

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

**Substantive Order Review Hearing
Thursday, 8 February 2024**

Virtual Hearing

Name of Registrant: Paul Christopher Hilditch

NMC PIN 83Y3947E

Part(s) of the register: Registered Nurse - Mental Health, Level 2
RMHN - RN4 - April 1985

Relevant Location: Stockport

Type of case: Misconduct

Panel members: Susan Ball (Chair, Registrant member)
Marcia Smikle (Registrant member)
Anne Phillimore (Lay member)

Legal Assessor: Melissa Harrison

Hearings Coordinator: Elizabeth Fagbo

Nursing and Midwifery Council: Represented by Madeleine Semple, Case Presenter

Mr Hilditch: Not present and not represented at the hearing

Order being reviewed: Suspension order (3 months)

Fitness to practise: Impaired

Outcome: **Suspension order (9 months) to come into effect on 19 March 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 Mr Hilditch was not in attendance and that the Notice of Hearing had been sent to Mr Hilditch's registered email address by secure email on 4 January 2024.

Ms Semple, 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 Mr Hilditch's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

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

The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision and reasons on proceeding in the absence of Mr Hilditch

The panel next considered whether it should proceed in the absence of Mr Hilditch. The panel had regard to Rule 21 and heard the submissions of Ms Semple who invited the panel to continue in the absence of Mr Hilditch. She submitted that Mr Hilditch had voluntarily absented himself.

Ms Semple submitted that there had been no engagement at all by Mr Hilditch with the NMC in relation to these proceedings and he did not attend the substantive order hearing

either, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

The panel accepted the advice of the legal assessor.

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

- No application for an adjournment has been made by Mr Hilditch;
- Mr Hilditch has not engaged with the NMC and has not responded to any of the letters sent to him about this hearing;
- The NMC telephoned Mr Hilditch this morning in advance of the hearing, he did not answer the call;
- Mr Hilditch has a history of non-engagement;
- Mr Hilditch has not provided the NMC with details of how he may be contacted other than his registered address;
- Mr Hilditch has voluntarily absented himself;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- There is a strong public interest in the expeditious review of the case; and
- The current suspension order is due to expire on 18 March 2024.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mr Hilditch.

Decision and reasons on review of the substantive order

The panel decided to impose a suspension order.

This order will come into effect at the end of 18 March 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 3 months by a Fitness to Practise Committee panel on 20 November 2023.

The current order is due to expire at the end of 18 March 2024.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charge found proved which resulted in the imposition of the substantive order was as follows:

‘That you, a registered nurse:

1. Failed to cooperate with a local authority safeguarding investigation when

requested to do so by email on the following dates:

a) 25 April 2019

b) 27 April 2019

c) 20 May 2019

d) 3 June 2019’

The original panel determined the following with regard to impairment:

‘In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

‘The question that will help decide whether a professional’s fitness to practise is impaired is:

“Can the nurse, midwife or nursing associate practise kindly, safely and professionally?”

If the answer to this question is yes, then the likelihood is that the professional’s fitness to practise is not impaired.’

In order to address these issues the panel considered the test of Mrs Justice Cox in the case of CHRE v NMC and Grant in reaching its decision. In paragraph 76, she said:

'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/their fitness to practise is impaired in the sense that S/He/They:

- 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 was of the view that all three limbs a) b) and c) of the above test were engaged and that Mr Hilditch had brought the nursing profession into disrepute and had breached the fundamental tenets of the profession.

The panel concluded that Mr Hilditch's failure to assist with the investigation of what went wrong with the care of the patient in February 2019 could have had implications for the conduct of the investigation and for learning from this incident to improve the care of future patients. The panel therefore concluded that there are patient safety implications from Mr Hilditch's failure.

Additionally, the finding is made having regard to the need to uphold proper professional standards and public confidence in the profession, which

would be undermined if a finding of current impairment was not made at this time.'

The original panel determined the following with regard to sanction:

'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 Mr Hilditch'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 Mr Hilditch'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 placing conditions of practice on Mr Hilditch'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 took into account the SG, in particular that conditions of practice can be appropriate where:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- No evidence of general incompetence;*
- Potential and willingness to respond positively to retraining;*

- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel was 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. Mr Hilditch's clinical competence is not in question and his failure is more about his attitude.

Furthermore, the panel concluded that the placing of conditions on Mr Hilditch's registration would not adequately address the seriousness of this case and would not protect the public.

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; and*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. Although not a single incident it was related to a single course of conduct. However, it had found that Mr Hilditch's conduct was partly due to attitudinal issues, and given his lack of engagement with the NMC, there is no evidence of insight and there has to be a risk of repetition.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension order may have a punitive effect, it would be unduly punitive in Mr Hilditch's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order might cause Mr Hilditch. However this is outweighed by the public interest in this case.

The panel considered that this order is 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.

The panel determined that a suspension order for a period of 3 months was appropriate in this case to mark the seriousness of the misconduct.

At 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:

- Mr Hilditch's engagement with NMC*
- Evidence of any insight, reflection and remorse from Mr Hilditch*
- Clarification of Mr Hilditch's future intentions concerning his nursing career'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Hilditch'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 also taken into account the submissions made by Ms Semple on behalf of the NMC.

Ms Semple provided the panel with a brief outline of the background of the case. She informed that panel that the original fitness to practise panel noted that a future panel may be assisted by Mr Hilditch's engagement with the NMC, and evidence of insight reflection and remorse. She submitted however that Mr Hilditch has persistently failed to engage with the NMC and there is no such evidence before the panel today. Therefore, Mr Hilditch's fitness to practice remains impaired.

Ms Semple submitted that after Mr Hilditch's failure to engage with the safeguarding investigation, he went on to give evidence at the coroner's inquest, where he disclosed that he had no recollection of some of the events. She submitted that this information was delayed by 16 months as Mr Hilditch could have disclosed this to the Safeguarding investigation team when he was initially contacted by them.

Ms Semple referred the panel to R (on the application of Abrahaem) v General Medical Council [2008] EWHC 183 (Admin) and highlighted that the persuasive burden is on Mr Hilditch to demonstrate that he is no longer impaired. She submitted that Mr Hilditch is not in attendance today and has not engaged with the NMC, therefore he has not remediated the attitudinal concerns identified and the risk to the public remains unchanged.

Ms Semple invited the panel to impose a further suspension order on the same grounds found at the substantive hearing. She submitted that this would give Mr Hilditch further opportunities to engage with the NMC and provide evidence of his remediation and engagement with the NMC for a future panel.

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 Mr Hilditch's fitness to practise remains impaired.

At this hearing there was no information before the panel of any insight, remediation, remorse or any steps taken by Mr Hilditch to strengthen his practice. In the absence of any evidence from him concerning the context in which his actions took place. The panel therefore concluded that there had been no material change of circumstances since the original substantive hearing, as Mr Hilditch has not engaged with the NMC.

In light of this, the panel considered that patients could be placed at risk of harm if Mr Hilditch was permitted to practise unrestricted because of attitudinal issues regarding the duty for nurses to engage in external investigations relating to patient safety matters. It was of the view that as there is no information before it to suggest Mr Hilditch's has demonstrated sufficient insight and taken the necessary steps to strengthen his practice therefore, a real risk of repetition remains. The panel therefore determined that a finding of impairment remains 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 Mr Hilditch's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Hilditch'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 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 Mr Hilditch'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 Mr Hilditch'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 Mr Hilditch'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 was not able to formulate conditions of practice that would adequately address the concerns relating to Mr Hilditch's misconduct, as the misconduct related to attitudinal concerns, rather than concerns with his clinical practise.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Hilditch further time to fully reflect on his previous failings and his disengagement with the NMC. It considered that Mr Hilditch needs to reflect and gain a full understanding of how his disengagement with the NMC and the attitudinal concerns of one nurse can impact the nursing profession as a whole and not just the organisation that the individual nurse is working for. The panel concluded that a further 9 months suspension order would be the appropriate and proportionate response

and would afford Mr Hilditch adequate time to engage with the NMC, develop his insight and take steps to strengthen his practice.

The panel went on to consider a striking off order and noted this is the most serious sanction available. It considered this was not necessary as it would be going further than is needed to achieve public protection and would therefore be disproportionate.

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 would provide Mr Hilditch with further opportunity to engage with the NMC. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 18 March 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:

- Mr Hilditch's engagement with NMC
- Evidence of any insight, reflection and remorse from Mr Hilditch
- Clarification of Mr Hilditch's future intentions concerning his nursing career

That concludes this determination.