

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

**Substantive Order Review Meeting
Thursday, 4 June 2020**

Virtual Meeting

Name of registrant: Tina Kelly

NMC PIN: 12A0437E

Part(s) of the register: Registered Nurse – Sub-part 1
Adult Nursing – 17 May 2012

Area of Registered Address: England

Type of case: Misconduct

Panel members: Louise Fox (Chair, Lay member)
Susan Greenwood (Registrant member)
Richard Bayly (Lay member)

Legal Assessor: Richard Miller

Panel Secretary: Philip Austin

Order being reviewed: Suspension order (6 months)

Fitness to practise: Currently Impaired

Outcome: **Striking-off order to come into effect at the end of 6 July 2020, in accordance with Article 30(1)**

Decision and reasons on service of Notice of Meeting

The panel received information from the legal assessor concerning service of the notice of meeting. Notice of the meeting was sent to Miss Kelly's registered address by first class post and by recorded delivery on 27 February 2020, stating that a meeting would go ahead no sooner than 25 May 2020, and that this is the deadline for her to provide any written evidence that she wants the panel to take account of. She was also able to ask for a hearing instead of a meeting.

The panel had regard to the Royal Mail 'Track and trace' printout which showed that the Notice of meeting was being returned to the National Returns Centre on 19 March 2020, as it had exceeded its retention period at the customer service point following the unsuccessful delivery of it to Miss Kelly's registered address.

The panel heard and accepted the advice of the legal assessor.

The panel noted that the notice of meeting had been served on 27 February 2020, which was more than 28 days before this meeting. The panel was satisfied that there was good service of the notice of meeting in accordance with Rules 11A and 34 of the Fitness to Practise Rules 2004 (as amended) ("the Rules"). The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision and reasons on review of the substantive order

The panel decided to impose a striking-off order. This order will come into effect upon expiry of the current suspension order, namely, at the end of 6 July 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 six months by a panel of the Fitness to Practise Committee panel on 6 December 2019. The current order is due to expire at the end of 6 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) *On 10 June 2016 vaccinated Child 1 without authorisation.*
- 2) *On 20 June 2016 vaccinated Child 2 without authorisation.*
- 3) *On 18 July 2016 vaccinated Child 2 without authorisation.*
- 4) *On 3 November 2016 vaccinated Child 3 without authorisation.*
- 5) *On 10 July 2016 and/or 21 June 2016 you accessed the health record (Consultation Information sheet) of Child 1 without authorisation.*
- 6) *On 21 June 2016 and/or 19 July 2016 you accessed the health record (Consultation Information sheet) of Child 2 without authorisation.*
- 7) *On 10 November 2016 you accessed the health record of Child 3 (via SystemOne) without authorisation.*
- 8) *...*
- 9) *On 10 July 2017 you accessed the health record of Child 1 (via SystemOne) without authorisation or clinical need.*
- 10) *...*
- 11) *...*
- 12) *...*

- 13) *When answering questions during the investigatory meeting on 27 July 2017 you said 'no' to a question as to whether you had ever vaccinated a relative other than Child 1.*

- 14) *Your answers at 11 and/or 12 and/or 13 above were dishonest in that you intended to mislead, knowing that you had in fact vaccinated other relatives.*

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 finds that Miss Kelly’s conduct engages parts b, c and d of the Grant judgment in that her dishonesty brought the profession into disrepute and breached fundamental tenets of the nursing profession.

The panel took account of the fact that there had been no allegations made against Miss Kelly’s clinical competence as a Registered Nurse and that no harm resulted from her actions. It therefore determined that Miss Kelly’s fitness to practise is not currently impaired on the grounds of public protection.

The panel took account of the fact that Miss Kelly had only engaged with the NMC on a minimal level and had not done so since August 2019, almost four months before the hearing. The panel had no information before it as to Miss Kelly’s current employment status. Further, it had not been provided with any reflection on her dishonesty and nothing from Miss Kelly, during the hearing, to state that she understood the impact that her actions had on the nursing profession and her colleagues at the Trust. However, within the evidence provided, the panel noted four occasions during the Trust disciplinary process when Miss Kelly demonstrated some reflection and remorse.

The panel took account of the telephone conversation with the NMC Case Officer in which she had said that she was sorry but was of the view that Miss Kelly could

have attended the hearing and told the panel that she was sorry for what she had done and ensure it that she would act differently in the future. The panel could therefore not be assured that Miss Kelly would not repeat her actions in the future.

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 required. It was of the view that a right thinking member of the public would be concerned to hear that a Registered Nurse had lied so flagrantly to her employer and not, at any stage, attempted to correct her dishonesty.

Having regard to all of the above, the panel was satisfied that Miss Kelly'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. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, 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 Miss Kelly'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. 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 Miss Kelly's registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG.

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case which do not relate to clinical failings. The misconduct identified in this case was not something that can be addressed through retraining.

Furthermore the panel concluded that the placing of conditions on Miss Kelly's registration would not adequately address the public interest in this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG paragraph indicates that a suspension order may be appropriate where some of the following factors are apparent:

- a single instance of misconduct but where a lesser sanction is not sufficient*
- no evidence of harmful deep-seated personality or attitudinal problems*
- no evidence of repetition of behaviour since the incident*
- the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour*

The panel determined that, although there had been a clear breach of fundamental tenets of the profession, there are in Miss Kelly's case mitigating circumstances. In relation to Miss Kelly's accessing of the medical records, [PRIVATE]. Miss Kelly's dishonesty related to her response to a single question in an investigatory interview. As such, the panel considered that, in Miss Kelly's case, the misconduct was not fundamentally incompatible with remaining on the register. The panel had no evidence before it that Miss Kelly had repeated this misconduct. The panel had previously noted a lack of insight from Miss Kelly into her actions. However, it took into account the importance of the public interest in allowing a Registered Nurse with no previous regulatory concerns back on

the register following a period of reflection. This would give her the opportunity to demonstrate further remorse for her actions and a greater understanding of the impact that they had had on the nursing profession.

The panel further considered whether a striking-off order would be proportionate in Miss Kelly's case. Taking account of all the information before it, and taking account of all the mitigation provided to the panel on Miss Kelly's behalf, the panel took account of the SG which states:

- 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 concluded, taking this into account, that to make a striking off order would be disproportionate. Whilst the panel acknowledges that a suspension order may have a punitive effect, it would be unduly punitive in Miss Kelly's case to impose a striking off order.

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

The panel noted the hardship such an order may cause Miss Kelly. However this is outweighed by 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 a period of 6 months was appropriate in this case to mark the seriousness of the misconduct. This period of time will allow Miss Kelly to decide what she wants to do in terms of her nursing career. Further it will give her time to reflect on her

misconduct so that she can attend a review hearing and outline to that reviewing panel what she has learnt from the process and how she would act differently in the future.

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 may be assisted by evidence of:

- *Miss Kelly's full engagement with the NMC process and her attendance at the review hearing;*
- *A reflective piece which outlines Miss Kelly's remorse and insight into the effect her actions had on the wider public interest;*
- *Evidence of keeping up to date with current nursing issues;*
- *Testimonials from any work paid or unpaid."*

Decision and reasons on current impairment

The panel has considered carefully whether Miss Kelly'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 contained within the NMC meeting 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 Miss Kelly's fitness to practise remains impaired.

The panel had regard to the substantive hearing decision, and noted that Miss Kelly's fitness to practise as a registered nurse was found impaired on the grounds of it being in the public interest alone. There were no public protection concerns in the original panel's judgment.

The panel considered the misconduct identified to be serious, and to relate to Miss Kelly's conduct in the performance of her role as a registered nurse. The panel noted that Miss Kelly had been a registered nurse for a significant period of time when the incidents occurred, having been registered with the NMC since 2012.

The panel noted that no new information had been received by the NMC in relation to this matter, as Miss Kelly does not appear to have engaged with the NMC since August 2019, before the substantive hearing between 2 – 6 December 2019. Therefore, the panel could not be satisfied that Miss Kelly had made any progress in developing her insight, or in remediating the misconduct found proved. The panel was of the view that the misconduct found proved, coupled with the extended lack of engagement with the NMC, could be demonstrative of an entrenched attitudinal issue and an inability or unwillingness to remediate.

Miss Kelly has not provided the panel with any evidence of the steps she has taken to address the concerns identified. The panel noted that Miss Kelly had not complied with any of the recommendations stipulated by the original panel, nor has she provided any references or testimonials from any recent employment, relating to paid or unpaid work.

In the absence of any evidence to the contrary, the panel could not be satisfied that the risk of repetition in this case had reduced. It considered there to be a real risk of repetition of the events, should Miss Kelly be permitted to return to unrestricted nursing practice.

The panel bore in mind the overarching objective of the NMC: to protect, promote and maintain the health, safety and well-being of the public and patients and 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. As Miss Kelly has not yet addressed the serious concerns identified by the original panel, this panel determined that, in these circumstances, a finding of continuing impairment on public interest grounds is required. It was of the view that a fully informed member of the public, aware of all the evidence presented in this case, would be extremely concerned by the actions of Miss Kelly, and would expect a panel to make a finding that her fitness to practise remains impaired, in absence of any new evidence to the contrary.

For these reasons, the panel finds that Miss Kelly's fitness to practise remains impaired on the grounds of it being in the public interest alone.

Decision and reasons on sanction

Having found Miss Kelly'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 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.

The panel then considered whether to impose a caution order but concluded that this would be inappropriate in view of the risk of repetition identified and the seriousness of the case as this would not place any restrictions on Miss Kelly's nursing practice. The panel decided that it would be neither proportionate, nor in the public interest to impose a caution order.

The panel next considered substituting the current suspension order with a conditions of practice order. The panel noted that as the concerns relate to Miss Kelly's standard of conduct in the performance of her role as a registered nurse, there were not any clear

identifiable areas of retraining which could be addressed through a conditions of practice order. Miss Kelly is currently subject to a suspension order for six months, and does not appear to have utilised this time to try to evidence any remediation and insight, given her lack of engagement with the NMC. The panel determined that it would not be possible to formulate any workable conditions to permit Miss Kelly to return to nursing practice.

In light of the above, the panel determined that a conditions of practice order would be neither proportionate, nor would it satisfy the public interest considerations.

The panel next considered imposing a further suspension order. The panel noted from its decision on impairment that Miss Kelly has not attempted to remediate the concerns identified, nor has she provided any evidence as to how she has developed her insight since before the substantive hearing. The panel was of the view that whilst Miss Kelly's failings may have been remediable at the time of the original hearing, given her lack of engagement, recognition and appreciation as to the extent of her failings, this was no longer achievable. Miss Kelly 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, and it appears that she has wholly disengaged from the regulatory process.

In taking account of the evidence provided, the panel was of the view that it would not be in the public interest to continue with these matters indefinitely, and that this process should be brought to a conclusion. Therefore, in having regard to the above, the panel was not satisfied that a further suspension order would sufficiently address the wider public interest elements of this case as it would not serve any useful purpose. Miss Kelly had been afforded an opportunity by the original panel to develop her insight and she has failed to do so. This inability to recognise her failings and self-direct her own learning to address them demonstrates a lack of understanding and appreciation of the need for reflection that is key to safe and effective nursing practice. This is not compatible with the behaviours expected of a registered nurse. The panel determined that it was necessary to take action to prevent Miss Kelly from practising as a registered nurse in the future and concluded that the only sanction that would serve the wider public interest was a striking-off order.

This decision will be confirmed to Miss Kelly in writing.

That concludes this determination.