

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

**Substantive Order Review Hearing
Tuesday, 12 March 2024**

Virtual Hearing

Name of Registrant: Sharron Clare Badcock

NMC PIN 95C0577E

Part(s) of the register: RNA: Registered Nurse – (sub part 1)
Adult – Level 1 23 February 1998

Relevant Location: Calderdale

Type of case: Misconduct

Panel members: Anthony Kanutin (Chair, lay member)
Beth Maryon (Registrant member)
Richard Bayly (Lay member)

Legal Assessor: John Bassett

Hearings Coordinator: Khatra Ibrahim

Nursing and Midwifery Council: Represented by Maggie Morrissey, Case Presenter

Miss Badcock: Not present and not represented

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry in accordance with Article 30 (1), namely 19 April 2024**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Badcock was not in attendance and that the Notice of Hearing had been sent to Miss Badcock's registered email address by secure email and registered address by recorded delivery and by first class post on 12 February 2024.

The panel had regard to the Royal Mail receipt of posting dated 12 February 2024 to her correct registered address.

Ms Morrissey, 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, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Badcock'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 Badcock has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision and reasons on proceeding in the absence of Miss Badcock

The panel next considered whether it should proceed in the absence of Miss Badcock. The panel had regard to Rule 21 and heard the submissions of Ms Morrissey who invited the panel to continue in the absence of Miss Badcock. She submitted that Miss Badcock had voluntarily absented herself, and despite several attempts by the NMC to contact Miss Badcock via telephone, email and post, there has been no response from her.

Ms Morrissey submitted that there had been no engagement by Miss Badcock with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Badcock. In reaching this decision, the panel has considered the submissions of Ms Morrissey and the advice of the legal assessor. It has had particular regard to 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 Miss Badcock.
- In the note of a telephone call on 27 September 2023 between Miss Badcock and the Case Officer, it is recorded that she stated she had no intention of attending a future hearing.
- Miss Badcock has not subsequently engaged with the NMC and has not responded to any of the letters or emails sent to her about this hearing.
- 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 has decided that it is fair to proceed in the absence of Miss Badcock.

Decision and reasons on review of the substantive order

The panel decided to allow the order to lapse.

This order will lapse and cease to be in effect at the end of 19 April 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 six months by a Fitness to Practise Committee panel on 21 September 2023.

The current order is due to expire at the end of 19 April 2024.

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

The charges found proved by the Fitness to Practise Committee dated 21 September 2023 were as follows:

'That you, a registered nurse:

1) On or around 18 April 2022:

a) Attended Summerfield House Nursing Home to work a shift when you were under the influence of alcohol;

b) Left your shift at Summerfield House Nursing Home in the knowledge there was no other registered nurse on the premises.

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

The Committee found that Miss Badcock's proven conduct in relation to Charge 1a amounted to misconduct.

The original panel determined the following with regard to impairment:

'The panel found that limbs a, b and c of the test outlined in [CHRE v NMC and Grant] are engaged.

The panel finds that residents were put at an unwarranted risk of harm as a result of Miss Badcock's misconduct. The panel bore in mind that the Home accommodated vulnerable residents and that Miss Badcock was under the influence of alcohol and the only nurse rostered to be on duty for the nightshift when she attended the Home to oversee the care of the residents. The panel determined that Miss Badcock's misconduct in charge 1a had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that in one of Miss Badcock's emails to the Agency dated 18 April 2023, she stated "Please allow me to apologise to Medilink & the residents at Summerfield House. I will NOT be apologising to staff at Summerfield House though." The panel considered that Miss Badcock's remorse was limited and it saw no evidence that she appreciates the impact of her actions on the colleagues at the Home. Further, she sought to deflect blame on to the staff at the Home for her failings. The panel was of the view that Miss Badcock has failed to take ownership of her misconduct. The panel took into account that it had no further information from Miss Badcock which demonstrates how her conduct put the patients at a risk of harm, an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession. Miss Badcock has not any provided information on how she has she would handle the situation differently in the future. The panel determined that by apologising to the residents and the Agency but not to the staff at the Home, Miss Badcock had shown only very limited insight.

The panel was satisfied that the misconduct in this case is capable of being addressed.

The panel carefully considered the evidence before it in determining whether or not Miss Badcock has taken steps to strengthen her practice. The panel took into account that it had no evidence of strengthened practice from Miss Badcock.

The panel is of the view that there is a risk of repetition. It noted that it did not have any information regarding what Miss Badcock is currently doing nor has she provided a reflective statement addressing her failings regarding this incident. It took into consideration that she has demonstrated very limited insight and that there is no evidence of strengthened practice. The panel was not satisfied based on the information before it that Miss Badcock was currently able to practise as a nurse kindly, safely or professionally. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that 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.

The panel determined that a finding of impairment on public interest grounds is required because public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Badcock's fitness to practise impaired on the grounds of public interest. The panel also found that an informed member of the public would be concerned to learn that a registrant with the misconduct found proved as outlined in this case was allowed to practise with no restrictions on their NMC registration.

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

The original panel determined the following with regard to sanction:

'The panel then went on to consider whether a suspension order would be an appropriate sanction. It took into consideration the factors outlined in the SG which

suggest that a suspension order may be appropriate. The panel noted that the following factors are applicable in this case and support a sanction of a suspension order:

- 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 panel noted that the following factor is not supported by its findings which are that Miss Badcock has very limited insight and that she currently poses a risk of repeating her conduct:

- The Committee is satisfied that the nurse, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour.*

Having considered that the panel's findings did not fully satisfy the SG relating to a suspension order, the panel went on to consider whether a striking-off order would be proportionate. The panel determined that the regulatory concerns in this case do raise fundamental questions regarding Miss Badcock's professionalism. However, it took into consideration that the misconduct related to a single incident. The panel determined that public confidence in the nursing profession could be upheld by way of a sanction less than a striking off order given that this was a serious but single incident. It decided that a striking off order was not the only order available to protect patients, members of the public, or maintain professional standards.

The panel concluded, having carefully considered the guidance in relation to suspension and striking off orders that the misconduct in this case was not fundamentally incompatible with remaining on the register. It was of the view that an informed member of the public would be satisfied that this was a reasonable sanction in the circumstances. Whilst the panel acknowledges that a suspension

may have a punitive effect, it would be unduly punitive in Miss Badcock's 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 noted the hardship such an order will inevitably cause Miss Badcock. However this is outweighed by the public interest in this case.

The panel considered that this order is necessary to protect the public, 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 six months was appropriate in this case to mark the seriousness of the misconduct and Miss Badcock's very limited insight. The panel was of the view that this would provide Miss Badcock with time to address the misconduct identified and to engage with the NMC.

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 would be assisted by:

- *Engagement with the NMC and attendance at any future NMC hearing.*
- *A reflective piece addressing the misconduct found by the panel at this hearing.*
- *Testimonials/ references from any current paid or voluntary work...'*

Decision and reasons on current impairment

The panel has considered carefully whether Miss Badcock'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 and to be able to 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 of the documentation before it, including the NMC bundle, and submissions from Ms Morrissey. Ms Morrissey submitted that the current order should be allowed to lapse on 19 April 2024. She submitted that Miss Badcock only remains on the register due to the current NMC proceedings.

Ms Morrissey took the panel through the background of Miss Badcock's case and outlined the regulatory concerns raised.

Ms Morrissey, submitted that at the time of the substantive hearing, and still now in the absence of any new information, Miss Badcock's remorse remains limited, and that she continues to fail to appreciate and acknowledge the impact of her conduct on both residents and colleagues. Ms Morrissey further submitted that there was no information before the panel today to demonstrate insight and or how she would handle a similar situation, should it arise again.

Ms Morrissey submitted that there remains a risk of repetition as there is no evidence before the panel today to demonstrate remediation or insight into the behaviour and matters found proved which led to the current sanction. Ms Morrissey reminded the panel that Miss Badcock has had limited engagement since the substantive hearing, other than an email from her dated 28 September 2023, in which she indicated that she will not be returning to nursing practice.

Ms Morrissey informed the panel that Miss Badcock's registration had expired in February 2023, and she only remains on the register due to the current proceedings. Ms Morrissey invited the panel to allow the order to lapse upon expiry. She further submitted that allowing the order to lapse would have the effect of Miss Badcock ceasing to be a

registered nurse, and would address any remaining public interest concerns, protect the public by way of finding impairment and would uphold the standards of the NMC as regulator.

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 Badcock's fitness to practise remains impaired.

The panel noted that the misconduct found proved was serious and related to unprofessional behaviour. The panel did not have any new information before it to suggest Miss Badcock had demonstrated any insight into her misconduct, nor did it have any further evidence of her remorse relating to the impact of her actions on the residents, or any in relation to her colleagues at the Home. Further, there was no evidence before the panel to show that she had taken steps to strengthen her practice and remediate the concerns found proved. To the contrary, Miss Badcock has not meaningfully engaged with the NMC, her regulator, since her substantive hearing, other than a telephone call on 27 September 2023. This call was evidenced by the NMC by way of a telephone note, which details the following conversation:

'I asked SB [Miss Badcock] to confirm that she would be able to receive our letters and if she preferred email or post. SB confirmed her email address and said that we can send it to her and she'll just delete it. She said it was her choice to read it or delete it and she would just ignore it. I asked about phone calls, SB said she only answered the phone if she knows who is calling. I said we can send her an email to let her know that we're about to call, SB said that she might not get it as she'll delete the email and then not answer the phone.

I explained that we had to send her letters of notice of hearing, as there will be another review hearing. SB said that she had had enough and thought this would now be over. SB said that she thought she would have a striking-off order but now

it's not over and she doesn't have closure. I said I was sorry to hear that she was upset about the outcome. SB said that it wasn't my fault and it wasn't about the outcome, she knew it would be that, but that it's taking too long to be over. She said she didn't want to be struck off, but that it's been stressful so at least she would have closure. I said I understood that it was stressful but that a suspension is to give more time for her to think about things and to be fair to her to give more time. I said that she can come to us before the case is reviewed again.

SB said she didn't see the point of that. SB said that she didn't intend to practice again and knows what she did was wrong and that she couldn't come back from it. She said she doesn't know how to come back from walking out and knows there's no justification for what happened. I tried to explain about removal and asking a panel to consider allowing her order to lapse, but SB cut me off and said that she has been saying since the beginning that she doesn't want to practice so what's changed.'

In the absence of any new information before it, the panel could not exclude the possibility of similar misconduct being repeated in the future. The panel therefore determined that the finding of impairment was 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 Badcock's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss Badcock'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 noted the reasons given by the previous committee regarding the inappropriateness of either taking no further action or imposing a caution order. For reasons that will become apparent, the panel recognises that in effect, it is deciding to take no further action at this stage.

The panel considered whether a conditions of practice on Miss Badcock'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 whilst a conditions of practice order could adequately protect the public and satisfy the public interest, in practice it would not be workable given that Miss Badcock has not engaged with this hearing and has previously indicated that she does not intend to practice as a registered nurse. The panel had no information before it that Miss Badcock would engage with any conditions of practice order.

The panel has received information that Miss Badcock does not intend to return to practise as a nurse. In light of this, the panel had regard to 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 Badcock remains on the register by way of these proceedings and that her registration has lapsed. In this regard, the panel noted the NMC's guidance which 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.'

Having given careful consideration to the content of the note of the telephone call dated 27 September 2023 as well as communications prior to the original hearing, the panel were satisfied that Miss Badcock has no intention of returning to practice as a registered nurse, even though it has not had direct confirmation of this from Miss Badcock herself.

In allowing the order to lapse, the panel was of the view that should Miss Badcock's repeated intentions not to return to the nursing profession change, the public would be adequately protected by its finding of impairment, which would have to be carefully considered by the NMC's Registrar before Miss Badcock could be reinstated onto the register.

The panel was also of the view 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 period of suspension and understand the protection that the finding of impairment would provide in the event, that Miss Badcock seeks to return to practice as a registered nurse.

The panel determined that imposing a further suspension order would serve no useful purpose. It determined that allowing the order to lapse would be the most proportionate way of dealing with Miss Badcock's case given her clear and consistent intentions communicated to the NMC to no longer practice as a nurse.

The panel therefore concluded to allow the order to lapse.

In accordance with Article 30(1), the substantive suspension order will lapse upon expiry, namely the end of 19 April 2024.

This will be confirmed to Miss Badcock in writing.

That concludes this determination.