

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

**Substantive Order Review Hearing
15 October 2020**

Nursing and Midwifery Council
Virtual Hearing

Name of registrant:	Nia Myfanwy Soundy
NMC PIN:	84D0088W
Part(s) of the register:	Registered Nurse – Adult Nursing Specialist Practitioner – District Nursing Community Practitioner Nurse Prescriber
Area of registered address:	Cardiff
Type of case:	Misconduct
Panel members:	Eileen Skinner (Chair, lay member) Susan Tokley (Registrant member) James Hurden (Lay member)
Legal Assessor:	Andrew Granville-Stafford
Panel Secretary:	Tara Hoole
Nursing and Midwifery Council:	Represented by Ben Edwards, Case Presenter
Mrs Soundy:	Not present and not represented in her absence
Order being reviewed:	Suspension order (12 months)
Fitness to practise:	Impaired
Outcome:	Striking-off order to come into effect on 26 November 2020 in accordance with Article 30 (1)

Decision and reasons on service of Notice of Hearing

As of 31 March 2020 a number of temporary amendments to The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended) (the Rules) came into force, in response to the current Covid-19 pandemic.

As a result of these amendments the Nursing and Midwifery Council (NMC) is now able to serve notice of hearings by email and has the power to hold hearings and meetings virtually.

The panel was informed at the start of this hearing that Mrs Soundy was not in attendance and that the Notice of Hearing had been sent to Mrs Soundy's registered email address on 8 September 2020. Mrs Soundy responded to this email.

Mr Edwards, on behalf of the NMC, submitted that it had complied with the requirements of Rules 11 and 34 of the Rules.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, dates and venue of the hearing and, amongst other things, information about Mrs Soundy's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence. It also contained a link to the virtual hearing.

In the light of all of the information available, the panel was satisfied that Mrs Soundy 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 Soundy

The panel next considered whether it should proceed in the absence of Mrs Soundy. The panel had regard to Rule 21 and heard the submissions of Mr Edwards who invited the

panel to continue in the absence of Mrs Soundy. Mr Edwards reminded the panel that this is a mandatory review of a substantive order which is due to expire in November 2020.

Mr Edwards referred the panel to the documentation from Mrs Soundy which included an email dated 22 September 2020 which states '*I will not be attending and you can continue with [the] hearing*' and a further email dated 12 October 2020 in which she confirms she will not be attending today's hearing and provides further information.

Mr Edwards submitted that Mrs Soundy had voluntarily absented herself. He submitted that there was nothing to suggest that Mrs Soundy would attend a future hearing if the panel was to adjourn today. Further, she had indicated that the hearing could continue in her absence. He submitted it was in the public interest and perhaps in Mrs Soundy's interest that the hearing proceed today.

The panel has decided to proceed in the absence of Mrs Soundy. In reaching this decision, the panel has considered the submissions of Mr Edwards, the correspondence from Mrs Soundy, and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- Mrs Soundy 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.
- Mrs Soundy's correspondence is clear that she does not wish to be involved and that she has made a conscious decision not to participate in the hearing today.
- No application for an adjournment has been made by Mrs Soundy and there is no reason to suppose that adjourning would secure her attendance at some future date; and
- 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 Soundy.

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 25 November 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 12 months by a Fitness to Practise Committee panel on 25 October 2019.

The current order is due to expire at the end of 25 November 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 3 November 2017, attended for work as a nurse whilst under the influence of alcohol.*
- 2) Between 15 March 2018 and 8 August 2019 failed to engage with an investigation into your fitness to practise by the Nursing & Midwifery Council ("NMC") in that you declined to provide consent for the NMC to contact your GP or hospital consultant.*

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 concluded that Mrs Soundy has in the past acted so as to put patients and the public at unwarranted risk of harm. She attended work whilst under the influence of alcohol and 'heavily intoxicated'. Her level of intoxication is likely to

have impaired her judgement, and as a consequence, placed patients at risk of harm. This risk was exacerbated by the nature of Mrs Soundy's role, in that she works alone in the community. As a district nurse, Mrs Soundy would have driven to her place of work, and to her patients' homes. To do so under the influence of alcohol would, in the panel's view, have placed the public at risk of harm.

The panel determined that Mrs Soundy's failings related to basic and fundamental tenets of nursing practice and her conduct was liable to bring the nursing profession into disrepute.

The panel then considered whether this is a continuing risk to patient safety. In doing so, the panel had regard to the issues of insight, remorse and remediation. For the reasons set out below the panel has concluded that Mrs Soundy is liable in the future to put patients at unwarranted risk of harm.

The panel was mindful that the issue it had to determine was that of current impairment. It therefore had to consider the risk of repetition. Any decision about the risk of repetition in this case would be informed by consideration of the level of insight Mrs Soundy has demonstrated and by whether her misconduct is capable of being remedied and, if so, whether it has been remedied.

In relation to insight, the panel had regard to Mrs Soundy's 'Statement of events of Friday 03/11/2017' dated 25 November 2017. The panel considered that Mrs Soundy did not express any remorse for her actions, nor did she appear to accept that she attended work under the influence of alcohol. There is no evidence of recognition of Mrs Soundy about the risk to patients and the public posed by her conduct. The panel therefore determined that Mrs Soundy has not yet demonstrated any insight or remorse.

While the panel is of the view that the misconduct found is potentially remediable, the starting point for any such remediation has to be an acknowledgement of, reflection upon, and insight into the deficiencies in question. The panel considered that there was no evidence of any steps Mrs Soundy has taken to remedy the concerns raised about her fitness to practise. The panel noted that Mrs Soundy has

indicated that she does not wish to return to practice as a nurse. As Mrs Soundy has not demonstrated that she has remediated her misconduct, the panel was of the view that the public would remain at risk of harm if she were able to practise without restriction. The panel finds that Mrs Soundy's fitness to practise is impaired on the ground of public protection.

The panel went on to consider whether the need to uphold proper professional standards and maintain public confidence in the profession would be undermined and the reputation of the profession brought into disrepute if a finding of impairment of fitness to practise were not made in the circumstances of this case. The panel considered that if a member of the public were made aware of all the circumstances in Mrs Soundy's case, they would expect a finding of impairment on public interest grounds. The panel therefore concluded that a finding of impairment was necessary in the public interest.

The panel determined that Mrs Soundy's fitness to practise is currently impaired by reason of her misconduct both on the grounds of public protection and public interest.'

The original panel determined the following with regard to sanction:

'Before making its decision on the appropriate sanction, the panel established the aggravating and mitigating features in Mrs Soundy's case.

The panel considered the aggravating features to be:

- *Mrs Soundy has not provided evidence of remorse, insight into her failings or remediation.*

The panel considered the mitigating features to be:

- *Difficult personal circumstances at the time the charges arose;*
- *Mrs Soundy has worked as a nurse for over 30 years, in what appears to be a long, and previously unblemished career.*

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case, [PRIVATE] and its findings on impairment. 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 Mrs Soundy’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 and the risk of repetition. 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 Soundy’s registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be relevant, proportionate, measurable and workable. Mrs Soundy has stated that she no longer wishes to practise as a registered nurse. The panel is of the view that due to Mrs Soundy’s limited engagement with the NMC, and her stated intention not to return to the profession, there are no practical or workable conditions that could be formulated. Furthermore, the panel concluded that the placing of conditions on Mrs Soundy’s registration would not adequately address the seriousness of this case and could not sufficiently protect the public or recognise the public interest.

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

- Does the seriousness of the case require temporary removal from the register?*
- Will a period of suspension be sufficient to protect patients and the public interest?*

The panel found that, in relation to charge 1, the evidence considered indicated that this was an isolated incident and that there appear to have been no previous regulatory findings against Mrs Soundy. Further, the panel was of the view that there was no evidence before it to suggest that Mrs Soundy has harmful, deep-seated personality or attitudinal problems.

The panel determined that a suspension order for a period of 12 months was appropriate in this case to mark the seriousness of the misconduct. This period will also allow Mrs Soundy time to reflect on her misconduct and develop insight into her actions. [PRIVATE]. A 12 month suspension order would also allow Mrs Soundy time to [PRIVATE], engage with the NMC [PRIVATE], and reflect on this. While Mrs Soundy stated that she does not intend to return to the profession, the panel could not exclude the possibility that she might change her mind.

The panel noted the hardship such an order may cause Mrs Soundy. 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 which includes cooperating with their regulator.

The panel gave careful consideration to making a striking-off order. The panel concluded that a striking off order would be disproportionate in the circumstances. Whilst the panel acknowledged that a suspension order may have a punitive effect, it would be unduly punitive in Mrs Soundy's case to impose a striking off order. Balancing all of these factors, the panel concluded that a suspension order would sufficiently protect the public against the risk of repetition of Mrs Soundy's misconduct, and accordingly, would be the appropriate and proportionate sanction.

Before the end of the period of suspension, another panel will review the order. At the review hearing the reviewing 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:

- *Mrs Soundy's attendance at the hearing;*
- *Her engagement with the NMC;*
- *[PRIVATE];*
- *[PRIVATE];*
- *A reflective statement from Mrs Soundy to demonstrate her understanding of the impact of her actions on patients, the nursing profession and the wider public;*
- *Evidence of what Mrs Soundy has done to keep her nursing knowledge and skills up to date.*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Soundy'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, and the email responses from Mrs Soundy dated 22 September and 12 October 2020.

It has taken account of the submissions made by Mr Edwards on behalf of the NMC.

Mr Edwards provided the panel with the background of this case. He submitted that Mrs Soundy has not engaged with the NMC in any meaningful way since the imposition of the suspension order. Mr Edwards referred to the suggestions made by the substantive panel at the hearing in October 2019, as to what today's panel would be assisted by. He submitted that the panel do not have any documentary evidence before it in relation to these matters. There is no [PRIVATE], no reflective statement demonstrating her

understanding of the impact of her actions on patients, the nursing profession and the wider public, and no evidence of how she has maintained her nursing knowledge. Nor has Mrs Soundy complied with the NMC's request for [PRIVATE].

Mr Edwards submitted that Mrs Soundy has now been subject to a suspension order for a year and has not made any progress to alleviate the concerns identified by the original panel. He submitted that the risk of repetition and the risk of harm remain in the absence of any evidence of insight, remorse or remediation. He therefore invited the panel to find Mrs Soundy's fitness to practise remains impaired.

Mr Edwards submitted that, if the panel agrees that Mrs Soundy remains impaired, that a striking-off order may be appropriate at this stage. He submitted this may be appropriate given that Mrs Soundy has not engaged with these proceedings in any meaningful way, her likely lack of engagement in the future as well as her lack of insight, the risk of repetition of the misconduct and the risk of harm to future patients. He highlighted the indication from Mrs Soundy's correspondence that she does not wish to return to nursing.

The panel had regard to Mrs Soundy's email dated 12 October 2020 which states:

'Thankyou [sic] for your correspondence throughout this ordeal and I am hoping the hearing today brings everything to a close.

As I said I do not wish to nurse again but I am a very caring person.'

Mrs Soundy goes on to detail her current circumstances and health.

The panel 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 Soundy's fitness to practise remains impaired.

The panel noted that the original panel found that Mrs Soundy had not yet demonstrated any insight or remorse. There was no information before the panel today to indicate whether Mrs Soundy has developed any insight into her previous misconduct. Further there is no evidence of remorse or evidence to demonstrate Mrs Soundy's understanding of the impact of her actions on patients, the nursing profession and the wider public.

In its consideration of whether Mrs Soundy has remedied her practice, the panel noted that Mrs Soundy has been under a suspension order for the last 12 months. The panel has no information before it as to whether Mrs Soundy has kept her nursing skills or knowledge up to date whilst she has not been able to work as a nurse.

The panel noted that Mrs Soundy has failed to provide [PRIVATE] as suggested by the original panel.

The panel had no information to determine whether Mrs Soundy now recognises the seriousness of her misconduct in attending work whilst under the influence of alcohol and whilst 'heavily intoxicated'.

The original panel determined that Mrs Soundy was liable to repeat matters of the kind found proved. Today's panel has received no information in order to determine that there is no longer a risk of repetition of the misconduct. In light of this the panel determined that Mrs Soundy remains liable to repeat matters of the kind found proved. 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 considered that Mrs Soundy's failure to engage meaningfully with her regulator over a three year period could damage confidence in the NMC as regulator, as well as the reputation of the nursing profession. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

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

Decision and reasons on sanction

Having found Mrs Soundy 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 but concluded that this would also be inappropriate in view of the risk of repetition identified and the seriousness of the case. In addition, having found Mrs Soundy's fitness to practise impaired on public protection grounds a caution order would provide no restriction on her practice. The panel therefore determined that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether substituting the current suspension order with a conditions of practice on Mrs Soundy's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. Whilst the panel was of the view that Mrs Soundy's failings were, in theory, remediable this would require meaningful engagement from her.

The panel noted that Mrs Soundy, in her email dated 12 October 2020, reiterated that she does not wish to return to practise as a nurse. In view of Mrs Soundy's intention not to return to nursing, the panel considered that any conditions of practice order would not be workable and would serve no useful purpose.

Further, the panel bore in mind the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the

public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mrs Soundy's misconduct, particularly in light of her lack of meaningful engagement with these proceedings.

The panel next considered imposing a further suspension order. The panel noted that Mrs Soundy has now been under a suspension order for 12 months and has not meaningfully engaged with the NMC process or complied with any of the clear recommendations of the previous panel. The panel considered that Mrs Soundy has not shown remorse for her misconduct and has not demonstrated any willingness to recognise her failings or learn from and act on them. The panel was of the view that considerable evidence would be required to show that Mrs Soundy no longer posed a risk to the public. The panel noted that there is no evidence that Mrs Soundy has taken any steps to remediate her misconduct. The panel was concerned that Mrs Soundy's skills and knowledge would have deteriorated over the last three years. The panel considered that the email from Mrs Soundy, dated 12 October 2020, suggested that others were at fault rather than taking responsibility for herself. The panel considered Mrs Soundy clearly has a lack of insight into the seriousness of her misconduct. The panel was of the view that the ongoing risk to the public therefore remains. In view of the above the panel determined that a further period of suspension would not serve any useful purpose.

In addition, the panel considered that it was not in the public interest to continually suspend a nurse nor is it in Mrs Soundy's interest. The panel considered that public confidence in nurses could not be maintained by allowing Mrs Soundy to remain on the register. It considered that, in the circumstances, Mrs Soundy's failings along with the lack of insight, remorse or remediation at this time are fundamentally incompatible with her remaining on the register. The panel therefore determined that it was necessary to take action to prevent Mrs Soundy 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. The panel therefore directs the registrar to strike Mrs Soundy's name off the register.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 25 November 2020 in accordance with Article 30(1).

This decision will be confirmed to Mrs Soundy in writing.

That concludes this determination.