

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

**Substantive Order Review Hearing
Thursday, 21 December 2023**

Virtual Hearing

Name of Registrant:	Laura Dawn Ellison
NMC PIN	12G0038E
Part(s) of the register:	Registered Nurse Adult – Sub Part 1 September 2012
Relevant Location:	Oxfordshire
Type of case:	Misconduct
Panel members:	Andrew Harvey (Chair, lay member) Kathryn Smith (Registrant member) Keith Murray (Lay member)
Legal Assessor:	Michael Bell
Hearings Coordinator:	Clara Federizo
Nursing and Midwifery Council:	Represented by Hena Patel, Case Presenter
Miss Ellison:	Not present and unrepresented
Order being reviewed:	Suspension order (6 months)
Fitness to practise:	Impaired
Outcome:	Suspension order (12 months) to come into effect on 27 January 2024 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 Miss Ellison was not in attendance and that the Notice of Hearing had been sent to her registered email address by secure email on 15 November 2023.

Ms Patel, 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 Miss Ellison'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 Miss Ellison 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 Miss Ellison

The panel next considered whether it should proceed in the absence of Miss Ellison. The panel had regard to Rule 21 and heard the submissions of Ms Patel who invited the panel to continue in the absence of Miss Ellison. She submitted that Miss Ellison had voluntarily absented herself.

Ms Patel submitted that there had been no engagement by Miss Ellison with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Ellison. In reaching this decision, the panel has considered the submissions of Ms Patel, and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- Miss Ellison has not engaged with the NMC and has not responded to the letters sent to her about this hearing;
- Panel noted that should it identify any inherent unfairness at a later stage, this could be addressed appropriately;
- No application for an adjournment has been made by Miss Ellison;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- 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 Miss Ellison.

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

During the course of the hearing, Ms Patel made a request that this case be held partly in private on the basis that proper exploration of Miss Ellison's case involves [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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.

The panel determined to go into private session as and when any references to [PRIVATE] are raised in order to protect her privacy in these proceedings.

Decision and reasons on review of the substantive order

The panel decided to confirm the current suspension order.

This order will come into effect at the end of 27 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 suspension order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 30 September 2022. On 3 April 2023, the suspension order was confirmed for another 9 months.

The current order is due to expire at the end of 27 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. Slept on night shift duty:*
 - a. On 12 March 2018.*
 - b. On one or more occasions on 16 March 2018.*

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 Miss Ellison’s fitness to practise remains impaired.

The panel noted that the original panel found that Miss Ellison had not engaged with the proceedings nor provided any evidence of reflection or remediation.

This panel has no information before it to assess whether or not there has been development of insight, remorse or remediation, and thus no basis to determine that Miss Ellison does not remain liable in the future to put patients at risk of harm and or to bring the profession into disrepute. The panel noted it also does not have any information relating to Miss Ellison's intentions to continue her nursing practice.

In light of this, this panel determined that Miss Ellison 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 Miss Ellison's fitness to practise remains impaired.'

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

'The panel considered the imposition of a further period of suspension. The panel was mindful that Miss Ellison only remains on the register due to these proceedings. The panel was also mindful of giving Miss Ellison further opportunity to provide information about [PRIVATE] that may have impacted on her actions when she was at Barchester Healthcare which would assist any future panel understand how those might be addressed to enable her to return to practice.

The panel concluded that a further suspension order would be the appropriate and proportionate response and would afford Miss Ellison adequate time to develop her insight and clarify her intentions about returning to practice.

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 9 months which would provide Miss Ellison with an opportunity to engage with the NMC and to comply with the recommendations set out below. It considered this to be the most appropriate and proportionate sanction available.

The panel decided that a striking off order would be disproportionate at this stage.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 27 April 2023 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.'

Decision and reasons on current impairment

The panel has considered carefully whether Miss Ellison'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. It has taken account of the submissions made by Ms Patel on behalf of the NMC. She provided a brief background to the case, including the initial referral on 16 April 2019 and the findings of the original and first reviewing panels. She raised that the previous reviewing panel considered whether to allow the order to lapse but determined that this

case was still in its early stages. Ms Patel submitted that, as at the first review, there is no information before the panel to assess whether or not there had been a development of insight, remorse or remediation, and thus there is no basis to determine that Miss Ellison does not remain liable in the future to put patients at risk of harm and/or to bring the profession into disrepute. She submitted that at the review stage, it is for Miss Ellison to provide information or evidence that she has insight into her past failings and is no longer impaired.

Ms Patel submitted that a finding of impairment is necessary on public protection and public interest grounds. She invited the panel to confirm the suspension order for another 12 months to provide sufficient time for Miss Ellison to re-engage with the NMC process, clarify whether she would like to continue practising as a nurse, and perhaps provide more information on any insight, reflections and/or steps she has taken to strengthen her practice since.

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 Miss Ellison's fitness to practise remains impaired.

The panel bore in mind that its decision was not bound by any previous panels, but it noted the findings of the original and last reviewing panels. This panel had no new information before it in relation to insight or remediation to undermine the previous findings of impairment.

In light of this, this panel determined that Miss Ellison remains liable to repeat matters of the kind found proved, as there is no information that could indicate otherwise or that the level of risk had decreased. 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 Miss Ellison's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss Ellison'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 allow the order to lapse upon expiry in accordance with Article 30 (1). However, it did not have any information before it in relation to Miss Ellison's employment intentions for the future nor has she engaged with the NMC process. Thus, it determined this option was not appropriate at this time.

The panel then 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 Miss Ellison'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 Miss Ellison'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 conditions of practice on Miss Ellison'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 noted that Miss Ellison has not been engaging with the NMC process nor has she clarified whether she intends to return to practise as a nurse. In light of this, the panel considered that any conditions of practice order would not be workable as she is unlikely to engage with any conditions, at this time, and there is no indication that the level of risk has reduced since the last review.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Miss Ellison further time to fully reflect on her previous failings. It considered that Miss Ellison needs to gain a full understanding of how her past actions can impact upon the nursing profession as a whole and not just the organisation that the individual nurse is working for. The panel concluded that a further 12 months suspension order would be the appropriate and proportionate response and would afford Miss Ellison adequate time to further develop her insight and take steps to strengthen her practice. It would also give Miss Ellison an opportunity to approach past and current health professionals to attest to her work ethic 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 12 months would provide Miss Ellison with an opportunity to engage with the NMC, to provide evidence of reflection and any steps taken to strengthen her practice and/or information as to her current employment status or intentions. It considered this to be the most appropriate and proportionate sanction available.

The panel considered that imposition of a striking off order would, at this point, be disproportionate nor was it necessary to protect the public or mark the public interest.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 27 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:

- Miss Ellison's engagement with the NMC and her attendance at a future review hearing.
- Any explanations as to why she has not engaged to date.
- A reflective piece focusing on the impact Miss Ellison's actions had on residents, colleagues, the nursing profession and the wider public, as well as what steps she would take to prevent her misconduct from reoccurring in future.
- Any evidence of keeping up to date with nursing practice or training undertaken by Miss Ellison.
- Any recent references or testimonials from having safely worked in a health care environment, whether in paid or unpaid employment.
- Clear indication as to Miss Ellison's future employment intentions, including whether or not she intends to return to practice as a registered nurse.

This will be confirmed to Miss Ellison in writing.

That concludes this determination.