

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

**Substantive Order Review Hearing
Thursday, 11 July 2024**

Virtual Hearing

Name of Registrant: Lisa Marie Unsworth

NMC PIN 86J0738E

Part(s) of the register: RN1: Adult nurse, level 1 (20 February 1990)

Relevant Location: Wigan

Type of case: Misconduct

Panel members: Anthony Kanutin (Chair, Lay member)
Janet Fitzpatrick (Registrant member)
Jude Bayly (Registrant member)

Legal Assessor: Suzanne Palmer

Hearings Coordinator: Sabrina Khan

Nursing and Midwifery Council: Represented by Dr Mehedi Rahim, NMC Case Presenter

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

Order being reviewed: Suspension order (8 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into effect on 18 August 2024 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 Unsworth was not in attendance and that the Notice of Hearing letter had been sent to her registered email address by secure email on 12 June 2024.

Dr Rahim, 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 allegations, the time, dates and that the hearing was to be held virtually. It included instructions on how to join and, amongst other things, information about Mrs Unsworth's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In light of all of the information available, the panel was satisfied that Mrs Unsworth has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs Unsworth

The panel next considered whether it should proceed in the absence of Mrs Unsworth. It had regard to Rule 21 and heard the submissions of Dr Rahim who invited the panel to continue in the absence of Mrs Unsworth.

Dr Rahim submitted that there had been no engagement at all by Mrs Unsworth with the NMC in relation to these proceedings, nor any indication that she has sought to instruct new legal representation. As a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

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*’ as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mrs Unsworth. In reaching this decision, the panel has considered the submissions of Dr Rahim, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *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 Unsworth;
- Mrs Unsworth has not responded to any communications sent to her about this hearing and also did not attend the substantive hearing in November 2023;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious disposal of the case as the current order is due to expire in just over a month.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mrs Unsworth.

Decision and reasons on review of the substantive order

The panel decided to impose a suspension order for 12 months.

This order will come into effect at the end of 18 August 2024 in accordance with Article 30(1) of the ‘Nursing and Midwifery Order 2001’ (the Order).

This is the first review of a substantive suspension order originally imposed for a period of eight months by a Fitness to Practise Committee panel on 17 November 2023.

The current order is due to expire at the end of 18 August 2024.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges considered by the original panel were as follows:

'That you, a registered nurse, whilst working at Wrightington, Wigan and Leigh NHS Foundation Trust:

1. *On 12 September 2020, failed to keep accurate patient records, in that you:*
 - a. *Used the same set of acronyms for each patient when they did not require the same care, (NOT proved)*
 - b. *Recorded that you gave continence care to a patient that did not require continence care, (Proved)*
2. *On 31 October 2020, failed to escalate Patient A's high NEWS scores, (Proved)*
3. *On 17 December 2020, were:*
 - a. *Verbally aggressive with colleagues, (Proved)*
 - b. *In the presence of a patient, (Proved)*
4. *On 29 January 2021, failed to keep accurate patient records, in that you:*
 - a. *Used the same set of acronyms for each patient when they did not require the same care, (NOT proved)*
 - b. *Made catheter notes without recording that Patient D was incontinent, (NOT proved)*
 - c. *Recorded Patient D's NEWS scores as both 4 and 0 in the same observation, (Proved)*

5. On 2 April 2021, failed to escalate the deteriorating condition of Patient B and/or Patient C, **(NOT proved)**
6. On 12 May 2021, acted unprofessionally, in that you:
 - a. Entered into an argument with a patient, **(Proved)**
 - b. Positioned yourself close to said patient's face, **(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:

'In coming to its decision, the panel had regard to the case of Grant and the NMC Guidance DMA-1 on impairment.

The panel next went on to decide if as a result of the misconduct, Mrs Unsworth's fitness to practise is currently impaired.

In this regard the panel considered the test of Mrs Justice Cox in the case of CHRE v NMC and Grant in reaching its decision. In paragraph 76, she said:

'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/their fitness to practise is impaired in the sense that S/He/They:

- 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 was of the view that all three limbs a) b) and c) of the above test were engaged and that Mrs Unsworth's misconduct had put patients at unwarranted risk of harm, had brought the nursing profession into disrepute and had breached the fundamental tenets of the profession.

Regarding insight, the panel considered that Mrs Unsworth has demonstrated very poor insight and understanding of how her actions put patients at a risk of harm. The panel noted that in her undated response to the regulatory concerns she makes a mere passing reference to being rude to a patient and appears to put the blame on others. The panel determined that Mrs Unsworth has not demonstrated an understanding of why her conduct was wrong and how it impacted negatively on the reputation of the nursing profession. The panel noted that her responses were deflective and did not show how she would handle the situation differently in the future. She seems to have shown extremely limited remorse.

In its consideration of whether Mrs Unsworth has addressed her practice, the panel took into account that she has not engaged or provided any evidence of any training to address the areas of concern identified. The panel noted that Mrs Unsworth had left the Trust two and a half years ago and there is no information as to what she had been doing in the intervening period. The panel determined that her failure to engage has made it impossible to determine whether she has remediated.

The panel is of the view that Mrs Unsworth's clinical care giving was unprofessional, however her inaccurate record keeping and poor escalation issues should be easily remediable through training. However, the panel noted that she has had multiple opportunities to adapt and amend her

practice to avoid these sorts of errors and it has not made a difference. Mrs Unsworth's attitudinal and interpersonal failings might be harder to remediate. The panel determined that it has seen no evidence of remediation. The panel determined that there is a real risk of repetition and therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect 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.

The panel determined that members of the public and members of the profession would be very shocked and would find it unacceptable were it not to make finding of impairment.

Having regard to all of the above, the panel was satisfied that Mrs Unsworth's fitness to practise is currently impaired.'

The original panel determined the following with regard to sanction:

'The panel was aware that in the Notice of Hearing, dated 5 October 2023, the NMC had informed Mrs Unsworth that it would seek the imposition of a 6 month suspension order with review, if it found her fitness to practise currently impaired.

Having found Mrs Unsworth's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to

the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel has considered this case very carefully and has decided to make a suspension order for a period of eight months with review. The effect of this order is that the NMC register will show that Mrs Unsworth's registration has been suspended.

The panel took into account the following aggravating features:

- *Lack of insight into her failings*
- *A pattern of misconduct over a period of time*
- *Conduct which put patients at risk of suffering harm.*
- *Her repeated bursts of loss of temper, aggression with colleagues and getting angry with a young vulnerable patient*

The panel also took into account the following mitigating feature:

- *Notwithstanding that the panel has concluded that the Covid-19 pandemic was not a key factor in the key issues identified, it noted that these incidents occurred during the Covid-19 pandemic when there were additional stressors in the workplace, including staff shortages.*

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of Mrs Unsworth's failings. The panel decided that it would neither be 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 Mrs Unsworth'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 Mrs Unsworth’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 neither be proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Unsworth’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 which indicates that conditions of practice may be appropriate where:

- 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 was of the view that some of the misconduct found could be addressed through retraining. However, in the absence of any evidence of Mrs Unsworth’s insight into her misconduct and her willingness to adhere to any conditions of practice imposed this would not be appropriate. It noted that relevant training, creation of action plans, and support from her more senior colleagues had all been provided in the period in question but Mrs Unsworth had not responded positively and learned from her mistakes. Moreover, the panel has no information on whether Mrs Unsworth is still practising as a nurse and, if so, whether workable conditions could be

devised which would be practical and relevant in her current workplace if any.

With regard to the attitudinal and behavioural misconduct the panel concluded that there are no practical or workable conditions that could be formulated, given the nature of these charges. The behavioural misconduct identified in this case was not something that can be addressed through clinical retraining.

Furthermore, the panel concluded that the placing of conditions on Mrs Unsworth's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that 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 noted that, to a greater or lesser extent, some of the factors in the SG cited above are not present in this case. This was not a single incident of misconduct, and there is no evidence to demonstrate that Mrs Unsworth has insight, so she continues to pose a risk of repeating her behaviour. However, the panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate at this stage. Given a further period of reflection and retraining, it would be feasible for Mrs Unsworth to deal with her issues and safely return to nursing. The panel also noted that the public interest would be served by a period of suspension and the requirement for a further review.

Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mrs Unsworth's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted there may be potential hardship that such an order may inevitably cause Mrs Unsworth. However this is outweighed by the public interest 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 eight months with review was appropriate in this case to mark the seriousness of the misconduct.

Towards 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.

During the period of suspension, Mrs Unsworth would have an opportunity to demonstrate remediation or, alternatively, discuss the prospect of Agreed Removal with the Registrar.

Any future panel reviewing this case would be assisted by:

- *Mrs Unsworth's engagement with the NMC process and participation in the review hearing*
- *A reflective statement evidencing insight into the misconduct found*
- *Details of what Mrs Unsworth has been doing since May 2021 to demonstrate her ability to escalate concerns appropriately and to keep accurate records*
- *Evidence of what Mrs Unsworth has done to maintain her nursing knowledge and any further training she has undertaken*
- *Testimonials supporting Mrs Unsworth's good attitude at work or at voluntary organisations'*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Unsworth'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 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 Dr Rahim on behalf of the NMC. He briefly outlined the background of the case to the panel and submitted that Mrs Unsworth's fitness to practise remains impaired as there has been no material change since the previous hearing and the suspension order for 12 months should be imposed.

Dr Rahim submitted that the original substantive panel directed that this panel might benefit from a number of factors. However, Mrs Unsworth has not attended today's hearing to provide any new information or provided a reflective statement, nor evidence of how she has kept her knowledge and skills up to date. Hence, there is no information about any remorse and any insight, or indeed any recent efforts she may or may not have

made in order to improve her practice. Therefore, there is no evidence that can undermine the decision of the previous panel.

Therefore, considering all the circumstances, Dr Rahim invited the panel to extend the suspension order by 12 months which will be reasonable and proportionate. This would allow Mrs Unsworth the necessary time and space to demonstrate any insight and strengthening of practice in order to properly move on from her misconduct, taking into account the need to protect the public in the intervening period.

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 Mrs Unsworth's fitness to practise remains impaired.

The panel determined that the concerns against Mrs Unsworth were serious including attitudinal problems. The panel noted that she has not engaged with the proceedings and has not provided the panel with any evidence of reflection, insight, retraining, steps taken to strengthen her practice or work undertaken since the events which resulted in these proceedings. In the absence of evidence of insight, remediation or remorse, the panel considered that Mrs Unsworth has not demonstrated that she is able to practice kindly, safely and professionally. It, therefore, saw no evidence of change or progress since the last hearing and nothing to undermine the previous panel's finding of impairment. The panel determined that there is a real risk of repetition and therefore decided that a finding of 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. The panel was of the view that a well-informed member of the public would be concerned if a finding of impairment was not made for a nurse in these circumstances.

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

Decision and reasons on sanction

Having found Mrs Unsworth'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 not protect the public nor be 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 Mrs Unsworth'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 Mrs Unsworth's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable, and workable. With regard to the attitudinal and behavioural misconduct the panel concluded that there are no practical or workable conditions that could be formulated, given the nature of these charges. The panel notes that some of the issues found proved could be dealt with by conditions but had no information to suggest that Mrs Unsworth would comply with a conditions of practice order. The panel bore in mind the seriousness of the facts found proved at the original hearing

and the lack of insight and development shown since and concluded that a conditions of practice order is not appropriate or proportionate, nor would it adequately protect the public or satisfy the public interest.

The panel considered extending the current suspension order. This was not a single incident of misconduct, and there is no evidence to demonstrate that Mrs Unsworth has insight, so there remains a risk of repetition of her behaviour. The panel was of the view that a suspension order would allow Mrs Unsworth time to fully reflect on her previous failings. The panel concluded that a further 12 months suspension order would be the appropriate and proportionate response and would afford Mrs Unsworth adequate time to develop her insight and take steps to strengthen her practice in a healthcare setting in a non-registered role. It would also give Mrs Unsworth an opportunity to approach past and current health professionals to attest to her good practice and provide documentary evidence that Mrs Unsworth has kept up to date with nursing.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the panel concluded that it would be disproportionate at this stage. Given a further period of time to reflect and retrain, it would be possible for Mrs Unsworth to deal with the issues found proved and safely return to nursing. The panel concluded that the public interest would be served by a period of suspension and the requirement for a further review.

Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mrs Unsworth's case to impose a striking-off order.

However, the panel wished to emphasise to Mrs Unsworth that if she continues to fail to engage with these proceedings, a future panel may consider that matters reach a point where the situation becomes incompatible with ongoing registration and imposes a striking-off order because of a persistent lack of engagement and lack of evidence of progress. It is in her interests to engage with the next review hearing as set out below. If Mrs Unsworth does not wish to return to her nursing career, she may wish to advise the NMC of that and provide evidence about her alternative career path, so that the next panel can consider the option of allowing the order to lapse.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction would continue to both protect the public and satisfy the wider public interest. It considered this to be the most appropriate and proportionate sanction available.

The panel noted there may be potential hardship that such an order may inevitably cause Mrs Unsworth. However, this is outweighed by the public interest in this case.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 18 August 2024 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:

- Mrs Unsworth's engagement with the NMC process and participation in the review hearing
- A reflective statement evidencing insight into the misconduct found
- Details of what Mrs Unsworth has been doing since May 2021 in a paid or unpaid capacity
- Evidence of what Mrs Unsworth has done to maintain her nursing knowledge and any further training she has undertaken
- Testimonials supporting Mrs Unsworth's good attitude at work or at voluntary organisations
- Mrs Unsworth's intention with regard to returning to nursing or whether she wishes to be removed from the register.

This decision will be confirmed to you in writing.

That concludes this determination.

