

Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Hearing

12-13 December 2019

Nursing and Midwifery Council

Regus, Forsyth House, Cromac Square, Belfast, BT2 8LA

Name of registrant:	Deirdre McCallan
NMC PIN:	14I0196N
Part(s) of the register:	Registered Nurse – Sub part 1 – Adult Nursing (4 November 2014)
Area of Registered Address:	Northern Ireland
Type of Case:	Conviction/Misconduct
Panel Members:	Florence Mitchell (Chair, Registrant member) Margaret Rogan (Registrant member) Derek McFaul (Lay member)
Legal Assessor:	Marian Killen
Panel Secretary:	Aoife Kennedy
Registrant:	Not present and not represented
Nursing and Midwifery Council:	Represented by Sarah Lewis, counsel, instructed by NMC
Facts proved by admission:	All
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision on Service of Notice of Hearing:

The panel was informed at the start of this hearing that Ms McCallan was not in attendance and that written notice of this hearing had been sent to her registered address by recorded delivery and by first class post on 12 November 2019.

The panel took into account that the notice of hearing letter provided details of the allegations, the time, dates and venue of the hearing and, amongst other things, information about Ms McCallan's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence. Ms Lewis submitted that the Nursing and Midwifery Council (NMC) 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.

In the light of all of the information available, the panel was satisfied that Ms McCallan has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision on proceeding in the absence of the Registrant:

Ms Lewis invited the panel to continue in the absence of Ms McCallan on the basis that there was no reason to believe that an adjournment would secure her attendance on some future occasion. She drew the panel's attention to an email from Ms McCallan dated 13 November 2019 in which she stated that she would not be attending today's hearing.

Further, Ms Lewis drew the panel's attention to two emails from Ms McCallan to the NMC, dated 11 December 2019, in which she stated that she would not be attending this hearing in person or via video link, and that she is happy for the panel to proceed in her absence.

The panel accepted the advice of the legal assessor and noted that it must exercise great care and caution in deciding whether or not to proceed.

The panel has decided to proceed in the absence of Ms McCallan. It has had regard to the overall interests of justice and fairness to all parties. It noted:

- Ms McCallan has indicated that she would not be attending today's hearing;
- She has not applied for an adjournment;
- 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 disposal of this case;

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Ms McCallan. The panel drew no inference from Ms McCallan's absence.

Decision and reasons on application under Rule 19

The panel took into account the written communication from Ms McCallan to the NMC requesting that this hearing be held in private.

Ms Lewis submitted that any parts of the hearing which refer to Ms McCallan's health or personal circumstances should be held in private.

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: "... Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private..."

The panel decided that it would be appropriate to conduct the hearing in public, and to hear any matters relating to Ms McCallan's health or personal circumstances in private.

Details of charge:

That you, a registered nurse:

1. On 10 April 2018, you were convicted at Belfast Magistrates' Court of:

1.1. Two counts of Offering to Supply Class C Controlled Drug;

1.2. One count of Supplying Class C Controlled Drug;

1.3. Two counts of Theft (By Employee);

AND in light of the above, your fitness to practise is impaired by reason of your conviction.

That you, a registered nurse,

1. On an unknown date/s between June and July 2016, consumed misappropriated diazepam whilst on duty;

2. On 10 April 2018, failed to appear for trial at Belfast Magistrates' Court;

3. Are intentionally evading the police by not responding to the bench warrant issued by Belfast Magistrates' Court on 10 April 2018 for your arrest;

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

Background

Ms McCallan was employed as a Band 5 Staff Nurse at Royal Victoria Hospital since May 2015. Concerns were raised during her employment which resulted in criminal charges in 2018. It is alleged that, on 10 April 2018, Ms McCallan was convicted at Belfast Magistrates' Court of offering to supply a class C controlled drug; supplying a class C controlled drug; and theft. It is further alleged that, between June and July 2016, Ms McCallan consumed misappropriated diazepam whilst on duty.

It is alleged that on 10 April 2018 Ms McCallan failed to appear for trial at Belfast Magistrates' Court. A bench warrant was issued by Belfast Magistrates' Court on 10 April 2018 for her arrest. It is alleged that Ms McCallan is intentionally evading the police by not responding to the bench warrant.

Decision on findings of fact

The panel took into account the submissions of Ms Lewis, and accepted the advice of the legal assessor.

Ms McCallan admitted charge 1, including subsequent subsections 1.1, 1.2, and 1.3 for the theft and offering to supply of class C controlled drugs, in relation to her conviction in its entirety. The panel therefore found Charge 1, in relation to Ms McCallan's conviction, proved in its entirety by way of admission.

Ms McCallan admitted charges 1 for consuming misappropriated diazepam, and 2 for failing to appear before Belfast Magistrates' Court. The panel therefore found charges 1 and 2, proved by way of admission.

The panel considered charge 3, that Ms McCallan is intentionally evading police by not responding to the bench warrant issued for her arrest. It noted Ms McCallan's Case Management Form ("CMF") dated 25 September 2019 in which she indicated that she did not admit charge 3. The panel further noted email correspondence between Ms McCallan and her NMC Case Officer between 10 and 11 December 2019, in which Ms McCallan stated that she had previously misunderstood the meaning of the charge, but that she wanted to change her plea as she admitted charge 3.

The panel sought clarification as to the rationale of Ms McCallan's late admission of charge 3 and, after hearing submissions from Ms Lewis and taking into account the written communications from Ms McCallan, the panel was satisfied that Ms McCallan understood and admitted charge 3. The panel therefore found charge 3 proved by way of admission.

Submissions on misconduct and impairment

Having announced its finding on facts, the panel then moved on to consider whether the facts found proved in respect of charges 1, 2 and 3 amount to misconduct and, if so, whether Ms McCallan's fitness to practise is currently impaired by reason of her misconduct. In reaching its decision, the panel took account of the submissions made by the case presenter, and heard and accepted the advice of the legal assessor. The panel noted that there is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

Ms Lewis submitted that Ms McCallan's actions amounted to a breach of The Code: Standards of conduct, performance and ethics for nurses and midwives 2015 ("the Code"). She then directed the panel to specific paragraphs and identified where, in the NMC's view, Ms McCallan's actions amounted to misconduct.

Ms Lewis referred the panel to the case of *Roylance v GMC (No. 2)* [2000] 1 AC 311 which defines misconduct as a 'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'

She then moved on to the issue of impairment, and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body.

The panel has accepted the advice of the legal assessor.

The panel adopted a two-stage process in its consideration, as advised. Firstly, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Ms McCallan's fitness to practise is currently impaired as a result of that misconduct.

Decision on misconduct

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of The Code: Professional standards of practice and behaviour for nurses and midwives (2015).

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel was of the view that Ms McCallan's actions fell significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code. The panel considered that the following sections of the Code were engaged in this case:

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times ...

20.4 keep to the laws of the country in which you are practising

The panel was aware that breaches of the Code do not automatically result in a finding of misconduct. The panel considered the charges individually and collectively, in determining whether they amounted to misconduct. The panel considered that the concerns in this case related to Ms McCallan dishonestly misappropriating controlled medication, and intentionally evading the police by not responding to a bench warrant issued for her arrest on 10 April 2018. The panel considered that Ms McCallan's actions brought the reputation of the nursing profession into disrepute, and put patients at risk of harm. The panel determined that these actions, both individually and collectively, were a serious breach of fundamental tenets of the nursing profession, honesty and integrity. It considered that Ms McCallan's actions fell seriously short of the conduct and standards expected of a nurse, were serious, and amounted to misconduct.

Decision on impairment

The panel next went on to decide if, as a result of this misconduct and conviction, Ms McCallan's fitness to practise is currently impaired. In reaching its decision, the panel took into account the submissions of Ms Lewis, and accepted the advice of the legal assessor. The panel also took into account of the admissions of Ms McCallan in relation to current impairment made on 25 September 2019 in her CMF. However, the panel exercised its own professional judgment in relation to current impairment.

Nurses occupy a position of privilege and trust in society and 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 judgement of Mrs Justice Cox in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) 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.'

Mrs Justice Cox went on to say in Paragraph 76:

'I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but

in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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 all four limbs of Dame Janet Smith's test as set out in the Fifth Report from Shipman were engaged by Ms McCallan's actions. The panel considered that Ms McCallan's theft of medication was clearly a dishonest act. The consumption of misappropriated diazepam whilst on duty was a serious breach of her position of trust and could have put patients at serious risk of harm. Ms McCallan also brought the nursing profession into disrepute, not only by her misconduct but also by her conviction in respect of theft, offering, and supply of controlled drugs. The panel concluded that Ms McCallan failing to appear for trial at Belfast Magistrates' Court on 10 April 2018, and intentionally evading the police by not responding to the bench warrant issued by Belfast Magistrates' Court on 10 April 2018 for her arrest, also brought the profession into disrepute. Honesty and integrity

are fundamental tenets of the nursing profession, and Ms McCallan's actions breached these tenets.

The panel considered that there was no evidence of any remediation from Ms McCallan. It took into account her reflective piece submitted in advance of this hearing. However, it considered that this refers to [PRIVATE] at the time of these charges and, whilst Ms McCallan does demonstrate some remorse, she has not demonstrated any evidence of insight or remediation.

In the absence of any remediation or insight, the panel considered that there is a serious risk of repetition in this case. The panel therefore determined that a finding of impairment was necessary on the grounds of public protection.

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, in this case, a finding of impairment on public interest grounds was required both in respect of misconduct and conviction. The panel determined that public confidence in the regulatory process would be undermined if a finding of impairment was not made in the circumstances of this case.

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

Determination on sanction:

The panel considered this case and decided to make a striking-off order. It directs the registrar to strike Ms McCallan off the register. The effect of this order is that the NMC register will show that Ms McCallan has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case. The panel accepted the advice of the legal assessor. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the Sanctions Guidance (SG) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

Ms Lewis invited the panel to make a striking-off order. She reminded the panel that this case related to convictions which inherently involved elements of dishonesty, the consumption of a misappropriated drug whilst on duty, and Ms McCallan's failure to respond to a bench warrant issued for her arrest. She submitted that this conduct is fundamentally incompatible with remaining on the register. Ms Lewis submitted that, although a reflective piece has been provided by Ms McCallan which does demonstrate limited remorse, it does not demonstrate any insight, and Ms McCallan has not provided any information in relation to remediation. Ms Lewis outlined what the NMC considered to be the aggravating and mitigating features of this case, and submitted that, because of the seriousness of the facts underlying Ms McCallan's conviction, and her misconduct, the only sanction that would suitably satisfy the public interest would be to permanently remove Ms McCallan's name from the register.

Before making its determination on sanction, the panel had regard to the aggravating and mitigating features in this case.

The panel considered the aggravating features to be:

- This case relates to multiple convictions;

- Ms McCallan has a previous conviction for theft;
- Ms McCallan has shown insufficient remorse, and has demonstrated no insight or remediation;
- Ms McCallan's misconduct took place over a prolonged period of time, in a clinical setting, and involved repeated dishonesty;
- Ms McCallan abused her position of trust, and attempted to involve her colleagues in her conduct;
- Ms McCallan consumed drugs whilst on duty and put patients at potential risk of harm.

The panel considered the mitigating features to be:

- Ms McCallan has engaged with the NMC during this process, albeit from a distance;
- Ms McCallan has indicated that her conduct [PRIVATE], albeit she has produced no evidence to the panel to support any of this.

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 action.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 McCallan's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that a caution order would not address the public interest in this case.

The panel next considered whether placing conditions of practice on Ms McCallan's registration would be a sufficient and appropriate sanction. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel is of the view that there are no practical or workable conditions that could be

formulated, given the nature of the charges in this case. The misconduct and dishonesty identified in this case were not something that can be readily addressed through retraining or restricting Ms McCallan's practice with conditions. The panel noted that a conditions of practice order would require Ms McCallan's willingness to engage, and considered that, given her request for voluntary removal and clear statement that she does not wish to return to practise as a nurse, a conditions of practice order would not be workable. Further, the panel considered that the placing of conditions on Ms McCallan's nursing registration would not adequately protect the public, address the seriousness of this case, nor uphold the wider public interest. Therefore, the panel determined that a conditions of practice order would not be the appropriate or proportionate sanction.

The panel then went on to consider whether a suspension order would be an appropriate sanction and took into account the SG which stated that a suspension order may be appropriate in cases of:

- a single instance of misconduct but where a lesser sanction is not sufficient
- no evidence of repetition of behaviour since the incident
- the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour

The panel was not satisfied that these factors apply to Ms McCallan, and considered that her conduct was a significant departure from the standards expected of a registered nurse. The panel found that the serious breach of the fundamental tenets of the profession evidenced by Ms McCallan's actions is fundamentally incompatible with a suspension order in this case. Balancing all of these factors, the panel has determined that a suspension order would not be an appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following from the SG:

- Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?

- Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?
- Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?

The panel considered the seriousness of the dishonesty in this case. The panel had regard to the SG and found that the following features indicating seriousness were engaged in this case:

- Abuse of position of trust;
- Potential risk of harm to patients;
- Persistent, premeditated dishonesty, which led to criminal convictions.

Accordingly, the panel concluded that Ms McCallan's dishonest conduct was at the most serious end of the spectrum of dishonesty, and the panel had no evidence before it that this behaviour would not be repeated.

The panel was of the view that the findings in this particular case demonstrate that Ms McCallan's actions were so deplorable that to allow Ms McCallan to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body. The panel also noted that Ms McCallan has still not responded to a bench warrant issued for her arrest, and the public would be extremely concerned to know that a registrant who was avoiding such a warrant was entitled to practise in any capacity. The panel concluded that Ms McCallan's actions are fundamentally incompatible with her remaining on the register.

Balancing all of these factors and after taking into account all the evidence before it during this hearing, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Ms McCallan's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

Determination on interim order

The panel considered the submissions made by Ms Lewis that an interim order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

If no appeal is made, then the interim order will be replaced by the striking-off order 28 days after Ms McCallan is sent the decision of this hearing in writing.

That concludes this determination.