

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

**Substantive Order Review Hearing
19 February 2020**

Nursing and Midwifery Council

Name of registrant: Lou Louise Adina Smith

NMC PIN: 11L0366E

Part(s) of the register: Registered nurse – Sub Part 1
Mental Health nursing – January 2012

Area of registered address: Nottinghamshire

Type of case: Misconduct

Panel members: David Newman (Chair, lay member)
Carole Panteli (Registrant member)
Gregory Hammond (Lay member)

Legal Assessor: Mark Piercy

Panel Secretary: Ruth Bass

Nursing and Midwifery Council: Represented by Zara Evans, Case Presenter

Mrs Lou Louise Adina Smith: Not present and unrepresented

Order being reviewed: Suspension order (4 months)

Outcome: Strike-off order to come into effect at the end of
23 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 Smith was not in attendance and that the Notice of Hearing had been sent to Mrs Smith's registered address by recorded delivery and by first class post on 20 January 2020.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the delivery status of the Notice of Hearing as unconfirmed.

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

Ms Evans, 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 Smith 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 Smith

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

Ms Evans invited the panel to continue in the absence of Mrs Smith on the basis that she had voluntarily absented herself.

Ms Evans referred the panel to an email dated 17 February 2020 from Mrs Smith stating that Mrs Smith was *'happy for the hearing to proceed without [her] being there...'*

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'* as referred to in the case of *R. v Jones (Anthony William), (No.2) [2002] UKHL 5*

The panel has decided to proceed in the absence of Mrs Smith. In reaching this decision, the panel has considered the submissions of Ms Evans, the email from Mrs Smith, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* 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 Smith;

- Mrs Smith has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- 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 Smith.

Decision and reasons on review of the current order

The panel decided to impose a striking-off order. This order will come into effect at the end of 23 March 2020 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the fifth review of an order originally imposed as a conditions of practice order by the Conduct and Competence Committee on 22 October 2015 for 12 months. This order was reviewed on 18 October 2016 when the conditions of practice order was confirmed and extended for a further 12 months. The order was reviewed again on 19 October 2017, when the conditions of practice order was amended and confirmed for a further period of 12 months. The order was reviewed again on 19 October 2018 when the conditions of practice order was amended and confirmed for a further period of 12 months. A further review took place on 15 October 2019 and a 4 month suspension order was imposed. The current order is due to expire at the end of 23 March 2020.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved by way of admission, at a Consensual Panel Determination (CPD) hearing, which resulted in the imposition of the substantive order were as follows:

“That you, a registered nurse, whilst working at the Hallcroft Care Home on the 11 August 2014:

1. Did not inform Residents A’s GP that the catheter had become dislodged;

2. Did not escalate to the emergency services that Resident A’s catheter had become dislodged

And in light of the above, your fitness to practice (sic) is impaired by virtue of your misconduct.”

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

The panel noted that Mrs Smith has still been unable to undertake a RTPC and that she has not practised as a registered nurse or worked within a health care setting since 2014. The panel therefore considered that it had before it no new and substantive information since the previous substantive order review hearing on 19 October 2018. In the panel’s view, Mrs Smith has still not been able to fully remedy the concerns surrounding her misconduct and has not been able to comply with her current conditions of practice order because she has not worked as a registered nurse. The panel therefore decided that there remains a risk of repetition and that to allow Mrs Smith to return to unrestricted practise would place patients at risk of harm and increase the likelihood of bringing the nursing profession into disrepute.

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 not required.

The panel therefore concluded that Mrs Smith's fitness to practise remains impaired solely on public protection grounds. It went on to consider, what, if any, order is now appropriate.

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

Mrs Smith has not practised as a nurse since 2014 and therefore in order to practise would be required to complete a return to practice course. The panel also noted that she has not attempted to register as a nurse since 2014.

Mrs Smith has not engaged with the NMC since the imposition of the conditions of practice order on 19 October 2018 and there is no information before it to conclude that Mrs Smith's is willing or able to comply with any conditions imposed upon their practice.

On this basis, the panel concluded that a conditions of practice order is no longer practicable as the appropriate order in this case. The panel concluded that no workable conditions of practice could be formulated which would protect the public.

The panel determined therefore that a suspension order is the appropriate sanction to protect the public. Accordingly, the panel determined to impose a suspension order for a period of four months to provide Mrs Smith with what maybe a final opportunity to engage with the NMC and to provide evidence that she has attempted to undertake a RTPC. It considered this to be the most appropriate and proportionate sanction available.

The panel seriously considered a striking off order but decided to give Mrs Smith one more opportunity to engage with the NMC.

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Smith'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 emails from Mrs Smith dated 17 October 2019 and 17 February 2020. The panel has taken account of the submissions made by Ms Evans on behalf of the NMC.

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 noted that Mrs Smith has not provided any new documentation to be considered at this review, and has not engaged in these regulatory proceedings since the substantive hearing, other than to confirm she will not be attending this review and state that she does not intend to return to a career in nursing.

The panel noted that Mrs Smith initially demonstrated some insight, in that she had admitted the charges and shown remorse. However, the panel noted that since the substantive hearing, Mrs Smith has not demonstrated any further insight into her misconduct or addressed any of the risks associated with it. Further, due to Mrs Smith's lack of meaningful engagement with these proceedings, the panel has no evidence that she has remediated her misconduct. It appears to this panel that Mrs Smith has made no attempt to address the public safety concerns identified. As such, the panel found that Mrs Smith is liable to repeat matters of the kind found proved and remains a risk to 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 impairment on public interest grounds is also required, due to Mrs Smith's continued failure to engage with her regulator in a meaningful way despite being urged to do so by the last reviewing panel.

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

Decision and reasons on sanction

Having found Mrs Smith'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 risk of repetition identified in this case.

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

The panel next considered whether conditions of practice on Mrs Smith'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 was of the view that Mrs Smith's continued lack of meaningful engagement since the substantive hearing, demonstrated an unwillingness to comply with such an order, making any conditions of practice order unworkable.

The panel also noted the email dated 17 October 2019 from Mrs Smith stating her intention not to return to practice as a nurse. The panel therefore determined that any conditions of practice order would not be workable and would serve no useful purpose.

The panel next considered imposing a further suspension order. It had regard to the fact that the last reviewing panel had given Mrs Smith a further opportunity to engage with these proceedings, provide some evidence of her future intention with regard to

returning to nursing, as well as provide any evidence of insight and remediation. No such engagement has occurred and Mrs Smith has not provided any evidence to be considered at this review. The panel took into account Mrs Smith's email dated 17 October 2019 which states that [PRIVATE], and that she therefore will not *'now or in the future return to a nursing career...'*

The panel was understanding with regard to [PRIVATE]. However, it expected some degree of meaningful engagement from Mrs Smith. Mrs Smith has not engaged with her regulator, in a meaningful way, since the conclusion of the substantive hearing in October 2015 a period which has included four reviews. The panel determined that a further period of suspension was unlikely to result in her engagement. Mrs Smith has shown no commitment to remediating her failings. The panel was of the view that this raised serious concerns with regard to Mrs Smith's professionalism as a registered nurse, and therefore public confidence in the NMC and nursing profession would be undermined if Mrs Smith's name was not removed from the Register permanently.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 23 March 2020 in accordance with Article 30(1).

This decision will be confirmed to Mrs Smith in writing.

That concludes this determination.