

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

**Substantive Order Review Meeting
Tuesday 1 August 2023**

Virtual Meeting

Name of Registrant: Catherine Mary Bell

NMC PIN 93Y0048N

Part(s) of the register: Registered Nurse – Adult Nursing (April 1996)

Relevant Location: Belfast

Type of case: Misconduct

Panel members: Clara Cheetham (Chair, lay member)
Allwin Mercer (Registrant member)
Nicola Hartley (Lay member)

Legal Assessor: Peter Jennings

Hearings Coordinator: Alice Byron

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Suspension order extended for 12 months from 15 September 2023 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Mrs Bell's registered email address by secure email on 26 June 2023.

The panel took into account that the Notice of Meeting provided details of the review including that Mrs Bell's substantive order would be reviewed at a meeting no sooner than 31 July 2023, unless she requested that it be reviewed at a hearing. It noted that Mrs Bell has not responded to this email, and has not engaged with the NMC since the substantive order was imposed on 18 August 2022, and has not asked for a hearing.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Bell has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision and reasons on review of the current order

The panel decided to extend the current suspension order for a further period of 12 months. This order will come into effect at the end of 15 September 2023 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 18 August 2022.

The current order is due to expire at the end of 15 September 2023.

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) Attended for work whilst under the influence of alcohol on some or all of the dates referred to in Schedule One;*
- 2) Between 6 May 2020 and 13 July 2021 failed to engage with requests from the Nursing & Midwifery Council to consent to medical testing;*

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

Schedule One

- a) 11 March 2019*
- b) 21 May 2019*
- c) 22 May 2019*
- d) 9 January 2020*

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 Bell'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. 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/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) [...].'*

The panel found that the limbs a, b and c of the Test to be engaged in this case, both as to the past and the future.

The panel finds that patients were put at risk of harm as a result of Mrs Bell's misconduct. Mrs Bell's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find the charges in this case serious.

Although the panel was satisfied that the misconduct in this case is capable of being addressed, there is no information before the panel for it to sufficiently assess the level of insight into her misconduct. It considered that Mrs Bell's written representations put before the panel do not address her failings and there is limited information as to what she would do differently should she find herself in a similar situation.

Further, the panel carefully considered the evidence before it in determining whether or not Mrs Bell has taken steps to address her misconduct. [PRIVATE]. Further, there is no information before the panel regarding Mrs Bell's current practice. In light of this, the panel is of the view that 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 that 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 a finding of impairment on public interest grounds is required. It concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mrs Bell's fitness to practise impaired on the grounds of public interest.

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

The original panel determined the following with regard to sanction:

'The panel next considered whether placing conditions of practice on Mrs Bell'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 [Sanctions Guidance], in particular:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- No evidence of general incompetence;*
- Potential and willingness to respond positively to retraining;*
- [PRIVATE]*
- Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- 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 is of the view that there are no practicable or workable conditions that could be formulated, given the nature of the charges in this case and that the misconduct identified in this case was not something that can be addressed through retraining.

The panel considered that conditions of practice may have been workable had Mrs Bell engaged with the NMC, however there is no information before

the panel to demonstrate that she would be willing to comply with conditions on her registration. It also took into account Mrs Bell's refusal to provide medical consent and participate in medical examinations, and therefore determined that conditions are not practicable nor effectively protect the public.

In addition, the panel considered that Mrs Bell's misconduct had been repeated despite the support of the Practice. In light of this, the panel determined that the panel could not be confident that Mrs Bell would comply with a conditions of practice order.

Furthermore, the panel concluded that the placing of conditions on Mrs Bell's registration would not adequately mark the seriousness of this case and would not protect the public or address the public interest in this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *[...]*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *[...]*
- *[...]*
- *[PRIVATE]; and*
- *[...]*

The panel was satisfied that in this case, [PRIVATE], it was not fundamentally incompatible with remaining on the register at this stage.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mrs Bell's case to

impose a striking-off order and it determined that Mrs Bell is not incompatible with remaining on the register.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Mrs Bell. However, this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

The panel determined that a suspension order for a period of 12 months was appropriate in this case to mark the seriousness of the misconduct. The panel took into account that Mrs Bell has indicated that currently she does not wish to return to nursing. However, it noted that a period of suspension will allow her [PRIVATE] to consider whether she wishes to engage with the NMC and return to nursing practice.

At 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:

- Mrs Bell's engagement and attendance at the review hearing;*
- Evidence of reflection into the regulatory concerns arising from the charges found proved; and*
- [PRIVATE].*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Bell'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 noted that Mrs Bell has not provided any representations or documentation for the panel to consider at this meeting.

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 declare and uphold proper standards of conduct and performance.

The panel noted that the original panel found that there was no information before it from which it was able to assess Mrs Bell's level of insight. At today's meeting, the present panel noted that there had still been no information provided by Mrs Bell since the substantive order was made. It therefore concluded that there was nothing from which the panel could assess Mrs Bell's current level of insight, such as any understanding of how she had put her patients at risk of harm or any understanding of how her actions had impacted negatively on the reputation of the nursing profession. Accordingly, the panel concluded that there is no information before it to suggest any development in Mrs Bell's insight since the initial hearing on 18 August 2022.

Similarly, the panel concluded that there is no evidence before it to suggest that Mrs Bell has strengthened her practice since the imposition of the suspension order.

The original panel determined that Mrs Bell was liable to repeat matters of the kind found proved. Today's panel has not received any information to suggest that the risk of repetition has diminished since 18 August 2022. In light of this the panel determined that

Mrs Bell remains liable to repeat matters of the kind found proved. 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 not only to protect patients but also to meet 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 Bell's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Bell'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 revoke the suspension order, but concluded that this would be inappropriate in view of the seriousness of the case. The panel similarly 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 Bell'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 Bell'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 Bell's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. It had regard to the evidence before it, and noted Mrs Bell's lack of engagement with the NMC. It concluded that, in light of such lack of engagement, a conditions of practice order would not be workable. Further, the panel bore in mind the seriousness of the facts found proved at the original meeting and concluded that a conditions of practice order would not 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 Bell's misconduct.

Furthermore, the panel noted the information provided to the original panel that Mrs Bell did not, at that time, wish to continue working as a nurse. Today's panel had no information to suggest that this had changed.

The panel considered an extension of the period of suspension. It was of the view that a suspension order would allow Mrs Bell further time to fully reflect on her previous failings, and on how her misconduct impacted the patients in her care and the reputation of the nursing profession as a whole. The panel concluded that a further 12-month period of suspension would be the appropriate and proportionate response and would afford Mrs Bell time to develop her insight and take steps to strengthen her practice, should she wish to continue practising as a nurse.

The panel noted that Mrs Bell has previously indicated to the NMC that she does not wish to return to practice as a nurse, but has not provided clear set intentions of her future career plans, or an attestation that she would not seek re-entry to the NMC register for a period of five years. It concluded that an extension of the current suspension order would also allow Mrs Bell to make informed decisions as to her future in nursing.

Given Mrs Bell's lack of engagement with the NMC, the panel gave serious consideration as to whether a striking-off order was the appropriate order in this matter. It noted that, [PRIVATE] having found misconduct it was open to the original panel, and any reviewing panel, to impose a striking-off order at any stage. The panel bore in mind that the charges found proved at the substantive meeting were highly serious; however, it concluded that,

at this stage, a striking-off order would be disproportionate, and that Mrs Bell should be afforded a further opportunity to consider her future intentions in respect of her career.

The panel determined therefore that an extension to the 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 continue the suspension order for a period of 12 months. It considered this to be the most appropriate and proportionate sanction at the present time. This would provide Mrs Bell with an opportunity to engage with the NMC, or provide the NMC with her clear settled intentions not to return to nursing.

This suspension order will continue from the expiry of the current suspension order, namely the end of 15 September 2023 in accordance with Article 30(1).

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may extend the order or make another order to take effect on its expiry, it may revoke the order or reduce its length, it may replace the order with another order, or it may allow the order to lapse.

It will be open to a future panel reviewing this order to impose any sanction which it thinks appropriate. However, if Mrs Bell provides evidence of a settled intention not to return to nursing, one course which a panel might adopt, if it thought it appropriate, would be to allow the order to lapse with a finding of current impairment, without making any additional order.

Any future panel reviewing this case would be assisted by:

- Evidence of Mrs Bell's intentions as to her future as a nurse; and
- Any evidence of Mrs Bell's engagement with her regulator; and
- Mrs Bell's attendance at the review hearing; and
- Evidence of reflection into the regulatory concerns arising from the charges found proved.

This will be confirmed to Mrs Bell in writing.

That concludes this determination.