

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

**Substantive Meeting  
Friday 10 July 2020**

**Virtual Meeting**

<b>Name of registrant:</b>	Gillian Rowlands
<b>NMC PIN:</b>	05A0202S
<b>Part(s) of the register:</b>	Nursing Sub part 1 RNA, Registered Nurse – Adult (24 December 2007)
<b>Area of registered address:</b>	Dundee
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	David Boden (Chair, lay member) Carole Panteli (Registrant member) Bernard Herdan (Lay member)
<b>Legal Assessor:</b>	Michael Levy
<b>Panel Secretary:</b>	Catherine Acevedo
<b>Facts proved:</b>	1, 2, 3, 5
<b>Facts not proved:</b>	4
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking-off order
<b>Interim order:</b>	Interim suspension order (18 months)

## **Decision and reasons on service of Notice of Meeting**

The panel was informed at the start of this meeting that Miss Rowlands was not in attendance but had acknowledged some of the documents and that the Notice of Meeting had been sent to Miss Rowlands' email address on the register on 3 June 2020.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and venue of the meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Rowlands has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

## Details of charge

That you, a registered nurse:

1. In March 2019 submitted to NHS Education Scotland (NES) a 'Nurses' Personal Record Document' (the Form) in which you completed the following sections intended for your supervisor:
  - a. You used the name of Colleague A in the 'Signature of supervisor' section of the Form;
  - b. You wrote comments in the 'Comment from supervisor' section of the Form.
2. Your actions at charge 1 were dishonest in that you knew Colleague A had no knowledge of the Form but you intended to mislead NES that Colleague A had approved it.
3. Between 20 May 2019 and 12 August 2019 did not tell your employer that you had failed the NES Asthma course.
4. Your action at charge 3 was dishonest in that you intended to mislead your employer that you were qualified to undertake asthma assessments when you knew you were not.
5. Between 20 May 2019 and 12 August 2019 you conducted numerous asthma annual review clinics knowing that:
  - a. you had failed the NES asthma course, and/or;
  - b. you were not qualified to do so.

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

## **Decision and reasons on facts**

In reaching its decisions on the disputed facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC and by Miss Rowlands.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel had regard to the written statements of the following witnesses on behalf of the NMC:

- Colleague A: Practice Nurse at Hawkhill Medical Centre
- Colleague B: Nurse Manager/Senior Nurse at Hawkhill Medical Centre
- Colleague C: Practice Manager at Hawkhill Medical Centre

The panel also had regard to the limited responses to the NMC from Miss Rowland.

## **Background**

Miss Rowlands was first admitted to the register of nurses and midwives maintained by the NMC on 24 December 2007. Miss Rowlands is registered as an Adult Nurse. The instant matter represents the first time Miss Rowlands's practice has come to the attention of her regulator.

Miss Rowlands was employed by Hawkhill Medical Centre as a practice nurse from June 2015 until August 2019.

On 3 September 2018 Miss Rowlands commenced a training course entitled “Initial Asthma Training for General Practice Nurses to Undertake Annual Asthma Reviews which was provided by NHS Education Scotland (NES).

On 4 March 2019 Miss Rowlands submitted a form to NES which included essays about five asthma assessments which Miss Rowlands carried out on 14 February 2019 at Hawkhill Medical Centre. This form included a supervisor’s written competency statement which was said to have been completed by Colleague A on 4 March 2019.

The statement reads “*Gill has carried out her annual asthma reviews competently and capably. She has shown that she has a very good level of knowledge of the asthma programme*” and the name Colleague A is typed into the space for the supervisor signature.

On 8 May 2019 Miss Rowlands had an annual appraisal meeting with Colleague B, Nurse Manager, and Colleague C, Practice Manager. During this meeting Miss Rowlands stated that she had submitted five essays to NES as part of her asthma course but had not yet received written feedback.

On 20 May 2019 NES sent an email to Miss Rowlands to confirm that she had not passed the course. The feedback was that Miss Rowlands’s essay regarding patient 1 was a departure from SIGN [2016] guidelines and demonstrated unsafe practice.

On 13 August 2019, during a discussion with Colleague B, Miss Rowlands stated that she had failed the NES asthma course.

Miss Rowlands responded to the NMC’s regulatory concerns on 8 October 2019 but has not responded to the charges.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the documentary evidence provided by both the NMC and Miss Rowlands

The panel then considered each of the disputed charges and made the following findings.

## **Charge 1**

That you, a registered nurse:

In March 2019 submitted to NHS Education Scotland (NES) a 'Nurses' Personal Record Document' (the Form) in which you completed the following sections intended for your supervisor:

- c. You used the name of Colleague A in the 'Signature of supervisor' section of the Form;
- d. You wrote comments in the 'Comment from supervisor' section of the Form.

### **This charge is found proved.**

In reaching this decision, the panel took into account the statement of Colleague A dated 3 October 2019 which confirms that she did not supervise any of the five patient assessments which appeared in Miss Rowlands' documentation sent to NES. The panel noted that Colleague A also confirms that she did not sign the supervisor's competency statement or write the supervisor comments. The panel also took into account that Miss Rowlands appears to accept that she completed the supervisor comments and signature on behalf of Colleague A. Miss Rowlands had explained that she was not in work on that day and she was under pressure to send a signed copy of the form to NES. The panel found the evidence proved that Miss Rowlands used the name of Colleague A in the 'Signature of supervisor' section of the Form and she wrote comments in the 'Comment from supervisor' section of the form.

## **Charge 2**

Your actions at charge 1 were dishonest in that you knew Colleague A had no knowledge of the Form but you intended to mislead NES that Colleague A had approved it.

### **This charge is found proved.**

The panel was of the view that Miss Rowlands dishonestly completed the supervisor section of the NES asthma assessment form knowing that she had not been supervised. The panel therefore concluded, having found charge 1 proved, that Miss Rowlands knew Colleague A had no knowledge of the form and Miss Rowlands intended to mislead NES that Colleague A had approved it.

### **Charge 3**

Between 20 May 2019 and 12 August 2019 did not tell your employer that you had failed the NES Asthma course.

#### **This charge is found proved.**

In reaching this decision, the panel accepted the statement of Colleague B which states that after her meeting with Miss Rowlands on 13 August 2019 she asked Miss Rowlands to forward her a copy of the email from NES confirming that she had failed the asthma course. It was on receipt of this email that Colleague B says she was first alerted to the fact that Miss Rowlands had known she had failed the course since 30 May 2019 and had not told her employers. The panel therefore concluded that Miss Rowlands failed to tell her employer that she had failed the asthma course between 20 May and 12 August 2019.

### **Charge 4**

Your action at charge 3 was dishonest in that you intended to mislead your employer that you were qualified to undertake asthma assessments when you knew you were not.

#### **This charge is found not proved.**

In reaching this decision, the panel noted in her response Miss Rowlands explains that she had been asked to complete numerous unsupervised asthma assessments before she had completed the coursework and did not, therefore, understand the importance of passing the course. The panel was of the view that this demonstrated poor professional judgement

and, in the absence of more definitive evidence, that Miss Rowland had not been dishonest and there was no attempt to cover up what she had done.

### **Charge 5**

Between 20 May 2019 and 12 August 2019 you conducted numerous asthma annual review clinics knowing that:

- a. you had failed the NES asthma course, and/or;
- b. you were not qualified to do so.

### **This charge is found proved.**

In reaching this decision, the panel took into account and accepted the statement of Colleague B. She states that on discovering that Miss Rowlands had failed the asthma assessment course she noted that Miss Rowlands had been conducting asthma assessments for quite some time but was being supervised by a more experienced nurse, Colleague A. Colleague B goes on to say that she then became aware that Colleague A had not, in fact, been supervising Miss Rowlands' assessments and the clinic carried out an audit of the 60 unsupervised asthma annual review clinics conducted by Miss Rowlands between 1 February and 19 August 2019. The panel noted Miss Rowlands' response to the regulatory concerns implied that she thought the practice were content for her to carry out unsupervised annual asthma reviews regardless of whether she had completed the NES course.

The panel concluded that Miss Rowlands conducted a number of asthma annual review clinics when she was not qualified to do so and that Miss Rowlands carried out these reviews knowing that she was not qualified since she had failed the NES course on 20 May 2019.

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss



Rowlands' fitness to practise is currently impaired. 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.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, 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, Miss Rowlands' fitness to practise is currently impaired as a result of that misconduct.

### **Representations on misconduct and impairment**

In coming to its decision, the panel had regard 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.'

The NMC invited the panel to take the view that 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 Code") in making its decision.

The NMC identified the specific, relevant standards where Miss Rowlands' actions amounted to misconduct.

The NMC requires the panel to bear in mind its overarching objective to protect 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 referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC invited the panel to find Miss Rowlands' fitness to practise impaired on the public protection and public interest grounds.

The panel accepted the advice of the legal assessor.

## **Decision and reasons on misconduct**

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Miss Rowlands' actions did fall significantly short of the standards expected of a registered nurse, and that Miss Rowlands' actions amounted to a breach of the Code. Specifically:

### **Practise effectively**

*To achieve this, you must:*

*6.1 make sure that any information or advice given is evidence-based including information relating to using any health and care products or services*

*6.2 maintain the knowledge and skills you need for safe and effective practice*

### **Promote professionalism and trust**

#### ***20 Uphold the reputation of your profession at all times***

*To achieve this, you must:*

*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...*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Miss Rowland's actions can be properly characterised as a serious dishonest act in the context of an otherwise unblemished career. The panel noted that Miss Rowlands' dishonesty had direct application to her clinical work with patients and increased the seriousness of her misconduct.

The panel found that Miss Rowland's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

### **Decision and reasons on impairment**

The panel next went on to decide if as a result of the misconduct, Miss Rowlands' fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. 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 judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* 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.'*

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

*'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.'*

Although there was no actual harm caused to patients, the panel was of the view that Miss Rowlands' actions placed patients at unwarranted risk of harm by continuing to work unsupervised knowing that she had failed the NES course and knowing that she failed because she had demonstrated unsafe practice. The panel was of the view that Miss Rowlands' actions brought the profession into disrepute. The public expects registrants, to be individuals of integrity. Honesty and integrity are fundamental tenets of the profession.

The panel was of the view that dishonesty is difficult to remediate because it indicates an attitudinal issue. Miss Rowlands' has not provided evidence of insight that she appreciates the seriousness of dishonesty and has provided no evidence of any training or other remediation she has undertaken.

Taking into account the attitudinal nature of dishonesty and Miss Rowlands' limited insight, remorse or remediation, the panel determined that there is a risk that she will repeat and commit similar misconduct in future.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This 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 a finding of impairment on public protection grounds is required. In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Rowlands' fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Miss Rowlands' fitness to practise is currently impaired.

## **Sanction**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Miss Rowlands off the register. The effect of this order is that the NMC register will show that Miss Rowlands 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 and had careful regard to the Sanctions Guidance (SG) published by the NMC. 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 SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Miss Rowlands' lack of insight into failings.
- The pattern of misconduct over a period of time in that Miss Rowlands continued to conduct asthma reviews and continued to fail to tell her manager that she had failed the NES course for several months.
- Miss Rowlands' conduct which put patients at risk of suffering harm.

The panel also took into account the following mitigating features:

- There was an insufficiently robust system of clinical supervision in place at Hawkhill Medical Centre which allowed Miss Rowlands to continue to undertake asthma assessments unsupervised.

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 Miss Rowlands' 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 Rowlands' 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 it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Rowlands' registration would be a sufficient and appropriate response. 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 identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Rowlands' registration would not adequately address the seriousness of this case and would not protect the public and would risk undermining public confidence in the profession.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *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 conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Miss Rowlands' actions is fundamentally incompatible with Miss Rowlands remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of 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?*

Miss Rowlands' actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Miss Rowlands' actions amounted to serious misconduct and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, 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 Miss Rowlands' 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.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

This will be confirmed to Miss Rowlands' in writing.

### **Interim order**

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Rowlands' own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

The panel was satisfied that an interim 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.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months due to summarise panel's reasons

If no appeal is made, then the interim suspension order will be replaced by the substantive striking off order 28 days after Miss Rowlands' is sent the decision of this hearing in writing.

That concludes this determination.