

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

**Substantive Order Review Hearing  
Thursday, 27 April 2023**

Virtual Hearing

**Name of Registrant:** Jo Brackley

**NMC PIN** 0810794E

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Adult Nursing - March 2009

**Relevant Location:** Buckinghamshire

**Type of case:** Misconduct

**Panel members:** Derek McFaull (Chair, Lay member)  
Richard Lyne (Registrant member)  
Michael Glickman (Lay member)

**Legal Assessor:** Mark Ruffell

**Hearings Coordinator:** Stanley Udealor

**Nursing and Midwifery Council:** Represented by Jane Carver, Case Presenter

**Miss Jo Brackley:** Not present and unrepresented at the hearing

**Order being reviewed:** Conditions of practice order (12 months)

**Fitness to practise:** Impaired

**Outcome:** **Striking-off order to come into effect on 6 May 2023  
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 Miss Brackley was not in attendance and that the Notice of Hearing had been sent to Miss Brackley's registered email address by secure email on 29 March 2023.

Ms Carver, 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, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Brackley's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Brackley 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 Miss Brackley**

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

Ms Carver referred the panel to *R v Jones* [2002] UKHL 5 and *GMC v Adeogba* [2016] EWCA Civ 162. She further referred the panel to Miss Brackley's email dated 26 April 2023 and submitted that it has been confirmed by Miss Brackley in her email that she will not be attending today's hearing. She submitted that Miss Brackley has voluntarily absented herself from today's hearing and has not requested an adjournment of this matter. In light of this, Ms Carver submitted that an adjournment would be unlikely to

secure Miss Brackley's attendance on a future date and, as this is a mandatory review of the current order which would expire on 6 May 2023, there is a strong public interest in the expeditious review of the case. She therefore submitted that it is fair and appropriate for the hearing to proceed in the absence of Miss Brackley.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Brackley. In reaching this decision, the panel has considered the submissions of Ms Carver, the email from Miss Brackley dated 26 April 2023, 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:

- Miss Brackley has informed the NMC that she is aware of today's hearing and would not be attending;
- No application for an adjournment has been made by Miss Brackley;
- Miss Brackley has voluntarily absented herself;
- There is no reason to suppose that adjourning would secure her 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 and appropriate to proceed in the absence of Miss Brackley.

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

The panel decided to replace the current conditions of practice order with a striking-off order.

This order will come into effect at the end of 6 May 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee on 7 April 2022.

The current order is due to expire at the end of 6 May 2023.

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

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

*'That you, a registered nurse:*

- 1) *On 14 November 2019 administered 500mg of vancomycin to Patient A intravenously when it should have been administered orally.*

***[PROVED BY ADMISSION]***

- 2) *On 23 December 2019 administered prolonged release co-careldopa to Patient B when you should have administered immediate release co-careldopa. **[PROVED BY ADMISSION]***

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

The original panel determined the following with regard to impairment:

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

*The panel took into account that the two incidents occurred within a short period of time and that Miss Brackley made admissions to making unauthorised decisions not to administer the medications as per the prescription. The panel noted that the second incident occurred whilst Miss Brackley was under supervision, however it considered that there was some indication that the supervision may have been inadequate to support Miss Brackley.*

*Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. 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) ...'*

*On the basis of all the information before it, the panel determined that limbs a – c of Dame Janet Smiths “test” are engaged in charges 1 and 2. The panel finds that patients were put at an unwarranted risk of serious harm as a result of Miss Brackley’s misconduct. She had failed to escalate the patient’s unwillingness to take the drug orally, failed to seek advice about how to manage the non-compliance and failed to adequately address the clinical considerations required in making a decision to change the route of administration. Miss Brackley did not have the competence of a nurse prescriber to enable her to make such a decision.*

*The panel is of the view that Miss Brackley’s misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to failure to safely administer medications extremely serious.*

*Regarding insight, the panel considered that Miss Brackley did demonstrate some insight at the time of the incidents in that she was honest and made early admissions to failures. The panel noted that Miss Brackley was able to demonstrate her reflections on the shortcomings and that she accepted where she went wrong. The panel was also mindful of the concerns that Miss Brackley presented as dismissive on a number of occasions when addressing the medication errors. As Miss Brackley was not present at this hearing, the panel did not have evidence of how her insight into the incidents may have developed and her reflections on how she would handle the situation differently in the future. The panel was therefore not satisfied that Miss Brackley has demonstrated sufficient insight and described it as limited.*

*The panel was satisfied that the misconduct in this case is capable of remediation. The panel noted that the failures to administer medications safely and according to the prescription can be remedied. Therefore, the panel carefully considered the evidence before it in determining whether or not Miss Brackley has remedied her practice. The panel took into account that, after the first incident, Miss Brackley was placed under supervision and undertook training in medications management.*

*However, the panel noted that, since the second incident, there is no evidence of remediation or evidence of training that Miss Brackley may have undertaken to address the concerns. The panel did not have any evidence before it to demonstrate that Miss Brackley has taken positive steps towards strengthening her practice. The panel noted that Miss Brackley has indicated her intention of not returning to nursing practice.*

*The panel is of the view that there is a real risk of repetition, and that Miss Brackley is liable to put patients at an unwarranted risk of harm, bring the profession into disrepute and breach fundamental tenets of the profession. The panel noted that Miss Brackley justified her actions by stating that she was doing what she thought was best for the patient. The panel is of the view that Miss Brackley acted outside of her scope of practice in what she did and, when these concerns were put to her, she was described as dismissive on more than one occasion. The panel is therefore of the view that the evidence of attitudinal concerns heightens the risk of repetition.*

*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 as Miss Brackley's acted outside the scope of her practice and in doing so presented a real risk of potential harm to patients in her care.*

*In addition, the panel concluded that public confidence in the profession and the need to uphold proper standards would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Brackley's fitness to practise impaired on the grounds of public interest.*

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

The original panel determined the following with regard to sanction:

*'Having found Miss Brackley's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. 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:*

- *The concerns do not arise from an isolated incident;*
- *Risk of harm to patients;*
- *The second incident occurred after a period of retraining in medications management;*
- *Miss Brackley's insight into the failings was limited; and*
- *Evidence of attitudinal concerns.*

*The panel also took into account the following mitigating features:*

- *Miss Brackley made early admissions to her failings; and*
- *Some evidence of an inadequate level of support in the supervision that was put in place following the first concern.*

*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 risk to the public. 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 Brackley'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 Miss Brackley'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 Miss Brackley'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:*

- The evidence of attitudinal problems are not deep-seated;*
- Identifiable areas of the nurses practice in need of assessment and/or retraining;*
- No evidence of general incompetence;*
- The charges relate to clinical concerns that are remediable;*
- 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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. Balancing all of the factors, the panel determined that the appropriate and proportionate sanction is that of a conditions of practice order.*

*The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Miss Brackley case because the concerns arising from the charges are considered remediable. The panel noted that a suspension order would not address the concerns and would not give Miss Brackley an opportunity to remediate and strengthen her practice.*

*Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will protect the public, as well as mark the importance of*

*maintaining public confidence in the profession and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.*

*The panel determined that the following conditions are appropriate and proportionate in this case:*

*'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.*

- 1. You must limit your nursing practice to substantive employers and not work under an agency.*
- 2. You must keep us informed about anywhere you are working by:*
  - a) Telling your case officer within seven days of accepting or leaving any employment.*
  - b) Giving your case officer your employer's contact details.*
- 3. You must keep us informed about anywhere you are studying by:*
  - a) Telling your case officer within seven days of accepting any course of study.*
  - b) Giving your case officer the name and contact details of the organisation offering that course of study.*
- 4. You must immediately give a copy of these conditions to:*
  - a) Any organisation or person you work for.*
  - b) Any employers you apply to for work (at the time of application).*
  - c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
  - d) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.*

5. *You must tell your case officer, within seven days of your becoming aware of:*
  - a) *Any clinical incident you are involved in.*
  - b) *Any investigation started against you.*
  - c) *Any disciplinary proceedings taken against you.*
  
6. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*
  - a) *Any current or future employer.*
  - b) *Any educational establishment.*
  - c) *Any other person(s) involved in your retraining and/or supervision required by these conditions.*
  
7. *You must ensure that you are directly supervised by a registered nurse of band 6 (or equivalent) or above at any time you are administering medication.*
  
8. *You must send your case officer evidence that you have successfully completed an assessed course on drug administration, including intravenous competency before the first review hearing of this case.*
  
9. *You must work with a supervisor who must be a registered nurse of band 6 (or equivalent) or above to create a personal development plan (PDP). Your PDP must address medications administrations. You must:*
  - *Send your case officer a copy of your PDP in advance of the first review.*
  - *Meet with your supervisor at least every month to discuss your progress towards achieving the aims set out in your PDP and record the outcomes of these discussions in the plan.*
  - *On completion of your PDP you must add to it a reflective piece which outlines your views on acting in the best interest of the patient.*

*The period of this order is for 12 months. The panel determined that this period of time would allow Miss Brackley to consider whether she intends to return to nursing practice, secure nursing employment and demonstrate compliance with the conditions of practice.'*

## Decision and reasons on current impairment

The current panel has considered carefully whether Miss Brackley'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 and the on-table bundle. It has taken account of the submissions made by Ms Carver.

Ms Carver took the panel through the background of the case and referred it to the relevant pages within the bundle.

Ms Carver informed the panel that a striking-off order had been imposed on Miss Brackley's registration by a Fitness to Practise Committee on 21 April 2023 in relation to a case involving professional misconduct and dishonesty. She invited the panel to consider the decision of that committee and the decision of the original panel that imposed the current conditions of practice order, in making its decision in this case. Ms Carver submitted that the underlying issues between the two cases are of a similar nature, namely, a wilful disregard for her employer's instructions and her "*blasé*" attitude towards her misconduct.

Ms Carver referred the panel to Miss Brackley's emails dated 5 June 2022, 26 April 2023 respectively and submitted that although Miss Brackley had indicated that she is currently working in a caring but non-nursing role, she had not provided any testimonial or details of her current employment to the NMC. She submitted that Miss Brackley has not worked as a registered nurse since the imposition of the current order therefore she has not had the opportunity to strengthen her practice, nor has she provided any insight or reflection on her misconduct. Ms Carver therefore submitted that the attitudinal concerns have been heightened, and her fitness to practise remains impaired with the consequent risk of harm to the public.

Ms Carver submitted that since Miss Brackley has indicated her desire to leave the NMC Register, the current conditions of practice order is no longer workable and her continuing attitudinal concerns are fundamentally incompatible with the nursing profession. She therefore invited the panel to impose a striking-off order on the grounds of public protection and in the public interest, and that the order should come into effect at the expiration of the current order to allow Miss Brackley the time to make an appeal with respect to the striking-off order in the other case.

In response to a question from the panel, Ms Carver submitted that although Ms Brackley had indicated that she does not want to continue to practise as a registered nurse, there was a possibility that Miss Brackley could change her mind and decide to return to nursing practice in the future. She submitted that such possibility poses a significant risk to the public and therefore a striking-off order is the appropriate order in this case.

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 Brackley's fitness to practise remains impaired.

The panel noted that the current substantive order was imposed based on the admitted charges that Miss Brackley had acted outside the scope of her practice by deliberately refusing to follow clinical instructions in the administration of medication to patients, which poses a risk of harm to patients and the public. It took account of Miss Brackley's email dated 26 April 2023 where she stated that she had been unsuccessful in securing an employment as a registered nurse and therefore, wished to be removed from the NMC Register. The panel was of the view that Miss Brackley has not yet had the opportunity to strengthen her practice in relation to her failings, has not complied with the current conditions of practice order and there was no evidence to indicate that she has reflected on or demonstrated insight into her failings.

The panel considered that a striking-off order had been imposed on Miss Brackley's registration by a Fitness to Practise Committee on 21 April 2023 in relation to a case involving professional misconduct and dishonesty. It was of the view that although it was not bound by the decisions of that panel, the circumstances of that case demonstrates a similar pattern of disregard for policies and procedures. As this case related to events in 2021, the panel considered that this attitude has persisted over an extended period of time which aggravates the risk of repetition and harm that Miss Brackley poses to patients and the wider public.

In light of this, this panel determined that Miss Brackley is liable to repeat matters of the kind found proved and there remains a risk of harm to the public. The panel 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. It was of the view that a fully informed member of the public, aware of the proven charges in this case, would be very concerned if Miss Brackley were permitted to practise as a registered nurse without restrictions.

For these reasons, the panel finds that Miss Brackley's fitness to practise remains impaired on public protection and public interest grounds.

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

Having found Miss Brackley'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. Whilst the panel considered that Miss Brackley had indicated that she no longer wants to practise as a registered nurse, the panel noted that this desire may stem from her unsuccessful attempts to secure employment as a registered nurse. The panel was of the view that allowing the order to lapse will provide an opportunity for Miss Brackley to return to the nursing profession if she changes her mind in the future and this poses an attendant risk to the public in view of the identified attitudinal concerns and her failure to strengthen her practice.

The panel therefore decided that it would neither protect the public nor be 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 Brackley'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 Miss Brackley'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 neither protect the public nor be in the public interest to impose a caution order.

The panel next considered whether imposing a conditions of practice order on Miss Brackley's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel noted that Miss Brackley has failed to strengthen her practice and she has not complied with the current conditions of practice. The SG indicates that:

*'Conditions may be appropriate when some or all of the following factors are apparent :*

- *no evidence of harmful deep-seated personality or attitudinal problems...'*

In this case, the panel has identified attitudinal problems. Consequently, the panel decided that any conditions of practice order would not be appropriate in this case and would not protect the public nor be in the public interest.

The panel next considered imposing a suspension order. It noted that Miss Brackley does not intend to return to nursing and has not provided evidence of steps taken to strengthen her practice nor provided further insight into her failings. The panel had regard to the NMC's Guidance 'Suspension Order' (SAN-3d) and it was of the view:

- This was not a singular incident of misconduct;
- There is evidence of deep-seated attitudinal problems;
- There is evidence of repetition of behaviour since the incidents;
- The panel was satisfied that Miss Brackley has not shown any insight and continues to pose a significant risk of repeating the behaviour.

In these circumstances the panel determined that a period of suspension could not adequately protect the public nor meet the public interest.

The panel therefore considered a striking-off order. It determined that Miss Brackley's behaviour represented a serious departure from the standards expected from a registered nurse. It determined that the public interest would not be served if the current order was extended. The panel decided that it was necessary to take action to prevent Miss Brackley from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest is a striking-off order. The panel therefore directs the registrar to strike Miss Brackley's name off the register.

This striking-off order will take effect upon the expiry of the current conditions of practice order, namely the end of 6 May 2023 in accordance with Article 30(1).

This will be confirmed to Miss Brackley in writing.

That concludes this determination.