

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

**Substantive Meeting  
Wednesday 27 April – Thursday 28 April 2022**

Virtual Meeting

<b>Name of registrant:</b>	<b>Natalie Ruth Burke</b>
<b>NMC PIN:</b>	13C0015N
<b>Part(s) of the register:</b>	Registered Nurse – Sub Part 1 Adult Nursing (21 March 2013)
<b>Area of registered address:</b>	Larne
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Bernard Herdan (Chair, lay member) Susan Tokley (Registrant member) Anne Phillimore (Lay member)
<b>Legal Assessor:</b>	David Marshall
<b>Hearings Coordinator:</b>	Jennifer Morrison
<b>Facts proved (by way of admission):</b>	All
<b>Facts not proved:</b>	None
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Conditions of practice order (12 months)</b>
<b>Interim order:</b>	<b>Interim conditions of practice order (18 months)</b>

## **Decision and reasons on service of Notice of Meeting**

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Miss Burke's registered email address on 31 March 2022.

Further, the panel noted that the Notice of Meeting was also sent to Miss Burke's representative at UNISON on 31 March 2022.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegations, as well as a date on or after which the case would be considered. It noted that Miss Burke had received slightly less than the 28 days' notice required by Rule 11A of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ('the Rules'). However, the panel considered that Miss Burke has had the benefit of representation throughout these proceedings. Her representative has responded to the Notice of Meeting, and did not object to the meeting taking place as scheduled. Miss Burke has also submitted documents for the panel to consider, and, through her representative, has had the opportunity to request additional time to submit further documents, if she so wished.

In the light of all of the information available, the panel was satisfied that Miss Burke has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34, and that it was appropriate for the meeting to proceed.

## **Details of charge**

*'That you, a registered nurse:*

- 1) *On 28 January 2021:*
  - a) *Failed to carry out an adequate examination of Resident A during the period following an unseen fall;*
  - b) *Failed to carry out an examination or take any observations when informed on 2 occasions that Colleague A was unable to awaken Resident A;*
  - c) *Failed to assist Colleague B in providing emergency care to Resident A;*

- d) *Falsified Resident A's notes by recording observations which you had not taken;*
- e) *On an occasion after that in charge 1) a) above, failed to act on concerns raised about Resident A by Colleague C.*

2) *Your actions in charge 1) c) above were dishonest in that you knew you had not taken the observations which you recorded on Resident A's notes.*

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

### **Decision and reasons to amend the charge**

The panel determined to amend the wording of charge 2 as follows:

*'Your actions in charge 1) e) d) above were dishonest in that you knew you had not taken the observations which you recorded on Resident A's notes.'*

The amendment was made in order to correct a typographical error. The panel was satisfied that charge 2 was intended to refer to an alleged act of dishonesty, which was clearly detailed in charge 1(d) and not charge 1(c).

The panel accepted the advice of the legal assessor and had regard to Rule 28.

The panel was satisfied that the amendment was in the interest of justice and was necessary to ensure clarity and accuracy. It was further satisfied that the amendment would not cause any prejudice to Miss Burke or injustice to either party.

### **Background**

The charges arose whilst Miss Burke was employed as a registered nurse at Hamilton Nursing Home ('the Home'). During the night shift of 28 January 2021, Resident A had an unwitnessed fall and sustained a head injury. At 07:30, Resident A was assessed by a senior staff nurse, who conducted observations. Miss Burke assumed responsibility for Resident A on the day shift, and was advised that the next set of observations were due at

08:00. Miss Burke allegedly failed to complete the required observations at 08:00, yet recorded that she had done so at 08:30 and 09:00.

At around 09:15, Resident A was found to be unresponsive. A health care assistant informed Miss Burke of this on two occasions, but Miss Burke allegedly failed to respond to the request from her colleague to examine Resident A or take observations. Miss Burke also allegedly failed to assist a nurse colleague in providing emergency care to Resident A. Later that day, after Resident A had returned from hospital, she also allegedly dismissed a further concern raised about Resident A by a colleague.

### **Decision and reasons on facts**

The panel noted that on the completed Case Management Form (CMF), received by the Nursing and Midwifery Council (NMC) on 19 January 2022, Miss Burke indicated that she admitted the facts alleged in all charges.

The panel therefore finds all charges proved in their entirety, by way of Miss Burke's admissions.

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Miss Burke's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel noted that on the CMF of 19 January 2022, Miss Burke had indicated that she accepted that her fitness to practise was impaired by way of misconduct. However, it was mindful that misconduct and impairment are ultimately matters for the panel's professional judgement. The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel would need to decide whether, in all the circumstances, Miss Burke's fitness to practise is currently impaired as a result of that misconduct.

### **Representations on misconduct and impairment**

In coming to its decision, the panel was advised to have regard to the case of *Roylance v GMC (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

The NMC invited the panel to take the view that the facts found proved amount to misconduct. The panel should have regard to the terms of the Code: Professional standards of practice and behaviour for nurses and midwives (2015)' ('the Code') in making its decision.

The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. The panel has referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC invited the panel to find that Miss Burke brought the profession into disrepute by her misconduct. It considers that Miss Burke has displayed some insight into her conduct by engaging with this process. She has accepted the charges and that her fitness to practise is impaired. Miss Burke has also reflected on her conduct and has taken some relevant training. Nonetheless, her actions placed Resident A at risk of serious harm. Therefore, the NMC considers that the public interest requires a finding that Miss Burke's fitness to practise is impaired in order to declare and uphold professional standards of conduct.

The panel accepted the advice of the legal assessor.

## **Decision and reasons on misconduct**

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was satisfied that Miss Burke's actions did fall significantly short of the standards expected of a registered nurse, and that Miss Burke's actions amounted to a breach of the Code. Specifically, she did not adequately comply with the following requirements:

**'1 Treat people as individuals and uphold their dignity**

*To achieve this, you must:*

- 1.1 *treat people with kindness, respect and compassion*
- 1.2 *make sure you deliver the fundamentals of care effectively*
- 1.4 *make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay.'*

**'8 Work cooperatively**

*To achieve this, you must:*

- 8.1 *respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate*
- 8.2 *maintain effective communication with colleagues*
- 8.3 *keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff*
- 8.5 *work with colleagues to preserve the safety of those receiving care*
- 8.6 *share information to identify and reduce risk.'*

**'10 Keep clear and accurate records relevant to your practice**

*This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.*

*To achieve this, you must:*

10.2 *identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need*

10.3 *complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements.'*

**'13 Recognise and work within the limits of your competence**

*To achieve this, you must:*

13.1 *accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care*

13.2 *make a timely referral to another practitioner when any action, care or treatment is required.'*

**'20 Recognise and work within the limits of your competence**

*To achieve this, you must:*

20.1 *keep to and uphold the standards and values set out in the Code*

20.2 *act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment*

20.3 *be aware at all times of how your behaviour can affect and influence the behaviour of other people.'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, Miss Burke's actions could have had serious consequences for Resident A. By failing to take required observations and subsequently falsifying Resident A's observation sheets, Miss Burke misled colleagues as to Resident A's true condition. She ignored two requests for help from a health care assistant, and even when action was being taken, failed to provide support to her colleagues. The panel concluded that Miss Burke had put the health of Resident A at serious risk and she failed to cooperate with her colleagues.

Furthermore, Miss Burke's actions set a very poor leadership example to junior staff. She was rude and dismissive to Colleague A during the emergency. Her comments to

Colleague C after the events had the effect of seriously undermining the decision to seek emergency assistance.

The panel found that Miss Burke's actions did fall seriously short of the conduct and standards expected of a nurse and as such, amounted to misconduct.

### **Decision and reasons on impairment**

The panel next went on to decide if as a result of the misconduct, Miss Burke'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. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. 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 judgement 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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel finds that Resident A was put at risk of physical harm as a result of Miss Burke's misconduct. Miss Burke's dishonest and unprofessional conduct, which breached the fundamental tenets of the nursing profession, brought its reputation into disrepute. Furthermore, the panel concluded that confidence in the nursing profession would be undermined if its regulator did not take action regarding Miss Burke's misconduct.

The panel determined that all four limbs of *Grant* were engaged with respect to Miss Burke's actions at the time. In determining Miss Burke's current impairment, the panel considered the development of Miss Burke's insight since the events that gave rise to the charges. Although she made early admissions to her employer, her contemporaneous reflection appeared to minimise the incidents. Later reflections, including the most recent, show Miss Burke's insight improving. She also showed considerable remorse. However, the panel found that in her reflections, Miss Burke mainly focused on the impact of the incidents on herself. She has not fully reflected on the impact her actions had on Resident A, her colleagues or the reputation of the nursing profession.

The panel also considered the context of events. [PRIVATE] It was also sympathetic to Miss Burke's personal circumstances, and noted the positive testimonial from her current employer, which stated that Miss Burke had been working well without issue. Nonetheless,

[PRIVATE]. Therefore, the panel concluded that Miss Burke's insight is developing, but incomplete.

The panel was satisfied that the misconduct in this case is capable of being addressed. However, the panel determined that, based on Miss Burke's incomplete insight, there is a risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC: to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that, given Miss Burke's acts of dishonesty and conduct that could have resulted in serious harm to a patient, a finding of impairment on public interest grounds is required in order to maintain public confidence in the profession.

Having regard to all of the above, the panel was satisfied that Miss Burke's fitness to practise is currently impaired.

## **Sanction**

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 12 months. The effect of this order is that Miss Burke's name on the NMC register will show that she is subject to a conditions of practice order and anyone who enquires about her registration will be informed of this order.

## **Representations on sanction**

The panel noted that in the Notice of Meeting, the NMC had advised Miss Burke that it would seek the imposition of a 12 month suspension order if the panel found Miss Burke's fitness to practise currently impaired. The NMC judged that a suspension order was

necessary given the risk of harm to Resident A, and to mark the seriousness of a finding of dishonesty.

### **Decision and reasons on sanction**

Having found Miss Burke's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate, and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the NMC's Sanctions Guidance ('SG'). The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Resident A was placed at serious risk of harm;
- Miss Burke's falsification of observation sheets was a dishonest act; and
- Multiple failings occurred over the course of a single shift.

The panel also took into account the following mitigating features:

- Miss Burke's misconduct was confined to a single shift and not indicative of a pattern of behaviour;
- Miss Burke made early admissions to the misconduct;
- At the time, Miss Burke was the sole nurse in charge of up to 30 residents due to staff shortages, and had been working extra hours due to the pandemic; and
- [PRIVATE].

The panel also assessed the weight which should be given to Miss Burke's dishonesty in accordance with the SG. The SG states that *'because of the importance of honesty to a nurse, midwife or nursing associate's practice, dishonesty will always be serious'*.

However, it acknowledges that not all dishonesty is equally serious. The panel concluded that Miss Burke's dishonesty was at the lower end of the spectrum, noting the following factors in the SG:

- Miss Burke's dishonesty was a one-off incident;
- Miss Burke's dishonesty was the result of opportunistic or spontaneous conduct (i.e., it was not pre-meditated);
- [PRIVATE]; and
- Miss Burke received no direct personal gain as a result of her dishonesty.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the reasons for its finding of impairment. 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 reasons for its finding of impairment, an order that does not restrict Miss Burke's practice would not be appropriate in the circumstances. The SG 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 Miss Burke's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Burke'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 took into account the SG; in particular, it judged that the following factors set out in the SG are appropriate to a conditions of practice order in this case:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case.

The panel considered evidence from Miss Burke's current employer, which showed that she was a well-regarded nurse who had been working successfully under conditions of practice since March 2021. This gave the panel reassurance that Miss Burke would continue to work well under conditions of practice, and that she would be able to undertake any remedial action sought by this panel. The panel had regard to Miss Burke's previously unblemished career of nine years as a nurse. The panel judged that this was an isolated incident. It determined that it was not in the public interest to deprive the public of an otherwise effective nurse, and that the public would be safeguarded through conditions on Miss Burke's practice.

Balancing all of these factors, the panel determined that the appropriate and proportionate sanction is that of a conditions of practice order for 12 months.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Miss Burke's case, given her remorse, developing insight and the excellent testimonial from her employer.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

In making this decision, the panel carefully considered the representations of the NMC in relation to the 12 month suspension order that it was seeking in this case. However, the panel considered that the risk of harm to the public and potential damage to public confidence in the profession could be sufficiently addressed through a conditions of practice order.

The panel determined that the following conditions are appropriate and proportionate in this case:

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. When working, you must meet with your line manager or supervisor at least monthly. Your meetings should cover:
  - a. any case management issues.
  - b. your developing insight into issues raised in the Fitness to Practise proceedings, including [PRIVATE].
2. You must submit to the NMC a report from your line manager or supervisor detailing these discussions before any review of your case.
3. You must work with your line manager or supervisor to create a personal development plan (PDP). Your PDP must address the issues discussed in the Fitness to Practise proceedings. You must
  - a. Send your case officer a copy of your PDP at least two weeks before the next review of your case.
  - b. Meet with your line manager or supervisor at least monthly to discuss your progress towards achieving the aims set out in your PDP.
  - c. Send your case officer a report from your line manager or supervisor at least two weeks before the next review of your case. This report must show your progress towards achieving the aims set out in your PDP.
4. You must keep the NMC informed about anywhere you are working by:
  - a. Telling your case officer within seven days of accepting or leaving any employment.
  - b. Giving your case officer your employer's contact details.
5. You must keep the NMC informed about anywhere you are studying by:
  - a. Telling your case officer within seven days of accepting any course of study.
  - b. Giving your case officer the name and contact details of the organisation offering that course of study.

6. You must immediately give a copy of these conditions to:
  - a. Any organisation or person you work for.
  - b. Any agency you apply to or are registered with for work.
  - c. Any employers you apply to for work (at the time of application).
  - d. Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
  - e. Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.
  
7. You must tell your case officer within seven days of your becoming aware of:
  - a. Any clinical incident you are involved in.
  - b. Any investigation started against you.
  - c. Any disciplinary proceedings taken against you.
  
8. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
  - a. Your current or any future employer.
  - b. Any educational establishment.
  - c. Any other person(s) involved in your retraining and/or supervision required by these conditions.

The period of this order is for 12 months.

Before the end of the period of the order, a panel will hold a review hearing to see how well Miss Burke has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

In addition to the points mentioned in the conditions of practice, a future panel reviewing this case would be assisted by:

- A reflection outlining the impact of Miss Burke's misconduct on Resident A and other patients in her care, her colleagues and the reputation of the nursing

profession. The reflection should also discuss how she has applied her learning and personal development around the issues discussed in these proceedings, and how this learning has influenced her patient care.

- [PRIVATE].
- Evidence of any further training she has undertaken.
- A testimonial from her current employer.

This will be confirmed to Miss Burke in writing.

### **Interim order**

As the conditions of practice order cannot take effect until the conclusion of any appeal that is lodged, within the period of 28 days, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Burke's own interests until the conditions of practice order takes effect.

The panel accepted the advice of the legal assessor.

### **Representations on interim order**

The panel considered the representations of the NMC, which, should the panel impose a restrictive sanction, invited the panel to impose an interim order for 18 months in order to protect the public and meet the public interest.

### **Decision and reasons on interim order**

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The

conditions for the interim order will be the same as those detailed in the substantive order for a period of 18 months, to allow for the possibility of an appeal to be made and determined.

If no appeal is made, then the interim conditions of practice order will be replaced by the substantive conditions of practice order 28 days after Miss Burke is sent the decision of this hearing in writing.

That concludes this determination.