

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

**Substantive Order Review Hearing**

**25 April 2019**

Nursing and Midwifery Council, Temple Court 13a Cathedral Road, Cardiff, CF11 9HA

|                                       |   |
|---------------------------------------|---|
| <b>Name of registrant:</b>            | Nicola Anne Bartlett  |
| <b>NMC PIN:</b>                       | 02I0610W  |
| <b>Part of the register:</b>          | Registered Nurse – Sub part 1<br>Adult Nursing – September 2005   |
| <b>Area of Registered Address:</b>    | Wales   |
| <b>Type of Case:</b>                  | Conviction  |
| <b>Panel Members:</b>                 | Trevor Spires (Chair – Lay member)<br>Jodie Banner (Registrant member)<br>Hannah Harvey (Registrant member) |
| <b>Legal Assessor:</b>                | Lee Davies  |
| <b>Panel Secretary:</b>               | Vicky Green   |
| <b>Mrs Bartlett:</b>                  | Not present and not represented in her absence  |
| <b>Nursing and Midwifery Council:</b> | Represented by Michael Bellis, Case Presenter   |
| <b>Order being reviewed:</b>          | Suspension Order – 6 months   |
| <b>Outcome:</b>                       | Striking off order to come into effect at the end of 16 May 2019 in accordance with Article 30 (1)          |

## **Service of Notice of Hearing**

The panel was informed at the start of this hearing that Mrs Bartlett was not in attendance, nor was she represented in her absence.

The panel was informed that the notice of this hearing was sent to Mrs Bartlett on 25 March 2019 by recorded delivery and first class post to her registered address. Notice of this hearing was also sent to Mrs Bartlett's representative at the Royal College of Nursing (RCN) on 25 March 2019.

The panel accepted the advice of the Legal Assessor.

In the light of the information available the panel was satisfied that notice had been served in accordance with Rules 11 and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (the Rules).

## **Proceeding in the absence of Mrs Bartlett**

The panel then considered proceeding in the absence of Mrs Bartlett. The panel was mindful that the discretion to proceed in absence is one which must be exercised with the utmost care and caution.

The panel considered all of the information before it, together with the submissions made by Mr Bellis, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

Mr Bellis drew the panel's attention to an email from the RCN to the NMC dated 23 April 2019 which stated the following:

*'Our member will not be attending the hearing nor will she be represented. No disrespect is intended by her non-attendance. Our member has received the*

*notice of hearing and is happy for the hearing to proceed in her absence. She is keen to engage with the proceedings.'*

Mr Bellis submitted that the RCN, on Mrs Bartlett's behalf, indicated that she is aware of this hearing and is content for this hearing to proceed in her absence. Mr Bellis submitted that Mrs Bartlett is aware of this hearing, and has voluntarily absented herself, on this basis he invited the panel to proceed in her absence.

Mrs Bartlett had been sent notice of today's hearing and, having regard to the email of 23 April 2019, the panel was satisfied that she was aware of today's hearing. The panel noted that Mrs Bartlett, in the email, indicated that she will not be attending today and is happy for the hearing to proceed in her absence. Mrs Bartlett has not requested an adjournment and the panel was of the view that an adjournment would not secure her attendance at a later date. The panel determined to proceed in the absence of Mrs Bartlett.

## **Decision and reasons on review of the current order**

The panel decided to impose a striking off order. This order will come into effect at the end of 16 May 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the third review of a suspension order, originally imposed by a panel of the Conduct and Competence Committee on 13 April 2017 for a period of 12 months. On 19 April 2018 the first reviewing panel decided to extend the suspension order for a period of 6 months. The last reviewing panel extended the suspension order for a further 6 months on 10 October 2018. The current order is due to expire at the end of 16 May 2019.

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

The charge found proved by way of admission which resulted in the imposition of the substantive order was as follows:

*'That you, a registered nurse, whilst employed by Aneurin Bevan Health Board*

- 1. On 17 December 2015 were convicted in Cardiff Crown Court of conspiracy to defraud contrary to common law*

*And, in light of the above, your fitness to practice is impaired by reason of your conviction.'*

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

*'This panel has considered whether Mrs Bartlett's fitness to practise is currently 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. It has*

*noted the decision of the last panel. However, it has exercised its own judgment as to current impairment.*

*The panel had regard to all of the documentation before it and 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 Bartlett's fitness to practise remains impaired.*

*The panel saw a letter dated 4 October 2018 from the RCN, acting for Mrs Bartlett, which included the following:*

*As the panel will be aware, Mrs Bartlett was convicted of conspiracy to defraud at Cardiff Crown Court in December 2015. She was sentenced to nine months' imprisonment, suspended for two years. The suspended sentence expired on 30 January 2018.*

*Since the substantive hearing in April 2017, Mrs Bartlett was tried for conspiracy to defraud, and was sentenced on 17 January 2018 to 12 months' imprisonment. Mrs Bartlett served 13 weeks at HMP Eastwood Park and following her release on 19 April, she was required to wear an electronic tag for a further 13 weeks. Following this period, the tag was removed and the sentence is now complete.*

*However, Mrs Bartlett is currently awaiting confirmation from the Criminal Appeals Office as to whether she will be granted leave to appeal that conviction. The application was acknowledged in May 2018, and the standard response confirmed that these types of matters are usually dealt with in around 5 months, taking us to around October 2018. No update has been received to date.*

*The NMC are already aware of this matter and there is a substantive hearing date listed for 26 October.*

*Due to her current circumstances, we ask that the panel extend the current suspension for a period of 3–6 months. This should be sufficient time in respect of the outcome of Mrs Bartlett’s application for leave to appeal, which will have an impact on these NMC proceedings.*

*The first reviewing panel found that Mrs Bartlett’s fitness to practise remained impaired at that date by the serious conviction in December 2015 because she had not been able to remedy her failings since the imposition of her original suspension order. At this review hearing there is still no evidence to suggest that Mrs Bartlett has been able to take any steps to address her impairment. The risk of repetition remains. This panel was satisfied that a finding of continuing impairment remains necessary both on the grounds of public protection and to protect the wider public interest.’*

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

*‘Having determined that Mrs Bartlett’s fitness to practise is 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 29 of the Order. The panel has also taken into account the NMC’s Sanctions Guidance (SG).*

*The panel first considered whether to take no action but concluded that this would be inappropriate in view of the risk of repetition identified and seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.*

*The panel then considered whether to impose a caution but concluded that this would be inappropriate in view of the risk of repetition identified and seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.*

*The panel next considered a conditions of practice order, but determined that no workable conditions could be formulated given Mrs Bartlett's current circumstances, repeated dishonesty and subsequent criminal conviction. The panel noted that these matters are now the subject of a separate NMC referral and that this gives rise to significant public interest considerations. In the circumstances, the panel has concluded that it would not be possible to formulate appropriate and workable conditions of practice that would satisfy the public interest and maintain public confidence in the profession.*

*The panel considered the imposition of a further period of suspension. The panel was satisfied that a further suspension order would protect the public. Furthermore, continuing Mrs Bartlett's suspension from the register while the further allegation against her is investigated would be sufficient to maintain public confidence in the profession.*

*The panel did consider a striking off order, but decided that it could not be justified at this time, while the facts concerning the further conviction have not been determined and an appeal is pending.*

*The panel determined that the appropriate period for a further suspension order was six months. This would allow sufficient time for Mrs Bartlett and her representatives to establish whether or not she will be given leave to appeal and, if so, when the appeal will be heard. It will also allow the NMC time to deal with the new allegation.*

*The panel concluded that a further six month suspension order would be the appropriate and proportionate response.'*

## **Decision on current fitness to practise**

The panel has considered carefully whether Mrs Bartlett'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. It has noted the decision of the last panel. However, it has exercised its own judgment as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle, and the written submissions dated 23 April 2019 provided by the RCN on behalf of Mrs Bartlett.

Mr Bellis outlined the background of the case to the panel along with the outcome of the substantive hearing which took place in April 2017. Mr Bellis informed the panel that since the substantive hearing, Mrs Bartlett has been convicted of a similar offence in January 2018, which related to dishonesty. He submitted that in the light of this, and in the light of no evidence of remediation or insight, Mrs Bartlett's fitness to practise remains impaired.

Mr Bellis told the panel that on 18 April 2019 a substantive panel accepted a Consensual Panel Determination (CPD) agreed between the NMC and Mrs Bartlett. The agreed sanction was that of a striking off order in relation to the subsequent criminal conviction. The striking off order will come into effect after the appeal period on 22 May 2019.

Mr Bellis referred the panel to the RCN written submissions dated 23 April 2019, in particular:

*'we submit that the appropriate outcome for this substantive order review hearing is a short extension of the suspension order, to allow the strike off order to come into effect in relation to the second NMC matter. The registrant's registration will*

*then no longer be valid or active, and this matter will then automatically conclude.'*

Mr Bellis submitted that sanction is a matter for the panel's independent judgement, based on the circumstances of this case.

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 Bartlett's fitness to practise remains impaired. The panel noted that there has been no new information from Mrs Bartlett to address remediation or insight. The panel considered that the new information of a subsequent and similar conviction demonstrated that Mrs Bartlett is liable to repeat matters of the kind found proved.

The panel had borne in mind that its primary function was 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, given the seriousness of this dishonesty and conviction in this case, a finding of continuing impairment on public interest grounds is required.

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

## Determination on sanction

Having found Mrs Bartlett'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 29 of the Order. The panel has also taken into account the NMC's Sanctions Guidance (SG) which included the guidance on considering sanctions in serious cases involving dishonesty and criminal convictions. The panel 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 allow the order to lapse but concluded that this would be inappropriate in view of the risk of repetition identified and the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to allow the order to lapse. The panel then considered whether to impose a caution order but concluded that this would be inappropriate for the same reasons as set out above.

The panel next considered replacing the suspension order with a conditions of practice order. It concluded that, given the repeated dishonesty and subsequent criminal conviction, workable conditions could not be formulated. The panel noted that the subsequent criminal conviction, which has been dealt with at a parallel substantive hearing and resulted in a striking off, order engages the public interest. Accordingly, the panel has concluded that it would not be possible to formulate appropriate and workable conditions of practice that would satisfy the public interest and maintain public confidence in the profession.

The panel next considered imposing a further suspension order. The panel had regard to the SG, in relation to when a suspension order is appropriate, in particular:

- *will a period of suspension be sufficient to protect patients, public confidence in nurses and midwives, or professional standards?*
- ...
- *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 was mindful of the fact that Mrs Bartlett provided a detailed and remorseful reflective piece to the substantive panel before the subsequent criminal conviction came to light. The panel was concerned that she would have been aware of her other criminal behaviour at the time of writing the reflective piece and did not address this. The panel considered that such actions are indicative of a deep-seated personality and attitudinal problem.

The panel noted that Mrs Bartlett has been subject to a suspension order for two years and has failed to demonstrate insight or remediation. The panel had regard to the subsequent criminal conviction of a similar nature which demonstrated that Mrs Bartlett has repeated the behaviour.

The panel determined that a further period of suspension would not serve any useful purpose.

The panel went on to consider when a striking off order is appropriate:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

The panel considered that all of the above were engaged in this case. It concluded that Mrs Bartlett's dishonesty and criminal convictions were fundamentally incompatible with remaining on the register. The panel determined that it was necessary to take action to prevent Mrs Bartlett from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order. The striking off order will come into effect at the end of 16 May 2019.

This decision will be confirmed to Mrs Bartlett in writing.

That concludes this determination.