

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

**Substantive Meeting
Wednesday, 3 August 2022**

Virtual Meeting

Name of registrant:	Elizabeth Claire Mcallister
NMC PIN:	75Y0070S
Part(s) of the register:	Registered Nurse General Nursing – 12 December 1977 Learning Disabilities Nursing – 30 June 2000
Relevant Location:	East Dunbartonshire
Type of case:	Misconduct
Panel members:	John Penhale (Chair, Lay member) Susan Field (Registrant member) Susan Laycock (Lay member)
Legal Assessor:	Suzanne Palmer
Hearings Coordinator:	Philip Austin
Facts proved:	All charges
Facts not proved:	None
Fitness to practise:	Currently Impaired
Sanction:	Suspension order (12 months) – with review
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Meeting

The panel received information and advice from the legal assessor concerning service of the notice of meeting.

The notice of meeting was sent by the Nursing and Midwifery Council's ("NMC") case officer in a secure and encrypted fashion to the email address of Mrs Mcallister on the NMC register on 21 June 2022. The panel noted that the rules currently permit electronic service of the notice of meeting. The notice appeared to contain the required information, and specified that the meeting would take place on or after 25 July 2022. The notice of hearing was also sent to Mrs Mcallister's representative on the same date of 21 June 2022.

The panel noted that the notice of meeting had been sent on 21 June 2022, which was more than 28 days before this meeting. The panel was satisfied that there was good service of the notice of meeting in accordance with Rules 11A and 34 of the Fitness to Practise Rules 2004 (as amended) ("the Rules").

The panel was aware that as this matter is being considered at a meeting, Mrs Mcallister would not be able to attend. However, Mrs Mcallister had been sent all of the evidence relating to this matter, and was informed that this meeting would take place on or after 25 July 2022. Miss Mcallister was also asked to provide comment no later than 18 July 2022 by using the response form attached to the notice of meeting, if she had anything that she wanted the panel to take account of when considering this matter. She was also invited to send relevant documents such as training certificates, references and testimonials.

The panel noted that Mrs Mcallister had previously indicated that she would prefer this matter be dealt with at a substantive meeting as opposed to a substantive hearing in her Case Management Form ("CMF"). She had indicated that she would not be able to attend a substantive hearing due to [PRIVATE].

Mrs Mcallister had also responded to the charges against her in the CMF dated 9 May 2022, and in the document titled 'Your response to the charges' dated 17 July 2022. She had indicated that she admitted all the factual allegations and did not challenge the content

of any of the NMC witness statements. The panel therefore noted that there did not appear to be any material areas of dispute in relation to the facts of this case.

In having regard to the above, the panel was of the view that referring this matter to a substantive hearing would not serve any useful purpose. It determined that it had all the information necessary before it to reach a decision on this matter, having regard to the documentary evidence received, and that it would be in the interests of justice and the public interest to proceed with the meeting today.

Details of charge

That you, a registered nurse:

1) On 23 May 2020:

a) Used inappropriate techniques to move Resident A in that you:

- i) Moved the resident without assistance from another colleague;
- ii) Moved the resident without the use of a hoist.

b) Following an incident resulting in Resident B suffering a head injury:

- i) Failed to carry out a full assessment, alternatively
- ii) Failed to document any assessment
- iii) Failed to carry out neurological observations, alternatively
- iv) Failed to document any neurological observations
- v) Completed a Datix report falsely stating you had cleaned Resident B's wound and carried out neurological observations.

2) Your actions in charge 1 b) v) above were dishonest in that you knew you had not cleaned Resident B's wound or taken neurological observations.

- 3) On 23 May 2020 completed a Datix report and entry in the care documents in respect of Resident F, falsely recording details of an assessment and observations you claimed to have carried out.
- 4) Your actions in charge 3 above were dishonest as you knew you had not carried out the assessment or observations which you recorded.
- 5) On 24 May 2020:
 - a) Resident D then having suffered a fall:
 - i) Failed to carry out a full assessment, alternatively
 - ii) Failed to document any assessment
 - iii) Failed to carry out neurological observations, alternatively
 - iv) Failed to document any neurological observations
 - v) Completed a Datix report falsely stating you had carried out checks on Resident D
- 6) Your actions in charge 5 a) v) above were dishonest in that you knew you had not carried out the checks on Resident D which you recorded in the Datix report.
- 7) On 23 and 24 May 2020, used inappropriate and/or derogatory terms such as 'witch', 'predator', 'lazy bastard' and 'bitch' or similar when speaking to residents.
- 8) On 24 May 2020, demonstrated an uncaring and/or unsympathetic attitude by alleging Resident D had intentionally thrown themselves onto the floor in order to seek attention.
- 9) On 24 May 2020, demonstrated an uncaring and unsympathetic attitude by screaming at Resident H that they were hurting your back.
- 10) On one or more occasion before 23 May 2020, used inappropriate and/or derogatory language during handovers including stating that Resident G had been '*lying in their own piss and shit*' or words to that effect.

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

Background

Mrs Mcallister first entered onto the Nursing and Midwifery Council (“the NMC”) register in December 1977 as a Registered Nurse, specialising in General Nursing. In June 2000, Mrs Mcallister specialised in Learning Disabilities Nursing.

On 4 June 2020, the NMC received a referral from Whitefield Lodge Care Home (“the Home”), part of Four Seasons Healthcare, about Mrs Mcallister’s fitness to practise as a registered nurse.

Throughout Mrs Mcallister’s time working at the Home, she allegedly routinely worked night shifts on the upper floor of the Home where the residents mainly suffered from dementia. During the day shifts over the weekend of 23 and 24 May 2020, the following concerns were identified with respect to her nursing practice:

- Mrs Mcallister allegedly moved Resident A from the lounge to their bedroom. Resident A’s care plan stated they needed two people and a hoist for all movement, but Mrs Mcallister allegedly failed to read the care plan and moved Resident A by herself without a hoist;
- After Resident B had suffered a fall and cut their head, Mrs Mcallister allegedly failed to undertake any neurological observations or a full assessment of Resident B;
- After Resident D had fallen in their bathroom, Mrs Mcallister allegedly failed to undertake a thorough assessment prior to moving them. She also allegedly failed to complete continued observations on them throughout her shift;
- Mrs Mcallister was allegedly heard calling residents derogatory names;
- Mrs Mcallister was allegedly heard telling Resident D that they deliberately fell over as they liked the attention;
- Mrs Mcallister allegedly swore at residents; and

- Mrs Mcallister's alleged record keeping in relation to Residents B, D and F was to a poor standard and allegedly contained falsified information as she stated that she had completed observations on the residents when she had not.

It was also raised that, on numerous occasions, outside of the above dates, Mrs Mcallister was overheard using derogatory language about residents during handovers. This was escalated to management, however, when they would observe Mrs Mcallister in handover, she would change her language and there was no direct evidence in respect of the wider concerns.

The Home commenced a local investigation, however, Mrs McAllister resigned during the disciplinary process. The matter was then referred to the NMC.

Decision and reasons on facts

The panel had sight of the CMF document, as well as the form titled 'Your response to the charges' which had been completed by Mrs Mcallister on 9 May 2022 and 17 July 2022 respectively. It noted that on both of these occasions, Mrs Mcallister had indicated that she was admitting all of the charges against her.

The panel accepted the advice of the legal assessor.

The panel noted that Mrs Mcallister had provided full and unequivocal admissions in two separate pieces of correspondence to the NMC, and she had signed a declaration to confirm that she was aware that the panel would be able to take account of this when considering the charges against her.

In taking account of the above, which was provided by Mrs Mcallister, the panel found all of the charges proved by way of admission.

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 Mrs Mcallister'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, 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. Firstly, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mrs Mcallister's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

The panel had sight of the NMC's statement of case, which reads as follows:

"Misconduct

9. *The comments of Lord Clyde in **Roylance v General Medical Council [1999]** UKPC 16 may provide some assistance when seeking to define misconduct:*

'[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances'.

10. As may the comments of **Jackson J in Calheam v GMC [2007] EWHC 2606 (Admin)** and **Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin)**:

'[Misconduct] connotes a serious breach which indicates that the doctor's (nurse's) fitness to practise is impaired'

And

'The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner'.

11. *Where the acts or omissions of a registered professional are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the NMC's Code of Conduct.*

12. *At the relevant time, Mrs McAllister was subject to the provision of **The Code: Professional standards of practice and behavior for nurses and midwives (2015)** ("the Code"). We consider the following provisions of the Code have been breached in this case;*

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

1.5 respect and uphold people's human rights

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:

10.1 complete records at the time or as soon as possible after an event, recording if the notes are written sometime after the event

10.3 complete 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, as appropriate:

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

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this, you must:

17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse

17.3 have knowledge of and keep to the relevant laws and policies about protecting and caring for vulnerable people

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

To achieve this, you must:

19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place

19.4 take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public

20 Uphold the reputation of your profession at all times

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

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

20.10 use all forms of spoken, written and digital communication (~~including social media and networking sites~~) responsibly, ~~respecting the right to privacy of others at all times~~

13. We consider the misconduct serious because Mrs McAllister failed in her duty of care in relation to Residents B and D. Mrs McAllister's behaviour and communication towards residents was inappropriate and unprofessional.

14. Causing harm to a patient is contrary to the caring nature of the professional and raises fundamental concerns about Mrs McAllister's professionalism. Mrs McAllister has not worked co-operatively with colleagues and has chosen a more physical and aggressive approach towards caring for her patients.

15. Residential dementia patients are particularly vulnerable. They can present with challenging behaviours which requires particular sensitivity, respect and compassion, which Mrs McAllister has failed to demonstrate on a number of occasions.

16. The conduct of Mrs McAllister detailed in the charges above fall short of what would have been expected of a registered professional.

Impairment

17. Impairment needs to be considered as of today's date, i.e. whether Mrs McAllister's fitness to practice is currently impaired as a result of misconduct. The NMC defines impairment as a registered professional's suitability to remain on the register without restriction. There is no burden or standard of proof to apply as this is a matter for the fitness to practice panel's own professional judgement.

18. We consider the following questions from the case of **Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)** are relevant in all cases when assessing past conduct and future risk:

- a) has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or
- b) has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or
- c) has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future
- d) has [the Registrant] in past acted dishonestly and/or is liable to act dishonestly in the future

19. Mrs McAllister's actions engage all four limbs:

- a. Failing to ensure adequate standards of patient care and poor recording keeping had the potential to put vulnerable residents at risk of harm.
- b. Acting in a way which causes risk of harm to patients and lacks compassion for vulnerable patients who are reliant on nurses for their basic care needs is liable to bring the profession into disrepute. Additionally, Mrs McAllister's communication with the residents and dishonesty raised fundamental concerns about her attitude and trustworthiness as a registered professional, which also brings the profession into disrepute.
- c. The nursing profession is a caring profession, to cause harm to a patient is a breach of this most fundamental tenet.
- d. Mrs McAllister's actions were dishonest in that she falsified records stating that she had carried out observations on residents when she had not.

20. The panel should also consider the comments of **Cox J in Grant** at paragraph 101:

“The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case”.

21. *Mrs McAllister has clearly brought the profession into disrepute by the very nature of the conduct displayed. Nurses occupy a position of trust and must act and promote integrity at all times, which have been breached in this case. The public has the right to expect high standards of registered professionals.*
22. *With regard to future risk it may assist to consider the comments of **Silber J in Cohen v General Medical Council [2008] EWHC 581 (Admin)** namely (i) whether the concerns are easily remediable; (ii) whether they have in fact been remedied; and (iii) whether they are highly unlikely to be repeated.*
23. *Mrs McAllister has not provided sufficient evidence of remediation to demonstrate that her actions will not be repeated. Mrs McAllister placed patients at risk of serious harm.*
24. *The NMC’s guidance entitled “**Can the concern be addressed?**” **FTP-13a**, states as follows:*
- “Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include:*
- [...]*
- dishonesty, particularly if it was serious and sustained over a period of time, or directly linked to the nurse, midwife or nursing associate’s practice”*
25. *Mrs McAllister’s actions were dishonest, and dishonesty is difficult, to remediate. It is submitted that the public would be concerned to know that a registered professional was deliberately dishonest.*

26. *Therefore, the NMC considers that there is a continuing risk to the public due to Mrs McAllister's lack of full insight and failure to undertake relevant training. We consider there is a public protection and public interest requirement in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behavior*"[sic].

Decision and reasons on misconduct

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

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

The panel was of the view that Mrs Mcallister's actions did fall significantly short of the standards expected of a registered nurse, and it considered them to have amounted to several breaches of the Code. It concurred with the parts of the Code highlighted by the NMC. Specifically:

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13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

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

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this, you must:

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

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

20.10 use all forms of spoken, written and digital communication (~~including social media and networking sites~~) responsibly, ~~respecting the right to privacy of others at all times~~".

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, in these circumstances, the panel decided that Mrs Mcallister's actions in each of the charges found proved fell significantly short of the standards expected and therefore amounted to misconduct.

The panel noted that the concerns relate to Mrs Mcallister's clinical nursing practice, as well as her conduct and behaviour. At the material time, Mrs Mcallister was on shift at the Home in the capacity of a registered nurse. She was also the sole registered nurse on the relevant floor on each occasion, and was in a senior position to the carers on duty with her.

The panel considered the charges to be extremely serious, particularly due to the vulnerability of the residents involved. The panel agreed with the submission of the NMC that dementia patients can present challenging behaviours which require sensitivity, respect and compassion, and that Mrs Mcallister failed to demonstrate this on a number of occasions to several different residents. Furthermore, Mrs Mcallister also acted dishonestly by knowingly recording false entries in residents' Datix reports, purporting to have delivered care that had not been carried out. Mrs Mcallister was intentionally trying to mislead colleagues into thinking that care had been delivered to residents when it had not been.

The panel was of the view that Mrs Mcallister had exposed residents in her care to a significant risk of unwarranted harm, again, noting as it did, that these residents were extremely vulnerable due to the nature of their health conditions. Her actions could have had serious ramifications for the health and wellbeing of the residents at the Home.

The panel was of the view that other registered nurses would consider Mrs Mcallister's actions to be deplorable in the particular circumstances of this case. The panel further

noted that Mrs Mcallister accepted in her form titled 'Your response to charges' dated 17 July 2022 that her conduct was unacceptable. The panel concurred with the NMC's submissions and saw nothing to undermine the points set out there. It considered the conduct sufficiently serious to cross the threshold of misconduct.

The panel found that Mrs Mcallister's actions in all of the charges did fall seriously short of the conduct and standards expected of a registered nurse and amount to misconduct, both individually and cumulatively.

Decision and reasons on impairment

The panel next went on to decide if, as a result of the misconduct, Mrs Mcallister's fitness to practise is currently impaired.

Registered 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 registered 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 *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)* 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/their fitness to practise is impaired in the sense that S/He/They:

- 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 considered all of the above limbs to be engaged in this case.

The panel found Mrs Mcallister to have exposed patients in her care to an unwarranted risk of harm and it considered her to have acted in a way that would have brought the nursing profession into disrepute. Furthermore, the panel decided that Mrs Mcallister had breached fundamental tenets of the nursing profession, particularly in demonstrating a lack of compassion and care for residents and in behaving in a dishonest manner.

In assessing Mrs Mcallister’s level of insight, the panel had regard to the reflective piece that she had provided alongside the form titled ‘Your response to the charges’ dated 17 July 2022. Mrs Mcallister has stated the following:

“I have fully reflected on my actions and accept full responsibility for my practice, which fell way below the required standard expected by both the public and the governing body.

I also wish to acknowledge that my failure to recognise, that my personal traumatic circumstances the material time, were having a negative impact on both my practice and my judgement.

My failure resulted in me continuing to present for duty, including working a 24 hour shift at my employers request on the weekend in question.

I failed to address issues in my personal life, or my fluctuating mood and emotional state. These failures on my part put my patients at risk and resulted in my impaired conduct. Which I recognise was totally unacceptable.

At an earlier hearing I made a full disclosure in relation to the traumatic events I experienced in my personal life.

On reflection if I was in a similar situation I would [PRIVATE]. I fully accept that my conduct was wholly unacceptable, and that my fitness to practice was impaired.

Prior to my current situation I had a long and exemplary nursing career in the NHS. I have previously submitted testimony from some of my line managers to support this.

Following a long period of reflection I took the decision to retire from all types of employment, and submitted a request to be considered for voluntary removal from the register. Due to poor physical and mental health, at no point in the future will I be applying for work in any area, or re admittance to the Nursing Register"[sic].

In taking account of the above, the panel noted that whilst Mrs Mcallister now appears to recognise that her actions were completely unacceptable, there was a lack of in-depth explanation as to how her behaviour fell far below the standards expected, or how her actions could have adversely impacted upon residents, colleagues, the nursing profession and the wider public. The panel noted that Mrs Mcallister comments that her adverse health and difficult personal circumstances may have affected her performance as a registered nurse at the time. It further noted that Mrs Mcallister had demonstrated developing insight into why she acted as she did and how she would avoid doing so in

future. Mrs Mcallister recognises the need to seek help before her personal circumstances impact on her clinical practice. However, because she has retired from nursing, she has not yet been able to demonstrate that she is capable of translating that insight into safe practice.

In establishing whether Mrs Mcallister has remediated the concerns identified, the panel had regard to the factors set out in *Cohen v General Medical Council [2008] EWHC 581 (Admin)*. It considered whether Mrs Mcallister's misconduct is capable of remediation, whether it has indeed been remediated, and whether it is highly unlikely to be repeated.

The panel was of the view that attitudinal concerns are often more difficult to remediate than clinical concerns, albeit not impossible. Therefore, it determined that Mrs Mcallister's misconduct is capable of remediation, in principle.

Notwithstanding this, the panel did not have any evidence before it of Mrs Mcallister having attempted to strengthen her practice in respect of her misconduct. It noted from Mrs Mcallister's reflective piece that she has stated that she has retired from "*all types of employment*", and that she had initially submitted a request for voluntary removal from the NMC Register. The panel took this to mean that Mrs Mcallister has no intention to practise as a registered nurse again in future. Mrs Mcallister did not provide the panel with any recent information as to her current nursing practice, nor did she submit any training certificates to address the specific concerns. The panel did have sight of three testimonials provided by colleagues of Mrs Mcallister, all of whom attested positively to her professionalism, good rapport with residents, and her clinical conduct.

In considering all the evidence before it, the panel determined that there was insufficient evidence to show that Mrs Mcallister has taken steps to strengthen her practice or remedy her failings, or that her insight has developed to the extent where she can avoid future repetition.

The panel had insufficient evidence before it to allay its concerns that Mrs Mcallister may currently pose a risk to patient safety. In the absence of any evidence to the contrary, it considered there to be a risk of repetition of Mrs Mcallister's misconduct, and a risk of unwarranted harm to patients in her care should she return to nursing practice without

adequate safeguards in place. Therefore, the panel decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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 considered there to be a high public interest in the consideration of this case as it determined that a fully informed member of the public would be appalled by Mrs Mcallister's misconduct, as identified through the panel's findings on the facts and misconduct. The panel concluded that public confidence in the nursing profession would be undermined if a finding of impairment was not made in this case. Therefore, the panel determined that a finding of impairment on public interest grounds was also required.

Having regard to all of the above, the panel was satisfied that Mrs Mcallister's fitness to practise as a registered nurse is currently impaired on the grounds of public protection and public interest.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months. The effect of this order is that the NMC register will show that Mrs Mcallister's nursing registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance ("SG") published by the NMC. The panel heard and accepted the advice of the legal assessor.

Representations on sanction

The panel had sight of the NMC's statement of case, which reads as follows:

“27. The NMC considers the following sanction is proportionate:

- *9-12 months suspension order with a review*

28. With regard to our sanctions guidance the following aspects have led us to this conclusion:

29. The aggravating factors in this case included:

- *Numerous residents involved*
- *Risk of serious harm*

30. The NMC considers that there are no mitigating factors in this case.

31. Taking the least serious sanctions first, it is submitted that taking no action and a caution order would not be appropriate in this case. The NMC Sanctions Guidance states that taking no action will be rare at the sanction stage and this would not be suitable where the nurse presents a continuing risk to patients. In this case, the seriousness of the misconduct means that taking no action would not be appropriate. A caution order would also not be appropriate as this would not mark the seriousness and would be insufficient to maintain high standards within the profession or the trust the public place in the profession.

32. The NMC’s sanctions guidance (SAN-3c) states that a conditions of practice order may be appropriate when there is no evidence of harmful deep-seated personality or attitudinal problems; there are identifiable areas of the registered professionals practice in need of assessment and/or retraining; and there is no evidence of general incompetence. In this case the conduct of Mrs McAllister raises significant attitudinal concerns. Conditions of practice would not be appropriate because this case involves harmful attitudinal problems which are more difficult to rectify and therefore difficult to manage and assess in a conditions of practice order. There are also very serious

dishonesty concerns involving patient records. This case concerns a series of incidents involving unwarranted risk of patient harm which have resulted from a lack of patience and poor attitude towards vulnerable residents. There are no conditions that would adequately address the concerns in this case.

33. *Accordingly, a suspension order of 9 months is required in this case to provide protection to the public as well as maintain public confidence in the profession. This was not a single incident and Mrs McAllister has failed to show a period of safe practise since these concerns were raised. Given the seriousness of the concerns and the dishonesty in particular. A review of the suspension order is necessary in order to assess Mrs McAllister's progress and insight.*

34. *Mrs McAllister first qualified over 40 years ago with no previous concerns raised. In light of that previous career, it seems likely that if Mrs McAllister decided to return to practise, she could work towards returning to be a safe and effective professional. A striking off order would be disproportionate at this stage."*

Decision and reasons on sanction

Having found Mrs Mcallister's fitness to practise as a registered nurse to be 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 SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel considered the following aggravating factors to be present in this case:

- Mrs Mcallister had exposed numerous vulnerable residents to an unwarranted risk of harm, all of whom were dependant on her care.

- Mrs Mcallister's misconduct relates to poor clinical nursing practice, as well as concerns around her conduct and behaviour, with particular regard to dishonesty.

The panel considered the following mitigating factors to be present in this case:

- Mrs Mcallister had made some early admissions at the local investigation, and has fully admitted all of the charges against her in these proceedings.
- Mrs Mcallister has demonstrated some insight through her recent reflective piece.
- There is some suggestion that Mrs Mcallister's health may have impacted upon her decisions at the time, although the panel had no independent medical evidence in relation to this.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action as this would not address the misconduct identified, nor would it safeguard residents in her care.

Next, the panel considered whether a caution order would be appropriate in the circumstances. The panel took account of the SG which states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel determined that a caution order would be inappropriate in view of the seriousness of the case, as Mrs Mcallister's misconduct was not at the lower end of the spectrum of fitness to practise. It had identified both public protection and public interest concerns, and it determined that neither would be sufficiently addressed by the imposition of a caution order.

The panel next considered whether placing a conditions of practice order on Mrs Mcallister's nursing registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be relevant, proportionate, measurable and workable.

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of Mrs Mcallister's misconduct. Whilst the panel noted that

there may be some identifiable areas of retraining for Mrs Mcallister to embark on, it was not satisfied that a conditions of practice order would be able to address the attitudinal concerns identified in this case. Mrs Mcallister has only demonstrated some insight into the behaviour which led to misconduct, and it is unlikely that she would be willing to comply with a conditions of practice order as she has stated that she has retired from all forms of employment. In any event, the panel determined that a conditions of practice order would not sufficiently address the public protection or public interest concerns identified in this case.

The panel then went on to consider whether a suspension order would be a sufficient and appropriate sanction.

The panel considered whether the concerns identified could be addressed by temporary removal from the register and whether a period of suspension would be sufficient to protect patients and satisfy the wider public interest concerns.

The panel decided that a suspension order would be the appropriate and proportionate sanction in Mrs Mcallister's case.

The panel considered Mrs Mcallister's misconduct to be serious. It determined that her clinical conduct and behaviour were a significant departure from the standards expected of a registered nurse. The panel took account of the NMC's written submissions in the statement of case, and that it had invited the panel to impose a suspension order for a period of 9 – 12 months with a review. It agreed with the recommendation for a suspension order to be imposed, and decided that the appropriate length of time would be the maximum of 12 months as this was sufficient to meet the public protection and public interest concerns identified. The panel noted that whilst Mrs Mcallister has indicated that she does not want to return to nursing practice at some point in the future, if she were to change her mind, this sanction would provide her with sufficient time to develop her insight further, and it would also enable her to strengthen her practice by way of remediation, if she was minded to do so. The panel was satisfied that, in taking account of her newly developed insight and remorse, it could be possible for Mrs Mcallister to return to unrestricted nursing practice in future, should she address the outstanding concerns identified.

The panel considered striking Mrs Mcallister's name off the NMC register, but concluded that this sanction would be disproportionate at the current time. Although this was a finely balanced decision, the panel determined that Mrs Mcallister should be given the opportunity to reflect fully on her misconduct, with the potential to remediate the outstanding concerns identified. Should Mrs Mcallister be able to demonstrate to a future reviewing panel that she is not currently impaired, she may be able to return to the nursing profession, as her misconduct is not completely incompatible with ongoing NMC registration.

The panel noted that Mrs Mcallister's current position is that she has retired from nursing and has no intention of returning to the profession. She has in the past requested voluntary removal from the NMC Register. The panel noted that at the present time, her registration is preserved by these ongoing proceedings. It noted that Mrs Mcallister may wish to look at the NMC's guidance on circumstances when it may be appropriate to allow an order to lapse on its expiry. If by the time of any review, she remains of the view that her nursing career is at an end, it would, in theory, be one option for a future panel to allow the order to lapse, if they were satisfied that public interest consideration had been sufficiently addressed and that there was concrete evidence of settled plans for retirement. This panel considered that a period of suspension would give Mrs Mcallister an opportunity to reflect on her wishes with regard to her future career, to advise a future reviewing panel of her intentions.

As already mentioned, this case was finely balanced between suspension and striking-off. However, this panel was mindful that it should impose the least restrictive sanction which was sufficient to meet the public protection and public interest considerations. In light of Mrs Mcallister's engagement, admissions, recent evidence of developing insight, and long career without previous regulatory findings, the panel considered that the balance at this stage lay in favour of temporary, rather than permanent removal from the NMC Register.

Balancing all of these factors, the panel has concluded that a suspension order for a period of 12 months, with a review, would be the appropriate and proportionate sanction, in respect of the misconduct identified.

The panel noted that this order will prevent Mrs Mcallister from working as a registered nurse during the period in which it is in force. However, the panel considered that this order is necessary to protect patients and to mark the importance of maintaining public confidence in the nursing profession.

At the end of the period of suspension, another panel will review the order. At the review, the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel may be assisted by:

- A further declaration from Mrs Mcallister as to her intentions for the nursing profession.
- Evidence of Mrs Mcallister planning or evidence of her having retired from employment.
- If Mrs Mcallister wishes to return to the nursing profession, a reflective piece demonstrating a development in her insight, with consideration given to how her behaviour impacted upon residents, colleagues, the nursing profession and the wider public as a whole.
- Evidence of Mrs Mcallister retraining or strengthening her nursing practice, with respect to misconduct identified.
- More recent testimonials from employers, relating to paid or unpaid work.
- Evidence of Mrs Mcallister having kept her clinical nursing knowledge up to date.

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, 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 Mrs Mcallister's own interest until the suspension order takes effect.

Representations on interim order

The panel had sight of the NMC's statement of case, which reads as follows:

"Interim Order Consideration

35. If a finding is made that the registrant's fitness to practise is impaired on a public protection basis and a restrictive sanction is imposed we consider an 18 months interim order in the same terms as the substantive order should be imposed on the basis that it is necessary for the protection of the public and otherwise in the public interest."

Decision and reasons on interim order

The panel accepted the advice of the legal assessor.

The panel considered the imposition of an interim order and determined that an interim order is necessary on the grounds of public protection and public interest.

The panel determined that an interim conditions of practice order was inappropriate given its earlier findings.

The panel was satisfied that an interim suspension order is necessary in the circumstances of this case. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

If no appeal is made, then the interim order will be replaced by the suspension order 28 days after Mrs Mcallister is sent the decision of this hearing in writing.

That concludes this determination.