

Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Order Review Meeting

18 June 2020

Virtual Meeting

Name of registrant: Philip Stewart Brown

NMC PIN: 85C0067W

Part(s) of the register: Nursing, Sub-part 1
RN1, Registered Nurse – Adult (2 June 1988)

Area of Registered Address: Wales

Type of Case: Misconduct/Conviction

Panel members: Julia Whiting (Chair, registrant member)
Faith Thornhill (Registrant member)
Tom Ayers (Lay member)

Legal Assessor: Lucia Whittle-Martin

Panel Secretary: Melissa McLean

Order being reviewed: Suspension order (6 months)

Outcome: Striking off order to come into effect at the end of 30 July 2020 in accordance with Article 30 (1)

Service of Notice of Meeting

The panel considered whether notice of this meeting has been served in accordance with Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004.

The panel accepted the advice of the legal assessor.

The panel noted that notice of this substantive order review meeting was sent to Mr Brown by email to his address on the register on 6 May 2020. The notice informed Mr Brown that his suspension order would be reviewed at a meeting no sooner than 15 June 2020, unless he asked for the review to take place at a hearing. Mr Brown has not responded to the notice of hearing and has not requested a hearing.

In these circumstances, the panel was satisfied that the notice was sent more than 28 days in advance of this meeting and had been served in accordance with the Rules. The panel was also satisfied that it was appropriate to proceed with this review at a meeting as it had no reason to believe that referring this matter to a hearing would result in Mr Brown's attendance or engagement.

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 at the end of 30 July 2020 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 28 December 2018. This was reviewed on 9 December 2019 and that panel extended the suspension order for six months.

The current order is due to expire at the end of 30 July 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, a registered nurse,

1. ...

2. Between 3 November 2017 and 1 May 2018 failed to co-operate with your regulating body, the Nursing and Midwifery Council by;

2.1 Failing to consent to medical testing related to your health.

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

3. Were convicted on the 6th of January 2017 for driving a motor vehicle with excess alcohol, contrary to section 5(1) (a) of the Road Traffic Act 1988 and

Schedule 2 to the Road Traffic Offenders Act 1988.

And in light of the above, your fitness to practice is impaired by reason of your conviction.”

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

‘The panel took into account Mr Brown’s email on 3 December 2019 where he stated:

“Earlier in the year I knew that I needed to move forward so I started working to get a counselling qualification and I’ve completed a level 3 course in Drug Awareness so that I can volunteer at WCADA which should start very soon.”

[PRIVATE] The panel noted the recent engagement of Mr Brown with the NMC but determined that there still remained a risk of repetition. However, Mr Brown's repeated failure to cooperate with medical testing has the potential to put patients at risk.

The panel 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 both public protection and public interest grounds is required.

For these reasons, the panel finds that Mr Brown's to practise remains impaired.'

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

'The panel first considered whether to take no action or impose a caution order but concluded that either of these would be inappropriate in view of the risk of repetition identified and the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action or impose a caution order.

The panel next considered the imposition of a conditions of practice order. The panel noted as the original substantive panel did that that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. Furthermore the panel concluded that the placing of conditions on Mr Brown's registration would not adequately address the seriousness of this case in public interest terms.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Brown further time to fully reflect on his previous failings, whilst continuing to protect the public and the public interest. The panel did take into account Mr Brown's submissions that he did not want to return to nursing but it noted that he had only expressed these intentions in recent engagements to the NMC.

The panel concluded that a further 6 month suspension order would be the appropriate and proportionate response and would afford Mr Brown adequate time to further develop his insight, show remediation and to update the reviewing panel with specific information on his future intentions regarding his nursing career.

Any future panel may be assisted by evidence of:

- *[PRIVATE]*
- *His attendance at the next review hearing*
- *A reflective piece demonstrating Mr Brown's understanding of and insight into the importance of the NMC code and the detrimental effect of his misconduct and conviction on it.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Brown'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. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, which included the decisions and reasons of the previous panels. It had no new information before it from Mr Brown.

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 Mr Brown has been subject to a substantive order since January 2019. [PRIVATE] Mr Brown has not engaged with the NMC since December 2019, when he sent an email to the NMC for the purpose of the review meeting on 9 December 2019. At that review meeting, that panel outlined the followings matters that would assist a future reviewing panel, as follows:

- *[PRIVATE]*
- *His attendance at the next review hearing*
- *A reflective piece demonstrating Mr Brown's understanding of and insight into the importance of the NMC code and the detrimental effect of his misconduct and conviction on it.*

This panel had no evidence as requested by the previous panel before it as to Mr Brown's insight and it determined that there is nothing to suggest that Mr Brown has remediated the misconduct found proved. The panel was of the view that the misconduct found proved, coupled with the lack of engagement with the NMC demonstrates a deep-seated attitudinal issue and an inability or unwillingness to remediate. The panel therefore concluded that there remained a continued risk of repetition. It concluded, on this basis that Mr Brown's fitness to practise remains impaired on the grounds of public protection.

The panel took into account the current Covid-19 pandemic and noted that this may have caused Mr Brown some difficulty in his personal circumstances. However, the panel considered that the Covid-19 pandemic would not have prevented Mr Brown contacting the NMC to provide an update on his personal life or provide a reflective piece as requested by the previous panel.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel determined that, in this case, a finding of impairment on public interest grounds was also required. It considered that a member of the public would be concerned if Mr Brown's fitness to practise was found not impaired following the panel's finding of misconduct, together with his conviction, in the absence of any remediation and/or insight in relation to that misconduct.

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

Decision and reasons on sanction

Having found Mr Brown'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. The panel noted that the charges found proved were serious. It also took into account that taking no action would not provide adequate protection for patient safety. The panel also noted in the light of the lack of information from Mr Brown, this would be inappropriate. 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 Mr Brown's practice would not be appropriate in the circumstances.

The panel considered substituting the current suspension order with a conditions of practice order. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel considered that there was no evidence of any

failings with Mr Brown's clinical practice. The panel noted that Mr Brown has demonstrated limited engagement with the NMC and has not demonstrated any insight into his failings or provided evidence to suggest that he would co-operate or comply with a conditions of practice order. Mr Brown has not taken the opportunity in the last six months to provide suitable and applicable evidence which may have been of assistance to this panel. The panel therefore determined that there were no workable conditions which could be formulated that would sufficiently protect the public and address the public interest concerns in Mr Brown's case. The panel therefore determined that such an order would be inappropriate.

The panel next considered imposing a further suspension order. The panel noted that Mr Brown has not demonstrated any insight into his previous failings. Further, Mr Brown has failed to engage with the NMC since December 2019. Mr Brown had been afforded an opportunity by the substantive panel and again by the previous reviewing panel to develop his insight and he has failed to provide any evidence that he has done so. The panel was of the view that considerable evidence would be required to show that Mr Brown no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose, given that Mr Brown has been encouraged to engage with his regulator. At the last review the panel had made it clear that a future reviewing panel would be assisted by [PRIVATE], Mr Brown's attendance and by evidence of reflection on his part. This reviewing panel had not been assisted by Mr Brown in any of those ways.

The panel took into account that Mr Brown has been suspended for almost 18 months which has provided him the opportunity to address his failings.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *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?*

The panel took into account the seriousness of the conviction. It is also took into account the charge found proved of Mr Brown failing to co-operate with his regulator. The panel noted that Mr Brown is still failing to engage with the NMC and determined that his continued lack of engagement demonstrates an underlying attitudinal problem. The panel determined that it was necessary to take action to prevent Mr Brown 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.

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

This decision will be confirmed to Mr Brown in writing.

That concludes this determination.