

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

**Substantive Order Review Meeting
Monday 1 February 2021**

Virtual Meeting

Name of registrant: Emma Louise Lyness

NMC PIN: 09J0134N

Part(s) of the register: Nursing, Sub Part 1
RNA, Registered Nurse – Adult
(20 November 2009)

Area of registered address: Northern Ireland

Type of case: Conviction/Misconduct

Panel members: Mary Hattie (Chair, registrant member)
Amy Lovell (Registrant member)
Nicola Dale (Lay member)

Legal Assessor: Andrew Reid

Panel Secretary: Catherine Acevedo

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: Striking-off order to come into effect on 17 March
2021 30 (1)

Decision and reasons on service of Notice of Meeting

This panel noted at the start of this meeting that Ms Lyness was not in attendance and that the Notice of Meeting had been sent to Ms Lyness' registered email address on 29 December 2020.

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

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Ms Lyness has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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 17 March 2021 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 19 August 2019. This was reviewed on 7 August 2020 and a suspension order was imposed for a further period of 6 months.

The current order is due to expire at the end of 17 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:

1. *On 6 July 2017 at Ballymena Magistrates Court, were convicted of the following offences:*
 - a) *Driving while unfit through drink or drugs, contrary to Article 15(1) of the Road traffic (Northern Ireland) Order 1995*
 - b) *Driving while disqualified, contrary to 168A (c) (1) of the Road Traffic (Northern Ireland) Order 1981*
 - c) *Driving without insurance, contrary to Article 90(4) of the Road Traffic (Northern Ireland) Order 1981*
 - d) *Failing to stop, contrary to Article 175 of the Road Traffic (Northern Ireland) Order 1981*
 - e) *Failing to keep the vehicle standing near where the accident occurred for a reasonable period, contrary to Article 175 of the Road Traffic (Northern Ireland) Order 1981*
 - f) *Failing to report the accident contrary to Article 175 of the Road Traffic (Northern Ireland) Order 1981*
2. *Did not inform the NMC you had received any of the convictions referred to in Charge 1 above until 23 July 2018.*
3. *Breached your professional duty of candour in that you failed to be open and honest with your regulator as soon as possible after receiving the convictions referred to in Charge 1.*
4. *Breached your professional duty of candour and/or were dishonest in that you informed the NMC on 23 July 2018 of 4 of the 6 convictions you knew you had received as set out in Charge 1.*

AND in light of the above, your fitness to practice is impaired in relation to charge 1 by reason of your conviction and in relation to charges 2 -4 by reason of your misconduct.

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

“The panel considered whether Ms Lyness’ fitness to practise remains impaired. It bore in mind that this case relates to both convictions and misconduct, specifically dishonesty; dishonesty is inherently a difficult (but not impossible) matter to remediate. The panel noted that the original panel considered Ms Lyness’ dishonesty to be towards the lower end of the spectrum of such matters, but reminded itself that dishonesty is an inherently serious issue in regulatory proceedings in any event.

The panel considered that there has been no material change since the determination of the previous panel. Ms Lyness has not provided any documentation for the benefit of this panel’s consideration, and has not engaged with the recommendations made by the previous panel; there is no evidence of any substantive engagement with the regulatory process since the last hearing, and very limited engagement prior to that.

The panel considered that Ms Lyness’ misconduct was capable of remediation, but she has not provided any evidence of remediation, remorse, or insight into her misconduct – nor any evidence of insight into, or remorse for, her conviction. The panel therefore concluded that a risk of repetition remains live.

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. It considered that, were it not to make a finding of current impairment, public confidence in the profession and the NMC as regulator would be significantly damaged. A finding of impairment is required to declare and uphold proper standards of conduct and performance expected of a registered nurse. The panel therefore determined that, in this case, a finding of continuing impairment on public interest grounds is required”.

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

“This panel considered that Ms Lyness’ sustained lack of engagement throughout these regulatory proceedings, such as to provide no evidence of insight, remediation, remorse, or compliance with the recommendations of the previous panel, to be an aggravating factor, on top of those determined by the original substantive panel. This panel considered there to be no further mitigating factors to add to those identified by the original substantive panel.

The panel considered whether to take no action or impose a caution order but concluded such courses of action would be inappropriate in view of the nature and seriousness of the case. In the light of the above, the panel considered that an order which does not restrict Ms Lyness’ practice would not be appropriate in the circumstances of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action or impose a caution order.

The panel next considered whether a conditions of practice order on Ms Lyness’ 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 satisfy the public interest, in the light of the nature and seriousness of the case. The panel could not formulate appropriate conditions of practice, as the matters at issue in this case are not clinical in nature. Furthermore, this panel was not satisfied, in the light of Ms Lyness’ non-engagement, that any conditions it could conceive of would be engaged and complied with. Therefore, the panel considered that any conditions of practice order would not be workable and would serve no useful purpose.

The panel considered the imposition of a further period of suspension. It noted that this is the first review of Ms Lyness’ substantive order, and that Ms Lyness has not engaged in respect of these regulatory proceedings; she has not provided any information as to her levels of remorse, insight, or remediation. The panel noted that Ms Lyness’ convictions are serious and that her dishonest misconduct involved an attempt to conceal a part of those convictions, which might appear to amount to a deliberate breach of the duty of candour. Furthermore, Ms Lyness did not disclose her convictions to the NMC until almost a year after the event. The panel

considered these matters to be exacerbated by the fact that it has no substantive acknowledgement of wrongdoing by Ms Lyness before it, which potentially raises serious questions about her professionalism.

However, the panel considered that the circumstances of this case are not such as to be fundamentally incompatible with Ms Lyness' continued registration. It bore in mind the extraordinary general circumstances of the last six months, which may or may not have affected any potential for engagement with the NMC. The panel determined that a further short period of suspension would adequately address the public interest in this matter. Furthermore it would provide a potentially ultimate opportunity for Ms Lyness to re-engage with the regulatory process and attempt to demonstrate remediation, insight, and remorse for her actions.

The panel gave serious consideration to a striking-off order, but considered that such a sanction would be disproportionate at this moment in time.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of six months which would provide Ms Lyness with a further opportunity to engage with the NMC. It considered this to be the most appropriate and proportionate sanction available at this point in time, while noting that all sanctions (including a striking-off order) will be available to a future reviewing panel

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 17 September 2020 in accordance with Article 30(1).

Before 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 reviewing this case would be assisted by:

- *Meaningful engagement by Ms Lyness, demonstrating insight and efforts to remediate her misconduct. Such engagement might take the form of up-to-date references, a reflective piece, and a clear statement by Ms Lyness with regards to her future practice”.*

Decision and reasons on current impairment

This panel has considered carefully whether Ms Lyness’ fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant’s suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle.

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

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Ms Lyness’ fitness to practise remains impaired. It bore in mind that this case relates to both convictions and misconduct, specifically dishonesty. The panel considered that dishonesty is difficult to remediate and is an inherently serious issue in regulatory proceedings in any event.

The panel considered that there has been no material change since the determination of the previous panel. Ms Lyness has not provided any documentation for the benefit of this panel’s consideration, and has not engaged with the recommendations made by the previous panel; there is no evidence of any substantive engagement with the regulatory process since the last hearing.

The panel considered that Ms Lyness' misconduct was capable of remediation, but she has not provided any evidence of remediation, remorse, or insight into her misconduct – nor any evidence of insight into, or remorse for, her conviction. The panel therefore concluded that a risk of repetition remains live.

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. It considered that, were it not to make a finding of current impairment, public confidence in the profession and the NMC as regulator would be significantly damaged. A finding of impairment is required to declare and uphold proper standards of conduct and performance expected of a registered nurse. The panel therefore determined that, in this case, a finding of continuing impairment on public interest grounds is required.

For these reasons, the panel finds that Ms Lyness' fitness to practise remains impaired.

Decision and reasons on sanction

Having found Ms Lyness' 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 considered whether to take no action or impose a caution order but concluded such courses of action would be inappropriate in view of the nature and seriousness of the case. In the light of the above, the panel considered that an order which does not restrict Ms Lyness' practice would not be appropriate in the circumstances of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action or impose a caution order.

The panel next considered whether a conditions of practice order on Ms Lyness' 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 satisfy the public interest, in the light of the nature and seriousness of the case. The panel could not formulate appropriate conditions of practice, as the matters at issue in this case are not clinical in nature. Furthermore, this panel was not satisfied, in the light of Ms Lyness' non-engagement, that any conditions it could conceive of would be engaged and complied with. Therefore, the panel considered that a 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 the decision of the previous reviewing panel:

“The panel determined that a further short period of suspension would adequately address the public interest in this matter. Furthermore it would provide a potentially ultimate opportunity for Ms Lyness to re-engage with the regulatory process and attempt to demonstrate remediation, insight, and remorse for her actions”.

The panel noted that since that review Ms Lyness has not engaged in respect of these regulatory proceedings; she has not provided any information as to her levels of remorse, insight, or remediation. The panel considered Ms Lyness' convictions to be serious and that her dishonest misconduct involved an attempt to conceal a part of those convictions, which might appear to amount to a deliberate breach of the duty of candour. Furthermore, Ms Lyness did not disclose her convictions to the NMC until almost a year after the event. The panel considered these matters to be exacerbated by the fact that it has no substantive acknowledgement of wrongdoing by Ms Lyness before it, which potentially raises serious questions about her professionalism. The panel was of the view that considerable evidence would be required to show that Ms Lyness no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Ms Lyness 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 17 March 2021 in accordance with Article 30(1).

This decision will be confirmed to Ms Lyness in writing.

That concludes this determination.