

**Nursing and Midwifery Council  
Fitness to Practise Committee  
Substantive Order Review Hearing  
30 December 2019**

Nursing and Midwifery Council 114-116 George Street, Edinburgh, EH2 4LH

<b>Name of registrant:</b>	Miss Wilma Dobbin
<b>NMC PIN:</b>	95I0460S
<b>Part(s) of the register:</b>	Registered Nurse – Sub Part 1 Adult Nursing – August 1998
<b>Area of registered address:</b>	County Antrim
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Florence Mitchell (Chair, Registrant member) Claire Matthews (Registrant member) Geoffrey Baines (Lay member)
<b>Legal Assessor:</b>	Graeme Dalglish
<b>Panel Secretary:</b>	Oliver Stephens
<b>Nursing and Midwifery Council:</b>	Represented by Alastair Kennedy, Case Presenter
<b>Mrs Wilma Dobbin:</b>	Not present nor represented in absence
<b>Order being reviewed:</b>	Suspension Order (12 months)
<b>Outcome:</b>	Striking-off order 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 Miss Dobbin was not in attendance and that the Notice of Hearing had been sent to Miss Dobbin's registered address by recorded delivery and by first class post on 22 November 2019.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Hearing was delivered to Miss Dobbin's registered address on 22 November 2019. It was signed for in the name of 'DOBBIN'.

The panel took into account that the Notice of Hearing provided details of the review hearing including the time, dates and venue of the hearing and, amongst other things, information about Miss Dobbin's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Kennedy, 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.

In the light of all of the information available, the panel was satisfied that Miss Dobbin 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 Miss Dobbin**

The panel next considered whether it should proceed in the absence of Miss Dobbin. The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*'.

Mr Kennedy invited the panel to continue in the absence of Miss Dobbin on the basis that she had voluntarily absented herself. Mr Kennedy referred the panel to the

documentation from Miss Dobbin, which included an email dated 12 December 2019, which stated:

*"I will not be attending the meeting ... I am happy for the hearing to go ahead without me as I will not be in the country."*

The panel considered all of the information before it, together with the submissions made by Mr Kennedy, on behalf of the NMC. The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Dobbin. In reaching this decision, the panel has considered the submissions of Mr Kennedy, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that there had been no adjournment application made by Miss Dobbin and that there is no reason to suppose that adjourning the proceedings would secure her attendance at a future date. She has also indicated she will not be attending. The panel noted that this is a mandatory statutory review and that it is both in the public interest and in Miss Dobbin's interest to review the matter expeditiously.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Dobbin.

### **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 30 January 2020 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 28 December 2018.

The current order is due to expire at the end of 30 January 2020.

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

The charges found proved which resulted in the imposition of the substantive order were as follows:

*That you a registered nurse,*

*1. On 17th February 2017 told a staff member that you had placed Resident A's personal property in the hospice safe.*

*2. On 17th February 2017 retrospectively recorded electronically that you had placed Resident A's personal property in the hospice safe on the 16th February 2017.*

*3. Between around 17th February 2017 and 27th March 2017 kept Resident A's property in a drawer in your desk.*

*4. Your actions as set out in charges 1 and 2 were dishonest in that you had not placed Resident A's property in the safe and deliberately sought to mislead the hospice as to the location of Resident A's personal property.*

*5. On one or more of the following dates removed pregabalin belonging to the hospice from the drug room without permission:*

*(a) 28th February*

*(b) 6th March 2017*

*(c) 8th March 2017*

*(d) 20th March 2017*

*(e) 22nd March 2017*

*6. Your actions as set out in charges 5 (a) – (e) were dishonest [PRIVATE].*

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

The original panel determined the following with regard to impairment:

*“Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional standards. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients’ and the public’s trust in the profession. In this regard the panel considered the judgement of Mrs Justice Cox in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) in reaching its decision...*

*Regarding insight, the panel considered that Miss Dobbin has demonstrated regret and remorse with some understanding of what she should have done. However, Miss Dobbin has not demonstrated insight into the impact of her actions on the public’s view of the profession. Further, she has failed to fully understand the seriousness of her dishonesty. Her dishonest conduct took place on more than one occasion and in two very distinct situations. She has not reflected as to how her conduct impacted upon Resident A or her colleagues.*

*In its consideration of whether Miss Dobbin has remedied her conduct the panel took into account the fact that she is no longer practising as a nurse or working in any other healthcare role. Miss Dobbin has informed the NMC that she has no intention to return to nursing practice and as a consequence has not been able to demonstrate remediation.*

*Further, Miss Dobbin has not properly addressed the dishonesty found in this case. Miss Dobbin has not considered the effect of her behaviour on Resident A. In any event dishonesty is difficult to remediate.*

*Taking all of this into account the panel is of the view that there is a risk of repetition.*

*The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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, in this case, a finding of impairment on public interest grounds is required.*

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

The original panel determined the following with regard to sanction:

*"The panel applied the principle of proportionality and balanced the public interest with Miss Dobbin's own interest. The panel must impose the least restrictive sanction necessary to protect the public and satisfy the wider public interest. The public interest includes declaring and upholding standards of professional conduct and behaviour and maintaining public confidence in the profession and in the NMC as its regulator. The purpose of sanction is not to be punitive although it may have a punitive effect.*

*The panel took account of the aggravating and mitigating factors which it identified as being relevant to the case as follows:*

*The aggravating features in this case are:*

- Miss Dobbin was a senior nurse in a position of trust and acting as a role model to other nurses.*
- There were three episodes of dishonesty.*

*The mitigating features of this case are:*

- Partial admissions to some of the incidents during the internal investigatory process and subsequently.*
- An unblemished 20 year career as a nurse.*
- Some evidence of remorse and insight.*
- Miss Dobbin's difficult personal circumstances at the time.*

*The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months with a review to be held before the expiry of the order. The effect of this order is that the NMC register will show that Miss Dobbin's registration has been suspended.*

*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.*

*Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the sanctions guidance (SG), 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 considered that Miss Dobbin's misconduct was not at the lower end of the spectrum and that a caution order 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 impose a caution order.*

*The panel next considered whether placing conditions of practice on Miss Dobbin'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 is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case.*

*The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates that a suspension order may be appropriate where there is:*

- No evidence of harmful or deep-seated attitudinal problems*
- No repetition of behaviour since the incidents*
- No risk of patient harm*

*Miss Dobbin is an experienced senior nurse whose misconduct occurred over a short period of time in a previously unblemished career. At the time Miss Dobbin was under stress due to challenging personal circumstances.*

*The panel has therefore determined that a suspension order is appropriate and proportionate. The panel exercised its own independent judgment in coming to this decision but did note that the NMC in its Statement of Case proposed this sanction.*

*The panel gave serious consideration as to whether a striking-off order would be appropriate and proportionate in this case. Whilst some of Miss Dobbin's misconduct was calculated and premeditated the panel did not consider it to be indicative of a harmful or deep-seated attitudinal problem given her long and unblemished career in nursing. Taking account of all the information before it and Miss Dobbin's difficult personal circumstances at the time the panel concluded that a striking off order would be disproportionate.*

*Whilst the panel acknowledges that a suspension order may have a punitive effect, it would be unduly punitive in Miss Dobbin'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 to address the public interest in this case.*

*The panel noted the hardship such an order will inevitably cause Miss Dobbin. However this is outweighed by the public interest in this case.*

*The panel considered that this order is necessary to 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 12 months was appropriate in this case to mark the seriousness of the misconduct.*

*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 may be assisted by evidence of:*

- Miss Dobbin's attendance at the review hearing to update that panel as to her personal circumstances;*
- A written reflective account demonstrating an in-depth understanding of the impact her actions have had on the public and her colleagues;*
- In the event that Miss Dobbin does secure employment in a healthcare setting references attesting to her integrity from senior nurses or colleagues who are aware of her misconduct and this panel's findings."*

## **Decision and reasons on current impairment**

The panel today has considered carefully whether Miss Dobbin'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 judgement as to current impairment. The panel heard and accepted the advice of the legal assessor.

The panel has had regard to all of the documentation before it, including the NMC bundle and the email from Miss Dobbin, dated 12 December 2019. It has taken account of the submissions made by Mr Kennedy on behalf of the NMC.

Mr Kennedy provided the panel with the background to Miss Dobbin's case and invited the panel to make a finding that Miss Dobbin's fitness to practice remains impaired. He submitted that there was no evidence from Miss Dobbin which showed she had developed any further insight into the impact of her conduct found proved. Further, he noted there was no evidence of any remedial steps undertaken by Miss Dobbin. Mr Kennedy drew the panel's attention to the email from Miss Dobbin, dated 12 December 2019, where he noted that Miss Dobbin did not see herself returning to nursing. He therefore submitted that there were no new circumstances which could eliminate the risk of repetition of the conduct found proved. Mr Kennedy therefore invited the panel to make a finding of impairment on both public protection and public interest grounds.

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 Dobbin's fitness to practise remains impaired.

The panel noted it had no evidence before it that Miss Dobbin had remediated her practice or developed further insight in relation to the facts found proved. The panel considered that notwithstanding the email from Miss Dobbin, dated 12 December 2019, she had not engaged further with the NMC. The panel noted that she had not provided any new information which the original panel considered would be of assistance to this panel in reviewing the order. Specifically, the panel noted that Miss Dobbin had not provided a written reflective account and was currently not working in a healthcare setting. Accordingly, no references or testimonials were provided.

Consequently, this panel had no new information from Miss Dobbin that she had kept her skills and knowledge up to date. It was unable to conclude that the risk of repetition had reduced. The panel therefore found that Miss Dobbin's fitness to practise is currently impaired on public protection grounds.

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, in light of the original findings, a finding of continuing impairment on public interest grounds is also required.

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

### **Decision and reasons on sanction**

Having found Miss Dobbin'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 and the risk of repetition identified. 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 Miss Dobbin's practice would not be appropriate in the circumstances. The panel considered that Miss Dobbin'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 a conditions of practice on Miss Dobbin'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 a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Miss Dobbin's misconduct, particularly given the dishonesty charges found proved.

The panel has received information that Miss Dobbin has not been working as a nurse or in a care setting. She does not intend to return to practise as a nurse. In view of Miss Dobbin's clear settled intention not to return to nursing, the panel considered that any conditions of practice order would not be workable and would serve no useful purpose.

The panel next considered imposing a further suspension order. The panel noted that Miss Dobbin has shown some degree of remorse for her misconduct. However, Miss Dobbin has not demonstrated any sufficient insight into her serious failings. The panel was of the view that some evidence would be required to show that Miss Dobbin 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 Miss Dobbin from practising in the future and concluded that the only proportionate sanction that would adequately protect the public and serve the public interest was a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 30 January 2020 in accordance with Article 30(1).

This decision will be confirmed to Miss Dobbin in writing.

That concludes this determination.