

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

Substantive Order Review Hearing

26 April 2019

Nursing and Midwifery Council, 61 Aldwych, London WC2B 4AE

Name of registrant:	Mrs Rachel Leanne Muir
NMC PIN:	09E1575E
Part(s) of the register:	Registered Nurse – sub part 1 Adult Nursing (1 October 2009)
Area of Registered Address:	England
Type of Case:	Misconduct
Panel Members:	John Haines (Chair, Lay member) Mary Monnington (Registrant member) Diane Corderoy (Registrant member)
Legal Assessor:	Ben Stephenson
Panel Secretary:	Catherine Acevedo
Mrs Muir:	Not present and not represented
Nursing and Midwifery Council:	Represented by Siobhan Caslin, Case Presenter
Order being reviewed:	Suspension Order (12 months)
Outcome:	Striking off Order to come into effect at the end of 15 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 Muir 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 Muir on 27 March 2019 by recorded delivery and first class post to her registered address.

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 absence

The panel then considered proceeding in the absence of Mrs Muir. 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 Ms Caslin, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

The panel also noted the contents of the email dated 23 April 2019 from Mrs Muir to the NMC, in which she has stated:

“Thank you for your email. I will not be collecting any further documentation from the NMC as I have informed you that I am no longer ever going to work as a nurse again.... I have now stated this so frequently that I feel that there should be no requirement for me to be constantly repeating myself. Please explain as to why this is continuing when there is clearly no real need? It is a waste of time

and paper. To confirm once and for all - I will not be collecting, reading, responding or attending any hearings, I never have.”

In further email correspondence from the same day Mrs Muir also stated:

“Everyone involved in this should already be aware of my intentions as I have informed them previously, more than once. Why does the paperwork have to continually be posted? It is the same, every time. It is a lot of paper, it is ridiculous. How long is this going to continue for? I have retrained and am working in a different role due to reasons already disclosed. I will never return to nursing so what exactly is the point off this continuing? I would like to know. All the paperwork will be returned to you in the future, so as I have already expressed, it is pointless.”

Mrs Muir had been sent notice of today’s hearing and the panel was satisfied that she was or should be aware of today’s hearing and it is of the view that she had chosen to disengage. The panel, therefore, concluded that she had chosen voluntarily not to attend. The panel had no reason to believe that an adjournment would result in Mrs Muir’s attendance. Having weighed the interests of Mrs Muir with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Mrs Muir’s absence.

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 15 May 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This covers both sets of charges and relates to the review of both orders dated 3 July 2014 and 14 September 2016.

On 3 July 2014 a panel of the Conduct and Competence Committee made Mrs Muir the subject of a conditions of practice order for 12 months. The order was reviewed on 3 July 2015 and the panel varied and extended it for 2 years. The order was reviewed again on 13 July 2017 and this time the order was extended for 10 months.

On 14 September 2016 a panel of the Conduct and Competence Committee considered further allegations in relation to Mrs Muir's practice and made her the subject of a conditions of practice order for 42 weeks.

This order was appealed by the Professional Standards Authority (PSA) in the High Court in May 2017 and by consent was changed to a 12 month suspension order.

Both orders were reviewed on 5 April 2018 and were replaced with a further 12 month suspension order which is due to expire at the end of 15 May 2019.

The committee is required to review these orders under Article 30(1) of the Order before their expiry.

The charges found proved which resulted in the imposition of the substantive conditions of practice order on 3 July 2014 were as follows:

That you, a registered nurse, whilst employed by Dorset County Hospital NHS Foundation Trust and working at Dorset County Hospital:

1. Between the hours of 11.45 and 12.30 on 22 June 2010 failed to maintain regular observations and/or effectively delegate these observations with respect to Patient X.
2. Between the hours of 10.20 and 17:30 on 6 December 2011 failed to record the amount of insulin that had been infused to Patient B, who was on a variable insulin infusion.
3. In respect of Patient D, on the night shift of 25 – 26 May 2012,
 - 3.1. Failed to repeat observations on Patient D between the hours of 21.00 and 03.40.
 - 3.2. ...
4. ...
5. On the night shift of 14 – 15 September 2012 failed to complete and/or delegate and/or document regular neurological observations in respect of Patient F

And in light of this, your fitness to practise is impaired by reason of your misconduct

The charges found proved on 14 September 2016 which later resulted in the imposition of the substantive suspension order by the High Court were as follows:

That you, a registered nurse, whilst working at Signature House Nursing Home:

1. On 5 November 2014, failed to administer Warfarin to Resident B;
2. On 10 December 2014, having taken delivery of medication for Resident B
 - 2.1. Signed 10mg Morphine sulphate tablets in the CD book on the page that was for 5mg tablets for Resident B;

- 2.2. Did not sign in Oramorph medication into the CD book;
- 2.3. Did not sign Oramorph medication into the MAR Chart;
- 2.4. Did not put Oramorph medication in the locked cupboard.

And in light of this, your fitness to practise is impaired by reason of your misconduct.

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

“The panel noted that Mrs Muir had not engaged with the NMC since February 2017 and was told by the NMC that in email correspondence she had stated that she no longer wished to return to nursing. The panel had noted this previously in the letter dated 24 April 2017 dealing with the PSA appeal.

The panel further acknowledged that since the imposition of the conditions of practice order in July 2014 Mrs Muir had not produced any evidence of insight, remediation, remorse or further training despite recommendations and guidance from previous panels.

The panel noted that in relation to both sets of charges it had no new information from Mrs Muir and that there was no evidence of any material changes in circumstances before the panel today.

The panel therefore determined that, in all the circumstances, a finding of current impairment remains necessary on the grounds of public protection and public interest.

Accordingly, Mrs Muir’s fitness to practise remains impaired. “

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

“The panel first considered whether to take no action and found this was inappropriate.

It next considered whether to impose a caution order but it concluded that it would be inappropriate given the seriousness of the misconduct the lack of insight and risk of repetition. Furthermore, it would not place any restriction on Mrs Muir's practice or guard against the risk to the public. The panel decided that it would be neither proportionate nor in the public interest to take no further action or impose a caution order.

The panel next considered whether to impose a conditions of practice order.

The panel noted that the charges found proved in the substantive case of 14 September 2016 occurred whilst Mrs Muir was already the subject of a conditions of practice order for earlier failings. The panel was also concerned that there was some evidence of attitudinal issues given Mrs Muir's reluctance to take responsibility for her failings and place blame on other factors such as staffing and lack of support. The panel has no evidence of any insight relating to her understanding of the impact her failings had on patients, the public and the reputation of the nursing profession.

With the above in mind and coupled with Mrs Muir's history of lack of engagement with her regulator, the panel decided that a conditions of practice order was no longer an appropriate sanction.

The panel noted that the conditions had been in place for several years and had not been met. Furthermore, that some of the conditions related to retraining and the requirement to submit a reflective piece, however Mrs Muir has not provided these, despite advice from previous review panels. The panel viewed this as a lack of potential and a lack of willingness to respond to retraining.

The panel next considered whether to impose a suspension order. The panel noted that the charges are serious and demonstrate serious departures from the standards of conduct expected of a registered nurse. This coupled with her lack

of willingness to remedy her deficiencies is evidence that the risk of harm to the public could no longer be dealt with by a conditions of practice order.

The panel therefore determined that a suspension order is the only appropriate sanction which would both protect the public and satisfy the wider public interest.

Accordingly, the panel determined to impose a suspension order for a period of 12 months. It considered this to be the most appropriate and proportionate sanction available.

The panel noted that, taken together, the two NMC cases involved incidents spanning several years and a range of key clinical nursing competencies.

The panel did consider whether to impose a striking off order but determined that at this stage such a sanction would be disproportionate.

Any future panel would welcome Mrs Muir's engagement with proceedings, however she must be reminded that any such panel would have a range of sanctions available to it, including that of a striking off order.

A future panel would be assisted by Mrs Muir's attendance at the hearing, a reflective piece and evidence of recent relevant training, testimonials and references."

Decision on current fitness to practise

This panel has considered carefully whether Mrs Muir'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 email correspondence from Mrs Muir dated April 2019. It has taken account of the submissions made by Ms Caslin on behalf of the NMC.

Ms Caslin outlined the background of the case to the panel and submitted that Mrs Muir remains impaired on the grounds of public protection and public interest. Ms Caslin invited the panel either to continue with a period of suspension or to impose a striking off order.

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 Muir's fitness to practise remains impaired.

The panel noted that it had not received any evidence of remediation or any intention of remediation from Mrs Muir. The panel noted that in relation to both sets of charges it had no new information from Mrs Muir and that there was no evidence of any material changes in circumstances before the panel today. Mrs Muir had not produced any evidence of insight, remorse or further training despite recommendations and guidance from previous panels.

The panel noted that Mrs Muir has had limited and sporadic engagement with the NMC since February 2017 and has told the NMC via email that she no longer wished to return to nursing and did not intend to engage further with the NMC.

The panel was of the view that there remains a high risk to the public and a high risk of repetition as Mrs Muir has not been working as a nurse for some years and has not remediated her original failings.

The panel therefore determined that, in all the circumstances, a finding of current impairment remains necessary on the grounds of public protection and public interest.

Accordingly, Mrs Muir's fitness to practise remains impaired.

Determination on sanction

Having found Mrs Muir'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 and allow the order to lapse. Mrs Muir had not given the panel a clear explanation of her plans for the future away from nursing. The panel noted that Mrs Muir would be able to apply for readmission to the register as soon as her registration lapsed. As the panel have found Mrs Muir currently impaired, she will not have addressed the concerns about her practice. The panel decided that it would be inappropriate to allow the order to lapse on expiry.

It next considered whether to impose a caution order but it concluded that it would be inappropriate given the seriousness of the misconduct the lack of insight and risk of repetition. Furthermore, it would not place any restriction on Mrs Muir's practice or guard against the risk to the public. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether to impose a conditions of practice order. The panel noted that the charges found proved in the substantive case of 14 September 2016 occurred whilst Mrs Muir was already the subject of a conditions of practice order for earlier failings. The panel was also concerned that the attitudinal issues identified by the previous panel have now become deep seated. Mrs Muir's reluctance to take responsibility for her failings and place the blame on other factors such as staffing and lack of support and her repeated refusal to engage with her regulator as outlined in her

recent emails dated 23 and 25 April 2019 are indicators of a hardening in attitude. The panel has no evidence of any insight relating to her understanding of the impact her failings had on patients, the public and the reputation of the nursing profession. The panel also noted the conditions of practice order that had previously been imposed was appealed by the PSA in the High Court in May 2017 and by consent was changed to a 12 month suspension order.

The panel next considered imposing a further suspension order. The panel noted that Mrs Muir has not shown remorse for her misconduct. Further, Mrs Muir has not demonstrated any insight into her previous failings. Mrs Muir has stated on many occasions that she does not wish to engage with her regulator and has made her position very clear that she will not be returning to nursing. The panel was of the view that considerable evidence would be required to show that Mrs Muir no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Mrs Muir 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.

This decision will be confirmed to Mrs Muir in writing.

That concludes this determination.