

**Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Hearing
24 March 2020**

Nursing and Midwifery Council, Virtual Hearing

Name of registrant:	Timothy King
NMC PIN:	13L0612E
Part of the register:	RNMH, Registered Nurse (Sub Part 1) - Mental Health (11 September 2014)
Area of registered address:	Mid Glamorgan
Type of case:	Misconduct
Panel members:	Deborah Jones (Chair, Lay member) Lorna Taylor (Registrant member) Catrin Davies (Lay member)
Legal Assessor:	Charles Parsley
Panel Secretary:	Oliver Stephens
Nursing and Midwifery Council:	Represented by Sophie Quinton-Carter, NMC Case Presenter
Mr King:	Not present nor represented in absence
Order being reviewed:	Suspension Order (12 months)
Outcome:	Striking-off order 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 Mr King was not in attendance and that the Notice of Hearing had been sent to his registered address by recorded delivery and by first class post on 18 February 2020.

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

Ms Quinton-Carter, 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 Mr King has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

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 proceeding in the absence of Mr King

The panel next considered whether it should proceed in the absence of Mr King. 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 Quinton-Carter invited the panel to continue in the absence of Mr King. She referred the panel to an email from Mr King to his NMC Case Officer, dated 20 March 2020, which states:

"I no longer practice as a nurse and have no interest in challenging any "evidence" brought against me. I have every faith you will manage the process appropriately ... I would be reluctant to return to nursing no matter the outcome.

Please keep me informed however."

Ms Quinton-Carter submitted that it could be inferred from this email that Mr King has voluntarily absented himself. She submitted that there had been no adjournment request, nor was there any information before the panel for it to conclude that an adjournment would secure Mr King's attendance at a future date. Ms Quinton-Carter submitted that in the circumstances it was in the public interest to proceed in Mr King's absence to ensure the expeditious disposal of this matter.

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 (No.2)* [2002] UKHL 5.

The panel has decided to proceed in the absence of Mr King. In reaching this decision, the panel has considered the submissions of Ms Quinton-Carter, the email from Mr King, dated 20 March 2020, 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.

The panel considered that Mr King had been sent notice of today's hearing and the panel was satisfied that he was aware of today's hearing, evidenced by his email reply to the NMC, dated 20 March 2020, and it is further of the view that he had chosen not to attend. The panel had no reason to believe that an adjournment would result in his attendance. Having weighed the interests of Mr King with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Mr King's absence.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr King.

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 30 April 2020 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second review of a substantive order. A conditions of practice order was originally imposed by a panel of the Fitness to Practise Committee on 28 September 2017 for a period of 18 months. This order was reviewed on 3 April 2019 and the conditions of practice order was replaced with a suspension order for a period of 12 months.

The current order is due to expire at the end of 30 April 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 as a Staff Nurse at Ty Catrin Hospital, Cardiff:

1. On 19 October 2016:

1.1. Allowed Patient A to go on Section 17 leave without her Salbutamol inhaler
[proved by admission]

1.2. Did not record that Patient A:

1.2.1. was refused her Salbutamol inhaler **[proved by admission]**

1.2.2. had gone on Section 17 leave without her Salbutamol inhaler
[proved by admission]

1.2.3. became breathless during her Section 17 leave **[proved by admission]**

1.2.4. you had undertaken observations on her return from Section 17 leave **[proved by admission]**

2. On 19 October 2016, did not allow Patient B to use the anti-suicide pen when she was entitled to do so **[proved]**

3. On 20 October 2016 incorrectly reported to Colleague A that you were observing Patient C when you were not **[proved by admission]**

4. Your actions as alleged at Charge 3 were dishonest in that you sought to give a misleading impression to Colleague A that you were observing Patient C when you knew that you were not **[proved by admission]**

5. On 11 November 2016:

5.1 recorded on Patient D's MAR chart that you had administered Modified Release tramadol 100mg when you had not **[proved by admission]**

5.2 incorrectly administered two 50mg tramadol tablets to Patient D which belonged to another unknown resident **[proved by admission]**

5.3 did not report to the prescribing doctor that the incorrect medication had been administered to Patient D **[proved by admission]**

5.4 did not make a record of the medication error within Patient D's clinical records **[proved by admission]**

5.5 did not complete an incident report form to report Patient D's medication error **[proved by admission]**

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

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

“The panel considered whether Mr King’s fitness to practise remains impaired. The panel noted that other than the email that was sent today, Mr King has not engaged with the NMC since the substantive hearing. The panel noted the original panel’s determination, in particular:

“The panel was concerned that Mr King’s actions demonstrate general poor decision making skills, and an over reliance of information received from subordinates, it had no evidence before of[sic] any attempts by Mr King to reflect on or improve this deficiency in his practice...”

The panel has received no new information from Mr King, other than his email, to be considered at this hearing. It was of the view that the concerns were and still are remediable, but that Mr King has not provided any evidence to demonstrate that he has taken action to address the concerns. Having regard to the email from Mr King, the panel considered that he may not have fully understood how he could demonstrate to a panel that he was willing to, and had taken steps to, address the concerns in order to demonstrate that his fitness to practise was no longer impaired. The panel considered that in the absence of any further information or compliance with the conditions of practice order, that there remains a real risk of repetition.

The panel noted the original panel’s determination in relation to Mr King’s insight:

“...the panel considered that, whilst Mr King demonstrated some insight into his action by making early admissions to the majority of the charges, some remorse, and his acknowledgement of his current impairment, he has not developed full insight. The panel noted Mr King’s remorse, however, it had no evidence before it that Mr King had reflected on or developed any significant insight into the cause of his misconduct, i.e. his poor decision making since the time of the internal investigations, the actual and potential effects of his misconduct had on the patients, his colleagues and the nursing profession as a whole.”

This panel found that as a result of his lack of engagement, it had no evidence that Mr King’s level of insight has developed further and, accordingly, Mr King is liable to repeat matters of the kind proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection and in the public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance.

For these reasons, the panel finds that Mr King’s fitness to practise remains impaired.”

The first reviewing 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 risk of repetition identified if Mr King were able to practise without restriction. 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 if Mr King were able to practise without restriction. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered extending the conditions of practice order. Mr King has not engaged with the NMC or the conditions of practice order imposed in

September 2017. He has not provided any evidence of insight into his failings or remediation. The panel noted from Mr King's email of 3 April 2019 the implication that he is not currently working as a registered nurse or seeking employment in this capacity. On this basis the panel concluded that a conditions of practice order is no longer practicable. In all the circumstances the panel considered that a conditions of practice order is no longer the appropriate order in this case. The panel concluded that on the basis of current information no workable conditions of practice could be formulated.

The panel determined therefore that a suspension order is the only appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 12 months. It considered this to be the most appropriate and proportionate sanction available. This suspension order will take effect upon the expiry of the current conditions of practice order, namely at the end of 1 May 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001.

The panel considered that a striking off order would be disproportionate at this stage.

The panel noted the email from Mr King to the NMC dated 3 April 2019, in particular:

'...I would love to be vindicated I have no faith that this will occur.'

The panel was of the view that Mr King may not be able to be 'vindicated'. However, he should understand that he does have the opportunity to demonstrate insight and provide evidence of remediation to the next reviewing panel. If a reviewing panel were satisfied that Mr King has fully remediated his practice, demonstrated full insight into his failings and no longer presents a risk of harm to patients, then it could be possible for him to return to unrestricted practice in the future. The panel was mindful that there is a public interest in returning a fully remediated nurse to unrestricted practice.

At the end of the period of the suspension order, another panel will review the order. At the review hearing the panel may revoke the order, confirm the order, replace the order with another order or it may impose a striking off order. Any future panel will be greatly assisted by:

- *Mr King's engagement with the NMC during the period of this order;*
- *Mr King's attendance at the next review hearing;*
- *References from past and/or current employers, paid or unpaid. This could include non-clinical work, and in particular, any work in a healthcare setting as an unregistered member of staff (eg. HCA);*
- *Evidence of any learning and training including self-directed study and reflection, and online course(s) to keep skills and knowledge up to date and to address the areas of concern identified;*
- *A reflective piece, using a recognised model, which demonstrates Mr King's ongoing and developing insight into his failings.*

Decision and reasons on current impairment

The panel has considered carefully whether Mr King'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 the email from Mr King, dated 20 March 2020. It has taken account of the submissions made by Ms Quinton-Carter on behalf of the NMC. She provided the background of the case and referred the panel to the relevant pages in the bundle. Ms Quinton-Carter submitted that with regards to current impairment, in the absence of any new information in relation to Mr King's circumstances, his fitness to practise remains impaired. She submitted that there is no evidence of any insight or remediation and there remains a risk of repetition of the misconduct found proved.

In respect of the appropriate sanction, Ms Quinton-Carter submitted that this is a matter for the panel's professional judgment. She referred the panel to the NMC Guidance on *'Allowing orders to expire when a nurse or midwife's registration will lapse'* and informed the panel that Mr King's registration was held in effect by virtue of the substantive order. Ms Quinton-Carter submitted that in the circumstances where Mr King has expressed his interest not to return to nursing, if a finding of impairment were made and Mr King's registration was to lapse, the Registrar would be aware of that finding. She submitted that the panel may consider a striking-off order to be unduly harsh given the nature of the original misconduct, however reminded the panel that all options are available to it.

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 Mr King's fitness to practise remains impaired.

The panel considered that it had no new information from Mr King regarding his particular circumstances since the imposition of the suspension order, other than his email to the NMC, dated 20 March 2020. The panel was therefore unable to conclude that the concerns had been remediated. Nor was the panel of the view that Mr King had developed any further insight into his failings. The panel considered that there is a continued lack of engagement and it considered that there remains a risk of repetition. 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 noted Mr King's continuing failure to engage with these proceedings in any meaningful sense and that the previous panels gave him guidance as to how he might do so, providing specific examples which might assist a future reviewing panel. The panel considered that Mr

King had not taken this opportunity. The panel therefore determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

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

Decision and reasons on sanction

Having found Mr King'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 if Mr King were able to practice without restriction. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered the imposition of a caution order but again determined that, this would be inappropriate in view of the risk of repetition 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 on Mr King's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be relevant, proportionate, measurable and workable. The panel considered that it had no information before it in relation to Mr King's current circumstances and noted that he had no desire to return to the nursing profession. The panel therefore considered that in these circumstances, any conditions of practice order would not be workable and would serve no useful purpose.

The panel next considered imposing a further suspension order. The panel noted that Mr King has not demonstrated any further steps towards remediation or developed further insight into his previous failings. The panel was of the view that considerable evidence would be required to show that Mr King no longer posed a risk to the public.

The panel also considered there is an obligation on registrants to engage with their regulator and it was of the view that Mr King had neither meaningfully engaged with the NMC, nor provided any of the material requested by the previous reviewing panel. The panel also noted that Mr King has expressed a desire not to return to work as a nurse. The panel therefore determined that a further period of suspension would not serve any useful purpose in all of the circumstances.

The panel also considered the NMC Guidance on *'Allowing orders to expire when a nurse or midwife's registration will lapse'*, which states:

"The nurse or midwife will need to give the panel a clear explanation of their plans for the future away from nursing or midwifery. Such information is only likely to be available if the nurse or midwife is in contact with us, so it will be important for panels to consider if the nurse or midwife is fully engaging with the process before deciding to take this option."

In light of its previous findings, the panel considered that Mr King had disengaged from these proceedings. In these circumstances, the panel was of the view that allowing the order to lapse would not mark the public interest in this matter which obliges nurses and midwives to engage with their regulator. Nor was the panel of the view that Mr King had provided any indication of his plans for the future away from nursing.

In all the circumstances, the panel determined, on balance, that it was necessary to take action to prevent Mr King 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 April 2020 in accordance with Article 30(1).

This decision will be confirmed to Mr King in writing.

That concludes this determination.