

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

Substantive Order Review Meeting

30 July 2019

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant: Ms Janet Sheila Cullen

NMC PIN: 77A0080E

Part(s) of the register: Registered Nurse – sub part 1
Adult Nursing (15 February 1993)
Registered Nurse – sub part 2
Adult Nursing (22 January 1979)

Area of Registered Address: England

Type of Case: Misconduct

Panel Members: Edward Lucas (Chair, Lay member)
Deborah Hall (Registrant member)
Colin Sturgeon (Lay member)

Legal Assessor: John-Bromley Davenport

Panel Secretary: Anjeli Shah

Order being reviewed: Suspension Order for 12 months

Fitness to Practise: Impaired

Outcome: Striking-Off Order to come into effect at the
end of 11 September 2019 in accordance with
Article 30 (1)

Decision on Service of Notice of Meeting:

Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (“the Rules”) state:

‘11A.(1) Where a meeting is to be held in accordance with rule 10(3), the Fitness to Practise 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.(3) Any other notice or document to be served on a person under these Rules may be sent by—
(a) ordinary post’*

The panel considered whether notice of this meeting has been served in accordance with the Rules.

Notice of this meeting was sent to Ms Cullen’s registered address on 1 May 2019 by recorded delivery and first class post. The panel is satisfied that the notice was sent at least 28 days in advance of this meeting. The panel therefore finds that notice has been served in accordance with the Rules.

The panel also noted that notice of this meeting was delivered to Ms Cullen’s registered address on 2 May 2019.

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 11 September 2019 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (“the Order”).

This is the first review of a suspension order, originally imposed by a Fitness to Practise panel on 13 August 2018 for 12 months. The current order is due to expire at the end of 11 September 2019.

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 whilst working a nightshift on 23/24 May 2017 at Elderholme Nursing Home:

1. *Attended work under the influence of alcohol;*
2. *Attended work whilst unfit for duty;*
3. ...

That you, a registered nurse:

4. *[PRIVATE]*

The original substantive meeting panel determined the following with regard to impairment:

“The panel finds that Ms Cullen’s actions engaged parts a, b, and c of the above test. It considered that her fitness to practise was impaired at the time of events as she attended work whilst under the influence of alcohol and therefore put

vulnerable patients at risk of harm. The panel determined that it is clear that Ms Cullen brought the nursing profession into disrepute and in doing so breached fundamental tenets of the profession.

The panel considered whether Ms Cullen's fitness to practise is currently impaired. She has not engaged with these NMC proceedings since November 2017, she has not provided any information to suggest that she has demonstrated full insight. The panel took into account Ms Cullen's email to the NMC dated 12 November 2017 in which she says: "I made a hugely bad error when I took to work a miniature gin." However, she then goes on to say: "But I was under extreme pressure when this happened". The panel therefore considered this to demonstrate very limited insight.

Ms Cullen also states in her email "I am choosing to continue as a carer and not revalidate because I love caring." The panel considered that she has not provided any evidence of remediation concerning the matters found proved.

For these reasons, the panel found that there is a serious 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 both public protection and public interest grounds was required.

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

The original substantive meeting panel went on to determine the following with regard to sanction:

“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 the seriousness of the case requires temporary removal from the register in order to protect the public and uphold public confidence in the profession but where the misconduct is not fundamentally incompatible with remaining on the register.

The panel determined that, although there had been a clear breach of fundamental tenets of the profession, Ms Cullen had been a nurse since 1979 with no other concerns relating to her practice. Whilst the panel determined that there was a serious risk of repetition, a period of suspension would allow Ms Cullen to reflect on her behaviour, engage with the NMC, and identify how best to remedy her practice should she wish to return to practise as a registered nurse.

The panel noted the hardship such an order may cause Ms Cullen. However this is outweighed by the public interest in this case.

The panel further considered whether a striking-off order would be proportionate in Ms Cullen’s case. Taking account of all the information before it, the panel concluded that, at this time, a striking-off order would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in her case to impose a striking off order.

Balancing all of these factors, the panel has concluded that a suspension order for a period of 12 months would be the appropriate and proportionate sanction.

The panel determined that a suspension order for a period of 12 months was necessary to protect the public and appropriate 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 will have the full range of sanctions available, including a striking off order.

Any future panel may be assisted by evidence of:

- References and testimonials from current or recent employers
- [PRIVATE]
- A reflective piece, demonstrating Ms Cullen's understanding of the impact of her misconduct found proved in charge 1, 2, and 4 on:
 - i) Vulnerable patients in her care
 - ii) Colleagues, in particular unregistered care workers
 - iii) The reputation of the nursing profession"

Decision on current fitness to practise

This panel has considered carefully whether Ms Cullen'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 had regard to all of the documentation before it, including a note of a telephone call between Ms Cullen and the NMC dated 21 March 2019.

The panel 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 Ms Cullen's fitness to practise remains impaired.

The panel considered that there had been no material change of circumstances since the original substantive meeting. Ms Cullen had not addressed the recommendations made by the previous panel, nor had she demonstrated any evidence of remorse, insight and remediation into her failings. The panel had regard to the telephone note dated 21 March 2019. [PRIVATE] The telephone note recorded the following:

“Ms Cullen apologised and said she was meant to get back to me and inform me that [PRIVATE] she is retired and will not be renewing her pin.

Ms Cullen says that she does not want the NMC to continue to waste time and money on her case as she will not be participating in the process, therefore, the NMC should do what they have to do and end the process as quickly as possible.”

Aside from this correspondence, Ms Cullen had not engaged with the NMC's proceedings since the original substantive meeting. The panel therefore considered that a risk of repetition remains. The panel determined that a finding of impairment remains necessary on the grounds of public protection.

The panel bore 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 also determined that a finding of impairment is necessary on public interest grounds, in order to maintain confidence in the nursing profession and in the NMC as a regulator.

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

Determination on sanction

Having found Ms Cullen'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 also took into account the NMC's Sanctions Guidance ("SG") and bore 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 to allow the current order to lapse on expiry. The panel had regard to the NMC's guidance on allowing orders to expire when a nurse or midwife's registration will lapse. The panel noted that Ms Cullen's fee had expired in January 2018, and therefore if the current order were to lapse on expiry, Ms Cullen's registration would lapse and she would be removed from the register. This would prevent Ms Cullen from practising as a registered nurse, and this panel's finding on impairment could be drawn to the attention of any future decision maker should Ms Cullen submit an application for readmission to the register. This would provide an additional safeguard to maintain public protection.

The panel considered that whilst, in these circumstances, taking no action and allowing the current order to lapse on expiry may protect the public, it would not be in the wider public interest. The panel had regard to the seriousness of Ms Cullen's failings, which involved attending work whilst under the influence of alcohol and whilst unfit for duty [PRIVATE]. Ms Cullen had indicated that she has retired, that she will not be participating in the process and she would like the process to end as quickly as possible. However, the panel was not satisfied that she had demonstrated a clear, expressed and consistent intention not to return to nursing. It noted that the only time she indicated she had retired was in the telephone call on 21 March 2019, and otherwise she had disengaged from the proceedings. In these circumstances, the panel concluded that taking no action and allowing the current suspension order to lapse on expiry would fail to uphold confidence in the nursing profession and in the NMC as a regulator.

The panel then considered whether to impose a caution order but concluded that this would also be inappropriate in view of the risk of repetition identified and the

seriousness of the case. Imposing a caution order would not restrict Ms Cullen's practice. The panel determined that imposing a caution order would not protect the public and it would not satisfy the public interest.

The panel then considered whether to impose a conditions of practice order. The panel had regard to Ms Cullen's lack of engagement with these proceedings, and the fact that she had not demonstrated evidence of insight and remediation into her failings. The panel considered that there was no evidence to suggest that Ms Cullen would be able or willing to comply with conditions of practice. The panel concluded that it would not be possible to formulate practicable or workable conditions which would adequately protect the public and satisfy the public interest.

The panel then considered whether to impose a further period of suspension. Whilst a suspension order would protect the public, the panel noted that the previous panel imposed a suspension order, and made clear recommendations as to what this panel may be assisted by. Ms Cullen had failed to address any of those recommendations and had communicated to the NMC [PRIVATE] that she has retired and that she will not be participating in these proceedings. The panel therefore considered that imposing a further suspension order would serve no useful purpose, as there was no evidence to suggest that it would serve to facilitate Ms Cullen's return to safe and effective practice.

The panel determined that it was now necessary to take action to prevent Ms Cullen from practising in the future and concluded that the only sanction that would adequately serve the public interest was a striking-off order.

This decision will be confirmed to Ms Cullen in writing.

That concludes this determination.