

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

**Substantive Order Review Hearing  
Wednesday, 13 March 2024**

Virtual Hearing

**Name of Registrant:** Ross Allan

**NMC PIN** 98J0320S

**Part(s) of the register:** Registered Nurse – Sub part 1  
Mental Health Nursing (October 2001)

**Relevant Location:** North Ayrshire

**Type of case:** Misconduct

**Panel members:** Derek McFaull (Chair, Lay member)  
Philip Sayce (Registrant member)  
Nicola Hartley (Lay member)

**Legal Assessor:** William Hoskins

**Hearings Coordinator:** Rebecka Selva

**Nursing and Midwifery Council:** Represented by Violet Smart, Case Presenter

**Mr Allan:** Not present and not represented

**Order being reviewed:** Suspension order (12 months)

**Fitness to practise:** Impaired

**Outcome:** **Suspension order (6 months) to come into effect on 29 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 Allan was not in attendance and that the Notice of Hearing had been sent to Mr Allan's registered email address by secure email on 14 February 2024.

Ms Smart, 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 Allan'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 Allan has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

## **Decision and reasons on proceeding in the absence of Mr Allan**

The panel next considered whether it should proceed in the absence of Mr Allan. The panel had regard to Rule 21 and heard the submissions of Ms Smart who invited the panel to continue in the absence of Mr Allan.

Ms Smart submitted that there had been no meaningful engagement by Mr Allan with the NMC in relation to these proceedings. The NMC had received correspondence by email from Mr Allan on 13 February 2024 enquiring as to why the matter was being reviewed. After a reply was sent explaining the process no further communication from Mr Allan had been forthcoming. 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 Allan. In reaching this decision, the panel has considered the submissions of Ms Smart, and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Allan;
- No meaningful engagement has been made by Mr Allan regarding today's hearing;
- There is no reason to suppose that adjourning would secure his attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

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

### **Decision and reasons on review of the substantive order**

The panel decided to extend the current suspension order.

This order will come into effect at the end of 29 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 12 months by a Fitness to Practise Committee panel on 28 February 2023.

The current order is due to expire at the end of 29 March 2024.

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

The charges found proved which resulted in the imposition of the substantive order were as follows:

*'1) Between April 2015 and July 2016 you changed patients' prescriptions without the agreement of a qualified prescriber for one or more of the patients listed in Schedule 1.*

***(This charge is found NOT proved in relation to Patients A, B and S and found Proved in relation to Patient F).***

*2) Between April 2015 and July 2016, you failed to review patient's need for prescription medication for one or more patients listed in Schedule 2.*

***(This charge is found proved in relation to Patients A, B, C, D, E, F, G, H, K, and 3 and found not proved in relation to Patients M, Q and 1).***

*3) Between April 2015 and July 2016, you failed to provide initial and or follow up appointments for one or more patients listed in Schedule 3. (This charge is found proved in relation to Patients A, D, F, G, H, J, K, Q, R, 1, 2, 3, 4 5, and 8 and not proved in relation to Patient 7).*

*4) '...'*

*5) Between April 2015 and July 2016, you failed to adequately document care provided to one or more patients listed in Schedule 5. (This charge is found NOT proved in relation to Patients D, G, J, N, O and 7. The charge is found proved in relation to Patients A, B, E, F, H, K, M, Q, R, S, 1 and 4).*

*In light of this the panel found that Mr Allan's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct'.*

The original panel determined the following with regard to impairment:

*'The panel finds that patients were put at risk of physical and emotional harm as a result of Mr Allan's misconduct. Mr Allan's misconduct had breached the fundamental tenets of the nursing profession and therefore*

*brought its reputation into disrepute. The panel therefore found the first three limbs of the test engaged.*

*Regarding insight, the panel took into account that Mr Allan has chosen not to engage with the NMC. It therefore had nothing before it to evidence any insight from Mr Allan. The panel considered that there was no evidence to demonstrate Mr Allan has an understanding of how his actions put his patients at a risk of harm or how his actions would impact negatively on his colleagues and the reputation of the nursing profession.*

*The panel was satisfied that the misconduct in this case is capable of being addressed, but the panel had no evidence before it to show that Mr Allan has taken any steps to strengthen his practice.*

*The panel considered that Mr Allan's misconduct took place over a significant period of time resulting in vulnerable patients not receiving care, their care being delayed, or their records not being kept up to date.*

*The panel considered that the local investigation interview took place six years ago and that there has been nothing submitted by Mr Allan as he has chosen not to engage with his regulator regarding these substantive proceedings. Therefore, the panel is of the view that there is a risk of repetition based on Mr Allan's lack of insight and there being no evidence of him strengthening his practice. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.*

*The panel bore in mind 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 current impairment on public interest grounds is also required as a member of the public, aware of all the circumstances in this case, would be concerned if a nurse, against whom such concerns have been found proved, were to be allowed to practise unrestricted.*

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

The original panel determined the following with regard to sanction:

*'The panel next considered whether placing conditions of practice on Mr Allan'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 where it listed circumstances in which a conditions of practice order would be appropriate, in particular:*

- Identifiable areas of the nurse or midwife's practice in need of assessment and/or 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;*
- Conditions can be created that can be monitored and assessed; and*
- Potential and willingness to respond positively to retraining.*

*The panel is of the view that there are no practicable or workable conditions that could be formulated, given Mr Allan's lack of engagement to date.*

*The panel then went on to consider whether a suspension order would be an appropriate sanction.*

*The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with Mr Allan remaining on the register. It did go on to consider whether a striking-off order would be proportionate sanction but, taking account of all the information before it, the panel concluded that it would be disproportionate at this time. Whilst the panel acknowledged that a suspension order may have a punitive effect, it would be unduly punitive in Mr Allan's case to impose a striking-off order.*

*The panel considered that imposing a suspension order on Mr Allan's practice would give him the opportunity to re-engage with the NMC and provide a reflective piece addressing the impact of his misconduct on his patients, colleagues and the wider nursing profession and express his intentions regarding his nursing career.*

*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 will inevitably cause Mr Allan. 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.*

*In making this decision, the panel carefully considered the submissions of Ms Ferns in relation to the sanction that the NMC was seeking in this case. However, the panel considered Mr Allan's lack of engagement and was of the view that it could not be confident that Mr Allan would engage and comply with any conditions imposed on his practice.*

*The panel determined that a suspension order for a period of 12 months was appropriate in this case to mark the seriousness of the misconduct.'*

## Decision and reasons on current impairment

The panel has considered carefully whether Mr Allan's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle. It has taken account of the submissions made by Ms Smart on behalf of the NMC.

Ms Smart referred the panel to the background of the case and reminded the panel that Mr Allan was not present at the original substantive hearing.

Ms Smart referred the panel to the suggestions made by the original panel for Mr Allan to provide prior to this review hearing:

*'Any future panel reviewing this case would be assisted by:*

- *A reflective piece addressing Mr Allan's insight and the impact of his misconduct on patients, colleagues and the wider nursing profession;*
- *Information about Mr Allan's intention in relation to his nursing career;*
- *Evidence of any completed relevant training;*
- *Testimonials in relation to paid or unpaid work; and*
- *Engagement with the NMC and Mr Allan's attendance at future review hearings.'*

Ms Smart submitted that the panel does not have information before it today to demonstrate that Mr Allan has developed his insight and/or remediated the misconduct found proved. She outlined for the panel that the original panel noted that the suspension order would allow for enough time and opportunity for Mr Allan to reengage with the NMC and to develop his insight. However, as of today, there is a lack of any further evidence or information from Mr Allan.



In light of this, Ms Smart invited the panel to find that Mr Allan remains impaired. She further submitted that to extend the current suspension order would now be appropriate.

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 Allan's fitness to practise remains impaired. It noted that the misconduct found proved related to multiple, wide-ranging clinical failings. The panel did not have any new information before it to suggest that Mr Allan has demonstrated any insight into his misconduct. Further, there was no information before the panel to show that he had taken steps to strengthen his practice and remediate the concerns found proved, despite being provided with ample opportunity to do so. To the contrary, Mr Allan has not engaged with the NMC apart from an email dated 13 February 2024 in which he questioned the purpose of today's review hearing. In the absence of any new information before it, the panel could not exclude the possibility of similar misconduct being repeated in the future. The panel therefore determined that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Mr Allan's fitness to practise remains impaired.

## Decision and reasons on sanction

Having found Mr Allan'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 Allan'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 Allan'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 a conditions of practice on Mr Allan'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 nor satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mr Allan's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Allan further time to fully reflect on his previous failings. The panel concluded that a further 6 month suspension order would be the

appropriate and proportionate response and would afford Mr Allan adequate time to further develop his insight and take steps to strengthen his practice.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 6 months would provide Mr Allan with an opportunity to engage with the NMC. It considered this to be the most appropriate and proportionate sanction available.

The panel gave serious consideration to imposing a striking off order as Mr Allan has not engaged with this process and the lack of engagement also concerns public protection. However, the panel determined that a striking off order at this stage would be disproportionate and the panel would like to provide Mr Allan a further opportunity to engage with the NMC.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 29 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:

- A reflective piece addressing Mr Allan's insight and the impact of his misconduct on patients, colleagues and the wider nursing profession;
- Information about Mr Allan's intention in relation to his nursing career;
- Evidence of any completed relevant training;
- Testimonials in relation to paid or unpaid work; and
- Engagement with the NMC and Mr Allan's attendance at future review hearings.

This will be confirmed to Mr Allan in writing.

That concludes this determination.