

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

**Substantive Order Review Hearing
Tuesday, 2 April 2024**

Virtual Hearing

Name of Registrant:	Louise Maxwell-Brierley
NMC PIN:	91C0141E
Part(s) of the register:	Registered Nurse – Sub part 1 Adult Nursing (February 1994)
Relevant Location:	Nottinghamshire
Type of case:	Conviction and Misconduct
Panel members:	Phil Lowe (Chair, Lay member) Amanda Revill (Registrant member) Sabrina Sheikh (Lay member)
Legal Assessor:	Nigel Mitchell
Hearings Coordinator:	Eyram Anka
Nursing and Midwifery Council:	Represented by Mr Radley, Case Presenter
Mrs Maxwell-Brierley:	Not present and not represented at this hearing
Order being reviewed:	Conditions of practice order (12 months)
Fitness to practise:	Impaired
Outcome:	Conditions of practice order (6 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Maxwell-Brierley was not in attendance and that the Notice of Hearing had been sent to her registered email address by secure email on 4 March 2024.

Further, the panel noted that the Notice of Hearing was also sent to Mrs Maxwell-Brierley's representative at the Royal College of Nursing (RCN) on 4 March 2024.

Mr Radley, 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 Mrs Maxwell-Brierley'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 Maxwell-Brierley 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 Maxwell-Brierley

The panel next considered whether it should proceed in the absence of Mrs Maxwell-Brierley. The panel had regard to Rule 21 and heard the submissions of Mr Radley who invited the panel to continue in Mrs Maxwell-Brierley's absence.

Mr Radley referred the panel to a letter from the RCN dated 28 March 2024, which states:

'Our member will not be attending the hearing nor will they be represented. No disrespect is intended by their non-attendance. Our member has received the notice of hearing and is happy for the hearing to proceed in their absence. They are keen to engage with the proceedings.'

The panel accepted the advice of the legal assessor.

The panel decided to proceed in the absence of Mrs Maxwell-Brierley. In reaching this decision, the panel considered the submissions of Mr Radley, the written representations from the RCN, and the advice of the legal assessor. It had regard to the overall interests of justice and fairness to all parties. It noted that:

- The RCN informed the NMC that Mrs Maxwell-Brierley received the Notice of Hearing and confirmed that she is content for the hearing to proceed in her absence.
- No application for an adjournment has been made by Mrs Maxwell-Brierley.
- There is no reason to suppose that adjourning would secure Mrs Maxwell-Brierley's attendance at some future date.
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mrs Maxwell-Brierley.

Decision and reasons on application for hearing to be held in private

Mr Radley made an application on the RCN's behalf for this case be held partly in private [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Radley submitted that the NMC supported the application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold

hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

[PRIVATE], the panel decided to hold those parts of the hearing in private in order to protect her privacy.

Decision and reasons on review of the substantive order

The panel decided to confirm the current conditions of practice order.

This order will come into effect at the end of 9 May 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the sixth review of a substantive suspension order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 8 February 2021. This was reviewed on 5 July 2021 when a reviewing panel extended the suspension order for a period of six months. The suspension order was again reviewed on 23 December 2021 and 30 June 2022 and on each occasion the panel further extended the substantive suspension order for a period of six months. On 20 December 2022, the last reviewing panel decided to impose a suspension order for a period of three months. The order was reviewed again on 30 March 2023 where the panel replaced the suspension order with an substantive conditions of practice order for 12 months.

The current order is due to expire at the end of 9 May 2024.

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 are as follows:

'That you, a registered nurse:

1) [PRIVATE]

2) [PRIVATE]

3) On 1 November 2018;

a) *Did not disclose your interim conditions of practice to Colleague A.*

b) *Told Colleague A that;*

i) *“Your interim conditions of practice order was related to your convictions” or words to that effect.*

ii) *“There were no restrictions on your practice” or words to that effect.’*

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

‘The panel was encouraged by your attendance today and your efforts to address the above recommendations. It found your reflective statement to be detailed, considered and sets out your coping strategies, what you have learned and the impact of your actions on the profession and the public. The panel noted it has previously been found that you have demonstrated remorse and it was satisfied that you have demonstrated sufficient insight into your convictions and the circumstances that led to this behaviour.

The panel had sight of a number of training certificates and noted that you have been undertaking mandatory courses through your current employer. It also noted that you have undertaken additional clinical training relevant to nursing skills. The panel was encouraged by the positive testimonials, having particular regard to the testimonial from your current employer who appears to be supportive of you returning to practice as a registered nurse.

The panel noted that there is no evidence of any further convictions and it considered that, in the light of your detailed reflection, the risk of repetition is low. The panel was mindful that your clinical skills and practice have never

been called into question. The panel therefore concluded that a finding of impairment was not required on public protection grounds.

Whilst the panel considered that the risk of repetition was low, given the seriousness and nature of the convictions, the panel was of the view that a member of the public would expect a finding of continued impairment on public interest grounds and in order to support you in your return to nursing. For these reasons, the panel finds that your fitness to practise remains impaired on public interest grounds alone.'

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

'The panel next considered whether imposing a conditions of practice order on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel was encouraged by your recent engagement and the positive steps you have taken to demonstrate that you have addressed the concerns arising from your convictions. Whilst the behaviour that led to the convictions did not occur in a clinical setting, the panel was of the view that given the significant period of time that has elapsed since you worked as a registered nurse, a supported return to nursing would be in the public interest as well as your own. The panel therefore determined that there are workable conditions that could be formulated.

The panel was of the view that to impose a further period of suspension order would serve no useful purpose at this time and a striking-off order would be disproportionate and would not be a reasonable response in the circumstances of your case and in the light of your engagement and the positive steps that you have taken.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 9 May 2023. It decided to impose the

following conditions which it considered are appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

- 1. You must limit your nursing practice to a single substantive employer.*
- 2. You must not be the sole nurse on any shift.*
- 3. You must work with your line manager, mentor or supervisor to create a personal development plan (PDP).*

You must:

- a) Send your case officer a copy of your PDP before any review hearing.*
 - b) Meet with your line manager, mentor or supervisor at least once a month to discuss your progress towards achieving the aims set out in your PDP.*
 - c) Send your case officer a report from your line manager, mentor or supervisor before any review hearing. This report must show your progress towards achieving the aims set out in your PDP.*
- 4. You must keep us informed about anywhere you are working by:*
 - a) Telling your case officer within seven days of accepting or leaving any employment.*
 - b) Giving your case officer your employer's contact details.*
 - 5. You must keep us informed about anywhere you are studying by:*

- a) *Telling your case officer within seven days of accepting any course of study.*
 - b) *Giving your case officer the name and contact details of the organisation offering that course of study.*
6. *You must immediately give a copy of these conditions to:*
- a) *Any organisation or person you work for.*
 - b) *Any agency you apply to or are registered with for work.*
 - c) *Any employers you apply to for work (at the time of application).*
 - d) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
7. *You must tell your case officer, within seven days of your becoming aware of:*
- a) *Any clinical incident you are involved in.*
 - b) *Any investigation started against you.*
 - c) *Any disciplinary proceedings taken against you.*
8. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*
- a) *Any current or future employer.*
 - b) *Any educational establishment.*
 - c) *Any other person(s) involved in your retraining and/or supervision required by these conditions.*

This order will run for a period of 12 months. This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 9 May 2023 in accordance with Article 30(1).'

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Maxwell-Brierley'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 had regard to all of the documentation before it. It took into account submissions made by Mr Radley and the written submissions from the RCN.

Mr Radley gave a background to the case with reference to previous panel decisions and relevant pages in the documents.

Mr Radley told the panel that Mrs Maxwell-Brierley has not provided any new information to demonstrate strengthened practice or further insight. He submitted that the NMC's position is that Mrs Maxwell-Brierley's fitness to practise remains impaired. Considering this, Mr Radley invited the panel to find impairment on the grounds of public protection and public interest. He submitted that the current substantive conditions of practice order should be confirmed for three months as per the RCN's request.

The RCN provided written submissions on behalf of Mrs Maxwell-Brierley in its letter dated 28 March 2024. The letter states:

'Our member has come to the difficult decision that she no longer wishes to work as a nurse and wants to remove her name from the NMC Register. She will shortly be making an application to the Assistant Registrar for Agreed Removal.'

[PRIVATE]

The Panel will be aware that our member currently has an ongoing NMC case under reference 080153/2020, which has been referred through to a hearing before the Fitness to Practice Committee.

Our member is keen to engage with the NMC proceedings and due to the nature of the fact she currently has two separate cases at two separate stages, then our member will need to make an application for Agreed Removal in the first instance in relation to her other case. If this application is approved, then we will be asking for a panel to deal with this case, where there is a substantive conditions of practice order in place and asking for the order to be lapsed, with an acknowledgement that our member's fitness to practice is still impaired, to allow her to come off the register.

We refer the panel to the guidance on the NMC's website regarding this situation as follows:

'Nurses, midwives or nursing associates who will continue to be registered once the substantive order expires or is lifted Sometimes professionals who are subject to a suspension order or a conditions of practice order will be entitled to remain on the register once the order expires or is lifted. In these cases an application for agreed removal should be made. If the Assistant Registrar agrees removal, a panel will then need to decide whether to lift the order (or allow it to expire). If the panel agrees that the substantive order should be lifted (or allowed to expire) the agreed removal decision can then take effect and the professional will be removed from the Register.'

...

We therefore ask the panel to allow the Substantive Conditions of practice order to remain in place for a further 3 months, to allow for the Agreed Removal Application to be made by our member, and to allow time for the Assistant Registrar to make a decision on the application. This will allow a future panel to revisit this issue at the next Substantive Order Review.'

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 Maxwell-Brierley's fitness to practise remains impaired.

The panel had no new information from Mrs Maxwell-Brierley demonstrating further insight, further training or professional development that would represent a significant change in her fitness to practise. Therefore, the panel determined that Mrs Maxwell-Brierley is likely still liable to repeat matters of the kind found proved. Accordingly, the panel decided that a finding of continuing impairment remains necessary on the ground of public protection.

The panel bore in mind that its primary function 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.

Further, the panel noted that the NMC and the RCN both invited the panel to confirm and continue the existing conditions of practice order for a period of 3 months. It also considered the RCN's submission that Mrs Maxwell-Brierley no longer wants to practice nursing and is seeking a removal from the register.

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

Decision and reasons on sanction

Having found Mrs Maxwell-Brierley'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 Mrs Maxwell-Brierley'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 Maxwell-Brierley'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 imposing a further conditions of practice order on Mrs Maxwell-Brierley's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel was of the view that the existing conditions of practice order is sufficient to protect patients and the wider public interest.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Mrs Maxwell-Brierley's case.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 6 months, which will come into effect on the expiry of the current order, namely at the end of 9 May 2024. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also,

'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must limit your nursing practice to a single substantive employer.
2. You must not be the sole nurse on any shift.
3. You must work with your line manager, mentor or supervisor to create a personal development plan (PDP).

You must:

- a) Send your case officer a copy of your PDP before any review hearing.
 - b) Meet with your line manager, mentor or supervisor at least once a month to discuss your progress towards achieving the aims set out in your PDP.
 - c) Send your case officer a report from your line manager, mentor or supervisor before any review hearing. This report must show your progress towards achieving the aims set out in your PDP.
4. You must keep the NMC informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer's contact details.
 5. You must keep the NMC informed about anywhere you are studying by:
 - a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.
 6. You must immediately give a copy of these conditions to:
 - a) Any organisation or person you work for.
 - b) Any agency you apply to or are registered with for work.

- c) Any employers you apply to for work (at the time of application).
 - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
7. You must tell your case officer, within seven days of your becoming aware of:
- a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.
8. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
- a) Any current or future employer.
 - b) Any educational establishment.
 - c) Any other person(s) involved in your retraining and/or supervision required by these conditions.

The order is confirmed for a period of 6 months to allow time for Mrs Maxwell-Brierley's application for Agreed Removal to be fully considered.

The conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 9 May 2024 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well Mrs Maxwell-Brierley has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

This will be confirmed to Mrs Maxwell-Brierley in writing.

That concludes this determination.