

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

**Substantive Order Review Hearing
Wednesday 18 December 2024**

Virtual Hearing

Name of Registrant: Jacqueline Kaye-Robinson

NMC PIN 09H2593E

Part(s) of the register: Registered Nurse – Sub Part 1 Learning Disabilities Nursing (Level 1) (September 2009)

Relevant Location: Barnsley

Type of case: Misconduct

Panel members: Andrew Qusted Harvey (Chair member)
Jessica Read (Registrant member)
Chris Thornton (Lay member)

Legal Assessor: Graeme Sampson

Hearings Coordinator: Peaches Osibamowo

Nursing and Midwifery Council: Samprada Mukhia, Case Presenter

Ms Kaye-Robinson: Not present and unrepresented

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Suspension order (6 months) to come into effect on 23 January 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 Ms Kaye-Robinson was not in attendance and that the Notice of Hearing had been sent to Ms Kaye-Robinson's registered email address by secure email on 14 November 2024.

Ms Mukhia, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Ms Kaye-Robinson'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 Ms Kaye-Robinson has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision and reasons on proceeding in the absence of Ms Kaye-Robinson

The panel next considered whether it should proceed in the absence of Ms Kaye-Robinson. The panel had regard to Rule 21 and heard the submissions of the case presenter who invited the panel to continue in the absence of Ms Kaye-Robinson. She submitted that Ms Kaye-Robinson had voluntarily absented herself.

Ms Mukhia referred the panel to the documentation from Ms Kaye-Robinson which included an email which states that she is content for the hearing to proceed in her absence.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Ms Kaye-Robinson. In reaching this decision, the panel has considered the submissions of the case presenter, the representations from Ms Kaye-Robinson, and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Ms Kaye-Robinson;
- Ms Kaye-Robinson 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; 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 Ms Kaye-Robinson.

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Ms Mukhia made a request that this case be held in private on the basis that proper exploration of Ms Kaye-Robinson's case involves her health conditions and those of a third party. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Mukhia indicated that she made this application to the extent that any reference to Ms Kaye-Robinson's and the third party's health condition should be heard in

private, as and when such issues are raised in order to protect the privacy of both individuals.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel noted the advice of the legal assessor and determined that it was fair to conduct parts of the hearing in private, when considering issues related to health.

Decision and reasons on review of the substantive order

The panel decided to extend the suspension order for a further 6 months. This order will come into effect at the end of 23 January 2025 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

The original Fitness to Practice panel decided to impose a 12 month suspension order on 20 December 2023.

The current order is due to expire at the end of 23 January 2025.

This 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 20 April 2021, in relation to Patient A*
 - a) Acted contrary to their care plan in that you did not*
 - i) Attempt to de-escalate the situation*
 - ii) offer Promethazine or Lorazepam.*
 - b) [...]*

- c) *Restrained them by allowing two staff members to hold them in a MAPA hold when there was no clinical justification to do so*
- 2) *On 20 April 2021, in relation to Patient A, administered a Promethazine tablet inappropriately in that you:*
- a) *Administered the tablet when Patient A was under restraint*
 - b) *Attempted to administer the tablet via a syringe*
 - c) *[...]*
- 3) *Failed to keep accurate records of the actions in charges 1 and 2 above in that:*
- a) *you did not record how long Patient A was restrained for in the Patient notes*
 - b) *you did not record that you had administered medication whilst Patient A was restrained and via a syringe*
- 4) *That your actions in charge 3 above were dishonest as they did not reflect what had happened. [This charge was found proven in respect of charge 3b only]*

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 found that limbs a, b, c and d were engaged in the test set out in Grant. The panel found that Mrs Kaye-Robinson's conduct put Patient A at risk of serious harm. Her actions brought the profession into disrepute and breached fundamental tenets of the nursing profession. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel took into account Mrs Kaye-Robinson's numerous reflective statements from November 2021, May 2022 and October

2023. The panel noted that there has been limited development of Mrs Kaye-Robinson's insight since her first reflective statement dated November 2021.

It noted that Mrs Kaye-Robinson has not sufficiently demonstrated an understanding of how her actions put Patient A at risk of harm and compromised his dignity, nor has she demonstrated a full understanding of why what she did was wrong and how this impacted negatively on her colleagues and the reputation of the nursing profession.

The panel noted that Mrs Kaye-Robinson has apologised and expressed remorse for her misconduct. However, it noted that the main focus of her reflection has been on how these proceedings have affected her personally. The panel noted that Mrs Kaye-Robinson refers to her health concerns but it had no independent information regarding the impact this may have had on her practice at the time.

The panel was satisfied that the misconduct in this case could be capable of being addressed although it acknowledged that dishonesty is a concern which is more difficult to put right. Therefore, the panel carefully considered the evidence before it in determining whether or not Mrs Kaye-Robinson has taken steps to strengthen her practice. The panel had no evidence before it of strengthened practice such as completion of any relevant training courses. It noted that Mrs Kaye-Robinson has not worked as a nurse since the incident and so there is no evidence of a period of safe and effective practice.

The panel also took account of the character reference provided by Mrs Kaye-Robinson. It was concerned that the author of this reference may not have been aware of the full context in which they were being asked to write it, because no mention of the concerns under investigation is made. The panel was referred to the previous finding of impairment regarding Mrs Kaye-Robinson's practice where a conditions of practice order was imposed for 12 months.

It noted that when the order was revoked in November 2018, Mrs Kaye-Robinson had indicated that that she had coping strategies in place to recognise the stressors that impact on her practice to ensure concerns do not arise again.

The panel noted that despite Mrs Kaye-Robinson's reference to these strategies at that time, further concerns about her practice have been raised. The panel is therefore of the view that there is a risk of repetition based on Mrs Kaye-Robinson's limited insight and the lack of evidence that she has addressed the concerns. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection. The panel bore in mind the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mrs Kaye-Robinson's fitness to practise impaired on the grounds of public interest. Having regard to all of the above, the panel was satisfied that Mrs Kaye-Robinson'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 Mrs Kaye-Robinson'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 is of the view whilst there may be practical or workable conditions that could be formulated to address the clinical concerns of

this case, there are no conditions that could be formulated to address Mrs Kaye-Robinson's lack of respect for Patient A or her dishonesty both of which are a serious departure from the core values of nursing. The misconduct identified in this regard is not something that can be addressed through retraining.

Further, the panel concluded that the placing of conditions on Mrs Kaye-Robinson's registration would not adequately address the seriousness of this case, mark the public interest, neither would it adequately protect the public. The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where some of the following factors are apparent:

- A single instance of misconduct but where a lesser sanction is not sufficient;*
- No evidence of harmful deep-seated personality or attitudinal problems;*
- No evidence of repetition of behaviour since the incident;*
- The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

The panel considered that although Mrs Kaye-Robinson has expressed remorse she has demonstrated limited insight into her misconduct. While Mrs Kaye-Robinson has not repeated the behaviour the panel acknowledged that she has not had the opportunity to demonstrate safe practice as she has not worked in healthcare since the incident.

It noted that Mrs Kaye-Robinson's misconduct was a single instance involving one patient and there was no evidence of harmful deep-seated personality issues. However, the panel noted that Mrs Kaye-Robinson has difficulties managing personal stress which the panel

determined has compromised her safe practice. The panel was satisfied that in this case, the misconduct was not necessarily fundamentally incompatible with remaining on the register.

The panel went on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the personal mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mrs Kaye-Robinson's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order with a review would be the appropriate and proportionate sanction. The panel noted the hardship such an order will inevitably cause Mrs Kaye-Robinson. However, this is outweighed by the public protection and public interest considerations in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse. The panel determined that a suspension order for a period of 12 months with a review was appropriate in this case to mark the seriousness of the misconduct.'

Decision and reasons on current impairment

The panel has considered carefully whether Ms Kaye-Robinson'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 ability to practise kindly, safely and professionally. 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 Ms Kaye-Robinson's email to the NMC on 16 December 2024. It has taken account of the submissions made by Ms Mukhia on behalf of the NMC. She submitted that the persuasive burden is on Ms Kaye-Robinson to prove that she is no longer impaired. Ms Mukhia noted that Ms Kaye-Robinson's email of 16 December 2024 shows that she has reflected on her failings, and acknowledges how she could have acted differently. Ms Mukhia also considered that Ms Kaye-Robinson detailed that she has undertaken a CPD and safeguarding course. However, she noted that certificates were not provided to prove this assertion.

She submitted that Ms Kaye-Robinson showed limited insight in her email, as there was a lack of meaningful reflection. Ms Mukhia highlighted that there is no information showing that Ms Kaye-Robinson has strengthened her practice and, as such, there is a risk of repetition.

Ms Mukhia suggested that a continued period of suspension would be appropriate 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 Ms Kaye-Robinson's fitness to practise remains impaired.

In its consideration of whether Ms Kaye-Robinson has taken steps to strengthen her practice, the panel took into account her email of 16 December 2024 which states that she had continued with CPD and undertaken a safeguarding course. However, no evidence of course completion has been provided, neither was there any application to nursing practice in her reflective statement. Although the panel acknowledged that Ms Kaye-Robinson has been unable to strengthen her clinical

skills in practice, it determined that she could have undertaken courses that directly addressed the original issues or sought work in a healthcare setting.

The original panel determined that Ms Kaye Robinson was liable to repeat matters of the kind found proved. Today's panel has considered Ms Kaye-Robinson's email of 16 December 2024 and found that she has shown limited insight with no meaningful reflection on the charges found proven.

The panel appreciates that Ms Kaye-Robinson stated that she has identified stress management techniques to enable her to handle situations more effectively. However, due to limited insight and a lack of strengthened practice, the panel determined that Ms Kaye-Robinson remains 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 determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Ms Kaye-Robinson's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Ms Kaye-Robinson's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, the public protection issues identified, an order that does not restrict Ms Kaye-Robinson'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 Ms Kaye-Robinson'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 conditions of practice on Ms Kaye-Robinson's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Ms Kaye-Robinson's misconduct, in particular her dishonesty, and that any potential conditions would restrict her practice to such an extent as to amount to an effective suspension.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Ms Kaye-Robinson further time to fully reflect on her previous failings. It considered that Ms Kaye-Robinson needs to apply the learning she has received to her nursing practice and how she will then remedy the significant gaps in her practice as found proved by the original panel. The panel concluded that a further six month suspension order would be the appropriate and proportionate outcome and would afford Ms Kaye-Robinson adequate time to further develop her insight, take steps to strengthen her practice and give a future reviewing panel a clear indication of her future career intentions. It would also give Ms Kaye-

Robinson an opportunity to approach current employers to attest to her honesty and integrity in the workplace.

Although it gave consideration to a more serious sanction, the panel found that a striking off order would be disproportionate at present considering the facts of this case and was not the only sanction that would protect the public. It also considered allowing the current order to lapse on expiry, as that would have the effect of removing Ms Kaye-Robinson from the register. Given that she has expressed an intention to return to practice in due course, the panel considered that not to be appropriate, at present. A further reviewing panel may take a different view, in light of subsequent events.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 23 January 2025 in accordance with Article 30(1).

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Evidence of professional development with application to Ms Kaye-Robinson's nursing practice
- A clear indication of Ms Kaye-Robinson's career intentions
- A character reference from a current employer

This will be confirmed to Ms Kaye-Robinson in writing.

That concludes this determination.