

**Nursing and Midwifery Council
Fitness to Practise Committee
Restoration Hearing
2 July 2021**

Virtual Hearing

Name of Applicant:	Sarah Jayne Billington
NMC PIN:	08F0502E
Part(s) of the register:	Registered Nurse – Adult
Area of Registered Address:	Cheshire
Panel Members:	Debbie Jones (Chair, Lay member) Claire Clarke (Registrant member) Jennifer Portway (Lay member)
Legal Assessor:	Nigel Mitchell
Panel Secretary:	Roshani Wanigasinghe
Ms Bilington:	Present and not represented
Nursing and Midwifery Council:	Represented by Tope Adeyemi, Case Presenter
Outcome:	Application granted subject to the completion of any additional training and experience as required under Article 19(3)

Decision and reasons on application for hearing to be held in private

During your evidence you made reference to your personal circumstances. The Legal Assessor therefore made a request that this case be held in private on the basis that such matters are kept private. The application was made pursuant to Rule 19 of the Rules.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Ms Adeyemi on behalf of the Nursing and Midwifery Council (NMC) did not object to this.

Having heard that there will be reference to your personal circumstances, the panel determined to hold part of the hearing in private as and when such issues arose.

The panel further noted that Mr 1 in his evidence, made reference to health matters. As such the panel also determined to hold those matters in private.

Determination of application for Restoration to the Register:

This is a hearing of your first application for restoration to the Nursing and Midwifery Council Register. A panel of the Conduct and Competence Committee directed on 19 June 2014 that your name be removed from the Register based on their findings with regard to the facts of your case and your impairment. This application is made by you in accordance with Article 33 of the Nursing and Midwifery Order 2001, as at least five years have now elapsed since the date of your strike-off.

At this hearing the panel may reject your application or it may grant your application unconditionally. It may grant your application subject to your satisfying the requirements of Article 19(3) and it may make a conditions of practice order.

The panel has considered your application for restoration to the Council's Register.

Background

The panel was informed that at the time of the incidents you were employed as a registered nurse with Barchester Healthcare based at Marple Dale Care Centre (Marple Dale). Your usual place of work was the Windsor First Floor Unit, a unit providing care to older people for up to 37 residents.

You were on duty at Marple Dale on 26 and 27 January 2013. Whilst on duty on one of these dates you had administered a supplement drink prescribed for Resident A to another resident, Resident B. Resident B had not been prescribed the supplement drink.

Further, on 3 February 2013 you had arrived at work to commence a shift whilst unfit. Subsequently you were found asleep during the shift and having left the keys to the medication trolley unattended in the corridor.

You had resigned from your role with immediate effect on 6 February 2013.

The panel at the substantive hearing on 19 June 2014, considered the following charges:

That you a registered nurse:

1. *On or around 26-27 January 2013 administered a nutritional supplement drink prescribed for Resident A to Resident B.*
2. *On 3 February 2013:*
 - a. *Attended for work whilst unfit.*
 - b. *Slept whilst on duty.*
 - c. *Left the keys to the medication cupboard unattended.*

And, in light of the above your fitness to practise is impaired by reason of your misconduct.

You had made admissions in full to charges 1 and 2 through the returned Standard Directions Form signed and dated 17 March 2014. The panel at the substantive meeting found all of the charges proved by way of your admission on 19 June 2014.

The substantive meeting panel, in making its decision on impairment, stated the following with regard to impairment:

“The panel has concluded that Ms Billington’s actions had the potential to cause residents significant harm. The panel was satisfied that her misconduct had brought the profession into disrepute, given that it not only involved a deliberate medication error but also attending work whilst unfit. The panel has also found that her misconduct breached fundamental tenets of the profession. The fundamental tenets of the profession are not limited to clinical care. They encompass care in general, which involves acting in patients’ best interest at all times, and showing respect not only for patients but also colleagues. As a registered nurse, Ms Billington must have been aware that attending work whilst unfit would prevent her from being able to care for residents. By her actions in the hours before starting her shift she did not put the best interests of those in her care first and placed her colleagues in a difficult and compromised situation.

The panel then considered whether Ms Billington is liable in the future to:

- (a) act so as to put patients at unwarranted risk of harm;*
- (b) bring the profession into disrepute;*
- (c) breach one of the fundamental tenets of the profession.*

In reaching its decision, the panel had regard to all the circumstances of the case and in particular to the issues of insight, remediation, the likelihood of repetition and the public interest.

The panel has not had the benefit of being addressed directly by Ms Billington. Although she has engaged with the NMC, in that she has completed and returned the Standard Directions Form with some comments, she has not provided any submissions directly relating to the charges. However, it has taken into account the evidence regarding her responses during the internal investigation.

The panel considered that there was no evidence of any insight demonstrated by Ms Billington. It considered that her response to Mr 1 during the meeting of 31 January 2013 in relation to charge 1 demonstrated an alarming lack of insight. It noted her comments that “well she needed them and I would do it again if I thought she needed them this is ridiculous... Your making a big issue out of this... It’s a supplement drink that’s all... well I’m sorry but it is only a supplement drink... I wish the carer had not seen me give it”.

It appeared as though Ms Billington had no understanding of the gravity of her actions, and no appreciation of the fact that the nutritional supplement had not been prescribed for Resident B. The panel was concerned by her declaration that she would act in the same way again and further that she wished a colleague had not observed her. There is no acknowledgement from her that her actions deprived Resident A of her prescribed medication. Her response on the Standard Directions Form indicates that she maintains her assertion that she was acting in the best interest of the patient. The panel considered this was clearly not the case for either Resident A or B.

There is no evidence of any reflection or insight from Ms Billington in relation to charge 2. Although Ms Billington has admitted the charges, there is no indication that she has understood the gravity of her actions or the potential impact of them on residents, colleagues and the reputation of the profession. At no stage has Ms Billington genuinely apologised for her actions or demonstrated any remorse.

There has been no evidence put before the panel in terms of any remediation taken by Ms Billington. It received no references or testimonials, nor any

information as to any further training undertaken since the incident. In any event, the panel did not consider this a case involving deficiencies in Ms Billington's clinical practice that could be addressed by re-training. Rather, it considered it to involve attitudinal problems, exemplified by Ms Billington's lack of understanding as to the seriousness of her actions and her deliberate disregard of her responsibilities to residents and colleagues by attending work whilst unfit . Such behavioural issues may be difficult to remedy, but in any event the panel has seen no evidence of any steps taken to do so.

In light of the lack of insight, remediation or genuine remorse, the panel could not be satisfied that Ms Billington would act any differently in similar circumstances. Accordingly, the panel concluded that there was a real risk that Ms Billington was liable in future to place patients at risk of harm, to bring the profession into disrepute and to breach fundamental tenets of the profession.

The panel also considered whether public confidence in the profession would be undermined if a finding of impairment were not made in the circumstances of this case. The panel concluded that it would. Members of the public have the right to expect a nurse to always act in the best interest of patients and to attend work in a fit and capable state. Members of the public would consider Ms Billington's conduct, in charge 2 in particular, abhorrent.

For all the reasons outlined above, the panel determined that Ms Billington's fitness to practise is currently impaired by reason of her misconduct.”

The substantive panel went on to say with regard to sanction:

“In reaching its decision on sanction, the panel considered all the evidence before it in this case and accepted the advice of the legal assessor.

The panel took into account the advice set out in the NMC Indicative Sanctions Guidance (June 2012). It had regard to the principle of proportionality, weighing

the interests of Ms Billington with the public interest. It has taken account of the mitigating and aggravating factors in the case.

In terms of mitigating factors, the panel took account of Ms Billington's early admissions to the NMC. There is no evidence of any further referrals or any concerns prior to the incidents in charges 1 and 2. Ms Billington is of previous good character.

In terms of aggravating factors, the panel bore in mind that Ms Billington's misconduct placed residents at significant risk of harm. Her misconduct also placed an unfair burden on her colleagues. There is no evidence of any insight, remediation or remorse.

The panel took into account that the purpose of a sanction is not to be punitive, although it may have that effect; rather, the purpose of a sanction is to protect patients and the wider public interest. The wider public interest includes maintaining public confidence in the profession and the NMC as a regulator, and declaring and upholding proper standards of conduct and behaviour.

The panel reminded itself of its findings at the impairment stage, especially with regard to seriousness, the likelihood of repetition and the impact on the public interest. It approached the question of which sanction, if any, to impose by considering the least restrictive sanction first and moving upwards.

It first considered taking no action. In light of the seriousness of the misconduct found, involving placing residents at significant risk of harm, the panel decided that taking no further action would be wholly inappropriate in this case. Such action would offer no public protection and would not satisfy the public interest.

The panel then considered whether to make a caution order. The panel considered that the seriousness of the case was at the higher end of the spectrum of impairment of fitness to practise. The panel was mindful of its findings that there was a real risk that Ms Billington was liable in the future to

place patients at risk of harm, place an unfair burden on colleagues, bring the profession into disrepute and to breach fundamental tenets of the profession. It bore in mind that a caution order would not restrict Ms Billington's ability to practise as a nurse. Accordingly, the panel concluded that such an order would offer no public protection and would not satisfy the wider public interest.

The panel then considered whether a conditions of practice order was the appropriate sanction. There was no evidence before the panel of any willingness by Ms Billington to respond positively to any conditions on her practice. Ms Billington has engaged with the NMC regulatory process, but has indicated that she no longer wishes to practise as a nurse. In addition, the panel considered that the misconduct related predominantly to Ms Billington's attitude and behaviour. The panel did not consider that there were workable and practicable conditions that could be formulated that would address its concerns. Accordingly, the panel was not satisfied that a conditions of practice order would be sufficient to protect the public. It also considered that such a sanction would not satisfy the wider public interest. The panel therefore decided that a conditions of practice order would not be proportionate or appropriate in the circumstances of this case.

The panel next considered whether a suspension order would be appropriate. The misconduct constituted two separate episodes of conduct which fell significantly short of the standards expected of a registered nurse. In light of the fact that the panel considered there to be a real risk of repetition, compounded by Ms Billington's lack of insight, reflection or remediation, the panel concluded that her misconduct was too serious for a period of suspension to be sufficient to protect the public and the wider public interest.

Ms Billington's misconduct amounted to numerous breaches of the Code and deliberately departing from the standards and policies relating to the safe administration of medication. The misconduct found could foreseeably have resulted in significant harm to patients. Attending work in an unfit state, and therefore being in no position to function properly and provide any care, is totally unacceptable and fundamentally incompatible with remaining on the NMC

register. Ms Billington has demonstrated no remorse or issued any sort of apology. She has consistently sought to justify her actions in relation to charge 1 and demonstrated a persistent lack of insight. There has been no evidence of any willingness to change her attitude.

In all the circumstances, the panel concluded that the only sufficient sanction to protect the public and satisfy the wider public interest was a striking-off order. Additionally, it considered that the public's trust and confidence in the profession, and the NMC as a regulatory body, would be significantly undermined were a striking-off order not imposed."

Submissions and evidence

Ms Adeyemi, on behalf of the NMC, outlined the background of the case and the facts that led to the striking-off. She referred this panel to the previous panel's decision which resulted in your removal from the NMC's register. She reminded the panel of the test set out in Article 33(5) of the Order.

Ms Adeyemi also referred the panel to the documents provided by you, which included email exchanges between yourself and your NMC case officer, your reflective piece and a number of references. She submitted that you have demonstrated insight into the shortcomings that led to your striking-off order. She submitted however that you have acknowledged that you have not kept up-to-date with professional practice and therefore if the panel was of the view that you should be restored back onto register then the panel may be minded that a conditions of practice order is necessary in order to protect the public. She submitted that a condition for you to be supervised for a period when undertaking medicines administration would be appropriate.

You provided evidence under affirmation. You told the panel how sorry you were and how you hugely regretted your actions. You said "*It was a huge mistake. It was a lesson learnt and I can give you my word it will not be repeated*".

You told the panel that you know that you cannot and should not administer medication that is not prescribed to a patient. You said that it was unsafe to have done that and you recognise the potential impact of such conduct on patients. You said that you let the nursing profession as well as yourself down.

You explained to the panel the circumstances that led to the events of 3 February 2013. You said that you had requested a day off as you had been out the night before. You said that you were asked by your manager to come into work, and you were told that if you did not, you would be “sacked”. Regardless, you told the panel that this was no excuse and admitted that you should not have attended work when unfit to do so.

You told the panel that the concerns arose during a difficult time in your personal life **[PRIVATE]**. You said that at the time you had not addressed those issues which caused you to act in the way in which you did. You told the panel that these difficult times are in the past and you no longer have such worries. You said that your primary priorities are to focus on yourself, your family and getting your PIN back so that you can practice as a nurse again.

You said that you have a good support system in place involving your parents, your siblings and a small group of close friends. You described yourself as “fortunate” for having such a support network in place. You further told the panel that you exercise regularly, eat healthily and keep active in order to maintain your well-being. In response to a panel question regarding future protective factors, **[PRIVATE]**. You highlighted that these incidents happened eight years ago when you were younger and less knowledgeable and you have since developed your life skills.

You said that you wish to return to nursing within end of life care and looking after the elderly. You said that you have always wanted to be a nurse and “*that is all i know how to be*”. You said that you are passionate about caring for the elderly. You stated that you have worked in a care setting since your removal from the register, where you continued to provide care for patients.

You also explained how you would manage similar situations in the future and how you would avoid similar failings. You further explained to the panel that you have been very conscious of your behaviour in your subsequent roles, and that you will always carry the lesson you have learnt as a result of the striking-off order. You said that you would not do anything to jeopardise your PIN again, if you are successful today.

You told the panel that you have used the time since being removed from the register to reflect on your conduct and that you have refreshed your professional knowledge of the NMC Code. In relation to keeping up-to-date with nursing, you accepted that you had not undertaken any CPD, as you were concerned that to do so would breach your striking-off order.

You told the panel again how sorry you were for your actions and that you will not repeat your previous behaviour.

The panel also heard oral evidence from two of your three referees, both of whom attested to your caring skills.

The panel heard and accepted the advice of the legal assessor who reminded the panel of the test, as provided in Article 33(5) of the Nursing and Midwifery Order, 2001. Firstly you must satisfy the panel that you fulfil the requirements of Article 9(2)(a) (approved qualification and prescribed education, training and experience) and Article 9(2)(b) (capable of safe practice). Secondly, you must satisfy the panel whether, having regard in particular to the circumstances which led to the making of the striking-off order in 2014, you are a *“fit and proper person to practise as a registered nurse”*. He advised the panel that it is for you to satisfy the panel of these two matters and it is for the panel to use its own independent judgment as to whether it is so satisfied.

Decision on the application for restoration

The panel has considered your application for restoration to the NMC Register very carefully. It has decided to allow the application subject to your successful completion of a Return To Practice course, in accordance with Article 19(3).

This article states:

“The Council may by rules require persons who have not practised or who have not practised for or during a prescribed period, to undertake such education or training or to gain such experience as it shall specify in standards.”

In reaching its decision the panel recognised its statutory duty to protect the public as well as maintain public confidence in the reputation of the profession, which includes the declaring and upholding of proper professional standards. The panel bore in mind that the burden was upon you to satisfy it that you are a fit and proper person who is able to practise safely and effectively as a nurse.

The panel had regard to the documents before it including your written reflective statement in which you accepted full responsibility. It also considered Mr 1 and Ms 2’s evidence on your behalf and found them to be credible and reliable witnesses one of whom was a registered nurse with a senior position in education. The panel also took into account the positive testimonial from your other referee. It noted that two of your three referees are registered nurses.

The panel had particular regard to your oral evidence. It considered your evidence to be genuine and credible and was satisfied that you did your best to assist the panel. It determined that you had demonstrated that you had now developed a good level of insight. The panel was satisfied that you have addressed the regulatory concerns with specific examples of how you would act if faced with similar situations in the future. You also explained how such conduct and failings would impact on patients and the wider nursing profession. The panel was satisfied that you had learned from this experience and have also understood the importance of being fit to practice.

When questioned about how you would handle a similar situation in the future, you were able to reassure the panel by your provision of sufficiently detailed answers. The panel noted that you had taken the opportunity, during your time away from nursing, to reflect on what had taken place and had provided evidence of the steps you have been able to take to remediate your practice. The panel noted that since you have been struck-off, you have been working within the health and social care sector caring for vulnerable people. It noted that you had shown compassion and good communication skills during

your work. It was particularly satisfied with the evidence that was provided on your behalf which attest to your good knowledge and caring abilities. It noted that both referees who gave evidence spoke highly of you and your caring attitude and abilities.

The panel determined that you have demonstrated that you are now a fit and proper person. The panel was satisfied that you have developed insight and reflected on your past behaviour. It noted your employment history and was satisfied that you have been working in a caring capacity albeit not as a nurse. It noted that although you have not been able to keep your nursing practice up-to date, it was clear from the evidence of Mr 1 that you have remained caring and compassionate and acted as an advocate for his wife, who you looked after.

The panel has carefully considered whether restoring you to the register would undermine public confidence in the profession and the NMC as its regulator. In the light of the evidence it heard from you, the references and your insight, the panel is satisfied that public confidence would not be undermined by your restoration to the register. It also considered that there could be public benefit in enabling a nurse to return to professional practice.

In determining to grant your application for restoration the panel bore in mind that you have not practised as a registered nurse for a number of years and that you no longer meet the requirements for registration with the NMC on this basis. However, the panel determined to allow your application for restoration subject to your completion of a Return to Practice course and paying the prescribed fee which satisfies the requirements of Article 19(3) and Article 33(7)(a) which states:

“(7) On granting an application for restoration, the Committee—

(a) shall direct the Registrar to register the applicant in the relevant part of the register on his satisfying any requirements imposed under paragraph (6) and on payment of the prescribed fee; and”

That concludes this determination.

This decision will be confirmed to you in writing.