

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

**Substantive Order Review Hearing  
Wednesday 18 January 2023**

Virtual Hearing

**Name of Registrant:** Mr Simon Fouracre

**NMC PIN** 89A2703E

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Mental Health Nursing – 30 March 1992

**Relevant Location:** Plymouth

**Type of case:** Misconduct

**Panel members:** Dr Katharine Martyn (Chair, registrant member)  
Lorraine Shaw (Registrant member)  
Jane Mcleod (Lay member)

**Legal Assessor:** Juliet Gibbon

**Hearings Coordinator:** Amie Budgen

**Nursing and Midwifery Council:** Represented by Anirudh Mandagere, Case Presenter

**Mr Fouracre:** Not present and was not represented at the hearing

**Order being reviewed:** Suspension order (3 months)

**Fitness to practise:** Impaired

**Outcome:** **Striking-Off order to come into effect on 1 March 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 Mr Fouracre was not in attendance and that the Notice of Hearing had been sent on 2 December 2022 by secure email to the email address that Mr Fouracre had previously used to correspond with the Nursing and Midwifery Council (NMC).

Mr Mandagere, on behalf of the 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 link to the hearing and, amongst other things, information about Mr Fouracre'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 Fouracre 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 Fouracre**

The panel next considered whether it should proceed in the absence of Mr Fouracre. The panel had regard to Rule 21 and heard the submissions of Mr Mandagere who invited the panel to continue in the absence of Mr Fouracre. He submitted that Mr Fouracre had not responded to the NMC with regards to his attendance.

Mr Mandagere submitted that there had been little engagement by Mr Fouracre with the NMC in relation to these proceedings and, 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 Fouracre. In reaching this decision, the panel has considered the submissions of Mr Mandagere. 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 Fouracre;
- Mr Fouracre has not engaged with the NMC since February 2022, and has not responded to any of the emails sent to him about this hearing;
- Mr Fouracre has not provided the NMC with details of how he may be contacted other than at the email address most recently used by him to correspond with the NMC;
- There is no reason to suppose that adjourning would secure Mr Fouracre's 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 Fouracre.

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

The panel decided to replace the current suspension order with a striking off.

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

This is the eighth review of a substantive order originally imposed by a panel of the Fitness to Practise Committee ("FtPC") on 3 May 2018. On that occasion, a suspension order for a period of six months was imposed. The suspension order was reviewed on 26 October 2018, where a panel of the FtPC decided to impose a further suspension order for a period of three months. This order was then reviewed on 31 January 2019, where a panel of the FtPC replaced the suspension order with a conditions of practice order for a period of nine

months. On 28 November 2019, a panel of the FtPC decided to impose a conditions of practice order for a period of 12 months. On 23 October 2020, a panel of the FtPC decided to impose a further conditions of practice order for a period of nine months. On 29 July 2021, a panel of the FtPC decided to impose another conditions of practice order for a period of six months. A review was scheduled to take place on 20 January 2021, but a panel of the FtPC adjourned that hearing. A further review was listed on 24 February 2022 and a panel of the FtPC decided to impose a further conditions of practice order for a period of nine months. This was reviewed on 20 October 2022 when the reviewing panel imposed a suspension order for 3 months.

The current order is due to expire at the end of 1 March 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) On a date prior to 11 August 2016 in respect of Resident A:*

- a) ...*
- b) did not check if the medication had been swallowed;*
- c) ...*
- d) refused to get a glass of water for Resident A when requested by Relative A.*

*2) On or around 12 August 2016 you gave a Resident medication with your fingers, rather than using the spoon.*

*3) On or around 28 September 2016 administered medication to Resident B:*

- a) when he was asleep and/or not sufficiently alert;*
- b) did not check if the medication had been swallowed;*

c) ...

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

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

*‘The panel considered whether Mr Fouracre’s fitness to practise as a registered nurse remains impaired.*

*The panel considered the misconduct identified to be serious, and to relate to Mr Fouracre’s conduct in the performance of his role as a registered nurse. It noted that this case predominantly relates to clinical concerns, particularly medication administration and management.*

*In taking account of the paperwork, the panel considered there to be no new information before it since the last review hearing on 24 February 2022. Mr Fouracre does not appear to have been in contact with the NMC since 2 February 2022, despite emails being sent to the address that he had previously communicated from. The panel noted that on 2 February 2022, Mr Fouracre had indicated that he was completing a full time course, but he would be looking to find nursing work through an agency from around late May 2022. However, as no further communication has been received from Mr Fouracre, the panel had no update as to how his search for employment was going.*

*As no new information had been received by the NMC in relation to this matter, the panel could not be satisfied that Mr Fouracre had made any progress in developing his insight or in strengthening his practice in respect of his misconduct. Mr Fouracre has not provided any evidence of having complied with the conditions of practice order currently imposed against his NMC registration, nor has he provided the panel with any evidence of the steps he has taken to address the outstanding concerns.*

*The panel noted that Mr Fouracre does not appear to have taken the opportunity to address any of the recommendations stipulated by the previous reviewing panel. Of particular note, Mr Fouracre does not appear to have provided a reflective piece since 2018, which he had been told was insufficient in considering the public protection elements of this case.*

*In the absence of any evidence to the contrary, the panel could not be satisfied that the risk of repetition in this case had reduced, or that Mr Fouracre no longer poses a risk to patient safety. Mr Fouracre had not provided any evidence of him having fully addressed his misconduct. It considered there to be a real risk of repetition of the events and a risk of unwarranted harm to the public, should Mr Fouracre be permitted to return to nursing practice without adequate safeguards in place.*

*Therefore, the panel decided that a finding of continuing impairment is necessary on the grounds of public protection.*

*The panel bore in mind the overarching objective of the NMC: to protect, promote and maintain the health, safety and well-being of the public and patients and the wider public interest which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. As Mr Fouracre has not yet addressed the concerns relating to his misconduct, this panel determined that, in these circumstances, a finding of continuing impairment on public interest grounds is required. It was of the view that a fully informed member of the public, aware of all the evidence presented in this case, would be concerned by Mr Fouracre's misconduct and his lack of engagement with the NMC as his regulator. The public would expect a panel to make a finding that Mr Fouracre's fitness to practise remains impaired, in absence of any new evidence to the contrary.*

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

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

*'Having found Mr Fouracre'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 then considered whether to impose a caution order but concluded that this would be inappropriate in view of the risk of repetition identified and the seriousness of the case as this would not place any restrictions on Mr Fouracre's nursing practice. It took account of the SG which 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 did not consider this case to be towards the lower end of the spectrum of fitness to practise. It decided that it would be neither proportionate, nor in the public interest to impose a caution order.*

*The panel next considered whether a further conditions of practice order would be a sufficient and appropriate sanction. Such an order is often appropriate where there are identifiable areas of practice in need of assessment or retraining. It is mindful that any conditions imposed must be relevant, proportionate, measurable and workable.*

*The panel noted that there were identifiable areas of retraining in respect of Mr Fouracre's clinical nursing practice which needed to be addressed. However, despite being given a number of opportunities to do so, Mr Fouracre does not appear to have made significant progress in developing his insight further or in strengthening his practice since the substantive hearing concluded in 2018. In particular, the panel noted that Mr Fouracre has had five conditions of practice orders imposed against his nursing registration during the lifetime of this case, with little evidence of proactive steps to address the outstanding concerns.*

*The panel had received no information to suggest that Mr Fouracre has been complying with his current conditions of practice order, or that he had been attempting to find employment as a registered nurse. The panel was of the view that a key component of a conditions of practice order is engagement and, whilst Mr Fouracre had expressed a desire to return to the nursing profession earlier this year, it considered there to have been a lack of engagement from him in the round as to what his intentions were for the nursing profession.*

*In taking account of the above, the panel determined that at this time, no practical or workable conditions could be formulated to adequately protect patients, given the lack of engagement from Mr Fouracre and his lack of attempts at addressing his misconduct.*

*The panel then went on to consider the imposition of a suspension order.*

*The panel was of the view that a suspension order would allow Mr Fouracre time to fully reflect on his previous misconduct and address the clinical concerns identified, whilst also re-establishing contact with his regulator. Mr Fouracre had been informed by a previous panel that his attempt at a reflective piece did not fully address the outstanding concerns and he has not looked to furnish the panel with any training courses that he has undertaken. The panel considered that a period of suspension would enable Mr Fouracre to take account of the clear recommendations below, and demonstrate what proactive steps he has taken in addressing his misconduct.*

*In having regard to the above, the panel determined that a suspension order would sufficiently satisfy the public interest elements of this case.*

*The panel concluded that a three month suspension order would be the appropriate and proportionate response and would afford Mr Fouracre adequate time to further develop his insight and provide any evidence of him having strengthened his practice in the areas of concern. Mr Fouracre*



*will be able to obtain references which can be provided to a future panel, and also demonstrate the attempts he has made to keep his clinical nursing practice up to date. Mr Fouracre will then be able to attend a review hearing to demonstrate any new-found learning.*

*The panel did move on to consider whether a striking-off order was the appropriate and proportionate response, but it concluded that this sanction would be disproportionate at this stage, given that Mr Fouracre had indicated this year that he would like to return to the nursing profession. However, the panel considered this to be a finely balanced decision, with Mr Fouracre having been warned once previously that a future panel may impose a striking-off order in the absence of any proactive steps taken by him to address the outstanding concerns. The panel wanted to reiterate this message to Mr Fouracre.'*

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

The panel has considered carefully whether Mr Fouracre'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 Mr Mandagere and has accepted the advice of the legal assessor.

Mr Mandagere referred the panel to the background of the case.

Mr Mandagere submitted that a substantive order remains necessary on the grounds of public protection and is also otherwise in the wider public interest.

Mr Mandagere submitted that Mr Fouracre's fitness to practice remains impaired. He informed the panel that there has been no further communication since February 2022 from Mr Fouracre, nor any information regarding his current employment.

Mr Mandagere submitted that there has been no evidence to show that Mr Fouracre has taken any steps to strengthen his practice in the areas of concern nor has provided evidence of any further insight into his misconduct. Furthermore, he submitted that consequently, there remains a risk of repetition and therefore a risk of harm to the public. Mr Mandagere submitted that a finding of impairment remains necessary on the grounds of public protection.

Furthermore, Mr Mandagere submitted that a fully informed member of the public would be concerned by Mr Fouracre's misconduct and lack of engagement with the NMC. Therefore, a finding of impairment is also otherwise in the wider public interest.

Mr Mandagere reminded the panel that a conditions of practice order had been imposed in previous reviews. He submitted that Mr Fouracre had not fully engaged with the conditions in the past and therefore, conditions of practice are no longer workable.

Mr Mandagere submitted that a striking off order is now an appropriate and proportionate order. He submitted, however, that the panel may wish to consider further extending the current suspension order to give Mr Fouracre another opportunity to engage, develop his insight and strengthen his practice.

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 Fouracre's fitness to practise remains impaired.

The panel was of the view that there was no evidence of any change in circumstances since the last review hearing.

The panel noted that the last reviewing panel found that Mr Fouracre had demonstrated insufficient insight due to his lack of engagement. At that hearing, the panel had no new information, nor had it received any reflective piece enabling the panel to consider whether Mr Fouracre understood how his actions put the residents at a risk of harm, why what he did was wrong and how this impacted negatively on the reputation of the nursing profession. Furthermore, Mr Fouracre had not demonstrated how he would manage the situation differently in the future.

In its consideration of whether Mr Fouracre has taken steps to strengthen his practice, the panel took into account that Mr Fouracre has not provided the NMC with any updated training records, nor any evidence of professional development.

The last reviewing panel determined that Mr Fouracre was liable to repeat matters of the kind found proved. Today's panel has heard no new information to demonstrate that Mr Fouracre has strengthened his practice or shown insight into his misconduct. In light of this, this panel determined that Mr Fouracre is liable to repeat matters of the kind found proved. 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 was of the view that a fully informed member of the public would be concerned by the persistent lack of engagement from Mr Fouracre over an extended period of time, despite previous reviewing panels having given him a number of opportunities to address the regulatory concerns. 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 Fouracre's fitness to practise remains impaired.

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

Having found Mr Fouracre's fitness to practise currently impaired, the panel then considered what, if any, order it should make in this case. The panel noted that its powers are set out in Article 30(1) 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 Fouracre'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 Fouracre'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 Fouracre'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 that Mr Fouracre has had ample opportunity to comply with conditions of practice that had been imposed by previous panels. It noted that whilst Mr Fouracre showed some intent to engage with the conditions initially, he did not comply with the conditions of practice in any meaningful way. It noted that Mr Fouracre had previously expressed his difficulty in securing employment, however the panel were of the view that the conditions had been workable and not too onerous. The panel noted that Mr Fouracre had not confirmed whether he to return to nursing practice. In light of this, the panel was of the view that conditions of practice would no longer be workable or proportionate.

The panel next considered imposing a further period of suspension. The panel noted that Mr Fouracre had had limited engagement in the earlier proceedings and has not engaged

with the NMC since 2 February 2022. It noted that the last reviewing panel on 20 October 2022 had no new information and at that time had replaced the conditions of practice order with a 3-month suspension order. Further, Mr Fouracre has not responded to the recommendations of that reviewing panel, has not demonstrated full insight into his previous failings, nor provided any evidence of his strengthened practice. The panel was of the view that considerable evidence would be required to show that Mr Fouracre no longer posed a risk to the public, and this has not been produced. Given its lengthy history and Mr Fouracre's significant lack of engagement, the panel considered that a fully informed member of the public would be concerned if the NMC allowed this case to continue further. The panel determined that a further period of suspension would not serve any useful purpose.

Therefore, the panel determined that it was now necessary to take action to prevent Mr Fouracre 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 1 March 2023 in accordance with Article 30(1).

This decision will be confirmed to Mr Fouracre in writing.

That concludes this determination.