

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

**Substantive Order Review Meeting  
Friday 23 July 2021**

Virtual Meeting

**Name of registrant:** **Fiona Sarah Diba**

**NMC PIN:** 91Y0512E

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Adult Nursing – May 1994  
  
Children’s nursing – September 1998

**Area of registered address:** Wolverhampton

**Type of case:** Misconduct and health

**Panel members:** Bryan Hume (Chair, Lay member)  
Claire Clarke (Registrant member)  
Jodie Jones (Registrant member)

**Legal Assessor:** Charles Apthorp

**Panel Secretary:** Parys Lanlehin-Dobson

**Order being reviewed:** Suspension order (6 months)

**Fitness to practise:** Impaired

**Outcome:** **Striking-off order to come into effect at the end of 17 August 2021 in accordance with Article 30 (1)**

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

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Miss Diba's registered email address on 7 May 2021.

The panel took into account that the Notice of Meeting provided details of the substantive order being reviewed, the time, date 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 registrant 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).

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

The panel decided to direct the registrar to remove Miss Diba's name from the register. This order will come into effect at the end of 17 August 2021 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fifth review of a suspension order, originally imposed by a Fitness to Practise Committee panel on 15 March 2018 for a period of 12 months. On 8 April 2019, the suspension order was extended for a period of six months. The suspension order was reviewed again on 6 September 2019 and extended for a further 12 months. The suspension order was then reviewed on 14 October 2020 and the suspension order was extended for a further period of 4 months. The order was last reviewed on 14 January 2021 and the order was extended for a further 6 months. Miss Diba was not present or represented at any of those hearings except for the hearing on 6 September 2019, at which she was present but not represented.

The current order is due to expire at the end of 17 August 2021.

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:

*That you a Registered Nurse;*

1. *Have suffered from and/or are currently suffering from the medical conditions as set out in Schedule 1. **[proved]***
2. ...

*And/or*

*That you, whilst employed by the Yeovil District Hospital NHS Foundation Trust on the Children's Ward,*

3. *On 12 December 2016 failed to conduct and or record any observations from 14.00 onwards in relation to;*
  - (a) *Patient A; **[proved]***
- ...
4. *On 12 December 2016 failed to administer and or record the administration of pain relief medication to Patient C.*  
***[not proved on "failed to administer"]***  
***[proved on "failed to record"]***
5. *On 14 December 2016 allowed Child A to leave the Ward with her parents in contravention of,*
  - (a) *Protection plan from Social Services;*
  - (b) *Handover instruction from Colleague A.****[proved]***

*And in light of charge 1 and 2 above, and/or any associated and/or consequential mental/physical health condition(s) your fitness to practise is impaired by reason of your physical or mental health.*

*And in light of charges 3, 4 and 5 your fitness to practise is impaired by reason of your misconduct.*

**Schedule 1 (Private)**

*[PRIVATE]*

The fourth reviewing panel determined the following with regard to impairment:

*'The panel considered whether Miss Diba's fitness to practise remains impaired.*

*The panel noted that there was no new information in this case. There had been no engagement from Miss Diba since her attendance at the second review hearing in September 2019 and her subsequent telephone call on 30 September 2020. At that time she had stated that she was having personal issues and was thinking of leaving the profession. That information had been available to the third reviewing panel in October 2020, and on that occasion Miss Diba had been advised to provide various information including an indication of her current intentions with regard to her nursing career. She had not done so.*

*The panel noted the previous panel's request for [PRIVATE]. In answer to questions from the panel, it was informed that a decision had been taken by the NMC not to seek those, apparently in response to Miss Diba having indicated that she was considering leaving the profession. The panel considered that no criticism could be levelled at Miss Diba in this regard, as it was the NMC's decision not to pursue [PRIVATE]. However in the absence of this information, or any information from Miss Diba, the panel had no [PRIVATE] to give any indication of Miss Diba's current circumstances or [PRIVATE].*

*In all the circumstances, the panel saw nothing to undermine the previous panel's decision in relation to impairment. There was no evidence of any change in the situation since that time. The panel agreed with the reasons set out by the previous panel for finding impairment and adopted them.*

*Those reasons are:*

*“The panel noted that it had not received any information from Miss Diba since the last review hearing, other than a vague indication that she may wish to pursue leaving the Register. In the absence of any evidence demonstrating that Miss Diba has addressed [PRIVATE] or remediated the misconduct, the panel was of the view that there remains a risk of repetition. It therefore decided 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 Miss Diba's fitness to practise remains impaired, on grounds of public protection and in the wider public interest.’*

The fourth reviewing panel determined the following with regard to sanction:

*‘The panel noted that Miss Diba had had a long period of practice without regulatory concerns prior to the events which gave rise to this case and was an experienced nurse. [PRIVATE]. The panel considered that it could reasonably be inferred, from the information available in 2019, Miss Diba's telephone call in September 2020 and her lack of engagement since that time that [PRIVATE], and could well be contributing to her apparent difficulty in engaging with the NMC at the present time. The panel noted that in September 2020 Miss Diba was giving consideration to her future career*

*intentions, and noted that this would not be an easy decision for her to make. It considered that it would not be unreasonable, in the circumstances of this case, to allow her a further period of time in which to consider her options.*

*The panel noted that Miss Diba had not had the benefit of advice or representation during these proceedings. She may not be aware of the options open to her. Prior to the substantive hearing voluntary removal might have been an option, although this is currently prevented by the ongoing proceedings and the substantive order is in place. However the panel was mindful of guidance which states that in certain circumstances it may be possible to allow an order to lapse on its expiry, allowing a registrant to apply for voluntary removal. Those circumstances include where a registrant is engaging with the NMC and there is clear evidence of a settled intention to retire from nursing and a panel considers that the public would be suitably be protected by a finding of impairment, which would prevent any readmission to unrestricted practice. The panel noted that Ms Diba may not be aware of this guidance.*

*Having reached the decision that Miss Diba's fitness to practise remains impaired, the panel considered the available sanctions, having regard to the Sanctions Guidance.*

*The panel first considered whether to take no action or to impose a caution order, but concluded that both of these would be inappropriate in this case. The panel noted that it had found current impairment and a risk of harm to patients if Miss Diba were to resume unrestricted practice at this stage. No further action or a caution order would not provide protection to the public and would not satisfy the wider public interest considerations in the circumstances. The panel noted, however, that (whilst it could not tie the hands of a future panel), to take no further action might be an option available to a future reviewing panel if, on a future occasion, there was clear evidence of a settled intention to leave the profession.*

*The panel then considered the imposition of a conditions of practice order but considered that such an order would not be sufficient or appropriate in this case. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel noted that in circumstances where it appeared that [PRIVATE], and where it was not clear that she wished to continue in her nursing career, there was no evidence that she would be able or willing to comply with any conditions imposed on her practice. In addition, without any indication of Miss Diba's current state of [PRIVATE] and insight, the panel determined that it was not able to formulate workable or practicable conditions of practice that would adequately address the concerns relating to Miss Diba's practice and protect the public. It concluded that conditions of practice were not workable or appropriate in the circumstances.*

*The panel next considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Miss Diba further time to fully reflect on her future career intentions and whether or not she wishes to seek to return to her nursing career if she [PRIVATE]. The panel noted that before she could safely return to practice, Miss Diba would need to [PRIVATE]. Perhaps more fundamentally, however, if she reaches a settled conclusion that she does wish to leave the profession, a further period of time would enable Miss Diba to provide evidence to a future panel to demonstrate a clear and settled intention to retire from the profession without the stigma of a striking-off order, and the steps she has taken to implement her plans to leave the profession and pursue an alternative career.*

*The panel noted that the failings identified in this case are capable of being remedied, provided [PRIVATE], although there is no evidence that they have been remedied at this stage. It bore in mind that Miss Diba had practised without regulatory concern for a significant period before this episode. It considered that there was no evidence of deep-seated attitudinal issues in this case, and that the failings were not fundamentally incompatible with ongoing registration.*

*In all those circumstances, the panel considered that at this stage, a striking-off order would be disproportionate and inappropriate. It considered that at this stage, the public could be protected, and the wider public interest considerations satisfied, by a lesser sanction which would give Miss Diba the opportunity for a further period of reflection on how she wishes to proceed in light of her ongoing health conditions. However the panel wished to advise Miss Diba that if she continues to be disengaged from the process, a future reviewing panel may potentially consider that a point has come when the situation ceases to be compatible with ongoing registration and a striking-off order becomes the only proportionate outcome.*

*The panel therefore determined that a suspension order is the proportionate sanction at this stage, which would continue to protect the public and satisfy the wider public interest considerations. Accordingly, the panel determined to impose a suspension order for the period of six months, to provide Miss Diba with an opportunity to reflect further and engage further with the NMC. The panel considered that by the end of that period Miss Diba should be able to formalise her decision, and provide evidence to the next panel, as to whether she is able and willing to seek to return to her nursing career, or whether she has instead reached a clear and settled decision to leave the profession. If she requires more time to reach that decision, she can request it on the next occasion.*

*The panel recommends that, if she wishes to avoid the possibility of a future panel considering that a striking-off order is the only proportionate outcome, Miss Diba provide the information recommended below, so that an informed decision can be made on the next occasion about the further progress of this case. She should be aware that a failure to do so, and a further disengagement from the process, may limit the options available to a future panel.*

...

*A future reviewing panel is likely to be assisted by the following:*



- *If Miss Diba has reached a settled intention that she wishes to leave the profession, evidence (in the form of correspondence or a statement by her) giving clear evidence of that intention, together with evidence of any steps she has taken towards leaving the profession or embarking on an alternative career;*
- *If Miss Diba requires further time to consider whether or not she wishes to leave the profession, a clear statement to that effect explaining how much more time she requires;*
- *If Miss Diba wishes to continue with her nursing career:*
- *[PRIVATE]*
- *Statements from [PRIVATE] that Miss Diba may have been engaging with;*
- *References from past and/or current employers, paid or unpaid*
- *A reflective piece which demonstrates Miss Diba's insight into her past failings and [PRIVATE]; and*
- *Evidence of successful completion of training courses with regard to record keeping and safeguarding.*

*In any event, Miss Diba's engagement with the NMC in relation to this case, and her attendance at or participation in the next hearing. She should be aware that in the event that she fails to engage, she runs the risk that a future panel will feel compelled to make a decision in the absence of new information, and the powers open to a future panel will include the imposition of a striking-off order.'*

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

The panel has considered carefully whether Miss Diba'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.

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 Miss Diba's fitness to practise remains impaired.

The panel had regard to the email dated 11 June 2021, sent to the NMC from Miss Diba that states the following:

*'Thank you for information re Meetings, I have no intention to return to Nursing Practice and have chosen to pursue a different career pathway, so I shall not be attending any meetings and request that I am removed from the Register please.*

*Regards*

*Fiona'*

The panel was of the view that there was no information before it to undermine the previous panel's decision in relation to impairment. There was no evidence of any change in the situation since that time. The panel agreed with the reasons set out by the previous panel for finding impairment and adopted them. Those reasons are:

*'The panel noted that it had not received any information from Miss Diba since the last review hearing, other than a vague indication that she may wish to pursue leaving the Register. In the absence of any evidence demonstrating that Miss Diba has [PRIVATE] or remediated the misconduct, the panel was of the view that there remains a risk of repetition. It therefore decided 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 Miss Diba's fitness to practise remains impaired, on grounds of public protection and in the wider public interest.

### **Decision and reasons on sanction**

Having found Miss Diba'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 noted that at the last review hearing Miss Diba was given a further period of time in which to consider her options and career prospects.

The panel had regard to the email from Miss Diba dated 11 June 2021 and it was mindful of guidance which states that in certain circumstances it may be possible to allow an order to lapse on its expiry, allowing a registrant to apply for voluntary removal. Those circumstances include where a registrant is engaging with the NMC and there is clear evidence of a settled intention to retire from nursing and a panel considers that the public would be suitably protected by a finding of impairment, which would prevent any readmission to unrestricted practice. The panel noted that Miss Diba was made aware of this guidance and it was of the view that Miss Diba, in her most recent correspondence with the NMC had not clearly evidenced a settled intention to retire from nursing or what her future prospects may be.

Having reached the decision that Miss Diba's fitness to practise remains impaired, the panel considered the available sanctions, having regard to the Sanctions Guidance.

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 and the nature of the case, and the public protection issues identified, an order that does not restrict registrant'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 [PRIVATE] 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 Miss Diba'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 [PRIVATE] and the misconduct.

The panel next considered imposing a further suspension order. The panel noted that Miss Diba has been suspended since March 2018 and has not demonstrated that she has [PRIVATE]. Further there has been no evidence to suggest that she has remediated her misconduct. The panel was of the view that considerable evidence would be required to show that Miss Diba no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Miss Diba from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 17 August 2021 in accordance with Article 30(1)

This decision will be confirmed to Miss Diba in writing.

That concludes this determination.