

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

**Substantive Order Review Hearing
Tuesday, 29 August 2023 - Wednesday, 30 August 2023**

Virtual Hearing

Name of Registrant: Joanne Lisa Kilpatrick

NMC PIN 87G1013E

Part(s) of the register: RN1, Registered Nurse- Adult- October 1990
RHV, Registered Specialist Community Public Health Nurse: Health Visitor- September 1994
V100, Community Practitioner Nurse Prescriber- July 2000

Relevant Location: Lancashire

Type of case: Misconduct

Panel members: Shaun Donnellan (Chair, lay member)
Richard Lyne (Registrant member)
Louise Guss (Lay member)

Legal Assessor: John Bromley-Davenport KC

Hearings Coordinator: Yewande Oluwalana

Nursing and Midwifery Council: Represented by Yvonne Ferns, Case Presenter

Mrs Kilpatrick: Not present and unrepresented at today's hearing

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

Fitness to practise: Impaired

Outcome: **Striking-Off order to come into effect on 13 September 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 Mrs Kilpatrick was not in attendance and that the Notice of Hearing had been sent to Mrs Kilpatrick's registered email address by secure email on 17 July 2023.

Ms Ferns, 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 Mrs Kilpatrick'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 Mrs Kilpatrick 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 Mrs Kilpatrick

The panel next considered whether it should proceed in the absence of Mrs Kilpatrick. The panel had regard to Rule 21 and heard the submissions of Ms Ferns who invited the panel to continue in the absence of Mrs Kilpatrick. She submitted that Mrs Kilpatrick had voluntarily absented herself.

Ms Ferns referred the panel to Mrs Kilpatrick's email correspondences to the NMC dated 11 August 2023, where she indicated she would not be attending the hearing and that '*Yes, I'm happy for you to go ahead in my absence*'. Ms Ferns submitted that Mrs Kilpatrick has not asked for an adjournment and there is no reason to suppose that adjourning will secure her attendance in future.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*'.

The panel has decided to proceed in the absence of Mrs Kilpatrick. In reaching this decision, the panel has considered the submissions of Ms Ferns and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Kilpatrick.
- Mrs Kilpatrick has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence.
- There is no reason to suppose that adjourning would secure her attendance at some future date.
- Not proceeding may inconvenience the witnesses, their employer and colleagues.
- 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 Mrs Kilpatrick.

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 13 September 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

The reasons for this decision will be set out below.

Introduction and background

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 panel on 16 August 2022.

The panel is also considering concerns that have been raised regarding a potential breach of Mrs Kilpatrick's conditions of practice order.

The current order is due to expire at the end of 13 September 2023.

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) *In respect of Patient A on 11 October 2016:*

a) Had inadequate infection control in that:

i) [...]

ii) [...]

*iii) Used a parcel as a table for your instruments during the procedure **[PROVED]***

iv) [...]

b) Did not provide proper patient care in that you:

*i) Did not provide adequate consultation prior to the procedures **[PROVED]***

*ii) Did not provide advice regarding side effects of treatments administered **[PROVED]***

*iii) Did not seek written consent prior to the procedures **[PROVED]***

*iv) Did not provide adequate post procedure advice **[PROVED]***

c) *Did not keep accurate records in that:*

i) [...]

ii) [...]

iii) [...]

iv) *Did not adequately document appointment on 11 October 2016*

[PROVED]

2) *In respect of Patient A on 20 October 2016:*

Had inadequate infection control in that:

a) *Attempted to squeeze an abscess when it was not appropriate to do so* **[PROVED]**

3) *Acted outside the scope of your practice in that you:*

a) [...]

b) [...]

c) *Allowed and / or encourage Patient A to use out of date antibiotics* **[PROVED]**

d) *Allowed and /or encouraged Patient A to increase her dose on Flucloxacillin* **[PROVED]**

4) *Did not have professional indemnity insurance in place to cover your treatment of Patient A* **[PROVED]**

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, Ms Kilpatrick's fitness to practise is currently impaired.

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 lives and the lives of their loved ones. 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) *[...]*

The panel finds that patients were put at risk as a result of Ms Kilpatrick's misconduct. Ms Kilpatrick'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 the charges found proved in this case serious.

Although the panel was satisfied that the misconduct in this case is capable of being addressed, there is no information before the panel for it to sufficiently assess the level of insight into her misconduct. It considered that the information put before the panel did not fully address her failings and there is limited information as to what she would do differently should she find herself in a similar situation.

Further, the panel carefully considered the evidence before it in determining whether or not Ms Kilpatrick has taken steps to strengthen her practice. The panel had sight of some training courses which Ms Kilpatrick had undertaken between 2013 and 2020, however there is no information or reflection as to what insight she has gained from this training. In addition, the panel considered that there is no information on any recent, relevant training that Ms Kilpatrick has undertaken in an effort to strengthen her practice directly in relation to the facts found proved. Further, there is no information before the panel regarding Ms Kilpatrick's current practice. In light of this, the panel is of the view that there is a risk of repetition.

The panel 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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and it noted that a fully informed member of the public would be concerned should a finding of impairment not be made. Therefore, the panel finds Ms Kilpatrick's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Ms Kilpatrick'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 Ms Kilpatrick'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:

- *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 considered that Ms Kilpatrick's failings were specifically in relation to her practice as an aesthetic nurse and recognised that it did not extend to her role as a health visitor. The panel also took into account the positive testimonials received from her colleagues in relation to her current and past practice in her role as a health visitor. It had particular regard to the following character statement, dated 15 February 2022, from a senior registered nurse:

'During the time I have known Joanne, her integrity and dedication to her job has never been in doubt. She is an excellent health visitor who is valued and respected by her colleagues and her clients. Joanne's clinical skills including infection control and following evidence-based practice is always evident in her work.

I have closely observed her practice including her prescribing and managing procedures, her practice has always been exemplary.

Joanne has demonstrated her professionalism and dedication during the covid pandemic by assisting in a hospital area to meet increased patient demand and support her colleagues in the nursing profession. Joanne is a dedicated, compassionate and highly skilled practitioner who has had a long career with no issues.

Having talked to Joanne I feel that this incident was an isolated incident that was totally out of character and does not represent the normal standard of Joanne's practice.

[...]

Joanne provides excellent support to her patients, and it would be a loss to the profession if this isolated incident stopped Joanne from continuing to practice.'

The panel determined that it would be possible to formulate appropriate and practicable conditions which would address the failings highlighted in this case.

The panel was of the view that it was in the public interest that, with appropriate safeguards, Ms Kilpatrick should be able to practise as a nurse.

Balancing all these 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 disproportionate and would not be a reasonable response at this stage in the circumstances of Ms Kilpatrick's case.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order, with appropriate safeguards, will mark the seriousness of the case, maintain 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.

In making this decision, the panel carefully considered the submissions of Mr Maini-Thompson in relation to the sanction that the NMC was seeking in this case. However, the panel considered that suspension would be disproportionate at this stage and would not be in the public interest to suspend an otherwise good 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 one employer in a substantive post which must not be an agency.*
- 2. You must not carry out any aesthetic procedures.*

3. *You will send your case officer evidence that you have successfully completed updated training in:*

- *Record keeping;*
- *Medication management;*
- *Infection control; and*
- *Maintaining professionalism;*

4. *You must work with your line manager, mentor or supervisor to create a personal development plan (PDP).*

Your PDP must address the concerns about your:

- *Record keeping;*
- *Undertaking effective consultation;*
- *Working within your scope of practice in relation to medication management;*
- *Infection control;*
- *Maintaining professionalism; and*
- *Adherence to the Code.*

You must:

- *Send your case officer a copy of your PDP within 28 days of this order being in place or on starting employment.*
- *Meet with your line manager, mentor or supervisor monthly to discuss your progress towards achieving the aims set out in your PDP.*
- *Send your case officer a report from your line manager, mentor or supervisor 14 days before the next review hearing.*

This report must show your progress towards achieving the aims set out in your PDP.

5. *You must keep the NMC 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.*

6. *You must keep the NMC 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.*

7. *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.*

8. *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.*

9. *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.*

The period of this order is for 12 months.

Before the order expires, a panel will hold a review hearing. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- *Ms Kilpatrick's engagement and attendance at the review hearing.*
- *Reflective pieces addressing the areas of regulatory concern.*
- *Up to date testimonials from her current employment.*

Fact finding in relation to new alleged concern about breach of condition 7

Prior to conducting the statutory review of the current conditions of practice order, the panel was asked to make findings of fact in respect of a new alleged concern. The NMC alleges that this concern, if proved, amount to a breach of Mrs Kilpatrick's current conditions of practice. The alleged concern is:

'Failure to fully disclose your conditions of practice order to a potential employer (Queensbury Medical Centre) as required by condition 7.'

Ms Ferns submitted that the NMC became aware of the concern raised following an email from Mrs Kilpatrick and then subsequent emails between Ms 1 and Ms 2 who worked at Queensbury Medical Centre. In the view of the NMC this indicated a potential breach of condition 7 of the conditions of practice order currently imposed on Mrs Kilpatrick's registration. Ms Ferns outlined the background of the case and drew the panel's attention to the documentation contained within the evidence bundles. In relation to the new concern, Ms Ferns drew the panel's attention to the email correspondences between Mrs Kilpatrick to her NMC case officer, and the witness statements of Ms 1 and Ms 2.

Background to the alleged concern

In summary, the alleged concern arose while Mrs Kilpatrick attended the Queensbury Medical Centre on 11 April 2023 for a meeting with Ms 1. Mrs Kilpatrick's friend who was a nurse at Queensbury Medical Centre, recommended her for a position as a nurse to administer vaccinations for children, for three hours a week, Ms 1 offered Mrs Kilpatrick the job with a start date of 23 May 2023. From the email correspondences to the NMC it is alleged that Mrs Kilpatrick did not disclose that she was subject to conditions of practice until an email on 17 April 2023 sent to Ms 2, but the details of the conditions of practice order were not disclosed nor was a copy of the order provided as required by condition 7. Mrs Kilpatrick's NMC case officer then informed Ms 2 via email about the conditions of practice order and the offer of employment was subsequently withdrawn by Ms 2.

The panel was mindful that the factual dispute before it was not a formal charge. However, it was being asked to make a finding of fact in relation to the new alleged issue of concern, said to amount to breach of Mrs Kilpatrick's current conditions. This was a matter relevant to the panel's subsequent consideration of the issues of current impairment and sanction, for the purposes of the substantive order review.

The panel was therefore required to have regard to the burden and standard of proof which apply in respect of findings of fact. The NMC was required to prove that the new matter of alleged concern had taken place. The panel therefore bore in mind, as it would be required to do when making any findings of fact, that Mrs Kilpatrick was not required to prove or disprove anything, and that the standard of proof which it must apply is the balance of probabilities. This test means that the panel must decide whether it is more likely than not that the facts occurred as alleged.

The panel had regard to the evidence which had been placed before it. This included documentary evidence - the NMC's bundle, Mrs Kilpatrick's written submissions an email dated 11 August 2023, and the witness statements and oral evidence of Ms 1 and Ms 2. The panel took into account the submissions made by Ms Ferns in relation to the disputed facts. It accepted the advice of the legal assessor.

Ms Ferns submitted that Mrs Kilpatrick breached condition 7, which states that *'you must immediately give a copy of these conditions to a) any organisation or person you work for b) any employer 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'.

She referred the panel to the documentary evidence from the NMC by way of two witness statements by Ms 1 and Ms 2, who have both given live evidence and the panel had the opportunity to test their evidence. The registrant, Mrs Kilpatrick has not attended the hearing but has made written submissions in relation to the breach allegation.

Ms 1 stated in her evidence that the role required a registered nurse working three hours a week and when Mrs Kilpatrick attended the clinic on 11 April 2023, it was for an *"introductory meeting"* but that her friend, had informed her of the position. Ms 1 in her evidence stated that she and Joanne Kilpatrick discussed the position on 11 April 2023 and after the discussion, Ms 1 *"verbally offered"* Mrs Kilpatrick the position and Mrs Kilpatrick *"accepted"* the position and they both agreed a starting date.

Ms Ferns submitted that by Mrs Kilpatrick attending the medical centre, accepting the position and agreeing a starting date, she was applying for the role and that Mrs Kilpatrick was required to provide a copy of her Conditions of Practice to her employer on that date.

Ms 1 was clear in her evidence that it was only later via the HR Manager, Ms 2 that she discovered that Mrs Kilpatrick had a Conditions of Practice Order in place. Ms 2 stated in her evidence that on 12 April 2023 she was asked by Ms 1 to *"do the paperwork"* for Mrs Kilpatrick and she started the HR enrolment process. Ms 2 stated that she contacted Mrs Kilpatrick to get further information from her to put her on the system. It was only on the 17 April 2023 that Mrs Kilpatrick informed her that she had a *'Conditions of Practice Order not to undertake aesthetics'* and she understood aesthetics to mean she could not do *"minor ops"*. Ms 2 confirmed that she had not come across a Conditions of Practice Order before and in relation to the conditions, that Mrs Kilpatrick *'didn't give me any more'*.

Ms Ferns invited the panel to consider that having heard from the witnesses, it may form the view that Mrs Kilpatrick applied for a position with Queensway Medical Centre in the childhood vaccination clinic and upon application of that position, failed to provide to her employer at the time of application, a copy of her conditions of practice order or inform them that she was subject to a conditions of practice order which Ms Ferns submitted was

in breach of condition 7b. Condition 7b specifically states that Mrs Kilpatrick is required to *'immediately give a copy of these conditions' to 'any employer you apply to for work (at the time of application)'*.

Mrs Kilpatrick has stated in her written submissions that when she attended on 11 April 2023, *"I did not mention the practice order at this point"* and it was only in her email of 17 April 2023 to Queensway Medical Centre that she disclosed that she was subject to a Conditions of Practice Order, *'I have a conditions of practice order not to undertake aesthetics'*. Mrs Kilpatrick has also not disclosed the full extent of the conditions in the Conditions of Practice Order to her employer or furnished them with a copy of the conditions as required in Conditions of Practice Order.

Ms 1 further stated that they decided to *'withdraw the offer'* of employment once they heard about Mrs Kilpatrick's Conditions of Practice Order as they *'couldn't support them'* and she *'felt uncomfortable'* that Mrs Kilpatrick had *'withheld this information'* and *'no longer wanted her working at the centre'*.

Ms Ferns submitted that Ms 1 and Ms 2, who both gave live evidence, were credible and reliable witnesses and their evidence was consistent with their statements. She further submitted that in all the circumstances and based on the evidence provided and heard, on the balance of probabilities, Ms Ferns invited the panel to find the breach proved.

The panel's decision regarding the breach

The panel considered the evidence before it, including the oral and documentary evidence of Ms 1 and Ms 2, it also considered Mrs Kilpatrick's written submissions regarding the alleged breach. The panel found that Ms 1 and Ms 2 were credible witnesses who were consistent in their evidence and when questioned, provided cogent responses. It noted that by Mrs Kilpatrick attending Queensbury Medical Centre that this could be seen as an application for the role and therefore she should have disclosed the conditions of practice order then on the 11 April 2023. The panel further noted that when Mrs Kilpatrick did mention her conditions of practice order to Ms 2 via email on the 17 April 2023 she stated *'I have a conditions of practice order not to undertake aesthetics'*. The panel found that

Mrs Kilpatrick downplayed the seriousness of the conditions of practice order and at that moment should have provided the conditions in full to Ms 2.

Mrs Kilpatrick in her email dated 11 August 2023 submitted that, *'I did not mention the practice order at this point as I was unsure whether I even wanted to vaccinate babies and children as it is quite stressful'* and she further stated, *'I realise now that I should have enclosed full details of the order. I wrongly presumed they would look on the NMC website as it is open for all to see. I had printed off a copy of the order to take along on my induction. This was my mistake and I hold my hands up. It was certainly not my intention to deceive in any way'*.

The panel, therefore found on the balance of probabilities that Mrs Kilpatrick breached condition 7 of her existing conditions of practice order, by not disclosing and providing a copy of her conditions of practice order to Ms 1 and Ms 2 at the time of application.

Submissions in relation to the substantive order review

Ms Ferns submitted that Mrs Kilpatrick's fitness to practise remains impaired as she has not demonstrated remediation. Therefore, the risk of harm to the public identified by the initial panel remains. She submitted that a finding of current impairment is necessary for the protection of the public.

She referred the panel to the case of *Abrahaem v General Medical Council* [2008] EWHC 183 (Admin) and submitted that there remains a persuasive burden on Mrs Kilpatrick to demonstrate that she has fully acknowledged why her past professional performance was deficient and also to demonstrate that she has sufficiently addressed her past impairment through insight, application, education, supervision, and/or other achievements.

Ms Ferns submitted that the original panel provided Mrs Kilpatrick its list of recommendations, as it found that there was no information before it to sufficiently assess the level of insight into her misconduct. The panel considered that the information put before it did not fully address Mrs Kilpatrick's failings and there was limited information as to what she would do differently should she find herself in a similar situation.

The original panel considered that there was no information on any recent, relevant training that Mrs Kilpatrick had undertaken in an effort to strengthen her practice directly in relation to the facts found proved. Further, there was no information before the panel regarding Mrs Kilpatrick's current practice. In light of this, the panel was of the view that there is a risk of repetition.

Mrs Kilpatrick has not provided a reflective statement detailing her understanding of the impact of her misconduct upon patients, colleagues, and the nursing profession.

Ms Ferns submitted that today's panel's 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 may therefore be of the view that, in this case, there is a finding of continuing impairment on public interest grounds and for these reasons, Mrs Kilpatrick's fitness to practise remains impaired.

Ms Ferns submitted that there is no information today to undermine the previous finding that Mrs Kilpatrick's practice is currently impaired.

In relation to sanction, Ms Ferns submitted that Mrs Kilpatrick's conduct fell far below the standards expected of a registered nurse and that the appropriate sanction is a suspension order. A suspension order would mark the seriousness of the misconduct and adequately protect the public confidence in the profession.

Ms Ferns submitted that Mrs Kilpatrick has had the opportunity to engage with the process and has not attended the hearing and her engagement has been minimal. Mrs Kilpatrick has not provided a reflection addressing the regulatory concerns, or any testimonials, or any other information such as recent training.

Decision and reasons on current impairment

Having found that Mrs Kilpatrick breached her conditions of practice order, the panel went on to consider carefully whether Mrs Kilpatrick fitness to practise remains impaired as part of the substantive order review.

The panel had careful regard to all of the documentation before it, the submissions from Ms Ferns and the advice of the legal assessor.

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. It has noted the decision of the last panel, but this panel has exercised its own judgement as to current impairment.

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 Mrs Kilpatrick's fitness to practise remains impaired.

The panel noted that the original panel found that there was no information before it to sufficiently assess the level of insight into her misconduct. At this hearing, the panel found that there was no new information to undermine the findings of the original panel and that following the further breach found proved, Mrs Kilpatrick's insight may have worsened.

The original panel determined that Mrs Kilpatrick was liable to repeat matters of the kind found proved. Today's panel has received no information from Mrs Kilpatrick regarding her insight into the serious concerns found proved and the impact upon Patient A, or any recent relevant training that she may have undertaken to strengthen her practice. The panel is of the view that this lack of insight is significantly compounded by Mrs Kilpatrick's breach of condition 7 of her conditions of practice order.

The panel noted Mrs Kilpatrick's explanation regarding the circumstances of the breach of the conditions of practice order, however, gave greater weight to the consistent evidence of Ms 1 and Ms 2.

In light of this, the panel is of the view that there remains a risk of repetition. 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 considered that members of the public would be concerned to learn that a member of the profession was allowed to return to unrestricted practice when there were ongoing concerns and deficiencies in insight and remediation.

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

Decision and reasons on sanction

Having found Mrs Kilpatrick'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 considered Ms Ferns' submissions and accepted the advice of the legal assessor.

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 that it would not protect the public from the risk of harm associated with any repetition of the failings in this case. The panel decided that to take no further action would not serve to protect the public or to satisfy the wider public interest considerations in this case.

The panel 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 Mrs Kilpatrick'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 the failings in Mrs Kilpatrick's practice could not be characterised as being at the lower end of the spectrum and were compounded by her breach of the current conditions, and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that a caution order would not serve to protect the public nor to satisfy the wider public interest considerations in this case.

The panel next considered whether a continuation of conditions of practice on Mrs Kilpatrick'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 having found that Mrs Kilpatrick breached condition 7 and has not complied with her current conditions of practice order, it determined that conditions were no longer appropriate or workable.

The panel considered its decision at the impairment stage and noted that Mrs Kilpatrick, had provided no insight into her failings, she has not taken proactive responsibility for the process of understanding and remedying her past failings, this has prevented conditions working effectively to date in order to protect patients from the risk of harm. Mrs Kilpatrick did not disclose her conditions to her potential employer and in fact tried to trivialise the extent of the conditions by relating it only to '*not undertaking aesthetics*'.

In the circumstances, the panel considered that it was no longer possible to formulate workable conditions of practice which would be effective to protect the public at this time.

The panel next considered imposing a suspension order. The panel noted that Mrs Kilpatrick has indicated that she does not intend to return to nursing and would like her registration to lapse, however the panel could not rely upon this as no formal application had been made to the NMC. The panel also considered that she had not provided any form of evidence in regard to her remorse for her misconduct, neither has she shown steps that she has taken to strengthen her practice or provided insight into her failings.

The panel noted that Mrs Kilpatrick despite the persuasive burden on the registrant, has had minimal engagement with the NMC. It also considered the breach of condition 7 was serious in that she did not disclose she was subject to a conditions of practice order. If the

NMC had not disclosed her full conditions of practice order to the Queensbury Medical Centre, she would have engaged in a nursing role injecting children with vaccinations.

In these circumstances the panel determined that a period of suspension would not be appropriate in this case. The panel noted that despite the unequivocal nature of the wording in condition 7 of the conditions of practice order the registrant managed to secure employment vaccinating children. Mrs Kilpatrick has also failed to comply with the recommendations of the previous panel as to what a reviewing panel may find helpful. The panel was not satisfied that Mrs Kilpatrick has insight and concluded that a significant risk remains of her repeating earlier behaviour if permitted to practice again in the future.

The panel accordingly determined that it was necessary to take action to prevent Mrs Kilpatrick from practising in the future and concluded that the only sanction that would adequately protect the public and serve the wider public interest was a striking-off order. The panel therefore directs the registrar to strike Mrs Kilpatrick'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 13 September 2023 in accordance with Article 30(1).

This will be confirmed to Mrs Kilpatrick in writing.

That concludes this determination.