

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

**Substantive Order Review Hearing
Wednesday 29 June 2022**

Virtual Hearing

Name of registrant: Karen Ingrid Mason

NMC PIN: 82G1362E

Part(s) of the register: Registered Nurse – Adult (Level 2)
RN2, Adult Nurse (7 August 1984)
RN1, Adult Nurse (6 September 1993)
RN8, Children’s Nurse (29 July 1996)

Relevant Location: Gwynedd

Type of case: Misconduct

Panel members: Adrian Ward (Chair, Lay member)
Richard Lyne (Registrant member)
Claire Cheetham (Lay member)

Legal Assessor: Angela Hughes

Hearings Coordinator: Amanda Ansah

Nursing and Midwifery Council: Represented by Michael Smalley, Case Presenter

Mrs Mason: Not present and unrepresented

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Striking-off order to come into effect at the end of 8 August 2022 in accordance with Article 30 (1).**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Mason was not in attendance and that the Notice of Hearing had been sent to her registered email address on 30 May 2022.

Mr Smalley, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

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

In the light of all of the information available, the panel was satisfied that Mrs Mason has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs Mason

The panel next considered whether it should proceed in the absence of Mrs Mason. The panel had regard to Rule 21 and heard the submissions of Mr Smalley who invited the panel to continue in the absence of Mrs Mason. He submitted that she had voluntarily absented herself.

Mr Smalley submitted that there had been no engagement at all by Mrs Mason with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Mason. In reaching this decision, the panel has considered the submissions of Mr Smalley and the advice of the legal assessor. It has had particular regard to the relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Mason;
- This is a mandatory review of an order that is due to expire at the end of 8 August 2022;
- Mrs Mason has not engaged with the NMC since the substantive hearing; and has not responded to any of the letters sent to her about this hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Mason.

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a striking off order.

This order will come into effect at the end of 8 August 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 7 January 2022.

The current order is due to expire at the end of 8 August 2022.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved which resulted in the imposition of the substantive order were as follows:

'That you, a Registered Nurse

1. Whilst employed by Eithinog Leonard Cheshire Care Home as a Nurse and registered for agency nursing work with Key Care Support (KCS):

1.1 Worked a shift at Ysbyty Gwynedd Hospital (the Hospital) through KCS whilst claiming sick pay from the Home on one or both of:

1.1.1 27 October 2018,

1.1.2 9 February 2019

1.2 On 11 January 2019, worked a shift at the Hospital through KCS when you were due to undertake nursing work at the Home

2. Your conduct at charge 1.1 was dishonest in that:

2.1 You claimed sick pay from the Home to which you knew you were not entitled by virtue of being fit to work or, by attending agency shifts, you represented to KCS and/or the Hospital that you were fit to work when you knew you were not

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

The original panel determined the following with regard to impairment:

'The panel next went on to decide if as a result of the misconduct, Mrs Mason'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 judgment of Mrs Justice Cox in the case of CHRE v NMC and Grant in reaching its decision. In paragraph 74, she said:

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

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

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

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

*The panel was of the view that all the limbs of **Grant** were engaged in this case.*

The panel found patients were put at unwarranted risk of harm as a result of Mrs Mason undertaking a clinical role whilst certified as unfit to work. Mrs Mason's misconduct breached the fundamental tenets of the nursing profession and brought its reputation into disrepute. In addition, Mrs Mason was found to have acted dishonestly. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find the charges found proved to be serious.

Regarding insight, the panel considered that there has been no insight shown by Mrs Mason. The panel was of the view that Mrs Mason has not provided any evidence before it today that she has any insight into her behaviour, as set out in the charges found proved nor demonstrated any remorse. In addition, the panel noted that Mrs Mason denied the charges from the outset and had not provided an adequate explanation for her conduct.

In relation to the misconduct involving dishonesty, the panel acknowledged that it would be difficult to remediate as dishonesty is considered an attitudinal issue. However, the panel was of the view that it is not impossible to remediate.

There having been no evidence of remediation provided, the panel considered that Mrs Mason has not demonstrated any understanding of the potential impact her actions could have had on patients, her colleagues and the reputation of the profession. Further, there is no information to indicate that Mrs Mason even wishes to remediate. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

In light of all the above, the panel had insufficient evidence before it to allay its concerns that Mrs Mason currently poses a risk to patient safety. It considered there

to be a risk of repetition of the incidents found proved and a risk of unwarranted harm to patients in her care due to her lack of insight into how her own health status impacts upon her ability to work. 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 was of the view that a fully informed member of the public would be very concerned by the panel's findings on the facts found proved and Mrs Mason's misconduct. It 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 Mason's fitness to practise as a registered nurse is currently impaired.'

The original panel determined the following with regard to sanction:

'Having found Mrs Mason'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 SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel first considered what it deemed to be the aggravating and mitigating factors in this case and determined the following:

Aggravating factors:

- *Financial gain from breach of trust;*
 - *Potential risk of harm;*
 - *Abuse of position of trust with KCS and the Hospital; and*
 - *No insight or remorse.*
-
- *Mitigating factor:*
-
- *No previous incidents in 36 years.*

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 neither protect the public nor be 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 seriousness of the case, the public protection and the public interest issues identified, an order that does not restrict Mrs Mason'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 Mrs Mason'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 Mrs Mason'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 is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case is difficult to address through retraining as the concerns relate to attitudinal issues and not clinical or competence issues. Furthermore, the panel concluded that the placing of conditions on Mrs Mason's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel considered the SG and found that the following features where a suspension order may be appropriate were present in this case:

- a single instance of misconduct but where a lesser sanction is not sufficient*
- no evidence of harmful deep-seated personality or attitudinal problems*
- no evidence of repetition of behaviour since the incident*

Whilst there were two instances, four months apart, of working for KCS while signed off as unfit to work, it was limited to only two [PRIVATE]. Mrs Mason had worked for LCG (both as agency and employee) and for KCS for a long time and both Ms 1 and Mr 1 spoke positively about her as a nurse. The panel had no evidence of harmful deep seated personality or attitudinal problems.

The panel considered that a period of suspension would appropriately mark the seriousness of the misconduct in this case, maintain public confidence in the nursing profession and uphold proper professional standards. The panel concluded that a six month suspension order with a review would be proportionate. This would afford Mrs Mason adequate time to demonstrate the development of her insight and remediation, and to engage with her regulator.

The panel seriously considered a striking-off order due to the lack of insight, remorse and remediation Mrs Mason has provided. The panel considered carefully whether a strike off was the appropriate sanction. In what was a very finely balanced decision, where strike off was seriously considered, the panel recognised that Mrs Mason has been practising as a registered nurse for a considerable amount of time without any issue and concluded that a final chance for her to demonstrate the development of her insight and remediation, and to engage with her regulator was a proportionate response. Whilst not attempting to direct any future panel, this panel makes clear that the option of strike off is an available outcome if Mrs Mason does not engage effectively.'

Decision and reasons on current impairment

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

The panel has had regard to all of the documentation before it, including the NMC bundle. It has taken account of the submissions made by Mr Smalley. He submitted that in the absence of new information provided by Mrs Mason, she remains impaired on public protection and public interest grounds. He informed the panel that the previous panel had particular concerns regarding Mrs Mason's levels of insight and the further information they suggested to potentially address this have not been provided by Mrs Mason. Mr Smalley further submitted that Mrs Mason remains impaired and regarding the sanction, made no positive case. However, he submitted that as Mrs Mason remains impaired and if the panel were to agree with this on public protection grounds, then there must be some restriction on her practice to address this specific risk. In this case, the panel should consider extending the existing order or make a new order. He reminded the panel that all the sanctions ranging from a caution order to a striking off order are available to the panel.

Mr Smalley submitted that a caution order would not be appropriate as it would not address public protection concerns, and that an interim conditions of practice order would be inappropriate given the indication made at the substantive hearing that Mrs Mason has retired from practice. He referred the panel to the documentation highlighting that her fee expiry was on 31 August 2020, and further submitted that the panel should consider imposing a suspension order or a striking off order.

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

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

The panel considered whether Mrs Mason's fitness to practise remains impaired.

The panel noted that the original panel found that Mrs Mason had insufficient insight. At this hearing the panel determined that this has not changed following the lack of engagement with the NMC. It considered that any developing insight would have deteriorated at this stage and there is no information to suggest that her current position has changed. The panel further noted that since the last determination, Mrs Mason has disengaged with process and although she provided minimal engagement previously, there has been nothing further since.

In its consideration of whether Mrs Mason has taken steps to strengthen her practice, the panel took into account Mrs Mason's failure to engage with the NMC regarding the proceedings and her failure to comply with the previous panel's recommendations regarding her insight and remediation.

The original panel determined that Mrs Mason was liable to repeat matters of the kind found proved. Today's panel has heard no information undermining this. In light of this, this panel determined that Mrs Mason is liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required, bearing in mind the seriousness of the concerns found proved and the continuing lack of insight, remediation and engagement from Mrs Mason.

For these reasons, the panel finds that Mrs Mason's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Mason's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the continuing impairment with regard to public protection, as well as the seriousness of the case. 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 seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Mason'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 Mrs Mason'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 a conditions of practice on Mrs Mason's registration would be a sufficient and appropriate response. The panel is mindful that any conditions

imposed must be proportionate, measurable and workable. The panel bore in mind the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mrs Mason's misconduct and it was of the view that given her lack of engagement, it is unlikely any conditions imposed would be complied with.

The panel next considered imposing a further suspension order. The panel noted that Mrs Mason has not shown remorse for her misconduct. It reconsidered the previous panel's determination referring to Mrs Mason's conduct as a single incident with no evidence of attitudinal concerns and no evidence of repetition, and noted that there were actually two incidents that could be looked at as one incident that was repeated. The panel considered the sanction guidance on suspension where it states that this would be inappropriate in the event of repeated conduct. The panel determined that given Mrs Mason's lack of engagement and lack of insight or remediation despite the previous panel's recommendations, a suspension order would not serve any useful purpose in all of the circumstances. It noted that the previous panel was quite clear that the current suspension order was offered as a final chance for Mrs Mason to demonstrate insight, remediation, and engage with the NMC all of which Mrs Mason has failed to do. It further noted that despite the previous panel's strong warning, Mrs Mason has disengaged with the process.

The panel was of the view that a considerable body of evidence would be required to show that Mrs Mason no longer posed a risk to the public and this information has not been provided. The panel therefore determined that it was necessary to take action to prevent Mrs Mason from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 8 August 2022 in accordance with Article 30(1).

This decision will be confirmed to Mrs Mason in writing.

That concludes this determination.