

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

**Substantive Order Review Hearing
Tuesday 15 October 2024**

Virtual Hearing

Name of Registrant: Francis Dike

NMC PIN 06H2816E

Part(s) of the register: Registered Nurse – Sub Part 1
Mental Health Nursing (21 September 2006)

Relevant Location: Bedfordshire

Type of case: Misconduct

Panel members: Fiona Abbott (Chair, lay member)
Gillian Tate (Registrant member)
Kiran Musgrave (Lay member)

Legal Assessor: Michael Hosford-Tanner

Hearings Coordinator: Rose Hernon-Lynch

Nursing and Midwifery Council: Represented by Giedrius Kabasinskas, Case Presenter

Francis Dike Present and unrepresented

Order being reviewed: Conditions of practice order (9 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (9 months) to come into effect on 22 November 2024 in accordance with Article 30 (1)**

Decision and reasons on review of the substantive order

The panel decided to impose a further Conditions of Practice Order for nine months.

This order will come into effect at the end of 22 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 originally imposed by a Fitness to Practise Committee panel on 25 May 2023. The first order was a suspension order for a period of eight months. This was reviewed on 16 January 2024 and a conditions of practice order was imposed for nine months.

The current order is due to expire at the end of 22 November 2024.

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. In relation to Service User 1, failed to ensure as of 25 October 2018 that their care plan set out clearly and/or at all:

1.1 with respect to the use of a Hoist:

1.1.1 what sort of hoist should be used

1.1.2 what sort of sling should be used

1.1.3 how many members of staff should operate the hoist

1.2 with respect to meal preparation:

1.2.1 what the risks were

1.2.2 what level of support Service User 1 required

1.2.3 what their preferences were

1.3 with respect to pressure sores:

1.3.1 ...

1.3.2 how staff could prevent pressure areas developing

1.3.3 whether Service User 1 could reposition themselves

1.3.4 how Service User 1 needed support

1.3.5 what action to take should their skin start to break down.

1.3.6 ...

2. ...

3.1 ...

3.2 set out adequately and/or at all how catheter and/or stoma care should be provided safely

4. In relation to Service User 2, failed to ensure that staff had any or adequate specialist training in catheter and/or stoma care

5. In relation to Service User 3, failed to ensure as of 25 October 2018 that the section of their Care Plan entitled 'Functional Electronic System' set out clearly and/or at all:

5.1 what FES equipment does

5.2 how FES equipment should be used

5.3 how long FES equipment should be used for

5.4 the risk of incorrect use or overuse

6...

7. ...

8. ...

9...

10. In relation to Service User 9, between 24 May 2018 and 5 June 2018, failed to ensure that they received any and/or adequate care in relation to food shopping and/or food preparation

11. As of 18 September 2018, in respect of one or more Service Users, failed to ensure that the service had, or had available, accurate and complete incident and accident records

12. In respect of recording of care calls:

12.1 failed to ensure that staff had been fully trained in the use of the CM2000 call system prior to its introduction

12.2 as of 18 September 2018, failed to ensure that at least one of CM2000 and paper records, or the two combined, provided a complete record of calls.

12.3 as of 18 September 2018, failed to ensure that there was evidence of all calls which had taken place since the introduction of the CM2000 call system

13. As of 25 October 2018 Failed adequately or at all to:

13.1 ...

13.2 have in place tools to monitor the standard of care provided during calls

13.3 have in place a system to record health or wellbeing information from calls

13.4 in respect of calls other than those at 2.1 & 6.1 above, ensure that calls took place at times required and/or appropriate to the needs of Service Users

13.5 in respect of calls other than those at 2.2 & 6.2 above, ensure calls were of the required length

13.6 ensure that care during calls was of a proper standard

13.7 identify and/or act upon occasions when the standard of care provided in calls was poor

14. On an unknown date prior to 25 October 2018, with regard to a Service User's suspected UTI, failed to contact their GP or advise their family to do so

15. ...

16. *In relation to the training of staff:*

16.1 *on one or more occasions prior to 25 October 2018 personally provided training to staff in one or more of the following areas when you had no relevant training specific qualification:*

16.1.1 *moving and handling*

16.1.2 *safeguarding of adults and children*

16.1.3 *food hygiene*

16.1.4 *equality and diversity*

16.1.5 *pressure care*

16.1.6 *medicines administration*

16.1.7 *health and safety*

16.1.8 *first aid*

16.1.9 *the Mental Capacity Act 2005*

16.2 *in respect of one or more of the areas at*

16.1.1 - 16.1.9 *above on one or more occasions provided training which was inadequate.*

16.3 *failed to ensure that spot checks of staff competency:*

16.3.1 *were adequate in number*

16.3.2 addressed safeguarding

16.3.3 addressed medication administration

16.3.4 assessed the performance of individual staff

16.4 with regard to moving and handling training:

16.4.1 failed to provide any or adequate practical training

16.4.2 failed to have in place effective monitoring to ensure that training was being followed and/or staff were competent

17...

18. With respect to complaints, failed to have in place and/or make use of:

18.1 a written policy for dealing with complaints

18.2 an effective system to:

18.2.1 monitor complaints

18.2.2 ensure complaints were acted upon

18.2.3 improve the Service in light of complaints

19. ...

20. In respect of reportable concerns:

20.1 on or about 22 December 2016 you became aware of a reportable concern but failed to report it until 20 February 2018

20.2 on or about 09 September 2017 you became aware of a reportable concern but failed to report it until 20 February 2018

20.3 on or about 04 October 2017 you became aware of a reportable concern but failed to report it until 20 February 2018

20.4 on or about 21 December 2017 you became aware of a reportable concern but failed to report it until 01 May 2018

20.5 on or about 08 June 2018 you became aware of a reportable concern but failed to report it until 30 August 2018

20.6 on or about 06 June 2018 you became aware of a reportable concern but failed to report it until 30 August 2018

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

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

'The panel had sight of two testimonials and a reflective statement provided by you. The panel took into account the evidence which you provided but considered that it did not fully address the clinical issues in this case. The panel noted that the reflection was relatively brief. Although you attempted to complete a recognised model of reflection, it did not address the core issues and was lacking in detail. The panel considered that the reflection focused on you as a business owner and did not address the concerns about public protection and public interest. 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 first reviewing panel determined the following with regard to sanction:

'The panel considered substituting the current suspension order with a conditions of practice order. Despite the seriousness of your misconduct, there has been evidence produced to show that your insight has begun to develop, you have demonstrated remorse, and there was no evidence of underlying attitudinal issues. You have indicated that you wish to return to nursing.

The panel was satisfied that it would be possible to formulate practicable and workable conditions that would allow you to return to unrestricted practice and would serve to protect the public and the reputation of the profession in the meantime.'

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 NMC has defined fitness to practise as the ability of a registered nurse to practise in a safe, kind and professional manner. 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 oral evidence provided under oath by you. It has taken account of the submissions made by Mr Kabasinskas on behalf of the NMC.

Mr Kabasinskas submitted that the burden is on the registrant to show that they are no longer impaired. Mr Kabasinskas also submitted that you have been unable to obtain work as a nurse and have not provided:

- Evidence of good nursing practice
- Evidence of written testimonials

to show that the risk to the public has been reduced or alleviated.

Mr Kabasinskas noted that, as there has been no change in circumstances and no new information provided by you, the NMC submits that you remain impaired both on grounds of public protection and public interest.

Mr Kasabsinskas stated the NMC's position is that the current conditions of practice order should be extended for a further nine months. Mr Kabasinskas highlighted that, whilst condition four of the current order is very clear, condition five does not stipulate a duty on the registrant to submit the reflective practice profile to the NMC, and so queried the enforceability of this condition.

Mr Kabasinskas requested that, if the current conditions of practice are maintained, further clarity is provided with regards to condition five. However, Mr Kabasinskas clarified that the NMC was content to leave it to the panel to decide the terms of any specific conditions of practice.

The panel also had regard to your oral evidence.

You reaffirmed that your issue is with the Care Quality Commission and not the NMC and that there have been *"no problems [with regards to your] practice as a nurse until today"*.

You told the panel that your previous employer was willing to reemploy you. You asserted,

with regards to impairment, that it is unclear whether this was found in regard to your management or nursing.

You reminded the panel that you had been practising as a nurse for a significant period of time, and that your previous employer had said, as noted in the bundle, you had been a very good nurse.

You stated that the issues that arose leading to proceedings were with regards to difficulties you had in finding suitable and sufficient employees which affected your management. You disputed the previous finding of no insight. You stated *"I am very sorry and pray it will not happen again"* and reflected with regards to issues which arose not on the business side that *"it is not good what happened"*. With regards to staff shortages which you experienced as a manager, you acknowledged that you could have closed the service and that is a mistake that you made in not doing so.

Mr Kabasinkas asked you if you had completed any training courses since the previous hearing. You replied that you have not and stated that *"most training is done on site [you] can't do this as you are not able to work"*. You were then asked if you had completed any written reflections which reflected on the issues raised by the previous panel. You stated that you could not do more reflections since the last hearing as you have not been able to practise as a nurse. You reiterated *"if I'm not working what can I reflect on if I'm not allowed to work"*.

Mr Kabasinkas enquired as to the current conditions of practice which you state are preventing you from gaining reemployment with your previous employer. You submitted that the conditions *"became overwhelming for them to look at"*. You stated with regards to

the difficulty of the supervision required under condition 2 by a Band 6 nurse that *“they are doing their jobs and have a lot on their plates, to add me in as part of their problem, they are not willing to take it”*. When questioned about any issues expressed by a potential employer with regards to Conditions 4 or 5 that *“[they] don’t have time to bring in someone they have to look after”*.

The panel enquired as to your current employment status, and you informed them that you are currently working in an Operational Support Grade role (OSG) for the Ministry of Justice but that you *“need to go back to nursing”*. The panel asked, if you were to return to your previous employer in nursing, what duties you would be undertaking to which you replied that you would be:

- Looking after residents
- Administering medication
- Dealing with care plans and other things

The panel asked you specifically about your previous employer with whom you wished to gain reemployment as a nurse. You informed the panel that it is a nursing home with 60 residents who reside over two wings. You told the panel that on a night shift there are two registered nurses on duty (one in each wing) and a third floating nurse. All are band 5 or above. You informed the panel that during a day shift, there are 4-5 registered nurses on duty. You said you are content not to be the nurse in charge of the shift.

The panel asked you about the various things that you were previously informed of in May 2023 that a future panel would be assisted by. You complied with these in part by the first review in January 2024, when the suggestions were not repeated. The panel noted your attendance at today’s hearing and that you had attended the review in January 2024. You confirmed to the panel that you have not provided an updated reflective statement and that *“if I was working that could have helped me do more reflections”*. You reiterated *“I didn’t update it”*.

The panel gave you the opportunity to provide a verbal reflection regarding the previous inadequate care planning and the impact this had on patients. You stated: *“I will be doing proper care plans which I used to do before anyway”*. When asked you then elaborated on what constitutes a proper care plan, the importance of adequate risk assessments and you provided examples of what constitutes a risk. You included examples regarding patient malnutrition and fire.

The panel then asked you if you were able to provide any reports or appraisals from a manager to which you replied that you were not. You stated that you have *“just started with the MoJ and never thought it was so necessary to bring”*. You also confirmed to the panel that you have not provided an updated reference.

The panel also asked if you had, as you mentioned in a previous hearing, undertaken a course on diabetes. You informed the panel *“that was my plan then but not now”*.

You asked the panel to *“look at my work as a nurse”* and consider your activities and work as a nurse and not as a registered manager of a company.

The panel heard and accepted the advice of the legal assessor. The legal assessor advised the panel that there is no burden on you to establish that you are no longer impaired and impairment is a matter for the judgement of the panel, where there is no burden of proof on either side. However, from a practical point of view, the panel does need to be shown that there has been a change in the situation since the finding of the last reviewing panel that your fitness to practise was impaired in January 2024.

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 noted that the last reviewing panel found that you had developing insight. The panel carefully considered the NMC Guidance set out in REV 3-a:

- *'Has the nurse, midwife or nursing associate complied with any conditions imposed? What evidence has the nurse, midwife or nursing associate provided to demonstrate this? What is the quality of that evidence and where does it come from?*
- *Does the nurse, midwife or nursing associate show insight into their failings or the seriousness of any past misconduct? Has their level of insight improved, or got worse, since the last hearing?*
- *Has the nurse, midwife or nursing associate taken effective steps to maintain their skills and knowledge?*
- *Does the nurse, midwife or nursing associate have a record of safe practice without further incident since the last hearing?*
- *Does compliance with conditions or the completion of required steps demonstrate that the nurse, midwife or nursing associate is now safe to practise unrestricted, or does any risk to patient safety still remain?'*

At this hearing, the panel found that you have been unable to comply with conditions set out in your conditions of practice order because you have not been able to secure employment as a nurse. The panel noted that you have not provided evidence since the last hearing of:

- Training
- Reflection
- References

The panel noted that no new information has been provided since the last hearing. However, the panel also noted that in today's hearing you:

- Took the oath and answered questions
- Expressed to the panel the importance of care planning and risk assessment and you provided examples of each

The panel determined that, through answering questions posed to you, you demonstrated further developing insight.

With regards to your level of insight, the panel determined that it has further improved, albeit slightly, but that you have not undertaken training, provided any written self-reflections nor have you undertaken self-study.

The panel noted that you do not have a record of safe practice without further incident since the last hearing as you have been unable to gain employment in the nursing profession.

The panel found that there has been no change in circumstances since the previous hearing in January 2024.

The panel found that you have not demonstrated full remediation, nor have you taken steps to improve your practice. 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 found that the public would expect a nurse impaired on public protection grounds to demonstrate safe practice. 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, 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.

The panel 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 further 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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there were no deep-seated attitudinal problems in this case, there are conditions that could be formulated which would protect patients during the period they are in force and that are workable, measurable and proportionate. Accordingly, the panel has amended the conditions of practice order made in January 2024 to reflect the submission made by the registrant the current conditions of practice are unnecessarily restrictive.

The panel was of the view that to impose a suspension order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case because there is no evidence of deep-seated attitudinal issues.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 9 months, which will come into effect on the expiry of the current order, namely at the end of 22 November 2024. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

‘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 only work with one employer, which must not be an agency or a temporary staffing organisation.
2. You should not work as the nurse in charge of a shift. You should work at all times on the same shift as, but not always be directly supervised by, another registered nurse.
3. You should have supervision meetings monthly to discuss your clinical practice.
4. You should undertake relevant training courses agreed by your manager/ supervisor which include care planning and risk assessment with regard to patients. A record of your training should be sent to your NMC Case Officer before your next review hearing.
5. You should write a reflective piece monthly and discuss this with your supervisor during your monthly meeting. This reflective piece should include:
 - a sample of a cases of where you have undertaken care planning/risk assessments;
 - the nature of care given

This should be submitted to your NMC Case Officer before your next review hearing.

6. You must provide a document from your supervisor which:

- Confirms that monthly meetings have taken place
- Details your progress and practice

This should be submitted to your NMC Case Officer before your next review hearing.

7. You must keep us 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.

8. You must keep us 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.

9. You must immediately give a copy of these conditions to: a) Any organisation or person you work for. b) Any employers you apply to for work (at the time of application). c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

10. 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.

11. 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 for nine months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 22 November 2024 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 you have 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:

- Attendance at any future hearing
- If you are not working in a nursing capacity and unable to comply with the conditions set out above, then to provide the panel with reflective statements relating to nursing practice, and evidence of relevant training including training regarding risk assessment and care planning

This will be confirmed to you in writing.

That concludes this determination.