

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

**Substantive Order Review Hearing
Monday, 18 December 2023**

Virtual Hearing

Name of Registrant: Karen Edith Cunningham

NMC PIN 87G0076S

Part(s) of the register: Registered Nurse – Sub Part 1
Children Nursing (Level 1) – September 1990
Specialist Practitioner: Community Children Nursing –
March 2005

Relevant Location: Dundee

Type of case: Misconduct

Panel members: Adrian Smith (Chair, Lay member)
Jude Bayly (Registrant member)
Pamela Campbell (Registrant member)

Legal Assessor: Michael Levy

Hearings Coordinator: Stanley Udealor

Nursing and Midwifery Council: Represented by Richard Webb, Case Presenter

Mrs Cunningham: Present and represented by Christie Wishart, instructed
by Thompsons Solicitors

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order extended for 12 months
to come into effect on 26 January 2024 in accordance
with Article 30 (1)**

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

At the outset of the hearing, Ms Wishart, on your behalf, made an application that this case should be held partly in private on the basis that her submissions in this case involves references to [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 Webb indicated that he 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.

Having heard that there will be references to [PRIVATE] in this case, the panel determined to hear this hearing partly in private in order to protect your privacy. It will go into private session as and when issues relating to [PRIVATE] are raised.

Decision and reasons on review of the substantive order

The panel decided to extend the current conditions of practice order for a period of 12 months.

This order will come into effect at the end of 26 January 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive conditions of practice order originally imposed for a period of 18 months by a Fitness to Practise Committee panel on 25 June 2021. The order was reviewed on 12 December 2022 and the conditions of practice order was further extended for 12 months.

The current order is due to expire at the end of 26 January 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 were as follows:

'That you, a Registered Nurse:

- 1) *On, or around, 7 May 2015, failed to ensure that the correct Potassium Chloride solution was administered to Patient E;*

- 2) *On 14 December 2017:*
 - a) *administered Trimethorprim instead of Paracetamol to Patient D;*
 - b) *failed to ensure appropriate checking / second checking procedures were undertaken in relation to the administration referred to in charge 2(a) above;*

- 3) *On 30 March 2018:*
 - a) *failed to ensure that Patient A's Smofluid / Lipid was infusing at the correct rate;*
 - b) *administered Smofluid / Lipid infusion at 10 times above the prescribed rate;*
 - c) *failed to undertake /ensure appropriate checking / second checking procedures were undertaken in relation to the administration referred to in charges 3(a) and 3(b) above;*

- 4) *Failed to respond to monitor alarms which were sounding in relation to patients and / or left student staff members to respond to such alarms:*
 - a) *On 12 August 2016 in relation to Baby K;*
 - b) *On one, or more, unknown dates in, or around April / May 2018;*

- 5) *Acted in an unprofessional and inappropriate way towards patients and staff, including in the clinical area, in that you:*

- a) *On or around 16 April 2018, said “stick it on the fat girls arse”, or words to that effect, in respect of a baby patient;*
- b) *In, or around, April / May 2018, said “Wow he’s a fat bastard”, or words to that effect, in respect of a baby patient;*
- c) *In, or around, April / May 2018, said “scummy junkie”, or words to that effect, in relation to one, or more, mothers;*
- d) *In, or around, April / May 2018, said “some people should not be allowed to have children”, or words to that effect, in respect of a mother with a genetic condition which had been passed onto her baby;*
- e) *In, or around, April / May 2018, said “fatso” in respect of a baby patient;*
- f) *In, or around, April / May 2018, commented on the size of a mother;*
- g) *In, or around, April / May 2018, commented on the mental capacity of a patient, including the use of the word “retard”;*
- h) *In, or around, April / May 2018, said “It’s not my baby I’m not fucking dealing with it” , or words to that effect, when a monitor alarm was sounding;*
- i) *On 12 August 2016, said a student nurse should “suck out her belly and turn the oxygen up” , or words to that effect when a monitor alarm was sounding;*
- j) *In, or around, April / May 2018, said certain women should be “sterilised and not allowed to have babies” or words to that effect;*
- k) *In, or around, April / May 2018, called or said to Colleague A words to the effect of the following*
 - i) *“useless”;*
 - ii) *“lazy git”;*
 - iii) *“Ginger one, are you coming”;*
- l) *On, or around, 16 April 2018, said to / in respect of Colleague B who had made a mistake “Wait are you Irish” and / or “that explains it” or words to that effect;*

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

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

'The panel considered whether your fitness to practise remains impaired.

With regard to your level of insight, the panel considered that the reflective piece you have provided demonstrated developing, but not full, insight into the proved misconduct. The panel considered that you needed to further address how your behaviour at the time impacted on patients, your colleagues, and the nursing profession as a whole.

The panel noted that you remain unemployed in a nursing capacity since the substantive hearing, [PRIVATE]. As a result, you have not been in a position to effectively work on addressing the concerns around your proven misconduct, and strengthening your practice in a clinical setting. As there has been no material change in your case since the substantive hearing, the panel considered that you still pose a risk to public safety, and that there still remains a risk of your misconduct being repeated.

In light of this, the panel determined that you therefore remain liable to repeat matters of the kind found proved in this case. 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. It considered that an informed member of the public would be highly concerned if you were allowed to practice unrestricted at this time, despite there being no evidence of strengthened practice since the substantive order was imposed. The panel therefore determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that your fitness to practise remains impaired.'

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

'Having found your fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case.....

.....

The panel next considered whether imposing a further conditions of practice order on your 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 acknowledged the reflective piece you have provided in line with condition 5 of the current conditions of practice order, but considered that this needed further development. It also noted that, [PRIVATE] and difficulties finding employment, you have not been able to secure a nursing position since the substantive order was imposed. However, Ms Wishart, [on your behalf] advised that you continue in your job search as you are keen to demonstrate that you are capable of returning to safe nursing practice under conditions. The panel considered that, as you have demonstrated a willingness to engage with the NMC proceedings, it would only be fair to allow you further time to secure a nursing role and time to work under these conditions to prove to a future reviewing panel your efforts in strengthening your practice.

The panel was therefore of the view that a further conditions of practice order is sufficient, and will continue to protect patients and the wider public interest. In this case, the panel maintained the position of the original substantive panel that suitable conditions are capable of being formulated that would protect patients during the period they are in force.

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 your case. This is because you have engaged with the NMC proceedings and have demonstrated a willingness to comply with conditions on your practice once you have secured a nursing position.

The panel determined that the following conditions remain workable, 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 one substantive employer which should not be an agency.*
- 2. You must ensure that you are supervised by another registered nurse at any time you are working. Your supervision must consist of working at all times on the same shift as, but not always directly observed by, a registered nurse of band 6 or above.*
- 3. You must not administer medicines unless under the direct supervision of another registered nurse, until you have been assessed as competent.*
- 4. You must work with your line manager, mentor or supervisor to create a personal development plan (PDP) to support your return to the workplace. This must include achievable objectives in respect of the following areas:*
 - a. Medicines administration*
 - b. Patient safety*
 - c. Respecting and supporting junior colleagues, especially student nurses*
 - d. Recognising stresses in the workplace and championing non-judgemental practices*
- 5. You must write a reflective piece exploring unconscious bias and reflecting upon the role this may have played in the language*

and comments that you made. This may be aided by online assessments such as the Harvard Implicit Association test.

6. *You must meet with your line manager, mentor or supervisor at least once a month to discuss:*
 - a. *Your progress towards achieving the aims set out in your PDP.*
 - b. *Your health or any other issues in your personal life which may impact upon your work*

7. *You provide a report from your line manager, mentor or supervisor prior to any NMC review hearing commenting on the standard of your performance and progress towards achieving the aims set out in your PDP.*

8. *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.*

9. *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.*

10. *You must immediately give a copy of these conditions to:*
 - a. *Any organisation or person you work for.*
 - b. *Any employers you apply to for work (at the time of application).*

- c. Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
 - d. Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity*
- 11. *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.'*

Decision and reasons on current impairment

The panel has considered carefully whether your 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 your on-table bundle. It has taken account of the submissions made by Mr Webb and submissions by Ms Wishart.

Mr Webb took the panel through the background of the case and referred it to the relevant pages within the bundle.

Mr Webb submitted that you have not been able to secure employment as a registered nurse and therefore, you have not had the opportunity to comply with the current conditions of practice order and strengthen your nursing practice. Consequently, he submitted that your fitness to practise remains impaired on the grounds of public protection and public interest.

Mr Webb invited the panel to confirm and extend the current conditions of practice order.

Ms Wishart informed the panel that [PRIVATE]. She stated that you have been actively searching for nursing roles as the *“Dundee Health Board” had stated that it would not re-employ you.* Consequently, you would have to search for nursing roles in other health boards at farther locations from your home, however, this would not be suitable for you due to [PRIVATE].

Ms Wishart stated that you are currently employed at ASDA, [PRIVATE]. She referred the panel to the various testimonials from your current employment. Ms Wishart submitted that you had made an educated decision to only return to nursing practice when you are able to give one hundred percent of your attention to patients under your care and [PRIVATE]. [PRIVATE]. [PRIVATE].

Ms Wishart invited the panel to extend the current conditions of practice order to allow further time for you to secure a nursing role and comply with the conditions of practice order.

In response to the question from the panel as to the length of such order, Ms Wishart submitted that it is a matter for the panel to consider [PRIVATE]. However, the panel could consider twelve to eighteen months as a starting point in this case.

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 took into account the submissions made by Ms Wishart that you have not been able to secure employment as a registered nurse [PRIVATE]. The panel noted that you are currently working in a non-clinical role at [PRIVATE] and it had sight of the multiple testimonials made on your behalf.

The panel took into consideration that you have not yet had the opportunity to strengthen your nursing practice in relation to your failings and you are yet to comply with the current conditions of practice order. The panel therefore determined that as there has been no material change in circumstances since the last review hearing, there remains a real risk of repetition and a consequent risk of harm to the public. It therefore concluded 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. It was of the view that a fully informed member of the public, aware of the proven charges in this case and that you are yet to strengthen your nursing practice in relation to your failings, would be very concerned if you were permitted to practise as a registered nurse without restrictions. 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 your fitness to practise remains impaired on public protection and public interest grounds.

Decision and reasons on sanction

Having found your 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.

The panel 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 your nursing 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 your 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 further extension to the current conditions of practice order would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel accepted that you have not been able to comply with the current conditions of practice due to your inability to secure employment as a registered nurse and [PRIVATE]. It noted that you have been actively engaging with these proceedings and that you require further time to secure a nursing role in order to take steps to strengthen your practice.

The panel therefore determined that a conditions of practice order remains appropriate and proportionate to address the failings highlighted in this case. It was of the view that a further conditions of practice order remains sufficient to protect the public and satisfy the public interest considerations in this case.

The panel was of the view that to impose a suspension order or striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of this case given your interest in returning to nursing practice and such an order would deprive you of the opportunity to strengthen your nursing practice.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of twelve months, which will come into effect on the expiry of the current order, namely at the end of 26 January 2024. It decided that the following conditions remains 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 one substantive employer which should not be an agency.
2. You must ensure that you are supervised by another registered nurse at any time you are working. Your supervision must consist of working at all times on the same shift as, but not always directly observed by, a registered nurse of band 6 or above.
3. You must not administer medicines unless under the direct supervision of another registered nurse, until you have been assessed as competent.
4. You must work with your line manager, mentor or supervisor to create a personal development plan (PDP) to support your return to the workplace. This must include achievable objectives in respect of the following areas:
 - a. Medicines administration
 - b. Patient safety
 - c. Respecting and supporting junior colleagues, especially student nurses
 - d. Recognising stresses in the workplace and championing non-judgemental practices
5. You must write a reflective piece exploring unconscious bias and reflecting upon the role this may have played in the language and comments that you made. This may be aided by online assessments such as the Harvard Implicit Association test.
6. You must meet with your line manager, mentor or supervisor at least once a month to discuss:
 - a. Your progress towards achieving the aims set out in your PDP.
 - b. [PRIVATE].

7. You provide a report from your line manager, mentor or supervisor prior to any NMC review hearing commenting on the standard of your performance and progress towards achieving the aims set out in your PDP.
8. 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.
9. 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.
10. You must immediately give a copy of these conditions to:
 - a. Any organisation or person you work for.
 - b. Any employers you apply to for work (at the time of application).
 - c. Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - d. Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.
11. 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.

The period of this order is for twelve months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 26 January 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 you have 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.

Any future panel reviewing this case would be assisted by:

- An updated reflective piece demonstrating your insight on the impact your behaviour had on patients, colleagues and the nursing profession;
- Testimonials from colleagues and/or patients from paid or unpaid work attesting to your character and practice;
- Evidence of any relevant training or continuous professional development undertaken since the substantive hearing and specifically in relation to the charges found proved;
- Your continuing engagement and attendance with these proceedings.

This will be confirmed to you in writing.

That concludes this determination.