

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Hearing

24 October 2019

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

Name of registrant: Reka Tapster

NMC PIN: 9613332E

Part of the register: Registered Nurse – Sub Part 1
Adult nursing – level 1 – September 1999
Children’s nursing – level 1- December 2001

Area of Registered Address: Hampshire

Type of Case: Misconduct

Panel Members: Paul Morris (Chair, Lay member)
Nicola Jackson (Lay member)
Beth Maryon (Registrant member)

Legal Assessor: Ben Stephenson

Panel Secretary: Anita Abell

Mrs Tapster: Present and not represented

Nursing and Midwifery Council: Represented by Matt Cassells, Case Presenter

Order being reviewed:	Suspension order for 12 months
Fitness to practise:	Impaired
Outcome:	Impose a striking off order to take effect from the end of 28 October 2019.

Decision and reasons on review of the current order

The panel decided to impose a striking off order to take effect from the end of 28 October 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second review of an order, imposed by a panel of the Conduct and Competence Committee on 4 April 2016. That order was a striking off order. You lodged an appeal on 3 March 2017 when the decision of the Conduct and Competence Committee in relation to sanction was quashed by the High Court. The striking off order was replaced with a 12 month suspension order on 3 March 2017.

You applied on 13 October 2017 to re-open your appeal and on 29 June 2018 applied for leave to appeal to the Court of Appeal. Both applications were refused.

The substantive order of 12 months became active on 29 June 2018 and was reviewed by a panel of the Fitness to Practise Committee on 4 June 2019 when a further suspension order was imposed for a period of four months. On 18 June 2019 you appealed this decision. That appeal is awaiting a court listing date.

A panel of the Fitness to Practise Committee met on 25 September 2019 to review the four month suspension order imposed on 4 June 2019. That hearing did not proceed.

The current suspension order is due to expire at the end of 28 October 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, whilst employed by the Isle of Wight NHS Trust as a Staff Nurse at St Mary's Hospital, between 2004 1999 and August 2014:

1. ...

2. *On 2 July 2014, sent an email and attachment(s) containing confidential patient information to one or more of the email recipients listed in Schedule 1*

3. *Sent the email and attachment(s) referred to above at Charge 2: -*

3.1. *from a non-NHS and/or unsecure email account;*

3.2. *to one or more non-NHS and/or unsecure email addresses;*

3.3. *containing potentially identifiable personal data of one or more patients;*

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

Decision and reasons on review of the current order on 4 June 2019

Decision on current fitness to practise

This panel has considered carefully whether Mrs Tapster'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.

This panel has had regard to all of the documentation before it. It has taken account of the submissions made by Mr Cassells on behalf of the NMC and Mrs Tapster's written submissions.

Mr Cassells explained the background of Mrs Tapster's case. He referred the panel to the decision of the original CCC panel on 4 April 2016 and the transcript from the High Court hearing on 2 March 2017 (the transcript). Mr Cassells referred the panel to the following within the transcript:

'MR JUSTICE HAYDEN: I am making a 12-month suspension order. Ms Tapster, you have heard what I had to say. These are serious issues. They are capable of causing real distress to people who are already in vulnerable circumstances and no nurse should ever do that. I have given you an opportunity over 12 months to show that you can reflect on what you have done in the hope that you may be able to return to your profession and contribute, as you manifestly have been able to in the past. But it will be only if you have addressed those issues in the way that they are

required to be addressed. That is down to you. This is a second chance for you today. It's up to you as to whether you take it or not. Thank you.'

Mr Cassells also referred the panel to a letter, dated 4 May 2019, from Mrs Tapster which stated:

'I can assure the committee that I will never again email anonymised patient information to regulating authorities, (or anyone), to raise concerns about severe patient harm. I now know that it is seen as unacceptable and "deplorable" conduct, worthy of severe punishment.

I apologise for my earlier belief that the risk of severe, preventable patient harm would justify my email to raise the awareness of regulating authorities, who may prevent it. I now understand that the risk to patient confidentiality outweighed the risk of ongoing patient harm at the Isle of Wight NHS Trust, where I was employed at the time.

Since the resulting risk to patient confidentiality is deemed capable of impairing professional nursing practice, I suggest that the NMC Code makes all Registrants aware that such practice is prohibited and punishable under the NMC's disciplinary rules. Prior to my punishment I was unaware of the prohibition because it was never prescribed.'

Mr Cassells agreed that, as stated in the transcript, the original charges may not appear as a striking off case. However, he submitted that there were issues with Mrs Tapster's lack of insight and her attitude. Mr Cassells invited the panel to consider that these issues remain at today's hearing. He submitted that Mrs Tapster has not

addressed the previous panel's concerns nor has she demonstrated that she has taken into account Mr Justice Hayden's comments.

Mr Cassells submitted that Mrs Tapster has shown no evidence that she has reflected and developed insight into her previous failings and the impact on patients of sending confidential emails to unsecure email addresses. He added that the final paragraph of Mrs Tapster's letter demonstrated not only a lack of reflection but a lack of reading the original panel's decision which set out what paragraphs of the NMC's Code she had breached.

Mr Cassells reminded the panel that it is for Mrs Tapster to persuade the panel that she has dealt with the issues in her practice. He submitted that Mrs Tapster has shown a worrying lack of engagement in her own case and a worrying lack of insight into patient confidentiality. He submitted that this panel could have no confidence that Mrs Tapster has remedied her practice and therefore there remains a risk of repetition and current impairment.

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 was of the view that there was no evidence that Mrs Tapster had reflected on the consequences of her actions and the risk to patients. It noted that there was no sign of remorse from her. The panel took into account that in an email, dated 7 May 2019, Mrs Tapster stated 'I can only confirm that I will refrain from repeating the

conduct for which I am punished', however there was no insight into the importance of patient confidentiality.

The panel was of the view that Mrs Tapster could have provided evidence that she had surrendered or destroyed the 'personal book' which was still in her possession at the time of the original hearing. However, there was no evidence of this.

The panel noted Mrs Tapster's letter, dated 4 May 2019, and was of the view that the tone of the letter did not satisfy the panel that Mrs Tapster was genuine in her remarks. It took into account that it contained no insight, no reflection and no remorse. The panel was satisfied that there was no evidence that Mrs Tapster has remediated her failings. In light of this the panel determined that she remains liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

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, in this case, a finding of continuing impairment on public interest grounds is required.

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

Determination on sanction

Having found Mrs Tapster'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) 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 or to impose a caution order but concluded that these 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 or to impose a caution order.

The panel considered whether conditions of practice would be appropriate but concluded that it would not be as there is no evidence of issues with Mrs Tapster's clinical practice. Further, she has not demonstrated that she would be willing to comply with conditions.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mrs Tapster further time to reflect on her previous failings. It considered that Mrs Tapster needs to demonstrate that she has gained a full understanding of the impact that breaching patient confidentiality can have on patients, their families and the wider nursing profession. The panel concluded that a further 4 month suspension order would be the appropriate and proportionate response and would afford Mrs Tapster adequate time to develop her insight and remediation.

Whilst it was raised during the course of the High Court hearing, the panel had no direct evidence to confirm that Mrs Tapster had been given advice as to what a reviewing panel might look for to satisfy itself that she has demonstrated insight and remediation. The panel wished to advise Mrs Tapster that the reviewing panel, if not satisfied that she has demonstrated insight and remediation, may make a striking-off order.

A future panel may be assisted by:

- *Evidence of knowledge of General Data Protection Regulation (GDPR)*
- *Evidence of insight into the importance of patient confidentiality and her duties under the NMC Code in relation to this*
- *Evidence of knowledge of her duties under the Code to protect patients by raising concerns and/or whistleblowing in line with local and national guidance*
- *A robust reflection demonstrating an understanding of why her actions were inappropriate and their impact on patients, colleagues and the wider nursing profession*
- *Attendance in person or via video link or telephone*

Decision on current fitness to practise 24 October 2019

The panel today has considered carefully whether your 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 substantive panel. However, it has exercised its own judgment as to current impairment.

The panel has had regard to all of the documentation before it, the submissions made by Mr Cassells, on behalf of the NMC, your submissions and the evidence you gave to the panel.

Mr Cassells outlined the background of the case to the panel along with the outcome of the substantive hearing, the various appeal applications and the outcome of the substantive review hearing held in June 2019. He drew particular attention to the

recommendations of the last reviewing panel as to what information it suggested would be of benefit to this panel.

You made submissions to the panel and gave evidence. The panel listened carefully to your submissions and your evidence and weighed them against the recommendations of the previous reviewing panel. The panel concluded that both your submissions and evidence did not focus on the situation today. Instead you constantly referred back to the findings made against you and what you considered to be injustices suffered by you. On more than one occasion you described the key witness at the substantive hearing as “lying” and victimising you.

You told the panel of the research you have done into General Data Protection Regulations (GDPR) and other legislative matters. You told the panel that you would never send an email with patient details from a non-secure account again. You also said that you “never accept it was misconduct” and “I don’t see how my actions impair my fitness to practise” referring to the finding made against you in 2016.

You spoke of a nurse that you had referred to the NMC and whose case did not proceed to a hearing. You alleged this was because she was born in this country and you were not.

You also made derogatory remarks about the NMC and Mr Cassels. The Chair informed you he would not tolerate such disrespect. You continued in a similar vein and the Chair then issued you with a warning.

The panel accepted the advice of the legal assessor. He reminded the panel of the cases of *Yusuff v GMC* [2018] EWHC 13 and *Blakely v GMC* [2019] EWHC 905. In those cases the court made clear that:

“1) findings of fact are not to be reopened

2) a registrant is entitled not to accept the findings of a tribunal...

3) admitting misconduct is not a condition precedent to establishing that a registrant understands the gravity of the offending and is unlikely to repeat it

4) when considering whether fitness to practise remains impaired it is relevant for a tribunal to know whether or not the registrant now admits the misconduct....

The essential question is how to reconcile the need to ensure that the [doctor] in question has acquired the requisite insight into his or her conduct so that there would not be an unacceptable risk of repetition with the fact that a [doctor] cannot be required to accept that he or she has had done something when this is denied”.

When considering your current fitness to practise the panel concluded that you clearly remain distressed by the incidents which led to the NMC proceedings. The panel found that you gave evidence that you considered to be truthful, albeit that you are looking at the situation from a very biased perspective. You referred several times to not being dishonest although that was not a charge against you.

Your entire focus during your submissions and evidence was on past events and individuals that you consider responsible for your current situation. Even when asked questions about how others might view your actions you seemed unable to comprehend the concept of how your actions might be perceived by other nurses, and the effect your actions may have on public confidence in the profession. You expressed remorse but entirely in respect of the impact on yourself. You never expressed any remorse for, for example, the parents of the children whose details were contained in your email.

Whilst you have carried out research in relation to GDPR and the Code, again you focused on how you could use narrow interpretations of these documents to support your case rather than on a wider examination of the purpose of these documents.

For this reason the panel concluded you had not properly addressed the first three bullet points specified by the reviewing panel.

The panel examined your reflective piece which, you submitted, addressed the issues raised by the previous substantive review panel. The panel considered that there was no insight or remediation demonstrated in this reflection and it continues to defend your actions and to blame others for your current situation. The panel concluded that you have allowed your sense of grievance and victimisation to overrule any meaningful assessment of the seriousness of your misconduct and its potential consequences.

The panel concluded that you have not demonstrated any insight or remediation nor expressed remorse towards those who may have suffered, or could have suffered, as a result of your actions.

The panel accepted your statement that you would never send a similar email again, and, indeed, you stated that in the future that you would merely complete incident reports and do nothing else. The panel concluded that your lack of understanding of the real concerns in this case, and your conviction that your actions were justified, make you liable to make a similar error of judgement in the future. For these reasons the panel concluded that your fitness to practice remains impaired on the grounds of public protection.

The panel bore 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, in this case, a finding of continuing impairment on public interest grounds is also required.

Determination on sanction

Having found that your 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 30(1) of Order. The panel has also taken into account the NMC guidance on allowing an order to lapse and NMC's Sanctions Guidance (SG). It 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 took into account the submissions of Mr Cassells, your submissions and evidence and the documentary evidence before the panel.

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

The panel has made a finding that your fitness to practise is impaired on the grounds of public protection and public interest. It based this finding on your lack of insight which it concluded could lead you to make similar errors of judgement in the future. For these reasons the panel has concluded that it would not be appropriate to allow the order to lapse on expiry, to take no further action or to issue a caution order. Any of these actions would allow you to practise without restriction when the panel has concerns about the integrity of your practice. Further, the misconduct found proved is serious and you do not appear to have recognised this.

The panel next considered whether it would be appropriate to impose a conditions of practice order. The panel noted that there were no clinical concerns relating to your practice. Rather the issue of concern here relates to your attitude to your previous employer and the NMC. The panel concluded that your lack of insight and inability to review matters dispassionately means that a conditions of practice order is not

appropriate. Further, it would be very difficult to devise conditions which would provide sufficient public protection and prevent repetition of similar misconduct in the future.

The panel next considered whether a further suspension order was appropriate. The panel took into account that apart from the two NMC determinations from the previous hearings, you were also told by Mr Justice Hayden in March 2017:

“These are serious issues. They are capable of causing real distress to people who are already in vulnerable circumstances and no nurse should ever do that. I am giving you an opportunity over 12 months to show that you can reflect on what you have done in the hope that you may be able to return to your profession...But it will be only if you have addressed those issues in the way that they are required to be addressed”.

Further, the panel noted that the reviewing panel in June 2019 stated:

“The panel wished to advise Ms Tapster that the reviewing panel, if not satisfied that she has demonstrated insight and remediation, may make a striking off order”.

This panel concluded that there has been no development of insight since the substantive hearing, which is now some three and a half years ago. Your position is clear that you have been wronged by everyone connected with this case and your views have not shifted. In all the circumstances the panel concluded that a further suspension order is neither sufficient nor proportionate.

The panel concluded that public confidence in the profession and the regulator is at risk if the panel allows you to remain on the register after the lengthy period you have had to remediate concerns, and that your attitude raises fundamental questions about your professionalism. The panel therefore concluded that a striking-off order is

the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards.

This decision will be confirmed to you in writing.

That concludes this determination.