

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

**Substantive Order Review Hearing
Friday 13 January 2023**

Virtual Hearing

Name of registrant: **Victoria Margaret Richards**

NMC PIN: 94D0029W

Part(s) of the register: Registered Nurse – Sub Part 1
Mental Health – March 1997

Relevant Location: Cardiff

Type of case: Misconduct

Panel members: James Lee (Chair, Registrant member)
Jodie Jones (Registrant member)
Stacey Patel (Lay member)

Legal Assessor: Graeme Henderson

Hearings Coordinator: Rene Aktar

Nursing and Midwifery Council: Represented by Ben Edwards, Case Presenter

Mrs Richards: Not present and unrepresented at the hearing

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Striking off order to come into effect at the
end of 21 February 2023 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 Richards was not in attendance and that the Notice of Hearing had been sent to Mrs Richards' registered email address on 13 December 2022.

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 Richards' right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Edwards, 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 Richards 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 Mrs Richards

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

Mr Edwards referred the panel to the email from Mrs Richards dated 16 November 2022:

'Thank you for your email. I can confirm that I will not be attending any review hearing that is scheduled. I have nothing more to say than I've already explained before. I have requested that I be struck off the register as I want an end to this...'

..

Please hear the review in my absence.'

The panel has decided to proceed in the absence of Mrs Richards. In reaching this decision, the panel has considered the submissions of Mr Edwards, 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 Richards;
- Mrs Richards has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- This is a mandatory review; 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 Richards.

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 21 February 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 six months by a Fitness to Practise Committee panel on 22 July 2022.

The current order is due to expire at the end of 21 February 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:

1. *On or around 17 January 2019 left your shift early without:*
 - a. *arranging for another registered nurse to take over your shift; **[PROVED]***
 - b. *giving a handover; **[PROVED]***
 - c. *giving the medication keys to a colleague on the ward. **[PROVED]***

2. *On or around 16 March 2019 did not maintain 1:1 observations on Patient 1. **[PROVED]***

3. *Wrote an incident report of the incident in charge 2 which did not record that you had not maintained 1:1 observations. **[PROVED]***

4. *Your actions in charge 3 were dishonest in that you sought to hide that you had not maintained 1:1 observations on Patient 1. **[NOT PROVED]***

5. *On or around 17 February 2019:*
 - a. *failed to administer Gabapentin despite Gabapentin being available from another ward. **[PROVED]***
 - b. *gave a patient more than the maximum prescribed dose of Zuclopenthixol **[PROVED]***

6. *On or around 6 March 2019 when dispensing Oramorph to a patient failed to:*
 - a. *record this in the controlled drugs book; **[PROVED]***
 - b. *ensure that a second nurse was present. **[NOT PROVED]***

7. *On or around 17 March 2019 having drawn up a Lorazepam injection:*
 - a. *Failed to obtain a second check; **[PROVED]***
 - b. *Left the broken ampoule on a worktop; **[PROVED]***
 - c. *Left the medication cabinet open. **[PROVED]***

8. On or around 12 May 2019 failed to record Diazepam in the drugs liable to misuse book. **[PROVED]**

9. On or around 13 May 2019
 - a. failed to record one or more entries for Clonazepam in the drugs liable to misuse book; **[NOT PROVED]**
 - b. recorded that you had dispensed 200mg of Pregabalin instead of 100mg **[NOT PROVED]**
 - c. incorrectly input one or more entries for Codeine Phosphate in the drugs liable to misuse book **[NOT PROVED]**
 - d. administered insulin approximately 4 days earlier than prescribed **[NOT PROVED]**
 - e. administered Hydroxocobalamin approximately 6 weeks earlier than prescribed. **[PROVED]**

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 Richards' 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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel finds that patients were put at risk, and at least one patient suffered harm as a result of Mrs Richards' misconduct. Mrs Richards' misconduct had breached fundamental tenets of the nursing profession – which the panel considered to include providing safe and effective care - and therefore brought its reputation into disrepute.

The panel considered the limbs of Grant. It determined that limbs (a), (b) and (c) are engaged in this case.

The panel considered that Mrs Richards' actions were serious and wide ranging, including multiple medication errors, record keeping errors, and not ensuring patient safety such as leaving the ward mid shift without a handover to qualified nurses who arrived to support her, removing the medication keys from the ward, and not maintaining 1:1 observations on a high-risk patient.

The panel considered that Mrs Richards' actions in respect of the 1:1 observations on a patient resulted in actual harm to that patient. The patient in question managed to wrap a ligature around her neck whilst Mrs Richards' back was turned in the kitchen as she was making a coffee. The panel considered that there is evidence of a red mark on the patient following the incident. In particular, the panel also determined that charges 7 and 9e put patients at potential high risk of significant harm.

The panel considered that there has been some recognition by Mrs Richards in her response to the NMC that she had made some errors, although the panel was of the view that she currently has limited insight into her actions. There has been some evidence of limited remediation in relation to the administration of medicines, however these are only assessments that she has undertaken as a HCA, and she has not been assessed within a working environment as a registered nurse. The panel considered that Mrs Richards' errors are capable of remediation, however there is no evidence before it that Mrs Richards has adequately addressed the issues and the impact they had and could have had on patients, colleagues, the public and the wider profession. Mrs Richards has not demonstrated what she would do differently in the future should she find herself in a similar situation, and she has not demonstrated any remorse.

However, in this case the panel considered that there are potential attitudinal issues, in relation to Mrs Richards leaving the ward without ensuring a handover, her failure to maintain observations on a high-risk patient, numerous medication

errors with limited insight and her response to the local interviews and investigation at the time.

The panel also noted the positive testimonials that have been provided from Mrs Richards' subsequent employers. The panel noted that this was in her role as a HCA and they are unable to testify to her working as a nurse. It considered that Mrs Richards has passed some medication assessments but, as she was working as a HCA, she is unable to put those skills into practise as a nurse and cannot be suitably assessed in the workplace. The panel acknowledged that whilst it is beneficial that Mrs Richards has started the journey of strengthening her practice, it is limited at this stage.

The panel considered that fundamental tenets of the profession had been breached. The errors also occurred over a significant period of time on different wards.

The panel is of the view that there is a risk of repetition due to there being no evidence of remorse from Mrs Richards, no apologies, no evidence of understanding her actions and no evidence to show she has demonstrated sufficient insight. 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 a finding of impairment on public interest grounds is required as the public would be concerned should Mrs Richards be permitted to practise unrestricted. In addition, in respect of charge 3, the panel considered that the public would also expect accurate records and a paper trail to be present in the case of serious incidents, in order to ensure patient care, safety and so that patients' relatives can be informed.

The panel concluded 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 Richards' fitness to practise impaired on the grounds of public interest.

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

The original panel determined the following with regard to sanction:

'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 took into account the following aggravating features:

- *Numerous medication and record keeping errors that occurred over a significant period of time: involving controlled drugs and drugs liable to misuse;*
- *All the incidents involved particularly vulnerable patients;*
- *Mrs Richards deflecting blame particularly in relation to charges 1 - 3; and*
- *Limited insight, strengthening of practice, remorse and reflection.*

The panel also took into account the following mitigating features:

- *A challenging working environment;*
- *Concerns about staffing levels;*
- *Potential targeting raised due to whistleblowing by Mrs Richards;*
- *Some progress in medications administration; and*
- *Positive testimonials from the agency whilst working as a HCA.*

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 Mrs Richards' 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 Richards' 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 placing conditions of practice on Mrs Richards' registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *The nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel is of the view that there are no practical or workable conditions that could be formulated. It considered that, due to the lack of meaningful engagement with the NMC, and limited insight, reflection, remorse and strengthening of her practice, conditions of practice would not be suitable or appropriate in this case. The panel noted that the agency have provided positive feedback on Mrs Richards and her medication assessments whilst working as a HCA. The panel, whilst acknowledging some progress, determined this is insufficient at this point to address all the concerns despite the agency's view (in April 2020) that Mrs Richards could confidently and competently work as a nurse on the ward. The panel concluded that the placing of conditions on Mrs Richards' registration would not adequately address the seriousness of this case and would not protect the public, and would not satisfy the public interest.

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;*
- In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel was satisfied that, in all the circumstances, the misconduct was not fundamentally incompatible with remaining on the register. It considered that there remains a risk of harm and a risk of repetition to the public. Whilst there is very limited insight from Mrs Richards, there is an overall lack of responsibility from her in respect of her failings. The panel considered that Mrs Richards has appeared to

deflect the blame on others, even if she has accepted some of her wrongdoings. The panel was not aware of any evidence of repetition since the incidents.

The panel accepted the mitigating circumstances, in particular that the wards she worked on were challenging. However, Mrs Richards has not provided any evidence of reflection, remorse or insight into her actions and the impact they could have had on patients, colleagues, the public and the wider profession. Whilst Mrs Richards has not disengaged with the NMC completely, there is nothing to suggest that she has undertaken sufficient learning and development. Mrs Richards does have some positive testimonials and appears to have passed some medication assessments with subsequent employers, but this is in her role as a HCA, not as a registered nurse. Whilst this demonstrates some progress made by her, it has not given her the opportunity to put it into practice as a nurse, and evidence such practice.

The panel was of the view that a suspension order would give Mrs Richards the opportunity to fully engage with the NMC and provide evidence of remorse, insight, reflection, and strengthening of her practice and, as well as matters of her health and her employment status. A suspension order would suitably mark the behaviour protect the public, satisfy the public interest, and give Mrs Richards time to pause, reflect, develop and demonstrate her insight if she chooses to do so.

The panel did go on to consider whether a striking-off order would be necessary or proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would not be necessary to protect the public and would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be, at this time, unduly punitive in Mrs Richards' 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 Richards. 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 six 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 Richards' attendance at the review hearing;*
- *A reflective statement from Mrs Richards demonstrating her remorse, insight and how she has strengthened her practice, and the impact her actions could have had on patients, colleagues, the public and the wider profession and how she would manage similar incidents in the future;*
- *Evidence of any training or development undertaken;*
- *An update from Mrs Richards on her current and future plans of working within nursing;*
- *Evidence of any paid or unpaid work; and*
- *Testimonials.*

This will be confirmed to Mrs Richards in writing.'

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Richards' 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 the email from Mrs Richards. It has taken account of the submissions made by Mr Edwards. Mr Edwards took the panel through the background of the case and referred it to the relevant pages in the bundle, as well as the facts found proved at the original hearing and the previous reviewing panels' decision.

Mr Edwards submitted that Mrs Richards' misconduct was serious and related to her clinical practice. Mr Edwards submitted that, in light of the absence of any new information from Mrs Richards, a real risk of repetition remains. He submitted that there is continuing impairment on the grounds of public protection and public interest. Mrs Richards has still not yet addressed the original concerns and shown insight or remediation into her actions.

Mr Edwards further stated that although Mrs Richards was previously engaging with the NMC, her recent disengagement with the NMC proceedings shows limited insight and a lack of compliance, as she has not complied with any of the recommendations provided by the previous panel.

Mr Edwards submitted that there is no update on Mrs Richards' current and future plans on whether she would like to return to nursing.

Mr Edwards submitted that there are no workable conditions to remediate the risks identified. He submitted that a strike off order can be appropriate. Mr Edwards therefore submitted that it is a matter for the panel to decide on what sanction it wished to impose on Mrs Richards practice if it was to find her fitness to practise remains 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 Mrs Richards' fitness to practise remains impaired.

The panel noted that the original panel found that Mrs Richards had not made any progress in regard to showing any insight or remorse into her actions. It further noted that there has been no evidence of any training or reflective pieces of work. The panel noted that there has been no evidence of any insight provided by Mrs Richards or any material to indicate that she wished to remediate the concerns raised with her practice. In addition to this it appears that Mrs Richards would like an end to these regulatory proceedings as per her email dated 16 November 2022.

The original panel determined that Mrs Richards was liable to repeat matters of the kind found proved. Today's panel has received a response from Mrs Richards, which demonstrated no evidence of remediation and insight. Mrs Richards has also not provided information that was requested of her by the previous reviewing panels.

Today's panel has not received any new information since the last hearing. In light of this, this panel 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 Richards' fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Richards' 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 Mrs Richards' 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 Richards' 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 conditions of practice on Mrs Richards' registration would be a sufficient and appropriate response. It was of the view that there were no workable conditions that could be formulated which would enable Mrs Richards' to practise safely, as Mrs Richards' has not yet provided evidence that she has shown any remediation, increased her level of insight or that she has strengthened her practise in any way.

The panel next considered imposing a further suspension order. The panel noted that Mrs Richards has not shown remorse for her misconduct. Further, Mrs Richards has not demonstrated any insight into her previous failings. The panel was of the view that considerable evidence would be required to show that Mrs Richards no longer posed a risk to the public. The panel noted that Mrs Richards has shown clear indication that she would like to be removed from the register. 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 Richards 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.

This striking-off order will take effect upon the expiry of the current suspension order, namely at the end of 21 February 2023 in accordance with Article 30(1).

This decision will be confirmed to Mrs Richards in writing.

That concludes this determination.