

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

**Substantive Order Review Hearing  
10 May 2022**

Virtual Hearing

<b>Name of registrant:</b>	<b>Miss Susan Caines</b>
<b>NMC PIN:</b>	97J0321E
<b>Part(s) of the register:</b>	Registered Nurse – Sub Part 1 Adult Nursing – October 2000
<b>Relevant Location:</b>	Manchester
<b>Type of case:</b>	Lack of competence
<b>Panel members:</b>	Adrian Ward (Chair, Lay member) Dr Natasha Duke (Registrant member) David Boyd (Lay member)
<b>Legal Assessor:</b>	Peter Jennings
<b>Hearings Coordinator:</b>	Roshani Wanigasinghe
<b>Nursing and Midwifery Council:</b>	Represented by Alban Brahim, Case Presenter
<b>Miss Caines:</b>	Not present and unrepresented
<b>Order being reviewed:</b>	Suspension order (12 months)
<b>Fitness to practise:</b>	Impaired
<b>Outcome:</b>	<b>Strike off to come into effect on 16 June 2022 in accordance with Article 30 (1)</b>

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

The panel was informed at the start of this hearing that Miss Caines was not in attendance and that the Notice of Hearing had been sent to her registered address by recorded delivery and by first class post on 11 April 2022.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Hearing was delivered to Miss Caines' registered address on 12 April 2022. It was signed for against the printed name of 'CAI ES'.

Mr Brahim, 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 venue of the hearing and, amongst other things, information about Miss Caines' 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 Miss Caines has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

## **Decision and reasons on proceeding in the absence of Miss Caines**

The panel next considered whether it should proceed in the absence of Miss Caines. The panel had regard to Rule 21 and heard the submissions of Mr Brahim who invited the panel to continue in the absence of Miss Caines. He submitted that there is an inference that Miss Caines had voluntarily absented herself.

Mr Brahimy submitted that there had been no attendance or engagement at all by Miss Caines 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 Miss Caines. In reaching this decision, the panel has considered the submissions of Mr Brahimy and the advice of the legal assessor. It has had particular regard to 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 Miss Caines;
- Miss Caines has not engaged with the NMC at any stage of these proceedings and has not responded to any of the letters sent to her about this hearing;
- Miss Caines has not provided the NMC with details of how she may be contacted other than her registered address;
- 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 and a statutory duty to review the order before its expiry.

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

### **Decision and reasons on review of the substantive order**

The panel decided to make a striking off order. This order will come into effect at the end of 16 June 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 14 February 2020. On 12 February 2021, the suspension order was extended for a further 12 months. The second reviewing panel on 7 February 2022 imposed a further suspension order for a period of 3 months.

The current order is due to expire at the end of 16 June 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, whilst enrolled at Manchester Metropolitan University between 1 May 2017 and 14 September 2018, failed to demonstrate the standards of knowledge, skill, and judgement required to practise without supervision as a band 5 nurse, in that you:*

*1) Did not achieve the required standards on a Return To Practice course, in areas including but not limited to:*

- 1.1) Medication administration;*
- 1.2) Care planning;*
- 1.3) Communication;*
- 1.4) Collaborative working;*
- 1.5) Escalating Concerns;*
- 1.6) Observations;*
- 1.7) Patient Assessment;*

*2) Failed to submit your written coursework assignment on the Return to Practice course on 6 February 2018.*

3) On 26 June 2018 were awarded a 25% fail mark for the written portfolio assignment “of evidence that demonstrates competency to Return to Practice.”

4) On 7 September 2018 were awarded a ‘fail’ in the theoretical part of the Return to Practice course.

5) On 17 October 2017 were awarded a “fail” in the practice part of the Return to Practice course.

*AND, in light of the above, your fitness to practice is impaired by reason of your lack of competence.”*

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

*“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 Miss Caines’ fitness to practise remains impaired.*

*The panel had regard to Miss Caines’ insight. There has been no engagement from Miss Caines, and as such, the panel had no new information to suggest that Miss Caines’ insight has developed; she has not sent to the panel a reflective piece as was suggested at the last review hearing.*

*The last reviewing panel determined that Mrs Caines was liable to repeat matters of the kind found proved. Today’s panel has not received any new material information to suggest she has remedied her failings so that they are unlikely to be repeated. In light of this, this panel determined that Mrs Caines has not fully remediated her lack of competence and is still 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.*

*For these reasons, the panel finds that Mrs Caines' fitness to practise remains impaired."*

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

*"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.*

*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 Miss Caines' practice would not be appropriate in the circumstances. 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 Miss Caines' registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel 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 Miss Caines' lack of competence and it had no information to suggest that Miss Caines would be willing to comply with a conditions of practice order.*

*The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Miss Caines further time to fully reflect on her previous failings. The panel concluded that a further 3-month suspension order would be the appropriate and proportionate response and would afford the*

*opportunity for Miss Caines to engage with the NMC, time to develop her insight and take steps to strengthen her practice.*

*The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 3 months. It considered this to be the most appropriate and proportionate sanction available.*

*The panel noted that a striking off order was not a sanction available to it at this moment in time, as two years had not passed since the imposition of the substantive order. The panel considered that a striking off order would not be an unreasonable response in the current circumstances of this case, however, it noted that a 3-month suspension order would give Miss Caines a further, perhaps final, opportunity to engage with the NMC, explain how she has remediated her fitness to practise, and set out her future practice intentions.*

*This suspension order will take effect upon the expiry of the current suspension order, namely the end of 16 March 2022.*

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

*Any future panel reviewing this case would be assisted by:*

- Miss Caines' attendance;*
- References and testimonials from any paid or unpaid work;*
- Evidence of meaningful engagement with the NMC;*
- A reflective piece addressing her lack of competence;*
- Information around Miss Caines' future intentions with regard to her career as a nurse or whether she intends to leave the profession; and,*
- Evidence of any steps Miss Caines has taken towards improving and updating her practice.”*

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

The panel has considered carefully whether Miss Caines' 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 Brahimy on behalf of the NMC.

Mr Brahimy provided the panel with a background to the case and referred it to the documents before it as well as the decision of the original substantive panel and the decisions of the previous review hearings.

He reminded the panel that on the last occasion, the reviewing panel had no new information before it and no evidence of how or if Miss Caines had addressed the concerns and remedied her fitness to practise. He submitted that that last panel had requested Miss Caines' attendance/engagement, references and testimonials, a reflective piece and information regarding her future intentions. However, she has neither complied nor engaged. He submitted that there is no change of circumstances since the last review and therefore an order remains necessary for the protection of the public and the public interest.

Mr Brahimy submitted that since it has been just over two years since the original substantive order, the panel is in a position to strike Miss Caines off the register if it feels this is necessary. He submitted that it is appreciated that a further suspension order may be more suitable and allow Ms Caines a final opportunity to re-engage.

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, to maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Miss Caines' fitness to practise remains impaired.

The panel noted that the last reviewing panel found: *"There has been no engagement from Miss Caines, and as such, the panel had no new information to suggest that Miss Caines' insight has developed; she has not sent to the panel a reflective piece as was suggested at the last review hearing."* At this hearing the present panel concluded that position remains the same, given that there has been no material change in the circumstances of the case since the order was last reviewed. There is no information before the panel to suggest that Miss Caines has engaged with the NMC.

The panel considered that Miss Caines had not provided the NMC with any evidence of her strengthening her practice since the last review despite being encouraged to do so. The panel determined that Miss Caines remains liable to repeat her failings, as she has not provided any evidence to demonstrate a material change in the circumstances of her case. The panel therefore decided that a finding of continuing impairment remains 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.

For these reasons, the panel finds that Miss Caines' fitness to practise remains impaired.

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

Having found Miss Caines' 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 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 Miss Caines' 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 Caines' lack of competence 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 order on Miss Caines' registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel 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 Miss Caines' lack of competence given that it had no information to suggest that Miss Caines would be willing to comply with a conditions of practice order as she has not engaged with these proceedings.

The panel next considered imposing a further suspension order. The panel noted that Miss Caines had been subject to three suspension orders in the past two years, and there is no evidence of her making efforts to engage with her regulator at any stage in these proceedings, or provide the NMC with any evidence of steps taken to strengthen her practice or a demonstration of insight into the concerns identified. In these circumstances the panel determined that a further period of suspension would not serve any useful purpose.

The panel concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order. The panel therefore directs the registrar to strike Miss Caines' name off the register.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 16 June 2022 in accordance with Article 30(1).

This decision will be confirmed to Miss Caines in writing.

That concludes this determination.