Conduct and Competence Committee
Substantive Meeting
30 November 2016
Nursing and Midwifery Council, 2 Stratford Place
Montfichet Road, London, E20 1EJ

Name of Registrant Nurse: Mrs Susan June Mullin

NMC PIN: 80D0860E

Part(s) of the register: Registered Nurse – Sub part 1
RN3: Mental Health – 20 March 1984
RN1: Adult - 24 May 1987
RM1: Registered nurse – 31 December 1989

Area of registered address: England

Panel members: Gill Madden (Chair, Lay member)
Janet Leonard (Registrant member)
Linda Nixon (Lay member)

Legal Assessor: Michael Bell

Panel Secretary: Rachael Victoria Omowo

Facts admitted: Charge 1

Fitness to practise: Impaired

Sanction: Suspension Order – 9 months

Interim order: Interim suspension order – 18 months
Determination on service of notice:

Notice of this meeting was sent to Mrs Mullin on 26 October 2016 by recorded delivery and first class post to her address on the register.

The panel was satisfied that notice has been served, as advised by the legal assessor, in accordance with Rules 11A and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (‘the Rules’):

11A.—(1) Where a meeting is to be held […] the Conduct and Competence Committee or the Health Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held.

34.—(1) Any notice of hearing required to be served upon the registrant shall be delivered by sending it by a postal service or other delivery service in which delivery or receipt is recorded to, or by leaving it at—

a) her address in the register; or

b) where this differs from, and it appears to the Council more likely to reach her at, her last known address, the registrant’s last known address.

Details of charges:

That you, whilst employed as a Bank Staff Nurse at St Joseph’s Convent Nursing Home in Stafford:

1. On the shift on 26 December 2015, attended work under the influence of alcohol

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

The NMC received a complaint about Mrs Mullin on 12 January 2016 from Ms 1, the Care Manager at St Josephs Convent Nursing Home (‘the Home’).

Mrs Mullin was employed at the Home from 22 July 2014 to 4 January 2016 as a staff nurse. She was working part-time at the Home and worked on bank shifts. She was on duty on 26 December 2015 covering the late shift 13:30 – 20:00.

It is alleged that Mrs Mullin attended work on 26 December 2015 under the influence of alcohol and continued to drink whilst on duty. Ms 2, a Healthcare Assistant (“HCA”), became concerned about her behaviour that afternoon and detected that Mrs Mullin smelt of alcohol and witnessed her behaving inappropriately in front of staff and patients. Mrs Mullin was suspended from the Home. Mrs Mullin did not attend the Home’s disciplinary hearing but stated in her letter to Ms 1, that she admitted that she was on duty whilst under the influence of alcohol.

Determination on the findings on facts:

**Charge 1**

On the shift on 26 December 2015, attended work under the influence of alcohol

This charge is found PROVED.

The panel noted that although there were various admissions made by Mrs Mullin throughout the NMC’s bundle, she had not submitted a formal admission to this charge. The panel therefore had to consider whether this charge can, on a balance of probabilities, be found proved.

The panel took account of Mrs Mullin’s resignation letter dated 4 January 2016 to Ms 1, in response to the Home’s disciplinary hearing. In this letter, Mrs Mullin accepts that she was on duty whilst under the influence of alcohol on the 26 December 2015. The panel also took account of both Ms 1 and Ms 2’s statement, who confirmed that Mrs Mullin smelt of alcohol on the shift in question.
The panel also took account of letter from the RCN dated 28 November 2016, in which Mrs Mullin continues to maintain her admission that she was on duty whilst under the influence of alcohol on the 26 December 2015.

In light of the above admissions, the panel was satisfied that on a balance of probabilities, on the shift on 26 December 2015, Mrs Mullin attended work under the influence of alcohol.

Accordingly, the panel found this charge proved.

The panel went on to consider misconduct and impairment in relation to the charges found proved.

**Determination on misconduct and impairment:**

Having made its findings on the facts, the panel then considered whether the facts found proved amount to misconduct and, if so, whether Mrs Mullin’s fitness to practise is currently impaired by reason of her misconduct. The NMC has defined fitness to practise as a registrant’s suitability to remain on the register unrestricted. This is an overall judgment made by the panel and no standard of proof applies.

The panel read the signed written statements from Ms 1, Care Manager and Ms 2, a Healthcare Assistant.

The panel also took account of the letter from the RCN dated 28 November 2016 outlining their written submissions and Mrs Mullin’s reflective piece dated 21 November 2016.

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

The panel first considered whether, on the facts found proved, Mrs Mullin’s actions were sufficiently serious departures from the standard of a registered nurse as to amount to misconduct.
The panel was of the view that Mrs Mullin’s conduct set out in the charges found proved constituted a serious departure from such standards. With regards to The Code: Standards of conduct, performance and ethics for nurses and midwives 2015 (‘the Code’) the panel noted the following breaches:

*Preamble:* You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the profession from patients, people receiving care, other healthcare professionals and the public.

20.1 keep to and uphold the standards and values set out in the Code
20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people
20.8 act as a role model of professional behaviour…

The panel considered that Mrs Mullin’s actions were serious and placed residents at unwarranted risk of serious risk of harm. The panel was of the view that Mrs Mullin’s actions were compounded by the fact that she was the sole registered nurse on duty on the shift in question. Further, having attended work whilst under the influence of alcohol, Mrs Mullin continued to drink alcohol during her shift. This is accepted and confirmed by Mrs Mullin in the letter from the RCN dated 28 November 2016.

The panel took account of Ms 2’s written evidence that Mrs Mullin smelt strongly of alcohol and was behaving so inappropriate that Ms 2 escalated the matter and the Home manager was called in. The panel was of the view that Mrs Mullin is likely to have been in an inebriated state. The panel considered that members of the profession and the public would consider that Mrs Mullin’s actions to be deplorable.
In the light of all of the above, the panel concluded that taken collectively Mrs Mullin’s misconduct, fell far short of the conduct and standards expected of a registered nurse and was sufficiently serious to amount to misconduct.

The panel next considered whether, as a result of the misconduct identified, Mrs Mullin’s fitness to practise is currently impaired. The panel heard and accepted the advice of the legal assessor.

The panel had in mind the case of CHRE v (1) NMC (2) Grant [2011] EWHC 927 (Admin) and the judgment which approved the approach recommended in Dame Janet Smith’s Fifth Report from Shipman. The panel considered the issue of Mrs Mullin’s current impairment in these terms, namely whether she:

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 […] 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 […] profession; […]
d) …”

The panel considered that Mrs Mullin placed residents at unwarranted risk of serious harm by attending and continuing to consume alcohol at work whilst undertaking her clinical duties.

The panel also considered that Mrs Mullin’s actions had brought the profession into serious disrepute and breached fundamental tenets of the profession.

In considering whether Mrs Mullin is liable in the future to place patients at unwarranted risk of harm and bring the profession into disrepute, the panel, in addition to assessing the gravity of the misconduct, gave careful regard to matters of insight and remediation which are important factors in any evaluation of the likelihood of repetition.
In relation to insight, the panel noted that when questioned by Ms 1 on the date of the incident, Mrs Mullin did not deny she had been drinking and admitted that [Private]. The panel further noted that in her resignation letter of 4 January 2016, Mrs Mullin stated that she accepted that she was under the influence of alcohol whilst on duty. In contrast, in their letter to the NMC Mrs Mullin’s representative has stated that [Private]. Given these contradictory positions and that Mrs Mullin’s reflective piece did not fully acknowledge the effect of the alcohol on her behaviour on the night in question, the panel was of the view that Mrs Mullin has limited insight into the problems which gave rise to the charge.

The panel was of the view that Mrs Mullin had demonstrated remorse and apologised for her actions.

The panel considered whether Mrs Mullin’s misconduct is capable of remediation. The panel noted that although the incident, which forms the basis of the charge occurred nearly one year ago, it had received no independent evidence concerning any steps which Mrs Mullin has taken to remediate her failings.

In the absence of this information and evidence of sufficient insight into her failings, the panel considered that there is a residual risk of repetition of Mrs Mullin’s misconduct which would, once again, put patients at unwarranted risk of harm, bring the nursing profession into disrepute and breach fundamental tenets of the profession.

Further the panel took account of paragraph 71 of Mrs Justice Cox’s judgement in Grant:

“It is essential when deciding whether fitness to practise is impaired, not to lose sight of the … the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession.”
It was satisfied that the public interest in this case and the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made.

Accordingly, the panel determined that Mrs Mullin’s fitness to practise is currently impaired by reason of her misconduct.

**Determination on sanction:**

The panel has considered this case very carefully and has decided to make a Suspension Order for 9 months. The effect of this Order is that the NMC register will show your registration has been suspended for 9 months.

In reaching this decision the panel had regard to all the information presented in this case. It heard and accepted the advice of the legal assessor. The panel had in mind that any sanction imposed must be reasonable, appropriate and proportionate, and although not intended to be punitive, it may have that effect. The panel had careful regard to the *Indicative Sanctions Guidance* (ISG) published by the NMC. It recognised that the decision on sanction is a matter for the panel exercising its own independent judgement on the specific facts of this case.

The panel had regard to the aggravating and mitigating features of this case.

The aggravating factors can be summarised as follows:

- By attending for duty and undertaking clinical practice whilst under the influence of alcohol, there was a potential for patient harm;
- Having attended work under the influence of alcohol, Mrs Mullin continued to consume alcohol during her shift;
- Mrs Mullin was acting as a role model for the HCA on duty at the time;
- Mrs Mullin was the sole registered nurse on duty;
- Mrs Mullin has demonstrated limited insight into the problems which gave rise to the charges.

The mitigating factors can be summarised as follows:
• There have been no prior regulatory proceedings or evidence of local disciplinary concerns in relation to Mrs Mullin’s clinical practice;
• There was no actual patient harm;
• Mrs Mullin has demonstrated remorse for her actions;
• Mrs Mullin made early admissions to her conduct.

The panel considered all the available sanctions in ascending order, considering the least restrictive first.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of Mrs Mullin’s misconduct. The panel determined that to take no action would not be in the wider public interest, nor would it protect the public.

In considering a caution order, the panel took into account the Indicative Sanctions Guidance, which 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 did not consider that Mrs Mullin’s actions were at the lower end of the spectrum. Further, it recognised that a caution order would not restrict Mrs Mullin’s practice. Given the seriousness of Mrs Mullin’s misconduct, the panel concluded that such an order would not sufficiently protect the public or satisfy the public interest.

The panel next considered a conditions of practice order. Such an order may be appropriate in cases where there are identifiable areas of nursing practice that require assessment and/or retraining. The panel was mindful that the allegation did not relate to Mrs Mullin’s clinical competence. It determined that it would be unable to devise practical, workable and measurable conditions that would address Mrs Mullin’s conduct in relation to her being under the influence of alcohol whilst at work.

The panel therefore concluded that a conditions of practice order would be inappropriate.
Having concluded that a conditions of practice order was not appropriate, the panel considered the remaining available sanctions of suspension and striking off. It first considered whether to impose a suspension order. The ISG indicates that suspension may be appropriate where some or all of the following factors are apparent (this list is not exhaustive):

- A single instance of misconduct but where a lesser sanction is not sufficient.
- The misconduct is not fundamentally incompatible with continuing to be a registered nurse or midwife in that the public interest can be satisfied by a less severe outcome than permanent removal from the register.
- No evidence of harmful deep-seated personality or attitudinal problems.
- No evidence of repetition of behaviour since the incident.
- The panel is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.

Whilst the panel considered that Mrs Mullin’s conduct was serious, it did not consider that she had a deep-seated attitudinal problem. Further, the panel noted that the charge related to one shift and appeared to be an isolated incident.

The panel considered that particularly in her comments to Ms 1 and in her resignation letter, Mrs Mullin has demonstrated sufficient insight for the panel to conclude there is not a significant risk of her repeating her misconduct.

Further, the panel noted that since the alleged incident occurred there has been no repetition of the behaviour/conduct found proved.

The panel therefore determined that Mrs Mullin’s misconduct was not fundamentally incompatible with her ongoing registration on the NMC register.

Having concluded that a suspension order was the appropriate sanction, the panel did consider whether it should instead impose a striking off order. The panel
concluded that this would be disproportionate in view of its finding that Mrs Mullin’s actions were not incompatible with her ongoing registration on the NMC register.

The panel next considered the duration of the order and has decided the suspension order should be for a period of 9 months. The panel considered that this period would adequately mark the seriousness of Mrs Mullin’s conduct, protect the public, and satisfy the public interest. Further, this will provide a sufficient period for Mrs Mullin to develop and demonstrate further insight into her misconduct and consider her intentions as to whether she wishes to return to the nursing profession.

The panel noted that imposing a suspension order is likely to have a detrimental financial impact on Mrs Mullin. However it is the panel’s judgment that Mrs Mullin’s interests in this regard are outweighed by the need to protect the public, maintain public confidence in the profession and the NMC as the regulator.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, confirm the order, or replace it with another order. Any future panel reviewing this order is likely to be assisted by the following:

- [Private];
- Evidence that Mrs Mullin is up to date with regards to annual mandatory and statutory training;
- Up to date written reflective piece which outlines Mrs Mullin’s intentions regarding her nursing career going forward.

**Determination on interim order:**

The panel took account of the guidance issued to panels by the NMC when considering interim orders and the appropriate test as set out at Article 31 of *The Nursing and Midwifery Order 2001*. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or is in Mrs Mullin’s own interest.
The panel was satisfied that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest. In reaching its decision to impose an interim suspension order, the panel had regard to the risks identified in its determination on impairment, and its reasons for imposing a substantive suspension order. To do otherwise would be inconsistent with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

If no appeal is made then the interim suspension order will be replaced by the substantive suspension order 28 days after Mrs Mullin is sent the decision of this meeting in writing.

That concludes this determination.