

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

**Substantive Order Review Hearing  
Thursday, 5 December 2024**

Virtual Hearing

**Name of Registrant:** Jo Mullen

**NMC PIN** 02F04130

**Part(s) of the register:** Registered Nurse – RN1, Adult Nurse (June 2002)

**Relevant Location:** London

**Type of case:** Misconduct

**Panel members:** Alan Greenwood (Chair, lay member)  
David Raff (Lay member)  
Melanie Lumbers (Registrant member)

**Legal Assessor:** Attracta Wilson

**Hearings Coordinator:** Abigail Addai

**Nursing and Midwifery Council:** Represented by Elizabeth Hartley, Case Presenter

**Ms Mullen:** Not present and unrepresented at the hearing

**Order being reviewed:** Suspension order (9 months)

**Fitness to practise:** Impaired

**Outcome:** **Conditions of practice order (9 months) to come into effect at the end of 15 January 2025 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 Mullen was not in attendance and that the Notice of Hearing had been sent to Ms Mullen's registered email address by secure email on 5 November 2024.

Further, the panel noted that the Notice of Hearing was also sent to Ms Mullen's representative at the Royal College of Nursing (RCN) on 5 November.

Ms Hartley, 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 of the hearing and that the hearing was to be held virtually. The Notice of Hearing included instructions on how to join and, amongst other things, information about Ms Mullen'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 Mullen 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 Ms Mullen**

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

The panel had regard to the letter sent by Ms Mullen's representative, dated 2 December 2024 which stated:

*'...The Registrant will not be attending the hearing, nor will she be represented. No disrespect is intended by her non-attendance. The Registrant has received the notice of hearing and is happy for the hearing to proceed in her absence. She remains keen to engage with the proceedings.'*

Ms Hartley submitted that Rule 8(6)c is satisfied, and the panel should proceed in absence because this review is mandatory and beneficial to the public interest.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Ms Mullen. In reaching this decision, the panel has considered the submissions of Ms Hartley, the letter from Ms Mullen's representative, 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 Mullen;
- There is nothing to suggest that an adjournment would secure the attendance of Ms Mullen at a future date.
- The letter from the RCN 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;
- Ms Mullen has voluntarily absented herself;
- An assessment into her practice is necessary as the current order expires on 15 January 2025; 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 Mullen.

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

The panel decided to replace the current suspension order with a conditions of practice order for a period of 9 months.

This order will come into effect at the end of 15 January 2025 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fourth review of a substantive conditions of practice order originally imposed for a period of 4 months by a Fitness to Practise Committee panel on 25 February 2022. This was reviewed on 17 June 2022 and the reviewing panel extended the conditions of practice order for a period of 12 months. The last reviewing panel confirmed the conditions of practice order for a period of 9 months. On 16 April 2024, the third reviewing panel decided to replace the conditions of practice order with a nine-month suspension order.

The current order is due to expire at the end of 15 January 2025.

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 8 August 2019 failed to take hourly observations of Patient A who had a recorded NEWS score of 6 at 13:15 hours;*

*2) On 8 August 2019 at around 15:15 hours altered observations on Patient A's notes which had been recorded by Colleague A:*

*a. Respiratory rates;*

*b. NEWS total from 6 to 4;*

*[...]*

*4) On 8 August 2019 you tried to pull the observation chart out of Colleague A's hands;*

*[...]*

6) *On 8 August 2019 asked Colleague A on one or more occasions not to raise a complaint about yourself;*

*[...]*

8) *Your actions in charge 6 showed a lack of integrity in that you put concern for yourself above the interests of a patient.*

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

*Charges 2a, 2b and 6 were found proved by your admission.'*

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

*'The panel considered whether your fitness to practise remains impaired.*

*The panel noted that the last reviewing panel found that you had developing insight. At this hearing the panel determined that your insight remains developing. The panel noted that it had no information to suggest that you wholly accept your role in your wrongdoings and there is no insight from you to suggest that you accept that your actions may pose a risk to patient safety. It referred to the email from Nurse Manager 1, as previously quoted:*

*'When discussed JM appeared to show no concern or accountability to the patient in her care and was dismissive that the deterioration was in part due to JM's failure to monitor the patient's ...'*

*In its consideration of whether you have taken steps to strengthen your practice, the panel took into account the additional training you have undertaken and you have provided the panel with certificates of these. The panel noted that you had not been able to work as a registered nurse for a long period of time before this review took*

*place, and that the information it has suggests that you could not comply with the conditions imposed on your practise.*

*The last reviewing panel determined that you were liable to repeat matters of the kind found proved. Today's panel has received evidence of new concerns surrounding patient safety. Furthermore, that you did not comply with your conditions of practice order. The panel had regard to the 'NMC's Sanctions Guidance' (SG) on breaches of conditions and note this is a serious matter. In light of this, this panel determined that you are 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 your fitness to practise remains impaired.'*

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

*'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 your 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 your 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 imposing a conditions of practice order on your 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 next considered the continuation of the current conditions of practice order. It determined that you had deliberately breached the last order, and referred to the NMC SG which states:*

*'If a nurse, midwife or nursing associate deliberately doesn't comply with an interim or substantive order this will be taken very seriously. This is because it is likely to show a disregard by that person for the steps the NMC has put in place to keep the public safe or uphold confidence in the professions.'*

*On this basis, the panel concluded that a conditions of practice order is no longer practicable or the appropriate order in this case. The panel concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest.*

*The panel determined therefore that a suspension order is the appropriate sanction which would both protect the public and satisfy the wider public interest.*

*Accordingly, the panel determined to impose a suspension order for the period of 9 months which marks the gravity of breaching conditions and the seriousness of your conduct. It considered this to be the most appropriate and proportionate sanction available.'*

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

The panel has considered carefully whether Ms Mullen'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 Ms Mullen's reflective piece and training certificates. Ms Hartley outlined the background of the case and informed the panel that since the last review when Ms Mullen's suspension order replaced the previous conditions of practice order, Ms Mullen has taken further courses and training to address her failings. She brought to the panel's attention the relevant training Ms Mullen had undertaken, namely a National Early Warning Score (NEWS) 2 Training which related to the original charges.

Ms Hartley acknowledged that Ms Mullen is presenting developing insight however, invited the panel to find an order is necessary for public protection and is in the public interest. She submitted that the NMC are neutral on the type of order it chooses to impose. However, if it directs a conditions of practice order, the conditions of the order should be workable and proportionate.

Further, Ms Hartley made reference to the letter sent by the RCN whereby they invited the panel to replace her current suspension order with a conditions of practice order. The latter was supported by Ms Mullen's growing insight into the regulatory concerns and her evidence of following the previous panel's suggestions on demonstrating her insight and strengthened practice. Additionally, the letter urged the panel to amend condition 1 as practising with supervision was particularly restrictive for Ms Mullen.

Ms Hartley acknowledged the difficulty Ms Mullen has faced with securing employment due to the conditions of practice order. However, she told the panel that supervision is a necessary requirement given Ms Mullen's previous breach of conditions 2, 4, and 6a.

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 Mullen's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Ms Mullen had developing insight. At this hearing, the panel determined that Ms Mullen's insight is still developing, however, it considered that she has not fully addressed the gravity of her failings, the potential for serious harm to patients and for damage to public trust and confidence in the nursing profession. The panel recognised that Ms Mullen has begun to address the breach of her previous conditions of practice order. The panel took into account the following statement from Ms Mullen's reflective piece, where she stated:

*'...I didn't understand that I had to disclose my Conditions of Practice order to every clinical area that I worked in. Given the opportunity again I would have disclosed to the clinical areas the condition so that they were aware and could monitor my practice...'*

However, the panel determined that this statement demonstrated a lack of insight and determined that if Ms Mullen had fully understood the purpose and importance of a conditions of practice order, she would have contacted her case officer to clarify any misunderstanding or ambiguity. Additionally, the panel determined that Ms Mullen has not yet demonstrated an in depth understanding of the importance of complying with the conditions of practice order and the implications of her failings. It made reference to a subsection of Ms Mullen's reflective piece which stated:

*'...I was not falsifying observations but merely trying to reflect the patient's status accurately. I demonstrated a lack of professionalism by not following the News2 policy and standard procedures for documentation. I did get a little defensive with the Band 6 because she accused me of falsifying observations which I did not do. There was no harm to the patient...'*

As a result, the panel determined that there is insufficient further reflection into how Ms Mullen's actions could have impacted patient safety, her colleagues and the reputation of the nursing profession. Moreover, Ms Mullen's reflections were more academic than practically based and therefore, a real risk of repetition remains. The panel decided that, in

this case, a finding of continued impairment is necessary on the ground of public protection.

Further, the panel acknowledged the courses and training Ms Mullen had undertaken and determined that some of the training undertaken is relevant to the misconduct found. However, it concluded that as Ms Mullen is not currently working in the nursing profession, she has not had the opportunity to apply any learning in the context of her nursing practice. Therefore, the panel was not satisfied that Ms Mullen's recent training has been embedded within her practice as a registered nurse.

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 Mullen's fitness to practise remains impaired.

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

Having found Ms Mullen'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, and the public protection issues identified, an order that does not restrict Ms Mullen'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 Mullen'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 considered substituting the current suspension order with a conditions of practice order. Despite the seriousness of Ms Mullen's misconduct, there is evidence before the panel today to support that she wishes to return to nursing, has developing insight and has taken steps to strengthen her practice. In view of Ms Mullen's efforts and relevant training, the panel have decided that a conditions of practice order would best support Ms Mullen into returning to unrestricted practice. Further, it will allow Ms Mullen further time to reflect on her failings and develop further insight into how she can embed her learning into the nursing environment.

The panel considered, in accordance with the sanction's guidance, whether it should impose a further suspension order. It determined that such an order was unnecessary and disproportionate having regard to the progress Ms Mullen has made to date.

The panel was satisfied that it would be possible to formulate practicable and workable conditions that, if complied with, may lead to Ms Mullen's unrestricted return to practice and would serve to protect the public and the reputation of the profession in the meantime.

The panel decided that the public would be suitably protected as would the reputation of the profession by the implementation of the following conditions of practice. However, it carefully considered Ms Mullen's previous breaches, therefore varied the conditions accordingly:

'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 immediately give a copy of these conditions to:
  - a) Any organisation or person you work for.

- b) Any agency you apply to (at the time of application) or are registered with for work.
- c) Any employers you apply to for work (at the time of application).
- d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study
- e) 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

2. 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.
3. 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.
4. You must limit your practice to one substantive employer which may include Bank or Agency. If working via an agency or as bank staff, you must limit your nursing practice to contracts for a minimum period of one month in the same unit or same ward/department.
5. You must remain under direct supervision when undertaking observations or record keeping by a nurse of a higher band than you or one who is the same band as you and he/she is senior to you. You must remain under indirect supervision by a nurse of similar seniority as above for all other aspects of your work.

6. You must develop a personal development plan (PDP) in relation to condition 5 above. The log must contain the dates that you carried out each set of observations and be signed by a supervisor on that shift to confirm the charts have been completed correctly and/or identify any errors. You must send your case officer a copy of the log prior to the next review hearing
  
7. You must write a reflective piece which demonstrates your understanding of the importance of integrity in the nursing profession and the workplace and its impact on patient care. This should also contain further reflection of your understanding of the panel's findings and what steps you have taken to strengthen your practice.
  
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 9 months.

This conditions of practice order will take effect upon the expiry of the current suspension order, namely the end of 15 January 2025 in accordance with Article 30(1)

Before the end of the period of the order, a panel will hold a review hearing to see how well Ms Mullen has complied with the order. 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:

- Your continued engagement with the process
- Your attendance at the next hearing
- Testimonials from any paid or unpaid work
- An updated reflective piece as detailed in condition 7 above
- Any relevant training to keep your practice up to date

This will be confirmed to Ms Mullen in writing.

That concludes this determination.