

**Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Meeting
20 May 2020**

Nursing and Midwifery Council, Virtual Meeting

Name of registrant:	Mr Mark David Humphries
NMC PIN:	88G0381E
Part(s) of the register:	Registered Nurse – sub part 2 Adult Nursing (5 December 1990)
Area of Registered Address:	England
Type of Case:	Caution
Panel Members:	David Crompton (Chair, Lay member) Alice Clarke (Registrant member) Alexandra Ingram (Lay member)
Legal Assessor:	Tracy Ayling
Panel Secretary:	Anjeli Shah
Facts proved:	All
Fitness to practise:	Impaired
Sanction:	Striking-Off Order
Interim Order:	Interim Suspension Order for 18 months

Decision on Service of Notice of Meeting

The panel was informed that notice of this meeting was sent to Mr Humphries on 9 April 2020 to his email address on the register.

The notice informed Mr Humphries that the meeting would take place on or after 18 May 2020.

The panel accepted the advice of the legal assessor.

Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) ("the Rules") states:

'11A.(1) Where a meeting is to be held in accordance with rule 10(3), the Fitness to Practise Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held.

34.(1) Any notice of hearing required to be served upon the registrant shall be delivered by sending it by

(a) a postal service or other delivery service in which delivery or receipt is recorded to, or by leaving it at, the registrant's address in the register; or

(b) a postal service or other delivery service in which delivery or receipt is recorded to, or by leaving it at, where this differs from, and it appears to the Council more likely to reach the registrant at, the registrant's last known address; or

(c) electronic mail to an electronic mail address that the registrant has notified to the Council as an address for communications

The panel noted that under the recent amendments made to the Rules during the COVID-19 emergency period, notice of a hearing or meeting can be sent to an email

address held for a registrant on the NMC's register, or an email address which the registrant has informed the NMC is suitable for communication.

The panel noted that notice of this meeting had been sent to an email address the NMC held for Mr Humphries on the register. The panel also noted that the notice was sent at least 28 days prior to the date Mr Humphries was informed his case would be heard on or after (18 May 2020). The panel was satisfied that notice of this meeting had been served in accordance with Rules 11 and 34.

The panel also noted that there had been no response from Mr Humphries in relation to the notice of this meeting. The panel considered that it is the responsibility of a registrant to maintain up to date details on the NMC's register.

The panel proceeded to consider Mr Humphries' case at a meeting.

Details of charge:

That you, a registered nurse:

- 1) *On 23 July 2018, accepted a police conditional caution for neglect and ill treatment of mentally disordered person; **(Proved)***

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

Background

Mr Humphries first came on to the Nursing and Midwifery Council (“NMC”) register in December 1990. The NMC received a referral on 7 August 2018 from HC-One Limited. Mr Humphries was employed by HC-One Limited as a nurse at Hollymere House Nursing Home (“the Home”) since 24 February 2020.

Mr Humphries was interviewed by the police in relation to allegations of neglect and ill treatment of residents at the Home. Mr Humphries was accused of verbally abusing three residents, physically abusing two residents and neglecting or omitting medical care for four residents.

Mr Humphries was interviewed by the police on 2 July 2018. During the interview, Mr Humphries provided personal mitigation, in relation to his health and personal circumstances. He accepted that his comments regarding residents were “totally inappropriate” and that one resident, Resident G, would regard him as a bully. Mr Humphries also admitted to a number of clinical concerns, and gave no acceptable explanation for his actions.

The police also interviewed and took witness statements from the following individuals:

- Ms 1, a Nurse Assistant at the Home (24 May 2018);
- Ms 2, a Carer at the Home (25 May 2018);
- Ms 3, a Carer at the Home (24 May 2018); and
- Ms 4, a Carer at the Home (5 June 2018).

On the basis of these witness statements, as well as Mr Humphries’ admission of the offence at interview, Mr Humphries was offered a conditional caution for neglect and ill treatment of mentally disordered persons. On 23 July 2018 Mr Humphries accepted the police conditional caution, admitting the offence.

Decision on the findings on facts and reasons

The charge in this case concerns Mr Humphries' caution.

The panel accepted the advice of the legal assessor, who referred to Article 22 of the Nursing and Midwifery Order 2001 ("the Order") and Rule 31 of the Rules.

The panel was provided with the certificate of conditional caution from Cheshire Constabulary, dated 23 July 2018. The panel finds that the facts of this charge are proved in accordance with Rule 31 (2) and (3) of the Rules which states:

- (2) Where a registrant has been convicted of a criminal offence—
 - (a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and
 - (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.
- (3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.

Decision on impairment

The panel next went on to consider whether if as a result of this caution Mr Humphries' fitness to practise is currently impaired.

The panel accepted the advice of the legal assessor.

The panel had regard to the terms of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) ("the Code"). The panel considered that the following sections of the Code were breached by Mr Humphries in relation to the caution he received:

"1 Treat people as individuals and uphold their dignity:

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

...

1.4 make sure that any treatment, assistance of care for which you are responsible is delivered without undue delay

...

3.1 pay special attention to promoting wellbeing, preventing ill-health and meeting the changing health and care needs of people during all life stages

...

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this, you must:

17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse

...

17.3 have knowledge of and keep to the relevant laws and policies about protecting and caring for vulnerable people

...

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

...

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

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

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress”

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 care and the care of their loved ones. To justify that trust, nurses must 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 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. ...”

The panel considered that limbs a, b and c of the above test were engaged by Mr Humphries' past behaviour.

The panel considered that the conduct which led to Mr Humphries receiving a caution demonstrated a pattern of behaviour. This put a large number of vulnerable and elderly residents in Mr Humphries' care at unwarranted risk of physical and emotional harm. There was evidence before the panel of some residents experiencing actual harm and significant emotional distress as a result of Mr Humphries' actions and omissions. Mr Humphries was in a position of trust, as the registered nurse responsible for the care of the residents at the Home, and his actions fell far below what was expected from someone in his position.

The panel considered that Mr Humphries' past behaviour brought the nursing profession into disrepute. The panel noted that Mr Humphries' behaviour involved the physical and verbal abuse and omission of medical care to residents. It considered that fellow

practitioners and members of the public would find such behaviour deplorable, and falling far short of what is expected of a registered nurse.

The panel also considered that Mr Humphries' past behaviour breached fundamental tenets of the profession, as reflected in the breaches of the Code mentioned previously.

The panel went on to consider whether Mr Humphries was liable to act in a way to put patients at unwarranted risk of harm, to bring the profession into dispute and/or to breach fundamental tenets of the profession in the future. In doing so, the panel considered whether there was any evidence of insight, remorse and remediation.

In considering insight and remorse, the panel noted that there was some evidence of acceptance of these matters when Mr Humphries was interviewed by the police. The panel noted, from reading the transcript of the police interview, that initially Mr Humphries appeared to deny some of the allegations and stated he could not recall other matters. However, upon taking a break from the interview, Mr Humphries then admitted some allegations. He expressed that he was sorry and provided an explanation for his actions and omissions. Mr Humphries accepted that his conduct towards residents at the Home had deteriorated, and that he had let standards drop below what was expected of him as a registered nurse. Mr Humphries went on to describe a number of matters which had been affecting him in his personal life and raised issues with regards to his health.

The panel recognised that Mr Humphries appeared to demonstrate some qualified admissions during his police interview, and that he went on to admit the offence, and accepted a police caution. He demonstrated recognition in the police interview that his conduct fell far below what was expected from him as a registered nurse, and raised matters in relation to his health and personal circumstances as mitigation. Whilst the panel noted these matters, it also had regard to the fact that Mr Humphries did not appear to have engaged at all with the NMC's proceedings. Mr Humphries had provided no evidence of any reflection, to explain why he acted in the manner which he did to a

number of vulnerable residents in his care, to demonstrate recognition of the impact of his actions and omissions on such residents, as well as his colleagues and on the wider reputation of the nursing profession and to provide reassurance that such matters would not reoccur in the future. There was therefore limited evidence before the panel to demonstrate insight and remorse on Mr Humphries' part.

Taking into account Mr Humphries' lack of engagement with the NMC's proceedings, the panel also considered that there was no evidence to suggest remediation of the matters leading to his caution. Whilst in his police interview Mr Humphries raised a number of matters concerning his health and personal circumstances, he had provided no evidence since to show that he recognised the impact of such matters on his practice, or of any attempts to address such matters, in order for them not to impact on his future nursing practice and the provision of care to residents and patients. The panel also had no information before it in relation to whether Mr Humphries has practised as a nurse, and what he has been doing since receiving the police caution. The panel therefore considered that there was no evidence of any remediation in Mr Humphries' case.

In light of the limited evidence of insight, remorse and remediation on Mr Humphries' part, the panel considered that a risk of repetition remained, and that he is liable to act in a way so as to put patients at unwarranted risk of harm, to bring the profession into disrepute and to breach fundamental tenets of the profession in the future. The panel therefore determined that a finding of impairment is 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 wellbeing of the public and patients, and to uphold and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing profession and upholding the proper professional standards for members of the profession. The panel considered that Mr Humphries' actions and omissions, leading to the acceptance of a police caution, demonstrated a

pattern of behaviour, leading to a large number of residents experiencing emotional distress, as well as being placed at significant risk of harm. Mr Humphries was in a position of trust and authority as the registered nurse, with residents looking to him to provide safe and effective care, as well as junior members of staff looking upon him to provide leadership and guidance. Through his behaviour, Mr Humphries significantly let down the expectations of his colleagues and the residents in his care. The panel considered that public confidence in the nursing profession and the NMC as a regulator would be undermined if a finding of impairment were not made in the circumstances. The panel considered that members of the public aware of Mr Humphries' actions and omissions would expect such action to be taken. The panel therefore determined that a finding of impairment is also necessary on public interest grounds.

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

Determination on sanction:

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

In reaching this decision, the panel had regard to all the documentary evidence in this case. The panel accepted the advice of the legal assessor. The panel bore 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.

The panel noted that the NMC, in its statement of case within the documentary evidence before it, outlined a sanction bid for a striking-off order.

The panel first considered what it deemed to be the aggravating and mitigating factors in this case and determined the following:

Aggravating factors:

- Mr Humphries was in a position of trust, as the lead nurse, responsible for the care of residents as well as for leading a team of staff who would have looked up to him;
- Mr Humphries’ actions and omissions demonstrated a repeated pattern of behaviour, which placed a large number of vulnerable residents at risk of physical and emotional harm and resulted in significant emotional distress;
- During the NMC’s proceedings, there has been no evidence of any insight, remorse and remediation.

Mitigating factors:

- Mr Humphries admitted these matters during his police interview, which led to the acceptance of the caution. He demonstrated some recognition of the matters during police interview, expressing that he was sorry and he also raised matters regarding his health and personal circumstances (although there was no further evidence of such matters before the panel since the police interview).

The panel then went onto consider what action, if any, to take in this case.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the gravity of the behaviour which led to Mr Humphries receiving a caution. The panel had identified a risk of repetition in respect of these matters and it noted that taking no action would not restrict Mr Humphries' practice. The panel decided that taking no further action would not protect the public and it would not satisfy the wider public interest.

The panel next considered 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, however the Fitness to Practise Committee wants to mark that the behaviour was unacceptable and must not happen again.”

The panel considered that Mr Humphries' behaviour did not fall at the lower end of the spectrum of impaired fitness to practise. The panel considered that this behaviour was extremely serious, and that imposing a caution order would not reflect the gravity of his actions and omissions. The panel had identified a risk of repetition in this case and it noted that imposing a caution order would not restrict Mr Humphries' practice. The panel decided that imposing a caution order would not protect the public and it would not satisfy the wider public interest.

The panel next considered whether to impose a conditions of practice order, being mindful that any conditions imposed must be practicable, workable and measurable. The panel noted that the behaviour which led to Mr Humphries' caution involved the physical and verbal abuse as well as neglect of residents. The panel considered that it would not be possible to formulate practicable, workable and measurable conditions of practice order to address such criminal behaviour and prevent the likelihood of it being repeated in the future. The panel considered that it would not be possible to protect the public through conditions of practice. Furthermore, having regard to the seriousness of Mr Humphries' actions and omissions, the panel considered that a conditions of practice order would fail to uphold the wider public interest. The panel determined that a conditions of practice order would not be appropriate or proportionate in the circumstances of this case.

The panel went on to consider whether a suspension order would be appropriate and proportionate. The panel had regard to the SG which states that this sanction may be considered appropriate where the following factors apply:

- 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 panel considered that this case did not concern a single instance of behaviour, but a pattern of conduct with a number of instances of placing a large number of residents at risk of harm. The panel did not consider that there was any evidence to suggest harmful deep-seated personality or attitudinal problems on Mr Humphries' part. The panel did not have any evidence to suggest a repetition of these matters since their occurrence, albeit it had no information regarding what Mr Humphries has been doing since they arose. The panel was not satisfied that Mr Humphries had demonstrated

insight into his behaviour, and it did consider that there was a risk of these matters being repeated.

The panel had regard to the seriousness of Mr Humphries' past behaviour, which involved a fundamental departure from the Code and the standards expected of a registered nurse. Mr Humphries was in a position of trust and authority, responsible for providing care to a number of vulnerable and elderly residents, as well as providing guidance to a team of staff. The panel considered that this behaviour fell far below the expectations in terms of the care provided and the example set to such other members of staff. Mr Humphries' behaviour, involving neglect and mistreatment of vulnerable residents, led to the acceptance of a caution, which has undermined the reputation of the nursing profession and the standards it seeks to uphold. It considered that this behaviour fell at the higher end of the spectrum of impaired fitness to practise.

The panel also noted that Mr Humphries has not engaged with these proceedings. He has not provided any evidence to suggest that he has reflected on the matters leading to his caution. Mr Humphries has not demonstrated any evidence of remorse, any explanation of why the matters occurred, any understanding of the impact his actions and omissions had on residents, colleagues and the reputation of the nursing profession as well as any reassurance that this would not reoccur in the future. Without any information having been provided by Mr Humphries, the panel was not satisfied that a suspension order would serve any useful purpose.

In these circumstances, the panel did not consider that a period of suspension would be sufficient to protect patients and members of the public as well as to mark Mr Humphries' behaviour as unacceptable, to uphold public confidence in the nursing profession and to maintain proper professional standards. The panel considered that the seriousness of the case, and Mr Humphries' lack of demonstration of reflection, insight, remorse and remediation of these matters warranted the imposition of a more severe sanction.

Balancing all of these factors, the panel concluded that a suspension order would not be appropriate or proportionate in the circumstances of this case.

The panel went on to consider whether to impose a striking-off order.

The panel considered that the behaviour in this case raised fundamental concerns about Mr Humphries' professionalism as a registered nurse, and that his actions and omissions were incompatible with remaining on the register. It considered that the findings in this case and the risk of repetition were so serious, that to allow Mr Humphries to continue practising would undermine public confidence in the nursing profession and in the NMC as a regulator.

The panel had regard to the effect of Mr Humphries' actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself. The panel determined that a striking-off order is the only sanction which would be sufficient to protect patients and members of the public and to maintain professional standards.

Balancing all of these factors and after taking into account all of the evidence before it, the panel determined that the appropriate and proportionate sanction is that of a striking-off order.

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.

Determination on Interim Order

Under Article 31 of the Order, the panel considered whether an interim order should be imposed in this case. A panel may only make an interim order if it is satisfied that it is necessary for the protection of the public, and/or is otherwise in the public interest, and/or is in the registrant's own interests.

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 matters in this case 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 Mr Humphries is sent the decision of this meeting in writing.

That concludes this determination.