Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Order Review Hearing
Wednesday 30 October 2024

Virtual Hearing

Name of Registrant:	**Lynsey Ann Brown**
NMC PIN:	97I0086N
Part(s) of the register:	Registered Nurse – Sub Part 1 Learning Disabilities Nursing – (25 September 2000)
Relevant Location:	Belfast
Type of case:	Misconduct
Panel members:	Denford Chifamba (Chair, registrant member) Sharon Haggerty (Registrant member) Michael Glickman (Lay member)
Legal Assessor:	Lucia Whittle-Martin
Hearings Coordinator:	Emily Mae Christie
Nursing and Midwifery Council:	Represented by Jennifer Morris, Case Presenter
Miss Brown:	Not present and not represented at this hearing
Order being reviewed:	Suspension order (12 months)
Fitness to practise:	Impaired
Outcome:	**Suspension order (6 months) to come into effect on 11 December 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 Brown was not in attendance and that the Notice of Hearing had been sent to Miss Brown's registered email address by secure email on 1 October 2024.

Further, the panel noted that the Notice of Hearing was also sent to Miss Brown's representative at the Royal College of Nursing (RCN) on 1 October 2024.

Ms Morris, 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, including instructions on how to join and, amongst other things, information about Miss Brown'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 Brown 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 Brown

The panel next considered whether it should proceed in the absence of Miss Brown. The panel had regard to Rule 21 and heard the submissions of Ms Morris who invited the panel to continue in the absence of Miss Brown. She submitted that Miss Brown had voluntarily absented herself, there has been no application to adjourn, and there is no reason to suppose that adjourning would secure her attendance in the future. Further, Ms Morris directed the panel to relevant case law. She submitted that it is in the public interest to proceed in the absence of Miss Brown.

Ms Morris referred the panel to the letter from the Royal College of Nursing (RCN) dated 14 October 2024 where the RCN state:

> *"Our member will not be attending the hearing, nor will they be represented. No disrespect is intended by their non-attendance. Our member has received the notice of hearing and is happy for the hearing to proceed in their absence. They are keen to engage with the proceedings."*

The panel accepted the advice of the legal assessor.

The panel decided to proceed in the absence of Miss Brown. In reaching this decision, the panel considered the submissions of Ms Morris, the representations from the RCN on Miss Brown's behalf, and the advice of the legal assessor. It had particular regard to 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 Miss Brown;
- The RCN has informed the NMC on Miss Brown's behalf 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; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel decided that it is fair to proceed in the absence of Miss Brown.

Decision and reasons on review of the substantive order

The panel decided to impose a suspension order for 6 months.

This order will come into effect at the end of 11 December 2024 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 12 months by a Fitness to Practise Committee panel on 9 November 2023.

The current order is due to expire at the end of 11 December 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. *Between 11 February 2020 and May 2020:*
   a. *On one or more occasion, left medication on Resident A's table which was not medication for Resident A;* ***[PROVED BY ADMISSION]***
   b. *Called Resident B by the wrong name when administering medication;* ***[PROVED BY ADMISSION]***
   c. *Left a pill pot with medication in it unattended.* ***[PROVED BY ADMISSION]***

2. *Between 11 February 2020 and 20 July 2020, dispensed medication for 3 residents (60ml of paracetamol) into one cup when individual cups should have been used for each resident.* ***[PROVED BY ADMISSION]***

3. *Between 09 July 2020 and 10 July 2020, left 20mg of Memantine in a resident's room which was labelled for another resident.* ***[PROVED BY ADMISSION]***

4. *On an unknown date in March 2020, said to Colleague A "you are full of shit" or words to that effect.* ***[PROVED BY ADMISSION]***

5. *Between 11 February 2020 and 20 July 2020 said to Colleague B:*
   a. *"I just wish I could do my job without you being a dick head to me", or words to that effect;* ***[PROVED BY ADMISSION]***
   b. *"You are a prick, that's what you are that's why I'm calling you prick", or words to that effect.* ***[PROVED BY ADMISSION]***

6. *Between 20 May 2020 and 20 July 2020, told one or more colleagues that Colleague B had inserted a catheter into Resident D's bottom.* ***[PROVED]***

7. *…*

8. *…*

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

The panel next went on to decide if as a result of the misconduct, your fitness to practise is currently impaired. The panel had regard to the NMC guidance on impairment.

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. To justify that trust, nurses 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) *...'*

The panel found that patients were put at risk of harm as a result of your misconduct. It found that your misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute in that you demonstrated unacceptable levels of care and communication with your colleagues.

The panel recognised that it must make an assessment of your fitness to practise as of today. This involves not only taking account of past misconduct but also what has happened since the misconduct came to light and whether you would pose a risk of repeating the misconduct in the future.

The panel had regard to the principles set out in the case of Cohen v General Medical Council and considered whether the concerns identified in your nursing practice were capable of remediation, whether they have been remedied and whether there was a risk of repetition of a similar kind at some point in the future. In considering those issues the panel had regard

to the nature and extent of the misconduct and considered whether you had provided evidence of insight and remorse.

Regarding insight, the panel had regard to your reflective piece dated 27 October 2023 in relation to charges 1, 2 and 3. The panel was of the view that you had not recognised the impact your actions had on patients, your colleagues and the reputation of the nursing profession. You stated that you are 'grateful that no patient came to harm' but you did not demonstrate an understanding of how your actions put patients at a risk of harm and how this impacted negatively on the reputation of the nursing profession.

In your reflection on charges 4 and 5, you stated that you were 'deeply embarrassed' and 'deeply sorry' about the language you used towards Colleague A and Colleague B. However, the panel found that you had not demonstrated that you appreciated the impact your language had on your colleagues.

In respect of charge 6, the panel had seen no reflection from you concerning the breach of Resident D's confidentiality and dignity and there was no evidence of how you would act differently in the future.

The panel therefore found that you demonstrated very limited insight into your failings.

The panel was satisfied that the misconduct in relation to medicines administration and management is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel considered that despite undertaking 'Safe Administration of Medicines' training in May 2020, you went on to act in an unsafe manner with medication at the Home. This was compounded by your attitude at the meeting at the Home on 13 July 2020 where you 'didn't find anything wrong with' dispensing several doses of paracetamol into the same medicine cup.

This suggested that you did not apply the training completed in May 2020 to your nursing practice.

You provided training certificates dated between May 2020 and October 2023 in respect of various areas, including stress management, assessing needs and pain management. The panel noted that you have completed a number of online training courses relating to medication management and administration between May 2020 and October 2023. However, there was no information before the panel about what you have learnt and how you have applied it to your practice. The panel also took into account that you have been subject to an interim suspension order since July 2021 and therefore did not have the opportunity to demonstrate safe practice since that time. The panel was not satisfied that it had sufficient evidence of strengthened practice with respect to your medication management and administration.

The panel had regard to the email dated 19 January 2022 from the Nurse Manager of a care home you worked at in 2021. In this email, the Nurse Manager confirmed that you were employed between March and May 2021, and they provided information in response to whether there were any concerns about your fitness to practise. They did not indicate any concerns about your fitness to practise and stated that you were 'always professional and...very kind hearted and empathetic'. The panel was concerned that the comments provided in this email were very broad and did not make any reference to what your role at the care home was, or to your medication management and administration practice. The panel could not draw conclusions from this that you have strengthened your practice.

The panel was not satisfied that you can currently practise safely, kindly and professionally.

The panel was not satisfied that it was highly unlikely that your conduct would be repeated in the future. It found that there is a risk of repetition and

that a finding of current impairment of fitness to practise is necessary on the grounds of public protection.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind 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 addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case which concerned serious misconduct relating to medication administration and management and your behaviour towards colleagues. It therefore also found your fitness to practise impaired on the grounds of public interest.

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:

- *Your conduct put patients at risk of suffering harm.*
- *There was a repetition of concerns after you received direction from your manager at the Home.*
- *You demonstrated very limited insight into the failings.*

The panel also took into account the following mitigating features:

- *You expressed that you were committed to taking the steps necessary to restore your professional standing*
- *You had limited experience of working in a care home setting at a particularly difficult time in your personal and professional life.*

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 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 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 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 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;*
- *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 was satisfied that conditions of practice could be put in place to robustly manage the concerns relating to medication administration and management. However, it found that there were no workable, practical or measurable conditions of practice that would address the attitudinal concerns it had found in respect of charges 4, 5 and 6. It considered that the attitudinal concerns relating to your behaviour towards colleagues and confidentiality, and your very limited insight into those concerns were not something that could be addressed through conditions of practice.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public nor 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.*

The panel considered that whilst this was not a single instance of misconduct, the misconduct took place within a relatively contained period of time and setting. The panel found that although there were attitudinal problems, there was no evidence of it being deep-seated. Further, there was no evidence of repetition of the misconduct since this matter came before the NMC. The panel was satisfied that you have some limited insight and have stated a commitment to improving your practice.

In light of your limited insight, the panel considered that there was a continued risk to patient safety. It determined that this was a serious case that warranted your temporary suspension from nursing practice.

The panel was satisfied that a suspension order would prevent you from working as a registered nurse. It would also give you time to reflect on the ways you failed in the areas relating to the charges found proved, and provide evidence of developed insight into your misconduct, the impact it has had on patients, colleagues and the wider profession and the attitudinal concerns identified. The panel determined that in the circumstances, a suspension order would suitably protect the public and meet the wider public interest.

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

The panel 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 was satisfied that a striking-off order was not the only sanction that would protect patients nor was it required in the public interest, and it would be unduly punitive in your case.

Balancing all of these factors the panel concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted 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 12 months was appropriate in this case to mark the seriousness of the misconduct. In addition, the panel concluded that such a period would be adequate to provide you with the opportunity to demonstrate developed insight.

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 may be assisted by:

- *An updated reflective piece which demonstrates insight into your actions and the impact on patients, colleagues and the reputation of the nursing profession.*
- *References and testimonials from any paid or unpaid work.*
- *Evidence of continued professional development and your reflection on that learning.*

Decision and reasons on current impairment

The current panel has considered carefully whether Miss Brown'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.

Ms Morris briefly outlined the background of the case to the panel and submitted that Miss Brown's fitness to practise remains impaired as there has been no material change since the substantive hearing. In addressing insight, Ms Morris submitted that Miss Brown has not provided evidence regarding any insight, remediation or remorse, which could have been addressed had she attended the hearing.

Further, Ms Morris submitted that the aggravating features found by the previous panel still exist, no steps have been taken by Miss Brown to address these, and therefore the risk to public protection remains. She therefore submitted that Miss Brown's fitness to practice remained impaired.

Ms Morris then made submissions regarding sanction. She set out that the NMC take a neutral stance, albeit she submitted that should the panel wish to impose no order or a caution order, it would be disproportionate in the circumstances.

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 Miss Brown's fitness to practise remains impaired.

The panel noted that the original panel found that Miss Brown had limited insight into her failings. At this hearing the panel heard no new information that substantially changed the position regarding Miss Brown's insight.

In its consideration of whether Miss Brown has taken steps to strengthen her practice, the panel heard no new information. Therefore, the panel concluded that she has taken no steps to strengthen her practice.

The original panel determined that Miss Brown was liable to repeat matters of the kind found proved. Today's panel has not received any new information in relation to the risk of repetition. In light of this, this panel determined that Miss Brown 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 Miss Brown's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss Brown'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, nor would it protect patients and the public.

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 Miss Brown's practice would not be appropriate in the circumstances. The panel considered that Miss Brown's misconduct was not at the lower end of the spectrum of seriousness 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 order on Miss Brown'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 any workable conditions of practice that would adequately address the concerns relating to Miss Brown's misconduct.

The panel considered the imposition of a further period of suspension.

The panel concluded that a further period of suspension would be the appropriate and proportionate response in light of the seriousness of the misconduct and the lack of insight or remediation demonstrated by Miss Brown. It would also afford Miss Brown adequate time to further develop her insight and take steps to strengthen her practice.

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.

The panel determined that a period of 6 months would protect the public and the wider public interest and provide Miss Brown with an opportunity to provide evidence of any relevant continued professional development, as well as a reflection demonstrating her insight.

The panel considered a striking off order to be disproportionate in the current circumstances.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 11 December 2024 in accordance with Article 30(1).

Before 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:

- An updated reflective piece which demonstrates Miss Brown's insight into her actions and the impact on patients, colleagues and the reputation of the nursing profession;
- Testimonials or references from any paid or unpaid work;
- Evidence of any relevant continued professional development and reflection on that learning.

This will be confirmed to Miss Brown in writing.

That concludes this determination.