

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

**Substantive Order Review Hearing
7 December 2020**

Virtual Hearing

Name of registrant:	Maria Theresa Coomber
NMC PIN:	76B1923E
Part(s) of the register:	Registered Nurse Adult Nursing (April 1978)
Area of registered address:	Devon
Type of case:	Misconduct
Panel members:	Adrian Ward (Chair, Lay member) Richard Lyne (Registrant member) Nicola Dale (Lay member)
Legal Assessor:	James Holdsworth
Panel Secretary:	Teige Gardner
Nursing and Midwifery Council:	Represented by Sophie Stannard, Case Presenter
Ms Coomber:	Not present and unrepresented
Order being reviewed:	Suspension order (12 months)
Fitness to practise:	Impaired
Outcome:	Striking-off order to take effect immediately in accordance with Articles 30(2) and 30(4)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Coomber was not in attendance and that the Notice of Hearing had been sent to Ms Coomber's registered email address on the 6 November 2020.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and venue of the hearing and, amongst other things, information about Ms Coomber's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Ms Stannard, 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 Ms Coomber 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 Ms Coomber

The panel next considered whether it should proceed in the absence of Ms Coomber. The panel had regard to Rule 21 and heard the submissions of Ms Stannard who invited the panel to continue in the absence of Ms Coomber. She submitted that Ms Coomber had voluntarily absented herself.

Ms Stannard referred the panel to email correspondence between the NMC and Ms Coomber on 19 November 2020, wherein Ms Coomber said that she had retired from the nursing profession and was not going to be in attendance today for this hearing. Ms Stannard submitted that there was no guarantee that adjourning this hearing today would secure Ms Coomber's attendance at a later date.

The panel accepted the advice of the legal assessor.

The panel decided to proceed in the absence of Ms Coomber. In reaching this decision, the panel considered the submissions of Ms Stannard and the advice of the legal assessor. It had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Ms Coomber;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

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

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a striking off order.

This order will come into effect immediately in accordance with Article 30(2) and 30(4) of the 'Nursing and Midwifery Order 2001' (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 13 December 2019.

The current order is due to expire at the end of 13 January 2021.

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:

"That you, a registered nurse,

1. *When notified that resident A appeared unwell and was not eating or drinking, did not,*
 - a. *Assess how much fluid resident A had taken in and what her urine output was*
 - b. *Determine the reason why resident A was not having any food & fluid*
 - c. *Carry out regular checks on resident A*
2. *Did not take any observations for resident A*
3. *Did not instruct other staff to take observations for resident A*
4. *Did not escalate matters when resident A's condition failed to improve*
5. *Did not enquire whether resident A should be hydrated by sub-cutaneous fluids*
6. *Did not ensure resident A's risk assessments, care plans and food/ fluid intake chart were being properly completed*
7. *Did not review resident A's pre-admission assessment*
8. *Did not ensure the risk assessments for resident B were completed within 24 hours of admission*
9. *Did not ensure resident B's food & fluid charts were completed*
10. *Did not ensure bed rail safety checks for resident B were completed accurately*
11. *Did not ensure that the correct procedure for medication administration recording was being followed for resident B*
12. *Did not ensure that all risk assessments for resident C were completed*
13. *Did not ensure wound care for resident C was properly carried out or recorded*

14. Did not ensure that all risk assessments and care plans for resident D were completed”

The original panel determined the following with regard to impairment:

“The panel determined that limbs a, b and c of the Grant test were engaged in Mrs Coomber’s case and found that Resident A, Resident B, Resident C and Resident D were put at risk as a result of Mrs Coomber’s misconduct. Also, Mrs Coomber’s misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that there has been no evidence before the panel that Mrs Coomber has any remorse or insight into her failings. She has not demonstrated an understanding of how her actions put the residents at a risk of harm, nor has she demonstrated an understanding or any reflection as to how to prevent her omissions recurring.

The panel was satisfied that the misconduct in this case is capable of remediation. Therefore, the panel carefully considered the evidence before it in determining whether or not Mrs Coomber has remediated her practice. The panel took into account that there was no evidence before it that Mrs Coomber had taken any steps to remediate her nursing practice.

The panel is therefore of the view that there is a real risk of repetition of the misconduct. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and wellbeing of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

In addition, the panel found that Mrs Coomber was the deputy manager who other registered nurses and staff at the Home looked to for management and supervision. It noted the evidence of Registrant 1 that Mrs Coomber was supposed to be her mentor during her 12 week induction to the Home. She also had a supervisory role for other members of staff. According to her job description, she had clinical supervisory duties to qualified staff in the Home. Her responsibility with regard to these residents was greater than the other less senior registered nurses involved in the incidents in question and thus was in charge of setting standards for the Home. The public interest relating to a vulnerable elderly resident, who was reported to be deteriorating with concerns about their fluid intake, would be high. The panel therefore concluded that the need to uphold proper standards and maintain public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mrs Coomber's fitness to practise impaired on the grounds of public interest.

The panel determined that a finding of impairment on public interest grounds is required in order to mark the seriousness of the misconduct involved in Mrs Coomber, as well as to uphold proper standards of conduct in the nursing profession.

Having regard to all of the above, the panel was satisfied that Mrs Coomber's fitness to practise is currently impaired on both public protection and public interest grounds."

The original panel determined the following with regard to sanction:

"The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where a number of factors are apparent, including:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- No evidence of repetition of behaviour since the incident.*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. The panel was of the view that a suspension order would provide adequate protection to the public and address the public interest

concerns, whilst giving Mrs Coomber an opportunity to engage with the NMC to address the failures and impairment found in this case.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and the mitigating factors, the panel concluded that it would be disproportionate and unduly punitive. The panel was of the view that the public confidence could be retained by the suspension order.

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

The panel noted that any hardship such an order will cause Mrs Coomber is outweighed by the need to protect the public and 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 the maximum period of 12 months was appropriate in this case to mark the seriousness of the misconduct, address the public interest and reflect her position of seniority.

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 reviewing this case, who will make their own independent decision, would be assisted by:

- Mrs Coomber's attendance and engagement with any future NMC proceedings;*
- A reflective piece written by Mrs Coomber;*
- Evidence of any training in record keeping, management and prioritisation of risks in deteriorating patients;*

- *Any positive references or testimonials about her nursing practice;*
- *Evidence from any future employer that she can prioritise concerns and manage risk.*

The panel noted that Mrs Coomber had indicated that she was intending to retire from the nursing profession. The panel considered the recent NMC guidance that in certain circumstances, it might be appropriate to allow an order to expire at a review following a finding of current impairment. The NMC guidance states that this may actually be the best way to protect the public from concerns about a nurse's practice in cases where a nurse has indicated that they no longer wish to continue practising. For any future panel to be able to consider this option, Mrs Coomber must:

- *Engage with the process;*
- *Keep in contact with the NMC;*
- *Give a clear and comprehensive explanation of her plans for her future outside of nursing.”*

Decision and reasons on current impairment

The panel considered carefully whether Ms Coomber's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as Ms Coomber's suitability to remain on the register without restriction. In considering this case, the panel carried out a comprehensive review of the order in light of the current circumstances. Whilst it noted the decision of the last panel, this panel exercised its own judgement as to current impairment.

The panel had regard to all of the documentation before it, including the NMC bundle and the email correspondence between Ms Coomber and the NMC. It has taken account of the submissions made by Ms Stannard on behalf of the NMC. She submitted that the findings of Ms Coomber's last hearing showed that she had put patients at risk of harm. Further, she submitted that Ms Coomber had undermined public confidence in the nursing profession.

Ms Stannard submitted that the previous panel that concluded that Ms Coomber has shown no remorse for her actions and had offered very little insight into her misconduct. Ms Stannard submitted that Ms Coomber had emailed the NMC stating that she had retired, but offered no further information following on from this.

Ms Stannard submitted that there were aggravating features of this case, as the misconduct was replicated over several years. Further, she submitted that Ms Coomber had only engaged minimally with the NMC throughout this process.

Ms Stannard submitted that it would be appropriate for the panel to find that Ms Coomber is still impaired and to allow the order to lapse. Ms Stannard submitted that Ms Coomber's registration has expired, and if the order was allowed to lapse she would be removed from the register.

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 Ms Coomber's fitness to practise remains impaired.

The panel noted that the original panel found that Ms Coomber had lacked any insight into her misconduct. At this hearing it noted that Ms Coomber had not provided the NMC with any new information. The panel was of the view that Ms Coomber had not abided by the previous panel's requirements for Ms Coomber to provide insight into the findings of misconduct brought against her. The panel were mindful that Ms Coomber had emailed the NMC to say that she had retired. However, the panel noted that Ms Coomber had provided very little information regarding her plans following on from retirement.

The panel reminded itself 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 Ms Coomber's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Ms Coomber'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 also considered 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 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.

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 Ms Coomber's practice would not be appropriate in the circumstances. The SG 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 Ms Coomber'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 Ms Coomber'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 Ms Coomber's misconduct. Further, the panel noted that Ms Coomber had little to no engagement with the NMC throughout this process and noted that she had told the NMC she had been retired since August 2019. Under these

circumstances, the panel considered it to be highly unlikely that Ms Coomber would comply with a conditions of practice order.

The panel next considered imposing a further suspension order. The panel noted that Ms Coomber has not shown any remorse, insight or attempts to remediate her misconduct. The panel was of the view that considerable evidence would be required to show that Ms Coomber 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 Ms Coomber from practising in the future and ensure confidence in the profession. It concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order. The panel were mindful of Ms Stannard's suggestion to allow the order to expire. However, the panel determined that allowing the order to expire would undermine public confidence in the nursing professions. Further, the panel noted that Ms Coomber had caused direct harm to a patient. Therefore, the panel noted that the patient's family and the wider public would lose confidence in the nursing profession and the NMC as its regulator, if Ms Coomber was allowed to simply retire. The panel concluded that a striking-off order is the most appropriate outcome for this hearing.

This striking-off order will replace the current suspension order with immediate effect in accordance with Article 30(2) and 30(4).

This decision will be confirmed to Ms Coomber in writing.

That concludes this determination.