

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

**Substantive Order Review Hearing
17 February 2020**

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

Name of registrant: Helen Marie Burnell

NMC PIN: 86Y1810E

Part(s) of the register: Registered Nurse - Sub Part 1
Adult Nurse (October 1990)
Registered Nurse - Nurse Prescribing
(October 2002)

Area of registered address: England

Type of case: Misconduct

Panel members: Jacqueline Alexander (Chair, Lay member)
Deborah Hall (Registrant member)
Amy Noakes (Registrant member)

Legal Assessor: Tracy Ayling QC

Panel Secretary: Alison Martin

Nursing and Midwifery Council: Represented by Richard Webb, Case
Presenter

Mrs Burnell: Not present and not represented

Order being reviewed: Conditions of Practice Order (6 months)

Outcome: Striking-off order to come into effect at the end
of 22 March 2020 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 Mrs Burnell was not in attendance and that the Notice of Hearing had been sent to Mrs Burnell's registered address by recorded delivery and by first class post on 9 January 2020.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Hearing was delivered to Mrs Burnell's registered address on 10 January 2020 and that it was signed for at her registered address.

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 Mrs Burnell's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Webb, 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 Mrs Burnell 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 Mrs Burnell

The panel next considered whether it should proceed in the absence of Mrs Burnell.

The panel had regard to Rule 21(2), which states:

'21.— (2) *Where the registrant fails to attend and is not represented at the hearing, the Committee—*

- (a) *shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;*
- (b) *may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or*
- (c) *may adjourn the hearing and issue directions.'*

Mr Webb invited the panel to continue in the absence of Mrs Burnell on the basis that she had voluntarily absented herself. He told the panel that Mrs Burnell did not engage at the last review hearing.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of Mrs Burnell under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*'. The panel further noted the case of *R (on the application of Raheem) v Nursing and Midwifery Council* [2010] EWHC 2549 (Admin) and the ruling of Mr Justice Holman that:

'...reference by committees or tribunals such as this, or indeed judges, to exercising the discretion to proceed in the person's absence "with the utmost caution" is much more than mere lip service to a phrase used by Lord Bingham of Cornhill. If it is the law that in this sort of situation a committee or tribunal should exercise its discretion "with the utmost care and caution", it is extremely important that the committee or tribunal in question demonstrates by its language (even though, of course, it need not use those precise words) that it appreciates that the discretion which

it is exercising is one that requires to be exercised with that degree of care and caution.'

The panel decided to proceed in the absence of Mrs Burnell. In reaching this decision, the panel considered the submissions of Mr Webb, and the advice of the legal assessor. It had particular regard to the factors set out in the decision of *R v. Jones [2002] UKHL 5* and *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:

- No application for an adjournment has been made by Mrs Burnell;
- Mrs Burnell has not engaged with the NMC for some time and has not responded to any of the letters sent to her about this hearing;
- there is no reason to conclude that adjourning would secure her attendance at some future date;
- the expiry of the order is just under five weeks away; 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 Burnell.

Mr Webb told the panel that he was the panel secretary at a review hearing in November 2018 and submitted that it does not prevent him from presenting this case in a fair way.

The panel accepted the advice of the legal assessor.

The panel noted that the panel secretary is unbiased and plays no part in the decision-making process. It therefore decided that no prejudice would be caused to Mrs Burnell in proceeding with this hearing.

Decision and reasons on review of the current order

The panel decided to impose a striking-off order to come into effect at the end of 22 March 2020 in accordance with Article 30 (1).

This is a review of an order, originally a suspension order, which was imposed by a panel of the Conduct and Competence Committee on 23 August 2016 for nine months. The order was replaced with a conditions of practice order for 18 months at the first review hearing on 8 June 2017. On 29 November 2018, the conditions were varied and continued for nine months. On 12 August 2019, the conditions were extended for a further six months.

The current order is due to expire at the end of 22 March 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, whilst employed by Lakeside Practice as a Nurse Manager/Practitioner between 11 August 2014 and 25 February 2015:

1. *Failed to perform a foot check as part of a diabetic review on one or more of the following occasions:*
 - 1.1. *On 3 November 2014 in respect of Patient 39*
 - 1.2. *On 5 December 2014 in respect of Patient 38*
 - 1.3. *On 12 December 2014 in respect of Patient 37*
 - 1.4. *On 9 January 2015 in respect of Patient 45*
2. *Recorded on one or more of the following occasions that you had performed a foot check as part of a diabetic review when you had not:*
 - 2.1. *On 3 November 2014 in respect of Patient 39*
 - 2.2. *On 5 December 2014 in respect of Patient 38*
 - 2.3. *On 12 December 2014 in respect of Patient 37*
 - 2.4. *On 9 January 2015 in respect of Patient 45*
3. *...*
4. *On one or more of the following occasions, you recorded as "normal" blood glucose test results that were "abnormal":*
 - 4.1. *On 6 January 2015 in respect of Patient 50*
 - 4.2. *On 20 January 2015 in respect of Patient 49*

- 4.3. On 29 January 2015 in respect of Patient 51
5. On 28 January 2015 you recorded a serum cholesterol level of 4.2mmol/L for Patient 26 when no serum cholesterol test had been carried out
 6. On one or more of the occasions set out in Schedule 1 signed prescriptions which you were not qualified to prescribe
 7. On 24 October 2014 issued a prescription to Patient 58, a relative
 8. On 24 October 2014 administered one or more vaccinations to Patient 58, a relative
 9. On one or more days between 1 November and 4 December 2014 you practised as a nurse when your registration with the Nursing and Midwifery Council had lapsed

That you, a registered nurse:

10. ...
11. ...
12. On 29 July 2015 worked at the Northgate Surgery in breach of one of more of the Interim Conditions of Practice Order imposed upon you by the Nursing and Midwifery Council at an Interim Orders Hearing held on 27 July 2015

And, for the reasons stated above, your fitness to practise is impaired by your misconduct.

Schedule 1

1. Signed prescriptions for antibiotics (including antibiotic eye drops, ear drops, creams and tablets) which were outside the Community Prescriber's limited formulary variously to Patients 38, 60, 63, 70, 71, 73, 91, 92, 93, 96, 99, 114, 117-118, 120, 124, 126, 128, 132-187 and 189-195.
2. Signed prescriptions for inhalers and inhaler devices which were outside the Community Prescriber's limited formulary variously to Patients 59, 61, 65, 76, 115, 123, 125, 126, 130 and 184.
3. Signed prescriptions for diabetes medications and equipment (including diabetes tablets, insulin injections, insulin needles, lancets and/or testing strips) which were outside the Community Prescriber's limited formulary, variously to Patients 68, 77, 78, 88, 101, 117, 119 and 129.

4. *Signed prescriptions for steroids (including steroid medications, oral and nasal creams) which were outside the Community Prescriber's limited formulary, variously to Patients 36, 61, 70, 74, 75, 77, 81, 85, 90, 112, 148, 153 and 171.*
5. *Signed prescriptions for antihistamines which were outside the Community Prescriber's limited formulary, to Patients 90, 97, 98, 108 and 122.*
6. *Signed prescriptions for thrush treatments (including creams, pessaries and oral medications) which were outside the Community Prescribers limited formulary, variously to Patients 69, 102, 106. 109 and 110.*
7. *Signed prescriptions for HRT Treatment, which was outside the Community Prescriber's limited formulary, to Patients 67, 84 and 86.*
8. *Signed prescriptions for dressings, which were outside the Community Prescriber's limited formulary to Patients 60, 72 and 79.*
9. *Signed prescriptions for the contraceptive pill, which was outside the Community Prescriber's limited formulary, to Patients 104 and 105.*
10. *Signed prescriptions for Chronic Obstructive Pulmonary Disease ("COPD") medications, which were outside the Community Prescriber's limited formulary, to Patients 76 and 148.*
11. *Signed prescriptions for indigestion medications, which were outside the Community Prescriber's limited formulary, to Patients 80 and 83.*
12. *Signed prescriptions for pain relief, which were outside the Community Prescriber's limited formulary, to Patients 44, 66 and 124.*
13. *Signed prescriptions which were outside the Community Prescriber's limited formulary for:*
 - a. *anti-inflammatory medication and secondary medication to protect the stomach for Patient 131;*
 - b. *blood pressure tablets for Patient 82;*
 - c. *prilocaine, a local anaesthetic, for Patient 127;*
 - d. *benzydamine, a mouthwash, for Patient 113;*
 - e. *simvastin, a cholesterol medication, for Patient 62; and*
 - f. *anusol suppositories for Patient 74.'*

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

'The panel noted that the last reviewing panel found that Mrs Burnell's insight in relation to her misconduct was developing but still had concerns regarding her insight in relation to charge six. Today's panel had not received any further communication from Mrs Burnell addressing those concerns. The panel also had no information before it as to whether Mrs Burnell is currently employed and if so, in what capacity. In light of this, the panel determined that Mrs Burnell remains liable to repeat the matters of the kind found proved if she were to return to unrestricted practise at this time. 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 also required.

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

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

'The panel first considered whether to take no action or to impose a caution order but concluded that this would be inappropriate in view of the ongoing public protection concerns. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered continuing the conditions of practice order. The panel noted that Mrs Burnell has not communicated with the NMC since the last review hearing but that prior to this, Mrs Burnell had engaged and provided submissions before each hearing.

The panel acknowledged the fact that concerns remain in relation to Mrs Burnell's practise as a registered nurse and that those concerns have not yet been fully remediated. The panel noted that the conditions of practice order was

amended by the last reviewing panel, removing the requirement for supervision after hearing submissions from Mrs Burnell that that condition was preventing her from securing employment as a registered nurse. In light of Mrs Burnell's lack of engagement since that time, the panel seriously considered imposing a suspension order. However, it determined that Mrs Burnell should be afforded one further opportunity to comply with the current conditions of practice order and remedy the matters of concern. It found that the current conditions would protect patients during the period they are in force, serve to protect the reputation of the profession and allow Mrs Burnell the chance to secure employment as a registered nurse.

Accordingly, the panel determined, pursuant to Article 30(1) (c) of the Nursing and Midwifery Order 2001, to continue the current conditions of practice order for a period of six months, which will come into effect on the expiry of the current order. It decided that the following conditions remained appropriate and proportionate in this case:

- 1. You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan designed to address the concerns about the following areas of your practice:
 - a. Assessing the limits of your competence as a registered nurse and working within those limits.**
- 2. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every month initially to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan. From the point at which your line manager, mentor or supervisor (or their nominated deputy) is satisfied that you are adhering to your personal development plan and are practising safely, the regularity of the meetings should be at least every 3 months.*
- 3. You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal*

development plan to the NMC at least 14 days before any NMC review hearing or meeting.

- 4. You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.*
- 5. You must disclose a report not more than 28 days old from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to any current and prospective employers (at the time of application) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.*
- 6. You must notify the NMC within 14 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.*
- 7. You must inform the NMC of any professional investigation started against you and/or any professional disciplinary proceedings taken against you within seven days of you receiving notice of them.*
- 8. You must within 14 days of accepting any post or employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.*
- 9. You must within 14 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact*

details of the individual/organisation with whom you have entered into the arrangement.

10. You must immediately inform the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures, and disclose the conditions listed at (1) to (9) above, to them:

- a. Any organisation or person employing, contracting with, or using you to undertake nursing work;*
- b. Any agency you are registered with or apply to be registered with (at the time of application);*
- c. Any prospective employer (at the time of application) where you are applying for any nursing or midwifery appointment; and*
- d. Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application).'*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Burnell'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. It has taken account of the submissions made by Mr Webb on behalf of the NMC. He submitted that all of the charges found proved were found to have amounted to misconduct and that the previous panel found that in respect of charges 1, 2, 4, 5, 7 and 8, the risk of repetition was low and that consequently Mrs Burnell was not impaired on the basis of those charges. Mr Webb submitted that in view of the finding of impairment on charges 6, 9 and 12, the risk of repetition remained. He drew the panel's

attention to the recommendations made by the previous panel that a future reviewing panel would be assisted by Mrs Burnell's attendance, a testimonial from any current line manager and an updated reflective piece covering the area of prescribing. He told the panel that there is no new information before it today and that Mrs Burnell has not complied with the recommendations. This is the fourth review; there has been no engagement by Mrs Burnell since the second review hearing on 29 November 2018 and that the risk of repetition remained. In respect of sanction, Mr Webb submitted that in light of Mrs Burnell's continued disengagement and lack of insight, the panel may wish to consider whether a striking-off order is now necessary, bearing in mind the public interest in ending proceedings and in the unnecessary costs of a registrant who has chosen not to engage. Mr Webb further submitted that the panel may decide that this is not necessary but that a suspension order may be a final opportunity for Mrs Burnell to re-engage.

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 Mrs Burnell's fitness to practise remains impaired.

The panel noted that Mrs Burnell has not provided the NMC with any evidence of additional relevant training she has undertaken, nor has she provided a reflective piece or an up to date testimonial.

The panel had regard to the facts found proved in respect of charges 1, 2, 4 and 5. It noted that Mrs Burnell has not practised as a nurse for five years and despite being offered a number of opportunities to practise with conditions, Mrs Burnell has provided no new information to suggest that she has kept her knowledge and skills up to date. The panel was of the view that given the passage of time Mrs Burnell's nursing knowledge and skills will have diminished. Taken together with her lack of insight and remediation, the risk of repetition has increased.

The panel considered charges 6, 9 and 12 and it was of the view that it has no new information before it that changes the original panel's findings on impairment and consequently the risk of repetition remained.

In light of this, the panel determined that in respect of the facts found proved in charges 1, 2, 4, 5, 6, 9 and 12, Mrs Burnell remains liable to repeat the matters of the kind found proved if she were to return to unrestricted practice at this time. The panel therefore decided that a finding of current 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 current impairment on public interest grounds is also required.

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

Decision and reasons on sanction

Having found Mrs Burnell'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 ongoing public protection concerns 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 public protection issues and the risk of repetition identified, an order that does not restrict Mrs Burnell'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 Mrs Burnell'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 order would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel has received no new information from Mrs Burnell and noted that she has not communicated or engaged with the NMC since November 2018. While Mrs Burnell did engage and provide submissions at the first two hearings, the panel noted her increasing disengagement as the process has gone along. In view of Mrs Burnell's lack of engagement, 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 suspension order. The panel noted that Mrs Burnell has not provided evidence of any remedial steps taken, nor provided any evidence of insight into her failings or that she has not been employed as a nurse within a clinical setting. Further, Mrs Burnell has not engaged with the NMC proceedings since November 2018, including not engaging in the hearing on 12 August 2019 or this hearing. Mrs Burnell has repeatedly failed to demonstrate developed insight into the concerns around her practice and the panel have identified an increased risk of repetition. In these circumstances the panel determined that a period of suspension would not serve any useful purpose.

The panel was of the view that public confidence in nurses cannot be maintained if Mrs Burnell is not removed from the register. The panel determined that it was necessary to take action to prevent Mrs Burnell from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order. The panel was satisfied that a striking-off order is proportionate in all the circumstances and the seriousness of the charges found proved. The panel therefore directs the Registrar to strike Mrs Burnell's name off the register.

The panel considered whether there were exceptional circumstances in this case, such as a striking-off order should take immediate effect. The panel decided that as Mrs Burnell was absent from this hearing and was not represented, there was no information that she was working as a nurse. There were therefore no exceptional circumstances in this case and the striking-off order would take effect will take effect upon the expiry of the current conditions of practice order, namely the end of 22 March 2020 in accordance with Article 30(1).

This will be confirmed to Mrs Burnell in writing.

That concludes this determination.