

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

**Substantive Order Review Meeting
Friday 26 June 2020**

Virtual Meeting

Name of registrant: Wendy Ann Costello

NMC PIN: 73Y0868E

Part(s) of the register: Registered Nurse – Sub-Part 1
Adult – 13 January 1993
RN2 Registered Nurse – Sub-Part 2
Adult – 15 September 1977

Area of registered address: West Sussex

Type of case: Misconduct

Panel members: Elizabeth Burnley (Chair, lay member)
Claire Gill (Registrant member)
Peter Swain (Lay member)

Legal Assessor: Patricia Crossin

Panel Secretary: Catherine Acevedo

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

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

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Mrs Costello's email address on the register on 6 May 2020. The panel noted that Mrs Costello did not request to participate at a hearing.

The panel took into account that the Notice of Meeting provided details of the substantive order being reviewed, the time, date and venue of the meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Costello has been served with notice of this meeting in accordance with the requirements of Rules 11A 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 Costello has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

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 13 August 2020 in accordance with Article 30(1) 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 6 months by a Fitness to Practise Committee panel on 14 January 2020.

The current order is due to expire at the end of 13 August 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, whilst working at Gossops Green Medical Centre:

1. *On 1 March 2017, you:*
 - a. *labelled Patient A's Blood sample with Patient B's details; [PROVED]*
 - b. *Recorded that Patient B had a blood sample taken when this was incorrect; [PROVED]*
 - c. *Did not maintain accurate records, in that Patient B's prescription for a depo injection was not recorded in their clinical records; [NOT PROVED]*

2. *On 26 July 2017, you labelled Patient C's blood sample with Patient D's details; [PROVED]*

3. *On 26 July 2017, you:*
 - a. *labelled Patient E's smear sample with another patient's details; [PROVED]*
 - b. *Coded Patient E's smear specimen as "inadequate" when this was not correct; [NOT PROVED]*

 - c. *Did not inform management regarding the error with Patient E's smear test; [NOT PROVED]*

 - d. *Did not provide a full reason for the error to Patient E; [PROVED]*

4. *On 26 July 2017, you did not label the ECG for Patient F with their name and/or date of birth;[ADMITTED]*

5. *On 30 November 2016, you incorrectly recorded 16 week vaccinations in the 12-13 month section of Patient G's red book; [PROVED]*

6. *On 30 May 2017 you recorded immunisations of Infanrix-IPV+HIB as having been given to Patient H twice; [PROVED]*
7. *On 11 June 2014, you did not label Patient I's smear sample; [PROVED]*
8. *On 19 May 2015, you did not label Patient J's smear sample; [PROVED]*
9. *On 12 June 2015,*
 - a. *you did not label Patient K's smear sample; [PROVED]*
 - b. *You did not record whether Patient K was informed of the reason why the sample was not processed; [PROVED]*
10. *On 14 February 2017, you labelled Patient L's smear sample with another patient's details; [PROVED]*
11. *On 23 May 2017, you labelled Patient M's smear sample with another patient's details; [PROVED]*
12. *You took out of protocol smear samples by taking them too early in that:*
 - a. *You took a smear sample from Patient N on 20 April 2016; [PROVED]*
 - b. *You took a smear sample from Patient O on 1 June 2016; [PROVED]*
 - c. *You took a smear sample from Patient P on 19 October 2016; [PROVED]*
 - d. *You took a smear sample from Patient Q on 11 April 2017. [PROVED]*
13. *On 4 November 2016, you submitted an empty smear sample vial for Patient R to the laboratory. [ADMITTED]*

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

The original panel determined the following with regard to impairment:

"The panel found that Mrs Costello has in the past placed patients at unwarranted risk of harm. Her failings encompassed basic aspects of nursing practice and, as

such, the panel found that she breached fundamental tenets of the nursing profession in failing to ensure safe care. The panel found that Mrs Costello's serious and wide-ranging failings brought the nursing profession into disrepute.

The panel then moved on to consider whether Mrs Costello was likely to repeat such misconduct in the future.

The panel considered that Mrs Costello's misconduct is capable of remediation. However, the panel had regard to the email dated 15 August 2019 in which Mrs Costello states:

"I am not sure what I would be able to contribute [...to a hearing...] as I have apologised for my mistakes on the two occasions that they happened, that nobody is perfect, nobodies [sic] life was in danger due to my mistakes, that I know and how I went wrong, therefore I have learnt my mistakes. I realise that more appointments would have to have to have [sic] been made .."

The panel was of the view that Mrs Costello had attempted to provide a justification for her actions. However, her statement that "nobodies [sic] life was in danger due to my mistakes", demonstrated a fundamental lack of insight into the potential serious consequences of delays to diagnosis and treatment. Furthermore, there was no evidence before the panel of Mrs Costello appreciating how these patients would have felt at being let down by her actions and omissions. The panel have no evidence before it that she has been practising since August 2017 since being dismissed from Gossops Green surgery. Accordingly the panel had no information before it to provide reassurance that Mrs Costello had remediated her failings.

With regard to insight, the panel bore in mind what Mrs Costello stated in her email dated 15 August 2019. The panel had no further reflection from Mrs Costello since that email and therefore has no evidence of insight into the potential impact of her actions on patients, nor what she would do differently in the future to avoid a repeat of the same mistakes. The panel noted Dr 1's evidence in which he stated:

“That was the whole point with Wendy, that she wasn’t apologetic at any time during the entire episodes. She almost had no insight of what was going on. There’s always a process of labelling things, blaming other things and she was saying, I think she blamed it on a meeting that we had to go to in Ardingly. And she was rushing.”

The panel was of the view that Mrs Costello lacks any real insight into her actions or the harm that it may have caused not only to the patients but also to those professionals working with her and the reputation of the profession as a whole.

The panel bore in mind that Dr 1’s evidence clearly highlighted the significant risks that could occur with errors of this kind:

With regard to mislabelled smears;

“So there will invariably be a 90 day delay, which is quite a long delay if someone has got something potentially serious i.e you’re looking at cervical cancer, or pre-stage to cancer, which can then be prevented. So this patient is losing time. And that’s the seriousness of this.”

With regard to incorrect entries on children’s vaccination records:

“The harm would be that if the mother then says, “No, I’m not going to have the next lot of jabs,” which is the one written down, they are different types of immunisation, which the mother would not know. And the argument would be that no – the surgery – it’s certainly in the book that they’ve already had it, so why are you giving it? The child would not be protected from these infections like meningitis.”

With regard to incorrect labelling of blood samples:

“...there was a delay in referral, and potentially delaying diagnosis which could have been fatal and delaying treatment.”

In light of the nature and seriousness of Mrs Costello’s misconduct, her lack of remediation and lack of insight, the panel concluded that there is a real risk of repetition should Mrs Costello be allowed to practise as a registered nurse without restriction.

The panel also 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 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. The panel had regard to the serious nature of Mrs Costello's misconduct, in relation to multiple patients, and determined that public confidence in the profession would be undermined if a finding of current impairment was not made. For this reason, the panel determined that a finding of current impairment on public interest grounds was also required.

Having regard to all of the above, the panel was satisfied that Mrs Costello's fitness to practise is currently impaired”.

The original panel determined the following with regard to sanction:

‘The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. Taking no further action would not protect the public from the identified risk of harm. The panel decided that it would be insufficient to protect the public interest, given the seriousness of the case and Mrs Costello's lack of remorse, insight and remediation. For these reasons, the panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel decided that a caution order would be inappropriate for the same reasons. It took into account the Sanctions Guidance, which 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 Costello's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. It would also be insufficient to satisfy the public interest, due to Mrs Costello's lack of remorse, insight and remediation, and would not protect the public. For these reasons, the

panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Costello'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 took into account the SG, in particular:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- Potential and willingness to respond positively to retraining;*
- Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- The conditions will protect patients during the period they are in force; and*
- Conditions can be created that can be monitored and assessed.*

The panel is of the view that conditions of practice could be formulated to address the clinical failings identified. However, the panel noted that Mrs Costello has not engaged with the NMC nor has any insight into her actions. Consequently the panel was of the view that the risk of repetition remains high unless and until she demonstrates insight into her misconduct. In the current absence of insight the panel determined that it could not formulate workable conditions that would protect the public and the public interest.

The panel then went on to consider whether a suspension order would be the appropriate sanction.

This misconduct reflected very careless record keeping as part of a clinical procedure and process of using screening methods to detect and treat patients promptly who may have early signs of life threatening conditions.

The panel considered whether the seriousness of this case could be addressed by temporary removal from the NMC register and whether a period of suspension would be sufficient to protect patients and satisfy the wider public interest concerns. When considering seriousness, the panel took into account the extent of the departures from the standards to be expected of a registered nurse and the risk of harm to the public interest caused by those departures.

The panel decided that a suspension order would be the appropriate and proportionate sanction in Mrs Costello's case.

The panel has found Mrs Costello to have demonstrated no insight in respect of her conduct. Mrs Costello had stated in her email dated 15 August 2019 that she has apologised and has asserted that nobody's life was in danger due to her actions. The panel was of the view that Mrs Costello is yet to understand and reflect upon the significance of her misconduct. The panel concluded that Mrs Costello has yet to recognise that her actions exposed patients to a real risk of serious harm. The panel bore in mind its finding that it could not exclude the risk of similar misconduct in the future, as it could not yet be satisfied that Mrs Costello has developed a sufficient understanding of how and why her nursing practice had fallen significantly below the standards expected of a registered nurse.

The panel was of the view that a six months period of suspension would provide Mrs Costello with the opportunity to reflect on her behaviour and to develop an understanding of how to prevent similar misconduct from occurring in the future. The panel was also of the view that this period would allow Mrs Costello time to re-engage with the NMC.

The panel did consider whether a striking-off order was necessary in Mrs Costello's case. However, taking account of all the information before it, the panel concluded that it would be disproportionate. The panel was of the view that the lesser sanction of suspension would satisfy the public protection and public interest concerns identified in this case. The panel decided that public confidence in the nursing profession and the NMC can be maintained by the imposition of a suspension order.

The panel has no information before it about whether Mrs Costello is currently working. This order will prevent her from doing so during the period in which it is in force. However, the panel considered that this order is necessary to mark the importance of maintaining public confidence in the nursing profession, and to send to the public and the profession a clear message about the standards of behaviour required of a registered nurse.

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 including a striking off order.

Any future panel may be assisted by:

- *Engagement with the NMC and Mrs Costello's attendance at the next review hearing.*
- *A structured reflective piece using for example the NMC's revalidation paper work on reflection.*
- *Any evidence of re-training in relation to the areas of concern, as well as any professional development undertaken by Mrs Costello in order to keep her nursing skills up to date.*
- *An indication from Mrs Costello about her future practice intentions.*
- *Any up to date testimonials or references from employers, whether in paid or unpaid employment".*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Costello'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, including the NMC bundle.

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 Mrs Costello's fitness to practise remains impaired.

With regard to insight, the panel noted the last email correspondence from Mrs Costello dated 15 August 2019. The panel had received no further reflection from Mrs Costello for this review hearing and it therefore has no evidence of her insight into the potential impact of her actions on the safety of patients, nor what she would do differently in the future to avoid a repeat of the same mistakes. The panel was of the view that Mrs Costello lacks any real insight into her actions or the harm that may have been caused not only to the patients but also to those professionals working with her and the reputation of the profession as a whole.

The panel also had no evidence before it that Mrs Costello has taken any steps to address the deficiencies identified in her practice. In particular, she has provided no evidence that she has taken the actions identified by the previous panel. Accordingly, the panel had no information before it to provide reassurance that Mrs Costello had remediated her failings.

In light of the nature and seriousness of Mrs Costello's actions, her lack of engagement, and lack of evidence of insight or remediation, the panel concluded that there remains a risk of repetition and therefore a risk of harm to patients. 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.

Having regard to all of the above, the panel was satisfied that Mrs Costello's fitness to practise is currently impaired.

Decision and reasons on sanction

Having found Mrs Costello'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 seriousness of the case. Taking no further action would not protect the public from the identified risk of harm. The panel decided that it would be insufficient to protect the public interest, given the seriousness of the case and Mrs Costello's lack of meaningful remorse, insight and remediation. For these reasons, the panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel decided that a caution order would be inappropriate for the same reasons. It took into account the Sanctions Guidance, which 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 Costello's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. It would also be insufficient to satisfy the public interest, due to Mrs Costello's lack of meaningful remorse, insight and remediation, and would not protect the public. For these reasons, the panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Costello'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 is of the

view that conditions of practice could be formulated to address the clinical failings identified. However, the panel noted that Mrs Costello has failed to engage with the NMC and has not demonstrated any willingness to comply with conditions. The panel was of the view that the risk of repetition remains high. In the current absence of insight, the panel determined that it could not formulate workable conditions that would protect the public and the public interest.

The panel next considered imposing a further suspension order. The panel noted Mrs Costello has not engaged with the NMC since before the imposition of the substantive order. She has not indicated that she has any intention of engaging with these proceedings and has been given ample opportunity to do so. She has not provided evidence of meaningful remorse for her misconduct. Further, Mrs Costello has not demonstrated any adequate insight into her previous failings. The panel was of the view that considerable evidence would be required to show that Mrs Costello 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, bearing in mind that Mrs Costello has shown no intention of engaging further with the NMC. The panel was mindful of a professional's duty to engage with investigations into their fitness to practise. Where there is no such engagement in response to serious concerns about insight and patient safety, then continued membership of the profession is at risk. In all the circumstances, the panel determined that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

The panel took into account the serious impact a striking-off order may have on Mrs Costello's professional and personal life. However, Mrs Costello has not engaged with these proceedings. Therefore, the panel has been unable to assess the impact of a striking-off order, either professionally or financially, upon her.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 13 August 2020 in accordance with Article 30(1).

This decision will be confirmed to Mrs Costello in writing.

That concludes this determination.