

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

**Substantive Order Review Hearing
Wednesday 22 January 2025**

Virtual Hearing

Name of Registrant: Karen Edith Cunningham

NMC PIN 87G0076S

Part(s) of the register: Registered Nurse – Sub Part 1
Children’s Nursing – (September 1990)

Specialist Practitioner: Community Children’s Nursing –
(March 2005)

Relevant Location: Dundee

Type of case: Misconduct

Panel members: Louise Fox (Chair, Lay member)
Jacqueline Metcalfe (Registrant member)
Caroline Taylor (Lay member)

Legal Assessor: Laura McGill

Hearings Coordinator: Charis Benefo

Nursing and Midwifery Council: Represented by Connall Bailie, Case Presenter

Mrs Cunningham: Not present and not represented at the hearing

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (2 years) to come into effect at the end of 26 January 2025 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 Mrs Cunningham was not in attendance and that the Notice of Hearing had been sent to Mrs Cunningham's registered email address by secure email on 20 December 2024.

Further, the panel noted that the Notice of Hearing was also sent to Mrs Cunningham's representative at Thomsons Solicitors on 20 December 2024.

Mr Bailie, 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 Mrs Cunningham'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 Mrs Cunningham 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 Mrs Cunningham

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

Mr Bailie submitted that Mrs Cunningham's legal representative had provided written submissions to the panel. He submitted that there was no application to adjourn the

hearing within the written representations and so it was implicit that Mrs Cunningham and her representative were in agreement with the hearing proceeding in their absence.

The panel accepted the advice of the legal assessor.

The panel decided to proceed in the absence of Mrs Cunningham. In reaching this decision, the panel considered the submissions of Mr Bailie, the representations made on Mrs Cunningham's behalf, and the advice of the legal assessor. It had particular regard to any relevant 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 Mrs Cunningham;
- Mrs Cunningham's representative has provided written submissions and implicit confirmation that 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, particularly as the order is due to expire at the end of 26 January 2025.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mrs Cunningham.

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

At the outset of the hearing, the panel had regard to the written submissions from Mrs Cunningham's representative, sent via email on 22 January 2025 which stated:

'I would like to make a rule 19 application ahead of my submissions today. My submissions focus solely on [PRIVATE] and as such, I would ask that my submissions in full are done within a private setting, so details of [PRIVATE] are not publicised to the NMC website.'

In light of this, Mr Bailie invited the panel to hold this case partly in private on the basis that proper exploration of Mrs Cunningham's case involves reference to [PRIVATE]. The application was made pursuant to Rule 19.

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 in the public interest.

The panel decided to hold in private the parts of this hearing that involve reference to [PRIVATE], as and when such issues are raised in order to protect [PRIVATE].

Decision and reasons on review of the substantive order

The panel decided to impose a further conditions of practice order.

This order will come into effect at the end of 26 January 2025 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive conditions of practice order originally imposed for a period of 18 months by a Fitness to Practise Committee panel on 25 June 2021. This was reviewed on 12 December 2022, when the reviewing panel imposed a further 12-month conditions of practice order. At the second review hearing on 18 December 2023, a conditions of practice order was imposed for a period of 12 months.

The current order is due to expire at the end of 26 January 2025.

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 were as follows:

'That you, a Registered Nurse:

- 1) *On, or around, 7 May 2015, failed to ensure that the correct Potassium Chloride solution was administered to Patient E;*

- 2) *On 14 December 2017:*
 - a) *administered Trimethorprim instead of Paracetamol to Patient D;*
 - b) *failed to ensure appropriate checking / second checking procedures were undertaken in relation to the administration referred to in charge 2(a) above;*

- 3) *On 30 March 2018:*
 - a) *failed to ensure that Patient A's Smofluid / Lipid was infusing at the correct rate;*
 - b) *administered Smofluid / Lipid infusion at 10 times above the prescribed rate;*
 - c) *failed to undertake /ensure appropriate checking / second checking procedures were undertaken in relation to the administration referred to in charges 3(a) and 3(b) above;*

- 4) *Failed to respond to monitor alarms which were sounding in relation to patients and / or left student staff members to respond to such alarms:*
 - a) *On 12 August 2016 in relation to Baby K;*
 - b) *On one, or more, unknown dates in, or around April / May 2018;*

- 5) *Acted in an unprofessional and inappropriate way towards patients and staff, including in the clinical area, in that you:*
 - a) *On or around 16 April 2018, said "stick it on the fat girls arse", or words to that effect, in respect of a baby patient;*
 - b) *In, or around, April / May 2018, said "Wow he's a fat bastard", or words to that effect, in respect of a baby patient;*
 - c) *In, or around, April / May 2018, said "scummy junkie", or words to that effect, in relation to one, or more, mothers;*
 - d) *In, or around, April / May 2018, said "some people should not be allowed to have children", or words to that effect, in respect of a mother with a genetic condition which had been passed onto her baby;*

- e) *In, or around, April / May 2018, said “fatso” in respect of a baby patient;*
- f) *In, or around, April / May 2018, commented on the size of a mother;*
- g) *In, or around, April / May 2018, commented on the mental capacity of a patient, including the use of the word “retard”;*
- h) *In, or around, April / May 2018, said “It’s not my baby I’m not fucking dealing with it” , or words to that effect, when a monitor alarm was sounding;*
- i) *On 12 August 2016, said a student nurse should “suck out her belly and turn the oxygen up” , or words to that effect when a monitor alarm was sounding;*
- j) *In, or around, April / May 2018, said certain women should be “sterilised and not allowed to have babies” or words to that effect;*
- k) *In, or around, April / May 2018, called or said to Colleague A words to the effect of the following*
 - i) *“useless”;*
 - ii) *“lazy git”;*
 - iii) *“Ginger one, are you coming”;*
- l) *On, or around, 16 April 2018, said to / in respect of Colleague B who had made a mistake “Wait are you Irish” and / or “that explains it” or words to that effect;*

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 took into account the submissions made by Ms Wishart that you have not been able to secure employment as a registered nurse due to [PRIVATE]. The panel noted that you are currently working in a non-clinical role at [PRIVATE] and it had sight of the multiple testimonials made on your behalf.

The panel took into consideration that you have not yet had the opportunity to strengthen your nursing practice in relation to your failings and you are yet to comply with the current conditions of practice order. The panel therefore determined

that as there has been no material change in circumstances since the last review hearing, there remains a real risk of repetition and a consequent risk of harm to the public. It therefore concluded 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. It was of the view that a fully informed member of the public, aware of the proven charges in this case and that you are yet to strengthen your nursing practice in relation to your failings, would be very concerned if you were permitted to practise as a registered nurse without restrictions. 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 your fitness to practise remains impaired on public protection and public interest grounds.'

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

'The panel next considered whether a further extension to the current conditions of practice order would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel accepted that you have not been able to comply with the current conditions of practice due to your inability to secure employment as a registered nurse and [PRIVATE]. It noted that you have been actively engaging with these proceedings and that you require further time to secure a nursing role in order to take steps to strengthen your practice.

The panel therefore determined that a conditions of practice order remains appropriate and proportionate to address the failings highlighted in this case. It was of the view that a further conditions of practice order remains sufficient to protect the public and satisfy the public interest considerations in this case.

The panel was of the view that to impose a suspension order or striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of this case given your interest in returning to nursing practice and such an order would deprive you of the opportunity to strengthen your nursing practice.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of twelve months, which will come into effect on the expiry of the current order, namely at the end of 26 January 2024. It decided that the following conditions remains appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'

- 1. You must limit your nursing practice to one substantive employer which should not be an agency.*
- 2. You must ensure that you are supervised by another registered nurse at any time you are working. Your supervision must consist of working at all times on the same shift as, but not always directly observed by, a registered nurse of band 6 or above.*
- 3. You must not administer medicines unless under the direct supervision of another registered nurse, until you have been assessed as competent.*
- 4. You must work with your line manager, mentor or supervisor to create a personal development plan (PDP) to support your return to the workplace. This must include achievable objectives in respect of the following areas:*
 - a. Medicines administration*
 - b. Patient safety*

- c. *Respecting and supporting junior colleagues, especially student nurses*
 - d. *Recognising stresses in the workplace and championing non-judgemental practices*

- 5. *You must write a reflective piece exploring unconscious bias and reflecting upon the role this may have played in the language and comments that you made. This may be aided by online assessments such as the Harvard Implicit Association test.*

- 6. *You must meet with your line manager, mentor or supervisor at least once a month to discuss:*
 - a) *Your progress towards achieving the aims set out in your PDP.*
 - b) *[PRIVATE]*

- 7. *You provide a report from your line manager, mentor or supervisor prior to any NMC review hearing commenting on the standard of your performance and progress towards achieving the aims set out in your PDP.*

- 8. *You must keep the NMC informed about anywhere you are working by:*
 - a. *Telling your case officer within seven days of accepting or leaving any employment.*
 - b. *Giving your case officer your employer's contact details.*

- 9. *You must keep the NMC informed about anywhere you are studying by:*
 - a) *Telling your case officer within seven days of accepting any course of study.*
 - b) *Giving your case officer the name and contact details of the organisation offering that course of study.*

10. *You must immediately give a copy of these conditions to:*
 - a. *Any organisation or person you work for.*
 - b. *Any employers you apply to for work (at the time of application).*
 - c. *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
 - d. *Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity*

11. *You must tell your case officer, within seven days of your becoming aware of:*
 - a. *Any clinical incident you are involved in.*
 - b. *Any investigation started against you.*
 - c. *Any disciplinary proceedings taken against you.*

The period of this order is for twelve months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 26 January 2024 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- *An updated reflective piece demonstrating your insight on the impact your behaviour had on patients, colleagues and the nursing profession;*
- *Testimonials from colleagues and/or patients from paid or unpaid work attesting to your character and practice;*

- *Evidence of any relevant training or continuous professional development undertaken since the substantive hearing and specifically in relation to the charges found proved;*
- *Your continuing engagement and attendance with these proceedings.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Cunningham'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 had regard to all of the documentation before it, including the NMC bundle and the written submissions from Mrs Cunningham's representative. It has taken account of the submissions made by Mr Bailie on behalf of the NMC. He provided a background to the case and submitted that Mrs Cunningham's fitness to practise remains impaired.

Mr Bailie invited the panel to impose a further conditions of practice order. He submitted that there had been no material change in circumstances since the last review hearing. Mr Bailie highlighted that Mrs Cunningham has been unable to secure employment in a clinical setting as a registered nurse, and therefore has not had the opportunity to comply with the conditions of practise order and strengthen her nursing practice.

Mr Bailie submitted that given the absence of work in a clinical setting, there is a real risk of repetition and a consequent risk of harm to members of the public. He therefore submitted that Mrs Cunningham's fitness to practise is impaired on public protection grounds. Mr Bailie submitted that a well-informed member of the public would be concerned if a registrant with a finding of impairment was allowed to practise without any conditions upon her practice. He therefore invited the panel to also make a finding of impairment on public interest grounds.

Mr Bailie referred to Mrs Cunningham's representative's written submissions and submitted that Mrs Cunningham appears to intend, at some point, to obtain employment in a clinical environment and to comply and engage with the conditions of practice order. However, as a result of [PRIVATE] that has not been possible, and so [PRIVATE]. Mr Bailie highlighted Mrs Cunningham's position as set out in the written submissions that once [PRIVATE], she can return to clinical practice in some form or another.

Mr Bailie submitted that it was a matter for the panel to decide the period of a further conditions of practice order. He submitted that the panel might decide to impose a further order for a similar length of time as previous orders.

The panel also had regard to the written submissions from Mrs Cunningham's representative, sent via email on 22 January 2025 which stated:

'...

Ms Cunningham's circumstances have not changed since the last calling of this panel. [PRIVATE].

Ms Cunningham has outlined that her work in [PRIVATE] affords her the flexibility to [PRIVATE]. Ms Cunningham is aware that this would not necessarily be an option for her while working for the NHS. Given [PRIVATE], it is clear to see that she is making an educated decision to not work within an NHS setting when she [PRIVATE]. She has the wellbeing of patients in mind when she has made the decision to remain in her post with [PRIVATE]. Ms Cunningham does still have the view of returning to practise at some point, but while [PRIVATE], she is simply unable to do so. [PRIVATE].

Ms Cunningham has further outlined that any return to practice would now require her to complete a Return to Practice course, something that she feels given [PRIVATE], she would not be able to do. [PRIVATE].

For these reasons, we are simply seeking the current order to remain in place to allow Ms Cunningham the time to [PRIVATE] and thereafter give Ms Cunningham options regarding a return o [sic] practice.'

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 Cunningham's fitness to practise remains impaired.

The panel noted that the last reviewing panel did not comment on Mrs Cunningham's insight, however the first reviewing panel had found that Mrs Cunningham had developing, but not full, insight. At this hearing, the panel had not received any additional reflection or evidence of further developed insight from Mrs Cunningham. In addition, it noted that Mrs Cunningham has not been able to engage with the current conditions of practice, follow any of the recommendations made by the last reviewing panel, or address the concerns identified. However, the panel accepted that Mrs Cunningham's inability to strengthen her practice is as a result of [PRIVATE].

The last reviewing panel determined that Mrs Cunningham was liable to repeat matters of the kind found proved. The only information before today's panel was that Mrs Cunningham has not been able to address the concerns due to circumstances outside her control. In light of this, this panel determined that Mrs Cunningham 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. It considered that a well-informed member of the public would be concerned if a finding of impairment were not made in this case. The panel therefore determined that a finding of continuing impairment on public interest grounds is also required.

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

Decision and reasons on sanction

Having found Mrs Cunningham'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 Mrs Cunningham'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 Mrs Cunningham'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 imposing a further conditions of practice order on Mrs Cunningham's registration would still be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable.

The panel accepted that Mrs Cunningham has not been able to comply with the current conditions of practice order due to [PRIVATE] and her inability to secure employment as a registered nurse. It noted that Mrs Cunningham has continued to engage with these proceedings, and requires further time to [PRIVATE] and secure a nursing role in order to take steps to strengthen her practice.

The panel considered Mrs Cunningham's willingness to engage with proceedings and comply with the current conditions of practice order, and decided to allow her further time to think about her future intentions regarding her return to nursing practice in light of [PRIVATE], the need for her to complete a return to practice course, and then if possible, take the steps necessary to return to practice.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that the failings identified can be remediated. In this case, there are conditions which could be formulated which would protect patients and address the wider public interest.

The panel considered the previous panel's recommendation of an additional reflective piece demonstrating Mrs Cunningham's insight on the impact her behaviour on patients, colleagues and the nursing profession. It was of the view that this could be amalgamated with the reflective piece required at condition 5.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Mrs Cunningham's case because her failings are remediable and she has demonstrated a willingness to return to safe, kind and professional practice without restriction. The panel determined that a suspension order would be unduly punitive and would not allow Mrs Cunningham the opportunity to secure employment and strengthen her practice, if she so wishes.

The panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of two years to give Mrs Cunningham a realistic time frame to engage with the order, in light of [PRIVATE]. This will also give her time to develop her insight further and consider if she is able to return to nursing practice. This will come into effect on the expiry of the current order, namely at the end of 26 January 2025.

The panel decided to impose the following conditions which it considered are appropriate and proportionate in this case:

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must limit your nursing practice to one substantive employer which should not be an agency.
2. You must ensure that you are supervised by another registered nurse at any time you are working. Your supervision must consist of working at all times on the same shift as, but not always directly observed by, a registered nurse of band 6 or above.
3. You must not administer medicines unless under the direct supervision of another registered nurse, until you have been assessed as competent.
4. You must work with your line manager, mentor or supervisor to create a personal development plan (PDP) to support your return to the workplace. This must include achievable objectives in respect of the following areas:
 - a. Medicines administration
 - b. Patient safety
 - c. Respecting and supporting junior colleagues, especially student nurses
 - d. Recognising stresses in the workplace and championing non-judgemental practices
5. You must write a reflective piece which:
 - a. explores unconscious bias and reflects upon the role this may have played in the language and comments that you made. This may be aided by online assessments such as the Harvard Implicit Association test.
 - b. demonstrates your insight on the impact your behaviour had on patients, colleagues and the nursing profession.

6. You must meet with your line manager, mentor or supervisor at least once a month to discuss:
 - a. Your progress towards achieving the aims set out in your PDP.
 - b. [PRIVATE].

7. You provide a report from your line manager, mentor or supervisor prior to any NMC review hearing commenting on the standard of your performance and progress towards achieving the aims set out in your PDP.

8. You must keep the NMC informed about anywhere you are working by:
 - a. Telling your case officer within seven days of accepting or leaving any employment.
 - b. Giving your case officer your employer's contact details.

9. You must keep the NMC informed about anywhere you are studying by:
 - a. Telling your case officer within seven days of accepting any course of study.
 - b. Giving your case officer the name and contact details of the organisation offering that course of study.

10. You must immediately give a copy of these conditions to:
 - a. Any organisation or person you work for.
 - b. Any employers you apply to for work (at the time of application).
 - c. Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - d. Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity

11. You must tell your case officer, within seven days of your becoming aware of:
 - a. Any clinical incident you are involved in.
 - b. Any investigation started against you.

c. Any disciplinary proceedings taken against you.

The period of this order is for two years.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 26 January 2025 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well Mrs Cunningham has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Mrs Cunningham's continuing engagement and attendance with these proceedings;
- An indication to the NMC of Mrs Cunningham's future plans regarding her nursing career;
- Testimonials from colleagues and/or patients from paid or unpaid work attesting to Mrs Cunningham's character and practice;
- Evidence of any relevant training or continuous professional development undertaken since the substantive hearing and specifically in relation to the charges found proved.

This will be confirmed to Mrs Cunningham in writing.

That concludes this determination.