

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

**Substantive Order Review Hearing
Tuesday, 12 September 2023**

Virtual Hearing

Name of Registrant: Colette Sallows

NMC PIN 95C1700E

Part(s) of the register: Registered Nurse – Mental Health Nursing (09 March 1998)

Relevant Location: Leeds

Type of case: Misconduct

Panel members: Rachel Onikosi (Chair, lay member)
Manjit Darby (Registrant member)
David Newsham (Lay member)

Legal Assessor: Nigel Pascoe KC

Hearings Coordinator: Opeyemi Lawal

Nursing and Midwifery Council: Represented by Christopher Scott, Case Presenter

Mrs Sallows: Not present and unrepresented

Order being reviewed: Suspension order (4 months)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry in accordance with Article 30 (1), namely at the end of 13 September 2023**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Sallows was not in attendance and that the Notice of Hearing had been sent to Mrs Sallows' registered address by recorded delivery and by first class post on 8 September 2023.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Hearing was delivered to Mrs Sallows' registered address on 9 September 2023. It was signed for against the printed name of 'SALLOWS'.

Mr Scott, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had acknowledged the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Scott submitted that as per Rule 11(2) 28 days' notice is required but the full 28 days have not been met in this case. Mr Scott submitted that a previous panel imposed a suspension order for four months, but this was subsequently replaced with a strike-off order on 4 August 2023, which expires at the end of 13 September 2023. However, on 25 August 2023, the NMC Case Officer received a call from Mrs Sallows' sister-in-law and detailed in that call log that:

[PRIVATE].

Mr Scott submitted that on 5 September 2023 the NMC Case Officer asked Mrs Sallows' sister-in-law via email if the notice period could be waived but no direct response was received. Mr Scott further submitted that it is fair to waive notice and that notice in this manner is reasonable given the circumstances.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information

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

The panel determined that given the exceptional nature of the circumstances, reasonable notice had been given. It considered that there is no unfairness to Mrs Sallows in waiving the 28 days notice, and that it would be unfair to her to not proceed given the Strike off order comes into effect tomorrow.

In the light of all of the information available, the panel was satisfied that Mrs Sallows has been reasonably served with notice of this hearing.

Decision and reasons on proceeding in the absence of Mrs Sallows

The panel next considered whether it should proceed in the absence of Mrs Sallows. The panel had regard to Rule 21 and heard the submissions of Mr Scott who invited the panel to continue in the absence of Mrs Sallows.

Mr Scott referred the panel to the email dated 11 September 2023, from Mrs Sallows' sister-in-law, detailing her reasons for her non-attendance and engagement, which stated:

[PRIVATE].

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Sallows. In reaching this decision, the panel has considered the submissions of Mr Scott, the representations from made on Mrs Sallows' behalf, 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:

- [PRIVATE];

- There is no reason to suppose that adjourning would secure her attendance at some future date;
- This is the only chance to hear the case given the striking off order comes into effect tomorrow; 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 to proceed in the absence of Mrs Sallows.

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Mr Scott made a request that this case be held partly in private on the basis that proper exploration of Mrs Sallows' case involves reference to...[PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to go into private session as and when such issues are raised.

Decision and reasons on review of the substantive order

The panel decided to let the suspension order to lapse upon expiry on 13 September 2023 in accordance with Article 30 (1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive suspension order originally imposed for a period of six months by a Fitness to Practise Committee panel on 13 October 2022. This was reviewed on 29 March 2023 when the Fitness to Practise Committee panel extended the suspension order for a period of four months. The order was then reviewed on 4

August 2023 when the Fitness to Practise Committee panel replaced the suspension order with a strike-off order.

The current order is due to expire at the end of 13 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 at the Woodend Care Home ('the Home') on 30 April 2019, inaccurately recorded in advance that you had administered medication to one, or more, Home resident's including:

1) In relation to Resident A:

- a) Donepezil at 19:00;*
- b) Mirtazapine at 19:00;*
- c) Senna at teatime;*
- d) Lactulose at teatime;*

2) In relation to Resident B:

- a) Mirtazapine at 19:00;*
- b) Paracetamol at lunch;*
- c) Paracetamol at teatime;*
- d) Risperidone at teatime;*

3) One, or more, unknown residents at:

- a) lunchtime;*
- b) teatime;*
- c) throughout the day;*

4) Your conduct at any and/or all of charges, 1 and/or 2 and/or 3 above was dishonest in that you:

- a) knew that you had not administered the medication to one, or more, residents,*
- when signing/recording that you had done so;*
- b) intended to create the misleading impression that you had administered the medication to one, or more, residents, when you had not done so*

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

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

'The panel considered whether Mrs Sallows' fitness to practise remains impaired and in doing so referred to the NMC's guidance on impairment.

The panel determined that there has been insufficient insight demonstrated by Mrs Sallows into her misconduct as she has not engaged with the NMC and there is no evidence of remediation. Her disengagement shows there has been no material change in circumstances. In its consideration of whether Mrs Sallows has taken steps to strengthen her practice, the panel determined that there has been no evidence of training and no evidence to suggest that she is working in a non-clinical role.

Today's panel has heard no new information that Mrs Sallows would not be liable to repeat matters of the kind found proved. In light of this, this panel determined that Mrs Sallows is liable to repeat matters of the kind found proved which are serious and involved vulnerable patients who were put at a serious risk of harm. 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 required. This is because members of the public and the profession would be concerned to know that a nurse who had made dishonest entries on patients' charts, which risked those patients not getting their medication and who had shown little insight into her behaviour and taken no steps to correct it, was found not to be impaired.

For these reasons, the panel finds that Mrs Sallows' fitness to practise remains impaired.'

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

'The panel next considered imposing a further suspension order. The panel noted that Mrs Sallows has not shown remorse for her misconduct. Further, Mrs Sallows has not demonstrated any meaningful insight into her previous failings, nor has she engaged with the NMC throughout these regulatory proceedings or provided any evidence of any remediation. The panel was of the view that significant evidence would be required to show that Mrs Sallows no longer posed a risk to the public. The panel considered whether to impose a further period of suspension. However, it noted that Mrs Sallows had twice been given the opportunity to engage with the NMC by complying with the suggestions made by the previous panels. The panel took into account the caselaw mentioned by the legal assessor, in particular the case of Unozor v. Nursing and Midwifery Council, 25 February 2016. In that case the High Court held that the panel had been entitled to conclude that it was not appropriate to continuously extend its suspension orders in the hope that the registrant might eventually comply with its suggestions.

The panel determined that a further period of suspension would not serve any useful purpose in all the circumstances, given Mrs Sallows'

lack of engagement and that, in line with the case of Unozor, it was appropriate and proportionate to now make a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 13 September 2023 in accordance with Article 30(1)'.

Decision and reasons on current impairment

This panel has considered carefully whether Mrs Sallows' 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 exceptional 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, the previous panel decision and written correspondence from Mrs Sallows' sister-in-law. It has taken account of the submissions made by Mr Scott on behalf of the NMC.

Mr Scott took the panel through the details of the case and the previous panel reasoning.

[PRIVATE].

Mr Scott further submitted that Mrs Sallows' has not strengthened her practice or addressed the concerns raised against her, so therefore, she is remains impaired by way of her misconduct.

Mr Scott submitted that if the panel find Mrs Sallows' fitness to practise impaired, the suggestion from her sister-in-law to allow for the order to lapse can be allowed, as per

NMC guidance REV-3h. Mr Scott further submitted that Mrs Sallows' registration expired on 3 March 2020 and the current proceedings is the reason keeping her on the register and once this comes to an end she will be removed from the register.

Mr Scott submitted that the panel must be satisfied that any decision the panel reaches is sufficient to protect the public and the public interest, whilst also being fair to Mrs Sallows.

Mr Scott submitted that the decision is up to the professional judgement of the panel.

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 Sallows' fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mrs Sallows had not engaged, had not shown remorse, had shown insufficient insight into her misconduct and there was no evidence of remediation... [PRIVATE]. Accordingly, the panel determined that there has been no material change in circumstances and that there has been no evidence that Mrs Sallows has strengthened her practice.

The last reviewing panel determined that Mrs Sallows was liable to repeat matters of the kind found proved...[PRIVATE]. In light of this, this panel determined that Mrs Sallows is still 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 Mrs Sallows' fitness to practise remains currently impaired.

[PRIVATE].

Therefore, under these exceptional circumstances the panel has decided to take no further action and allow the order to lapse. The public will be protected because Mrs Sallows will no longer be registered and the fact that this panel has found her to be currently impaired would become apparent should she try to re-register. To continue with this substantive order will be disproportionate in this case.

In accordance with Article 30(1), the substantive suspension order will lapse upon expiry, namely the end of 13 September 2023.

This will be confirmed to Mrs Sallows in writing.

That concludes this determination.