

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

**Substantive Order Review Hearing
Monday 8 February 2021**

Virtual Hearing

Name of registrant: Michael Catherall

NMC PIN: 7810018W

Part(s) of the register: Registered Nurse – Sub Part 2
Learning Disabilities – 18 December 1980

Area of registered address: Conwy

Type of case: Misconduct

Panel members: Nicholas Cook (Chair, lay member)
Jonathan Coombes (Registrant member)
Jill Wells (Lay member)

Legal Assessor: Jeremy Barnett

Panel Secretary: Jennifer Morrison

Nursing and Midwifery Council: Represented by Conall Bailie, Case Presenter

Mr Catherall: Not present and unrepresented

Order being reviewed: Suspension order (4 months)

Fitness to practise: Impaired

Outcome: **Striking-off order to come into effect on 19
March 2021 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 Catherall was not in attendance and that the Notice of Hearing had been sent to Mr Catherall's registered email address on 16 December 2020.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and venue of the hearing and, amongst other things, information about Mr Catherall's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Mr Bailie, 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 Catherall 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 Mr Catherall

The panel next considered whether it should proceed in the absence of Mr Catherall. The panel had regard to Rule 21 and heard the submissions of Mr Bailie who invited the panel to continue in the absence of Mr Catherall. He submitted that Mr Catherall had voluntarily absented himself.

Mr Bailie submitted that Mr Catherall had been made aware of today's hearing and had clearly stated that he would not be attending. Further, Mr Catherall had not requested an adjournment. He submitted that Mr Catherall had consistently indicated throughout the course of the NMC's proceedings that he did not wish to participate or to send information for panels to consider and, as a consequence, there was no reason to believe that an adjournment would secure Mr Catherall's attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Catherall. In reaching this decision, the panel has considered the submissions of Mr Bailie, written communication from Mr Catherall to the NMC, 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:

- No application for an adjournment has been made by Mr Catherall;
- Mr Catherall has clearly indicated in correspondence with the NMC that he does not wish to engage with these proceedings;
- There is no reason to suppose that adjourning would secure Mr Catherall's 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 Mr Catherall.

If, once the panel has heard submissions from Mr Bailie, the panel alters the order in this case, the matter may be listed for an early review in order that Mr Catherall and/or his representative can attend.

Decision and reasons on review of the substantive order

The panel decided to impose a striking-off order.

This order will come into effect at the end of 19 March 2021 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 four months by a Fitness to Practise Committee panel on 20 October 2020.

The current order is due to expire at the end of 19 March 2021.

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, on unknown dates between January and October 2018:

1. *Behaved inappropriately towards service users in that you:*

1.1. *Called Resident A “a pain in the arse”, or words to that effect;*
[PROVED BY ADMISSION]

1.2. *Called Resident B “a prick” and/or “numb nuts”, or words to that effect;*
[PROVED]

1.3. *On being informed that a resident was having a medical episode, responded “there is no rush, it’ll be over before I get there”, or words to that effect. [PROVED BY ADMISSION]*

2. *Behaved inappropriately towards colleagues in that you:*

2.1. *said in respect of a colleague that you would ‘break their legs’, or words to that effect; [PROVED BY ADMISSION]*

2.2. *said to Colleague B that her “top with pompoms on looked nice”, or words to that effect; [PROVED BY ADMISSION]*

2.3. ... **[NOT PROVED]**

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 next went on to decide whether, as a result of the misconduct found by the panel to arise in respect of charges 1.1, 1.2, 1.3 and 2.1, Mr Catherall's fitness to practise is currently impaired.'

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of CHRE v NMC and Grant in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

- b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) *...'*

For reasons already set out above in relation to misconduct, the panel considered that limbs a, b and c were engaged by Mr Catherall's misconduct in this case.

The panel then turned to the issue of whether Mr Catherall was liable to repeat those failings in future. The panel had regard to the case of Cohen, and considered whether the areas of concern identified in Mr Catherall's nursing practice are capable of remediation, whether they have been remedied, and whether there is a risk of repetition of similar concerns occurring at some point in the future. The panel noted that evidence of remediation, remorse and insight are key to that exercise.

The panel noted that there was an absence of evidence, in this case, of remorse, remediation or insight.

In relation to remorse, the panel noted that the stance adopted to these allegations in both the Home's investigation and in these proceedings was to seek to deflect blame onto others. He did not express regret at his actions. On the contrary, he had asserted that the allegations against him were part of a "witch hunt", did not appear to recognise that his actions were inappropriate, and in a number of instances sought to justify or minimise them, for example dismissing them as banter. The panel considered that there was therefore no evidence of remorse.

Regarding insight, the panel noted that Mr Catherall had admitted a number of the factual allegations set out in the charges. However, there was no evidence of any reflection by him on what happened. There was no evidence of any recognition by him of the potential impact of his actions for the safety and wellbeing of vulnerable service users in his care, for his junior colleagues, or for the reputation of the nursing profession as a whole. There was no evidence of any understanding or appreciation on his part that his actions were inappropriate, of why they happened, or of how he could address his behaviour to ensure that it was not repeated. The panel therefore considered that, notwithstanding Mr Catherall's factual admissions, there was very little evidence of insight.

The panel noted that there was no evidence of any previous regulatory concerns about Mr Catherall. It noted Ms 2's evidence that in the past Mr Catherall had been professional and receptive in response to issues of local concern being brought to his attention in a clinical setting, and had taken those issues on board and addressed them to her satisfaction. It further noted the evidence of Ms 4 that Mr Catherall had, in her view, had a good relationship with patients and had been professional towards her as a colleague. The panel accepted that this provided some evidence that the attitudinal failings evidenced by these charges were not present at all times, and that Mr Catherall was capable of acting professionally on other occasions.

Taking into account that evidence and the nature of the proven charges in this case, the panel was satisfied that all the charges found proved were capable of being remedied. However, in the absence of evidence of insight or evidence of incident-free practice in a healthcare setting subsequent to these incidents, there was no evidence that the concerns had been remedied to date. The panel noted that it had no evidence before it of any action taken by Mr Catherall to acknowledge, address or remedy these failings, or the attitudinal issues which appear to underpin them.

The panel noted that it had no clear information as to whether Mr Catherall is currently employed and in what capacity. It noted that Mr Catherall has stated

that he has retired from the nursing profession. However there was no concrete evidence of this, and there was nothing at the present time to prevent him from returning to a nursing role in the future. Were he to do so, the panel considered that in the absence of evidence of remorse, insight and remediation, Mr Catherall was liable to repeat his actions in future. Were those actions to be repeated, there would be a risk of unwarranted harm to patients in his care, as well as of further damage to the reputation of the profession and further breaches of fundamental tenets of the profession.

In light of the above, the panel had no evidence before it to allay its concerns that Mr Catherall currently poses a risk to patient safety. It therefore found his fitness to practise impaired on that basis. The panel was also satisfied that, having regard to the nature of the misconduct in this case, “the need to uphold proper professional standards and public confidence in the profession would be undermined” if a finding of current impairment were not made. It was of the view that a reasonable, informed member of the public would be concerned if Mr Catherall’s fitness to practise were not found to be impaired and if he were to be permitted to practice as a registered nurse in future without some form of restriction.

For all the above reasons the panel concluded that Mr Catherall’s fitness to practise is currently impaired by reason of misconduct on both public protection and public interest grounds.’

The original panel determined the following with regard to sanction:

‘The panel considered that, although serious, the misconduct in this case was not at the top of the scale of seriousness. It had already noted that, had there been sufficient evidence of remorse, insight and remediation to minimise the risk of repetition, a caution order or conditions of practice order might have been sufficient to mark the seriousness of the misconduct and address the wider public interest considerations in this case. It followed that the panel considered that a period of suspension would be sufficient to address the

public interest considerations. It also considered that a period of suspension would operate to protect the public whilst it was in force.

The panel further bore in mind that there was no evidence of deep-seated attitudinal failings in this case and that the conduct was remediable. It considered that a period of suspension would allow an opportunity for Mr Catherall to reflect on his actions, the concerns identified in this case, and to develop (and demonstrate to a future panel) an appreciation of the inappropriateness of his behaviour, an understanding of why and how it happened, its actual and potential implications and consequences for patients, colleagues and the reputation of the profession, and the steps which could be taken to ensure that it was not repeated.

The panel was mindful that this was the first instance of regulatory concerns about Mr Catherall, and that there was some positive evidence about his interaction with patients and colleagues on other occasions, including in response to clinical concerns being raised with him. The panel was therefore hopeful that, given a period of suspension in which to reflect further on these events, Mr Catherall would be able to develop sufficient insight to be able to address and remedy them and demonstrate himself capable of embedding the lessons learned into safe and effective practice, should he wish to do so.

In the circumstances set out above, the panel was also satisfied that in this case the misconduct, whilst unprofessional, was not at the top of the scale of seriousness and was not fundamentally incompatible with remaining on the register. It consisted of an accumulation of relatively minor and fleeting misdemeanours which, viewed collectively, disclosed concerns about an unprofessional, disrespectful and inappropriate attitude towards colleagues and patients. These issues were remediable, although they have not to date been remedied. In all the circumstances the panel considered that it would be disproportionate and unnecessarily punitive to impose a striking off order in this case at this stage.

The panel was therefore of the view that a suspension order would be appropriate, sufficient and proportionate response in this case. It was at the present time the only order which would be sufficient to address both the public protection and wider public interest considerations in the light of the absence of evidence of insight, remorse and remediation. A suspension order would send a clear message to Mr Catherall, the profession and the public about the inappropriateness and unacceptability of his actions. Further, it would give Mr Catherall the opportunity to reflect upon and remedy his failings, and to engage with the NMC to demonstrate to a reviewing panel that he recognises the impact that his actions have or could have had on residents, colleagues and the profession in general, as well as providing an assurance that the misconduct would not be repeated. If he was able to achieve this, the public interest could potentially be served by the continuation in practice of an experienced nurse about whom there were no clinical concerns and no prior regulatory concerns. The panel noted the hardship such an order will inevitably cause Mr Catherall, although this appears to be limited in circumstances where it is his stated intention at the present time to retire from the healthcare profession. In any event, Mr Catherall's interests in this regard are outweighed by the public interest and public protection considerations in this case. The panel considered that a suspension order was necessary to mark the misconduct, send to the public and the profession a clear message about the standard of behaviour required of a registered nurse, and thereby maintain public confidence in the profession and the regulatory process.

The panel considered that it was necessary for there to be a review following the period of suspension. It considered that Mr Catherall needs to develop, and demonstrate, the required levels of remorse, insight and remediation to show a future panel that he is capable of learning from this incident and embedding his learning into consistent professional practice in the future. Without a review, the order would simply lapse on its expiry, and there would be no way to monitor or review the progress made by Mr Catherall.

The panel gave careful consideration to the appropriate duration of the suspension order. It determined that a suspension order for a period of 4

months was appropriate in this case. It had to balance what is necessary to mark the seriousness of the misconduct alongside the likely period of time which will be required for Mr Catherall to undertake the necessary development in his insight and to be in a position to demonstrate his progress to a future panel. Whilst the panel considered that a period of 3 months would be adequate to mark the seriousness of the misconduct and address the public interest considerations, it considered that a longer period was required for Mr Catherall to take the steps he now needs to take to recognise and address his misconduct in order to address the risk of repetition and the public interest considerations. The panel therefore considered that the period of 4 months was necessary, appropriate and proportionate. It was mindful that with the addition of the 28 day appeal period during which the substantive order would not take effect, this would in effect give Mr Catherall nearly 5 months in which to recognise his failings and demonstrate the steps he has taken to address them. It considered that this was the minimum period necessary to address the failings identified in this case.'

Decision and reasons on current impairment

The panel has considered carefully whether Mr Catherall'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 written communications between Mr Catherall and the NMC. It has taken account of the submissions made by Mr Bailie on behalf of the NMC. Mr Bailie outlined the background to the case and the charges that were found proved. He referred to the original panel's finding of impairment by reason of misconduct, and to that panel's view that although Mr Catherall's conduct was capable of remediation, Mr Catherall had not provided any evidence of remorse, remediation or insight into his failings.

Mr Bailie submitted that nothing had appeared to have changed since the imposition of the suspension order. With reference to an email from Mr Catherall dated 6 February 2021, Mr Bailie submitted that Mr Catherall still regarded the whole process as a '*witch hunt*', and that he had still not shown any evidence of remorse, remediation or insight. He further submitted that Mr Catherall did not appear to be working in a healthcare setting, which would limit his ability to address the failings in his conduct towards service users and colleagues.

Mr Bailie stated that the NMC's position is that Mr Catherall's fitness to practise is still impaired, and that he had no instruction from the NMC with regard to the appropriate sanction. He submitted that it was ultimately a matter for the panel to decide.

Mr Bailie clarified that Mr Catherall had repeatedly informed the NMC that he wished to be removed from the register, and submitted that Mr Catherall had been given clear guidance by his case officer on what he would need to do to potentially bring about that outcome. However, Mr Catherall had not taken any steps towards complying with that guidance, which would include providing evidence that he did not intend to return to a nursing role. Mr Bailie submitted that this appeared to be because Mr Catherall did not trust the NMC to maintain appropriate confidentiality with respect to his case.

Mr Bailie noted that Mr Catherall has not paid his registration fee and, if the panel did not impose a further order, then Mr Catherall's registration would lapse and he would be removed from the register as he so wished. However, Mr Bailie submitted that in the absence of evidence supporting Mr Catherall's stated intention not to return to nursing, which might include confirmation of alternative employment, pension statements or a declaration from Mr Catherall, it would neither be appropriate nor safe to allow the current suspension order to lapse, since Mr Catherall could simply reapply for readmission to the register if he changed his mind.

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 Catherall's fitness to practise remains impaired.

The panel noted that the substantive hearing panel found that all of the charges found proved were capable of remediation. However, the original panel further noted that aside from making admissions to some of the charges, Mr Catherall had demonstrated no insight into his conduct, and had taken no steps towards remediating the concerns about his practice. Today's panel was of the view that, despite having been given a period of time to acknowledge, address and remedy his failings, Mr Catherall had not taken any steps towards doing so.

The panel had regard to the original panel's finding that there was no evidence of deep-seated attitudinal failings in Mr Catherall's case. However, today's panel noted with concern that in the light of communications between Mr Catherall and the NMC that had been exchanged since the original hearing, Mr Catherall had appeared to disengage from meaningful participation in the regulatory proceedings. The panel noted that Mr Catherall had apparently refused to provide information about his current employer, or any other information that would support his application to be removed from the register. The panel had regard to an email from Mr Catherall dated 26 January 2021, which stated:

'...I havnt looked at the BUNDLE, I am not attending a meeting virtual or whatever, I want rid of the NMC... I just want MY NAME off the register voluntarily and will NOT furnish you with details of my employ. As I do not trust you policy n procedure people.' [sic]

The panel considered Mr Catherall's response in this and other emails to be indicative of a deep-seated attitudinal issue that may be difficult to remediate.

The original panel determined that Mr Catherall was liable to repeat matters of the kind found proved. Based on the information before it, today's panel was of the view that Mr Catherall is even more 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 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 Catherall's fitness to practise remains impaired.

Decision and reasons on sanction

The panel first decided whether to allow the substantive order to expire following its finding of current impairment. The panel took into account the NMC's 'Sanctions Guidance' (SG) as applicable to the matter, and considered in particular whether or not the three factors set out in the SG applied in this case, namely that:

- *'the nurse, midwife or nursing associate's registration is only active because of the substantive order being in place,*
- *the nurse, midwife or nursing associate doesn't want to continue practising, and*
- *the public are protected because the panel have made a clear finding that the nurse, midwife or nursing associate's fitness to practise is currently impaired so that this can be drawn to the attention of any future decision-maker if the nurse, midwife or nursing associate attempts to re-join the register.'*

The panel concluded that although Mr Catherall's registration is only active because of the substantive order being in place and that there would be a degree of public protection because of the finding of current impairment, the panel was not satisfied that Mr Catherall had supplied sufficient evidence of his intention to stop practising as advised in the guidance. The panel therefore concluded that it would not be appropriate to allow the order to expire in this case.

The panel therefore went on to consider sanction. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 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 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 public protection and wider public interest considerations identified, an order that does not restrict Mr Catherall's practice would not be appropriate in the circumstances. The panel had regard to the original panel's finding that had there been sufficient evidence of remorse, insight and remediation to minimise the risk of repetition, a caution order might have been sufficient to mark the seriousness of the misconduct and address the wider public interest considerations in this case. However, in the light of the new information before it, today's 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 Catherall'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 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 Mr Catherall's misconduct.

The panel has received information that indicates Mr Catherall does not intend to return to practise as a nurse. In view of Mr Catherall's clear settled 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.

The panel next considered imposing a further suspension order. The panel noted that Mr Catherall has not taken any of the steps that had been suggested by the first panel which would have permitted him to demonstrate an intention to remediate his failings. Although the panel was not satisfied that Mr Catherall had made it clear in an appropriate manner

that he intended to no longer practise, the panel considered Mr Catherall's communications to be an unequivocal wish to be removed from the register. The panel was therefore of the view that a further period of suspension would not serve any useful purpose.

The panel next considered imposing a striking-off order. The panel was of the view that Mr Catherall's attitude towards the NMC as regulator and towards his responsibility as a registered nurse to cooperate with his regulator were wholly incompatible with remaining on the NMC register. The panel considered that Mr Catherall's conduct had demonstrated an unprofessional, disrespectful and inappropriate attitude towards colleagues and patients, and noted that it had not received any evidence to indicate that this had changed in any way. Rather than developing insight into the effect that his behaviour might have on the care afforded to patients and on his working relationship with other professionals, the panel was of the view that Mr Catherall had now developed a deep-seated animosity towards the NMC as regulator and that he had decided against taking any steps to remediate his conduct. The panel therefore concluded that the only sanction that would adequately protect the public and serve the public interest considerations in this case was a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 19 March 2021 in accordance with Article 30(1).

This decision will be confirmed to Mr Catherall in writing.

That concludes this determination.