

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

**Substantive Order Review Hearing  
Friday 22 November 2024**

Virtual Hearing

**Name of Registrant:** Andrew Graham

**NMC PIN:** 86A1262E

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Adult Nursing – 10 April 1989

**Relevant Location:** Torfaen and Cornwall

**Type of case:** Misconduct

**Panel members:** Museji Ahmed Takolia (Chair, lay member)  
Elisabeth Fairbairn (Registrant member)  
Georgina Wilkinson (Lay member)

**Legal Assessor:** John Donnelly

**Hearings Coordinator:** Salima Begum

**Nursing and Midwifery Council:** Represented by Fiona Williams, Case Presenter

**Mr Graham:** Present and unrepresented

**Order being reviewed:** Suspension order (2 months)

**Fitness to practise:** Impaired

**Outcome:** **Order to lapse with impairment, upon expiry in accordance with Article 30(1), namely at the end of 29 November 2024**

## Decision and reasons on review of the substantive order

The panel decided to allow the current order to lapse upon expiry in accordance with Article 30(1).

This order will come into effect at the end of 29 November 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive order, the original panel imposed a conditions of practice order on 31 October 2023. On that occasion, the Fitness to Practise Committee (FtPC) panel decided to impose a conditions of practice order for 12 months. This was reviewed on 18 September 2024, when the first reviewing panel imposed a suspension order replacing the current conditions of practice order with immediate effect in accordance with Article 30(2). It will remain in place until the expiry of your current order, which is due to expire at the end of 29 November 2024.

The panel is reviewing the order pursuant to Article 30(2) 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) *While working as a nurse at [PRIVATE] Between 15 and 17 April 2021 in relation to Patient A breached professional boundaries in that you:
  - a) *while speaking with Patient A's mother said "I won't give her [Patient A] a kiss from you as that you would be inappropriate" or words to that effect; [found proved]*
  - b) ...
  - c) ...
  - d) *had a conversation with Patient A in which you [PRIVATE]; [found proved]*
  - e) ...
  - f) ...
  - g) ...*

- h) ...
  - i) ...
  - j) ...
  - k) ...
- 2) ...
- 3) ...
- i) ...
  - ii) ...
  - iii) ...
- 4) *Between 16 September 2021 and 17 September 2021 while working as a nurse [PRIVATE] you breached professional boundaries in that:*
- a) *during a conversation with Colleague A discussed [PRIVATE] Colleague A that the topic caused upset; **[found proved]***
  - b) ...
  - c) ...
  - d) *discussed the dark web and/or asked Colleague A if they had been on the dark web and/or referred to incidents of abuse on the dark web; **[found proved]***
  - e) ...
- 5) ...
- 6) ...
- i) ...
  - ii) ...
  - iii) ...
- 7) ...
- a) ...
  - b) ...

8) ...

9) ...

i) ...

ii) ...

iii) ...

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

The first panel determined the following with regard to impairment:

*'The panel has had regard to all of the documentation before it, including the NMC bundle, which contains the correspondence between you and your case officer, an NMC Monitoring and Compliance Officer dated between 26 October 2023 and 2 September 2024. It has taken account of the submissions made by Ms Boesche on behalf of the NMC. She informed the panel that this hearing was being held as an early review, and that the NMC was seeking the imposition of a suspension order.*

*Ms Boesche submitted that it appeared that the original panel on 31 October 2023 did not have the information that you have been barred by the Disclosure & Barring Service (DBS) for 10 years. In addition, she submitted that in light of your correspondence with your NMC case officer, there had been a change in risk, in that the risk had increased.*

*Ms Boesche submitted that the correspondence from you, which contained your views on the world in general and your position, mirrored the behaviour which formed part of the original allegations. She submitted that you were imposing your personal views and behaviour despite your case officer asking that you limit your correspondence to the present case alone. Ms Boesche submitted that your behaviour potentially caused emotional harm.*

*The panel also had regard to your submissions. You set out the circumstances of the incident leading to the allegations in April 2021, where you spoke to a patient*

*about a book you had written, after which you say the patient made false allegations about you. You submitted that the references to your correspondence with the NMC case officer mirrored this to a certain degree.*

*You submitted that you had made it clear to the original panel at the substantive hearing that the DBS had banned you “for the most remarkable length of time” considering the nature of your book. You submitted that your NMC case officer did not ask you to stop sending her your written pieces, but that had she asked you to stop, then you would have done so. You submitted that you are being portrayed as a loose canon, but you are just presenting yourself and your view of the world.*

*Ms Boesche then referred the panel to the email sent by your NMC case officer to you on 28 June 2024, which stated:*

*‘...’*

*I would be most grateful if you could kindly stick to sending me documents/evidence and/or updates that directly relates to the conditions of practice order.*

*...’*

*Ms Boesche submitted that your NMC case officer was very tactfully trying to sway you away from sending information which did not relate to the conditions of practice order. She submitted that the case officer’s emails have always been courteous and were just limited to saying “thank you” and “received” in response to your emails. Ms Boesche indicated that she had not seen any other reference to the case officer asking you to stop.*

*You submitted that there was no sense of upset from your case officer as suggested by Ms Boesche. You submitted that the manipulation from the NMC was that you were asked to stop, even though you were not. You submitted that you were simply guided by your case officer about the requirements of the conditions of practice order.*

*In response to questions from the panel, you indicated that you were given three months from the date of the DBS Decision Letter to appeal the decision, and that “the appeal happened at the time”. [PRIVATE].*

*The panel heard and accepted the advice of the legal assessor.*

*In response to the legal assessor’s advice, you submitted that you were being portrayed as a risk to the public, but you were a nurse for 33 years and posed no threat to public safety. You described a particular shift where you cared for a patient who was in significant pain, and submitted that you were one of the better, more compassionate nurses working in the NHS, “with empathy way beyond a very large number of nurses who simply do their job”. You submitted that you were not a threat, but you would agree, in hindsight, that you had been far “too open” with the patient during the night shift in April 2021.*

*You accepted that you are impaired, but that this did not extend to you posing a threat to public protection.*

*[PRIVATE]. You submitted that you have no intentions of returning to nursing practice, but that you would prefer not to be struck-off the register and that you do not deserve to be struck-off. You submitted that you were a good nurse and that should be recognised.*

*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 your fitness to practise remains impaired.’*

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

*‘The panel next considered whether a further conditions of practice order on your registration would still be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and*

*workable. The panel noted that you have been included on the DBS barred lists since November 2022. It also noted your submission that you do not intend to return to nursing practice. In view of this, the panel considered that any conditions of practice order would not be workable and would serve no useful purpose.*

*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 which will replace the current conditions of practice order with immediate effect in accordance with Article 30(2), and will remain in place until the expiry of your current order at the end of 29 November 2024. It considered this to be the most appropriate and proportionate sanction available.'*

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

The panel has considered carefully whether your fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the Nursing and Midwifery Council (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 the on table which included documents sent from yourself on 10 November 2024 via special postage delivery. It has taken account of the submissions made by Ms Williams on behalf of the NMC.

Ms Williams confirmed with the panel that they should have received a 99 page bundle along with a separate 130 page document provided as on table. You also confirmed your intention for these materials to be reviewed by the panel as your written submission. Ms Williams outlined the background of the case and referred it to the relevant pages within the bundle.

She further submitted you were barred by the Disclosure and Barring Service (DBS) on 30 November 2022 due to your case, rendering you unable to practise as a registered nurse. Ms Williams informed the panel, you have the option to ask for a review in 2032 on the DBS by the Children's and/or Adults' Barred Lists. While you have engaged and corresponded with the NMC, you have not demonstrated compliance with any of the recommendations provided by the previous reviewing panel.

Ms Williams told the panel you remain unable to practice as a registered nurse due to your debarment by the DBS. She emphasised this restriction has been in place since November 2022 as a result of your case. Furthermore, Ms Williams reiterated the previous reviewing panel's conclusion that your level of insight into the concerns was self focused and that your reflections primarily centered on [PRIVATE] rather than demonstrating an understanding of the broader implications of your actions on others. She told the panel, there has been no evidence to the NMC, of significant progress or development in your insight that would allow the panel to consider your fitness to practice as not impaired.

In addressing your 130 page submission, Ms Williams told the panel, while it may be intended to illustrate your understanding and learning, she noted that it lacks key element of addressing your actions.

Additionally, the reflective piece fails to address the impact of your actions on the nursing profession or acknowledge the potential or harm caused to the public. Ms Williams emphasised that these omissions reflect a continued lack of accountability and meaningful reflection, leading the NMC to conclude that your fitness to practice remains impaired.

The panel also had regard to your written submissions, it asked you to address the recommendations made by the last reviewing panel in your oral submission, which were;

*' Any future panel reviewing this case would be assisted by:*

- *Your continued engagement with the NMC proceedings.*
- *Evidence of your professional development.*
- *A reflective piece addressing why your actions were inappropriate; how you may have caused distress to Patient A and Colleague A in view of*



*the topic of your conversations; how your actions impacted negatively on the nursing profession; and how you would conduct yourself differently in the future.*

- *Your future intentions regarding your nursing career.'*

You informed the panel that you are not legally represented today and denied accusations made against you, including involvement with the dark web, stating they are untrue. You expressed you are angry over false allegations by a patient and colleagues, the accusation from the last colleague you believe led to the end of your nursing career, though previously, concerns had only resulted in warnings.

You acknowledged regret about mentioning your book but stated that your written submissions explains your case. You said you are accused of being a danger to the public, you believe you are one of the best nurses. You clarified you do not have issues with foreign nurses but you do take issue with the NMC.

You stated that testimonials were submitted at the start of the investigations, and you are unsure of their current whereabouts. The panel asked the Legal Assessor and Ms Williams to verify the historical testimonials existence. Ms Williams told the panel the NMC's position would be that the older testimonials would not address the current issue of impairment.

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 your fitness to practise remains impaired.

The panel agrees with the findings of the previous reviewing panel and also finds you to be self focused, with limited insight, and lacking further development in addressing the concerns raised. At this hearing, the panel heard the following evidence from you;

*'I am not reflecting on my nursing career... I can reflect that it would have been a pretty good idea not to raise the subs of my book.'*

However, it found you remain focused on yourself and continue to place blame on others, rather than demonstrating a clear understanding of your own actions.

The panel did consider the matter raised by you regarding testimonials, but came to the conclusion that even if retrieved, older testimonials will not assist it in addressing your current impairment.

Overall the panel finds that you have not taken steps to address the misconduct or grievances identified in your case. Your submission fails to address outstanding misconduct and demonstrates non compliance with the recommendations set out by the previous panel. It took into account, you have engaged with the NMC, but this engagement has not been meaningful or relevant in addressing the core issues.

Whilst the panel accepts that you maintain your innocence on the charges found proved, it is the panels' view having taken account of your submissions, that you still appear to demonstrate an unwillingness to engage meaningfully with the the earlier panels recommendations. Notably that you should provide a reflection piece, that focuses on the impact of your actions on Patient A and nursing colleagues.

When considering whether you had taken steps to strengthen your practice, the panel found no evidence to indicate any improvement or progress since the last review. On the contrary, they noted signs of deterioration. While the previous panel had identified some developing insight, the panel concluded that you have demonstrated no such progress at this hearing.

In light of this, this panel determined that you are liable to repeat matters of the kind found proved and that you therefore continue to pose a risk to the public. The panel concluded 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.

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

Having found your fitness to practise currently impaired on the grounds of public interest and public protection, 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.

Ms Williams referred to the NMC guidance (REV-3h) regarding sanctions and the removal from the register. She told the panel, in this case, conditions of practice or a suspension order would not be effective in ensuring your return to safe practice. Instead, these sanctions would leave you in a state of uncertainty and would not serve the public interest. She emphasised that, given the circumstances, it is not possible for you to continue practicing as a nurse in the foreseeable future.

Ms Williams also pointed out that it is your responsibility to demonstrate why your actions should not be considered insufficient. She further noted that, while you have engaged with the NMC, you have not addressed the proven concerns since the original sanctions were put in place. In the view of the NMC, remaining on the register is not a workable solution.

In conclusion, Ms Williams stated that the decision is a matter for the panel.

The panel's decision is finely balanced. It has carefully considered your response which followed Ms Williams' submission on behalf of the NMC regarding the proposed sanction. You said that the absence of a representative was detrimental to your case and not in your best interests, this was noted.

Furthermore, you voiced your dissatisfaction with the accusation of racism, which you felt was unfounded. You referenced your written evidence, specifically highlighting the 13 lies you had outlined in your submission, which you believe have been disregarded. Additionally, you emphasised your commitment to effective communication with your patients and reiterated that being unrepresented today undermines your ability to adequately present your position.

The panel heard and accepted the advice of the legal assessor.

The panel has received limited evidence to demonstrate progress with your insight and limited meaningful engagement, which demonstrates negligible progress towards strengthening your fitness to practise.

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 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.

The lower sanctions, namely no further action, caution order and conditions of practice order were considered by the panel, but in view of the seriousness of the case and in light of the decision of the DBS found that taking these actions would not be appropriate.

The panel next turned to consider the NMC guidance (REV-3h) in its decisions on what actions to take. The panel took into account, your intention not to return to nursing.

Reference from the NMC guidance (REV-3h):

***' Removal from the register when there is a substantive order in place***

*This guidance is intended to help substantive order review panels decide what action to take where*

- *a professional hasn't addressed outstanding fitness to practise concerns, and*
- *continuing/imposing a conditions of practice order or suspension order is unlikely to mean the professional will return to safe unrestricted practice within a reasonable period of time.*

*There is a persuasive burden on the professional at a substantive order review to demonstrate that they have fully acknowledged why past professional performance was deficient and through insight, application, education, supervision or other achievement sufficiently addressed the past impairments*

#### *Ways of leaving the register while impaired*

1. ...

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.*

...

3. *Striking off*

*The panel can impose a striking off order, removing the professional from the register. At a substantive order review, the panel will take into account both the concerns themselves and the professional's conduct since they were sanctioned.*

*The panel will ask:*

- *Are there now fundamental questions about the nurse, midwife or nursing associate's professionalism?*
- *Can public confidence in nurses, midwives and nursing associates now be maintained if the nurse, midwife or nursing associate is not struck off from the register?*
- *Is striking-off ngrahmaow the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

*For example, a reviewing panel could impose a striking off order if the professional has shown they clearly lack insight, pose a risk of repeating the behaviour, or their conduct suggests harmful deep-seated personality or attitudinal problems.*

*Cases where is likely to be appropriate include when:*

- *the professional has shown limited engagement and/or insight,*
  - *...*
  - *the professional has otherwise made no or negligible progress towards addressing issues with their fitness to practise.*
- ...'*

While a striking off order could be considered, the panel is of the view that it is not necessary in this particular case. It does however find that there are concerns about your fundamental professionalism that might warrant a striking off order but that in it's view public confidence in the nursing profession can still be maintained without a striking off order. Finally, the panel is satisfied a striking off order is not the only sanction sufficient to protect patients and the wider public.

The panel therefore concludes that allowing the suspension order to lapse with a recorded finding of impairment is proportionate and consistent with your repeated stated desire to leave the profession.

Accordingly, the panel has decided to allow your registration to lapse with a recorded finding of impairment.

The substantive suspension order will expire at the end of its current period of imposition, in accordance with Article 30(1).

This means that your PIN will lapse, and you will cease to be a registered nurse, making you unable to practise as such. Should you wish to apply for re-registration in the future, the Registrar will consider your current impairment as part of the re-registration process.

The suspension order will be allowed to lapse at the end of the current period of imposition, namely the end of 29 November 2024 in accordance with Article 30(1).

This will be confirmed to you in writing.

That concludes this determination.