

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

**Substantive Order Review Hearing
Friday 13 December 2024**

Virtual Hearing

Name of Registrant: David Keith Woodall

NMC PIN 01D0143E

Part(s) of the register: Sub part 1
RNMH, Registered Nurse – Mental Health (2 September 2004)

Relevant Location: South Essex

Type of case: Misconduct

Panel members: John Kelly (Chair, Lay member)
Janine Ellul (Registrant member)
Caroline Friendship (Lay member)

Legal Assessor: Charles Parsley

Hearings Coordinator: Peaches Osibamowo

Nursing and Midwifery Council: Represented by Joy Isaacs, Case Presenter

Mr Woodall: Not present and not represented at the hearing

Order being reviewed: Suspension Order (6 months)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry with impairment in accordance with Article 30 (1) on 24 January 2025**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Woodall was not in attendance and that the Notice of Hearing was sent to Mr Woodall's registered email address by secure email on 11 November 2024.

Ms Isaacs, on behalf of the Nursing and Midwifery Council (NMC), submitted that it has 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 Mr Woodall'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 Woodall 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 Woodall

The panel next considered whether it should proceed in the absence of Mr Woodall. The panel had regard to Rule 21 and heard the submissions of Ms Isaacs who invited the panel to continue in the absence of Mr Woodall. She submitted that Mr Woodall had voluntarily absented himself.

Ms Isaacs referred the panel to the email sent by Mr Woodall to the NMC on 11 December 2024, in which he states that he will not be attending the hearing, thus voluntarily absenting himself, and he is content for the hearing to proceed in his absence.

The panel accepted the advice of the legal assessor.

The panel decided to proceed in the absence of Mr Woodall. In reaching this decision, the panel considered the submissions of Ms Isaacs and the email from Mr Woodall. It had regard to relevant case law and to the overall interests of justice and fairness to all parties. The panel noted that:

- In his email of 11 December 2024, Mr Woodall informed the NMC that he received the Notice of Hearing and confirmed he is content for the hearing to proceed in his absence.
- There is no reason to suppose that adjourning would secure his attendance at some future date.
- This is a mandatory review which must take place before the expiry of the existing order of suspension.
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel decided that it is fair to proceed in the absence of Mr Woodall.

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

At the outset of the hearing, Ms Isaacs made a request that this case be held partly in private on the basis that [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Isaacs submitted that [PRIVATE].

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 determined to go into private session as and when issues are raised in relation to [PRIVATE].

Decision and reasons on review of the substantive order

The panel decided to allow the order to lapse upon expiry with impairment at the end of 24 January 2025 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second review of a substantive order, imposed as a conditions of practice order for a period of 18 months by a Fitness to Practice Committee panel (the original panel) on 21 December 2022. The first review of that order took place on 11 June 2024, when a review panel (the first review panel) imposed a six-month suspension order.

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

‘That you, a registered nurse,

1. On 21 October 2018,

a. Administered patient medication from the second half of the MAR chart instead of starting from the top down, resulting in medication being omitted

b. Began to prepare medication for a patient who had not yet arrived

2. On 28 October 2018, did not respond to an alarm

3. On 29 October 2018, did not handover information from the earlier shift

4. ...

5. On 23 June 2019, did not know how to correctly dispense the required volume of liquid medication until prompted

6. On 28 June 2019, wanted to administer lorazepam to a patient without attempting verbal de-escalation

7. On a date unknown, left a razor on the stable door shelf where patients could have accessed it'

In considering impairment, the original panel found the first three limbs of the test in *Grant* to be engaged and, in the light of the lack of evidence from Mr Woodall to demonstrate strengthened practice, it included that there was a risk of repetition. It therefore made a finding of impairment on the ground of public protection. The original panel also concluded that public confidence in the profession would be undermined if a finding of impairment were not made. It therefore made a finding of impairment on the ground of public interest also.

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

'Today's [the first reviewing] panel did not have any new information before it to determine that Mr Woodall's insight had developed, other than a recognition from Mr Woodall that he may be 'struck off'. In relation to remediation, the panel acknowledged Mr Woodall's communication with the NMC stating that he has been unable to find employment as a nurse and that he has not practised as a registered nurse since 2019. However, the panel noted the recommendations made by the previous panel and it did not have before it any suggestion that Mr Woodall had attempted to comply with those recommendations.

...the panel had no information before it to evidence that Mr Woodall had taken any steps to strengthen his practice. In light of this the panel determined that Mr Woodall 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 determined that, in this case, a finding of continuing impairment on public interest grounds is also required. It concluded that a fully informed member of the public, aware of the misconduct found proved and Mr Woodall's lack of insight and remediation, would expect his practice to be

restricted at this time. To do otherwise would undermine the public confidence in the nursing profession and the NMC as a regulator. For these reasons, the panel finds Mr Woodall's fitness to practise remains impaired.'

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

'Having found Mr Woodall'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 next considered the continuation of the current conditions of practice order. It noted that despite the conditions of practice order being in place for 18 months, Mr Woodall has not yet engaged with the order despite having ample opportunity to do so. Further, Mr Woodall has not demonstrated a willingness to comply with the order and that Mr Woodall last communicated with the NMC in January 2024. On this basis, the panel determined that a conditions of practice order is no longer the appropriate order in this case. The panel concluded that conditions of practice are no longer workable in order to sufficiently protect the public or satisfy the wider public interest. The panel seriously considered imposing a striking off order given Mr Woodall's lack of insight, remediation and non-engagement with any of the recommendations made by the previous panel.

However, the panel determined that Mr Woodall should be provided with a final opportunity to return to a nursing career by re-engaging with these proceedings and the NMC as his regulator. The panel therefore decided that a suspension order is the most appropriate sanction at this time, which would both protect the public and satisfy the wider public interest. Accordingly, it determined to impose a suspension order for the period of six months, which would provide Mr Woodall with an opportunity to re-engage with the regulatory proceedings and comply with the suggestions

made by today's panel in order to assist the next reviewing panel. The panel considered this to be the most appropriate and proportionate sanction available.

Decision and reasons on current impairment

The panel has considered carefully whether Mr Woodall'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. Whilst the panel notes the decisions of the original and first review panels, 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 heard and accepted the advice of the legal assessor.

The panel has had regard to all of the documentation before it, including the NMC bundle, and Mr Woodall's email of 11 December 2024.

It took account of the submissions made by Ms Isaacs on behalf of the NMC. She submitted that Mr Woodall has made representations suggesting that he has found the process challenging and has no interest in pursuing his career as a nurse. Ms Isaacs submitted that Mr Woodall has not worked as a nurse since the original substantive hearing, and has shown a lack of reflection and remediation. As such, Ms Isaacs suggests that an order remains necessary to protect the public, and that it is in the public interest to maintain public confidence in the profession.

The panel noted that the original panel found that Mr Woodall had limited insight. At this hearing the panel concluded that this concern remained. The panel has taken note of Mr Woodall's email of 11 December 2024 which indicates a lack of understanding or acceptance of the charges and a lack of insight, whilst demonstrating a disregard for the

nursing profession, and some of his ex-colleagues. Mr Woodall has made no progress and has not engaged in proceedings.

Today's panel has not received any new information suggesting that Mr Woodall has addressed the original issues, and the panel is not aware of any steps taken to strengthen his practice or acknowledged the impact of his actions upon others and the nursing profession itself. Consequently, this panel determined that Mr Woodall is still liable to repeat the matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the ground of public protection.

The panel bore 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 the ground of public interest is also required.

Decision and reasons on sanction

Having found Mr Woodall'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 had regard to the NMC Guidance on '*Removal from the register when there is a substantive order in place*', reference '*REV-3h*', last updated 30 August 2024:

'2. Lapse with impairment

Where the professional would no longer be on the register but for the order in place, a reviewing panel can allow the order to expire or, at an early review, revoke the order. Professionals in these circumstances will automatically be removed from the register, or lapse, upon expiry or revocation of the order. The panel will record that the professional remains impaired.

A panel will allow a professional to lapse with impairment where:

- *the professional would no longer be on the register but for the order in place,*
- *the panel can no longer conclude that the professional is likely to return to safe unrestricted practice within a reasonable period of time;*
- *a striking off order isn't appropriate.*

Public protected by finding of impairment

Before allowing a professional to leave the register by lifting a substantive order or allowing it to expire, the panel should make it clear whether they consider the professional's fitness to practise to be currently impaired.

This is because nurses, midwives or nursing associates, whose registration lapses or are removed from the register after a suspension or conditions of practice order expires or is lifted, can apply for readmission. In looking at any application in the future, and deciding whether the nurse, midwife or nursing associate is capable of safe and effective practice and meets the requirements for health and character, the Registrar (or one of our Assistant Registrars who also make decisions on behalf of the Registrar) would be able to take account of the panel's decision whether the nurse, midwife or nursing associate's fitness to practise was still impaired when they were removed from the register.'

The panel took into account that Mr Woodall's NMC registration expired on 31 August 2021, as such, he only remains on the register due to the current substantive order in place. The panel noted that Mr Woodall clearly indicated that he has no further interest in practising as a nurse. The panel took into account the original and first reviewing panels' decisions and reasons why a striking-off order was considered inappropriate. The panel determined that a striking-off order remains inappropriate and disproportionate in this case given the nature of the misconduct found proved.

The panel is satisfied that a finding of impairment will adequately protect the public and sufficiently address the public interest concerns in this case. In reaching this decision the panel took into account that when the current order expires Mr Woodall will cease to be on the register and he will not be able to return to practice without formally applying to re-join the NMC register, when it would be noted that there was a finding of impairment against his name.

The panel therefore decided to allow the current suspension order to lapse upon expiry on 24 January 2025 in accordance with Article 30(1).

This will be confirmed to Mr Woodall in writing.

That concludes this determination.