

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

**Substantive Order Review Hearing
Wednesday, 5 June 2024**

Virtual Hearing

Name of Registrant: Christie Smyth

NMC PIN 06F0755E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing Level 1 October 2006

Relevant Location: Metropolitan Borough of Oldham

Type of case: Misconduct

Panel members: Dale Simon (Chair, lay member)
Purushotham Kamath (Registrant member)
Nicola Hartley (Lay member)

Legal Assessor: Sean Hammond

Hearings Coordinator: Flynn Cammock-Nicholls

Nursing and Midwifery Council: Represented by Shopna Roy, Case Presenter

Miss Smyth: Not present and not represented at the hearing

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry, namely at the end of 10 July 2024, 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 Miss Smyth was not in attendance and that the Notice of Hearing had been sent to her registered email address by secure email on 8 May 2024.

Ms Roy, 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.

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. It included instructions on how to join and, amongst other things, information about Miss Smyth's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Smyth 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 Miss Smyth

The panel next considered whether it should proceed in the absence of Miss Smyth. The panel had regard to Rule 21 and heard the submissions of Ms Roy who invited the panel to continue in Miss Smyth's absence.

Ms Roy referred the panel to an email from the NMC to Miss Smyth dated 3 June 2024 which stated:

'Please can you confirm if you will be attending? If you will not be attending please can you confirm you are ok for the review to go ahead in your absence? Please get back to me at your earliest convenience.'

Miss Smyth did not reply to this email.

Ms Roy referred the panel to a telephone note of a call from the NMC to Ms Smyth dated 4 June 2024 which stated:

'Called registrant on the above numbers but there was no answer.'

Ms Roy noted that Miss Smyth has made no application for adjournment, has had limited engagement with the NMC, and has not responded to any of the letters sent out in relation to any of the NMC hearings which have occurred since June 2023. Ms Roy submitted that there is no reason to suppose that adjourning this hearing will secure Miss Smyth's attendance at a future hearing.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Smyth. In reaching its decision, the panel considered the submissions of Ms Roy and the advice of the legal assessor. It has had regard to the relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- Miss Smyth has not engaged with the NMC and has not responded to any of the telephone calls or emails sent to her about this hearing;
- Miss Smyth has made no application for an adjournment;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- The current substantive suspension order is due to expire at the end of 10 July 2024 and must be reviewed before expiry; 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 Miss Smyth.

Decision and reasons on review of the substantive order

The panel decided to allow the current suspension order to lapse upon expiry, namely at the end of 10 July 2024, in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order). This will have the effect of Miss Smyth being removed from the register.

This is the second review of a substantive suspension order imposed for a period of 6 months by a Fitness to Practise Committee panel on 9 June 2023. This was reviewed on 27 November 2023 when a Fitness to Practise Committee extended the substantive suspension order by a further period of six months.

The current order is due to expire at the end of 10 July 2024.

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. ...
2. *Failed to maintain professional boundaries with Patient B and/or Patient B's family in that:*
 - a) *In or around October 2018 you:*
 - i. ...
 - ii. *took Patient B shopping along with your daughter on one or more occasions.*
 - iii. ...
 - iv. *allowed Patient B access to your personal telephone number.*
 - v. *accepted calls from Patient B on your personal telephone.*
 - b) ...
 - c) *On 20 November 2018 attended Patient B's home and:*
 - i. ...

ii. accepted two owl brooches owned by Patient B when given to you by Husband B.

3. Failed to keep patient data securely in that you recorded patient key safe numbers and their corresponding address in your paper diary.

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

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

'The panel considered whether Ms Smyth's fitness to practise remains impaired.

The panel took into account that the original panel found that Ms Smyth's insight was limited. It considered the original panel's determination, which set out that it had no information before it in relation to Ms Smyth's insight, reflection or remorse, nor any evidence of relevant training undertaken that relates to the areas of concern in this case. At this meeting, the panel considered that it has no new information before it from Ms Smyth. In light of this the panel determined that Ms Smyth is 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 Smyth's fitness to practise remains impaired.'

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

'Having found Ms Smyth'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 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 Ms Smyth's 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 Ms Smyth's 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 a conditions of practice on Ms Smyth'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 bore in mind the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Ms Smyth's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Ms Smyth further time to fully reflect on her previous failings. The panel concluded that a further 6-month suspension order

would be the appropriate and proportionate response and would afford Ms Smyth adequate time to further develop her insight and take steps to strengthen her practice. It would also give Ms Smyth an opportunity to approach past and current colleagues to attest to her honesty and integrity in her workplace assignments since the substantive hearing.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 6 months would provide Ms Smyth with an opportunity to engage with the NMC, to develop her insight and remediate the regulatory concerns. It considered this to be the most appropriate and proportionate sanction available.

Bearing in mind Ms Smyth's lack of engagement with the NMC, this panel considered the possibility of strike-off as a sanction, but decided at this stage it would be disproportionate. Should Ms Smyth continue to not engage with the NMC, strike-off would be an available sanction option for future reviewing panels.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 10 January 2024 in accordance with Article 30(1).'

Submissions

Ms Roy outlined the background of the case and referred the panel to the relevant pages in the bundle and the decisions of previous panels. She submitted that Miss Smyth has not complied with any of the recommendations of the previous reviewing panel, in that she has not engaged with the NMC, has not attended this hearing, and has not provided any reflective statements or references in relation to any work or evidence of relevant training.

Ms Roy submitted that Miss Smyth has provided no new information to demonstrate reflection or further training to address the areas of concern. She submitted that Miss Smyth is liable to repeat matters of the kind proved. She reminded the panel that the onus is on Miss Smyth to demonstrate that her fitness to practise is no longer impaired. Ms Roy

submitted that Miss Smyth's fitness to practice remains impaired, and that a finding of impairment is necessary on the grounds of public protection and public interest.

On the matter of sanction Ms Roy submitted that taking no action, issuing a caution order, or imposing a conditions of practice order would be insufficient to protect the public and to satisfy the public interest in this case. She submitted that a further suspension order may not be appropriate given that Miss Smyth has not engaged with the NMC, has not attended this hearing, and has not provided any of the documents listed by the previous panel which could have demonstrated insight or strengthened practice since the substantive suspension order was imposed.

Ms Roy submitted that, in the circumstances, a striking-off order is now proportionate and not unduly punitive. She submitted that the panel should therefore consider imposing a striking-off order.

The panel heard and accepted the advice of the legal assessor.

Decision and reasons on current impairment

The panel has considered carefully whether Miss Smyth's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has said that the question which will help decide fitness to practise is whether a nurse can practise kindly, safely, and professionally. 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 the documentation before it, namely the NMC bundle, as well as to Ms Roy's submissions and 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 had regard to the findings of the previous reviewing panel on 27 November 2023 which found that Miss Smyth's fitness to practice remains impaired on the grounds of public protection and public interest. Today's panel had no new evidence that Miss Smyth has addressed any of the concerns raised. Accordingly, it determined that Ms Smyth is liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the ground 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 Miss Smyth's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss Smyth'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 considered 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 also considered the NMC's guidance in relation to '*Allowing nurses, midwives or nursing associates to be removed from the register when there is a substantive order in place*'. The panel noted that Miss Smyth's registration lapsed on 31 October 2021 and that she remains on the register only because of these proceedings. The NMC's guidance states:

'If nurses, midwives, and nursing associates don't pay their fee or complete revalidation, their registration will usually lapse. However, if a nurse, midwife, or nursing associate is on a conditions of practice order, or a suspension order, their registration cannot lapse because of the existence of the order. If the panel decide to lift the order or allow the order to expire, the nurse, midwife, or nursing associate who has not paid their fee or completed revalidation will no longer be registered with us and will not be able to practise.'

The panel noted that, in an email dated 21 July 2021, Miss Smyth indicated her intention not to return to nursing. It further noted that she does not appear to have practiced as a registered nurse since 2019 and that she allowed her registration to lapse on 31 October 2021. It also considered her subsequent lack of engagement with the NMC. Having regard to these factors, the panel was satisfied that Miss Smyth has no intention of returning to practice as a registered nurse, even though it has not had direct confirmation of this from Miss Smyth herself.

The panel first considered whether it would be appropriate and proportionate for it to take no further action. This would allow the order to lapse and will result in Miss Smyth being removed from the register at the end of 10 July 2024. The panel was satisfied that this would provide an adequate degree of public protection because, should Miss Smyth decide to return to the nursing profession, she would need to demonstrate to the NMC Registrar that she is capable of safe and effective practice. In making any decision on reinstatement, the Registrar would need to consider the findings of impairment of this panel and previous panels and determine whether the areas of concern identified have been fully addressed. Due to the period of time since Miss Smyth has last practised as a registered nurse, the panel noted she would also be required to undertake a return to practice course.

The panel was further satisfied that this course of action would address the wider public interest considerations and maintain public confidence in the nursing profession. It determined that a reasonable and informed member of the public would not be concerned about this decision. Such a member of the public would consider that the public interest has been served by the finding of impairment, the period of suspension already served, and the steps Miss Smyth would need to undertake if she wished to return to practice as a registered nurse.

The panel determined, for the reasons articulated by previous panels, that the imposition of a caution or conditions of practice order was not appropriate in this case, and that imposing a further suspension order would serve no useful purpose. It determined that allowing the order to lapse, which will have the effect of Miss Smyth being removed from the register, would be the most proportionate way of dealing with Miss Smyth's case while

protecting the public and satisfying the public interest. The panel therefore concluded to allow the order to lapse.

The substantive suspension order will be allowed to lapse at the end of the current period of imposition, namely the end of 10 July 2024 in accordance with Article 30(1).

This will be confirmed to Miss Smyth in writing.

That concludes this determination.