

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

**Substantive Order Review Hearing
Monday, 01 July 2024**

Virtual Hearing

Name of Registrant: Elyse-May Hibbs

NMC PIN 19A0037W

Part(s) of the register: Registered Nurse – Adult Nursing (August 2019)

Type of case: Conviction

Panel members: Vicki Wells (Chair, registrant member)
Elisabeth Fairbairn (Registrant member)
Jayanti Durai (Lay member)

Legal Assessor: Graeme Dalgleish

Hearings Coordinator: Khatra Ibrahim

Nursing and Midwifery Council: Represented by Mehedi Rahim, Case Presenter

Miss Hibbs: Present and represented by Louisa Simpson, instructed by The Royal College of Nursing (RCN)

Order being reviewed: Suspension Order (12 months)

Fitness to practise: Not Impaired

Outcome: **Order to lapse upon expiry in accordance with Article 30 (1), namely 8 August 2024**

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

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

Mr Rahim indicated that he supported the application.

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 that when matters [PRIVATE] were raised, the hearing would be heard partly in private in order to protect your privacy.

Decision and reasons on review of the substantive order

The panel decided to allow the order to lapse upon expiry, namely at the end of 8 August 2024.

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 7 July 2023.

The current order is due to expire at the end of 8 August 2024.

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

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

'Details of charge

That you, a Registered Nurse

- 1. On 20 September 2022 in the Crown Court sitting at Cardiff, were convicted of Misconduct in a Public Office contrary to common law'*

Background taken from substantive hearing dated 7 July 2023:

'You were convicted as a result of your conduct while you were employed as a registered nurse within a prison. The referral to the NMC outlined that you had inappropriately communicated with a serving prisoner, Person A, some of which contact had been recorded on the prison telephone system, whilst other contact was made via an illegal mobile phone in Person A's possession.

[PRIVATE], and later resigned from your position on 6 July 2021. The concerns relating to your contact with Person A were referred to the police and you were arrested on 13 July 2021. You entered a guilty plea to the charge of Misconduct in Public Office relating to the period between 27 May 2021 and 6 July 2021. You were later sentenced to a six-month term of imprisonment, of which you served six weeks before being released on Home Detention Curfew, and ordered to pay the victim surcharge. You remain on licence until December 2023.'

The original panel determined the following with regard to impairment:

'The panel went on to decide if as a result of the conviction, your 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 and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must act with integrity. They must make sure that

their conduct at all times justifies both their patients' and the public's trust in the profession.

The panel found that, although there is no evidence of actual clinical harm in this matter. The panel bore in mind the prosecution opening note, that you failed to report Person A and the contact he had with you, despite your belief that this communication was being maintained through an illegal telephone which Person A possessed in prison. It considered that this inaction resulted in a risk of harm to other prisoners, staff members and the wider public. It found that your conduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel bore in mind the context of these events and appreciated that you were a young woman and [PRIVATE] as a newly qualified nurse working within a difficult prison setting. It had regard to the testimonial provided Nurse 2, dated 5 June 2023, which stated:

“as a young nurse she received lots of attention from male staff and prisoners, found herself [PRIVATE], but did not have the support from senior staff [...]. Senior staff were dismissive [PRIVATE], this I had witnessed as staff could be flippant about a young nurse receiving attention from male staff or prisoners.”

It also had regard to your personal circumstances at the time, including the breakdown of your relationship and the death of your Person D. The panel gave serious consideration to this context and appreciated the difficulty you faced at this time. However, it had concerns about your lack of insight into your situation at the time, the poor quality of your decision making, and the actions taken by you. It bore in mind that you were capable of making some appropriate decisions, such as [PRIVATE] and resigning from your position at the prison but demonstrated a lack of judgement when making other decisions, including your continued contact with Person A throughout the period on the indictment, and your decision not to report this contact in line with the policies at the prison. The panel bore in mind that, despite your age and lack of professional experience, as a registered nurse you will

have been fully appraised of the NMC code and the obligations which it imposed upon you.

The panel went on to consider your insight and reflection on your conviction. It bore in mind that you have provided before this panel two written accounts which demonstrate some understanding into the serious nature of your conviction, have expressed remorse for your actions and outlines how you would act differently in the future. The panel concluded that this documentation demonstrates some insight into your actions within a prison setting, but demonstrates a limited understanding of how you would act differently if presented with a similar situation in a different clinical setting.

In its consideration of whether you have strengthened your practice, the panel took into account that you have provided it with evidence of having undertaken training on professional boundaries, dated 29 June 2022. The panel found that the weight of this evidence is limited as it does not outline details of this course, the contents of the modules and what learning you have embedded in your practice from attending this training. The panel also noted that there was no further evidence before it of your continued professional development in any other areas relating to your practice.

The panel had regard to the fact that impairment is a forward-thinking exercise, and it must consider whether there is a risk of repetition of the concerns alleged in the future. The panel concluded that you have learned about the importance of maintaining professional boundaries at significant personal and reputational cost, including your punishment through the criminal justice system and a period of imprisonment. In light of this, the panel found that you are unlikely to repeat the conduct which resulted in your conviction. It also bore in mind that no concerns have been raised relating to your clinical practice as a nurse. Accordingly, the panel decided that a finding of impairment is not necessary on the grounds of public protection.

However, the panel bore in mind that the overarching objectives of the NMC are 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, which 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, in this case, a finding of impairment on public interest grounds is required. It concluded it is highly serious for a nurse to be convicted of misconduct in a public office. The panel concluded that public confidence in the nursing profession and the NMC as a regulator would be significantly diminished were a finding of impairment not found on public interest grounds.

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

The original panel determined the following with regard to sanction:

'Having found your 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 features:

- You had previously attended courses and training in the dangers of manipulative behaviour and failed to apply this knowledge in your practice;*
- A custodial sentence was imposed by the Crown Court;*
- You worked as a nurse in a position of trust within your clinical practice whilst working at a high risk and secure environment;*
- Your actions allowed Person A to retain a prohibited device in prison which could have been used by Person A to perpetuate further criminality;*
- The period of indictment relates to inappropriate behaviour and communication which took place over a period of several weeks; and*

- *You didn't seek or act on advice from colleagues or mentors when first contacted by Person A.*

The panel also took into account the following mitigating features:

- [PRIVATE]
- *Your age and relative inexperience at the time of your failings;*
- *You have shown genuine remorse;*
- *You have co-operated and engaged with both the police and the NMC;*
- *You have accepted responsibility for your failings from the outset of the criminal and regulatory investigations;*
- *You were working in a challenging professional environment during the period of indictment; and*
- *The presence of intimidation and threats to you and your family's safety following your initial inappropriate contact with Person A.*

The panel noted that you do not have any previous adverse criminal or regulatory findings.

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 interest concerns identified, an order that does not restrict your 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 your case 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 your 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 the nature of the charges in this case. The panel bore in mind that the concern in this matter does not relate to your clinical practice, and therefore this concern is not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a 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 was satisfied that, in this case, the misconduct was not fundamentally incompatible with remaining on the register. It considered that your communication with Person A constitutes a single instance of misconduct, although it extended over a period of several weeks. It also bore in mind that there is no evidence of repetition since your arrest, and that there is evidence before it that you immediately took appropriate action by notifying the police when Person A attempted to contact you following your discharge from prison.

The panel did not consider that there is any evidence of harmful deep-seated personality or attitudinal issues and was satisfied that you demonstrated genuine remorse through your written reflection and oral evidence. However, the panel concluded that your insight is still developing. It concluded that you continue to

demonstrate naivety and a risk of weakened judgement which was evidenced by your intentions towards your future as a nurse. It was concerned about your lack of ability to recognise risk when working with vulnerable people who may display similar manipulative behaviours, such as those with addiction issues. The panel noted that, although you have undertaken some training, there was more you could have done to demonstrate your strengthened practice.

Despite the fact that the panel concluded that you have not demonstrated full insight, it had regard to proportionality in this matter. It was satisfied that you do not pose a significant risk of repeating behaviour for the reasons as outlined in its decision on impairment. 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 bore in mind that you were a young nurse working within a challenging environment during the period of the indictment. It was satisfied that the seriousness of this case and the public interest concerns identified could be appropriately marked by the imposition of a suspension order.

In making this decision, the panel had regard to the sanction that the NMC was seeking in this case. However, the panel considered that a conviction for a serious matter should not automatically result in a striking-off order. It concluded that a member of the public who was fully aware of the facts of this matter would recognise that you have already been punished by the criminal courts for your offence. The panel concluded that it is fair and proportionate to allow you a further opportunity to learn, develop and fully consider your future professional opportunities. The panel judged this matter to be the higher end of the spectrum of seriousness, but does it not involve discrimination, bullying, harassment, victimisation, sexual misconduct, misconduct involving vulnerable victims or dishonesty to cover up a mistake, as outlined in the NMC guidance.

Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your 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 recognised the hardship such an order will inevitably cause you. 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 one year was appropriate in this case to mark the seriousness of your conviction, which it considered to be at the higher end of the spectrum of seriousness. The panel took into account that you have been subject to an interim suspension order since 19 December 2022 when considering the length of the order. However, it concluded that a period of suspension for one year is necessary to reflect the seriousness of this matter.'

Decision and reasons on current impairment

The panel has considered carefully whether your 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 your fitness to practise 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 had regard to all of the documentation before it, including the NMC bundle, evidence from you, submissions from Ms Simpson and your own bundle. It has taken account of the submissions made by Mr Rahim on behalf of the NMC. He took the panel through the background of the case and submitted the suspension order is due to expire at the end of 8 August 2024. He submitted that the order was made on the ground of public

interest and that there has been no change in circumstance since the substantive hearing. He also submitted that it is for the panel to decide and the NMC's position is neutral.

In addition, Mr Rahim submitted that an early revocation would not be appropriate as a member of the public would be shocked and concerned if restrictions did not remain on your practice until 8 August 2024. He submitted that the information provided by you today does not address the issue of public interest and that it refers to developing your skills as a nurse, when in fact it should relate to the boundaries between yourself and patients. He submitted that it was a matter for the panel to decide what, if any sanction should be imposed upon expiry of the current suspension order.

The panel also had regard to submissions from Ms Simpson, on your behalf. She submitted that the order should be allowed to lapse, and if the panel are not with her, to reduce the current suspension order to a conditions of practice order. She submitted that you have completed courses which have allowed you to keep some of your knowledge and skills as a registered nurse up to date. She submitted that whilst you have been suspended, you have written reflective pieces, obtained positive testimonials and have completed courses. She submitted that a member of the public would now not be concerned if you were to return to nursing.

Under affirmation, you told the panel that you are fully aware that your actions could have had an impact on your colleagues and prisoners and could have put them at further risk. You said that you have taken this into account, and you take full responsibility for your actions.

You told the panel that you are aware that you could have made things difficult for your colleagues and managers, as your conduct put them in a difficult position. You described how it may have affected the nursing profession, and that you understand your behaviour was not acceptable and you also accept how it may reflect negatively on other prison nurses, particularly young prison nurses. You said that you hope that the public would not label every prison nurse because of your wrongdoing.

You said that substance misuse has always been an area of nursing you have been interested in, and that you are aware that people who deal with this are extremely

vulnerable. You told the panel that if you were allowed to practise as a nurse, you would seek employment on a hospital ward for 6-12 months to gain your confidence back and bring your skills back up to the previous level. You said that after this has happened, you will then look to branching into nursing in the area of substance misuse. You also said that if a similar situation were to arise, you would take the appropriate steps and immediately escalate it to your manager and report to the Police, if appropriate to do so.

[PRIVATE]

You told the panel that in the time you have been suspended, you feel you have matured and have taken a number of steps to better yourself both personally and professionally, hence the Continuing Professional Development (CPD) training you've completed. You said that at the time, you lost Person D and a relationship had broken down. You told the panel [PRIVATE], and you did not have the tools to support yourself. You said that your reaction was to shut yourself off and deal with it on your own. [PRIVATE] reflected and have developed skills to ensure this does not happen again.

Ms Simpson submitted that there is no risk of repetition and that you have been able to demonstrate both written and orally that you are remorseful and fully acknowledge and accept your past conduct. She submitted that you have considered the impact on your actions on the public, your colleagues and the nursing profession as a whole. She also submitted that you have demonstrated insight into the seriousness of your past conduct, and you have sufficiently reflected on what went wrong, why it went wrong, the seriousness of the concerns and how you aim to avoid any repetition in the future. She stated that the public interest has been satisfied by way of your compliance with the 12 month suspension order and that your fitness to practice is no longer 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 your fitness to practise remains impaired.

The panel noted that the original panel found that you had insufficient insight. At this hearing the panel took note of the previous panel's recommendations:

- *'Your attendance at any future review of this order.*
- *Evidence of any training, learning and development you have undertaken, including evidence of continued professional development, professional knowledge and documentary evidence of your completion of any training courses;*
- *A reflective piece in which you address how you would embed your learning from your failings and conviction in a different workplace; and*
- *Oral or written evidence from professional colleagues from any workplace, either paid or unpaid.'*

Today's panel were satisfied that you have met all the recommendations as above, and in addition, you completed a number of courses which included those in relation to professional boundaries. You have taken the opportunity to develop insight both personally and professionally as a registered nurse. The panel also had sight of your extensive reflective piece and positive testimonials. It therefore determined that there is a minimal risk of repetition.

The panel took into account that you demonstrated an understanding of how your actions put the public, colleagues and patients at a risk of harm, and how this may have impacted the reputation of the nursing profession. When questioned during the course of this hearing about how you would handle the situation differently in the future. You were able to provide sufficiently detailed answers explaining that this included [PRIVATE] and appropriately escalating issues to your managers.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account your CPD certificates and reflective piece submitted for this review hearing, which included the following:

'...I have learnt a lot about myself throughout the last 3 years and I have learnt that honesty and integrity are very important attributes to possess, and I believe my

honesty and ability to take such punishment and use it to better myself proves that I am deserving of another chance. I have learnt how to be professional in undesirable situations. For example, I have been the recipient of unprofessional advances from males in the work place since my conviction. However, now I have enough confidence to express that I want nothing but a professional relationship and make my boundaries known from the beginning. I have done hours of CPD training and research to better my knowledge and keep up to date with relevant practices. I understand that maintaining professional boundaries is essential to an effective nurse-patient relation, whose sole focus must be on the care and treatment needs of the patient (Griffith R & Tengnah C, 2013).

I have reinforced my learning that professional boundaries are a set of rules which protect patients and staff from harm. Staff must understand they are in a position of power within this relationship, and this must not be abused. (Northumberland, Tyne and Wear NHS Foundation Trust, 2023). Professional boundaries in nursing are crucial for ensuring ethical practice and maintaining the trust of my patients. As a nurse, it is crucial to establish clear boundaries between myself and my patients to uphold professional standards set out by the NMC in section 20 of the Code of Conduct. The Code of Conduct states that nurses should lead to trust and confidence in the profession from patients, people receiving care, other health and care professionals and the public (The Code Online - the Nursing and Midwifery Council, n.d.), I am aware my actions breached the code and the law but I can assure to the panel I have took my punishment as an opportunity to improve myself personally and professionally and hope this is apparent in my reflection and training modules...'

The original panel decided that you were not liable to repeat matters of the kind found proved and found impairment on the grounds of public interest only. Today's panel has heard your evidence and received oral submissions, reflective pieces, positive testimonials and CPD certificates. In light of this, this panel decided that you have shown well developed and mature insight into your conduct. You have spent time suspended from nursing practice and you have used that time positively to strengthen your practice and develop good insight. You have also served your prison sentence, shown a clear determination to develop personally and professionally and to return to nursing.

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 not required.

For these reasons, the panel finds that, although your fitness to practise was impaired at the time of the incidents, given all of the above, your fitness to practise is not currently impaired.

In accordance with Article 30(1), the substantive suspension order will lapse upon expiry, namely the end of 8 August 2024.

This will be confirmed to you in writing.

That concludes this determination.