

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

**Substantive Order Review Hearing
Monday, 14 October 2024**

Virtual Hearing

Name of Registrant: Violet Yvonne Horsford

NMC PIN 01C2189E

Part(s) of the register: Registered Nurse – Sub part 1
Adult Nursing – 26 April 2006

Relevant Location: West Midlands

Type of case: Misconduct

Panel members: Sarah Lowe (Chair, lay member)
Rosalyn Mloyi (Registrant member)
Susan Laycock (Lay member)

Legal Assessor: Simon Walsh

Hearings Coordinator: Aditya Kaushik

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

Mrs Horsford: Not present and not represented at the hearing

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Suspension order extended by 6 months in accordance with Article 30(1)(a) of the Order.**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Horsford was not in attendance and that the Notice of Hearing had been sent to Mrs Horsford's registered email address by a secure email on 13 September 2024.

Mr Kabasinkas, 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 ('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 and the date of the hearing, and that the hearing was to be held virtually, including instructions on how to join. Amongst other things, Mrs Horsford was also provided with information about her right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In light of the information available to it, the panel was satisfied that Mrs Horsford was served with the Notice of Hearing in accordance with Rules 11 and 34 of the Rules.

Decision and reasons on proceeding in the absence of Mrs Horsford

The panel next considered whether it should proceed in Mrs Horsford's absence. The panel had regard to Rule 21 of the Rules and heard the submissions of Mr Kabasinkas, who invited the panel to continue in Mrs Horsford's absence. Mr Kabasinkas submitted that Mrs Horsford had voluntarily absented herself from the hearing.

Mr Kabasinkas also referred the panel to the email dated 10 October 2024 sent by Mrs Horsford to the NMC Case Officer indicating that she has no desire to remain on the register and that she is not interested in the outcome of this hearing. The relevant portion of her email is produced below:

'I have no interest if [sic] staying on the register. And furthermore, NMC have reported me to DBS. If I attend panel with a successful outcome. I still have another fight on my hands....'

Mr Kabasinkas also referred the panel to Mrs Horsford's email dated 11 October 2024, sent to the NMC Hearings Coordinator, confirming her unavailability at the hearing. The relevant portion of her email is produced below:

'.....I will not be attending.'

Mr Kabasinkas submitted that there had been no meaningful engagement by Mrs Horsford with the NMC in relation to these proceedings and, consequently, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

Mr Kabasinkas also submitted that from the history of the case it could be seen that Mrs Horsford did not attend the substantive hearing. Therefore, there is a strong public interest in the expeditious disposal of the case as the charges relate to events that occurred in 2018. He concluded that it is fair and in the public interest for the hearing to proceed in the absence of Mrs Horsford.

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 Horsford. In reaching this decision, the panel has considered the submissions of Mr Kabasinkas 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:

- Mrs Horsford received the notice of hearing for the hearing.

- Mrs Horsford has by way of emails dated 10 October 2024 and 11 October 2024 shown her disinterest in the outcome of the present proceedings and indicated her unavailability.
- No application for an adjournment has been made by Mrs Horsford, and
- There is no reason to suppose that adjourning would secure her attendance at some future date.

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

Decision and reasons on review of the substantive order

The panel decided to extend the current suspension order by 6 months.

This order will come into effect at the end of 22 November 2024 in accordance with Article 30(1)(a) 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 6 months by a Fitness to Practise Committee panel on 23 April 2024.

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 are as follows:

'That you, a registered nurse, whilst working at Jubilee Care Home, during the night shift of 27 October 2018:

1. In relation to Resident A:

*a) Grabbed Resident A by the shoulder to move her out of a chair; **[PROVED]***

b) *Held Resident A by her waist and / or pulled her;***[PROVED]**

c) *Held Resident A by the wrist(s) and / or dragged her to a settee;***[PROVED]**

d) *Pushed and / or shoved Resident A onto a settee on one, or more, occasions;*
[PROVED]

.....

6. *Did not make a record of the matters referred to in any and / or all, of the above charges in an incident report:*

a) *Immediately following the incident;***[PROVED]**

b) *Promptly or at all***[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:

'The panel first considered whether the misconduct is capable of remediation. It was of the view that although the concerns were attitudinal in nature, the misconduct in this case was capable of remediation through retraining in managing vulnerable persons with brain diseases and demonstration of sufficient insight into the misconduct.

The panel then went on to consider the efforts Mrs Horsford had made to remediate her misconduct. Regarding insight, the panel was of the view that Mrs Horsford has failed to demonstrate insight into her conduct. It noted that it has not seen any reflections from Mrs Horsford on the impact of her conduct on Residents A, B and C, her colleagues and the nursing profession. The panel was concerned that Mrs Horsford did not demonstrate sufficient understanding of the seriousness of her

conduct but sought to provide justifications for her actions and did not provide detailed steps she would take if similar scenarios should occur in future or to prevent such situation in future.

In considering whether Mrs Horsford had strengthened her nursing practice, the panel took account of the various training courses that Mrs Horsford had completed, and the several testimonials made on her behalf. However, the panel noted that all but one of the training certificates had expired and the various testimonials were made between the period of 2019 and 2020. Therefore, in the absence of up-to-date training certificates in the relevant areas of concern and updated testimonials, the panel was not satisfied that Mrs Horsford had demonstrated sufficient steps to strengthen her nursing practice.

The panel was also of the view that the nature of Mrs Horsford's misconduct was such that it could discourage members of the public from seeking or accessing appropriate care when required for themselves or their vulnerable relations. Family members might well be reluctant to place relations living with brain disease in the care of healthcare providers if they felt that their dignity might be compromised in this way.

In light of this, this panel determined that there is a real risk of repetition of Mrs Horsford's misconduct and therefore concluded 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 to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This 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 had regard to the serious nature of Mrs Horsford's misconduct and the public protection issues it had identified and determined that public confidence in the profession, particularly as the misconduct involved a failure to respect and uphold the dignity of a resident, would be undermined if a finding of impairment

were not made in this case. For these reasons, the panel determined that a finding of current impairment on public interest grounds is required. It decided that this finding is necessary to mark the seriousness of the misconduct, the importance of maintaining public confidence in the nursing profession, and to uphold proper professional standards for members of the nursing profession.

Having regard to all of the above, the panel was satisfied that Mrs Horsford's fitness to practise is currently impaired on both public protection and public interest grounds.'

The original panel determined the following with regard to sanction:

'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 found that Mrs Horsford's misconduct amounted to a breach of fundamental standards of professional conduct and behaviour that a registered nurse is expected to maintain. It noted that Mrs Horsford failed to demonstrate insight into the severity and impact of her misconduct on Residents A, B and C, her colleagues and the nursing profession. The panel further noted that Mrs Horsford failed to fully engage with these proceedings and there was a lack of information about her current nursing practice or current circumstances.

Notwithstanding this, the panel took into account that this was a single instance of misconduct, there was no evidence of harmful deep-seated personality or attitudinal

problems and no evidence of repetition of behaviour since the incident. The panel also recognised that Mrs Horsford had taken some steps to strengthen her nursing practice through completing various training courses in the areas of concern albeit now outdated and there were several positive references made on her behalf between the period of 2019 and 2020. Consequently, the panel was satisfied that the misconduct in this case was not fundamentally incompatible with remaining on the register.

The panel carefully considered the submissions of Mr Radley in relation to the imposition of a striking-off order in this case. It also considered following paragraphs of the SG with respect to imposing a striking-off order:

- Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

However, in taking account of all the evidence before it, including that this was a single instance of misconduct, the limited steps Mrs Horsford had taken to strengthen her nursing practice and the positive testimonials on her behalf, the panel concluded that a striking-off order would be disproportionate. Although Mrs Horsford's misconduct raises questions about her professionalism, it was, in the panel's view, not to the extent that required her removal from the register. Also, in the absence of information about Mrs Horsford's nursing practice or present circumstances, the panel was not satisfied that a striking-off order was the only sanction sufficient to protect the public and to address the public interest considerations in this case. Whilst the panel acknowledges that a suspension order may have a punitive effect, it would be unduly punitive in this case to impose a striking-off order. It was of the view that a striking-off order could deprive the public of a registered nurse who has the potential to return to nursing practice in the future. Therefore, a striking-off order would not serve the public interest considerations in this case.

Balancing all of these factors, the panel concluded that a suspension order would be the appropriate and proportionate sanction to protect the public and address the public interest in this case. It was satisfied that a suspension order for a period of six months would provide Mrs Horsford with an opportunity to demonstrate evidence of sufficient insight into her misconduct and that her fitness to practise is no longer impaired. The panel determined that this order is necessary to protect the public, mark the seriousness of the misconduct, maintain public confidence in the profession, and send to the public and the profession, a clear message about the standard of behaviour required of a registered nurse.

Any future panel reviewing this case may be assisted by:

- A reflective statement from Mrs Horsford using an accepted model of reflection, demonstrating sufficient insight on the incident at the Home, the severity of her misconduct and its impact on Resident A, B and C, her colleagues and the nursing profession.*
- Any updated references or testimonials within the past twelve months attesting to Mrs Horsford's capability to perform her duties, in whatever role, professionally in any paid or unpaid work subsequent to this hearing.*
- Up-to-date relevant training courses undertaken in the areas of concern including in managing challenging behaviours.*
- Mrs Horsford's full engagement and attendance at any future review hearing.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Horsford'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.

The panel has had regard to all the documentation before it, including the NMC bundle and Mrs Horsford's correspondence with the NMC. It heard the submissions made by Mr Kabasinkas on behalf of the NMC. Mr Kabasinkas provided a brief background of the case and gave an account of the original panel's decision on impairment and sanction imposed on Mrs Horsford.

At the outset, Mr Kabasinkas referred the panel to the three limbs of the test of impairment as stated in the case of *Cohen v GMC* [2008] EWHC 581 (Admin).

Mr Kabasinkas referred the panel to the observations of the original panel with respect to insight. He submitted that there was evidence of limited engagement of Mrs Horsford with the NMC before the original panel. He also submitted that the original panel had the benefit of some training courses undertaken by Mrs Horsford to address the concerns around her misconduct. Therefore, the original panel determined that Mrs Horsford's misconduct is remediable. However, the original panel found the said evidence to be insufficient to demonstrate development of full insight by Mrs Horsford into her failings. Mr Kabasinkas submitted that Mrs Horsford has not produced any new evidence to demonstrate development of insight into her previous misconduct as desired by the previous panel.

Mr Kabasinkas also referred the panel to emails dated 10 October 2024 and 11 October 2024 sent by Mrs Horsford to the NMC. He submitted that Mrs Horsford has clearly indicated her desire to not be on the register and unavailability to attend the present hearing. Mr Kabasinkas also pointed to the fact that Mrs Horsford has not followed the suggestions made by the original panel and not provided any reflective written piece demonstrating her insight into her failings. Mr Kabasinkas emphasised that Mrs Horsford also has not addressed the question as to how she would do things differently if allowed to return to practice.

In view of the above, Mr Kabasinkas submitted that Mrs Horsford has not demonstrated development of insight into her actions.

Mr Kabasinkas also submitted that Mrs Horsford has not provided any evidence of strengthening of practice or of any efforts taken to keep up-to date with her knowledge. He submitted that the risk of repetition as determined by the original panel, given the seriousness of charges found to be proved against Mrs Horsford, continues to exist. In light of this, Mr Kabasinkas invited the panel to make a finding of impairment on the grounds of public protection.

Mr Kabasinkas submitted that as per the case of *Cohen* (supra), the burden of proof to demonstrate that their fitness to practise is not currently impaired is on the registrant. However, he submitted that because no new information has been provided by Mrs Horsford, the burden of proof has not been met. Therefore, Mr Kabasinkas invited the panel to make a finding of impairment against Mrs Horsford on the grounds of public interest for the same reasons as given by the original panel.

As to sanction, Mr Kabasinkas invited the panel to extend the current suspension order by a further period of 6 months. He submitted that at this stage the option of allowing the current suspension order to lapse on its expiry is available to the panel. However, Mr Kabasinkas, referring to the call note dated 13 June 2024 and emails dated 10 and 11 October 2024 respectively, submitted that Mrs Horsford has changed her mind about being on the register and attending the present proceedings within a short period of time. Therefore, he submitted that allowing the current order to lapse on its expiry would not be appropriate as it would amount to Mrs Horsford being removed from the register.

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 Horsford's fitness to practise remains impaired.

The panel considered the question as to whether, based on the evidence before it, Mrs Horsford can practise kindly, safely, and professionally. To determine this question, the panel directed its assessment to the following key considerations:

- Demonstration of insight by the registrant into their failings.
- Steps taken by the registrant to strengthen their skills and keep up-to date with knowledge.
- Risk of repetition of registrant's past misconduct, and
- The issues of public interest and public protection

The panel considered whether Mrs Horsford has developed insight into her failings. It noted that the previous panel found her to have demonstrated insufficient insight into her actions. This panel observed that no further evidence of development of insight has been provided by Mrs Horsford. It noted that Mrs Horsford has failed to:

- a. Provide any reflective written statement demonstrating development of insight into her failings and the impact of her actions on the patients in her case, and
- b. Engage with the NMC in a meaningful manner.

The panel noted that Mrs Horsford's engagement with the NMC has been limited. Firstly, in reply to the NMC Case Officer's email wherein she enquired as to how she can prove her fitness to practise to the NMC and indicated her attendance for the present proceedings. Secondly, in reply to notice of hearing of the present proceedings when she stated that she is not interested in remaining on the register and unavailable to attend the present proceedings. The panel also observed that Mrs Horsford has failed to provide any evidence to show how she would behave differently in the future with her patients, if she was allowed to return to practice. Further, she failed to provide evidence that she understood how her actions negatively impacted the nursing profession and the patients in her care.

The panel determined that in view of the above, Mrs Horsford has failed to evidence sufficient insight into her misconduct.

The panel noted that Mrs Horsford has failed to provide any evidence of self-reflection or continuing professional development, nor has she provided evidence of any training courses undertaken to strengthen her practice and keep her knowledge up to date as required by the original panel. The panel also noted that Mrs Horsford has not provided any references/testimonials as suggested by the original panel to demonstrate a period of practice without further incidents indicating that she can be allowed to return to safe practice.

Following the above discussion, the panel determined that there remains a risk of repetition of Mrs Horsford's past misconduct. This, coupled with a lack of insight, led the

panel to conclude that Mrs Horsford's fitness to practise remains impaired on public protection grounds.

The panel also determined that in view of the above findings and the findings of the original panel, there remains a likelihood of Mrs Horsford failing to uphold proper professional standards and conduct. The panel determined that Mrs Horsford's limited insight into her failings, lack of evidence to demonstrate strengthening of practice, and the seriousness of the charges found proved against her, show that the public interest would be undermined if a finding of no impairment is made against her. Therefore, the panel concluded that, in Mrs Horsford's case, a finding of continuing impairment on public interest grounds is required.

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

Decision and reasons on sanction

Having found Mrs Horsford'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 the imposition of a caution order but determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Horsford'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 Horsford'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 order on Mrs Horsford's registration would be a sufficient and appropriate response. The panel was mindful that

any conditions imposed must be proportionate, measurable, and workable. The panel bore in mind the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel determined that due to lack of any new information before it, no conditions of practice can be formulated to adequately address the concerns relating to Mrs Horsford's misconduct.

The panel next considered extending the current suspension order. The panel noted that because no new evidence was provided by Mrs Horsford to displace a finding of impairment, the aggravating factors before the original panel continue to exist. The panel observed that Mrs Horsford needed to show that the risk of repetition of her past misconduct has reduced or diminished.

Therefore, the panel was of the view that a suspension order would allow Mrs Horsford further time to fully reflect on her previous failings. It observed that Mrs Horsford needs to gain a full understanding of how her actions impacted her patients and the nursing profession and undermined the public confidence in the profession. The panel noted that, within a short span of time, Mrs Horsford changed her stance from seemingly intending to take steps to evidence that she is no longer impaired and attending the present proceedings to not following the suggestions of the previous panel and not attending the present proceedings. This showed a lack of clarity on Mrs Horsford's part about whether or not she wants to remain on the register and return to practice. The panel concluded that a period of suspension will allow Mrs Horsford to clarify her future intentions. The panel also observed that the misconduct in this case is remediable, as was the conclusion of the original panel, therefore, an extension of the current suspension order is the appropriate sanction in the present case.

The panel concluded that extending the length of the current suspension order by a further period of 6 months would be the appropriate and proportionate response. The panel noted that upholding the public interest in the present case is of critical importance as Mrs Horsford's misconduct relates to failure to respect and uphold the dignity of patients.

The panel determined that this order is necessary to protect the public, mark the seriousness of the misconduct, maintain public confidence in the profession, and send to

the public and the profession, a clear message about the standard of behaviour required of a registered nurse.

This extension of 6 months will come into effect on the expiry of the current suspension order, namely by the end of 22 November 2024, in accordance with Article 30(1)(a) of the Order.

The panel was mindful of the NMC Guidance Rev-3h, which allows a reviewing panel under the present circumstances to allow the current order to lapse on its expiry. However, the panel noted that Mrs Horsford has not provided unambiguous evidence about her intentions of remaining on the register in the form of a clear future plan or alternative employment. The panel bore in mind the lack of clarity demonstrated by the recent engagement of Mrs Horsford with the NMC. The panel determined that allowing the order to lapse on its expiry will have the effect of Mrs Horsford's removal from the register and will take away her chances of providing evidence of fitness to practise. The panel determined that, with the misconduct being remediable in the present case, an order being allowed to lapse on its expiry would not be the appropriate response.

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.

The panel is aware of Mrs Horsford's most recent correspondence with the NMC about having no interest in returning to the register. However, should Mrs Horsford decide to return to practice, then any future panel reviewing this order may be assisted by:

- A reflective statement from Mrs Horsford using an accepted model of reflection, demonstrating sufficient insight on the incident at the Home, the severity of her misconduct and its impact on Resident A, B and C, her colleagues, and the nursing profession.
- Any updated references or testimonials within the past twelve months attesting to Mrs Horsford's capability to perform her duties, in whatever role, professionally in any paid or unpaid work subsequent to this hearing.

- Up-to-date relevant training courses undertaken in the areas of concern including in managing challenging behaviours.
- Mrs Horsford's full engagement and attendance at any future review hearing.

This will be confirmed to Mrs Horsford in writing.

That concludes this determination.