

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

**Substantive Order Review Meeting
Wednesday, 5 July 2023**

Virtual Meeting

Name of Registrant: Julie Callaghan

NMC PIN 82Y0915E

Part(s) of the register: Nurses part of the register Sub part 1
RN1: Adult nurse, level 1 (21 May 1985)

Relevant Location: North Ayrshire

Type of case: Misconduct

Panel members: Shaun Donnellen (Chair, Registrant member)
Mary Karasu (Registrant member)
Linda Redford (Lay member)

Legal Assessor: Tim Bradbury

Hearings Coordinator: Roshani Wanigasinghe

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry in accordance with Article 30(1), namely at the end of 18 August 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 Callaghan's registered email address by secure email on 1 June 2023.

The panel took into account that the Notice of Meeting provided details of the review including the fact that it would be heard no sooner than 3 July 2023 and the meeting will be conducted at a private meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Ms Callaghan 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 order to lapse upon expiry, at the end of 18 August 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 12 months by a Fitness to Practise Committee panel on 19 July 2022.

The current order is due to expire at the end of 18 August 2023.

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

The charge found proved by admission which resulted in the imposition of the substantive order was as follows:

"That you being a registered nurse between the 11th May 2017 and the 23rd October 2019

1. *Accessed multiple patient medical records without clinical justification*
[PROVED BY ADMISSION]

And by reason of the above, your fitness to practise is impaired by virtue 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, Ms Callaghan’s fitness to practise is currently impaired.

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) *...'*

The panel determined that limbs a – c were engaged in this case. It noted that patients were distressed and angry having found out that their private records had been accessed without their consent. In this regard, the panel considered that patients were caused emotional harm as a result of Ms Callaghan's misconduct. Furthermore, in breaching confidential patient records, the panel considered that Ms Callaghan breached the fundamental tenets of the nursing profession and brought its reputation into disrepute.

In considering current risk, the panel had regard to the seriousness of the concerns and whether Ms Callaghan has taken steps to address those concerns.

The panel was of the view that the concerns in this case are serious. It noted that Ms Callaghan's conduct relates to a pattern of misconduct, involving over 30 patients, over a long period of time (22 months).

Regarding insight, the panel bore in mind that Ms Callaghan admitted to the facts at an early stage (both during the local investigations and in these proceedings). However, the panel considered that Ms Callaghan's insight is limited by the fact that she attempted to deflect some of the blame. The panel had regard to the disciplinary meeting notes taken on 4 December 2019 where it was outlined:

'She suggested that the system was flawed as it should have highlighted the errors straight away. She also questioned why something was not put in place to

prevent her doing something like this given the mitigating factors in her personal life.'

In addition, in a text message to the Chair of the disciplinary meeting held on 26 November 2019, Ms Callaghan states:

'I meant to say that there were a few people's notes that had no information.'

Given this failure to take full responsibility and lack of explanation for her actions, the panel determined that while Ms Callaghan has demonstrated that she has some insight, there is more for her to do.

The panel also bore in mind that Ms Callaghan has not provided any evidence to explain why she acted the way she did and how she would act differently in the future. In addition, the panel was not satisfied that Ms Callaghan is aware of the impact of her actions on the patients concerned (and their families) or the reputation of the wider nursing profession. The panel therefore determined that Ms Callaghan has not taken sufficient steps to address the misconduct in this case.

As such, the panel decided that there is a risk of repetition and 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.

In this regard, the panel determined that a finding of impairment on public interest grounds is also required. It considered that an informed member of the public would be concerned if a finding of impairment were not made in this case."

The original panel determined the following with regard to sanction:

“Having found Ms Callaghan’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 SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating factors:

- Duration of record access (over a period of 22 months).*
- Large number of patients (in excess of 30), including three children aged 6, 8 and 17.*
- Many of the patients were known to Ms Callaghan.*
- Ms Callaghan had received training and was aware that there was a lack of both clinical justification and consent.*
- There was no clinical or legitimate reason to access highly sensitive data.*
- Ms Callaghan breached guidance, protocol and rules as to confidentiality.*
- The conduct is capable of undermining confidence in the profession.*
- Patients were deeply upset and angry about the way their patient information was inappropriately accessed.*

The panel also took into account the following mitigating factors:

- Ms Callaghan engaged locally and made early admissions.*
- Personal circumstances – Ms Callaghan claimed to be suffering from stress and was seeing a GP at the time.*
- Some insight has been shown.*
- No hard copies or printing was created. There is no evidence that Miss Callaghan did not seek to share the illicit information she had obtained with anyone.*

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the public protection issues identified.

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 Callaghan's practice would not be appropriate in the circumstances.

The panel next considered whether placing conditions of practice would be a sufficient and appropriate response. The panel took into account the SG and was mindful that any conditions imposed must be relevant, proportionate, measurable and workable. The panel noted that the concerns in this case relate to Ms Callaghan's professionalism and mishandling of confidential data rather than an area in her clinical practice and therefore would be difficult to address with conditions.

The panel was therefore of the view that there are no practical or workable conditions that could be formulated, given the nature of the concerns in this case.

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:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- No evidence of repetition of behaviour since the incident; and*
- The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

It 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 provided, the panel concluded that it would be disproportionate. The panel noted that whilst this case is serious, Ms Callaghan has an otherwise unblemished nursing career of 37 years, and she has demonstrated some insight. As such, the panel was satisfied

that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Ms Callaghan'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 Ms Callaghan. 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 12 months was appropriate in this case to mark the seriousness of the misconduct and maintain public confidence in the profession.

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:

- *Evidence of a reflective piece which outlines:*
 - *Why Ms Callaghan acted as she did;*
 - *How she would act differently in the future; and*
 - *The impact of her actions on the patients involved and the wider profession*

- *Testimonials or references from an employer (whether in paid or unpaid employment) with particular reference to confidential or sensitive data handling*
- *Ms Callaghan's attendance at the review hearing"*

Decision and reasons on current impairment

The current panel has considered carefully whether Ms Callaghan'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 the email response from Ms Callaghan to the NMC dated 21 January 2023 and 2 June 2023 respectively.

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 Ms Callaghan's fitness to practise remains impaired.

The panel noted that the original panel found that although Ms Callaghan had admitted to the facts at an early stage, her insight was limited and that she had not taken full responsibility for her actions and therefore there was a genuine risk of harm to patients. At this meeting, the panel determined that this had not changed. It noted that the original panel suggested that Ms Callaghan provide a reflective piece on her actions to address the impact on patients and the wider profession and to provide testimonials or references from an employer. However, none of this information has been provided.

In its consideration of whether Ms Callaghan has taken steps to strengthen her practice, the panel found that there has been no indication of remorse, no reflective statement or evidence of further training, and a lack of insight in relation to the charge found proved. It was of the view that the finding of misconduct and impairment found at the time still applies as this panel did not have any new information before it to indicate that these areas have been addressed by Ms Callaghan.

In light of this the panel determined that Ms Callaghan remains liable to repeat matters of the kind found proved. 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 Ms Callaghan's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Ms Callaghan'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 allow the current suspension order to lapse on expiry. In doing so, the panel had regard to the Guidance, particularly where it states:

'In certain circumstances allowing a suspension or conditions of practice order to expire following a finding of current impairment may actually be the best way to protect the public from concerns about a nurse or midwife's practice.'

Taking this option is likely to be appropriate if:

- *the nurse or midwife's registration is only active because of the substantive order being in place,*
- *the nurse or midwife doesn't want to continue practising, and*
- *the public are protected because the panel have made a clear finding that the nurse or midwife's fitness to practise is currently impaired so that this can be drawn to the attention of any future decision-maker if the nurse or midwife attempts to re-join the register.'*

The panel took into account the email Ms Callaghan sent to the NMC on 31 January 2023 which stated that:

"I do not wish to attend a meeting. I have no intention of practising again."

It further bore in mind Ms Callaghan's email dated 2 June 2023 which stated that:

"...I have not worked since November 2018. I have no desire to practise as a registered nurse again..."

The panel considered that in these emails Ms Callaghan has made it clear that she does not wish to continue practising as a nurse now or in the future. The panel was made aware that she has not worked in the nursing field since 2018 and that her registration had lapsed on 31 May 2020.

The panel had regard to the Guidance, which states that allowing a substantive order to expire may be appropriate where the panel has made a clear finding that the nurse or midwife's fitness to practise is currently impaired. The panel noted that if Ms Callaghan were to change her mind about returning to nursing, the Registrar would be made aware of the finding of current impairment and would thus be able to ensure that any ongoing risks to patient safety had been addressed before admission to the register could be considered.

The panel went on to consider whether to impose a caution order but determined that this would serve no useful purpose. Such action would serve to keep Ms Callaghan on the register, in circumstances where her intention not to work as a nurse again in the future was clear. The panel considered that imposing a caution order would not protect the public from the outstanding risk, and it would not be in the wider public interest.

The panel next considered whether imposing conditions of practice on Ms Callaghan'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 concluded that it would be impossible to formulate conditions for a registrant who does not intend to work as a nurse.

The panel considered that imposing a further period of suspension would serve no purpose as Ms Callaghan does not wish to practise as a nurse. The panel also considered a striking-off order would be disproportionate and could be considered punitive in the context of her case.

The panel considered that a well-informed member of the public would understand that allowing the order to lapse would be proportionate action to take under these circumstances. The panel determined that the finding of impairment and Ms Callaghan's clear position that she will not return to nursing would ensure the public remain protected.

The panel was therefore satisfied that allowing the current suspension order to lapse on expiry would be appropriate and proportionate in the circumstances of this case. This would protect the public, as when the order expires, Ms Callaghan's registration would lapse, and she would be removed from the register, thereby preventing her from practising as a nurse. Allowing the order to expire would also satisfy the wider public interest, in that imposing a more restrictive sanction in this case would serve no useful purpose, in circumstances where it would not serve to facilitate Ms Callaghan's return to safe and effective nursing practise in the future. The panel was satisfied that allowing the current order to lapse on expiry would maintain public confidence in the nursing profession and in the NMC as a regulator.

The panel therefore determined to allow the current suspension order to lapse on expiry, namely at the end of 18 August 2023.

This decision will be confirmed to Ms Callaghan in writing.

That concludes this determination.