

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

**Substantive Order Review Meeting
Monday 27 November 2023**

Virtual Meeting

Name of Registrant: Christie Smyth

NMC PIN 06F0755E

Part(s) of the register: Nursing, Sub part 1
RNA, Registered Nurse – Adult (12 October 2006)

Relevant Location: Tameside and Oldham

Type of case: Misconduct

Panel members: Konrad Chrzanowski (Chair, Lay member)
Sandra Lamb (Registrant member)
Suzanna Jacoby (Lay member)

Legal Assessor: Nigel Pascoe KC

Hearings Coordinator: Anya Sharma

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Suspension order (6 months) to come into effect at the end of 10 January 2024 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 Ms Smyth's registered email address by secure email on 20 October 2023.

The panel took into account that the Notice of Meeting provided details of the review that the review meeting would be held no sooner than 27 November 2023 and inviting Ms Smyth to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Ms Smyth 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. This order will come into effect at the end of 10 January 2024 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 6 months by a Fitness to Practise Committee panel on 12 June 2023.

The current order is due to expire at the end of 10 January 2024.

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. ...
2. *Failed to maintain professional boundaries with Patient B and/or Patient B's family in that:*
 - a) *In or around October 2018 you:*
 - i. ...
 - ii. *took Patient B shopping along with your daughter on one or more occasions.*
 - iii. ...
 - iv. *allowed Patient B access to your personal telephone number.*
 - v. *accepted calls from Patient B on your personal telephone.*
 - b) ...
 - c) *On 20 November 2018 attended Patient B's home and:*
 - i. ...
 - ii. *accepted two owl brooches owned by Patient B when given to you by Husband B.*
3. *Failed to keep patient data securely in that you recorded patient key safe numbers and their corresponding address in your paper diary.*

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, Ms Smyth'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 and to maintain professional boundaries. 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 considered that only limbs b and c of Grant are engaged in this case. It considered that Ms Smyth did bring the reputation of the profession into disrepute with her actions, and Ms Smyth did breach fundamental tenets of the profession in the past. The panel is aware that this is a forward-looking exercise and accordingly, it went on to consider whether Ms Smyth's misconduct was remediable and whether it had been remediated.

The panel then considered the factors set out in the case of Cohen v GMC [2007] EWHC 581 (Admin). It determined that the misconduct in this case can be remediated.

The panel noted that Ms Smyth had implied during the disciplinary interview that she recognised that there was a problem about the relationship between her and Patient B. However, the panel determined that she did not acknowledge any of her actions were wrong and has had very limited engagement regarding the proceedings.

In relation to Ms Smyth's insight, the panel has had no information before it that she has learnt from her past actions and behaviour and has any insight as to the impact on the wider members of the profession and the public, and why these actions were unacceptable. The panel has not had information about any reflection or remorse, nor any evidence of relevant training that relate to the areas of concern in this case. Further, Ms Smyth has been unable to provide evidence to the panel as to how she would act differently should a similar situation arise again in the future. In light of Ms Smyth's limited insight and in the absence of any remediation or strengthened practice, the panel determined that there is a risk of repetition at this time. However, panel was not provided with any information regarding any potential risk of harm to the public, as such, it is of the view that Ms Smyth does not represent a risk to the public.

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 determined that a fully informed member of the public would be seriously concerned should a finding of impairment not be made at this time.

The panel therefore determined that a finding of impairment on public interest grounds is required.

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

The original panel determined the following with regard to sanction:

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates that key things to weigh up before imposing this order include:

- 'whether the seriousness of the case require temporary removal from the register?*
- will a period of suspension be sufficient to protect patients, public confidence in nurses, midwives or nursing associates, or professional standards?'*

The SG states that suspension order may be appropriate where some of the following factors are apparent:

- 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;*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register and therefore a suspension order was the most appropriate sanction.

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

Whilst the panel acknowledges that a suspension may have an unintended punitive effect and such an order could cause Ms Smyth hardship. This is outweighed by the public interest in Ms Smyth's case.

The panel 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 and unduly punitive.

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 six months was appropriate in this case to mark the seriousness of the misconduct. The panel determined that a period of six months would allow sufficient time for Ms Smyth to reflect further on her failings and to strengthen her practice and provide evidence of safe and effective practice or to state her future intentions.

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:

- Ms Smyth's engagement and participation at the review hearing;*
- A reflective piece focussing on professional boundaries, regulatory concerns and the effects on her colleagues, patients and the public perception of the nursing profession as a whole;*
- References from any work undertaken, whether paid or voluntary;*
- Any evidence of relevant training.*

The panel considered Ms Smyth's indication in July 2021 that she would like to proceed with VR from the Register, but this was not appropriate given the rules in force at the time. The panel considered that AR would have been an appropriate way to deal with this case subject to the decision of the Registrar. However, AR would still require Ms Smyth to engage with the NMC and submit a formal request noting her intention to leave the nursing profession. This has not so far been received.

Decision and reasons on current impairment

The panel has considered carefully whether Ms Smyth's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the Nursing and Midwifery Council (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.

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 Ms Smyth's fitness to practise remains impaired.

The panel took into account that the original panel found that Ms Smyth's insight was limited. It considered the original panel's determination, which set out that it had no information before it in relation to Ms Smyth's insight, reflection or remorse, nor any evidence of relevant training undertaken that relates to the areas of concern in this case. At this meeting, the panel considered that it has no new information before it from Ms

Smyth. In light of this the panel determined that Ms Smyth 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.

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

Decision and reasons on sanction

Having found Ms Smyth'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 the public protection issues identified, an order that does not restrict Ms Smyth'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 Ms Smyth'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 Ms Smyth'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 Ms Smyth's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Ms Smyth further time to fully reflect on her previous failings. The panel concluded that a further 6-month suspension order would be the appropriate and proportionate response and would afford Ms Smyth adequate time to further develop her insight and take steps to strengthen her practice. It would also give Ms Smyth an opportunity to approach past and current colleagues to attest to her honesty and integrity in her workplace assignments since the substantive hearing.

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 6 months would provide Ms Smyth with an opportunity to engage with the NMC, to develop her insight and remediate the regulatory concerns. It considered this to be the most appropriate and proportionate sanction available.

Bearing in mind Ms Smyth's lack of engagement with the NMC, this panel considered the possibility of strike-off as a sanction, but decided at this stage it would be disproportionate. Should Ms Smyth continue to not engage with the NMC, strike-off would be an available sanction option for future reviewing panels.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 10 January 2024 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 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:

- Ms Smyth's engagement and participation at a future hearing;
- A reflective piece focussing on professional boundaries, regulatory concerns and the effects on her colleagues, patients and the public perception of the nursing profession as a whole;
- References from any work undertaken, whether paid or voluntary;
- Any evidence of relevant training.

This will be confirmed to Ms Smyth in writing.

That concludes this determination.