

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

**Substantive Order Review Hearing
Thursday 16 March 2023**

Virtual Hearing

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| Name of Registrant: | Mr Michael Turner |
| NMC PIN | 14H1547E |
| Part(s) of the register: | Registered Nurse – Sub part 1 Nursing RNMH: Mental Health Nursing - 20 April 2015 |
| Relevant Location: | Liverpool |
| Type of case: | Misconduct |
| Panel members: | Simon Banton (Chair, Lay member) Lisa Punter (Registrant member) Frances McGurgan (Lay member) |
| Legal Assessor: | Suzanne Palmer |
| Hearings Coordinator: | Amie Budgen |
| Nursing and Midwifery Council: | Represented by Raj Joshi, Case Presenter |
| Mr Turner: | Not present and was not represented at today's hearing |
| Order being reviewed: | Suspension order (3 months) |
| Fitness to practise: | Impaired |
| Outcome: | Striking-Off order to come into effect on at the end of 18 April 2023 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 Mr Turner was not in attendance and that the Notice of Hearing had been sent to Mr Turner's registered email address by secure email on 2 February 2023.

Mr Joshi, 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 that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Turner's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Turner 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 Mr Turner

The panel next considered whether it should proceed in the absence of Mr Turner. The panel had regard to Rule 21 and heard the submissions of Mr Joshi who invited the panel to continue in the absence of Mr Turner. He submitted that Mr Turner had voluntarily absented himself.

Mr Joshi referred the panel to emails from Mr Turner dated 5 March 2023 and 14 March 2023, which stated he will not be attending the hearing, including documentation for the panel to consider in his absence.

The panel accepted the advice of the legal assessor.

The panel decided to proceed in the absence of Mr Turner. In reaching this decision, the panel has considered the submissions of Mr Joshi, the emails from Mr Turner dated 5 March 2023 and 14 March 2023, informing the NMC that he will not be attending, and the advice of the legal assessor. It had particular regard to any 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 Mr Turner, on the contrary, he has indicated that he is content for the hearing to proceed;
- Mr Turner has informed the NMC that he has received the Notice of Hearing, confirmed he will not be attending, and provided documents for the panel to consider in his absence;
- There is no reason to suppose that adjourning would secure his attendance at some future date; and
- There is a strong public interest in the expeditious review of the case before the current order expires on 18 April 2023.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mr Turner. It noted that it would be able to minimise any prejudice to Mr Turner by taking into account the written representations which he has provided.

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 18 April 2023 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 17 September 2021. This first was reviewed on 5 September 2022 and the panel decided to impose a further three-month suspension order. This was last reviewed on 8 December 2022 and the panel decided to impose a further three-month suspension order.

The current order is due to expire at the end of 18 April 2023.

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

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

“That you, whilst employed as a registered nurse by Mersey Care NHS Foundation Trust:

- 1) *On one or more occasions, prior to 15 March 2018, used inappropriate language when speaking to Colleague A, particularly you said the following or similar words to and/or discussed the following or similar subjects with Colleague A:*
 - a) *“Haven’t you got a gorgeous face?” [Found proved]*
 - b) *Tying people up for sex. [Found proved]*
 - c) *“Fat arse” [Found proved]*
 - d) *“I’m erect talking to you” [Found proved]*
 - e) *“Tits out so that I can suck them” [Found proved]*
 - f) *That Colleague A’s “big arse” made her sexually attractive, particularly to black men. [Found proved]*
 - g) *“I’d like to finger the box off you” [Found proved]*
- 2) *On or around 11 March 2018 locked Colleague A in a room with you. [Found proved]*
- 3) *Your actions as set out at charges 1 and/or 2 were sexually abusive. [Proved in respect of charge 1 but not proved in respect of charge 2]*
- 4) *Your actions as set out at charges 1 and/or 2 were intended to sexually degrade and/or demean and/or discomfort Colleague A. [Proved in respect of charge 1 but not proved in respect of charge 2]*
- 5) *[Found not proved]*

- 6) *[Found not proved]*
- 7) *[Found not proved]*
- 8) *On or around 11 March 2018;*
 - a) *Administered medication to Colleague A without her having a valid prescription. [Found proved by admission]*
 - b) *Did not take any or any sufficient medical history from Colleague A. [Found proved by admission]*
 - c) *Did not check the contra indications and/or side effects of the medication given to Colleague A. [Found proved by admission]*
- 9) *On or around 11 March 2018 in relation to the medication given to colleague A in charge 8;*
 - a) *Inaccurately recorded that the medication given to Colleague A had been administered to a patient. [Found proved by admission]*
 - b) *Obtained the medication from ward stock. [Found proved by admission]*
- 10) *Your actions at charge 9(a) and (b) were dishonest in that you knew:*
 - a) *[Found not proved]*
 - b) *That the medication belonged to the Trust and that you were not entitled to use it for the purpose to which you did. [Found proved]”*

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

'The panel noted that the last reviewing panel found that although Mr Turner had expressed remorse and shown some insight, it was not satisfied that Mr Turner would not repeat matters of the kind found proved. At this hearing, the panel took into account the new information before it, namely Mr Turner's CPD Certificate on Professional Boundaries Level 2 ('the CPD course') and his reflective account. It noted that, in the CPD course, Mr Turner has achieved a pass rate of "100%". It also noted that Mr Turner continued to deny some of the charges.

The panel took into account that the allegations are serious, and that the onus is on Mr Turner to demonstrate that his fitness to practise is no longer impaired. In light of the evidence before it, the panel found that the content of Mr Turner's reflective account was limited and only partially addressed the concerns of the previous reviewing panel. The reflective account shows insufficient evidence of how Mr Turner's knowledge of professional boundaries has been extended since the last review. In particular, it makes no reference to the impact on junior colleagues of a failure to maintain professional boundaries. The panel determined that Mr Turner has therefore not satisfactorily demonstrated that his fitness to practise is no longer impaired.

In light of this, this panel determined a finding of continuing impairment is necessary on the grounds of public protection.

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

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

'Having found Mr Turner'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 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 Mr Turner's limited reflective account before this panel, an order that does not restrict Mr Turner'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 Mr Turner'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 Mr Turner'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 Mr Turner's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Turner further time to fully reflect on his previous misconduct. It considered that Mr Turner has not as yet demonstrated a full understanding of the concerns identified by the previous panel, in particular regarding junior colleagues. The panel concluded that a further three months suspension order would be the appropriate and proportionate response and would afford Mr Turner adequate time to further develop his insight and take steps to strengthen his practice.

The panel therefore determined that a suspension order is the appropriate and proportionate sanction which would continue to protect the public. Accordingly, the panel determined to impose a suspension order for the period of three months in order

to provide Mr Turner with an opportunity to demonstrate sufficient reflection on the concerns identified.'

Decision and reasons on current impairment

The panel has considered carefully whether Mr Turner'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 and the reflective piece from Mr Turner. It has taken account of the submissions made by Mr Joshi on behalf of the NMC.

Mr Joshi referred the panel to the background of the case, including details of the referral that the NMC received and the reflective piece that Mr Turner sent the NMC via email on 14 March 2023.

Mr Joshi submitted that Mr Turner continues to deny some of the allegations and that he has repeated this denial in his email sent on 14 March 2023. He submitted that his reflective account seems to address the allegations generally rather than address the specific issues which the previous panel asked of him.

Mr Joshi submitted that the regulatory concerns are very serious in nature, relating to sexual misconduct, medicine administration errors and dishonesty. Further, that Mr Turner has breached the NMC Code of Conduct, as well as the professional duty of candour.

Mr Joshi submitted that Mr Turner used his male dominance to harass female members of staff, which can be viewed as misogynistic and discriminative. Mr Joshi invited the panel to consider the discomfort that the female members of staff involved in the incidents may have felt, as some of the remarks were made in an enclosed space. Further, he submitted

that the comments that Mr Turner made were ill intended, submitting that remarks of this nature should not even be used in a light-hearted way.

Mr Joshi referred the panel to the following statement included in the previous determination letter on 8 December 2022:

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

- Mr Turner's attendance at a future hearing, whether in person or by telephone, and*
- A detailed reflective piece addressing what Mr Turner has learnt from the CPD course, with particular reference to junior colleagues.'*

Mr Joshi submitted that whilst Mr Turner has provided a reflective piece, he is still denying the incidents that took place and does not accept the allegations that have been proven against them. Further, that Mr Turner's reflective piece does not demonstrate any insight in relation to concerns relating to his sexual misconduct.

In relation to sanction, Mr Joshi submitted that due to serious attitudinal concerns that Mr Turner has demonstrated, relating to misogyny and discrimination, and his lack of insight and accountability for the charges, there remains a risk of repetition and a risk of harm to the public.

The panel also had regard to Mr Turner's written representations sent via email on 14 March 2023, stating the following:

'Due to work commitments I am again unable to attend the hearing. I am agreeable to the hearing continuing in my absence. Whilst I continue to deny the specific allegations made against me, I have prepared a document in the hopes that it demonstrates my insight into the issues of sexually inappropriate behaviour in the workplace and the impact on recipients and witnesses of the same. I trust that my inability to attend will not be received as disinterest or dismissal of the importance of the hearing. The last 5 years have been incredibly difficult in many ways and I am hopeful that this chapter will soon be behind me.'

This document has been prepared with the intention of demonstrating insight into the effects of sexually inappropriate language and/or behaviour in the workplace, specifically the impact that this may have on junior staff.

Experiencing sexually inappropriate behaviour in the workplace can have many negative effects on the recipients and witnesses. People can feel belittled, degraded, unsafe and fearful. Individuals may also experience mental health issues such as increased stress, anxiety and depression, as well as long term emotional and psychological trauma. This can then result in loss of earnings due to sickness and fear of attending the workplace because of the negative associations developed about the environment and people. Decreased productivity is another negative effect associated with experiencing inappropriate behaviour in the workplace. Given the nature of the work that nurses do, decreased productivity negatively impacts patient care. Junior staff being the recipients or witnesses of sexually inappropriate behaviour can also lead to the behaviour being normalised and becoming commonplace, fostering a risk of the inappropriate environment and behaviour being perpetuated which in turn exposes more and more people the inappropriate language and/or behaviour. This sort of environment can result in the company or trust gaining a negative reputation. Specifically in the nursing profession it can result the health service as a whole acquiring the reputation and the negativity reflecting on the nursing profession as a whole

Sexually inappropriate behaviour of any kind has no place at work, not only because of specific trust policy but in the interest of the wellbeing of all staff, patients, families and visitors. Maintaining appropriate boundaries promotes a non-toxic work environment and generates a safe, effective and comfortable workplace. A workplace that everybody is entitled to and deserves.'

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 Mr Turner's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mr Turner had insufficient insight. At this hearing the panel determined that Mr Turner continues to show limited insight. It considered that Mr Turner's reflective piece does show generic insight into the impact of harassment in the workplace generally, but it does not address his specific behaviour in this case. Moreover, he did not provide evidence to suggest that the risk of repetition and therefore the risk of harm to the public has been mitigated.

The panel was reminded by the legal assessor, and was mindful of the principle, that an individual can in theory continue to deny their wrongdoing whilst accepting findings and demonstrating insight and remediation. It did not consider that the fact that Mr Turner continues to deny aspects of his actions was of itself a bar to remediation and the development of full insight, although it noted that it was inevitably harder for Mr Turner to develop insight in circumstances where he does not accept accountability for his actions or recognise the substantive findings. The panel also accepted that failings like those identified in this case, which are of a behavioural rather than a clinical nature, are capable of being remedied through the development of genuine and extensive insight and reflection about how the failings arose, their impact and consequences, and how they could be avoided in future.

However, the panel did not consider that Mr Turner's insight is anywhere near fully developed in this case. It considered that the reflective piece which he has provided does not demonstrate a real understanding of why the behaviours which were found proved in this case were wrong, why they occurred, their impact on the colleagues who were the victim of those behaviours. Mr Turner had also not demonstrated an understanding of how the behaviour found proved which impacted negatively on the reputation of the nursing profession, nor has he acknowledged his misconduct or addressed how he would handle a similar situation differently in the future.

In its consideration of whether Mr Turner has taken steps to improve his conduct, the panel took into account the training he had done prior to the second review, and his written reflective piece for this review. However, as explained above, the panel determined that Mr Turner's reflective piece did not show the required level of insight. The panel determined

that there have been no material changes which indicate that Mr Turner has accepted responsibility in relation to his sexual misconduct towards his female colleagues, nor has he demonstrated an understanding of the impact that this may have had on them.

The last reviewing panel determined that Mr Turner was liable to repeat matters of the kind found proved. Today's panel has heard no new information which can be viewed to have changed the risk of repetition. In light of this, this panel determined that Mr Turner 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 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 Mr Turner's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Turner'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 seriousness of the case and the ongoing risk of repetition. The panel decided that no further action would neither protect the public, nor serve the wider public interest considerations.

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 Mr Turner'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 Mr Turner's misconduct was not at the lower end of the spectrum and that a caution order would neither protect the public, nor serve the wider public interest considerations in the case.

The panel next considered whether a conditions of practice on Mr Turner'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 the fact that the concerns in this case are behavioural rather than clinical. It concluded that it would not be possible to formulate effective and workable conditions to address the issues of concerns identified in this case, and further concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest.

The panel next considered imposing a further suspension order. Having reviewed the guidance provided from the first hearing, as well as the two previous review hearings, the panel determined that Mr Turner has been provided with ample opportunity to demonstrate that he can develop sufficient insight to remedy his failings. It has been spelt out to him in very clear terms, on each occasion, what is required of him in order to demonstrate that he is capable of developing sufficient insight to address the concerns identified. By way of example, the panel noted that the previous panel on 8 December 2022 provided the following guidance:

Any future panel reviewing this case would be assisted by:

- *Mr Turner's attendance at a future hearing, whether in person or by telephone, and*
- *A detailed reflective piece addressing what Mr Turner has learnt from the CPD course, with particular reference to junior colleagues.'*

Despite being given these opportunities, and clear recommendations, Mr Turner has consistently failed, in the period of 18 months since the substantive hearing, to demonstrate the requisite level of insight. The panel concluded that it now appeared that Mr Turner was not capable of developing sufficient insight, or of engaging sufficiently with the process of remediation to address the behavioural concerns in this case. It considered that the situation appeared unlikely to change significantly if a further period of suspension is imposed or further guidance is given.

The panel had regard to the fact that Mr Turner had completed a course on professional boundaries in 2022, however, he has not been able to demonstrate that the course had any significant impact on his levels of remorse or insight, or that he had learnt sufficient lessons from the course to strengthen his practice. The panel was of the view that considerable evidence would be required to show that Mr Turner no longer posed a risk to the public and such evidence appeared unlikely to be forthcoming.

The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Mr Turner 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.

It considered that in light of the persistent lack of insight in this case, and the fact that Mr Turner appeared not to be capable of developing the requisite levels of insight, the situation was now incompatible with ongoing registration, and the only sanction sufficient to protect the public and serve the wider public interest considerations was now a striking-off order. The panel was mindful that such an order would have a significant impact on Mr Turner, but it considered that he had been given every opportunity to address his failings, and that his interests were outweighed by the public protection and wider public interest considerations in this case.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 18 April 2023 in accordance with Article 30(1).

This decision will be confirmed to Mr Turner in writing.

That concludes this determination.