

Nursing and Midwifery Council

Registrations Appeal Hearing 30 April 2021

Virtual Hearing

Name of Appellant:	Sarah Lowe
Type of case:	Registration Appeal
Panel members:	Peter Cadman (Chair, Lay member) Pamela Ormerod (Lay member) Sue Gwyn (Registrant member)
Legal Assessor:	Nigel Ingram
Panel Secretary:	Max Buadi
Nursing and Midwifery Council:	Represented by Gulcan Olurcan, Case Presenter
Appellant:	Not present and not represented in absence
Decision:	Appeal dismissed

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

1. At the outset of the hearing, Ms Olurcan, on behalf of the Nurse and Midwifery Council (NMC), made a request that the entirety of this case be held in private on the basis that proper exploration of the Appellant's case concerns [PRIVATE]. It also concerns the Appellant's health. The application was made pursuant to Rule 30(1a) of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).
2. The panel accepted the advice of the legal assessor.
3. Having heard that there will be reference to [PRIVATE] and the Appellant's health, the panel determined to hold the entirety of the hearing in private.

Decision and reasons on service of Notice of Hearing

4. Ms Olurcan, informed the panel that the Appellant was not in attendance and nor was she represented in her absence.
5. The panel was informed that notice of this hearing was sent to the Appellant on 5 March 2021 via email to her email address held on the NMC register. The notice sent to the Appellant stated that her appeal had been scheduled for a hearing today. Ms Olurcan, further, informed the panel that the Appellant had been sent the NMC bundle on 13 April 2021. Ms Olurcan also informed the panel that the Appellant responded, in an email dated 26 April 2021, informing the NMC that she had issues accessing the NMC bundle in Egress.
6. In the light of the information available, the panel was satisfied that notice had been served in compliance and accordance with Rules 19 and 23 of the Nursing and Midwifery Council (Education, Registrant and Registration Appeals) Rules Order of Council 2004 (the Rules).

Decision and reasons on Proceeding in absence

7. The panel next considered whether it should proceed in the absence of the Appellant. It had regard to Rule 29 and heard the submissions of Ms Olurcan.
8. Ms Olurcan submitted that all reasonable steps had been taken to give notice of hearing to the Appellant. She drew the panel's attention to an email dated, 26 April 2021:
9. *"...I have been delayed in responding [PRIVATE] and additional problems of being unable to access the bundle it won't let me in as a result I cannot pass the info on to my advocate. Please advise what to do next , I would be available to attend hearing provided I can have the additional support..."*
10. Ms Olurcan submitted that the Appellant had notified the NMC of the problems she had accessing the bundle 13 days after it had been sent. She submitted that bundle was re-sent on 26 APRIL 2021 and asked the Appellant to contact the NMC case officer for a password which the Appellant never did.
11. Ms Olurcan also submitted that the Appellant has never informed the NMC regarding [PRIVATE] or how it would prevent her from attending the hearing. Ms Olurcan further told the NMC that the Appellant would attend the hearing provided she had support.
12. Ms Olurcan submitted that the Appellant has not notified the NMC in answers to requests for information about her advocate and if the advocate will be attending.
13. Ms Olurcan submitted that it was the Appellant's appeal but it appears she has subsequently decided not to attend. As a result, she submitted that the Appellant has voluntarily absented herself. Ms Olurcan also informed the panel that the NMC has a witness, a social worker, on standby.
14. Ms Olurcan informed the panel that the Appellant can re-appeal in event the panel dismiss the appeal so there is no disadvantage to her. There has been no application made for an adjournment today and doing so would serve no purpose

as there is no guarantee that adjourning would secure the Appellant's attendance at a future date.

15. Ms Olurcan invited the panel to proceed in the absence of the Appellant.
16. The panel highlighted a concern regarding the witness. Ms Olurcan informed the panel that she would ask the witness questions that may go beyond what is in her witness statement. The panel noted that, in light of the Appellants absence, she would not have an opportunity to cross examine the witness herself. It noted that this would disadvantage the Appellant.
17. Ms Olurcan informed the panel that she would release the witness in order to avoid the disadvantage of calling a witness in the Appellant's absence.
18. The panel has decided to proceed in the absence of the Appellant. In reaching this decision, the panel has considered the submissions of Ms Olurcan and the advice of the legal assessor.
19. The panel took account of the substantial correspondences between the NMC and the Appellant and was satisfied that she was aware of today's hearing, that she had not requested an adjournment and that she had voluntarily absented herself. The panel had no reason to believe that an adjournment would result in the Appellant's attendance. It also bore in mind that Ms Olurcan is no longer going to call Ms 1 as a witness. The panel determined to proceed in the Appellant's absence in the interests of justice.

Decision and reasons

20. The panel decided to dismiss Appellant's appeal against the decision of the Assistant Registrar of the Nursing and Midwifery Council (NMC).
21. This appeal is made under Article 37(1)(a) of the Nursing and Midwifery Order 2001 (the Order). The Appellant appealed the decision of the Assistant Registrar, dated 2 October 2020, to refuse her application to join the register of nurses, midwives and nursing associates.
22. Article 9(2)(b) of the Order, one of the requirements of registration is that an applicant must satisfy the Registrar that they are capable of safe and effective

practice. In doing so, the Applicant must make a declaration that they are of sufficiently good character so as to be capable of safe and effective practice.

23. The Assistant Registrar determined that she could not be confident that the Appellant would be able to work as a nurse safely and effectively. This was based on the lack of evidence to demonstrate that concerns against the Appellant's safeguarding ability have been addressed.

24. The Assistant Registrar continued: *"The information from [PRIVATE] confirmed that safeguarding issues had been identified but, because you were no longer engaging with them, it was not possible to assess whether these had been dealt with."*

25. *I was also concerned that the specific circumstances [PRIVATE] suggests that you may not engage effectively with the NMC as your regulator.*

26. *I appreciate that positive references have been received from your employers, but I don't consider these sufficient at this stage to assure me that you are currently capable of safe and effective practice."*

27. In reaching its decision, the panel considered all of the evidence in this case including the submissions of Ms Olurcan, on behalf of the NMC.

Background

28. The Appellant was first registered with the NMC as a Mental Health Nurse on 8 December 2007. Her registration lapsed on 30 April 2018.

29. On 11 July 2018, the NMC received a Fitness to Practise (FtP) referral about the Appellant. That referral was from a member of the public and raised concerns about the conduct of the Appellant which included: [PRIVATE] involvement with the Appellant and her family, the Appellant's [PRIVATE].

30. At the time the referral was received, the Appellant's registration wasn't effective, having lapsed on 30 April 2018. The NMC had no jurisdiction to fully investigate

and progress the referral at that stage. As required, the NMC placed a flag on the Appellant's PIN, to allow the referral to be investigated should she re-apply in future.

31. The Appellant did re-apply on 3 July 2020 and the flag on her PIN triggered a referral and investigation by the NMC's Registrar and Appeals Support Team (RAST). RAST investigated the referral by seeking information from the Appellant, Social Services and past/present employers.
32. On 25 October 2020, the Appellant appealed the decision of the Assistant Registrar in a Notice of Appeal.

Submissions

33. Ms Olurcan invited the panel to dismiss the appeal on the basis that the Appellant has not discharged her burden of demonstrating that she is of sufficiently good character to safe and effective practice.

34. She referred the panel to the character guidance referencing paragraph 139 which states:

35. The Registrar will look at your application and the factors which will be taken into account are as follows:

- Your age when the conduct took place.
- How long ago the conduct took place.
- Whether it was an isolated incident.
- Whether the incident(s) were linked to nursing or midwifery practice or employment.
- Whether the use of drugs or alcohol was a factor in the conduct.
- Reflection and insight about the conduct and obligations as a registered nurse, midwife or nursing associate.
- Personal mitigation.
- Any explanation offered for the conduct having occurred.

36. Ms Olurcan informed the panel that [PRIVATE] involvement started in 2009 and they continue to have safeguarding concerns. She submitted that conduct cannot be said to have occurred a long time ago and is continuing.
37. Ms Olurcan submitted that this was not an isolated incident. [PRIVATE] have been involved for some time and the incidents include acts of violence towards the Appellant's ex-partner and [PRIVATE].
38. Ms Olurcan informed the panel that the incidents are not work related and occurred in the Appellant's private life. However, she submitted that the incidents relate to the provision of care and are in relation to a vulnerable group – children.
39. Ms Olurcan also informed the panel that the Appellant has not engaged in [PRIVATE]. Ms 1 in her witness statement has stated that this was one of the requirements of her engagement. [PRIVATE].
40. Regarding insight and reflection, Ms Olurcan informed the panel that the Appellant maintains her denial in there of any safeguarding concerns but also criticised the judge and her own lawyers. [PRIVATE].
41. Ms Olurcan also submitted that the Appellant appears to continue to attribute blame onto others.
42. Ms Olurcan submitted that due to the absence of the Appellant, the panel will have to decide what weight it applies to the Appellant's responses.
43. [PRIVATE].
44. In her closing submissions, Ms Olurcan referred the panel to the case of *Jidefo v The Law Society [2007] EW Misc 3 (EWLS)*, This case looked at the principles around the admission of solicitors when character concerns are raised. Paragraph 16 of the Judgment reads as follows:

i) that the test of character and suitability is a necessarily high test;

ii) that the character and suitability test is not concerned with 'punishment', 'reward' or 'redemption', but with whether there is a risk to the public or a risk that there may be damage to the reputation of the profession; and

iii) that no one has the right to be admitted as a solicitor and it is for the applicant to discharge the burden of satisfying the test of character and suitability.

45. In light of this, Ms Olurcan submitted that the Appellant's application should be dismissed.

46. The panel accepted the advice of the legal assessor, who referred it to the NMC's character and health decision-making guidance when making its decision, as well as Article 30(7) of the Nursing and Midwifery Order 2001.

Panel's decision

47. The panel took account of all the information it had before it. It drew no adverse inference from her absence in its decision. However, because the Appellant did not attend, the panel could not ask her questions, nor could the case presenter cross examine.

48. The panel noted that this application pertains to continuing concerns surrounding the Appellant and safeguarding. However, the panel had insufficient evidence, from any source, before it that would satisfy the panel that the Appellant had discharged the burden on her of demonstrating that she is of sufficiently good character to safe and effective practice. It came to this conclusion in light of the evidence provided by the NMC in particular the outstanding safeguarding concerns.

49. The panel therefore decided to dismiss the Appellant's appeal, to uphold the decision of the Assistant Registrar, thereby refusing the Appellant's application to re-join the NMC register.

50. This will be confirmed to the Appellant in writing.

51. That concludes this determination.

Addendum

52. Following the panel's decision but prior to handing it down, a what's app message was received from the Appellant:

"I have not had access to my emails. I noticed I had this number stored. Apologies if this isn't appropriate. I am unable to attend hearing today as I feel my well being will be compromised my [PRIVATE] I don't wish to compromise my current progress. I am available by telephone if there are any questions to be asked. I am not confident that any input from me will change the decision..." [sic]

53. The panel heard from the NMC who submitted to the panel that in view of the fact that it had reached its determination, it would be wrong to re-open the matter on the basis of the communication from the Appellant her what's app message.

54. The position taken by the panel, having taken the advice of the legal assessor, was that as the determination had been reached, it would be wrong to reopen the matter.

55. The panel bore in mind in particular that the Appellant had been aware of the date and time of this hearing since 5 March 2021.

56. The panel bore in mind that it was open to the Appellant to renew her application, notwithstanding the discussion that this panel had made today.