

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

**5 August 2020**

Virtual Hearing

<b>Name of registrant:</b>	Mary Edwards
<b>NMC PIN:</b>	74E0445E
<b>Part(s) of the register:</b>	Registered Nurse – sub part 2 Adult Nursing – 7 June 1976 Registered Nurse – Sub Part 1 Adult Nursing – 3 November 1997
<b>Area of Registered Address:</b>	England
<b>Type of Case:</b>	Misconduct
<b>Panel Members:</b>	Florence Mitchell (Chair, Registrant member) Lorraine Shaw (Registrant member) Claire Corrigan (Lay member)
<b>Legal Assessor:</b>	Karen Rea
<b>NMC:</b>	David Claydon, on behalf of the NMC
<b>Registrant:</b>	Not present or represented
<b>Panel Secretary:</b>	Aoife Kennedy
<b>Order being reviewed:</b>	Suspension order (4 months)
<b>Fitness to Practise:</b>	Impaired
<b>Outcome:</b>	Striking-off order to come into effect immediately in accordance with Article 30(2)(4) of the Nursing and Midwifery Order 2001

## **Decision and reasons on service of Notice of Hearing**

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

The panel noted that under the recent amendments made to the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended) (“the Rules”) during the COVID-19 emergency period, notice of hearing may be sent to a registrant’s registered email address.

The panel was informed that notice of this hearing was sent to Mrs Edwards on 25 June 2020 to her email address on the register.

The panel took into account that the Notice of Hearing provided details of the order being reviewed, the time, date and venue of the hearing and, amongst other things, information about Mrs Edwards’ right to attend, be represented and call evidence, as well as the panel’s power to proceed in her absence. It was also sent in accordance with the 28 day notice period rule.

Mr Claydon, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 2B, 11 and 34 of 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 Mrs Edwards has been served with notice of this hearing in accordance with the requirements of Rules 2B, 11 and 34.

## **Decision and reasons on proceeding in the absence of Mrs Edwards**

The panel next considered whether it should proceed in the absence of Mrs Edwards. It had regard to Rule 32 and heard the submissions of Mr Claydon who invited the panel to continue in the absence of Mrs Edwards. Mr Claydon drew the

panel's attention to telephone notes from attempts to contact Mrs Edwards dated 4 August 2020.

Mr Claydon referred the panel to an email from Mrs Edwards to the NMC dated 1 April 2020, sent in advance of her previous review hearing in which she indicated that she did not wish to return to nursing. He submitted that, in light of Mrs Edwards' previous communications, the panel may reasonably infer that Mrs Edwards does not intend to return to nursing and does not intend to engage with these proceedings.

Mr Claydon submitted that Mrs Edwards should be aware of today's hearing and has not engaged. He informed the panel that Mrs Edwards has not engaged with the NMC throughout these proceedings and has made her intention clear in the past that she does not wish to return to practice as a registered nurse. In the circumstances he submitted that there is no indication that Mrs Edwards wishes to attend today's hearing and that an adjournment would serve no purpose.

The panel accepted the advice of the legal assessor.

The panel decided to proceed in the absence of Mrs Edwards. In reaching this decision, it considered the submissions of Mr Claydon and the advice of the legal assessor. It had particular regard to the relevant case law and to the overall interests of justice and fairness to the parties, including proceeding with the utmost care and caution.

The panel took the view that Mrs Edwards has engaged up to her reflective piece on 1 April 2020. Although, subsequently she has not engaged further. The panel further noted that:

- Mrs Edwards has had limited engagement with the NMC
- She has not made an application for an adjournment;
- There is no reason to suppose that adjourning would secure Mrs Edwards' attendance at some future date; and

- There is a strong public interest in the expeditious review of the case.

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

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

The panel decided to impose a striking-off order. This order will come into effect immediately in accordance with Article 30(2)(4) of the 'Nursing and Midwifery Order 2001' (as amended) (the Order).

This is the second review of a substantive suspension order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 11 October 2019. The order was reviewed on 3 April 2020 and a further suspension order was imposed for a period of 4 months.

The current order is due to expire at the end of 11 September 2020.

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

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

1. *On 31 January 2018:  
Stole Diazepam ... from a drawer of the drugs cupboard on Lipton Ward.*
2. *On 10 ... February 2018:  
Stole Diazepam ... from a drawer of the drugs cupboard on Lipton Ward.*
3. *On 22 February 2018:  
Stole Diazepam ... from a drawer of the drugs cupboard on Lipton Ward.*
4. *On an unknown day in February 2018:  
Stole Diazepam ... from a drawer of the drugs cupboard on Lipton Ward.*

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

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

*“The panel noted that Mrs Edwards had engaged with the NMC proceedings from the outset. She admitted to appropriating the drugs, made a self-referral and co-operated with the process. The original panel considered her dishonesty to be at the lower end of the spectrum and was of the view that the 6 months suspension order was sufficient to mark the seriousness of the concerns raised.*

*The panel noted that the original panel found that Mrs Edwards had demonstrated some insight. At this hearing the panel found that Mrs Edwards was still developing insight but she had yet to sufficiently reflect on the cause of her misconduct.*

*The panel had regard to Mrs Edwards’ reflective piece, dated 1 April 2020. It noted that she demonstrated an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession and herself. However, it noted that the reflective piece did not sufficiently address if she would be liable to act dishonestly in the future nor did it sufficiently address the root cause as to what led her to appropriate the controlled drugs in the first place.*

*In its consideration of whether Mrs Edwards’ has remedied her behaviour with regards to controlled drugs. The panel took into account the fact that dishonesty is difficult to remediate. The panel was of the view that her 6 month suspension has marked the seriousness of her dishonesty. It noted that Mrs Edwards mentioned the impact the stress of these proceedings has had on her health. However, she has not provided the panel with any medical information as to how she has dealt with the stress and insufficient information regarding her coping mechanisms. The*

*panel had no information before it pertaining to any support mechanisms she has in place that would help her manage it in the future or what she would do if she found herself in similar circumstances that had led to the misconduct.*

*The original panel determined that Mrs Edward was liable to repeat matters of the kind found proved. Today's panel noted that the allegations are serious and in the absence of any information to suggest that Mrs Edwards is capable of not appropriating controlled drugs it has concluded that the risk to the public remains. In light of this, the panel determined that, without this assurance, Mrs Edwards is still 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 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, a finding of continuing impairment on public interest grounds is also required.*

*For these reasons, the panel finds that Mrs Edwards' fitness to practise remains impaired."*

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

*"The panel next considered whether a conditions of practice order on Mrs Edwards' 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 correspondence from Mrs Edwards', dated 1 April 2020, where she stated her intention to leave the nursing profession. The panel was of the view that the dishonesty identified in this case was not something that can be addressed through conditions of practice. The panel concluded that*

*placing conditions on Mrs Edwards' registration would not adequately address the seriousness of this case, would not protect the public nor meet the public interest.*

*The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mrs Edwards further time to state her future intentions to the NMC. If she wants to retire, she should provide the NMC with evidence of this before the next review of this order. If she changes her mind, then she should provide the NMC with testimonials and medical information stating that she is fit to practice. The panel concluded that a further 4 months suspension order would be the appropriate and proportionate response and would afford Mrs Edwards adequate time to state her intentions to the NMC.*

*The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 4 months would provide Mrs Edwards with an opportunity to, decide what she wants to do, gather the aforementioned information and engage with the NMC. It considered this to be the most appropriate and proportionate sanction available.*

*The panel paid careful attention to the NMC guidance on "Allowing orders to expire when a nurse or midwife's registration will lapse". However, it noted the following:*

*"...The nurse or midwife will need to give the panel a clear explanation of their plans for the future away from nursing or midwifery. Such information is only likely to be available if the nurse or midwife is in contact with us, so it will be important for panels to consider if the nurse or midwife is fully engaging with the process before deciding to take this option..."*

*The panel noted that in absence of a clear explanation, the panel determined that it could not allow the current order to lapse.*

*This suspension order will take effect upon the expiry of the current suspension order, namely the end of 11 May 2020 in accordance with Article 30(1).*

*Before 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 reviewing this case would be assisted by:*

- *Evidence of Mrs Edwards' stated intention to retire/leave the nursing profession having particular regard to the NMC guidance on voluntary removal from the NMC register and retirement;*
- *... ;*
- *A further detailed reflective piece having particular regards to coping mechanisms."*

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

The panel has considered carefully whether Mrs Edward'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 has had regard to all of the documentation before it, including the NMC bundle and Mrs Edwards' reflective piece dated 1 April 2020. It has taken account of the submissions made by Mr Claydon on behalf of the NMC.

Mr Claydon submitted that Mrs Edwards has not engaged with the NMC since her previous review hearing, and there is nothing to suggest that she has demonstrated insight into her misconduct or remediated her practice.

Mr Claydon referred the panel to a reflective piece presented by Mrs Edwards in advance of her previous review hearing, dated 1 April 2020, in which she mentioned her intention to retire from nursing. Mr Claydon reminded the panel of its powers to allow the order to lapse and submitted that Mrs Edwards is only on the register due to the current suspension order and that, should she choose to return to practice, she would have to satisfy the Registrar that she was no longer impaired.

Mr Claydon submitted that a conditions of practice order or a further period of suspension would not be appropriate given Mrs Edwards' lack of engagement and her intention not to return to nursing. He submitted that the panel may consider that a striking-off order requires a high bar to reach in this case, described as 'at the lower end of seriousness of dishonest misconduct'. He submitted that it was for the panel to determine whether that high bar was reached due to the passage of time.

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

In reaching its decision, this 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 Edwards' fitness to practise remains impaired. In doing so the panel considered the following questions:

- 1) Why she did do the acts in question?
- 2) How it impacted on the reputation of the profession and herself?
- 3) If she would be liable to act dishonestly in the future and if not, why not?
- 4) What was the root cause that led her to her appropriation of the controlled drugs in the first place?
- 5) Does she have supporting mechanisms in place in the future to help her manage?
- 6) What would she do if she found herself in similar circumstances that led to this misconduct?

The panel noted that Mrs Edwards has not engaged with NMC proceedings since her previous review hearing. The panel noted the previous reviewing panel's finding that Mrs Edwards was still developing insight but she had yet to sufficiently reflect on the cause of her misconduct.

This panel had sight of Mrs Edwards' reflective piece which she submitted in advance of her previous review hearing, dated 1 April 2020 and agreed with the previous panel's finding that it did not sufficiently address the root cause of her misappropriating controlled drugs, whether she would be liable to act dishonestly in the future, any supporting mechanisms she has, how she would act in the future in similar circumstances, and the effect of her acts on the reparation of the profession and on herself.

In its consideration of whether Mrs Edwards' has remedied her behaviour with regards to controlled drugs, the panel took into account the fact that dishonesty is

difficult to remediate. The panel took into account that the original panel imposed a 6 month suspension order to mark the level of seriousness of Mrs Edwards' dishonesty, which was assessed as at the lower end of seriousness of dishonesty. The previous reviewing panel imposed a further suspension order for a period of 4 months to allow Mrs Edwards to engage with these proceedings and make clear her future intentions with regards to nursing. This panel did not have any new information before it as to Mrs Edwards' potential remediation.

This panel considered that the allegations are serious and, in the absence of any evidence of insight or remediation, it concluded that the risk to the safety, health and wellbeing of the public remains. In light of this, the panel determined that, without this assurance, Mrs Edwards is highly likely to repeat matters of the kind found proved and, thus, continued to pose a risk to the public.

The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

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, a finding of continuing impairment on public interest grounds is also required. Without a full reflective piece from Mrs Edwards, capturing all six points referred to above, the panel concluded that an informed member of the public, knowing that the case involved the theft of a controlled drug by a nurse whilst on duty, would not have the required confidence in the profession or in its regulatory process if Mrs Edwards was to be declared not impaired, and thus fit to practise.

The panel therefore decided that a finding of continuing impairment is necessary on the grounds of the wider public interest.

For these reasons, the panel finds that Mrs Edwards' fitness to practise remains impaired on the grounds of public protection and in the wider public interest.

## **Decision and reasons on sanction**

Having found Mrs Edwards 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. The panel paid careful attention to the NMC guidance on "Allowing orders to expire when a nurse or midwife's registration will lapse". The panel noted the following:

"...The nurse or midwife will need to give the panel a clear explanation of their plans for the future away from nursing or midwifery. Such information is only likely to be available if the nurse or midwife is in contact with us, so it will be important for panels to consider if the nurse or midwife is fully engaging with the process before deciding to take this option..."

In the absence of a full reflective piece and a clear explanation of a plan for a future away from nursing, particularly in light of the concerns raised as to the difficult financial situation Mrs Edwards may face, the panel determined that it was not proportionate or appropriate to allow the current order to lapse. The panel decided that it would be neither proportionate nor in the public interest to take no further action given the seriousness of the case and the risk of repetition identified.

The panel 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 Mrs Edwards' practice would not be appropriate in the circumstances.

The panel next considered whether a conditions of practice order on Mrs Edwards' 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 correspondence from Mrs Edwards', dated 1 April 2020, where she stated her intention to leave the nursing profession. The panel was of the view that the dishonesty identified in this case may be difficult to address through conditions of practice, particularly in light of the absence of a full reflective piece. The panel concluded that placing conditions on Mrs Edwards' registration would not adequately address the seriousness of this case, would not protect the public nor meet the public interest. Further, there was no indication that Mrs Edwards would comply with a conditions of practice order given her stated intention to leave the nursing profession and her lack of engagement with these proceedings.

The panel next considered imposing a further suspension order. It took into account the seriousness of the charges found proved, namely theft of a controlled drug, and Mrs Edwards' continued lack of engagement with the regulatory process. It took into account the previous reviewing panel's reasons that a suspension order would allow Mrs Edwards further time to re-engage with the NMC's proceedings and state her future intentions with regards to nursing. This panel has seen no up to date evidence that Mrs Edwards is willing to engage with these proceedings and remediate her practice. She has not engaged with the NMC since her previous review hearing, and her most recent communication with the NMC, on 1 April 2020, indicated that she does not wish to return to nursing. This panel therefore was not satisfied that Mrs Edwards would make use of a further period of suspension to re-engage. For these reasons, the panel considered that a further suspension order would serve no useful purpose, and would not now be appropriate or proportionate.

The panel then considered whether a striking-off order would be appropriate. In determining this, the panel also took account of the submissions of Mr Claydon as to the 'high bar' required to impose this sanction, and also to the NMC's SG, as follows:

*"This sanction is likely to be appropriate when what the nurse or midwife has done is fundamentally incompatible with being a registered professional."*

*“.....Before imposing this sanction, key considerations the panel will take into account include:*

*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? ...”*

*“Dishonest conduct will generally be less serious in cases of:*

- one-off incidents*
- opportunistic or spontaneous conduct*
- no direct personal gain*
- no risk to patients*
- incidents in private life of nurse or midwife*

*The law about healthcare regulation makes it clear that a nurse or midwife who has acted dishonestly will always be at risk being removed from the register.*

*Nurses and midwives who behaved dishonestly can engage with the Fitness to Practise Committee to show that they feel remorse, that they realise they acted in a dishonest way, and tell the panel that it will not happen again. They can do this in person, through anyone representing them, or by sending information they want the Committee to consider. If they do this, they may be able to reduce the risk that they will be removed from the register.”*

The panel considered Mrs Edwards’ persistent failure to fully demonstrate a commitment to, and engage with, the process of remedying the failings identified in her practice, has led to the conclusion by the panel that Mrs Edwards may never be

likely, willing or able to demonstrate full remediation, even with further extensions to the existing suspension order. Thus, the panel has concluded that the dishonest misconduct, without further reflection and full remediation, is incompatible with remaining on the register. Therefore, the panel determined that the only proportionate and appropriate sanction available to it is that of a striking-off order.

The striking-off order will take effect immediately in accordance with Article 30(2)(4) of the Order, as to delay it under Article 30(1) of the Order until 11 September 2020 would not achieve anything that would be achieved by the extension of the existing suspension order, which the panel has given reasons for not imposing above.

This will be confirmed to Mrs Edwards in writing.

That concludes this determination.