

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

**Substantive Order Review Hearing
Monday, 23 September 2024**

Virtual Hearing

Name of Registrant: Joan Anne Barber

NMC PIN 83G1515E

Part(s) of the register: Adult Nursing – September 1986
Children’s Nursing – October 1989
Registered Health Visitor – November 2014
Registered Nurse Prescriber – January 2015

Relevant Location: Birmingham

Type of case: Lack of competence

Panel members: Pamela Johal (Chair, lay member)
Esther Craddock (Registrant member)
Robert Fish (Lay member)

Legal Assessor: Nigel Ingram

Hearings Coordinator: Rebecca Wagner

Nursing and Midwifery Council: Represented by Uzma Khan, Case Presenter

Mrs Barber: Not present and unrepresented

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: Order to lapse upon expiry in accordance with Article 30 (1), namely 1 November 2024

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Barber was not in attendance and that the Notice of Hearing had been sent to Mrs Barber's registered email address by secure email on 22 August 2024.

Ms Khan, 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 substantive order being reviewed, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mrs Barber'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 Barber has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs Barber

The panel next considered whether it should proceed in the absence of Mrs Barber. The panel had regard to Rule 21 and heard the submissions of Ms Khan, who invited the panel to continue in the absence of Mrs Barber. Ms Khan submitted that there had been limited engagement by Mrs Barber with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel has decided to proceed in the absence of Mrs Barber. In reaching this decision, the panel has considered the submissions of Ms Khan, the email correspondence received from the Registrant on 20 September 2024, and the advice of the legal assessor. It has

had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Barber and she has chosen to voluntarily absent herself from today's hearing;
- 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 review of the case.

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

Decision and reasons on review of the substantive order

The panel decided to allow the current suspension order to lapse upon expiry on 1 November 2024.

This is the first review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 04 October 2023.

The current order is due to expire at the end of 1 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 :

Between 2015 and 2020 failed to demonstrate the standards of knowledge, skill and judgement required to practice without supervision as a Band 6 Health Visitor in that you

In 2017 in relation to Baby A

1. *'Did not include Baby A on your caseload.*
2. *Did not put an alert on Baby A's case notes.*
3. *Did not make antenatal contact with Baby A's mother.*
4. *Did not successfully complete a new birth visit in a timely manner.*
5. *...*
6. *Did not document Baby A's rash despite being aware of it.*
7. *Did not place Baby A on the premature pathway.*
8. *Did not keep adequate records and/or complete a care plan.*
9. *Assessed Baby A as universal which was incorrect.*
10. *Did not put an alert on Rio regarding Baby A.*

With regards to record keeping

11. *Did not complete records and/or assessments for one or more of your cases on your June 2017 caseload.*

In 2020 in relation to Baby B

12. *Did not follow the premature baby pathway.*
13. *...*
14. *Did not record in the care plan any restrictions in place due to corona virus.*

15. *On becoming aware that Baby B's mother had been subject to domestic abuse did not risk assess the current situation.*

16. *On being unable to conduct a 6-8 week review on Baby B did not raise this with your team leader and/or your supervisor.*

17. *On writing a care plan did not include sufficient detail in that you.*

17.1 *Did not describe the restrictions imposed via lockdown.*

17.2 *Did not describe that there was a compelling need to see Baby B.*

18. *Between 2 June – 29 June 2020 did not contact Baby B's mum.*

19. *Did not offer weekly weight appointments for the first six weeks.*

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

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

'The panel found that patients were put at risk of harm as a result of Ms Barber's lack of competence. The panel noted that, although it is not suggested that Ms Barber's actions directly contributed to the death of Baby A or Baby B, it has received evidence from witnesses that other health visitors would have acted differently had they been aware of Baby A's full clinical history and that Baby A would have received more support through being placed on the correct premature pathway. The panel also determined that Baby B was not given the support that they required during their short life through Ms Barber's lack of competence. Accordingly, the panel found that vulnerable patients were potentially caused harm by Ms Barber's failure to update records and follow Trust pathways and guidance.

The panel found that Ms Barber's repeated failures and lack of competence had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel took account of the contextual factors which were raised by Ms Barber within her Trust disciplinary meetings, namely the challenging work environment including feeling overwhelmed by her workload and a challenging working relationship with a colleague. In respect of Ms Barber's workload, although the panel recognises that health visiting is a challenging area of practice, which was described as being "chaotic at times" by some witnesses, the panel also took into account the evidence of Witness 11, who said that Ms Barber "blamed work pressures for her failings". The panel took into account that multiple witnesses were asked about the average caseload for a health visitor, and told the panel that Ms Barber's caseload was not excessive compared to her colleagues. It also had regard to the evidence of Witnesses 1 and 11, who told the panel that Ms Barber was given a direct instruction to reduce her caseload on 25 January 2017 and had failed to do so by 7 March 2017. Witness 11 said that Ms Barber repeatedly ignored instructions to hand over cases over several months, and said that she "needed to sort them out". Furthermore, Witness 1 said that Ms Barber actively sought to take Baby A onto her caseload during this period, despite repeated instructions to reduce it and to not take new active cases. Accordingly, in these circumstances, the panel concluded that it was unable to attribute any mitigation to Ms Barber's actions in relation to her caseload, especially when she was working within a supportive environment.

Similarly, the panel concluded that it could attribute limited mitigation to Ms Barber's concerns about her challenging working relationship with her colleague. The panel noted that it has not received any evidence as to how it is suggested that this may have directly affected Ms Barber's competence, and bore in mind that registered nurses have a duty to work in a professional manner in a way which does not affect their patients and clinical practice. It concluded that, any such issues ought to have been escalated through Ms Barber's manager.

Regarding insight, the panel noted that Ms Barber has not provided any evidence to this panel, however it has the benefit of Ms Barber's responses to the concerns when raised at the four Trust investigation meetings in 2018 and 2020 respectively. The panel noted that, in these meetings, Ms Barber demonstrated a limited ability to reflect on her failings and verbalise her remorse for some of her failings. However,

the panel concluded that throughout these interviews, Ms Barber ultimately rested on a position of blaming others and the Trust as an organisation, especially in relation to the deaths of Baby A and Baby B.

In its consideration of whether Ms Barber has taken steps to strengthen her practice, the panel took into account all of the evidence before it and noted that there is evidence of initial strengthened practice from Ms Barber's successful completion of her stage 2 performance plan, following the Trust investigation into the death of Baby A. However, the panel concluded that this learning had not been embedded into Ms Barber's practice, given the repetition of the strikingly similar concerns surrounding the death of Baby B. The panel would expect that, having been involved in an incident as serious as the death of Baby A, a practitioner would become very reflective and hypervigilant in order to avoid the recurrence of such a serious incident again, yet Ms Barber did not act as such. Further, the panel took into account that Ms Barber has not been in clinical practice since her retirement from nursing in December 2020, therefore has not had any opportunity to prove that she can practice safely and effectively since this date. Accordingly, the panel found that there is no evidence of strengthened practice before it today.

The panel considered that the lack of competence found has the potential to be remedied, but there is no evidence of any remediation having taken place, therefore the panel is of the view that there is a risk of repetition.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind 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 determined that a finding of impairment on public interest grounds is required as a result of Ms Barber's lack insight, reflection or strengthened practice.

The panel took account of its findings that vulnerable patients were not safely managed and not properly cared for as a result of Ms Barber's recordkeeping, assessment and escalation errors. It concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case. The panel therefore also finds Ms Barber's fitness to practise impaired on the grounds of public interest.

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

The original reviewing 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:

- [...]*
- No evidence of harmful deep-seated personality [...] problems;*
- [...]*
- In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

For the reasons already outlined, the panel determined that there remains a significant risk to patient safety were Ms Barber permitted to practise as a nurse or health visitor even with conditions of practice in place.

The panel bore in mind that, in cases relating to lack of competence, it is not open to a panel to consider a striking-off order at a substantive hearing.

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

The panel noted the hardship such an order will inevitably cause Ms Barber. 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 12 months was appropriate in this case to mark the seriousness of this case and the public interest concerns identified.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, it may confirm the order, it may replace the order with another order, or it may allow the order to lapse with a finding of impairment.

Any future panel reviewing this case would be assisted by:

- Should Ms Barber wish to return to nursing practice, evidence of engagement with the NMC and an extensive up-to-date reflective piece which addresses her insight, remorse and the impact which her lack of competence had on the patients in her care, their families, her colleagues and the reputation of the nursing profession.*
- Should Ms Barber wish to be removed from the NMC register, evidence of her clear settled intentions that she no longer wishes to return to practice as a registered nurse, including a declaration that she would not seek readmission to the NMC register for a period of at least five years after her name has been removed.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Barber'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 or more recently '*able to practice safely, kindly and professionally*'. 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 email correspondence Mrs Barber provided the NMC, dated 20 September 2024. It has taken account of the submissions made by Ms Khan on behalf of the NMC.

Ms Khan outlined the background of the case to the panel. She referred the panel to the limited engagement Mrs Barber has had with the NMC, noting the only engagement from Mrs Barber since the substantive hearing, was the email dated 20 September 2024 where she stated she is '*happy for [Mrs Barber's] name to be removed from the register.*'

Ms Khan submitted that Mrs Barber remains impaired and is '*not suitable to practice unrestricted.*' She noted that Mrs Barber has not demonstrated any insight, no evidence to remedy the deficiencies in her practice, or her ability to practise safely.

Ms Khan submitted the panel has two options of sanctions available to them:

1. to impose a further suspension order for 12 months; or
2. to allow Mrs Barber's current order to lapse with impairment.

Relating to the former, Ms Khan submitted a further suspension order may not be adequate in these circumstances. She noted there has been no change in Mrs Barber's insight and that there remains a risk of harm to patients. Ms Khan submitted there is no evidence before the panel to suggest a further suspension order will provide a reviewing panel with the necessary information to demonstrate a change in insight or reduced risk of harm to patients.

Relating to the latter, Ms Khan submitted the current order can expire and that Mrs Barber's registration will lapse upon its expiry. Ms Khan noted it is clear that Mrs Barber's fitness to practice remains impaired and that Mrs Barber's registration is only active because of the current substantive order in place. Ms Khan confirmed Mrs Barber had been invited by the NMC to provide information prior to this hearing as to whether she wishes to remain on the register and submitted that Mrs Barber's email dated 20 September 2024 makes her desire to no longer remain on the register known. In light of the above, Ms Khan submitted to the panel that in these circumstances it may be more appropriate to allow the registration to lapse with a finding of impairment.

Ms Khan directed the panel to Mrs Barber's additional recent email to the NMC Case Officer, dated 20 September 2024, stating:

*'Dear [NMC Case Officer],
With reference to your emails, I confirm that I am happy for my name to be removed from the register. I have no intention of applying to re register in the future.'*

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 Barber's fitness to practise remains impaired.

The panel noted that the original panel found that Mrs Barber had minimal insight. The panel noted there is no evidence to demonstrate an understanding of developing insight into the charges found proved against her. The panel observed there is nothing before it to provide any indication as to what Mrs Barber has been doing throughout the current suspension order. The panel confirmed that it has not received any reflective statement relating to the incidents, and no remorse had been demonstrated by Mrs Barber following the imposition of the current order.

The panel considered the original charges found proved and noted that they were wide ranging and were over an extended period of time. The panel considered the lack of engagement, no new information on insight into her failings and the seriousness of the charges found proved, demonstrates that Mrs Barber has failed to address the recommendations provided by the original panel.

In its consideration of whether Mrs Barber has taken steps to strengthen her practice, the panel noted Mrs Barber has not taken any steps to strengthen her practice in order to maintain her clinical skills since her retirement in December 2020. The panel confirmed it had no evidence to suggest Mrs Barber had engaged in training and/or courses to strengthen her practice whilst the current substantive order is in place.

Further, the panel noted that in the absence of any recent information before it, a finding of impairment was required. The panel noted there is no evidence of remorse and the risk of repetition remains high. The panel determined that a current finding of impairment is required as Mrs Barber has taken no steps, in effect since 2020, to remedy any of her failings.

The original panel determined that Mrs Barber was liable to repeat matters of the kind found proved. Today's panel has not received any new information. In light of this, this panel determined that there remains a risk of repetition for the matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel also borne in mind 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 Mrs Barber's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Barber'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 be neither 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 Barber'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 Barber's lack of competence 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 Barber'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 has received information that Mrs Barber has been retired since 2020 and does not intend to return to practise as a nurse. In view of Mrs Barber's clear settled intention not to return to nursing, the panel considered that any conditions of practice order would serve no useful purpose.

The panel next considered imposing a further suspension order. The panel noted that Mrs Barber has not shown remorse for her lack of competence. Further, Mrs Barber has only demonstrated minimal insight into her previous failings. The panel was of the view that considerable evidence would be required to show that Mrs Barber no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances.

The panel confirmed the sanction of a striking-off order was not available to it, in view of the fact that this was a lack of competence case and Mrs Barber had only been suspended for a period of 12 months.

The panel determined that allowing the current order to lapse with a finding of impairment is the appropriate course of action which would both protect the public and satisfy the wider public interest. In coming to its determination, the panel made note of the relevant guidance, '*Removal from register when there is a substantive order in place*', last updated 30 August 2024 (ref REV-3h). In particular, the panel considered whether the paragraph below applied to the circumstances of this case:

'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 place³;*
- 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.'*

The panel determined there have been no material change of circumstances since the existing substantive order was imposed. In its consideration, the panel noted:

- original panel's recommendations to Mrs Barber; and
- the NMC's correspondence outlining the panel's recommendations, dated 8 December 2023 and 19 August 2024.

Specifically, the panel considered Mrs Barber's written correspondence relating to her intention to no longer practice as a registered nurse, the panel also noted an email from Mrs Barber, dated 13 March 2023:

'with reference to your email, I do not wish to be contacted regarding the processes you mention, either by email or postal mail.

As I stated in my letter over two years ago, I was withdrawing from the NMC processes for my health and well-being. As of December 2020, I have been retired.

I have no wish to return to any form of a caring role within health or social care.'

The panel gave particular weight to the email from Mrs Barber, dated 20 September 2024, where she provided the NMC with a clear intention to be removed from the NMC Register:

‘with reference to your emails, I can confirm that I am happy for my name to be removed from the register. I have no intention of applying to re register in the future.’

The panel determined that the appropriate course of action with respect to sanction is to allow the current order to lapse with a finding of impairment and this outcome is also in Mrs Barber’s own interest. The panel determined that this would uphold the public’s confidence in the profession.

The panel determined that the appropriate order is to allow the substantive suspension order to lapse with a finding of impairment at the end of the current period of imposition, namely the end of 1 November 2024, in accordance with Article 30(1). This will mean that Mrs Barber’s PIN will expire, and she will cease to be a registered nurse and unable to practise. In the event that Mrs Barber wishes to re-join the register, the Registrar will take into account Mrs Barber’s current impairment were she to apply for re-registration.

This decision will be confirmed to Mrs Barber in writing.

That concludes this determination.