed by the NMC's interest in protecting the public and upholding public confidence in the profession.

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.

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.

Any future panel reviewing this case would be assisted by:

- Mrs Ross's engagement with the NMC, including attendance at any review hearing.*
- References or testimonials relating to any paid or voluntary work.*
- Evidence of training relating to record keeping, escalating concerns and management of falls.*

- *A reflective piece that addresses the impact of Mrs Ross's misconduct on Resident A, colleagues and the reputation of the profession.*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Ross' 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 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 was of the view that there was no evidence before it that the ongoing risk to the public has reduced since the original substantive hearing.

The panel acknowledged that Mrs Ross' accepts her fitness to practice remains impaired as she has not remediated her practice. The panel noted that Mrs Ross no longer wishes to practice as a registered nurse and seeks to allow the current order to lapse. The panel also noted that Mrs Ross had not provided any testimonials or a reflective piece in relation to the misconduct found in her nursing practice. The panel determined that Mrs Ross has not yet demonstrated that she has remediated the failings in her practice and concluded that there therefore remains a risk of repetition and a consequent risk of harm to patients and that a finding of impairment remains necessary on the grounds of public protection.

The panel has had regard to all of the documentation before it, including the NMC bundle, and an email from Mrs Ross dated 16 June 2023, which states:

'Dear Sir/Madam, thank you for your letter and e mail. As mentioned in previous correspondence I have now retired due to [PRIVATE].'

The panel determined that patients would be placed at real risk of harm if Mrs Ross were able to practise without restriction. The panel therefore determined that a finding of 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 Mrs Ross' fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Ross' 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 decided to allow the current order to expire and Mrs Ross's registration to lapse. The panel had regard to the NMC guidance on '*Allowing orders to expire when a nurse or midwife's registration will lapse*'. This guidance states that, in certain circumstances, allowing a suspension or conditions of practice order to expire following a finding of current impairment may be the best way to protect the public from concerns about a nurse's practice. Taking this option is likely to be appropriate if:

- The nurse's registration is only active because of the substantive order being in place
- The nurse does not wish to continue practising, and

- The public are protected because the panel have made a clear finding that the nurse's fitness to practise is currently impaired so that this can be drawn to the attention of any future decision-maker if the nurse attempts to re-join the register

It noted that the guidance on allowing an order to expire suggests that this outcome may not be appropriate if the nurse or midwife is not engaging with the NMC. The panel noted that Mrs Ross has engaged with the NMC, and her registration is only active because of the substantive order in place.

The panel noted that the public are protected because the panel have made a clear finding that Mrs Ross' Fitness to Practice is currently impaired, and this will be evident to the Registrar should they be required to consider any future attempts by Mrs Ross to re-join the register.

Accordingly, the substantive suspension order will be allowed to lapse at the end of the current period of imposition, namely the end of 22 September 2023 in accordance with Article 30(1).

This will be confirmed to Mrs Ross in writing.

That concludes this determination.